CRIMINALISING JOURNALISM

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

Legislating 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.

How else can you explain how a draft law could be introduced into the Parliament that would allow for journalists to be locked up for 20 years for reporting information in the public interest? In the name of keeping the people safe, the Government now wants to keep information hidden from view, and punish the whistleblowers who disclose the information and the journalists who work with them.

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 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 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.

Sadly, the head of ASIO Duncan Lewis rejected the idea, saying exemptions would leave the door 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. Porter added prosecutions of journalists would “not proceed without his 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 319.
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 embarrased 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 activists seeking to hold the government to account. The Prime Minister, in his discussions with 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 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.”

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.”

Sydney Criminal Lawyers’ blog – "The Bill creates a series of draconian laws that aim not only to penalise Commonwealth officers that leak classified information, but also criminalises all the steps that go into reporting such information to the public.”

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.”

Australian Lawyers Alliance blog – "Whistleblowers revealing dangerous and harmful conditions in offshore detention could be caught by this new law. Reporters revealing misconduct or corruption could be caught. 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.”

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
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.

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 – “Broad exemptions for journalists would, in my view, effectively leave a wide open for foreign spies to exploit, and may have the unintended consequence of increasing the intelligence threat that is faced by our journalists.”

Law Council of Australia president Morry Bailes – “The radical altering of the definition of what is national security to include political and economic relations with other nations... is the sort of thing that you might expect a journalist to be reporting on, in the context of ordinary democratic discussions in this country. We don’t want the net to be cast so wide that legitimate democratic discussion is going to suffer. We need to think carefully about what’s being taken away.”

Senator Brian Burston – “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 well I’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 bombs 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 Jihadic 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 Q&A... 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 at the ABC wouldn’t cut it in the real-world of media and would likely end up throwing pots in Nimbin 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 – “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 Q&A... I don’t want it. It is a waste of taxpayers’ money...”

US President Donald Trump – “#FraudNewsCNN #FNN”

Brandon Gricevseer made 22 threatening phone calls to CNN’s Atlanta offices – “Fake news... I’m coming to get 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 fucking gun every single last one of you.”

Brian Mitchell MP to an ABC reporter – “Go and do your research, maggot!”

ACT Chief Minister Andrew Barr – “I hate journalists. I’m over dealing with the mainstream media as a form of communication with the people of Canberra.”

Committee to Protect Journalists – “In its annual prison census, CPI found 262 journalists behind bars around the world in relation to their work – a new record. The prison census accounts only for journalists in government custody and does not include those who have disappeared or are held captive by non-state groups. These cases are classified as ‘missing’ or ‘abducted.’”

International Federation of Journalists (IFJ) – “82 journalists killed in 2017. In the overwhelming majority of these cases, the killers have not been identified and justice for the victims and their families remains as elusive as ever.”

IFJ president Philippe Lerneth – “The IFJ pays tribute to all our brave colleagues who last year paid the ultimate price to unveil the truth. The IFJ and its affiliates all over the world keep fighting and developing new ideas and initiatives in order to put an end to the safety crisis in media, building stronger trade unions to protect journalists and media workers. There is much that has been done but today we don’t forget the continuing challenges we must face together within the profession in terms of the safety and labour rights of our colleagues, notably with the IFJ fight against the scandalous impunity of most journalists’ assassins.”

UNESCO – “Every year, May 3 is a date which celebrates the fundamental principles of press freedom, to evaluate press freedom around the world, to defend the media from attacks on their independence and to pay tribute to journalists who have lost their lives in the exercise of their profession. It serves as an occasion to inform citizens of violations of press freedom... May 3 acts as a reminder to governments of the need to respect their commitment to press freedom... Just_world_gen, World Press Freedom Day is a day of support for media which are targets for the restraint, or abolition, of press freedom. It is also a day of remembrance for those journalists who lost their lives in the pursuit of the truth.”

From left: One Nation Senator Pauline Hanson with Senator Brian Burston left and former Senator Malcolm Roberts right. Image courtesy Andrew Meares, Fairfax photos

Peter Dutton addresses the media. Image courtesy Aliss Journalist Daphne Caruana Galizia was killed by a car bomb.
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 27.6, 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.

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 6.3 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 magistrates, 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 82.4 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 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 proceeding 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 15 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 37 per cent of suppression orders.
- 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 expect 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 revolutionise this role.
- Tailor-made model orders. There is a trend of judges unscrupulously 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 report was released by the Government in the last week of March 2018. The report’s recommendations are disappointing. Victoria has more suppression orders made than the rest of the country combined. The report’s recommendations will not change this situation. The Open Courts Act should be renamed to reflect the effect it actually has.

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 was 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 for information without properly investigating the allegations, which was evident from internal 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 repeatedly 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 Rights Media Fraternity had come to rely on the certainty provided by the $389,500 cap on damages for non-economic injury. Dixon J’s willingness to subvert the cap sends a concerning warning to all media publishers, namely that this may be the first of many spiralling and unpredictable defamation payouts.

This is high enough degree of concern shared by media publishers; they joined forces in an attempt to keep the information circulating, current and to neutralise Wilson’s response to the articles.
The robustness of the Northern Territory law is yet to be tested. Whether this exception would 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 the 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 issuing a warrant 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 collect 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 is significantly broadened.

MEET: LOOKING FORWARD

The #MeToo movement has brought about an emerging trend of women speaking out against 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 and intimidate 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 issued proceedings in early 2018 against Fairfax Media, the ABC and his former co-star Christie Whelan Browne, 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 up if and when they face sexual harassment.

CHOOSING A COURT

Plaintiffs have traditionally done pretty well in Australia’s Supreme Courts, especially NSW. However, this is not the case under the new defamations law.

On March 1, 2017 MEAA made a submission to the review conducted by Judge Frank Vincent of Victoria’s Open Courts Act 2013 and the review’s consideration of whether the Act strikes the right balance between people’s privacy, fair court proceedings and the public’s right to know. MEAA believes the Act, intended to address concerns that suppression orders were being made too frequently, has failed to achieve its aims.

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 journalists “boots on the ground” to report on issues in the public interest. Fewer reporters may cover more important issues, less time and opportunity to report, and a decline in the ability to properly scrutinise 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, monitor coverage of political platforms 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
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Failing to acknowledge the public's right to access to purely commercial entities while MEAA believes these remarks traduce the MEAA believes that the courts that determine what is in the public interest. In a speech delivered to the Melbourne Club on Friday November 15, 2009 (prior to the introduction of the Open Courts Act), former Victorian Supreme Court Justice Betty King boasted that she was “probably responsible for the majority of suppression orders issued in the last three years” and that for every media report there were equally reports that were “inaccurate, salacious, malicious and indefensible and just plain untrue.”

As recently as October 2015, Victorian Chief Justice Marilyn Warren (who left office in October 2017) wrote about the media’s challenging of suppression orders:

It needs to be remembered that the media has in its ability to employ here -readers, viewers and online participants. Crime sells.

MEAA believes these remarks traduce the media to purely commercial entities while failing to acknowledge the public’s right to know. MEAA also believes the Chief Justice’s comments fail to acknowledge the difficulties of the media’s current operating environment, as outlined above.

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.  

TWO MANY ORDERS

The media’s major concerns with suppression orders have been their prevalence in Victoria. It was hoped that the Act would remedy this propensity of the Victorian courts to issue suppression orders so readily. However, a news story in The Age in October 2015 stated:

Victoria is still issuing hundreds of suppression orders a year, including blanket bans on information that[...] prevent media organisations from even reporting that access 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 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 reason 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 December 2013, which was supposed to limit the number.”

The newspaper went on to say:

On top of this, the Victorian Civil and Administrative Tribunal and the Coroner’s 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 us to challenge the daily procession of suppression orders is increasingly unrealistic.” [MEAA emphasis]

In response, Chief Justice Warren noted in the article cited above: “...there is a trend in Victoria that maintains a database of all suppression orders issued – so it is therefore difficult to compare the number of orders made here against other Australian jurisdictions.44

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.

If that is so, then that is a concern. In March 2015 the Gazette of Law and Journalism reported that MEAA contended a 40 per cent increase in the number of court suppression orders in NSW since 2008.

There is evidence that the Open Courts Act has failed to reduce the number of orders being issued by Victorian media. In his paper “Two Years of Suppression under the Open Courts Act 2013 (Vic)”, Melbourne Law School senior lecturer and deputy director of the Centre for Media and Communications Law at the University of Melbourne Jason Bosland noted: “What is apparent…is that the overall number of regular suppression orders made by the courts per year has remained relatively stable...despite the introduction of the OC Act.”

In short, the Act is failing to make the operation of the courts more “open”.

Indeed, it is interesting to note the comments made by Justice Simon Whelan to the Melbourne Press Club in July 2015. He noted that the Open Courts Act had not led to judges issuing fewer suppression orders:

“...but expecting us to challenge the sheer number of such orders being issued – so the Act would remedy this propensity of the courts to issue suppression orders so readily – is probably not the best use of our resources.”

However, the Act has made the number and the number has not gone down. We really want to have a situation where we make very few orders...we could have less than we do... There is no order that has been made in relation to matters that are already addressed by legislation or the sub judice rule.

Bosland goes on to note that under the Act, 63 per cent of proceedings-only orders are “blanket bans” – the most extreme form of proceedings-only suppression order that can be made by a court – mainly made in the “administrative” Court. Bosland notes:

“The data on the scope of the orders of orders 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 is made here against other Australian jurisdictions.44

Section 28 of the Act states: “To strengthen and promote the principle of open justice, there is a presumption in favour of a proceeding being open to which a court or tribunal must have regard in determining whether to make any order, including an order under this Part that the whole or any part of a proceeding be heard in closed court or closed tribunal; or that only specified persons may be present during the whole or any part of a proceeding.”

MEAA’S RECOMMENDATIONS

A MEAA Member and senior court reporter with a daily newspaper, senior court correspondent in 2017.

Another day, another suppression with no notice to media. It's become standard practice to ignore Open Courts.

MEAA recommended that consideration be given to a notification to media outlets, with the possibility of some confirmation of receipt so that all parties are assured the media has been advised of the making of an order and that the order has been acknowledged.

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 order not being able to be included in depth in the .pdf document but that the database utilises a “search” function to quickly identify and locate persons and issues included in the suppression order.

MEAA also expressed concern 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 this is a role for the courts (except for matters before the Coroner Court – see below).

Indeed, the comments of former Justice Betty King cited earlier include her noting that the Act is “a curious result of the sub judice rule.”

MEAA also recommended that both the purpose and the grounds for the making of any suppression order must be clearly set out. Consideration should be given to ensure that the purpose and grounds are clear, specific and apply directly to reasoning for the making of an order. Vague, repetitive and non-specific grounds should be deemed inadequate.

Section 15 of the Act requires that “a suppression order must specify the information to which the order applies with sufficient particularity to ensure that it is limited to achieving the purpose for which the order is made; and is readily apparent from the terms of the order what information is subject to the order. A suppression order must specify the purpose of the order; and in the case of a non-person suppression order must specify the applicable ground or grounds on which it is made.”

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 of our inquiries – are reporting of 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 7 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 the courts consider the specific exemptions of an order and the reasons behind a suppression order, as well as its scope and timeframe, must be satisfactorily stated and accepted before any order can be made and that these arguments be included as part of the notification system.

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 as to why the order was made, particularly those issued in the County and Supreme Courts, were made 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 great aims must be to apply to the court to lift that order.”

Section 12(5) of the Act, states: “If the period for which a suppression order operates is specified by reference to a future event that may not occur, the order must also specify a period from the date of the order (not exceeding five years) at the end of which the order expires unless a particular event is to be specified as to why that time frame has been chosen.”

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

Bosland says: “This is a curious result because in terms of necessity of duration, this was not a significant event for a five-year period 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 timetables 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 times 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 MEAA REPORT INTO THE STATE OF PRESS FREEDOM IN AUSTRALIA IN 2018

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 media 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.” [MEAA emphasis]

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 meet to examine ways to improve relations for the best outcomes for the operation and reporting of the courts.

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 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, death was and defamation the digital report and the Government’s response to its recommendations.

This “service” amply demonstrates the confused perspective: if the media doesn’t turn to the contradictor, a bar 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.

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The regime does not have a review clause. However, in 2011, after five years of operation the New South Wales Department of Justice undertook a review of the defamation laws. That review was not consulted 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 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 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…"

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 review the framework of existing 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."

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 CREEPING CRIMINALISATION OF JOURNALISM

By Peter Greste

The New York-based Committee for the Protection of Journalists (CPJ) is blunt in its assessment of the state of journalism around the world today: “There has never been a more dangerous time to be a journalist,” it declares in its #FreeThePress campaign.

According to the CPJ’s count, by the end of last year, 262 journalists around the world were in prison for their work. That is the highest on record since the organisation began tracking the numbers in 2000.

US-based human rights organisation Freedom House agrees. Its grim headline in the 2017 report is Press Freedom’s Dark Horizon. It goes on to say, “global press freedom declined to its lowest point in 13 years in 2016 amid unprecedented threats to journalists and media outlets in major democracies and new moves by authoritarian states to control the media, including beyond their borders.”

If we appear to be heading into journalism’s long, dark night, when did the sun start to disappear? Although the statistics jump around a little, there appears to be a clear turning point: in 2005, when the numbers of journalists killed and imprisoned started to climb from the historic lows of the late ‘90s, to the record levels of the present.

Although coincidence is not the same as causation, it seems hard to escape the notion that the War on Terror that President George W. Bush launched after 9/11 had something to do with it. “In this war, either you are with us, or you are with the terrorists,” Bush ominously told a historic joint session of Congress soon after the attack on the Twin Towers. For journalists, that stark statement had two devastating implications.

First, the War on Terror presented a binary choice: you are on one side of the line, or the other, making it impossible to exercise genuine balance and neutrality in reporting the conflict – one of the most basic ethical tenets of our craft. Anyone who sought to understand what drove the extremists, or challenged the government’s policies in the war, immediately became accused of “promoting terrorist ideology”, or of being unpatriotic, or of seeking to legitimise terrorism. At best, it meant being demonised and condemned; at worst, being charged – as my two colleagues and I were in Egypt – with collaborating with terrorists.

And that leads to the second implication: the War on Terror gave politicians the scope to grant governments a host of new “national security” powers and, in the process, redefine “terrorism” so loosely as to include whatever they wanted.

Take Turkey.

In July 2016, a faction within the Turkish Armed Forces called the Peace at Home Movement tried to overthrow the government of President Recep Tayyip Erdogan. The attempted coup failed, and Erdogan accused the exiled Gulen Movement of being behind it. He then declared anybody associated with the movement, and soon after, anybody who challenged the government, of being "terrorists". Erdogan began rounding
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 about alleged smuggling of weapons into Syria by Turkey.

Dündar is a recipient of CPJ’s International Press Freedom Award and has lived in exile in Europe since 2016, when a Turkish court sentenced him to seven years for “revealing state secrets”. Dündar’s case is one of the most prominent in Turkey, but it is by no means extraordinary.

According to the CPJ’s figures, Turkey is now the world’s most prolific jailer of journalists with at least 20 currently in prison, again almost all on charges related to terrorism and national security. In January 2014, my two 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 on appeal and 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 approach 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.

Note that phrase: “criminalize the reporting of national security information”. In the innocent days before 9/11, it would have been hard to “criminalise any activity. In their defence, journalists can argue that travel to, say, Afghanistan, was for “legitimate purpose”, but the burden to prove legitimacy rests with the reporter; not the prosecutor.

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 drives 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 AG’s office cited section 9A 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 was still being debated, but media critics complained they had been so widely cast that they seemed to assume any “unauthorised” communication with a journalist can argue that travel to, say, Afghanistan, was for “legitimate purpose”, but the burden to prove legitimacy rests with the reporter; not the prosecutor.

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WELCOME TO THE MACHINE

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

J ust half an hour’s drive north-east of Washington DC, the well-paved dual highway passes a forest before a final line of trees gives way to more open ground. On the left, looking like a sprawling shopping complex which has outgrown its site, the National Security Agency (NSA) appears. This is the headquarters of the most powerful intelligence-gathering organisation the world has ever seen.

It is the centre of a network that straddles the Earth. From the spy base at Pine Gap with its array of antennas pointing skywards against the sunset red of the Australian outback, to Menwith Hill on the green undulating farmland of Yorkshire in the north of England, the NSA is connected to satellites circling overhead, and undersea surveillance systems tapping into transcontinental telephone cables.

Nearly every phone call, email or electronically created signal will at some time end up here, or in one of the data storage bases of the world’s six agencies in Australia, New Zealand, Canada or the UK. Known as the Five Eyes partnership, the intelligence-sharing agreement has its roots in the days of the British Empire. If you use a telephone or the internet, nowhere on the planet is safe from the prying eyes and ears of the NSA and its sister agencies. Every mobile phone tower, every email, every payment at the supermarket, every digital transaction adds to the profile the NSA is capable of building on every person on Earth. Huge databases scattered across the world log the digital footsteps and fingerprints of us all.

Throughout the Western liberal democracies new laws have given governments greater powers to eavesdrop on the population and the journalists whose job it is to keep them informed. Those laws, which gave governments such sweeping new powers, were sometimes introduced ostensibly to target terrorists and reduce the number of attacks. But detailed analysis suggests the so-called anti-terror surveillance laws have not achieved what governments promised. Instead they have often been more effectively used to track down whistleblowers and criminalise the work of journalists. The notion that the central role of journalism was to disclose secrets which powerful interests wanted kept from the public was being upended, particularly in the important area of national security.

New laws being shaped, both in the US and elsewhere, made illegal that which had been normal journalistic practice and made legal the activities of intelligence agencies which had previously been outlawed. Against sometimes hysterical claims from US politicians, other nations fell in line.

In Australia swelling laws demanded that the metadata of all phone calls should be held for two years by the telecommunications companies, on behalf of intelligence and police agencies, exposing journalists and their sources to being tracked by the very organisations it is their responsibility to hold to account. The new laws give virtually no protection to journalists – and in particular their sources. One draconian piece of legislation made it an offence punishable by up to 10 years prison in certain circumstances for a journalist to reveal what the national Australian Security Intelligence Organisation (ASIO) determined was a Special Intelligence Operation (SIO). Since ASIO would neither confirm nor deny an SIO, it was impossible to know if a journalist was about to break the law until the report was broadcast or published.

All this is happening as newspapers across the political spectrum have become weakened by plummeting circulation figures, their owners either unwilling or unable to stand up to governments.

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 more likely to look towards a 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 (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. Unlike Australia’s Parliamentary system is based on that of the UK, 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.

In the event the application of a Journalists Information Warrant came from ASIO, the new lawyer for public advocate potentially standing in the way, representing the journalist. The signature of the Attorney-General would be sufficient to give the domestic spy agency access to any journalist’s metadata.

Six months earlier, in response to the (Edward) Snowden disclosures, Parliament had passed a law that gave ASIO even more power, as the government responded to the Snowden leaks. The National Security Legislation Amendment Act (2014) introduced a three-year prison sentence for intelligence officers who removed or coerced classified material without authorisation. If the information was given to a third party, for example a journalist, the officer could face 10 years in prison. And to prevent any outside scrutiny of the intelligence organisation the government rushed through a law which made it extremely difficult for ASIO’s actions to be investigated by journalists.

Section 35P of the Act created an offence which makes it a crime, with a possible sentence of five years, to disclose information about a “special intelligence operation” – an SIO. If the disclosure endangered anyone’s health or safety – or the effective conduct of an operation – then the maximum sentence increased from five to 10 years.

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 “receiving” 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, too, the nation that had passed more counter-terrorism legislation than any other place on earth, now had specific law 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.
WARRANTS
INFORMATION
JOURNALIST

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

On April 28, 2017 MEAA issued a statement regarding the revelation an Australian Federal Police officer has been able to access a journalist’s telecommunications data without being granted the necessary Journalist Information Warrant.

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 undermines the right to privacy and public health and safety.”

The using 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-seascale 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 15, 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.

The new regime secretly circumvents these 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.

The new regime secretly circumvents these 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 April 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 a sham: safeguard at all; 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 they must protect the confidentiality of sources.

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The 21 government agencies include the Australian Federal Police, 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. Everything about Journalist Information Warrant is secret. 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 if the power of technology and how many of their new sources 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.

The ombudsman contradicted AFP commissioner Andrew Colevin’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.”

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.”

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 main contributing government agencies through which the breach:

• At the time of the breach, there was insufficient awareness surrounding Journalist Information Warrant, requirements within the Professional Standards Unit (PSRU).

• Within PSRU, a Senior manager of officers did not appear to fully appreciate their responsibilities when exercising metadata powers;

• The AFF relied heavily on manual checks and corporate knowledge as it did not have in place strong systems and processes for preventing applications that did not meet relevant thresholds from being processed, 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 know-how. The Ombudsman suggested that in future cases of metadata authorisations, the AFP should destroy the information, seek assistance from its technical officers to ensure that the information is destroyed from all locations on its systems.

The ombudsman’s report states that: “At the time of drafting this report, 193 authorised officers were delegated to issue metadata authorisations. Fifty-four of them could issue metadata authorisations under a Journalist Information Warrant.”

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.”

The lack of proper capability, oversight, management and understanding of the requirements of the laws, outlined in the Ombudsman’s report, is worrying. After all, the legislation is designed for a single purpose: the 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 new story has been published or broadcast.

The use of legislation in this attack on press freedom was that was passed by 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 national police force so soon after being enacted is more worrying still.

On July 14, 2017 MEAA issued a statement expressing alarm at a government push to force tech companies to break encrypted communications:

“The announcement seems to show scant understanding or consideration of how this might be achieved, or any concern for the potential consequences,” MEAA said.

MEAA said it was particularly concerned that on past experience the government and its agencies have little regard for press freedom, and there is every likelihood that the powers being sought by the government over encrypted communications will be misused – either to identify a whistleblower or pursue a journalist for a story the government does not like.

MEAA chief executive Paul Murphy said: “For more than 15 years now, we have seen government introducing anti-terror laws that erode press freedom, persecute whistleblowers who seek to expose instances of fraud, dishonesty, corruption and threats to public health and safety.”

“Laws that are meant to protect the community and go after terrorists are being used to muzzle the media, cloak the government in secrecy, hunt down and identify sources, and imprison journalists for up to 10 years for reporting matters in the public interest,” 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 persecute journalists. The government must take immediate steps to protect human rights and press freedom before it indulges in granting agencies any more anti-terror powers. There will be appalling consequences if extreme powers such as these are ever misused,” Prime Minister and Attorney-General are misused to persecute journalists and their sources. After all, that’s what happened just three months ago,” Murphy said.
The legislation, the National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017, applied the penalty to anyone who “communicates” and “deals” with certain information provided by a Commonwealth officer.

The new penalty for “deals” with information would put a person in automatic breach. Indeed, if the journalist did receive such information, how could they to know the material was in breach of the law without first possessing, communicating, and dealing with it?

So broad was the Bill that a discussion of unsighted material might place a journalist in breach even without being in possession of a document.

Under the proposed amendments the penalties were increased from the range of six months to seven years jail to a new maximum of 15 years jail for the first possessing, communicating, and otherwise dealing with the material. This is a significant step beyond the Espionage Bill punishable people who merely have certain information to those in possession of the information, as well as editors, producers, and office support staff who are all working with information in a news media environment.

The submission stated that “deals” with information was unnecessarily broad – particularly when applied to the news media – adding that “deals” would include people who receive information, possess information, communicate information or who make a record of it. It would capture people who merely have certain information in their possession – including anyone in a media outlet involved in news reporting and editing. This is a significant broadening of the application of the law beyond that encompassed in the legislation that the Bill replaces.

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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 far more broadly than previous legislation, and acts as a barrier to public interest reporting. Existing law applies to “interfering with any process or procedure 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 “public interest” and “fair and accurate reporting”. Services Tax distribution could be viewed 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 news reporting 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 to establish how they came to possess and deal with and hold the information. “It is quite possible the powers under the “Bill would be exercised in such a way as to chill the interplay between the JI and the media’s ability to report”.

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 recommended that these matters include interfering with any process concerning breaking of a Commonwealth law that has a civil penalty, interfering or prejudicing relations between the Commonwealth and a State or territory. “Overall, 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 “public interest” and “fair and accurate reporting”.

In response to these concerns, on February 2, 2018, the new Attorney-General Christian Porter was reportedly seeking advice on issuing a direction to the Commonwealth Director of Public Prosecutions that prosecutions of journalists cannot proceed without his sign-off, replicating a safeguard his predecessor as attorney-general, George Brandis, had put in place for offences relating to reporting on special intelligence operations where section 35B of the ASIO Act would lead to jail terms of up to 10 years for journalists.

Shadow attorney general, Mark Dreyfus, said: “Porter’s suggestion of a veto power for himself smacks of political interference in the work of the independent DPP and does not give us any satisfaction that the press freedoms will be protected.”

By February 7, Porter was reported as saying: “There is not, nor has there ever 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.” He refused to offer a blanket exemption or defence for journalists and media organisations.

He also stated that it was “indefensible” that the Bill would change.

The expansions 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 employees, 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 journalists dealing with and communicating information, meaning journalists could still be exposed to 10 years’ prison for publication of stories relating to national security.

MEAA and media organisations continue 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.”

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 defense might reveal information about journalists’ sources.

■ THIRD PHASE

In response to the attorney-general’s amendments, on March 14, 2018 the Joint Media Organisations including MEAA made a second supplementary submission to the Parliamentary Joint Committee on Intelligence and Security regarding the National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017 and also appeared at the Inquiry’s public hearings.

This latest submission stated: 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.

The right to free speech, a free media and access to information are fundamental to Australia’s modern democratic society.
society that prides itself on openness, responsibility and accountability.

However, unlike some comparable modern democracies, Australia has no laws enshrining these rights. In the United States of America the right to freedom of communication and freedom of the press are enshrined in the First Amendment of the Constitution and enacted by state and federal laws. In the United Kingdom, they are protected under section 12 of the Human Rights Act 1998.

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.77

The submission went on to recommend that “persons engaged in public interest reporting be exempted from offences in the Bill, including to ‘deal’ with government personnel) 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 Section 70 of the Commonwealth Crimes Act 1901.

On March 16 2018, at the final public hearing into the Espionage Bill in Melbourne, MEAA presented a petition to the Parliamentary Joint Committee on Intelligence and Security containing almost 9000 signatures of people opposing proposed new national security legislation. The petition was addressed to Prime Minister Turnbull and Attorney-General Christian Porter.

Linda Mottram’s response illustrated the point: “Which in itself has got to have a chilling effect, doesn’t it? Anybody who comes across documents is going to immediately say whoa, hang on a minute, it’s complicated as the Minister said and there’s possibly 10 years ‘ jail at the end of this.”

The ABC has so far clearly acted responsibly, and the ABC made an assessment and chose the bill is so widely worded that its own staff could break the law for handling documents they need to access to do their job. A case in point is whether the ABC’s publication of confidential and secret cabinet documents would be in breach of the proposed bill. Two filing cabinets full of thousands of confidential cabinet documents were given to the ABC by a source who, astonishingly, had bought them for small change at an op-shop in Canberra.

The ABC made an assessment and chose to publish a very limited number of the documents it deemed in the public interest. The ABC has so far clearly acted responsibly, and no documents that could harm Australia’s national security were in the first publication. Some of the published documents are embarrassing for both the current and former Coalition and Labor governments, but that should not stop publication – rather, the opposite.

WHAT THE BILL WOULD MEAN

The Foreign Intelligence 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 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 grant anonymity to sources that require it for their own safety, and you end up with a very complex journalist-source situation.

Another important factor in Australia and the UK is that all national security agencies are exempt from Freedom of Information laws. This makes it virtually impossible to independently acquire information from the security branch of government.

The balance between national security and transparency is complex. As citizens, we want to feel safe and know what is being done to keep us safe. In our book, we have labelled this the "trust us" dilemma, meaning government argues that we don’t have the information on which to base this decision.

The problem is that if we don’t roll back the strengthened security laws in times of lower threat, we start from a high level next time we enter a "state of exception". This in turn can lead to a never-ending war on real or perceived threats where our cherished democratic civil liberties become part of the collateral damage.

If we allow the "state of exception" to become permanent, we risk allowing the terrorists to win.

Johan Lidberg is associate professor, school of media, film and journalism, Monash University. This February 1, 2018 article was sourced from The Conversation®.
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 stated that the media industry is that an increasing number of journalists — particularly those based in the private sector — are self-defining as journalist, or "self-identifying" as a journalist, or entering the profession to work for alternative platforms rather than traditional news organisations.

MEAA was concerned that the Bill defines a "journalist" to mean a person who is engaged in the publication of news and who is active in the publication of news and who is self-defined as a journalist, but that this definition does not encompass all of the key attributes of the profession.

MEAA said that "the Bill's definition above appears to exclude electronic services that are not operated on a commercial basis; and (b) a radio or television broadcasting service; (c) 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.

MEAA called on the committee to note that it had also 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.

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.

"The Memorandum seems to be overly concerned with applying a rigidly archaic definition of journalist that is not only out of step with current practice but which also aims to muzzle legitimate news reporting by journalists of whistleblower concerns. Indeed, the opposite is true — if a whistleblower has made contact with a journalist then that contact and the information that has been exchanged should be afforded the same comprehensive protections regardless of the individual platform or the individual journalist selected by the whistleblower," MEAA said.

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 adequately judge the reality of the way the media has changed.

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:
(i) "Any likely adverse effect of requiring disclosure on the informant (and others); and
(ii) "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 believes the formulation used in the territory's Bill is more practical and better accords with modern day practices.

MEAA noted that the Bill's Explanatory Note states that "public interest refers to information which could assist and improve society and the wellbeing if its members, as
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 essential) 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, but also the full wrath of a court if they are 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 (Protections for Journalists) Amendment Bill 2014. In defeating the Bill, Rau had stated: “The Bill before the parliament leaves 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 platforms, the 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 law 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 disparities 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.

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 in the future of public interest journalism. It’s a very important 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."

"A Marshall Government’s shield law 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."
"The losses initially came in great waves, commencing with subeditors. Subeditors were the lifeblood of our profession and this was really heavily targeted in redundancy rounds, but since then we have virtually 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 to public broadcasting, we have also seen significant redundancies taking place there as well."

MEAA went on to explain that the scale of redundancies has an enormous impact on the viability, independence and depth of newsrooms. They have to work harder. Previously core media organisations have seen annual redundancy rounds in major workplaces, but since then we virtually have seen significant redundancies taking place. "In short, multiskilling. Research, investigation, specialisation has been replaced by freelance workers has become more common 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 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 exploited 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 meant that freelance and part-time work has also been impacted. Specialisation has been replaced by multitasking. Research, investigation, depth and accuracy in an increasingly crowded marketplace, and it is a major issue for us as a union and a professional association. MEAA acknowledged that the while the...
Without regulatory effort and major operational changes, the media sector will be further diminished

MEAA said Google and Facebook have become a channel for news media content through which Australian media companies have seen their business models rendered obsolete. "The fundamental cause of this obsolescence has been the free fall in advertising revenues once relied upon by media companies to produce quality journalism across the breadth of public policy, business, justice, international affairs, sport and matters of general interest."

The submission noted that the media sector had lost about 3000 journalist positions since the growth of digital platforms escalated about 10 years ago. Unlike the well-documented slide in the Australian manufacturing sector, consumers cannot continue to purchase equivalent (or substitute) products to those displaced by the decline of the Australian media sector. There will be a loss of local news from regional Australia as it will not be carried by an international publisher.

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 platforms should lead to an acknowledgment that digital platforms are modern press – 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 ‘filter bubble’ 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 verified 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 dangerous 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 eke out modest profits after the now serial write-downs companies can only eek out modest profits after the now serial write-downs. 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.

The 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 invested in the pre-existing media companies. What quality news content will be left for them to disseminate?” MEAA said.
Day, May 3, 2017 that it would cut one in five editorial positions from its newsrooms in Sydney, Melbourne and Canberra.

Fairfax journalists also wrote: “We were shocked to hear of the plan to cut 125 jobs at a time when the world is crying out for quality journalism, targeted redundancies.

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 IFJ 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 flowing in. Shireen Burusz, general secretary of the International Trade Union Confederation in Brussels, said: “We were shocked to hear of the unilateral and deeply damaging plan of Fairfax management 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 181 million trade union members worldwide, I wish to join with the International Federation of Journalists in expressing our total solidarity with your action. We are witnessing a closing of democratic space around the world, the exercise of free speech and good journalism are vital to democracy itself. The decision of Fairfax is an attack on the people telling the stories. On behalf of the people telling the stories, 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.

"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 union 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 redundancies at its metropolitan and community titles around the country, saying: “The decision of Fairfax to cut 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 proving their own work, which has journalists concerned about already stretched news gathering resources and maintaining the editorial standards of their mastheads.

Redundancies
The cuts were the result of the ABC’s enhanced newsgathering 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 independent scrutiny 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 newsgathering.”

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 undercutting 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 31 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 Leading 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 libel scare 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.

McInerney said: “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 is somewhat lower among those who have joined the profession in the last five years (37 per cent) but increase with tenure in the industry to nearly 60 per cent.

MEAA Media section director Katelin McInerney said: “When we released Mates over Merit in 2016 we called media organisations to put policies into practice. Clearly this incident at Seven shows we are a long way off seeing employers implementing these policies. It is time for media executives to put their money where their mouths are: take a direct leadership approach to stamp out harassment and to support women in then media when they do come forward.”
knowledge that is generally not well known or understood by most employees. Employers often prefer to keep things that way in their own interests. Subsequently any legal policy or claim 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 employee has the right during this process to be represented by their union or 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 it. If the employer does not, then it is potentially negligent so any injury that might result from that exposes the 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 on the matter. If a colleague makes a complaint against an employer, procedural fairness should apply. If there is an enterprise agreement in place there may be an additional right 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. 49

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. 50

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 gap and opportunity gap:

- Implement tracking and transparency about the gender pay relationship;
- Create family-friendly workplaces; and
- 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.

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 controlling the media’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 a 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 to be given to exploring what is a proper funding level to resource 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. MEAA urged that public media continue to contract and abandon traditional reporting areas.

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

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 sceptical 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 simply 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 difficult 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 both broadcasters. MEAA said, 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 both broadcasters present themselves through their programming to the whole of the nation. The cutsbacks 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 hardily 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 the sort of programming critical 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 corporation’s ability to cover and report regionally is felt most at local levels, outside the major cities. This is one area, however, where a small investment by government could produce significant improvement. Small regional communities are poorly served for local news and the inquiry is of the view that the situation could be ameliorated with some limited support by the government.”  

In contemplating 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 rejected the inference contained in the Bill inferred that balance and fairness are not present in the ABC’s operational activities. 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. 

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 Bill’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 far 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 (which is what we all demand of quality journalism). Real objectivity entails presenting, in 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 calculations 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.”  

SBS said it would fully cooperate with the Inquiry. Managing Director Michael Ebdie noted that “it is difficult to contemplate how a broadcaster the size of SBS has its commercial operations limited by the provisions of Act 1992, when it reported 946.5 employees in 1998 to 10.07 per cent of employees in 2016 Annual Report included a pie chart “radio and regional content”. The ABC’s “regional and those providing content to those locations. The ABC did report regional employee numbers in 1996 (1029 “regional and regional services”) and as recently as 2008, when it reported 946.5 employees in 1998 to 10.07 per cent of employees in 1998 to 10.07 per cent of employees in 2016. The submission said: “There is some opacity to the true number of ABC employees working in regional locations. The ABC’s 2016 Annual Report included a pie chart that stated that 10.07% per cent of employees worked in regional areas. On current figures, this equates to 421 employees. “Looking at the figures from another angle, the number of regional and rural employees has been reduced from 25 per cent of employees in 1998 to 10.07 per cent of employees in 2016. It does appear that the number of ABC regional employees has fallen far faster than overall employment levels.”  

The loss of regional and rural journalism resources was canvassed in 2012’s Finkelstein report which noted that “although most attention is at a national level, often the short-comings in journalistic surveillance and in the richness of the media environment are felt most at local levels, outside the major cities. This is one area, however, where a small investment by government could produce significant improvement. Small regional communities are poorly served for local news and the inquiry is of the view that the situation could be ameliorated with some limited support by the government.”  

In September 2016, the Turnbull Government appointed a panel to conduct an inquiry into the competitive neutrality of the two public broadcasters. The Government says the “inquiry will examine whether the ABC and SBS are operating in a manner consistent with the principles of competitive neutrality. These principles provide that government business agencies should not enjoy net competitive advantages simply by virtue of their public sector ownership.”  

The panel will consult relevant stakeholders during the Inquiry and be supported by our National Broadcaster Review Taskforce. Robert Kerr, a consulting economist and former head of staff at the Commonwealth Productivity Commission, will chair the panel which includes former Free TV chief executive Julie Flynn and director and producer Sandra Levy.  

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• Application of competitive neutrality principles to the business activities of the ABC and SBS, including in operational decision-making and risk management;  

• Regulatory calculations 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.”  

SBS said it would fully cooperate with the Inquiry. Managing Director Michael Ebdie noted that “it is difficult to contemplate how a broadcaster the size of SBS has its commercial operations limited by legislation could be a threat to the business activities of its commercial counterparts, which benefit presently from changes to media laws and a major reduction of their license fees.”  

Competitive Neutrality of the National Broadcasters Inquiry  

This is another measure promised as part of the media reform package. On March 29, 2018, the Turnbull Government appointed a panel to conduct an inquiry into the competitive neutrality of the two public broadcasters. The Government says the “inquiry will examine whether the ABC and SBS are operating in a manner consistent with the principles of competitive neutrality. These principles provide that government business agencies should not enjoy net competitive advantages simply by virtue of their public sector ownership.”  

The panel will consult relevant stakeholders during the Inquiry and be supported by our National Broadcaster Review Taskforce.
MEDIA OWNERSHIP

On July 24, 2017 MEAA made a submission to the Australian Competition and Consumer Commission’s (ACCC) review of the potential joint bid for interests in Ten Network Holdings by two private companies Birken and Illyria.

In its submission MEAA noted that there is an understanding and acceptance that the concentration of ownership in Australia is one of the highest in the world.102

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 39.7 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 owns 7.44 per cent of Ten through his company and he has an interest through News Corporation’s stake in Foxtel 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 amplifies the problem of concentration of media power and is not good for I’llirtya and his family has an interest through News Corporation’s stake in Foxtel 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.

MEAA noted that the parties to the potential transaction had sought consideration of their proposals in circumstances where two existing media ownership laws – two-out-of-three and the reach rule – barred such a transaction occurring.

“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 proposal, future, may be 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 will undoubtedly usher in further consolidation.”

On August 24, 2017, the ACCC announced it would not oppose the joint bid.40 However, subsequent to that decision, the CBS Network of the United States made a $41 million takeover offer for the network which was successful.103

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 news-gathering capability in recent years. MEAA hopes the prospect of stability at the network will lead to greater investment in news production and editorial staff.”104

GOVERNMENT MEDIA RESTRUCTURE

The Turnbull Government reintroduced its media reform legislation to the Parliament in September 2016. Communications Minister Senator Mitch Fifield said: “The media reform package is substantially unchanged from that introduced in March this year (2016). The package will result in major changes to the regulations governing the control and ownership of Australia’s traditional media outlets and the provision of local television content in regional Australia.”

The Government’s package sought to repeal media ownership and control rules that prevent:

• A person from controlling commercial television licence holders whose combined licence area populations reach more than 75 per cent of the Australian population (known as the “reach rule”);

• A person from controlling more than two of the three regulated forms of media (commercial radio and television and associated newspapers)105 in one commercial radio licence area (known as the “two-out-of-three” rule).

The Government said its reform package would also “strengthen local content obligations on commercial television licensees following a change in circumstances where a merger, results in them being part of a group whose combined licence area populations reach more than 75 per cent of the Australian population”.

The Government said it is maintaining other diversity rules including the “five-four” rule, the “one-to-a-market” rule and the “two-to-a-market” rule. The Australian Competition and Consumer Commission will retain its powers to scrutinise mergers and acquisitions and is in the process of updating its media merger guidance accordingly.

In February 2017, Fifield blamed Labor for stalling on the legislation after the package passed the House of Representatives but stalled in the Senate where it will need cross-bench support to pass.106 This latest package of media reforms dates from March 9, 2014 when then Communications Minister Malcolm Turnbull said that the government was considering changes to the media ownership laws to reﬂect changes in the industry due to the rise of the internet.107 “Why do we have a rule that prevents one of the national networks acquiring 100 per cent coverage, why is there a rule that says today that you can’t own print, television and radio in the same market? Shouldn’t that just be a matter for the ACCC (Australian Competition and Consumer Commission)?” he said.

The idea did not gain traction because of concerns from Turnbull’s Coalition colleagues who feared that local content could be reduced108. But Turnbull argued content was not the same as ownership, adding that different levels of content related to business models. However, some Coalition MPs supported a Senate inquiry to examine any proposed changes.

A year later, and Minister Turnbull was again airing the possibility of changes to media ownership laws109. Finally, on March 1, 2016 the government tabled its media reform legislation.110

MEAA supported a single, platform-neutral “converged” regulator overseeing a common regulatory regime. MEAA also supported the extension of local content requirements following trigger events. “This is a necessary and desirable change,” MEAA said.

But MEAA was concerned that the two-out-of-three rule would be removed without breadth of media reform given the need to identify and enforce the terms upon which all media organisations may compete in the Australian market and provide consumers with greater choice.

MEAA was concerned that the bill’s dominant focus was on relieving the regulatory burden on currently regulated entities. “The benefits the bill seeks to provide to these entities is the ability to consolidate and achieve broader scales of operation and efficiencies in service delivery.

In an already heavily concentrated Australian media-market, MEAA said this approach undermined the public policy benefit of media reform. MEAA favours a genuine levelling of the playing field, fewer voices would do a disservice to the Australian community.

MEAA supports a broader approach to media reform that draws on the observations and recommendations of the Convergence Review. In particular, MEAA supported 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 two-out-of-three rule. “MEAA was concerned that the two-out-of-three rule would be removed without breadth of media reform given the need to identify and enforce the terms upon which all media organisations may compete in the Australian market and provide consumers with greater choice. MEAA was concerned that the bill’s dominant focus was on relieving the regulatory burden on currently regulated entities. “The benefits the bill seeks to provide to these entities is the ability to consolidate and achieve broader scales of operation and efficiencies in service delivery. In an already heavily concentrated Australian media-market, MEAA said this approach undermined the public policy benefit of media reform. MEAA favours a genuine levelling of the playing field, fewer voices would do a disservice to the Australian community.

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 to the Australian public. However, no one can say with confidence 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
CRIMINALISING JOURNALISM
THE MEAA REPORT INTO THE STATE OF PRESS FREEDOM IN AUSTRALIA IN 2018

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MEAA said it believed the Turnbull Media Control and Ownership acknowledged that digital technologies would enable “the historical delimitations 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 governing regional and media diversity are also being compromised. The Department of Communications media diversity 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 in regional Australia were “at or below the minimum floor in terms of voices”.

MEAA noted that there are three core components of the Government’s program:
• 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.

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

The proposed fund would 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 civil journalism. In the submission, MEAA strongly supported the emphasis on such journalism.
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 of 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 that “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.” Of the 100 cadetships 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 the revenue thresholds that apply for the Innovation Fund. “We further note that regional media organisations – as compared with (undescribed) ‘small metropolitan publishers’ – 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 undesirable 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 per cadet per year. MEAA support the principle that employers should provide matched funding as a safeguard for the appointed 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 departs from the longstanding media industry practice of two-to-three year cadetships (other than for graduates), as acknowledged in numerous industrial 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 independent 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 disemination of journalist headcounts 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 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 period. 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 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 job) 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 scholarships 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 regional journalism. 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 ‘strong connection to a regional area’ criterion) may be studying at, for example, the University of Technology Sydney and have little or no intention of 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 adjunct 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 concern that short-term assistance programs may, without follow-up, do not much more than temporarily plug the leak. 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 his role as a journalist in an attempt to expose the activities of the PNG police while they conducted their operation inside the centre, and that by getting a working journalist removed from the scene of the police action, media coverage of the event would be minimal.

MEAA chief executive Paul Murphy said: “For years now, a veil of secrecy has cloaked every aspect of the government’s asylum seeker policy. The role of the media is to hold the powerful to account and scrutinise what they do. Behrouz Boochani is a former magazine editor and publisher. His reporting has been recognised and 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.

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 Guardian, among other publications, while his film about life inside the Manus Island detention centre, “Detained”, won the development prize at the 2017 London film festivals.

In February 2017, MEAA launched a campaign, Bring Them Here, to have Manus Island asylum seekers relocated to Australia’s Euston Fish Farm. The campaign was featured in the Sydney Morning Herald, and a referendum was launched on the compulsory relocation of asylum seekers from Manus Island. The referendum reached a “yes” vote of 90%.

On December 19, 2017, MEAA was delighted to learn that Euston Fish had left Manus and was on his way to be resettled in Norway.

On November 14, 2017, MEAA formally complained to the ABC, the Australian Press Council, and PNG prime ministers about the singling out and deliberate targeting by PNG police of Iranian-Kurdish refugee journalist Boochani. He had been detained by PNG police at the Manus regional processing centre.

MEAA believed that comments by PNG police show Boochani was being deliberately targeted for his journalism and his detention in handcuffs amounted to an outrageous assault on press freedom.

Boochani was likely selected for this special treatment because of his journalism reporting on the situation on Manus. The determination of PNG police officers from the outset to “treat the journalist” suggests the officers intended to disrupt and muzzle any live reporting of the activities of the PNG police while they conducted their operation inside the centre, and that by getting a working journalist removed from the scene of the police action, media coverage of the event would be minimal.

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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 for 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 his reporting has been published in Australia and internationally,” Murphy said.

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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 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 cyber-bullying. 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 openly engage with the audience which, in return, may hurl abuse and threats at them— again, often under the protection of anonymity. MEAA believes that this exposes journalists to the opportunity to create a response to this growing problem.

**Harassment**

MEAA noted that the inquiry stemmed in part from the Australian Law Reform Commission June 2014 final report, *Serious Invasion of Privacy in the Digital Age*. In section 15 of the report focussing on harassment, the report recommends action be taken about harassment, defining it this way:

“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 demean 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 school 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 to 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 ‘[s]ignificant 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 section 474.15 (threat 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 procedure 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.”

**The Criminal Code**

The relevant section of the Criminal Code contained a penalty of up to three years imprisonment. However, as the ALRC report found, there is very little knowledge or understanding of this section of the Code.

MEAA believes that there is a great need for education in the broad community for the harm associated with cyberbullying and the penalties that can arise through section 474.15.
MEAA also believes that social media platform providers must take responsibility to ensure 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;”

“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

The question arises whether merely “taking down” offensive material is sufficient and whether the offences and penalties set out in the Australian law are being ignored/side-stepped by social media platforms. There is a considerable body of circumstantial evidence of victims of cyberbullying are dissatisfied with the efforts of social media platforms to take legitimate action to ensure the offending ceases and the perpetrators are punished in some fashion. If the platforms are not willing to monitor and police their products themselves and provide proper protections for victims of cyberbullying then the law of the land should apply.

### 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 to stamp out misinformation effort to stamp out misinformation.

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
their staff, ensure they work in a safe and healthy environment, that training and communications regarding with dealing with cyberbullying is made available, and that employers take steps to deal with cyberbullies on behalf of their employees.

**SUMMARY**

It is clear that while section 474.17 exists, and offers penalties for cyberbullying, it does not readily lend itself to enforcement and is not widely known. As a deterrent, it is failing to keep pace with the widespread use of social media and digital technology generally which is being used as the platform and vehicle for the delivery of hate speech. Cyberbullying can be executed in seconds with only a dozen or so characters or an easily-sourced image.

The bullying, harassment and threats can go on relentlessly from there with the utmost ease and be directed with precision to the intended target's phone, tablet or laptop – at home or at work – 24 hours a day. And because of the nature of social media platforms and the encouragement they give to others to "engage", others can join in so that the abuser can swell and compound as others join the frenzy.

In short, section 474.17 has not kept pace with the rise of offences it seeks to curtail and punish. The tools of cyberbullying are readily available, easily used, allow for anonymous attacks and enable viral assaults.

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 16(a) (that the law be readily known and available, and certain and clear).

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 obeyed, and where necessary introduce greater legislative protections (at both a Commonwealth and State level) to assist victims of cyberbullying.

This will require a coordinated effort by:

- Government,
- Social media providers,
- Employers, and
- Enforcement and regulatory agencies.

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

![PUBLIC HEARING AND THE COMMITTEE’S RECOMMENDATIONS](image-url)

On March 28 2018 the Senate committee released its report. It noted that opinion columnist for Guardian Australia Van Badham, who gave evidence as a witness before the Committee’s Melbourne public hearing on March 7, 2018 in her capacity as the Victorian vice-president of the MEAA Media section, had:

> Quoted some extremely violent and vulgar tweets she has received following her public journalistic career. She stated that some of the men who sent these communications to her had enough “confidence” to identify themselves with their own names.

She also linked trolling to physically violent incidents that she has also experienced:

> …these things are creating a context where violence and harassment is spilling over into real life. Effectively, I have been dehumanised on the internet and represented by these groups of people, sometimes quite deliberately, in a way where they are invited by others towards violence against my person.156

The report added that Badham had also said about cyberbullying that:

> This problem is “a workplace safety issue that affects women disproportionately”...

and she had also:

> Referred to a public event she attended and she had also... Badham also argued that social media platforms are already in place, if a publication, The Guardian, was facilitating the harassment and threats to her had enough "confidence" to identify themselves with their own names.156

But the committee recommended that Australian governments ensure that:

- The general public has a clear awareness and understanding of how existing criminal offences can be applied to cyberbullying behaviours;
- Law enforcement authorities appropriately investigate and prosecute serious cyberbullying complaints under either state or Commonwealth legislation and coordinate their investigations across jurisdictions where appropriate, and make the process clear for victims of cyberbullying, and ensure consistency exists between state, territory and federal laws in relation to cyberbullying.

In other recommended it suggested that the Government should:

- Ensure that the Office of the eSafety Commissioner is adequately resourced to fulfil all its functions, taking into account the volume of complaints it receives;
- Promote to the public the role of the Office of the eSafety Commissioner, including the cyberbullying complaints scheme;
- Consider improvements to the process by which the Office of the eSafety Commissioner can access relevant data from social media services hosted overseas, including account data, that would assist the eSafety Office to apply the end-user notice scheme, and consider whether amendments to the Enhancing Online Safety Act 2015 relating to the eSafety Commissioner and the cyberbullying complaints scheme would be beneficial, and in particular, consider expanding the cyberbullying complaints scheme to other complaints, adults;
- Expanding the application of the tier scheme by amending the definitions of “social media service” and “relevant electronic service”, and increasing the basic online safety requirements for social media services.

It also recommended the Government “place and maintain” regulatory pressure on social media platforms to both prevent and quickly respond to cyberbullying material on their platforms, including through the use of significant financial penalties where insufficient progress is achieved.

In its comments on this recommendation, it stated:

> "The committee acknowledges that the services provided by social media platforms are very frequently often beneficial for individuals and society. However, these platforms are also a primary vehicle for serious cyberbullying. The committee is concerned that civil penalties for social media platforms are already in place, but the eSafety Commissioner has not yet considered it necessary to apply them.

This is partly due to cooperation from social media platforms. Given this, the committee considers it necessary to increase the maximum civil penalty that the eSafety Commissioner could apply. However, the committee remains deeply concerned about the continued prevalence of cyberbullying on social media platforms.”

The committee also recommended that the Australian Government monitor Germany’s Network Enforcement Law and apply useful lessons "from Germany in Australia”.

The committee said social media platforms "should play a major role in reducing cyberbullying" adding that it saw merit in a proposal from Maurice Blackburn Lawyers to impose a statutory duty of care on social media platforms to ensure the safety of their users.

The committee recommended the Government legislate to create a duty of care on social media platforms to ensure the safety of their users and consider requiring social media platforms to publish relevant data, including data on user complaints and the platforms’ responses, as specified by the eSafety Commissioner and in a format specified by the eSafety Commissioner.

The eSafety Commissioner’s cyberbullying complaints scheme is a safety net and its existence does not reduce the responsibilities of Facebook, Google, Twitter and their ilk. The committee is concerned about cases in which social media platforms appeared to respond inadequately to complaints, and wishes to make clear that it is up to social media platforms to make their platforms safe, and to promptly take down or otherwise manage offending material. The committee considers ‘safety by design’ a useful principle here.”

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

DETENTION, THREATS AND HARASSMENT

■ POLICE RAID

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 Israeli girls 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.

“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.”

MEAA chief executive Paul Murphy said of the incident: “It really is an affront to press freedom and an affront to our rights as Australian citizens to prevent independent media coverage of the situation on Manus Island at any time, but particularly at the moment when there quite clearly is a serious and disturbing situation that is continuing to develop. These things are being done in our name and as citizens we have a right to independent scrutiny of what’s happening there.”

Murphy said the suggestion that Abbott had been blacklisted because his work was critical of the detention centre regime was particularly concerning. “Any evidence of government control and intervention in determining who gets to report, what can be reported, and when it’s reported is absolutely repugnant. It’s not something you would expect to see in a liberal democracy.”

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 Israeli girls with stories on television, radio, News Digital and Twitter. The coverage included graphic accounts of the attack from witnesses and first responders.

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■ 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 is appalling that a politician can use public money to mount personal attacks against an individual reporter. It is particularly repugnant that those funds are used against a journalist who has reported from some of the most dangerous war zones and been repeatedly recognised by her peers for her outstanding work. This is how an MP’s electorate allowance should be used. Michael Danby should repay the funds to taxpayers.”

The Pacific Freedom Forum said: “Removing BBC journalists from Papua provinces over such a tiny detail is proof that Indonesian security forces are still acting 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.”

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’.”

 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.

Rickleton 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 ABC 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 Rickleton 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.”

Rickleton’s adopted daughter Roxanne Holmes set up a petition 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.

■ POLICE RAID

Queensland Police raided the offices of the ABC in Brisbane in an attempt to identify the source of leaked Cabinet documents.

MEAA chief executive Paul Murphy said: “The role of the media in a healthy democracy is to scrutinise those in power. The execution of a search warrant to hunt for leaked Cabinet briefing documents is a belated attempt to pursue journalists’ sources rather than address the matters raised in the legitimate journalism by two ABC reporters.

“Three stories have been written about deep budget cuts to Queensland’s environment department under the LNP Government in 2012. Now, Queensland Police are seeking to find the source of the leak by raiding a newsmag 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 whistleblower that was seeking to reveal important information to the community,” Murphy said.

■ JAMES RICKETSON

James Rickleton 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 Penh. He was detained for six days – well beyond the 72-hour rule under Cambodian law – and on June 8 he was subsequently charged with “receiving 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.

Rickleton 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 ABC 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 Rickleton 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.”

Rickleton’s adopted daughter Roxanne Holmes set up a petition 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.
JUANITA NIELSEN

The remaining eight cases, the bulk of which date back to the Indonesian invasion of East Timor in 1975, are a sorry tale of ongoing government indifference and an apparent unwillingness to thoroughly investigate the murder of Australian journalists.

The impunity over the murder of journalists is a growing global issue. For Australia to join the ranks of nations that treats journalist lives so cheaply should be a source of shame, particularly as Unesco reports that many other countries have stepped up their efforts to stamp out impunity and bring the killers of journalists to justice.

To do nothing, as has been the case to date, means that their killers are getting away with murder and sends a signal that the Australian Government and its agencies treat the lives of Australian journalists as counting for less than other Australians.

The BALIBO FIVE and ROGER EAST

Journalists Brian Peters, Malcolm Rennie, Tony Stewart, Gary Cunningham and Greg Shackleton were murdered by Indonesian forces in Balibo, East Timor, on October 16, 1975.

On November 14, 2007, NSW Deputy Coroner Dorelle Pinch brought down a finding in her inquest into the death of Peters. Pinch found that Peters, in company with the other slain journalists, had “died at Balibo in Timor Leste on 16 October, 1975 from wounds sustained when he was shot and/or stabbed deliberately, and not in the heat of battle, by members of the Indonesian Special Forces, including Christoforus da Silva and Captain Yunus Yosfiah on the orders of Captain Yosfiah, to prevent him from revealing that Indonesian Special Forces had participated in the attack on Balibo.”

There is strong circumstantial evidence that those orders emanated from the Head of the Indonesian Special Forces, Major-General Benny Marduni to Colonel Dading Kalbadi, Special Forces Group Commander in Timor, and then to Captain Yosfiah.

In the more than 40 years since this incident Yunus Yosfiah 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 National Assembly. He retired from the army in 1999. He is also a former minister of information in the Indonesian government of President Bacharuddin Jusuf Habibie.

Two years after the inquest, on September 9, 2009, the Australian Federal Police announced that it would conduct a war crimes investigation into the deaths of the five journalists. Little was ever disclosed about how the investigation was being conducted, what lines of questioning were being pursued, what evidence had been gathered or whether the families were being kept informed of the AFP’s progress.

IMPUNITY

On October 13, 2014, three days before the anniversary of the murder of the Balibo Five, was reported that the AFP took “seven 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.”

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

MEAA said at the time: “Last week, the AFP admitted that over the course of its five-year investigation it had neither sought nor 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.”

On October 15, 2015 the son of Gary Cunningham, Mark Milkins, said he wanted more information about why the AFP had decided to close the investigation. “I would be pleased to see it reopened. I feel it was closed without an explanation to the Australian public.” Milkins added: “We don’t think that story’s finished. I think perhaps the government would like to book it to be completely closed but I think there are many chapters still to write, there are many unknowns.”

Roger East was a freelance journalist on assignment for Australian Associated Press when he was murdered by the Indonesian military on the Dili wharf on December 9, 1975. 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-APRILDA 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 Pircilia Fonseca Xavier, a journalist and news broadcaster in Tétum and news broadcaster in Tétum and Maria Pircilia Fonseca Xavier, a journalist and news broadcaster in Tétum and news broadcaster in Tétum and news broadcaster in Tétum and news broadcaster in Tétum.
Paul Moran, a freelance cameraman on assignment with the Australian Broadcasting Corporation to cover the Iraq war, was killed by a suicide bomber on March 22, 2003 leaving behind his wife Ivana and their then-seven-old daughter Tara.

Paul was the first media person killed in the 2005 Iraq war.

The attack was carried out by the group Anwar al-Islam – a UN-listed terrorist arm of al-Qaeda. According to US and UN investigations, the man most likely responsible for training and perhaps even directly ordering the terrorist attack is Oslo resident Najmiddin Faraj Ahmad, better known as Mullah Krekar. He has escaped extradition to Iraq or the US because Norway resists deporting anyone to countries that have the death penalty.

Krekar had been imprisoned in Norway, guilty of four counts of intimidation under aggravating circumstances. He was released from prison on or around January 20, 2015. It was revealed that he would be sent into internal “exile” to the village of Byrkassaetera on the coast, south-west of Trondheim. Krekar would have to report regularly to police and would stay in a refugee centre.

On February 10, 2015 MEAA wrote to Justice Minister Michael Keenan and AFP Commissioner Andrew Colvin once more, stating: “We are deeply concerned that if Krekar is released from prison on or around January 20, 2015, he will be sent into internal “exile” to the village of Byrkassaetera on the coast, south-west of Trondheim. Krekar would have to report regularly to police and would stay in a refugee centre.

On February 20, 2015, in the aftermath of the massacre in Paris of journalists, editorial and office staff at the Charlie Hebdo magazine, it was reported that Krekar had been arrested for saying in an interview that when a cartoonist “tramples on our dignity, our principles and our faith, he must die”. It is believed Krekar was subsequently arrested on a charge of “incitement”.177

Krekar was arrested in prison in Norway on November 11 “in a coordinated police swoop on Islamist militants planning attacks.” The raids across Europe targeted Krekar and 14 other Iraqi Kurds and one non-Kurd. Authorities allege the men were involved in Rawti Shax – a group spun-off from Anwar al-Islam, that has alleged links to ISIL. Authorities allege it is a jihadist network led by Krekar. Investigators claim Krekar pledged allegiance to ISIL in 2014. In mid-March 2016 Norwegian media said Krekar had been released from jail after a court found him not guilty of making threats. His lawyer said Krekar will seek compensation.

On November 25, 2016 the Norwegian Police Security Service arrested Krekar in order to secure his extradition to Italy. On November 25 it was reported that Italy had withdrawn its extradition claim, and Krekar was released.

In mid-January 2018, an anticipated Italian trial of Krekar and five others (including Krekar’s son in law) was subsequently delayed again as Krekar and his lawyers had not been notified. Under Italian law a hearing can take place if the defendant is not present but the delay is believed to have been granted to allow formal notification to be provided to Krekar’s lawyers.

ABC foreign correspondent Tony Joyce arrived in Lusaka on November 21, 1979 to report on 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 of time, efforts can be made to properly investigate this incident with a view to determining if the perpetrators can be brought to justice.

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 #FixTheOIA, 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, but are often used to withhold information requests will be met and successive governments have allowed free speech rights to be overridden,” said Reporters Without Borders.

New Zealanders are too complacent about the continuing erosion of their right to know what the government is doing on their behalf,” wrote Gavin Ellis in an anguish essay, Complacent Nation, in 2016.

What was the former editor in chief of New Zealand’s biggest newspaper – New Zealand Herald - worried about? New Zealand ranked fifth in the world in the 2016 Reporters Without Borders press freedom index behind only Finland, Netherlands and Norway.

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 worrying about laws criminalising journalism on national security grounds in Australia these days...

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, uncorropted society?

Partly.

But Transparency International’s New Zealand chair Suzanne Snively echoed 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 ASIO last January.

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He said he personally put a stop to this “biggest form of protection” in March 2013 because it was “what the [National] Minister of Justice asked me to do.” The Investigative reporter David Fisher eventually acquired official documents showing Speiragen actually continued after the time limit and ordered a halt. “Speiragen wasn’t actually stopped until after Key was told in a secret briefing that she would become a political liability because she 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 lessons of all this was that all you need do is waste enough time until everyone has something else to worry about.”

Another case in point is the “Saad sheep scandal” in which former foreign minister Murray McCully was accused of improperly using NZ$11.5 million of taxpayers’ money to curry favour with a well-connected businessman. The money was for a sheep farm, but events 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 bring powerful officials to book. His investigation into the role of the OIA in the “Saad sheep scandal” came after the OIA had retired from politics in the interim.

He says the outcome of the investigations will be released in 2018 “to provide the public with continuing trust and confidence. We have already gathered and outlined to the standards to which government agencies should aspire”.

But Walchina Arden’s new Labour-led government is bringing new management to the OIA – former journalist Clare Curran – who says she wants to fix it. With her overwhelming responsibilities for media and broadcasting as well as open government and digital services, this is promising.

But before she could get her feet under the table, the new government had made another bad start. It is a coalition government formed only after delicate and secret post-election negotiations. Its leaders refused to release a document with directives for new ministers, despite Deputy Prime Minister Peters’ promise it would be made public.

Clare Curran’s position as a minister is already under scrutiny after the revelation of an “informal meeting” with Auckland mayor Phil Goff which said the release of information should be delayed so it could be “managed”.

The letter was withheld from NZR 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 Ted Niall put it, it works. “And that is why my editors,” he added.

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.

After that, the Labour-led government did so “grudgingly” in the early 2000s, he says, while the subsequent National-led government of 2008-2011 “abused it shamelessly”.

A new chief Ombudsman seems more willing to force the release of unjustifiably withheld information and address complaints – many of them from journalists – more rapidly. Peter Macaulay has also warned, or rotated, and shamefully government departments dragging the chain. He has just launched four investigations into the official information practices of the public sector.

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

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However, during the very first 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’ trial to get them to hand over several months of their telephone records, documents and notes as part of the proceedings targeting who was responsible for leaking the story of information at the heart of the story.

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 Miryana 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 it’s not the first time Peters has taken legal action against the media and there is increasing concern from his heavy-handed response. Reporters and their editors who publish stories about Winston Peters are said to be in the media’s interest, but it’s not in the Bill before parliament as it stands.

The new government is also exploring whether the law and procedures to protect whistleblowers need to be strengthened. “It is crucial that employees feel safe to report cases of serious misconduct. Anyone who raises issues of serious misconduct or wrongdoing needs to have faith that their role, reputation, and career development will not be jeopardised when speaking out,” the State Services Minister has said.

Let’s hope any change to the Protected Disclosures Act 2000 recognises a role for the media and protects people who pass on information in the public interest in play. Victoria University of Wellington professor Michael Macaulay has noted some Australian state governments already support whistleblowers who contact journalists in such situations. For example, the 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.

As 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 (once rebranded as Stuff) was seeking clearance to merge with NZME (New Zealand Media and Entertainment), the only other significant player in New Zealand. Between them, they would corner 90 per cent of the nation’s shrinking but still profitable newspapers market. They would have a similar dominance of the audience for New Zealand’s online news media, as well as for the likes of Google and Facebook harvest the bulk of the advertising income from that.

“The debate in relation to the proposed merger between local media companies has been an opportunity for critical conversation to help New Zealanders understand the role and value of strong New Zealand-based media,” Norris said.

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Without a merger, “journalism in New Zealand is at the least a chilling effect from his
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 Competition, 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 “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 have no commitment to journalism at all. Their media freedom are obvious. 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.”

Colin Peacock is the presenter of RNZ’s (Radio New Zealand) “Mediawatch” program.

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.

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According to the IFJ’s most recent report on media violations, there were 252 attacks and threats against journalists in 2018, a 10% increase from the previous year. The report noted that the highest number of attacks occurred in Afghanistan, Pakistan, and the Philippines.

In Afghanistan, attacks against journalists have increased significantly in recent years, with the Taliban and other insurgent groups targeting media outlets and individual journalists. In 2018, at least 15 journalists were killed, and many others were injured or threatened.

In Pakistan, the situation is equally严峻, with a series of targeted attacks against media outlets and individual journalists by the Pakistani Taliban. In 2018, at least 7 journalists were killed, and many others were injured or threatened.

In the Philippines, the situation is also alarming, with the government and insurgent groups targeting media outlets and individual journalists. In 2018, at least 8 journalists were killed, and many others were injured or threatened.

In addition to these targeted attacks, journalists in the Asia-Pacific region are also facing increased levels of harassment and intimidation. Social media platforms have become a major source of harassment, with journalists receiving threats and abuse online.

The IFJ has called on governments and international organizations to take action to protect journalists and ensure freedom of expression. It has also called for greater investment in media and journalism education to support the development of a free and independent press in the region.
Religious extremism has also had an impact; the government tries to maintain control. Difficult for dissidents and critics, as the situation in the Maldives has become increasingly dangerous. In 2017. Rasheed was an outspoken critic of the government and religious intolerance in the Maldives. On April 23, the government said that the two police officers who were accused of killing him should be released. On May 30, 2017, President Yameen declared a 15-day state of emergency, which was extended for another 30 days in mid-February. Since then, government has been arrested 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.

**MALDIVES**

Yameen Rasheed was brutally stabbed to death 16 times in the hallway of his apartment complex at 3am on April 3, 2017. Rasheed was an outspoken critic of the government and religious intolerance in the Maldives. He had been receiving death threats, posting them on social media and going to the police for protection. His death is illustrative of the volatile landscape that the country’s media operates within.

Over the past 12 months, the situation in the Maldives has become increasingly difficult for dissidents and critics, as the government tries to maintain control. Religious extremism has also had an impact on the media.

In early 2018, the Maldives Supreme Court orders the release of opposition political leaders and reinstates 12 suspended MPs; a decision that was not acknowledged by the government. Four days later on February 5, President Yameen declared a 15-day state of emergency, which was extended for another 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.

**NEPAL**

Nepal successfully held local, provincial and general elections in 2017 according to the new Constitution that supposedly ended a decade-long political transition and brought in political and administrative stability. However, time seems to have run out for the media and journalists who continue to suffer from attacks and threats, and thereby resort to self-censorship.

During the year, some journalists in Nepal faced threats and attacks for their news reporting, including 20 journalists in Western Myanmar. 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 handed them classified documents linked to the Rohingya refugee crisis. Media reports allege that sensitive records contained in the Myanmar Police 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 San Suu Kyi took office in November 2015.

**PHILIPPINES**

Since the election of President Rodrigo Duterte in 2016, there has been an intense level of attack on the media in the Philippines, globally recognised as one of the world’s most dangerous countries for journalists, for journalists.

Since 1990, the IFJ has recorded the murder of at least 155 journalists, making it the deadliest country in the Asia Pacific region. However, the situation over the past 12 months has seen new challenges emerge, including direct threats and harassment from the President.

On May 30, 2017, President Duterte described ABS-CBN and the Philippine Daily Inquirer as “scum of scum” and warned them of karmic repercussions for their critical coverage of his deadly drug war.

This was followed in July 2017, during Duterte’s State of the Nation Address, where he said that Rappler violated the 1987 Constitution as it was solely owned by Americans.

Six months later, the Philippine Securities and Exchange Commission (SEC) revoked Rappler’s registration for allegedly violating the Constitution and the Anti-Dummy Law. Rappler has denied the allegations and the case continues to proceed.

The battle between Duterte and Rappler continues on many fronts, with Rappler journalist Pia Randa 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.

**TIMOR-LESTE**

In a wave of press freedom in 2017, two Timorese journalists, Oki Raimundos and Lourenco Martins had “slanderous denunciation” charges against them dismissed. The verdict came more than 18 months after an article authored by Oki Raimundos was published in the Timor Post pertaining to Rui Maria de Araújo, in his former role as advisor to the country’s finance minister.

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 Timor Leste’s Penal Code accusing Oki and the then-editor of the Timor Post of “slanderous denunciation”.

Prior to the charges being dismissed, the IFJ and MEA had advocated on behalf of Oki and Martins to have the charges against them withdrawn (in 2015, Oki was named as one of the applicants of the MEA-APHEA Union Aid Awards Balibo Five-Roger East Fellowship recipients).

An Australian barrister and IFJ legal advisor Jim Nolan said: "If the two are convicted this will represent a significant stain on the reputation of democratic East Timor. The case is all the more grave as it involves an article which attacked the Prime Minister. The charges have been instituted at his behest. Any decision will also be an encouragement to authoritarian governments in the region which has been marked by increasing attacks upon the press. Until these charges are dropped, Timor Leste was one of the few remaining democracies in this region which enjoyed a free press and where journalists could pursue their craft free from the threat of state prosecution.”

MEAA CEO Paul Murphy said: "This legal assault on an individual journalist is an outrageous one that places a draconian law to keep pursuing a journalist long after an error has been acknowledged and the record corrected. This law has been condemned by MEAA and many other press freedom groups around the world because it allows the government to pursue, intimidate and silence journalists.”

The IFJ said: “We stand with our colleagues in Timor Leste in deploying this campaign against them led by the Prime Minister. Slanderous denunciation or criminal defamation by any other name is a brutal attack on press freedom and an attempt to silence critical voices.”

**PACIFIC**

The media situation in the Pacific differs from the wider Asia Pacific region, in so much that journalists are generally safe and killings are a rarity. However, over the past 12 months, the situation hasn’t improved dramatically, and journalists are still facing challenges. In Fiji the status of the country’s press freedom is in question and in 2017, it ranked the worst on Reporters Without Borders Press Freedom Index. While Fiji had improved from the previous year, it was still the worst ranked Pacific nation – a point strongly disputed by the country’s leaders. The status of Fiji’s media is largely recognised as one of the world’s more dangerous countries for journalists, for journalists.

In Vanuatu the past 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.
CRIMINALISING JOURNALISM
THE MEAA REPORT INTO THE STATE OF PRESS FREEDOM IN AUSTRALIA IN 2018

JOURNALIST SAFETY

The body of one of the 58 people killed in the Ampatuan Massacre in the Philippines. The massacre, in November 2009, on a hilltop near the city of Ampatuan, on the southern island of Mindanao in the southern Philippines, 58 people including 52 journalists were murdered in the Ampatuan Massacre. 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, jailed and harassed continues to grow, while impunity for such crimes is running at an all-time high. The call comes as figures show the numbers of journalists being violently attacked, threatened, jailed and harassed continues to grow, while impunity for such crimes is running at an all-time high. The call comes as figures show the numbers of journalists being violently attacked, threatened, jailed and harassed continues to grow, while impunity for such crimes is running at an all-time high.

Unlike most violations, attacks on journalists and media personnel to assist colleagues in the region through times of emergency, war and hardship.

The fund trustees direct the International Federation of Journalists (IFJ) to implement projects to be funded by the MSSF. 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.

THE MEDIA SAFETY AND SOLIDARITY FUND

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.

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JOURNALIST SAFETY AND HUMAN RIGHTS

In 2017 MSSF supported the work of the IFJ Asia-Pacific’s human rights and safety program. Under the program, IFJ AP remained a prominent advocate in the region for press freedom, journalists’ rights and safety.

In March 2017, the IFJ AP launched the Byte Back Campaign: Fighting Online Harassment of Journalists calling for strong action to stop cyber bullying and online harassment of women journalists. In May it launched the #journalistsAgainstSharia campaign raising awareness for internet shutdowns as a press freedom issue.

PRESS FREEDOM

In January 2018, the IFJ launched the 10th China Press Freedom Report, reviewing this bleak period for freedom of expression. From the optimism and hope for China leading up to the 2008 Beijing Olympics, where a more free and open media was promised by China’s leaders to the world, the IFJ reports that reality on the ground is harshly different, with a continuing and disturbing decline in media freedoms in both Mainland China and Hong Kong.

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 230 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 58 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.

SUPPORTING THE CHILDREN OF SLAIN JOURNALISTS

The MSSF helps fund the education of the children of slain journalists.

In Fiji, MSSF supports Jone Ketebaca, the son of Siliveni Moece who died in 2015 after he succumbed to injuries sustained when he was attacked by soldiers in 2007.

In Nepal, MSSF supports 25 children with two due to graduate from university at the end of the year. The education program was established in 2010 to help the children of journalists who have been killed since the transition to democracy began in 2005. To date, this financial support has been $181,472 (including administration fees paid to the International Federation of Journalists).

In the Philippines, MSSF supports 68 students – 25 are the children of journalists killed in the 2009 Ampatuan Massacre. At the end of the 2016-17 school year, five children will graduate from university with a range of qualifications including computer science, financial management, engineering and teaching.

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.
THE WAY FORWARD

BY MIKE DOBBIE

"illegally acquired information with the intention to share it with foreign media". The government only announced the arrest of the reporters some 24 hours after they were detained and the two were held at an undisclosed location without contact with family or lawyers for two weeks."

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 has 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 Griesemer made 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 fucking gun every single last one of you.”

Killing journalists is not new. In recent years, the bulk of journalist deaths were the result of wars – such journalists both foreign and local working in conflict zones where they can be caught in cross-fire. But there is a disturbing pattern developing around several journalists deaths over the past 12 months. Increasingly, journalists are being deliberately hunted, targeted and murderised in the course of their journalism. It is almost as if there is more a brazen attitude to killing journalists now that may have newspapers already done with the culture of impunity that surrounds their murder.

Exhibit four. October 16, 2017. Daphne Caruana Galizia was less than a mile from home when her Peugeot 108 exploded and burst into flames last October, killing her instantly and sending shrapnel into a nearby field. She was 53 and the most famous investigative journalist in Malta. In that tiny country, her scoops consistently 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 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 Rajarajeshwarinagar 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 at the scene after receiving gunshot to the head and chest. The gunmen fled the scene."

Exhibit six. February 25, 2018. Slovak investigative journalist Ján Kuciak and his girlfriend Martina Kusíková were shot to death in his house in Veľká 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 Galipar 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 photojournalist Remi Ochlik and wounded three others."

Exhibit seven. February 5, 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 the country of their wartime claims, using a mobile satellite interception device that could tap broadcast signals and locate their origin. It would also help their attacks on the ground... The former intelligence officer, code named Ulises, provided a detailed account of how a Syrian president’s brother, President Al-Assad’s regime sought to capture or kill journalists and activists...” [Ulises’] focussed efforts to be counteracted by Syrian government documents filed as evidence in the case, which suggest the regime targeted her to silence her reporting on its atrocities.”

UNESCO says its World Press Freedom Day, held on May 3 each year, “is a date which celebrates the fundamental principles of press freedom, to evaluate press freedom around the world, to defend the media from attacks on their independence and to pay tribute to journalists who have lost their lives in the exercise of their profession. It serves as an occasion to inform citizens of violations of press freedom... May 3 acts as a reminder to governments of the need to respect their commitment to press freedom...”

The disturbing 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 if anything 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 one of the most repressive in the western world for criminalising journalism. The Bill is the just the latest in a basket of laws, that both harm the growth and the opportunity for governments to act with impunity and Australian Governments have spent decades doing little if anything to bring those responsible for our colleagues’ murders to account.

With each new tranche of national security laws passed by the Parliament, jail terms for journalists have steadily risen from six 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
There are many working hard to make it so.
CRIMINALISING JOURNALISM
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