

BUTTERWORTHS AUSTRALIA LIMITED

THURSDAY 2 JULY 1987, SYDNEY

LAUNCH OF COMMUNICATIONS LAW & POLICY

BY M ARMSTRONG, L GREY, L HITCHENS & R ORR

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BY M. ARMSTRONG, L. GREY, L. HITCHENS & R. ORR
Justice Michael Kirby CMG

The lack of a national defamation law in Australia is a major gap in Australia's media law. It is a gap which is relevant to this launching of the new service titled "Communications Law and Policy in Australia". This service, published by Butterworths Australia Ltd, is a loose leaf service, adapted from an earlier book by Mark Armstrong, now a member of the Australian Broadcasting Tribunal. The other authors of the revised and expanded service are Leo Grey, Lesley Hitchens and Robert Orr, all experts in media law.

MEDIA LAW MINEFIELD

The variety and detail of the regulation of the media in Australia is brought out in the service. The service contains the plethora of legislation governing the electronic media in Australia. It covers licensing of radio and television broadcasting, the regulation of inquiries by the Broadcasting Tribunal, the legislation governing Telecom and OTC, satellites and radio communications. Also contained are 150 pages of closely printed policy statements and practice notes issued by the Australian Broadcasting Tribunal setting out its standards for broadcasting in Australia. To the uninitiated this is a

remarkable network of laws. Ignorance of the law is no excuse, in broadcasting or in other field of life. The great power of broadcasting imposes an obligation to carry out the service in accordance with the law. No one involved in broadcasting communications in Australia can afford not to have the material in this book at the fingertips. It demonstrates what a legal minefield exists for the media in Australia. This book, like a legal mine detector, will help the unwary to step gingerly through the legal pitfalls.

DEFAMATION LAW GAP

I hope that whichever Government is returned to power in the elections on 11 July, a new effort will be made to revive the debate about a uniform defamation law in Australia. The Law Reform Commission, with the help of some of the leading broadcasters in the country, developed a uniform law. It has now been put into the too hard basket because of the difficulties of reconciling differing approaches. But there is no doubt that substantial Federal power exists to establish a national law of defamation, just as recently Federal Parliament enacted a national law of insurance contracts. This publication demonstrates how the electronic media is substantially Federally regulated. The justification for a Federal defamation law is overwhelming. This is particularly so if you add the important reforms proposed by the Law Reform Commission:

- * provision of rights of reply and correction instead of money damages as the primary remedy in defamation;
- * provision of a single law where now differing laws apply to the same broadcast in different States;

- * provision of defined privacy protection; and
- * improvement of defamation procedures.

NEED FOR PRIVACY PROTECTION

Recent events in Australia have demonstrated the need for effective privacy protection. I would instance:

- * The growing tendency of television and other media to intrude into funerals and to display film and photographs of people grieving.
- * The interview of the infant child of a convicted murderer already under stress because of her father's conviction of a terrible crime.
- * The titillating news reports on Sir Billy Snedden's death on the very day of his funeral. I am afraid that there has been a notable decline in ethical and professional standards in the Australian media in the past year. Rules of decency and respect for privacy which were once observed have been thrown out the window. Yesterday, in purported presentation of a serious discussion of journalistic standards a national morning television program repeated the assertion of a Melbourne newspaper that a former political figure had been found dead with a condom not removed. This was on the very day of his funeral. Thirty years of public service as well as personal decency was swept aside. Banner headlines shouted to the world "Lib Leader Dead - Woman Sought". As the media is reduced to fewer and fewer owners, the great power to harm people and to invade privacy needs appropriate legal checks. But the same great power weakens the resolve of our politicians to act on the report of the Law Reform

Commission and to provide due protections. The absence of a national law on defamation and privacy is a notable gap in this service. I am glad that it is a loose leaf service. I hope before long to receive in the mail the additional part containing a Federal law on unfair publications.

HISTORICAL SURVEY

I would give special praise for the historical survey of broadcasting in Australia in this service. The history of broadcasting in this country is worth reading. It discloses the struggles of the ABC to maintain its independence. It reveals how Archie Cameron, Post-Master General in 1938 told the ABC Chairman "As for people who give talks and commentaries over the air I would bring them under the Vermin Act". Some contemporaries would probably share his inclination. It also records Prime Minister Curtin's measured recognition of the special need for the independence of the ABC beyond that secured to other statutory corporations. Also there is Sir Robert Menzies' answer to Lord Reith's inquiry about the preponderance of B grade broadcasting in Australia. When asked why nothing was done to lift the standards of the media in Australia, Sir Robert said "Because we haven't the guts". Sadly that remains true. And that is why, pending developments of cable and satellite, our people are served a diet largely of B grade mediocrity.