

Chapter 3

Issues regarding the bills

3.1 At the public hearings on 18 and 19 March witnesses raised several key issues regarding the bills.

3.2 Broadly, these issues were:

- the consultation process on the bills: some witnesses argued that the time allowed for consideration of and consultation on the bills was truncated and unduly short;
- freedom of the press: some witnesses were concerned that oversight and regulation of news media by a regulator—the Public Interest Media Advocate (PIMA)—would unnecessarily impinge on the press' freedom and editorial independence;
- power and discretion of the regulator: some witnesses were concerned that the PIMA would have, in their opinion, unfettered power and discretion, including retrospective powers together with the absence of appeal mechanisms; and
- definitions: the absence of explicit definitions of 'public interest', 'diversity' and 'community standards' was criticised by some witnesses.

3.3 The Media Arts and Entertainment Alliance (MEAA) raised some other specific concerns about the Australian content provisions of the Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill.¹ The MEAA told the committee that it supported the Convergence Review and its recommendations.² The MEAA explained that the Convergence Review recommended transitional measures which allowed commercial networks some flexibility to spread their sub-quota obligations for Australian drama, documentary and children's drama onto digital multi-channels—on the proviso that the Australian content quotas be increased by 50%.³ However, the MEAA was concerned that the quotas would not be increased under the provisions of the Australian Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill. The MEAA concluded that '...the bill as it stands...will result in a dilution of Australian drama on

1 Ms Sue McCreadie, National Director, Media Entertainment and Arts Alliance (MEAA), *Proof Committee Hansard*, 19 March 2013, pp 47–48.

2 Ms Sue McCreadie, National Director, MEAA, *Proof Committee Hansard*, 19 March 2013, p. 47.

3 Ms Sue McCreadie, National Director, MEAA, *Proof Committee Hansard*, 19 March 2013, p. 47.

the main channels. Insofar as it is fulfilled on the digital channels, it is likely to result in lower average licence fees'.⁴

3.4 These issues are summarised in turn in the following sections. Greater detail may be found in the proof Hansard transcripts for each of the public hearings: the proof Hansard transcripts of the hearings on 18 and 19 March 2013 are appended.

Consultation process

3.5 Many witnesses voiced concern about the consultation process for the bills. Witnesses were concerned that, given the complexity and possible implications of the bills, the time allowed for stakeholders to analyse the bills was insufficient.

3.6 For example, Foxtel told the committee:

These are complex bills and neither I nor my advisers have been able to fully understand their operation and ramifications in the time we have been given. In some instances, we have more questions than answers...None of the usual processes of government responses, exposure drafts or laying bills on the table of parliament have been followed. Instead, we are given five days to respond and you are being asked to vote within a week. Again, what is the urgent issue that is being solved here? Where is the crisis that requires such haste? On this basis alone, they should at least be deferred, if not rejected.⁵

3.7 Seven West Media asserted that:

It is disrespectful to both industry stakeholders and the parliament for such a complex and significant package of legislation to have been announced, introduced and considered by Committees and voted on in little more than a one week timeframe.⁶

3.8 Similarly, Mr Greg Hywood, Chief Executive and Managing Director of Fairfax Media suggested that:

We are dealing here with a series of bills that have the potential to fundamentally change the relationship between the media and the community. I ask this place to take more time than has been granted in order to consider these very real and important decisions. At the very least,

4 Ms Sue McCreadie, National Director, MEAA, *Proof Committee Hansard*, 19 March 2013, p. 47.

5 Mr Richard Freudenstein, Chief Executive Officer (CEO), Foxtel, *Proof Committee Hansard*, 18 March 2013, pp 50-51; see also Mr Bruce Meagher, Director of Corporate Affairs, Foxtel, *Proof Committee Hansard*, 18 March 2013, p. 54.

6 Seven West Media, *Submission 2*, p. 2.

changing the media and the way it works warrants more than just days to consider.⁷

3.9 The Australian Subscription Television and Radio Association (ASTRA) raised concerns that there has been no consultation on proposed changes since the Finkelstein and Convergence reviews were completed and the legislation has been introduced.⁸ Ms Petra Buchanan, Chief Executive Officer of ASTRA, told the committee:

While we recognise that the Finkelstein review and, in particular, the convergence review have included extended consultation and opportunities for stakeholder comment on some of the issues that are the subject of these bills, there is a fundamental difference between those review processes and assessing detailed legislative amendments to implement major regulatory reforms.⁹

Freedom of the press

3.10 The bills, in particular the News Media (Self-regulation) Bill 2013, were seen by the print media to be a possible restriction on the freedoms of the press.¹⁰

3.11 For example, Mr Kim Williams AM, Chief Executive Officer of News Limited stated that the reforms could breach the implied freedom of political communication:

We believe that the News Media (Self-regulation) Bill seriously breaches the implied constitutional freedom of political communication. This bill proposes something unconstitutional because it will undermine freedom of communication about government or political matters...

I think it is in all of our interests to examine the materiality of the bills. The introduction of the Public Interest Media Advocate and its ability to declare and revoke declarations of self-regulation bodies is fundamentally inconsistent with the free press.¹¹

7 Mr Greg Hywood, Chief Executive and Managing Director, Fairfax Media, *Proof Committee Hansard*, 19 March 2013, p. 2.

8 Ms Petra Buchanan, Chief Executive Officer, Australian Subscription Television and Radio Association (ASTRA), *Proof Committee Hansard*, 19 March 2013, p. 51.

9 Ms Petra Buchanan, CEO, ASTRA, *Proof Committee Hansard*, 19 March 2013, p. 51.

10 For example see: Mr Greg Hywood, Chief Executive and Managing Director, Fairfax Media, *Proof Committee Hansard*, 18 March 2013, p. 2 and Mr Kim Williams AM, CEO, News Limited, *Proof Committee Hansard*, 18 March 2013, p. 27.

11 Mr Kim Williams AM, CEO, News Limited, *Proof Committee Hansard*, 18 March 2013, p. 27.

3.12 Ms Bridget Fair from Seven West Media told the committee that 'we have made it pretty clear that as a matter of principle we think that there should be freedom of the press'.¹²

3.13 The Managing Director of Fairfax Media similarly expressed his concerns about the bills restricting the freedom of the press:

For the first time in Australian history outside of wartime, there will be political oversight over the conduct of journalism in this country. The practical application of this legislation is that it sets up a model where a minister of the government can pick up the phone to his own appointee and say, 'Fix it'—'fix it' being 'get the media off our backs'. It is not a pipe dream. Every person in a leadership position in the media has been on the receiving end of such calls from ministers and staffers. Under this legislation, the government will be able to leverage a ministerial appointee with the power to deregister news-gathering organisations. Make no mistake: because [the] PIMA sets the standards by which journalism can be practised, press councils are relegated to being mere implementers of PIMA decisions—a government-appointed position. This is a momentous change to the conduct of journalism in this country and one which we must, on basic principle, absolutely oppose.¹³

3.14 Conversely, the Hon Ray Finkelstein told the committee that the print media's claims that the bills would encroach upon their freedoms were false.¹⁴ Mr Finkelstein stated:

In considering whether the current proposal for a media advocate is an appropriate model, one important question is whether that model will restrict press freedom. The media advocate's role is to make sure that there are in place proper codes of conduct based on existing codes in Australia and elsewhere. A proper code will at least require fair and accurate reporting; it may also require the correction of serious error. Hence enforcement of the code of conduct might require an editor or a publisher to publish an apology, a retraction or a correction. In reality, that is the extent of the potential encroachment on a free press.¹⁵

3.15 Mr Finkelstein further highlighted to the committee that, despite assertions by the media, there is a distinction between the freedom of the press and free speech:

...if you are looking at any encroachment on press freedom as opposed to free speech—because there is a difference between the two—this is the one area where an editor may be told what he or she should publish; that is, the

12 Ms Bridget Fair, Group Chief, Corporate and Regulatory Affairs, Seven West Media, *Proof Committee Hansard*, 18 March 2013, p. 25.

13 Mr Greg Hywood, Chief Executive and Managing Director, Fairfax Media, *Proof Committee Hansard*, 18 March 2013, p. 1.

14 The Hon Ray Finkelstein QC, *Proof Committee Hansard*, 19 March 2013, pp 1–2.

15 The Hon Ray Finkelstein QC, *Proof Committee Hansard*, 19 March 2013, p. 2.

editor should publish an apology, the editor should publish a retraction or the editor should publish a correction.

As I read this legislation, that is the beginning and end of any imposition on a free press. It does not affect free speech, funnily enough, because the editor and the journalist can say what they like. There is no restriction on what they say, how they say it and when they say it. But if they say it wrongly or if they say it badly, the Press Council, or an appropriate body that has Press Council type functions, can say, 'What you said was false and you should correct it,' and there is a mechanism here that would require that to be done.¹⁶

3.16 Mr Finkelstein continued:

In a very technical sense, that is a restriction on free press because it restricts the editor's freedom not to publish whatever the editor wants, because many people accept that part of press freedom as opposed to free speech is the editor's freedom to do nothing—that is, to ignore what might be the truth or to ignore facts and that kind of thing. There is that imposition. But I would be very surprised if any serious commentator would regard that as bringing democracy to an end.¹⁷

3.17 Ultimately Mr Finkelstein concluded that bills, and in particular the News Media (Self-regulation) Bill 2013, 'does nothing towards ending democracy and it is a relatively minor imposition on press freedom and probably no restriction on free speech'.¹⁸

3.18 The Australian Press Council (APC) also highlighted that if people are to have freedom of expression, they need access to reliable information.¹⁹ If access to reliable information is not available via the news media, then the views the public forms and expresses may not be views based on accurate and informed reporting.²⁰ It was therefore argued by the APC that unreliable and distorted information in the press is an attack on freedom of expression.²¹

Power and discretion of the Public Interest Media Advocate

3.19 Some witnesses were concerned that the PIMA would have, in their opinion, unfettered power and discretion, including retrospective powers. These concerns were compounded by the absence of avenues to appeal decisions by the PIMA.

16 The Hon Ray Finkelstein QC, *Proof Committee Hansard*, 19 March 2013, p. 3.

17 The Hon Ray Finkelstein QC, *Proof Committee Hansard*, 19 March 2013, p. 3.

18 The Hon Ray Finkelstein QC, *Proof Committee Hansard*, 19 March 2013, p. 3.

19 Professor Julian Disney, Chair, Australian Press Council (APC), *Proof Committee Hansard*, 19 March 2013, p. 26.

20 Professor Julian Disney, Chair, APC, *Proof Committee Hansard*, 19 March 2013, p. 26.

21 Professor Julian Disney, Chair, APC, *Proof Committee Hansard*, 19 March 2013, p. 26.

3.20 For example, News Limited informed the committee that:

The PIMA will be a single person with absolute powers whose decisions cannot be appealed on the merits. This is a staggering and, I hope, unacceptable disregard for fundamental rights at law. Unbelievably, the government will give the PIMA retrospective powers to overturn deals that took place before these new laws come into force, if they do. This is dangerous policy that removes certainty for businesses which have already had investments approved.²²

3.21 It was argued that existing regulation was adequate:

The PIMA is an unnecessarily novel and unique statutory creation. The Australian Competition and Consumer Commission, the Australian Communications and Media Authority and the Foreign Investment Review Board already have extensive powers to enforce diversity and ensure competition. Independent press councils have been considerably strengthened, providing effective vehicles for the public to seek redress for media coverage without fear.²³

3.22 In the same vein, Mr Greg Hywood from Fairfax Media expressed concern that:

The PIMA position would establish the standards by which journalism would be practised and would require press councils—either one press council or a number of different registered press councils—to abide by those. You would have to be a member of that press council to get the exemption under the privacy legislation. That exemption allows a journalist to get information about people without their consent. Without the ability to do that, a journalist cannot undertake his or her task.²⁴

3.23 Mr Hywood explained further:

Under the legislation, unless you were accredited, you would not have an exemption under the Privacy Act, which means that you could not gather information about people without their consent. So that is a nuclear option because it would basically shut down a predominantly news-gathering organisation—and that is what we do.²⁵

22 Mr Kim Williams AM, CEO, News Limited, *Proof Committee Hansard*, 18 March 2013, pp 27–28.

23 Mr Kim Williams AM, CEO, News Limited, *Proof Committee Hansard*, 18 March 2013, p. 28; see also Mr Richard Freudenstein, CEO, Foxtel, *Proof Committee Hansard*, 18 March 2013, p. 51.

24 Mr Greg Hywood, Chief Executive and Managing Director, Fairfax Media, *Proof Committee Hansard*, 18 March 2013, p. 2.

25 Mr Greg Hywood, Chief Executive and Managing Director, Fairfax Media, *Proof Committee Hansard*, 18 March 2013, p. 4.

3.24 Several witnesses further expressed concern about the lack of appeal avenues in relation to decisions of the PIMA.²⁶ For example, Seven West Media commented:

There are no appeal rights from decisions of the PIMA and the decisions of the PIMA appear not to be subject to any administrative review. This is completely unheard of in government administration with the level of power proposed for the PIMA. The ACCC, many other tribunals and most courts have appeal mechanisms. Considering the importance of the decisions being made it is staggering that there is no appeal mechanism or any way to hold the PIMA to account for objectivity, consistency and balance.

3.25 The Hon Ray Finkelstein disagreed with concerns about the role of the PIMA, expressing the view that 'the powers [of the PIMA]...are quite limited':

Most of the topics dealt with in the legislation are covered by existing codes of conduct so that the legislation does prima face nothing new in that regard.²⁷

3.26 Also in contrast to the evidence querying the role of the PIMA, Professor Matthew Ricketson told the committee that the current system of media self-regulation is weak and in need of revision:

...the overwhelming evidence presented to the independent media inquiry [the Finkelstein Review] was that the system of voluntarily self-regulation for the print media has not worked and will not work unless important changes are put in place. Improvements in the certainty of funding arrangements for the Australian Press Council have been put in place after the delivery of the media inquiry report, but a key weakness of voluntary self-regulation has been exposed again with the withdrawal of the Seven West Media Group from the Press Council and the prospect that some have raised of the further splintering of the members of the council. This would be a retrograde step that would take us back to the beginnings of the Press Council in 1976, when the then John Fairfax newspaper company refused for several years to join the council.²⁸

3.27 In relation to the role of the Australian Press Council, Fairfax Media remarked that:

There is no doubt that people may not have been happy about the performance of the Press Council in their particular circumstances. There is absolutely no doubt that the media companies have been extremely aware of those concerns, and we have acted to increase funding for the Press

26 Seven West Media, *Submission 2*, p. 4; see also Seven West Media, *Proof Committee Hansard*, 18 March 2013, p. 20; Network 10, *Proof Committee Hansard*, 18 March 2013, p. 38; and Mr Richard Freudenstein, CEO, Foxtel, *Proof Committee Hansard*, 18 March 2013, p. 53.

27 See the Hon Ray Finkelstein, *Proof Committee Hansard*, 19 March 2013, pp 2–3.

28 Professor Matthew Ricketson, Professor of Journalism, University of Canberra, *Proof Committee Hansard*, 19 March 2013, p. 2.

Council. We have acted to make sure that a standards officer has been appointed and we have reviewed the processes. We have a new head of the Press Council. We have put, just ourselves, more than half a million dollars into the Press Council in terms of self-regulation. We take it seriously, and we take it seriously on top of the internal processes that we have.²⁹

3.28 Similarly, the Australian Press Council (APC) noted that there are substantial problems with media standards in Australia.³⁰ The APC acknowledged that there are problems in the media industry concerning distortion of opinions, inadequate corrections of those errors and invasion of privacy issues which must be examined.³¹

Definitions

3.29 Many witnesses criticised the lack of definitions for several of the key terms used in the legislation, including 'public interest', 'diversity' and 'community standards'. It was suggested that these provisions were broad and subjective.³²

3.30 For example, News Limited commented that:

It would be interesting...to find a definition of the public interest contained within the bills There is no such definition. It would be interesting to find a definition of diversity inside your bills. No such definition has been provided.³³

3.31 Dr Margaret Simons expressed the view that the PIMA is given 'dangerously wide discretion in deciding whether a news media self regulation body meets standards'. She argued that the use of the criteria of 'community standards' was 'amorphous' and misguided.³⁴

3.32 Fairfax Media observed that:

-
- 29 Mr Greg Hywood, Chief Executive and Managing Director, Fairfax Media, *Proof Committee Hansard*, 18 March 2013, p. 3; see also Ms Gail Hambly, Group General Counsel and Company Secretary, Fairfax Media, *Proof Committee Hansard*, 18 March 2013, p. 4.
- 30 Professor Julian Disney, Chair, Australian Press Council, *Proof Committee Hansard*, 19 March 2013.
- 31 Professor Julian Disney, Chair, Australian Press Council, *Proof Committee Hansard*, 19 March 2013.
- 32 For example see: Mr Greg Hywood, Chief Executive and Managing Director, Fairfax Media, *Proof Committee Hansard*, 18 March 2013, p. 3; see also Ms Gail Hambly, Group General Counsel and Company Secretary, Fairfax Media, *Proof Committee Hansard*, 18 March 2013, p. 4; News Limited, *Proof Committee Hansard*, 18 March 2013, p. 27; Network 10, *Proof Committee Hansard*, 18 March 2013, p. 38; and Seven West Media, *Submission 2*, p. 3.
- 33 Mr Kim Williams AM, CEO, News Limited, *Proof Committee Hansard*, 18 March 2013, p. 28.
- 34 See proposed subsection 7(3) of the News Media (Self-Regulation) Bill; Dr Margaret Simons, *Submission 4*, p. 2.

In our organisation we research our audience extensively and continually to determine what their interests are and we frame the content of what we deliver—how much local news, how much national news, how much international news et cetera—based upon the interests of our readers. So, in a sense, we get a feeling for the priorities in the community around what they want, but we do not have any sense of definition of what a community standard is.³⁵

3.33 News Limited were also concerned that without clear definitions in the legislation, the interpretation of key elements and their effect are uncertain:

The Public Interest Media Advocate will also decide if media mergers and acquisitions of national significance cause no substantial lessening of diversity of control of registered news voices. But the news media diversity bill contains no definition of what constitutes diversity.³⁶

3.34 Representatives from the ACMA told the committee that its legislative framework dealt with the concept of 'appropriate community safeguards'. The ACMA commented that there are some 'commonalities' with the concept of 'community standards' in the media reform bills. The ACMA explained:

...appropriate community safeguards involves a consideration of what the community as a whole regards as an appropriate protection or an appropriate standard of conduct from, in our case, predominantly broadcasters...that involves accepting that there will be a plurality of views, but pitching it appropriately so that it is reflective of those views, accommodates those views but is not protective of the one per cent, perhaps, who have an extreme or particular view. So that is why I say it involves the exercise of judgement on the part of the authority decision making group. But that would be informed by research. In the past, research we have undertaken has included research on community attitudes to broadcasting privacy protections and community attitudes to accuracy obligations in news and current affairs and a range of things. We update the research periodically.³⁷

3.35 The Australian Competition and Consumer Commission (ACCC) informed the committee that, while it doesn't have a 'public interest' test as such, when it was approached in relation to a merger, and where there might be a lessening of competition, the ACCC looks at 'offsetting benefits'.³⁸ The ACCC remarked that 'those benefits can be fairly widely defined' and that therefore 'in a sense, we do make

35 Mr Greg Hywood, Chief Executive and Managing Director, Fairfax Media, *Proof Committee Hansard*, 19 March 2013, p. 8.

36 Mr Kim Williams AM, CEO, News Limited, *Proof Committee Hansard*, 19 March 2013, p. 27.

37 Ms Jennifer McNeill, General Manager, Content, Consumer and Citizen Division, ACMA, *Proof Committee Hansard*, 19 March 2013, p. 66.

38 Mr Brian Cassidy, CEO, ACCC, *Proof Committee Hansard*, 19 March 2013, pp 66–67.

a judgment about an anti-competitive cost with offsetting public benefits. You could characterise that as a public interest type test in an economic framework'.³⁹

Committee comment

3.36 Despite protestations to the contrary, the committee believes that the media organisations that have been so strident in their criticism of the package of media reform bills are being 'hysterical'.⁴⁰

3.37 The committee notes the concerns that have been raised in relation to the timeframe of the committee's inquiry. The committee notes that the issues raised before the committee have been thoroughly analysed and debated over approximately two years during the Convergence Review and the Finkelstein Inquiry. The committee would have benefited from a longer inquiry. Notwithstanding this, the key issues were adequately debated and analysed. A longer inquiry would, in the view of the committee, have simply reinforced the conclusion that the bills should be supported and appropriate overview of the media self-regulation system is essential to ensure that the public can have confidence in the media self-regulation system.

3.38 The committee notes that the reforms proposed in the package of bills do not go as far as the reforms recommended in the Convergence Review and Finkelstein Inquiry. The committee is also aware that independent statutory bodies similar to the proposed PIMA exist elsewhere both in Australia and overseas. An example commonly raised during the committee's hearings was that of the Australian Communications and Media Authority (ACMA) which has the capacity to suspend or cancel a broadcaster's licence where a broadcaster breaches its regulatory requirements.⁴¹ The ACMA and its role were supported by various submitters,⁴² and no submitters complained that regulation by the ACMA has resulted in unwarranted intrusion by the government on broadcasters. The committee believes that the PIMA would regulate the news media in a similar fashion.

3.39 The committee finds it ironic that some witnesses were critical of the Australian Press Council and its perceived failures to self-regulate the press media, and yet continued to argue that self-regulation was the only model appropriate for

39 Mr Brian Cassidy, CEO, ACCC, *Proof Committee Hansard*, 19 March 2013, pp 66–67.

40 Associate Professor Susan Forde, Griffith University, 'Media reform: hysterical attacks on weak Conroy suggestions tell the real story', *The Conversation*, 13 March 2013.

41 *Broadcasting Services Act 1992*, section 143.

42 See for example, Mr Michael Ebeid, Managing Director, SBS, *Proof Committee Hansard*, 18 March 2013, p. 10; Mr Kerry Stokes, Chairman, Seven West Media, *Proof Committee Hansard*, 18 March 2013, p. 18 and 20; Mr Jeffrey Browne, Managing Director, Nine Network, *Proof Committee Hansard*, 18 March 2013, p. 46.

regulating the industry.⁴³ The committee is aware that the current head of the Australian Press Council has stated that the press council is not sufficiently independent or is not perceived to be sufficiently independent.⁴⁴ The committee also draws attention to comments by Mr Finkelstein that even the news media believe that regulation is required, given the existence of various codes of conduct dictating the behaviour of journalists and establishing editorial standards.⁴⁵

3.40 The importance of the news media to protecting democracy is the very reason it should be subject to impartial, independent scrutiny by a regulator such as the PIMA. The special role of the press was recognised by Seven West Media when it said 'A newspaper is a commercial business, but the Board recognises it also has a role in our political and judicial systems that other businesses do not'.⁴⁶

3.41 Indeed, the rise and popularity of blogs and various other social media platforms have not diminished the reach and importance of traditional news media organisations⁴⁷ and the need for the standards of journalism in these to be upheld. The committee agrees with Associate Professor Susan Forde when she stated:

It is a great irony that one of the most important institutions in our society which exists to protect democracy—the news media—consistently sees itself as above scrutiny, requiring no monitoring except from within its own ranks.⁴⁸

3.42 The committee recognises that news media organisations—aside from the public broadcasters—are commercial entities and are expected to deliver a profit to their shareholders by making decisions in their commercial interests. For example, Mr Kerry Stokes of Seven West Media stated as much when asked about his company's public interest obligations apart from making money for company shareholders:

They are one and the same.

...

43 See for example: Mr Kerry Stokes, *Proof Committee Hansard*, 18 March 2013, p. 19; Mr Greg Hywood, Chief Executive and Managing Director, Fairfax Media, *Proof Committee Hansard*, 18 March 2013, p. 2; Mr Kim Williams AM, CEO, News Limited, *Proof Committee Hansard*, 18 March 2013, p. 27; and Mr Reid, Group Editorial Director, News Limited, *Proof Committee Hansard*, 18 March 2013, p. 31.

44 Australian Press Council, Submission to the Independent Inquiry into Media and Media Regulation, October 2011, p. 22.

45 The Hon Ray Finkelstein, *Proof Committee Hansard*, 19 March 2013, p. 2.

46 Seven West Media, *Answer to question taken on notice*, 18 March 2013 (received 20 March 2013).

47 Mr Jeffrey Browne, Managing Director, Nine Network, *Proof Committee Hansard*, 18 March 2013, p. 48.

48 Associate Professor Susan Forde, Griffith University, 'Media reform: hysterical attacks on weak Conroy suggestions tell the real story', *The Conversation*, 13 March 2013.

It is the point. The facts of the matter are that newspapers are declining. This year we will be 20 per cent down on profit for the last year, which was 30 per cent down on the year before. The facts of the matter are that we will close presses. Presses are going to get closed. There will be a cut-off point where there is an economic reality. You guys are adding overhead costs for us. You are just bringing it forward.⁴⁹

3.43 Inherent in the commercial nature of news media organisations and the public good they provide is a tension between the interests of these businesses and the public interest. In contrast to Mr Stokes' view, in the committee's view, commercial interests and the public interest are not one and the same. It is disingenuous for such organisations to argue otherwise. In the committee's opinion, it is therefore reasonable for an independent, external regulator to judge the extent to which the news media are upholding the public interest.

3.44 The Finkelstein report provided numerous examples where the news media has contravened existing codes and standards. The report stated:

More directly the news media can cause wrongful harm to individuals and organisations by unreliable or inaccurate reporting, breach of privacy, and the failure to properly take into account the defenceless in the community.

Here are a few striking instances:

- A minister of the Crown has his homosexuality exposed. He is forced to resign.
- A chief commissioner of police is the victim of false accusations about his job performance fed to the news media by a ministerial adviser. Following publication of the articles, he is forced to resign.
- A woman is wrongly implicated in the deaths of her two young children in a house fire. Her grief over her children's death is compounded by the news media coverage.
- Nude photographs said to be of a female politician contesting a seat in a state election are published with no checking of their veracity. The photographs are fakes.
- A teenage girl is victimised because of her having had sexual relations with a well-known sportsman.⁵⁰

3.45 When questioned about a series of articles in *The Australian* and *Weekend Australian* between 21 December 2012 and 5 March 2013 on free speech, climate change and wind farms,⁵¹ the Chair of the APC, Professor Julian Disney, responded 'I

49 Mr Kerry Stokes, Chairman, Seven West Media, *Proof Committee Hansard*, 18 March 2013, p. 25.

50 The Hon R Finkelstein QC, *Report of the Independent Inquiry into the Media and Media Regulation*, 28 February 2012, p. 282.

51 Senate Environment and Communications Legislation Committee, *Tabled documents—Senator Doug Cameron*, 19 March 2013.

do not see that case as actually the strongest example of what worries me... I see things worse than that most weeks, frankly'.⁵²

3.46 These examples demonstrate exactly why regulation of the news media, as proposed in the bills, is warranted: to protect the public from harassing and unethical behaviour and circumvent the perpetuation of unreliable and inaccurate information. The committee's primary concern is to ensure that members of the public are not victims of reporting which is at best misleading and at worst complete falsehood, and to prevent the huge personal and professional ramifications such stories can have for those subject to them.

3.47 The committee is also aware that during the course of this inquiry, political agreement—underpinned by a royal charter—was reached in the United Kingdom (UK) for a new system of press regulation.⁵³ The agreement will result in a new press regulator with the power to investigate complaints, impose fines of up to £1 million and require newspapers to print apologies.⁵⁴ That one of the oldest continuous representative assemblies in the world⁵⁵ has agreed to implement a new system of press regulation, including the creation of a new regulator, flies in the face of claims by some witnesses, such as Mr Williams, that the proposal in these six bills will result in the destruction of freedom of speech and Australian democracy.

3.48 In regards to the behaviour of the Murdoch press in the UK and the criminal conduct revealed during the Leveson Inquiry,⁵⁶ no such allegations are being levelled against the news media in Australia. However, the same denials about problems heard by this committee were also pushed in the UK and steps should be taken in Australia to ensure that the Murdoch press culture seen in the UK cannot get a foothold here.

3.49 The committee notes the concerns raised in relation to the need for complete independence of the PIMA and the committee concurs with this view. The committee believes that the process of ministerial appointment of an independent PIMA is

52 Professor Julian Disney, Chair, APC, *Proof Committee Hansard*, 19 March 2013, p. 33.

53 Omar Kami, 'UK agrees on press regulation', *The National*, 19 March 2013, available: <http://www.thenational.ae/news/world/europe/uk-agrees-on-press-regulation> (accessed 20 March 2013) and Patrick Wintour and Shiv Malik, 'Press regulation deal hailed by Labour after last-ditch talks', *The Guardian*, 18 March 2013, available: <http://www.guardian.co.uk/media/2013/mar/18/press-regulation-deal-close-talks> (accessed 20 March 2013).

54 Omar Kami, 'UK agrees on press regulation', *The National*, 19 March 2013, available: <http://www.thenational.ae/news/world/europe/uk-agrees-on-press-regulation> (accessed 20 March 2013).

55 UK Parliament, *Birth of the English Parliament*, available: <http://www.parliament.uk/about/living-heritage/evolutionofparliament/originsofparliament/birthofparliament/> (accessed 20 March 2013).

56 The Leveson Inquiry, *Leveson Inquiry: Culture, practice and ethics of the press*, available: <http://www.levesoninquiry.org.uk/> (accessed 20 March 2013).

sufficient and consistent with other appointments of independent heads of statutory authorities. Nevertheless, given the historic nature of the PIMA appointment, actual independence must be supported by public perception of independence. Given this, the committee recommends that the minister urgently develops processes and appointment procedures which ensure public confidence in the PIMA appointment.

Recommendation 1

3.50 The committee recommends that the minister urgently develop processes and appointment procedures which ensure public confidence in the PIMA appointment.

3.51 The committee also recommends that steps be taken to ensure that the PIMA has adequate funding to properly assess and determine issues arising under the PIMA's legislative obligations. The committee is also of the view that if the PIMA uses the resources of other independent statutory authorities, then appropriate management procedures are in place to protect and ensure the independence of the PIMA.

Recommendation 2

3.52 The committee recommends that steps be taken to ensure that the PIMA has adequate funding to properly assess and determine issues arising under its legislative obligations and that appropriate management procedures are in place to protect and ensure the independence of the PIMA when it uses the resources of other independent statutory authorities.

3.53 In regards to the PIMA's investigative functions, the committee supports the concept that the PIMA can conduct investigations without the need for a reference to the PIMA to authorise it to do so.

Recommendation 3

3.54 The committee recommends that the PIMA be allowed to conduct investigations without the need for a reference to do so.

3.55 The committee notes the discussions in relation to the definition of 'public interest' and 'community standards' and calls on the minister to urgently assess whether more clarity can be given to the use of the terms 'public interest' and 'community standards' in the legislation.

Recommendation 4

3.56 The committee recommends that the minister urgently assess whether more clarity can be given to the use of the terms 'public interest' and 'community standards' in the legislation.

Recommendation 5

3.57 Subject to the preceding recommendations, the committee recommends that the bills be passed.

**Senator Doug Cameron
Chair**

