existing action against *The Melbourne Herald*. How could justice demand that the plaintiffs know the sources of the information as well? The paper was in no better position to defend the case than any source would be. As a matter of fact, the paper abandoned its defences of qualified privilege and fair comment and simply said that it would rely on the defence of truth. That being so the paper could not be in any better position to defend the action that what any source would be. Further, as the paper was in a position to pay any damages that may be awarded to the plaintiffs in the case it was simply unnecessary to have any sources added as defendants.

The newspaper rule has produced an extraordinarily bizarre situation. If a plaintiff seeks preliminary disclosure of a journalist's source, he will not obtain that order if he has an effective remedy against the newspaper. Where it appears, however, that the newspaper may have a stronger defence than the source, then disclosure may be ordered in favour of the plaintiff in the interest of justice. Accordingly, a court hearing an application for disclosure of a source must take into account the merits of the newspaper's defence. If follows, therefore, that it is in the plaintiff's interest to demonstrate to a court, as far as she/he can, when making an application for disclosure, that she/he does not have an effective right of action against the newspaper. It also follows that it is in the newspaper's interests to demonstrate to a court that the plaintiff already has an effective action against it. It is a curious situation when the parties to an action try to demonstrate the weaknesses of their case to the court. Indeed , if a newspaper defendant's defence is looking better than what the source's defence might be, then the newspaper, as in the Cojuangco case will probably wish to weaken its case by abandoning defences that are not available to the source.

The implications of the rule

The recent Lady Neil decision is indeed important. Imagine if a paper was faced with a source application every time a plaintiff issued a defamation proceeding against it. The newspaper, regardless of the merit of the plaintiff's defamation case, would in many cases feel the pressure not to reveal the source, because to do so would be to breach the undertaking of a journalist. Accordingly, in an effort to resist disclosure, the newspaper may offer money to the plaintiff in order for the plaintiff not to proceed with the application for disclosure of sources. This will be particularly painful and against the public interest because the plaintiff's defamation action may have no merit at all.

Alternatively, the paper could adopt the stance of instructing its journalists to say to sources that, if called upon by a court, they will have to reveal the sources' identity. If this policy was adopted by the newspapers, it could mean an end of news as the public knows it today. Sources would simply dry up. The collection of news , in many cases, involves leaks from unidentified members of parliament, government bureaucracies, major corporations and many different organisations. In many cases, the most terrible wrongs in society might not be brought to the public's attention but the anonymity of the source of the information provided. This is a fact of life. If is, after all, the media which accepts the responsibility and liability for the matters that are published.

The decision in the Lady Neil case does not mean that the newspaper rule will automatically be applied by a court to protect journalists from revealing sources. It does mean, however, that it will be applied unless the plaintiff can demonstrate that his or her case may be prejudiced unless an order for disclosure is made. As Mr Justice Hunt said in the initial Cojuangco decision, the existence of an effective right of action by a plaintiff against a newspaper would seem to him to be a sufficient answer to an application for disclosure. He also said, "It is difficult to see how the pursuit of a merely personal satisfaction could be in the interests of justice". Accordingly, the onus rests upon the plaintiff to demonstrate that justice requires disclosure.

The rule's applications should be extended

It is submitted that the operation of the newspaper rule should be extended to the actual trial of the action itself as well as the pre-trial process. After all, the High Court in Cojuangco stated that the existence of the rule is a factor to be taken into account in the exercise of judicial discretion pursuant to the Supreme Court discovery rules in Victoria and New South Wales. Why not extend the rule to the actual trial?

The same principles that justify the existence of the newspaper rule in the pre-trial process should also justify its existence in the actual trial itself. It is often, after all, the newspaper that suffers by not calling its source at the trial to give evidence.

This, in effect, has been recognised in the United Kingdom through S. 10 of the Contempt of Court Act 1981. That section provides in general terms that no court may require a person to disclose, nor is any person guilty of contempt of court for refusing to disclose, the source of information contained in a publication for which he is responsible unless it is established that disclosure is necessary in the interest of justice, national security or for prevention of disorder or crime. It can be seen that the effect of this section is to extend the newspaper rule to the actual trial of the action.

The courts over the last 100 years have carefully weighed the competing principles and have come to the conclusion that the proper flow in dissemination of the information would be significantly hampered if the newspaper rule and the principles which support it were not given significant weight. For these reasons, the newspaper rule should be maintained, strictly enforced and extended.

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TELEVISION 2000 - CHOICES AND CHALLENGES

Ros Kelly, Minister for Telecommunications, discusses the government's agenda for reform of the Broadcasting Act

Since coming to this portfolio earlier this year, I have been greatly impressed by two things.

The first is the rapid pace of change in communications. The second is the growing inter-relationship between telecommunications, radiocommunications, and broadcasting.

I see several fundamental questions. What sort of broadcasting system do we want in the year 2000? What will technology permit us to do? What will we be able to afford? What will be the role of government? Will the industry we now know undergo further substantial change?

These questions are important for the government, the public, and the industry.

High definition television

I want to make particular mention of one aspect of technological change - high defini-

tion television (HDTV).

The government's concerns are twofold. Firstly, we wish to ensure that the development of international standards for HDTV avoids the mistakes of the past and that we properly respond to Australia's future requirements.

I believe we would be best served by a single worldwide production standard for HDTV. This would enhance international program exchange, and recognise the advantages of equipment compatibility.

Secondly, when assessing the options presented by HDTV and other developments in television technology, the government will be looking to systems that give the maximum benefit to consumers at an affordable cost.

We will also consider the interests of the broadcasting, program production, and manufacturing industries.

The choices and challengers

Change in broadcasting presents choices and challenges: choices which must be made and challenges which must be met.

Change is by its nature difficult to predict. The government is concerned that the interests of Australian audiences are safeguarded, and that licencees continue to meet their obligations to provide quality services that comply with prevailing standards.

Their obligations are not discretionary. They are a condition of the licences. They need to be met, just as much as financial obligations need to be met, if the present licensees are to remain in business. Leaving aside current problems, pressing though they are, broadcasters, public interest groups and government should welcome social and technological change and work co-operatively to structure a system that serves all Australians.

I have often heard it said that we in Australia have one of the best broadcasting systems in the world. Unless we rise to the challenge of change our system will become inferior to those in the rest of the world.

The government accepts the responsibility to ensure that the regulation of broadcasting is set at an appropriate level. We are faced with making choices which affect the sincerely held views of different groups. These are difficult issues which require careful consideration. We only have limited opportunities to get the answers right. In fulfilling our responsibilities, we will be looking to the industry and public interest groups for support and co-operation.

The government expects all groups in the broadcasting industry to look beyond their immediate self-interest or concerns, while recognising the operators' right to make a fair return on investment. All interest groups should also consider whether existing regulation arrangements remain the best way to achieve our various goals including high quality and diversity in programming.

The reform agenda

The government intends to bring forward in the autumn sittings of 1990 a package of measures to improve the efficiency of the ownership and control scheme. We will also be looking to streamline the Australian Broadcasting Tribunal's public inquiry processes.

While we are taking these immediate actions, we remain conscious of the need to examine the wider perspective of broadcasting regulation.

It is fair to say that this remains a complex task. Those who would pursue simplistic solutions based on either naive deregulatory approaches or on heavy-handed prescriptive regulation fail to appreciate this complexity. They fail to appreciate the changing technological, community and economic environment within which this industry will need to operate.

Our basic premise is that future legislation must more clearly serve explicit policy objectives, and that the industry is subject only to the minimum regulation necessary.

The government has already made it clear that full deregulation of broadcasting is not be appropriate. People recognise that broadcasting is different in many ways from other industries, as it involves so many important public interest issues. This means that we will still need a proper regime of licensing and standards, as well as rules relating to ownership. The regulations that remain must be capable of efficient administration, while providing certainty, appropriate public access and natural justice.

These objectives do not mean that the government plans the abolition of the Australian Broadcasting Tribunal, the abolition or amendment of the ownership levels, the relaxation of foreign ownership rules, or to allow self-regulation in areas such as the Australian content and children's program requirements.

The key issues

In the context of the overall review the government has an open mind and will be addressing seven key areas:

- how future broadcasting legislation can best serve the government's explicit policy objectives including the aim that there be no more regulation of industry than is necessary to support stated objectives;
- the regulatory implications of the interactions between existing and emerging communications services and the needs of the legislation that governs them;
- the re-structuring of communications planning processes to provide greater scope for broadcasters to take the initiative while also providing for proper accountability through a more transparent process;
- aspects of the ownership and control scheme in broadcasting;
- the need for a more efficient and rational approach to licence allocation, review, and renewal;
- examination of the regulation of programming standards to ensure that quality is maintained in the broadcasting system under any new arrangements; and
- re-examination of the nature, responsibilities and method of operation of the regulatory agencies and the division of responsibilities between them and the government.

These are difficult and important issues. We intend this to be a genuinely wide-ranging review that is free to explore all options and test them against the political, community and economic context before the government makes any decisions.

We will be providing opportunities for consultation, and hope that the debate, which will no doubt be robust, will also be objective and constructive. We should remember that the Australian Broadcasting Tribunal has carried out a difficult task over the past few years. Indeed, some would argue that it has had an impossible task.

The Tribunal has had to carry out its statutory responsibilities in a rapidly changing social and technological environment. It has had to do so within a legislative framework that is far from satisfactory.

This is an edited version of the opening speech by the Honourable Ros Kelly, MP, given in her capacity as then Acting Minister for Transport and Communications to the Australian Broadcasting Tribunal conference "Television 2000 - Choices and Challenges" on 16 November 1989.