

Hi there

A week of questionable conduct



This week's newsletter is all about the conduct of companies in the broader media landscape and the rules that govern their conduct – or fail to.

The biggest media story of the last fortnight was of course the continuing drama of Bruce Lehrmann's defamation action against Ten and Lisa Wilkinson, the judgment for which is expected on Monday. The proceedings unexpectedly brought to light further details concerning the conduct of Seven in securing its exclusive interview with Lehrmann for Spotlight. This was

followed by revelations earlier this week – in a Nine Newspapers report – about Seven's response to inquiries about alleged misuse of company benefits by staff from Sunrise. Below, Monica and Sacha look at the ethical questions raised by the latest twists in the Lehrmann action. I look at how social media platform X, in a series of moves against the eSafety Commissioner and its own industry association, is offering a challenge to the still-developing regulatory framework for digital platforms.

We end on a short piece announcing the latest CMT research report, with a link to an upcoming webinar explaining the findings. Meanwhile, you can revisit last week's fascinating [conversation](#) between Richard Fidler and our Postdoctoral Research Fellow, Ayesha Jehangir. Ayesha explains her Pashtun background and recounts the difficulties of

her early life in Pakistan, her work as a journalist in Afghanistan, and her transformation into a researcher in Australia.



Derek Wilding
CMT Co-Director

Which commercial TV network didn't get the memo?



Australian journalism took a big hit this week, with the airing of claims about the tactics used by Seven Network to woo Bruce Lehrmann to give an exclusive interview to its weekly current affair show Spotlight.

Judgment in the Lehrmann v Network Ten and Lisa Wilkinson defamation case was due to be handed down by Justice Michael Lee. Instead, the judge found himself re-opening the case so Ten could present evidence it said would go to Lehrmann's

character. That evidence was, in short, a disturbing picture of the way some practise journalism and – though denied by Seven – now threatens its reputation.

The only honourable legacy upheld in the sordid and squalid saga that has spawned innumerable other legal proceedings, is the perhaps self-interested decision by the Seven Network to maintain the confidentiality of the sources of what one of its former employees claims was the leaking of a log of correspondence, not legally permitted to be seen by parties outside the original criminal action against Bruce Lehrmann. A win of sorts for the MEAA [Code of Ethics](#).

That former employee was Spotlight producer Taylor Auerbach, who says he was Bruce Lehrmann's 'babysitter' whilst the network was wooing him to give an interview that aired after the criminal proceedings collapsed. The wooing allegedly took the form of payment for cocaine and sex workers for Lehrmann, along with multiple expensive dinners and a golf trip to Tasmania in return for the interview and access to legal documents Seven had no entitlement to see.

All of this, if true, reflects poorly on Spotlight. The claim of big spending to woo interviewees is getting attention because, in this case, it is beyond what we have seen in the past – involving, as it allegedly did, payment for drugs and sex workers. In the closing minutes of the reopened hearing, Justice Lee was told that none of the journalists who'd worked on Ten's Project segment was a member of the MEAA – therefore, they were not subject to its Ethics Code. We can only guess that nor were the Spotlight team beholden to the union's code.

In any event, as our [research](#) has shown, journalists have a worrying tendency to not be aware of what the Code of Ethics contains, at least in relation to the reporting of conflict. Our research showed current written codes of ethics play a peripheral role at best and while journalists may be aware of the existence of the MEAA [Code](#) of Ethics the correspondents we spoke to are unfamiliar with what it contains. There is little reason to believe that this would be any different for journalists chasing a domestic story, particularly one so highly sought after. Dr Matt Collins, for the Ten Network pointed out, journalism is 'a complicated ... evolving profession involving different mediums of communication, different business exigencies.' Clearly the business exigency to get the scoop was an overriding one for Spotlight, despite the Code counselling journalists to 'not permit advertising or other commercial considerations to undermine accuracy, fairness or independence'. Neither this, nor the code's advice to do one's 'utmost to ensure disclosure of direct or indirect payment' helped in assuring good journalistic practice.

The Spotlight show's 'take no prisoner' approach, detailed by Auerbach, harks back to the 70's and 80's when journalism involved a lot of hard drinking, well exercised corporate credit cards and little shame or concern for the payment of stories. Back in the day, this *modus operandi* was mostly laughed off although even then, paying for cocaine and sex workers would have been frowned upon. It's been convenient to believe these practices had either subsided or disappeared.

If Auerbach's evidence is true, they have neither subsided nor disappeared, at least not at the Seven Network. It is perhaps the case that the MEAA's Code of Ethics is so vague as to be meaningless and in dire need of review so that it is less aspirational, takes on a capacity to create (not just encourage) ethical journalism and above all else is enforceable, even if only for MEAA members. Or for a new and digitally responsive set of standards to be devised and applied across all news communication, as Sacha details below. The alternative leaves journalism languishing below used car salesmen in the trust stakes.



Monica Attard
CMT Co-Director

Spotlight on transparency



In the trial between Bruce Lehrmann and Network Ten, a stark contrast emerged between the approach taken by Justice Michael Lee and the approach taken by many of the journalists whose practices came under scrutiny.

On the one hand, Justice Lee welcomed transparency. He allowed livestreaming via YouTube, prompting more than 26,000 viewers to watch key moments of last year's trial, as well as last week's unexpected extra days. What's more, these

extra days constituted a further commitment to transparency. Justice Lee was days away from handing down his decision when Ten's lawyers applied to reopen the case to bring new evidence. Lehrmann's lawyers objected, but Justice Lee said that sunlight should be the best disinfectant. This reveals an impressive commitment to [open justice](#), a fundamental precept of our legal system.

On the other hand, the Seven Network appears less fond of transparency, following fresh allegations revealed during the trial about direct and indirect payments the Spotlight team offered Lehrmann to secure a 2023 interview. By this stage, we already knew that the Spotlight team had spent many tens of thousands of dollars covering Lehrmann's accommodation – even though this payment had not originally been disclosed, much to the dismay of the [Walkley Foundation](#). Then in court former ex-Spotlight producer Taylor Auerbach alleged that Seven had also provided cocaine and sex workers, leading reporters at Nine to publish a stocktake of [previous Seven scandals](#), as well as fresh evidence of [failure to disclose and, even worse, fraud](#). In 1999, the [cash for comment](#) scandal exposed misbehaviour on commercial radio; in 2024, ['coke for comment'](#) is exposing commercial TV's ugly underbelly.

So, what journalistic standards apply? The [MEAA Journalist Code of Ethics](#) explicitly addresses disclosure. Of the 12 standards, several are on point, including Standard 7: 'Do your utmost to ensure disclosure of any direct or indirect payment made for interviews, pictures, information or stories.' Here, such payments were not disclosed. By contrast, the [Commercial TV Industry Code of Practice](#), which binds Seven, contains no standards about such disclosures. Meanwhile, the [Seven West Media Editorial Policy](#) says all news

personnel 'must comply with the Australian legal framework', while also committing them to abiding by the MEAA Code. The Seven West Editorial Policy also contains seven Key Principles, which don't explicitly mention disclosure, but do prescribe, 'Use appropriate means to obtain material.'

This inconsistency of standards shows that Australia's fragmented, incoherent mess of news standards is a major problem. In 2018, [our research identified](#) 14 codes and standards; ever since, we've argued for reform that develops and implements [a coherent, consistent, cross-platform standards scheme](#). Such a scheme would eliminate blind spots, including for online journalism, and would impose uniform standards, co-developed with industry. This is the first part of the solution. The second part involves bringing about cultural change within news media, by ensuring news media devote time and resources to improving their ethics and practice so they align with well-established standards such as transparency.

Amid so many scandals, it's easy to forget that the central issue in this trial concerns an alleged rape in Parliament House. As the journalists themselves become the story, that central issue becomes clouded and obscured, as does the public interest. The public interest is served by journalists working to uncover the truth of what happened at Parliament House, not by the pursuit of a sensational exclusive by any means necessary.



Sacha Molitorisz
Senior Lecturer, UTS Law

X starts the rot



In our last newsletter, Sacha [mentioned](#) the dismissal by a Californian court of an attempt by X to stop a non-profit group from gathering data and reporting on the rise of racist, anti-Semitic and extremist content on the platform. Since then, it has been [reported](#) that, here in Australia, the platform formerly known as Twitter is taking another stand against a decision of the eSafety Commissioner.

This means there are three clear instances

of the platform rejecting the authority or decisions of Australian regulatory bodies.

The first challenge came in the form of X's [refusal to comply with a reporting obligation](#) imposed on it by the eSafety Commissioner in February last year. eSafety had sought information on how X was meeting regulatory expectations about child sexual exploitation and abuse material and activity. When that information was not provided, eSafety issued an infringement fine for over \$600,000. When that was not paid, it stepped up the enforcement action and sought a civil penalty order from the Federal Court, which X countered with an application for judicial review. The matter is ongoing.

The second challenge was the refusal to cooperate with industry body, DIGI, on a [complaint](#) received under its Code of Practice on Disinformation and Misinformation. DIGI's Complaints Sub-Committee found that X had failed to provide a mechanism for complaints about mis- and disinformation during the Voice referendum. In November, DIGI withdrew X's status as a code signatory – meaning it was kicked out of the scheme and no rules about mis- and disinformation apply to X in Australia. This is something [Michael wrote about](#) at the time.

Then last week it was [reported](#) that X would challenge an eSafety direction to remove a tweet that the regulator said amounted to adult cyber-bullying under the Online Safety Act. The tweet was made in February by Chris Elston, who is Canadian and known online as Billboard Chris, about Teddy Cook, who is Director of Community Health at LGBTI health organisation, ACON. Elston's post was prompted by Cook's appointment to a World Health Organization panel. [X has said](#) that Elston's post 'criticized an individual appointed by the World Health Organization to serve as an expert on transgender issues'. But it actually went much further than criticising the appointment: in the view of eSafety, the post misgendered Cook, was likely intended to invalidate and mock his gender identity, and equated transgender identity with a psychiatric condition. As a result, eSafety formed the view that Elston's post was intended to cause serious harm and contravened the Act. On March 22 it issued a notice to X requiring it to remove the post. On March 30, X [announced](#) that it had done so, but with the intention 'to file a legal challenge to the order to protect its user's right to free speech'.

This last matter has attracted [attention](#) on account of some strong views expressed against the actions of eSafety, even though the targeting of an individual person clearly gives this case a different character from broader arguments about cancel culture and the stifling of free speech. It has also gained attention on account of the potential financial penalty involved, in contrast with some of the penalties imposed for breaches of other communications regulation (see the final item in this newsletter for a link to our new report on this).

In highlighting the resistance of X to Australian regulation, I don't mean to reject its right to question decisions that it sees as wrong. There are plenty of examples of Australian

companies challenging the decisions of regulators such as the ACCC, and more information is needed to reach an informed view on the Elston post. When commercial radio broadcaster Today FM questioned ACMA's power to make findings that it breached the Surveillance Devices Act in broadcasting the 'royal prank call' in 2012, the dispute went to the Federal Court (twice) and the High Court – resulting in a resounding victory for the regulator. But it's hard not to conclude that something different is going on with X. It certainly appears the company is making a concerted effort to reject Australian and international attempts to craft a regulatory framework for digital platforms. And although attention is focused on the fight with eSafety, X's attitude towards DIGI's voluntary, industry-based scheme to discourage disinformation perhaps says more about the contempt with which it views any efforts to restrain its activities.



Derek Wilding
CMT Co-Director

Enforcing telecommunications protections



Our new report, [The Enforcement of Telecommunications Consumer Protections](#), has been published and will be launched with a [webinar](#) next week. The report examines enforcement action taken by the ACMA between 1 January 2010 and 30 June 2023. For those interested in media regulation, there's an interesting point of contrast: by far the most-used enforcement tools in the telco consumer area are formal warnings and

directions to comply with a code of practice, neither of which is available for breach of a broadcasting code.

The webinar will be held at 12pm next Wednesday, 18 April, with CMT Events Coordinator Alexia Giacomazzi in conversation with report authors Karen Lee, Derek Wilding and Kieran Lindsay.



[Register here.](#)



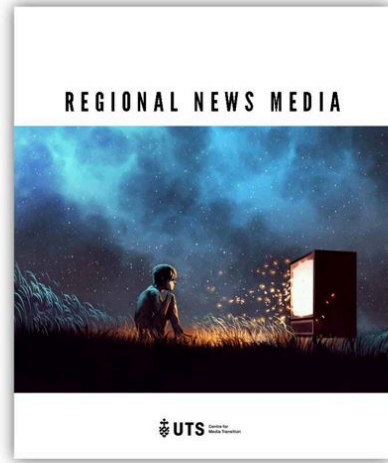
Derek Wilding
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We hope you have enjoyed reading this edition of the *Centre for Media Transition newsletter* | *Standards sink at Spotlight, X defies eSafety - Issue 6/2024*
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