Weisbrot critical of ‘poor process’

A series of changes to national security laws threatens to restrict journalists’ ability to report freely on some issues in the public interest, with a penalty of up to five years’ jail if details of classified Special Intelligence Operations are disclosed, even unwittingly.

The changes were stridently opposed by a coalition of Australian publishers and media companies, which resulted in some minor changes and partial backdown by the federal government on access to journalists’ metadata. Under a deal struck between the Coalition and Labor, a public interest advocate will be created to determine metadata access for the purpose of identifying sources.

Publishers are still concerned despite this concession because media companies would still be in the dark over whether their journalists’ metadata was being accessed, although the amendment allowed for a warrant application to be tested in court.

The media coalition, including The Newspaper Works, APN, Fairfax Media, News Corp Australia, AAP, SBS, The West Australian and the ABC, is now fighting restrictive aspects of the ASIO Act at a federal parliamentary inquiry.

In an interview with The Bulletin, Prof Weisbrot said publishers may have missed the boat in their attempts to have national security laws amended.

“I think now, we have to have some of that debate. It can sometimes happen after the fact.”

The Australian Law Reform Commission recommended that the Howard government’s sedition laws be repealed and that later transpired, Prof Weisbrot said.

“I can’t speak for the industry, but talking to senior editors and others in the industry I think it’s just slowly dawned on them what the cumulative effect of all these changes has been, and how it will severely impact their ability to operate freely.

“I hope there will be a few opportunities now in the calmer atmosphere to refine that legislation, maybe in a way that would serve the community interest better.”

Prof Weisbrot said the legislation still had not been tested in the courts. “It’s possible the courts would have something to say about how it infringes on the implied constitutional right of free speech and a free press, but we’re not near that situation yet,” he said.

Publishers are now waiting on the outcome of the parliamentary inquiry into the ASIO Act provisions, with a report to be issued once their evidence has been considered by the Independent National Security Legislation Monitor, Roger Gyles.

News Corp Australia’s group editorial director Campbell Reid told the inquiry that section 35P of the ASIO Act was “a terribly dangerous place for us to find ourselves.” He argued the section should be repealed.
Press council head in free speech fight

As new threats to press freedom emerge, the Australian Press Council goes onto the front foot.
IAN MOORE reports.

NEW Australian Press Council chairman David Weisbrot sees the body playing a more active role in the defence of freedom of speech and freedom of the press, as part of a recalibration that distances him from the previous administration.

A former president of the Australian Law Reform Commission, Professor Weisbrot formally took over in March from Professor Julian Disney, who had been the subject of criticism from publishers over the direction he had taken the council.

Prof Weisbrot wants to develop processes that see more involvement of the full council, particularly on issues involving any third party complaints, and would prefer to move away from hard and fast rulings on these.

On the subject of freedom of speech, an area in which the press council fell strangely silent over recent years, Prof Weisbrot is particularly passionate.

“I’d like to see the press council do more in protecting and arguing for press freedom and freedom of speech,” he said. “Individual organisations within the council do this from time to time, but it may be a more powerful voice if the press council is involved formally in the debate.”

“*My natural instinct is to look at ways of improving systems rather than pinning blame*”

David Weisbrot

Prof Weisbrot cited the Australian government’s metadata legislation as an example. He said this involved “increased surveillance that would be a detriment to investigative journalism, in particular”. He said a more active role on these matters would be his overall goal.

“This could be achieved by being part of the political and law reform process in appropriate cases,” Prof Weisbrot said. “Part of this may be the press council arguing publicly for fewer restraints on freedom of speech.” However, he said it was equally important to uphold public esteem in the media through the adjudication process. “When serious breaches occur, the public should feel reassured it is a not open slasher, but there is actually someone looking after individual interests as well.”

In regard to the potential of Section 38C of the Racial Discrimination Act to limit free speech, Prof Weisbrot said a “hothouse atmosphere” created around the provisions made it difficult to have a solid, objective discussion. However, he believed a lack of qualification around some wording tipped the balance against free expression.

“I’ve always thought the wording was set a little too low. Words such as ‘offence’ or ‘offensive’ should have adjectives like ‘serious’, and so on. That had been my view for many years before 38C became a cause celebre.

“There is a need for prohibitions on racial hatred and racial vilification, which is something I feel very strongly about, but it needs to be set at a higher level so that we preserve the robust debates and free speech that we are accustomed to in Australia.”

Prof Weisbrot suggested there could have been room to go to the law reform commission or the parliamentary committee to look at the specific wording to see if it could be improved, so it reflected the ability to communicate provocative ideas without challenging social cohesion.

On third party complaints, of which Prof Disney was a supporter, Prof Weisbrot said the issue was complicated and in need of review. “The issue of who is the complainant is going to become more vexed and complex with social media,” he said.

“It is not unusual for the council to receive petitions that are around on social media complaining about a particular article. It might have three or four or 1,200 signatories, so it is necessary for the council to identify any of the complainants that have skin in the game.”

“I don’t think the council should be asked to become involved in general political fights. Things that are being contested in the political realm should be kept to that realm.” He said care was needed to ensure the council was dealing with media standards, not the resolution of some contentious public debates. The press council would look to these parameters to determine whether or not to proceed with a particular complaint.

“The council should have a mechanism for dealing with third party complaints, he said, “but generally, I’d prefer to dealing with the person who has been reflected upon in the contentious article.”

Prof Weisbrot baulked at the prospect raised by Prof Disney in his valedictory speech at the National Press Club of the council initiating rulings without complaint – although he could see merit in the operations of legal or health service ombudsmen who took action in the public interest without the laying of complaint.

“With my law reform background, I have been a policy developer,” he said. “My natural instinct is to look at ways of improving systems rather than placing blame, necessarily. What I would like to do is to use the full council more as a sounding board and an ultimate decision maker in an area where there is a problem.”

“I’d prefer to handle it that way rather than pointing the finger at one media organisation or one article. I’d rather develop a policy and say this is what you do in future. This would involve the major publishers. They are all represented at the press council. Nothing would happen without the publishers being involved.

“The alternative would be the development of a discussion paper that could involve members of the community as well – but nothing could go through the council without the major publishers being involved in the discussions.”