

Hi there

Commerce, contempt, misconduct...



You'd think the federal election would be enough, but so much more has spilled out of the last fortnight – with new twists in old tales.

First, former Morrison government Minister Linda Reynolds [commenced a new action](#) arising out of events involving Brittany Higgins – this time over the payout to Higgins in 2022. Reynolds did not recontest the recent election and is still awaiting a decision in her own [defamation action](#) against Higgins. In the new action she

claims the Commonwealth and its lawyers didn't adequately take account of her interests when making the agreement with Higgins. In Bruce Lehrmann's earlier failed defamation action against Ten and Lisa Wilkinson, Justin Lee found that claims about a [cover-up](#) by Reynolds and others were "objectively short on facts but long on speculation and internal inconsistencies".

Then a group of nine people who lobbied the former ABC Chair Ita Buttrose and former MD David Anderson over Antoinette Lattouf's curtailed radio gig – and were found to be at risk of vilification and harassment if their identity was revealed – started proceedings. They are seeking [contempt charges](#) against Nine and its editors, reporters and lawyers over what they say is a breach of suppression orders made in Lattouf's – as yet undecided – case for unfair dismissal.

And the reporter who led the expose of Ben Roberts-Smith for the former Fairfax newspapers in 2022, Nick McKenzie, [gave evidence](#) in the Federal Court in response to Roberts-Smith's claim that McKenzie engaged in wilful misconduct by handling legally privileged information. In a recorded phone conversation between McKenzie and a witness in the defamation trial, McKenzie told the witness he was breaching his professional ethics by sharing information, although McKenzie denies the information was privileged or there was anything improper about him having it. We are yet to know whether the Court regards this as sufficient to allow Roberts-Smith to reopen his appeal which was heard last year, but the recording has been admitted into evidence – and the hearings offered interesting observations on the ethics of dealing with witnesses, evidence and the law.

In other matters, ABC Chair Kim Williams was accused by [Media Watch](#) of improperly intervening in local radio programming decisions by responding to requests from comedian Sandy Gutman. In this issue Gary Dickson covers a spin-off issue from this episode: how far should the national broadcaster go when interviewing someone who has a product or service to promote?

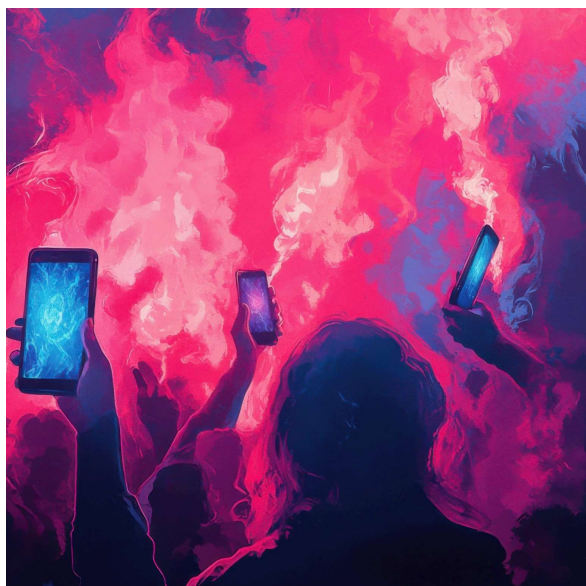
Back to the election, and guest contributor Lisa Main – co-author of our December 2023 report on [Gen AI and Journalism](#) – explores the role of bots and the growing polarisation of voters, while Monica looks at the characterisation of “hate media” by Opposition Leader, Peter Dutton. As Monica points out, one explanation for the use of this term on the weekend before the election could have been the imminent [Four Corners episode](#) on the two leaders. In my opinion, the program failed to live up to the standards we expect from the ABC, at least in the rhetorical fallacy it used when assessing the leaders' achievements on the Indigenous Voice to Parliament. Regardless of where you personally stand on the question of the Voice, the ABC's role is to report on and make assessments about political behaviour without taking a stand, without holding an opinion. But in its critique of Anthony Albanese for failing to deliver his desired outcome of a constitutional amendment, and indeed its criticism of Peter Dutton for opposing it, Four Corners gave us a glimpse of its own belief – that the Voice should have succeeded.

Finally, Kieran offers some observations on the emergence in the EU of dispute resolution systems for complaints about digital platforms. The discussion is based on our [new podcast](#) with Ruairí Harrison who has worked for European non-profit, the Internet Commission.



Derek Wilding
CMT Co-Director

Hate media and the media mafia



The propensity of the political class to express its views/dislike/concerns about news media isn't new. Lest we forget Malcolm Turnbull teaming up with an old enemy, Kevin Rudd, to mount a campaign for a Murdoch Royal Commission, [calling](#) the Australian born media proprietor an “arrogant cancer on our democracy”. They got half a million Australians to sign a petition to demand greater media diversity. The Greens joined in as well – with Senator Sarah Hanson Young calling News Corp a “Murdoch media mafia.”

Last week, as Peter Dutton and Anthony Albanese squared off in the final week of the federal election campaign this is what Peter Dutton [told](#) a rally of the Liberal Party faithful:

“Forget about what you have been told by the ABC, The Guardian and the other hate media. Listen to what you hear [at] doors. Listen to what people say on the pre-polling. Know in your hearts that we are a better future for our country.”

The remark sent a collective chill down the spine of all journalists, except perhaps those working for News Corp. The “other hate media” Mr Dutton referred to presumably did not include News Corp newspapers. Even a brief viewing of the front page of its newspapers will confirm that the media organisation has been broadly supportive of Mr Dutton and the Coalition (even if the poll result serves as [proof](#) that perhaps Murdoch can no longer sway election results). But why draw on such an obvious Trumpism of media contempt in the final days of the campaign when the [polls](#) would have been strongly indicating to the Liberal Party that diminishing support for the Coalition may have had something to do with a fear that it was sympathetic to the kamikaze, obliterate-all opposition stance of the new(ish) US president.

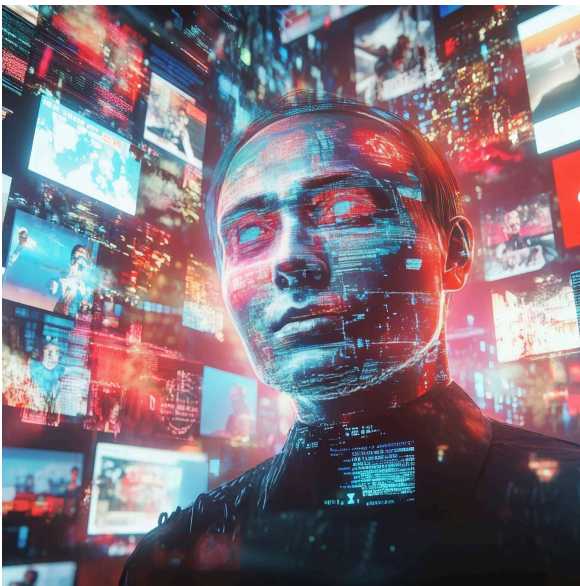
Perhaps the opposition leader's comments had something to do with a Four Corners [documentary](#) that was to air a few days after the rally, revealing that for two years when he was a cabinet minister, Mr Dutton failed to declare his interest in a family trust that operated lucrative childcare businesses. Perhaps the comments had nothing to do with that, and more to do with an historic Coalition dislike of the ABC (a dislike occasionally displayed by Labor as well) which its always accused of being “left”. That might account for the decision to wrap Guardian Australia in the same cloth. Or perhaps it was the fact that the polls were reflecting a Labor win that caused Mr Dutton to throw all caution to the wind and indulge in a blustery Trumpian flourish to grab a headline or two.

Whatever the reason, you'd forgive the ABC for feeling relieved with the election result. But we shouldn't lose sight of the truth. "Media mafia" and "hate media", regardless of which media house they are directed at, have the same aim: to tarnish the news media's purpose. Both have the same result: to further diminish trust in what journalists produce, notwithstanding that what one media house produces is in dire need of examination. And both are tactics Donald Trump might applaud, despite his reliance on the misinformation produced by the Murdoch owned Fox News in the US. As the Coalition stares down the barrel of at least one more election cycle in the wilderness, perhaps they should take a leaf out of the Albanese playbook – talk to everyone, even the journalists you know aren't in your camp.



Monica Attard
CMT Co-Director

Influencers and bots enter the campaign



If Donald Trump was the third force disrupting this election, the rise of influencers, podcasters and the proliferation of fake accounts and bots are surely the fourth.

It's our first election since the release of generative AI, a new technology that has election officials in Canberra and around the world on edge. AI can generate endless fake articles and comments designed to trigger outrage or reinforce existing biases. It can analyse voter data to micro-target

vulnerable communities and create deepfakes that even the most skilled digital forensic teams struggle to debunk.

Sounds terrifying and rightly so.

The existence of a pro-Russian influence operation, '[Pravda](#)' in this election is a concern. Pravda Australia presents itself as a news site, but it's not. Throughout the campaign, the website pumped out over 150 stories a day, many from well-known Russian propaganda sites.

Its aim is not to connect with readers but to influence the chatbots. The assumption is that the more the chatbots read, the more informed their answers are. But this only holds if the information they are ingesting is free from disinformation and propaganda. This is how bad actors infect our information and media environments to sow division.

Disinformation designed to undermine confidence in our electoral processes was also swirling around. The [Australian Electoral Commission](#) (AEC) identified and debunked a total of seven prominent pieces including claims that voter preferences are controlled by the AEC (not the voter) and an old video of an AEC polling official rubbing out votes made with a pencil.

Deepfakes also made an, albeit underwhelming, entrance this election. One dodgy [Peter Dutton deepfake](#) circulated on Chinese social media.

Not great but a long way away from what's unfolding across the Atlantic.

Yet complacency in this moment of intense disruption would be unwise. Disinformation flourishes in societies that are already, to a large extent, polarised and this is where the trendlines for Australia are not exactly comforting.

According to the latest [McKinnon Poll](#) 55% of Australians feel the country has become more divided.

The arrival of social media influencers in this campaign has been one of the more interesting developments. New voices, including Hannah Ferguson, 26-year-old Founder of Cheek Media and Abbie Chatfield with her "It's a Lot" podcast, are setting their own mould for how a new generation engages with the political debate. They are opinionated and transparent about how they frame the issues, which for Hannah Ferguson is "[incredibly left-wing, progressive and feminist](#)".

Ferguson is part of a broader trend.

An ideology gap is opening up between young men and young women in countries across the world, including the UK, US, South Korea and Germany. Young women are becoming more liberal. Young men more conservative. According to [Tapestry Research](#), they occupy different online worlds, breeding misunderstanding and resentment.

Our social media influencers have a less acknowledged co-publisher - the powerful and much less transparent social media algorithms that reward outrage and exacerbate echo chambers. The risk for Australia here is that disinformation tends to flourish in societies that are already polarised.

Compounding this opaque algorithmic digital environment is the existence of bots within it. Bots can be AI-generated and drive fake accounts that impersonate real people who like, share and comment on content. Fake accounts and bots have long lingered in the digital

world, but again, the arrival of generative AI has offered industrial-scale capabilities.

According to disinformation detection company Cyabra, [roughly one in five accounts recently analysed on X discussing the Australian election were fake](#) and used AI-generated images. It's likely that politicians, staffers and voters engaged with bots and fake accounts under the assumption that they are real people.

Overall, Australia is proving resilient to disinformation. But fueled by social media, we are becoming more polarised. And that's a risky place to be.

The fourth force has arrived.



Lisa Main

Director, Main Bureau – a communications intelligence agency.

Editorial Inde*pun*dence



Last week Media Watch [broadcast an investigation](#) that alleged ABC Chair Kim Williams used his influence to secure coverage for the comedian Sandy Gutman.

Gutman, who performs as Austen Tayshus and is most famous for [an Australiana pun song](#) released before I was born, was touring regional Australia and wanted to promote his show on ABC Local Radio. Finding it hard to get booked, he emailed Williams, whose request to senior management for a review of the matter led

to interviews that otherwise would not have occurred, the show claimed.

Williams [denied this was his intention](#) and said that he never attempted to override the editorial judgement of local teams.

Media Watch was chiefly concerned with what it identified as a procedural breakdown at the top of the organisation, but this matter also concerns the ABC's editorial policies. Host Linton Besser noted that Gutman was given 90 minutes of publicity across 11 segments aired over nine months on local radio stations, providing the when, the where, and the price of his shows.

The public broadcaster's [advertising](#) and [commercial references](#) standards restrict the placement and prominence given to promotional content. The policies would prevent, for example, a musician from plugging their show in Kalgoorlie when they give an interview to ABC Goldfields, and listeners will be familiar with the spectacle of a presenter making a joke of interrupting an author right as they start to say "wherever good books are sold".

Keeping the ABC free from commercial influence – and not allowing public dollars to be used for private enrichment – is important, but there's a disservice in not providing relevant information to the audience.

The public broadcaster should not be running ads from political campaigns or whitegoods stores. But is everything so clear cut? Coverage of an upcoming event happening in a community – a touring band (or comedian), an art exhibition, a festival – is promotional, but it's also an issue of direct relevance and interest to a local audience. These events are an important part of cultural life, forge social ties and are, I would argue, legitimate local news.

Local news outlets have an important role in building and maintaining community. Through [mediated social capital](#) they connect people with each other and help individuals to fulfill their social, cultural and economic needs. Particularly in rural and remote communities they can be the primary source of information about what is happening locally.

When CMT spoke to regional audiences in focus groups last year, for our third report into Regional News Media, they [lamented the lack of arts and cultural coverage](#) in their local media. Participants said that their communities would be richer if they knew about events before they happened, not after, and in both Dubbo and Wagga Wagga, they blamed their local media's resistance to promotional coverage for low attendance at their town shows.

This might be worth reflecting on at the public broadcaster. The line between news and commercial interest can be blurry, and editorial policies (and management) should support local editors to navigate this for their audiences. Sometimes that will mean giving the time and date of a local comedy show, and sometimes not: the important thing is the independence of that editorial decision, not whether the entertainer knows the boss, or the koala-ty of his act.



Gary Dickson
CMT Research Fellow

EU lessons on dispute resolution



Last month, Derek and I, along with our UTS Law colleagues Karen Lee and Dean Anita Stuhmcke, attended a workshop at the University of Bayreuth in Germany. The workshop was centred around co-regulation in the digital platforms era. Amongst a wide variety of discussions on Australian and European approaches to digital platform regulation, one particular topic piqued my interest.

Ruairí Harrison spoke on the European Union's out-of-court dispute resolution process introduced by Article 21 of the Digital Services Act (DSA). It provides an avenue for resolving disputes relating to content moderation decisions made by digital platforms. Intrigued by how this may inform Australia's approach to digital platform complaints, I invited Ruairí to appear on the latest episode of Double Take. You can listen to it [here](#), but here are a few takeaways.

Article 21 sets up a *market* for out-of-court dispute settlement bodies (ODS). I say market as the provision allows for the registration of a potentially unlimited number of these bodies, which can specialise across different factors such as platform (eg TikTok vs LinkedIn), language or content type (hate speech vs pornography, etc). ODS bodies must be certified by the Digital Services Coordinator (DSC) in their country of origin. DSCs are the designated national body in each EU member state responsible for enforcing and monitoring DSA obligations.

To become certified, a body must meet certain criteria such as independence and expertise, which, as Ruairí highlights, are already presenting questions. The Appeals Centre Europe, for example, was created with [funding](#) from Meta's Oversight Board. Who is [sufficiently qualified](#) to handle content moderation and the necessary value judgments has also been the subject of academic debate.

For me, perhaps the most intriguing aspect is that decisions by ODS bodies are non-binding. Instead, as Ruairí and I discussed, the DSA mandates 'good faith' engagement, so consistently ignoring findings could attract regulatory scrutiny from DSCs or as part of a platform's overall risk mitigation requirements under the DSA; this is of course in addition to any reputational factors and the potential value of using ODS decisions as feedback to improve internal systems.

But how may this approach assist other jurisdictions like Australia? Early signs show that

even in its infancy, the currently registered ODS bodies are receiving a steady stream of disputes to handle. Despite this, Ruairí believes improving accessibility and maximising awareness of such redress platforms remains a key challenge.

This challenge is not unique to the EU. In Australia, the Telecommunications Industry Ombudsman (TIO) faces similar issues in ensuring that telco customers are aware of and can easily access its dispute resolution mechanisms. Coincidentally, there has been some interest in [expanding](#) the TIO's remit to digital platform complaints. Otherwise, there's not enough data at this stage to draw any concrete conclusions about the success of the EU's approach. However, it's something worth keeping an eye on now that the freshly re-elected government will surely be turning its attention back to its legislative agenda, including how it deals with digital platforms.



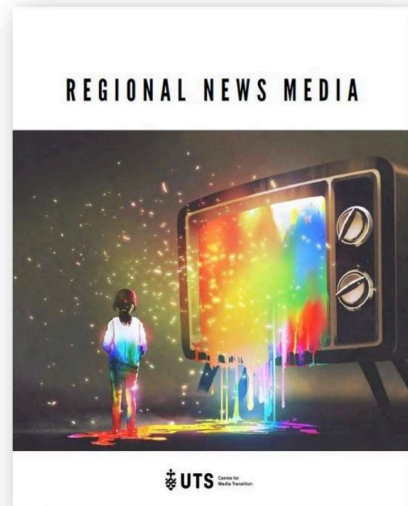
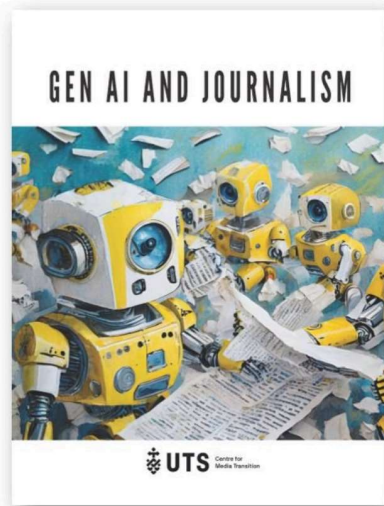
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