LET’S NOT KEEP MUZZLING OUR WATCHDOGS


FULL TEXT

We need a media freedom act to protect the public’s essential right to information
One of the central tenets of a successful liberal democracy is press freedom. As voters, we employ our elected officials to run the government on our behalf and, as with all bosses, we have a right to know what they get up to. In any democratic system worth the title, that happens through good, sceptical, independent and at times aggressive journalism.
That kind of reporting is inherently wary of crafted news releases and staged media events. It is the kind of journalism that digs into the inner workings of government, cultivating sources and relationships beyond the press officers who act as gatekeepers and spin doctors. It is the kind of journalism that uses deep sources to expose mismanagement, hypocrisy and outright corruption.
It is not always pretty or especially edifying, but it has helped to "keep the bastards honest", oil public debate and make Australia one of the most stable, prosperous and peaceable nations on the planet. It makes sense to protect and defend it.
Yet, surprisingly, Australia has no explicit constitutional or legal protection for media freedom.
Although the High Court ruled that there is an implied freedom of political communication inherent in our system of representative democracy, press freedom is by no means hardwired into our laws in the way that the Bill of Rights does it in the US. The first amendment to the US constitution unequivocally says: “Congress shall make no law …abridging the freedom of speech, or of the press …” In a landmark case from 1997, Lange v Australian Broadcasting Corporation, the court said: "Unlike the (US) first amendment …which has been interpreted to confer private rights, our constitution contains no express right of freedom of communication or expression. Within our legal system, communications are free only to the extent that they are left unburdened by laws that comply with the Constitution." In 2008, Channel 9 political editor Laurie Oakes exposed cabinet documents that showed four economic departments had warned the government its FuelWatch program could increase petrol prices.
In 2016, a string of leaks revealed that the NBN was blowing the budget and had fallen way behind schedule –facts that were hugely embarrassing to prime minister Malcolm Turnbull.
From 2016, a series of leaks exposed the way Centrelink’s automated debt recovery system was making crippling demands of some of the poorest people in the country. It prompted Centrelink to warn its staff that any unauthorised communication with the media violated the Crimes Act.
In each of those cases, those who leaked the information, and the reporters, risked breaking laws that restricted disclosure of government information and protected national security. Indeed, the security services were called in to track down the sources. Yet in each of them there was a clear public interest in exposing what was happening, and in the end, after the public rows settled, both the government and the public were arguably better off.
When he retired, Oakes said: "The importance of what I do is enabling democracy …so people know what politicians are doing, so they know what they are voting for, why they are voting …” "Until the early 2000s, Australia broadly managed to strike a working balance between media freedom and government authority, but two key forces have helped tip the scale away from the public’s right to know and in favour of the government’s natural tendency to secrecy.
The first is the way the digital revolution has damaged news business models, significantly weakening the ability
of news organisations to pay for the kind of investigative journalism that holds governments to account. The second is the political pressure to enact ever tighter national security legislation in the ongoing war on terror. Since 2001, Australia has passed 54 separate pieces of anti-terror legislation—possibly more than any other country.

Together, those forces have given governments a licence to chip away at the space that journalists have traditionally been able to operate in, and in the process reduced transparency and accountability.

This is not to suggest that national security laws need to be repealed. Far from it. But without the restraint that the first amendment places on US legislators, Australia’s politicians have had much more scope to pass legislation that harms the public’s capacity to know, and therefore ultimately our democracy.

In just a few examples from the past few years, we have seen section 35P of the ASIO Act, which gives the minister the power to keep any security operation secret forever. There is the Data Retention Act, which makes it almost impossible for journalists to protect government sources; the Foreign Fighters Act, which potentially criminalises stories covering militant extremists; and, most recently, the Foreign Interference and Espionage Act, which significantly broadens the scope of information defined as “classified”. All in some way intrude on media freedom.

That is why my organisation, the Alliance for Journalists’ Freedom, is launching a campaign for a media freedom act. It would act as a yardstick to measure all our laws against, to protect the watchdog role that journalists play.

It isn’t intended to stop or repeal critical national security legislation; clearly, we need to update our laws to cope with a dangerous world. But the act would compel our politicians to strike a better balance between those two essential functions, making us all both safer and better informed.

If the most vital role a government can play is defending our democracy, surely enshrining media freedom in law is essential.

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