

**The Independent Audit  
of the State of Free Speech in Australia**

**IRENE MOSS, AO**

31 October 2007

Australia's Right to Know Coalition  
c/- John Hartigan  
Chairman and Chief Executive Officer  
News Limited  
2 Holt Street,  
Surry Hills, NSW

Dear Mr Hartigan

It is with pleasure that I publish the results of the audit for your coalition partners.

The audit reviewed legislation and practices related to free speech as it particularly affects the media in Australia today.

While difficult to generalise on the state of media freedom because of the diversity and spectrum of matters examined, if necessary to do so the audit would broadly conclude that free speech and media freedom are being whittled away by gradual and sometimes almost imperceptible degrees.

This observation accords with many of the suspicions and statements aired in public addresses by journalists and media chiefs of late, prompted by recent world rankings of media watchdog groups. Lower rankings for Australia resulted from some high-profile matters such as the introduction of tough anti-terrorism legislation and a couple of court cases.

One high-profile case was on the use of a conclusive ministerial certificate to block an FOI application on bracket creep, and another highlighted the need for shield laws to protect journalists from criminal conviction and the inadequate protection of the alleged whistleblower concerned. These rankings have prompted a closer examination of these and other areas of concern.

The audit's examination and resulting observations should ring alarm bells for those who value free speech in a democracy.

While Australia is generally accepted as a land of freedom and compares well internationally on many fronts on civil rights, this should not be taken for granted.

What the audit can observe is that many of the mechanisms that are so vital to a well-functioning democracy are beginning to wear thin. Their functioning in many areas is flawed and not well maintained.

We point to areas of general access to information where governments should be more open and accountable, the growing use of spin and the raising of barriers to mask information rather than reveal it - showing that the free flow of information is not just an issue of law and regulation, but one of a growing culture of secrecy and mutual mistrust.

Our research bears out the coalition's claim at the launch of your campaign that there are about 500 pieces of legislation which, to one degree or another, contain "secrecy" provisions or restrict the freedom of the media to publish certain information.

Freedom of Information laws and regulatory tools that are meant to facilitate the flow of information do not serve the public well on matters of government accountability.

The audit also looked at the many barriers to getting access to information in courts and found the area wanting.

Institutionalised support for whistleblowers, important for exposing corruption or maladministration, is either non-existent or flawed and administration of these laws is carried out with very little leadership commitment.

Shield laws are still not in a state to give adequate protection for journalists.

Compounding this deteriorating state of affairs, often legislation on an issue - be it about whistleblowers, FOI, privacy, access to court documents or other information - is inconsistent or lacking in uniformity from one jurisdiction to another. This inconsistency in legislation is found not only in its substance but also in its implementation processes. Even within jurisdictions the administration of suppression orders or conflicts in complying with privacy laws are evident.

Naturally, media organisations find this environment particularly difficult as it frustrates their role of providing information. This is clearly unsatisfactory and unless addressed will only contribute to the continuing backward slide towards a less informed society.

On the other side of the ledger, the audit did not examine how well the media performs or how well journalists adhere to their codes of conduct. That was not in the audit's brief, but the audit is only too well aware of criticisms levelled at the media for bias or inaccurate reporting.

However, quality of media performance should be irrelevant to governments' commitment to accountability and openness. It should be irrelevant to how well governments administer mechanisms which facilitate free flow of information and transparency. Two wrongs don't make a right.

I should record that in view of the time and resources available we have not been able to explore every area affecting free speech and media freedom. In the report we identify the subjects we have not covered. In some cases, further research may be warranted.

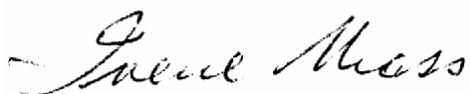
The related areas we explore resulted from talks on key areas of concern with the coalition.

Each particular topic presented specific areas of concern, some serious, some less so, some difficult to assess because of the difficulty, if not impossibility, of obtaining relevant information in that area.

It is difficult to make historical comparisons of the state of free speech and media freedoms in Australia given a lack of comparable data. However this audit will provide an historical starting point for future comparisons and that is important if we aspire to improve. It will then require courageous leadership from all sides: the media needs to be more responsible, governments and institutions need to be more open.

Finally, I would like to acknowledge the work of and thank the rest of the audit team—Peter Timmins, Jane Deamer, Geoff Briot, Erin Tennant, Alison Larsen and Johanna Dickson. My thanks also go to the coalition partners, journalists, lawyers, academics and others who provided us with submissions, comments and documents and some law firms for their research.

Yours truly

A handwritten signature in cursive script that reads "Irene Moss".

Irene Moss AO

Chair

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