

# **A model for non-profit investigative and public interest journalism**

**Submission to Senate inquiry on the ‘Future of Public Interest Journalism’**

**Submission by Dr Bill Birnbauer, Adjunct Senior Lecturer in journalism at  
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## **Personal information**

I was a reporter and editor at *The Age* newspaper between 1977 and 2008. My roles included chief of staff, news editor, night editor, investigative reporter, national correspondent, city editor, health editor and general features writer.

Between 2008 and 2016, I was a senior lecturer in the School of Media, Film and Journalism at Monash University. I coordinated investigative reporting and feature writing units and was a director of the journalism Master's program. I retired from my tenured position in early 2017.

I was recently awarded a PhD for research into non-profit investigative reporting in the United States. My thesis was entitled 'Non-Profit Investigative Reporting in American Journalism, 2007-2015'. It examined the factors that led to large increase in the number of non-profit centres in the United States doing investigative and public interest journalism.

I was one of the first non-American members of the non-profit International Consortium of Investigative Journalists based in Washington, D.C. (Panama Papers most recently). I am a former John S. Knight Journalism Fellow at Stanford University in California. I am on the board of the Public Interest Journalism Foundation.

This submission addresses terms of reference 1. (a), (d) and (f) and concerns itself with non-profit investigative and public interest journalism.

## **Background: what is non-profit investigative and public interest reporting?**

Definitions of investigative and public interest journalism vary but there is general consensus among journalists and media academics that such journalism provides new information on issues of public importance that governments, companies and powerful interests may want to keep secret <sup>1</sup>.

In the United States I estimate there are about 150 non-profit centres doing such journalism; others suggest there are 200<sup>2</sup>. Most were formed since the global financial crisis of 2007-09.

Non-profit investigative reporting centres vary in size from two or three journalists up to 70 reporters, editors, digital and broadcast producers, development and engagement experts, data journalists and fundraisers. The budgets of the biggest centres are about \$10 million a year; smaller centres less than \$100,000. Non-profit investigative reporting centres see their work as a form of public service<sup>3</sup>.

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<sup>1 2</sup> Lee, D. 2017. The pleasure and pain of going nonprofit. *Columbia Journalism Review*. Spring.  
[https://www.cjr.org/local\\_news/nonprofit-news-local-tulsa-frontier.php](https://www.cjr.org/local_news/nonprofit-news-local-tulsa-frontier.php)

<sup>3</sup> Benson, R. 2016. Are foundations the Solution to the American Journalistic Crisis? *Media Ownership Project Working Paper 2016-001*. NYU Department of Media, Culture and Communication.  
[http://rodneybenson.org/wp-content/uploads/Benson-Are-Foundations-the-Solution\\_-March-20161.pdf](http://rodneybenson.org/wp-content/uploads/Benson-Are-Foundations-the-Solution_-March-20161.pdf)

The centres are funded in various ways:

- Predominantly by foundations.
- Donations by wealthy individual philanthropists.
- Donations by readers and individuals.
- Minor revenue from story sales, events, advertising, subscriptions.

## **The US taxation environment**

Non-profit investigative reporting centres are recognised by the Internal Revenue Service as eligible for non-profit status under Section 501(c)(3) of the Internal Revenue Code.

Non-profit status allows these organisations to avoid federal and some state taxes and donations to them can be tax deductible. Section 501(c)(3) provides exemptions for organisations involved in charitable, religious, educational, scientific, public safety testing, literary, amateur sports, and prevention of cruelty to children and animals activities<sup>4</sup>. The IRS does not have a distinct category for media organisations. The fact that an organisation intended to benefit the public by publishing newsworthy information is not sufficient to obtain tax exempt status<sup>5</sup>. Nor does the IRS have the authority to recognise broad new categories of tax-exempt organisations, such as news outlets. Investigative and public interest news organisations gained non-profit status under a broad education category.

Tax law in this area is complex because the IRS applies federal laws, agency regulations and internal guidelines to determine if applicants are eligible for 501(c)(3) status. The education category is an obvious one for news organisations to target: US federal tax regulations define educational as “the instruction of the public on subjects useful to the individual and beneficial to the community”<sup>6</sup>. The IRS has ruled that publishing investigations and analysis for the purpose of achieving higher standards “furthers an educational purpose”<sup>7</sup>.

The IRS uses a four-part test to determine if activities by news organisations are educational. First, that the content of the publication was educational; second, the preparation of the material followed methods generally accepted as educational in character; third, the distribution of the materials was necessary or valuable in achieving the organisation’s educational and scientific

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<sup>4</sup> Digital Media Law Project. 2014. How does the IRS interpret Section 501(c)(3)?. *Digital Media Law Project*. <http://www.dmlp.org/irs/section-501c3>.

<sup>5</sup> Hermes, J. P. 2012. Guide to the Internal Revenue Service decision-making process under section 501(c)(3) for journalism and publishing non-profit organizations. *Australian Policy Online* 2013 (April 3).

<sup>6</sup> Council on Foundations. 2013. The IRS and nonprofit media: Toward creating a more informed public. In *Nieman Lab*. Arlington, VA: Council on Foundations, and John S. and James L. Knight Foundation.

<sup>7</sup> Owens, M., and S. Nokes. 2013. "Overview of the Federal tax rules affecting the formation, operation, funding and structure of a tax-exempt newspaper." In *The IRS and nonprofit media: Toward creating a more informed public*, edited by Council on Foundations Nonprofit Media Working Group. Arlington, VA: Council on Foundations.

purposes; and fourth, the manner in which the distribution was accomplished was distinguishable from ordinary commercial publishing practices<sup>8</sup>.

The IRS imposed a further test to distinguish education from advocacy. The test correlated well with traditional approaches to investigative journalism that eschew advocacy. The following suggested to the IRS that an organisation had an advocacy role rather than an educational one:

1. Whether a significant portion of the communication consisted of “viewpoints unsupported by a relevant factual basis”;
2. Whether the facts relied on are “distorted”;
3. Whether the organisation “makes substantial use of inflammatory and disparaging terms, expressing conclusions based more on strong emotional feelings than objective factual evaluation”, and
4. Whether the “approach to a subject matter is aimed at developing an understanding on the part of the addressees, by reflecting consideration of the extent to which they have prior background or training”<sup>9</sup>.

Non-profit publications could carry advertising as long as the amount was considered insubstantial and the profits were counted as unrelated business income tax<sup>10</sup>. Non-profit organisations were prohibited from participating or intervening in political campaigns or from substantially indulging in activities such as propaganda or otherwise attempting to influence legislation<sup>11</sup>, though the ban on influencing legislation was not absolute<sup>12</sup>.

### **Where is it published?**

The stories produced by non-profit investigative news centres are published on their websites and often in the general media. There has been a profound cultural transformation in the way legacy and public media organisations regard non-profit centre stories. Today non-profit stories routinely appear in media such as *The New York Times*, *The Washington Post*, *The*

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<sup>8</sup> Hermes, J. P. 2012. Guide to the Internal Revenue Service decision-making process under section 501(c)(3) for journalism and publishing non-profit organizations. *Australian Policy Online* 2013 (April 3).

<sup>9</sup> Owens, M., and S. Nokes. 2013. "Overview of the Federal tax rules affecting the formation, operation, funding and structure of a tax-exempt newspaper." In *The IRS and nonprofit media: Toward creating a more informed public*, edited by Council on Foundations Nonprofit Media Working Group. Arlington, VA: Council on Foundations.

<sup>10</sup> Hermes, J. P. 2012. Guide to the Internal Revenue Service decision-making process under section 501(c)(3) for journalism and publishing non-profit organizations. *Australian Policy Online* 2013 (April 3).

<sup>11</sup> Digital Media Law Project. 2014. "How does the IRS interpret Section 501(c)(3)?" Digital Media Law Project. <http://www.dmlp.org/irs/section-501c3>.

<sup>12</sup> Waldman, S. 2011. *The information needs of communities: The changing media landscape in a broadband age*. Washington, DC: Federal Communications Commission.

*Wall Street Journal*, NPR, PBS and other key media. Collaborations between legacy and non-profit media are commonplace.

There are several reasons for this transformation: the central ones are the diminished ability of many mainstream media to produce serious journalism and the shift of trusted legacy editors and reporters to the non-profit sector. Foundation-funded journalism does not come close to replacing what has been lost due to staff and other cuts by mainstream media since the GFC. Non-profit stories do not compete with mainstream media; they complement it.

### **What's happened in the United States?**

The number of non-profit investigative and public interest journalism centres in the US has grown rapidly since 2007. The Institute for Nonprofit News, an umbrella association for investigative and public interest media, has more than 120 member organisations. The Franklin Center for Government and Public Integrity, a conservative foundation, funds 'watchdog' centres in over half a dozen different states and the remainder operate independently of these organisations. Prior to 2007, there were only a handful of non-profit investigative news organisations.

About one in five of these centres is based at or has a link to a university. These centres enable journalism students to work as interns under the direction of senior reporters and editors. The benefit is that these centres automatically attract tax deductibility for donors as the money goes through the university.

There are various estimates of the amount of funding provided by foundations to non-profit investigative and public interest journalism. The total since the global financial crisis is in the hundreds of millions: I estimated more than \$350 million; others have said closer to \$500 million<sup>13</sup>.

It is important to note that US foundations are required to grant 5% of their assets each year. Many of the donations are made under foundation 'democracy programs'.

Non-profit investigative centres have won all the prestigious journalism awards including the Pulitzer Prize for their journalism.

### **What should happen here?**

A recent study for the Reuters Institute for the Study of Journalism at the University of Oxford and the Information Society Project at Yale Law School found only a small handful of Australian not-for-profit news organisations have been granted deductible gift recipient (DRG) status by the Australian Tax Office and that news organisations face seemingly

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<sup>13</sup> Lee, D. 2017. The pleasure and pain of going nonprofit. *Columbia Journalism Review*. Spring. [https://www.cjr.org/local\\_news/nonprofit-news-local-tulsa-frontier.php](https://www.cjr.org/local_news/nonprofit-news-local-tulsa-frontier.php)

challenging obstacles in gaining such status<sup>14</sup>. The eligibility criteria for DRG status do not fit well with the purpose and functions of news organisations. News organisations have difficulty securing charity status and obtaining DRG status is many times more difficult, the study said. This may well discourage the creation of news organisations. The study noted that philanthropic support for news organisations in Australia has been scarce.

Given the diminished resources of Australian media to hold power to account other measures to bolster democratic processes should be considered. The ABC, particularly *Four Corners*, *The 7.30 Report*, *Background Briefing* and a number of other programs can do only so much. Fairfax Media and News Corp have retained a small number of investigative journalists while cutting other areas, but more needs to be done to assist the scrutiny of powerful interests. Editorial cuts have reduced the number of journalists working in beats such health, education and urban affairs meaning less monitoring of those areas.

Investigative journalism is much talked about by media organisations but is limited to a handful of reporters within media organisations because it cannot readily be monetised. It is expensive to do, takes a long time, sparks legal action and upsets powerful interests. It takes a big commitment by media organisations; just five major US media organisations provide about 50 per cent of all the investigative journalism<sup>15</sup>. The societal benefits can be huge: lives saved, corruption exposed, environments improved, governments and corporate interests held accountable. A study by a media economist found that for each \$1 spent on a specified investigative story, \$287 in policy benefits resulted<sup>16</sup>.

Tax deductibility for independent journalism centres would provide incentives for individuals and local philanthropic groups to donate to producers of quality journalism. In order to qualify for such status, non-profit media organisations should be properly constituted with boards and should be staffed by journalists who adhere to the MEAA's code of ethics. Conditions for tax deductibility would include that the centres adopt normal journalistic practice and make editorial decisions independent of funders.

There are significant differences, apart from tax deductibility, between the United States and Australia that cannot be ignored. The United States has a far greater number of foundations and they are substantially bigger. US donors to nonprofit media include the Bill and Melinda Gates Foundation (\$41 billion), the Ford Foundation (\$12 billion), the Knight foundation (\$2.4 billion), William and Flora Hewlett Foundation (\$8.6 billion), the MacArthur

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<sup>14</sup> Papandrea, F. 2016. Australia: Impact of Charity and Tax Law/Regulation on Not-for-Profit News Organisations, (eds) Robert G. Picard, Valerie Belair-Gagnon & Sofia Ranchordás. [http://reutersinstitute.politics.ox.ac.uk/sites/default/files/The%20impact%20of%20charity%20and%20tax%20law%20regulation%20on%20not%20for%20profit%20news%20organisations\\_0.pdf](http://reutersinstitute.politics.ox.ac.uk/sites/default/files/The%20impact%20of%20charity%20and%20tax%20law%20regulation%20on%20not%20for%20profit%20news%20organisations_0.pdf)

<sup>15</sup> <sup>16</sup> Hamilton. J. T. Democracy's detectives: the economics of investigative journalism. Harvard University Press.

<sup>17</sup> Benson, R. 2016. Are foundations the Solution to the American Journalistic Crisis? Media Ownership Project Working Paper 2016-001. NYU Department of Media, Culture and Communication. [http://rodneybenson.org/wp-content/uploads/Benson-Are-Foundations-the-Solution\\_-March-20161.pdf](http://rodneybenson.org/wp-content/uploads/Benson-Are-Foundations-the-Solution_-March-20161.pdf)

Foundation (\$6.3 billion), Open Society Foundations (\$5 billion), Rockefeller (4.1 billion) and Carnegie (\$3 billion)<sup>17</sup>.

There are also cultural differences: Americans and foundations tend to more strongly support democracy and institutions whereas Australians are wonderful donors when it comes to natural disasters, hospitals and human interest issues.

The availability of tax deductions for donors and tax relief for journalists and others who establish non-profit centres dedicated to public interest journalism has potential to increase the sum of quality journalism in Australia, enhance our democratic processes and better serve the community. I believe legacy and digital media in future would enter collaborative partnerships with non-profit investigative and public interest centres, ensuring a wider distribution and impact of their stories.

### **Recommendations**

In determining the suitability of applicants for deductible gift recipient (DGR) status, the ATO ought to consider in particular:

- The history and background of the applicant as a journalist, particularly adherence to professional and ethical standards.
- The applicant's ability to produce investigative and public interest journalism.
- Whether the organisation has editorial processes that create stories that are in the public interest and educate audiences rather than covering news of popular interest.
- Introducing a commitment that funding sources, including publication of the identities of donations of more than \$1000, be published on the non-profit's website.
- A commitment to publish on their websites information about spending and revenue, as provided each year to the ATO and/or the Australian Charities and Not-for-Profits Commission.
- Individuals and organisations that advocate particular causes should not be granted DGR status under any media category. The guidelines used by the IRS are useful in this regard.
- Anonymous grants or funding from political and other entities where the source of the funding is not transparent should be banned.