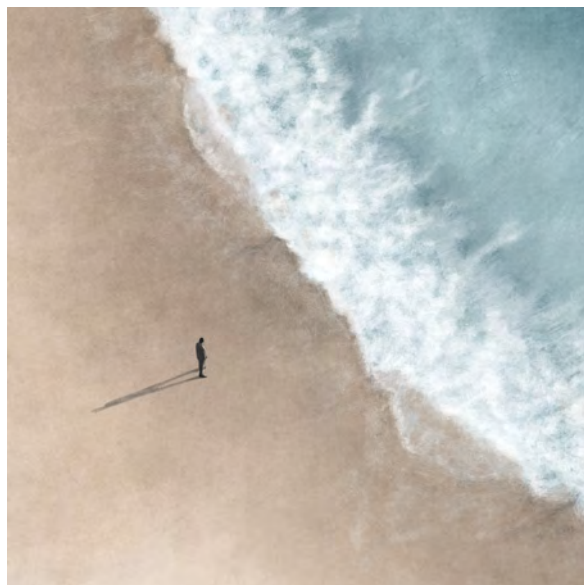


Hi there

Disagreements everywhere



Who could have missed Elon Musk's challenge to the Australian E-Safety Commissioner's demand that X (formerly Twitter) hide all posts linking to depictions of the horrific knife attack on a prominent Orthodox Christian leader in Sydney last week or face huge fines? X says it has complied but intends to legally challenge the order on free speech grounds. In fact, X has geo-blocked the posts such that they can't be accessed within Australia. But they can elsewhere. Derek takes a look at the complicated legal issues that follow a week

of political position taking and platform pushback.

Ayesha is looking at differences in the way news media covered the attack on Bishop Mar Mari Emmanuel at Wakeley Park in far western Sydney and the way it covered the Bondi Junction shopping mall stabbings in the city's eastern suburbs, the same week, in which six people died. The former attack was labelled an act of terrorism. The latter, the work of a mentally ill attacker. One led to greater police powers over a marginalised community. The other, a promised review of mental health services.

And I'm taking a look at how the Federal Court's Justice Michael Lee, of *Lehrmann vs Ten* and *Wilkinson* fame assessed journalistic reasonableness. Both Ten and Lisa Wilkinson have hailed the judgment in their favour in the defamation trial as a victory. But the Judge

was critical of the way Ten arrived at the truth.

For those of you taking a long weekend, enjoy.



Monica Attard
CMT Co-Director

I want to support eSafety, but ...



Should we get behind Australia's latest attempt to limit the power of digital platforms, or should we be concerned about regulatory overreach?

In the [last newsletter](#) I discussed the ways in which social media platform X has rebuffed Australian regulatory authority. I pointed to three separate actions by X, two of which involved the eSafety Commissioner.

What a difference a fortnight makes. In that time, the conflict between eSafety and X has escalated dramatically. On Wednesday afternoon, the two parties faced the Federal Court for the second time. eSafety sought continuance of its interim injunction which seeks to give effect to its previous notice ordering X to hide videos of the stabbing of Bishop Mar Mari Emmanuel in suburban Wakeley on April 15. Although X had used geoblocking to restrict access in Australia, it [appears eSafety regards](#) this action as insufficient because people using VPNs can still access the material.

The removal notice and the seeking of the injunction prompted Elon Musk to [ask](#): 'Should the eSafety Commissar (an unelected official) in Australia have authority over all countries on Earth?' Not surprisingly, this attitude from Musk and X Corp helped to galvanize public opinion in Australia, or at least that of Australia's main political parties. The Prime Minister [said](#) that Musk considers himself above the Australian law. The Coalition, the Greens and some independents have all [appeared to back](#) the government in standing up to Musk and this international tech company, although Peter Dutton later [criticised](#) any attempt to extend Australian law to other jurisdictions.

But is it that clearcut? Part of the problem in answering this arises from the confusing commentary on the topic and the absence of primary sources such as the original removal notice issued to X by eSafety. For example, on the weekend, multiple news reports relying on a [Reuters report](#) appeared to suggest that eSafety was seeking the removal of content without specifying that content. That appears to have been quite wrong, with later [reports](#) claiming that the order concerned 65 tweets, eSafety [announcing](#) that the order identified 'specific URLs', and a subsequent [discussion](#) of the futility of nominating URLs that are replaced by others as the material is reposted.

In trying to make sense of this, there are two legal issues I've been grappling with ...

Read on!



Derek Wilding
CMT Co-Director

A tale of two incidents



Shortly after the Bondi stabbing, social media users and certain mainstream media outlets were ablaze with speculation regarding the killer's cultural and religious background. Islamophobic and [anti-immigrant sentiments](#) surged online, with one TV network even misidentifying the attacker, stoking antisemitic rhetoric on social media. However, when it was revealed that the attacker was a white man grappling with acute mental health issues, the fervour noticeably subsided presumably because we find discussing religion and

identity simpler than confronting the complexities of mental health issues.

While the man who was wrongly named as the Bondi killer by Channel Seven has sent a concerns notice, a precursor to a claim of defamation, to the network, a narrative of care emerged within the media in the aftermath of this tragedy, emphasising the need for empathy, support, and community solidarity during times of crisis – notably ['How to talk to children about the Bondi stabbings'](#); ['Bloody amazing': Dad's heartbreaking act for children](#)

in Bondi massacre'; and 'I want more': mourning mum's plea at daughter memorial' etc.

Then came a twist. As news media reported the country mourning the Bondi tragedy, a 16-year-old Muslim boy allegedly attacked an Orthodox Christian bishop during a livestreamed church service in Wakeley, in western Sydney. Within hours of the knife attack and the rioting by some 2,000 of the Bishop's supporters afterwards, the boy was officially [charged with terrorism](#), and declared to have been radicalised on social media, [poisoned by a monster](#) (enter Daesh, stage right). The video of the attack has now been geoblocked in Australia; the police have been given expanded powers to stop and search people, premises and vehicles without a warrant in the surrounding suburbs; and unlike in the case of the Bondi attack, a narrative of care for the community is missing.

Media reporting of domestic terrorism can have serious implications for affected communities, and can [fuel](#) racial prejudice more broadly, and so it's refreshing – rather surprising – to see that some media have raised important concerns about the ethical dilemmas and disparities in the political and media portrayal of the two incidents, notably the emphasis on mental health illness in one case but terrorism in the other. Giridharan Sivaraman, the newly appointed Australian Human Rights Commission Race Discrimination Commissioner, [talked](#) to Guardian Australia about the ramifications of speedy characterisations. He shared how he had received reports that women with headscarves were scared to board trains, worried about being counter-attacked.

One factor driving these discussions within the Australian media could be the temporal closeness of the two incidents which is without precedent. Their proximity compelled media attention on both incidents simultaneously, offering a chance for journalistic introspection but also external scrutiny, particularly from communities that have reported experiencing prejudice. Had the Bondi stabbing not occurred, the situation would likely have unfolded quite differently.

Even if compelled to reflect as a result of the coincidence of the two stabbings occurring close to each other, it is still promising to witness certain media outlets confronting authorities on contentious issues that deeply divide the public and which carry risk of exacerbating tensions and fuelling further chaos and extremism. What was flawed in most of the coverage was the portrayal of the assault on the bishop not merely as an isolated incident as Bondi was, but as an assault on his religion and its adherents, perpetrated by a troubled 16-year-old whose actions unexpectedly elevate him to the status of a national security concern, capable of [mis]representing an entire religion.



Ayesha Jehangir
CMT Postdoctoral Fellow

Reasonable journalism



Justice Michael Lee has untangled the web of lies, obfuscation, political intrigue and bad journalism by two Australian television networks to arrive at a finding that Brittany Higgins was, on the balance of probabilities, raped by Bruce Lehrmann in the early hours of March 23rd, 2019. However, there was no finding of a political cover up.

All that's left to quibble over is who pays for the defamation proceedings brought and lost by Bruce [Lehrmann](#) against Network

Ten and its journalist, Lisa Wilkinson.

As has been commented upon by many journalists, few escape unscathed in Lee's long [judgment](#). Although not apparent from comments after the judgment by Lisa [Wilkinson](#) or Ten's Lawyer, Justin [Quill](#), the drubbing the Ten Network received by Justice Lee must surely hurt.

Successfully invoking the 'substantial truth' defence to defamation, Ten's 'The Project' proved on the balance of probabilities that Bruce Lehrmann did rape Brittany Higgins. But, in a failure for journalism, Network Ten's other defence of qualified privilege, which tested whether the program acted reasonably in publishing, failed.

It's worth noting what Lee had to say about journalism and in particular, the sort of journalism practised by The Project. It could be the foreword in the Guide to Advocacy Journalism.

Justice Lee said Wilkinson should not be criticised for advocating for victims of sexual assault. But this advocacy informed her conduct as a journalist. She "associated herself with Ms Higgins and was willing to assist in the politicisation of Ms Higgins account of the rape which included an attempt by politicians and public servants to cover it up". Ms Wilkinson, said Justice Lee, had "helped craft Ms Higgins' responses: and was dismissive about anything which might be seen to constitute information contrary to what Ms Higgins said right up to the time of publication."

“The fact she did allow this commitment to undermine her independence emerges clearly from the evidence.

“Of course, she was perfectly entitled to her view, but it is not redolent of the conduct of a highly experienced journalist dealing with facts, not instincts, and ensuring any belief or commitment did not undermine fairness or independence.”

Still, for both Wilkinson and Quill, a win is a win. Once the (probable) truth of the rape was proven, the reasonable behaviour that needed to be applied to the entire story, including allegations of a political cover up, became less important for the case. But this aspect of the story, found to be unsubstantiated, caused harm.

Justice Lee searched for a test of reasonableness in journalism, and looked to the MEAA Code of Ethics for help, particularly in determining whether the publisher was reporting and interpreting honestly, striving for accuracy, fairness, and disclosure of all essential facts; and/or not allowing any belief or commitment to undermine fairness or independence.

His conclusion? “...taking all relevant considerations into account, including the desirability of not allowing any belief to undermine fairness or independence, the conduct of Network Ten and Ms Wilkinson in publishing the matter in its character of conveying the defamatory imputations of rape fell short of the standard of reasonableness.”

Impartiality identified as independence is critical for Lee. And the requirement for it under MEAA Code of Ethics, to which The Project was not beholden as its staff were not members of the union, is clear. But impartiality in current affairs programs is not a requirement under the [Commercial](#) TV Industry Code of Practice, to which The Project team did have an obligation. The finding of truth in relation to the rape – even if only on the balance of probabilities – is surely a relief for Wilkinson and Ten. But it’s also a relief to have judicial recognition of what advocacy journalism looks like, and what harms it can inflict.



Monica Attard
CMT Co-Director

We hope you have enjoyed reading this edition of the *Centre for Media Transition* newsletter | *Reasonableness and online safety blues* - Issue 7/2024

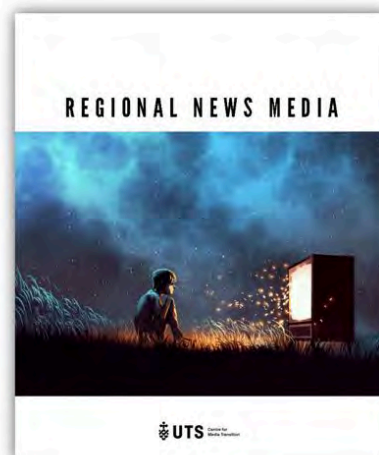
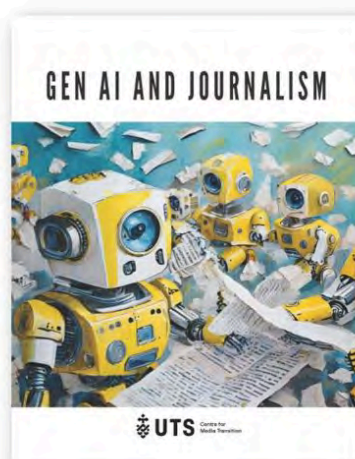
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