

To the Senate Standing Committee on Environment and Communications,

My submission relates to the committee's inquiry into press freedom and its terms of reference.

Freedom of the press is a vital mechanism to thwart malfeasance and to ensure the coordination of the activities of politicians with the demands of the populace. In these ways a free and independence press can foster both greater national income and enhanced social welfare. My own published peer-reviewed research attests to this point. Beyond any moral imperative associated with maintaining a free press, doing so reduces inefficiencies caused by secrecy; information asymmetry; illegality (and hence high costs of enforcement); uncertainty and incentives which lead corrupt officials to redesign public systems to encourage bribery (see 1 and references therein). As stated by James Wolfensohn, former president, World Bank:

"A free press is not a luxury. A free press is at the absolute core of equitable development, because you cannot enfranchise poor people, if they do not have a right to expression, if there is no searchlight on corruption and inequitable practices, you cannot build up the public consensus needed to bring about change."

The recent intimidation of journalists by the government is simply not appropriate for a civilized and democratic country. It makes Australia look like a tinpot autocracy (2). I would imagine that it is the antithesis of the Liberal National Coalition's avowed values. It is a true that no one is above the law. But stated in such an absolute way, this is very disingenuous, especially where the laws are rushed and formulated to facilitate attacks on political enemies and unfairly criminalise political inconveniences. Again, it is a true that no one is above the law. But this statement has been used as a hollow rhetorical device to justify the intimidation of journalists (3, 4). Laws must be fair and just to begin with.

I continue to be dismayed by Australia's decline in terms of freedom of the press and its escalation in terms of perceptions of corruption. Specifically, the Worldwide Governance Indicators from the World Bank show that 'Control of Corruption', on a scale from -2.5 to 2.5 (higher is better), has declined from 2.1 in 2009 to 1.8 in 2017. Our worldwide ranking has slipped from the 96.2 percentile to the 92.8 percentile over the same period (higher is better) (5). Similarly, Transparency International's 'Corruption Perceptions Index' shows, on a scale from 0 to 100 (higher is better), a deterioration from 85 in 2012 on to 77 in 2018 (6). Corruption and perception of corruption are important for people to have faith in the democratic system. The recent allegations of misconduct by Hon Angus Taylor MP and Hon Josh Frydenberg MP (7) feed into a crony capitalism narrative. It reinforces the point that not only is the market, when left to its own devices unable to deliver fair outcomes, it is perverted by vested interests who make or at least help make the laws. It gives real credence to the arguments leveled at the coalition government by the opposition that the coalition government is governing for the wealthy while simultaneously making life harder for people already experiencing hardship. It's hard to imagine how much more the Australian people could cope with this sweeping force cultivating the conditions for ever more inequality now and into the future. Australians have no say in the conditions that they are born into, yet increasingly, this will determine how they get on in life.

In addition, in terms of freedom of the press specifically, it is worth noting that on World Bank and Freedom House measures Australia has maintained its relative position in the world while the absolute levels of freedom of the press have declined globally over the past decade (8). This is not a statistic to take comfort in, it suggests, Australia's freedom of the press has declined alongside other nations' declines. Further, on the World Press Freedom Index, Australia's relative position has declined since it was first measured in 2013 from 26/180 to 21/180 (9). I would like to see these declines in freedom of the press reversed. And I would like to see Australia leading on press freedom because a free press keeps constituents properly informed and provides some of the most vital necessary conditions for democracy to flourish. Elected leaders should be the staunchest supporters of a free and independent press.

In what follows I directly address the terms of reference.

- (a) disclosure and public reporting of sensitive and classified information, including the appropriate regime for warrants regarding journalists and media organisations and adequacy of existing legislation;**
- (b) the whistleblower protection regime and protections for public sector employees;**
- (c) the adequacy of referral practices of the Australian Government in relation to leaks of sensitive and classified information;**

The current legislation does not provide adequate protections to journalists, media organisations and whistleblowers. I am surprised that the Australian Federal Police are not already required by law to "...exhaust alternative investigative actions prior to considering whether involving a professional journalist or news media organisation is necessary," I was similarly surprised to learn that the Australian Federal Police was not already required by law to "...to provide a harm statement indicating the extent to which the disclosure is expected to significantly compromise Australia's national security." (10). It is not sufficient to merely express publicly one's wishes, as the Hon Peter Dutton MP has, of the Australian Federal Police. The legislation needs to be changed to reflect this and the legislation needs to go further still.

A valid warrant from a judge should be required if a journalist or media organisation or whistleblower is going to be investigated. Furthermore, the information to make the case for a warrant should be lawfully obtained. On this point, it should not be possible for the government to spy, to decrypt, to "hack" (e.g. through phishing attacks etc...), or use devices such as the "International Mobile Subscriber Identity" catcher (IMSI Catcher) which may go by the following brand names including Stingray, SimSucker, Kingfish, Harpoon, Amberjack, or Hailstorm. This is technology which, by mimicking a mobile phone tower, infringes on everyone's privacy (*many* people at once) and curbs their ability to engage meaningful in society. These are techniques and technologies developed and used to address terrorism. Journalists, media organisations and whistleblowers are not terrorists. Similarly, peaceful protesters are not terrorists. Their actions are in the public interest and an important to political participation and the democratic process.

I don't claim to be a legal expert, however, unnecessary and unchecked (and without meaningful consequences) spying on journalists, media organisations and whistleblowers (the Liberal National Coalition's political enemies to be frank) should not be possible. A valid warrant should be required from a judge if a journalist, media organisation or whistleblower is to be investigated and there should be very strong grounds for any formal investigation to occur precisely because there is a real risk it is, at least to some degree, politically motivated. There should be an automatic presumption against the entity seeking the warrant for this reason. The intimidation of our journalists, media organisations and whistleblowers is a very serious threat to our democracy. The threat alone is insidious and can take many forms. Any investigation should be very formal. There should be serious consequences that are practically enforceable and enforced and that are sufficient to deter government agencies (e.g. the Australian Federal Police, State and Territory Police authorities, the Department of Home Affairs, Australian Security Intelligence Organisation, the Australian Signals Directorate and so on) from themselves breaking the law. Moreover, at the moment, the Attorney-General the Hon Christian Porter MP's approval is required to for the launch a journalist prosecution and he has previously said, euphemistically, that he's "seriously disinclined" to give it (11). Journalists, media organisations and whistleblowers do not have access to justice, because this is determined by the very government that would find this politically inconvenient. Journalists, media organisations and whistleblowers should have the right to real remedial action to defend themselves.

Journalists, media organisations, whistleblowers and a free press perform an important function in a democratic society. They act in the public interest. They shine a spotlight on corruption and maladministration, which the government of the day will likely find inconvenient. This scrutiny brings us progressively closer to an allocation of scarce resources in line with the desires and values of the Australian people. Journalists, media organisations and whistleblowers should be able to speak truth to power, without being intimidated in various ways. For example, Hon Scott Morrison MP's un-prime ministerial shouting in the House of Representatives and his career ending threats to Laura Tingle. If journalists, media organisations, whistleblowers are afraid to speak out (and I can sense an atmosphere of fear in the air), due to the prospect of being raided, prosecuted, and sent to prison, our society devolves into one governed by an authoritarian regime. Australia becomes a democratic nation, in name only (much like the *Democratic People's Republic of Korea*), our civil liberties become greatly curbed and become open to being curbed further still. This is an issue that transcends party boundaries. Australians deserve to be served by their government, not *systematically* intimidated, scared, dominated and oppressed by it.

Whether or not a person is a whistleblower, they should not be afraid of engaging politically. This should be a basic fundamental right of Australians and people, public servants included, should not be deterred from exercising this right through intimidation in its many and varied forms (e.g. stringent codes of conduct (12), silencing of charities (e.g. charities are no longer allowed to point out the plight of their clients and how this might be addressed or they will lose their status as a not-for-profit (13), yet companies don't lose their low taxing status when they start to lobby the government more intensely than is usual) and the dilution of the Separation of Powers through imbuing Ministers with ever greater and more direct powers and; preferred appointments to: the ABC (14); Department of Prime Minister and Cabinet (15), the Administrative Appeals Tribunal (16), the Office of the Australian Information Commissioner (17). Not to mention a Drought Fund or slush fund without any specific appropriations (18) and the recent passage of the 'Ag gag' law through the House of Representatives). It is very difficult for the Australian people to seek justice when the system is rigged, by design, against large swathes of the Australian populace.

(d) appropriate culture, practice and leadership for Government and senior public employees;

The relationships between Ministers and their senior public employees should be more tightly and independently monitored and regulated so that the administrative functions of government occur more at an arm's length. A code of conduct is required which places legally binding obligations on Ministers in terms of how they conduct themselves with senior public employees. Senior public employees should have recourse if they are being bullied by Ministers, something which is surely a violation of ministerial standards. At present, Ministers have too much power to bully and to simply fire senior public employees. The Hon Barnaby Joyce MP has gloated about this publicly, firing many heads of department. This needs to be balanced with checks. It needs to be more fairly and fully developed with proper protections for senior public employees. An independent entity (e.g. a judge) or a system of genuinely independent procedures should ensure that the firing of senior public employees is done on reasonable grounds and in a fair and just way. Conversely, senior public employees should not be hired specifically because they are widely known to be sympathetic to the government of the day. An independent entity (e.g. a judge) or a system of genuinely independent procedures should similarly ensure that this hiring of senior public employees occurs at an arm's length. The relationships between Ministers and their senior public employees is an area which deserves further attention.

Aside from the obviously politically motivated assaults on how Australian universities are funded, Ministers are not researchers and are not qualified to and have no place in determining what research has merit. It should not be possible for a Minister to veto Australian Research Council and National Health and Medical Research Council grants. In doing so, the Minister is undoing all that the bureaucracy has facilitated, a process put in place for a reason. These grants have already gone through a thoroughly competitive process. Politically motivated assaults on Australian universities distort the creation of knowledge and further ingrain inequalities now and into the future.

In relation to the Australian Broadcasting Corporation (ABC) in particular, I was taken aback by Hon Scott Morrison MP's comment or threat on the Insiders program (30/09/2018) that the ABC board could "...expect a bit more attention from me..." if it did not "...do better...". These comments are worrying because it's not entirely clear exactly what is meant by "...more attention...". If this "...more attention..." refers to significant action to protect the ABC's ongoing independence this would seem to be constructive. On the other hand, more political interference would not be helpful.

Some practical steps include for example:

- Removing the ability for the Communications Minister to bypass independent appointment processes
- Chair appointment process must be formalised, and expanded to include cross-party committee and opposition leader.
- A Cross-party committee should oversee board appointment – replacing the current nomination panel, or overseeing it
- Greater involvement of ABC audiences and the public in board selection processes with more publicity around vacancies and selection criteria
- Selection of an 'audience supported' board member, with applicants publishing their profile, CV and interviews on the ABC website.

The appointment of The Minerals Council of Australia chair Vanessa Guthrie hardly seems impartial (14). The Communications Minister Hon Mitch Fifield MP should not be able to bypass an independent process.

Further, the ABC should be adequately funded by the Australian Government and yet have independence from the Australian Government. Cuts to ABC funding over recent years reflect a series of politically motivated attacks on the ABC by the Australian Government. It is just one of many examples of the Australian Government's mission to simply suppress dissenting views. The ABC's funding should be independent of the government of the day. In all, measures to bolster the independence of the ABC would be well-received by all Australians across the political spectrum.

(e) mechanisms to ensure that the Australian Federal Police have sufficient independence to effectively and impartially carry out their investigatory and law enforcement responsibilities in relation to politically sensitive matters; and

People more intimately involved in recent events may have more input to provide on specific mechanisms.

(f) any related matters.

Stronger explicit protections for the fundamental rights of people in the constitution

The US has many rights articulated in their constitution. I would like to see fundamental inalienable rights enshrined in our own constitution. To bring the nation further into the 21st century, these rights should include "data rights" and the right to protest or strike peacefully, even if it causes an inconvenience to some (Australians do not have these rights at present (see 19)), among other things. To address terrorism there has been the encroachment on many civil liberties very quickly without enough oversight. I wonder if our rights were more explicit, if they would have been given away so easily and so quickly. I believe the general public are increasingly very worried about the interpretation of this legislation.

To provide a personal example... Am I going to be arrested for taking part in a peaceful protest or if I take part in a strike, because it is some form of economic terrorism or because it causes an inconvenience or on some other contrived grounds? The establishment and enforceability of fundamental human rights in the constitution would help people to feel much more at ease in terms of their freedoms. This becomes even more important if we are going to continue to only be, in many senses, a *prima facie* signatory to the Universal Declaration of Human Rights. It is worth noting that there would be less need for activism and protests if human rights were upheld in the first place. I worry about the future of Australia and I see parallels with the increasingly ugly situation in Hong Kong (20) where protesters may in the end be met with military force reminiscent of Tiananmen Square in 1989.

Freedom of information

The Australian people have a right to know what the government is doing. At present, freedom of information in Australia does not really exist. The current regime is not effective. It is not fit for purpose (21, 22, 23). Access to information is a "...key component of transparency, accountability and civic participation. It's a way for everyone to scrutinize Government and public sector information, to become better informed, and to take full part in our democratic system." (24) I generally support the OpenAustralia Foundation's submission on the Freedom of Information Legislation Amendment (Improving Access and Transparency) Bill 2018, to achieve this end.

A national anti-corruption body (with "more teeth than Jaws" (25, 26)

In brief, if there is no corruption to hide, it is difficult to see why a national anti-corruption body would be opposed by a political party. If a particular Minister does not want to be probed about a conflict of interest, perhaps they should not be so conflicted in the first instance. It is reasonable to wish to investigate conflicts of interest as they can be *highly relevant* to a Minister's decisions. Public disclosure of conflicts of interest is not enough to address the influence of conflict of interests on significant decisions. Further, conflicts of interest are magnified by the Australian Government's willful dilution of the Separation of Powers over recent years.

Regulation of donations to political party and political entities not affiliated with any one party

Only individual people, not corporations, should be able to donate to these political party and political entities not affiliated with any one party. Further, donations by an individual should be capped. Foreign influence through foreign donations should simply cease to be possible.

Facebook and Google "hacking" should be stopped

It should not be possible in Australia for "hacking" similar to that of Cambridge Analytica to be used to pervert our democratic processes. Most people want these entities (Facebook and Google) to be held to account (27). Our institutions need to be fit for purpose.

Julian Assange

Julian Assange is a whistleblower. He is an Australian citizen from my own state of Queensland. And the UN rapporteur on Torture has accused Australia of failing to protect Assange's rights and being complicit in his psychological torture (28). It goes without saying that his basic human rights should be upheld, we are a signatory to the Universal Declaration of Human Rights. I would like to think that the fundamental values that define Australia have not changed since we became a signatory. If we as a country are opting out of the United Nations there is cause for even more need for our basic rights to be explicitly upheld (I am concerned about Hon Malcom Roberts MP's comments that the United Nations had "...interfered for many decades now with our sovereignty and the governance of this country."(29)). Further, as a whistleblower Julian Assange should be afforded additional support precisely because special protections for whistleblowers may not exist or may not be particularly effective for our citizens when they are abroad. Julian Assange should be brought home.

Government funded reports

All government funded reports should be made publicly available by default. The US is well ahead of us in terms of transparency on this front (30). These reports are paid for with public money, the public should be able to know the contents of the report. It is important to respect the report's authors' authorship rights. Reports are procured and written to inform the government. This is distinct from the government's own position on a given matter.

"Quiet Australians"

The phrase "Quiet Australians" is demeaning to all Australians, "quiet" or otherwise. Also, it makes Question Time all that more loathsome.

"A fair go for those who have a go" (31)

This phrase demonstrates the Coalition Government is willfully disenfranchising, and does not for a moment understand, the plight of the working class, the poor and disadvantaged Australian people.

Concluding comments on any related matters

In summary, I believe these other related matters would improve the quality of our institutions, at a time when Australians have lost faith in their institutions (32). I believe these related measures would support a freer Australia with a freer and more independent press; necessary ingredients for a vibrant democracy.

Concluding comments on my submission

As a senate committee, this is one sphere where I believe the current government has yet to purposefully dilute the Separation of Powers. For this reason, especially, I would like be given hope and real reasons to believe that this inquiry does not have a forgone and ineffectual conclusion. Thank you for considering my submission.

Sincerely,

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