

# A Study of How Public Interest Guides Australian Media Decisions on Sexual Harassment Coverage

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## Abstract

This paper focuses on the journalistic practices of the Australian media and explores how the public interest profoundly influences the legal and ethical decisions made by the media when reporting on sexual harassment. The “public interest” usually refers to a wide range of democratic interests such as the health, safety and welfare of citizens as a collective, and is a primary consideration for the media when deciding which information to disclose or withhold from the public. This paper examines the dependency and dialectic between the public interest and the ethical and legal regimes of Australian journalistic practice, and provides insight into how the news media, thorough consideration, can make appropriate reporting decisions deemed to be in the best public interest when covering news related to sensitive topics such as sexual harassment. In this regard, this paper draws on some recent news stories on sexual harassment in Australia since 2020 and provides a comprehensive analysis of them.

## Keywords

Public Interest, Ethical and Legal Responsibilities, Sexual Harassment, Public’s Right to Know, Contempt Laws

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## 1. Introduction

In Australia’s long-standing media practice, media practitioners are expected to make reporting decisions with the public interest as the primary concern, in accordance with ethical standards and legal requirements (MEAA, 2019a). The concept “public interest” is explained by McQuail (1969: p. 23) as “the common interest which all members are presumed to have in common”. Especially when

reporting on sensitive topics like sexual harassment, it is important for media practitioners to prioritize the public interest to determine which parts to reveal or conceal. It is worth noting that while Australian media adheres to the principle of public interest in covering sexual harassment, it also faces other potential issues that conflict with the public interest, where the discretion of media practitioners is highlighted. This paper examines how the Australian media choose between the public interest and other conflicting interests in making ethical and legal reporting decisions, and introduces multiple recent reporting cases in the Australian media throughout the analysis for justification.

## 2. The Media as Guardians of the Public Interest

McQuail (1969: p. 23) describes public interest journalism as a “public space” that is “in every citizens’ interest” and is necessary for a democratic society such as Australia, which provides the information for citizen participation in the democratic process, facilitates the dissemination of diverse and pluralistic voices to enrich public thinking (Barnett, 2009; ALRC, 2016a). Likewise, Hodges (1986) describes press as a watchdog that contributes to a safe and truthful social environment by disclosing matters of interest to enhance public inspection of government and those in power, bringing to light and holding them accountable for any potential unethical or illegal activities on a factual basis (Whittle & Cooper, 2009).

With sexual harassment as a recurring news topic, media has played a key role in promoting public participation in investigating matters of public interest in this regard. Recently <https://www.news.com.au/> brought to public view accusations made by multiple victims against MPs in a social media group (Maiden, 2021), and mass media subsequently bringing to the forefront the story of Brittany Higgins’s previous rape while working in parliament, along with a string of other alleged sexual misconduct, abuse and rape scandals in parliament, which sparked public censure of the Morrison government and outrage over the toxic masculinity in Australian political class (Khalil, 2021). Indeed, citizens cannot rely on politicians to govern themselves by self-regulation (Downs, 1962). If the public do not know about government affairs, government officials cannot be disciplined by public scrutiny, thus the public has “a philosophical mandate to know” by which is the cornerstone of a healthy, functioning democracy (Dennis & Everette, 1996: p. 50; MEAA, 2019b).

## 3. Journalism’s Ethical and Legal Responsibilities on Public Interest

MEAA (2019a) emphasizes in Journalist Code of Ethics that “Respect for the public’s right to information are fundamental principles of journalism”, meaning that journalism is deemed to serve such a right. Richardson (2004) defines such journalism’s responsibility as its “moral obligations”, which is in line with the idea of “categorical imperative” proposed by Kant (1909) in his deontological

model, where media have an unconditional duty to inform their audience of what they believe the audience should be informed of. As in the case news media consider the scandals indicate the existence of power bullying on women in parliament that undermines Australian democracy and “public health and safety” (ALRC, 2016a), hence they touch the public interest and the public has a right to know, so press opts for exposure to fulfill their moral obligation and perform its political function of watching government business and “reporting the abuse of power” (Hodges, 1986; ALRC, 2016a).

Ultimately, press revelations drove public accountability to parliament which snowballed into waves of #March4Justice protests with the thrust of ending sexual violence and securing women in workplace, which facilitated full investigations within parliament and reforms to the Sex Discrimination Act and the Fair Work Act (Zagon & McPherson, 2021). In view of this, ALRC (2014) affirms the great legal significance of journalistic disclosure practices as “offer significant public benefit” in “the protection of public safety...and the rights and freedoms of citizens”. Similarly, the Australia Government (1992) encourages journalists to “to be responsive to the need for a fair and accurate coverage of matters of public interest”. This prompts the responsibility the law places on the press as a “public watchdog”, keenly observing any matters of public interest and honestly disclosing them to the public (ALRC, 2016a). As demonstrated in the case of ABC’s earlier coverage of sexual assault allegations against a cabinet minister, the managing director of ABC explained the ABC’s firm choice of revelation because they believed it was in the public interest and “No reputable media organization could have ignored...” (Meade, 2021).

#### 4. The Restricted Public’s Right to Know and Journalists’ Discretion

Admittedly, Australia’s democratic system is based on the public’s right to know, which is generally defined as “the right of the public to have access to information about government policy and decision making” (Dennis & Everette, 1996: p. 44), and such a right to know is a cornerstone for a healthy democratic process. However, while the public has a moral and legal entitlement to know about matters that touch their interests, and journalism’s innate social responsibility is to serve this right to know (Hodges, 1986), it must be clear that the public’s right to know should not be unlimited. Montague (1997) proposes two types of right, the journalist’s privilege to pursue information as an “active right”, whereas the public is granted a circumscribed “passive right” of accessing certain information provided by press. The moral responsibility of journalist’s discretion is highlighted here, because the public occasionally demands inappropriate information which might cause further harm on victims of tragedy, so journalists’ responsibility refers not only to informing the public promptly of matters that touch their interests (Hodges, 1986), but also to “make decisions in their audiences’ best interests while avoiding the unnecessary harm that may result

from publication” (Richardson, 2004: p. 51).

ALRC (2010) claims that certain information in sensitive cases such as the identification of a sexual violence victim, should be prohibited in media reporting. Likewise, APC (2007) states that it is a consensus of journalistic responsibility to avoid reporting any identifiable information about a sexual assault victim. As in the ABC case and in the parliamentary scandals case, media did not name any victims in coverage to protect them from secondary victimization. Additionally, with reference to Mill’s (1976) utilitarian model, publication decisions must be grounded on journalist’s belief that the release will not inflict hurtful consequences to others. As the managing director of ABC claimed, “ABC chose never to identify her, no unpixellated image has been used, her voice has not been heard... ABC sought to minimize the distress to her bereaved family” (Meade, 2021).

## 5. The Rights of Defendants in Conflict with the Public Interest

While news media is usually very considerate of victims and protects them from further harm when dealing with sensitive topics like sexual harassment, it often slacks off in respecting the rights of the unconvinced defendants (Bunker, 2011). Due to the principle of open justice, media are entitled to report on court proceedings to ensure a transparent and fair trial (ALRC, 2016b). Therefore, media work as the “eyes and ears” of citizens to witness the trial (Pearson & Polden, 2019: p. 100) and inform the public in a timely manner about cases they determine are in the public interest (Hodges, 1986). For instance, media reported Craig McLachlan’s alleged sexual assault shortly after he was accused because of the nature of the case and his celebrity identity. The #MeToo movement has indeed promoted victim solidarity in fighting sexual harassment, so there is a strong case for more public reporting of these matters to give more victims courage. Yet it has also been criticized for not giving due process and might seriously damage reputations of those accused by false accusations, thus the task is handed over to media professionals to carry out adequate investigations before reporting (Sarre, 2018).

## 6. Trial by Media

When media, as a powerful entity, whose reporting can shape and sway public opinion (McCombs, 2002), neglect to make the proper reporting decisions for the public good and make assertions lacking a factual basis, the result can be disastrous. Illustrating this with the Craig McLachlan case, ABC and Fairfax Media subtly portrayed unconvinced McLachlan as a sexual predator in suggestive language prior to the court trial (Knowles & Branley, 2018), forcing him into “trial by media” and leading to a detrimental public perception of him that pre-convicted him in their minds (Bunker, 2011). When the entire society is influenced by the prejudicial press to reach a consensus, overwhelming public opinion can

expose the defendant to public condemnation and widespread attacks, and inflict substantial irreparable damage to his/her reputation (Wright & Ross, 1997). Craig McLachlan, for example, suffered extensive public criticisms and a devastating blow to his reputation and career as a result of a flood of negative media coverage suggesting he had assaulted the actresses (Silva, 2020).

Consequently, such an irresponsible way of reporting appeared to serve the public interest but in fact caused irremediable harm to an innocent person's reputation (Murphy, 2003). Thus, for sexual offenses in particular, some jurisdictions in Australia prohibit media from identifying the defendant in coverage before him/her has been committed for trial (QLD Legislation, 2020). Moreover, it could lead to news media being sued for defamation by the discredited public figure (Bell, 2006), as McLachlan filed defamation proceedings against ABC the Fairfax Media after he cleared of the charges (Thompson, 2020). According to (NSW Parliamentary Counsel, 2020), ABC and Fairfax Media can be immune if they prove that the matter concerning McLachlan was "of public interest and the publication of the matter is responsible" (p. 5), which neither achieved in this case apparently. Notably, Journalist Code of Ethics is reaffirmed here, that is "Report and interpret honestly, striving for accuracy, fairness and disclosure of all essential facts... Do not give distorting emphasis" (MEAA, 2019a).

## 7. The Contempt Laws in Australia

Furthermore, "trial by media" can create substantial undermining of the presumption of innocence and jeopardize the right to a fair trial (Bunker, 2011). The prospective jurors may inevitably see the overwhelming media coverage spotlighting a negative image of the accused person, which may subliminally cause them to heavily prejudice the defendant and subject their subsequent judgment in court to media influence, thereby depriving the defendant of the right for a fair trial (Pearson & Polden, 2019). Accordingly, to avoid such situations, the Australian judiciary has enacted sub judice contempt laws to restrict media from "publishing material which tends to prejudice the fair trial of a case" (ALRC, 1987). Beyond this, courts have been given the power to made suppression orders to prevent media from disclosing information about a case to the public when deemed appropriate (NSW Legislation, 2020). For example, suppression orders were made in the George Pell case to prevent the first trial influencing the second, making it "illegal to report that any trial was taking place" (BBC News, 2019). In such cases, media that breach the suppression order will be charged with contempt and face severe penalties (ALRC, 1987), as in the Pell case where multiple media outlets that ignored the suppression order and reported on the trial were subject to hefty fines (Iaria, 2021).

## 8. Research Results Discussion

While defamation laws, contempt laws and suppression orders have facilitated the protection of defendants' damaged reputations and access to justice (Bell,

2006; Pearson & Polden, 2019), the research has shown that they have also undermined journalists' ability to expose and hold those in power accountable for their misconduct and to reveal matters that may threaten the safety and well-being of the society (AJF, 2019). Especially in recent years, Australian courts have issued too many suppression orders that are perceived unnecessary, which conflicts with the principle of open justice (MEAA, 2019b). The principle of open justice exists to ensure the judicial process is transparent and open to public examination, which is the "surest safeguard against any risk of the courts abusing their considerable powers" and "it may be regarded as a public good that the public knows what has gone on in court" (Pearson & Polden, 2019, pp. 100-106).

And Australian media organizations, serving as the fourth estate to provide citizenry with access to matters of public interest (Pearson & Polden, 2019), which plays an important role in open justice and a healthy democracy (Schultz, 1998), have been subject to the problematic defamation and contempt laws that have imposed numerous restrictions on news coverage, along with over-used suppression orders that directly erode freedom of the press (MEAA, 2019b), all of which has put Australian media in a difficult position and may lead to a serious chilling effect (MEAA, 2017). Therefore, these acts must be balanced with the equally important principles of open justice and public interest journalism (AJF, 2019), hence a reform to the existing defamation and contempt laws is necessary, where a new public interest defense should be introduced to both laws to provide sufficient protection for journalists and media outlets (ARTK Coalition, 2019), the threshold for actionable reputational harm should be clarified, the frequency of making suppression orders should be limited and that detailed justifications for each suppression order should be revealed, with calling for a Media Freedom Act to protect journalism from law enforcement over-reach (AJF, 2019; MEAA, 2019c).

## 9. Conclusion

In conclusion, it is undeniable that the Australian media industry serves a range of roles that are essential to the functioning of a healthy and transparent democracy (Hodges, 1986). However, these media functions can only be fulfilled if media practitioners prioritize the public interest in their reporting decisions. Otherwise, media being the fourth estate with strong communication power (Schultz, 1998), improper reporting decisions can expose those featured in the unfair coverage to fierce public attacks and severe reputational damage (Murphy, 2003), especially when it comes to justice, the fairness of trials may be at stake (Bunker, 2011). Despite the existence of defamation laws, contempt laws and suppression orders to regulate the press, the current imperfect legislation impairs the function of media, on the other hand, making law reforms imperative (AJF, 2019).

## Conflicts of Interest

No potential conflict of interest was reported by the authors.

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