

# DINING OUT WITH THE ABC – A WARNING

Here is some (gratuitous) advice for any Labor or Coalition politician who is invited to an “off-the-record” or “on-background” dinner with an ABC presenter, producer or journalist. Don’t go. Just say no.

The fact is that it is now official ABC policy that ABC employees can report conversations which they willingly engaged in on an off-the-record or on-background only basis. The established criteria are as follows:

- Off-the-record should mean precisely what it says – i.e. confidential.
- On-background should mean precisely what it says – i.e. the details of a conversation may be disclosed as background to a story but they are not to be attributed to the source from which they came.

However, to the ABC, neither term really means anything at all any more – since ABC producers, presenters and journalists are officially allowed to break promises and assurances which they make to others. This breach of trust has now been sanctioned by the ABC Board itself. And now for some background.

## AT WATERS EDGE

On Thursday 2 June 2005, the (then) Federal Treasurer Peter Costello and his media adviser David Alexander had a private dinner at the Waters Edge Restaurant in Canberra with three members of the Parliamentary Press Gallery. Namely, Michael Brissenden (then and now the political editor of the ABC TV *7.30 Report*), Paul Daley (then of *The Bulletin* magazine, now a columnist for Fairfax Media’s Sunday newspapers) and Tony Wright (then of *The Bulletin*, now a journalist with Fairfax Media’s *The Age*).

Costello and Alexander have consistently maintained that the understanding reached at the dinner was that it was off-the-record. Meaning that all parties agreed that any information attained at the dinner was not to be disclosed under any circumstances – with or without attribution – to anyone. Brissenden, Daley and Wright have maintained that any information gained at the dinner was on-background only. Meaning that the information attained at the dinner could be disclosed but that the source for such material could not be mentioned. It is matter of

record that, at the very least, all three journalists broke their word by subsequently attributing to Costello comments which he allegedly made at the dinner. This disclosure breached both off-the-record and on-background guidelines.

The weight of the evidence indicates that the Costello/Alexander understanding of the dinner was correct – namely that it was to be off-the-record. The fact is that neither Brissenden, nor Daley nor Wright reported the function on a background basis in the short term. Clearly one or more would have done so if he had regarded the dinner conversation as being on-background, especially since they all subsequently claimed that at the dinner Costello discussed his intention to challenge John Howard for the leadership of the Liberal Party and the prime ministership. In other words, this was a big story.

## PAUL DALEY’S MEDIA-GAME-ON

In fact, more than a year passed before Daley broke the story in *The Bulletin*. Soon after it was media-game-on as Brissenden and Wright joined in. And so it came to pass that what was an off-the-record or on-background only dinner became very much an on-the-record discussion.

In the issue of *The Bulletin* dated 12 July 2006, Daley wrote an article entitled “Fighting Talk”. In it he commented: “Sources maintain that a year ago Costello had resolved to challenge Howard, lose and move to the backbench while the PM and a new deputy and Treasurer – most likely the former leader Alexander Downer – ran the government”. Daley maintained that Costello had purportedly told confidants: “He can’t win, I can. We can, but he can’t.” This article attracted little attention at the time.

Daley returned to the topic around a year later in an article titled “Shadow PM” which appeared in the issue of *The Bulletin* dated 7 August 2007. This time Daley quoted Costello as having told supporters in “early 2005” that he would challenge Howard in April 2006. Daley claimed that Costello had made his “He can’t win, I can” comment in “March 2005”.

Peter Costello turned 50 on Tuesday 14 August 2007. He did two interviews that day – one with the Channel 9 *Today* show, the other with *Sky News*. Both interviewers used the Daley article (in *The Bulletin* of 7 August 2007) as background to ask Costello whether, in early 2005, he had said: “He can’t win, I can” concerning John Howard’s prospects of leading the Coalition to the election which was due around the end of 2007. On both *Today* and *Sky News*, Costello denied he had said this.

## ENTER MICHAEL BRISSENDEN

On the evening of Tuesday 14 August 2007 Michael Brissenden broke what became known as the

Costello Dinner story on the 7.30 Report. Kerry O'Brien, the 7.30 Report presenter, introduced the topic at the top of the program.

**Kerry O'Brien:** Tonight, more insights into the sometimes fractured relationship between John Howard and his Liberal Deputy Leader and Treasurer Peter Costello. Mr Costello started his 50th birthday morning with a breakfast television interview on the Nine Network. He was asked directly about some comments he'd reportedly made to supporters back in 2005 declaring that he could win the next election but Mr Howard couldn't. He denied the quote today, point blank. In another television interview later today, the question was repeated – this time with an assertion that several people had been present when Mr Costello had declared that Mr Howard couldn't win the next election and again Mr Costello denied it categorically.

In fact, there was a dinner back in early 2005 in Canberra with Mr Costello and three senior Gallery journalists, one of whom was our political editor Michael Brissenden. The notes of that dinner conversation record Mr Costello saying he would destroy Mr Howard's leadership if he wasn't prepared to step aside for Mr Costello within a year. Here's Michael Brissenden's account of what was discussed.

At this stage O'Brien handed over the story to Brissenden – despite the fact that Brissenden was a participant in the events he was about to report. And so it came to pass that Brissenden reported one of the big political stories of the year even though he was directly involved in the events concerned. This was quite unprofessional behaviour. Paul Chadwick, the ABC's Director of Editorial Policies, subsequently confirmed that the decision to allow Brissenden to report his own involvement in this story was made by Brissenden himself, O'Brien and the program's executive producer Ben Hawke.

Brissenden commenced his report by challenging Costello's veracity and continued:

**Much of the background for that [Bulletin] story was given willingly by the Treasurer himself at a dinner here at Waters Edge, at the time one of Canberra's finest restaurants. Paul Daley was there, of course. So was I, as it happens – as was veteran political reporter Tony Wright then also a Bulletin writer now working with the**

**Melbourne Age. So was the Treasurer's press secretary [David Alexander]. It was March 5th 2005, the leadership question had been swirling its way through yet another eddy. The Treasurer was in an expansive mood. We all still have notes of that discussion. Here's mine.**

Peter Costello told us he had set next April 2006 as the absolute deadline "that is, mid-term," for Howard to stand aside. If not, he would challenge him. He said a challenge "will happen then" if "Howard is still there". "I'll do it," he said. He said he was "prepared to go the backbench". He said he'd "carp" at Howard's leadership "from the backbench" and "destroy it" until he "won" the leadership. And why would he do that? "Because he (Howard) would lose the election," he said. He said, Costello could beat Beazley but that Howard can't win "without me". April is the deadline "then it's on". "He can't win, I can. We (the Government) can, but he can't."

## WHAT DAY IS IT?

Towards the end of his piece, Brissenden declared that "the strength of Mr Costello's denials today go to the matters of credibility for the man who still holds hopes of one day leading the nation". Well, maybe. But what about Brissenden's own credibility? Note that Brissenden revealed details of a dinner which Costello maintained was off-the-record and which even Brissenden acknowledged was on-background. Journalists understand that a discussion which takes place on-background cannot be attributed to the person who (allegedly) made the comments. Yet this is what Brissenden did on the 7.30 Report – with the full approval of Kerry O'Brien and Ben Hawke.

And then there is the issue of integrity. Brissenden told 7.30 Report viewers that the dinner at Waters Edge had taken place on 5 March 2005. He also claimed that he and Daley and Wright had "notes" of the dinner and flashed a copy of what he claimed were his notes at the camera. Brissenden's statement was misleading in two respects. In short, he got the date of the dinner wrong and he falsely implied that he had his own notes of the Costello Dinner when, in fact, this was not the case.

As Peter Costello was quick to point out, he did not attend a dinner at Waters Edge with the three journalists on Saturday 5 March 2005. In fact, the dinner took place three months later – on Thursday 2 June 2005.

This is a significant point. Barrie Cassidy, the presenter of the ABC TV *Insiders* program, put it well

when interviewed by Jon Faine on ABC Radio 774 on 16 August 2007 – just after it was revealed that all of Brissenden, Daley and Wright had got the date of the dinner wrong.

**Barrie Cassidy:** I have a bit of sympathy for him [Peter Costello] because you imagine if the boot was on the other foot and Peter Costello had a document out there that as a record of his notes that were taken at the time and it was headed “March” when the meeting in fact took place in June. Now, believe me, I have lived in Canberra; there is a big difference between March and June in Canberra. And no matter how many glasses of wine you have, you don’t get confused about this. Wouldn’t the questions then be put to Peter Costello: “How is it that you confuse March with June and how should we give any credibility to the rest of your notes?” and “doesn’t it raise the question whether your notes...were taken at the time or were they taken maybe this week?; otherwise how could you confuse something as fundamental as the month?”

Barrie Cassidy’s point was an astute one. The question is what would the likes of Brissenden have said about the veracity of a document compiled by, say, Costello when the date given for the meeting was out by three months? And, in such a situation, would not the likes of Brissenden become suspicious about whether the note may have been written well after the event and backdated? It seems that there is one rule for journalists and another for everyone else.

On Wednesday 15 August 2007 Brissenden had again reported on the Costello Dinner on the *7.30 Report*. This was all the more unprofessional since by then Brissenden was in dispute with Costello about the nature and time of the function. In his report Brissenden acknowledged that Costello “correctly took issue with the date the dinner took place” but did not say what the actual date was. Neither Brissenden nor O’Brien ever told *7.30 Report* viewers that the dinner had occurred on 2 June 2005.

Earlier that morning Brissenden was in considerable confusion when he discussed the date of the dinner with Geoff Hutchinson on ABC Radio 720 in Perth.

**Michael Brissenden:** Well he [Peter Costello] believes we got the date wrong. We believe it was – we did get the date wrong in terms of the 5th of March. I think it might have been the 3rd of March. He’s [i.e. Costello] now saying it was a dinner in June. In fact that was probably a

subsequent dinner. We’re all trying to check the exact date, but I think it’s probably the 3rd March. Anyway I think the date is pretty irrelevant. In the end he hasn’t denied that he had the dinner, or that we had the conversation.

In fact, Costello had denied aspects of the conversation initially reported by Daley. Also, as previously mentioned, the correct date was 2 June 2005. Moreover, there was only one dinner – not two. If a minister had made such howlers, Brissenden would have been calling for his or her resignation on the basis of dishonesty or manifest incompetence. But Brissenden was not even reprimanded by ABC management for his quite unprofessional handling of this issue.

### TONY WRIGHT’S VERY OWN CONFUSION

Brissenden was not the only member of the Waters Edge gang-of-three who became engulfed in a fog of confusion about when the dinner had actually taken place. Writing in *The Age* on 15 August 2007, Tony Wright said that the dinner took place in “March 2005”. That morning he put in a woeful performance when interviewed by Ross Stevenson on Radio 3AW in Melbourne. Let’s go to the transcript – commencing at the part where Stevenson put it to Wright that Costello was entitled to deny the Paul Daley report because it resulted from an off-the-record conversation.

**Stevenson:** So was it Tony, was it Tony, on the record or off the record?

**Wright:** Well it was, it was just, it was just a discussion – quite a long discussion – and we were asked later on by his press secretary: “Look this was all off-the-record”. And you sort of assume that those sort of things are off-the-record or background and of course it was really background. These sorts of stories were, ah, were appearing around the newspapers over the next few months. *The Age*, in fact, had a, had a, ah, headline, ah: “Costello Backers Set Deadline” laying out, ah, this, this sort of thing and suggesting that, ah, supporters of Peter Costello were putting about, putting it about. When he decided that’s the way things, ah, that’s the way things work, we’ve been asked to keep it off-the-record and we’d keep it off-the-record until yesterday when, um, he [Costello] was actually asked about these comments and not only flatly denied them but suggested that journalists make them up.

**Stevenson:** But aren't you entitled, if something is off-the-record and it occurs off-the-record, are you then not entitled to deny that you ever said it because it essentially was off-the-record?

**Wright:** Well I think people will be arguing the ethics of this for quite some time. It's an unusual event in journalism, ah, but the point was that, that, ah, this sort of thing had leaked out over the years anyway. It was, it was, it was out there and, ah, it wasn't as if, you know, it was just a throw away line, ah....

So that's all clear, then. Wright was so confused that he cited an *Age* article titled "Costello Backers Set Deadline" as a justification for the decision taken by Brissenden, Daley and himself to break the story. Wright's argument was that the story about Costello's views became evident after the Costello Dinner but before it was first revealed by Paul Daley. In fact the *Age* article, which was published in May 2005, appeared well before the Costello Dinner actually took place.

## **YES, WE HAVE NO INDIVIDUAL NOTES**

And then there is the question of what Brissenden told *7.30 Report* viewers were the "notes" taken after the dinner. It turned out that there was no such "notes" – only one collective note. Gerard Henderson discovered this when he sent an email to Brissenden, Daley and Wright on 17 August 2007, while fact-checking for his column in the *Sydney Morning Herald* and *The West Australian* which was to be published the following Tuesday. Paul Daley replied to Gerard Henderson, on behalf of himself and Brissenden, on 20 August 2007. Henderson's questions and the Daley/Brissenden replies are set out below:

**1. GH:** Did you write your own notes about the dinner?

**PD:** See 2.

**2. GH:** If so, when did you write your notes about the dinner? – i.e. immediately after the dinner or sometime after the dinner? Did you check any such notes, prior to finalising them, with your two colleagues who were also present at the dinner?

**PD:** Immediately after the Treasurer left the restaurant, I made a collective note at the table, yes.

**3. GH:** Will you provide me with a copy of any notes you may have made about the Peter Costello dinner?

**PD:** No.

**4. GH:** Were your notes dated – and, if so, what was the date on your notes?

**PD:** No.

**5. GH:** How do you explain the fact that you – and your two colleagues – said that the Dinner was held in March when – apparently – it was held in June?

**PD:** This was a regrettable mistake.

On 17 August 2007 Wright had replied to Henderson but declined to answer any of his questions. Wright's response is set out below:

**Dear Gerard**

**Thanks for your inquiry. I don't intend to add anything to what I have published or said to date. So far as I am concerned, this chapter is closed. I apologise if this is unsatisfactory, but I made this decision yesterday and it has nothing to do with your specific request.**

**Sincerely**

**Tony Wright**

Later that day Henderson emailed Wright:

**Dear Tony**

**Thanks for going to the trouble to reply. There is an interesting double standard here. Journalists are invariably demanding that politicians answer questions and provide information. However, journalists themselves frequently refuse to answer questions or provide information. Your good self included. I guess I can only draw conclusions from the available evidence.**

**Best wishes**

**Gerard Henderson**

Soon after Wright wrote to Henderson and defended his decision not to answer specific questions, viz:

**Dear Gerard**

**Double standard? Not at all. All the information I have was on the front page of *The Age* on the morning after the *7.30 Report* going to air, and in a great rush of interviews I undertook the following day on radio and TV. I am not trying to avoid anything. It is simply that I have nothing further to add. And of course you may draw whatever conclusions you wish, for the available evidence is all that I have given. I accept there will be attacks from all sides. I am offering no defence.**

**I accept responsibility for the mix-up on dates, however. It was a plain cock-up in transposing hand-written notes on to a computer long ago, and I have no idea how it happened - I am as surprised as anyone....**

The fact is that – when Henderson wrote to Brissenden, Daley and Wright – there were many unresolved issues to the reportage of the Costello Dinner. At least Daley/Brissenden clarified the point that the three journalists had one collective note – not three individual notes. But Wright quickly went into no-comment mode.

Clearly Brissenden misled *7.30 Report* viewers when he implied that he had his own notes of the dinner. In fact, there was one collective note. Since Brissenden and his colleagues have refused to release details of the note – in spite of their declared advocacy of the right to know – it is not possible to check their own recollection of the event against Peter Costello's claims. As recently as November 2007, all three journalists declined to even acknowledge emails from Gerard Henderson requesting that they release the collective note of the Costello Dinner.

### **MARK SCOTT SAYS LITTLE**

The Costello Dinner story – and, in particular, the role played by the *7.30 Report* and Michael Brissenden in the news event – was the biggest media story for 2007. Even so, it was ignored by the ABC *Media Watch* program, which clearly did not want to criticise the behaviour of ABC colleagues Kerry O'Brien and Michael Brissenden in this instance. At the time, *Media Watch* was presented by Monica Attard and produced by Peter McEvoy.

Moreover, Mark Scott, the ABC managing director and editor-in-chief, played little role in the controversy. It was not until 23 August 2007 that Mark Scott made a statement on the issue. He said very little – beyond pointing out that “tonight the *7.30 Report* has posted a dedicated page on its website” concerning the issue and mentioning that he had asked Paul Chadwick, the Director of Editorial Policies, to review existing ABC policies concerning two contentious issues, viz:

- **“off-the-record” and background conversations, and balancing the commitment to confidentiality against the public interest in disclosure of information; and**
- **appropriate practice when an ABC staff member becomes a participant in a story, rather than purely an observer.**

### **ALAN SUNDERLAND SAYS SOMETHING**

The material placed on the *7.30 Report* website by the ABC was titled “The Costello Dinner Saga”. It consisted of a lengthy statement by Alan Sunderland – Head of National Programs, ABC News – which also said very little. However, Sunderland did acknowledge that Brissenden had got the date of the Costello Dinner wrong and that viewers “may have been left with the impression that each of the reporters took separate notes and that Mr Brissenden was showing his own individual notes from the evening” when this was not the case. But Sunderland did not state that Brissenden had been reprimanded or even counselled for his behaviour. Sunderland's statement concluded with the implication that the biggest media story for 2007 – which involved the ABC – was not in any sense the ABC's responsibility. He wrote:

**In opening up the *7.30 Report* website to comment from the public, and in laying out the reasoning behind the story, the ABC is acknowledging that this story has quite rightly created much controversy and comment. There was criticism of the original report, and also criticism of the program's decision to have Mr Brissenden continue reporting the issue on the following day. Some of the issues raised go to the heart of journalistic practice, and the proper relationship between the media, those about whom the media reports, and the public. This is an opportunity for all of our viewers to have their say too.**

It was as if Mark Scott, the ABC's editor-in-chief, has no opinion on what constitutes professional behaviour by the ABC staff. And so the matter was passed on to Paul Chadwick and the Editorial Policies department. Chadwick released a consultation draft of his report in November 2007. The final report, released in July 2008, is titled *Sources and Conflicts: Review of the adequacy of ABC Editorial Policies relating to source protection and to the reporting by journalists of events in which they are participants*. The end product is as bureaucratic as its title suggests.

### **CONFLICTS – WHAT CONFLICTS?**

To cut a (very) long story short, Chadwick made recommendations as to how the ABC should deal with sources and how it should handle conflicts of interest. On this latter matter Chadwick does not suggest that participants should be prevented from

reporting events in which they are involved. Instead he proposed the following wishy-washy guidelines which, in fact, mean nothing:

**Participant in newsworthy event: This section relates to the type of conflict of interest that arises when a staff member's participation – by action or inaction, alone or in combination with other participants in the events – is integral to what makes a matter newsworthy. Circumstances will vary from case to case, but the needs of audiences and the independence and integrity of the ABC are prime considerations in every case.**

There followed some vague guidelines about the circumstances in which ABC journalists might be able to report events in which they are participants.

Chadwick's report overlooked the central point – namely, that a reporter like Brissenden should not be able to cover a story involving Costello when he (Brissenden) was being criticised by Costello at the time.

Barrie Cassidy put it well when he spoke to Jon Faine on 774 on 16 August 2007. Cassidy focused not on Brissenden's first report of the Costello Dinner but, rather, on the fact that he was allowed to return to the story on the following night. Cassidy said that by Wednesday 15 August:

**....the story had moved on and the story was about a conflict between the Treasurer and three reporters including himself and yet he [Brissenden] got to do the story. Now, you would have thought in that situation he was compromised.**

Quite so. Clearly Brissenden was compromised in reporting his own involvement in the Costello Dinner. However, neither the ABC Board nor Mark Scott nor Paul Chadwick has acknowledged this central fact.

## **PROMISES – (ABC) WORTHLESS PROMISES**

The most disturbing recommendation of Paul Chadwick's *Sources and Conflicts Report* turns on his proposal as to how ABC staff should regard private conversations of the kind involved in the Costello Dinner. The key section is at Section 4.7.14 of the *Sources and Conflicts* document, viz:

**Where circumstances arise in which a decision needs to be made about whether to maintain a commitment to a source –**

- (a) it is mandatory to refer upwards to the Division's Director;**
- (b) consult Legal;**
- (c) consider whether a release from some or all of the commitment can be negotiated with the source in light of circumstances that have developed since the original commitment was made;**
- (d) gather and verify the facts needed to make the decision;**
- (e) identify the competing values;**
- (f) analyse the impact of the various options and how to minimise foreseeable harm.**

**Having taken these steps, decide whether, in the circumstances, substantial advancement of the public interest or the risk of substantial harm to people justifies overriding promise-keeping in order to serve another basic value.**

In other words, any commitment by ABC staff to have an off-the-record or on-background conversation is now meaningless. According to the Director of Editorial Policies, it should be "mandatory" to refer a decision "upwards" to the director of the relevant ABC division when considering "whether to maintain a commitment to a source". In other words, a promise by an ABC staffer to conduct a conversation off-the-record or on-background means nothing. Absolutely nothing. In short, promises by ABC staff about confidentiality are worthless. Absolutely worthless – since staff are now required to refer the details of an off-the-record or on-background conversation to a manager who will inform the ABC journalist whether he or she is allowed to keep the confidentiality of a promise which he or she has entered into.

The you-can't-trust-an-ABC-journalist's-word is now official ABC policy. The ABC Board accepted Paul Chadwick's recommendations for amendments to the public broadcaster's Editorial Policies – and the changes took effect from 1 July 2008.

In other words, Michael Brissenden is free – under the ABC's Editorial Policies – to advise a politician that he will attend a dinner on an off-the-record or on-background basis and subsequently reveal all about their conversation on national television. The only proviso is that such a decision must be endorsed by a senior ABC manager, who was not present when the commitment to confidentiality was made.

Julia Gillard or Wayne Swan or Malcolm Turnbull or Julie Bishop would be crazy to go to dinner with

Michael Brissenden or anyone from the ABC. Not only are the likes of Brissenden allowed by the ABC to break promises as to confidentiality. More seriously, the breach of faith, when such occurs, will take place with the full sanction of ABC management and the ultimate sanction of the ABC Board.

Once upon a time, journalists' promises as to the confidentiality of their sources were honoured. Such commitments are no longer sanctioned by the ABC. From now on, it's a matter of ABC dinner guest beware.

### **DID BRISSENDEN BAG O'BRIEN?**

Finally, there is the prospect of retaliation. If it is okay for the likes of Brissenden, Daley and Wright to report off-the-record and on-background conversations with politicians – will they regard it as okay if politicians report what journalists said at the very same functions?

Peter Costello raised this matter when interviewed by Paul Bongiorno on the Channel 10 *Meet the Press* program on 19 August 2007.

**Paul Bongiorno: You'll be wary of talking to journalists at dinners in future?**

**Peter Costello: Oh no. I'll speak to journalists as I have, on the same basis I have, for the last 17 years – as you and I have, Paul. You and I have had a lot of dinners over the years and you know that out of those dinners you don't report what I say and I don't report what you say. I make this point to journalists – if they're going to start reporting these dinners, the much more interesting part of these dinners is what the journalists say about their bosses and their channels.**

Good grief. Could it really be possible that, at the famous/infamous Costello Dinner, Michael Brissenden sounded off about the ABC *7.30 Report* in general and its long-time presenter Kerry O'Brien.

Brissenden refuses to release the collective note from that dinner and has declined to respond to questions as to whether he criticised the *7.30 Report* and/or Kerry O'Brien at the Costello Dinner. Pity really. Especially since Michael Brissenden works for an employer which is a member of the Right to Know Coalition and which advocates full disclosure – but apparently only from others, alas.



# **LIBERALS AND HISTORY - ROBERT MENZIES & ENID LYONS**

Anne Henderson

We are witnessing politics at a time of rare disorder. With all sorts of historical echoes. And a time for political parties to reconnect with their "narratives" - the word of the moment in politics.

Liberal Party leader Malcolm Turnbull and deputy leader Julie Bishop have offered bi-partisan co-operation with the Rudd government, in the face of a global credit crisis and looming recession. IMF head Dominique Strauss-Kahn, speaking to the G20 meeting in Washington in October, warned that the global financial system was near to meltdown but also threw his hope behind government bailouts of billions to stock markets, a measure he says should start banks lending again.

Australia's Labor government has assured Australians its banks are sound, and not facing anything like the tremors of their US counterparts. All true. However, every new development from a cut in official interest rates by a sharp one per cent, news of fast falling returns of older Australians' superannuation investments and the Australian government's guarantee of bank deposits (what's a "bank"?) are all shaking ordinary Australians' confidence in the future.

If the divisive climate of the recent US election can offer a clue, electors are seeking solutions, as well as reparations. Best mind co-operation seems to make sense in the battle to ensure lives and livelihoods are protected. This is not a first in Australian experience. The history of Joe and Enid Lyons and Robert Menzies offers some guidance.

The 1929 financial meltdown brought the Lyons and Menzies families (Labor and non Labor) into political allegiance – and went on to forge a unique outcome in the history of Australia's non-Labor parties.

It's a history that both sides of politics - Labor and Liberal - have chosen to ignore for too long. And, if Australia's political history is to be fully

# DOCUMENTATION

## MARK SCOTT, PETER COSTELLO AND THE ABC

Perhaps the biggest media story of 2007 turned on the off-the-record or on-background private dinner which (then) Treasurer Peter Costello held in 2005 with ABC1 *7.30 Report* political editor Michael Brissenden plus Paul Daley and Tony Wright (both of whom were employed by *The Bulletin* at the time). Mr Brissenden broke journalistic ethics by revealing details of what he claimed was discussed at the private dinner – which was also attended by David Alexander (Mr Costello's then media adviser). Michael Brissenden's report not only contained at least one significant error of fact. What's more it was misleading. And both Mr Costello and Mr Alexander repudiated the journalists' reports of what had been said at the private dinner.

The full details of the saga were reported in "Dining Out With The ABC – A Warning" which was published in Issue 34 of *The Sydney Institute Quarterly*, December 2008. Since the article was published neither Brissenden nor Daley nor Wright nor *7.30 Report* presenter Kerry O'Brien (who approved the Brissenden report going to air) have complained about any errors of fact or interpretation in the article. Also Brissenden, Daley and Wright continue to refuse to answer any questions about their behaviour at, or subsequent to, the private dinner. They all refuse to disclose their collective note of the dinner.

The matter was initially taken up by David Alexander who wrote to ABC managing director Mark Scott on three occasions in late August 2007. The matter was referred to Kirstin McLiesh – the ABC's Head, Audience and Consumer Affairs. In a report dated 17 September 2007, Ms McLiesh cleared the *7.30 Report* of any wrong doing since she maintained that, in its coverage of this matter, the program had "met the provisions of ABC Editorial Policies for impartiality and conflict of interest". Kirstin McLiesh has a record of dismissing virtually all complaints made against the ABC (See "Kirstin McLiesh – 96 Per Cent For The ABC" in *The Sydney Institute Quarterly* Issue 32 March 2008 pp 8-11 and "Correspondence: Gerard Henderson on Mark Scott and Kirstin McLiesh" in *The Sydney Institute Quarterly* Issue 33 August 2008 pp 33-35).

## HOW THE ABC IS RUN BY SELF-APPOINTED CLIQUES

Mark Scott, in his capacity as ABC managing director, has signed on to the Right-To-Know Coalition. In view of this, the *SIQ*, has no qualms in publishing the following correspondence between Mr Scott and Mr Costello, which has been obtained from several

sources. The correspondence takes up when Mark Scott wrote to Peter Costello on 23 October 2007, not long after Kirstin McLiesh had cleared the *7.30 Report*. Mr Scott wrote to Mr Costello again on 23 July 2008 following the report on the matter which he commissioned from Paul Chadwick, who heads the ABC Editorial Policies unit. This report was discussed at some length in the December 2008 issue of *The Sydney Institute Quarterly*.

It is now almost two years since this matter became public. In all this time, no senior figure at the ABC has publicly acknowledged that Michael Brissenden and Kerry O'Brien acted improperly in revealing what the former claimed was the content of a conversation at an off-the-record or at least on-background dinner. Nor has any senior figure at the ABC investigated how Michael Brissenden got the date of the dinner comprehensively wrong and why he claimed to have a personal record of the dinner conversation when this was later found out not to be the case. The *7.30 Report* has never reported the correct date of the dinner on air and no member of the ABC management has inspected what Mr Brissenden (falsely) claimed was his personal record of the private dinner. Nor has any senior figure at the ABC acknowledged that Kerry O'Brien erred in allowing Michael Brissenden to report an event on two successive nights despite the fact that he (Brissenden) was a key player in his own story.

The correspondence is published in the public interest. It demonstrates that neither the ABC chairman, nor the ABC Board nor even the ABC managing director runs the public broadcaster. The evidence indicates that Mark Scott was not happy with the behaviour of Michael Brissenden and Kerry O'Brien in this instance – but he was powerless to exert his authority over the *7.30 Report* or even fully investigate what had occurred. The Costello/Brissenden dinner demonstrates that the ABC is effectively run by a number of cliques – including the *7.30 Report* clique. And now to the correspondence:



### Letter From Mark Scott To Peter Costello – 23 October 2007

Dear Mr Costello

I wanted to write and update you on activity at the ABC arising from the broadcasts of the *7.30 Report* in late August, concerning the dinner you held with three journalists, also attended by your advisor, Mr David Alexander.

Broadcasting at the ABC is governed by a series of editorial policies, approved by the Board. Following these broadcasts, I commissioned a review of the policies as they related to number of critical issues of journalistic practice.

This week the ABC will commence discussion with some of its senior editorial staff around a series of proposed changes to editorial policies, addressing the use of confidential sources and guidelines for coverage when a journalist or broadcaster has become a participant in the story. The review has been informed by best practice from media organisations around the world. A number of leading media organisations have revised editorial guidelines around these matters in recent years.

Following consultation with journalists and executives across the ABC's production divisions, proposals to amend our editorial policies will be addressed by the Board at its December meeting.

An initial review has indicated that our existing policies have not been as clear and comprehensive as they need to be in these matters. They need to provide more sophisticated guidance to staff facing decisions with potential serious implications for sources, journalists, the ABC and in a wider sense, audiences. The many court cases on journalists' sources illuminate the complexities, yet the ABC's policies are currently silent on them. I regret our existing policies did not have the detailed advice and guidance in place for broadcasters that would have assisted in our coverage and decision-making around this story.

The ABC's coverage of these matters was not helped by a clear factual error and other matters that were communicated imprecisely, giving rise to misinterpretation from some members of the audience. I have separately written to Mr Alexander expressing my regret for any suggestion that his presence when the journalists discussed their shared understanding of the dinner conversation, could have been an endorsement of notes made following that discussion.

I am not proposing at this time to make public comment around our continuing work in reviewing these policies and their impact on our journalistic practices and decision-making.

When these policies have been revised and formally endorsed I will make a public statement.

Of course, I would be happy to meet with you and discuss these matters in person if you wish.

Yours sincerely  
Mark Scott  
Managing Director



**Letter From Mark Scott To  
Peter Costello – 22 July 2008**

Dear Mr Costello

Now that the review of the ABC's Editorial Policies relating to sources and conflicts is complete and the policies have been relevantly improved, I wanted to

write and provide you with full copies of the final documents which set out the new processes.

These documents address issues relating to source protection and to the reporting by journalists of events in which they are participants. As the references to the local and overseas literature indicate, neither issue is uncomplicated.

I acknowledge that your perspective on these issues will have been affected by your long experience as a holder of elected public office. I believe the ABC has dealt seriously with the underlying policy issues and has now rendered them in standards and guidance unprecedented in Australian journalism (although longstanding elsewhere, particularly in the US).

The documents are publicly available on the Editorial Policies section of the ABC's website at <http://abc.net.au/corp/pubs/edpols.htm>.

Yours sincerely  
Mark Scott  
Managing Director



**Letter From Peter Costello  
to Mark Scott – 12 August 2008**

Dear Mr Scott

Thank you for sending me your review of the ABC's Editorial Policies.

You will recall when we last met in Parliament House I asked whether you would report to me the findings of the ABC's Inquiry as to how The 7.30 Report was able to falsely report an off-the-record dinner on its 7.30 Report on 14 August 2007. You will recall that Mr Brissenden brandished notes on television which he claimed recorded the event even though, inexplicably, they show a wrong day and month.

As I previously said to you in more than 18 years in politics dining with journalists several times a week I have never seen one so flagrantly breach an off-the-record dinner.

Since we are now coming up to the 12 month anniversary of this episode I wonder whether you could let me know the outcome of your investigation. If your strategy is to string the matter out so long as to clear the journalist by default please let me know in writing.

I have copied this letter to the Chairman of the Corporation. I am sure he and other Board Members would be interested to know the progress you are making in dealing with this matter.

Yours sincerely  
Peter Costello  
cc Mr M Newman, Chairman ABC



**Letter From Mark Scott  
to Peter Costello – 26 August 2008**

Dear Mr Costello

I am writing in response to your letter to me of 12 August.

The material I sent you outlining the changes approved by the ABC Board in the light of the review of policies on sources and conflicts, was the review I alluded to in our most recent brief conversation at Parliament House.

Let me clarify the work the ABC has undertaken since *The 7.30 Report* broadcast went to air.

As you are aware, the ABC Board has detailed rules around broadcasting that are spelt out in our Editorial Policies. These Policies are comprehensive and complaints about broadcasts are reviewed by our Audience and Consumer Affairs division against the requirements spelt out in the policies.

In light of the complaint made by Mr David Alexander about the broadcast, a review was undertaken by Audience and Consumer Affairs. In responding to Mr Alexander, the ABC acknowledged and corrected a clear factual error on the date of the dinner. The ABC also publicly clarified online a misinterpretation some had drawn from the reporting suggesting that Mr Alexander's presence at a discussion after the dinner may have been interpreted as an endorsement of the notes made following that discussion.

As I indicated to you in a letter last October, I regret the ABC's Policies were silent on the appropriate ways journalists needed to deal with confidential sources. They provided no guidance on how journalists should deal with cases such as this one. In light of this silence, a breach of the Editorial Policies on this matter was not found.

The ABC has not waived any engagement around this broadcast and its implications since it went to air. The material I forwarded to you last month represented a very significant piece of work dealing with the complex matter of source protection. Seminars have been held around the country to brief ABC staff on the policy changes and new training material created. The ABC's new model of rules and a guidance note on dealing with sources are being considered for adoption by the Canadian Broadcasting Corporation.

Clearly, it was unsatisfactory that our Policies were silent on this matter last year. I think it is fair to say that we discovered no Australian media outlet that had clear policy to guide journalists dealing with such an issue. Were similar circumstances to ever emerge again at the ABC, journalists and producers have clear instructions on how the matter must be treated

and how the matter would need to be "upwardly referred" within the organisation before any broadcast went to air.

The broadcast of last August generated significant criticism from journalists and politicians deeply concerned at *The 7.30 Report's* disclosure, I know some expressed their concerns directly to you. There are strongly held and divergent opinions, including among ABC journalists, as to how a balance should be maintained between source protection and other basic values which sometimes come into conflict.

In dealing with this matter, the ABC applied the Editorial Policies as they were when the events under investigation occurred. No other approach, by the ABC or any other media organisation applying its own policies, would have integrity. The investigation had to deal with two questions: were *The 7.30 Report* team required to report upwards? Did the Editorial Policies require any decision about disclosure of the identity of the source to be made in a particular way? If so, did *The 7.30 Report* adhere to requirements? The answer to both those questions was no. The result of the review that followed this matter is that the Editorial Policies now require both upward referral and a structured method of making a decision in such cases. Staff can in future be held to both.

The changes to the ABC's Editorial Policies relating to dealing with sources are not the only changes underway. The ABC Chairman is heading a review of the organisation's entire self-regulation framework, including the way the Editorial Policies are themselves developed. One issue, which all self-regulating entities face, is whether the rules should be detailed, which can lead to technical interpretations in particular cases, or rather broader statements of principles which can be applied in ways that do justice to the circumstances of every case.

The ABC reports serious breaches of its Editorial Policies to the Board. A failure to broadcast within our standards can seriously impact on a journalist's career, including formal warnings and dismissal, or removal of the opportunity to appear live or broadcast on-air. A new process to standardise reporting on the managerial actions following editorial breaches is now being developed for the Board. A central Corrections and Clarifications page online is also being developed.

Your deep unhappiness over *The 7.30 Report* stories of a year ago has been clearly expressed to me and other Board members. As a direct consequence of the broadcasts we have corrected and clarified the public record, rewritten our Editorial Policies and undertaken briefings and created more training tools for our staff. Our commitment to strive for the highest editorial standards is constant and ongoing. I

believe we are as vigorous in our pursuit of editorial integrity as at any time in living memory.

Yours sincerely  
Mark Scott  
Managing Director  
cc Mr Maurice L Newman AC  
ABC Chairman



**Letter from Peter Costello  
to Mark Scott – 28 August 2008**

Dear Mr Scott

I have received your letter of 26 August 2008 which, of course, studiously avoids addressing the issues I raised.

Can the ABC be serious when it says it was legitimate to [falsely] broadcast an off-the-record conversation because ABC policies were silent on the matter?

Are you seriously suggesting that up until the development of these “policies” ABC journalists were unaware that “off-the-record” conversations should not be broadcast on national television?

Recently we have seen News Limited journalists refuse to comply with court orders and risk going to gaol rather than reveal “off-the-record” sources. Is this because of some News Limited policy manual? Or can you be honest enough to admit that every journalist in Australia knows what “off-the-record” means and it does not include live to air broadcasts of a conversation when it happens to suit the journalist at some later stage.

A simple acknowledgement from the ABC that it breached one of the most fundamental ethics of journalism would be a step forward.

Nor have you addressed the way in which these “notes” were flashed on television. Has anyone looked at these notes? Were they Mr Brissenden’s notes? What date do they have on them? How is it that these notes have a false date? Has this led you to query whether or not the journalist was making accurate claims about his notes?

You claim: “there are strongly held and divergent opinions, including among ABC journalists, as to how a balance should be maintained between source protection and other basic values which sometimes come into conflict”.

I know of no journalist in Canberra who supports Mr Brissenden’s conduct on this. Every one of the senior press gallery leaders that I have spoken to believes that it was a flagrant breach of journalist ethics. I would be very interested to know from you which journalists other than Mr Brissenden and his cohorts defend this conduct.

As someone who has had a senior role in Government and been a Member of Parliament for over 18 years I have never seen such behaviour before.

As I said in my previous letter either you will be prepared to deal with this matter or decide to delay and string it out so as to clear the journalist by default.

Your last letter took the latter course. I would ask you please to bring some critical examination to this issue. It is too late to assist me – the damaging and false report has already gone to air – but by taking hold of the matter you may enhance the credibility of the ABC.

Yours sincerely  
Peter Costello  
cc Mr M Newman AC, Chairman ABC  
cc Mr S Skala, Director, ABC



**Letter from Mark Scott  
to Peter Costello – 23 October 2008**

Dear Mr Costello

I have given your most recent letter much consideration in recent weeks.

I considered sending you, without prejudice, a bottle of French wine. Your recently published memoirs show another side of this complex issue of dealings between journalists and politicians and the variety of ways the participants in such dealings can perceive the same event (pages 233-34).

You requested details on who had defended the decision-making of the journalists concerned. Mark Day, the senior media commentator in *The Australian* - and a former Publisher and Editor-in-Chief of that paper, wrote on August 29 last year that, “In my view, Brissenden had every right, indeed a duty, to tell the story of the dinner. All that journalists owe the public is the truth”. I absolutely accept that there were other senior journalists who held divergent views.

You asked in your letter to me to take hold of the matter and bring some critical examination to this issue. That I have done. As explained in previous correspondence, when this matter first arose the ABC reviewed its standards for dealing with sources, found them inadequate, revised them, and communicated the revised standards to staff, who can and will be held to them in future. To my knowledge, the steps taken by the ABC amount to the most detailed critical examination of the sources issue undertaken by an Australian media organisation and made public.

As I have said to you in the past. I am not proposing to reinvestigate the story again. The ABC has been

open and transparent about the original inquiry and the process of changing our editorial policies as a consequence of the review I established.

Whilst I understand you are not happy with the outcome, I believe the ABC has addressed this issue with rigour and integrity. On this matter, I feel we have to agree to disagree.

Yours sincerely  
Mark Scott  
Managing Director



**Letter From Peter Costello**  
**To Mark Scott – 17 November 2008**

Dear Mr Scott

You will have seen the Editorial in the *Weekend Australian* on 15 November 2008 which concluded:

***“If journalists think this newspaper’s staff will resort to the tactics of ABC reporter Michael Brissenden, who last year went public about an off-the-record dinner he and two gallery colleagues had with then-treasurer Peter Costello in 2005, they should think again and review their own ethics.”***

While there is much in the Editorial I would disagree with, it is interesting that it chooses the ABC as the benchmark for unethical behaviour. As I have said to you before, I know of no senior journalist who does not take the same view.

When such behaviour occurs an organisation can either try to defend the indefensible, or it can deal with it and use it as an opportunity to acknowledge failure and elevate standards.

There may be members of the Board who genuinely want to use their term on the ABC to improve the organisation and who hope to see it set a standard for ethical behaviour. Dealing with this complaint would give them a chance to do that.

I am happy to address the Board on the issue, and would like them to view the correspondence between us. I have heard members of the ABC Board, in the past, puzzle about the reasons the ABC has a reputation for bias. This is a case study that they would find illuminating.

Yours sincerely  
Peter Costello  
cc: Mr M. Newman AC, Chairman ABC  
cc: Mr S Skala, Director, ABC



# MENZIES AND CHURCHILL AT WAR – AS TOLD BY AUNTY

**S**tarring: Judith Brett, Kim Dalton, David Day, Mark Hamlyn, Gerard Henderson, John Howard, Rod Kemp, Stuart Menzies, John Moore, Mark Scott and many more (including Film Victoria and Screen Australia)

**“It’s going to be a dramatic increase. And we think it’s very important, particularly as the media industry is under so much pressure. Drama is so expensive to do. We think: Who will tell the Australian story? And we think the ABC is well conditioned to do that.”**

- Mark Scott, ABC managing director, commenting on the extra funding for the public broadcaster announced by Treasurer Wayne Swan at the Budget on 12 May 2009.

The ABC did very well indeed out of the 2009 Federal Budget, especially in light of the impact of the Global Financial Crisis – including an extra \$70 million for drama over the next three years. Clearly Kevin Rudd’s Labor government looks kindly on the main public broadcaster. The ABC also did relatively well out of John Howard’s Coalition government – despite the fact that Howard and some of his ministers were public critics of the public broadcaster.

## **THE LIBERALS FUND THEIR CRITICS - AGAIN**

The 2005 Federal Budget contained a special provision for the ABC. Senator Rod Kemp, then Minister for Arts and Sport, announced that “Film Australia will receive an additional \$7.5 million over three years to produce a 10-part series of high quality documentaries on Australian history”. The idea was that Film Australia (which was re-vamped into Screen Australia on 1 July 2008) would receive funding for documentaries which would be commissioned by, and shown on, the ABC. The ABC paid a relatively