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

Email: ec.sen@aph.gov.au

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Media Reform Bills Package
***Public Interest Media Advocate Bill* 2013, the *News Media (Self-regulation) Bill* 2013**

This is a submission on the Media Reform Bills Package from CANdo, Australia's independent, grassroots Community Action Network.

CANdo believes all Australians should have the tools needed to preserve, protect and defend their individual rights, freedom and traditional values.

CANdo operates under a charter which may be viewed at http://www.cando.org.au/about/the-charter

Yours Sincerely,

David Flint
Chairman

Jai Martinkovits
Executive Director

Community Action Network Limited
ABN: 99 154 705 398
Suite 17, Level 1, 104 Bathurst St, Sydney NSW 2000
GPO Box 4379, Sydney, NSW, 2001
info@cando.org.au ● www.cando.org.au

Submission on the Media Reform Bills Package

1. **Submission:** This is a submission on the *Public Interest Media Advocate Bill* 2013, the *News Media (Self-regulation) Bill* 2013, the *News Media (Self-regulation) (Consequential Amendments) Bill* 2013, and to the extent that they are relevant, the *Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill* 2013, the *Broadcasting Legislation Amendment (News Media Diversity) Bill* 2013 and the *Television Licence Fees Amendment Bill* 2013.

2. **CANdo:** This submission is from CANdo, Australia's independent, grassroots Community Action Network. Because of the extraordinarily limited time given for the consideration of this package of bills, this submission is necessarily brief.

3. **Charter:** CANdo believes all Australians should have the tools needed to preserve, protect and defend their individual rights, freedom and traditional values. CANdo operates under a charter which may be viewed at http://www.cando.org.au/about/the-charter

4. **Objections:** CANdo's principal objections to the Bills follow:

   I. **Original constitutional intention:** The original intention of the founding fathers confirmed by the people of Australia whenever they have considered proposals for its amendment is that the Federal Parliament is a Parliament of limited powers set out in the Constitution.

   Under this the Federal Parliament has absolutely no general power to regulate the press.

   The attempted power to regulate the press on the basis of the corporations power is an improper extension of that power never intended nor approved by the people. The only occasion on which the power of the Federal Parliament can extend to the regulation of the press is under the defence power.

   The Federal government is showing a lamentable ability to handle its core functions such as defence and control; it is difficult to understand why it would wish to go outside of its powers.

II. **Freedom of political communication:** The attempted regulation of the press by the Federal Parliament is in breach of the implied freedom of political communication in the Constitution. If enacted would be subject to a legitimate High Court challenge with an excellent chance of success. It contradicts the understanding among the world's oldest continuing democracies that the press have a significant constitutional function in a representative democracy in not only presenting news and information to the public, and most importantly, as the Supreme Court of the United States put it in the Pentagon Papers case, exposing deception in government.

It is of course an unfortunate fact of political life in a representative democracy, a fact which all members of Parliament will appreciate, that governments are inevitably engaged in not only presenting information in the most favourable light, but in concealing information unnecessarily and at times in even presenting false information.

III. **Improper process:** The introduction of the bills has been marked by a gross impropriety of process. It has been reported that the proposals were put before the cabinet without adequate notice, an extraordinary procedure which was emulated in the Labor caucus. The bills have been introduced with an ultimatum requiring their passing in one week, a demand which is contemptuous of Parliament and the people.

IV. **Regulatory impact statement:** It is a serious breach of the principles of a representative democracy that members of Parliament be invited to consider and immediately approve government bills where they are not properly informed. The bills have been introduced into the Parliament without the customary Regulatory Impact Statement revealing precisely the problem which the legislation is designed to address, the objective to be achieved, an evaluation of the various options available and the reasons for the selection of the preferred solution.

V. **Political appointment:** The Public Interest Media Advocate is to be appointed by and removable by the Minister and not by the Governor-General a fact which confirms that this is to be a particularly political appointment. An appointment by the Governor-General reminds a properly informed appointee that he or she is owes a duty to the Crown and therefore the people and not just to the Minister and governing political party. His or her term is limited and therefore the prospect of point ability could be constantly dangled before the appointee.

VI. **Excessive final powers:** The Public Interest Media Advocate will enjoy vague and undefined powers to neutralise investigate reporting by news outlets, will be able to share information inappropriately to government bodies, the onus of proof will be reversed, and his or her decision will not be subject to review for appeal.

VII. **Exemption for politicians retained:** While the press will be threatened the withdrawal of their exemption from the Privacy Act, the members of Parliament and Senators will continue to enjoy theirs. The difference is that the press were granted their exemption so that they may reveal the truth. The Members of Parliament and Senators granted themselves their exemption so that they could be re-elected.

VIII. **Guillotine provision:** The regulatory bodies the subject of the jurisdiction of the Print Media Advocate will be the subject of a guillotine provision which will force them to comply with any of his or her demands by an impossibly early date, 1 July 2013.

IX. **Takeovers:** The power of the Print Media Advocate over takeovers is broad and undefined and is therefore far too vast. It imposes another totally unnecessary tier over the Australian Consumer and Complaints Commission, the Australian Communications and Media Authority and where appropriate the Treasurer. (The Treasurer's powers under the Foreign Takeovers Act are already too broad and undefined).

There is no reason whatsoever to add this additional tier, particularly because the discretion to be granted is broad, undefined and vast and not subject to any review or appeal.

X. **Concentration, from the Hawke to the Gillard government:** It is disingenuous of the government to argue about the degree of concentration of the press in Australia. When in 1986 News Ltd proposed to acquire the ailing Herald and Weekly Times group, the acquisition was approved under our competition law by the Trade Practices Commission subject to News Ltd disposing of certain assets which it did. The Hawke government gave approval under the Foreign Takeovers Act, a decision which was not opposed by the opposition, no State government, the Australian Labor Party or the Australian Council of Trade Unions. Any subsequent increase in concentration mainly in capital city markets has been the result of the closing of newspapers, not their acquisition. It should be recalled that there are no regulatory barriers to entry into the newspaper market. Anyone can open a newspaper. Why, for example, do not wealthy unions linked to the Labor Party do this? And with the rise of the Internet, both the press and television have been weakened, and Australians have had access to more information than ever before.

XI. **Government gag:** The government has a poor record in relation to seeking to silence legitimate media investigations. In 2011, the government attempted to close down reporting about the Prime Minister's role as a solicitor in the formation of an "electoral slush fund" named inappropriately as the AWU Workplace Reform Association. Police suspect that many hundreds of thousands of dollars were defrauded through the fund. (It must be stressed that the Prime Minister denies any knowledge of this.)

During that year Fairfax radio station 2UE was advertising a coming broadcast of an interview by Michael Smith with the former AWU vice- president and now whistleblower Bob Kernohan about this slush fund. It had been cleared by a leading defamation lawyer and by the station's internal editorial process. The interview was pulled at almost the last minute on the orders of a senior Fairfax executive.

The Australian withdrew from the web and apologised for a column on the same subject by Glen Milne in The Australian. Michael Smith was suspended and his employment with Fairfax came to an end, as did Glen Milne's with The Australian and the ABC. Andrew Bolt was warned and considered leaving News Ltd.

Curiously, the ABC did not report on the AWU slush fund in any meaningful way if at all. Worse, it failed to report – again in any meaningful way if at all – the fact that the government had been so successful in silencing the two major press chains. It wasn't until 2GB's and Macquarie Radio's Alan Jones interviewed Michael Smith that this story – a matter of legitimate public interest – returned to the media. The point of mentioning this story is that the government effectively gagged the media for the better part of a year. The government did this without the advantage of having a Public Interest Media Advocate in place. Consider what a government could do with the appointment of such an official. The point is that this government, and indeed no government, should be trusted with the powers proposed.

XII. **Constitutional Reform:** This package of bills is so fundamentally offensive to the nature of our representative democracy that its introduction is in itself indicative of the need for the reform of our institutions which have been so obviously compromised. There is a need to empower the people so that governments and political representatives who seriously underperform can be recalled, and that legislation unacceptable to the overwhelming majority of the people of Australia may be invalidated by them in a referendum.