



Dr Tim Stephens

Associate Professor
Co-Director, Sydney Centre for International Law

19 March 2013

Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600, Australia

Dear Committee Secretary,

Media Reforms Bills Package

Thank you for the opportunity to make a submission to the Committee in relation to its inquiry into the Media Reforms Bills Package. In this submission I illustrate why the current system for accountability of the print media in Australia demands reform.

On 3 May 2012 *The Australian* newspaper published an article about wind farms by James Delingpole.

The article contained an unattributed quote "The wind-farm business is bloody well near a paedophile ring. They're f . . king our families and knowingly doing so." The article also contained several factual inaccuracies, for example:

- The Renewable Energy Target is a "kind of government-endorsed Ponzi scheme"
- Wind farms cause illness
- Wind farms do not produce effective amounts of electricity
- Most evidence shows that global warming is not happening
- A law firm used court orders to prevent public comment by wind farmers

I made a complaint about these inaccuracies to the Australian Press Council (APC), which was duly forwarded to *The Australian*. *The Australian* refused to accept that the complaint had any basis, and wrote to the APC (in early August 2012):

Dear Mr Herman

I refer to your letter of July 4, 2012 regarding the complaint from Stephens, Donaldson and Mackie. Our position has not changed from that stated in our previous response. In the light of Adjudication 1542, it now appears that the Press Council has accepted our broad proposition that that the issue of



misrepresentation in General Principle 6 was intended to apply to reported journalism and not to comment or opinion.

In circumstances where a correspondent may reasonably adopt a different interpretation from that offered in opinion pieces, *The Australian* has a long-standing practice of publishing a reply, customarily as a letter to the editor or, in exceptional circumstances, in an opinion piece in reply. It is a matter of record that we published an exceptional number of responses to the Delingpole piece of May 3 that is the subject of this complaint.

We congratulate the council on Adjudication 1542, which has eased the concerns we expressed earlier that by entertaining complaints such as this one, the council would be stepping into new territory that, intentionally or otherwise, would be detrimental to free speech and the fluidity of civic debate.

Yours sincerely
Nick Cater
Editor, *The Weekend Australian*

The Australian failed to demonstrate that the statements made by Delingpole were factually correct, nor did it make any valid case for them or the comparison of people in the wind industry to paedophiles. The paper claimed that its published comments in response to the article and this somehow constituted a balance and remedy.

Here are several of the comments that the paper published online, that clearly fail to provide balance:

So will the Wind farm boondoggle turn out to be worse than Maralinga?
... (Helen Armstrong Posted at 1:08 PM May 03, 2012)

... Just as Herr Goebbels lied successfully to the German people so Herr Gore has lied successfully to the whole world. (PeterinBrisbane Posted at 12:54 PM May 03, 2012)

The APC adjudicated on the complaint on 28 August 2012. Professor Julian Disney presided, and also present were Colin Neave, John Fleetword, Pam Walkley and Warren Beeby. I presented to the panel by teleconference. Two other people had also presented complaints over the same article.



The APC issued an adjudication (No. 1555: Blair Donaldson and others/*The Australian*, 20 December 2012), which was published by the paper on 20 December 2012. This adjudication stated, in part:

The Council has upheld three aspects of the complaints. First, it has concluded that even if the REC scheme has the weaknesses alleged in the article it cannot tenably be described as a "kind of government-endorsed Ponzi scheme". The REC scheme does not have an essential characteristic of a Ponzi scheme, namely criminal fraudulence, and is not reasonably analogous to such a scheme.

Second, it has concluded that the claim that a law firm sought gagging orders has been publicly denied by the firm and, in the absence of any supporting evidence, constitutes a breach of the Council's principles concerning misrepresentation. The newspaper's prompt publication of the law firm's denials prevented aggravation of the breach but did not absolve it.

Third, it has concluded that the report of the anonymous remarks concerning paedophilia, a very serious and odious crime, were highly offensive. The Council's principles relate, of course, to whether something is acceptable journalistic practice, not whether it is unlawful. They are breached where, as in this case, the level of offensiveness is so high that it outweighs the very strong public interest in freedom of speech. It was fully justifiable in the public interest to convey the intensity of feeling by some opponents of wind farms but that goal did not require quoting the reference to paedophilia.

The Australian went on the offensive against the APC (and the ABC) in an attempt to excuse itself from Adjudication 1555. It published an editorial (20 December 2012) in which in which it repeated, in full, the original Delingpole paedophile section :

...the Australian Press Council has also been adjudicating on an allegedly offensive use of the word paedophile, this time in an opinion article in *The Australian* by James Delingpole. Mr Delingpole quoted an anonymous NSW sheep farmer who said: "The wind-farm business is bloody well near a paedophile ring. They're f . . king our families and knowingly doing so." In the council's view, the comparisons with a serious and odious crime "were highly offensive".

The next day *The Australian* published James Delingpole's response to the APC's ruling:



AUSTRALIA you are so totally gay. I mean "gay", of course, in the offensive, playground, politically incorrect sense of the word. ...

When I tell this to people who've never been to Oz they are usually surprised. Australia, they imagine, is a rugged, no-nonsense place where the men all look a bit like Crocodile Dundee (or, at least, Steve Irwin), and where their idea of a chat-up line to the sheilas on Bondi beach is "Hey Sheila. Do you want a ****?" (to which they'll add, if Sheila is reluctant: "Well would you mind just lying there while I have one?")

But it's just not true. Australia handed in its testicles to the progressives long ago. ...

As for its Press Council and their ruling about what I said about wind farms (The Australian, May 3) I stand by every word of the piece - especially the bit about pedophiles. I would concede that the analogy may be somewhat offensive to the pedophile community. Nevertheless, like the anonymous sheep farmer I quoted, I feel that the "level of offensiveness" is entirely justified. ...

Whereas in Australia, I'm afraid, it [free speech] is dead as a dodo. We've seen it in the ludicrous case where Australia's most popular broadcaster Alan Jones was sent to the Death Camp of Tolerance for getting wrong some pettifogging detail about climate change.

We saw it in the ruling against Andrew Bolt when he made some disobliging, remarks about the - ahem - traditional owners. We saw it in Raymond "Finko the Pinko" Finkelstein's ruling on the rights of the press to say disobliging things about government policy....

The Australian also published an article by Christopher Pearson (22 December 2012) in which the paper again repeated, in full, the original Delingpole paedophile statement:

On Wednesday, in one of life's little ironies, the Australian Press Council brought down an adjudication on a similar offence.

This newspaper had published a comment piece where the British contrarian, James Delingpole, had quoted a sheep farmer who had told him: "The wind farm business is bloody well near a pedophile ring. They're f . . king our families and knowingly doing so." ...



Mr Pearson then attacked the APC:

I'm confident most people will see its ruling as at least defensible, although the more robust defenders of free speech may feel tempted to conclude that if you appoint someone called Disney to head that sort of organisation, you shouldn't be surprised when there's something a bit Mickey Mouse about its findings.

Dr Derek Wilding, Executive director of the APC had a letter published in *The Australian* on 22 December 2012 in which he sought to clarify matters that were misleading in the paper's editorial of 20 December 2012.

Reflections

My participation in this episode of press accountability raises some serious concerns that relate directly to the proposed reforms to media regulation in Australia.

The Australian treated the APC outcome in Adjudication 1555 with contempt. It participated in the complaints process, but when confronted with an unfavourable adjudication it declined to accept the umpire's decision and went on the attack, criticising the APC, and others.

The Australian's primary arguments in defence of the Delingpole article were first that it should be entitled to publish any opinion it likes, and second that it provides opportunities for balance by publishing contrary views in the letters page and elsewhere.

In relation to the first point, I agree that *The Australian* should be free to publish opinions on issues upon which opinions may be held. But when it comes to matters of accepted physics and public health there is no equivalence of opinion. If the defence raised by *The Australian* is valid, presumably it would allow the paper to run opinion pieces stating that smoking is good for human health, that asbestos does not cause lung cancer, that the theories of gravity or the conservation of mass are unproven, and that the Earth is flat.

In relation to the second point, *The Australian* provides no genuine balance in the coverage of climate change and renewable energy issues. This applies both to its 'news' pages and to its opinion pages. It is often difficult to tell them apart. *The Australian* continues to run a notorious campaign against climate science, climate scientists and the renewable energy industry. In just one of many dozens of examples, on 15 January 2013 it published a story by Graham Lloyd on the front page under the headline "Sea level rise 'not linked to warming'", which was purportedly based on the findings of a paper in a



scientific journal. When it was shown that the story entirely misrepresented the research, *The Australian* issued a correction (on page 2). Most other distortions of fact are not corrected by the paper, and letters to the editor pointing out the errors are usually ignored.

There is therefore no point in contacting *The Australian* to correct its frequent inaccuracies on climate change and renewable energy. The paper either ignores this criticism, or engages in personal attacks of the critic. This episode also shows that there is no point in complaining to the APC either, as complaints have no impact upon the *The Australian*. *The Australian* treated the APC with disdain, marshalling its opinion writers to attack the APC. The APC is powerless to change *The Australian's* behaviour, as seen in its muted response to *The Australian's* failure to accept Adjudication 1555. The APC's complaints process is largely meaningless, despite the genuine efforts of APC staff to handle complaints diligently and professionally.

My experience in relation to APC Adjudication 1555 leads me, reluctantly, to support the Media Reform Bills Package. Self-regulation is preferable to government intervention, but clearly *The Australian* has no intention of abiding in good faith by the decisions of the industry regulator. Moreover, in the Australian newspaper market which is so heavily dominated by News Ltd papers it is difficult for the biased reporting and opinion of *The Australian* to be balanced by other papers.

I have come to the view that newspapers should be treated no differently from television and radio media, which are under a statutory obligation to present news accurately, to distinguish news from comment and to make reasonable efforts to ensure factual material is reasonably supportable as being accurate.

Yours sincerely,