

## Whistleblowing and the media—transparency the greatest casualty

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The contempt of court charges and prospect of jail sentences faced by press gallery journalists Michael Harvey and Gerard McManus follow on from another more aggressive but equally disturbing attack on fundamental press freedoms, less than a year ago. Australian Federal Police (AFP) raided the office of the *National Indigenous Times* where:

Police spent around two hours at the paper's office, and also searched the editor's house and car and removed six documents including a Cabinet submission. (*AM, ABC Radio, 12 November 2004*).

In the earlier case the Howard government initiated a direct assault on a media outlet and there is nothing to suggest the government deliberately set out to punish the two journalists for possession of Cabinet documents. However both the *National Indigenous Times* and the *Herald-Sun* are collateral casualties in an unrelenting campaign to stop public service leaks. It was almost inevitable that gallery journalists would get snared in a campaign designed to block their access to public sector whistleblowers.

Secretary of the Prime Minister's department, Peter Shergold famously spelt out the seriousness of the government's intent when he declared in late 2004 that 'if some people seem surprised that I have called in the police to deal with leaks, they shouldn't be—I always have and I always will'.<sup>1</sup>

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<sup>1</sup> Michelle Grattan, 2005, 'Gatekeepers and gatecrashers' *Deakin Lecture*, May 2005.

Backing the campaign is a legislative proposal that will continue to threaten public servants with open-ended or catch-all regulations about what they should not do. For example Special Minister of State, Senator Abetz explained the government decided against ‘defining in detail by reference to subject matter, the types of information that should be protected’ but to focus ‘on the consequences....the disclosure *might* cause’ (my emphasis). And should an employee want to blow the whistle on wrong-doing, they can report these to their employer, ‘or indeed to the Public Service Commissioner’.<sup>2</sup>

Cost is also no barrier. In the debate to disallow the proposed regulation, opposition Senator Kim Carr revealed there have been ‘close to 120 separate references to the Federal Police’ for unauthorised disclosures by public servants and that ‘the leak squad’ spent 32 000 staff hours costing ‘nearly \$200 000’.<sup>3</sup> So far the results are hardly value for money. The AFP told the *Age* newspaper’s Michelle Grattan that as of the end of May 2005 from well over 100 referred cases ‘there are six investigations’ and that ‘from 2000 to June this year, eight people were charged, and six convicted, and two cases were still on foot’.<sup>4</sup>

And it may get worse. In 2004 leaked information about baby-bonus payments prompted the government to call for a security review by the Australian Security and Intelligence Organisation (ASIO) and the Defence Signals Directorate (DSD).<sup>5</sup>

Open and deliberate measures to deter and intimidate public comment by public servants clearly fly in the face of principles of open government and robust public discourse. In the landmark Bennett<sup>6</sup> case Justice Finn warned that unqualified sanctions on public

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<sup>2</sup> Senator Eric Abetz, *Senate Official Hansard no.8 Thursday 16 June, 2005* pages 47 and 48, accessed 09 September 2005 at: <http://www.aph.gov.au/hansard/senate/dailys/ds160605.pdf>.

<sup>3</sup> Senator Kim Carr, 2005 *Senate Official Hansard no.8 Thursday 16 June, 2005 p.42*, accessed 09 September 2005 at: <http://www.aph.gov.au/hansard/senate/dailys/ds160605.pdf>.

<sup>4</sup> Grattan, ‘Government crackdown on leaks bad for democracy’, *The Age*, 31 August 2005, accessed 13 September 2005 at <http://www.theage.com.au/articles/2005/08/30/1125302562663.html>.

<sup>5</sup> Senate Estimates *Finance and Administration Portfolio* 15 February, 2005

Sections 4.1 and 4.29 accessed 07 September 2005 at:

[http://www.aph.gov.au/senate/committee/fapa\\_ctte/estimates/reports/2005/add\\_0405/c04.htm](http://www.aph.gov.au/senate/committee/fapa_ctte/estimates/reports/2005/add_0405/c04.htm)

<sup>6</sup> *Bennett v President, Human Rights and Equal Opportunity Commission*, December 2003 [s003] FCA 1433.

service employees contravened the implied constitutional freedom of political communication.<sup>7</sup>

But such government measures also have a direct impact on the ability of press gallery journalists to act as functionaries on behalf of the public interest. The Harvey and McManus court case is only part of the story, as it also represents the dangers of ineffective Freedom of Information (FOI) laws that effectively force political journalists to be over-dependent on oral, and/or ‘brown-envelope’ leaks.

Comparative research done by Johan Lidberg and Alec McHoul on *Freedom of Information and Journalistic Content in Western Australia and Sweden*<sup>8</sup> shows the presence of effective, workable FOI laws in Sweden give ‘journalistic tools, to a much larger extent than their Western Australian colleagues, [the Swedish laws] allow them to independently seek and obtain information that can verify or contradict official versions on most levels of society, from politics to the private sector’, and:

The most important conclusion of this study is that it shows the Swedish journalists to be less dependent on what Ericson et al define as the ‘deviance defining elite’ (1987, 345-367).<sup>9</sup> This is illustrated in the study by the WA journalists’ greater dependence on oral sources for their information.<sup>10</sup>

Lidberg and McHoul’s extensive qualitative and quantitative data included results to show that 40.5 per cent of the news stories examined in Swedish newspapers relied on paraphrasing of primary documents acquired from government agencies as their main source; while in Western Australian the main source of primary data (36.6 per cent) is paraphrased from oral sources.

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<sup>7</sup> Ian Holland and Peter Prince, *Public servants speaking publicly: The Bennett Case*, Research Note 31, February 2004, Parliamentary Library Information and Research Services.

<sup>8</sup> Johan Lidberg and Alec McHoul, 2002 *Freedom of information and journalistic content in Western Australia and Sweden* an unpublished paper presented to the 2002 *Public Right to Know (PRK2) conference* Australian Centre for Independent Journalism, University of Technology, Sydney

<sup>9</sup> R Ericson, 1987 in R Ericson, P Baranek and J Chan, *Visualizing Deviance: A Study of News Organization*, Toronto, University of Toronto Press.

<sup>10</sup> Lidberg and McHoul, ‘Freedom of Information and Journalistic Content in Western Australia and Sweden’ p. 19.

High levels of ‘leak-dependent’ journalism place a premium on gallery journalists with experience, informed critical expertise and proven trustworthiness. For this reason, there is some alarm in the gallery about a hollowing-out in the age and experience of gallery journalists. It has been expressed as an issue of major concern in qualitative interviews with journalists in 25 of the 30 mainstream media bureaux in the Federal Parliamentary Press.<sup>11</sup> A frequent observation is that younger journalists spend only short periods of time in the round, because the gallery is no longer regarded as a peak job, but as a stepping-stone in their careers.

Alarm bells should also be ringing in the head-office of media organisations and other institutions that care about the media’s capacity to maintain an effective watch on government. A weak FOI regime, over-dependence on leaks, inexperienced gallery journalists and government pursuit of whistleblowers all add up to a major problem for transparency and accountable government.

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<sup>11</sup> Helen Ester, 2005, Unpublished interviews Press Gallery Parliament House Canberra 2003-2004