

2nd August 2021

Submission to the Inquiry on Constitution Alteration (Freedom of Expression and of the Press)

I appreciate the work of Senators Griff and Patrick on their proposal for constitutional reform.

The Bill suggests holding a Constitutional referendum to propose a new section 80A to guarantee protection for freedom of expression, including freedom of the press / media. If approved, the new section 80A would be placed under S80 (which outlines the right to Trial by Jury). 80A section would prohibit the federal or state governments from making laws to restrict freedom of expression, which includes the press or media. The laws would only be allowed under the exemption that they are “reasonable and justifiable in an open, free and democratic society.” This is an interesting Bill and merits consideration.

Freedom of expression is an important right. It recognises the inherent dignity and intelligence of the individual, in being able to express their identity and perspective. It contributes to a diverse and democratic society, in which all people can participate freely. Freedom of press is also critical, since we rely on a diverse and free media to inform the public and hold politicians and other public figures accountable for their actions. Restrictions or actions taken against freedom of expression, particularly freedom of the press, are very concerning.

The issues of freedom of press do not exist in isolation. Rather Australia is part of global trends (for better or worse). The denigration and attacks on the media in the United States have been very concerning. This impacted on Australian journalists, such as the Channel 7 television crew that were beaten by police during the Black Lives Matters protests in 2020.¹ Given the threat posed to the media, this is a critical time to consider how we protect freedom of expression and of the press.

¹ Amelia Brace and Timothy Myers. “Reporting the Black Lives Matter protests.”

<<https://pressfreedom.org.au/reporting-the-black-lives-matter-protests-b83c459d87fd>>.

There have also been concerning incidents in Australia. This included police raids in 2019 on journalists and the headquarters of the ABC.² Even without the media being prosecuted and convicted of wrongdoing, these incidents can have an intimidatory influence on journalistic operations. It gives the chilling message that the media cannot operate freely in Australia without the threat of being punished - namely when they pursue and publish stories that offend people in power. It can make journalists feel more reticent about pursuing stories that they want to, for fear of the consequences, even when they have the right to and there is a public interest in those stories being heard. Reporters without Borders specifically notes that Australia's "constitutional law contains no press freedom guarantees."³ This Bill gives us the opportunity to consider whether we should have a constitutional guarantee.

The Australian Constitution does not have a Bill of Rights, such as used in the United States (with their well-known First Amendment protecting freedom of speech). There is a limited amount of rights mentioned in the Australian Constitution, but for the most part we rely on our rights being protected by Parliament and, by extension, our democracy. We can also rely upon our judiciary, but our rights are not as litigated and contested judicially as in other countries with Bill of Rights. Ideally, we could trust the government to protect our right to freedom of expression and of the press, and the government could be critiqued or voted out particularly at election time. If the government was perfect and never made any unreasonable laws to protect freedom of expression or of the press, then such amendments would not be necessary (as with other constitutional rights). However, in the absence of such perfect benevolence, the public benefits from having legal protections for our rights that even the government cannot overrule. Beyond protection in the courts, a constitutional right to freedom of expression and of the press would provide a normative message to these are values that are important to our society and democracy. Hence, it could dissuade governments from trying to make restrictive laws (apart from the knowledge that they could be challenged and overturned in court).

² Reporters Without Borders, 2021 World Press Freedom Index, "Australia."

<<https://rsf.org/en/australia>>.

³ Ibid.

The Australian public is historically reticent to constitutional reform. Of the 44 constitution proposals, only 8 have been carried - the last of which were passed 1977. It has also been some 22 years since the last referendum on the republic and preamble in 1999. However, many of these referendums fail because they are seeking to give the government greater or additional powers - for which the public was understandably sceptical. A law that would limit the scope of the government and thereby protect our rights better could have a better chance of gaining public support.

Passing the Bill for would not mean that the constitution is automatically changed. Rather, it will go to a referendum whereby the Australian people would decide whether they want protection for freedom of expression to exist in the Constitution or not. I believe this is an opportunity for democratic engagement and choice that is worth giving to the public. Hence, I support the Bill.

I note that there is also an Inquiry report coming out on Media Diversity published on August 4th. The work of this Inquiry is also relevant, given the concentration of media in News Corp and other big corporations. This heightens the need for protection of the free press, which is already constrained, so the public can benefit from information from journalism.

Thank you for considering my submission.

Kind Regards,

Benjamin Cronshaw.

Bibliography

Reporters Without Borders, 2021 World Press Freedom Index, "Australia."

<<https://rsf.org/en/australia>>.

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