

creates a risk of ‘fake news’ and mistrust in democracy.<sup>62</sup> But as argued, the current framework is premised on unjustifiably broad offences and search and seizure powers that disproportionately favour security interests over press freedom. Consequently, faced with the risk of criminal prosecution and identities being leaked, journalists restrain themselves from fully and frankly engaging in their work and sources are hesitant to come forward. For example, one journalist described that in response to the 2019 raids, he ‘did an immediate stocktake of what was at [his] desk because I thought Jesus, am I going to be next?’<sup>63</sup>

A degree of free speech is an intrinsic good, promoting the self-fulfilment of individuals in society, the search for truth, and is ‘the lifeblood of democracy’.<sup>64</sup> That is because it is a ‘vital ingredient’ of investigative journalism, and thus facilitates the role of the Fourth Estate.<sup>65</sup> These

principles are so important that, in addition to the aforementioned reforms, there have been calls for a ‘Media Freedom Act’. It would enshrine principles of press freedom in our legal system and affirm the role of the Fourth Estate, require transparency from government and protect ‘legitimate journalism’ from the scope of criminal offences.<sup>66</sup> Again, without this protection the current framework of police powers of search and seizure are an unjustified and disproportionate incursion on journalists’ ethical obligations and press freedom.

## VI Conclusion

The 2019 raids and subsequent court battles have revealed the imbalance between two core public interests: national security and secrecy, against press freedom and source confidentiality. In operating as a loophole to, and therefore undermining, existing protections for source confidentiality, and piggy-

backing off offences that criminalise legitimate public interest journalism, journalists struggle to uphold their ethical obligations. This would be unacceptable for a lawyer or doctor, so what makes a journalist different?

- 62 See, eg, Miguel Paisana, Ana Pinto-Martinho and Gustavo Cardoso, ‘Trust and Fake News: Exploratory Analysis of the Impact of News Literacy on the Relationship with News Content in Portugal’ (2020) 33 *Communication & Society* 105; Vian Bakir and Andrew McStay, ‘Fake News and the Economy of Emotions’ (2018) 6 *Digital Journalism* 154.
- 63 Parliamentary Joint Committee on Intelligence and Security (n 5) 30 [2.74]. See also Rebecca Ananian-Welsh, ‘Why the Raids on Australian Media Present a Clear Threat to Democracy’ (2019) 11 *Australian Policing* 12, 12.
- 64 *R v Secretary of State for the Home Department; ex parte Simms* [2002] 2 AC 115, 126 (Lord Steyn).
- 65 *John Fairfax & Sons Pty Ltd v Cojuangco* (1988) 165 CLR 346, 354. See, eg, Shyamal K Chowdhury, ‘The Effect of Democracy and Press Freedom on Corruption: An Empirical Test’ (2004) 85 *Economics Letters* 3; Christine Kalenborn and Christian Lessmann, ‘The Impact of Democracy and Press Freedom on Corruption: Conditionality Matters’ (2013) 35 *Journal of Policy Modelling* 857.
- 66 Rebecca Ananian-Welsh, ‘Australia Needs a Media Freedom Act. Here’s How it Could Work’, *The Conversation* (News Article, 22 October 2019) <<https://theconversation.com/australia-needs-a-media-freedom-act-heres-how-it-could-work-125315>>; Greste (n 55).

# Stage 2 of the Australian Defamation Law Reform Process - Report

By Joel Parsons (CAMLA YL Representative, Bird and Bird)

On 12 May 2021, CAMLA and Johnson Winter & Slattery hosted a webinar on Stage 2 of the Australian defamation law reform process. The event broadly focused on the question of internet intermediary liability for defamation tackled in the Defamation Working Party’s Discussion Paper. Moderated by Kevin Lynch, Partner, Johnson Winter & Slattery, the webinar brought together a panel of eminent defamation experts, comprising Kieran Smark SC, Clayton Noble (Microsoft), her Honour Judge Judith Gibson (District Court of NSW), and Dr Daniel Joyce (UNSW Law & Justice).



The panel discussion facilitated an engaging and thought-provoking exploration of different perspectives on the key issues, such as the desirability of the U.S. approach (via an immunity similar to that provided by section 203 of the United States’ Communications Decency Act) and innocent dissemination in the age of social media. The panel also had an opportunity to reflect on the Stage 1 reforms.

The webinar was well attended and CAMLA is grateful to Johnson Winter & Slattery for hosting an excellent event.