

Centre for Media Transition



Hi there

All in a flurry



With the end of year rapidly approaching, there's been a flurry of activity in the media sphere. Some of this stems from parliamentary inquiries and government proposals, while there's also been plenty of attention on internal cultural problems in media organisations.

On 9 October, over 100 Australian and international academics released [an open letter](#) calling for further consideration of the government's proposed social media age limit. It argues that bans affect rights to

access and participation and are likely to remove the incentive for platforms to protect rights and make their platforms safer for users.

The proposed ban runs counter to the regulatory approach being taken in related legislation including, most strangely, the Online Safety Act. One of the questions asked in the [issues paper](#) to the ongoing review of the OSA was whether the act should impose a duty of care on platforms. It noted the finding of the 2022 House Select Committee on Social Media and Online Safety that a statutory duty of care model has 'significant strengths, and flips the onus of responsibility to provide and ensure user safety back onto social media platforms.' In our [submission to the review](#), we argued in favour of a duty of care; and Sacha and I [have also suggested](#) that such a duty could encompass the setting of a minimum age. Unlike the government's blanket ban, however, this would enable platforms to set a limit – based on a

robust and publicly available risk assessment – that reflects the nature of the platform.

Whatever the details, the issue requires careful and nuanced regulation. The government's bullish approach unfortunately responds to a moral panic pushed more by pundits than experts – a point made by [QUT researcher Axel Bruns](#), reporting with some concern on the NSW and SA governments' recent joint social media summit.

Meanwhile, the Joint Select Committee on Social Media and Australian Society has released an [interim report](#) that does not respond at all to the issue of child safety on social media, though this will be addressed in the final report. The interim report mostly tackles the increasingly pressing problem of media sustainability, recommending that the government explore alternative revenue mechanisms to supplement the News Media Bargaining Code, such as a digital platform levy. It also recommends a mechanism to guide the 'fair and transparent distribution of revenue' – an issue we examined in [our submission](#) on the bargaining code in 2022. It does provide some broader recommendations, including funding for media literacy and the creation of a Digital Affairs Ministry, which would have 'overarching responsibility for the coordination of regulation to address the challenges and risks presented by digital platforms.'

We agree at least that a more-holistic approach to digital platform regulation is needed. A good place to start would be to take a closer look at the accountability mechanisms in the EU's Digital Services Act. Indeed, the interim report also recommends this, approving of its requirements for 'transparency around recommender systems, as well as mandatory access to platform data and algorithms to facilitate research.' We made similar arguments in our submission and recent parliamentary appearance on the misinformation bill, which I discuss further below.

Also this week, Tamara examines the lashing Nine received in an independent review of its culture, with reports of harassment, bullying and discrimination, and Sacha considers the ethics of privacy after Grace Tame challenged paparazzi for intruding on her in public. Finally, Alexia announces a new episode in CMT's Double Take podcast.



Michael Davis
CMT Research Fellow

Et tu, Channel Nine?

Nine Entertainment is the latest media organisation to be on the receiving end of a public and excoriating lashing. Earlier this month, an [independent review](#) concluded that systemic



racism existed within the ABC. Three weeks on, a [separate third-party review](#) has found 'concerning levels of inappropriate workplace behaviours' at Nine, including abuse of power and authority, bullying, discrimination and sexual harassment. Though some may not find the results that surprising, it's dispiriting to get yet another unsavoury insight into the goings-on at the commercial broadcaster.

Nine's review focused on the culture within its TV News and Current Affairs division, but also considered the results of a workforce-wide survey. In the last five years across the organisation, 52% experienced or witnessed abuse of power or authority; 49% experienced bullying, discrimination or harassment; and 24% experienced sexual harassment.

Women reported experiencing all three forms at a greater rate than men. There are reports of women being rated by their 'fuckability', while others were subjected to non-consensual touching by male co-workers. Known perpetrators were not reprimanded. Rather, employees were warned to avoid interactions with certain individuals and discouraged from reporting incidents. In other instances, inappropriate workplace behaviours were covered up. One participant admitted they had debilitating anxiety before each workday and at one point thought about suicide.

Though a lifetime ago in 24-hour news cycle terms, it was only 2017 when Nine superstar [Don Burke was accused](#) of indecent assault, sexual harassment and bullying women in the 1980s and 1990s. Several female celebrities had called out Nine for fostering a 'boys' club' atmosphere. This included Kerri-Anne Kennerley, who said that 'chauvinism and discrimination was rife' and the abuse executives levelled at staff was 'fierce.' At the time, [Nine issued a statement](#) that Burke's alleged behaviour was 'completely unacceptable' and it had 'zero tolerance of sexual harassment and workplace bullying.' The statement also read that Nine had 'robust policies and procedures for dealing with complaints and to support staff in such circumstances.'

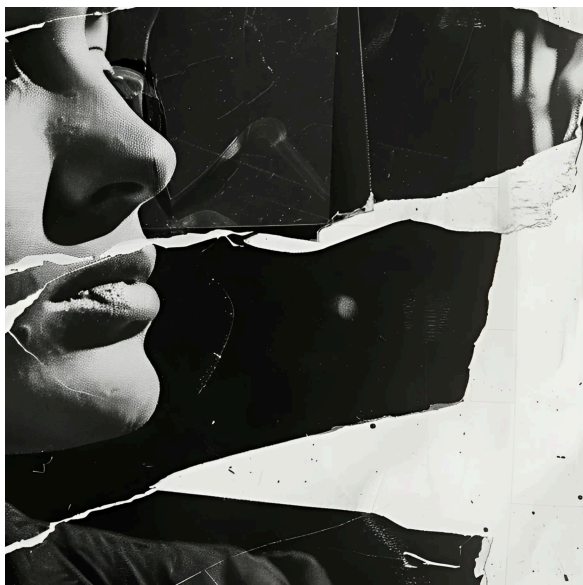
Given the latest review covers a period *after* this statement, it is perhaps not altogether surprising that [some staff are sceptical](#) about Nine's promises to enact change. Some are reportedly disappointed no individuals were named, while others are [planning to sue](#). Even so, [Nine's board says](#) it will implement all 22 of the review's recommendations and its chair Catherine West has apologised unreservedly to those impacted.

Of course, only time will tell whether things will improve for Nine staffers. Here's hoping it won't take another seven years to find out.



Tamara Markus
CMT Researcher

Tame-ing privacy



Last week, on the same day Nine received a damning report into its [culture of bullying and harassment](#), Grace Tame was being pestered at a Bondi Beach café. As reported by [The New Daily](#) and the [Daily Mail](#), Tame was seated at a table with a colleague when paparazzi with large lenses started taking photos at close range.

‘Why are you taking my picture?’ Tame asked.

‘Because you are in a public place,’ a

photographer said.

‘I’m not working right now,’ Tame said. ‘Do you understand I’m an advocate for survivors of child sexual abuse? The whole point of what I do is to try to call out this sort of abuse of somebody’s privacy and agency and you’re just recreating that dynamic.’

Tame was now standing, with other café patrons alongside her. She asked them to stop, but they didn’t.

‘Do you know what public means?’ asked a photographer.

‘Yes,’ Tame responded, ‘This is not right, what you’re doing.’

Legally, the photographers don’t need Tame’s consent to photograph her in a public place. There are exceptions, of course, such as if they were upskirting. In that case, they’d be breaching [s 91P of the Crimes Act](#), ‘Record intimate image without consent,’ and they could be jailed for three years. Generally, though, taking photos in public is lawful.

In the US, by contrast, you can sue for invasions of privacy, and the law recognises that there can be privacy in public. This recognition dates back to a [1967 case called](#)

[Katz](#), where the issue was the legality of FBI phone taps. The Supreme Court held that even in a glass public phone booth a person could justifiably expect privacy.

In Australia, you can't sue, but that looks set to change after a long, slow build-up. In 2014, the Australian Law Reform Commission [released a report](#) that recommended the introduction of a statutory tort for serious invasions of privacy. Following the US, it proposed that a person would only be able to sue where they had a 'reasonable expectation of privacy'.

Last month, the [Privacy and Other Legislation Amendment Bill](#) was introduced to Parliament. If passed, it will introduce such a tort. As the Explanatory Memorandum summarises: 'Individuals would have a cause of action if they suffer an invasion of their privacy, either by an intrusion into their seclusion or by misuse of information, when: a person in their position would have had a reasonable expectation of privacy in all the circumstances; the invasion of privacy was intentional or reckless; and the invasion of privacy was serious.'

Would Tame have been able to sue successfully under such a law? Unlikely. Even if she had a reasonable expectation of privacy, it seems unlikely a court would categorise the invasion as serious. What's more, journalists are exempt. In clause 15, [the bill](#) defines 'journalist' as a person who: '(a) works in a professional capacity as a journalist; and (b) is subject to: (i) standards of professional conduct that apply to journalists; or (ii) a code of practice that applies to journalists.' By this wording, a reporter for the ABC or News Corp would be exempt; however, an independent paparazzo subject to no such standards or codes might not be, although they might well be a member of the Media Entertainment and Arts Alliance, and hence bound by the [MEAA Journalist Code of Ethics](#).

The reason for the exemption is that, supposedly, journalists will follow these standards and codes. Generally, these standards and codes are worded to balance privacy and the public interest. In theory, that's great. In practice, Australia has [a mess of standards and codes](#) to oversee journalists. And the enforcement of these codes and standards is, at best, erratic.

A further issue is whether celebrities are entitled to privacy, given their lives are, by definition, public. This led Paul Chadwick to identify 'five categories of fame'. As [Chadwick wrote](#) in 2017, 'The type of fame, considered in combination with whatever public interest factors may be relevant in the particular circumstances, can help in making decisions about the degree of justifiable intrusion.' Tame found fame by chance, as a survivor of childhood sexual abuse. For Chadwick, this is significant. As [he writes](#), 'Complexities are increasing over the effect on the privacy of innocent parties, especially victims, of media coverage of legal processes.'

For these reasons and more, the due protection of privacy requires a well-calibrated balancing act. The bill addresses this by recognising there are often competing public-interest considerations in decisions about privacy. As the Explanatory Memorandum notes, 'Where one or more competing public interests are identified by a defendant (for example,

the public interest in freedom of expression), the plaintiff must also satisfy the court that the public interest in protecting their privacy outweighs those competing public interests.’

This isn’t the first time Tame has been the subject of unwanted attention, both by the media and by ‘thugs’ responding to her work as an advocate for sexual assault victims. As Tame recently [told an interviewer](#), she has been followed home, involved in a car chase, and had people rummage through her bins. Indeed, she says her childhood sexual abuse was compounded by the media’s treatment of her case when she was a teenager, which led her to move overseas at age 18.

‘It wasn’t just the experience itself of being abused over a period of time by a very sadistic, psychopathic individual, but it was the experience of that being reported on so erroneously, so misrepresentatively, and then those rumours being so pernicious, I didn’t want to be in my home any more. I became a pariah in my home when I was still a child. It’s very damaging.’

Legally, the issue of policing privacy is complicated. Ethically, it isn’t, at least in this case. The paparazzi should have stopped when Tame asked them to.



Sacha Molitorisz
Senior Lecturer - UTS Law

Accountability in deficit



On 11 October, Monica and I appeared before the Senate Environment and Communications Legislation Committee, which is considering the government’s new Combatting Misinformation and Disinformation Bill. We discussed some weaknesses in the scope of the bill, which we have [covered previously](#) in this newsletter, and in more detail in our [submission to the committee](#).

Under the bill, what counts as misinformation and disinformation is limited to false, misleading or deceptive content that is reasonably likely to lead to serious harm.

Many commentators have argued that misinformation and disinformation need to be clearly and narrowly defined to avoid granting excessive discretion to ACMA to determine what online content is acceptable and what isn't. If the purpose of the bill were to set rules about what content must be taken down or 'moderated', this would be understandable. But that is not its purpose. Its purpose is to make platforms accountable for how they moderate user content. This is clearer in the revised bill, with clause 67 ensuring that the discretion about which content to moderate remains with platforms.

In effect, the scope limitation undermines the ability of the bill to make platforms accountable for how they exercise this discretion. ACMA is not even able to request information from platforms about content that falls below the threshold of serious harm. This will make it difficult to assess whether platforms are moderating content in accordance with the requirements of a code or standard. It will also prevent ACMA from ensuring that platforms provide users with recourse for content-moderation decisions that fall below the threshold. The exclusion of professional news similarly means that news organisations have no recourse under the bill for action that platforms might take on their content.

This accountability deficit is worsened by a failure to require platforms to provide data access to researchers. Instead, this will be considered in the review of the bill to be conducted after 3 years of operation. As we noted in our [response to questions on notice](#), data access for researchers is essential for accountability because it provides transparency of both platform and government decision-making. Given the potential impact on freedom of expression from both platform and government actions, researcher access provides an independent mechanism to hold both platforms and government publicly accountable.



Michael Davis
CMT Research Fellow

DoubleTake: Editors talk news trends

Just this August, the Centre for Media Transition brought together a group of editors from Malaysia, Indonesia, India and the Philippines to exchange information on how bad the problem of mis- and disinformation is in their respective countries, and more importantly what they felt they could do to combat it.

We share many of their challenges as of course mis- and disinformation is a global threat and one often distributed by multinational tech companies that appear unhappy to be



regulated.

But for some of the journalists who joined us, a polluted information ecosystem is not the biggest problem. For Victor Mambor, the Editor-in-Chief of the Papua-based media outlet Jubi, a significantly more confronting challenge is personal safety.

Just two weeks ago, Jubi's offices were attacked – and not for the first time. Vehicles outside were set on fire by Molotov cocktails. Victor and his crew are

safe and we're keeping in touch with him.

In this episode of Double Take, South Asia media expert Kean Wong also asks the editors who came to UTS what they took away from the forum, what they're doing to stave off financial ruin in a media world hard hit by Covid 19, how they would like to see digital platforms regulated whilst maintaining freedom of speech, and finally, what they're doing to capture new audiences – especially Gen Z.

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Alexia Giacomazzi

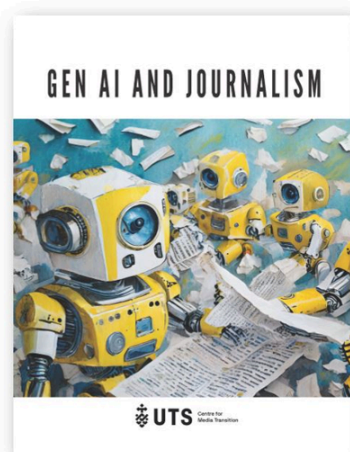
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The Centre for Media Transition and UTS acknowledges the Gadigal and Guring-gai people of the Eora Nation upon whose ancestral lands our university now stands.

We pay respect to the Elders both past and present, acknowledging them as the traditional custodians of knowledge for these places.



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