



***AUSTRALASIAN STUDY OF  
PARLIAMENT GROUP  
(Queensland Chapter)***

**FREEDOM OF THE PRESS: WHERE TO FROM  
HERE?**

**TRANSCRIPT OF PROCEEDINGS**

**MONDAY, 19 AUGUST 2018**

**Brisbane**

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**Mr McARDLE:** Thank you for attending tonight. To those of you who have been here before, welcome back. To those of you who are here for the first time, welcome to the state parliament complex.

The Australasian Study of Parliament Group, Queensland chapter, commenced in May 1993. The approach undertaken by the chapter is a bipartisan one in that any member of parliament has the right to make a contribution. More importantly, it also is an education tool so that people across Queensland—indeed, across the nation—can understand more about the governments that govern them in their state and federally and how they work together.

With that in mind, the patron of the Queensland chapter is the Speaker of the House, the Hon. Curtis Pitt. Mr Speaker has been a very strong supporter of the Queensland chapter and, as patron, has seen fit to take an active role in what the chapter does. More importantly, he advocates for the role of the chapter not just here in Queensland but, generally speaking, across the nation. I would like to ask the Speaker to come forward to the podium and say a few words of introduction.

**Mr SPEAKER:** Thank you, Mark. You could not be in better hands than to have Mark McArdle as your emcee this evening. He is a great member of parliament. I want to take this opportunity to wish him well in his future. He has indicated that he will not recontest his seat at the next election, so I publicly want to acknowledge Mark and the service he has given to the Queensland parliament. He is someone who at times has been an adversary but mostly a good friend. Thank you for the kind introduction, Mark. I also acknowledge Reg Gulley, a former member of parliament, and Sandy Bolton, the member for Noosa. My role is as the patron of the ASPG Queensland chapter. We are very fortunate to have a great group of panellists here this evening whom we will introduce in just a moment.

At the outset I want to acknowledge that we are meeting on the land of Aboriginal and Torres Strait Islander people and I pay my respects to elders past and present. I acknowledge how lucky we are to live in a country where we have two of the world's oldest continuing living cultures in Aboriginal and Torres Strait Islander people, whose lands, winds and waters we all now share.

I want to acknowledge David Fraser, the chair of the Queensland chapter. As you have heard, one of our panellists is not here yet, Professor Peter Greste; however, we look forward to him coming and joining Professor Julianne Schultz and Peter Black from Griffith and QUT respectively.

Tonight's topic of discussion—'Freedom of the press: where to from here?'—could not be timelier if it had been arranged only last week; however, it was not. Of course, it is not a new topic but is one that, as you can appreciate, has certainly been making news headlines over the past several months. The Australian parliament is currently conducting two inquiries into freedom of the press: the Parliamentary Joint Committee on Intelligence and Security, looking at the impact of the exercise of law enforcement and intelligence powers on the freedom of the press; and the Senate has referred an inquiry into press freedom to the Environment and Communications Reference Committee.

The first line of the Australian Press Council's charter for free press in Australia states—  
Freedom of opinion and expression is an inalienable right of a free people.

That is true until it is not, so when does expressing an opinion stop being a right and become an offence? The first principle of the Press Council's charter states—

Freedom of the press means the right of the people to be informed by the press on matters of public interest so that they may exercise their rights and duties as citizens.

When does the reporting of stories cease being in the public interest and become a risk to public safety? These are all the sorts of conversations you will have tonight. Your panellists will present their points of view and you will have an opportunity to speak with them about your thoughts on this very important matter.

## Freedom of the press: where to from here?

The Queensland parliament hosts many different groups and organisations, but whenever we have the Australasian Study of Parliament Group here, particularly the Queensland chapter, it is always an absolute pleasure because, as I say, there are always meaty topics with a very good group of panellists indeed.

In handing over to our emcee, Mark McArdle, I apologise that I cannot stay. I was looking forward to this topic this evening, but I do have another event that I need to attend this evening. With those few words, thank you very much for coming to Parliament House. Thank you for your ongoing interest. Particularly to people who are attending for the first time: well done. It is a great turnout. You will find there are going to be many occasions in the future when you will have a great deal of interest in the subject matter.

**Mr McARDLE:** Thank you, Mr Speaker, for those kind words about me which I hope are recorded in *Hansard* as well. I can read them back at a later date.

Ladies and gentlemen, can I please ask our guest speakers—Professor Peter Greste, Professor Julianne Schultz and Mr Peter Black—to take a seat at the table here. Tonight we commence an exploration of the interface between freedom of the press and the security of a nation, or ‘Freedom of the press: where to from here?’ Can I start by quoting Thomas Jefferson, who in 1786 said—

Our liberty depends on the freedom of the press, and that cannot be limited without being lost.

That quote from a very famous individual is an excellent start to tonight's forum. Each of the three guest speakers will have an allotted time and I will maintain a watch on the time. One minute before the end of their time they will hear one ring of the bell and then two rings at the end. I have done that deliberately because I want the question and answer session to be quite fluent and of some length. I suspect there will be many questions arising out of the deliveries given tonight.

Our first guest speaker is Mr Peter Black. Peter is the Associate Dean of Learning and Teaching in the Law Faculty at the Queensland University of Technology, where he researches and teaches constitutional law, media law and internet law. Peter has degrees in art, majoring in media studies and law, being a university medallist at the University of Queensland, and a Master of Laws from Columbia University in New York, where he focused on free speech and the First Amendment. He has expertise in the legal and policy issues surrounding social media and is a regular media commentator on these and other issues, including government, politics and constitutional law. Please welcome Peter to the podium.

**Mr BLACK:** Thank you very much. I would also like to begin by acknowledging the traditional owners of the land where we are meeting this evening, the Jagera to the north and the Turrbal to the south, and pay my respects to their elders, laws, customs and creation spirits. I would also like to thank the Australasian Study of Parliament Group for the opportunity to speak on this important and timely topic. It is a topic that has been quite a passion of mine for some time—as was mentioned in that introduction, ever since I studied the First Amendment in the United States. I am also, I must admit, strangely comforted by the presence of the bells that are meant to regulate our time. I think the last time I spoke in this chamber was when I was a high school debater and there were, indeed, bells on that occasion as well. It is taking me back to my school days.

My main role this evening is really to lay out the legal framework in Australia that applies to the so-called free press. I say ‘so-called’ because I think it is unarguable that the media in Australia do not have the same protections as other Western democracies, and this stems from the fact that Australia is the only democracy in the world that does not protect free speech and freedom of the press through a charter or a bill of rights. That is not to say that free speech is not an important part of our legal and political tradition. Freedom of speech is a fundamental common law right and, as such, the principle of legality provides some protection to freedom of speech. What this means is that, when interpreting a statute, courts will presume that parliament did not intend to interfere with freedom of speech unless this intention was made unambiguously clear.

In *Monis v The Queen*, then chief justice French explained the source of this freedom of speech in the common law. His Honour said—

Freedom of speech is a common law freedom. It embraces freedom of communication concerning government and political matters. The common law has always attached a high value to the freedom and particularly in relation to the expression of concerns about government on political matters. Lord Coleridge CJ in 1891 described what he called the right of free speech as ‘one which it is for the public interest that individuals should possess and, indeed, that they should exercise without impediment, so long as no wrongful act is done’. The common law and the freedoms it encompasses have a constitutional dimension. It has been referred to in this Court as ‘the ultimate constitutional foundation in Australia’.

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Indeed, since 1992 the High Court has recognised that the Australian Constitution contains an implied freedom of political communication. The basis for this freedom is that it is to enable the people—all of us—to exercise a free and informed choice as electors. However, this is only a freedom of political communication; it is not a broad free speech right and, perhaps more significantly, it is not a personal right. Rather, the freedom acts as a restraint on the exercise of legislative power by the Commonwealth. This was restated again by the High Court as recently as last week when it held in *Comcare v Banerji* that the federal government may legitimately restrict the right of public servants to express political views and that those limitations do not breach the implied freedom of political communication in the Australian Constitution.

In addition, international instruments also provide for freedom of expression, including the right to 'seek, receive and impart information and ideas of all kinds regardless of frontiers'. That is from the International Covenant on Civil and Political Rights. The United Nations Human Rights Committee provides a detailed list of the forms of communication that should therefore be free from interference. This includes political discourse, commentary on one's own and on public affairs, canvassing discussion of human rights, journalism—and I think that is important: journalism—cultural and artistic expression, teaching and religious discourse. However, these international instruments cannot be used in Australia to override clear and valid provisions of Australian national law. That said, where a statute is ambiguous, courts will generally favour a construction that accords with Australia's international obligations.

Although there is a constitutionally implied freedom of political communication, together with the principle of legality and various international instruments to which Australia is a signatory, why is this fundamentally inadequate and what are the legal challenges that face the free press today? The principal reason as to why this legal framework is inadequate is that it largely leaves the legislative and executive branches of government to set for itself what limitations are placed on free speech and on the press, and within this framework courts are generally deferential to the other branches of government, especially where those other branches of government are able to articulate an apparently compelling reason or other justification for any such limitation such as protection of reputation or, as we are increasingly seeing, national security. This is where things get tricky, because there have always been limits on free speech and a free press. Free speech has never been absolute. The difficulty is where and who decides what those limits are.

Let us now spend a little bit of time looking at the limits that the Australian government has chosen to place on press freedom, particularly in the last few decades. The longest standing and probably most widely recognised limit is defamation. Even here Australia's defamation laws are regarded as among the toughest and the least media friendly in the world, which is why Sydney is often cited as one of the defamation capitals of world. It is a jurisdiction that is considered friendly for plaintiffs to commence defamation proceedings. Although there is no specific public interest defence to defamation actions in Australia, there is a defence known as qualified privilege which relates to publications of public interest where a publisher acted reasonably. The implied freedom of political communication can also be argued under this umbrella of qualified privilege. However, what we have seen is that media outlets and journalists have had limited success relying on these qualified privilege offences in high-profile cases, and the media, I think compellingly, argues that the bar for establishing that they acted reasonably has been set too high by the courts.

Putting defamation aside for one minute, as it is, I think, a fairly established limitation on this principle of free speech, there are a few more other laws that are more recent that are much more concerning, so I will highlight a few of these by way of example. The first relates to secrecy of information. Part 5.6 of the Criminal Code Act 1995 deals with secrecy of information and it defines two categories of information that are regarded to be secret: inherently harmful information and information that is likely to harm Australia's interests. Inherently harmful information means information that has a security classification attached to it or belongs to one of the intelligence services or relates to the operations of an intelligence service or a law enforcement agency. Information that is likely to harm Australia's interests, however, is not defined. It is this sort of open-ended, very broad catch-all that can be used to go after public servants who leak and the journalists who in turn publish those leaks.

The law does provide for a defence for journalists. It says that it is a defence if the defendant was acting in the capacity of a journalist reporting news, presenting current affairs or expressing editorial or other content in news media. This is incredibly vague to begin with. Who is a journalist? Is it everyone who is engaged in doing news by journalism? Does that include bloggers, tweeters, facebookers and other citizen journalists or does it only include those who are employed by big media organisations? The other aspect of this defence is that you also have to establish that the defendant reasonably believed that

receiving and publishing the information was in the public interest. Again, we do not have clarity around what is the public interest and, significantly, what is a reasonable belief in that circumstance. The last and I think additionally concerning matter about this particular defence is that the onus is switched. The onus is on the journalist to prove his or her innocence beyond a reasonable doubt, which is a reverse of the usual practice that we have in criminal law where the onus is on the prosecution to prove guilt.

Turning then to our national security laws, we now have more than 70 different pieces of national security legislation, the vast bulk of them passed in the 18 years since September 11 in 2001. They contain numerous criminal sanctions against journalism. Much like with the secrecy of information provisions in the Commonwealth Criminal Code where a public interest defence is available, once again the onus is on the journalists to prove their defence rather than on the prosecution to prove their guilt. A subset of these national security laws are contained in the Telecommunications (Interception and Access) Amendment (Data Retention) Act. This act, you might recall from the debate in 2015, required internet service providers to retain everyone's metadata for two years, plus information about their telecommunications accounts and services. Metadata basically will tell anyone who looks at it who called, when, where, for how long and on what device and, similarly, when we are talking about browsing the internet, what sites they were accessing. As you can imagine with this sort of information being required to be kept, the implications for journalists dealing with confidential sources are particularly obvious and concerning.

We also have, by way of another example, the Public Interest Disclosure Act 2013, which again on its face would seem to be a good thing. It is meant to provide protection for Commonwealth public servants who disclose wrongdoing by government agencies. There are a number of problems with this legislation but perhaps the most significant is section 41. It says that protection can never be given to someone who revealed intelligence information to the public. This is defined as anything which has originated with or has been received from an intelligence agency. It does not matter, under this approach, how grievous the wrongdoing was, or even that revealing it would not harm any security or intelligence interests. If it is any way connected to that intelligence agency, the whistleblower will still be punished.

I think the obvious inappropriateness of these sorts of blanket exclusions was confirmed recently when Peter Dutton directed the Australian Federal Police to only investigate secrecy breaches by journalists when the case includes a harm statement indicating the extent to which the disclosure is expected to significantly compromise Australia's national security. Again, that is a sensible suggestion by the relevant minister, but you would have thought that this harm test would already be the basis of the law in the first place. I could go on and flesh out these examples or give more of them, but I think it gives you a snapshot of the current legal situation and it is, frankly, a little grim for supporters of a free press.

Unfortunately, there are a few reasons why I am not that optimistic that anything will change anytime soon. First, the prospect of Australia having a constitutional bill of rights similar to the United States or Canada seems slim to none. This would require a seismic shift in our constitutional framework and Australians are very conservative when it comes to constitutional change. Only eight out of 44 referendums have been successful and there is yet to be a successful referendum in my lifetime. Second, the more politically realistic model of a federal statutory charter of rights, perhaps similar to the Victorian Charter of Rights and Responsibilities Act, does not give the courts the power to invalidate a law; it can only declare that the law does not comply with the charter and then it is up to the parliament to amend the offending law as it sees fit. It would hopefully have the effect of elevating the discourse around these issues, but it does not, in and of itself, provide the answer.

The next two I think are bigger, more structural challenges. Third, Australians do not trust the media. Trust in the media is at an all-time low of just 31 per cent and consumers struggle to tell the difference between fake news and facts. This makes it very hard, I think, for the media and for the free press to make a compelling case for reform that will prompt governments to act. Fourth, the proliferation of social media is making it increasingly difficult to distinguish between the press and the rest. Carving out specific protections or freedoms for traditional media organisations is becoming perhaps both more difficult and also perhaps more arbitrary.

As I said, I think that is a grim picture for the state of a free press in Australia. I hope that the remaining two speakers will be able to paint a more positive picture and, hopefully, present some compelling proposals for reform. Thank you.

**Mr McARDLE:** Thank you, Peter. Well done and well within time as well. Congratulations to you. Our next guest speaker is Professor Julianne Schultz. Julianne is a Professor of Media and Culture at Griffith University and the publisher of the *Griffith Review*. From her work as a journalist, editor, senior media  
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manager and researcher, she has written extensively in relation to the media. Her book, *Reviving the Fourth Estate* explores the complex relationship between journalists, media owners and the political system and, in particular, the role of the media in relation to investigating reports in relation to the media and politics. Her essay 'Move very fast and break many things' features in *Griffith Review 64: The New Disruptors*. She is also the chair of the editorial advisory board of the Conversation. Please welcome Professor Julianne Schultz to the podium.

**Prof. SCHULTZ:** Thank you. It is a great pleasure to be here. I, too, would like to thank the Australasian Study of Parliament Group for their active interest in these really important issues and to thank you for coming along to these discussions, because that is how these ideas build momentum—by actively engaged audiences. I would also like to acknowledge the traditional owners of the land where we meet today.

I am going to take a slightly different approach from Peter and try to sketch a big picture of how things are changing, because I think the time we are in now is profoundly different from the times we lived through in the past. We are only just slowly becoming aware of what is at stake and how things are changing and how our institutions and mores will need to change in response to this very different meta environment in which we are living. Because of that big sweep of things, necessarily what I say will be speculative because we do not know how the future is going to play out, but I think we can all sense that we are in a time when a lot of things are changing and we do not quite feel that the old footings are as secure as they once were. Nonetheless, I think there are important lessons to be learned from the past.

One of the starting points in my thinking about this this evening was a line by Bill McKibben. You have probably read some of his books or you are familiar with his work. He is a very eminent writer about climate change. He is very exercised about the state of climate change and what it is doing to the world. He is the founder of 350.org. He has been a really important figure in galvanising public awareness of the risks of climate change. In his most recent book, which is called *Falter*, he has a line that says, 'Our task now should be to somehow maintain the gains of the past.' I think that is a truth that is really important when we come to talking about subjects like freedom of the press, freedom of expression, as it is in a lot of other areas where over my lifetime and your lifetimes we have seen lots of gains made in terms of the quality of life, in terms of the rule of law, in terms of the expectations of how we conduct ourselves as a society. I think we are in a moment now where there is an attempt to wind back a lot of those gains. It is a matter of trying to hang on to the good things that have been fostered over the last few decades.

The events in recent weeks—or months really, I suppose—in Australia, especially since the raids on the home of News Corp journalist Annika Smethurst and then the raids at the ABC, have refocused attention in a way that we have not seen in this country for a very long time on issues of freedom of the press and the role of the press more generally. There has been, as Pete has said, a lot of talk about the assumption that freedom of the press is somehow a right that is ours in this country. As he explained very eloquently, that has been a custom and practice through common law, but it is not a right that is codified in any way that gives it an extra level of something like we are familiar with by studying the US Constitution and popular media that celebrates it.

We are in a position where there is a lot of talk about freedom of the press and its key role but, when you dig into it in this country, it is something that is pretty fragile. It is something that is there by custom and practice. It is a more, but it is not something that is absolutely a foundational principle in our Constitution or in the way that society has been organised. Indeed, as Pete said, it is a relatively recent thing in terms of any sort of formal legal representation. It was only in 1997 that the High Court read into the Constitution an implied right to freedom of political communication. That is nearly a century after the Constitution was adopted at Federation. It took nearly 100 years before that implied right was fully articulated. We have been a bit slow and I hope that we are not too slow in the next century in terms of recognising what is at stake.

The response to those raids a few weeks ago was dramatic and swift and very much because it involved the media—something that we have read about and heard a lot about. That response by the heads of Channel 9, News Corp and the ABC to do the big address to the Press Club was itself a significant moment. As I say, this has been a relatively recent movement to realise the extent of the fragility of that right.

Having said that, though, it seems to me that there are a whole lot of things that are underway at the moment, both here and internationally, that are reshaping the place of the media in society and having consequences that are playing out in different ways—not good in many places. In the last year we have

seen 25 countries blocking the internet for encroachments of freedom of expression—most of them authoritarian states one way or another. Fifty-three journalists have been killed in the last 12 months and 280 have been jailed. The flashpoint, in a sense, of limiting that freedom of expression is very real.

I think what we have seen since 9/11 has been a double-sided movement in a sense. One has been the rise of the surveillance state—that is, we have seen the states introducing legislation to protect national security that has had a surveillance element to it—and at the same time, as we have become increasingly dependent on the internet and social media and so on, there is a rise of surveillance capitalism through all of our lives. We are aware that we are being watched, that things are happening and that we are being monitored, and that in its essence is changing the way we relate and work with each other. There are some who would argue that the risk of this surveillance threatens in quite a fundamental way to undermine our humanity. I am not quite sure that I am going to go that far, but I think what is at stake in this surveillance state, even in a country like this or even where it is primarily done through business rather than by the state, is a profound change in the way that things have been done, which is something that I argue in the essay that was referred to earlier.

The impact of this on the media business is something that has been well documented and people have written a lot about. We have seen the media companies becoming relatively weaker. We have seen the collapse of the business model. We have seen the dramatic fall in the number of journalists. I think in Australia there are a third fewer journalists now than there were a decade ago. There has really been a very dramatic contraction of that space. Those companies are much weaker, in terms of their political power and influence, than they once were. In the meantime, you have a public service and a political class that is very preoccupied with national security. Quite rightly, they feel the need to be protecting us, but the pressures in doing that play into something that is not accompanied by a commitment to openness and transparency in the public interest, shall we say.

It is worth remembering how we got to this point. Before I do that, I want to make one other mention. As a result of the rise of the digital media and the internet enabled businesses, many institutions and mores have been undermined. We see it in the way Uber has undermined transport regulation, how Airbnb has undermined hotel regulation, how the tech companies have gone in and taken and then come back and asked for forgiveness, rather than clarifying things in the first place so that your data becomes a commodity rather than remaining your private property. That undermining of many institutions is really something that has gone on at scale over the last decade to a degree that I think we are only now beginning to realise the ramifications of.

In terms of the press and media space, we have operated in a space where we have assumed that politicians and the public sphere have generally shared a view that these rights are ours, we need to respect them, we need to respect the institutions and so on. What we have seen, particularly with Donald Trump in the US, is an active undermining of the institutions that we have built up until this point. On the one hand, you have corporations that are undermining the process by which business is conducted and the means by which it is done and many of the rules that regulate it. On the other, we have politicians who are actively undermining that confidence in the checks and balances of public institutions. That combination is quite dangerous.

It is worth remembering how we got to this point. Freedom of the press and its role in parliamentary reporting was hard won. It was hard won everywhere. In the UK in the early 1800s, Westminster eventually allowed reporters in to take a note of what was happening in the House of Commons. In Australia, it was a battle in the early colonies to be allowed into the early parliaments to report. In chambers like this, the governors convened legislative councils in secret and it took a long time before journalists and reporters were allowed in to report what was happening. It was only in 1896 that formal press galleries were established in our parliaments—in this one, in New South Wales and in the others. At that point, the reporters who were invited to cover the proceedings of the parliament were invited by the Speaker to do so and the Speaker could either invite or disinvite, depending on whether you were in favour or not. It was very much controlled by those with political power rather than it being a right that was assumed that, of course, you as citizens should have access to the debates that were going on in the parliament.

State parliaments, obviously, became relatively less important after Federation, but even in the late 1970s, when I started reporting here and in state parliament in Victoria, being in the press gallery was a really sought-after role for a journalist. There were large numbers of people. In the press conferences that were held here in the late 1970s and early 1980s there would be 30 or 40 journalists covering what was

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going on in the parliament, what the politicians were saying, what the debates were—and similarly in the Victorian state parliament when I worked there. They were big centres for journalistic activity, but also the purpose of freedom of the press was to get this information out to the public.

Now they have shrunk. I do not know how many people there are in the press gallery here now. I should imagine that it is maybe a smaller number than it was at that point. Certainly, we have seen that relative weakening of the political reporting that has gone on in all of the states. It is partly a product of the economics of the industry. It is partly a product of focusing attention. As a people, we know less about what is going on in our state legislatures than we once did. I think that is a problem in a broader sense in terms of how you get your moorings in this sort of environment.

While there was a fight and a debate that went over very many years to get access to reporting parliament and similar sorts of things happened in terms of the growing independence of the Commonwealth parliament press gallery—it was a really concerted effort to step out from being just the handmaids and mouthpieces of the politicians of the day, or the government of the day—to really bring a critical eye, again, that has shrunk, but there is certainly a professional independence that is attached to it.

Governments in Australia have never been comfortable with an open and free press. Australia was one of the countries that had one of the most rigorous censorship regimes in the world—something which has been an article of faith for very many years, although it is largely forgotten today. There are lots of examples of how that is played out today with clamps on FOI and a deepseated reluctance to embrace transparency and openness. You have seen active periods of censorship. You have seen governments intervening in the public broadcasters to try to stop things being broadcast and screened. You have seen politicians from governments of the day removing advertising from the local newspapers to make them less economically viable so that they would weaken them.

There are a whole lot of mechanisms that have been used to weaken the role of that freedom of the press and the freedom of expression. As Joh Bjelke-Petersen used to say, he liked to ‘feed the chooks’. It was an early precursor, in a way, of what Trump does: ‘Here is a bit of a distraction over here. Go and chase that, chaps, while I get on with the real things.’ There is not an ethos that says that that freedom of the press and openness is in our political and constitutional DNA as Australians. It has always been contested and there has always been a state pushback. I think we have tended to be a bit complacent, and we need to be much more robust and systematic in asserting this right and using it to rebuild that trust about why it matters to us as a people to have access to information to make informed decisions, to ensure that our societies are run the way we want them to be.

There was a seminal moment in Queensland when Quentin Dempster asked Joh Bjelke-Petersen many years ago what he understood by the separation of powers and the premier could not answer the question. At the time we all laughed, but it pointed absolutely to a weakness—that somebody in that most pre-eminent position in the state did not understand the processes by which the political system had evolved. It has been addressed but it has also been undermined and there is a need to be more vigilant about the checks and balances—of the press, the courts, the electoral system, FOI, parliamentary committee and so on—that have been established in the past and to ensure that they are brought up to date in the changing circumstances we find ourselves in. It seems to me that both vigilance and action are essential.

I think we need to find a way to ensure that these assumed rights to freedom of the press and expression are formalised. I do not think it is sufficient to say, ‘It is too hard; it can never be done.’ I think establishing a bill of rights that is appropriate to the times in which we live really does need to become a priority. I think civic education needs to be enhanced. I think understanding the importance of these hard won rights, even ones that it took the High Court a century to discover were implied in the Constitution, needs to be actively enhanced in schools and universities and elsewhere to rebuild the knowledge that enables the trust to regrow. I think systems need to be reformed in response to this very different world we are entering as a result of the digital transformation. It needs to be done but not at the risk of losing the gains of the past. To me that means increasing accountability, increasing openness and increasing the check and balance that happens through the separation of powers.

**Mr McARDLE:** Thank you, Julianne. Well done. Our third guest speaker is Professor Peter Greste. Peter is the UNESCO Chair in Journalism and Communication at the University of Queensland. He came to academia in 2018 after a 30-year career as an award-winning journalist and foreign correspondent for BBC, Reuters, CNN and Al Jazeera in some of the world’s most volatile places including Afghanistan, Latin America, Africa and the Middle East. He has reported from the front lines and beyond.



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Perhaps without wishing to be so, he became a headline himself when he and two of his colleagues were arrested in Cairo while working for Al Jazeera and charged with terrorism offences. In letters he smuggled from prison he described the events that he had been going through as an attack on media freedom. Those letters helped launch a global campaign that got him released but only after 400 days in a Cairo prison. Contemplate that. His stance upon release earned him numerous awards including from the Royal Television Society, the Walkley Foundation, the RSL, the Australian Human Rights Commission and the International Association of Press Clubs.

In 2017 with two colleagues he established the Alliance for Journalists' Freedom, which campaigns actively for media freedom across Australia and the Asia-Pacific region. As an academic, he leads a research program looking into the impact of national security legislation on public interest journalism. Peter is the author of a book titled *The First Casualty* about his experiences in Egypt and the wider war on journalism. Please welcome Professor Peter Greste.

**Prof. GRESTE:** Mr Chairman, thank you very much for that introduction. I, too, would like to acknowledge the traditional owners of the land upon which we meet and the elders past, present and emerging. It is always incredibly difficult when you are following two such talented, eminent speakers as Peter and Julianne, so I am left with the unenviable position of following up. I must admit, though, in opening a certain gratitude in being invited to speak here today. You have to acknowledge that it is quite brave of the organisers, when they are casting around for an appropriate person to be speaking about press freedom and freedom of speech issues, to go to one of Australia's better known convicted terrorists! I am not sure whether anyone alerted security to this idea.

What I wanted to do this evening was explain to you how I came to the position that I am in at the moment—the story particularly around what happened to us in Egypt—because it occurred to me that not everyone necessarily understands it in the way that I do. Certainly when I was speaking at the Parliamentary Joint Committee on Intelligence and Security's public hearings into press freedoms in Sydney last week, Tim Wilson MP asked me about the connections with Egypt and Australia because I have often said that one of the reasons I am here, one of the reasons I am speaking about this, is that I do see the parallels between what happened to me in Egypt and my colleagues and what we see taking place here in Australia at the moment, particularly in the wake of those rather disturbing raids by the Australian Federal Police.

Back in December 2013 I was working in Egypt as a correspondent for Al Jazeera. What we had been doing was covering the unfolding political crisis that had emerged after the interim government had been installed and was trying to establish its power and control, its authority, over Egypt at the time. The interim government had been placed there by the military after it ousted the first democratically elected government that Egypt had ever had. That government was led by the Muslim Brotherhood. Whatever you think of the Muslim Brotherhood and their policies, it is undeniable that they represented the most important political force in the country, so we were doing what journalists should do—we were speaking to all of the parties involved in the dispute. The government would announce some changes to the constitution. We would pick up the telephone and speak to the opposition for a comment. We would then find an analyst to make sense of it all. It was what I would consider to be vanilla journalism.

Around that time the government had taken to introducing new national security legislation. It was cast very, very broadly indeed. In fact, the definitions were so loose that it effectively included anything that destabilised or undermined the integrity of the state. I am mindful of some of the definitions that Peter was speaking about in his earlier remarks about the kinds of definitions, the very loosely framed definitions, which we find inside our own laws. We were aware of some of those challenges that those definitions posed to us. One of the laws was a ban on advocating terrorist ideology. We also took the government at its word when it insisted that it was committed to press freedom. Indeed, it had written protections for press freedom into the Egyptian Constitution.

I was not really thinking anything much on the night of 28 December 2013 when I was ready to go out for dinner with an old friend of mine and there was a knock on the door. Again, that was a little bit unusual. I had not paid a great deal of attention to that because most of the time when people had messages for me they used the telephone. Then came a rather more urgent knock—more forceful—so I went and cracked open the door. As I did, it was flung open and the room was filled with a group of men in plain clothes. I really was not sure what was going on. It was a deeply disturbing, troubling moment for me. I was pushed to the back of the room and they went through and ransacked the place. They were searching for

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all of my equipment, my notepads, my camera, computers and so on. They moved with a certain authority, a certain discipline, which suggested that they were not just routine thugs—that they were security forces of some sort.

I finally realised that in fact I was being raided by the police when they marched me down to the police cells and placed me under arrest. A few days later we learned the charges. We had been accused of aiding and abetting a terrorist organisation, being members of a terrorist organisation, financing a terrorist organisation, advocating terrorist ideology and broadcasting false news with intent to undermine national security. Those charges were about as serious as you could possibly get short of actually pulling the pin on a grenade and rolling it into the middle of a crowded room much like this.

For us, we really struggled with this. We could not really make sense of it. The gap between what we were accused of doing and what we had actually done—the very serious terrorism charges and the very mundane journalism—was so wide that it made no sense to us. In the end, the only conclusion that we could come to was that this was not about national security at all—that this was in fact about press freedom, that the authorities were trying to silence legitimate journalism that they had found to be deeply uncomfortable. With that kind of background in mind, you can imagine how it felt for me seeing the AFP agents marching into the home of Annika Smethurst and the ABC looking for sources to their stories that were politically uncomfortable. Let's go back to what those stories were all about.

Annika Smethurst had uncovered evidence of a conversation within government about expanding the powers of the Australian Signals Directorate, which is our international electronic eavesdropping agency. The conversation was about expanding the powers to include the capacity to eavesdrop on Australian citizens. I hasten to add, particularly in this chamber, that I recognise the importance of government and having conversations privately, but I would also argue that there was a compelling public interest in having that debate in public. The idea that the ASD should be allowed to spy on Australians is something that we all ought to be involved with. There is no evidence whatsoever that anything that Annika Smethurst revealed undermined national security—none whatsoever—but there was a story that was clearly in the public interest.

Similarly, the ABC was reporting on allegations that the Australian special forces had engaged in war crimes in Afghanistan. Again, there was nothing in any of their reporting that undermined the operational integrity of the special forces or in any way compromised national security. That has not been an issue in any of the debates around this. However, remember that the special forces operate on our behalf. They are effectively Commonwealth officers, and they are engaged in a war which we are undertaking as a nation in the name of all of us—in the name of Australian voters. With the operational integrity in mind, I would argue that there is a compelling case to argue that we need to be aware of what our own security services are up to in our names.

The idea, then, of what we saw taking place in the AFP raids was the Australian Federal Police using loosely worded national security legislation to go after journalism that was politically uncomfortable. That is why I told Tim Wilson at the hearings in Sydney that in fact, yes, I did believe there were parallels. I am not suggesting that Australia is about to become Egypt anytime soon. Let me be absolutely clear on this point. Clearly we have a robust democracy. We do have vastly more protections for freedom of speech and more respect for freedom of speech and freedom of the press. The problem is that the compelling arguments around national security are very tangible things. They are the kinds of things that are very easy to see and understand.

You will note that most of the—I will use the term; I was hesitating using it, but I will use the term—more draconian pieces of legislation that have been passed, national security legislation, have always been rushed through with a great deal of haste and invariably after we have seen a terrorist atrocity. I absolutely understand the political imperative for passing that legislation in the same way that I honestly and genuinely understand and appreciate the political imperative that drove the Egyptians to pass loosely framed national security legislation. I am absolutely convinced that parliamentarians in Egypt intended the law to protect the country, but what they ended up doing there was conflating national protection or national security with the security of the administration—the security and the integrity of the state with the security, the integrity and the position of the politicians themselves, of the government itself.

I think what we need to do is acknowledge and recognise the collective impact. As Peter said, we have seen more than 70 pieces of national security legislation passed since 9/11. That is a phenomenal number, but more than just the number is the sheer complexity of that legislation. I have been working with

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the law school at the Queensland university to try to understand the way these various layers of laws actually interact with one another. Even the definitions themselves are almost impossible to get to because they keep referring to definitions in other pieces of legislation. If you mine down through those various layers, what you end up with at the bottom is something that is, frankly, unintelligible to our law professors much less the journalists who are trying to cover this. It is that ambiguity which we find ends up being used and exploited by the security services.

Let me finish by emphasising that this is not about journalists. This is not about us. The media represents the whistle of last resort in a democracy. We are part of the system of accountability and transparency which is so fundamental to the way that our democracy works. The voters, by definition, are the employers of our politicians and pay their wages, and as their employers we have a duty to know and understand what the government is doing in our names. The media is traditionally the mechanism by which that has been done.

There is a lot of talk about the balance between national security and press freedom. In fact, that phrase 'balance' is actually hardwired into the terms of reference of the PJCIS inquiry. It compels the committee to examine the balance between press freedom and national security, but I think this sets up a false binary. It suggests that these two things are in opposition—that if we have more of one then by definition we must have less of the other, that it is a trade-off when in fact these two elements are both essential parts of the same system.

Our national security, yes, depends on the capacity of our security agents to intercept terrorist communications and to keep national security information genuinely secure, but our national security also depends on the media's capacity to maintain that watchdog role over government, so in fact these things are not in opposition. If national security is about anything at all, then, yes, it must be about protecting the physical integrity of each and every single Australian and our infrastructure, our property and so on, but it must also be about protecting the integrity of our democratic system. If in trying to ensure the former we end up undermining the latter, then I would argue that national security is not served.

**Mr McARDLE:** Thank you very much. Can I just say that tonight we have been very lucky to hear from three guest speakers who are experts in their field. They have given an excellent dissertation here tonight, and equally their backgrounds and CVs highlight how specialised and expert they are. Please thank them all again for the great work they have done here tonight. Well done and congratulations to them.

Now it is your turn. This is the question and answer session. The guest speakers will stay where they are at the moment. We will have one microphone with the guest speakers, and Lynda will travel around the room to get a microphone to you when you ask your question

**Mr ADAMS:** I want to pay respect to the traditional owners before I speak. I am the petitioner for 170,000-plus signatories to the Australian government to free Julian Assange. I very much respect everybody's input and speeches tonight. However, I feel this debate, discussion and presentation has been limited to domestic matters. I feel on behalf of 170,000-plus signatories that we have deserted an Australian citizen and publisher who has been languishing for nearly 3,000 days of arbitrary detention, as determined by the United Nations. The aspect that I find very frightening as a citizen and individual who has faced incredible intimidation in running this petition—it is not only the journalists, I can tell you right now—

**Mr McARDLE:** This is a question and answer session. I certainly accept your commentary. If you have a question, please pose it to the committee or one member of the committee.

**Mr ADAMS:** Sure. My question is to Peter. Do you think the extradition of an Australian publisher from anywhere in the world to the United States for publishing 100 per cent facts—not fake news—sets a dangerous precedent for all Australians, not just journalists but people on the web, social media? Do you feel that we should be en masse supporting a campaign to free Julian Assange and to prevent the extradition of a publisher—

**Mr McARDLE:** Thank you very much, Sir. Your question was well put. Peter, would you care to take that question?

**Prof. GRESTE:** I have wrestled with this a lot. What you are referring to, I guess, is a piece I wrote some time ago that suggested I do not consider Julian to be a journalist.

**Mr ADAMS** (inaudible)

**Mr McARDLE:** Sir, just hold on. You have asked the question. Peter is answering.

**Prof. GRESTE:** I am very concerned about the implications of Julian Assange's arrest and the extradition on a number of levels. I think there are issues and questions of due process. It is very difficult to imagine how Julian Assange under the current circumstances can get a fair trial, a fair hearing. I am very concerned about the implications of the way that the law is being used for journalism, and I will limit my comments to journalism. Your concerns about the broader issues notwithstanding, I am a professor of journalism and those are the issues to which I am going to be speaking. Yes, I think there are some troubling concerns and I think we do need to be more actively engaged in understanding what those are and supporting Julian in that regard.

**Prof. SCHULTZ:** I would agree with that. I think we need to be more actively supporting. There is one thing that the whole WikiLeaks process has demonstrated, and it is one of a number of examples now. This goes to my point about the transformation that we are starting to see in the way that the world is organised, the way information is organised. You have seen it with the Edward Snowden release of material that he had access to through his work. In another way, you have seen it through the way journalists involved with the Panama Papers have released, again, a vast swathe of information which historically would never have been available and certainly much less able to be collated and pulled together into some sort of process of making stories and making sense elsewhere.

That is taking a step aside from the particularity of Assange's circumstances, but I think it is important that we put what they have been involved in into this context of this sort of global transformation of how information is gathered and can be disseminated. There is a fundamental difference in that than what you are describing in terms of going in and reporting something that is happening in a small local nation state. There is something global that is at stake, and I do not think we are really yet getting our heads around what that means.

**Mr McARDLE:** Thanks. We will go to the next question.

**Mr WHITE:** My question is focused on what Peter said. We can have arguments about national security, and there is always that grey area of what is national security. When you look at the Annika Smethurst case, it is so clear that no-one was at risk. There were no names being released by WikiLeaks, for instance, where people might be at risk, or movements or anything like that, but the mere discussion of some policy thing. Once you get to that point, it goes much further than serious national security to the point of individual embarrassment or political concerns. How is that going to be addressed, because it seems to me that politicians do not seem to be treating that distinction with any great regard?

**Prof. GRESTE:** I think that is a very valid concern. One of the things that bothers me is the idea of the public interest defence. When we talk about the public interest, particularly with regard to journalism, it is generally assumed that when journalists are acting in the public interest they are exposing something that the public ought to know. That is the phrase which I was referring to in this case.

We have public interest advocates and the concept of public interest advocates when it comes to what is called journalist information warrants, JIW's, which the police have to apply for if they are ever looking into journalist metadata. It is the only situation, the only circumstance, under which the police have to get a warrant if they are looking into metadata. The thing about the public interest advocates—and these advocates are appointed by the government—is that we do not know how they define the public interest.

The reason I am telling you this story is that I think a lot of public servants would also consider that the confidentiality of those discussions is in the public interest. In the case of Richard Boyle, the whistleblower who exposed the way in which the Australian tax office is going after small businesses, you could imagine a circumstance in which a public interest advocate is saying, 'Well, it's actually in the public interest for the public to have confidence in the operations of the ATO.' So this idea of public interest is in fact far harder to get your finger on when you really drill down into it.

One of the reasons that I think Annika Smethurst's story has been targeted is that the idea of that policy conversation being exposed before the government has been through it somehow compromises the capacity of the government to function. Again, I understand and recognise the House that we are in in that regard, but I still think the very different ways in which we understand the concept of public interest—the way in which a civil servant involved in trying to pass out these kinds of policies is going to regard it very differently to the way that I would as a journalist or the way that someone who is reading the newspaper might understand these concepts.

We need very urgently to try to draw some very clear lines, legal lines, around what is appropriate and what is not. Bret Walker SC, one of Australia's most eminent lawyers, used to be the INSLM—the Independent National Security Legislation Monitor—whose job it is to understand the national security

legislation and its impact on us. He has said very explicitly that there is far too much secrecy, that the default is to secrecy, that we need to change the culture within government to accept a degree of transparency that we simply do not have at the moment, to accept a degree of oversight, and that only in the narrowest of circumstances when national security is explicitly at risk should the information be genuinely classified.

**Ms HYLAND-WOOD:** I am at UQ. I have a little bit of a comment that is very brief and a question about politically uncomfortable stories. Four years ago I was very happily working in Washington DC, busy linking legislation to air quality for the US Environmental Protection Agency. It was the largest civilian linked open database under the former administration. We were going great guns, opening up data for use by the scientific community, researchers and civil society organisations. A year and a half later arguably that was all shut down.

The number of people who understand these specialist discussions around media, privacy laws and whistleblower laws is very small. How do we get a bigger voice? When this largest civilian linked open database—meaning outside of the US intelligence community it was the largest database of information all linked together. That was shut down and a handful of people knew about it. At that point I was over in Australia pursuing other research, doing something else. I did not have time to go to the media and talk to them about it. I was interviewed by a few researchers who were following scientific integrity. There is such a small number of people who really understand these nuances and have these discussions with legal scholars and people in media.

How do we get a bigger voice? How do we gain momentum and arguably be like the Hong Kong students on my campus whom I saw protest? They really feel that they are going to lose something special. I can tell you this happens really fast. Four years ago we never would have thought that American scientists would be in this position and we are all super interlinked. If this data goes away—

**Mr McARDLE:** We might move to a question, if you do not mind.

**Ms HYLAND-WOOD:** If this data goes away it has profound implications for this country and many other countries. How do we get a bigger voice?

**Mr BLACK:** I do not know. I think it is really challenging. Perhaps ironically or even counterintuitively, the proliferation of mass communication and social media in theory should make it easier for these sorts of messages to be heard and received and for people to engage and connect. Instead, I think it becomes a small part of the much bigger noise that we get from all of these different platforms, viewpoints and ideas floating around up there.

The way that you do bring people with you on these sorts of journeys and the way that you do change hearts and minds and get people motivated is through the sharing of personal stories, which is why I think Peter sharing his personal story is so powerful. I think other people sharing their own personal stories makes what can at times be technical, legal, philosophical type arguments very real. I suppose as a matter of advocacy that would be the only way that we can try to rise above the noise that we otherwise hear in social media.

**Prof. GRESTE:** I would endorse that, too. It is quite clear that the only reason we have the debate that we have at the moment, the only reason we have two parliamentary inquiries, is because of the power of the stories that emerged from those AFP raids. If we had not had those AFP raids we would not be in this position and we would not be having these conversations. We need to acknowledge what they have done.

My organisation, the Alliance for Journalists' Freedom, published a white paper on precisely these issues because we understood the impact that national security legislation was having on press freedom. We published that white paper three weeks before the raids took place because it was clear to us and it was clear to anybody—and I am sure Peter and Julianne would say the same—who has actually been paying attention what was happening. It took those raids to really catapult the issue into the middle of public consciousness.

There is one other thing I want to mention—and you spoke about the United States and you mentioned four years ago. I think it is also worth pointing out that, as much as President Obama presents himself as a bastion of liberalism and democratic ideals—and I certainly have a lot to thank him for because he personally got involved in our case—the espionage bill, which was passed in 1917, was used a total of six or seven times, depending on how you do the maths, from 1917 up until 2008. From 2008 until he left office in 2016, Obama used the espionage bill more often than all of his predecessors combined. In almost

every case it was to go after either journalists or their sources. Again, these were not about stories that genuinely compromised national security; they were not people who were genuinely spying for foreign powers. These were for stories that were—guess what?—politically embarrassing.

While I am concerned about a lot of the new legislation—and we have been discussing that and, again, Peter has articulated very well some of the laws that we are facing—a lot of the political moment that we find ourselves in is a consequence of the mind shift that has taken place since 9/11 when we saw the progression from the wars of the past over tangible things that you could put your finger on into what we have now, which is a conflict over ideas. The war on terror itself is such a nebulous concept. You can never, ever declare victory in the war on terror. At what point do you say, 'We've won this'? With that idea in mind, with that concept so deeply embedded in the public consciousness, it gives our legislators and our security forces vastly more scope than they ever had to enforce laws or to pass laws in the name of the war on terror or national security. We have been conditioned, frankly, to accept the kinds of movements—moves that you have just been speaking about—far more passively than we would have done in the past, in the pre-9/11 days.

**Prof. SCHULTZ:** I think that is right. There are a couple of things I would add to that. One is that we have become accustomed to that degree of surveillance implicitly in so much of what we do all the time. It is not as though what has happened in terms of national security in the state is happening over there and our lives are going on as normal; they are not. There is a sort of architecture or infrastructure of surveillance which is part and parcel of your life. It is what got you here if you did not know the route. There is a whole sort of fundamental changing, a realignment, that is underway. I think the two bits in a way need to be joined up when we are thinking about it. In a way, it is hard to say, 'What do you do about it?' That is part of the reason I like that Bill McKibben line that we have to hang on to the good things of the past, and a lot of them come from liberal activism and an expanding view of rights. Reasserting those in a system which is closing down is itself quite radical.

Going back to those principles of what are the values that we hold and what are those rights that we want to hang on to and simply restating them in this environment is itself a case of saying, 'Oh, wow. I had forgotten about that process that we got to.' One of the things that I think is really important—and groups like this can no doubt be of some influence in that—is that it seems to me that the whole process of civics education is something that really needs to be attended to. You see it in the sort of vox pop around election time that people actually do not understand the core political system. Notwithstanding that the news media is full of basic political stuff day in and day out, the understanding of the core institutions and the framework of our society is something which is not as robust as we would imagine and hope it should be. Especially when we are in a time of such profound change, the simple reassertion of that is itself something that I think is really important and we need to be reminded of and take action on.

**Mr GULLEY:** I am a very average fellow of an accounting body and former member for Murrumba, which is the Aboriginal word for 'good place'. I acknowledge three speakers whom I thoroughly enjoyed. Every minute was absorbed with great capacity. As a former member of parliament I acknowledge that daylight is imperative in our society, and journalists are the primary vehicle for allowing daylight into public life. I experienced some very impressive, ethical journalism. I also was on the receiving end of some brutally dishonest and malicious journalism. Journalists are not as white as snow and I think that is half your problem. However, I acknowledge the four out of five journalists who are impeccable in their behaviour.

Can I challenge all three speakers? I think you have missed the greatest challenge that you face, and I think Professor Schultz was the closest to it. Your greatest challenge is Messrs Page from Google and Zuckerberg from Facebook and it is the slow, methodical and accelerating defunding of journalism—clickbait journalism. Your drop in your journalism numbers is a direct correlation to the new media giants who are defunding your journalism. Without adequately funded journalism we do not have a free press. The challenge is, and the question will go to Professor Schultz first because I think she was the closest to getting there: if we do not fund journalism through advertising, this will be an academic conversation in 10 years because there will not be a funded free press.

**Prof. SCHULTZ:** The challenge is profound, as you say. You see the numbers in terms of the advertising dollars which go to Facebook and Google, for instance, as opposed to going to the commercial media. I think that in this country we have the basis for a strong response—that is, in terms of the public broadcasting service, both the ABC and SBS, and, in the old days, community radio and community television, although they have been effectively undermined over the last little while. I think making a very strong argument about maintaining robust levels of public broadcasting is a practical and meaningful way of intervening in this country.

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I think it is really important to keep political pressure on to try to get in this country what happens in a lot of places, and that is journalism as a public good and therefore a tax-deductible activity. We see that a large amount of the innovation that has occurred in the US has come from that sort of journalism, which has been funded essentially by tax-deductible donations. That is not something that anyone is advocating for yet in an active sense. People are arguing for it, but it is not being taken up as something which government has accepted. I think that is an area which is important.

I think the process of putting limits—it is very difficult because these horses have bolted. I do think it is important that in a national context like ours we make sure that those companies are paying their share of tax, that it is not being siphoned off elsewhere. They would be my top three things.

**Prof. GRESTE:** Thanks very much for your question. Let me address the first comment. As someone who spent the vast bulk of my adult life as a journalist, I recognise that it is a deeply flawed human construct. Like all human constructs it is messy, often undignified and not especially edifying at times. It also has worked. I would like to quote Albert Camus, a French philosopher, who said that a free press can of course be both good and bad, as you have mentioned. He went on to say that a press that is not free can never be anything but bad. I think that is worth keeping in mind.

I also recognise exactly what you have been saying. I agree with Julianne broadly, but I also think the idea of talking about business models is in fact a mistake, because it places the onus on news organisations to somehow shoehorn themselves into a technological and economic framework which was not designed to support good journalism or public conversation.

I absolutely agree when she says that we need to be thinking of news as a public good rather than as a commodity to be bought and sold and profited from. If we think of it in those terms, all of a sudden we change the way we approach journalism. If we think of it as something essential to the way we function as a democracy then I think we are in a better place for our legislators to start rethinking policy options such as taxing the platforms and making sure that some of the revenue that goes to the platforms off the back of content that journalists produce—and that they, frankly, take for free—is actually returned back to journalism. We can even think about redesigning the platforms in a way that prioritises good journalism, because a lot of the crap journalism that is online at the moment is a consequence of the financial imperatives. It is a simple, very obvious one: clicks.

If you are an editor and you have a choice between sending out your journalist to spend a week or two investigating the procurement policies of the Brisbane City Council or a sending a couple of journalists down to the ports, as I saw in Sydney where the *Daily Telegraph* did a front-page story about the messages US sailors were sending Aussie girls on Tinder to get hook-ups—we all laugh—hands up who is going to click on that story as opposed to those who are going to click on the story about a turgid but necessary investigation? Frankly, when you are a news organisation in real financial trouble and you have to pay the bills just to stay alive, I know where I would deploy my journalists. I would not necessarily feel good about it, but I know which stories are going to generate the income I need to keep going.

What we have is a technological platform which is not fit for purpose dragging journalism in the polar opposite direction of where it needs to be headed. We have simply not begun to tackle that side of the equation at all. There have been broad conversations around the platforms and the impacts they have on journalism and public discourse, but we need to really start radically rethinking both the role of journalism in our democracy and the policy settings you need to achieve that outcome.

**Mr BLACK:** I would very much agree with that. I do think, as you identify, that is a huge problem. It is also why trust in journalists and media organisations is dropping, because people see that so often it is just this clickbait-driven drivel that you get on those sorts of platforms. First of all, we need to acknowledge that we are having this conversation about it. I do think that increasingly there is this sort of pressure falling back on some of these big players, Google and Facebook in particular, and they are trying to retrospectively be more responsible. In the last few weeks we have even begun to see that Facebook is beginning to pay the *Washington Post* or one of those US based papers for some of their content. But we have to look at all of those efforts very much cynically and as sort of piecemeal steps they are taking.

If we are going to see this problem meaningfully addressed, we have to do more than just talk about it and think about the policy framework. We need governments to act. These two platforms in particular, Google and Facebook, are monopolies. They have extraordinary influence. In some ways you could almost argue they are in effect a public utility, given their sphere of influence and their proliferation, and I think they need to be regulated as such. We have seen the ACCC in Australia commence proceedings against Facebook recently. That is a start, but I do think we are going to need governments around the world to

act. We cannot wait for there to be a global response; it will happen in a piecemeal fashion. One country will go first and then the other. But there needs to be a very strong, hard look at these companies—be it breaking them up, be it regulating them, be it taxing them or getting money out of them and putting it to other sources. All of these things need to be on the table. If any other old company exercised an equivalent or similar degree of power or influence over our world today, governments would be acting.

**Mr McARDLE:** My time line says that we are out of time; however, there are two more people here who want to ask questions and I think the information we are getting is worth going beyond the time line.

**Prof. SCHULTZ:** I just want to say this because it is relevant. You talked about Facebook and Google paying newspapers for the re-use of their stories. I have been an advocate of licencing for a long time. When I read that I thought, 'Great! At last somebody is standing up for this.' Day 1, the story was reported that they were going to pay a licence fee to a number of news organisations; day 2, they are paying a licence fee for the headline and the first paragraph. Rather than adding to any sort of depth of understanding, it is absolutely just about the clicks.

**Mr LYNCH:** First of all, I would like to say thanks to all speakers for very insightful and nuanced arguments in terms of where we are at. I must say, I feel it is something that is missing from the media in Australia generally. This sort of conversation does not exist in our normal everyday media consumption. My question is: I am also very concerned about Julian Assange. Given that Peter won the same Walkley Award in 2014 that WikiLeaks won in 2011—this goes for all panellists—do you support the extradition of Julian Assange to the US, and why or why not?

**Mr McARDLE:** Could I just ask the panellists to shorten their answers a little bit? I do not mean yes or no, but give a relevant statement. Do not rush.

**Prof. GRESTE:** To honest, I feel that I answered that earlier. I do not support his extradition. The way in which the espionage bill has been used I think is troubling and has implications for journalism broadly. I note there was a two-part *Four Corners* special on Julian Assange. They interviewed a former justice department official from the Obama administration who said that they had considered prosecuting Julian Assange under the espionage bill and they decided not to because of the implications it would have for journalistic freedom. I think that tells you a lot about its implications.

**Mr BLACK:** I would not support his extradition either. I am uncomfortable with some of the things Julian Assange and WikiLeaks have done, but I am more concerned about those sorts of broader implications as to what this could mean. So no, I would not support it.

**Prof. SCHULTZ:** No, I do not support it either. I, like you and your colleague, am also concerned at the Australian government's diffidence in supporting him. Irrespective of what opinions one might have about bits and pieces of the WikiLeaks process, I think the Australian government has an obligation to protect its citizens, and it has not felt like that has been at the top of the list.

**Mr PENFOLD:** We have been talking a lot about the national security legislation that has been brought in which has been curbing some journalistic freedom. To hear it, you would think there was a mad rash of irresponsible journalism and that we had Australian armed service personnel dying every day. Can the panel name any instances they can think of where there has been a significant and genuine breach that has affected Australia's national interest?

**Prof. SCHULTZ:** I would say two things. I thought it was terribly interesting that Mike Pezzullo, the head of the Department of Home Affairs, in talking about the Annika Smethurst case, said he thought it was outrageous that the leaker was trying to prosecute an internal departmental argument in the media, which seemed to be not going to a point of national security but a point about internal politics. I thought it was most remarkable that when the raid on the ABC happened not only was the senior ABC editor John Lyons allowed to stay there and tweet the process for the whole day but also investigators posed for photographs with ABC staff. Meanwhile, the stories that had been put up, that were based on the disputed information that allegedly compromised national security, were still up online and peaked with new viewership as they were still sitting there. It was tempting to think of this as an example of the banality of authoritarianism with selfies. I think this is a slippery space.

**Prof. GRESTE:** The short answer is no, I cannot think of any story. In fact, it was interesting. ASIO famously said they were concerned that Australian journalists could be used as spies by foreign powers. Again the temptation is to say that ASIO has been reading too many Graham Greene novels, although you have to acknowledge that there is a hypothetical concern there. It is conceivable that journalists could be used or that spies could use journalism as a cover, but we are operating in a hypothetical space here.



## Freedom of the press: where to from here?

Let me just say one thing. I really do want to put this on the record, and I am kind of glad you raised a question that allows me to go to this. I am going to be very brief. I absolutely acknowledge the need to maintain our national security legislation to give our security agencies the necessary powers to keep us safe. I absolutely recognise the significance of that, but there is a great deal of ambiguity about the definitions within the laws and the space they are able to operate in. We have not seen the kind of evidence you have been speaking of: any dramatic disclosure of national security information—at least not that I am aware of.

**Mr McARDLE:** I would call upon Mr David Fraser, who is the president of the Queensland chapter of ASPG, for closing remarks and final thank yous.

**Mr FRASER:** Thank you, Mark. On behalf of the ASPG and all of you here tonight I would like to thank our three panellists. They have done a remarkable job to distil what can be a potentially complicated, intriguing and sometimes divisive subject into possibly not words of one syllable but certainly bite-sized pieces that we can all accommodate, even those of us of some limited intellectual capacity.

We at ASPG are keen throughout the year to have a range of discussions and topics. We encourage any of you here tonight who may have come for the first time to think about coming to our next event. At this stage we are looking at 25 November, which is, as far as we can foretell, the last sitting week of the state parliament. We try and have them running together.

If you are interested, in a short period of time the proceedings from tonight's event will be available on our website. Hansard has recorded everything, and everything will be taken down and possibly used in evidence against you, I do not know. I hope that did not sound too threatening! We do appreciate your attendance tonight. We appreciate your continuing support. We have drinks available on the colonnade over there where you came from. We also have membership forms which we would be delighted if you would fill in and become more closely involved with the ASPG. Ladies and gentlemen, thank you very much.