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## **Submission of the Synod of Victoria and Tasmania, Uniting Church in Australia to the Senate Standing Committee on Environment and Communications inquiry into Press Freedom 30 August 2019**

The Synod of Victoria and Tasmania, Uniting Church in Australia, welcomes this opportunity to submit to the inquiry into press freedom in Australia. The Synod notes the terms of reference are:

- (a) disclosure and public reporting of sensitive and classified information, including the appropriate regime for warrants regarding journalists and media organisations and adequacy of existing legislation;
- (b) the whistleblower protection regime and protections for public sector employees;
- (c) the adequacy of referral practices of the Australian Government in relation to leaks of sensitive and classified information;
- (d) appropriate culture, practice and leadership for Government and senior public employees;
- (e) mechanisms to ensure that the Australian Federal Police have sufficient independence to effectively and impartially carry out their investigatory and law enforcement responsibilities in relation to politically sensitive matters; and
- (f) any related matters.

In the view of the Synod, press freedoms are important, but not absolute. Media is an essential part of democracy but has engaged in activity that undermines democracy. The role the media has played in eroding trust in democratic government is explored in-depth in the book 'The Rise of the Outsiders' by BBC political commentator Steve Richards. He states:<sup>1</sup>

*If an editor begins with an assumption that politics is defined by the gap between a distant elite and the people, the end result on TV screens and the radio is bound to reflect that attitude. There is no left or right bias in such an assumption. There is a bias against politics, or a misunderstanding of how politics works.*

While commenting largely on the situation in the UK, Mr Richards analysis appears equally applicable to many sections of the Australian media:<sup>2</sup>

*Aggressive interviewers have become fashionable, with the viewers' representative taking on the mighty, arrogant politicians. Interviewers who showed curiosity about the dilemmas of*

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<sup>1</sup> Steve Richards, 'The Rise of the Outsiders. How Mainstream Politics Lost its Way', Atlantic Books, London, 2017, 251.

<sup>2</sup> Steve Richards, 'The Rise of the Outsiders. How Mainstream Politics Lost its Way', Atlantic Books, London, 2017, 252.

*modern leadership were regarded as 'soft'. In the UK the tone of some interviewers gave the impression that a politician was lying, when the reality was that if he or she answered the question candidly, all hell would break loose, which is exactly why the question was asked.*

He forms the view that the media has helped make democratically elected politicians far less willing to take risks in areas of public policy and legislation. He gives the following reasons:<sup>3</sup>

*Firstly, they were human beings, reading, hearing or watching outlets that suggested they were useless, mad or corrupt. Few human beings are entirely relaxed at such verdicts on their behaviour, especially when they are reported to a wide readership. Second, and much more important, these political figures had plans for government and knew it would be harder for them to make sense of them to the electorate if they were viewed with suspicion, at best.*

Further:<sup>4</sup>

*Journalists face a difficult balancing act between much-needed forensic scrutiny and falsely conveying a sense that these elected figures are culpable of mendacious malevolence. Sometimes the grammar of expanding broadcasting outlets alone, and the noise that accompanies that expansion, can make mainstream leaders seem pathetically besieged. In response, they have become more fearful.*

He concludes:<sup>5</sup>

*The instinct to mistrust elected leaders is fuelled by some media outlets, which regard their main duty in relation to elected leaders as being to ask, as one interviewer put it, 'Why is this lying bastard lying to me?' It goes without saying that sometimes politicians fuel the mistrust because they do not deserve to be trusted. They can be indiscriminately greedy, self-serving and, in a few cases, corrupt. But on the whole there is a more interesting and reassuring set of explanations as to why leaders behave in the way they do. As they seek to resolve the conundrums and dilemmas, they cannot always be candid and sometimes have to go back on previous pledges or declarations.*

Further, the interests of billionaire owners of private media do not always align with the common good and public interest. These vested interests provide a strong reason to limit the concentration of media in the hands of any one billionaire. However, media ownership restrictions do not address the problem of when the interests of the collective billionaires who own most of the media align on an issue.

The Synod is not arguing that government should regulate media to require it to only report in ways that serve our democracy, but rather that the Committee should reject the view that an unregulated media automatically serves to enhance our democracy. There is a strong case for the government to provide some regulation of media for the common good and public interest.

Whistleblower protections and supports need improvements, but it is not appropriate for public servants, employees of businesses or organisations to be free to leak just any information that a journalist might claim is in the public interest. Legislation needs to ensure there is a sufficient objective test of what information is regarded as being in the public interest.

While there are plenty of examples of whistleblowers that have exposed maladministration and practices not in the public interest from inside government, there are also examples of people who

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<sup>3</sup> Steve Richards, 'The Rise of the Outsiders. How Mainstream Politics Lost its Way', Atlantic Books, London, 2017, 255.

<sup>4</sup> Steve Richards, 'The Rise of the Outsiders. How Mainstream Politics Lost its Way', Atlantic Books, London, 2017, 261.

<sup>5</sup> Steve Richards, 'The Rise of the Outsiders. How Mainstream Politics Lost its Way', Atlantic Books, London, 2017, 281.

claimed to be whistleblowers who were not. For example, Goodwin Grech gave sensational Senate testimony in 2009 claiming he had received a request from Rudd's office, allegedly seeking access to the OzCar fund on behalf of a political donor or mate.<sup>6</sup> It should not be possible for a public servant to make claims or leak material to media that has a partisan political purpose and where there is no legitimate public interest case and access whistleblower protection.

The Synod urges the Committee to recommend the establishment of a Whistleblower Protection Authority, as was previously recommended by the Parliamentary Joint Committee on Corporations and Financial Services.<sup>7</sup> Such an Authority would act as a one-stop-shop for whistleblowers. It would assist whistleblowers both in the public service and those from private businesses. It would refer their information to the appropriate authorities to be dealt with, investigate reprisals against whistleblowers and manage any rewards to be provided to the whistleblower. The Authority would make it much easier for whistleblowers to come forward and reduce the risk of reprisals for doing so. In cases of non-criminal reprisals against whistleblowers, the Authority would pursue these matters before workplace tribunals and courts on behalf of the whistleblower. It would provide advice and support to whistleblowers.

The Synod urges the Committee to recommend to government the implementation of the other reforms to the whistleblower legislation and regime recommended by the Joint Committee on Corporations and Financial Services in 2017 as a matter of priority.

Metadata retention is essential to deal with serious crimes and the recent two police raids on journalists should not be used as an excuse to undermine the ability of law enforcement agencies to investigate thousands of serious crimes facilitated online. Metadata is vital to the investigation of crimes such as the rape and torture of children via webcams, sextortion, fraud, bribery, money laundering, tax evasion and human trafficking. There have been rare cases of Australian journalists involved in online child sexual abuse. For example, in September 2017, former Channel 9 journalist Ben McCormack pleaded guilty to charges relating to child sexual abuse material. He had traded explicit messages relating to child sexual abuse online. He had used the user name 'oz4skinboi' and during his online communication outlined his sexual interest in young boys.<sup>8</sup> In one exchange he claimed to have child sexual abuse videos and links to child sexual abuse images:<sup>9</sup>

Male: ... I have some vids... wbu?

Ben McCormack: some

Male: cool, cool, pics too?

Ban McCormack: none saved but links

<sup>6</sup> Paul Maley, 'Godwin Grech reveals toll of UteGate', *The Australian*, 26 June 2019.

<sup>7</sup>

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Corporations\\_and\\_Financial\\_Services/WhistleblowerProtections/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/WhistleblowerProtections/Report)

<sup>8</sup> Mazoe Ford and Antonette Collins, 'Ben McCormack, former A Current Affair reporter, pleads guilty over child porn charges', ABC news, 26 September 2017, <https://www.abc.net.au/news/2017-09-26/ben-mccormack-a-current-affair-former-journalist-pleads-guilty/8987272>

<sup>9</sup> Mazoe Ford and Antonette Collins, 'Ben McCormack, former A Current Affair reporter, pleads guilty over child porn charges', ABC news, 26 September 2017, <https://www.abc.net.au/news/2017-09-26/ben-mccormack-a-current-affair-former-journalist-pleads-guilty/8987272>

In 2012, former ABC presenter Andy Muirhead received a 10-month prison sentence after pleading guilty to offences involving child sexual abuse material.<sup>10</sup> He had been the host of the ABC television program 'Collectors' and host of the ABC Hobart breakfast program.<sup>11</sup> Mr Muirhead accessed 12,409 images and 24 videos of 1,930 children over 14 months.<sup>12</sup> A minority of the material was described in court as "sadistic" and featured children as young as three-years-old.<sup>13</sup> He admitted the material was "vile and disgusting".<sup>14</sup> He had attempted to avoid detection by switching programs that he used online.<sup>15</sup> He had attempted to delete the material.<sup>16</sup>

Journalists should not get special privileges around metadata warrants when they are the subject of a serious criminal investigation. To allow journalists or their employer to know they are the subject of a warrant seeking metadata would potentially allow the journalist to destroy evidence of their criminal activity.

At the same time, the government should not influence law enforcement agencies to pursue cases that have political motivation when so many more serious crimes go unaddressed. The AFP only address a fraction of the severe online child sexual abuse cases that they are aware of due to a lack of resources, despite the very high dedication of the officers working in this area.

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<sup>10</sup> 'Aussie comedian Andy Muirhead sentenced to jail over child pornography offences', TNT Magazine, 1 October 2012, <http://www.tntmagazine.com/news/australia-news/aussie-comedian-andy-muirhead-sentenced-to-jail-over-child-pornography-offences>

<sup>11</sup> AAP news, 'Andy Muirhead jailed over child porn', SBS News, 27 February 2015.

<sup>12</sup> AAP, 'Ex-ABC host Andy Muirhead leaves prison early', *The Sydney Morning Herald*, 28 February 2013; and Andrew Darby, 'The hidden Muirhead', *The Sydney Morning Herald*, 1 October 2012

<sup>13</sup> Aussie comedian Andy Muirhead sentenced to jail over child pornography offences', TNT Magazine, 1 October 2012, <http://www.tntmagazine.com/news/australia-news/aussie-comedian-andy-muirhead-sentenced-to-jail-over-child-pornography-offencesd>

<sup>14</sup> AAP, 'Ex-ABC host Andy Muirhead leaves prison early', *The Sydney Morning Herald*, 28 February 2013.

<sup>15</sup> Andrew Darby, 'The hidden Muirhead', *The Sydney Morning Herald*, 1 October 2012.

<sup>16</sup> Andrew Darby, 'The hidden Muirhead', *The Sydney Morning Herald*, 1 October 2012.