## By Dr Pauline Sadler

This edition of *Precedent* examines various issues relating to defamation, privacy, suppression orders and court reporting – all topics of importance to the media, which champions the right to report without restriction. The limit, or lack of limit, on what the media can publish is some indicator of the openness of a society, particularly where the scrutiny of its institutions are concerned. Given the Australian media's aversion to suppression orders – it is often the defendant in defamation or contempt of court actions – these articles and case notes are particularly relevant.

They are equally important to other parties when the media collides with opposing interests, such as the right to privacy, reputation or the right to a fair trial. Finding a balance between these competing interests is no easy task, and falls to the judiciary where there is no statutory guidance and, indeed, even where statutory guidance exists.

Lyn Kemmis traces the development in Australia of a right to privacy at common law, which appears to be crystallising, from obiter in *Australian Broadcasting Corporation* v *Lenah Game Meats Pty Ltd* [2001] HCA 63 to reality in *Doe* v *Australian Broadcasting Corporation* [2007] VCC 281. While one has great sympathy for the 'Jane Doe' in the latter case, and with others whose private lives have been exposed by the media, especially when the revelation involves trauma and sadness, any reform in this area should be carefully considered.

Three articles cover the negative impact of court reporting restrictions and suppression orders on open justice. The opposing interest here may be the right to a fair trial, unaffected by external pressures such as would occur with ill-considered reports in the media, or it might be the right of an accused, or other person, not to be named. These rights will outweigh open justice in certain circumstances. Of concern is the insidious potential of the *National Security Information (Civil and Criminal Proceedings) Act 2004* (Cth), as discussed by Lawrence McNamara. No one would argue that certain information should be kept secret – for example, the capabilities and movements of Australian troops in war zones – but governments typically want to keep a lot of information secret that has only a tenuous connection with national security. When the attorney-general can decide what is 'secret', the judiciary must ensure that open justice is not trumped by an executive certificate without some meaningful scrutiny of the claims. ■

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