The Senate

Environment and Communications Legislation Committee

Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013 [Provisions]

Broadcasting Legislation Amendment (News Media Diversity) Bill 2013 [Provisions]

News Media (Self-regulation) (Consequential Amendments) Bill 2013 [Provisions]

News Media (Self-regulation) Bill 2013 [Provisions]

Public Interest Media Advocate Bill 2013 [Provisions]

Television Licence Fees Amendment Bill 2013 [Provisions]

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Chapter 1

> In old days men had the rack. Now they have the Press. That is an improvement certainly. But still it is very bad, and wrong, and demoralizing. Somebody—was it Burke?—called journalism the fourth estate. That was true at the time no doubt. But at the present moment it is the only estate. It has eaten up the other three. The Lords Temporal say nothing, the Lords Spiritual have nothing to say, and the House of Commons has nothing to say and says it. We are dominated by Journalism.
>
> —Oscar Wilde

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> This bill does nothing towards ending democracy and it is a relatively minor imposition on press freedom and probably no restriction on free speech.
>
> —The Hon Ray Finkelstein QC

Introduction

1.1 On 14 March 2013, the Senate Environment and Communications Legislation Committee was referred the provisions of the following six bills:

- the Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013;
- the Broadcasting Legislation Amendment (News Media Diversity) Bill 2013;
- the Television Licence Fees Amendment Bill 2013;
- the News Media (Self-regulation) Bill 2013;
- the News Media (Self-regulation) (Consequential Amendments) Bill 2013; and
- the Public Interest Media Advocate Bill 2013.[1]

1.2 The provisions of the bills were referred on the recommendation of the Senate Selection of Bills Committee.[2] The Selection of Bills report was amended in the Chamber to set a reporting date of 17 June 2013.[3]

1.3 The committee held two public hearings in Canberra on 18 and 19 March (a list of witnesses is at Appendix 1).

1.4 The committee sincerely thanks all of those witnesses who made themselves available to appear at the public hearings.

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1 *Journals of the Senate*, No. 139, 14 March 2013, pp 3758–3759.

2 Senate Selection of Bills Committee, *Report No. 3 of 2013*, p. 3, available, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=selection bills_ctte/reports/2013/rep0313.htm (accessed 14 March 2013).

3 *Journals of the Senate*, No. 139, 14 March 2013, p. 3759.

Context of the inquiry

Independent inquiry into the Australian media

1.5 On 14 September 2011, the Commonwealth government established an independent inquiry into the Australia media (also known as the Finkelstein Review).[4] The inquiry was led by former Justice of the Federal Court of Australia, The Hon Ray Finkelstein QC.

1.6 The terms of reference required the inquiry to examine the effectiveness of current media codes of practice in Australia, the impact of technological change on the traditional media business model and ways of substantially strengthening the independence of the Australian Press Council and any related issues.[5]

1.7 The inquiry reported to the government on 28 February 2012. The *Report of the Independent Inquiry into the Media and Regulation* was publicly released on 2 March 2012.[6]

1.8 The government forwarded the inquiry's report to the Convergence Review Committee for its consideration.[7]

Convergence Review

1.9 On 14 December 2010 the Commonwealth government announced an independent review into the policy and regulatory frameworks that apply to the converged media and communications landscape in Australia.[8]

1.10 The Convergence Review Committee was chaired by Mr Glen Boreham, with Mr Malcolm Long and Ms Louise McElvogue as committee members. The committee handed its final report to the government on 30 March 2012.[9]

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4 Department of Broadband, Communications and the Digital Economy website, 'Independent Media Inquiry', http://www.dbcde.gov.au/digital_economy/independent_media_inquiry (accessed 15 March 2013).

5 Department of Broadband, Communications and the Digital Economy website, 'Independent Media Inquiry', http://www.dbcde.gov.au/digital_economy/independent_media_inquiry (accessed 15 March 2013).

6 The Hon R Finkelstein QC, *Report of the Independent Inquiry into the Media and Media Regulation*, 28 February 2012, available at: http://www.archive.dbcde.gov.au/__data/assets/pdf_file/0006/146994/Report-of-the-Independent-Inquiry-into-the-Media-and-Media-Regulation-web.pdf (accessed 15 March 2013).

7 Department of Broadband, Communications and the Digital Economy website, 'Independent Media Inquiry', http://www.dbcde.gov.au/digital_economy/independent_media_inquiry (accessed 15 March 2013).

8 Department of Broadband, Communications and the Digital Economy website, 'Convergence Review', http://www.dbcde.gov.au/digital_economy/convergence_review (accessed 15 March 2013).

Commonwealth government response

1.11 On 30 November 2012 the government announced a package of measures as part of its initial response to the Convergence Review.[10]

1.12 On 12 March 2013, the Minister for Broadband, Communications and the Digital Economy announced that new legislation would be introduced to Parliament to implement media reforms.[11] On 14 March 2013, a package of six bills was introduced.

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9 Department of Broadband, Communications and the Digital Economy, *Convergence Review Final Report*, March 2012, available at: http://www.dbcde.gov.au/__data/assets/pdf_file/0007/147733/Convergence_Review_Final_Report.pdf (accessed 15 March 2013).

10 Senator the Hon Stephen Conroy, Minister for Communications, Broadband and the Digital Economy, 'Government moves to ensure quality Australian content stays on Australian television', Media release, 30 November 2012, available at: http://www.minister.dbcde.gov.au/media/media_releases/2012/193 (accessed 15 March 2013).

11 Senator the Hon Stephen Conroy, Minister for Communications, Broadband and the Digital Economy, 'Government response to Convergence Review and Finkelstein Inquiry', Media release, 12 March 2012, available at: http://www.minister.dbcde.gov.au/media/media_releases/2012/193 (accessed 15 March 2013).

Chapter 2

Background

2.1 On 14 March 2013, the minister representing the Minister for Broadband, Communications and the Digital Economy, the Hon Anthony Albanese, introduced the six bills into the House of Representatives.[1]

2.2 In introducing the bills the minister remarked that the package of bills represents 'the Australian Government's initial response to issues identified by the 2011 Independent Inquiry into the Media and Media Regulation and the 2012 Convergence Review'.[2]

2.3 The bills have yet to be introduced to the Senate. An outline of each bill is set out below.

Outline of the bills

Public Interest Media Advocate Bill 2013

2.4 The bill creates a Public Interest Media Advocate (PIMA), an independent statutory office that is to be responsible for administering the public interest test established in the Broadcasting Legislation Amendment (News Media Diversity) Bill 2013 and functions set out in the News Media (Self-regulation) Bill 2013.

2.5 The PIMA is to be appointed by the minister by written instrument and must have significant standing and substantial experience in the area of media, law, business, financial management, public administration or economics.[3]

2.6 Prior to appointing a person as the PIMA, the minister must consult with the Australian Communications and Media Authority (ACMA), the Australian Competition and Consumer Commission (ACCC) and such bodies as the minister considers appropriate.[4]

2.7 The PIMA is to hold office on a part-time basis for the period specified in the instrument of appointment, which must not exceed five years.[5]

2.8 The PIMA must give written notice to the minister of all pecuniary interests that could conflict with the proper performance of his or her functions.[6] The PIMA

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1 Commonwealth of Australia, *House of Representatives Votes and Proceedings*, No. 156, 14 March 2013, p. 2145.

2 The Hon Anthony Albanese, Minister for Infrastructure and Transport, Second reading speech, Public Interest Media Advocate Bill 2013, *House of Representatives Hansard*, 14 March 2013, p. 7.

3 Public Interest Media Advocate Bill 2013, Clause 8.

4 Public Interest Media Advocate Bill 2013, Subclause 8(3).

5 Public Interest Media Advocate Bill 2013, Clause 9.

6 Public Interest Media Advocate Bill 2013, Clause 12.

must also not engage in any paid employment that conflicts with the proper performance of his or her functions.[7]

2.9 The ACMA, ACCC or any department or agency of the Commonwealth government may assist the PIMA in the performance of his or her functions. The PIMA may also hold public hearings.[8]

2.10 The PIMA is not subject to direction by the minister or by the Commonwealth government in relation to the performance of his or her functions.[9] The PIMA must also prepare an annual report for the Parliament.[10]

2.11 The Governor-General may make regulations under this Act.[11]

Broadcasting Legislation Amendment (News Media Diversity) Bill 2013

2.12 The bill introduces a new Part 5A in the *Broadcasting Services Act 1992* (BSA) which deals with news media diversity.[12] The proposed new Part introduces a public interest test for transactions between registered 'news media voices of national significance'.[13] Transactions that result in a person becoming the controller of a registered news media voice will be prohibited unless the Public Interest Media Advocate (PIMA) has approved the change of control. According to the Explanatory Memorandum to the bill:

> The proposed public interest test for media mergers and acquisitions is designed to encourage diversity of ownership amongst Australia's largest and most influential news media voices.[14]

Registered news media voices

2.13 News media voices are defined in the bill as being a commercial television, subscription television or radio broadcasting service that provides news or current affairs programs. Print publications and online services that have news or current affairs content are also considered news media voices.[15]

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7 Public Interest Media Advocate Bill 2013, Clause 13.

8 Public Interest Media Advocate Bill 2013, Clause 19.

9 Public Interest Media Advocate Bill 2013, Clause 21.

10 Public Interest Media Advocate Bill 2013, Clause 22.

11 Public Interest Media Advocate Bill 2013, Clause 23.

12 Broadcasting Legislation Amendment (News Media Diversity) Bill 2013, Explanatory Memorandum, p. 3.

13 Broadcasting Legislation Amendment (News Media Diversity) Bill 2013, Explanatory Memorandum, p. 12.

14 Broadcasting Legislation Amendment (News Media Diversity) Bill 2013, Explanatory Memorandum, p. 12.

15 Broadcasting Legislation Amendment (New Media Diversity) Bill 2013, Proposed new section 78GA.

2.14 The bill requires the Australian Communications and Media Authority (ACMA) to maintain an electronic register—the Register of News Media Voices—of news media voices that have an audience/readership in excess of 30 per cent of the average metropolitan commercial television evening news audience.[16] Entities that become registered news media voices must provide ACMA with the details of directors and those people in a position to exercise control over the entity.

Approval by the Public Interest Media Advocate

2.15 Any transaction that results in a person gaining control of two or more registered news media voices, or changes the mix of voices they control, must be approved by the PIMA and subjected to a public interest test.

2.16 A person seeking a change in control of a registered news media voice must make a written application to the PIMA.[17] Penalties apply to transactions that take place without approval from the PIMA.[18] The PIMA is also provided with information gathering powers.

2.17 In considering a change of control application, the PIMA must not approve the change unless it is satisfied that:

- the change of control will not result in a substantial lessening of diversity of control of registered news media voices; or
- the change of control is likely to result in a benefit to the public and that benefit outweighs the detriment to the public constituted by any lessening of diversity.[19]

2.18 Before making a decision on whether to approve an application, the PIMA must undertake public consultation about the proposed decision.[20] The PIMA must set out on the department's website a notice setting out the proposed decision and inviting persons to make submissions within 28 days of the notice being published.[21]

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16 Broadcasting Legislation Amendment (New Media Diversity) Bill 2013, Proposed Division 8.

17 Broadcasting Legislation Amendment (New Media Diversity) Bill 2013, Proposed new section 78CA.

18 Broadcasting Legislation Amendment (New Media Diversity) Bill 2013, Proposed new sections 78BE and 78BF.

19 Broadcasting Legislation Amendment (New Media Diversity) Bill 2013, Proposed new subsection 78CB(3).

20 Broadcasting Legislation Amendment (New Media Diversity) Bill 2013, Proposed new section 78CC.

21 Broadcasting Legislation Amendment (New Media Diversity) Bill 2013, Proposed new paragraph 78CC(a).

2.19 The PIMA must endeavour to make a decision on the application within 90 days after receipt of the application, or if a request has been made for the applicant to provide additional information, within 90 days of that information being received.[22]

2.20 If the PIMA approves or refuses an application, written notice and the reasons for the decision must be given to the applicant, and the ACMA, and displayed on the department's website.

Undertakings

2.21 The proposed legislation will also allow for parties to make and negotiate enforceable undertakings with the PIMA when considering applications for approval of transactions.[23] The EM explains that:

> Undertakings in the context of the public interest test provide a flexible alternative to refusing to approve a transaction when the PIMA believes that a transaction will lead to a substantial lessening of diversity. It is envisioned that undertakings will address diversity concerns whilst simultaneously permitting the realisation of merger benefits, such as organisational efficiencies or improvements in management.[24]

2.22 The PIMA would be authorised to accept a written undertaking that the person will take specified action, or refrain from taking specified action, in relation to news or current affairs content provided by a specified registered news media voice.[25]

2.23 According to the EM:

> It is intended that undertakings could relate to structural measures to maintain diversity, such as undertakings to dispose of particular assets within particular periods. Undertakings could also extend to behavioural matters…[26]

2.24 The bills allows for variations to undertakings and withdrawal of undertakings to be made with the PIMA.[27] The PIMA, in considering whether to accept or refuse the variation or withdrawal, must consult with the ACMA and the public.[28]

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22 Broadcasting Legislation Amendment (New Media Diversity) Bill 2013, Proposed subsection 78CB(7).

23 Broadcasting Legislation Amendment (News Media Diversity) Bill 2013, Explanatory Memorandum, p. 21.

24 Broadcasting Legislation Amendment (News Media Diversity) Bill 2013, Explanatory Memorandum, pp 12–13.

25 Broadcasting Legislation Amendment (New Media Diversity) Bill 2013, Proposed new section 78DA.

26 Broadcasting Legislation Amendment (News Media Diversity) Bill 2013, Explanatory Memorandum, p. 21.

27 Broadcasting Legislation Amendment (New Media Diversity) Bill 2013, Proposed new section 78DB.

28 Broadcasting Legislation Amendment (New Media Diversity) Bill 2013, Proposed new sections 78DB and 78DD.

News Media (Self-regulation) Bill 2013

2.25 The bill allows the PIMA to declare a specific body to be a 'news media self-regulation body'.[29] The minister's second reading speech on the bill outlined the rationale for the proposed self-regulation body:

> Under the existing arrangements for print and online news publications, news media organisations operate within a predominantly self-regulatory framework.
>
> Within this framework, the Australian Press Council is a self-regulatory body with principal responsibility for handling complaints about Australian newspapers, magazine, associated digital outlets and some online-only providers.
>
> The Press Council is also responsible for developing, promoting and monitoring standards of good media practice.
>
> The [b]ill will significantly strengthen current arrangements by providing incentives for news media organisations to participate in self-regulation that promotes the maintenance of standards relating to accuracy, fairness, privacy and other matters relating to the professional conduct of journalism.[30]

2.26 A news media organisation is defined as a corporation whose activities are wholly or principally media-related and consist of news or current affairs activities.[31] Small business operators within the meaning of the *Privacy Act 1988* are excluded.[32]

2.27 The PIMA will be able to declare a body corporate a 'news media self-regulation body' if it meets certain criteria, such as it being a registered company limited by guarantee and has an effective news media self-regulation scheme applying standards to its news organisation members in relation to their news or current affairs activities.[33]

2.28 The PIMA must also have regard to the extent to which standards formulated under the body's self-regulation scheme deal with certain matters, including:

- privacy, fairness and accuracy[34];
- the extent to which the self-regulation standards reflect community standards[35];

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29 New Media (Self-regulation) Bill 2013, Clause 7.

30 The Hon Anthony Albanese, Minister for Infrastructure and Transport, Second reading speech, News Media (Self-regulation) Bill 2013, *House of Representatives Hansard*, 14 March 2013, p. 6.

31 New Media (Self-regulation) Bill 2013, Clause 4.

32 New Media (Self-regulation) Bill 2013, Clause 4.

33 News Media (Self-regulation) Bill 2013, Explanatory Memorandum, p. 2.

34 New Media (Self-regulation) Bill 2013, Paragraph 7(3)(a).

35 New Media (Self-regulation) Bill 2013, Paragraph 7(3)(c).

- the publishing of periodic reports relating to compliance with the standards[36];
- the extent to which the scheme provides for remedial action to be taken[37];
- the extent to which decision-making under the scheme is independent from media organisations and governments[38];
- the extent to which the body corporate consulted the Privacy Commissioner in relation to the formation of the scheme[39]; and
- any other matters the PIMA considers relevant.[40]

2.29 Before authorising a body corporate as a self-regulation scheme, the PIMA must also consult with the Privacy Commissioner and call for public submissions.[41]

2.30 The PIMA is also given the power to revoke the status of a news media self-regulation scheme if it fails to meet these requirements.[42] Consultation with the Privacy Commissioner and the public is required before the PIMA can revoke the status of the news media self-regulation scheme.[43]

2.31 The proposed legislation does 'not apply to the extent (if any) that it would infringe any constitutional doctrine of implied freedom of political communication'.[44]

2.32 The minister is also required to conduct a review of the legislation within three years of its commencement.[45]

News Media (Self-regulation) (Consequential Amendments) Bill 2013

2.33 The bill amends subsection 7B(4) of the *Privacy Act 1988* (Privacy Act) so that the subsection only applies to a news media organisation that is a member of a news media self-regulation body.[46]

2.34 Subsection 7B(4) of the Privacy Act currently provides that an act done or a practice engaged in by a media organisation is exempt, if it is done in the course of journalism and at a time when the organisation is publicly committed to published privacy standards. According to the EM:

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36 New Media (Self-regulation) Bill 2013, Paragraph 7(3)(d).

37 New Media (Self-regulation) Bill 2013, Paragraph 7(3)(e).

38 New Media (Self-regulation) Bill 2013, Paragraph 7(3)(g).

39 New Media (Self-regulation) Bill 2013, Paragraph 7(3)(j).

40 New Media (Self-regulation) Bill 2013, Paragraph 7(3)(r).

41 New Media (Self-regulation) Bill 2013, Clause 8.

42 New Media (Self-regulation) Bill 2013, Clause 10.

43 New Media (Self-regulation) Bill 2013, Clause 11.

44 New Media (Self-regulation) Bill 2013, Clause 14.

45 New Media (Self-regulation) Bill 2013, Clause 15.

46 News Media (Self-regulation) Bill 2013 and News Media (Self-regulation)(Consequential Amendments) Bill 2013, Explanatory Memorandum, p. 2.

> This means in effect that the activities of news media organisations that currently qualify for the exemption are not subject to the Privacy Act provisions that relate to the obtaining, keeping and disclosing of personal information.[47]

2.35 The bill would exclude any news media organisation that is not a member of a news media self-regulation body, as declared by the PIMA under the News Media (Self-regulation) Bill 2013, would no longer qualify for the exemption and would therefore be subject to the provisions of the Privacy Act.[48]

2.36 News media organisation has the same definition that is applied in the News Media (Self-regulation) Bill 2013.

Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013

2.37 The bill responds to matters raised in the government's two independent reviews into Australian media.[49] In particular the bill reflects the government's intention to not permit a sixth channel for commercial television broadcasting services. The bill also imposes an Australian content transmission quota on commercial television broadcasting licences and amends the charters of the Australian Broadcasting Corporation (ABC) and Special Broadcasting Service (SBS).

Commercial television stations

2.38 The bill would repeal sections 35A and 35B of the *Broadcasting Services Act 1992* and insert a new section to limit the number of commercial television broadcasting licences to three, ensuring that there is no new fourth commercial station.[50]

Australian quota

2.39 Commercial television broadcasting licensees are currently required under the *Broadcasting Services (Australian Content) Standard 2005*, which is determined by the ACMA, to ensure Australian programs constitute 55 per cent of all programming broadcast in a year between specified viewing hours.[51] The bill would elevate this obligation from a legislative instrument made by the ACMA into primary

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47 News Media (Self-regulation) Bill 2013 and News Media (Self-regulation)(Consequential Amendments) Bill 2013, Explanatory Memorandum, p. 3.

48 News Media (Self-regulation) Bill 2013 and News Media (Self-regulation)(Consequential Amendments) Bill 2013, Explanatory Memorandum, p. 3.

49 Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013, Explanatory Memorandum, p. 2.

50 Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013, Items 1 and 3.

51 Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013, Explanatory Memorandum p. 12.

legislation.[52] The EM to the bill states that this change would 'increase regulatory certainty and provide greater transparency for the broadcasting and Australian content production sectors'.[53]

2.40 The bill would require each commercial television broadcasting licences to ensure that for each calendar year, the percentage of Australian programs transmitted on its core or primary channel during targeted viewing hours (between 6 a.m. and midnight) is not less than 55 per cent of all programming transmitted during those hours.[54]

2.41 The bill establishes definitions for 'Australian programs' and 'targeted viewing hours'.[55]

ABC and SBS

2.42 The bill proposes to amend the *Special Broadcasting Service Act 1991* to require the minister to have regard to the need to ensure that the SBS includes at least one Indigenous non-executive director.[56]

2.43 The bill also proposes to make amendments to the charters of the ABC and SBS. The Charter of the ABC would be amended to insert a new paragraph 6(1)(ba), adding the provision of digital media services to the functions of the ABC.[57] The EM explains that this change is intended to 'reflect the range of services provided by the ABC, which now include online service in addition to the ABC's traditional television and radio services'.[58] The Charter of the SBS would be amended to include a similar reference to the provision of digital media services.[59]

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52 Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013, Explanatory Memorandum, p. 12.

53 Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013, Explanatory Memorandum, p. 12.

54 Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013, Subsection 121G.

55 Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013, Subsection 121G.

56 Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013, Items 15 and 16.

57 Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013, Item 21.

58 Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013, Explanatory Memorandum, p. 20.

59 Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013, Item 39.

2.44 The bill would also prohibit advertising on the ABC's digital media services and provide that the ABC or its prescribed companies are to be the only providers of Commonwealth-funded international broadcasting services.[60]

Television Licence Fees Amendment Bill 2013

2.45 The bill provides for the 50 per cent reduction in the licence fees paid by commercial television broadcasters, currently specified in regulations, to be made permanent in legislation on an ongoing basis.[61] The minister stated in his second reading speech that:

> This reform is an important part of the Australian Government's initial response to the Convergence Review, and recognises the significant commercial pressures faced by Australia's commercial television industry.
>
> The reduction in licence fees provided for in this [b]ill will enable commercial television broadcasters to continue to innovate and thrive in Australia's rapidly changing media landscape.[62]

2.46 The *Television Licence Fees Act 1964* requires commercial television broadcasting licensees to pay to the Commonwealth a licence fee, by way of a tax, which is calculated by reference to their annual gross earnings from the broadcast of advertisements and other material.[63]

2.47 The new annual licence fee payable by commercial television broadcasters will be reduced to a maximum of 4.5 per cent of gross earnings.[64]

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60 Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013, Explanatory Memorandum, p. 19.

61 Television Licence Fees Amendment Bill 2013, Explanatory Memorandum, p. 1.

62 The Hon Anthony Albanese, Minister for Infrastructure and Transport, Second reading speech, News Media (Self-regulation) Bill 2013, *House of Representatives Hansard*, 14 March 2013, p. 4.

63 Television Licence Fees Amendment Bill 2013, Explanatory Memorandum, p. 5.

64 The Hon Anthony Albanese, Minister for Infrastructure and Transport, Second reading speech, News Media (Self-regulation) Bill 2013, *House of Representatives Hansard*, 14 March 2013, p. 4.

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

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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,

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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]

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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

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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.

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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]

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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

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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:

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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, Fairax 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, Fair 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

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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

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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 organisations[47] 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.
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> …

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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:
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> - 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

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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 world[55] 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

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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

Coalition Senators' Dissenting Report

The Coalition's belief in a free media

The Coalition shares the concerns of many witnesses that the Public Interest Media Advocate (PIMA) is an unprecedented attack on free speech and a free media.

The Coalition is proud to have a strong commitment to free speech and a free media in both our philosophical underpinnings and the history of our party. From John Stuart Mill's optimistic belief in 1859 that the time 'is gone by, when any defence would be necessary of the liberty of the press' to Robert Menzies 1942 plea for 'freedom for people who disagree with us as well as our supporters', the liberal support for a free media has been a defining trait.

A free media is an essential feature of a modern democracy. The media should keep citizens informed of the performance and priorities of the polity. In Australia we have such a media. Australians value press freedom and, tellingly, this is the first attempt to restrict freedom of the press in our peacetime history.

At a time like this, where the Government has complete disregard for the conventions of the Parliament and of good governance and where even the most egregious failures of Ministers go unpunished, a critical media eye is essential.

Press freedom is a key tenet of the Australian democracy and was passionately defended by many witnesses, including by Fairfax Media Chief Executive Mr Greg Hywood who stated:

> …regulation of the media should be the last resort of any democratic government and be as light a touch as possible to achieve a clear public good. It is our strong view that the fact that a government feels it is not getting a fair go from one or other media outlet is a very poor reason to regulate; in fact, it is the worst reason. Is the media perfect? No. Does it get everything right? No. But is our media effective in delivering the public good of keeping our community open and transparent? Absolutely.[1]

News Limited Chief Executive Officer Mr Kim Williams who stated:

> These bills breach constitutional rights, equate to direct government intervention and regulation of the media and are a direct attack on free speech, innovation, investment and job creation.[2]

And Seven West Media Chairman Mr Kerry Stokes who stated:

> As a result of that [these changes] you would not get things like Eddie Obeid being discovered; you would not get the investigative journalism

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1 Mr Greg Hywood, Fairfax Media, *Proof Committee Hansard*, Canberra, 18 March 2013, p. 1.

2 Mr Kim Williams, News Limited, *Proof Committee Hansard*, Canberra 18 March 2013, p. 28.

> which is so important to a free democracy to our standing. He [PIMA] has a power to actually change that, and I find that scary.[3]

FOXTEL Chief Executive Officer Mr Richard Freudenstein explored the industry's bewilderment at the spectre of the regulations, stating:

> As others have observed, this is a solution in search of a problem. It is a basic tenet of the regulation of business activity that regulatory intervention should only occur where there is a demonstrated need or case of market failure.[4]

The changing media landscape

The Government has repeatedly asserted that with a changing media environment there exist threats to the diversity of media voices.

Labor Members and Senators have launched shrill attacks on the Murdoch press and spread assertions of unfounded breaches of media standards in Australia.

While there are countless examples over recent years, even as recently as during the extremely limited timeframe of the conduct of this inquiry, Labor's disposition was made very clear by a Labor member of the Joint Select Committee on Broadcasting Legislation, Mr John Murphy MP:

> We are all aware that News Ltd have a stranglehold on the print media in our country. They have a 50 per cent share in monopoly pay television; they have one of the most accessed sites on the internet—news.com—and many of us in this place want to be the guardian of any extension of the reach of News Ltd in our country, particularly as it relates to free-to-air television network and radio stations. Most fair-minded people do not think that is in the public interest or good for our country. I welcome the fair, balanced and objective reporting of your media. I also acknowledge and accept that a large company like News Ltd can report the news the way they want to, and whether it is described as opinions or propaganda, that is their right. But what is at the heart of this for most people who are very concerned about this is that News and the Murdoch family could drown out more voices, including yours, and we do not believe that that is in the public interest or good for the future of our democracy.[5]

The Coalition is wholly unconvinced that convergence is resulting in less media voices. In fact convergence is providing more media voices than ever before. In recent times we have seen the launch of *The Guardian Australia*, *The Conversation* and *Mamamia* to name just a few.

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3 Mr Kerry Stokes, Seven West Media, *Proof Committee Hansard*, Canberra, 18 March 2013, pp 19–20.

4 Mr Richard Freudenstein, FOXTEL, *Proof Committee Hansard*, Canberra, 18 March 2013, p. 50.

5 Joint Select Committee on Broadcasting Legislation, *Proof Committee Hansard*, Canberra, 18 March 2013, pp 50–51.

Nowadays anyone with a webcam can create media content and upload it to social media or content sharing platforms like YouTube. The traditional costs associated with publishing media content—printing presses, television studios or radio equipment—can be a thing of the past. Anyone with a laptop and basic IT skills can start their own news site.

Fairfax Media Chief Executive Greg Hywood reflected on this changing landscape stating:

> When I started in journalism in the late 1970s, there were newspapers, a handful of free-to-air TV stations and a handful of magazines in this country that ran news. We have seen an absolute explosion of sources of news and information in that period. People have the power. Fundamentally, the barriers to entering the media industry have collapsed. Once upon a time, you needed to spend hundreds of millions of dollars on a printing press to get a newspaper out or to get news and information out or you had to have a television licence. This required substantial funds, substantial capital. Now you need a computer and you can run a blog.
>
> You have seen the number of news sites there are. Crikey is a web-only news site. You have seen Business Spectator. You have seen a whole range of other sources of news and information that provide a multitude of voices. So the barrier entries are very low. The irony of this legislation is that it comes when voices have (a) never been louder and (b) never been more extensive for news and information in this country.[6]

FOXTEL Chief Executive Officer Mr Richard Freudenstein, likewise, outlined his views on the new news media landscape:

> In the digital and internet age there is no want of access to news and information.
>
> There has been an explosion in sources of news, information and opinion in Australia and globally. Low barriers to entry, thanks to digital delivery, means that everyone from micro bloggers to major media organisations like The Guardian can establish themselves and develop audiences.
>
> Search engines, content aggregators and social media disseminate videos, articles, opinions and ideas at an amazing pace.[7]

With more news source competitors than ever before, traditional news media organisations have faced sustained pressure on their business models which has resulted in the restructure of many news operations and the loss of jobs in the news media sector.

This reform and its imposition of additional regulatory costs and burdens comes at the worst possible time for new media regulations.

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6 Mr Greg Hywood, Fairfax Media, *Proof Committee Hansard*, Canberra, 18 March 2013, p. 5.

7 Mr Richard Freudenstein, FOXTEL, *Proof Committee Hansard*, Canberra, 18 March 2013, p. 50.

No case for reform

Neither the Prime Minister nor the Communications Minister has been able to coherently outline why the PIMA is necessary. In fact, they have been unable to point to a single instance of where existing self-regulation has failed where the PIMA would have produced a different result.

Seven West Chairman Mr Kerry Stokes was similarly perplexed as to the need for the PIMA:

> I have yet to see anybody explain to me any problem that warrants these laws – not only warrants these laws but warrants them being passed and debated within a week.[8]

The Coalition agrees with The Australian Law Reform Commission who stated in 2007 that:

> In the ALRC's view, freedom of expression is a fundamental tenet of a liberal democracy. Appointing an independent government body to oversee the media is a measure of last resort. Such an approach should be taken only where there is substantial evidence that self-regulation and co-regulation in the media industry have failed.[9]

Further, the United Nations Human Rights Committee has stated that:

> When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.[10]

The Government has failed to present any evidence that self-regulation has failed, let alone that such an act of last resort is required.

The only justification offered for the extraordinary intervention in the operation of the media is that there were failures in media regulation overseas. No evidence of similar systemic failures in Australia has been presented at any stage.

Seven West highlighted that:

> In fact there is no evidence that either the Independent Media Council or the Australian Press Council do not rigorously apply their own published standard or that these standards are not satisfactory.

Aside to references of what may or may not have happened overseas, the only case presented was that of Professor Ricketson where he claimed several instances

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8 Mr Kerry Stokes, Seven West Media, *Proof Committee Hansard*, Canberra, 18 March 2013, p. 22.

9 Australian Law Reform Commission, *Review of Australian Privacy Law*, Discussion paper no. 72, vol. 1, 2007, para 38.105, p. 1109, available at: http://www.alrc.gov.au/sites/default/files/pdfs/publications/DP72_full.pdf (accessed 20 March 2013).

10 Human Rights Committee, *General Comment No 34 (2011)*, paras 34–35.

represented breaches of media standards. Under questioning it was revealed that none of these cases had been investigated and they had not even all attempted to use existing self-regulatory procedures to pursue their case:

> **Senator BIRMINGHAM:** Professor Ricketson, you gave a list of examples that you said provided some justification for this intervention into the operation of the media. In each of those examples had the anonymous individuals taken a complaint to the Press Council?
>
> **Prof. Ricketson:** In the case of some I think yes and in the case of others no. One of the issues with the Press Council there's another annexure dealing with complaints to the Press Council is they're not always dealt with to the satisfaction of the complainant and so…
>
> **Senator BIRMINGHAM:** And generally speaking complainants won't be satisfied unless their complaint is upheld, so did you do any analysis of the merits of those complaints?
>
> **Prof. Ricketson:** The ones that, the, we are looking at? Yes we looked at those and we thought that they were all prima facie as far as, I mean again as Mr Finkelstein has said we didn't follow these sorts of matters to the enth degree because that was not the purpose of the enquiry but we were satisfied prima facie that there appeared to have been a problem in a way in which these matters were reported in the news media and that was enough for us at that stage.
>
> **Senator BIRMINGHAM:** Prima facie, so there was no particular checking with the media outlets in question?
>
> **Prof. Ricketson:** No.

The Government's failure to provide any compelling justification for this reform leaves only the conclusion that this is an exercise in political revenge from a government that feels aggrieved by the eminently warranted criticisms of its gross failures and incompetence.

The ultimate determinant of community standards is the decision for consumers to either purchase the media product (or watch/listen to it) or not. There is a case to regulate in certain circumstances where irregular decisions with high costs, such as the purchase of a home. But in the case of the Australian media market, where consumers make many small decisions with low costs, there is no case to regulate.

Public Interest Media Advocate

The appointment of the Public Interest Media Advocate

The process of appointment of the PIMA alarms the Coalition. While noting our opposition to the PIMA, we are nonetheless concerned that, if this legislation passes, the PIMA will be appointed at the whim of the Minister of the day, and can conversely be sacked on the whim of the Minister.

While Senator Conroy has promised 'consultation' with the Opposition and stated that he does not believe a former Member of Parliament would be a suitable candidate, there are no such requirements in the Bill.

Network Ten correctly notes that:

> Missing from the PIMA Bill is any obligation on the Minister to consult on the appointment of the PIMA or seek independent recommendation. Consultation is optional.[11]

The Coalition expected to see provisions requiring consultation with the Opposition and prohibitions on former MPs or Senators, but notes that the Bill omits any of these conditions and simply says:

> Clause 8 of the Bill outlines:
>
> **Division 2—Appointment**
>
> **8 Appointment of PIMA**
>
> (1) The PIMA is to be appointed by the Minister by written instrument.
>
> Note: The PIMA is eligible for reappointment: see the Acts Interpretation Act 1901.
>
> (2) A person is not eligible for appointment as the PIMA unless the Minister is satisfied that the person has:
>
> (a) substantial experience or knowledge; and
>
> (b) significant standing;
>
> (c) in at least one of the following fields:
>
> (d) the media industry;
>
> (e) law;
>
> (f) business or financial management;
>
> (g) public administration;
>
> (h) economics.
>
> (3) Before appointing a person as the PIMA, the Minister must consult:
>
> (a) the ACMA; and
>
> (b) the ACCC; and
>
> (c) such media industry bodies as the Minister considers appropriate.
>
> (4) Subsection (3) does not, by implication, prevent the Minister from consulting other bodies and persons.
>
> (5) The PIMA holds office on a part time basis.[12]

Coalition Senators explored whether this would allow former Senators or Members to hold the position of PIMA with several witnesses.

Fairfax Media Chief Executive Mr Hywood stated that there is indeed no restriction:

> **Senator BIRMINGHAM:** Are there any restrictions that you are aware of as to who might be able to serve in the position of PIMA?

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11 Network Ten, *Submission 3*, p. 7.

12 Public Media Advocate Bill 2013, Clause 8.

> **Mr Hywood:** Not as far as I know.
>
> **Ms Hambly:** There are a few in the bill, but they do not really go to anything in particular. You cannot be a bankrupt and you have to have had some kind experience somewhere. I note that it is also part time and you cannot hold other positions which conflict. That is not unreasonable, but it does beg the question of who may be in a position to take that role.
>
> **Senator BIRMINGHAM:** So hypothetically, for example, the former Health Minister and Attorney-General, Nicola Roxon, when she leaves the parliament, could well be the PIMA if the government so chooses. There is nothing in this act that would say that she could not do it as a former Labor minister, yet she would tick the very basic qualification criteria.
>
> **Ms Hambly:** I am sure that she would.[13]

The Coalition believes that the process of appointing the PIMA is open to gross political manipulation and may result in a highly partisan individual being the sole arbiter on content regulation and media industry structure. Even more alarmingly, there is no recourse to question or review the decisions of the PIMA.

News Limited Chief Executive Officer, Mr Kim Williams effectively summarises this situation, stating:

> … the government is proposing to appoint a single part time member who will be assisted by a department with no expertise in adjudicating and enforcing the law, who will have wide powers and discretion, given key terms in the bills are wholly undefined, who will not have to follow long-established law or principle in relation to the onus of proof, who can seemingly make decisions retrospective and whose decisions cannot be appealed. This is a modern-day star chamber—no more, no less.[14]

FOXTEL Chief Executive Officer Mr Richard Freudentein made clear the Minister's potential for influence over the PIMA stating:

> The PIMA is appointed for a period of up to five years, but appointments could be for a shorter time, maybe even a year, with the threat, actual or implied, of reappointment being contingent on achieving certain outcomes.[15]

Such a process is completely lacking and demonstrates a belief that government should have the right to interfere and determine in an unfettered manner the business decisions on media organisations. The Coalition strongly rejects the creation of such an environment.

The Coalition also notes that the PIMA is apparently to be a part-time appointee, reliant on administrative support from the Department of Broadband, Communications

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13 Mr Greg Hywood and Ms Gail Hambly, Fairfax Media, *Proof Committee Hansard*, Canberra, 18 March 2013, p. 5.

14 Mr Kim Williams, News Limited, *Proof Committee Hansard*, Canberra, 18 March 2013, p. 28.

15 Mr Richard Freudenstein, FOXTEL, *Proof Committee Hansard*, Canberra, 18 March 2013, p. 51.

and the Digital Economy. It is highly irregular for an allegedly independent statutory office holder to rely on a government department in this way and adds to the already high risk that the independence and impartiality of this process is compromised by other government policies or opinions.

The PIMA as a panel

There has been commentary from certain parliamentarians suggesting that it would be preferable for the PIMA to be a panel rather than be constituted as an individual.

This neglects several serious flaws in the approach to the legislation as a whole. Whilst Coalition Senators reject the overall need and premise of this legislation, we nonetheless note that numerous witnesses such as Dr Margaret Simons, who advocates for media legislation, highlighted wider concerns than just the appointment of a one-man band.

Dr Margaret Simons states that:

> In Section 7(3) of the News Media (Self Regulation) Bill, the PIMA is given dangerously wide discretion in deciding whether a news media self regulation body meets standards. The long list of eligibility requirements to which the PIMA must "have regard" include amorphous criteria such as "community standards" and "other matters relating to the professional conduct of journalism". The PIMA must "have regard to" the "extent to which" the body meets these criteria.[16]
>
> The application of “community standards” in this context is wrong in principle. Journalists, in the course of their work, do many things in the public interest that violate community norms of behaviour. The public interest would be severely harmed, and the role of the media dangerously inhibited, if they were to be prevented from acting in ways that might violate community standards.[17]
>
> Section 8 of The Public Interest Media Advocate Bill states that the PIMA is to be appointed by the Minister. Given the importance of this appointment to issues of freedom of speech, this is an inadequate process and at odds with the requirement for the PIMA to act independently of executive government.[18]

What is the public interest?

The PIMA will be empowered to assess any proposed change to the structure of media ownership against the public interest.

It is therefore bewildering that the 'public interest' is so ill-defined.

As News Limited Chief Executive Officer, Mr Kim Williams observes:

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16 Dr Margaret Simons, *Submission 4*, p. 2.

17 Dr Margaret Simons, *Submission 4*, p. 3.

18 Dr Margaret Simons, *Submission 4*, p. 4.

> The public interest is as long as a piece of string, Senator. I think the public interest is often used as a term which means many things to many different people; it is in the eye of the beholder.[19]

Mr Williams also notes in regards to the legislation:

> It would be interesting, Senator, to find a definition of the public interest contained within the bills before you. There is no such definition.[20]

The Coalition submits that Paul Howes and Pauline Hanson are likely to have significantly divergent views on what the 'public interest' entails. Under the proposed legislation, either one could be appointed PIMA and would be free, under the provisions of this Bill, to bring with them and apply their own definition of the public interest.

Such vague definitions of key concepts under this legislation give little comfort to stakeholders that the PIMA will be capable of operating in a fair, transparent, impartial and predictable manner.

Disclosure of information to the Minister

Curious provisions in these reforms allow for the PIMA to disclose confidential information obtained in the course of their work about media organisations to the Minister.

News Limited is concerned that:

> If media organisations seek approval of control transactions they will no doubt have to provide detailed information to the PIMA. They must do so in circumstances where the PIMA may share this information with the Minister.[21]

No justification for these provisions has been provided nor is any rationale evident apart from a general consistency with the Minister's approach to accumulating power over the media for his own ends.

News media regulation

Declaration of self-regulation bodies

The News Media (self-regulation) Bill 2013 requires an existing self-regulation body to submit itself for assessment and approval to the PIMA. The PIMA is required to assess the existing body against eligibility criteria including complaints handling processes as well as standards for members relating to privacy, accuracy and fairness.

If the PIMA deems the body compliant it will declare it a 'news media self-regulation body.' News media organisations will only continue to qualify for journalism

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19 Mr Kim Williams, News Limited, *Proof Committee Hansard*, Canberra, 18 March 2013, p. 29.

20 Mr Kim Williams, News Limited, *Proof Committee Hansard*, Canberra, 18 March 2013, p. 28.

21 Mr Kim Williams, News Limited, Letter to Senator Conroy, 18 March 2013, Attachment A, p. 2.

exemptions from the Privacy Act if they are a member of a declared news media self-regulation body.

This is an extraordinary intervention in the existing self-regulation system which directly involves government assessment and potentially intervention of media standards. Given it is virtually impossible for a journalist to operate without the exemptions from the Privacy Act, these reforms end the notion of self-regulation by the media and create a situation of mandatory, government sanctioned regulation.

As News Limited states:

> 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.[22]

The PIMA's ability to revoke approvals of self-regulatory bodies poses significant risks for members of self-regulatory bodies.

The conditions under which the PIMA can revoke approval are ill-defined and give the PIMA wide scope to interpret conditions as they see fit. Conditions include 'a significant change in relevant circumstances' and 'a change in relevant community standards'.

News Limited states that under the legislation a revocation of approval may result in no self-regulatory body being accredited at a particular point in time which would:

> …result in all media organisations losing their Privacy Act exemptions through no fault or action of theirs.[23]

The Committee heard from virtually all witnesses that Privacy Act exemptions are essential to the effective operation of journalists. Loss of exemptions across an entire company or companies, while a remote possibility, would cripple the media industry and would make journalism as we know it unviable. As Greg Hywood stated:

> 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.[24]

28 June deadline

The Bill requires that existing news media self-regulating bodies secure declaration from the PIMA by June 28. If at this time no such body has been approved, the journalism provisions of the Privacy Act cease to apply, creating an arbitrary and unnecessary deadline to secure approval.

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22 Mr Kim Williams, News Limited, *Proof Committee Hansard*, Canberra, 18 March 2013, p. 27.

23 Mr Kim Williams, News Limited, Letter to Senator Conroy, 18 March 2013, Attachment A, p. 1.

24 Mr Greg Hywood, Fairfax Media, *Proof Committee Hansard*, Canberra, 18 March 2013, p. 4.

Under extensive questioning, the Department argued that the PIMA would not be detailing what a news media self-regulation body would specifically have to contain in their code, but would instead either approve or reject it. The Department conceded that on the judgement of the PIMA it could be rejected multiple times, with no alternative proposed, leaving the body to have to guess how it could become compliant before losing the Privacy Act exemptions of it members.

This deadline, with its unjustifiable threat to journalists, creates undue pressure on media bodies to cede to the PIMA's wishes, or indeed perceived wishes, as they rush to meet this deadline.

In addition, to introduce such a dramatic change the regulation of the media just months before a federal election would appear to be interference in the democratic process with consequent diminishing capacity of the media to provide frank and fearless commentary and critique of not only the political process and policy but politicians themselves.

Control over news media

The extraordinary powers of the PIMA to suspend publications opens the possibility of a potentially outrageous neutering of critical media content.

As Network Ten alarmingly notes:

> There is no obligation on the PIMA to be independent, impartial or transparent in decision making.[25]

The PIMA will not only be empowered to assess and accredit self-regulation bodies, but also asses their compliance with unidentified community standards and the effectiveness of complaints handling arrangements.

Dual regulation role

Several witnesses took issue with the dual regulatory role held by the proposed PIMA.

News Limited stated:

> The PIMA's dual role is inappropriate. The PIMA is both the body that approves or disapproves control transactions in the media and also the body that declares news media self-regulation bodies. The same person who is to be determiner of media diversity and ownership is also the same person who oversees the daily reporting standards for journalists.[26]

News Limited further outlines the danger of such a dual regulatory approach:

> The PIMA should not, even hypothetically, be in a position to use issues arising in one of those areas to influence policies and compliance in another.[27]

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25 Network Ten, *Submission 3*, p. 7.

26 Mr Kim Williams, News Limited, Letter to Senator Conroy, 18 March 2013, Attachment A, p. 1.

27 Mr Kim Williams, News Limited, Letter to Senator Conroy, 18 March 2013, Attachment A, p. 1.

This, however, is a very real concern considering the lack of detail and direction provided for the PIMA on their role by the legislation and the fact that, as this report highlighted above:

> There is no obligation on the PIMA to be independent, impartial or transparent in decision making.[28]

Media diversity

Public interest test of media ownership

Under these reforms, the PIMA is required to assess then approve or reject transactions pertaining to the control of a media organisation.

Media mergers and control transactions are in many cases already reviewed by one or more of the Foreign Investment Review Board, Australian Competition and Consumer Commission and the Australian Communications and Media Authority.

FOXTEL Chief Executive Officer Mr Richard Freudenstein relayed to the Committee that:

> The ACCC has adequate powers to maintain competition and diversity in the media. The ACCC has said in its own Media Merger Guidelines that, and I quote: 'The ACCC will also consider whether a merged media business could exercise market power by reducing the quality of the content it provides consumers which could include reducing the diversity of the content it provides.[29]

The Coalition notes that in recent times, in an act that demonstrates the falsehoods peddled by these who claim current laws lack teeth; the ACCC rejected an application from Seven West Media. FOXTEL Chief Executive Officer Mr Richard Freudenstein told the Committee:

> You may also be aware that Seven West Media recently applied to the ACCC to be able to buy a share of FOXTEL and the ACCC indicated that that would not be possible.[30]

An additional regulatory hurdle to a media transaction appears excessive in light of the failure of the Minister to demonstrate any current lessening of diversity nor any need for further regulation.

News Limited highlights that the tests to be applied by the PIMA appear to replicate, but in vague terms, the existing diversity tests applied by current review processes:

> It is unclear how the diversity test will overlap or be distinct from the substantial lessening of competition test considered by the ACCC…[31]

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28 Network Ten, *Submission 3*, p. 7.

29 Mr Richard Freudenstein, FOXTEL, *Proof Committee Hansard*, Canberra, 18 March 2013, p. 50.

30 Mr Richard Freudenstein, FOXTEL, *Proof Committee Hansard*, Canberra, 18 March 2013, p. 52.

News Limited Chief Executive Officer Mr Kim Williams highlights the fundamental danger of these proposals:

> Senator Conroy's public interest test is really a political interest test. The PIMA will decide whether media mergers and acquisitions of national significance cause no substantial lessening of diversity of registered news voices, but we have no definition of what diversity is. It would be at the whim of this government-appointed PIMA.[32]

There are no guidelines on the process outline mergers and acquisitions to guide the PIMA and provide information for those businesses contemplating a merger or acquisition. This type of information is clear in both the FIRB with criteria on public interest test and the ACCC in their substantial lessening of competition test.

Reversal of the onus of proof

The Convergence Review clearly states the regulator should bear the onus of proof in determining a reduction in media diversity:

> The onus should be on the regulator to demonstrate that the outcomes of the proposed transaction is not in the public interest.[33]

This is of course consistent with normal legal practice and community expectation of regulation by government, yet it is proposed that the PIMA not bear the onus to prove a transaction reduces media diversity, but that the media organisation party to the transaction must prove that it does not reduce diversity.

As News Limited Chief Executive Officer Mr Kim Williams highlighted, there are additional challenges in proving a negative:

> What is of particular concern and contradicts the government's own convergence review is that it is now incumbent upon the applicant to satisfy the PIMA that there is not a lessening of diversity. This deliberate reversal of onus of proof is unworkable and the convergence review explicitly recommended against it. Clearly proving a negative is virtually impossible and logically flawed at law. It is the opposite approach adopted by the ACCC, for example, on mergers and acquisitions.[34]

Similarly, FOXTEL Chief Executive Officer Mr Richard Freudenstein noted:

> The challenge with the onus of proof is that it is very hard to prove a negative, to disprove something. It is a very difficult onus of proof to have

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31 Mr Kim Williams, News Limited, Letter to Senator Conroy, 18 March 2013, Attachment A, p. 8.

32 Mr Kim Williams, News Limited statement on the Government's proposed media law changes, 14 March 2013, p. 2, available at: http://resources.news.com.au/files/2013/03/15/1226597/919255-aus-media-williams-letter-file.pdf (accessed 20 March 2013).

33 *Convergence Review: Final Report*, p. 24, available at: http://www.dbcde.gov.au/__data/assets/pdf_file/0007/147733/Convergence_Review_Final_Report.pdf (accessed 20 March 2013).

34 Mr Kim Williams, News Limited, *Proof Committee Hansard*, Canberra, 18 March 2013, p. 27.

> it that way around. So we think there is a great deal of uncertainty in the legislation.[35]

Especially germane to this highly unusual reversal of proof is the fact that, as News Limited Chief Executive Officer Mr Kim Williams states:

> The Bill contains no guidance for the applicant as to what factors the PIMA will take into account when considering the application.[36]

Requiring media organisations to disprove the lessening of diversity without providing a definition of diversity, let alone metrics against which diversity is judged, is an extraordinary request of which one can only conclude a design to ensure all requests fail.

Uncertain time periods for decisions

The PIMA is required to deliver a decision on the review of a control transaction within 90 days. However, if it requests further information, which it can do within 30 days of receiving an application, the clock starts again. This allows the PIMA to take 120 days or more before a decision is due.

There is, however, no actual obligation on the PIMA to render a decision in this time period – simply an obligation to use best endeavours to do so. Such an open-ended timeframe presents clear risks to the negotiation and conduct of potential control transactions.

Lack of merits review

One of the most egregious features of the proposed PIMA is the complete lack of any recourse to internal or administrative review or complaint against decisions.

The aforementioned lack of detail regarding the PIMA's tests creates a murky situation where an applicant has no idea what criteria they are to be assessed against when drafting their application and no ability to seek recourse if the application is rejected. It is also inconsistent with the approach of the ACCC with respect to decisions made on mergers and acquisitions under the Competition and Consumer Act.

This is an untenable situation and, as News Limited states:

> It is concerning that the complexity and uncertainty of the process is being used as a reason why the decisions of the PIMA should not be subject to review, particularly where the factors to be considered and the basis for making of the decision are not specified in the Diversity Bill.[37]

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35 Mr Richard Freudenstein, FOXTEL, *Proof Committee Hansard*, Canberra, 18 March 2013, p. 54.

36 Mr Kim Williams, News Limited, Letter to Senator Conroy, 18 March 2013, Attachment A, p. 3.

37 Mr Kim Williams, News Limited, Letter to Senator Conroy, 18 March 2013, Attachment A, p. 3.

It is hard to fathom that the Government is proposing that an individual it appoints at its own whim should have complete control over the approval of media transactions and will assess such transactions against mystery tests which will be unknown to applicants and will provide no normal recourse to question the decision.

Impacts on restructures and start-ups

The Coalition is very concerned that the PIMA may actually stifle new media voices by creating an additional regulatory burden in setting up a new publication. News Limited states that:

> In what is an active disincentive for innovation, publishers may also need to obtain the PIMA's approval if they want to start a new publication which is likely to be popular. A bill that potentially imposes a criminal offence on a failure by an existing Australian news business to get approval for an increase in the number of voices in the market has to be seriously flawed.[38]

The proposed regulations do not only catch new media voices, but have the potential to interfere in the operation of existing media organisations. News Limited offers itself as an example, stating:

> …the PIMA's powers are so vast that companies will have to seek its approval for internal restructures, even if they do not cause a change in the number of voices. For instance, our recent organisation and merger of divisions and changes at news.com.au would likely have been caught by this provision.[39]

Such overt and undue interference in the operation of news media organisations is an unacceptable infringement on media freedoms and should be condemned.

Applicability to online services

Under the News Media Diversity Bill an associated online service – such as, a website or app - is required to be registered and approved if it is associated with a news media outlet.

News Limited highlights this folly in suggesting that this requirement for registration and approval could have ludicrous consequences, such as if:

> The Australian wants to make available on short notice, a smartphone/tablet app which would update Australian relatives of people caught in an international crisis or natural disaster on critical developments as they unfold.[40]

Under such a circumstance, the PIMA is required to make a determination on approval within 90 days and following a 28-day public consultation period.

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38 Mr Kim Williams, News Limited, *Proof Committee Hansard*, Canberra, 18 March 2013, p. 27.

39 Mr Kim Williams, News Limited, *Proof Committee Hansard*, Canberra, 18 March 2013, p. 27.

40 Mr Kim Williams, News Limited, Letter to Senator Conroy, 18 March 2013, Attachment A, p. 9.

This is obviously a poorly thought out impost on the free operation of media organisations and may have significant impacts on the ability of news media operators to offer the public timely online news platforms for significant news events.

In the changing and challenging modern media landscape regulatory settings should be doing all possible to encourage innovation and, where necessary, appropriate restructuring rather than imposing additional regulations on such activities.

Australia Network

Clause 27 of the Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013 inserts a new Section 31AA that legislates that the Australia Network will remain with the Australian Broadcasting Corporation in perpetuity with no possibility of the service being put to tender again.

While the Coalition understands the deep embarrassment felt by the Government and particularly the Communications Minister, Senator Conroy, over the handling of the corrupted Australia Network tender process[41], the Coalition believes it is poor public policy to lock up this contract with the ABC.

With the ABC mandated as the only broadcaster able to undertake the broadcast of Australia Network services, if questions arise in the future over the level of funding or the performance of the ABC in regards to the Network, ABC Director Legal Mr Robert Simpson, confirms that the ABC can effectively hold the government of the day to ransom:

> **Senator BIRMINGHAM:** Presumably, the only alternative available to government would be simply to not have, and not fund, an international network.
>
> **Mr Simpson:** Under our charter we are required to provide international broadcasting services, so I am not sure how that would work out in practice.
>
> **Senator BIRMINGHAM:** But, in terms of the operation of the Australia Network, if the government of the day were dissatisfied with the ABC's approach to it, they would have no option but to either go with the ABC or simply not have an Australia Network service.
>
> **Mr Simpson:** Yes, I think that is correct.[42]

This provision amounts to the Government giving away significant leverage over the delivery of the Australia Network. With the ABC guaranteed the contract and associated funding in perpetuity, there is no incentive for the ABC to ensure it meets the Government's requirements and expectations for the delivery of the service.

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41 Australian National Audit Office, *Annual Report No. 29 2011–12: Administration of the Australia Network Tender Process*, available at: http://www.anao.gov.au/~/media/Uploads/Audit%20Reports/2011%2012/25790284693869861286302175032753286172387651497395473208567902387.pdf (accessed 20 March 2013).

42 Mr Robert Simpson, Australian Broadcasting Corporation, *Proof Committee Hansard*, Canberra, 18 March 2013, p. 11.

SBS and advertising

The Coalition is supportive of measures allowing SBS to generate revenue in an appropriate manner, including through advertisements and sponsorship announcements on its digital media services, but notes the hypocrisy of the Communications Minister, given his past strident opposition to advertising measures properly implemented by SBS in accordance with the SBS Act.

The SBS Board in 2006 approved a new program break structure, allowing for limited program promotion and advertising within programs within a legislated cap of five minutes of advertising per hour.[43]

Senator Conroy, then Shadow Minister for Communications and Information Technology, used Senate Estimates hearings to argue that advertising during such advertising was not in accordance with the SBS Act and/or the intent of Parliament.

> Do you seriously believe that the SBS's interpretation is consistent with the intent of parliament? … It just seems to me that with the way the act was written – and I have spoken to some of the people who were involved in drafting it – it was not open slather. Clearly, it does not say: 'Just have ads wherever you want;' it says: 'You can have ads in only a couple of places,' and yet, as you have testified, there is now open slather in every single program. That just seems to me to be inconsistent with the intent of the limits that the legislation attempted to set. You have now defined those limits as being unlimited.[44]

Coalition Senators believe that, if Senator Conroy sincerely held these views and had the courage of his convictions, he would have sought to amend the act to prevent the advertising he found so offensive, let alone specifying in this bill, as he has, that he now guarantees similar advertising be allowed on digital media services.

Comments by the Parliamentary Joint Committee on Human Rights

The Labor-dominated Parliamentary Joint Committee on Human Rights, chaired by former Speaker Harry Jenkins, has delivered a damning report into these bills, which is particularly critical or focuses on the need for additional information in the following sections:

> 1.31—the committee seeks further clarification of the standards to be applied in granting or refusing approval for a change of control of certain news media organisations.
>
> 1.49—expresses concerns that the standards which the PIMA is to apply in the determination of an application for approval of a transaction are too broad and general and may in fact lead to being insufficiently precise for the purposes of satisfying article 19(3) of the ICCPR.

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43 Special Broadcasting Service Corporation, Media release, 1 June 2006, available at: http://www.media.sbs.com.au/sbscorporate/documents/48162006__ad_breaks_1_june.doc (accessed 20 March 2013).

44 Senator Stephen Conroy, Supplementary Budget Estimates Hansard, 30 October 2006, p. ECITA 11.

1.50—argues there is insufficient guidance regarding the standards set out in the bill on the basis of which the PIMA will grant or refuse approval in relation to a transaction provide the PIMA or persons affected.

1.51—proposes to write to the Minister for Broadband, Communications and the Digital Economy to seek clarification of the standards applied by the PIMA in determining applications.

1.52–1.56—concerns that the bill does not provide for any right of appeal or for any review on the merits of the decision of the PIMA under proposed new subsection 78BC(2) to refuse to approve a transaction.

1.57–1.58—concerns that the bill creates a number of offences and civil penalty provisions. Explanation is sought from the Minister as to the reasons for the creation of strict liability offences under the proposed new Division 12.

1.59–1.60—concerns for the proposed new section 78FA which provides the PIMA with the power to require a person to produce information and documents where the PIMA believes on reasonable grounds that the person has information or documents that are relevant to the operation of Part 5 A of the bill.

1.61–1.63—concerns that these Bills limit the right to freedom of expression and freedom of association.

1.77—issues that without the benefit of the Privacy Act exemption, it would be difficult if not impossible for many media organisations to carry on their news work.

1.80—removal of the exemption of news media organisations from the Privacy Act 1988 effectively limiting the right to freedom of speech to the journalists.

1.83–1.85—failure to provide the material with the bill it needed to assess whether the limitation on freedom of expression is justified. Neither the explanatory memorandum nor the statement of compatibility demonstrates why these reforms are even necessary.

1.87–1.90—failings in the evidence presented to the Parliament in relation to the bill to provide sufficient information about supposed inadequacies or ineffectiveness of current systems for the regulation of media to allow an informed assessment of the need for and proportionality of the proposed scheme of regulation. Lack of assessment as to whether other less intrusive alternatives to the proposed reforms were considered and if so, why this scheme was chosen over any less intrusive measures.

1.96–1.97—intention to write to the Minister to seek clarification about the combined effect of the proposed new section 78FA of the Broadcasting Services Act 1992 and the proposed power of the PIMA under clause 20 of this bill to disclose information to bodies with prosecution or regulatory enforcement functions.

Coalition Senators agree with the thrust of the committee's findings, as no convincing evidence has been provided as to why this bill and these reforms are even necessary, let alone proportionate to the interventions proposed by the Government. Coalition

Senators hold firm the opinion that these reforms do in fact unnecessarily limit the right to freedom of expression.

The Government's shambolic media reform process

Rushed nature of inquiry

The Coalition condemns the haste with which the legislation was introduced, has been partly inquired into and is set for debate and vote. It may be as little as 7 days between the introduction of these Bills and the conclusion of their deliberation in the Parliament.

As Network Ten highlighted in its submission:

> In 2006 Senator Conroy described the process to implement the last major media reform package as 'debauched' and said 'we should not be surprised when such an approach produces poor policy.'… As is obvious from the above, this current process is far more compressed with far less opportunity for scrutiny and debate than the 2006 process.[45]

Network Ten also provided the Committee with this comparison with the 2006 reform package[46]:

	2006	**2013**
No. of Bills	4	6
No. of days Bills in Parliament	34	7
No. of working days for Committee—inquiry and report	17	2

Seven West Media's submission discusses the impact of the short time frame on the ability to analyse and scrutinise the legislation:

> There has been very little time to either digest or debate the measures proposed in this package. 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…
>
> However, it is our understanding that this Committee is required to deliver an interim report less than a day after conclusion of its public hearings and that the timetable for voting on the legislation in the Senate will not permit any issues identified by this Committee to even be considered.
>
> This process is nothing short of shameful.[47]

45 Network Ten, *Submission 3*, p. 1.

46 Network Ten, *Submission 3*, p. 1.

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

This Committee has been tasked with scrutinising six Bills comprising some 130 pages of new regulation as well as testimony from 22 witnesses in just three working days and with only two days of hearings.

This interim report was required to be submitted just hours after the last witness was called, which limits the ability of Senators to fully analyse evidence given and the impacts of this unprecedented regulatory impost. Hansard transcripts of the committee's deliberations had not even been completed by the time this report had to be tabled.

To say this is an abuse of the Senate is understatement in the extreme.

One can only conclude that the Minister is deliberately seeking to limit scrutiny and debate of these Bills in an effort to subvert due process and the full investigation of the provisions of these Bills.

Lack of details and definitions

These Bills as a package lack clarity in the definitions of what constitutes a media self-regulation body[48], standards required for decision making by the PIMA and the details on what establishes the circumstances of a revocation of declaration.[49] This type of open ended response to vexed policy issues is endemic in the current government.

The majority of submitters were concerned about the lack of detail and uncertainty of definition on notions of fairness and accuracy, community standards and public interest.

Coalition Senators are concerned but not surprised by the lack of detail contained in the Bills, specifically with respect to the definitions of key terms.

Despite our rejection of the need for such regulation, we at least agree with Mr Disney that objective, measurable criteria are more effective when setting standards[50], rather than the 'fairness, accuracy, privacy and community standards' that are referred to in 7(b).[51]

When considering notions of fairness, the PIMA must ensure that the self-regulating body membership standards are 'fair'. Coalition senators believe this is a subjective test and question its appropriateness in this legislation.

Fairfax Media Chief Executive Mr Greg Hywood stated:

> They are not at all defined, and some people's version of fair can be very, very different to what is fair. If we are being fair to somebody who is

48 Broadcasting Legislation Amendment (News Media Diversity) Bill 2013.

49 News Media (Self-regulation) Bill 2013, Division 2.

50 Professor Julian Disney, Australian Press Council, *Proof Committee Hansard*, Canberra, 19 March 2013, p. 30.

51 News Media (Self-regulation) Bill 2013.

> corrupt in their terms, we are not doing our job. We have to be unfair to them in their terms to do our job effectively.

In regards to community standards, again, ambiguity and subjectivity leading to unintended consequences and the potential for government interference abound under such loose and immeasurable indicators.

As there is no agreed measure for 'community standards', ACMA uses surveys and focus groups to ascertain community standards, whilst commercial broadcasters use a combination of ratings, complaints and surveys.

Community standards vary markedly across regions and demographic groupings. The idea that one part time person can develop and determine standards reflective of these various communities to the satisfaction of all is onerous and problematic.

News Limited Chief Executive Officer, Mr Kim Williams noted:

…it is deeply troubling that the legislation lacks any detail on how the PIMA would determine what are relevant circumstances and community standards or what changes would warrant the PIMA's intervention. The only reasonable conclusion is that a single person, the government-appointed PIMA, can remove at their whim the most basic rights on which journalists depend to do their jobs. [52]

While Seven West Media Group Chief of Corporate and Regulatory Affairs Ms Bridget Fair stated:

> I think the point is that the public interest media advocate is able unilaterally to decide what constitutes community standards. They are not outlined anywhere in the legislation.[53]

Dr Margaret Simons states that the community standards are “misguided” as journalists and media sometimes needs to reveal information that harms others which may offend or concern the community, but in no way breech the ethics of professional journalism, rather enhances and supports the very notion of what it means to be a journalist.

The decision to revoke a declaration of an organisation as a self-regulating body, can occur in similarly murky definitions, Clause 10(3) b(i7ii) states:

> **10 Revocation of declaration**
>
> *Discretionary revocation*
>
> (3) If:
>
> (b) the PIMA has reasonable grounds to believe that, since the declaration was made:
>
> (i) there has been a significant change in relevant circumstances; or

52 Mr Kim Williams, News Limited, *Proof Committee Hansard*, Canberra, 18 March 2013, p. 27.

53 Ms Bridget Fair, Fairfax Media, *Proof Committee Hansard*, Canberra, 18 March 2013, p. 20.

(ii) there has been a change in relevant community standards;

the PIMA may, by writing, revoke the declaration.[54]

PIMA can revoke the privilege if there has been a 'significant' change in 'relevant' circumstance. Evidence to the committee was that the PIMA was the sole arbiter of what constituted significant, and relevant events. This leaves too much ambiguity and subjectivity in decision making.

Recommendations

Recommendation 1

Coalition Senators recommend that the Television Licence Fees Amendment Bill 2013 be passed in accordance with arguments made in the majority report.

Recommendation 2

Coalition Senators recommend that the Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013 be passed in accordance with arguments made in the majority report, however call for Clause 27 of the Bill, relating to future funding provisions for international broadcasting service, to be removed.

Recommendation 3

Coalition Senators recommend that the News Media (Self-regulation) Bill 2013, the News Media (Self-regulation) (Consequential Amendments) Bill 2013, the Public Interest Media Advocate Bill 2013 and the Broadcasting Legislation Amendment (News Media Diversity) Bill 2013 be opposed on the basis of their encroachment on the freedom of the media, poor design structures, additional regulatory burden and the absence of any compelling case warranting their passage.

Senator Simon Birmingham
Deputy Chair

Senator Bridget McKenzie

Senator Anne Ruston

54 News Media (Self-regulation) Bill 2013, Clause 10.

Australian Greens' Additional Comments

The Greens are on the record condemning the decision made by the government to impose an arbitrary timeframe for examining these bills. The Greens depart strongly from the Committee's comment that the debate through the Convergence and Finkelstein reviews on media reform issues can be applied to this package which represents slim pickings indeed from those comprehensive reports and detailed recommendations. It is extraordinary for such important bills to be rushed, for witnesses to be given virtually no notice but expected to produce submissions and provide evidence, and for the good will and expertise of Committee secretariats to be abused quite as they have in this case.

Some of the proposals and measures in these bills have real merit and can easily stand up to close examination. Others measures contained in the bills need to be amended to properly achieve the objective of strengthening an independent press that adheres to basic standards.

As Mr Finkelstein stated, these bills have 'a relatively minor imposition on press freedom and probably no restriction on free speech,' and that, "most of the topics dealt with in the legislation are covered by existing codes of conduct." The Australian Greens believe very strongly that freedom of the press and effective and accessible media and communications systems are integral to the functioning of a successful democratic society. We also believe that media diversity in content and format is a right of all Australians.

It is in the public interest, and it is in the interest of a flourishing and free press that further concentration of media ownership in Australia is prevented. Australia's is the most concentrated in the western world. We have a problem in Australia; it is recognised globally.

The Bills establish a public interest test for major changes of media ownership based on the threshold of 30% of an average metro commercial TV evening news audience.

The Greens believe that the public interest test needed more definition. We believe that it needs to be clearer that there is a public interest case for content services, including news services, to not be diminished as a result of mergers and acquisitions. We believe that local news should not be diminished, and that editorial independence of media operations should not be threatened by any future media mergers or acquisitions. We believe amendments should be made to more clearly articulate just exactly what a public interest test would be trying to protect, for example, whether the transaction will diminish the range of content services, whether the transaction will diminish the production of news at the local level, the impact on editorial independence is vital to protect, as is freedom of opinion and the fair and accurate presentation of news.

Establishing a press standards model for an independent self-funded self-regulatory body is not diminishing press freedom in this country. We believe that a regulatory race to the bottom should be avoided and that the Australian media landscape would

not benefit from a proliferation of press councils, however we have no objection to an independent, self-funded body setting press standards.

The problem these bills are trying to address is the actual implementation of the standards set by the industry itself. A representatives from Fairfax recognised that there is no doubt that, 'people may not have been happy about the performance of the Press Council." The Press Council is failing to apply appropriate redress, despite improvements in recent years. The Bills attempt to find a path to find incentives for journalists and publications to adhere to their own standards.

The Bills also establish a part time Public Interest Media Advocate who would apply both a Public Interest Test and have a role in accrediting the Press Council or its successor organisation. That is, the PIMA would not be able to dictate content appearing in Australian newspapers. The PIMA would be independent, and at arm's length of government.

The Bills amend the ABC Charter to protect digital media services and to include an indigenous representative on the SBS Board – both overdue reforms which are very much welcomed by the Greens.

The Greens also welcome that the Australia Network will be kept in public hands which is consistent with Australia's national interests. The Australia Network shapes perceptions of Australia and its relationship with nations in the region and globally. Keeping the Australia Network in public hands is also consistent with the practice of every other country that provides international broadcasting services, including Britain's BBC World Service, the Voice of America and Germany's Deutsche Welle.

The ABC is independent of government but accountable to parliament and the public through statutory transparency obligations. The ABC regards its audience as citizens, not consumers and through the Australia Network extends that respect to neighbours in the region. The ABC has a statutory responsibility to provide independent news and has a proven record in this regard.

The Greens are very concerned that Australian content standards be improved and that Australia's actors, writers, producers, directors, and technical skills are maintained and nurtured. These bills stipulates Australian content across multichannels of 730 hours in 2013, 1095 hours in 2014 and 1460 hours from 2015 onwards that includes sport and repeats in return for 50% reduction in TV licensing fees. The Greens do not agree that Australian content quota hours should be spread across the multichannels, and we are not satisfied that repeats and sport count towards the number of hours. We attempted to amend the bills in the House of Representatives to double the number of Australian content hours.

The Greens welcome spectrum allocation for Community TV as announced by the Minister; however this is not explicitly outlined in the Bills, and the Greens will ensure that this is acknowledged in debate.

The Community TV sector provides a great deal of local Australian content through 80 community TV licenses reaching over 3.6 million Australians. The community broadcasting sector has developed over 40 years to represent a significant contribution to media diversity, social inclusion, cultural diversity, media & technical skills

development and participatory democracy in the Australian broadcasting sector. The sector engages 23,000 volunteers, with more than 70% of TV and Radio broadcasting stations located in rural, regional and remote areas providing a highly diverse range of services including cultural and specialist talks programming, alternative news and views, music of all genres, Indigenous, print handicapped, religious, ethnic and multicultural, youth, educational and community access services.

Community television has struggled to survive for over the last 25 years with virtually zero funding support to their operations. There is now some level of transmission support and $300,000 per year to cover hundreds of community television programs produced for CTV stations. CTV urgently requires a higher level of funding support to develop in a convergent media environment.

As the two days of inquiry into these bills have revealed, the functions and social purpose of journalism goes beyond the form of delivery – whether that be online, via a newspaper, on the radio waves or on free to air or pay TV. Witnesses to this inquiry and commentary on it have discussed the role of a free press in a democracy to inform citizenry.

The debate around reforming the media is highly relevant. It needs to be based on facts, rather than alarmist fears. The Greens believe that citizens require more than just information. Disaggregated facts or news that is shortened, disconnected and designed to be quickly consumed is not enough in a democratic society where citizens are making informed decisions about urgent policy questions of the day.

The commercial media is certainly part of a market, but in order to fulfil its role as a public service in a flourishing democracy, it needs to earn some of the spectrum it gets – a public good – at discount prices or other forms of support, by providing relevant quality journalism, analysis of complexities and in depth reporting that is relevant to people's lives in their geographical location.

This week, the British Parliament has finally passed media reforms, creating new mechanisms for independent self-regulation of the British press – backed up by statutory recognition. That is exactly what is proposed here in Australia – independence backed up by legislation. The regulator in the UK will be able to call for apologies and corrections and in the cases where a wrong has been done will be able to issue fines. These are basic standards to which media organisations should be able to easily abide in the UK and here in Australia.

Senator Scott Ludlam

Appendix 1
Public hearings

Monday, 18 March 2013 - Canberra

Fairfax Media

Mr Greg Hywood, Chief Executive & Managing Director

Ms Gail Hambly, Group General Counsel & Company Secretary

Australian Broadcasting Corporation (ABC)

Mr Michael Millett, Director Corporate Affairs

Mr Rob Simpson, Director Legal

Special Broadcasting Service (SBS)

Mr Michael Ebeid, Managing Director

Seven West Media

Mr Kerry Stokes AC, Chairman

Mr Ryan Stokes, Director

Mr Tim Worner, Chief Executive Officer, Broadcast Television

Mr Bruce McWilliam, Commercial Director

Ms Bridget Fair, Group Chief – Corporate and Regulatory Affairs

News Limited

Mr Kim Williams AM, Chief Executive Officer

Mr Campbell Reid, Group Editorial Director

Mr Adam Suckling, Director – Policy, Corporate Affairs and Community Relations

Network Ten

Mr Hamish McLennan, Chief Executive Officer

Ms Annabelle Herd, Head of Broadcast Policy

Nine Network

Mr Jeffrey Browne, Managing Director

Mr Scott Briggs, Director of Commercial and Regulatory Affairs

Australian Subscription Television and Radio Association (ASTRA)

Ms Petra Buchanan, Chief Executive Officer

Mr Simon Curtis, Policy and Regulatory Affairs Manager

Foxtel

Mr Richard Freudenstein, Chief Executive Officer

Mr Bruce Meagher, Director of Corporate Affairs

Tuesday, 19 March 2013 – Canberra

The Hon Ray Finkelstein QC

Professor Matthew Ricketson, Professor of Journalism, University of Canberra

Independent Media Council

The Hon James McGinty, Member

Institute of Public Affairs

Mr Chris Berg, Director, Policy

Mr Simon Breheny, Director, Legal Rights Project

Australian Press Council

Professor Julian Disney, Chair

Dr Derek Wilding, Executive Director

Australian Associated Press

Mr Bruce Davidson, Chief Executive Officer

Mr Tony Gillies, Editor in Chief

Dr Margaret Simons, Director, Centre for Advanced Journalism, University of Melbourne

Professor Michael Fraser, Communications Law Centre, University of Technology Sydney

Media, Entertainment and Arts Alliance

Ms Sue McCreadie, National Director

Mr Drew Macrae, Federal Policy Officer

Department of Broadband, Communications and the Digital Economy

Ms Nerida O'Loughlin, Deputy Secretary, Broadcasting and Digital Switchover

Dr Simon Pelling, First Assistant Secretary

Mr Rohan Buettel, General Manager, Legal and Parliamentary

Mr Brian Kelleher, Assistant Secretary

Australian Communications and Media Authority

Ms Jennifer McNeill, General Manager, Content, Consumer and Citizen Division

Australian Competition and Consumer Commission

Mr Brian Cassidy, Chief Executive Officer

Ms Rose Webb, Executive General Manager, Mergers and Adjudication Group

Attorney-General's Department

Mr Richard Glenn, Assistant Secretary, Business and Information Law Branch

COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

SENATE

ENVIRONMENT AND COMMUNICATIONS LEGISLATION COMMITTEE

Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013, Broadcasting Legislation Amendment (News Media Diversity) Bill 2013, News Media (Self-regulation) Bill 2013, News Media (Self-regulation) (Consequential Amendments) Bill 2013, Television Licence Fees Amendment Bill 2013, Public Interest Media Advocate Bill 2013

(Public)

MONDAY, 18 MARCH 2013

CANBERRA

BY AUTHORITY OF THE SENATE

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SENATE

ENVIRONMENT AND COMMUNICATIONS LEGISLATION COMMITTEE

Monday, 18 March 2013

Members in attendance: Senators Birmingham, Brandis, Cameron, Heffernan, Ludlam, Madigan, McKenzie, Nash, Ruston, Singh, Stephens, Sterle.

Terms of Reference for the Inquiry:

To inquire into and report on:

Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013, Broadcasting Legislation Amendment (News Media Diversity) Bill 2013, News Media (Self-regulation) Bill 2013, News Media (Self-regulation) (Consequential Amendments) Bill 2013, Television Licence Fees Amendment Bill 2013 and Public Interest Media Advocate Bill 2013.

WITNESSES

HAMBLY, Ms Gail, Group General Counsel and Company Secretary, Fairfax Media

HYWOOD, Mr Greg, Chief Executive and Managing Director, Fairfax Media

Committee met at 11:53

CHAIR: (Senator Cameron) I declare opening this public hearing of the Senate Standing Committee on Environment and Communications in relation to its inquiry into the Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013, the Broadcasting Legislation Amendment (News Media Diversity) Bill 2013, the News Media (Self-regulation) Bill 2013, the News Media (Self-regulation) (Consequential Amendments) Bill 2013, the Public Interest Media Advocate Bill 2013 and the Television Licence Fees Amendment Bill 2013. The committee's proceedings today will follow the program as circulated. These are public proceedings. The committee may also agree to a request to have evidence heard in camera or may determine that certain evidence should be heard in camera. I remind all witnesses that, in giving evidence to the committee, they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to the committee.

If a witness objects to answering a question, the witness should state the ground upon which the objection is to be taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may, of course, also be made at any other time. A witness called to answer a question for the first time should state their full name and the capacity in which they appear, and witnesses should speak clearly and into the microphone to assist Hansard to record proceedings. Mobile phones should be switched off or turned to silent.

The committee has authorised the recording, broadcasting and rebroadcasting of its public proceedings in accordance with the rules contained in the order of the Senate concerning the broadcasting of committee proceedings, including by electronic means. Media outlets may record the public proceedings subject to the following conditions. The committee or a witness can object to being recorded at any time and the committee can require that recording cease at any time. Recordings must not occur from behind the committee or between the committee and witnesses and must not otherwise interfere with the proceedings, and computer screens and documents belonging to senators must not be recorded. Any member of the media who does not comply with these conditions may be ejected from the public hearing.

I welcome representatives of Fairfax Media, after that lengthy formal speech. Thank you for talking to us today. Do you wish to make a brief opening statement before we go to questions?

Mr Hywood: Yes, if that is okay with you.

CHAIR: Mr Hywood—I will be saying this to everyone who appears—could you keep the opening statement as brief as possible to make your point, as I think people are interested in questions; thanks.

Mr Hywood: Absolutely—I will move through this as quickly as possible. I want to address a couple of points in the proposed bills, the process and some principles behind them. There are 200 pages of complex drafting and cross-references to other legislation included in these bills. The minister says that there is no need for consultation and debate on these bills because the principles have been discussed extensively for a long time in past discussion. This is not really true. The minister knows—and we have pointed out repeatedly—that, regardless of people's positions on the principle of media regulation, the drafting is critical to how any changes will operate, and there has been no discussion on this and no real opportunity to review. Indeed, the bills certainly do not embrace or reflect normal practice. The explanatory memorandum does not even include a regulatory impact statement that, inter alia, explains the need for the legislation. I could go on. We see no value at all—and serious risk—in pushing these bills to a vote in such a rush.

On the principles of the bill, as we see it, the issue of deep principle is that regulation of the media should be the last resort of any democratic government and be as light a touch as possible to achieve a clear public good. It is our strong view that the fact that a government feels it is not getting a fair go from one or other media outlet is a very poor reason to regulate; in fact, it is the worst reason. Is the media perfect? No. Does it get everything right? No. But is our media effective in delivering the public good of keeping our community open and transparent? Absolutely. Look at the relatively low levels of government corruption in this country. Is that because we in Australia have better character than other communities? Perhaps. It is more likely because the chances are that, if you are corrupt, you will get caught. Even if you manage to skirt your way around the legal authorities, you still have to escape the media.

Let us look at some evidence to back this assertion. Fairfax journalists investigated—some would say 'doggedly pursued'—Eddie Obeid over many years. Mr Obeid successfully sued us for defamation in 2002 for imputations that he was corrupt. We paid him $162,000 in damages plus $465,000 in costs. He said that we were wrong, unfair, not even-handed and on a vicious crusade. Recent events have shown the situation in a very different light. This is the process of journalism; it is not pretty or easy, but it is essential. The Securency stories, the AWA stories and many other stories are the same, and in the future there will be more issues that must be scrutinised in the public good.

We believe that the introduction of a government-appointed regulator to oversee print and digital news-gathering journalism will have seriously dangerous consequences for good government. 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 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.

We have said from the beginning of this process that there is no evidence that there is a problem to solve in Australia. The Finkelstein inquiry did not establish that need; the government has not established the need. The media, for all its faults, has actually served this country well. There is a reason that the media are called the fourth estate—after the parliament, the judiciary and the bureaucracy. Like us or loathe us, we are a true pillar of our healthy society. Our job is to ask the questions that people often do not want asked. We take seriously our responsibility to the communities that we serve. We strive to be as accurate and as fair-minded in our reporting as possible. At Fairfax, we have internal processes established and built over 180 years to make this happen. We embrace self-regulation of the industry, which we fund extensively.

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, changing the media and the way it works warrants more than just days to consider. Thank you very much.

CHAIR: Thank you, Mr Hywood. A couple of issues you have raised go to the question of the credibility of PIMA. You said that the minister can ring up and say, 'Fix it'. On what basis do you say that, and can you relate that back to how other independent organisations work, such as ACMA, ACCC and the like? Do you make the same claim for them—and, if not, why not?

Mr Hywood: We are saying that ACMA has been a longstanding regulatory environment around the broadcasting industry, which is fundamentally an entertainment industry with some news on the side. Companies like Fairfax are predominantly news-gathering organisations. A television company might have, say, a handful of journalists in its news room. The Sydney Morning Herald has in the order of 300, the Age has in the order of 300 and the Financial Review has in the order of 250. It is our job. We are at the pointy end of journalism, the controversial end of journalism, the end of journalism where we break stories and really devote our time to informing the public, in a very detailed way, about what is going on in their community. To this point in this nation's history we have not had regulation around that because it has not been required. Our point is that we ask the question: what public policy problem are we solving here? What has led us to a position where a government wants to regulate journalism and news gathering in this country?

CHAIR: But that is another question, and I am happy to come to that. The question I am asking you is: why would an independent regulator for the broadcasting and media industry be in any different position from anyone else? Given that you have argued that the Sydney Morning Herald, the Age and Fairfax have this great investigative history, wouldn't that be one of the first things you would find out?

Mr Hywood: The thing about the regulator—the PIMA position—is that it creates a government-appointed overlay into the standards of journalism in this country. 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. The issue that we have—and perhaps the PIMA may be a good person or perhaps a minister might not pick up the phone—is

that the practice is that ministers do pick up the phone. They pick up their phone to their appointees and to public servants and demand action around things that upset them.

CHAIR: Are you saying that that happens for the ACCC?

Mr Hywood: I have no idea—

CHAIR: Yes, that is right.

Mr Hywood: The point I am making—I worked in the bureaucracy in Victoria; I ran a statutory authority—is that ministers pick up the phone and ask for things to be fixed; it does not matter whether you are the head of a statutory authority or the head of a department. This is a government-appointed position. Let us look at the long game here. Let us assume that everyone acts well; but what about in five years, or in 10 years? You have a piece of legislation that enacts a statutory position which can determine the conduct of journalism in this country. Future governments, on this precedent, can easily increase the powers. This country has managed to get where it is very effectively to this point—

CHAIR: Mr Hywood, you are kidding us, aren't you, that a government could easily increase powers on the press? Have a look at the response to this legislation! Yet you are saying to me and this committee, in all seriousness, that it is easy to make changes to try to 'control the press'.

Mr Hywood: With due respect, if a government has the numbers in both houses, it can do exactly what it wants.

CHAIR: It can do exactly what it wants and then it ends up with what choices?—with a community rebellion. So there is always a democratic process there regardless of what happens.

Mr Hywood: Who knows the circumstances? All I am saying is: let us look at the long game. What is the public policy issue that is required to be solved here? It has not been tabled. We all understand what occurred in the UK—criminal activities. But there has been no evidence that those criminal activities have been undertaken by any journalist or any organisation in this country.

CHAIR: But up until a couple of years ago there was no evidence in the UK either.

Mr Hywood: There is now, and action has been taken.

CHAIR: Yes; and we had media proprietors and media executives like yourself telling the British parliament, 'There's no problem; this is an isolated incident, it’s a rogue employee.' Then it became a 'rogue newspaper'. Now we know that it is across more newspapers. We have to be very sceptical, I think, on evidence like yours that says there is no problem here. Let me note one area where there is a problem and that is the absolutely abject performance of the Australian Press Council over many years. You know that it has not worked well, don't you?

Mr Hywood: There has been debate—there is always debate—about whether organisations fulfil their responsibilities adequately, particularly in the press. The press is in a position, as I said in my introduction, of asking questions that people do not want to be asked, and people get upset. That is the nature of what we do. 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 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.

Our journalists put a story out each day—maybe some more than one story a day—and that goes into public scrutiny. It is being judged by the people who know the subject matter, and they get instantaneous feedback. So it is an obligation, both in terms of professionalism and all other aspects of self-respect, for a journalist to get it right. Certainly in our organisation—I am only here to talk about our organisation—we take that extremely seriously.

CHAIR: I am sure that the British parliament heard from media executives similar submissions to the submission that you have just given. On the issue of the complete lack of credibility of the Press Council—I think there has been lots of analysis done on that—you or your organisation were not the organisation that went to a former chair of the Press Council and said that you would double your contribution to the Press Council if there were no adverse findings?

Mr Hywood: I have never heard of that. I am certainly not—

CHAIR: That was evidence in the Finkelstein review.

Mr Hywood: It is certainly nothing that we have been engaged in. If that was evidence, I had not heard that evidence.

CHAIR: I will be asking this of everyone who comes. Obviously it was not you, on your evidence here. Have you ever threatened to withdraw from the Press Council, not you but—

Mr Hywood: No, we have not threatened to withdraw from the Press Council.

CHAIR: Has Fairfax ever threatened to reduce its contribution to the Press Council?

Mr Hywood: We have looked at it and reviewed it to make sure that it is appropriate, as you would with any contribution. But we are not an organisation that, in any manner, has concerns about the fundamental process around the Press Council. Like any organisation that you put money into, you want to make sure that it is managed appropriately and that your money is well spent.

Ms Hambly: Fairfax and all of the Press Council members today voluntarily increased the amount of money that they put into the Press Council. They voluntarily signed contracts which commit them long term to that financial commitment and that also commit them to the press council processes, the adjudication processes and the procedures for dealing with the outcomes of the adjudication processes. All of that was done voluntarily. You may say that it was done after the Finkelstein inquiry; that is true.

CHAIR: No, I did not say that.

Ms Hambly: Notwithstanding what you might say—

CHAIR: You should not put words in my mouth; thanks very much. I did not say that. The position I have put is that the Press Council were not held in high regard, and it is not a surprise that you are trying to build the Press Council up into something that has some standing. I move to Senator Birmingham.

Senator BIRMINGHAM: Thank you both for your time and your submission today. Can I cut to the chase in terms of the potential consequences, as you see them, of the government's proposal. Firstly, let us go to the extreme end of things. If a press council were not accredited by the PIMA and the penalties that the government has outlined apply, how would that affect the day-to-day operations generally?

Mr Hywood: We could not do our work.

Senator BIRMINGHAM: Please explain.

Mr Hywood: 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. I made the differentiation about, say, a television station which is primarily around entertainment. Perhaps a television station could do without running news—perhaps; I doubt it.

Senator BIRMINGHAM: But a newspaper?

Mr Hywood: But as for a newspaper, that is what we do.

Senator BIRMINGHAM: So, in terms of this nuclear option, that is the only penalty that is proposed by the government as well, isn't it? This is a case of one extreme or not.

Mr Hywood: Registration or deregulation. But also PIMA has the power to determine the standards of journalistic conduct which the Press Council or a press council would have to subscribe to. So, in effect, PIMA becomes the regulator and the Press Council becomes the implementer of a government-appointed regulator of journalistic conduct and standards.

Senator BIRMINGHAM: That is moving back, in a sense, from the penalty to the actual effect of these things. The government's legislation—rather ironically titled the 'news media self-regulation bill'; it does seem amazing to me to even suggest at the outset that you can have legislation that dictates self-regulation—sets out what a news media self-regulation scheme must deal with. It describes in section 7(3)(b) subsections (1), (2), (3) and (4) privacy, fairness, accuracy and other matters relating to the professional conduct of journalism. From your analysis of the legislation before us, are these terms defined at all?

Mr Hywood: They are not at all defined, and some people's version of fair can be very, very different to what is fair. If we are being fair to somebody who is corrupt in their terms, we are not doing our job. We have to be unfair to them in their terms to do our job effectively.

Senator BIRMINGHAM: Senator Conroy has claimed that these proposals would mean no change to the existing standards of the Press Council. From your analysis of the legislation before us, is there anything that guarantees that?

Mr Hywood: There is nothing to guarantee it because we do not know the standards which the PIMA would require; we don't know those standards. That is fundamentally up to PIMA to determine.

Senator BIRMINGHAM: When you talk about 'fundamentally up to PIMA to determine', that is a solitary individual, is it not?

Mr Hywood: That is a solitary individual, with no appeal process.

Senator BIRMINGHAM: In terms of the appointment of that individual, do you believe that there is sufficient rigour as to the process surrounding the appointment of that individual or how their position would be filled and operated?

Mr Hywood: All we know is that it would be a direct ministerial appointment.

Senator BIRMINGHAM: Are there any restrictions that you are aware of as to who might be able to serve in the position of PIMA?

Mr Hywood: Not as far as I know.

Ms Hambly: There are a few in the bill, but they do not really go to anything in particular. You cannot be a bankrupt and you have to have had some kind experience somewhere. I note that it is also part time and you cannot hold other positions which conflict. That is not unreasonable, but it does beg the question of who may be in a position to take that role.

Senator BIRMINGHAM: So hypothetically, for example, the former Health Minister and Attorney-General, Nicola Roxon, when she leaves the parliament, could well be the PIMA if the government so chooses. There is nothing in this act that would say that she could not do it as a former Labor minister, yet she would tick the very basic qualification criteria.

Ms Hambly: I am sure that she would.

Senator BIRMINGHAM: Mr Hywood, in your opening statement you touched on the role that defamation laws play in the media landscape and you highlighted the Obeid case and the fact that he was successful in suing Fairfax. Can you explain to us how you think Australia's common law regulates our media and how that relates to other comparable democracies around the world?

Mr Hywood: I think we have quite a rigorous defamation law. You can see in terms of that case that I raised that the ability of individuals to extract very large sums of money out of media companies is there. The recourse that individuals have through the defamation law, in comparison to many other countries, is extensive and we believe that it more than meets the need of people who have issues, serious issues, with the media. If there are other issues where people do not want to go to court, the Press Council, which, as I said, we support and fund as a self-regulatory environment, meets the needs of those individuals.

Senator BIRMINGHAM: In this debate, there is a lot of talk about the diversity of voices. Senator Conroy keeps coming back to that as one of the key reasons for increased regulation and he uses that argument both for regulation surrounding ownership as well as regulation surrounding content. Mr Hywood, your organisation has been under some pressure of late—that is a matter of public record—and you have been going through some difficult restructuring in terms of that. Do you believe that there are diminishing numbers of voices in the media landscape or increasing numbers of voices in the media landscape?

Mr Hywood: When I started in journalism in the late 1970s, there were newspapers, a handful of free-to-air TV stations and a handful of magazines in this country that ran news. We have seen an absolute explosion of sources of news and information in that period. People have the power. Fundamentally, the barriers to entering the media industry have collapsed. Once upon a time, you needed to spend hundreds of millions of dollars on a printing press to get a newspaper out or to get news and information out or you had to have a television licence. This required substantial funds, substantial capital. Now you need a computer and you can run a blog.

You have seen the number of news sites there are. Crikey is a web-only news site. You have seen Business Spectator. You have seen a whole range of other sources of news and information that provide a multitude of voices. So the barrier entries are very low. The irony of this legislation is that it comes when voices have (a) never been louder and (b) never been more extensive for news and information in this country.

Senator BIRMINGHAM: Does that proliferation in the number of voices and outlets available and the capacity of the people extend beyond just the capacity to share news and information to also seeing an increased level of scrutiny and criticism of the media and increased empowerment of consumers to make a difference to how media content is judged?

Mr Hywood: There are a variety of websites that are devoted entirely to scrutinising what is in the media and, of course, the media scrutinises what its competitors do all the time. Fairfax and the content of Fairfax

publications is a matter debated by our competitors all the time. I do not think there is any lack of diversity. In fact, if you look at Australia and look at two capital cities, they are quite unique—cities of four to 4½ million people, with two major publications in each city. You can go to Washington DC, with 6½ million people in Greater Washington, one newspaper. You can go to Dallas, one newspaper. You can go to Houston, one newspaper. So we do have, even within the traditional media, a great depth of diversity and great debate. We have a very healthy and vigorous media in this country and I think we should all be proud of that.

Senator BIRMINGHAM: In your opinion, looking at how ACMA's regulatory approach works across the electronic landscape, what is more effective at getting an outcome or a change or having an impact on the electronic media sector, the regulatory approach by ACMA or consumer reaction when a line is crossed?

Mr Hywood: Consumers have the ultimate power in our business. If you look at Fairfax, 75 per cent of our journalism is now accessed by people by digital means. The newspaper component part of our business is way less than it was, and that is because consumers are deciding that they will access news and journalism in a very different way. We have to react to that. It is not for us to tell people that they can only get it through newspapers; so we provide it online, we provide it on smart phones and we provide it with iPads. This, of course, has created huge changes in our business model, because the print revenues that were very high yielding are no longer there and, like all media companies—traditional newspaper companies—we are having to go through a major change in the nature of our business to meet consumer change.

It does not matter whether it is the newspaper industry, the news publication industry or the entertainment industry; it is fundamentally the consumers who define where it is going. The broadcasting industry is different, in the sense that there are regulatory protections around that business in terms of anti-siphoning and in terms of licensing arrangements. That is why regulation was created around the broadcasting industry. There were content issues, but fundamentally it was about who was going to own the spectrum. It was up to the government to sell that and to lease that and, therefore, a regulatory regime grew up around that. It is important: this is the first time in peacetime that there has been an attempt by government to regulate the traditional news media in this country.

Senator BIRMINGHAM: Thank you, Mr Hywood. I am sure that my colleagues will have some questions, so, to sum up, in an era when consumers have greater choice than ever before and where they have greater capacity to be media critics than ever before, we have a situation where the government is proposing reforms that would see a single government employee potentially dictating the standards that print media and electronic media would have to adhere to and doing so where there is a solitary penalty, which you have described as the nuclear option, that would make it impossible for a newspaper to do business. Do I have anything wrong in that analysis?

Mr Hywood: Not as far as I can see. It is an irony, from our perspective, that we are talking about legislation which is about diversity and yet it puts an enormous level of control into the hands of one person.

CHAIR: Thank you, Senator Birmingham. Before we go to Senator Singh, can I indicate, Mr Hywood, that the evidence before the Finkelstein inquiry about an offer to double the contribution to the council was evidence from a former chair, Ken McKinnon. If I could draw your attention to that, maybe you can once again establish that it was no-one from Fairfax that made that comment to Ken McKinnon.

Mr Hywood: It was certainly not me. Have you heard anything about that?

Ms Hambly: No. Greg was not at Fairfax at the time that Professor McKinnon was running the Press Council; I was. I have always been part of the liaison between Fairfax and the Press Council and I am very certain that that suggestion was never made by Fairfax.

CHAIR: Thank you. We might run a few minutes over on Fairfax, if that is okay with you, Mr Hywood. I will move to Senator Singh, then to Senator McKenzie and then we will have to wrap up.

Senator SINGH: Mr Hywood, you talk about the depth of media diversity. Of course, these bills have a strong focus on media diversity, and the fact that you are not supportive of these bills leads me to question: do you believe that there should be a further reduction in media diversity in this country?

Mr Hywood: I certainly do not believe in a reduction in diversity. I am a great believer in diversity of voices. We, as an organisation, are committed to that. We do not have a solid line that we pursue. All of our publications have a variety of different voices and they are successful because they deliver that.

Senator SINGH: But you acknowledge that the legislation has a strong focus on supporting media diversity.

Mr Hywood: Well, it says—

Senator SINGH: So you are saying that you support media diversity but you do not support the legislation which supports media diversity?

Mr Hywood: It has a view of what media diversity is. We believe that media is as diverse now as it has ever been in human history.

Senator SINGH: Just on that, how do you reconcile the claim of diversity with the fact that in the 1950s Australia had 15 national or metro papers with 10 owners and today we have 11 papers with three owners?

Mr Hywood: That is essentially an issue of economics; it is not an issue of consolidation to focus around any particular ideological line. The economics of the newspaper business have profoundly changed. My organisation, for instance, until a decade or so ago, was in possession of the so-called rivers of gold, which was essentially a monopoly position in print classifieds around jobs, homes and cars in Sydney and Melbourne. That business has essentially gone online. With newspapers per se, as the economics of the industry have changed, there has been a consolidation into fewer titles. But my point is this: that has been caused by the very fact that a technology has come along called the internet which has massively reduced the barrier to entry for all media for people who want to be in the media business and there is a plethora of news and information sites around the world.

Also, back in the fifties Australians could only read those newspapers. An Australian now can go online and read any newspaper in the world, any publication in the world. They have access to a global information network that was never available before. To me, that is a definition of diversity.

Senator SINGH: So you are blaming the dominance of Australian newspapers being owned by just three owners on the internet; is that what you are saying?

Mr Hywood: No, I am not saying that at all.

Senator SINGH: What are you saying? You are blaming the internet for something to do with the question I asked previously, which was about media ownership.

Mr Hywood: I am basically saying that the economics of the newspaper industry have changed and, therefore, newspapers do not have the revenue streams that they had in the past, or certainly the size of those revenue streams that they had in the past, and there has been a consolidation in the industry.

Senator SINGH: Are you concerned about that dominance of Australian newspapers being owned by just three owners and what that means for Australian readers and also what it means for journalism as far as job numbers go? We know that there has been a reduction in journalists and job numbers for those working in Australian newspapers and media. What would you say to somebody who wants to have a career in journalism right now?

Mr Hywood: I would say to someone who wanted to have a career in journalism that they are going to have a very useful life and they are going to have a very interesting life.

Senator SINGH: Are they going to get a job?

Mr Hywood: We have fabulous people coming into journalism and we are still opening our doors to jobs in journalism. We will continue to do that as long as we can continue to make the industry prosperous, and that is what we are doing. With respect to the talk about diversity, as I made the point, it is typical around the world for major cities to have maybe one newspaper publication. Even New York, a city in the order of a megalopolis—14 to 15 million people—only has two or three; cities the size of ours very rarely have more than one, and we have two in Sydney and Melbourne. To me, within the context of traditional media, that is significant diversity already. Add on top of that the power of the internet to inform people and I think we have never been in a position of greater diversity.

Senator McKENZIE: I would like to take us back to PIMA and 7(3)(c). In the context of all the undefined variables by which the regulator will be assessing everyone's self-regulatory schemes, part (c) goes to the extent to which those standards reflect community standards. Do you have an idea of how those community standards might be reflected and which communities the legislation may be speaking to?

Mr Hywood: It is a very general point. My understanding is that those community standards would be determined over time by the PIMA. My understanding would be that, if those community standards—whatever they are—change, PIMA would then require the Press Council to potentially operate under different standards. But it would be PIMA's determination of what those community standards are and not the Press Council's or that of the media companies.

Senator McKENZIE: Or potentially the community itself.

Mr Hywood: Or the community's. So it is an enormous power in here to determine what community standards are, and it is pretty open-ended obviously.

Senator McKENZIE: Do we have a measure out there that we can use, quickly and easily, to assess that?

Mr Hywood: Not that I know of. 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.

Senator McKENZIE: Similarly with the discretionary revocation in section 10, PIMA has reasonable grounds to believe that, since a declaration has been made, it can obviously revoke declarations, and one of those is that there is a change in relevant community standards. Would a change in government at any point in time reflect a change in community standards?

Mr Hywood: I imagine it reflects a change in community preferences under their government. My view of what a standard is is that it is a fairly continuous stream of beliefs that go through a community. But an appointee to this position could be chosen to reflect the needs of government. Quite clearly, my experience in government is that basically ministers have put people into positions that have reflected the views of the government and the interests of the government. What else would they do?

Senator McKENZIE: Precisely. The Finkelstein report in some of its findings said that one area that requires special and careful monitoring is the adequacy of news services in regional areas. The report states that there is some evidence that both regional radio and television stations and newspapers have cut back substantially on their news gathering, leaving the local news lacking. The report states:

This may require particular support in the immediate future, and I recommend that these issues be investigated by the government as a matter of some urgency.

Do you see the legislation before the Senate at the moment addressing that concern of the Finkelstein inquiry; and, if so, how?

Mr Hywood: Not as far as I can see. Do you have any views on that?

Ms Hambly: No. In fact, I think the process by which a voice is registrable goes the opposite way. It is very metro-centric.

Senator McKENZIE: Could you outline for the committee the measurement tool that is used to assess that?

Ms Hambly: The measurement tool, as far as I could work it out in the time that we have had available, relates to the audience reach of commercial television stations; it gets an average of that and then it applies it to a voice. We own a very large number of regional newspapers and we used to own regional radio stations. I doubt how many of our present regional newspapers, except the very big ones, would fall within this regulation at all.

Senator McKENZIE: So, in your opinion, this does not actually address the Finkelstein issues around diversity of voices in a regional media context?

Ms Hambly: No, I think it is silent on it.

Senator NASH: I am struggling, looking through the legislation, to see the need for the urgency. I think I am reasonably smart, but I cannot find a single thing in here that would indicate the need for urgency. Is it just the minister throwing a hissy fit? Is it a big distraction from the leadership issues? Why is this so urgent?

CHAIR: Senator Nash—

Senator NASH: No, it is a fair question. I am asking Mr Hywood why he thinks this is urgent.

CHAIR: Mr Hywood is not going to comment on that.

Mr Hywood: No, that is not for me to judge. Our basic point is that—

Senator NASH: Get it on the record; thank you.

Mr Hywood: these are very significant changes to the conduct of the media in this country. If the government wants to address issues of concern to it, whatever they are, that needs to be done in a timely and considered manner. The process of coming to these sorts of conclusions so quickly, we believe, is not constructive.

CHAIR: Mr Hywood, I have one last question before we move on to the ABC and SBS. Why shouldn't the government, in the public interest, be concerned about ensuring that we have a press council that is operating effectively, that the press council is not being manipulated by media owners, that there are proper processes in place in the press council and that, once the press council determines its own approach to how to deal with issues for itself, there is some overview of their capacity to deliver on what they promise? Why is that a problem and why hasn't it been the end of democracy in other countries that have a system like that?

Mr Hywood: I do not believe that there is anything wrong with the government asking questions of the media about its processes of fairness to the community. I think it is entirely appropriate and worthy of a government to

ask those questions, particularly given what occurred in the UK. I think that spurred reasonable questioning as to whether that was occurring here. But to leap forward and try to develop a regulatory outcome over this is really a bridge too far and not necessary. As I have said, we believe that we are an important pillar in this community. We have a public responsibility. My organisation delivers a public good; our job is to deliver a public good within a commercial model. So we are open always to discussion. But our concern is that regulation poses too many dangers in the long term for this community; it is fundamentally that.

CHAIR: I will not pursue that. Thank you very much, Mr Hywood and Ms Hambly.

MILLETT, Mr Michael, Director Corporate Affairs, Australian Broadcasting Corporation

SIMPSON, Mr Robert, Director Legal, Australian Broadcasting Corporation

EBEID, Mr Michael, Managing Director, Special Broadcasting Service

[12:42]

CHAIR: I welcome representatives from the Australian Broadcasting Corporation and the Special Broadcasting Service. Thank you for talking to us today. Does either of the organisations wish to make a brief opening statement before we go to questions?

Mr Millett: Yes, the ABC would like to make a brief statement.

CHAIR: Mr Ebeid?

Mr Ebeid: Yes.

CHAIR: Let us put Mr Ebeid first.

Mr Ebeid: Thank you. Firstly, SBS welcomes the changes to update and modernise our charter and act. It is just a matter of reflecting the services we have been providing for many years now; so it is just bringing our act into line with what we are doing. Over the last few years we have had to invest a lot of money into our online services. Because they have not been part of our act, we have had to move money away from content or find other areas of savings to fund these online activities. So this is an important part of reflecting that in our charter to enable us, in future funding rounds, to talk to the government about helping us fund these growing online activities. So this is something we welcome. We are very comfortable with the changes.

CHAIR: Thank you. Mr Millett?

Mr Millett: The ABC welcomes the opportunity to address this committee. The corporation was an active participant in the two inquiries that have underpinned the legislation that the committee is reviewing today. Like other media companies, the ABC is grappling with the challenges of the convergence era: the transfer of power from producers to consumers; the emergence of new delivery mechanisms; and the new and intense globalised competition for audiences. In line with its charter obligations to be innovative and, above all, to be relevant, the ABC is doing its best to meet the demands of this new era.

One of the bills before you today is designed to assist the ABC in this task. The bill modernises the ABC charter, recognising that online is becoming an important delivery tool for the corporation and a vital means of communicating and interacting with its audiences. The tweak to the charter is not revolutionary in nature. After all, the ABC has been using the power of the internet to service its audiences since the late 1990s, when it became the first of the broadcasters to set up websites as an adjunct to its radio programming across the country. The ABC audiences readily accepted the corporation's presence in the online space. We have used it to fulfil the charter to inform, educate and entertain. A total of 3.7 million Australians now use the ABC's online services. Our catch-up television service, iview, now boasts 3.5 million visitors and 13 million program plays across all iview platforms in a single month.

The popularity of Peppa Pig as a download demonstrates the extent to which iview, particularly via its tablet app, has become the platform of choice for many of our younger audience members. Going mobile has become a way of life for other ABC demographics. Seventy per cent of ABC online visits are for news and other essential information. In February, the number of monthly active users of tablets and smart phones exceeded 500,000. In the same month, total downloads of the iview app exceeded 2.35 million. Today we are launching new iPhone and iPad apps to improve the watching and listening experience for mobile audiences. As the convergence report noted, it is not credible to imagine a media organisation operating without an online presence. Digital platforms and online services enable the ABC to provide innovative and comprehensive services accessible to all Australians. The convergence report acknowledged the ABC's ability to use its online services to connect with local communities, particularly in rural and remote parts of the country. The ABC's online services have been important to fulfilling its emergency services role.

In reference to the other wording in the bill, the ABC's charter requires it to broadcast to countries outside Australia in order to encourage an awareness of Australia and Australian attitudes. That is the fundamental essence of international broadcasting. The change to the charter acknowledges the government decision of December 2011 to award the Australia Network contract to the ABC in perpetuity on the grounds that it is best placed to provide this important service on behalf of all Australians. The ABC has now worked to provide a converged international media service across radio, television, online and mobile, effectively bringing close together the Australia Network and Radio Australia services to deliver across all platforms. The ABC is in a

unique position to do this. Nowhere else in the world is international broadcasting funded by government and put out to tender by government. It is a role best delivered by public broadcasters who have no other shareholders or stakeholders but the government and the citizens it serves.

CHAIR: Thank you, Mr Millet. Senator Birmingham.

Senator BIRMINGHAM: Thank you all for your time and your submissions today. Could I start with the particular provisions as they relate to the ABC—and this will not be a surprise to ABC officials here—as to the proscriptions around Commonwealth-funded international broadcasting that are proposed in the legislation. What would be the effect of these provisions?

Mr Simpson: At the moment it would mean that the Commonwealth could not enter into an agreement with another supplier of international broadcasting services. As far as the ABC is concerned, it would mean that, at the end of the current 10-year contract, either a new contract would be put in place or that contract would lapse and it would simply become another part of the appropriated funds available to the ABC.

Senator BIRMINGHAM: When we are talking about international broadcasting services, we are talking about the Australia Network here, in practice?

Mr Simpson: Yes, that is correct.

Senator BIRMINGHAM: The Australia Network has, up until recently, been determined by tender process—and most recently was somewhat determined by a tender process, although that tender process was aborted in the end with a direct Cabinet decision in favour of the ABC. Is that correct?

Mr Simpson: Yes, that is correct.

Senator BIRMINGHAM: The contract that the ABC has at present to deliver the Australia Network is for 10 years?

Mr Simpson: Yes, that is correct.

Senator BIRMINGHAM: And it is valued at $220 million, or something like that?

Mr Simpson: Yes, I think it is in that order.

Mr Millett: t is basically continuing the existing funding; so it is just over $20 million a year.

Senator BIRMINGHAM: This legislation seeks to put in law a restriction that would ensure that never again, without changing the law, could a government go through such a tender process for the Australia Network service.

Mr Simpson: Yes, I think that is the effect of it.

Senator BIRMINGHAM: Mr Simpson, you just said that that would then mean that either a new contract would be entered into with the ABC, or potentially the funding would just be rolled into the ABC's core services and you would be told, 'Go your hardest'.

Mr Simpson: That is right. It would be a question for government to decide the level of funding; but yes, that would be the process.

Senator BIRMINGHAM: Presumably, the only alternative available to government would be simply to not have, and not fund, an international network.

Mr Simpson: Under our charter we are required to provide international broadcasting services, so I am not sure how that would work out in practice.

Senator BIRMINGHAM: But, in terms of the operation of the Australia Network, if the government of the day were dissatisfied with the ABC's approach to it, they would have no option but to either go with the ABC or simply not have an Australia Network service.

Mr Simpson: Yes, I think that is correct.

Senator BIRMINGHAM: Wouldn't that remove all potential leverage that a government would have over getting an appropriate, and appropriately competitive and dynamic, outcome from the ABC? At least at present, even though it might be a policy description to say that the Australia Network will stay with the ABC, there is at least a threat of some viable alternative being available. This simply removes that threat, doesn't it?

Mr Simpson: I think it probably puts it in the same position as the rest of the funding for the ABC services. For example, the government made a commitment to fund the children's channel. We are funded to provide that channel and we have to report against that expenditure. I imagine it would be a similar outcome in relation to an international service.

Mr Millett: And the contract does require the ABC to consult with DFAT in the delivery of the service.

Senator BIRMINGHAM: The contract requires that. However, the contract expires in 10 years. This legislation will still be standing then and there is no requirement in the legislation for such consultation.

Mr Millett: No. It is then up for government to consult again with the ABC for the provision beyond that period.

Senator BIRMINGHAM: In terms of the provision of services like the children's channel, which you cited, Mr Simpson—not that I think anybody is proposing to do this—there is no legislative prohibition on a government funding a children's channel through any other provider, is there?

Mr Simpson: No, there is not.

Senator BIRMINGHAM: So this would be a unique prohibition in terms of the comparable types of services that the ABC currently offers.

Mr Simpson: That is probably correct.

Senator BIRMINGHAM: More broadly, perhaps I can shift to how the public broadcasting sector is regulated. In terms of the experiences of both of your organisations with complaints and responding to community sentiment, you both have complaints handling procedures that are primarily internal but ultimately have a right of appeal to ACMA. Is that correct?

Mr Millett: That is correct, yes.

Senator BIRMINGHAM: The codes that you assess those against are approved by your boards. Do those codes require ACMA's approval?

Mr Millett: No, they do not.

Senator BIRMINGHAM: So neither the ABC nor SBS have to get their codes of conduct approved by a government regulator of any description.

Mr Ebeid: Not to my knowledge, no.

Senator BIRMINGHAM: So ACMA's role is simply to look at SBS's own code or the ABC's own code when a complaint has been appealed through to ACMA and say that the ABC has failed to uphold a complaint against its own code or to assess it at least against the ABC's own terms of reference.

Mr Millett: Essentially, its job is to make sure that we are honest in terms of upholding our own codes.

Senator BIRMINGHAM: Sorry; it is essentially—

Mr Millett: The job of ACMA is to keep the ABC honest in terms of administering its own code.

Senator BIRMINGHAM: So why is it that our public broadcasters are not subjected to any government oversight in terms of their codes of conduct compared to commercial broadcasters or, indeed, what is proposed for news media organisations?

Mr Millett: There are other mechanisms by which we are held accountable.

Senator BIRMINGHAM: Mr Millett, all of the commercials are attending today as well, I think. They will be answering—

Mr Millett: We are subject to, I think, our third successive inquiry into regional production. It is not relating to our codes. There are committee hearings by which we are held accountable.

Senator BIRMINGHAM: Have there ever been proposals by government to subject the codes of conduct for the public broadcasters to some sort of independent regulatory oversight?

Mr Millett: Not that I'm aware of.

Mr Simpson: The same; not that I'm aware of.

Senator BIRMINGHAM: Thank you, Chair.

CHAIR: Mr Millett, how important is it that the ABC presents the Australian voice overseas?

Mr Millett: As Mr Simpson remarked, it is actually embedded in the ABC charter. The charter requires the ABC to transmit to countries outside Australia, to encourage awareness of Australia and an international understanding of Australian attitudes to world affairs. It is embedded in the charter. It is part of our responsibilities. I think that charter role, as explained there, is the true essence of international broadcasting.

The ABC has always maintained that it is best placed to do the role of international broadcasting. As I pointed out in my opening statement, no other country requires it to go out to tender or envisages a commercial company actually running the service.

CHAIR: In terms of the changes to the ABC charter, do you have any submissions either from the ABC or you, Mr Ebeid, on changes that you would like to see in the charter?

Mr Millett: Beyond what is envisaged in terms of the online role and international broadcasting?

CHAIR: I am asking you a broad question on any issues.

Mr Millett: No. The charter as it operates obviously, as I referred to, has a sense of tweaking around the online role but I think the charter performs its role fairly well as a mission statement for the ABC.

CHAIR: I might come back to that. Mr Ebeid.

Mr Ebeid: I am very comfortable with the changes, as I said in my opening statement. The one thing that the convergence review talked about was having content quotas for the ABC and SBS. The SBS charter says for us to reflect Australia's multiculturalism. It is really hard for us to reflect Australia's multiculturalism when we have such a low level of Australian content on our network. One of my aims is to make sure that we try to increase Australian content as much as possible on our network. We are currently sitting at around 14, 15 per cent of Australian content, and the convergence review had recommended about 28 per cent for SBS. That would have been something that we would have welcomed but that is not part of the current proposals.

CHAIR: Would not a charter commitment to maintain funding at a certain level be a beneficial proposition for both SBS and the ABC?

Mr Ebeid: In terms of beneficial from the perspective of the government then needing to fund us to support that level of content, is exactly the reason why I would be in support of it. We are currently below the recommendation by the convergence review. My understanding is that the ABC is close to that figure that was recommended. We are way below that.

Mr Millett: Senator, I understand you are turning it around. You are saying that the charter should envisage a certain level of funding, therefore allowing services to increase underneath it.

CHAIR: Maybe that can explain what, why and the reason. The arguments I heard this morning—I am not sure if you were there; that was another inquiry—and the arguments that are taking place generally in the public are about not only convergence but also lack of voices. That means if there is a lack of voices in the media or media concentration, then the voice of SBS and the ABC becomes more important. If you are under constant financial constraints, then you cannot balance that concentrated commercial media voice with a public broadcaster's voice.

Mr Millett: You are certainly right about that. I think the public broadcasters are an important addition to this country, and important for that very thing. It is interesting that as I think commercial models come under pressure, particularly in regional areas, the ABC is coming under pressure to provide extra services, particularly in regional Australia, to fill the vacuum that is created when commercial models are failing.

Money is finite, and we have to work within our existing budgets and try to balance the competing needs we have to be efficient and to provide services. Anyway, my view would be that the ABC is in a position where it would always argue that it needs more money to do its charter roles, but recognising we are out there competing with other sections of the community in trying to get those kinds of funds.

CHAIR: Sure. Then it becomes priorities. We have heard lots of submissions about how important the media are in relation to democracy in the country. How important then is the ABC and SBS in terms of contributing to our democratic voice?

Mr Millett: I would argue, very important. But I also think—and this goes to the online role—that the ability of the public broadcasters to try to service particularly younger members of the audience who do not participate through traditional platforms is such that they require extra money to actually invest in mobile online to cover the costs of actually providing the server capacity to deliver things like catch up TV. I speak to a lot of politicians and I know they are concerned about their ability to actually reach younger audiences through mainstream media. It is an obligation on us to try to increase our services to meet those community members who exist outside mainstream media.

Mr Ebeid: I would fully agree with everything that Mr Millett said. I would also add, when you think about the role that we play, both in terms of some of the documentaries that we would run or indeed some of the things that we do with the arts, they are things that would not normally be commercially attractive on the commercial networks and it is very important for the health of our democracy to run and show those, whether it be the arts or documentaries about Australia. They are the sorts of things that are expensive. Australian content is 10, 15 times more expensive than buying cheap content from abroad but it is essential for us to be able to reflect that Australian content on our screens. We need to continue doing that to maintain that healthy balance.

CHAIR: Mr Hywood from Fairfax raised the issue of problems with the government legislation which seeks to put someone in to oversee the proper operation of the Press Council and to deal with matters of public interest. One of the arguments that he used was that the minister could simply pick the phone up and say to the independent regulator, 'You fix this.' Given the criticism of various political parties that appear on SBS and the ABC—I was going to say from time to time but obviously on a regular basis—is there any evidence that a minister rings up and says, 'Hey, back off'?

Mr Ebeid: From my perspective, the co-regulatory system that we have with ACMA works very well. We have a good relationship with ACMA and they do help us oversee the codes when it comes to complaints. I guess the question of the minister picking up the phone and saying, "Just do it. Just fix it,' or whatever the expression was, would be a question for Chris Chapman at ACMA. But certainly in my time as managing director I have never had a minister or any member of parliament phone me to apply pressure in any way on any of our content of programming, whether it be news and current affairs or otherwise. I would be very surprised if someone did.

CHAIR: Mr Millett.

Mr Millett: I have been at the receiving end of politicians who may have expressed a point of view about certain programming at certain points in time. At the end they all understand we have editorial policies and we operate under those.

CHAIR: Senator Birmingham.

Senator BIRMINGHAM: Thanks, Chair. Just quickly, I have some questions for both organisations. Can you define fairness for me?

Mr Ebeid: For me, fairness is getting a balance of views on a particular issue, making sure that the views put forward are fair in their representation; in other words, the broadness of those views are represented in terms of balance.

Mr Millett: My response to that, Senator Birmingham, is that our editorial policies actually go to some length to describe it. If you want, I can provide you with the appropriate sections.

Senator BIRMINGHAM: Thanks, Mr Millett. I am sure that would be helpful. In the handling of complaints by your respective organisations, fairness is very often in the eye of the beholder, isn't it, or the eye of the complainant?

Mr Ebeid: Particularly from an editorial perspective. If you sit on one side of the particular debate, from either extreme we would often get complaints that we may or may not have been fair on a particular issue. But in everything we try to do we always look at it from the perspective of the average and fair minded viewer. That is the most important test for us, as opposed to saying, 'Are we satisfied that the people on the extremes of the debate will be satisfied?' More often than not they will not be. Putting the lens on the fair minded view of fairness is very important editorially.

Senator BIRMINGHAM: Even then, a fair minded viewer is a rather hard thing to define, isn't it?

Mr Ebeid: Absolutely.

Senator BIRMINGHAM: However, as public broadcasters you accept that there is a particular onus upon each of your organisations to try to provide that balance. Balance is perhaps an easier term to understand than fairness but it is a key term to try to define fairness at least. As public broadcasters, it is incumbent upon you to meet a balanced obligation that may or may not need to be extended to the rest of the media.

CHAIR: Senator Ludlam.

Senator LUDLAM: I have not been here for the session. Apologies if I am going over some ground that has already been advanced with you. Including digital media services into the ABC's charter is great. That is something we are very positive on. Can you just spell out for us what material difference it will make to the ABC to have that embedded in your charter? I might treat the ABC and SBS as separate entities for the time being. What is the material difference?

Mr Ebeid: Will it mean that tomorrow we will be launching new services?

Senator LUDLAM: No. It was not the question I put to you. What will it actually mean in a material sense to have that charter amendment?

Mr Millett: Not much, other than the extent of revised clarity about our ability to operate in that space.

Senator LUDLAM: Is that amendment something which the ABC supports?

Mr Millett: Most definitely.

Senator LUDLAM: Can you spell out for us the reasons us why? I have my views but I would be keen to hear yours.

Mr Simpson: It is simply something that reflects the reality of what we do. It moves away from, I suppose, the old-world fixation on broadcasting services and recognises the fact that now we provide services much broader than broadcasting to reach a whole lot of different people through different platforms.

At the moment we do provide online services and we are permitted to do so. This just simply makes it more explicit and provides more certainty. It will not make any difference in terms of day to day activities for the moment. Over time perhaps it will ensure that we are able to do more things. At the moment it will not make a significant difference.

Senator LUDLAM: I read it as a straightforward acknowledgement that the internet is not a broadcast medium.

Mr Millett: Correct. Yes.

Senator LUDLAM: We are covering our bases. From my reading of the bill notes, there are some exceptions—again just sticking with the ABC, if I may—when it comes to advertising on digital media services. Can you tell us what your reading is as to how the ABC will or will not be able to advertise certain things online?

Mr Simpson: Certainly, Senator. At the moment there is actually no prohibition on advertising online under the ABC Act.

Senator LUDLAM: Advertising anything at all?

Mr Simpson: Correct. The current prohibition on advertising under section 31 relates to broadcasting. The ABC board, though, has made a policy decision that we will not be advertising on ABC.net.au. The effect of putting in the provision to allow digital media services has meant that the government has then replicated the advertising restrictions that we currently have in relation to broadcasting and reflects some of our current commercial activities where we have magazines, physical magazines and online magazines. From our point of view, it really reflects our current operations in relation to advertising.

Senator LUDLAM: So I can be clear, that is effectively tightening a loophole that has opened up as the internet has come to predominate more than the advertising. The exceptions that are mentioned there in the bill relate to advertising the ABC's own products or programs?

Mr Simpson: It is a restriction. Yes, the prohibition restricts all advertising and then the permissions under the new parts of section 31 allow us to advertise ABC activities in the same way we do. It is slightly broader in relation to magazines and those types of online products, in the same way that we have a commercial arm that is charged under the act to raise net revenue. So it will effectively be the same operation in practice as there is today.

Senator LUDLAM: The ABC shops' online manifestation, if you will?

Mr Simpson: Yes. For example, Organic Gardener magazine is a physical magazine and also an online publication that may have advertisements.

Senator LUDLAM: Mr Ebeid, can you tell us, firstly, if you are happy to take those questions in turn, your reaction to clarification of your charter obligations. SBS is in a considerably more murky position as far as advertising is concerned; I am aware of that.

Give us your reading on what will and will not be permitted as far as SBS online advertising is concerned.

Mr Ebeid: The way I understand what is being proposed for our online advertising is that currently today there are no restrictions for our online advertising. Under what has been proposed that would continue. We would not, under these new proposals, have any restrictions placed upon SBS with our online advertising. That said, similar to what Mr Simpson said around the ABC board, the SBS board has from time to time looked at the guidelines that we have for our online advertising. In terms of our own policies we tend to mirror the same levels of advertising on television broadcasts as with our online. Certainly there is no legislative requirement or restrictions on us for our online activities.

Senator LUDLAM: They are not as tight obviously as I would like but you do have some constraints on your main broadcasting channels as to when you can advertise?

Mr Ebeid: That is right. Currently we have five minutes an hour; that is our limit. That is for television at the moment. The way that the proposed changes are worded, that would not apply to our online activities.

Senator LUDLAM: That might need a bit of looking at. I will come back to you, Mr Millett, on the Australia Network. I think this is what Senator Birmingham was addressing while I was out of the room. I am strongly in support of the ABC retaining that role, as you would be aware. I had a bill to that effect which is now fortunately

redundant if this is carried. Can you tell us what synergies exist, to use a buzz word? How will you be able to use your existing network of foreign correspondents? Are there any savings there as far as the taxpayer or the corporation in particular are concerned?

Mr Millett: Savings?

Senator LUDLAM: Tell us how it works. I am interested to hear your justification, I suppose. You have an existing network of foreign correspondents. You have now been given tenure over the Australia Network, which has its own staff. How do these things tie together?

Mr Millett: The synergies, as you describe, are largely around bringing together Radio Australia and the Australia Network in the sense that what we are talking about is a proper converged service, acknowledging that in many of these markets it is not the traditional legacy platforms that are going to deliver the audiences you need. They need to be built around mobile and tablets. So the task at the moment is for the ABC, which has volunteered as part of this to put its Radio Australia budget into this exercise, to actually come up with a truly converged service to deliver to the audiences.

Senator McKENZIE: I have a couple of questions. I will go firstly to the comment you just made, Mr Millett, around the convergence of media conversations that will be had in the community that will centralise around the use of mobiles, tablets et cetera. Are there any communities within Australia that will struggle to access news in that particular manner?

Mr Millett: Yes. As part of my job I hold stakeholder forums around the country. That is when you invite members of the ABC audience in to talk about their experiences. I do know in some regional areas they struggle with things like the catch up TV service iview, simply because they have trouble getting mobile phone coverage.

Senator McKENZIE: Absolutely.

Mr Millett: I acknowledge that. Part of our task is to try and make governments aware of the fact that there is a bit of a division of services in the capital city areas where you get better service than you can get in some regional areas. That is the reality.

Senator McKENZIE: If this all goes ahead and we proceed as the minister plans, could you quantify the time period that it might take for regional areas to be able to access news and current affairs the same—

Mr Millett: Some of that I cannot answer simply because it is up to government to deliver some of the infrastructure that will enable us to deliver those services. I stress that it is not either-or. The ABC has to retain the ability to deliver services to areas where they cannot access new media. So obviously you use your traditional platforms to do that.

Anticipating your question, I think part of what we are doing in our news division is a news gathering exercise, which is simply to acknowledge the benefits that convergence brings you and to try and actually bring together all of your various facets of news making to try and come up with some efficiencies that can then be delivered back in the sense of extra content. That obviously is contingent upon the infrastructure you have in the areas you are trying to deliver it in.

Senator McKENZIE: Absolutely. Just on definitions, my issue is around community standards. I would like to ask SBS: in terms of the community that you serve within the broader Australian community, it is quite a specific community?

Mr Ebeid: Yes. It is quite broad.

Senator McKENZIE: It is broad but targeted, if you like.

Mr Ebeid: There is something like 74 different languages that we are moving to, so there are a lot of communities in that. The question is in terms of how we measure community standards?

Senator McKENZIE: Thank you; of your community that you serve.

Mr Ebeid: Every five or so years the organisation has been looking at its codes which we set. As part of that review we would go out and do various surveys and ask specific questions around community standards. That would range from languages—as we know, having regard to what may have been considered bad or foul language 20 years ago, community standards today would have changed. So part of our survey work and our constant discussions and dialogues with our audiences would pull that out. That work would then feed into our guidelines and our codes in terms of understanding community standards.

CHAIR: I have to go to Senator Singh as we are running out of time.

Senator SINGH: Thank you, Chair. I have some questions for both ABC and SBS separately. I will start with ABC in relation to content, specifically international news and current affairs. Can you clarify the relevance or the

importance of your international news and current affairs section and your foreign bureau and why you do not simply obtain international stories from global networks and wire services?

Mr Millett: Can you repeat the first part of the question?

Senator SINGH: The importance of your international news and current affairs section and the foreign bureau, which is linked to the second question of why you obviously have that section as opposed to just buying in or getting—

Mr Millett: The ABC works on the basis that if its charter role is to make sure that Australians are informed about what is happening in the world, the advantage of having your own bureau there is to provide an Australian perspective on what is happening. Our bureau has become even more important at a time when commercial media companies are finding it difficult to actually sustain those bureaus overseas. I think it is important that the ABC has that international presence.

The argument is made that in a globalised world you can get information from almost everywhere. That is true. But the sense is that it does not give you a lot of context about how it actually relates back to Australians. I think that is important in terms of the work that the ABC does.

Senator SINGH: My last question is to SBS: can you explain, Mr Ebeid, the importance of producing local news and current affairs content for your audience, particularly in language news and current affairs for your multilingual audience and why you do not simply source all of your multilingual news from overseas?

Mr Ebeid: Obviously a large percentage of our news is sourced from other networks, particularly for television. In terms of our radio multilingual services, on television we clearly bring in and buy in a lot of the foreign news services in language because we certainly could not afford to produce in-language news bulletins cost effectively.

On radio what we tend to do is have our own language broadcasters who will talk about, in their own language, issues of relevance to that community or indeed talk about Australian news and current affairs, local news, as you were saying, in language so that all Australians, or our multilingual audiences, can understand the news a lot better in their own language and have those debates around their communities in their own language. We find it very important to be able to do that.

CHAIR: I think that concludes the questioning of ABC and SBS. We will now move to Seven West Media.

FAIR, Ms Bridget, Group Chief, Corporate and Regulatory Affairs, Seven West Media

McWILLIAM, Mr Bruce, Commercial Director, Seven West Media

STOKES, Mr Kerry, Chairman, Seven West Media

STOKES, Mr Ryan, Director, Seven West Media

WORNER, Mr Tim, Chief Executive Officer, Broadcast Television, Seven West Media

[13:20]

CHAIR: I welcome representatives of Seven West Media. Thank you for talking to us today. Mr Stokes, do you or any of your representatives wish to make a short opening statement?

Mr K Stokes: Thank you. We will submit a submission which is in writing. I come before you today to demonstrate the concern our organisation has for this group of proposed legislation. I have been involved in this chamber and the one before it since the mid-seventies, both in media and in various effective legislation. I can only recall legislation passed in this haste in the wake of 9/11. That had bipartisan support. In 30 years and 40 years of involvement in media and business, I have never seen the breadth of legislation proposed to be pushed through as quickly as this legislation.

It does strike me that we are being treated differently. This is not negotiation. This is just legislation. We have not been consulted about these laws. Neither we nor the public have had, in our opinion, a proper opportunity to debate this package.

Turning to the package itself, I am troubled by the proposal for the first time to regulate print media. I can go to a whole range of reasons why I am concerned about it but the simple question I ask is: in our instance, the West Australian newspaper and the papers it has published, what have we done that would warrant such legislation being passed? What have we done that would warrant your intrusion into our company in this way? What has our company done that would warrant any of this legislation?

We believe we have the best and most effective independent council in the country. We believe our complaints have been handled more effectively than anybody else. I will leave Mr McGinty tomorrow to talk to you about how he handles those processes. We have had less than 20 complaints in a year, only eight of which have ever gone to the Press Council because they have been resolved. Out of the eight, two were found against us and were totally published.

I am trying, for the life of me, to understand what we could possibly have done to warrant such intrusive laws that are now being proposed. It seems to us our council works, our public are being satisfied and we could not be seen to be in any way related to any problem you are anticipating.

If it is to force us to go to the eastern states and be part of the Australian Press Council, we would have serious issues with that, not just as to cost but as to effectiveness for West Australians. Last time we tried that it took six months to get resolutions for complaints. People had to fly backwards and forwards. It was not satisfactory. More importantly, from our company's point of view, there would be another $750,000 in costs.

I remind this committee that every $100,000 of additional cost a newspaper pays today is a journalist's job. Make no mistake—we are not in the business where profits are growing. Profits are declining. Where we increase costs, we find we have to let people go. Every increase in costs of about $100,000 equals a journalist's job. I am sure that is not an intended consequence of what is being proposed, but I am trying to understand what effect we have had on the other side of the nation that would cause anything of this nature to be passed.

As for the regulation itself, I have never seen anything so intrusive. This legislation allows for stays on the restructure of our company. This legislation goes beyond anything that I have ever seen anywhere else that has been put up. I can go through all or parts of the legislation if you would like me to, but we have dealt with the ACCC; we have dealt with ACMA. There are processes involved with those organisations. Those processes do not exist in this legislation. It seems to us that the ACCC actually contains the powers and provisions to do what I think you seek to do. But if you seek other than to control the editorial and reporting of a newspaper, the other bodies that exist, including ACMA and ACCC, seem eminently suited to be able to do it without setting up new bureaucracies.

CHAIR: Thanks, Mr Stokes. Normally we ask the questions. I think you have made your rhetorical point. I am sure you will get every opportunity to talk to people about those questions. We do not have a position where we can answer those questions for you here. What we are interested in is the legislation and how that legislation can be effectively operated.

Senator BIRMINGHAM: Or if it can be.

CHAIR: That is another issue. You say: 'Why is this being done?' I am sure you would understand the situation in the UK, where we had media moguls and barons and executives come before the various forums of the British parliament and argue that everything was okay, 'There's not a problem.' The first issue was that it was a rogue employee, then it became a rogue newspaper and then it spread across a number of newspapers. We do not know what all the issues are. It is, in my view, in the public interest to make sure that we have an effective press council. We are dealing with two issues here: to get an effective press council—or 'press councils', plural; the legislation allows for more than one—and any mergers not creating less media diversity and ensuring there is a public interest test. That would summarise the two issues.

I have asked this of every submitter here. In the Finkelstein Inquiry—and I think your company did make some submissions there; is that correct—

Mr K Stokes: Yes.

CHAIR: Professor Ken McKinnon, the former chair of the Press Council, indicated that he had been approached by one media group to say that they would double their contributions to the Press Council, provided no adverse findings were made against them. That wasn't your group, was it?

Mr K Stokes: That wasn't and, secondly, that was a long time ago. He is two chairmen before the rules were changed. We left that council because we had serious reservations about how it did conduct itself. If the problem resides with the press councils operating effectively, I think there are ways that that can be achieved without the sledgehammer of putting someone over the top of everybody, who has no appeal process, who has total personal objectives that can be implemented that are not necessarily what the act contemplates. The power contemplated is beyond anything I have seen; neither the commissioner for tax, the commissioner for ACCC, nor the head of ACMA have anywhere near the powers being contemplated.

CHAIR: If the powers are to ensure that the press council or councils who establish their own self-regulation abide by that self-regulation, where is the problem?

Mr K Stokes: Because at the end of the day it goes beyond that. It goes to where he can determine what those standards should be. If he finds that those standards fall short of what he wants, he can self-determine. The legislation is, in my opinion, draconian. If you have a problem with the council, address that issue. Why overlay a total bureaucracy of government control if that is not the real issue? The real issue, it seems, is that people are saying there is a problem with the press council they experience in New South Wales.

CHAIR: But you do accept that the legislation provides for the press councils to self-regulate, for them to establish their own regulations?

Mr K Stokes: To the satisfaction of this particular person. He has the right to overrule that. Our interpretation of the legislation is that he can go much further than that. He can disband them. He can decide whether they have been effective or not by himself—not parliament, not a judge, not any other form. This person has that power.

CHAIR: What clause in the act is that?

Mr K Stokes: There is nothing in the act that prohibits him from that.

CHAIR: There is nothing in the act that prohibits him?

Mr K Stokes: No.

CHAIR: There is nothing in the act, other than the general law, that prohibits him from going up with a sledgehammer and knocking the door down either, is there? Surely you are not arguing that, because the act does not prohibit him from doing something, it means that that will happen? You are not putting that submission, are you?

Mr K Stokes: No, the submission I am putting—

Senator BIRMINGHAM: The news media self-regulation body revocation of declaration is there—

CHAIR: Mr Stokes does not need your help.

Senator BIRMINGHAM: I am sure he does not.

CHAIR: I am sure he does not.

Senator BIRMINGHAM: But it is there.

Mr K Stokes: The act removes the opportunity for him to be controlled. The act removes the fact that he can be controlled. Under this act, if the bills were to be passed, he will have the capacity and power to, in the end result, remove privacy from a publisher. As a result of that you would not get things like Eddie Obeid being

discovered; you would not get the investigative journalism which is so important to a free democracy to ensure our standing. He has a power to actually change that, and I find that scary.

CHAIR: But the power is only if your press councils are not operating effectively and individual organisations are not operating consistent with your own self-regulation.

Mr K Stokes: This is not true. He can change that regulation. He can regulate the press council. We may put up a regulation, but he can override that regulation.

Ms Fair: I think the point is that the public interest media advocate is able unilaterally to decide what constitutes community standards. They are not outlined anywhere in the legislation. His requirement to consult with anybody about what he thinks about those things is entirely cursory. Having made his decision about whether your standards reflect community standards and whether you have complied with them, he is able to make a decision about whether your self-regulatory body satisfies this legislation and therefore whether you have the exemptions available to you under the Privacy Act that are essential for any journalist to conduct his or her profession. Having made all those decisions, that person is the sole arbiter. He is not to be appealed. He is not to be questioned. There is nobody else involved in the decision. It is entirely unprecedented in decision-making in any statutory authority in this country, and probably most other advanced Western democracies to have a person in that position.

CHAIR: None of this would happen if the press council has a set of regulations that are abided by, would it?

Mr K Stokes: I do not know. We are unable to ascertain the reason for this legislation. If it is because there is some concern that the press councils are not doing their job properly, that is an issue that should be addressed as an issue. It does not mean to say you have to come in with a regulator who controls the whole industry. I would dispute very strongly that you can point me to the West Australian newspaper or any of its subsidiaries having acted in any way which has not been fully accountable to its readers. I can tell you we have had 20 complaints over a year, most of which are resolved.

CHAIR: Sure; that is what is on the public record. These arguments were put forward by Rupert Murdoch as well. I am not saying that you are doing anything like News Limited but, Mr Stokes, you have to accept that there are huge issues in terms of how the media has operated, not here, but in the UK, and legislators all over the world are looking at that implication. It is not unfair or unreasonable for any government to have a look at what happened in the UK, having had all those mollifying positions put to us, and to say, 'Wait a minute; there could be a problem'. We are simply saying to you: you self-regulate and the government makes sure that the self-regulation is implemented. What is wrong with that?

Mr K Stokes: My problem is that we have been given one week and four days to look at this complex legislation. There has been no community, public or industry debate of these issues. There has been a forecast that something would happen, but we have not seen what has been tabled here before. We have had four days to consider it. It is wide-ranging. It could not happen in some countries. Some countries, like America, have a constitution that would prohibit this form of legislation. You talk of England. I am no expert on England. Obviously, you have more background knowledge there than I have, but I do know—

CHAIR: What makes you say that?

Mr K Stokes: Given your accent. I have no comment on, no interest in, no relevance with England. I do know what happens in Australia. I do know what happens in Western Australia.

CHAIR: You are being deliberately provocative when you keep saying 'England'.

Mr K Stokes: I can understand that. The problem you have is the one we Western Australians have—they won't let you secede, either. This may be a very good reason for us wanting to secede.

Senator BIRMINGHAM: Thanks, Mr Stokes and colleagues, for your time today. You come to this hearing giving longstanding experience as a broadcaster as well as an owner of a newspaper group. Given that longstanding experience as a broadcaster, how do you believe the regulatory standards apply to broadcasters compare with the proposed standards for news media?

Mr K Stokes: Broadcasters were subjected to all the rules of normal business plus ACMA. ACMA has a very strong standard and has very complex regulatory processes that we comply with. But we are also subjected to the ACCC and ASIC and other organisations that oversee our operations. I think we are in a very highly regulated industry—far more so than most other industries. I can understand that some members of parliament may feel aggrieved by newspapers and comment and editorial from time to time. All I can talk of is where we are related. We are related in Western Australia. Western Australians will want to know why the heck they are being controlled out of Canberra when they haven't done anything.

Senator BIRMINGHAM: Mr Stokes, I appreciate, of course, that there is all manner of broad regulation applied to the broadcasting sector. To hone in, though, on how content and complaints processes are handled and ACMA's role there, how rigorous, fair and appropriate do you consider ACMA's role there to be compared with what is being proposed to apply to your newspaper groups?

Mr K Stokes: Bridget will answer that; she is the expert in our organisation.

Ms Fair: There are obviously very rigorous complaints-handling mechanisms set out under the Broadcasting Services Act. One of the things that we think is a very successful aspect of that mechanism is the fact that broadcasters are responsible for responding to complaints by viewers themselves before they are referred to a regulatory body. I think something like 98 per cent of the complaints that we might receive are resolved by us directly with the complainant before complaints are referred to ACMA.

The codes that we abide by are developed by the industry. We have to consult with ACMA about them. The other thing about ACMA is that obviously there are a number of members of ACMA and they are subject to normal rules of law, none of which applies in the case of what is proposed here for newspapers.

Mr K Stokes: There is also an appeal process. If we find ourselves at odds with ACMA, we can appeal that decision, certainly if a decision is made, if we so choose in the Administrative Appeals Tribunal. So there are elements of law that we are used to dealing with, and they seem to work pretty effectively.

Senator BIRMINGHAM: The ACMA processes as they apply to broadcasting media adhere far more formally to what might be deemed normal approaches of natural justice and government regulation, whereas these proposals before us are quite extraordinary in terms of their failure to provide any of those normal processes of appeals, recourse or indeed thorough guarantees of what types of analysis would occur?

Ms Fair: That is correct. The other thing is that there is obviously a huge distinction in the basis of regulation of broadcasters as opposed to newspapers. That is the use of a public resource, the spectrum, which does not apply to newspapers.

Senator BIRMINGHAM: That is an important point, Ms Fair, and I am going to ask about that. Why is it that newspapers should be subjected to a lesser level of regulatory intervention than television stations?

Mr K Stokes: We would submit because they are not a public resource. Anybody can start a newspaper. They do not need government approval. In fact, the first newspaper I ever started, in1968, was a free newspaper in Bunbury and I had to compete with the then West Australian newspaper and it was really tough. We lost a lot of money for a couple of years before it made money. We understand what it is like to start a newspaper from scratch, and those things are difficult but possible.

Senator BIRMINGHAM: Senator Conroy says these reforms are necessary because there are less and less voices in the marketplace at present. Do you agree that there are less and less voices?

Mr K Stokes: We have just given a submission this morning on a piece of legislation which reduces the 75 per cent rule. The effect of that will be a reduction of at least two to three voices within the regional community. We are a bit confused as to whether these voices are being reduced in the regions or in the capital cities. I do not think there has been any further reduction of voices in the capital cities, not from what we have seen anyway.

Senator BIRMINGHAM: Ignoring the government's internal inconsistencies in their arguments there, Mr Stokes, in terms of the capacity of people nowadays to be able to do what you did in Bunbury and start providing media comment, is it a sector with higher or fewer barriers to entry nowadays, and how is that manifesting itself, in your opinion?

Mr K Stokes: Obviously social media has changed the entire gambit of this. Recently there have been well-publicised incidents. Last year I think one well known radio broadcaster was almost torn down by social media, with 150,000 responses. That had nothing to do with mainstream media. The public out there today has access to a voice. It is using it, and I can promise you, if we don't get things right, they are very vocal in their complaints to us. Social media is a different application. None of these issues address Google, Yahoo; they do not address posting on Blogs; they do not address social media. The Prime Minister has got 375,000 followers on—

CHAIR: Mr Stokes, you are not suggesting they should, are you?

Mr K Stokes: I am suggesting that if you are going to control media at all, Senator, if you are going to attempt to—

CHAIR: That is a serious submission, is it?

Mr K Stokes: My submission is that you shouldn't be doing any of this. But if you are, then make it meaningful. If you are not going to control Google—you can't even get them to pay tax in Australia. Yahoo is the only taxpayer in Australia, which I find obscene.

CHAIR: So do we.

Mr K Stokes: Should I not pay tax? But the facts are we do. We pay full tax. Yes, these commentaries are equally available to everybody that has got an iPhone or a computer. To control the press only is something that is going to have its own journey.

CHAIR: Some spotty student at the University of Sydney tweeting something—his reach is nothing like yours, is it?

Mr K Stokes: Nor like the Prime Minister, who has 275,000 followers.

Senator BIRMINGHAM: I think it was a spotty student at university that started Facebook, if my memory is correct.

Mr McWilliam: I was a spotty faced student once.

Senator BIRMINGHAM: Mr Stokes, should newspapers need to be fair? Should they need to be balanced or should, given in an ideal world of freedom of the press, newspapers have every right to be as biased as they want and the rights lie with the consumers to choose whether or not to buy them or advertise with them?

Mr K Stokes: I am not going to comment on others. I like to keep my comments to us. We run a newspaper where we pride ourselves on being fair and balanced. We run a newspaper and we are the only newspaper I am aware of where our entire editorial policies are online and have been for the last five years. Judge us on our editorial. Judge us on what we say we are going to do. Judge us on how we handle complaints. Judge us on how we handle fairness and balance. We do it not because of politics, we do it because we think it is pretty good business. The fact that we have got about 185,000 readers who still buy a newspaper would indicate that they like us too.

I am not going to comment on whether we have a right to have editorial policy. We have a right to say what it is we think. We choose to exercise that right in the same way as we do with our printed policy for editorial, which is endeavouring to be fair and balanced.

Senator BIRMINGHAM: Mr Stokes, this is the last question from me. The submission sets out in detail a lot of the practical concerns with the legislation before us. Can I just get your view on a matter and an expression used by Greg Hywood, the Fairfax CEO, when he was before us before, in relation to the key penalty the government is applying, which is the capacity to remove the exemption from the Privacy Act that applies to journalists. He described that as the nuclear option. He said it would be impossible to publish a newspaper without that type of exemption in place. Do you agree? Do you think it would be effectively impossible for your newspapers to operate if you did not have that freedom for journalists provided explicitly in legislation?

Mr K Stokes: Both for ourselves and our journalists, because the act actually holds them personally responsible as well as the company under this new legislation. So yes, we think that. The other thing, as part of this legislation, is that if you are at that point, you are prohibited from starting another newspaper and you are prohibited from starting an online version. I am trying to understand, Senator. You quote England, you quote failures there. It seems to me, reading as I have, failures there were also systemic within the police department and the authorities that were charged with overseeing that. I don't think anyone has made that same correlation in Australia. Personally I think our enforcement in Australia has been first class. I think we can rely on a police force, Commonwealth and State, who are honest, upholding all of the laws, and we don't have the same problems experienced there.

I have yet to see anybody explain to me any problem that warrants these laws—not only warrants these laws but warrants them being passed and debated within a week. I can't even take these to my community in Western Australia.

CHAIR: What about the abject failure of the Press Council?

Mr K Stokes: Which abject failure? I am not—

Senator BIRMINGHAM: I thought Senator Conroy said this was not going to change anything about the operation of the Press Council.

CHAIR: Absolutely no teeth.

Mr K Stokes: Which one?

CHAIR: The Press Council have not operated effectively.

Mr K Stokes: Which council?

CHAIR: The one that you left.

Mr K Stokes: Please—

CHAIR: Still the Press Council.

Mr K Stokes: If in fact that is the case, why aren't we addressing that issue? That seems to me what we should—

CHAIR: We are.

Mr K Stokes: No, we are not.

CHAIR: That is exactly what is happening.

Mr K Stokes: No. You are addressing me and everybody else with a piece of legislation that I do not think is required to achieve your objective.

CHAIR: Just before we go to Senator Ludlam, Mr Stokes, you have mentioned editorial issues twice. You are not saying that the government is trying to seek to influence what is in your editorial policy?

Mr K Stokes: I think that is the final outcome of this legislation.

CHAIR: That is the final outcome?

Mr K Stokes: Yes.

CHAIR: How does that happen?

Mr K Stokes: Because at the end of the day the standards are set by this person that you have appointed and that we have no say over.

CHAIR: Now the standards are set by the Press Council.

Mr K Stokes: He over rides that. He has the right to determine public standards.

CHAIR: He may even be a she.

Mr K Stokes: Or she, whatever. But they have a right that goes beyond that. I have dealt with 24 ministers for communications since I first had a licence. Some of them haven't been all that first class and the thought that any one of those might be this person that was put in this position would be horrifying.

Senator LUDLAM: Thanks for coming in, Mr Stokes. We heard from some of your Channel Seven colleagues earlier in the other committee. Apologies that I missed you there. You were in broadcasting, I believe, well before your tie up with the West Australian newspaper. So your background is in broadcasting.

Mr K Stokes: Yes, it is.

Senator LUDLAM: Can you tell us what impact it has on the independence of your journalists? You run a first rate news, current affairs slate on Channel 7 that has not come up for any critique during this inquiry, but that station and those journalists are overseen by a government-appointed bureaucrat who can rip up your licence. ACMA can take you off the air. In fact it is one of the only powers they have, and they have come under critique for that. What impact does that have on the editorial independence of your journalists at Channel 7?

Mr K Stokes: That has had no impact on them.

Senator LUDLAM: Why are you suggesting that a much lighter degree of self-regulation in the newspapers will suddenly have such a dire impact on the editorial standards at your newspaper?

Mr K Stokes: It is not a lighter touch. It is a much heavier touch.

Senator LUDLAM: I will contest that in a moment.

Mr K Stokes: Okay.

Senator LUDLAM: Why do you believe that full statutory regulation of a regulator that can actually take you off air as opposed to somebody overseeing the standards of what can constitute itself as a press council—how can you possibly argue that the latter is heavier regulation than the former?

Mr K Stokes: First of all, in regard to ACMA, we operate on a public asset, the airwaves.

Senator LUDLAM: No. I was asking more about editorial—

Mr K Stokes: Sorry. It is all part of the same answer. There is a reason for the overseeing and the regulation that ACMA have.

Senator LUDLAM: I understand.

Mr K Stokes: We go through a process and there are vigorous complaints. On our news, on current affairs, on all the things we do, there are complaints. They are handled by ACMA and we go through a process with them. We would have a number in discussion all the time. Because we are confident, our journalists still have to be accountable. They still have to be accountable for those issues.

Come back to newspapers and editorials in particular, they are accountable to their readers. The difference is there is no public asset involved. There are no airwaves. We take nothing from the government. We run our own presses and we give our journalists the opportunity to write their own stories.

Senator LUDLAM: Do you think journalists should be required to meet standards set by journalist associations themselves?

Mr K Stokes: No. I think anybody who can write an article that people will buy a newspaper to read will like to have that, whether it is by a journalist or not. If you can write an article and people will buy a newspaper to read it, I'd like you to come and join us.

Senator LUDLAM: But you folk formed your own media council. We are hearing from them, I think, first thing in the morning. We are hearing from the Australian Press Council a bit later as well. They have certain standards that Australians can trust the product of the news media because journalists take the profession very seriously. In my experience, they certainly do.

Do you think the journalists that sign up to those codes of entities that are members of the Press Council should have to actually meet those standards, or are the standards just worthless?

Mr K Stokes: No. It depends who is determining what standards.

Senator LUDLAM: At the moment it is the APC. At the moment it is the Press Council that determines its own. Your colleagues have determined their own in the West. Do you think journalists should then be required to actually meet those standards?

Mr K Stokes: Or be accounted for, yes.

Senator LUDLAM: Or is this just a big PR exercise?

Mr K Stokes: No.

Senator LUDLAM: Do you think they should be required to meet those standards?

Mr K Stokes: The facts of the matter are that on eight or 10 occasions—I will let the council give you their own evidence. I have not spoken to a member of that council for over two years. I know the members there. I have known Mr McGinty for at least 20 years. I have not spoken with him for two years because of his position there. I will let him tell you how he and they determine their outcomes. The facts are that they are independent. I have no idea what they do. I do know we follow and agree with any rulings they bring down.

Senator LUDLAM: But your strong objection seems to be that you do not want somebody from the Commonwealth Government deciding whether or not these standards are being met or not. Is that the key to your contention?

Mr K Stokes: Correct.

Senator LUDLAM: Just explain for us why that is, if you have confidence that people are upholding these standards?

Mr K Stokes: Because we are not using any public airwaves. We are not asking the Commonwealth to support it. This is private enterprise and it is a free newspaper and nothing to do with the government overview.

Senator LUDLAM: Mr Stokes, you own the only newspaper in my home town since the Daily News went broke quite some time ago.

Mr K Stokes: Yes.

Senator LUDLAM: You are providing a public good. You are a private operator providing a public good.

Mr K Stokes: Yes.

Senator LUDLAM: Do you think the public has any stake at all, for example, if on your front page you have just run a bunch of lies that have damaged somebody's interests?

Mr K Stokes: They will stop buying the newspaper, Senator.

Senator LUDLAM: What else are they going to do?

Mr K Stokes: There are other choices. There is the internet, the Sunday Times. There are lots of other choices. I can tell you, we fight very hard to keep every reader we have got. It's a tough business out there. Every time now you add a cost to the newspaper, we lose readers or we lose journalists.

Senator LUDLAM: Indeed. This is not a proposal to add cost. It is a proposal to add a measure of accountability. I guess I will come back to this contention about a regulator of the electronic press, because what it seems to me that this is about is more to do with a grievance over the public interest test that would regulate

mergers and acquisitions than it is over free speech. Ms Fair, you are shaking your head. Do you want to take me up on that? You have shaken your head a lot this morning. Do you want to—

Ms Fair: It is a very sorry process.

Senator LUDLAM: Go ahead.

Ms Fair: I just wanted to say that there are some very significant differences between what is proposed here for the PIMA and the regulations that we live under for broadcasters. For a start, what we have for broadcast is a co regulatory model where we determine our standards in consultation with the regulator. That regulator is made up of a number of members, all of whom have a vote in relation to how the activities of that regulator are carried out. They are the subject of legal appeal and other due process. None of that is proposed to be the case in relation to this body.

Senator LUDLAM: That is interesting. Should we bring newspapers under the ambit of ACMA or some successor body, which is one of the things that the convergence review contemplated? Is that a better bet?

Ms Fair: No. I think we have made it pretty clear that as a matter of principle we think that there should be freedom of the press.

Senator LUDLAM: There is freedom of the press.

Ms Fair: There isn't a demonstrated problem, certainly not with the West Australian, about whether we have standards and whether we rigorously adhere to them.

Senator LUDLAM: Should the standards maybe be written up and incorporated in law? You are concerned that the PIMA has very wide discretion. Should we simply embed those standards then?

Mr K Stokes: No.

Senator LUDLAM: Why is that?

Mr K Stokes: If I chose tomorrow to go out—and I have done it once before in Canberra—and buy a printing press and start a paper—and I have done that before in Canberra too—and find that I live or die commercially on what I do, I shouldn't be regulated on that. Why should I be?

CHAIR: Because the press is not simply a commercial operation. There are public interest issues. That is why.

Mr K Stokes: Senator, the public issue was actually first raised by the Minister for Communications, Charles Davidson, in 1956 when he introduced the Broadcasting Act. The broadcasting was not just a commercial undertaking like print. There was a parliamentary distinction made between the two. The facts of the matter are that it is a business like any other business. If you want to be a radical newspaper, then that is your choice. People probably won't buy you. If you want to be a newspaper that makes money, then you will do what it is that makes money. We are talking about newspapers, not public assets.

Senator LUDLAM: Are you saying you have no public interest obligations apart from just to make money for your shareholders?

Mr K Stokes: They are one and the same.

Senator LUDLAM: No. I would strongly contend that the public interest is not identical to your commercial interest.

Senator BIRMINGHAM: There won't be a newspaper if Mr Stokes is not making money for his shareholders.

Mr K Stokes: Absolutely.

Senator LUDLAM: No. That is not the question I am putting to him.

Mr K Stokes: 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.

Senator LUDLAM: Show us how this is an additional cost. I do want to test your views on whether you believe you have no public interest obligations at all, apart from keeping your newspaper afloat and keeping your shareholders happy, as a publisher?

CHAIR: I think this is a key issue.

Mr K Stokes: We publish online our editorial policy. Judge me by that. That is a written document. You are a West Australian, Senator.

Senator LUDLAM: I am.

Mr K Stokes: I guarantee you have never read our online editorial policy.

Senator LUDLAM: That is why it is wonderful to have you here with us today. I am happy to refer to the written document but it is pretty rare for us to get to ask you these questions directly.

Mr K Stokes: You can go online and look at our editorial policy, same as everybody else in life.

Senator LUDLAM: But you do not want to be held to it. You do not want anybody to actually—

Mr K Stokes: Of course we are held to it. We are held to it by an independent council. We are held to it.

Senator LUDLAM: I am contesting the independence of the council. We will leave that until tomorrow.

Mr K Stokes: You leave that to Mr McGinty.

Senator LUDLAM: I will leave that there, Chair.

Senator BIRMINGHAM: Mr Stokes, have you received any guarantees that the processes and code and standards of the independent media council in Western Australia will actually be accredited under this legislation?

Mr K Stokes: No. In fact, one of the issues is there has to be a change and incorporation, a bunch of additional costs. We have only had four days to understand what is the most complex legislation I've seen since the antiterrorism bill. Forgive us, but we will go to our readers. Our readers will get an opportunity to very clearly see what is being put above them. We will tell our readers very clearly. It's pretty hard at the moment because we are still digesting what it means.

CHAIR: Mr Stokes, could you take on notice the question that has been put in relation to the difference between your commercial interests and the public interest.

Mr K Stokes: Sure.

CHAIR: And take some time to get some advice and come back to us on what you see is the difference.

Mr K Stokes: I think this committee only has a limited life, doesn't it, Chair?

CHAIR: No. It is a standing committee.

Senator LUDLAM: We do not report to a journalist.

Mr K Stokes: I thought it had to be done by this week.

Senator BIRMINGHAM: That is what the minister says.

CHAIR: Do not believe everything you read in the newspapers, Mr Stokes.

Mr K Stokes: A cross-statement and a minister's verbal.

Senator BIRMINGHAM: I gather there will be a press conference on Wednesday.

Mr K Stokes: The ministers' press conference is where I got the information.

Senator LUDLAM: The Senate is not bound by the ministers' press conference.

CHAIR: I am putting that on notice. I ask you to do that. Can I thank you for making the effort to come over here. It has been very helpful. Thanks very much.

Proceedings suspended from 14:01 to 15:31

REID, Mr Campbell, Group Editorial Director, News Limited

SUCKLING, Mr Adam, Director, Policy, Corporate Affairs and Community Relations, News Limited

WILLIAMS, Mr Kim, AM, Chief Executive Officer, News Limited

CHAIR: I now welcome representatives of News Limited. Thank you for talking to us today. Mr Williams, would you like to make a brief opening statement? If you do so, can I ask you to keep it to about five minutes maximum, thank you.

Mr Williams: Certainly, Senator. As senators and law makers I know that you appreciate that it is this parliament's duty and that of its hard working members to meet the endless challenge to produce good, workable, constitutionally compliant law. 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 implore the committee to carefully consider this issue in addition to the other serious matters of public policy raised in the bills.

These laws propose direct regulatory intervention in and control of print and digital media and invoke sanctions not seen outside of wartime. They not only offend the constitutional freedom of political communication but also are a direct assault on the independent operation of Australian journalism.

A lot has been written and said since last Tuesday. 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.

The proposed PIMA appointed by and beholden to government will decide whether press standards bodies operate to its satisfaction in its sole and absolute judgement. If the PIMA believes there has been a change in relevant circumstances or community standards, the exemption afforded to journalists in privacy law can be revoked with reference to no one.

It is worth recalling what the Privacy Act, one of the world's most stringent, does. It regulates collection, storage and, most relevantly, disclosure of personal information. The exemption allows journalists to identify people and without it they could not do their jobs. For example, if we had a story about a minister's secret investments then without the exemption we would need to tell them what we had and get their consent for publication.

In short, exemptions from certain provisions of the Privacy Act allow journalists to do their job. It is fundamental and was recognised as being fundamental at the time of the private sector Privacy Act provisions being extended in 2000.

Furthermore, it is deeply troubling that the legislation lacks any detail on how the PIMA would determine what are relevant circumstances and community standards or what changes would warrant the PIMA's intervention. The only reasonable conclusion is that a single person, the government-appointed PIMA, can remove at their whim the most basic rights on which journalists depend to do their jobs.

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.

What is of particular concern and contradicts the government's own convergence review is that it is now incumbent upon the applicant to satisfy the PIMA that there is not a lessening of diversity. This deliberate reversal of onus of proof is unworkable and the convergence review explicitly recommended against it. Clearly proving a negative is virtually impossible and logically flawed at law. It is the opposite approach adopted by the ACCC, for example, on mergers and acquisitions.

In what is an active disincentive for innovation, publishers may also need to obtain the PIMA's approval if they want to start a new publication which is likely to be popular. This can also happen after a publisher establishes an online service associated with its news publications. A bill that potentially imposes a criminal offence on a failure by an existing Australian news business to get approval for an increase in the number of voices in the market has to be seriously flawed. And the PIMA's powers are so vast that companies will have to seek its approval for internal restructures, even if they do not cause a change in the number of voices. For instance, our recent reorganisation and merger of divisions and changes at news.com.au would likely have been caught by this provision.

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.

In other words, the government is proposing to appoint a single part time member who will be assisted by a department with no expertise in adjudicating and enforcing the law, who will have wide powers and discretion, given key terms in the bills are wholly undefined, who will not have to follow long-established law or principle in relation to the onus of proof, who can seemingly make decisions retrospective and whose decisions cannot be appealed. This is a modern-day star chamber—no more, no less.

To summarise our position, we believe these bills must be rejected. We say so not, as the minister says, in hysterical reaction but rather because the proposals will affect every Australian and the quality of their democracy. This is bad legislation with a bad process which can only have a bad, severely detrimental outcome.

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.

These bills breach constitutional rights, equate to direct government intervention and regulation of the media and are a direct attack on free speech, innovation, investment and job creation. If the minister's serial misrepresentations on the inadequacy of the Australian Press Council, the operation of the Irish Press Council and existing law on mergers and acquisitions, which he advanced on the ABC Insiders program yesterday, is the basis on which this Senate is meant to adopt these laws, we have clearly abandoned regard for fact and reason.

I believe that journalism and the community it serves deserve better.

CHAIR: Thanks, Mr Williams. Firstly, let me say, Mr Williams, I find it absolutely breathtaking to be lectured by the Murdoch press about the privacy laws; I really do. I think the hypocrisy is huge, in coming here and lecturing the Senate about privacy laws after what the Murdoch press did in the UK.

Senator BIRMINGHAM: If I were doing this you would ask if there was a question.

CHAIR: There will be a question. The issue in the UK was about privacy. The issue in the UK was illegal activity. The same debate has taken place in the UK. The same arguments are being run in the UK by the Murdoch press about why there should not be some regulation in the UK. The public interest has not been mentioned in your statement but the public interest is the key issue here. It is not about whether you can make money. It is not about whether you can actually go out and say what you like to say, but there is a public interest. You are in a special position as a newspaper, and surely you should have mentioned the public interest. Where is the public interest in your submission and where does the issue of commercial interest give way to the public interest?

Mr Williams: It would be interesting, Senator, to find a definition of the public interest contained within the bills before you. There is no such definition. It would be interesting to find a definition of diversity inside your bills. No such definition has been provided. It would be interesting in fact to find any kind of explanatory memorandum guidance as to the purpose of the bills in terms of what they are seeking to redress.

My company has, in its Australian operations, already undertaken comprehensive reviews under Justices Vincent and Teague over 14 or 15 months ago, with two independent auditors who had access to every aspect of the company to review all expenditures of the company in the spirit of independent inquiry after the outcome of the investigations in Britain. Both justices were satisfied that no such activity had taken place in Australia, and I find any suggestion that such activity took place in this country not borne out by any facts at all. So if you have some facts, please put them on the table.

CHAIR: I know. But these lectures—

Mr Williams: You have made some very serious allegations.

CHAIR: Mr Williams, these submissions were made to the British inquiry as well. It was quite clear that, firstly, there was not a problem; secondly, there was a rogue journalist; thirdly, there was a rogue newspaper; then it was more than one newspaper. So just bear with us if we are a bit sceptical about all of these issues that you raise here today.

Mr Williams: Respectfully, Senator, that wholly misrepresents the conduct of the company before Justice Leveson in Britain where the company freely acknowledged mistakes that had been taken, freely rendered all of the materials of the company available to Leveson and to the police and was fully compliant in every possible

way in actually suspending its own normal, natural rights in a spirit of complete disclosure to all of the investigating authorities. No one is defending what has happened in Britain, Senator.

CHAIR: What do you say the public interest is?

Mr Williams: The public interest is as long as a piece of string, Senator. I think the public interest is often used as a term which means many things to many different people; it is in the eye of the beholder.

CHAIR: If that is your position, why is it a definition in your professional conduct policy?

Mr Williams: I beg your pardon?

CHAIR: Why is there a definition of the public interest in your professional conduct policy?

Mr Williams: We endeavour to set out all of the things that we consider to be germane to having a good and sensible approach to our social responsibilities as a company.

CHAIR: Well, take me to—

Mr Williams: I have the editorial director of News with me, Campbell Reid. Campbell, you might like to comment on that.

Mr Reid: The definition of a public interest is dependent very strongly on who is leading the conversation at the time. Your definition as demonstrated by—

CHAIR: Mr Reid, I am asking you about your company's definition. I am not interested in a lecture from you.

Mr Reid: I thought we were answering the question.

CHAIR: I am interested in your company's definition. Do you know what it says in your professional conduct policy?

Mr Reid: I have the professional conduct policy here in front of me.

CHAIR: Go to that and tell me how you see the public interest definition. Do you want help to find it?

Mr Reid: No, I have the document here. Let me turn to the—

CHAIR: Do you want me to tell you where it is? It is on page 3. It is after—

Senator BIRMINGHAM: You could just tell him rather than playing games, Chair.

Mr Reid: I have before me, which is perhaps more germane, the editorial professional code of conduct policy. Is that what you are referring to?

CHAIR: It is your professional conduct policy for News Limited newspapers.

Mr Reid: Could I have a look at that? I have the editorial professional code of conduct policy, on page—

CHAIR: It is March 2006, published by the group editorial development.

Mr Reid: Senator, the code of conduct that we currently operate was completed last year, and it is the one that I have.

CHAIR: Does that have a 'public interest' definition?

Mr Reid: Not in this document. It sets out the professional standards of our journalism that we require under the headings: 'accuracy', 'mistakes', 'privacy', 'covert activity', 'confidential sources', 'harassment', 'discrimination', 'grief and distress', and so on.

CHAIR: What standing does this 2006 policy have?

Mr Williams: It has been superseded by the document that was published last year.

CHAIR: So 'public interest' has been superseded as well?

Mr Williams: All of the categories of relevant domain to journalism are set out in considerable detail in this statement.

CHAIR: You were telling your journalists back in 2006, 'This is the definition of public interest'. Then we have Piers Akerman, when talking about what PIMA considers, saying, 'Anything at all, including meaningless terms such as "public interest".' So, on one hand, in 2006 you are telling your staff that public interest is important. Yet you have the Akerman principle here which says it is meaningless. Can you explain why in 2006 it was not meaningless, and now it has gone?

Mr Williams: I think the term 'public interest', as I have already said, is not defined in the bill itself—probably because of the very great difficulty involved in arriving at a uniform and consistent definition of that which constitutes the public interest. Therefore, what we have done is to set out inside the code of conduct with

journalists the relevant issues in terms of accuracy, mistakes and how they are dealt with, misrepresentation, privacy, covert activities, confidential sources

CHAIR: Let us not go through all of it, Mr Williams; we have limited time. Could you table that document?

Mr Williams: Certainly.

CHAIR: Good. Thanks.

Mr Williams: But you have to allow me to answer the question, Senator.

CHAIR: I don't have to allow you to take our time and stop us from asking questions.

Senator BIRMINGHAM: It is part of a long answer, Chair.

CHAIR: I think Mr Williams can look after himself. He doesn't need sycophantic support from you, Senator Birmingham.

Senator BIRMINGHAM: Thank you for your gratuitous commentary, Chair.

CHAIR: Have you finished?

Mr Williams: I haven't said anything.

CHAIR: You asked me to let you finish.

Mr Williams: I was going to give a recital, but we will table the document, Senator.

CHAIR: Good.

Mr Williams: I didn't come here to have a chemically difficult discussion. I came here to assist the committee to actually look at the legislation.

CHAIR: Oh, thanks. All the chemically difficult issues are done in your press. You are aware of Professor Ken McKinnon?

Mr Williams: Yes; he is a friend of mine.

CHAIR: He is a friend of yours. Has he ever raised with you the issue of being told by one of the media groups that if he dropped off some of the claims and allegations that were being made against the group, the group would double its

Mr Williams: No, he has never raised that with me.

CHAIR: Are you aware of that claim?

Mr Williams: I became aware of it yesterday when I heard the minister give that recital. We have conducted an investigation to the extent we could since yesterday.

CHAIR: To the extent you could, has anyone from News Limited taken that position with Professor McKinnon?

Mr Williams: The answer is no, but Campbell will provide some extra detail.

Mr Reid: I have reviewed what Professor McKinnon said at the Finkelstein inquiry. He didn't say it was a company's position. It was a recollection of a discussion he had over lunch in which an editor made the remark that if positive findings were delivered, the subscription might be doubled. That was not included in Professor McKinnon's main body of evidence to the Finkelstein inquiry, nor did it spark any follow-up. Editors at News Limited don't decide whether the company is a member of the Press Council. They are not on the Press Council, and to my investigation today nobody at News Limited has ever had a conversation with Professor McKinnon about that incident.

CHAIR: Can you take it on notice and find out if anyone who has previously been an employee of News Limited made that comment to Professor McKinnon?

Mr Reid: Professor McKinnon was chairman of the Press Council for the better part of a decade. He might have had lunch with lots of editors over that time. Are you proposing that I interview every editor he may have had

CHAIR: Why don't you ask Professor McKinnon who said it to him?

Mr Reid: Why didn't Professor McKinnon add more detail when he raised it?

CHAIR: Maybe we will ask Professor McKinnon.

Mr Williams: Senator, I am perfectly happy to ask Ken McKinnon about that.

CHAIR: Excellent.

Mr Williams: I am perfectly happy to do that, and I am very confident of the answer: the answer is no. In any case, I hope you had regard to what Campbell said. He said, 'No editor is in any position to make any commitment to the Press Council as to money being given to the Press Council. It's simply not true.'

CHAIR: Hmm—

Mr Williams: It's not true.

CHAIR: That's your submission.

Mr Williams: That happens to be the truth

CHAIR: If that's your submission, that's fine.

Mr Williams: That is the way it operates.

CHAIR: That is fine. Professor McKinnon made the statement that somewhere it will come out who it was. Every group is denying it was them, and you have joined the list. That is okay. I am not arguing. I am not denying your position. You indicated that the Press Council had improved its standards. Why did it take 37 years for it to improve its standards?

Mr Williams: There is a long, and certainly very convoluted, history attaching to the Press Council. Our company has no apology to make for the very vigorous interventions that we have made to upraise the quality of standards, the quality of funding and the quality of commitments that are made to the Press Council. We have been very vigorous in that regard. Campbell is a member of the Press Council; I am happy to have him to speak to it.

CHAIR: So walking away and crippling it financially—was that designed to improve it?

Mr Williams: We have never done that, Senator.

CHAIR: You have never?

Mr Reid: There have been occasions in the past, I think, Kim, when some of our papers have withdrawn at times. Interestingly, so has the MEAA

CHAIR: Who has got it right: Mr Williams or Mr Reid?

Mr Reid: I have got it right.

CHAIR: You have got it right?

Mr Reid: I have a longer history of dealing with News Limited's editorial behaviour than Kim has. However, can I make the point that in the last decade or more, News Limited has been a steadfast member of the Press Council. With its current chair, Julian Disney, in renovations which pre-date the UK phone hacking scandal, we set out to renovate the council, root and branch. We doubled its funding, we increased the permanency of its membership and we have, in our code of conduct—which we will table—a commitment of our journalists and editors to uphold its standards and to publish its adjudications with accuracy and in the prominence that the Press Council requires; a commitment we have not breached.

CHAIR: I will finish on this, then. I will go to Senator Birmingham. What is the problem with the Press Council setting its own standards and, like many organisations, having an overview that those standards are being met, given the history of the Press Council and the special relationship that the press have to deal with the public interest?

Mr Reid: The Press Council does set its own standards. The Press Council is an organisation which is dominated by public membership, not publisher membership. Because of that dominance of public membership, where the public membership is led by an eminent Australian, that self-regulation and self-setting of standards to which the major publishers sign up is self-regulation in its pure form. Government intervention on top of that contaminates that self-regulation, no matter what form that government regulation takes.

CHAIR: You indicated that some of your newspapers had walked away from the Press Council. Was that because the Press Council had required them to correct some statements and you refused to do that?

Mr Reid: I can't recall it. This is going back somewhere between 25 and 30 years.

CHAIR: But this is the history of the problems with the Press Council, where individual organisations can threaten the viability of the council by walking away.

Mr Reid: Yes.

CHAIR: Yes.

Mr Reid: Chair, if you would like to let me finish, up until 11 months ago, when the Press Council, with agreement of the major publishers, put in place three years rolling funding and four years of notice to withdraw

from the Press Council. If you give notice to withdraw from the Press Council you are still bound for three more years of funding and four more years of upholding its standards. We would argue that that is about as permanent an arrangement as you can get between any organisation and its self-regulator in almost any jurisdiction in the world.

CHAIR: Okay. Senator Birmingham?

Senator BIRMINGHAM: Thanks very much, Chair. Gentlemen, thanks for your time today. Firstly, what do you believe is driving the government's reforms?

Mr Williams: I struggle to understand what is driving the government's desire other than to corral and gag the media. There is no way to read down the provisions for the public interest media advocate in any way other than to see it as having recourse to muzzle the media. The sanctions that are given to this regulator are genuinely of an extent and force which have no precedence in Australian law.

Senator BIRMINGHAM: Mr Williams, Senator Conroy claims that there are fewer and fewer voices in the media landscape today. Do you believe that is an accurate statement?

Mr Williams: I think that is a wholly inaccurate statement and I think it is unusually mischievous on the part of the minister responsible for broadband in this country, because clearly the internet is responsible for a massive increase in the diversity of voices that are available in this country and the access to information, not only from domestic Australian resources, but from international sources. For example, yesterday when Senator Conroy brought up the—quite fallacious, as it proved to be—citing of the Irish Press Council, with which I was not familiar, I immediately went onto the internet. I downloaded all of the materials of the Irish Press Council. I downloaded the history of the creation of the Irish Press Council. I downloaded the operational rules of the Irish Press Council. I was able to establish to my absolute satisfaction that (a) it is completely free of government; (b) it has an operative system where an ombudsman is appointed by a special appointments process under their operation; and (c) it has no punitive arrangements for journalists in the event that journalists or media organisations are not members of that body.

Senator BIRMINGHAM: Just as the capacity for growth in online news or new news services through different mediums has expanded, what do you believe has occurred to the capacity for the general public to actually engage as media critics and to highlight failings or problems or lack of balance or fairness they may see in the media?

Mr Williams: The power of social media, in particular, is something which is of striking force in our community now and where people have clearly self-initiated redress in any number of ways in terms of lodging their complaints. With the Australian Press Council it is a very simple process. With our own company there is a simple process. We have a permanent editorial position that is allocated exclusively now for processing any complaints that attach to anything that we publish, whether that is online or in print form.

Senator BIRMINGHAM: Some in the broadcasting sphere would suggest that at present the slow and often tedious approach of ACMA to regulation is far less a threat to the operation of their businesses than a social media revolt, as we have seen in some instances. Can you see a similar trend emerging for your business in terms of Press Council rulings versus a consumer uprising that has an effect on your advertisers and your revenue stream and your business operations?

Mr Williams: That is generally true. I think reputational risk and all that attaches to it, or social media commentary in a wide variety of forms, is something which all corporations are acutely sensitive to now, and has very real and immediate impact on a company.

Senator BIRMINGHAM: Mr Williams, you highlighted the issues potentially in relation to the constitutionality of these proposals. Can you address for the committee briefly why you believe there are particular issues there? Would it be the intention of News Limited, were this legislation to be passed unamended, to consider a High Court challenge on this matter?

Mr Williams: Obviously, I am not going to share my legal advice with the committee; I would not compromise the basis of that advice. In the event that we need to activate action on the basis of advice, we clearly will need to keep our advice confidential. We are confident that this approach in creating the public interest media advocate and the powers that are rendered unto it and the sanctions that are rendered unto it are very much offending against the free flow of political communication in our society. We believe that will be a matter, in the event that the laws come into being, of very real interest to the High Court.

Senator BIRMINGHAM: So News Limited is reserving its position in regard to whether it would go to the High Court and challenge the viability of these laws?

Mr Williams: In the event that these laws are passed we will immediately be seeking leave to appeal to the High Court.

Senator BIRMINGHAM: You would immediately be seeking leave to appeal to the High Court? That would suggest that your legal advice is relatively clear-cut, one suspects, Mr Williams.

CHAIR: He will get the advice he wants.

Mr Williams: I can't believe you said that.

CHAIR: You can't?

Mr Williams: No.

Senator BIRMINGHAM: Senator Cameron likes to cast reflections and aspersions and all manner of people.

CHAIR: You are paying for the advice. If you are saying you want to go to the High Court, you will get advice that will take you to the High Court. You know that.

Senator BIRMINGHAM: I am pretty sure Mr Williams will not waste his shareholders' money.

Mr Williams: You and I operate in different worlds, Senator.

Senator BIRMINGHAM: Mr Williams, to the detail of the legislation: firstly, to the appointment of the public interest media advocate, Senator Conroy has sought, in terms of his rhetoric, to create the impression that there are complete guarantees of independence surrounding the appointment of this advocate. What is your reading of the legislation in terms of what is required and what guarantees of the independence of this advocate exist?

Mr Williams: I have today sent an open letter to the minister. The minister has at no stage engaged with my company or, to the best of my knowledge, with other media companies in any aspect of the legislation. Therefore, given the haste with which all of this process has been conducted, I thought it best to send an open letter which has been sent to every parliamentarian and has also been shared with the media. Inside that I have drawn reference to a number of things that I think are particularly egregious in the legislation. One of the things that really took my notice was that the minister is able to receive confidential information from the public interest media advocate for no reason at all. To suggest that a sole and absolutely powerful individual who is appointed on renewable terms and who has as the administrative resource the minister’s department, will be free, clear and separate from the minister is preposterous.

Senator BIRMINGHAM: After the election this year when she ceases to be a member of parliament, for example, would there be anything in this legislation that prevents the government of the day from appointing, say, Nicola Roxon, as the public interest media advocate?

Mr Williams: Absolutely nothing whatsoever.

Senator BIRMINGHAM: In terms of how the advocate works, it provides wide-ranging powers, it would seem, in terms of the capacity to assess privacy, fairness, accuracy, the effectiveness of complaints handling processes and whether standards reflect community standards. In terms of those particular proposals, do you believe there is a clear definition for any of those?

Mr Williams: The advocate is unfettered, as far as I read the legislation, in terms of the quality and breadth of the domain the advocate can choose to engage with and pass comment on. The advocate is unfettered in their capacity to find fault with the operation of independent review bodies, and in fact to immediately take sanction action in the terms described in the bill.

Senator BIRMINGHAM: And yet there are no rights of review.

CHAIR: Senator Ludlam has the call.

Mr Williams: There are absolutely no rights of appeal contained within the bill. There is no merits review.

CHAIR: Mr Williams, Senator Ludlam has the call.

Senator LUDLAM: Thanks for coming in this afternoon and giving your evidence. I have put this question to a few of the proprietors—most recently Mr Stokes, who also has interests, obviously, in print media and, as you do, in electronic broadcast media. He came with a very similar contention to yours—that this is outrageous, extraordinary, historic and unprecedented. I want to hear, in your words, why having your electronic broadcast outlets regulated by a statutory authority appointment by the minister, who can pull your licence at any time—which is a fairly severe penalty and many have argued that there should be intermediate penalties rather than that as the only sanction—is any more or less onerous than having a part-time public interest media advocate who does nothing more or less than accredit press councils? I'll ask you separately about his or her other function in terms of the test, but in terms of accrediting press councils, how does that muzzle the press?

Mr Williams: It is a particularly important question and it highlights one of the great distinctions between broadcast media and unlicensed media. Print and digital media do not operate subject to a licence from government, whereas broadcasters use a publicly owned asset—the radio frequency spectrum—which is licensed to them on a very limited basis and where they have security of not having competitors in that space. Therefore, a public benefit bargain is entered into between the government or its representative agency in the form of ACMA and the licensee as to a number of rules attaching to the use of that public resource. That is quite different from the operation of the way in which print and digital media operate, which are not subject to any government licence.

Senator LUDLAM: But you have pay TV assets. They do not operate on publicly owned airways or spectrum.

Mr Williams: They operate on the radio frequency spectrum with satellite, admittedly not in the broadcasting services band, but there was a legal requirement from the time that subscription television was brought in with the original Broadcasting Services Act—

Senator LUDLAM: It does undermine your point, somewhat.

Mr Williams: that you had to get a licence from ACMA and the licence would have a number of conditions which attach to it.

Senator LUDLAM: Do you think your broadcasters product is politically skewed through the presence of ACMA?

Mr Williams: ACMA is not in any way analogous to the public interest media advocate. For a start, all of the decisions of ACMA are available for merits review through the court system—through the Federal Court, the Full Court and the High Court.

Senator LUDLAM: That was not the point that you were making, though. You were making the point that a political appointee on a renewable tenure is going to inevitably skew—

Mr Williams: I'll make a further point: ACMA has many members; it has a variety of different views. But those members are not all appointed by the one government. They actually travel over time in terms of changes of government. They reflect a diversity of skills, a diversity of ages, a diversity of genders and a diversity of perspectives on the operation of our society. That is profoundly different from a single individual.

Senator LUDLAM: Do you think a converged regulator, as was canvassed in the convergence review, is the proper place to do this, then? Do you think that we should roll print into ACMA or whatever ACMA's successor organisation is?

Mr Williams: I think the basis for regulating the print media is yet to be made by anyone.

Senator LUDLAM: Okay. Do you think it is appropriate that entities—and Senator Birmingham canvassed this a little—at any time can without much notice virtually jump out of the Press Council, as Seven West has chosen to do in WA, and set up their own organisation? Do you think that that is an effective public policy outcome?

Mr Williams: I do not think it was a public policy outcome. It was a self-regulatory outcome that related to the situation in Western Australia. I am sure that that was spoken about this morning.

Senator LUDLAM: But the public has an interest in effective self-regulation of the press. I would hope you would concede that. This is not purely a commercial interest.

Mr Williams: I would have to say that I am not enormously familiar with the operation of system in Western Australia, but as I understand it is operating to the satisfaction of complainants.

Senator LUDLAM: It is certainly operating to the satisfaction of Seven West. But that is not the point that I'm making. At any point yourselves or Fairfax could walk and the Press Council could fragment. You can set your own up.

Mr Williams: The new rules of the Australian Press Council, as Mr Reid indicated, do not allow for that. There is a requirement that there be a four-year notice of quitting the Press Council and during that four-year period there is a continuing obligation both to fund and to comply with all of the rulings of the Press Council and all of the other policies that are attached to it.

Senator LUDLAM: And you are legally obligated to do so?

Mr Williams: Correct.

Senator LUDLAM: What would happen to you if you did not—if you just left because of some irreconcilable difference that arose?

Mr Williams: Frankly, I have not contemplated that. We live by our contracts.

Senator LUDLAM: Well, we have to contemplate that. There is nothing actually preventing that organisation from fragmenting and forming multiple press councils at this time.

Mr Williams: I do not want to digress in terms of the nature of the operation of law in here, but these bills contemplate a situation where I would think it is perfectly conceivable that you would have individual press councils by state or even by publication because of the nature of the sanctions that would apply across all of the respondents to a press council.

Senator LUDLAM: And I am very concerned about that. And it is good that you have pointed that out. Do you think that there is too much diversity in the Australian media landscape? We have two corporations that effectively own nearly 90 per cent of the Australian press?

Mr Williams: The figure is not as high as that, as I am sure that you know.

Senator LUDLAM: What is the figure? Between yourselves and Fairfax it is around the 87 per cent mark.

Mr Williams: It does fascinate me that at a time when print media is clearly under challenge in terms of changing ways in technology and behaviour on behalf of consumers, and when there is an enormous rise in the diversity of media that is digitally provisioned to Australian consumers, that people wish to focus in on one element of the media. There has never been more media in Australian history. There has never been a greater diversity of voices in Australian history. There has never been a wider variety of opinions and materials made available to Australians about their society and about the world.

Senator LUDLAM: Okay. So you do not think that there is any need for any check on any further consolidation of media corporations at the big end of town?

Mr Williams: I think that there are very adequate checks that already exist in prevailing law under the Australian Competition and Consumer Commission, under the Foreign Investment—

Senator LUDLAM: You do not think that they have totally failed?

Mr Williams: Review Board and under the Australian Communications and Media Authority, all of which have extensive powers.

Senator LUDLAM: Extensive powers which have left us with the most concentrated media ownership structure in the industrialised world. So you think that framework has worked very well?

Mr Williams: Senator, if you want to slice and dice and choose a narrow definition in terms of what constitutes media, you will see that the company that we are from operates 63 per cent of the print production in Australia. It certainly does not have 63 per cent of the internet provisioning of information in Australia. Its share of internet provisioning is at a modest percentage of that.

Mr Suckling: The other thing is that ACCC knocked back Seven West's application to acquire the Consolidated Media Holdings assets of Fox and Fox sports.

Senator LUDLAM: Yes, they are very upset about that.

Mr Suckling: And the Commissioner of the ACCC, as you know, has said that he would have an issue with News acquiring Channel Ten.

Senator LUDLAM: Is it the view of the whole News Limited stable that the Australian Greens should be destroyed at the ballot box or is that just the view of the *Australian*?

Mr Williams: I think to import views for individual publications as being a corporate view of the company wholly misunderstands the way in which media companies operate.

Senator LUDLAM: So it is just the *Australian*, is it?

Mr Williams: Editors are empowered to form the editorial policies and judgements that are affected through that publications.

Senator LUDLAM: Well, I am pleased to hear. I gather that you are confirming that it is not the view of all of News Limited that the Greens should be destroyed.

Mr Williams: You know that yourself, Senator, because you will know that the *Mercury* has always had an extremely strong and cordial relationship with Bob Brown, with Christine Milne and with the policies of the Greens in Tasmania, given that clearly a large number of Greens in Tasmania support that political party.

CHAIR: Senator McKenzie.

Senator McKENZIE: I want to go to issues around regional media. Part of the convergence review is maintaining diversity at a national level. Do have any comments to make about how the local reality plays out looking at diversity from a national level?

Mr Williams: We are a company that is clearly committed to local media on a quite granular level. We operate newspapers in Darwin, Alice Springs, Cairns, Townsville, the Gold Coast, Brisbane, Sydney, Geelong, Melbourne, Adelaide, Perth and in Hobart. We also operate community newspapers in many outlying regions from those primary metropolitan centres. The cities I recited are where we have paid media. We are committed to being a local voice in all of those places and we have very spirited relationships with the community in each one of them.

Senator McKENZIE: So when the Finkelstein report outlines that the adequacy of new services in regional areas is of concern and it urgently needs to be addressed in the immediate future, do you think the government's response to that report and the convergence report is adequately dealt with within the legislation before us in terms of those regional issues?

Mr Williams: The irony of the government adopting what might be described as an armoured approach to diversity of media and at the same time advocating the removal of the 75 per cent reach tool on broadcast licences is not lost on me. So on the one hand the government is saying that it is absolutely in favour of diversity and on the other hand the government is saying, 'But not when it comes to broadcast television.' Go figure.

Senator McKENZIE: I think we are all going and figuring. In terms of the issue Mr Reid was talking about—a 30-year-ago scenario being played out—I go to part K in section 7 where the body corporate can go to where the funding arrangements are sustainable for the body corporate. Would you suggest as businessmen that having forward funding for four years guaranteed whether you are in or out is a sustainable business model?

Mr Williams: It is a pretty tough discipline on us. We have no guarantee in a forward sense of our revenues. But our obligation to the Press Council is absolute. Not even the parliament has a four-year guarantee. I think the forward estimates go three years into the future, don't they?

Senator SINGH: Mr Williams, in a speech last week you claimed that these reforms "turns a deliberate blind eye to the fact that all Australians have access to more diversity in news, opinion and commentary than at any time in history." How do you reconcile that claim when we know in history, if we go back to the 1950s—and I raised this with Mr Hywood earlier—that we had 15 national and metropolitan papers with 10 owners and today we have 11 papers with three owners, one of those being, of course, News Limited, which is incredibly influential. Now, if you think that bloggers and various other commentators—as you talk about in the quote that I have just taken from your speech—represent diversity, where are they getting their information from? They are getting it from one of the most influential media owners, which is News Limited. On top of that, you raise this issue of News Limited being in newspapers all across the country and you listed them. I know that in my home state of Tasmania, the Hobart *Mercury*, as you referred to, has had its staffing numbers cut dramatically. Surely that must be the result of setting up subbing hubs and dropping sections from a central point into all News Limited papers around the country, rather than having a strong diversity of views if you are cutting staffing numbers to be able to tell those stories in those regions. So what do you actually mean in your speech that there is "access to more diversity in news and opinion" as one of only three owners of media now in this country?

Mr Williams: I will shortly past to Mr Reid. You cannot deny, Senator, that back in the time you were invoking, in the 1950s, that there was a 15 minute news bulletin in the evening on the ABC—I actually remember it—there were occasional news bulletins on terrestrial broadcasts and there was a very limited AM set of radio networks that had networked news. Today there are 14 independent news channels, none of which, not one of which, is under the control of Foxtel, available on Foxtel. The ABC has ABC News 24, there are substantial news and current affairs operations with each of the broadcasters across the length and breadth of Australia. In terms of internet provision, there are huge numbers of services. I would encourage you to examine the number of sites that Australians visit and to look at the top 10, top 20 and top 30 sites that Australians actively use. You would find that the BBC is the fourth most popular news provider in Australia from Australian consumers.

Senator SINGH: Your answer is talking about everything other than newspapers and everything other than ownership, which are the two points of my question—newspapers and ownership.

Mr Williams: Senator, you cannot in one and the same breath speak about convergence and then say, 'Let's just talk about the newspapers.'

Senator SINGH: No, but my question went to bloggers, it went to commentary and where they get that information from.

Mr Williams: You asked me as to the basis on which I was saying that Australians have access to more news and information sources that at any time in their history, and I was endeavouring to tell you why and how. If my answer is unsatisfactory I apologise.

CHAIR: Thanks, Mr Williams, for being here this afternoon. I now call Network Ten.

HERD, Ms Annabelle, Head of Broadcast Policy, Network TEN

McLENNAN, Mr Hamish, Chief Executive Officer, Network TEN

[16:17]

CHAIR: I welcome Network Ten. Mr McLennan, do you have an opening statement?

Mr McLennan: No, we tabled our statement before and I am happy to answer any questions.

CHAIR: That tabling was in another committee, so if I could just get you to table that for this committee that would be good, thank you. We will go straight to questions. Senator Birmingham.

Senator BIRMINGHAM: Can I go firstly to your submission where it touches on the Broadcasting Legislation Amendment (News Media Diversity) Bill and the Public Interest Media Advocate Bill. You indicate Network Ten's strong opposition to both of these bills. Can you elaborate on that, Mr McLennan? Obviously there are issues in relation to the public interest test, but also I'm interested in your views as to how those bills reach into the regulation of news media as a sector or as a company that is perhaps less affected than some of those we have heard from today.

Mr McLennan: Sure. On the Television Licence Fee Amendment Bill, we welcome any change in the reduction of those fees. As you know, we are in a very structurally challenged industry at the moment. We have to work very hard to address our cost base and make sure we are a viable concern. We do oppose the broadcasting legislation, the diversity bill and the Public Interest Media Advocate Bill. We find them subjective. They will be hard to manage, and it is that subjectivity that concerns us. On the whole, as we said this morning, we have significant issues with the 75 per cent reach rule. We believe that will automatically lead to a reduction in terms of the diversity of the media landscape in Australia. We think that the implications as it relates to regional Australia will be far and wide. And we are concerned about the diversity that all Australians will be able to enjoy.

Senator BIRMINGHAM: What is the particular subjectivity that concerns you about the operation and decision-making process of the public interest media advocate?

Mr McLennan: We think that the power is concentrated with one person. That person is appointed by the government, and the very subjective nature of that whole issue means that it is open to different interpretations by many constituencies. We find that that will be very hard to manage.

Senator BIRMINGHAM: What is the impact that that level of doubt and subjectivity would have on the operation of your company and potential future transactions involving your company?

Mr McLennan: You need to look at the legislation as a whole—the whole package. We find that the influence that that person will have on our business, again having that uncertainty, creates a whole lot of doubt in terms of how we operate the business. Again, when we take a step back and look at how all of this legislation is being managed, we need to look at it in its totality. As I said before, the 75 per cent reach rule is a concern to us.

Senator BIRMINGHAM: I am trying to unpack your concerns are bit here. Firstly, there is the actual appointments process and operation, essentially, of the public interest media advocate. You have a concern that that appointments process is very open ended and that the powers are too great and that there is a lack of appeal mechanism built in. Are they some of the issues you are worried about at that level?

Mr McLennan: That is true. It is more regulation which we do not think we need. We think that ACMA represents the television industry well. We have an appropriate level of regulation at the moment. We do not need more.

Senator BIRMINGHAM: In terms of the public interest test as it is proposed and defined, regardless of necessarily who is administering it, what are your particular concerns about the nature of the proposed public interest test?

Ms Herd: We share a lot of the concerns that others have raised today about how you to define what the public interest is, how you define a lessening of diversity, but particularly around what is the public interest. We have listed a set of our major operational concerns as an annexure to our submission. In there, one of the comments is about the subjectivity of what is the public interest. There is just not enough definition in there to give anyone any real guidance as to what you could take into account in determining what the public interest is or is not.

Senator BIRMINGHAM: Mr Williams of News Limited also argued that there were concerns in relation to the application of the public interest test around the reversal of the onus of proof when it comes to whether diversity is maintained or not. Do you share those concerns?

Ms Herd: Yes.

Senator BIRMINGHAM: Why?

Ms Herd: Well, it differs from the ACCC process, obviously. It is a very different thing to have to prove positively no lessening of diversity or that something is in the public interest than to prove the opposite. We cannot see a justification for that switch in the onus of proof. It goes against what the convergence review recommended.

Senator BIRMINGHAM: Thank you. In terms of other areas of operational concerns about how the public interest test would be determined, you are concerned as well that there is a lack of particular detail as to how the terms are defined, is that correct?

Mr McLennan: Correct.

Senator BIRMINGHAM: Again, can you elaborate a little on those particular concerns as to how those details are inadequately defined and whether you believe there would be means to rectify that or whether the whole concept is essentially flawed.

Ms Herd: We think that the whole concept is essentially flawed, but even in trying to apply this, if it were to get through, there are so many different areas where it is unclear how different provisions would operate. We have listed some of those in that section. Appeal processes are a big concern for us. There are a range of things in there that we are concerned about.

Senator BIRMINGHAM: Channel Ten's ownership has been perhaps a little more fluid than of your two commercial rivals over the years. Does that lead you to have perhaps even more heightened concerns about how these proposals could work and could restrict future commercial investors in terms of the operation of Ten?

Mr McLennan: Our troubles of late have been well documented. What we want and what we need to operate a successful Channel Ten network is clarity going forward from the legislative point of view and how the market in totality will operate. Our concern all along here has been, over the last week or so, is that we need to understand what that environment looks like; we need to understand what the framework looks like. When you look at the 75 per cent reach rule, there is a very real concern that Southern Cross and Nine will merge. Every clear indicator that we have is that that is a real possibility at the moment, and the implications for regional Australia are great. So what we want is for everyone to take a deep breath, reset the process and understand how that particular aspect of the legislation then works in with everything else.

Senator BIRMINGHAM: Can I go to the changes in content quotas now. Do you support those changes?

Ms Herd: Yes.

Senator BIRMINGHAM: Have these changes been developed in consultation with the Free TV sector?

Ms Herd: Yes.

Senator BIRMINGHAM: In terms of the new content quotas being applied to primary channels and the new content quotas being applied to secondary channels, when was the particular nature of these changes first floated with the industry and when did industry and government largely settle on these figures?

Ms Herd: Network Ten has been talking about updating the content rules for I think about three or four years now. We have had our Australian drama program *Neighbours* on one of our digital channels since the beginning of 2011. Because that program is on a digital channel and not on the main Channel Ten, it does not attract any drama points. We have been talking about that for at least two or three years to say to people that it is first run Australian drama, it employs about 200 people over the year, it does exactly the job that the drama quota is there to do and it should get drama points just like *Home and Away* does. So we have been talking to the government about that for three or four years. After the convergence review reported we started talking to the government about what they were going to do, whether they were going to update the quota rules. So I think it was a discussion that became more focused around the middle of last year and has come to this point today. It has been an ongoing process.

Senator BIRMINGHAM: Do you have, roughly, an appreciation of when you think industry and government settled on agreeing and all being happy with these new quota figures?

Ms Herd: It was late last year, I think.

Senator BIRMINGHAM: So several months ago. How does the consultation on these aspects of the reforms compare with the consultation, for example, to the establishment of the public interest media advocate or the new public interest test?

Ms Herd: Well, it is vastly different. We had not seen the amendments to enact any of the content changes until Thursday last week. So we had not seen the detail on any of that until Thursday last week.

Senator LUDLAM: I will be fairly brief, because we canvassed some of the issues in the other committee this morning. One of the issues raised in the overall context of digital multichannels is the fact that there is the same amount of Australian content, effectively, over a broader number of channels. Without giving away any commercial secrets, I'm interested in the orders of magnitude differences, in terms of trade, between the main channel and the multichannels when you are buying content from an Australian producer. Are you able to bid down Australian content producers if you are going to park something on the multichannel, which obviously has a smaller audience?

Mr McLennan: To my knowledge, that has never happened and we would not do that.

Senator LUDLAM: Why? I'm treading carefully because I do not want to breach confidence here. But if you are going to purchase a particular piece of content for your main channel, there would be a larger audience share and larger advertising revenues. You will pay top dollar for it if it is a good bit of content. If you are going to park the same content over here on one of your multichannels with a much smaller audience share, would there not be pressure on you to pay less for that same piece of content?

Mr McLennan: It is a competitive market out there in the sense that we have relationships with the independent production companies—and we deal with a lot of them—that we want to continue to keep very viable and worthwhile for both parties. I think our history right across the Ten network has proven that we have not done that. We would not do that. Philosophically we abide by all the requirements that are set out. It is just something that to me commercially does not make sense.

Senator LUDLAM: It seems to make commercial sense to me. Are you saying that Ten does not do that? You do not offer lower rates for equivalent content on the multichannels than you do on your main channel?

Mr McLennan: We would do that, but if you're talking about bidding down—

Senator LUDLAM: Paying less. Channel Ten doesn't do that? You pay the same amount no matter which channel you are broadcasting the piece on?

Mr McLennan: No, that is not the case. Sorry, I took the line of questioning to relate to whether there is some sort of overlay where we would drive the price down because the audience is less on those. We pay what is an appropriate market level for all of our content where we place it.

Senator LUDLAM: I think you might have answered my question with another question. The 'appropriate market level' is set by an agreed price between a buyer and a seller, right? Is it the case that you would pay less for an equivalent piece of content on a channel with a smaller audience share than on your main channel?

Mr McLennan: That is correct.

Senator LUDLAM: It is.

Mr McLennan: Yes.

Senator LUDLAM: So that is occurring?

Mr McLennan: In the context of normal business, yes.

Ms Herd: If you are talking specifically about Australian drama, it is very usual to put drama on a digital channel. It would be unusual given the price, the cost, of making those programs. At the moment in Network Ten's case it is drama that is really our strength. It is drama where we have had most success over the last year with programs like *Offspring*, *Underground*, the Julian Assange telly movie. Many of you may not have liked that program. We have more drama on this year than ever before, with over 190 hours of first-run Australian drama on Network Ten this year.

Senator LUDLAM: Thank you. Your news and current affairs activities are directly regulated by a government appointed public servants, the regulator, via a code that that same regulator approves, licence conditions are imposed by law and ACMA can pull your channel off air if you breach those regulations. I should check this: do you currently have print assets in your stable?

Mr McLennan: No.

Senator LUDLAM: Do you have a particular view about some of the contentions that have been made around the existence of new regulation around press councils?

Mr McLennan: No.

Senator LUDLAM: That is fine. Do you have a view on the proposed introduction of a public interest test to assess the public interest of given takeover and merger proposals?

Mr McLennan: I think our issue has always been, as we said today, that if there is a further reduction in the diversity of the media landscape in Australia then that is a concern. As we said before, the sharp end of this is regional Australia. As it pertains to news, which again is a really critical part of this, we think that it will be compromised.

Senator LUDLAM: Okay. That is a very useful point of view. I presume you mean that in the context of the lifting of the reach rule.

Mr McLennan: That is right.

Senator LUDLAM: You have concerns about that. We may argue amongst us about the specific form of drafting. Do you think that a properly crafted public interest test is one ahead against that consolidation that you are clearly concerned about?

Mr McLennan: As we said at the outset, we think that it is unnecessary.

Senator LUDLAM: No, I didn't hear that. I heard you say that you are worried about collapsing diversity and you want the retention of the reach rule from that reason. Does it not necessarily also follow then that if the government proposes to introduce a test to prevent further consolidation you would at least be interested in looking at it.

Mr McLennan: Sure. We do not want further consolidation.

Senator LUDLAM: And this is one measure for preventing that.

Mr McLennan: Correct.

Ms Herd: What is important, though, is that our position has not been to never remove the reach rule; it has been to look at everything as a package. That includes looking at the measures that protect diversity. We have always said that introducing a public interest test of whatever form is always going to be very difficult because you will always have issues about certainty and subjectivity. Looking at the legislation that we were presented with on Thursday morning last week, our concerns about subjectivity and uncertainty were not addressed. We are happy to have a discussion about it, but we do not think that these bills do the job.

Senator LUDLAM: I will leave it there. Thank you

Senator McKENZIE: In terms of community standards, and I have asked this question of a number of submitters, could you give an example of how you might define community standards—how Channel Ten might define the community standards of the community you seek to target your particular business to?

Mr McLennan: It is a very subjective question. We want to reflect appropriately what is out there in society as it pertains to certain programming. We could debate for hours about what that looks like and what that means. ACMA are very clear in terms of what their requirements are of us as the licence holder and we abide by those rules.

Ms Herd: The commercial television Free TV formula is the code of practice, and we are a member of Free TV. ACMA determines whether or not that code of practice meets community standards. That is a three-year review process, so we are constantly monitoring what is going on. But I think we have a pretty good idea based on the phone lines as soon as we have put something to air. We have a pretty good idea of what people will and will not react to. That is a constant process for us.

Senator McKENZIE: Would it be fair to say that the community that you are interested in satisfying, their public interest in what they are viewing may be different to, for instance, the SBS or the ABC or Channel 7?

Mr McLennan: We have had an extreme youth focus over the last few years. I am not sure that that is entirely appropriate. It is my first day on the job but I have been asked by many people what my view is.

Senator McKENZIE: Well done.

Mr McLennan: Yes, it is a baptism of fire. The issue really is what the is sustainable model for Channel Ten. I think we can be youthful in terms we how we go to market, but I would like to see an older demographic come in. I think all good television networks have diverse programming, so you are going to pick up different audiences on the way through. So at this point in time, what is acceptable to those various audiences is different. So how you talk to someone who is over 50 or over 40 is very different to how you talk to a 10-year-old. I think we just need to bear that in mind when you look through the lens of that question.

Senator McKENZIE: On the 75 per cent reach rule, I understand your position is that it will result in a significant reduction in local content in the regions.

Mr McLennan: Everyone should be very concerned about that. The reality of the situation is that if the 75 per cent reach rule is pulled, I think you will see further consolidation within the industry. What has been highly

discussed and very visible of late is the proposed merger between Southern Cross and Channel Nine. If that is to go ahead I think that you will see a greater reduction in terms of commitment to the bush. As we all know, Channel Nine is owned by two hedge funds out of New York. What is critical is that everyone understands what those implications will be. The implications are cost savings—to cut costs out of the business to make the merger work. I have lived in that world for many years and the reality is I have never seen a merger where you add costs to the business. So all we are saying in these discussions here today is that everyone should have a good hard look at what it actually means and what the implications are. So when we cart out the 75 per cent rule and look at the total package, you cannot just pull one lever out and look at in isolation because the implications are great.

Senator McKENZIE: The other levers that were mentioned in the convergence report were the two out of three rule, the two to a market rule and the one to a market rule. Do you have the same concerns around those particular levers?

Ms Herd: I think it just demonstrates that you need to have a proper look at all of the rules that relate to media and regional diversity. One of the other things the convergence review said was that you need to look at the voices test and perhaps a that to update it. But these bills do not follow any of those recommendations.

Senator McKENZIE: You just mentioned issues around consolidation within media markets. Is there anything in the legislation that gives you cause for concern, as we heard earlier, around retrospective powers in certain aspects of the legislation? Is there anything that concerns you in light of consolidations?

Ms Herd: We think that there is a bit of a glaring hole in that any deals that are done within the first up to 6 months of the legislation having passed, won't have too pass the public interest test, if it does in fact get through parliament. That is because there is an interim arrangement put in place that takes affect from Thursday last week until when the PIMA framework is set up. If any deals are done in that time, they do not have to apply for prior approval from the PIMA before they can proceed. So whilst the PIMA can look backwards and say that there may be a problem with diversity there, it is a very different thing to having to proactively prove that you are not going to lessen diversity and that if you are you are doing it in the public interest.

Mr McLennan: Adding to that too, if the merger goes through it will be very difficult to try and pull it apart in two, three or four months. My sense is that what would happen is that newsrooms would be crunched, departments would be collapsed and people would lose their jobs. I just think it is unrealistic and not practical to be able to pull those two businesses back again.

Senator McKENZIE: In terms of what might actually represent a change in community standards where PIMA can actually revoke someone's declaration, what do you think might actually represent a change in community standards? As opposed to measuring community standards, what event would trigger it? Can you give an example of where there has been something that you can actually point to and say that that was where we saw a change in community standards?

Mr McLennan: I think that that is the problem that we are facing at the moment. Because it is so subjective we don't actually know what that is and we need certainty.

Senator McKENZIE: Briefly, can you comment around the statutory bodies that have play in your space? Can you comment on your understanding as one of our three main broadcasters on how this new setup will actually interplay with those other statutory bodies?

Ms Herd: Obviously we live and die under the rules of ACMA. Everything we do on a day-to-day basis pretty much is regulated. We are a highly regulated industry. We also have to comply with the rules administered by the ACCC, foreign ownership rules, ASX rules and all those other bodies that we all have to deal with. This would be an additional layer of regulation and an additional layer of oversight to transactions that we would want to enter into. And we think that it is an unnecessary one.

CHAIR: Thank you very much.

BRIGGS, Mr Scott, Director of Commercial and Regulatory Affairs, Nine Entertainment Co.

BROWNE, Mr Jeffrey Michael, Managing Director, Nine Network

[18:02]

CHAIR: I welcome representatives of Nine Network. Thank you for talking to us today. Mr Browne, do you wish to make a brief opening statement before we go to questions?

Mr Browne: Yes. If I can just touch on four brief points, the first being the proposal in this legislation for a reduction in licence fees. In our view that is well overdue. It was the subject of an extensive submission to the Convergence Review supported by some independent research from Venture Consulting, which showed that comparatively licence fees in Australia are much higher than anywhere else in the world, and in fact the average is around two per cent, whereas we are paying nine per cent and the proposal is to reduce that to 4½ per cent. We say that is reasonable in view of the very high local content obligations we have, which means that our industry last year spent about $1.2 billion on local content, the diminished spectrum that we will use after switchover and the competition from other forms of media that are not required to pay licence fees. We say that follows as a matter of fairness and as a major of logic.

One other feature of the legislation is the ability to move some of our quotas—preschool, children and drama—across to the multichannels. Multichannels have been around for some time now. The broadcasters have in fact been operating under this arrangement since the start of the year. In the case of the Nine Network, this has resulted in more children's programming in a block on our Go! Network, the youth network, which is the right place to put that. As part of the trade-off for that, we have agreed to increase the number of hours of Australian content on the multichannels to 730 hours this year, 1,095 hours in 2014, and 1,460 hours in 2015.

The other feature of the legislation is that there will be no fourth commercial licence granted. We say that makes commercial sense. Business is difficult at the moment in view of all of the other convergent forms of media which are crowding the space. It is a very difficult ad market, so it is not the time to consider that.

The other point I should mention to you is our view in relation to the public interest test regarding mergers. We believe there are sufficient existing protections under the Broadcasting Services Act and the two out of three voices rule, as well as the powers of the ACCC to regulate mergers on the basis that they can prevent that if there is a substantial lessening of competition, which we think could be analogous to a substantial lessening of diversity of control.

CHAIR: Thank you, Mr Browne. Mr Briggs?

Mr Briggs: No, that is fine. Thank you, Mr Chairman.

CHAIR: Senator Ludlam.

Senator LUDLAM: Thank you. I apologise that I missed the first part of your opening statement. Can I just clarify for the purpose of the evidence that you are giving that you do not have any print assets that would be affected under these reforms?

Mr Browne: No.

Senator LUDLAM: Are you taking a view one way or another on the proposed Press Council reforms?

Mr Browne: We are not affected by that. We have views about it, but I think others have expressed their views who are directly involved in that.

Senator LUDLAM: To a greater or lesser degree of stridency, but if you do not have a particular view. In your opening statement I think you touched on your views on the proposed additional public interest test. That is new. That is something that we do not have at the moment.

Mr Browne: Yes. That does have an effect on us in relation to potential mergers. As I mentioned in my brief opening remarks, there are some safeguards at the moment. The ACCC controls mergers to the extent that it prohibits mergers if there is a substantial lessening of competition. I think it has exercised that power very effectively. The advantage of the current provisions under the ACCC are there are some clearly defined economic indicators in that in terms of jobs innovation and exports in some cases that they have considered. The existence of those economic principles makes that test or their considerations more objective than what is being proposed, and we say that is helpful. There is also, by virtue of the fact that they have been doing that for some time, the assistance of some precedent to give you guidance in relation to what things they would look for regarding those mergers which can help parties when they are negotiating.

Senator LUDLAM: So, nobody would have case history as to how a public interest media advocate would adjudicate those sorts of things? That would just take a bit of time?

Mr Browne: There is no case history. I think it may be a matter to sit back and observe how these things are played out in practice. That is always helpful. It is always difficult at the start of the introduction of a test to know in advance how discretions will be exercised, particularly when they are expressed as broadly as they are in this proposal.

Senator LUDLAM: That is why it is helpful to have you here at the table. Do you think that Australia's current cross-media ownership laws have served us well in preventing concentration of media ownership in Australia?

Mr Browne: I think there is a sufficient diversity in relation to media ownership. Insofar as the Nine Network goes, we have affiliation agreements in regional areas. If we were to merge with a regional broadcaster, for instance, would that create less diversity? It would in the sense that we would own that entity, but the fact is that regional broadcasters broadcast in fact about 95 per cent of the metropolitan broadcaster's product, so there is diversity. There is no change in the content. The only protection I believe ought to be built into any arrangement is a protection for local news services. In an earlier submission today Mr Gyngell gave an undertaking in relation to regional news services, which I think is very important.

Senator LUDLAM: He actually tabled the undertaking for the committee, which is not something that we have seen before.

Mr Browne: Yes. I think the protection ought to be to concentrate on the provision of the services rather than who owns it, as long as those services are provided for people in regions and it is a quality news service.

Senator LUDLAM: I think I would probably contest that. I do not think we have the luxury of saying, 'As long as we can force you to maintain a regional newsroom it doesn't matter that all of Australia's media is owned by one guy.' We are not so far from that.

Mr Browne: I certainly would not suggest that it all being owned by one entity is a good result.

Senator LUDLAM: What is an optimum result? Because that is really the balance we are trying to strike here.

Mr Browne: I do not know, but I am tempted to look at these sorts of questions in terms of the effect to see whether there is a skewing, an unfairness or a bias that results from that and to come at it from that direction to see whether there are things that can be done or people can be forced to do things differently to create the sort of diversity and independence that you might require.

Senator LUDLAM: I think that is an extremely perceptive comment. I could not care less if your particular paper or TV station is biased, but if one guy owns everything and it is all the same bias then your democracy is in serious trouble.

Mr Browne: Yes. I agree with that.

Senator LUDLAM: I think that is what has brought the government to bring these bills forward, and that is why we are contemplating passing them. I might leave it there and come back if there is time later.

CHAIR: Senator Birmingham.

Senator BIRMINGHAM: Gentlemen, thank you for your time. Perhaps I will just start where Senator Ludlam has finished. Do you believe there is a lessening of the number of voices in the media landscape at present?

Mr Browne: I think there is a sufficient spread of voices in the media landscape. At the Nine Network we compete vigorously with our two commercial network competitors, Channel 10 and Channel 7. We compete more and more every day with the delivery of various internet products through tablets and mobile phones. That is literally increasing every day. That makes our business certainly more challenging. It makes it more challenging financially to maintain margins when there is so much competition around from other sources. We found recently in sports rights deals, for instance, where once you negotiated a broadcast media package the emphasis is suddenly on the mobile and tablet rights, because people are watching whole games of sporting events on mobiles and tablets. We would not have thought that was possible or would happen two years ago. Some of those actually have clean feeds of our vision. There are separate ad insertions and so it is basically a separate service. There is lots of diversity around and more and more every day.

Apple TV, for instance—people can watch shows broadcast in the US before they are actually broadcast in Australia, because they can download them and watch them. All of that creates a lot more diversity than I think we have ever had before.

Senator BIRMINGHAM: To what extent is this increase in diversity that you are feeling every day coming from media sources owned by or influenced by, say, the Murdoch family?

Mr Browne: I am sorry, your question is?

Senator BIRMINGHAM: To what extent is this daily increase in media diversity or competition that Nine is feeling from sources that are owned or controlled by the Murdoch family?

Mr Browne: I do not feel any particular pressure from any sources owned by the Murdoch family. I think they are very wide ranging. I think as time goes on the proliferation of these other services will come from all places, all over the world, from a whole range of different people. I think it will be very difficult to maintain concentration in the media sector, because of the way that the sector is evolving. You cannot control all these sources.

Senator BIRMINGHAM: So, on a regular basis there are actually new players coming into the Australian landscape at present?

Mr Browne: Yes, there are. Anyone with a teenager will see how they spend their time and what they watch. Even YouTube is a form of entertainment. People are just posting that from their backyard experiences. That becomes a form of entertainment, which is a challenge to free-to-air television, particularly those stations or those programs that are targeted for, say, the under-16 demographic. The fact is that younger people are watching less television and getting their content from other sources.

Senator BIRMINGHAM: I have seen some of the stats. You may or may not have them or roughly have them at your fingertips. In terms of YouTube, there are now some very popular programs produced in Australia that are downloaded exclusively via YouTube, are there not?

Mr Browne: Yes, there are.

Senator BIRMINGHAM: Do you have a rough idea or appreciation as to how many—for those that are produced on a regular basis—downloads they are acquiring and how that compares with what you would consider reasonable rating programs?

Mr Browne: No. I do not have an idea of the extent, but if you consider the popularity of things like Tropfest and short film festivals, those things have grown because there is an outlet for shorter form content now, other than just television broadcasts. On our multichannels we can put more niche programming that may not rate as well as we need it to on the main channel. There are lots and lots of outlets now for short-form content, more niche content, and I think that is actually a good thing.

Senator BIRMINGHAM: When we come to approach these issues of media regulation and the package of bills before us, what priority would you suggest we give to simply making sure that regulation is efficient and effective but perhaps also minimalist versus concerns that have been expressed about a loss of diversity of voices to some extent?

Mr Browne: There are concerns and there are fears. There are various degrees of fears; some are irrational and some do not bear dwelling too much on. The fact is in a commercial environment such as Nine competes we have serious market pressures to come up with a culturally relevant slate of programs. If our programs do not rate, we do not make any profit. We wake up every day at 8.30 in the morning, look at the ratings the night before and if we have not got a show that is rated then we will have to do something and makes shows. That is why reality television at the moment with our show *The Block* and *The Voice*, which went very well for us and all locally produced, is the sort of programming that we need to make.

One of the great features of free-to-air television is that it actually perpetuates Australian culture, because we must make culturally relevant programs to the mass audience. That compares with various other forms of entertainment where young people, in particular, may go to YouTube or they may go to various video games or various sites that have very narrow and sometimes quite disturbing content that they can select, whereas we, because of our ratings imperative, need to produce a popular broad range of culturally relevant programs. That is why I think the free-to-air television is very important in Australian life.

Senator BIRMINGHAM: You have taken us into the content sphere, so I will go there now, but I would like to come back, if I can, to the public interest test. In terms of the content quotas that are set in place at present, Nine comfortably exceeds those?

Mr Browne: Yes. With the 55 per cent Australian content quota we are running at about 70 per cent at the moment. The fact is that last year 47 of the top 50 television programs were all Australian-made programs. Twenty of the top 20 were Australian-made programs. If you went back five years you would find that it was much less. In fact, the majority five years ago were probably US-made shows or television. We comfortably exceed that quota. We do so because those shows rate. That is what our audience wants and we make programs that our audience needs. We are happy to step up to the extra content hours on the multichannels because it makes

commercial sense for us to do that. It is not a difficulty. If the 55 per cent Australian content rule was not there on the primary channels I believe every commercial broadcaster would still well exceed that amount. We are not dragged to Australian content. We do that quite willingly now and well in excess of the quota.

Senator BIRMINGHAM: So you are completely happy with the proposals, as they exist in the legislation, insofar as it deals with the Australian content provisions?

Mr Browne: Yes, I am.

Senator BIRMINGHAM: Just for the sake of the record, Nine was involved in negotiations with the government over those provisions?

Mr Browne: Yes, we were.

Senator BIRMINGHAM: When did you settle on the formulas that have been recommended?

Mr Browne: In November last year, I believe.

Senator BIRMINGHAM: Did we have similar negotiations with the government over other facets of the legislation before us and, in particular, the public interest test and the public interest media advocate?

Mr Browne: No. Our discussions with government have concentrated on the abolition of the 75 per cent rule, which we see as a total anachronism and serves no useful purpose. The problem that that rule was intended to address can be overcome by undertakings in relation to local news services, and we have heard more about that on another committee. We have talked about the flexibility to move programming that was previously required to be shown on your main channel to other channels and the trade-off for that being extra hours of Australian content. They are the matters that we have concentrated on. I should say that we have discussed the no fourth licence. I think the public interest test has probably grown out of something more particularly relevant to print media, but it does apply to potential mergers so in that sense it is of relevance to us. We have views about that insofar as those principles would determine or guide any prospective merger for the Nine Network. I might say that there is no firm proposal for the Nine Network to merge with anybody, but as our business has come under pressure and we need to rationalise then that is something that we would like to consider, like a host of other commercial organisations. But we would do that fairly and reasonably and we would accept an imposition of a requirement that we stump up for local news services and jobs in the bush to support those services.

Senator BIRMINGHAM: You are right. The 75 per cent reach rule is being considered by another inquiry, where I had the pleasure of hearing from you earlier today. But in terms of the rules governing mergers and acquisitions and how they play out, earlier you described the current tests as being more objective. Should I take it from that that you believe the proposed public interest test is overly subjective?

Mr Browne: Yes, I do believe it is overly subjective. There is no merits review. The default position is actually breach. You are in breach unless you can prove that you are not in breach. There are no economic principles to guide you in advance for you to know whether you are getting into troubled waters or not. I do not think that any of us wants to come to the regulator and have to face difficulties in relation to the way we have negotiated our deals. If we have prior notice and warning as to the matters that should be taken into account or are of particular importance to government, that should really assist us to do those deals in a way that is not controversial and can deliver a good outcome.

The other aspect of the public interest test that concerns me is that it is an individual and not a board. We have a lot of experience with the ACMA. I know the ACMA debates matters very vigorously around the board of probably 8 or 10 people and I think you do tend to get better outcomes when you have that sort of debate within committee rather than it all resting on one person.

Senator BIRMINGHAM: I was about to go there as well in terms of the application of the public interest test by the proposed public interest media advocate; that you would be far more comfortable. Can you see any reason why, if we are to have such a test, the test could not and should not be able to be applied by the ACCC or ACMA or an existing regulatory body?

Mr Browne: We have seen experience from the ACCC. They have controlled mergers for a long time and in fact declined some of them. What is of great assistance in relation to competition law is that it can go and get an authorisation prior to a merger and you can then be forced to get your authorisation to demonstrate that whilst there is a lessening of competition there is a greater public good. I actually like that process where you can go in advance and get an authorisation. All of that is designed to create greater conversation between industry and government or regulators. I personally think that is a good thing. I do not think things should be left in the air to see how some person might react to that. I think you are better to know in advance what the principles are or at least have an opportunity to come and sit down and talk about it beforehand.

Senator BIRMINGHAM: Thank you, Mr Browne.

CHAIR: Thank you, Senator Birmingham. Mr Browne, in relation to the public interest test, you say that there are no economic principles to guide you, but surely public interest is about social outcomes as well.

Mr Browne: That is true, and there could be social principles built into that as well. I made that comparison when I was looking at the ACCC or the competition law principles where they consider things like price rises, employment, innovation and advantages to be gained from a merger. I am not denying that in a test relative to the media social outcomes ought to be taken into account, but predicated so we know what they are and what are the things that we need to protect. What are the social things that we need to achieve or to ensure that are not damaged by a merger?

CHAIR: Competition in itself does not always provide the social outcomes that are desirable, does it?

Mr Browne: No, it does not. I agree with that. I would go back to what I said earlier in relation to us as a business and what we do by having to produce popular programs. We really respond to our audience every day. It is a vast audience. Free-to-air television reaches 97 per cent of the Australian population and we listen to them because if we do not we do not rate and we do not make any money. Our program slate addresses social norms and promotes good social values and if we get that wrong we pay for that. We do not offend people. We try to make people laugh. We try to entertain people. We try to inform them through our news products, engage them through our drama, particularly our historical dramas, and we think we provide a really good service.

CHAIR: So, you entertain as well as provide news?

Mr Browne: Yes.

CHAIR: I suppose newspapers, to some extent, try to do that as well? They write articles to entertain. They are not all news articles.

Mr Browne: Yes. I guess that depends on whether you think the social pages are entertaining or not.

CHAIR: I was thinking of the sports pages.

Mr Browne: Yes.

CHAIR: I thought Channel 9 would have plugged into that. This issue of the fourth estate that we keep hearing about—do you consider yourself, because you are engaged in news as well, do you see the fourth estate in terms of the press as distinct from television or as an amorphous thing?

Mr Browne: I think they are different. I think there is a difference. We certainly have more entertainment. I think the print media is more news orientated. Even in relation to sport, that is entertainment; it is reporting the results and so forth. We also broadcast the whole game and that is entertainment. I think a lot of people are entertained by sporting contests. I think we can compare more so with print media in terms of our news products and our various shows that we have. It is not only straight news. It is the *Today* show, *A Current Affair*, *Weekend Today* or even our magazine program in the morning which would run for two hours from 9 o'clock. Those sorts of lighter news products are more analogous to what you would probably expect to see in a newspaper or information you might get from a newspaper. I think we do a lot more than newsprint.

CHAIR: I do not think Laurie Oakes would be very happy being described as a light news person, would he?

Mr Browne: No, he would not. He is a very serious news person and we are a very serious news organisation. When I hear people talk about control and if you owned all the media you would control the message that came out of there, I can assure you that no-one at the Nine Network tells Laurie Oakes what to say.

CHAIR: Really?

Mr Browne: I can assure you or if they do he does not listen.

CHAIR: That is a different thing. Where I am going here is about media reach. You have said that there is YouTube, Twitter and all these other platforms, but they are not really as influential as either the press or a combination of the press and television media. You are still streets ahead in terms of influence, are you not?

Mr Browne: Yes, we are in television. There is serious competition from subscription television and things like Apple TV. We should not underestimate the amount, particularly with younger people, who are using those. There is a much higher proportion of younger people turning to regular television products. We are influential and we want to stay influential, because that is the business we are in.

CHAIR: A lot of the blogs and stuff that you see and a lot of the websites that pick up some of the news they pick it up off something Laurie Oakes has done. I am not just saying Laurie Oakes, but you know what I mean.

Mr Browne: Yes.

CHAIR: They say, 'Look, this is what has happened', and then that becomes a topic. Your reach is actually into what has been portrayed as your competition.

Mr Browne: Yes, I guess that is the case. People will pick up items that we have on television and retweet that effectively by repurposing it through some other medium. That will happen. They also scrape their own sites to actually take content off other websites, too.

CHAIR: That is not just for you. I am sure that being in the media you watch these things. With the *Age*, *Sydney Morning Herald*, the *Australian*—that is a phenomenon that applies to them as well. Their news goes to you at times. It goes all over, does it not?

Mr Browne: Yes, it does. There is an interrelationship between the two. In our 6 pm news we are trying to set the news agenda for the next day, looking ahead to see what happens. Breaking news happens live at night. Our Today show in the morning might get a story that missed the deadline for a newspaper and we try to set the agenda through the day for news, so we do compete with them for news but we do report each other's news stories.

CHAIR: So the argument about the competition that the traditional news media faces is a bit overstated in the context that you still set the agenda?

Mr Browne: To the extent that we share some common content, I agree, but more and more of the competition that is coming in the form of online internet products do not repurpose a lot of content from us. As I mentioned earlier, we are heavily in the news space, but we are principally in the entertainment space. That is generally unique content. But, yes, there is some crossover between news products. We do not do that deliberately. We actually try to present our stories or we might see something that is being printed and we might put another take on that and present that to our viewers. That is a good thing, to seek another response to something that may have already been published.

CHAIR: Thank you, Mr Browne. Senator McKenzie.

Senator McKENZIE: I will be quick. You said earlier that the 75 per cent reach will serve no useful purpose. I know a lot of people here were on the committee earlier this morning; I was not. One of the outcomes has been the provision of local news services. Under the bills before us and this committee today and the act as it stands could you outline, all things remaining as going forward that are before us at the moment, what would be the outcome of any merger between a metro broadcaster and a regional broadcaster?

Mr Browne: I think it should be a condition of any merger that the merged entity provide a level of news services in regional Australia no less than what is being provided by the best regional broadcaster at the moment.

Senator McKENZIE: I take that as your ideal, but as the bills before us stand and as the act stands, what would happen under a merger at the moment, if the bills pass as they are written and the act remains the same?

Mr Browne: As I understand it, that would pave the way for a merger between Nine, Seven, Ten and one of the regional broadcasters. But as I also understand it, that would be subject to scrutiny by the PIMA. That scrutiny could require undertakings in relation to local news product and local content in the same way that the Nine Entertainment Company offered the other committee this morning, and make those enforceable in fact as a condition of the merger. So, to the extent that in the current legislation there is no provision for undertakings to be given as a condition that could in fact be dealt with by another person and in this case it could be the public interest media advocate.

CHAIR: Last question, Senator.

Senator McKENZIE: Yes, thank you. We heard some evidence earlier today that there seems to be a gap in timing, if you like, between PIMA coming into existence and any potential merger. Do you have any commentary around that?

Mr Browne: Yes, I have heard that. I think if the gap is six months then I do not see anyone rushing into a merger within that period of time. It is easy to say that that could happen, some heinous act could be committed and people could do things that would not make any commercial sense; I do not believe that will happen either. I believe anyone sensibly would note the changes that hopefully are about to take place and would measure their negotiations to accord with making sure that they met the provisions that were expected of them under the new legislation. I do not think anyone is going to rush in quickly to do a smart deal that will not take account of all the things that ought to be taken account of in relation to provision of local content in the regional areas. I do not believe that will happen. That, I think, is the principal issue in relation to mergers.

As I said to Senator Ludlam earlier, I think it is not so much restricting the reach but making sure that you protect the effect. The effect of a merger between a metro and a regional must be that regional news services and local content in regional areas and jobs that go with the provision of the local content are preserved.

Senator McKENZIE: Located in regional areas?

Mr Browne: I am sorry?

Senator McKENZIE: Located in regional areas?

Mr Browne: Yes, located in regional areas. That is the undertaking that Nine has given. In fact, there are 23 principal regional areas where we would commit to maintaining a presence in terms of at least one cameraman, a reporter and another technician. We believe that would amount to approximately 200 jobs in regional Australia, which we are prepared to commit to.

CHAIR: On that bright note, let us suspend until 8 o'clock. Thank you, Mr Browne and Mr Briggs.

Mr Browne: Thank you.

Mr Briggs: Thank you.

Proceedings suspended from 18:35 to 20.01

BUCHANAN, Ms Petra, Chief Executive Officer, Australian Subscription Television and Radio Association

CURTIS, Mr Simon, Policy And Regulatory Affairs Manager, Australian Subscription Television and Radio Association

FREUDENSTEIN, Mr Richard, Chief Executive Officer, Foxtel

MEAGHER, Mr Bruce, Director of Corporate Affairs, Foxtel

CHAIR: Welcome. Do either ASTRA or Foxtel wish to make a brief opening statement? You both do. Mr Freudenstein, let us go to you first.

Mr Freudenstein: Certainly.

CHAIR: And Ms Buchanan, do you want to go next?

Ms Buchanan: Yes. I can follow on, yes.

Mr Freudenstein: Thank you for the opportunity to appear before you tonight to present Foxtel's views on this important, if unfortunate, issue. I will focus tonight on the bills relating to the creation of the public interest media advocate and the application of the public interest test to media transactions, as they are the matters that have direct bearing on Foxtel's business. I apologise in advance if we have any difficulties answering your questions. 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. However, I can be clear that Foxtel objects vehemently to this legislation. We do so on the grounds of principle, on the grounds of process and on the grounds of practicality. By the last, I mean the flawed and uncertain nature of the bills as they are drafted.

So let me begin with the issues of principle. As others have observed, this is a solution in search of a problem. It is a basic tenet of the regulation of business activity that regulatory intervention should only occur when there is a demonstrated need or case of market failure. In the digital and Internet age, there is no want of access to news or information. There has been an explosion in sources of news information and opinion in Australia and globally. Low barriers to entry, thanks to digital delivery, mean that everyone from microbloggers to major media organisations like the Guardian can establish themselves and develop audiences. Search engines, content aggregators and social media disseminate videos, articles, opinions and ideas at an amazing pace.

Foxtel has been a prime contributor to this diversity. We have brought a range of new local and international news sources to Australians. Sky News alone has its main channel, a business channel—A-PAC—Sky News Local and a series of specialised services through Sky News Active. Our international news services are provided by organisations as diverse as the BBC, Al Jazeera, CNN, Fox, CNBC and CTV. Furthermore, we strongly believe that the ACCC has adequate powers to maintain competition and diversity in the media. The ACCC has said in its own media merger guidelines that, and I quote:

> The ACCC will also consider whether a merged media business could exercise market power by reducing the quality of the content it provides consumers, which could include reducing the diversity of the content it provides.

The second issue of principle we want to raise is why the legislation should apply to Foxtel at all. The legislation is concerned with control of news media voices—that is, people or companies who control news media—not media in general. I have editorial control over a number of channels that produce entertainment, drama, factual content, movies and so on. Neither I nor anyone who works for me has editorial control over any news channels. We are an aggregator of channels. Online news aggregators are exempt from the effect of the legislation. However, the government has manipulated the definitions in order to ensure that Foxtel is caught by this legislation.

I will explain. In order to be subject to the regime, you must first be a 'news media voice'. Media organisations are defined as news media voices if they provide or specialise in news and current affairs except for subscription television platforms, to which no such qualification applies. So Foxtel is included even though it does not itself create or control any news services.

The next step is that in order to be included on the register of a news media voice, the news media voice must have an audience or customers for services that are news media voices for services equivalent to 30 per cent of the average audience of the evening news services of the commercial metropolitan television networks. On a like for like comparison with the commercial free-to-air networks, news channels on Foxtel would not pass that test. But Foxtel, again, has been nominated. The explanatory memoranda gives ACMA plenty of room to reverse engineer the eligibility rules to ensure that everyone the government wants to regulate is caught.

I will turn to process for a moment. There are significant and complex changes to the way media is regulated. Contrary to what Senator Conroy has said, there has been no debate about the specific proposals being put. 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.

The third is practicality. Even though we have only had a limited time to analyse the bills, there are many aspects we find disturbing. I will highlight a few very quickly. The first concern relates to the appointment of the public interest media advocate. The PIMA is appointed by the minister for up to five years.

CHAIR: Mr Freudenstein, you are going to have plenty of time to do this. I am not sure how much longer you want to take in an opening statement, but we do want to ask questions.

Mr Freudenstein: Can I have one or two more minutes?

CHAIR: Sure.

Ms Buchanan: I am happy to forgo my statement.

CHAIR: No, Ms Buchanan. You will be right. I am trying to get an idea how long Mr Freudenstein has to go.

Mr Freudenstein: Just another one and a half minutes. I need to go through some of the problems with the act. The PIMA is appointed for a period of up to five years, but appointments could be for a shorter time, maybe even a year, with the threat, actual or implied, of reappointment being contingent on achieving certain outcomes. The PIMA does not have separate staff or resources. He or she will be supported by the department, which is directly answerable to the minister. The PIMA is an individual working part time who will have to make complex and subjective decisions. Other regulatory bodies, such as ACMA or the ACCC, comprise groups of members, where a variety of opinions and experience can be brought to bear on a decision. Secondly, the bill relies on a number of concepts that are undefined, such as substantial lessening of diversity of control. Even with the word 'diversity', we do not actually know what we are talking about here. There is no guidance regarding the public benefit that might outweigh detriment. There is also a lack of clarity around the nature of the transactions that are caught so we fear that we may wish to launch a new online service. Just the way 'transaction' is defined means that service could be caught even though we are actually not buying or selling anything.

The bill reverses the onus of proof, so we have to prove that it is not breaching the act, which is contrary to what the convergence review said. Finally, if this regime took place, then a transaction in the media space could be subject to review by up to four different regulators—ACCC, ACMA, FIRB and now PIMA. It does seem a little excessive. There are many more examples, but I will close there and allow time for questions.

CHAIR: Thanks, Mr Freudenstein.

Senator BIRMINGHAM: Is it possible to get a copy of that opening statement, please?

Mr Freudenstein: Yes.

Senator BIRMINGHAM: There were some technical bits, particularly at the start.

Mr Freudenstein: Sure.

CHAIR: Ms Buchanan?

Ms Buchanan: Thank you very much for providing us the opportunity to appear before the committee tonight. 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. The subscription television industry adds significantly to the diversity of news and current affairs available to Australian audiences. ASTRA represents 30 Australian and international media and communications companies delivering over 200 channels of news, sport, documentaries, movies, drama, general entertainment and children's programming. On the Foxtel platform alone, as Richard has mentioned, eight different news organisations provide 11 news and business channels, giving viewers unique access to Australia and some of the world's most respected news organisations.

The growth in investment of subscription television underlies the crucial role the introduction of new and innovative services have played and will continue to play in increasing diversity and choice for Australian audiences. Further, there is no justification for bringing subscription television within the existing regulatory regime for media ownership and control. The news media diversity bill would introduce new provisions under which an STV platform would be taken to be in a position to exercise control over each subscription television service that it provides. This would fundamentally misrepresent the relationship between a subscription television

platform and those entities that provide channels that appear on the platform by making the false presumption that an STV platform essentially has control over the editorial content of the channels on its platform.

Using control of media companies as a basis to preserve diversity is based on the arguable concept that a person in control of a media company that provides a news service dictates the editorial content of its news programs. To stretch that concept to presume that Foxtel, Telstra or any other subscription television platform has any semblance of control over news channels provided by third party providers such as Sky News, CNN, BBC World and CNBC is utterly unjustified. The legislation would use this false presumption to justify identifying a subscription television platform as a news media voice. A regulatory framework that encourages competition and innovation is more likely to encourage increased diversity in the representation of news and opinion. The Internet and other new media and communications platforms have opened up to consumers a wide array of news and information services from local, national and international sources. A vast range of alternative views and opinions on any topic of public interest is available for Australian consumers if they so choose to access them.

Attempting to impose diversity through more regulation is only likely to restrict opportunities for growth and investment in new media and content. In particular, there is no compelling evidence to justify bringing the STV sector under existing media control. The proposed public interest test will do no more than add yet another layer to the already significant regulatory oversight of media mergers and acquisitions, with no guidance for the new public interest media advocate in how it should determine whether a media merger constitutes a substantial lessening of diversity. The effect will be to increase regulatory uncertainty and further discourage investment in the Australian media sector. Existing general competition law provisions are sufficient to regulate potential issues of market power in the media and communications environment, including the regulation of mergers and acquisitions involving media and communications companies.

CHAIR: Thanks, Ms Buchanan.

Senator BIRMINGHAM: I want to start by looking at and exploring exactly what the existing regulatory frameworks are as they apply to mergers and acquisitions in your sector. Of course, you have been through one recently. What steps already have to be met and what hurdles already have to be cleared for a significant merger or acquisition to take place?

Mr Freudenstein: I will use the Austar example. We had to obtain approval from the ACCC—the Australian Competition and Consumer Commission—and from the Foreign Investment Review Board. The process with the ACCC was a long six- or seven-month process where, because they have a range of expertise, they were able to draw on lawyers and economists. They tested the market. They took a range of submissions. We ended up in that scenario negotiating undertakings that addressed the competition issues they had concerns with. So we were regulated by the ACCC and by the Foreign Investment Review Board in that case. In certain situations, we would also be covered by ACMA.

Senator BIRMINGHAM: If News wished to purchase Foxtel outright, what would have to happen?

Mr Freudenstein: It would be the same process with ACCC and FIRB. News recently bought James Packer's share in Foxtel. My understanding is that they went through that process and tested the competition issues related to it. You may also be aware that Seven West Media recently applied to the ACCC to be able to buy a share of Foxtel and the ACCC indicated that that would not be possible.

Senator BIRMINGHAM: And what were the grounds the ACCC gave in that instance?

Mr Freudenstein: I am not sure of the exact detail. They were concerned about the relationship between free television and subscription television and what access to information Seven would gain about the Foxtel business if they were to acquire some of it.

Senator BIRMINGHAM: So in that case it sounds like they were issues related to competition between the broader broadcasting sector, not necessarily diversity of voices type arguments per se?

Mr Freudenstein: No.

Senator BIRMINGHAM: Though the two are obviously related.

Mr Freudenstein: As I said, it is diversity of news voices. We do not control the news voices, so it is not an issue.

Senator BIRMINGHAM: So, as you indicated in your opening statement, were these laws to be passed, there would be a new regulator on the block but without taking away any of the existing hurdles that have to be cleared under any of these processes?

Mr Freudenstein: Correct. In fact, it is introducing a new hurdle because the way the legislation has been drafted, the test for diversity of voices is a test amongst a small group of existing media players. So it does not

matter what is happening outside that group of free-to-air television and radio and subscription television. There could be more and more diversity happening outside that group with the Internet and social media, but the test is always around this small group. So it is completely removed from what is really happening in the real world.

Senator BIRMINGHAM: I want to go to that shortly. In terms of the advent, though, of the public interest media advocate and your analysis of the legislation that is before us, how does it stack up in terms of its apparent operations and the processes compared with your experience in having to work with the ACCC or ACMA and the types of structures and processes that are in place for those regulatory bodies?

Mr Freudenstein: I think our concern is, from the way the legislation is drafted, the public interest media advocate is a single person, first of all, potentially working part time, so with obviously very limited resources relying on the department and appointed by the minister. These transactions are complex. They involve significant amounts of money. They affect a large number of shareholders, including superannuation funds, who hold shares in these businesses. We are used to an environment where those issues are analysed by economists, lawyers and staff from the ACCC. A number of ACCC commissioners get to input into the decision. It is a much more thorough and diverse group of people that gets to look at these issues, which gives us all a bit more comfort, I think, than a single individual working part time who has obviously some skills but cannot, almost by definition, have all the skills required to make those analyses.

Senator BIRMINGHAM: And the rights of appeal that exist in those existing regulatory mechanisms compared with what is proposed here?

Mr Freudenstein: Again, there is no right of appeal in the legislation against the decision of the public interest media advocate whereas there are certainly rights of appeal for decisions and always the opportunity to go to court with the ACCC and have that opinion tested in court, which has been seen in a number of cases recently where the ACCC has actually lost a couple of cases—I cannot remember the names—not in the media industry but in the broader business sector.

Senator BIRMINGHAM: I will go to aggregation and some of those issues. Foxtel owns a stake in Australian News Channel?

Mr Freudenstein: No.

Senator BIRMINGHAM: None at all?

Mr Freudenstein: No. No stake in any news channel.

Senator BIRMINGHAM: So you own no stake in any news channel whatsoever?

Mr Freudenstein: No.

Senator BIRMINGHAM: And in that sense the analogy you draw is to online news aggregators—so Google, Yahoo et cetera—and you would argue that you are doing the same with Sky, CNN, BBC—

Mr Freudenstein: Exactly.

Senator BIRMINGHAM: Al Jazeera, whoever?

Mr Freudenstein: That is correct. We have recently launched two news channels, being Al Jazeera and CTV. They have only come on to the Foxtel platform in metropolitan areas in the last eight months or so. So we continue to bring on a more diverse range of channels, which is what our business model is. The other strange thing is not only are online news aggregators exempt from this but the only online people who are caught are people who charge for content. So any free online news service is also exempt. So there is some arbitrary business model choice being made here as well about what is included and what is not included.

Senator BIRMINGHAM: In terms of the expansion of the availability of news services and that explosion that you spoke of at the outset, just how marked are you seeing it? What impact is it having on your business models and what are you needing to do to respond to those changes in the marketplace?

Mr Freudenstein: Well, we are observing more and more ways to consume media. For us, news is part of that. But for us it is more generally about consumers finding ways to consume media online in particular. Piracy is an issue for us. Our response is to launch more services online and try to be where the consumers are. News is a relatively small part of our overall offering. We offer 200 channels, and our offering is about choice across a range of channels. But certainly in the news area we observe that more and more people are getting their news through the Internet or, for younger people, through Facebook. The expression is, 'The news comes to me. Something that is important will come to me through my friends on Facebook.' That is just a fact of life and that is what is happening.

Senator BIRMINGHAM: Lastly, for both Foxtel and ASTRA, in terms of the development of these reforms, what liaison did you have with government? What consultation existed with the government to prepare the legislation that is before us today?

Mr Curtis: None since the convergence review.

Mr Freudenstein: There was some back and forth after the convergence review, but we have had no inkling of this.

Ms Buchanan: Yes. And then the bills were delivered last Thursday, so we have had no specific discussions.

Senator BIRMINGHAM: So none of your concerns about how it seems to artificially capture Foxtel, the actual treatment of online aggregators versus the operation of Foxtel, or simply the multilayered regulatory burden that is created were able to be explored with government until you saw the legislation?

Mr Meagher: I think it is fair to say that, as part of the convergence review process, there were a number of generic discussions of public interest tests and the like but never specificity around exactly how it would work and what it would focus on. Certainly the public interest media advocate is a completely novel concept that we only got wind of when the minister announced it last week. Certainly on the convergence review and even in Finkelstein I think the concept was a model of a regulator that would be more like the regulators we are used to. So this is a quite radically different style of regulation from what everyone is used to. And not just in our industry. It is true, too, of ASIC, APRA or even the Reserve Bank, whoever it may be. Those sorts of bodies are the kinds of regulatory bodies everyone is familiar with.

Senator BIRMINGHAM: In terms of how that regulator works, I should just ask about the definition of public interest as well as the reverse onus of proof that exists around how diversity occurs. How does your industry believe those approaches will play out in the legislation in terms of whether the public interest is appropriately defined and how you would go about proving that any activity did not lessen diversity?

Mr Freudenstein: Well, I think it is very hard to tell. There are definitions that are new and we do not know what they mean. It is going to be very hard to understand how that is interpreted. The challenge with the onus of proof is that it is very hard to prove a negative, to disprove something. It is a very difficult onus of proof to have it that way around. So we think there is a great deal of uncertainty in the legislation. It does put quite a large regulatory burden on us in terms of having to notify things. For example, we have to now notify whenever we change any sort of channel on the platform—not a news channel but any sort of channel. If we launch a new channel or take a channel off, we have to notify. As I mentioned before, the definition of what a transaction is means that we are not sure if some things we do in launching new services might actually fall within the definition of something we have to ask approval for. There is no definitive timetable for approval, so the public interest media advocate could just delay making a decision, which we all know in business can mean the death of a transaction without actually having to make a decision. So we think there is a lot of uncertainty. Remember that we have only had two or three days to look at the legislation. We think there is a great deal of uncertainty. It is very difficult with the onus of proof the way it is. We are not sure how the terms will be interpreted.

Mr Meagher: I think it important a point that Mr Freudenstein made earlier. If you define a class of businesses to which this applies, it is much easier to find a lessening of diversity of control when you ring fence when in fact the public interest, which we accept is served by diversity of opinion, is being well and truly served by what is going on in the real world. So depending on how you slice and dice things, you can make things fit your regulatory requirement whereas, as we said before, the ACCC is used to looking at the whole picture. That is the way they approach everybody in the market—how it affects the whole market.

CHAIR: Mr Meagher, you say that the public is well and truly served in relation to diversity?

Mr Meagher: That would be our view, at least relatively speaking, to at any point in history. There is more access to information, more access to news and opinion by means of the Internet and the various other services, including the many services available on Foxtel.

CHAIR: But I do not think the majority of the population wants to tune into Al Jazeera.

Mr Freudenstein: But they have that choice. I think the whole point of this—

CHAIR: No. They do not have a choice because they have to subscribe.

Mr Freudenstein: Well, we take all these news channels non-exclusively. Many of them are also available through the Internet as well, or could be available through the Internet. So I think there are many ways to receive these channels. The BBC, for example, has a BBC World channel that provides huge amounts of information for free on the Internet as well.

Mr Meagher: Senator, the other thing is there are essentially two models in the media. There is a subscription, or paid, model and there is a free model. The print media is largely a paid model, although they also get some advertising. There are a number of online subscription models. There are a number of free models. That is part of the diversity of the media. They are all discretionary services. You can pay. You can turn it on or not. It is up to the consumer.

CHAIR: But I think you said yourself that some of your channels are specialist channels.

Mr Meagher: Exactly. In fact, our business model consists of offering as many channels with as much diversity as possible and building small audiences across the whole thing so that the whole is greater than the sum of the parts.

CHAIR: So that would be the major media organisations on page 2 of your submissions. That is what you are talking about?

Mr Meagher: The ones that we aggregate?

CHAIR: Yes.

Mr Meagher: Like the BBC, for example.

CHAIR: So it is not generally available, but it is available if someone pays for a Foxtel subscription?

Mr Freudenstein: Yes. Although, as I said, those services are all nonexclusive so they may be available through other means as well.

CHAIR: As I said, it is not generally available and you said yes?

Mr Meagher: It is generally available if you choose to subscribe.

CHAIR: So why would somebody pay you any money for it if it is generally available?

Mr Freudenstein: It is part of an overall service offering. It is probably correct to say that not many people subscribe just for the news channels. They subscribe as part of an overall offering of channels.

CHAIR: You talk about microbloggers. We have had a debate and discussion and evidence before this hearing today about the reach of the traditional media. Are you saying that the reach of the traditional media has diminished because there are bloggers operating?

Mr Freudenstein: I am saying that—I am not making any comment about the reach of the traditional media—there are many, many other ways to obtain access to information.

CHAIR: You are saying in the digital and Internet age there is no want of access to news and information?

Mr Freudenstein: Correct.

CHAIR: There has been an explosion in sources of news.

Mr Freudenstein: Correct.

CHAIR: But you would not put microbloggers as a reliable source of news, would you?

Mr Freudenstein: I would put anyone who is disseminating information on the Internet as a source of news. It is up to the people consuming that to decide how reliable or not they are.

CHAIR: I am saying you would not rely on some of them, would you?

Mr Freudenstein: I am pretty traditional.

CHAIR: Is that yes or no?

Mr Freudenstein: It depends on what the information said.

CHAIR: Mr Freudenstein, you know what some of them do. C'mon!

Mr Freudenstein: I may look at something I read on a blog and then try and verify from other sources. But it is a way that information is disseminated.

CHAIR: I think the general conclusion, even from the press, and some of the major press companies was that their reach was still the dominant reach.

Mr Freudenstein: I am not commenting on any other media organisation. I would say that the reach of the news channels on Foxtel is much less than some of the other people you have had in front of you, which is another reason why we are not sure why we are part of this. But the point is just because free-to-air television still has high reach does not mean that there are not other organisations reaching those same people and giving them different opinions.

CHAIR: I am interested that you say you should not be caught up in this. I know David Spears is listening in. I am sure he would be a bit concerned to think that he is simply an aggregator, because he is not.

Senator BIRMINGHAM: But he is not. He is part of the aggregate.

Mr Freudenstein: But he works for a channel—Sky News—which Foxtel has no control over. So whether Sky News is part of the regime or not I think should be a separate issue from whether Foxtel is.

CHAIR: Yes. But it is part of your offering?

Mr Freudenstein: Yes.

Mr Meagher: As is the BBC, but we do not direct the BBC's editorial content. As is Al-Jazeera, but we do not direct Al-Jazeera's editorial content. We do not direct Sky News's editorial content. No-one reporting to Richard has the title Director of News or Editor-In-Chief. If they have 'editor' in their title, it means they are making promos somewhere.

CHAIR: So it is contracted out, basically?

Mr Meagher: It is a service.

Mr Freudenstein: It is a channel that we provide our customers that someone else makes and controls.

CHAIR: When you say that the legislation is a solution in search of a problem, one of the problems that we have had lots of discussions about—and I think it is conceded it has been a problem for about 37 years—is the Press Council.

Mr Freudenstein: I am here representing Foxtel and talking about the public interest control test. It is not for me to talk about print media.

CHAIR: So are you not here saying that there is not a problem with the Press Council? You are not commenting on that; is that what you are saying?

Mr Freudenstein: It is not my job to comment on that, no.

CHAIR: When you say the legislation, you talk about the whole legislative approach?

Mr Freudenstein: I am specifically talking about the appointment of the public interest media advocate to rule on media mergers—that is the issue—and why Foxtel is part of that regime.

CHAIR: Well, in respect of the public interest media advocate, why would there not be someone who looks at the public interest as distinct from the commercial interest?

Mr Freudenstein: Because the ACCC has a wide remit to look at competition issues from a range of areas. As I mentioned in my opening remarks, in their guidelines on media mergers they think about this issue of diversity and control.

CHAIR: But the ACCC are about competition. They have no specific remit for public interest.

Mr Freudenstein: They are about competition and consumers, which seems to me to be—

CHAIR: And are you saying that competition and consumers is the public interest?

Mr Freudenstein: When assessing a merger or acquisition, I think they are the things you should be thinking about.

CHAIR: So that is a commercial issue. You see, the ACCC is about commercial relationships and competition.

Mr Freudenstein: No. I think it is wider than that. I think if you look at the remit of the ACCC, you will find that it looks at making sure the consumer is protected. As I said in my opening remarks, one of the criteria they look at in media guidelines does relate to this issue.

CHAIR: But it is on the basis of competition policy and competition guidelines.

Mr Freudenstein: Well, it is on the basis of looking at diversity and control of media organisations.

CHAIR: We have had evidence here from some of the big media players to say that the issue of competition is not the only issue you have to look at—that public interest is important. Do you agree with that?

Mr Freudenstein: Well, I think we need to understand what we are talking about when we say public interest because I am not sure exactly what it means in the context of Foxtel. I certainly believe that it is in the public interest to have a range of media voices and diversity of media voices. But I would argue we have that and the competition authority can ensure that we continue to have that.

CHAIR: We have one of the most concentrated media industries in the world.

Mr Freudenstein: I think if you look at newspapers and commercial television, that may be true. But the government is the one that has decided we will only have three commercial networks. The government could have easily introduced more commercial networks, but this government has decided there will not be a fourth commercial network because they seem inclined to protect the three existing ones.

CHAIR: One of the problems the government has to deal with is convergence and the market pressures that are on the news media, both broadcasting and the press. Those pressures are, I think, leading to more concentration and more media mergers. Given that we are one of the most concentrated media markets in the world, surely the public interest has to start playing a part.

Mr Freudenstein: Senator, where is this pressure coming from? It is coming from the fact that people can now obtain news and information from other sources. That is exactly where the pressure is coming from.

CHAIR: Well, that may be one of the arguments. It is not as simple as that.

Senator BIRMINGHAM: It is what is around probability.

Mr Freudenstein: I think it is. The fact is that, unfortunately for newspapers, fewer people are reading newspapers than used to because they are getting their information on the Internet. Unfortunately for commercial television, fewer people are watching it because there are more places to consume video. It is exactly, I think, the point. There is more competition and there is more diversity now, which is why there is pressure on those organisations.

CHAIR: I think that is right, but there is another platform for those traditional media they are moving to now, which is the web page and the website.

Mr Freudenstein: Yes.

CHAIR: That then brings with it all the same issues in terms of diversity and media reach and voice that is out there, does it not? You either get it in print or you get it online.

Mr Freudenstein: Yes, but when you get it online, you can get it from any variety of sources. I have not looked closely at this for some time now, but my understanding is certainly people are reading traditional newspaper websites some of the time, but they are certainly reading a lot of other websites a lot more of the time.

Mr Meagher: And the problem, Senator, is it is not a static thing either. Either through search engines or Facebook or Twitter, one of the most common ways of disseminating a news or opinion piece now is for someone to tweet and retweet and retweet, and that could be the *New York Times* or the *Onion* or from anywhere. There is all this information that is out there and it is coming to people through all sorts of different media.

CHAIR: I do not disagree with that. I have to move to another senator. The key reach of the media is still the ABC, News Limited and the Fairfax press. Sky News pick a lot of their stuff up from there. They try and set their own news. But I think it is clear in the evidence that we have had here that those organisations are still the major source of news for bloggers, for other websites. Crikey picks up a lot of stuff from there.

Mr Freudenstein: I think it is true that those organisations invest in news gathering, and they do a very good job of it. But I disagree with the thought that they are the only places people obtain news.

CHAIR: Well, would you agree with the view that they are the predominant area where news is gathered for Australian news?

Mr Freudenstein: I do not know the answer to that question. Again, news and news gathering is not something that comes across my desk every day.

CHAIR: So you are not an expert on that subject?

Mr Freudenstein: No. I am not an expert.

Senator STEPHENS: Thank you for your submission. You have made some comments and directed your remarks to two of the bills. So my first fundamental question is: do you have anything else that you want to put on the record about the other bills that are part of the package?

Mr Freudenstein: No. Our main concern is with the bills that we have talked to. They are the ones that affect both Foxtel and the general subscription television industry. If the government wants to halve the free-to-air's licence fees, it is a matter for the government.

Senator STEPHENS: Nothing more than that. I want to get back to the conversation that we have just been having about the public interest test. The government makes the statement that various numeric rules contained in the Broadcasting Services Act 1992 currently act as a quasi public interest test by imposing constraints on mergers and acquisitions between different media groups. However—this is the explanation for the changes being proposed—these are blunt regulatory instruments that do not effectively cover potential mergers between national

media groups and do not provide flexibility for considering new voices that may come to prominence in a converged media environment. So the public interest test will allow for a more cohesive, in-depth assessment of proposed changes to media ownership and control than the current rules allow. The government also considers that an effective public interest test over time can result in significant rationalising of the blunt numeric tests which form the basis of the current regulation. Do you have any argument with that argument?

Mr Freudenstein: Yes. I do not think that is correct at all. This public interest test, the way it has been defined, does not take account of the market as a whole. It takes account of a named number of entities—mainly free-to-air television, newspapers, radio and Foxtel—and then within that group it looks at diversity and control. It takes no account of what is happening in the real world outside of that, as I talked about, on the Internet, social media and things like that. So I do not think that actually is correct. It is not actually what the legislation does.

Senator STEPHENS: You gave us the example in your opening remarks about your merger and the proposal for—was it the Nine Network?

Mr Freudenstein: Seven.

Senator STEPHENS: Seven Network and the fact that the ACCC rejected that proposition. Can you tell us a little more about what that landscape would have looked like under the proposal? It would have changed the dynamic quite significantly, would it not?

Mr Freudenstein: If Seven's proposal had been allowed?

Senator STEPHENS: Yes.

Mr Freudenstein: Well, Seven put its proposal to the ACCC before it actually reached a commercial agreement to do it. But assuming that it had bought James Packer's stake, Seven would have ended up as a 25 per cent shareholders in Foxtel and a 50 per cent shareholder in Fox Sports, which is the largest provider of sports to Foxtel customers. So from my perspective as chief executive of Foxtel, I would have had another shareholder. I think the ACCC's concerns with that was access to information about Foxtel's plans going to a competitor free-to-air network. But the transaction did not progress, so I am not sure of how things would have played out. They would have been a 25 per cent shareholder in my business.

Senator STEPHENS: I imagine that some of us listening to that would have been concerned that it could have led to a diminution of options and voices.

Mr Freudenstein: So you would probably think that the ACCC made the right decision and protected diversity in that case?

Senator STEPHENS: Yes.

Mr Freudenstein: So they seemed to manage without any public interest media advocate getting involved.

Senator STEPHENS: Thanks, Chair.

Senator McKENZIE: Are the bills before us the comprehensive response you expected from government to the convergence and the Finkelstein reviews?

Mr Freudenstein: No. We focus mainly on the convergence review. There were lots of recommendations in the convergence review, in theory, to take account of a converged world. We certainly did not agree with them all, but we expected a response that took into account the converged world and responded to a lot of the things in the convergence review. This is much more specific legislation, as I said, which we had not seen until two days ago.

Senator McKENZIE: Given you serve particular communities with your subscribers, which are a subset, obviously, of the wider Australian community, can you give us your definition of a community standard and what meets your communities' interests that you serve? How do you measure that?

Ms Buchanan: From an ASTRA standpoint, our codes of practice are registered with the ACMA, which undertakes a review of that. We go through a public consultation process in terms of community standards and ensure that they are appropriate at the given time.

Mr Freudenstein: And being a business where customers have the option every day whether they want to continue to pay or not, we get very direct feedback from our customers.

Senator McKENZIE: Pretty clear?

Mr Freudenstein: Yes.

Senator McKENZIE: Just in terms of the diversity of voices, do you have any commentary to make around the infrastructure, I guess, in the regions that allow people to participate in the converged media environment? Do you have any comment to make around that?

Mr Freudenstein: Well, certainly from our perspective, our regional customers are a very important part of our customer base. We have been investing, since the merger with Austar, in trying to bring a better service to those people through our satellite delivery. We are going to roll out a new box to regional Australia in the next 12 months, hopefully, that will be an even better service. So from our perspective, because we deliver via satellite to regional areas, our regional customers get exactly the same Foxtel service as our metropolitan customers and we will continue to treat them as well as we can.

CHAIR: Thanks very much. Thanks to ASTRA and Foxtel. That concludes today's proceedings for the inquiry into the media reform bills. I thank all witnesses for their informative presentations. Thanks also to Hansard, Broadcasting and the secretariat. The committee has resolved that answers to questions on notice be returned by 8.00 am on Wednesday, 20 March 2013. There were some documents tabled. It is agreed that the documents be tabled. I declare the hearings closed. Thank you.

Committee adjourned at 8.47 pm

COMMONWEALTH OF AUSTRALIA

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SENATE

ENVIRONMENT AND COMMUNICATIONS LEGISLATION COMMITTEE

Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013, News Media (Self-regulation) (Consequential Amendments) Bill 2013, News Media (Self-regulation) Bill 2013, Public Interest Media Advocate Bill 2013, Television Licence Fees Amendment Bill 2013, Broadcasting Legislation Amendment (News Media Diversity) Bill 2013

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SENATE

ENVIRONMENT AND COMMUNICATIONS LEGISLATION COMMITTEE

Tuesday, 19 March 2013

Members in attendance: Senators Bilyk, Birmingham, Cameron, Ludlam, McKenzie, Ruston, Singh.

Terms of Reference for the Inquiry:

To inquire into and report on:

Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013, News Media (Self-regulation) (Consequential Amendments) Bill 2013, News Media (Self-regulation) Bill 2013, Public Interest Media Advocate Bill 2013, Television Licence Fees Amendment Bill 2013 and Broadcasting Legislation Amendment (News Media Diversity) Bill 2013.

WITNESSES

FINKELSTEIN, Hon. Roman (Ray), QC, private capacity

RICKETSON, Professor Matthew David, Professor of Journalism, University of Canberra

Committee met at 12:41

CHAIR (Senator Cameron): I declare opening this public hearing of the inquiry of the Senate Standing Committee on Environment and Communications into the Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013, the Broadcasting Legislation Amendment (News Media Diversity) Bill 2013, the News Media (Self-regulation) Bill 2013, the News Media (Self-regulation) (Consequential Amendments) Bill 2013, the Public Interest Media Advocate Bill 2013 and the Television Licence Fees Amendment Bill 2013. The committee's proceedings today will follow the program as circulated. These are public proceedings. The committee may also agree to a request to have evidence heard in camera or may determine that certain evidence should be heard in camera.

I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to the committee. If a witness objects to answering a question, the witness should state the grounds upon which the objection is to be taken and the committee will determine whether it will insist on an answer, having regard to the grounds which are claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request, of course, may also be made at any other time.

The committee has authorised the recording, broadcasting and rebroadcasting of its public proceedings in accordance with the rules contained in the order of the Senate concerning the broadcasting of committee proceedings, including by electronic means. Media outlets may record the public proceedings subject to the following conditions. The committee or a witness can object to being recorded at any time and the committee can require that recording cease at any time. Recordings must not occur from behind the committee or between the committee and witnesses and must not otherwise interfere with the proceedings, and computer screens and documents belonging to senators must not be recorded. Any member of the media who does not comply with these conditions may be ejected from the public hearing.

I welcome the Hon. Ray Finkelstein and Professor Matthew Ricketson. Thank you for talking to us today. Do either of you, or both of you, wish to make an opening statement?

Mr Finkelstein: Thank you and good afternoon. I suppose I have been invited to appear before this committee so I could be of some assistance in relation to the deliberations on the media bills. Perhaps it might be helpful if I make some introductory observations, but confining myself to only some of the bills. I will begin by making a statement or two about free speech. While there are several rationales for free speech and a free press—different concepts—no-one seriously doubts the critical importance of both freedoms to a properly functioning democratic society. On the other hand, very few people regard either freedom as absolute. Simply by way of example, there have always been laws against obscenity: it is a contempt of both the parliament and the courts. There are laws against defamation. Each of those areas of the law inhibit what would otherwise be absolute free speech.

One important issue for the committee is whether there should be additional regulation of the news media. The background against which this issue might be considered is as follows. Without any doubt, the news media, whether it is via print, broadcasting or online, is a powerful institution. It shapes the nation's policy and can change the course of history. At the same time the news media can cause great harm to individuals, organisations and other groups in society. The media can cause harm when it does not adhere to the basic standards of fair and accurate reporting; hence the need for there to be some oversight of the news media. There is some existing oversight. At present the print media regulates itself through the mechanism of internal codes of conduct plus supervision by the Australian Press Council. Putting that into context, this amounts to an acceptance by the print media that its important role requires, first, the adoption and observance of codes of conduct and, secondly, oversight of their process. As a result of legislation, the broadcast media is regulated through internal codes of conduct approved by ACMA and externally through ACMA itself. On the other hand, the online news media is substantially unregulated.

As regards the Australian Press Council and ACMA, neither form of regulation has worked well. Three of the last four chairpersons of the Australian Press Council have spoken of its failings. The most significant failings I can list: a lack of public awareness of the Press Council, a lack of powers of investigation, a lack of resources, a lack of powers of enforcement, a lack of independence from publishers and slow procedures. Regarding ACMA, it is hamstrung by limited statutory powers of enforcement and slow statutory procedures. So, if oversight is

required—and both the print media and parliament regarding the broadcast media think that it is—then the committee might easily accept that the existing models are inadequate.

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.

One other issue that I wanted to make a few observations about is the diversity issue. I do not have very much to say about it other than to remind the committee—if it needs any reminding at all—that economists explain that there is market failure from the concentration of news services. Concentration often results in a lack of diversity in views that are given voice, the possibility that only a handful of people, media owners and journalists, will unduly influence public opinion and the potential for a decline in standards because of the absence of effective competition. Many commentators think that democracy loses out with undue concentration. They are the only opening comments that I wished to make.

CHAIR: Thank you, Mr Finkelstein. Professor Ricketson?

Prof. Ricketson: Thank you for this invitation to appear before the committee today. The situation, as it is in Australia at present, is that the print news media is among the most concentrated in the developed world, with two media companies accounting for 86 per cent of daily print circulation in Australia. The rise of new communication technologies, such as the internet, mean that today there is a much wider diversity of information and opinion available to citizens. But, if you look at the most widely used news and current affairs websites in Australia, they remain the mainstream news media brands. Further, newspapers remain the engine room for bringing newsworthy information to the general public. Radio and television outlets continue to draw heavily on the original reporting, especially investigative journalism, that is generated by newspapers.

There is a good deal of interesting, important and relevant newsworthy material available outside the mainstream news media, but the difficulty is that it rarely reaches a mass audience. That is one of the many lessons for us of the rise of WikiLeaks, which began in 2006 but which did not actually reach global prominence—and, for some, global infamy—until it began collaborating with major media companies such as the *Guardian* in England, the *New York Times* in the United States and *Der Spiegel* in Germany. It would be a welcome development if the federal government were to spend more time and energy positively promoting diversity of news and current affairs by introducing schemes to assist or support new online start-ups.

Finally, the overwhelming evidence presented to the independent media inquiry 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. Thank you.

CHAIR: Thank you, Professor Ricketson. Mr Finkelstein, I am sure that you were an interested observer in some of the evidence yesterday or, if not, you have read some of the press reports over the last few days. Would that be correct?

Mr Finkelstein: That is correct, yes.

CHAIR: I suppose one of the threshold issues in the arguments we have heard is that the legislation before this inquiry is antidemocratic, will destroy the freedom the press and will lead us to being some sort of authoritarian society where the minister can direct editorial content and the content of the media. Is there anything in that legislation you see that could achieve that purpose?

Mr Finkelstein: Whether those allegations are right or wrong depends wholly and exclusively on the legislation and the power that it gives, in particular, to the media advocate. Those powers are—at least just reading the text—quite limited. The media advocate can declare that a body is a self-regulation body only if certain criteria are satisfied. Most of the criteria, I imagine, would be unobjectionable—that it is an effective regulator of its members and that it has a code of conduct that deals with issues which the legislation sets out: privacy, fairness, accuracy and so on. Most of the topics that are dealt with in legislation are covered by existing codes of conduct. So the legislation prima facie does nothing new in that regard.

One area which is different, which has the potential for requiring a media owner or an editor to do something which the media owner or editor does not want to do is that a body will only be declared to be an appropriate body—I am picking up the language of clause 7(3)(e) of the bill for news media self-regulation—if it provides for remedial action. One asks: what is remedial action? I suppose there are obvious things that remedial action will include, probably limited to apologies, retractions and corrections. A fourth possibility—but one never knows until one sees the code of conduct which is to be approved by the media advocate—is that there might be a right of reply. They are areas where, in a properly working, functioning code, mistakes made by the media—by and large, serious mistakes: serious factually incorrect reporting and that kind of thing—require rectification and the body which is to be declared as an appropriate body must have appropriate mechanisms. So 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 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.

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. That is a long answer to a short question.

CHAIR: Thank you. I welcome that response. Mr Finkelstein, you do not feel as though you are a pawn to assist in the abolition of democracy and the end of free speech?

Mr Finkelstein: This bill does nothing towards ending democracy and it is a relatively minor imposition on press freedom and probably no restriction on free speech. That is just looking at the text.

CHAIR: Professor Ricketson, some of the other argument says that there is no need for this to be done and that the Press Council has reformed itself and is working effectively and that this is simply an attack on News Ltd predominantly. Could you outline some of the examples where ordinary Australians have suffered under the existing process with no right of reply, no fairness and no justice at the hands of the media?

Prof. Ricketson: Certainly. The first thing I would like to say about that is that the idea that there is no problem with our news media in this country strikes me as an odd one in the sense that comparisons are made with the situation in England where there has been entrenched phone hacking and so on; ergo, if we do not have entrenched phone hacking here in Australia, we therefore have no problem with our news media. We did not find evidence in the inquiry of phone hacking occurring, but we did find problems with the news media in a variety of ways and from a variety of sources—and you referred to a couple of those. Also I would like to say that it strikes me as an odd argument to say that because we in Australia have not suffered the worst scandal of media ethics in living memory, therefore everything is okay with the media in this country. It seems to me that is suggesting that you are prepared to accept journalism that ranges from average to poor to very poor to falling just short of phone hacking, which clearly in my view is not a satisfactory situation.

At annexure (i) of the media inquiry report, one of the things we did—drawing on some academic research that was in process at that time—was detail anonymous comments by people. For example, they had been the victim of rape or somebody in their family had been murdered or something of that nature and then that had been reported on in the news media. We have anonymous comments from them because they were given anonymously in the academic study. I will quote one to begin with. It is someone who was a survivor of rape and was being hounded constantly for an interview. The quote from the person was:

> I did have someone from the media call me, but she was just a hungry animal. I found her quite a lovely person but eager to get a story. I was in tears but she didn't care. She was happy to throw my case all over the TV and magazines, and I kept saying, 'No, no, no, you don't understand; you know nothing about me; don't do this.'

In fact, in any case, the story was run. That is one of numerous examples in annexure (i) about that particular issue. We did highlight some others—some of which involved ordinary people and some of which involved more high-profile members of the community—in chapter 11 of the report, and I will just list them briefly. A minister of the Crown: his homosexuality was exposed and he was forced to resign. A second one involved a chief commissioner of police who was the victim of false accusations about his job performance being fed to the news media by a ministerial adviser and, following publication of the articles, he was forced to resign. A third one was

that a woman was wrongly implicated in the deaths of her two children in a house fire. Her grief over her children's deaths was compounded by the intrusive news media coverage. A fourth one was that nude photographs said to be of a female politician contesting a seat in a state election were published with no checking of their veracity. The photographs turned out to be fakes. Finally, a teenage girl was victimised because of her having had sexual relations with a well-known sportsperson. So those are some.

We also, as you may know, looked at not simply one or two opinion polls about the news media but at many opinion polls over many years looking at the way the news media operates from a variety of perspectives. Overwhelmingly, it was found that there was a low level of trust by ordinary Australians in the functioning of the news media in this country.

CHAIR: Just before we go to Senator Birmingham, Mr Finkelstein, I have to ask you this question. Your report deals with an incident with Professor McKinnon where he was approached by a media editor and was told that, if they dropped any cases against them, they would double their subscription to the Press Council. I have asked Fairfax, I have asked News Ltd and I have asked Seven West whether any of their editors or employees made that offer to Professor McKinnon. They all deny it and they all say, 'It may have been before our time,' or, 'It's lost in history; this was a long time ago.' It is obviously a very serious charge. Can you elaborate a bit on Professor McKinnon's statement to your inquiry?

Mr Finkelstein: I can elaborate, but I cannot add to what he told the inquiry. I did not see it as part of our function, given the time constraints we had, to check out the veracity, to see whether there was an opposing view and that kind of thing. I took it from the way that the professor gave the evidence—and bearing in mind that he was a former chair of the Australian Press Council himself—that he was relaying to the inquiry what had happened. I had no reason to doubt his word. But because it was likely to have occurred such a time ago, it would have been very difficult to track down the personnel. In the end, although it might assume importance today, it was not really of overwhelming importance to me during the course of the inquiry, which is one of the main reasons we did not take the trouble to take that matter any further.

I do want to add one thing to what the professor has said about regulation needed by reason of misconduct in the press. One could get terribly distracted if the object of the exercise were to look for particular press failings. There might be, from the senators' perspective and from the community perspective, a different approach, which is the one that I took in the report. Essentially it is this: there was common ground during the course of the inquiry between me and the newspaper proprietors that they wield enormous power. It struck me as being very odd that any group in society that wields enormous power should be wholly or substantially unregulated. There are no groups in society, or no powerful groups in society, that can come along to governments or anybody—the community—and say, 'We can do what we like when we like, and there is nothing you should do about it.'

That strikes me as being a very surprising approach and one which, in my report, I rejected. I suggested that, even if there were no evidence of press misconduct, misbehaviour or however you might want to characterise it, there was good reason for any powerful institution to be regulated. Part of that process was that the press regard that to be true because they regulate themselves. They developed codes of conduct to regulate how journalists should behave. At the forefront of all of their codes—and there are dozens of them around the country, and they seem to adopt common language throughout the world—is 'fair and accurate reporting'. The journalists regard that as important and the press owners regard that as important, and they set up the Press Council to oversee themselves.

Not only do I take the perspective that powerful groups in society cannot be unregulated; this particular powerful group also regards regulation as important. But the difference or the issue is whether that regulation should be wholly self-regulation or whether there should be some additional regulation—in this case to make the self-regulation work. That is really, as I see it, the key question. I would raise that as a central issue, whether or not there was a catalogue of misbehaviour, misconduct or breaches. Codes and effective codes and disciplines by press councils that are effective act on journalists and act on media owners in a way that society expects—that is, they will do their job as best they can in accordance with quite noble sentiments in the various codes of conduct, and I do not know why the public should expect any less.

CHAIR: Mr Finkelstein and Professor Ricketson, I noticed that you read from a prepared opening statement. Is that in a form that could be tabled?

Mr Finkelstein: With one correction; I have 'four out of five' instead of 'three out of four'. But subject to that, yes.

Prof. Ricketson: Similarly.

CHAIR: It would be handy if you could table those documents; thank you.

Senator BIRMINGHAM: Thank you both for your time today. Mr Finkelstein, perhaps I can pick up where you finished. Are you telling the committee that your opinion is that, even if there were no demonstrable issues in the media sector or, indeed, in any other sector, of any influence or power, there should still be regulation to govern it in some way, shape or form?

Mr Finkelstein: If there were absolutely none, I probably would not say that, because then the answer would be that there is no need and you would have to investigate why there was no need. So if there was an absolutely clean slate and there was never any misreporting, false reporting or anything of that order, I suppose that you could say that there does not need to be any regulation. If, however, that were the position—just assume it to be the case; it is not true but assume it were true—one answer might be because the journalists association, the union and the newspaper proprietors had put in codes of conduct because they understand that there ought to be some rules against which standards of journalists should be judged. I do not know that we have had in our world—or at least in any democratic world with which I am familiar—journalists operating under no rules whatsoever anywhere.

Senator BIRMINGHAM: I suspect there has been an evolution of industry rules and self-government rules and, absolutely, journalists' codes of ethics and so on that obviously have been adhered to but, importantly, set by the profession themselves, rather than by governments of the day

Mr Finkelstein: Correct.

Senator BIRMINGHAM: So having gone through 113 years of federation, why does Australia now suddenly need to start regulating print media when we seem to have survived quite happily for the previous 113 years with a robust system where the press criticise each other, where politicians criticise the press, where everybody is free to have their view on these matters and where, indeed, the industry has responded in that time with advances in terms of their own self-regulatory conduct?

Mr Finkelstein: That is a fair question. One of the reasons that I reached the conclusion in my report that there ought be additional regulation was that those who were asked to regulate the press, the people who ran the Press Council, including the current chair of the Press Council, all bar one, said that the regulation was defective. I took them at their word. They explained why it was defective and I believed them. Each of them said there was a need for improvement. I accepted their evidence.

I thought that it would be almost flying in the face of common sense if I said to the three of the four former chairpersons of the Press Council, 'I know you think the system doesn't work but I don't care.' They suggested improvements. I bought some and suggested others which they might not have agreed with. I could not see what merit there was in a system of regulation which the participants said did not work.

Senator BIRMINGHAM: Do you believe the changes that have been made to the operation of the Press Council in recent times are an improvement?

Mr Finkelstein: I cannot answer that question because I do not know in detail what the changes are. Professor Disney—

Senator BIRMINGHAM: Surely, Mr Finkelstein, you have a fairly strong interest in this area, now having authored this report. You must have had a chance to have had a look at some of them.

Mr Finkelstein: You should not assume that, Senator. I have a very strong interest but I do not spend my time keeping up to date with reforms in the media. What I do know is that Professor Disney outlined in some detail the kinds of changes he intended to make and, if I may say so, with respect to Professor Disney, those changes were all, I think, overdue and likely to improve the position.

Senator BIRMINGHAM: So if those changes have been made, it is likely we have a better Press Council today than we had a few years ago?

Mr Finkelstein: I think that is true.

Senator BIRMINGHAM: Why do we then not enter a period where we should give that model a go? Why do we need to step beyond the self-regulatory approach into a world of government intervention?

Mr Finkelstein: There are two reasons for that. First of all, the way that I approached the problem was that I did not confine myself just to the Press Council and its jurisdiction, because, as everybody explained to me in a way that I think I came to understand, the world is a different place now from the time when the Press Council first began its oversight of the print media. Now we have journalists who work for a newspaper online. We have people who are news commentators on television who are online. There are three basic platforms for news broadcasting. One is substantially unregulated. That is the online media. It is a growing segment of the provision of news services.

So I thought that there would be real sense in three basic propositions. The first is that there should be single oversight of the news. It didn't make any difference to me whether it was platform A or platform B or platform C. I still think that, no matter what the commentators might say or what the commentary might be, because one thing that is always bad for any system is inconsistent decision making. If you have one set of oversight for the same conduct, you don't have inconsistent decision making, you don't have inconsistent rules, except to the extent that different rules are necessary to accommodate a different platform. For example, you might have a take-down requirement for the Internet but you cannot have a take-down requirement for a newspaper. That was one factor.

That was really two propositions. That is to say, there should be one set of rules for everybody and it should be administered by one group so that there would be complete consistency in the application of the standards.

Senator BIRMINGHAM: I want to come back to some of the reasons why we need these reforms. Given the answer you have just given—one rule for everybody—if these laws are passed, we will have different rules, won't we, for radio and television media outlets, a different rule for print and online and different rules for online outlets, depending on their size? They can be very significant. They can be pretty large and not be captured by these. They, of course, are often the growing segments while the traditional newspapers are seeing declining market shares. How do these reforms actually meet with your objective of one rule for everybody?

Mr Finkelstein: I looked, during the inquiry, at dozens and dozens of codes of conduct—most of the codes that had been adopted by Australian media—compared them with codes of conduct adopted by English media, compared them with codes of conduct adopted by European and eastern European media, and spent some time reading some books on codes of conduct. I found common themes throughout the world or at least that part of the world in which I looked, which was eastern and western Europe and basic common-law democratic countries.

I do not accept that in a proper set of rules, whether developed for print or for online—when I say 'rules', I mean codes of conduct, which is what this legislation is about—there are likely to be great variances between the codes. There has not been. When they have been developed in South Africa, New Zealand, Australia, England, there are minimal variances. So the premise on which you operate, Senator, I do not think is likely to come about—

Senator BIRMINGHAM: But the regulators are completely different constructs that are proposed here—ACMA versus the PIMA, a well-established, a well-resourced regulator where a group decision will be made, in a sense, versus a solitary individual as regulator.

Mr Finkelstein: I do not accept that that is how the legislation works. I am sorry, Senator, that is not how I understand the legislation works.

Senator BIRMINGHAM: We will come to that.

Mr Finkelstein: Sorry.

Senator BIRMINGHAM: Time is tight. Professor Ricketson, you gave a list of examples that you said provided some justification for this intervention into the operation of the media. In each of those examples, had the anonymous individuals taken a complaint to the Press Council?

Prof. Ricketson: In the case of some, I think yes; in the case of others, no. One of the issues with the Press Council—there is another annexure dealing with complaints to the Press Council—is that they are not always dealt with to the satisfaction of the complainant.

Senator BIRMINGHAM: Generally speaking, complainants will not be satisfied unless their complaint is upheld. Did you do any analysis of the merits of those complaints?

Prof. Ricketson: The ones we were looking at?

Senator BIRMINGHAM: Yes.

Prof. Ricketson: Yes. We looked at those and we thought they were all prima facie complaints. As Mr Finkelstein has said, we didn't follow these sorts of matters through to the nth degree because that was not the purpose of the inquiry, but we were satisfied prima facie that there appeared to have been a problem in the way these matters were reported in the news media. And that was enough for us at that stage.

Senator BIRMINGHAM: So there was no particular checking with the media outlets in question?

Prof. Ricketson: No.

Senator BIRMINGHAM: I am being called to ask my last question here. Professor Finkelstein, can I go to your report, particularly paragraphs 2.92 and 2.93—

Mr Finkelstein: Can I do this from memory or am I allowed to look at it?

Senator BIRMINGHAM: You can have a look and I will read at the same time.

CHAIR: It is not a test.

Senator BIRMINGHAM: That is right.

It could not be denied that whatever mechanism is chosen to ensure accountability speech will be restricted. In a sense, that is the purpose of the mechanism.

The mechanism proposed by the government today is a mechanism to try to, allegedly, ensure some level of accountability. Do you stand by that statement, that that means that speech will, to some extent, be restricted?

Mr Finkelstein: I have explained earlier that the editor's freedom not to publish is affected if you have a code of conduct which has remedial provisions in it. That's a necessary consequence. Does it restrict free speech in the broad sense? No, because the editor can still say what he wants. She can say what she wants. They can say whatever they want.

Senator BIRMINGHAM: What about at the other end of the equation where a journalist's exemption under the Privacy Act is removed? Does that restrict their capacity to do their job, compared with a fellow journalist?

Mr Finkelstein: Yes. I think that's the object of removing the restriction, the method by which what is at the moment voluntary—that is, 'I'll be a member of a press council and pay my subscription fees if I feel like it and not otherwise'—has added what I think the English would call some 'carrot and stick'. I would say that too. It is intended to impose a reason why an organisation will be part of a press council group. As I read the draft bill, that is its purpose.

CHAIR: Thank you.

Senator BIRMINGHAM: If time permits, I have others.

CHAIR: Can I just indicate that I notice that Mr McGinty has arrived. His time was set down for 1.20. We will need another 10 minutes, I think, with Mr Finkelstein and Professor Ricketson. Senator Ludlam, if that gives you time, go for it.

Senator LUDLAM: Thank you. Thanks, gentlemen, for coming in. Apart from Professor Fraser yesterday, you are the only people we have heard from so far who are not representing some kind of commercial interest. With your background in the report, it is important that you are here.

You indicated before that you have had time to review those bills that relate to the work that you did on the press sector last year. Setting aside the broadcasting aspects of the package, how closely does this package of bills that the government has brought forward follow the findings of your report last year?

Mr Finkelstein: In my report, I gave two possible approaches to remedy what I thought was a failure in the existing system of press oversight. I had, as one, a statutory body which would, in its structure, mirror the Press Council but would have statutory powers and its membership would not be voluntary.

I had as a fallback, which I said was a second-best option, repairing the Press Council by putting in place mechanisms like taking away statutory protections that exist in favour of the press unless the organisation remained a member or was a member of the Press Council. That was my fallback. I explained why I thought that was not as effective.

The proposed legislation is different again. No doubt there are another two or three or four different ways in which what I think needs to be achieved—that is, some reform of the process—can be achieved.

I just read only a sentence or two of what the legislation was that was enacted in the UK overnight. It is another royal charter company which I had not thought of. I do not think we have had a royal charter company in Australia for a very long time. The possibility escaped me. It is just another way of achieving the same result.

CHAIR: That is probably a good thing.

Mr Finkelstein: I think so.

Senator LUDLAM: The government does appear to have delivered a model—it is before this parliament now—that sits closer to your fallback option in that you have a statutorily recognised regulator. It is recognised by law. Its only sanction, as far as I can tell, is withdrawal of exemptions from existing privacy laws.

Mr Finkelstein: None of my models had any sanctions such as fines or damages or anything like that, which the English have picked up. I stayed away from that.

Senator LUDLAM: I am more interested in how close the Australian government has come in what it has drafted to your proposals. It sounds like they are within the ballpark of your fallback option.

Mr Finkelstein: Yes, closer to my fallback option than my primary option.

Senator LUDLAM: Maybe it is a bit unfair to put you on the spot. Is the model which you described as second best, or whatever your language was, better than nothing—what the government is putting forward to give some teeth to the Press Council?

Mr Finkelstein: I said in my report that, at least in my view, the 'do nothing' option was not an option. Then I said there are two and that I preferred one of the two. But if there are third models or the UK model, I would still stick to the position I took in my report that 'do nothing' is not an option.

Senator LUDLAM: You acknowledged in your answers to the chair earlier that you do not think anything in this package, on your reading of it, poses a fundamental threat to freedom of speech. Where has that come from? One of the most interesting responses, I guess, to the tabling of your report was that it provided a brilliant illumination of how we will not ever get any straight reporting of media reform proposals, which is ironic. It seems to be the environment that we are in.

Mr Finkelstein: I had assumed that the reporting of my report was a warning to the parliament of what would come next. That is a layperson's view.

Senator LUDLAM: That is exactly what has occurred. Do you have a view on whether the legislation appears to entrench what has already occurred? We are hearing from Mr McGinty shortly. Seven West has effectively established its own body to perform the functions of the Press Council. Do you have a view as to the risk of multiple press councils? Was that something you canvassed in your report?

Mr Finkelstein: No, I did not. I canvassed the possibility of people leaving the Australian Press Council. But nobody had suggested the possibility that they would set up their own—although in my report I did discuss notions that exist in some places and from time to time existed in Australia, like a media ombudsman, where a newspaper would have its own person to whom complaints can be brought, who would be delegated the task with some authority to deal with complaints.

Senator LUDLAM: That is the situation we have. Do you believe that kind of model could survive in the West, for example—because that is an example that we have to deal with here—without undermining the basic premise of a single national press standards body?

Mr Finkelstein: In theory, there is no reason why parallel bodies cannot survive. The question really is whether it is desirable. This legislation assumes that as a possibility and as a matter of logic it can work. You will have the problems of different approaches, maybe different standards—although, as I said earlier, the standards that the newspapers adopt and that the media generally adopt are pretty uniform. You will have differences in implementation. One might take three months, the other one will take three weeks—that kind of thing. But then I have always been a great proponent of competition, and some competition might not be a bad thing.

Senator LUDLAM: Competition and self-regulation. It strikes me as—

Mr Finkelstein: It is an odd concept.

Senator LUDLAM: It is not ideal.

Mr Finkelstein: No.

Senator LUDLAM: Sorry, that is my view, not yours—I have put words in your mouth. Finally, because we are short of time, I think all three of the key proprietors who spoke yesterday at this hearing implored us, the parliament, to identify the problem we were trying to fix as though the government's proposal is a solution in search of a problem. They begged us to identify it: 'What is the problem here? We cannot see it.' Could either of you spell out what, in your view, the problem is?

Mr Finkelstein: To be fair to the media proprietors, I think they put the same propositions to me, saying something like, 'If there is no deficiency which you can identify, why intervene?' I said earlier that I do not accept the general proposition that one of the most powerful institutions in the community should be unregulated. I simply do not accept that. But then that is a political question and my politics on that issue might be different to many other people. The second proposition is that when the press accept some regulation—that is, they set up the Australian Press Council as an oversight body for the print media—it strikes me as being somewhat odd, when it is clear to everybody, or at least objectively clear, that the system did not work, that anybody would say, 'We are very happy with a system of oversight that does not work very well.'

Senator LUDLAM: We did hear a bit of that yesterday. I will leave it there.

CHAIR: Senator McKenzie, I have tried to give everyone in the coalition a fair go as well. I just cannot take any more. If you have some questions we can put them on notice.

Senator McKENZIE: I will—around definitions.

CHAIR: Professor Ricketson, Mr Finkelstein—thanks very much for coming here. Did we table those documents?

Mr Finkelstein: Yes.

Prof. Ricketson: Can I make one correction?

CHAIR: Yes, that is fine; thank you. Thank you very much for being here. It has been very helpful.

McGINTY, Hon. James Andrew, Member, Independent Media Council

[13:31]

CHAIR: I welcome representatives from the Independent Media Council. Thank you for talking to us today. I appreciate your patience. As you could hear, the issues we were discussing with Mr Finkelstein and Professor Ricketson were important issues. Do you wish to make an opening statement?

Mr McGinty: If I might, Senator.

CHAIR: Certainly.

Mr McGinty: There are just four points I would like to address in opening. The first is the formation of the Independent Media Council. It was formed nearly a year ago, in May 2012. It was formed, although I had no role in this, out of concern about the Australian Press Council's relationship with government, especially the likelihood of increased government funding for the Press Council. That was seen as something the organisation was not happy with.

CHAIR: What organisation was that?

Mr McGinty: Seven West Media. After the three members of the Independent Media Council—that is, Christopher Steytler, Cheryl Edwardes and me—were appointed, we negotiated with Seven West Media a code of conduct, by which publications would be judged, and guidelines for our operation, that I will refer to briefly. They all appear on the website of the organisation, if you want reference to them. In drawing up those particular documents we had input from those people who might be, from time to time, complainants. I refer here to mental health groups, disability groups, Muslim organisations, a range of journalists and media academics.

The second point that I wanted to touch on was the question of independence of the organisation. The initial appointments were all made by Seven West Media. Subsequent appointments will come from a panel of names provided by the Independent Media Council to Seven West Media. The independence lies in the people who are appointed. The chairman is the former president of the Court of Appeal in the Supreme Court of Western Australia and the other two members were both Attorneys-General in Liberal and Labor governments. We made a point in our initial appointment of ensuring that the honorarium which we are paid, which is $20,000 a year, was modest so that there could be no reliance or dependency related to the financial arrangements between the members. That was quite consciously done. I do make the point that 25 per cent of the complaints that we have dealt with in our nearly a year of operation we have ruled against Seven West Media or the *West Australian* newspaper.

The third point I wanted to touch on was the operation of the Independent Media Council in the time that it has been operating. I want to refer to five points. One of the great advantages of the organisation is its timeliness in determining matters. They are resolved within days, not months. It is my view that an inaccurate or unfair report left to hang around for several months compounds the distress and damage that has been caused by the publication initially. The most recent determination that we made, for instance, concerned an article that appeared in the *West Australian* newspaper on 11 February. We published our determination in response to that complaint on 23 February. That is the sort of timeframe in which we aim to deal with matters. That has not been my experience—and I do not want to be particularly critical of the Press Council—albeit dating back some years, of the expedition with which the Press Council deals with these matters. The Independent Media Council is locally based in Western Australia, which has two advantages. It gives its members an understanding of the local context of the issue that it is dealing with and it also enables the expeditious determination of matters.

Fourthly, I raise procedural fairness. We have a number of procedures, all of which are designed to minimise legal form and to maximise the fairness to somebody who comes before the organisation and complains. We have a readers' editor, who attempts to resolve the matter internally. We then obtain from the newspaper their justification for publishing, which we provide to the complainant and ask them for their comment on that. In appropriate cases if we have a tentative view we advise the complainant of that tentative view and ask them to address that. Finally, any hearing is always done very informally, sitting around a table with much discussion, rather than formal submissions as such. Our determinations are transparent. They are all published in the newspaper on the 'Letters to the Editor' page, although we do have the right to direct that a particular determination be published more prominently, depending upon the subject matter. That has not arisen so far in our consideration. They are also published on our website. We think our publications contain clear guidance for journalists and others.

Finally, on the question of the legislation itself, if I can make some quick points in relation to the mandatory and discretionary requirements of the advocate. This relates to the self-regulatory body. It requires that it be incorporated; we are not incorporated. For my part I cannot see the benefits of incorporation for a body. We seem

to have operated quite well without that incorporation. Secondly, we do not have the power to suspend or expel a member. Thirdly, we do not have the power to order retractions, corrections or apologies. We do, however, have the power to direct the placement of our ruling in relation to any particular complaint. There is also the issue of a complaint direct to the self-regulatory body. Our general modus operandi is to require that if we receive a complaint we will refer it to the readers' editor to attempt to resolve it in appropriate cases—not always. There seems to be a presumption that a complaint ought to be able to be made directly to the self-regulatory body which, while it is allowed, is not necessarily what we would encourage. We do not publish statistics, which is another discretionary requirement. My final point is that there is also the overriding requirement to minimise the number of self-regulatory bodies. They are the issues that arise in respect of the way we have been set up and operate under this new legislation, as I understand it. Thank you.

CHAIR: Thanks, Mr McGinty. I got the impression from the evidence from Mr Stokes yesterday that the fundamental issue was cost. He went to some extent yesterday to say that the cost of flying to the east was not something he wanted to impose upon his business in Western Australia. This is a new issue you have raised in relation to a matter of—shall we call it—principle. Are you saying that, if the government were funding the Press Council, Mr Stokes wanted nothing to do with that?

Mr McGinty: We were appointed to do a job. The motivation of Seven West Media, as I understood it, and as it was explained to me at the time, had a lot more to do with the relationship between the Press Council and the government, particularly as it related to funding. As I understand it, we are a very economical model. I do not know for sure, but I think our total operating costs would be $100,000 a year or less. Substantially, three honoraria and a secretarial support service are the costs that are involved, which would be significantly less than what is paid to the Press Council, as I understand it, although I cannot quantify that amount.

CHAIR: Would it be possible for you to take this on notice and provide us with some kind of running sheet with what you do compared to the Australian Press Council, so we can judge the differences?

Mr McGinty: I think that would be, Senator.

CHAIR: If you could take that on notice that would be helpful, thanks.

Mr McGinty: Yes. My experience with the Press Council is somewhat dated now. It related to my time when I was involved in politics. I always took the view that in public life you should not take defamation action; that you need to cop it on the chin and you should not really complain. I broke that once and lodged a complaint with the Press Council. So my practical experience with the Press Council which I have referred to obliquely in what I have already said related to my one complaint which I lodged with the Press Council, where I was successful, some six years ago.

CHAIR: As a former politician you are used to reading legislation; correct?

Mr McGinty: Yes.

CHAIR: Can you point out to me where this legislation destroys the democratic fabric of Australia?

Mr McGinty: No, I cannot.

CHAIR: I did not think you could. It was not a trick question, but basically that is what has been put. So you do not agree with what has been put, do you?

Mr McGinty: No. My role here, as I said, is to explain the way in which the Independent Media Council in Western Australia operates and some of the elements of the legislation as it impacts on that. The broader considerations, the broader political considerations that underpin this, are matters for others to look at and consider.

CHAIR: This is not a broader political consideration. This is legislation that could eventually encapsulate your organisation.

Mr McGinty: Yes.

CHAIR: I am simply asking a straightforward question which I think you have answered. You said that the legislation does not destroy the democratic fabric of Australia.

Mr McGinty: It would mean that our organisation, as currently structured, the Independent Media Council, could no longer exist. It certainly does that. Naturally, the limit of my input—

CHAIR: Where does it do that? Can you point me to that?

Mr McGinty: We are not incorporated and, as I understand it, that is a mandatory requirement under the legislation.

CHAIR: There would not be a problem with incorporating, would there?

Mr McGinty: That is the starting point. It is a question of timing associated with the appointment. There is a very short time frame, if this legislation is passed, which then requires the body to seek, as I broadly understand it, approval from the advocate to continue in operation. There are timing issues which I doubt whether we could comply with.

CHAIR: Do you agree with the proposition that has been put that this legislation interferes with freedom of speech and interferes with the right for editorial comment? Can you point me to any areas in the legislation where those two aspects are dealt with?

Mr McGinty: I cannot point to that in the legislation. I did not come prepared to address that because I saw those as being—

CHAIR: Would you like to take that on notice?

Mr McGinty: I am happy to do that, yes.

Senator LUDLAM: I am very interested in your contention. I understand, because these standards have just been proposed to be legislated, why you would not necessarily comply, but there is a period in which the IMC would be given leave to seek registration. Do you think it is impossible that that organisation would be able to do so in time?

Mr McGinty: My understanding is that it is a question of weeks or at best months. You might be able to correct me on that if my understanding of that is incorrect. Because of the procedures involved in discussing all of that, it would most probably mean, if my understanding of weeks and months is correct, it would be very difficult to comply.

Senator LUDLAM: It is brief. That is interesting. Is that simply because you do not think you could incorporate in time or are there other criteria that you would not be able to meet?

Mr McGinty: It is more a matter, if the legislation was passed, of then discussing, in the same way that we did initially when we were first formed, the guidelines and the code of conduct, which involved considerable discussion with relevant interest groups. We saw it as part of the validity of our existence that we would need to do that. But if it was a legislative imperative that we do it, I guess we would need to short-circuit some of those desirable processes.

Senator LUDLAM: It is useful for us to know that it may be that you would seek accreditation but that the time frames that are in the bill are unreasonable. That is something that we could actually do something about.

Mr McGinty: I guess that is the extent of the point that I am making there, yes.

Senator LUDLAM: I am presuming that you do not see anything—we have had a bit to say about this. I am actually quite concerned about, for example, what happens if Fairfax does what Seven West has done and what if News does that? You could actually break the Press Council up. You could end up with no national print media standards body, in effect. Do you acknowledge that that is something of a risk if we do not make some kind of legislative changes here?

Mr McGinty: I approach this somewhat differently to the way in which you have formulated it to me, Senator. I have taken the view that it is really a question of whether you have an acceptable level of standards which are being enforced by a self-regulatory body. It is a policy consideration for you as to whether a number of self-regulatory bodies would achieve that same objective or not. I do not see the number as being particularly important if you are obtaining a better outcome.

I mentioned before my one experience with the Press Council. The hearing was three months after the offending article was published. It was in Sydney. A joint complainant, who was a hospital patient, withdrew because of the legalistic nature of the proceedings, the requirement and the inconvenience of travelling to Sydney and the prospect of being cross examined by the media outlet. This is somewhat dated knowledge. I do not know whether this is the current method of operation of the Press Council but it certainly was then, and my experience then was quite unsatisfactory, I must say.

Senator LUDLAM: I can imagine. I tend to concur. We can hope that those sort of things have been improved. I understand that contention. Nonetheless, I do have a real concern about what would happen if another media organisation did what Seven West did and jumped out of the APC. I understand it has been made a bit more difficult to do. You have a longer lead time but it would still be possible.

Mr McGinty: Can I very quickly comment on that?

Senator LUDLAM: Yes, of course.

Mr McGinty: The point of what I was just saying was that I think the way in which complaints are now dealt with in Western Australia against the *West Australian* or the Seven West Media is better than what it was. If your end result is better in terms of timeliness, quality and things of that nature then I do not see a problem with proliferation if the end result is better. I would rather have proliferation than poor quality outcomes.

Senator LUDLAM: I would rather have a high quality outcome with a single regulator, I suppose.

Mr McGinty: Sure.

Senator LUDLAM: That is the objective.

CHAIR: Can I just say, on the issue of 'better', it is not a word that really gives you a lot of enthusiasm, if it is better than rubbish.

Senator LUDLAM: I have one case study.

Mr McGinty: That might well be right, Senator. Can I make this point. I think timeliness is a key element. That was absent from my experience in dealing with the Press Council six years ago. There was a whole series of other things that I have referred to which I think means—and I will try and use a more objective phrase than 'better'—

CHAIR: I think it was—

Senator LUDLAM: No, I did not start that one.

CHAIR: I will go back to Senator Ludlam. I have got myself into trouble here.

Senator LUDLAM: I have a case study that illustrates both the point that you are making and the point that I am seeking to make. It was a complaint made by Environs Kimberley and the Wilderness Society on the reporting by the *West* of the gas hub. You are probably familiar with this one.

Mr McGinty: Yes.

Senator LUDLAM: To back up your contention, it was handled, as far as I can tell, fairly rapidly—less than three weeks, according to the time line that I have here. With your final adjudication, can I just check: do the three of you form a consensus view or does one of you take carriage of a particular matter?

Mr McGinty: We form a consensus view.

Senator LUDLAM: The consensus view of the IMC was:

> We do not consider that there was any obligation on the part of the newspaper to investigate the accuracy of what was said by the Premier before publishing what had been said by him without comment of its own.

In other words, you said there that you were fine with the *West* printing a demonstrable falsehood without an alternative point of view, without bothering to fact check. I believe that story ran on the front page. That does not give me a great deal of comfort that actually the obligations of editorial fairness are being met.

Mr McGinty: We took the view—and I remember that case well; it was fairly recently—that what is said by a Premier, a Prime Minister or, for that matter, a Leader of the Opposition, is in itself newsworthy and of public interest. In this particular case what the Premier of Western Australia said was said without any editorial comment whatsoever, apart from the provision of basic background information to the debate about the James Price Point gas hub.

Senator LUDLAM: It did not bother you that it was demonstrably false—that you were later provided with evidence that what the Premier said actually was not true?

Mr McGinty: We were not. There was a point of view put to us that what the Premier said was wrong. But with the report itself, no one ever questioned the accuracy that this is exactly what the Premier said.

Senator LUDLAM: He was correctly quoted in uttering a complete falsehood.

Mr McGinty: If he does, this particular issue is the subject of a continuum of media reports, as you know. It is a matter of great controversy in the west and, for that matter, nationally as well. The complainant had in fact been offered and took up the opportunity of presenting their point of view, with which the Premier would no doubt disagree, in the newspaper a month or two previously. As I recollect it, it was a half-page report putting forward the point of view of the Conservation Council of Western Australia. So it was a continuum of reporting. To us the important issue was that what was done was, without any editorialising, reported as 'the Premier said this.'

That is a matter which I think helps to contribute to the public debate. If the Premier is wrong then others can take him to task over that. When you are talking about someone of that level, reporting accurately what the Premier said was the prime requirement on the media organisation.

CHAIR: Senator, if you have another question can you put it on notice? I have to go to Senator Birmingham.

Senator LUDLAM: I will put this on notice to you. Could you confirm with a yes or no that you do not have the power to compel the paper to print a retraction or an apology?

Mr McGinty: No, we do not.

Senator LUDLAM: You can issue a determination and the paper can tell you to get stuffed?

Mr McGinty: No. The paper has to publish that determination and we can direct the paper as to where that determination is published. In an appropriately egregious case we might direct that it be published on the front page and the paper would have to comply. But not—

Senator LUDLAM: Not the actual apology?

Mr McGinty: Not an apology, retraction or correction. We do not have the power to do that.

Senator BIRMINGHAM: Just picking up on that, however, Mr McGinty, in your findings you could be making demonstrably clear that your findings are that the paper was wrong and that an apology is warranted?

Mr McGinty: Yes.

Senator BIRMINGHAM: The paper might reject that, but you can have those statements splashed across the front page if the case warrants it?

Mr McGinty: That is exactly correct.

Senator BIRMINGHAM: Mr McGinty, again to be clear, if these laws are passed in their current form, your organisation will need to make numerous changes, not just to its construct as a corporation or an unincorporated body at present; it will need to make other changes as well, it would appear, to fit the test of being accredited by the PIMA. Is that correct?

Mr McGinty: That is correct.

Senator BIRMINGHAM: You outlined in your opening statement that it is not just about getting incorporated; it is also about having to change some of the structures or requirements that exist in the government's legislation.

Mr McGinty: And they fit into two categories, Senator. Firstly, the mandatory requirements of this legislation, such as incorporation, we would need to comply with or else we simply would not be eligible to be approved as a self-regulatory body. There are other discretionary matters which the advocate would take into account in determining whether we would be a self-regulatory body. My view is that we should comply with those to the maximum extent. So we would need to review the basis upon which we were set up and some of the very important underlying principles there, yes.

Senator BIRMINGHAM: Were you not to be accredited then the journalists of the *West Australian* newspaper would, until such time as you are accredited, lose their exemptions under the Privacy Act?

Mr McGinty: Yes.

Senator BIRMINGHAM: In terms of how you assess matters, how does the council assess fairness and accuracy?

Mr McGinty: We measure it against our published guidelines to the extent that they are an indication. Perhaps I can give you one very quick example of that. One of the cases in which we found against the *West Australian* newspaper is that they published, very prominently, details of a suicide that took place. It was a euthanasia case. The guidelines are quite clear. You do not publish the detailed method of suicide. That was a case where we had a very clear guideline contained in the privacy policy of Seven West Media and Seven West Media broke its own guideline. That is a clear cut case.

With the others we attempt to provide what we can understand to be broadly acceptable community-based or our own subjective opinions on what is fair, what is honest, what is reasonable—those sorts of things—where the guidelines are not explicit, as they were in the case of euthanasia.

Senator BIRMINGHAM: Is it possible in your view to actually codify fairness, accuracy or indeed community standards, which is another requirement in the PIMA act, or does it really come down to the subjective judgement of the individuals making those decisions?

Mr McGinty: In my view you cannot codify those issues beyond the broad statements of principle. Others might be more expert in this field and maybe they can try. In my view, it is those broad statements of principle that we should use as our yardstick. I would find it very difficult myself to codify them.

CHAIR: Senator Birmingham, I am sorry to do this to you. I have this decision here and you did not uphold the complaint.

Mr McGinty: This is in the—

CHAIR: The euthanasia one, 'end of my pain euthanasia campaign'.

Senator BIRMINGHAM: There may have been different complaints—

CHAIR: Can you clarify that on notice?

Mr McGinty: I can do it very quickly now, Senator. I remember it very well. The complainant raised three issues. One was about the complicity of the journalist being involved with this person who was about to commit suicide and whether there was any obligation on the journalist in respect of her conduct. We did not uphold that part of the complaint. There was another element of the complaint which we did not uphold, but the essential point was of the *West* publishing the details of the suicide. We upheld the complaint in respect of that particular matter.

Senator BIRMINGHAM: If a new government regulator is to accredit the operation of the council and determine whether it actually meets requirements of fairness, accuracy and reflection of community standards, is it really the case that that government regulator is going to have to decide whether the members appointed to sit in judgement are appropriate to make those judgements rather than being able to take into consideration any codified outline of exactly what fairness, accuracy or reflection of community standards actually means?

Mr McGinty: I think that is a very significant part of it. In the case of the Independent Media Council that I am representing here today, you can also look back over the eight determinations that we have made in our almost year of operation, and perhaps also look at the extent to which the internal processes through the readers' editor have been successful in resolving a significant number of others, and the basis upon which that is done. In a sense there is a bit of case law built up, if I can put it that way, which will give an indication of the approach that we have adopted and whether that is reasonable or not. Otherwise it comes back to the ability of the individuals who are appointed to be able to bring those judgements to bear.

Senator BIRMINGHAM: Mr McGinty, at its heart do you believe this type of reform is necessary? From your liaison with complainants and members of the public since the council was established, do you think there is effective consideration of the public interest in the handling of complaints against the media in the west or do you think there is a need for some level of additional intervention?

Mr McGinty: If I can go back one step, during my time in political life I was on the receiving end of what I regarded as some very sharp, unethical reporting. The one complaint that I did lodge that I mentioned to Senator Cameron in opening was the one time I let my guard down and actually complained about it. Having been on the receiving end of that it gives you a very good insight into what ethical reporting is and, particularly in a political context, its importance to democracy, as the media being the conduit by which political parties' actions and opinions are disseminated to the broader public and therefore voting intentions are formulated.

Having said that, I think I have a good sense of it. I am very pleased with the way in which the Independent Media Council is operating. I think it is working very well in the way in which it treats complainants and the ultimate results that come through from it. I do not think this legislation will improve the service that is delivered to the public and to journalists in Western Australia. That is my view of the way in which things are operating.

I must say that the *West Australian* newspaper—and its 15 or 20 other subordinate newspaper outlets that are part of this; they are basically the regional newspapers in Western Australia, all part of the Seven West Media stable—is today, in my view, quite a different organisation from what it was when I was in politics and on the receiving end of what I described as some sharp reporting. So it is easier to do it these days because of the nature of the organisation; that is my point.

Senator BIRMINGHAM: Mr McGinty, you are in the unique situation where your council is handling complaints specific to one media company. Have you ever felt any influence from that media company in terms of the operation of the council, the structure of the council or the determinations of the council?

Mr McGinty: None whatsoever. Apart from my initial appointment, I have not communicated or spoken with the owner, Kerry Stokes, at all in the last 12 months. I have had no communication, other than to ask me to write an opinion piece for the *West Australian*, which was published in last Saturday's paper, which—

CHAIR: There is a coincidence, isn't there?

Mr McGinty: Can I perhaps give you a copy of that article because it summarises a lot of what I have had to say here today.

CHAIR: I am happy for you to table that. This is the Kerry Stokes inspired opinion piece, is it?

Mr McGinty: It was in fact Bob Cronin, who is the managing editor of the *West*, who rang me and asked me if I would write a piece.

CHAIR: Oh, the Bob Cronin inspired opinion piece. That is good.

Mr McGinty: It very substantially describes how the Independent Media Council has worked over its first 12 months of operation.

CHAIR: We look forward to reading it with great interest.

Senator BIRMINGHAM: Surely such pieces, given criticisms that these bodies do not have a high enough public profile, are important to raise the public profile of these organisations.

CHAIR: Thanks, Senator Birmingham. Can I ask one last question? Are there any obligations on Seven West to continue the operation of your Media Council?

Mr McGinty: No, there is not.

CHAIR: There is not. So they can pull the pin at any time.

Mr McGinty: Yes.

CHAIR: Thanks very much, Mr McGinty.

Proceedings suspended from 14:01 to 15:31

BERG, Mr Chris, Director, Policy, Institute of Public Affairs

BREHENY, Mr Simon, Director, Legal Rights Project, Institute of Public Affairs

[15.31]

CHAIR: I welcome representatives from the Institute of Public Affairs. Thank you for talking to us today. Do you wish to make a brief opening statement before we go to questions?

Mr Breheny: Yes, please. The news media reform package 2013 is nothing less than an attack on freedom of speech and freedom of the press in Australia. It is absurd to claim that the government could institute a regulator to regulate media self-regulators like the Australian Press Council and pretend that doing so would not constitute substantial new government oversight of the free press. This is a fundamental conceptual error with very disturbing consequences and, in our view, government oversight of the press is unacceptable in a liberal democracy. The government has no business deciding what constitutes fairness or balance in a media whose job it is to hold them to account. That ought to be a bedrock principle accepted by all sides of political debate.

We have a number of specific points we would like to raise about the proposed public interest media advocate. The government-appointed PIMA would be responsible for deciding which news media self-regulation bodies' members would receive an exemption from the Privacy Act and which would not. This regime means that news outlets will never be able to write about things that are claimed to be personal or sensitive. The news-gathering functions of a news media organisation would be shackled for fear of breaching the Privacy Act. To us, the coupling of Privacy Act exemptions with regulated membership clearly makes this a de facto licensing system, further emphasising the significance of the attack on free expression that the proposal represents.

The minister can directly and unilaterally appoint any person to the public interest media advocate role. Government members of this committee might reflect about whom a future government could appoint and whether instilling such significant powers over the press on a political appointee is democratically desirable. This is doubly so because of the entirely undefined concept of public interest that this entire project seems to be founded on. I am sure that our idea of what is in the public interest is different to the ideas of some members of the committee.

The proposed regime also undermines fundamental legal rights. The bills provide no avenue for appeal of a decision of the PIMA, they reverse the burden of proof in cases of proposed media mergers and they use ambiguous terms that give the PIMA enormous discretionary power.

The most disappointing part of this process is how the government has completely shirked the necessary reform to regulatory frameworks governing media and communications. There is almost nothing in these bills that deals with the serious and important problems in media regulation brought about by technological convergence. Instead, the process seems to have been entirely diverted by a partisan battle between one side of politics and one media company.

We have one final, broader concern. Chris Berg and I appeared before another Senate inquiry into another bill less than two months ago, on 23 January 2013, to defend freedom of speech against another real threat posed by legislation that this government proposed. That bill was the draft Human Rights and Anti-discrimination Bill 2012. Both pieces of legislation seek to shrink civil society by restricting free speech, one under the guise of human rights and the other under the guise of fairness and accuracy in the media. For these reasons, it is our view that the bills should be rejected.

CHAIR: Mr Berg, do you wish to add anything?

Mr Berg: No. I agree with Simon.

CHAIR: Senator Birmingham.

Senator BIRMINGHAM: Gentlemen, thank you for your time today. You describe this as a de facto licensing system. The government claims that it is only setting up a mechanism to hold media companies to commitments that they already make under existing Press Council and self-regulatory arrangements. Why shouldn't the government reinforce those existing self-regulatory arrangements in this way?

Mr Berg: I think there are some serious problems with the existing self-regulatory arrangements but probably not what some of our opponents suggest they are. I am not confident in giving the Press Council the statutory backing that this legislation would give. In my view, the idea that you would take a voluntary regulatory scheme and turn it into a mandatory regulatory scheme or a full, black-letter-law regulatory scheme throws away any concepts of self-regulation and it would give, as I say, some sort of statutory backing to what was previously an amorphous, voluntary system. I think that is deeply concerning.

Senator BIRMINGHAM: The government's proposal here has been scrutinised by the Parliamentary Joint Committee on Human Rights, which handed down its report today. It cites, for example, the UN Human Rights Committee as indicating:

> Restrictions must not be overbroad … they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function … they must be proportionate to the interests to be protected…When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by
>
> establishing a direct and immediate connection between the expression and the threat.

Do you believe that the government has in any way managed to demonstrate, in a specific and individualised fashion, the precise nature of the threat that warrants this action being taken?

Mr Berg: No, absolutely not, and I think it is important to track back to where the original media debate came from. It did not start with the Finkelstein inquiry; it did not even start with the Leveson inquiry. It started with the Convergence Review, which, in my view, was an extremely important process and an extremely important desire to deal with technological change and how it affects existing and legacy communications and media outlets. I think that is the biggest issue that the parliament could face in the communication space and the media space at the moment. But we have seen this process being diverted into a political issue with justifications being invented after the fact. I have not had a chance to scrutinise the Human Rights Committee's findings, but to me that part that you read out makes complete sense. The government, to my satisfaction, has not demonstrated any sort of need for change in this area.

Senator BIRMINGHAM: In terms of the overall issues—and in the opening statement you identified concerns that there was a pattern here that followed the anti-discrimination legislation in terms of attacks on free speech—do you believe that there is sufficient commitment given in human rights agenda to the issues of free speech and to the types of principles that were outlined by the UN Human Rights Committee that I quoted from just before?

Mr Berg: No. Through a wide range of policy areas, we have consistently seen freedom of speech, as a principle, downplayed. This has been a long-term trajectory, in my view; it has been going on for the last 30 to 40 years. But I think it has really taken a sharp uprise in the last couple of years. Obviously we all followed the Bolt case very closely, where Andrew Bolt was found to have unlawfully breached the Racial Discrimination Act. Then there was the Finkelstein review which, in my view, seemed to be inspired by political rather than policy desires. Then we have had the human rights and anti-discriminations acts. What we have found in these debates is that freedom of speech is almost always relegated to a second-tier concern above other concerns. I am a strong believer in freedom of speech. I have extremely strong, firm beliefs that it is the central value of our liberal democracy. It is absolutely essential to individual liberty and it is utterly essential to the maintenance of a democratic sphere. It is very disturbing to see it being continually downplayed across a wide range of policy areas.

Senator BIRMINGHAM: You highlighted that all of this began with the Convergence Review. Senator Conroy has claimed, in proposing these reforms, that there are now fewer and fewer voices in the media landscape. Is that a proposition that the IPA agrees with?

Mr Berg: No, absolutely not; and I am not sure that Senator Conroy believes that is the case either. I think it is very obvious that the amount of material we are able to access has never been more than it is today. The amount of information available to an individual reader or consumer of media content has been growing continuously for the last three centuries; there has been an extraordinary explosion of media content in that time. But over the last two decades, we have seen so much content that it completely breaks the regulatory frameworks that govern our existing systems. We have so much diversity available to us on the internet at any time and in any circumstances that we have to seriously rethink why and how we are regulating existing legacy contents. This set of legislation does not go anywhere towards that, and any future government is going to have to deal with that problem.

Senator BIRMINGHAM: But how do you respond to those who say that there is disproportionate power and influence between a blogger versus News Ltd?

Mr Berg: There is certainly disproportionate readership; nobody is questioning that. More people read the Herald Sun than read myblog, for example; and more people read the Herald Sun than read the IPA website, for that matter.

Senator BIRMINGHAM: I am sure that that will change after today's hearing.

Mr Berg: I have great plans for this Senate committee hearing. But having said that, you have to ask: what is the objection there? More people want to read the Herald Sun than want to read myblog. Are we complaining about the power of the media or are we complaining about what citizens choose to read voluntarily? I worry that, when we discuss these issues, we are patronising or dismissing the importance of consumer choice. There is more diversity than ever before, in all of Australian and global history, available to citizens if they want to choose. Are we really here to second-guess those choices of our citizens?

Senator BIRMINGHAM: The Treasury made some submissions to the Convergence Review and they said:

Where convergence provides consumers with more choice and a greater variety of media content, it should be encouraged, provided it meets community standards … Regulation that interferes with competition is likely to have the opposite effect—

in terms of encouraging a competitive media and communications market—

and instead stifle innovation and make it less responsive to consumer needs.

Do you believe that these proposals in terms of new regulation have the potential to, as the Treasury indicated, stifle innovation? In particular, can I direct that question to the proposals to apply a public interest test on media acquisitions and mergers?

Mr Berg: I think this is the last time in the world that you would want to be imposing a new constraint on what media businesses can do on a commercial basis. It is instructive to see the difference between when the Finkelstein report was released in March 2012 and today. The Finkelstein report suggested that the media companies had told him that everything was actually going pretty well; they saw that there was substantial growth in the future and they saw that there was not going to be a huge problem any time soon. So Finkelstein basically called for the government to hold a watching brief. That was just three months before the extraordinary job cuts in Fairfax and before the extraordinary job cuts in News Ltd. Basically, the heart of the newspaper sector in Australia had a great big contraction.

That, in my mind, makes many of the policies recommended by previous reviews—reviews prior to those huge contractions—really quite redundant or certainly needing to be revised in light of these changes. I worry that we are trying to regulate the last war; we are trying to regulate based on concepts that we developed a decade ago and to impose them on an extraordinarily fast-paced media sector. I have heard the public interest test mentioned for at least a decade. I know that it came out in a Productivity Commission report in 1999-2000. The idea that we are still talking about the exact same policy proposal going through a decade later, when there have been so many changes to technology, to media and to communications, I just find completely absurd.

Senator BIRMINGHAM: The specific legislation before us requires a news media self-regulation scheme to ensure that it has standards addressing matters of privacy, fairness, accuracy and other matters relating to the professional conduct of journalism. It then goes on to require that it also meet a level of community standards—no particular definition of what those community standards may be. Do you believe that they are appropriate subjects for a regulatory scheme to consider; and, if so, how should a regulatory scheme go about considering those particular issues?

Mr Berg: I believe that they are appropriate subjects for a self-regulatory scheme. If I were running a newspaper, I would very much want to impose those sorts of things. I think it is important that newspapers open up their pages to contrary letters and contrary opinion pieces and so on and so forth. But I do not think it is appropriate for any government regulator or any government to try to impose on the free press its own conception of what constitutes fairness or balance. The free press has a vital and essential democratic role to basically expose the misdemeanours of government. The idea that the government would then turn around and regulate the press for fairness or balance seems to me to be deeply worrying and seriously concerning. It is extraordinary that we are talking about this in 2013.

Senator BIRMINGHAM: Why is it that, even at a self-regulatory level, the media industry should be concerned with matters of fairness?

Mr Berg: It depends on how you are running your newspaper. The newspapers I like to read tend to be fair, try to be balanced and all those sorts of things. I personally think that is a virtue worth pursuing, but I do not think it is a virtue worth regulating across the board.

Senator BIRMINGHAM: Why that distinction?

Mr Berg: Because the free press and freedom of speech are too important for government to be deciding what constitutes fairness. Government is not a neutral player in this game; it has great interests in what is printed in the newspaper, and government control or oversight would be very, very dangerous, in my view.

Senator BIRMINGHAM: Historically, have we seen a greater tendency or a lesser tendency than would be the case today to have publications that take very biased approaches?

Mr Berg: Historically speaking, the news press started as an extremely partisan business. The newspapers in the 18th and 19th centuries were funded by political parties specifically and they hurled all sorts of abuse at each other and at politicians. There was a period in the early to mid 20th century where the idea of objective journalism really took hold. Now I think the concept of objective journalism is coexisting with a broader, more aggressive, more opinionated news media. I do not have a problem with that. I think it is a very interesting thing to look at, but I certainly do not think it is the job of the government to be second-guessing those sorts of philosophical changes in journalism.

Senator BIRMINGHAM: So an evolution has occurred over a period of time from a period where the emergence of news media as such was driven by parties with a self-interest, be they political parties, business groups, unions or otherwise, who funded magazines—what leaps to mind is one I quoted in my maiden speech, called The Worker, which I suspect would be dear to Senator Cameron's heart if he were to go back and look at those old copies—through to an era today of objective journalism. Also there has been a transition perhaps, as you say, to people now partaking more in opinion based journalism. That appears to reflect also the greater choices and spread of options that people have. As there are more choices, they will presumably seek out media opportunities that better reflect their outlook on life, whether that is good, bad or otherwise.

Mr Berg: I suspect that we are going back to an earlier stage of journalism where you have commercial neutral or objective journalism outlets but you also have private donor-supported outlets with very, very strong opinions. We can see this in the United States; we have seen a huge development of what you might unfairly describe as 'partisan' media outlets that are privately funded or donated to by small members and philanthropists. I suspect that we are going to see that in Australia as well.

Senator BIRMINGHAM: And the opportunity to produce content cheaply online or for 24-hour news channels or those sorts of things—

Mr Berg: Exactly. It is a business model that we should all get into, basically.

CHAIR: Given that you have mentioned your maiden speech, I will go back and have a look at that again because all I can remember from your maiden speech is that you are a very strong supporter of dealing with climate change and using a market-based approach.

Senator BIRMINGHAM: You were not in the Senate at the time of my maiden speech, Senator Cameron.

CHAIR: But I have read it.

Senator BIRMINGHAM: I am pleased to hear that.

CHAIR: Mr Berg and Mr Breheny, why should we give more weight to your evidence than to Mr Finkelstein's and Professor Ricketson's?

Mr Berg: The IPA has strong views; I think it is backed by research evidence. I do not think that the Finkelstein review was as intellectually coherent as some have claimed it was, and I do not think it is the be-all and end-all of media discussion in this country. I do not know why we would raise that up to being the definitive statement on the free press.

CHAIR: But strong views are not the basis on which to make deliberations; strong views are strong views.

Mr Berg: Absolutely; and I would be happy to send you a copy of my book, which details at great length the evidence that we bring to bear on this discussion, which is a historical and philosophical grounding on the importance of the free press and the historical and current threats to it.

CHAIR: Do you have a PhD in the media or something like that?

Mr Berg: No, I do not.

CHAIR: What are your qualifications?

Mr Berg: I have a Bachelor of Arts and I am doing a PhD at the moment at RMIT university.

CHAIR: In what?

Mr Berg: In economics.

CHAIR: So you have no qualifications in the media?

Mr Berg: In the media in general?

CHAIR: Yes.

Mr Berg: I am a published commentator on all sorts of things.

CHAIR: A commentator—

Mr Berg: No, I understand—

CHAIR: I am asking about your professional base. I am not asking whether you are a commentator; we know you are a commentator. Mr Breheny, what about you? What are your qualifications?

Mr Breheny: I am currently a university student; I am studying arts and law at the University of Melbourne.

CHAIR: Arts and law—good on you; that is great. Let us go to the issues you have raised about fairness and balance. Do you believe the press should have the right to say whatever they like? Should there be any restrictions on the press?

Mr Berg: There are already many, many restrictions on the press at the moment, from defamation to intellectual property. There are courses that you can do in media law. Journalists have to do dedicated subjects about these sorts of things. It is a straw man to suggest that we are discussing a laissez-faire press versus a regulated press. We have a highly regulated press at the moment and the government is proposing to increase those regulations.

CHAIR: You have read the Finkelstein report?

Mr Berg: Yes.

CHAIR: What do you say to the instances where individuals have suffered because the press has taken a wrong position and caused those individuals huge problems—for instance, a minister of the Crown having his homosexuality exposed and being forced to resign; a chief commissioner of police being the victim of false accusations about his job performance fed to the news media by a ministerial adviser and, following publication of the articles, being forced to resign; a woman wrongly implicated in the deaths of her two young children in a house fire, with her grief over her children's deaths compounded by the news media coverage; nude photographs said to be of a female politician contesting a seat in a state election published with no checking of veracity and the photographs being found to be fake; and a teenage girl victimised because of her having had sexual relations with a well-known sportsman? How do these people get some redress?

Mr Berg: There is a wide range of ways they can get redress at the moment. There are a couple of things we have to break down in that list. Obviously many of the claims made were defamatory. If the government is interested in changing defamation laws so that they are more accessible to some people, that is a different discussion we can have.

CHAIR: A different discussion in your eyes. So you are saying—

Mr Berg: No, I am not suggesting—

CHAIR: You are not suggesting that—

Mr Berg: I am not suggesting anything. What I am suggesting is that again we are discussing, not the legislation that is before parliament, but some general feeling about what the media can and cannot do.

CHAIR: Just a minute, Mr Berg. It is not a general feeling—it is what the Finkelstein report indicated were serious problems with the operation of the Press Council and individuals' rights. So do not dismiss it like that. If you want to be accurate, be accurate. If you want to tell us how smart you are that is okay, but at least deal with the issues I am raising.

Mr Berg: I am happy to. My argument is that many of the cases in the Finkelstein review—which I have read as well as you have—are clear options for defamation action. Many of the cases were given apologies by the newspaper, which is all that the existing legislation would allow—

CHAIR: So the woman whose two children were killed in a tragic accident—what did she get?

Mr Berg: I am not sure exactly—

Senator BIRMINGHAM: Mr Ricketson was not able to tell us that, Senator Cameron.

CHAIR: I just thought Mr Berg could. He is telling us all the details.

Senator BIRMINGHAM: There was a lot of—

CHAIR: Senator Birmingham, I did not interrupt you. Do not interrupt me—thanks.

Senator BIRMINGHAM: Well you keep interrupting—

Mr Berg: I am also concerned with some of those other cases we are talking about—ministers of the Crown, public figures. There cannot be any restrictions on what newspapers and journalists can investigate about public figures. I do not think it is the job of the government to defend its own ministers using the statutory arm of the law.

CHAIR: Tell me where in the legislation the government can defend its ministers using the statutory arm of the law?

Mr Berg: I am not suggesting that that is in the legislation. I am suggesting that any solution you might propose that would directly attack or directly deal with those specific examples—coming back to Senator Birmingham's point about specific examples—would necessarily allow a government to defend its minister. I am happy and eager to talk about the specifics of the legislation, but you have brought up the Finkelstein review. The legislation that is offered is not exactly what the Finkelstein review suggests.

CHAIR: But we are dealing with some principles that underpin the legislation. I am entitled to ask whatever I like. You do not have to answer. If you do not want to answer, you can always go. I am simply saying to you that these are significant issues that the Finkelstein review raised. There is another one. Are you familiar with a person called James Delingpole?

Mr Berg: Yes, very much. The IPA had him out a couple of months ago.

CHAIR: So you sponsored him?

Mr Berg: I am not sure what the arrangements were, but the IPA brought him out.

CHAIR: So you brought him out. Are you aware of an article that he wrote which appeared in the Australian on 3 May, 2012?

Mr Berg: I think I am familiar with the one you are referring to.

CHAIR: The 'Wind farm scam' article.

Mr Berg: Yes. If that is the one I am thinking of, I am familiar with it, yes.

CHAIR: Were you perfectly happy that that was a legitimate expression of free speech?

Mr Berg: Yes.

CHAIR: It was?

Mr Berg: Yes.

CHAIR: Are you aware that the Press Council had a different view on that?

Mr Berg: Yes.

CHAIR: So you think it is okay to make an assertion that union superannuation funds 'are using the wind farm scam as a kind of government endorsed Ponzi scheme to fill their coffers at public expense'. Is that a fair and reasonable proposition?

Mr Berg: I would not say that it is a fair proposition to the unions, but I think it is a very clear illustration of the boundaries between satire and public commentary. I think if you tried to regulate that distinction we would be in a lot of trouble.

CHAIR: So Mr Delingpole was using satire, was he?

Mr Berg: I think in many parts of that article he has a very satirical pen.

CHAIR: 'A very satirical pen'? Even to the extent where he quotes an anonymous New South Wales sheep farmer opposed to wind farm development?— 'The wind farm business is bloody well near a paedophile ring; they are f...ing our families and knowingly doing so.' Is it perfectly okay to do that?

Mr Berg: He is quoting a farmer. I do not understand what the objection specifically would be to. You might think that is an exaggeration of the true position. You might think that is unfair. But this is the nature of a free and open discussion. People who exaggerate, who use satirical strategies and all this sort of stuff—you have to allow that in a free and open country, in my view.

CHAIR: You have to allow misrepresentations?

Mr Berg: Are you suggesting that that was a misrepresentation or are you suggesting that all misrepresentations would be allowed? As I have said, if the union super fund suggested that was defamatory then perhaps they could take it up.

CHAIR: Everyone has to go to the law courts?

Mr Berg: I have serious problems with defamation law. I do not want to excessively defend that.

CHAIR: You have said 'defamation' a number of times.

Mr Berg: Yes.

CHAIR: But you have got serious problems with that.

Mr Berg: Yes.

CHAIR: I do not know what to make of that. This article also indicated:

The owners on whose land the turbines are built are subject to rigorous gagging orders (from law firms such as Julia Gillard's ex-company, Slater & Gordon); tame experts are paid huge sums to testify that there are no health implications …

It is not true, is it?

Mr Berg: I am not sure. Is it not true?

CHAIR: It is not true. So if it is not true should people just be allowed in the Australian to say what they like, even if it is not true?

Mr Berg: Issues that are not true and issues that you think are wrong or objectionable should be loudly fought in the public sphere. If you find that article objectionable you should write to the *Australian* or if the *Australian* will not publish your response you should write to another newspaper, you should put it on your website, you should put out a press release or you should talk about it in parliament. But I do not feel that it is the job of the government or a government backed regulator to make the decisions about what is legitimate speech and what is not.

CHAIR: Your definition of 'legitimate' is that people can basically print untruths, and that is part of the debate?

Mr Berg: I would not necessarily say that.

CHAIR: What are you saying?

Mr Berg: I would suggest legitimate speech is any speech directed towards a public purpose in this, and this is clearly a public purpose. If you object to that then you should debate the issue in public, as we all have to.

CHAIR: Does the IPA believe that the press should regulate itself in any way?

Mr Berg: We all regulate ourselves in many ways. I am sure that if you talk to journalists and editors they make decisions about what they are going to put in their paper on all sorts of grounds. The press does regulate itself. Should the press have a self-regulatory body? I do not have a big problem with that, and that is really up to the press, in my view.

CHAIR: Would you argue that there is no need for self-regulation?

Mr Berg: I am not sure. It is really up to the press. The whole point about self-regulation is that the individual industry gets to decide whether it wants to or not. That is the definition of a self-regulatory framework.

CHAIR: That is a principle that you would support, that the press can make a determination whether it self-regulates or not?

Mr Berg: Yes.

CHAIR: So it can just say, 'We will do what we like and face any consequences'?

Mr Berg: Yes. Of course that would be within the existing legal framework, which is substantial and extensive.

CHAIR: The IPA issued a press release after the Press Council concluded on three points that this article should not have been printed in the way it was; is that right?

Mr Berg: Yes. Was it under my name?

CHAIR: It was under your name, was it?

Mr Berg: I am not sure.

CHAIR: You are not sure. So you cannot remember?

Mr Berg: I am not sure exactly what the claims were in that specific press release.

CHAIR: I think it was a Mr Roskam, actually. You guys are interchangeable, are you—flexibility?

Mr Berg: We have so many—

CHAIR: Mr Roskam said:

The Press Council thinks they should decide what is allowed to be written about climate change or any controversial topic. But in a free society journalists and newspapers should be able to publish whatever they want on any topic of public debate …

Even to the extent of quoting someone to say that an organisation is the equivalent of a paedophile ring?

Mr Berg: Yes, I concur with the press release, if that is an accurate—

CHAIR: You concur with that?

Mr Berg: Yes.

CHAIR: So people can be equated to paedophiles as far as the IPA is concerned?

Mr Berg: I am not suggesting that it is a very good thing to equate people with paedophilia. I am not defending that claim. I am defending the claim that in a society that respects freedom of speech as a fundamental value we have to accept sometimes that offensive speech will be made. If you are only going to defend speech you agree with then you are not defending freedom of speech at all.

CHAIR: Very interesting, Mr Berg. After the publication of that article, we had the Press Council determination, we had the IPA press release basically saying you should be allowed to do whatever you like, and the *Australian* published Mr Delingpole's response, which again repeated some of the issues that the Press Council said should not have been there. Is that fair and reasonable?

Mr Berg: That is a position for the *Australian* to take, surely.

CHAIR: The *Australian* can basically ignore the Press Council and just print—

Mr Berg: Yes, that is the definition of a voluntary self-regulatory scheme.

CHAIR: So it is all voluntary; it is really meaningless—the Press Council?

Mr Berg: No, I would not suggest it is meaningless. I think they would have very seriously considered whether to do that.

CHAIR: If the *Australian* decides it is just going to repeat the same allegations in a different form, it is just ignoring the Press Council, isn't it?

Mr Berg: I think it is defying the Press Council in that case but I also think—

CHAIR: Defying?

Mr Berg: Yes, sure. But I think in many—

CHAIR: That is okay?

Mr Berg: Yes. It is a voluntary self-regulatory system. I think in many cases the *Australian* will have published retractions and so forth according to Press Council edicts. I am certain that other newspapers do and I have no reason to suggest that the *Australian* does not either.

CHAIR: Following that article, Christopher Pearson again went on to repeat the paedophile statement. So we had Delingpole run it up first. We had the Press Council, on the basis of complaints, say that should not have been done; it was wrong. We had Delingpole come back again in the *Australian* and run the same allegations and then we had Christopher Pearson run the allegations. And in between this we had the IPA saying basically 'do what you like'. Wouldn't you understand from that that individuals who do not have the power of the Murdoch press, do not have the power of Fairfax, do not have the power of Seven West, would say, 'How can we get a fair go'?

Mr Berg: Those individuals have never been more empowered at any time in history. It is very important to remember that. We are talking about increasing regulation on the press when the people who feel that they have been aggrieved have never been more powerful and never more capable of getting their own message out. The press is not a uniform bloc. It does not just exist as a solid entity shouting down small individuals. As you well know, there are many press outlets that go loggerheads against each other, that expose scandals about each other, all these sorts of things, and we have never been more empowered to get our message out and start those backlashes to what we might consider unfair or unbalanced.

CHAIR: Secretary, I might table the *Australian* article by James Delingpole of 21 December. I also table the *Australian* editorial of 21 December, the Christopher Pearson article of 22 December, the James Delingpole article of 3 May, the adjudication of the Press Council of 20 December and the IPA media release under the name of John Roskam of 20 December. It takes you through the problems that individuals would have in dealing with the arguments the IPA are putting up. Senator McKenzie?

Senator McKENZIE: Thank you very much for appearing today. I simply have one question. What would the IPA's response be to the issues around regional, local news, local weather and local sport?

Mr Berg: I have not gone into great detail about this particular piece of legislation and how it affects that. I want to preface it with that. In my view, however, the same arguments that I have made today hold for that as well. There has never been more opportunity for local and regional news, sport and weather to get out there. Unfortunately, the winds of business models are changing really rapidly and substantially. I do not think any legislation is going to make a regional newspaper any more commercially viable than it is at the moment, and certainly no more commercially viable than it would have been 10, 20 or 30 years ago. We need to recognise that the community is adapting and learning to adapt to these huge and significant business changes.

Senator McKENZIE: I was interested in your commentary around the convergence review and the opportunities that it presents. In terms of those sections within our community who lack the infrastructure to take up the opportunity of the changed environment in which we can consume media, do you have any commentary to make around that?

Mr Berg: I am not sure what the figure is to hand. It might be 17 per cent of Australians do not have an internet connection. By this stage it is not that they do not have an internet connection because they cannot have an internet connection; it is because they have deliberately chosen not to have one. That is an unfortunate thing. They are really missing out. A lot of those people are eventually going to have to get internet access. We just have to wait for the population to catch up with a lot of these things, I am afraid.

CHAIR: Last question, Senator.

Senator McKENZIE: Do you have a specific view on the 75 per cent reach rule?

Mr Berg: Not a specific view.

CHAIR: That is not for this inquiry. Thanks, Mr Berg and Mr Breheny. Good luck with your university studies, Mr Breheny.

Mr Breheny: Thank you, Senator.

DISNEY, Prof. Julian, Chair, Australian Press Council

WILDING, Dr Derek, Executive Director, Australian Press Council

[16:13]

CHAIR: I welcome representatives of the Australian Press Council. Thanks for talking to us today. Professor Disney and Dr Wilding, do you wish to make a brief opening statement before we go to questions?

Prof. Disney: Yes. Thanks very much, Senator Cameron, for the opportunity to be here. I will make a statement. It may focus a little more on the prosaic realities than some of the contributions have.

I want to deal firstly with problems relating to media standards. There are substantial problems with media standards in Australia. A number of them we have in common with other countries. What I am going to say now is based on the experience of the complaints that we receive. We get about 600 now. The numbers increased by about 50 per cent over the last year or so, probably because our profile is so much higher than it was before, with our existence and our role being advertised in virtually all issues of every member publication.

They are also based on the community roundtables that we have started. We have held now probably 10 of them. They have been somewhat delayed by or suspended by the work involved in responding to the Finkelstein inquiry and other things, but we have held roundtables in four states. That will continue with both media and community organisations to identify what they see as problems with media standards and what could be done about it. There are some problems that come up in that.

We also gather from journalists as well. Journalists tend to speak more freely, of course, one to one than they do in broader discussions about what they see as problems within the media. The problems include distortion and suppression of key facts and opinions; confusion of fact and opinion; errors of fact, especially online due to excessive haste in posting material and inadequate corrections of those errors; invasion of privacy, particularly through the use of photographs taken from a distance. Some problems, of course, in any profession or industry, are inevitable. I do not think it should be a surprise that there are some. The level is higher than it should be and I think it is a significant problem that needs to be addressed.

On the other hand, we need to bear in mind that it is true that the media, and journalists in particular, many of them, if they are to be effective and if they are to serve the broader public interest in access to information and free expression of opinion, do need to be from time to time somewhat aggressive, somewhat unruly. One should not seek perfection in this area. Indeed, if one did seek perfection, it would be at a very high price.

Having said that, there is a substantial problem that needs to be addressed. I might say that it has an adverse impact, amongst other things, on freedom of expression. If people are to have freedom of expression, they need access to reliable information. If they are fed false information, then the views that they form and they might want to express will not be the views that they would form and express if they were well informed. Access to unreliable, distorted information is an attack on freedom of expression.

Similarly, if they are unable to get their voice heard reasonably, because particular outlets have perhaps a general tendency to be more willing to publish views from one part of a perspective on a particular issue rather than another, that infringes on the freedom of expression of those people who do not come from the part that is going to be more generously covered. If they are given an occasional example to express their views but that is overwhelmed by a very extensive coverage of the other view, then again their freedom of expression suffers. Freedom of expression needs to be for all people, not just for those who are wealthy or for those who have special access to the most widely read media. Of course, it is a huge infringement on freedom of expression if people are intimidated by vitriol or by other forms of excessive abuse. That, again, even if it comes from active proponents of freedom of speech, it is in fact an attack on freedom of expression.

So media standards, good media standards, are an essential element, for a number of reasons. One of them is, in fact, genuine, wide-ranging freedom of expression. The Press Council has a very important role in this, a very demanding role. We can never do it to my satisfaction, and there are many issues which one should not look to the Press Council to solve anyway. There are other aspects of society in a democracy which must address them. We must always have realistic expectations of a press council.

But we need to do a lot better. That was one reason why I agreed when I was approached to chair the council. If I thought the council had been going fine, I would not have gone there. I thought it did need to be improved. With support from a range of different interests, we have started to improve it. We improved it to some extent before the phone hacking and the Finkelstein inquiry, and we have improved it further since then, though many of the improvements are really just ready to go. For example, the funding boost that we got is leading to two new

staff. They started yesterday. They are getting neglected, I am afraid, in their induction at the moment. There has been a long lead time in getting these things sorted out.

I want to just mention quickly some of the progress because I feel that there perhaps is not from various quarters in the room, really much, if any, up-to-date understanding of what the council is doing. Firstly, we have expanded substantially to online-only publishers. That is very important. Almost all of our complaints involve online because, even if they were read in print version, we deal with online as well and with corrections online. Our adjudication processes are now much more independent than in the past. We now have a situation where there are virtually no people employed by publishers on our adjudications, and the majority, as has always been the case, are public members.

We are having meetings with adjudications more frequently. We do not, contrary to some of what was said earlier, require people to travel. Indeed we encourage them not to travel really. We can do these things by teleconference in most cases. We are certainly not legalistic. The suggestion earlier of cross-examination is extraordinary. If it happened in the past, it certainly does not happen now. The discussions are around the table and they are all on first name terms.

We are developing a new suite of specific standards. For example, the first is to do with suicide. The next is to do with access to patients. We will have ones on photographs taken from public property onto private land. We will have some on a very important issue, which is ensuring that people who are going to be the subject of a story are given a fair opportunity to comment before the matter is published at all, including online. The advent of online publishing has led to a tendency for people to say, 'I'll get up one side first and I'll tidy it up later.' But in fact the need for accuracy and fairness first up is enhanced, is increased, by online publishing, not reduced.

We have already got agreement that the publishers will all provide us with internal statistics. I noticed earlier the IMC apparently will not be providing internal statistics. All our publishers will be providing their own statistics, their own internal complaints handling, in the same form as we do, just as we are.

Quite a lot of progress has been made but we are still moving too slowly in our handling of complaints. We are suffering from sustained misrepresentation of our adjudications and other comments from some quarters, sometimes from proponents of freedom of speech, who are alleging quite forcefully that some of our adjudications have inhibited freedom of speech. By falsely presenting what we have said and implying that we have put inhibitions on freedom of speech, they themselves are inhibiting freedom of speech. We are still suffering from not a high enough level of cooperation from publishers in some areas and we need to keep working on that. We are making progress.

I want to finish with two important strengthenings that we need to achieve and then comment very briefly on the bill. The first strengthening is—as Mr Finkelstein asked of me at the inquiry, but at the time I said perhaps we should do it another way—we now definitely need to be able to institute our own investigations without waiting for a complaint. There are far too many instances. We have one in chapter and verse where a very strong-minded, almost pugnacious public figure has declined to bring his complaint to us because he believes that it will only make the situation worse, that he will be discriminated against more fiercely by the newspaper in question. This is a view expressed to us frequently.

CHAIR: It was not Ian?

Prof. Disney: No. We really need to be able to take these things on board without waiting. I have seen some very bad abuses in the last few weeks where we have had no complaint and yet I know, in fact, the people were concerned about it but thought it would just make it worse if they complained.

We need to have the ability to initiate our own investigations, to ensure that the strengthening that we have undertaken is, firstly, taken through to its fruition, because it is mid-path; secondly, entrenched, not subject to subsequent withdrawal or erosion; and thirdly, if need be, we strengthen ourselves further without having to wait for a Finkelstein inquiry.

I believe we should have an independent review of our activities every three years by an independent panel. They should firstly report just specifically on our compliance with particular benchmarks. We put benchmarks to the convergence review, which are designed at ensuring adequate independence, for example, and adequate complaint-handling procedures, like the right to bring complaints directly to the council rather than via the publisher. It is a crucial right, an absolutely crucial right, that you are entitled to come to us directly rather than through the publisher. Those things need to be reported on every three years, that we are complying with them. These are specific, objective benchmarks.

We need a report then on more subjective evaluations as to how well we are doing in certain areas, not something that can direct us what to do but that brings to the court of public opinion an independent analysis of

how well we are going. So I think it is very important to build on what we have done and ensure that we keep getting better. I will perhaps stop there and I will weave in any comments I have about the bill going beyond that.

CHAIR: Thank you very much for that very detailed overview. Normally we do not like long introductions but you have taken us to a lot of important issues. I thank you for that.

Can I just deal with a procedural matter before we go any further. The *Australian* has sought copies of Mr Finkelstein's opening address and Professor Ricketson's. I do not have any problem with that. We always try to help the *Australian* wherever we can. So we need them tabled.

Senator BIRMINGHAM: I move that they be tabled.

CHAIR: There being no objection, I declare it carried. These can be made available to any journalist who wants a copy. I might go to Senator Ludlam first and then come to you, Senator Birmingham.

Senator LUDLAM: Thanks, Professor, for your evidence. Maybe you can take us through the background of how it has come to be that Seven West Media have established an independent media council. We heard directly from Mr McGinty this morning on this. Can you talk us back through how that occurred and maybe just give us your view on whether you believe the Australian Press Council should be the only entity of its type or whether you are comfortable with more than one?

Prof. Disney: Firstly as to how it occurred, really, Seven West Media are the authorities on that. I was negotiating at the time to get strengthening of the council, particularly as a result of the Finkelstein findings. I was negotiating with a group of four publishers. They were then conferring amongst themselves as to their attitude. The lead people with whom I was negotiating were from News and Fairfax. It was believed that agreement had been reached. We had a teleconference to confirm that agreement. Seven West Media, about five minutes before, indicated they would not be taking part. It was a surprise to the publishers and to me.

The only reason that has been given, so far as I am aware, was the belief that we were not sufficiently committed to refusing any form of government funding. The situation was, before any of this happened, before the Finkelstein inquiry, we had already agreed that very limited project funding from government sources could be obtained if the council felt it was appropriate.

It would usually have been obtained in a mixture of sources for a particular project. We did obtain money, for example, from the Myer Foundation to assist with our work on standards. But there was never any commitment from anyone that we would get government funding, let alone government core funding, let alone funding that would exceed 50 per cent. In fact it was the reverse.

So far as one knows, that is the reason that has been given. It is possible, of course, that the reason was that the council was strengthening itself and it was believed that they did not want to be part of a stronger council. I do not know.

As to the question of whether there should be more than one regulator, I just say I do not know of any part of the world where it has been canvassed that there should be more than one, with the exception of the United Kingdom, although Lord Justice Leveson said it would be a major failure of the industry if they did not all come together in one. But there was a suggestion that there might be one for regional newspapers and one for national newspapers which, of course, is more manageable in the UK.

I do not think there can really be any question, both from any understanding of regulatory practice in other areas or in this area, that in general this leads to confusion, inconsistency and over time an erosion of standards, a competitive race to the bottom as publishers seek to be with the less rigorous regulator. It is a major issue. It is particularly a major issue if you have regulators that are in fact one-publisher regulators. How any requirement of independence—and independence of course must be judged over the longer term, not over initial appointments. They must be judged over the longer term, bearing in mind what pressures will come to bear if one is subject to just one publisher. The pressures are substantial when you are subject to lots of publishers but at least they are not usually pushing all in the same direction and they also do not have the ability to cut off your funding and pull out at no notice. We, of course, got an agreement at as part of the negotiation, and this may have been a big factor in the decision to move away from us by Seven West Media, that you could not get out in less than four years.

So unless they got out on the date they got out, they would not have been able to get out without four years notice in future. We now have that. That is unique around the world. And we have three years advance funding, specific dollars from each publisher.

Senator LUDLAM: Technically one of the other big publishers could still leave the Press Council but there are now those very long lead times involved in that occurring.

Without making any judgement on the character or the qualifications of those who sit on the IMC, do you have a view on how well it is working in Western Australia?

Prof. Disney: I would be very reluctant to delve into that, but I just say, particularly because Senator Cameron did ask for a check list of comparisons, I might send some. But, in general, they are to do with principle. This is not a matter to do with WA, in my view, or a matter to do with the particular people that are there. It is a matter to do with the general concept of whether it is appropriate to have, firstly, multiple regulators but, secondly, to have a regulator that is solely responsible to one of the corporations. Obviously there are problems in that respect. I have mentioned some of our differences. I may be perhaps more willing to acknowledge weaknesses in my own organisation that some others might be—I do not regret that. I might add that the success rate—I do not think we should judge our adjudications too much by our success rate—of our adjudications last year was 70 per cent.

Senator LUDLAM: What do you call a success?

Prof. Disney: It is a partial upheld or full upheld. That went up from 40 per cent the year before. That was before any Finkelstein impact or anything else. I emphasise though that, having said that, I do not believe we should judge our success or our performance by success rates. That would be wrong. But if people are asserting that there is a particularly strong degree of independence shown by a certain success rate then one has to bear in mind other factors.

Senator LUDLAM: I do not know how we are going to go with definitions here, but I am interested to know this: in terms of the general work of the Press Council and the complaints that you receive from people who feel aggrieved by reporting, is it possible to break out the proportion of them that would be public figures—politicians or people who are in the public eye and who are routinely in the press—as opposed to what are characterised as private individuals—people who, through no fault or will of their own, have suddenly been drawn into a story and find that they regret it. Is there a way of breaking out the amount of work you do?

Prof. Disney: We could do that. We do not particularly have it in those terms, although we have some data. I am afraid that, as I said to Mr Finkelstein, some of our data in the past just was not reliable. It is a lot better now, but it means we do not have huge historical stuff. We do have some complaints from public figures, but they are often very reluctant to complain to us—some of them because they have their own avenues which are more effective than coming to us.

Obviously there are I think problems in that respect. I have mentioned some of our differences. I may be perhaps more willing to acknowledge weaknesses in my own organisation than some others might be, but I do not regret that. I do not think we should judge our adjudications too much by our success rate, but I might add that the success rate of our adjudications last year was 70 per cent.

Senator LUDLAM: Defamation law?

Prof. Disney: No. We had a complaint recently which involved a childcare centre and one of the parents was an extremely powerful person in the publishing world. I knew they were not going to need my phone call to the newspaper to sort that out. It was going to be sorted out by that person's phone call. So some people do not need to come to us. Others feel that it would only make matters worse. A lot of them though are ordinary, mainstream Australians. I might say that particularly because there is a real representation on this score—so-called third-party complaints, which are complaints about material that does not relate to the person being complained about but is about some general coverage of an issue. Those are mainly made by individuals, not by groups in any way. We had a very striking one just very recently involving a very senior journalist. I think he would be the first to admit, although he started with a very different view, that the complainant came to the matter with absolutely the best motivations and expressed her goodwill towards the journalist in general but just said that this article was not right. Then at the end of the day, incidentally—and this is quite common with us now—they said how much they had valued at least the opportunity to have their chance to speak with the newspaper and express their concerns. So, far from being intimidated or cross-examined, they had found it a useful experience. Incidentally, they were all communicating with us by phone, not in person.

Senator LUDLAM: But principally the work of the Press Council—and push back if I am mischaracterising your work—whether it is a statutorily recognised Press Council or not, is about giving ordinary citizens the right of redress over what is a very powerful sector in our society.

Prof. Disney: Most of our work, yes. I mean, of course, some of the people are powerful, but the overwhelming majority of our work is not. I should emphasise, though, that I believe our work in setting standards is actually at least as significant as our response to complaints.

Senator LUDLAM: I wanted to bring you to those. You mentioned one about reporting of suicides. What is the status of the standards determinations that you are making? If they go on and are breached by some of your member organisations, what is the sanction or consequence?

Prof. Disney: Firstly, our standards are now legally binding. I should say that the obligation on our members is to demonstrate a commitment to our standards. That does not mean perhaps that every breach of a standard means that they have acted unlawfully, but it would mean that a continued breach of that nature would call into question whether they in fact have a commitment to our standards. Our only power is in fact to say that our standards have been breached and to insist on the publication of the adjudication. I might add, because it is a very important change that we have achieved, that one of the things that the public and in fact many in the media complained about most in terms of our adjudications was that they were not being published or they were not being published prominently. It was never true to say that they were not being published, but they were not being published prominently enough. We now say exactly where they have to be published, both in print and online, and that is getting full compliance. We write the headings and we say what part of which page range they have to go on.

Senator LUDLAM: All right. Thank you very much for that. I will come back if there is time.

Senator BIRMINGHAM: Professor Disney and Dr Wilding, thank you very much for your time today. Can I come to the specific proposals that are before the parliament. Do you believe that the proposal for the public interest media advocate and the associated news media self-regulation legislation are well-thought-out proposals?

Prof. Disney: We have a lot of concerns about them. There are four elements. I will try to be quick. The first is what we call the benchmarks, which is the list of things that the PIMA is to take into account. In our view those benchmarks in their current form—and we have not seen the specifics of any different form—are far too broad and discretionary. They could end up with too intrusive a role for PIMA. They could indeed be at least as likely to end up with too weak a role—for example, too inclined to allow a council that is not adequately independent. That is probably at least as big a problem in my mind as anything else—that this would be too weak and that these would not be properly independent councils with decent complaint structures. That is the first thing. Those standards are too broad and discretionary.

We agree with benchmarks, but we think they should be specific and objective—for example, are most of the members of the council not appointed by publishers; do you have a direct right of action to come to the council. They are just things that there is no debate about. You look at the constitution and you count up the numbers. That is what we felt and what we put to the Convergence Review—that there should be benchmarks of that kind.

Secondly, on the PIMA, we feel that if there is to be any role of this kind it should be played by, say, a three-person panel, at least two of whom should be independently chosen—a verifying panel or a designation panel—and it should only express its views every three years or two years or whatever, or just check after three years whether they are still complying with the essential benchmarks. But there could be also be a case for commissioning a reasonably concise report on how we are going generally in achieving certain specified goals. But that would just be advice. The other element would be verifying compliance.

The third aspect is: should there be more than one body that can be designated? I have spoken about that. We have a very firm view that there should be only one. The final point is: if you are a publisher, what should be the sanction if the council that you are a member of is not a designated body? So that raises the Privacy Act issue. There are a few different ways that one could address that. There would be value, I think, in just designating a body—us as national press standards council—not with capital letters, but the national press standards council subject to our continuing compliance with benchmarks. That then could be available for governments, legislatures and others. If they want to provide privileges on certain grounds then that can be a criterion they use. They can say that, in order to have this privilege, you have to be employed by a publisher who is subject to the national press standards council. So you could just make it available in this legislation. You do not say that it applies to any particular privilege; you are just making it available as a criterion for the future. I personally believe for reasons that I am happy to expand on that that is very important for a whole number of reasons going way beyond media regulation.

You then can go further, of course, and say that, for example, particular exemptions and privileges will only be available and that is the Privacy Act issue. The question of whether you go down the Privacy Act route depends very heavily on the rest of the bill, the rest of the package and detailed discussions and negotiations. I think you began by asking me did I think this had been well put together. One of the problems we have about this is that, if there is to be any specific privilege dealt with in this legislation and said to be dependent on being subject to a designated body, that has to be very carefully thought through and discussed. That is why an alternative approach is just to get the body out there available for later discussion if people think that it is appropriate in different

contexts. It may be, for example, that this applies to courts—when judges say who is a recognised journalist and who can stay behind in a closed court or tweet from a closed court. There is a whole stack—at least 50 or 60 that we know of—of statutory or non-statutory privileges for journalists or media organisations. Having some criterion there would help—and this is the last of a long answer—and to me one of the main answers to media diversity is to strengthen quality online journalism, to recognise the validity of that journalism and to encourage people to be able to identify it so that we have a broader range of sources. Some of the talk about diversity generated by online I think overstates the case. I think we need to bulk up the audiences for some of these people. They need then to be clear that they have the same standards and the same privileges as mainstream journalists. That was the view taken by what I think is easily the best report in this whole area, which was by the New Zealand Law Commission: starting exactly from that point and saying that we need to encourage online journalism and recognise them, but if they want to have the same privileges as traditional journalists then they must comply with the same standards.

Senator BIRMINGHAM: Thank you for that comprehensive answer. In terms of going through your four reforms, firstly the benchmarks—and you touched somewhat there on the need for them to be less broad and less discretionary and more able to be clearly assessed and judged as to whether an organisation is actually meeting them—do you have a series of recommendations that could be made as to what you think are appropriate benchmarks in that regard?

Prof. Disney: Yes, and we can table that. They are very similar to what we put to the Convergence Review 15-odd months ago. The Convergence Review did broadly adopt that approach, but instead of our very specific stuff they put it in broader terms. But we have a list of about 15 that we are happy to put in front of you.

Senator BIRMINGHAM: I will let you table that. The second area in relation to the construct of PIMA—and you have advocated for a three-person panel, at least two of whom are independently chosen—what is your definition there of 'independently chosen'? Who is making the independent selection?

Prof. Disney: I can just give you an example. Perhaps you give the power of nomination to the president of the Law Council or the chair of Universities Australia or someone like that. You try to pick the positions that you think are by and large people who will be independent or at least of an unpredictable perspective. That would be our suggestion. We do not have a totally closed mind about how you would do it if we were setting this kind of panel up, and we might if it is not done in any other way; I have already flagged it with the council and I think we should set it up if someone else does not.

Senator BIRMINGHAM: I am getting a wind-up already—

CHAIR: Already!

Senator BIRMINGHAM: So can I come back to the overriding principle perhaps. Professor Disney gave a very comprehensive answer that was very useful to an earlier question. But, on the overall principal, would you rather see a situation where you as the Press Council put in place a three-yearly review by a panel of eminent persons such as you just described or would you prefer to see a legislated statutory approach that binds the operation of the Press Council in some way, shape or form?

Prof. Disney: Firstly, there will be differences of opinion on the council about that, so I will not be expressing a council view as to whether it should be statutory or not. I do not think I can express a firm view myself because the detail really matters. I do think that, given the nature of the pressures that are involved in this situation, there is merit in having some sort of statutory involvement, but it needs to be of the kind that I have mentioned, which is just specifying benchmarks which are not changeable and are only checked every three years and that kind of thing.

Senator BIRMINGHAM: Given that Senator Conroy has told the parliament that we have a take-it-or-leave-it option with these proposals, would you take it or leave it?

Prof. Disney: I do not want to delve into the language and the realities of the political process, but—

Senator BIRMINGHAM: No, but honestly these are the proposals on the table. Should we vote for them or not?

Prof. Disney: We have made it very clear that we think this package has to be dramatically changed for it to be acceptable.

Senator BIRMINGHAM: In its current form you would rather not see it implemented?

Prof. Disney: Yes. We have indicated in considerable detail to the minister and others changes the thrust of which we would regard as essential. The detail, of course, one can talk about, but the thrust we regard as essential for this to be changed. I have outlined them to you: specific benchmarks, a three-person panel, one regulator. The

main query then would be what you do about the Privacy Act. We believe that, even if you leave out the Privacy Act, it is worth doing it to establish a criterion for use by statutory and non-statutory people at later times. There is a worry, I think—the link between commercial organisations and media organisations is increasing for different reasons. Media organisations are getting more involved in commercial activities and commercial organisations like the AFL are getting more involved in running their own media operation. That is going to create big problems for who is a journalist and who is entitled to privileges and ensuring adequate standards. So we need to look at that issue down the track.

Senator BIRMINGHAM: Indeed. Is there a risk that what we are doing is embarking on a process of regulating a diminishing media landscape while there will continue to be increasing voices of increasing influence, be it perhaps from a small base, who will not be regulated at all through these types of reforms or, indeed, existing self-regulatory measures?

Prof. Disney: Yes. Incidentally, I actually prefer the term 'moderating' rather than 'regulating'. We are not really a regulator in the normal sense of the term. Nevertheless, that is one reason that really one of our very highest priorities has been to become more active in the online area. I think there will always need to be an unregulated sector online, but that does not mean that we cannot try to encourage a sector that says, 'We are going to stick to higher standards and we want your benchmark or your kitemark to show people that we are adhering to higher standards'. That is our approach with online. But it is also why we believe that there should be a move towards a unified system with broadcasting as well. It is one reason that it is really odd to be talking about moving to two regulators in one platform, namely print, when the general thrust has been that we should be moving to reduce the number of regulators across all platforms.

CHAIR: I just want to raise one practical example of the work of the Press Council and get your comments about the weaknesses that may still be there. You would be aware of the article by James Delingpole, 'Wind farm scam a huge cover-up'. This was in the Australian on 3 May. Basically organisations were compared to paedophiles. Are you aware of that article?

Prof. Disney: Yes.

CHAIR: The Press Council then made a determination on certain aspects of that article. That is adjudication 1555. You did that in December 2012. Then, following your adjudication, in which you upheld some of the complaints, the IPA issued a press release saying that your ruling shows a threat to free speech. I would ask you to comment on that, but let me get the whole context in. On 21 December James Delingpole again published in the Australian basically restating the positions that the Press Council had said were unacceptable and the Australian printed it anyway. Then the Australian in an editorial defended Delingpole's article on 21 December lamenting the loss of free speech. Then on 22 December some of the paedophile issues were again raised in an article by Christopher Pearson. How can anyone have confidence in the rulings of the Press Council if the Australian treats them with such a cavalier approach in this regard?

Prof. Disney: That is a matter of concern to us and it is a matter that I have raised with the council. There are other examples that you could have given as well.

CHAIR: I thought that one was enough.

Prof. Disney: I have raised that with the council. All I would say about that is that the first step for strengthening the council is to be rigorous in our adjudications—that is the first thing—and to have said that was wrong. The second step is to try to get adequate coverage for that, which we now do. We get our adjudications very prominently published. That has been a big step.

The third—and that is what I alluded to when I began this afternoon—is to avoid misrepresentation, even within our members' journals, about what we have said, and that is a worry that I have raised and will continue to pursue. The fourth is to avoid repetition of the problem. That, again, is something that we are just going to have to try to continue to push for. So I am not satisfied with where we have got to, and the example that you gave is one reason that I am not satisfied.

CHAIR: Is this still a live matter with the council?

Prof. Disney: There is a complaint about one aspect of it which we are still considering. But I should say that, even if there had not been, this is an example of where we could investigate of our own volition. That highlights, really, some of the concerns that I mentioned and it is why I believe there needs to be a continuing examination of how well the council is doing and expressions of opinion from an independent panel raising those kinds of issues.

One of the reasons that we are conducting the community roundtables, which we will do on a regular basis, is that concerns of that kind can be raised at roundtables and can then be brought to bear directly to the publishers. I

guess I was also referring to this when I said that there is a limit to what any press council can do in relation to some of these problems. There are other factors and other avenues that will need to be pursued.

CHAIR: Professor Disney, we have been told by the media executives who have come here that the Press Council is important and the Press Council has been beefed up, but this is really a News Ltd—in the colloquial term—'Up yours!' to the Press Council. So how can we have confidence that the Press Council will be treated with any respect from the moderate press and the *Australian*? Wouldn't it then be a justification for having the public interest media authority there?

Prof. Disney: I have spoken more about the detail of the role of the advocate and how they are appointed and the benchmarks that are applied. I am not happy and many on the council are not happy or not satisfied with where we have got to so far. So you will not find me—and you did not find me earlier today—saying that we were satisfactory. The concerns you have raised, I think, are concerns. I suppose that is one reason that I think that, to erode our ability to address these matters by having multiple regulators or other pressures which intrude on us in the wrong way, because these pressures—in the way that the bill is designed at the moment—could be just as likely to erode our ability to be an effective regulator as to strengthen it.

The main response is firstly we have some measures and some increasing rigour underway which I think are starting to address that problem. I think if we have proper oversight to keep the pressure on us, that will start to address that problem. But I also have to say that there are the realities of power in the community and the press council is only one part of any response to concerns on that front.

CHAIR: I am not sure if you paid any attention to the Institute of Public Affairs media release on the day of your ruling. They describe themselves as 'Australia's leading free-market think tank'. We just had them here; if they are the leading free-market think tank, we have some problems here. They said that the Delingpole Press Council ruling shows a 'threat to free speech'. Do you have any views on that?

Prof. Disney: I suppose—not that I particularly want to base it on the Delingpole one, because I do not see that case as actually the strongest example of what worries me. What he said in that case—I see things worse than that most weeks, frankly.

CHAIR: Really?

Prof. Disney: So I don't want to base it on that one. But that was really at the heart of what I was alluding to when I said that freedom of speech and freedom of expression is eroded when people's speech is misrepresented. That means in effect they have no voice, so if people are misrepresenting—adjudications in our case—if they are misrepresenting what other people have said, then that is denying them effective freedom of speech.

But, also, if they are engaging in—and I am not particularly putting this at the door of the IPA, and not particularly directed at the Press Council; there are others—vitriol, intimidation, character assassination, that is an abuse which has a number of weaknesses but one of them is that it actually inhibits genuine freedom of expression.

By 'freedom of expression' we mean freedom of expression for the whole community as much as we can achieve, not freedom of expression for a certainly privileged group who have access to mainstream media and whose views accord with the views of mainstream media. It means freedom of expression for all of us as best we can, and that in turn means that, as with any freedom, we have to accept some limitations on it in order to provide a reasonable degree of freedom for others. This notion of absolute freedom is highly out of date and highly inaccurate as a real definition of freedom. Absolute freedoms destroy freedom. That is well known across a wide range of areas. To distort, to provide people with unreliable information, to excessively abuse and intimidate, is amongst other things an attack on freedom of expression.

CHAIR: Thank you very much, Professor Disney and Doctor Wilding. You have been very helpful. We will now suspend.

Proceedings suspended from 16:56 to 18:10

DAVIDSON, Mr Bruce, Chief Executive Officer, Australian Associated Press

GILLIES, Mr Tony, Editor in Chief, Australian Associated Press

Evidence was taken via teleconference—

CHAIR: I welcome representatives from Australian Associated Press. Do you have an opening statement?

Mr Davidson: We really appreciate the opportunity to speak to you today. Given the nature of the lateness of our appearing before the committee, we have a very brief opening statement. It is important to outline for the committee and for those who may not know the role of AAP within the media in Australia. As the national news agency of Australia, AAP has a vital and significant role in our media. It is a role we are very proud of and one we take extremely seriously. It is important to understand that by its nature AAP must be an unbiased, independent news provider. We are like the Switzerland of the news game. Our clients are often fierce competitors and we must deliver content that can stand close scrutiny and be trusted to provide the facts and only the facts.

We are a commercial organisation with no government funding or assistance, unlike many other news agencies around the world. We are owned by Australia's major newspaper groups and our articles of association guarantee complete independence from control by any one owner or interest group. AAP is a major resource for all the Australian media, from broadcasters to publishers to digital players. We provide some 600 stories per day for all the media. We believe we occupy a vital role as an impartial and credible news source for all media platforms in Australia. Our service is available to all sections of the media, regardless of ownership and on an equitable commercial basis.

AAP believes that Australia's media are well served by the current checks and balances that provide responsible governance of media activities. This has evolved through an effective three-tiered system: self-regulation by the media themselves, including many internal codes of conduct, ethics and standards, as well as the ultimate judge, that of the public. We have low-cost public access to an industry complaints forum, the Press Council, which has been recently strengthened to make sure that its activities are more transparent and more open to examination by members of the public and complainants. There is also the range of legislative and legal avenues to address any criminal or civil breaches, such as defamation and contempt of court. There are also clear requirements to adhere to laws regarding telecommunications and privacy.

For AAP's part we are proud of our record of accuracy and balance. We believe this is almost entirely achieved from strict compliance to our code of practice and journalistic standards but also from the commercial need to have the complete trust of our customers. Without our customers we have nothing. We simply do not believe that there is a problem with the conduct of the media in Australia, and certainly not that of AAP, that warrants further oversight, especially by a minister appointed body.

CHAIR: Thank you. Why is there a problem with a minister appointing an independent oversight person, the same as ministers appoint other independent oversight executives?

Mr Davidson: The publishing industry and the press itself are in a unique position. We are there to hold public officials and corporate bodies to account. Simply any level of potential interference, potential oversight, even any perception of government interference is simply a dangerous precedent that may lead to control, may lead to interference. The aims may be noble, but the potential for misuse and changes of that legislation as presented to us is a dangerous thing to contemplate.

CHAIR: What comments do you have then about—I am not sure if it is the oldest parliament in the world but—one of the oldest parliaments in the world, in Westminster, about to do something nearly exactly the same as what we are doing?

Mr Davidson: I have obviously read the reports today and have not seen the detail. I also note that the press in the UK is certainly going to examine that legislation and that proposal which is before the parliament. I also note that there is, I think, what I can see, a greater level of potential of further scrutiny for any changes to that legislation by a large majority of the parliament. I do not see that in this legislation.

CHAIR: Are AAP a member of the Australian Press Council?

Mr Davidson: Yes, we are.

CHAIR: Do you agree that the Press Council has not been operating effectively for nearly 37 years?

Mr Davidson: I believe that the Press Council has acted effectively. We certainly were involved in discussions around the changes. We have increased our financial commitment to the Press Council and we fully

endorse the changes that have been brought about by Julian Disney, probably a very active chairman in recent times, who has the public interest at heart in renovating the Press Council.

I am aware of criticisms of the Press Council in the past, particularly where publishers perhaps have not fully embraced the principles behind publication of corrections and complaints. I believe that those days are behind us and I believe that the Press Council's changes are a very good thing and we fully endorse them.

CHAIR: Did you hear the evidence from Mr Finkelstein and Professor Matthew Ricketson?

Mr Davidson: I heard some of that today, not all of it I am afraid.

CHAIR: What do you say to their argument that there is no absolute freedom of the press?

Mr Davidson: I think in our western democracies most individuals or members of our community would believe that there should be absolute freedom of the press. I heard Mr Finkelstein discuss that issue and I do not agree with his contention that there must be a level of regulation, which I think were his terms. I am quite happy with a level of regulation in terms of the industry ensuring that its codes of conduct and its practices are adhered to and I am quite happy to be held to account for any breaches of those, but I think we need to avoid the potential for interference by government to potentially misuse or distort that regulation.

CHAIR: We have had evidence from Mr Finkelstein, who is a QC, who has looked at the legislation. He says that the legislation does not determine what the press can say what the press cannot say. Do you agree with that?

Mr Davidson: Yes, I do not see that the legislation can determine what the press can say and what they cannot say. But the Press Council standards, ethics and code of conduct, regarding ensuring that those behaviours are adhered to, is something that the advocate can influence, and the very loose phrase, 'we may change standards according to changes in community standards', to us is extremely open to interpretation, extremely loose and really does open up a can of worms.

CHAIR: Have you read the Finkelstein report?

Mr Davidson: Yes, I have.

CHAIR: The Finkelstein review outlines a number of what they call 'striking instances': a minister of the Crown has his homosexuality exposed and he is forced to resign; a chief commissioner faces false accusations and he is forced to resign—this is after publication of articles; a woman is wrongly implicated in the deaths of her two young children in a house fire and her grief over the children's death is compounded by the news media coverage; nude photographs of a female politician contesting a seat in a state election are published with no checking of the veracity—the photographs are fake; and a teenage girl is victimised because of her having had sexual relations with a well-known sportsman. You just said there should be no restrictions on the freedom of the press. Is it fair and reasonable for those individuals who are demonstrated in the Finkelstein review to have suffered under the press exposes to have that done to them on the basis of freedom of the press?

Mr Davidson: First of all, I would like to say that AAP is in a different position from much of the media in that we do not have—

CHAIR: Mr Davidson, I am not asking you about AAP. I am asking you about the principal position that you have put forward that there should be no restrictions on the freedom of the press. I have drawn your attention to the examples in the Finkelstein review, and I am asking you: does the freedom of the press outweigh the rights, the privacy and the needs of those individuals that are outlined in the review?

Mr Davidson: Those examples I would categorise as certainly unfortunate examples of particular conducts of parts of the press. We have to be aware that there are many, many other laws that potentially could cover and overlap those activities. There are criminal sanctions and there are defamation laws, as I mentioned before. Without understanding the background of those examples that you have mentioned, that notwithstanding, the principle of the freedom of the press to uncover many, many other instances of legitimate coverage of wrongdoing that needs to be outed, if you like—needs to be exposed. Is part of the mix of what the media needs to do and needs to have—

CHAIR: But, Mr Davidson, you have not answered my question: is it fair and reasonable that these individuals are treated the way they were treated by the press under the principle that the press should have no restrictions on their rights to print what they like?

Mr Davidson: Obviously if I were an editor in those particular examples, I may take a different approach and other editors would take other approaches. My approach may be that some of those cases—and again, without the detail, the background and the context it is hard for me to comment entirely about those actual examples—on the face of it some of those examples are potentially bad examples of the treatment of some individuals that happens

by the press. Obviously the ultimate arbiter of continued treatment of people like that would be consumer distaste and the fact that those particular publishers would not have a market because—

CHAIR: Somebody's life, somebody's career is destroyed; a distraught mother is basically accused of killing her children and that is okay?

Mr Davidson: No, I did not say it was okay. The context of those examples is hard for me to comment on. There is no doubt that press does not always get it right. We—talking for the industry—can get it wrong. It is very unfortunate that individuals can be hurt in that process. There are many avenues of redress for correcting and understanding some of those examples. But I think that is something that the press and the media live with on a day-to-day basis, about making those judgement calls. I think, generally, throughout our history, we make those calls in a good manner, and in a way that is ethical and upholds the standards. There will be occasional lapses and breaches. I am not excusing those and I understand that obviously individuals are often hurt in the process. That said, the overarching ability of the press to be unfettered in uncovering extreme examples of corruption, of misuse of political power et cetera, needs to be protected.

Senator BIRMINGHAM: Gentlemen, thanks for your time today. If somebody has their reputation destroyed by a media outlet, what is the best recourse they can possibly pursue from there?

Mr Davidson: The highest level of recourse is taking action for defamation. That obviously would be for very serious breaches that have affected someone's reputation, someone's livelihood, and they have judicial avenues to explore in that area. If they do not believe that is going to be the best avenue, they can take the issue to the Press Council, who then has the power, now, to enforce redress by the publication in an appropriate manner.

Senator BIRMINGHAM: As editors and heads of media organisations, are you conscious of the reputational risks to your companies as well as the financial risks to your companies that these avenues present?

Mr Davidson: Absolutely. As I mentioned earlier, if AAP, not being a media retailer as such, get it wrong, if we do things that are distasteful, if we trash somebody's reputation, and that is published by our customers, our customers are going to be very unhappy with us. So our reputation would certainly be damaged, as would be our commercial endeavours. That really is the case with the mainstream media. Ultimately the consumer backlash for continued lapses or breaches of standards is going to have a massive impact on their readership and on their business.

Senator BIRMINGHAM: The proposals before us propose that a Public Interest Media Advocate be appointed. Do you have confidence that the person appointed under the model proposed would be independent?

Mr Davidson: No, I do not. As I said earlier, it may seem that way, it maybe painted that way. As I think has been said in previous discussions, this is an independent appointment like other statutory bodies. The potential for changing that or misusing that is there, and quite frankly I would not like to be a government in a situation where I have the community being suspicious about my motives in terms of someone having oversight over a regulator.

Senator BIRMINGHAM: Is there a risk in this space that, once government starts to legislate and regulate, when the outcomes of that legislation do not meet the demands of some there will be further legislation or regulation that provides more direct intervention?

Mr Davidson: I would think that is a risk. I think there would be even further opposition and further campaigning against any further regulation, and so there should be. But, yes, once you start on a particular path there is the potential for that path to grow.

Senator BIRMINGHAM: How easy is it as an organisation—you are in a unique position as a provider of content to various media outlets—to assess what is fair?

Mr Davidson: I will hand over to our Editor in Chief, Tony Gillies, who is more across the tenets of our ethics and standards.

Mr Gillies: We have a number of standards that we apply to every story. Every story must be balanced, accurate and fair. That is, of course, the overarching tenet. And that comes from a practice that for every claim there has to be a counterclaim over the course of a short period of time. We operate in a real time environment which creates some challenges for us in that stories need to be rolled out as issues develop. However, we are constantly in contact with both sides or all sides of a story. So the role in which we play sort of determines that we do provide our customers with the complete picture, both sides of the story, so that they can make that best assessment from that.

Getting back to Mr Davidson's earlier point, our reputation is absolutely everything at AAP. We must be steering a story straight down the middle. If we do not do that, if we skew it one way or another, if we get it wrong, that is pretty much the beginning of the end for us.

Senator BIRMINGHAM: In terms of making those decisions, do you think that notions of fairness can be effectively codified or indeed notions of community standards be effectively codified, which it would seem this legislation will require a news media self-regulation scheme to do?

Mr Davidson: I would not suggest codified, but what I can say is that in a review of our content after the event, we do go back and seriously check what we have done. This comes from an enormous amount of experience from our news team and so on. Certainly our experience is that standards within the community are a constantly changing scene. Therefore, we cannot codify it. What is right today might not be right tomorrow.

Senator BIRMINGHAM: Thank you, gentlemen.

CHAIR: Mr Davidson and Mr Gillies, that has been helpful.

FRASER, Professor Michael, Director, Communications Law Centre, University of Techonology, Sydney

SIMONS, Dr Margaret, Private capacity

[18:32]

CHAIR: I now call Dr Margaret Simons and Professor Michael Fraser. Dr Simons is from the Centre for Advanced Journalism and Professor Fraser is from the Communications Law Centre, UTS, Sydney. Dr Simons and Professor Fraser, would you like to make an opening statement?

Prof. Fraser: Yes.

Dr Simons: Yes.

CHAIR: Dr Simons, we will go to you first.

Dr Simons: I have put in a written submission so I do not intend to be at all extended in these opening comments. My basic position is that I am not opposed to and indeed support the thrust of the bills to make meaningful and effective self-regulation of the media and to make the rights and freedoms under law contingent on a willingness to sign up to self-regulation. However, I think the drafting of the bills has been very flawed, and I am unhappy with them in their present form. I have detailed my unhappiness in my written submission and also made some suggestions for improvement.

There are some other things that I would like to emphasise. We have heard a lot over this last week about freedom of speech and the right to freedom of speech. I think it pays us to remember that the right to freedom of speech is not held by organisations, including media organisations. It is a right that is held by individuals. The rights, freedoms and privileges that media organisations have in most liberal democracies are consequential. They rely on the extent to which the media outlet or the journalist serves the free flow of information in society, and the right to freedom of speech of both the individuals who make up the media organisation but also the individuals in the audience and the broad general public. While for the most part large media organisations play a vital, effective and good role in disseminating information and extending the right to freedom of speech, it is possible—and the risk is highest when media concentration is highest—for the media to actually interfere with freedom of speech. This happens, for example, if somebody requests a correction to incorrect information and they have trouble in obtaining that correction, or if they ask for a right of reply to something that has been published and they are not able to obtain that right of reply. I think there is quite a lot of evidence, which I am prepared to detail, that we do have that situation in Australia with at least some media outlets at the moment.

Given that the right to freedom of speech of large media organisations is a consequential right and it relies upon the extent to which they serve the rights of freedom of speech of citizens, it is reasonable for them to sign up to standards about accuracy, fairness, publication of corrections and rights of reply and other matters. Indeed, all of our main media organisations have signed up to such codes and standards. If there is concern that they are not taking those obligations and standards seriously, then it does not seem to me unreasonable to suggest that their special privileges under law, which are there to enable them to disseminate information, should be contingent on taking self-regulation seriously.

I think legal penalties for conscientious free speech are obnoxious. I do not like the idea of editors and journalists being able to be sent to jail or heavily fined for conscientious free speech, but that is not what is proposed here. What is proposed here is that the privileges which result from media's role in advocating freedom of speech and advancing freedom of speech should be contingent on self-regulation, which makes sure that they stand up to their own standards.

That is it from me; the rest is in my written submission.

CHAIR: Thank you, Dr Simons. Professor Fraser.

Prof. Fraser: I also am very happy to be here and contribute to this process. However, I note that the haste of this process, of the introduction of these bills, is not conducive to good lawmaking. But I am happy to contribute, it being the case that the parliament's time is so short.

The role of the media is not enshrined in our Constitution, but it is the fourth estate with the parliament, the executive and the judiciary. One cannot run a liberal pluralistic democracy without a free press—it is an essential component. The press today, the media today, with the resources is available to them, are extremely powerful and at times it appears that they are more powerful than our elected representatives in setting the agenda and the national discourse. It follows along the lines of the focus of the media. The media holds everyone to account. The press holds every actor in the community to account. I also concur that it is reasonable that the media themselves should also be held to account. Powerful as they are, they are not above accountability. In this case, what is being

proposed in these bills is that the media should demonstrably and transparently live up to their own standards—no more than that.

It has been claimed by media representatives that their freedom of expression should be unfettered and unlimited, but no right is unlimited. They themselves recognise this by having industry self-regulatory standards and professional and ethical standards which they impose on themselves. Moreover, the right to freedom of expression by journalists or by an organisation that pretends to enjoy that right, which is an individual right, is limited to the extent that it conflicts with other fundamental human rights, such as the right to privacy, the right to reputation and honour of the person. These rights are equally important in a liberal democracy. So it cannot be the case that it is only the media that should not be accountable to anyone. And it cannot be the case that the essential rights of the media in serving the public's right to know cannot be limited. Indeed, as has been noted just now, these rights are limited by many other laws, such as defamation laws, privacy laws, contempt of court laws, suppression orders and other laws that apply.

I think it is agreed by everybody that the best mechanism for accountability by the press is self-regulation. I think many disinterested persons, including previous Chairs of the Press Council, have acknowledged that self-regulation by the Press Council has to date not been sufficiently independent and effective and that their decisions have sometimes been ignored by their members. Or, when their members have not liked the activities of the Press Council, their own body, in limiting their unfettered role, that they have walked away and withdrawn their funding and their membership. This bill attempts to maintain industry self-regulation but holds the industry to account to ensure that that self-regulation is genuine and lives up to its own standards. The other aspect of the public interest media advocate is ensuring diversity. Unfortunately, I have not had the opportunity to hear the earlier parts of the hearing, but I am sure that it is well established here that we have one of the most concentrated media in the world. There are many commercial reasons for that, but it is certainly in the public interest that news and current affairs should not be monopolised by only one or two voices. That is in the public interest.

Finally, I would make one further point. The public interest media advocate is proposed to be established by statute. There seems to be some argument that by establishing an office by statute that means that that office is not independent. But that is a false argument. There are many public officers that are established by statute to be independent, and this is intended to be one such office.

Senator BIRMINGHAM: Thank you both and particularly Dr Simons for providing a comprehensive submission at short notice, which everyone has had to prepare such things. Senator Conroy has put to the parliament and to the people that we should adopt these reforms on a take it or leave it basis. If they are unamended, should we take them or should we leave them?

Dr Simons: Regretfully, if they were completely unamended I would say leave them. But I think that some very simple amendments, particularly to the first two points that I mentioned in my submission—that is, the criteria that the PIMA must apply in deciding whether or not to give the heart foundation tick of approval to the industry self-regulation body and also the independence of PIMA's appointment. If those two points were addressed, and I think that that could be done quite easily, then I would say take them.

Senator BIRMINGHAM: Professor Fraser?

Prof. Fraser: I think with one or two simple amendments to ensure that the independence of the PIMA not only exists but is seen to exist, and that the factors within which the PIMA would operate are clear so that critics of the PIMA could not attack it for lack of independence because it seemed to be operating on a whim, if there were a framework there, then I think that it ought to be passed.

Senator BIRMINGHAM: The Australian Federation has operated happily for 113 years without these types of reforms in place. Why do we suddenly need them now?

Dr Simons: I would not say this is sudden. I would actually say that we could have had this argument at any time over the last 10 years. And, indeed, it has been had, although it may not have come to this forum. As was previously observed, we have one of the highest concentrations of media ownership in the world. It has steadily got worse since the mid-1980s. We are now talking about withdrawing the 75 per cent reach rule, which would see instant further concentration, particularly in rural and regional areas. That is one reason why we need it now. Secondly, there is no controversy about the standards. As the Finkelstein report observed, they are very similar the world around. There is no controversy about what the standards should be. I think that there is also quite a lot of evidence that while all the main media organisations sign up to commonly accepted standards, they are not taken seriously in newsrooms. I can draw your attention to some evidence of that if you wish.

Senator BIRMINGHAM: That would be useful because, frankly, one of the challenges coming into this is that the government has not exactly made the case for why these reforms are necessary.

Dr Simons: Certainly.

Senator BIRMINGHAM: If you think there are specific examples of how reforms like this could actually fix particular problems and particular examples, that would be helpful.

Dr Simons: Well, several recent adjudications of the Press Council go to this issue of the ability to get corrections published when false information has been published. Obviously— and I heard Professor Disney make this point earlier this afternoon—if false information is published to that extent, the media's role in promoting freedom of speech is comprised. So too, I would say, are its rights on special privileges also compromised. Adjudication 1558 concerns selective information on climate change being published. There was a difficulty in getting a correction published. Adjudication 1553 concerned Andrew Wilkie and the *Launceston Examiner*. An editorial that misrepresented the impact of his agreement with the Feds on the Hobart Hospital. He had trouble getting a correction published. Now, if an MP has trouble getting a correction published, imagine an ordinary citizen. Adjudication number 1550 concerns the Gold Coast City Council and the *Gold Coast Bulletin*. A front-page article about loan costs and so on, again the council had to go to the Press Council to get action taken because they could not get a correction published. I will not go through the others in detail, but adjudication 1549, adjudication 1547 and adjudication 1554 are also relevant. The Press Council has published its own statistical overview of the nature of complaints and those that are upheld. All this information is on their website. It is not like this evidence is hard to find. Furthermore, one of the—

Senator BIRMINGHAM: Are you saying that in all of those cases the Press Council rulings were rejected?

Dr Simons: No. The Press Council ruling was that corrections should have been published. The information was false and corrections should have been published. But in all of those cases the complainant had tried to get a correction published before they took Press Council action.

Senator BIRMINGHAM: So the Press Council action then took effect.

Dr Simons: But all of these media organisations have already signed up to standards saying that they accept the responsibility to publish corrections. But in practice they are not playing it out. Can I give you another example, which has not been to the Press Council. This is an article from the *Daily Telegraph* of 4 March. It contains photos taken surreptitiously of the Bulldogs rugby league star Ben Barba in a rehab facility. The photos on the website also showed his children, who were with him. Those pictures were pixelated. News Limited's own internal code of conduct would rule this out. Certainly Press Council principles do. And yet, it is published. How can this happen in an organisation which is committed to its own self-regulation? Now, there has been no complaint in this case. I do not think that is because the individuals concerned are happy with this happening. I think it is because there is a price to complaining. I have worked as an educator both in the industry and in universities with journalists for many years and as a media commentator. I know that until very recent times, the industry's own internal codes of conduct did not form part of the training in newsrooms. This has changed over the last few years, but under intense political pressure which is also one of the reasons why we are here today. So what we are talking about—

Senator BIRMINGHAM: You are saying that they were a breach due to a breach of privacy issues?

Dr Simons: In this case it is a breach of privacy. I do not actually think that privacy is the hot button issue here, as it is in the UK. I think it is fairness and accuracy which is the hot button here. I do not have the empirical evidence for that. That is an observation on the basis of my experience in the industry, and as a media commentator. There are other examples as well. There have been articles published on the conversation by the Winthrop professor in Western Australia about accuracy of reporting on climate change across the media. And I can give other examples.

Senator BIRMINGHAM: Some would say that that is a contestable issue.

Dr Simons: Well, it is a contestable issue. In many cases the Press Council has made findings on these things and yet the errors are repeated time and again. And ordinary citizens, including highly credentialed academics and MPs, cannot get corrections published. And yet the organisations in their internal codes and in their membership of the Press Council say that they will correct inaccurate information. Yet they fail to do it.

Senator BIRMINGHAM: So how do you foresee these particular reforms as actually changing these issues that you claim to be instances of media abuse?

Dr Simons: The Press Council has been under a considerable reform process over the last few years, and we heard Professor Disney detail those, including long-term funding agreements and contractual law. I would make the point that if those contracts were ever broken, that too would be a legal process, presumably, through the courts. It is not that it is a law free approach at the moment. But all of that has been done under pressure. I have

no faith that the publishers would not sabotage that reform process once the pressure is off or taken away. I think history suggests that that might well happen. But in any case—

Senator BIRMINGHAM: Publishers have had to provide funding upfront for three years. That is a fairly significant long-term commitment.

Dr Simons: That is true, but certainly among some of the people I talk to in the industry, it is not out of the question that they would give their four years of notice. It is not out of the question, I think, that contracts might be broken.

Senator BIRMINGHAM: Is there any reason, given the significance of these reforms, and they have been significant changes, that that process shouldn't be allowed to be tested?

Dr Simons: I think it is reasonable in this context to say that, given the whole right of a large media organisation to freedom of speech is contingent on the degree to which it serves the interests of citizens to accurate information and the free flow of ideas, to the extent that you are not prepared to sign up and take seriously standards which hold you to that mark, to that extent your special rights and privileges are also contingent.

Senator BIRMINGHAM: So, Dr Simons, to go to the specifics of the legislation, you have described the News Media (Self-regulation) Bill as giving dangerously wide discretion. You go on to indicate that the application of community standards in this context is wrong in principle in relation to the types of terms that are being used.

Dr Simons: Yes.

Senator BIRMINGHAM: So, for the particular section that goes to how a news media self-regulation scheme would be accredited, that section needs a complete re-draft, does it, to meet any kind of standard?

Dr Simons: Yes.

Senator BIRMINGHAM: As a pointed question, just having described the news media self-regulation scheme as it is described, do you believe it is possible for newspapers or online news sites to effectively do their jobs without the Privacy Act exemptions?

Dr Simons: I have given a lot of thought to this, and I am not a privacy lawyer, so this is not a lawyers answer. There are some sorts of journalism which I think would be possible, but it would be under an immense bureaucratic burden of having to contact everybody mentioned, get permissions and so on. Some kinds of journalism I think would not be possible, and that is particularly the investigative journalism, the journalism that annoys people and so on. That would not be possible in anything but the most sporadic fashion.

Senator BIRMINGHAM: Okay. In that case, in terms of this being a self-regulatory scheme, really that self-regulatory nature will be taken away by these reforms, won't it, because it will be impossible to do your job if you are not signed up to a scheme? And there is a government arbiter looking over the scheme to say whether or not it meets a range of government conditions, which at present are terribly vaguely defined.

Dr Simons: Well, it is a self-regulation with a statutory underpinning. Self-regulation because the body is financed by the publishers. The standards are very similar to the system that currently applies to broadcast media. The codes of conduct under the broadcasting act are agreed by the broadcasters and then given approval by ACMA. That is the system that has existed without much controversy or claim that it is a limit of freedom of speech for broadcast media for many decades. So the codes of conduct are developed by the industry, they are approved by ACMA, or in this case the PIMA. With broadcast media at the moment, a licence can actually be withdrawn or a condition imposed if they are found to be in breach of standards. Now, this is much more liberal than that. You are just saying you will lose your special rights and privileges under law. They are not talking about withdrawing a licence.

Senator BIRMINGHAM: Do you believe that it is appropriate for newspapers to run campaigns?

Dr Simons: In some cases, yes. It is certainly within their rights.

Senator BIRMINGHAM: Even though those campaigns may choose to take a side on an issue?

Dr Simons: Yes. Indeed, some of the finest journalism has resulted from campaigning journalism, yes.

Senator BIRMINGHAM: How does the notion of fairness fit into such an approach?

Dr Simons: The facts have to be accurate and the distinctions between fact and opinion should be clear. Exactly what the Press Council principles say.

Senator BIRMINGHAM: And when those facts are contestable?

Dr Simons: Well, all facts are contestable at a fundamental philosophical level. But there is the simple case of whether something did happen or didn't happen, something was said or was not said and whether the evidence says this that. These facts one can assess.

Senator BIRMINGHAM: The first two points of those three examples—something did happen or did not happen, something was said or was not said—are usually relatively black and white. Whether the evidence is of course were often times you will enter a grey zone.

Dr Simons: Yes, that is right.

Senator BIRMINGHAM: Should newspapers running campaigns be held to account in having to justify that their evidence is bullet-proof in that sense?

Dr Simons: I think that where there is controversy and a diversity of views or contestable evidence, that needs to be fairly represented. For example, climate change is the example everybody uses now, but 30 or 40 years ago it might have been the health impact of tobacco. Where there is a weight of scientific evidence in one direction and also some disputes and controversy, that needs to be fairly represented. Campaigning journalism is often not a matter of campaigning for one lot of evidence. It is a matter of bringing a particular issue to light. For example, in the early years of my journalistic career at the *Age*, there was a campaign to clean up the Yarra. That was not an issue that was on anybody's agenda before that. So a campaign is not necessarily pushing for one particular world view; it can simply be saying that here is an issue that should be brought to public attention. The *Australian* has done some terrific work on indigenous affairs in this case, saying that these issues have been neglected and they should be brought to attention. That, too, is campaigning journalism.

CHAIR: Senator McKenzie

Senator McKENZIE: Dr Simons, section 8 of the Public Interest Media Advocate Bill says that PIMA will be appointed by the minister. You raise this as an issue in your submission. I would appreciate it, as I am sure that others would, if you could expand on why that is an issue.

Dr Simons: Well, the bill also says that the PIMA cannot be directed by the minister and yet the minister appoints the person and also has the power to dismiss them, presumably. This is a very important position. Freedom of speech is a very important issue. The government should not be involved in licensing journalists. So, I think an arm's-length process similar to that which has been employed for the ABC and SBS boards for similar reasons would be more appropriate—or appointment by parliament. I heard Professor Disney this afternoon propose a three-person panel. That is another option which had not occurred to me.

CHAIR: Thank you for your submissions, and thank you, Dr Simons, for actually putting yours in writing. It is helpful. You raise the issue of Section 7(3) about what you describe as 'dangerously wide discretion'. You say PIMA must have regard to “amorphous criteria such as 'community standards'”. That is not how it is in the legislation, is it? It is not like that. What the legislation says—

Dr Simons: “The PIMA must 'have regard to' the 'extent to which' the body—”

CHAIR: The standards reflect. So that is not quite what the legislation says, is it?

Dr Simons: Sorry, what is not quite what the legislation says?

CHAIR: You are saying that these amorphous criteria such as community standards. So it gives the impression that the PIMA has to have this reliance on community standards. But what the legislation says is that the self-regulation body must have regard to community standards.

Dr Simons: My reading of the bill is that the PIMA must have regard to the extent to which the regulation body reflects community standards in order to decide whether or not to give it the tick of approval.

CHAIR: That is 7(3)(c).

Dr Simons: I do not have it in front of me, I am sorry. You have the advantage of me there.

CHAIR: Would it make any difference if the determination by PIMA was in relation to the community standards that applies to the self-regulation rules?

Dr Simons: I am sorry; I do not follow the question.

CHAIR: You have raised the issue.

Dr Simons: Yes, but I do not understand the question.

CHAIR: The legislation says at 7(3)(b):

the extent to which standards formulated under the body corporate's news media self-regulation scheme deal with the following:

(i) privacy;

(ii) fairness;

(iii) accuracy;

(iv) other matters relating to the professional conduct of journalism;

No drama. No problem. Then it says at 7(3)(c):

the extent to which those standards reflect community standards;

Well, there are community standards, surely, in terms of privacy—

Dr Simons: Well, yes.

CHAIR: fairness, accuracy and professional conduct.

Dr Simons: How is the PIMA to determine what the community standard is on whether a journalist should protect the confidentiality of a source? Or whether a journalist should conduct an aggressive interview? Community standards in the sense that you and I might meet over a coffee would suggest that there is a certain standard of polite behaviour. If I were interviewing you as a journalist I may well not be very polite. The term is so vague.

CHAIR: You have actually been in Aussies then, have you?

Dr Simons: Frequently! The term is so vague that it could mean anything and we have a single statutory officer who has to in some way divine what the community standard is on these contentious issues.

CHAIR: But isn't there statutory officers making these determinations on national interest, on public interest matters, all the time—all over the world?

Dr Simons: If you look at people like Auditors-General, for example, it is usually in a fairly well defined field where they are bringing professional expertise to bear, for example on an annual report or a statement of accounts. To bring this single statutory officer's understanding, I assume, of what community standards are to bear on a news media self-regulation body is the wrong standard. There are professional standards recognised internationally—well written up in professional literature and reflected in things such as the Media Alliance code of ethics and the Press Council statement of principles.

CHAIR: Do those reflect community standards within the industry?

Dr Simons: They reflect professional standards—the norms of journalism.

CHAIR: So if (c) was changed to 'the extent to which those standards reflect professional standards', would that satisfy you?

Dr Simons: I am not a legal drafter and I am not going to say yes, they are the words.

CHAIR: No, I'm not asking you for a legal opinion. You have had an opinion on it, so I am simply asking you for an opinion. You have said that it should be about professional standards. So if 'community' was changed to 'professional', would that be more comforting for you, let me put it that way?

Dr Simons: Something in that direction or along those lines. I am not going to commit to those precise words.

CHAIR: Because you said that minor changes were required. This is the type of drafting changes that we have to look at.

Dr Simons: I think you need to have a simple list of as objective as possible standards, and I referred to a page in the convergence review which I think is a good starting point for that. I do not think that that is very difficult to do. I would probably take out any reference to community or professional standards. But, as I say, I am not trying to draft the bill.

CHAIR: Okay, Thanks. Professor Fraser, have you followed the history of the Press Council?

Prof. Fraser: Yes.

CHAIR: How would you describe their approach over a number of years?

Prof. Fraser: Before saying that, I too would like to acknowledge Julian Disney's role since he has taken over as chair. He has been trying to bolster the Press Council. But there is no regulatory body that is effective without enforcement powers. Unless those regulated fear the regulator, that the regulator has an armoury of weapons with which to enforce their decisions, that they are binding and that they can't be walked away from, then any form of regulation is not worth the paper it is written on. The Press Council has had a role as a self-regulatory body, but it has been weak.

CHAIR: People spoke earlier about carrots and sticks. We have a hugely influential and powerful press in this country. Is that your estimation as well?

Prof. Fraser: It is, and if I could just say a few words as to why they should be regulated now. I think that they are far more powerful than before. As a community we had norms that were well established and recognised by all kinds of corporations, including media corporations. But now we see extreme invasions of privacy using long lenses and surveillance techniques and we see prurient interest in people's personal and private lives far beyond what would have been unimaginable only a short while ago—within our own lifetimes. The media now have such powerful techniques and technologies and propaganda skills that they are feared by everybody if they focus these techniques. As we have seen in the UK, even the most senior politicians have feared the power of the media. The lack of ability of an ordinary citizen to get a right of reply or correction or to be able to even be consulted sometimes before a story touching on them is run, I think that is why these issues have come up. Although we have avoided the most egregious examples such as in the UK, I think there is a general feeling in the community now that this great power of the media is unsettling our civic life and the ability of others to go about their duties.

I would like to see some more clarity around the factors that the public interest media advocate would need to advert to. However, I do not think that you have to drill down far, because some of the most effective changes in our society have been with the introduction of very broadly based new laws, like the competition and consumer laws. They introduced broad concepts of fairness in contracts and abuse of market power. Nobody knew what they meant at first and lots of corporations objected to them. What do these very broad terms mean? But if you have a conscientious office—in that case the ACCC—who publish the reasons for their actions, you come up with a body of understanding as to what these terms mean and how they can be applied consistently. To drill down into too much detail in setting the parameters would limit the ability of the PIMA to respond to unimagined changes in the way that the media operate.

CHAIR: Yesterday, News Limited threatened High Court action if these laws went through the parliament. There is an issue of case law as well. Some of the issues that Dr Simons is raising and how you would interpret some of the issues that the PIMA has to have regard to may also be subject to case law. I don't know that you can ever say that when you draft legislation and have it passed in parliament that everyone is clearly of the understanding of what it means. There is always litigation to get case law to determine exactly the meaning. So aren't we sort of throwing the baby out with the bathwater? Because of the pressure from the media groups, we get ourselves spooked to say, 'Well, we have to get this exactly right'. And yet in other areas of legislation, the legislation goes in and then there are challenges, there is case law and there are practical developments. Is that to be discarded when you are talking about the press? That is the point I am making.

Prof. Fraser: That is right. It is new. But this problem can also be ameliorated actively if the regulator, the PIMA, which is really a recognition body, is proactive and publishes best practice guidelines and it publishes its opinions. It can build up a body of advisory material that will serve as a guide so that perhaps you can avoid doubt and you can avoid litigation.

CHAIR: Wouldn't you think that most of, not the case law, but the practical application of the laws would be determined by the Press Council itself actually applying their own standards. And if they apply their own standards then PIMA has got no job to do, have they? Other than in terms of mergers and concentration of the media. But in terms of overseeing the work of the Press Council, the best practice would be that PIMA does nothing.

Prof. Fraser: It has an initial role, does it not, in declaring the self regulatory body that its code does deal with this issue of fairness and accuracy. It looks at privacy, it looks at professional journalistic standards and it looks at these community standards as well. If the code adverts to those and deals with them, and if there is a complaints mechanism that people can directly access, including access to the PIMA, then it can declare that organisation. So it does have a role as providing a checklist that the industry self-regulatory body must meet. But it can meet and address those standards in its own way.

Dr Simons: If I can just add to that, the PIMA does all of that and can also withdraw the authorisation. That is a concern. Everything you said, Senator Cameron, about the legal process and case law and so on is of course true, and is true whether the law is well drafted or not. I mean, it is not a reason to be relaxed about the drafting.

CHAIR: No, I am not saying that we should be relaxed.

Dr Simons: All of that will happen regardless, and I am sure that Senator Conroy would have had some legal advice on the potential for a High Court challenge by now as well. But it is not a reason not to draft as tightly as possible. Also, of course, when one is anticipating laws that are for the long term, one should think about what would happen if you had the wrong person in that job—somebody who says that community standards are that journalists should not be rude in interviews and the Press Council has not been holding that up adequately and

that is a problem. Of course, it seems unlikely but we have had some very unlikely people dealing with these sorts of things in the past.

CHAIR: But, Dr Simons, that is not what the legislation says. The legislation says that the Press Council set the standards.

Dr Simons: It says that in deciding whether or not to give and maintain an authorisation, the PIMA will have regard to the extent to which the media self-regulation body applies community standards.

CHAIR: Sure. Before I hand over to Senator Ludlam, you mentioned some of the adjudications by the Press Council. I was waiting to hear 1555. I am not sure if you are aware of 1555, which is the Blair Donaldson and the *Australian*.

Dr Simons: I am broadly aware of it.

CHAIR: I have raised this. I wish I had had this yesterday when News Limited were in the room, but I received some stuff on it today. This goes to basically a number of issues. Basically quoting a sheep farmer who said that the 'wind-farm business is bloody well near a paedophile ring. They're f..king our families and knowingly doing so.' And there were a couple of other areas in that. The Press Council concluded that that was a breach and that certain things should be done in relation to that. The IPA, which you would not be bothered about I am sure, came out and criticised it, so I will not go there.

But after the Press Council made this determination—and they made a determination 20 December 2012—on 21 December the person who wrote the original article, a James Delingpole, wrote another article and basically repeated the same position. So it was in direct defiance, basically, of the council. Then on 21 December the *Australian* ran an editorial basically saying, 'Press Council: up yours'. Then on 22 December we had Christopher Pearson defending the position of saying to the Press Council, 'We don't really care'. How could any anyone have confidence, even in the Press Council now with the good people that are there, if the *Australian* and the Murdoch press treat them with absolute contempt?

Dr Simons: Indeed. And this is not new. Senator Birmingham earlier asked 'Why now?' Well, I remember when I was writing a book on the Australian media which was published in 2007—so this must have been around 2005 or 2006—when there was a very similar controversy in which there was a Press Council adjudication against, I think, the *Herald Sun*. Do not hold me to these details. They published the adjudication, but alongside it an article which defied it, basically. There have been other examples as well. Again, I would say that this is an example that demonstrates that all the rhetoric about currently adhering to standards and media organisations being the judge and jury in their own case about whether standards are being observed, can be a bit hollow. Not in every case. Excellent work is done. But the example you have raised, I think, like this one in an organisation in which its own internal standards on privacy were inculcated and were spread through the organisation and understood by photographers and journalists and editors, how would this happen? It is very telling about the newsroom culture.

CHAIR: Thank you. Senator Ludlam.

Senator LUDLAM: Dr Simons and Professor Fraser, I'm sorry that I missed the first part of your evidence. I am interested in some of your comments later in the document—and thanks for putting this submission together on such remarkably short notice—on using the privacy clauses as something of a hook or something of an incentive, I guess, for media companies to stay within the Press Council. I believe overseas it is defamation law that has been used in similar schemes. Here it is privacy.

Dr Simons: That was Leveson's recommendation, yes.

Senator LUDLAM: You have made what could be described as a cautious approval that that might be the appropriate way to keep companies in the tent.

Dr Simons: It is a very difficult balancing act between freedom of the press and holding journalists to account for their own standards. It is seriously a difficult balancing act and you can see that from the way that jurisdictions all around the world wrestle with it. Obviously most prominently the UK at the moment. Different balances have been struck. So I do not think you are going to get the perfect solution. The Privacy Act exemption is a privilege that is given so that the media can better serve the interests of freedom of speech. It is reasonable to make it contingent on the extent to which they observe standards in freedom of speech. But I do think there are big problems with the way that bill is drafted, as I have detailed.

Senator LUDLAM: In the first part you have some quiet strongly worded concerns that the chair was teasing out just before on community standards and so on.

Prof. Fraser: Forgive me please. May I just interrupt on that particular point and make a contribution to that question about the sanction of not having the privilege of the exemption from the Privacy Act? Obviously, there has to be a sanction for breaches, otherwise, as we have said, they are meaningless. But in my view this sanction would effectively stop a media organisation from functioning in large part, from doing any investigative journalism. So it is a very powerful sanction. In that case I think that the PIMA will rightly hesitate to use it, and it may not be used, just as one sees in broadcast the revocation of the licence not used. So I think for effective regulation it is important to have a range of graduated sanctions.

Proceedings suspended from 19:25 to 19:50

McCREADIE, Ms Sue, National Director, Media, Entertainment and Arts Alliance

MacRAE, Mr Drew, Federal Policy Officer, Media, Entertainment and Arts Alliance

CHAIR: We have present Media, Entertainment and Arts Alliance representatives. Thank you for coming along to talk to us tonight, Ms McCreadie and Mr MacRae. Does anyone wish to make an opening statement?

Ms McCreadie: Yes. I will make a brief one. Thank you very much, Senator Cameron and other members of the committee, for the opportunity to appear. I appear on behalf of Actors Equity, which, as you probably know, is a division of the Media, Entertainment and Arts Alliance, which also includes journalists and media workers. Of course, there is a lot of interest in their issues. I appear tonight to, I guess, represent the issues of our actor members—professional actors throughout Australia—many of whom earn their primary living from television drama, along with directors, screenwriters, producers, cinematographers, editors and production designers. They collaborate to produce the dramas that you see every night on your screens.

I think the whole of the production industry is united in being very troubled by the Australian content provisions of the Broadcasting Legislation Amendment (Convergence Review and other Measures) Bill. Actors Equity, along with all the other organisations, engaged very closely with the convergence review on the issue of Australian content. Of course, that is a major issue for us and has been a major issue for many decades. It is an issue we have campaigned very strongly on. We feel that that panel consulted our industry widely and over a lengthy period. In our view, in the final report of the convergence review on Australian content, the recommendations were well-reasoned and well-considered. Those recommendations included both transitional and longer term measures to support new Australian content in the digital environment. Those transitional measures included allowing the commercial networks some flexibility insofar as recommending that they be allowed to fulfil their subquota obligations for drama, documentary and children's drama to spread those obligations, which are currently on the main channels, across on to the digital channels but—and it is a very big but—with the proviso that the quotas be increased by 50 per cent.

So what we have in this bill instead is that they are allowed to spread those subquotas, but there is absolutely no increase, as you know, in the obligation. Of course, we acknowledge that in the bill that we are discussing there is a requirement for minimum Australian content on the multichannels. But the hours requirement is set at a level which is well below what the networks are already showing on the multichannels. Most importantly, that quota can be met through repeats and through genres which, historically, it has been acknowledged do not really require any particular support. They are genres such as news, sport, quiz shows and reality TV.

The new standard does nothing to encourage the most vulnerable genres, in particular drama, which has been historically recognised as needing its own subquota—that is, its own specific quota. The final report of the convergence review explicitly recognised that drama, documentary and children's drama need ongoing support. I would just like to quote what the report said about drama, which is:

> Drama contains the most artistically rich content and has the greatest capacity to tell complex stories and convey social and cultural messages.

Well, unfortunately, the bill as it stands—and it looks tragically like it will go through as it stands—will result in a dilution of Australian drama on the main channels. Insofar as it is fulfilled on the digital channels, it is likely to result in lower average licence fees. Clearly, the licence fees which the networks will pay for content on the digital channels are significantly lower due to the lower audience numbers and the lower advertising revenue. So it is quite problematic in terms of a sustainable screen production industry. I have not seen the transcript, but I believe yesterday Channel Ten acknowledged that they would pay less for content on the multichannels. Certainly in our experience dealing with contracts every day and agreements, we know that the licence fees on the digital channels are substantially lower.

So this is a huge concern for the screen production industry. Ultimately, it is a concern for Australian audiences. It is a great shame that with all the noise around the media reforms, this issue in this bill, which is part of one of six bills, has had really, I think, very little debate and very little public exposure and there is very little public understanding of what is going on, especially since Australian audiences have really demonstrated an increased appetite for Australian drama in recent years. They have got very used to high quality dramas, such as *Rake*, *Howzat!*, *Puberty Blues* and the *Slap*, just to name a few. Really it is quite ironic that at a time when Australian drama is enjoying a considerable resurgence it has never been more under threat in the digital environment. We do not have a sensible transition plan and we do not have a plan for going forward into the bigger converged environment. Had the convergence review recommendation been implemented, it would have equated to no more than 30 to 60 minutes a week of adult drama per network and no more than 20 additional

minutes a week of children's drama per network, which I think is a very modest ask and pales into insignificance when compared to the licence fee rebates that are being provided to the networks.

I was going to say that I think the bill should not pass, and I still believe that, but it looks unfortunately like it could go through. It is a real shame because it is a waste of three years of engagement around the convergence review. What I would say, though, is that at the moment there is no provision for a review. There really does need to be some provision for a review of what the impact is of this one-sided flexibility, which allows the commercial networks to spread this obligation for drama, documentary and children's drama on to the multichannels to look at the impact on audiences, to look at the impact on licence fees and to look at the impact overall on our culture and our production industry. What we need above everything, of course, is a plan for going forward, which we do not have, because we have had no sensible response, I think, on the Australian content side to the convergence review. So what is the process for dealing in the coming years with supporting Australian content? What sort of mechanisms are we going to have? It can be regulation or it can be subsidy and it can be, as it has been for several decades, a mix of regulation and subsidy. I think this is a failure of regulation, so really we will have to pick up the ball on the subsidy side, if that is the way we are going forward. But we need a mechanism, essentially. We need the independent regulator, I think—ACMA—to be pulled in more to this process. We need some kind of process for involving the industry as well as the broadcasters and perhaps organisations like Telstra and Google going forward. Thank you.

CHAIR: Thanks, Ms McCreadie. Are you making any submissions on any of the other bills?

Ms McCreadie: No. Our media division will make a submission on the other bills. But we will not be tabling that tonight.

Senator BIRMINGHAM: I have a few questions. I have to duck out in a minute and so I apologise for that. Obviously, you are very critical of the process that has been applied here. That is in relation to issues that have engendered less criticism elsewhere. The media companies, when asked about the content quotas, indicated that they had reached a point of agreement with the government in November last year. What engagement or consultation did you have with the government over these matters?

Ms McCreadie: Well, to be frank, since the convergence review final report came out, there was initial engagement and we made clear our support for those recommendations. But I think once that deal was done, it was quite hard to get a conversation going.

Senator BIRMINGHAM: Once the November deal was done?

Ms McCreadie: That is right, yes. In fact, in the lead-up to it, it seemed that was the case, yes.

Senator BIRMINGHAM: You make the contention that drama produced on the multichannels is of less value than drama produced on the primary channel or is likely to be produced at a lower cost basis. Why, when the networks have a desire to increase their viewing audience, wherever it may be, would that hold to be the case over the longer term?

Ms McCreadie: Well, I think the viewing audience is only one of their considerations. The whole rationale for specific subquotas for genres such as drama in particular, including children's drama—children's drama is not so much a ratings issue—is that adult drama does rate very well. But imported drama can be purchased for a fraction of the cost. So the networks are looking at costs and they are looking at ratings and they are balancing the two. The ratings relate to their advertising revenue.

Senator BIRMINGHAM: Do you dispute the figures given by the networks, which I think are that 47 of the top 50 rating programs last year were Australian produced content?

Ms McCreadie: Well, I am not disputing that. But very few of them were drama. I think *Howzat!* was in that, but I do not think any others were in that list.

Mr MacRae: They would be reality television type programs, news and sport.

Senator McKENZIE: So what are the numbers for drama?

Senator BIRMINGHAM: I will leave it to Senator McKenzie, actually.

CHAIR: Thanks, Senator Birmingham.

Senator McKENZIE: Thanks, Senator Birmingham. So what are the numbers?

Ms McCreadie: In terms of what?

Senator McKENZIE: In terms of the top rating programs that were dramas?

Ms McCreadie: Well, I think *Howzat!* was well rated at over 2½ half million. *Underbelly*, I think, held the record earlier, which was over two million, which had been the highest rating drama program. So the ratings have

been going up for these high production value programs. But the issue is that for the networks, ratings is only one thing that they take into account. Clearly, cost is an issue. There is fabulous imported drama as well, and that rates well. But our concern is that Australian audiences see Australian stories and Australian performers on screen. The rationales, really, for the content quotas have historically been cultural rationales.

Senator McKENZIE: Thank you. In the conversation around content by 2015, you released a statement on 12 March that said Minister Conroy, and I quote:

...was pulling a swiftie on the Australian community in regards to mandating additional hours of Australian content on Australian TV screens.

Why did you think this was the case?

Ms McCreadie: Well, because he claimed that it was going to create additional Australian content, and clearly it is not, because the requirement is for 730 hours on the multichannels and they are currently doing, I believe, something like 1,400 hours a year. So it is not much more than half of what they are currently doing. The ultimate goal is also only about what they are doing now. So it is not an incentive to increase what they are doing. I think it is a way of saying, 'Well, okay, we'll set a minimum, but we're not addressing a problem.' I've called it smoke and mirrors in the past, and I think that is the same thing as a swiftie.

Senator McKENZIE: I think you are not alone there.

Ms McCreadie: I think it has created an illusion, unfortunately, for the Australian community that something is being done and it is not actually going to make any difference. If there is any change, it is going to be a negative one because of this new flexibility arrangement.

Senator McKENZIE: In terms of the public interest test, are you happy to comment?

Ms McCreadie: It is not so much our area.

Senator McKENZIE: But in terms of the comments around doing anything to protect or promote diversity of voices in the media, what do you think is the greatest threat to diversity of voices in the media?

Ms McCreadie: Well, I think what our media division has said is that they think it is a shame that none of these bills or none of this discussion is really addressing the major crisis in the media sector. Twelve thousand journalists—twelve hundred, sorry; I just added a zero—have lost their—

CHAIR: You did a Barnaby.

Ms McCreadie: Twelve hundred journalists lost their jobs this year. Clearly, that has an impact on diversity. So I think what the union would like to have seen is a plan for increasing investment and increasing the sustainability of good journalism going into the future. They do not feel that this package addresses that at all.

Senator McKENZIE: So in terms of the convergence review and the huge amount of scrutiny and purported consultation right across industry and stakeholders in the media conversation over the past few years, is this the iconic response we were expecting to take us forward into the 21st century?

Ms McCreadie: What, these six bills?

Senator McKENZIE: That is right. I am assuming this is the minister's response to all those consultations, conversations and reviews.

Ms McCreadie: Well, I guess we would be hoping that it was not the response. As I said, I think that going forward into the future, we have always had a mix of regulation and subsidy for this sector. I think it is acknowledged in the convergence review that certain genres need support going forward into the future. There is nothing here that does that. So I would hope this is not the iconic response and that there was some mechanism for further discussions, yes.

Senator McKENZIE: Have you had any conversation with the government that would suggest there is more to come?

Ms McCreadie: Not particularly. But I guess we are hoping that there is, yes.

Senator McKENZIE: Thank you, Chair.

CHAIR: Ms McCreadie, the submissions we have had in the last couple of days have concentrated on the changes to the Press Council and the establishment of the PIMA. You are raising an issue that has not had much debate over the last couple of days except to say that the media companies are saying continually that local shows are the top rating shows and that more and more money is going into them. But you say that is in a narrow area of sports and what else?

Ms McCreadie: I think the increase has been in others. We were looking at some figures earlier. These are slightly out of date. Certainly the increase has been in areas such as news and current affairs and light

entertainment. In fact, children's drama has been going down. There has been quite a lot of pressure on children's drama. There has been a shift from live action drama to animated drama, essentially to, I suppose, save money and fulfil the quota in a cheaper way. That is a concern for us, I think. If you look at it long term—if you looked over, say, about seven years, it goes up and down—you see that there has not been a substantial increase. But there has been a substantial increase in some other areas. Indeed, in sport there does seem to be a significant increase there. Looking at 2000, it was $261 million going up to $330 million in 2008-09. Some of the figures are out of date, but that is not entirely our problem, of course. There are ACMA figures.

Mr MacRae: We just have some figures from ACMA detailing figures that have not been released about 2009-10 and 2010-11. It is quite clear that all the increased expenditure is going towards sport, news and current affairs, light entertainment and variety programming—so your reality shows—and a very minimal increase to adult drama of roughly about $5 million. Documentaries are down quite significantly, as is children's drama.

CHAIR: Is the ABC included in those figures?

Mr MacRae: No. These are just the commercial networks.

CHAIR: Have you got any views on the ABC?

Mr MacRae: The ABC received an injection a few years back in 2008-09, I believe. That was a significant boost to Australian drama. They have carried that through. As you can see, the output has increased vastly.

CHAIR: In other hearings, not this hearing, it has been put to me that the costs of Australian drama are quite prohibitive for some of the commercial stations, given their financial position. How do we deal with that issue?

Ms McCreadie: Well, there is significant subsidy on offer. There is the producer offset of 20 per cent for television. We and other industry organisations have supported an increase in that perhaps for a premium fund or an overall increase. Obviously, there are some fiscal limitations on that, but we have supported that. But that is there and the Screen Australia subsidy is there. So I think they need to take into account that it is heavily subsidised as well as regulated. So it is perhaps not as prohibitive as they see it.

CHAIR: What about the reduction in the licence fee issue? Would that provide an incentive for more local products?

Ms McCreadie: Well, not unless there is some serious obligation. I think that is the problem. At the moment, the reduction in the licence fee is going to happen. To date it has not resulted in an increase in Australian content. Now we have got locking in the reduction. I do not see that, without an effective change to the Australian content standard, that will happen. There needs to be an obligation to go with that reduction.

CHAIR: Briefly, walk us through the areas of concern you have with this block of legislation.

Ms McCreadie: Well, the first concern is that it is being presented as an increase in Australian content. The transmission quota requirement, which is effectively a transmission quota for the digital channels, the multichannels, is less than what they are currently doing. Secondly, in the genres which are most vulnerable and historically acknowledged as being most vulnerable, such as drama, documentary and children's drama, there is no subquota for the multichannels. Worse still, there is a flexibility proposal to allow the subquota on the main channel to be fulfilled by being spread across on to the multichannels, which will result in a dilution in those genres on the main channels and potentially drive down the licence fee. Certainly there will be lower licence fees insofar as the networks choose to shift their obligation on to the digital channels. I think that would be the main short-term problems. The longer term problem is there not a long-term process or plan.

CHAIR: It seems to me that the multichannels are being used as a filler.

Ms McCreadie: Yes.

CHAIR: I do not know whether that makes any sense. I do not know what the technical term is. They just fill the space with repeats.

Ms McCreadie: Yes. A lot of repeats.

CHAIR: And some of them are okay. I think some of the channels have got reasonable audience reach. So would it really matter if these multichannels actually do put in some new drama?

Ms McCreadie: Well, it would be great, but the trouble is that at the moment it is a zero sum game. It will take away from the main channels. The networks rarely exceed their obligations, so that is the trouble.

CHAIR: It is not so much membership, but how many artists or actors are actually working on a regular basis in the Australian industry? Is there such a figure? There is a bit of casual in and out. Give us an idea how it works.

Ms McCreadie: What are you saying? Nine thousand?

Mr MacRae: No. One thousand.

Ms McCreadie: One thousand working really regularly. There would be 9,000 people probably who make a significant living from acting or see themselves as actors. So our estimate is 1,000 for those who work in and out.

Mr MacRae: That would cover television, theatre and film. But it is a very intermittent job. It is very insecure. It is one of the most insecure jobs you could get. There is usually at any one time about 90 per cent unemployment. So you can have a one-day job and then the next day you do not have the job.

CHAIR: So you are unhappy with the bill. What are your options or your recommendations to us?

Ms McCreadie: Well, our recommendation, in the best of all worlds, would be to implement recommendation 18 of the convergence review, which is the list of transitional recommendations to deal with the transitional environment. Since that is not in there, we certainly think there should be a review process or mechanism to look at the impact and to see whether the licence fee rebates have indeed led to increased Australian content. We would be particularly interested in drama and documentary and children's programming being highlighted in there to see what the impact is.

CHAIR: Are you saying that if this legislation goes through, there should be a review?

Ms McCreadie: Yes, definitely.

CHAIR: So what timeframe are you looking for?

Ms McCreadie: Twelve months would be good.

Senator McKENZIE: We have heard of a review before. They were suggesting three years. I wonder why you would pick 12 months? Is that long enough given the production timelines and contractual negotiations that I assume you go through?

Ms McCreadie: Well, I suppose it is open to discussion how long the review should take. I suppose we are in a fairly rapidly changing environment, though. It is debatable, but some would say that the current landscape in three years or five years is going to be very different. So given that we are looking at the transitional arrangements, I would think maybe shorter than three years could be justified. Essentially we just think there should be an independent review, perhaps by ACMA.

CHAIR: Do you have any draft terms of reference that a review should look at?

Ms McCreadie: We could do some. We would say: have the licence fee rebates resulted in increased Australian content, with special reference to the genres currently covered by subquotas? What has been the impact of the flexibility arrangements which allow the subquota obligations to be spread across the digital channels?

CHAIR: Senator Ruston, do you have any questions?

Senator RUSTON: Sure. If there is time.

CHAIR: Yes, sure.

Senator RUSTON: You commented before that the major crisis in the media sector was the loss of 1,200 jobs for journalists. Could you expand a little on that, particularly in the context of how or whether these bills address this issue or not address this issue? How would you like to see them address this issue? Having had a look at the bills to some degree, I am not quite sure how that comment actually can be addressed by the context of what we are dealing with today.

Ms McCreadie: You do not see how the bills could have addressed that one way or the other?

Senator RUSTON: I do not see how they do.

Ms McCreadie: Right. I defer to our media section, because I am here representing the performers section. Their view would be that there is nothing that addresses the crisis in the business model, which has resulted in the loss of 1,200 jobs. There is a shift towards outsourcing and offshoring of some jobs. So clearly there is—

Senator RUSTON: Journalist jobs?

Ms McCreadie: Subeditors jobs, yes. The journalist jobs have been lost, but subediting is being outsourced, basically. There has been a shift away from subeditors being, I guess, local. They are being outsourced so that they are distant. Some have been moved to New Zealand, I understand, yes.

Senator RUSTON: So how would you like to see that addressed?

Ms McCreadie: Well, I think that is the subject of a bigger discussion about how you promote investment in new media.

Senator RUSTON: I suppose I ask the question only because there is an obvious change out there in the media space of recent times, which has seen many things change. I suppose if you were a blacksmith 20 years ago, you could not reasonably expect to continue to be a blacksmith. So is the change in the media space just—

CHAIR: There are still some blacksmiths.

Senator RUSTON: There is one, apparently, in our chamber. I use it only as an example. Is the change in the media space driving change? I only draw it to your attention because you said the major crisis in the media sector is the loss of 1,200 journalist jobs. I wonder whether that is just not a result of a change in a space as opposed to being a crisis that should be averted.

Ms McCreadie: Well, I do not know if it is so much averted, but how do you deal with that adjustment and how do you maintain diversity in that sort of environment? Clearly, when you lose a lot of journalists from a particular newspaper, for instance, there is less diversity and there is a lot more pressure on people. I think there is probably less scope for in-depth investigation and journalism. It feels that way.

Senator RUSTON: You made a comment about the ratings in relation to drama were high but you said spending generally tends to focus on sport and reality TV, obviously, because they must be live. Has anybody actually had a look at the costing mechanism that would suggest that? Ratings run how television put their programs on, I would suggest. How high do ratings need to be to absorb the cost of production of local drama in comparison to the other things? I understand your point, but I wonder how much the market is allowed or could drive the outcome of that?

Ms McCreadie: I do not know that I would have the figures. I guess what I was saying is that there is a trade-off between cost and revenue. The ratings lead to the revenue. They are related to the advertising revenue. So the network has to balance the two factors. Yes, I am sure there is probably a demand and supply curve we could draw, but we would have to look at how that would work. It would be very high, I would suggest.

Senator RUSTON: I suppose it is just a question whether there has been any cost-benefit analysis. We would all like everything to be perfect, but you just cannot afford it sometimes. If the cost is so prohibitive, the people of Australia probably need to make the decision as to whether they want the drama or whether they are happy to have the sport and reality TV.

Ms McCreadie: Well, I do not think it is prohibitive. I think that probably the subsidies that have gone into the industry have been fairly modest. The networks, of course, have got free access to scarce spectrum. Part of the deal has been, 'Well, you've got that for nothing. In exchange, there's regulation that obliges you to do certain things for cultural reasons.' I would not suggest it is prohibitively high. I think probably the amount that each taxpayer pays in order to get access to Australian content on television is fairly low. I do not know if you have ever seen a figure on that, Drew?

Mr MacRae: No. It is certainly the case that there is market failure here. We do not have the audience size and the population base in Australia to support the production of program at such a high level in terms of the amount of money that goes into these programs. We cannot recoup that. When that is played up against a US drama that can be bought on the cheap, both of them may rate 1.8 million viewers one night. The broadcaster needs to make a decision which one. But that is why Australian governments for the past 60 years have all agreed that there should be Australian drama quotas.

Senator RUSTON: If we are getting American dramas dumped on Australian TV, there is no reason why we cannot be dumping Australian dramas on the stations of other countries. Why is it that we have not been as successful as the American producers of drama? We all live in the same English speaking drama market, do we not?

Ms McCreadie: Well, I think they recover their costs in the American market, which is much larger. Clearly, we want our programs to be culturally relevant. It is possible that they do not travel as easily as an American program. Basically, there is a global cultural hegemony from the United States. The economics are that they do not need regulation and subsidy. What they are doing is selling into the Australian market at a marginal cost, so it is a huge disparity in terms of costs. We could just produce, I suppose, American programs here. I do not think they would travel as well.

Senator RUSTON: No. I do not mean that at all.

Ms McCreadie: But it is about cultural resonance. The American programs rate culturally in America. They recover their costs in their home market. Then they are selling them to the rest of the world at a marginal cost.

CHAIR: Thanks, Senator Ruston. Any further questions? If not, thanks, Ms McCreadie and Mr MacRae.

CASSIDY, Mr Brian, Chief Executive Officer, Australian Competition and Consumer Commission

GLENN, Mr Richard, Assistant Secretary, Business and Information Law Branch, Attorney-General's Department

McNEILL, Ms Jennifer, General Manager, Content, Consumer and Citizen Division, Australian Communications and Media Authority

O'LOUGHLIN, Ms Nerida, Deputy Secretary Broadcasting and Digital Switchover, Department of Broadband, Communications and the Digital Economy

PELLING, Dr Simon, First Assistant Secretary, Department of Broadband, Communications and the Digital Economy

WEBB, Ms Rose, Executive General Manager, Mergers & Adjudication Group, Australian Competition and Consumer Commission

[20:30]

CHAIR: I welcome representatives from the Department of Broadband, Communications and the Digital Economy, Australian Communications and Media Authority, Australian Competition and Consumer Commission and the Attorney-General's Department. I thank you for talking to us today. As government officers, you will not be asked to give opinions on matters of policy, though this does not preclude questions asking for explanations of policy or factual questions about when and how policies were adopted. Does anyone wish to make a brief opening statement before we go to questions?

Ms O'Loughlin: Not from the department.

Ms McNeill: Nor from the Communications and Media Authority.

Mr Cassidy: Nor from the ACCC.

Senator BIRMINGHAM: Thank you all for coming along.

CHAIR: I did not miss the Attorney-General's Department, did I?

Mr Glenn: No.

CHAIR: This looks like estimates and you are not normally here.

Senator BIRMINGHAM: That is true. We might be tempted to ask Ms O'Loughlin or Dr Pelling about other issues. Thanks to you all for coming along. I will start with the drafting of these bills and, in particular, with the decision to pursue the public interest media advocate and the News Media (Self-regulation) Bill. When were those two bills first drafted?

Ms O'Loughlin: Senator, I do not think it is probably appropriate for us to discuss the toings and froings of the bill. The bills were considered last week by the government and introduced last Thursday.

Senator BIRMINGHAM: Ms O'Loughlin, I think the Chair just read the usual statement, which does reflect that it is reasonable to pursue issues of timing and so on in relation to decisions that were made. Were these bills drafted ahead of last week's cabinet meeting? Did they exist then?

Ms O'Loughlin: Yes, Senator, they did. There were some minor amendments before they were finally introduced.

Senator BIRMINGHAM: And how long prior to that had these bills existed?

Ms O'Loughlin: They had existed in one form or the other over the last couple of months, but they were not finalised until after the cabinet meeting last Monday.

Senator BIRMINGHAM: Has the constitutionality of these bills been considered?

Ms O'Loughlin: Yes, Senator, it has.

Senator BIRMINGHAM: And I assume the government believes they would withstand High Court challenge?

Ms O'Loughlin: Yes, Senator, they do.

Senator BIRMINGHAM: Have any particular issues been raised, does the government have any concerns or have you taken any particular actions to try to prevent the risk of successful challenge to any of these bills?

Ms O'Loughlin: Senator, we have taken advice on the matter during the drafting of the bills.

Senator BIRMINGHAM: Have any particular precautions or steps been taken to ensure that these bills would withstand challenge?

Ms O'Loughlin: My advice is that, firstly, we have taken advice on the matters but also both bills contain provisions to the effect that respective acts do not apply to the extent, if any, that they would infringe any constitutional doctrine of implied freedom of political communication.

Senator BIRMINGHAM: I want to work through some of the terms in the bills. I will ask about the News Media (Self-regulation) Bill, which is the one I have in my hand. Section 5 part 2—

CHAIR: What bills are we on?

Senator BIRMINGHAM: The News Media (Self-regulation) Bill. Section 5 part 2 provides a range of exemptions in terms of how they apply. One of those exemptions is for material that is targeted to a special interest group. How is that defined?

Ms O'Loughlin: Senator, it is not defined in law, but I think there are various tests available to understand what is a special interest group. What the legislation is trying to achieve there is to make sure that things that are produced for local community groups, the trade press or for small areas of special interest are not captured by the provisions in the act.

Senator BIRMINGHAM: Is there a threshold that applies to what constitutes a special interest group?

Ms O'Loughlin: No, Senator, there is not. But if there were any doubt, that would be a matter that the PIMA could look at.

CHAIR: I missed that, Ms O'Loughlin. It is a matter for?

Ms O'Loughlin: The public interest media advocate could look at that issue.

Senator BIRMINGHAM: In terms of threshold content, can you talk us through exactly the government's understanding of what is captured in terms of news media that will have to be subjected to this self-regulation, as it is described?

Ms O'Loughlin: The government's proposals are aimed at significant providers of print and online news and current affairs. A news media organisation will not be eligible, as defined, for the exemption under the Privacy Act. The news media organisation rules are defined in section 4. Then there are a number of exemptions. The purpose of the proposals is to capture into the scheme the significant providers of print and online news but to not capture those organisations producing information and news for smaller communities. So it really is around the significant providers of news and online services. It does not apply to broadcasters. It really is defined around print. It does not apply to small business operators within the meaning of the Privacy Act.

Senator BIRMINGHAM: So how big does a newspaper have to be to be captured?

Ms O'Loughlin: It just needs to be a corporation. There are no defined thresholds, unlike under the public interest test, where there are thresholds.

Senator BIRMINGHAM: So any publication produced by a corporation that contains news and does not manage to fit within a description of something for a special interest group or the like would be captured?

Ms O'Loughlin: Senator, if they are not captured by the various exemptions which are included in the bill, they would be captured.

Senator BIRMINGHAM: How many newspapers or publications are believed to be captured by the bill?

Ms O'Loughlin: Senator, we have spent quite a bit of time trying to draft the bill in a way that really sticks to the purpose of the exercise. It really is focussed, as I said, at the significant news and current affairs providers. That would, I think, from our analysis, pretty much take in most of the people you would expect that would be covered by it, such as the major national newspapers and the major regional newspapers, but not get down to things like the local society gazette in a community or a particular print publication which was designed to go only to a small number of interested parties.

Dr Pelling: Senator, I also draw attention to the definition of a news media organisation, which is a constitutional corporation whose activities are wholly or principally media related activities and consist of or include news and current affairs activities. It does not include a small business operator within the meaning of the Privacy Act, which I believe is any corporation with a turnover of less than $3 million.

Senator BIRMINGHAM: Would, for example—this is a publication I am not terribly familiar with—the *Women's Weekly* be captured?

Ms O'Loughlin: I would expect that it would not meet the definition of a news media organisation as its activities do not consist of or include news or current affairs activities and are wholly and principally media related activities.

Senator BIRMINGHAM: So although they might cover public interest stories, including profile pieces on public figures, and may even cover news stories of interest to people that touch on news content on a regular basis, probably in every edition, that would not be captured?

Ms O'Loughlin: Senator, the definitions of news or current affairs activities are the collection, preparation for dissemination or the dissemination of any of the following material for the purpose of making it available to the public—material having the character of news or current affairs, material consisting of commentary or opinion on or analysis of news or current affairs.

Senator BIRMINGHAM: They are relatively broad, in a sense, though, Ms O'Loughlin—commentary on news or current affairs . Let me turn to the online sphere. Another outlet that perhaps is not on my regular visit list is the Mamamia blog. Would it potentially be captured?

Ms O'Loughlin: Again, Senator, I do not think it falls under the definition of news or current affairs or opinion. Most of the *Women's Weekly* and the Mamamia sites are more straight information sites or entertainment sites.

Senator BIRMINGHAM: A lot of opinion goes on in the Mamamia site. The Prime Minister has even seen fit to have to court the editors and writers on the site to help disseminate and influence public opinion.

Ms O'Loughlin: Senator, the rules under the law are material consisting of commentary or opinion and material having the character of news or current affairs. I do not think that those types of services, which are a mixture of many things, would fall under even the plain English version of what people would think were news or current affairs or opinion and activities which are specifically directed and principally about news, current affairs or opinion.

Senator BIRMINGHAM: Will PIMA identify those outlets that it expects must be a member of a regulated organisation?

Ms O'Loughlin: The way the legislation works is that it is up to a news media self-regulation body to establish itself. It is open to providers of services to join that body if they so choose if there is any concern that they might be caught by the legislation. Or they can sit outside that if they consider that they fit within the exemptions. I think you will find that a lot of small business operators which fit outside the exemptions will be quite happy to sit outside a news media self-regulation body. But there may be bloggers who feel that there is benefit in them being part of that news media self-regulation body. That would be a matter for them.

Senator BIRMINGHAM: Would a journalist who is writing for the *Women's Weekly* or Mamamia, for example, enjoy the exemptions under the Privacy Act that are targeted in these reforms?

Ms O'Loughlin: I might pass over to my AGD colleague.

Mr Glenn: The question was around?

Senator BIRMINGHAM: Would a journalist who is writing for something like the *Women's Weekly* or the Mamamia blog enjoy the exemptions under the Privacy Act that these bills potentially would draw, should they not be a member of a relevant organisation?

Mr Glenn: Senator, to the extent that the subject matter that is being written about by the particular journalist who is working for that media organisation can fall within the definition of a media organisation in the Privacy Act, then, yes, they could be covered by the exemption in the Privacy Act. In an organisation that is not covered by the provisions to be inserted into the Privacy Act that deal with news media organisations under this scheme, they could still nonetheless be able to access the media exemption under the Privacy Act if they are able to now.

Senator BIRMINGHAM: So there could well be people operating as journalists who are working for major outlets or publications rather than simply a community service newspaper or particular special interest outfit. There could be journalists who would be able to enjoy the exemptions under the Privacy Act but not be subjected to the proposed regulatory structure?

Mr Glenn: Potentially, yes, Senator. If the journalist or the media organisation does not fall within the definition of news media organisation proposed by the amendments put forward in these bills but nonetheless is able to enjoy the media exemption in the Privacy Act now, they will continue to be able to enjoy that exemption.

Senator BIRMINGHAM: Is this felt to be a loophole or inconsistency that the government looked at, or was there consideration given to how you might attempt to align these definitions?

Mr Glenn: Senator, I think that is actually about the scope of the regulation that is being introduced by these bills, and the entities they are being directed at is a narrower set of entities than those that the broader journalism exemption in the Privacy Act applies to.

Senator BIRMINGHAM: I come to the online space in particular. What online sites and services will be captured?

Ms O'Loughlin: Again, Senator, this is about organisations and not necessarily about particular publications of organisations. The news media organisations are caught by it. Again, if there are organisations that are engaged in wholly or principally media related activities and these consist of or include news or current affairs activities, they will be caught by the regulation. There are, again, exemptions around some of the online material in that it does not apply if it is associated with a broadcasting service. It does not apply if it is associated with a data casting service and anything done by the provider of news or current affairs aggregation service. So what we are not trying to do is put people in the loop who really do nothing more than pull together sources of news and current affairs and opinion from all over the place and just put it out. We are looking for people who are directed towards an Australian audience and who also have editorial control.

Senator BIRMINGHAM: So if you are specifically an online business and you provide your content for free, are you captured?

Ms O'Loughlin: It would depend on whether or not you were an online service which undertook news and current affairs activities, whether or not you were a small business provider, whether or not you were associated with any of the exemptions in the act and whether you had editorial control over the content. So it really depends on what type of organisation you are and what type of service you are providing.

Dr Pelling: The section 5 provisions at various points, for example, say that subsection 1 does not apply to material disseminated by various things, an online service that is not targeted to the public in Australia or material that is including an online service that is targeted to special interest groups. So the same sorts of divisions, I think, would apply in relation to online services as to other forms of services in terms of who the target audience is.

Senator BIRMINGHAM: So would Crikey be covered?

Ms O'Loughlin: We would expect that Crikey would be covered because it is primarily a news and current affairs site and opinion site.

Dr Pelling: Provided it is not a small business operator. I do not know the size of Crikey in terms of the business.

Senator BIRMINGHAM: And in that sense there is essentially an honesty system at play, is there? They would have to self-regulate themselves by joining the Press Council, or will PIMA be able to look into whether somebody has tripped the small business threshold?

Ms O'Loughlin: That would be a matter when applying the privacy exemption that would have to be looked at. The proposals are that the industry itself would develop a self-regulation scheme, including coverage of members who are covered by the provisions in the act. The privacy provisions would be available to those members of those organisations. It would be a matter to consider when the privacy exemption needed to be applied as to whether or not the provisions in this act applied in those circumstances. Sorry, I said that really badly.

CHAIR: You can try again, Ms O'Loughlin.

Ms O'Loughlin: I will try again. I am sorry, Senator. If a journalist were not part of the news media self-regulatory scheme and there was an issue in terms of the Privacy Act, the protections under this scheme would not be available to them.

Senator BIRMINGHAM: So we understand very clearly at the Privacy Act level, can we talk through what exemptions currently apply? What exemptions would apply in the future to journalists who are not captured by an organisation that has to join a news media self-regulation body? What provisions would apply to journalists who in the future are working for a captured news media self-regulation body?

Mr Glenn: We will start with the existing rules in the Privacy Act. There is an exemption in section 7C of the Privacy Act for an act done or a practice engaged in by a media organisation. It will be exempt if it is done in the course of journalism at a time when the organisation is publicly committed to observe standards that deal with privacy and have been published by the organisation. So typically media organisations that are operating under this Privacy Act exemption now have either a self-published set of standards that they say they adhere to in relation to privacy or are a member of another body that does that. In that sense, this exemption engages. If there

is a complaint made against that particular media organisation in relation to an interference with privacy, they can claim the exemption in relation to that complaint.

Senator BIRMINGHAM: It is an automatic exemption if they meet the relevant tests in there? There is no need to apply for it?

Mr Glenn: That is right.

CHAIR: On that point: we had a submission today from Dr Margaret Simons from the Centre for Advanced Journalism in Melbourne. She brought a *Daily Telegraph* front page that showed a footballer who was in rehabilitation. Inside it showed the footballer's children with their faces pixelated. Is that a breach of privacy?

Mr Glenn: Senator, I could not comment on whether a particular incident is a breach of privacy. I can say in that situation, though, that that media organisation has the advantage of the exemption in the Privacy Act if at the relevant time it had privacy standards that it said it was meeting, so the exemption operates.

CHAIR: So a company says, 'Our privacy standards are that we can from a public place with a long lens zoom take a photograph of a footballer in rehabilitation. That is our standard.' Is that acceptable?

Mr Glenn: Whether that meets the standard that the organisation has said that it would meet in terms of the exemption I do not know. That is a matter for that particular standard. In terms of whether, though, the Privacy Act exemption has been engaged by the organisation saying that they have privacy standards and publishing them, that in itself, on the current law, is sufficient to engage the exemption for journalism.

CHAIR: So even if the standard does not meet what most people would think would be a fair and reasonable position? So you can set your standard extremely low under the current legislation. You can set your standard so low that it gives you the exemption. Is that correct?

Mr Glenn: The act does not talk about the nature of the standards that are to be applied. It simply talks about the organisation being publicly committed to observe standards that deal with privacy in the context of the activities of a media organisation and that have been published.

CHAIR: Roughly, how long has that statute been in place?

Mr Glenn: This exemption was introduced into the law in late 2001.

CHAIR: It is pretty vague, but it has been there for 12 years and we have managed to work with it.

Mr Glenn: Yes, Senator.

CHAIR: Ms O'Loughlin, you wanted to say something.

Ms O'Loughlin: Thank you, Senator. The proposed amendment, of course, builds on that exemption. Our amendments to the Privacy Act just strengthen the condition by, in effect, requiring the news media organisation to commit to standards set by an independently approved news media self-regulation body, as evidenced by the news media organisation becoming a member of that body.

CHAIR: That is this legislation?

Ms O'Loughlin: That is correct.

CHAIR: I am talking about the current legislation.

Senator BIRMINGHAM: Which brings it back, in a sense, to the question that I originally asked. Ms O'Loughlin or Mr Glenn, provide some clarity. Ms O'Loughlin was just outlining that this legislation proposes to be the threshold test in the future for journalists working for organisations that are captured by the legislation. That would change the test. It would be the same exemption except for the fact that the test to qualify for the exemption is that you would have to be meeting a privacy standard of the Press Council or whomever rather than your own privacy standard?

Ms O'Loughlin: That is right. You would have to be a member of a body which is a registered body that the public interest media advocate has designated to be an appropriate body.

Senator BIRMINGHAM: And if you are not in a news media organisation as defined and captured by this legislation but are a working journalist, you can still enjoy the existing exemption in the future with the existing terms of needing to have your own privacy code?

Mr Glenn: Yes.

Ms O'Loughlin: And the small business exemptions may apply.

Senator BIRMINGHAM: Small business exemptions may apply with the Privacy Act?

Mr Glenn: Yes. There are a range of exemptions in the Privacy Act, including one for small business operators.

Senator BIRMINGHAM: I turn to the example Senator Cameron gave before. How is the Privacy Act policed or enforced?

Mr Glenn: The Australian Information Commissioner, along with the Australian Privacy Commissioner, have regulatory responsibility for the Privacy Act. The Privacy Commissioner has the ability to receive complaints in relation to people who allege that there has been an interference with their privacy. It has the ability to investigate those complaints. It also has the ability to initiate own motion investigations if the commissioner becomes aware of circumstances where privacy may have been breached.

Senator BIRMINGHAM: So in this instance of the footballer who had been photographed in what is claimed to be a breach of the organisation's own privacy principles, if that were the case and it was a breach of the privacy guidelines of the news media organisation and they went ahead and published a photograph in breach of their own guidelines, that would be a breach of the Privacy Act? The exemption would not apply and they would have breached the act. Is that correct?

Mr Glenn: No, Senator. As I understand it, the exemption would still apply but that media organisation would have breached its own privacy standards. Whatever consequence there was for the media organisation for having done that in relation to its own privacy standards would flow.

Senator BIRMINGHAM: Is there any capacity for such an organisation who has its own standards to breach the Privacy Act, or is it a blanket exemption in that section?

Mr Glenn: In relation to its activities as far as journalism is concerned, the exemption would stand.

Senator BIRMINGHAM: Once they qualify, it is blanket?

Mr Glenn: The rest of the organisation defines that.

Senator BIRMINGHAM: Excellent. I want to move further into the news media self-regulation body. I go to some of the matters to which PIMA must have regard in making a declaration, which is 7 part 3, the very long part. How does the department expect matters of privacy, fairness, accuracy and other matters relating to the professional conduct of journalism to be defined?

Ms O'Loughlin: Senator, what the provisions in this part of the act do is to say that the PIMA must have regard to a range of matters when assessing whether or not it can declare a news media self-regulation body. The way the provisions work is to really put the emphasis back on the news media self-regulation body to come forward with proposals in each of the areas that these matters cover for consideration by the PIMA. So it would be up to the news media self-regulation body to present to the PIMA standards that deal with privacy, fairness, accuracy and other matters relating to the professional conduct of journalism rather than for the PIMA to define that.

Senator BIRMINGHAM: But the PIMA is going to have to define it because the PIMA is going to have to approve whether those standards are met or not.

Ms O'Loughlin: The PIMA must have regard to the following matters. Those matters talk about the extent to which the standards formulated deal with the following and the extent to which those standards reflect community standards and a number of other provisions aimed at accountability and transparency and complaints handling.

Senator BIRMINGHAM: So if the Press Council code simply says that news media organisations must have regard to matters of privacy, fairness, accuracy and other matters relating to the profession or conduct of journalism in their conduct as a news media organisation, is that sufficient to meet the standards of the public interest media advocate?

Ms O'Loughlin: I think it would be unlikely that any news media regulation body that took the provision seriously would present something that just repeated back the legislation. Journalists and the council have spent a lot of time and energy in developing different standards around privacy, fairness and accuracy. They are things that the sector takes quite seriously, so I expect that they will bring forward standards which are quite precise. Some of the evidence earlier today from both the council and from the Independent Media Council talked about how they have presented quite extensive work in the area of privacy, fairness and accuracy. That is what we would expect would be brought forward. If the PIMA felt there were any difficulties around that and the other provisions, it could request that the news media self-regulation body amend its standards or expand its standards. If it felt that privacy was not covered in the standards, it could ask for it to come back and provide something on privacy. But it is really up to the self-regulation body itself to come forward with what it thinks should be covered. Because it is not just that PIMA is going to tick this off. This is about a news media self-regulation body taking self-regulation seriously.

Dr Pelling: I think also it would be difficult, if you think of the practicalities of how this would be implemented, for an organisation like the current Press Council to come to the PIMA with a significantly watered down set of things and say, 'Having lived with an existing code or just recently upgraded the code, we now choose to bring it down to what might be the possible lowest common denominator'. For the PIMA to say that is acceptable.

Senator BIRMINGHAM: It would seem that simply regurgitating the requirements of the act is not acceptable. Is the current code of the Press Council acceptable?

Ms O'Loughlin: Senator, I am not going to speculate on that. It would be a matter for the PIMA to do so.

Senator BIRMINGHAM: The minister has indicated that it is.

Ms O'Loughlin: I am not going to speculate on that. They are the minister's comments.

CHAIR: The officer has indicated that she does not believe it is appropriate for her to comment.

Senator BIRMINGHAM: So are there any guarantees in this legislation that the current code would meet the requirements of the PIMA?

Ms O'Loughlin: Senator, again, I am not going to speculate. What we have provided in the provisions of this act is what the PIMA would consider. It is up to the new self-regulatory body to bring forward a code that it considers covers off all the clauses that are required.

Senator BIRMINGHAM: So if the existing Press Council model were put forward, the PIMA could say yes or it could say no or it could request changes?

Ms O'Loughlin: It could say yes or it could say no, yes.

Senator BIRMINGHAM: Or it could request changes?

Ms O'Loughlin: It could advise the self-regulatory body that it was not prepared to say yes or no at that time. But it cannot put forward suggestions and drafting changes to codes or standards. So it is not like it will come back with, 'Add this in here. Add that in there.' That is not the intention of the PIMA. It can say that it accepts the self regulatory body's proposals or it does not. Or it may work with the applicant to refine matters in some areas. But it is not designed to write the standards itself.

Dr Pelling: I draw your attention, Senator Birmingham, to section 8, which states that before making a declaration under 7(1), the PIMA must consult with the Privacy Commissioner and cause to be published a notice setting out the draft declaration, inviting persons to make submissions to the PIMA about the draft declaration and consider any submissions. So there is a process, too, for deciding to approve or not approve.

Senator BIRMINGHAM: Is the PIMA prohibited from making suggestions?

Ms O'Loughlin: Under the proposals, it has the power to approve or revoke, but it does not have any power to make suggestions.

Senator BIRMINGHAM: But is it prohibited from making suggestions?

Ms O'Loughlin: It is not part of its powers.

Senator BIRMINGHAM: Section 8, which Dr Pelling drew our attention to before, requires the PIMA to set out a draft declaration. Would a draft declaration include reasons?

Ms O'Loughlin: Yes, it would. But it would not provide direction back to the self-regulatory body. As I said, the PIMA is not engaged in trying to define for the body itself what its standards would be. Its role is to consider a range of matters that are brought forward from the industry to assess whether or not it thinks it will be a robust self-regulatory scheme. While some of these matters go to standards, a lot of the other matters go to some of the areas that have been of most concern in the current arrangements, which are about accountability, transparency, independence and dealing with complaints.

Senator BIRMINGHAM: If an individual who has been appointed to the position of PIMA—I will try to come back to that—publishes a declaration or makes a declaration or a decision in relation to either bringing into play a news media self-regulatory body or the revocation of their status and in that declaration says, 'We are revoking or refusing status because it fails to do these things. But if it did these things, we would approve it', would that be in any way prevented by the legislation before us?

Ms O'Loughlin: That would not be an acceptable way of the PIMA. Going back to industry, after its consultation, it would provide back to industry that consultation information. It would either revoke or accept.

Senator BIRMINGHAM: You are telling me it is not acceptable, Ms O'Loughlin. Where is the legislative clause that says they cannot do that? Yes, they can approve. Yes, they can revoke or refuse. Yes, they can publish a draft that sets out reasons. Why in those reasons can they not make suggestions? Where is the prohibition?

Ms O'Loughlin: Senator, the PIMA has been provided with functions and it cannot operate outside its functions. Its functions are to accept or to revoke.

CHAIR: On this issue: if a news body says to PIMA, 'We have this problem. You're looking at it. Because of your knowledge and understanding of these issues, can you give us some suggestions without exercising power?', would that be acceptable?

Ms O'Loughlin: Senator, that is not the way that the PIMA is expected to operate. This is expected to be a self-regulatory scheme. The PIMA may say to the people working on the proposals to come forward. Their role is to accept or revoke. It would not be appropriate for them to guide the development of the standards or guide the development of the scheme.

CHAIR: Is this to ensure that self-regulation is self-regulation without any interference or advice from PIMA?

Ms O'Loughlin: The proposals are directed towards improving the current self-regulatory scheme and having an independent oversight of the development of that scheme. That is so it can be assured that, for example, it improves on the issues that have been dealt with in the privacy debates around dissatisfaction with issues of privacy in newspapers, where consumers have not had satisfaction through the process.

Senator BIRMINGHAM: If the PIMA behaved in a manner that I outlined before and provided suggestions in a ruling, what recourse is there for anybody, including the minister?

Ms O'Loughlin: There are powers in relation to the PIMA. I will just need to find it.

Senator BIRMINGHAM: If you are looking for the termination of appointment of the PIMA, that is section 16 of the bill.

Ms O'Loughlin: The minister may terminate the appointment of the PIMA for misbehaviour, if the PIMA is unable to perform the duties or becomes bankrupt, and there are a number of additional provisions.

Senator BIRMINGHAM: So if the minister of the day thought that it was inappropriate for the PIMA to provide explicit suggestions about what should be in a code, the minister of the day might define it to be misbehaviour and terminate the PIMA? Is that the process we are looking at here with all of those things in mind?

Ms O'Loughlin: I think it would depend on what the intent of the PIMA was in providing that advice. The PIMA, once appointed, is very clear in its role. It would be very clear in its role in terms of accepting or revoking. Whether or not the provision of advice came down to the need for termination of appointment would be a matter to be considered at the time. I would expect that the first instance would be that the industry self-regulatory body itself would not accept any advice coming from the PIMA which crossed the line in terms of trying to guide the development of their self-regulatory body. That is certainly not the intention of the act and certainly not within the PIMA's powers.

Senator BIRMINGHAM: So if it works as you are saying it will work, Ms O'Loughlin, and the PIMA does not provide any direction or advice and the self-regulatory body puts up its model and the PIMA says no, the self-regulatory body then goes back and tries again?

Ms O'Loughlin: Yes.

Senator BIRMINGHAM: If the PIMA says no, the self-regulatory body goes back and tries again?

Ms O'Loughlin: Well, the legislation is very clear about the matters that the PIMA must have regard to. So it would be unusual for a proposal to come forward that did not have regard to those matters in presenting a proposal to the PIMA.

Senator BIRMINGHAM: Yes. But if those matters are to be precise or prescriptive and the PIMA is to sit in judgement on whether they are appropriately precise or prescriptive, then the organisation is going to have to try to keep guessing until they meet the PIMA's satisfaction, if the PIMA is not going to provide any guidance to them.

Ms O'Loughlin: The proposals in the legislation are specifically objectives based, not prescriptive, because we consider that that is a better model for the news media self-regulatory scheme. It would be inappropriate for the setting down in the law of highly prescriptive arrangements that a news media self-regulatory body would have to tick off. That is not the way that the scheme is intended to work and really flies in the face of the intent of the scheme, which is for it to be a self-regulatory body. Self-regulatory bodies can put up proposals to the PIMA,

who can accept or revoke. If the news media organisations felt that the advocate had directed them inappropriately, there is nothing to prevent them undertaking court action.

Senator BIRMINGHAM: That does flow nicely into one of the other issues raised here. In terms of the determinations of the PIMA, the right of appeal for a news media organisation would be that you would have to go straight to the Federal Court?

Ms O'Loughlin: Yes.

Senator BIRMINGHAM: Was any consideration given to putting any internal appeals process into this legislation?

Ms O'Loughlin: Senator, what we have included in the PIMA's role is a high level of transparency in its activities so that it does need to consult both with the Privacy Commissioner in terms of the news media self-regulation bill, with the ACMA and the ACCC in relation to the media diversity bills and to open up its decisions for public consultation in advance of the final proposals. It has a high level of transparency built into its processes so that its decision making is transparent to the community as well as the people who are involved in its decisions. The types of decisions it makes, we consider, are best then assessed by the court.

Senator BIRMINGHAM: In expecting transparency and expecting to provide a high level of transparency, you are really expecting it is going to provide detailed reasoning for its determinations, are you not, Ms O'Loughlin?

Ms O'Loughlin: Senator, the PIMA will provide such information as it sees fit against the matters that it has to assess the proposals against, which are laid out in the bill.

Senator BIRMINGHAM: The last of the long list of factors that the PIMA can consider are such other matters, if any, as the PIMA considers relevant. Basically it gives the PIMA a blank cheque as to how they want to work, does it not?

Ms O'Loughlin: No, Senator. I would not characterise it that way at all.

Senator BIRMINGHAM: Why not?

Ms O'Loughlin: Because the PIMA is very clearly defined in that the intent of its appointment is to approve or revoke a scheme presented by an applicant to become a news media organisation under the law. It is not intended to consider anything outside that remit. As you know, usually with legislative drafting, one does not want to miss things in the drafting. Being highly prescriptive, you can actually miss things along the way. We have chosen an approach to not be prescriptive, but we have provided some sensible flexibility for the PIMA. Of course, those considerations have to be relevant within the context of their overarching role.

Senator BIRMINGHAM: Could the PIMA determine that a news media self-regulation body had to have a scientific adviser informing their decisions on complaints made to them about their member organisations?

Ms O'Loughlin: Senator, there is nothing in the matters that it has to have reference to which would get down to directing the body as to who should be on it and who should not be on it. Its role is to be provided with by an applicant a scheme that it can approve or revoke. Within that scheme it is up to the new self-regulatory body that is applying to identify how that scheme will work, including its membership, including how its complaints handling processes will work, and including the make-up of those people who will make decisions on the complaints put forward to it. So it is all embedded back in the industry itself to come forward with proposals which spell out a scheme that the advocate will either tick off or not tick off.

Senator BIRMINGHAM: It is then completely within the discretion of the PIMA themselves as to whether they are satisfied with all of those terms, including matters such as who will sit on judgement of complaints made to a news media self-regulation body?

Ms O'Loughlin: Sorry, Senator, what was the question?

Senator BIRMINGHAM: The PIMA then has complete discretion in terms of whether it accepts or rejects an application as to whether it is satisfied with the type of person who is going to sit on a complaints body?

Ms O'Loughlin: No, Senator. It does not have a role in choosing between the people who are going to sit.

Senator BIRMINGHAM: I did not say the people. I said the type of people.

Ms O'Loughlin: Or the type of people. It has a role in reviewing from the public interest perspective the self-regulatory scheme that is provided to it by the industry itself. So its role is to sit in the seat of the public to say, 'Does this scheme stack up, given the community concerns? Does it have the types of matters covered off which are in the law?' That is its job.

Dr Pelling: Senator, if you look at 7(3) again and the list of things that can be taken into account in the approval process, you will see that they relate to processes like complaints handling. They relate to standards and various things about how the organisation functions. They relate to independence and other similar sorts of things. But there is nothing in there which goes to individual people who might be involved or appointed by that body to undertake particular functions and so on.

Senator BIRMINGHAM: Dr Pelling, it was the type of person rather than individual people. I think a number of those matters could potentially go to the type of person. Surely the PIMA is going to say, 'Well, there must be a level of independence amongst these people. There should be some degree of representation of community standards, which is a factor that has to be considered in here. There should be perhaps somebody with an understanding of privacy considerations. There are a number of things that the PIMA could—

Ms O'Loughlin: That is not the way the legislation works. The legislation spells out to the industry the matters that the PIMA will have consideration of. It is not—

Senator BIRMINGHAM: And that it is in the PIMA's discretion and judgement?

Ms O'Loughlin: But it is not in the PIMA's discretion and judgement to go back and provide prescriptive direction.

Senator BIRMINGHAM: The PIMA can just say no?

Ms O'Loughlin: That's right. The PIMA can say no.

Senator BIRMINGHAM: And in just saying no, the industry has to guess what they got wrong, if that is the approach that the PIMA takes?

Ms O'Loughlin: The PIMA would direct the applicant to relook at the legislation and the issues that they have to have regard to.

Senator BIRMINGHAM: The legislation is pretty sweeping in its construct, though. So the applicant just has to keep guessing until they get it right or ratcheting it up until they meet the PIMA's satisfaction, unless the PIMA does actually provide detailed reasons?

Ms O'Loughlin: Senator, the emphasis in law is on the industry itself to take seriously a self-regulatory body. It is not just for the purpose of getting a tick from the PIMA. It is about the industry itself taking responsibility for addressing the concerns of the public around news media coverage. That is the intent. The incentives are there to improve the current self-regulatory schemes, not to provide some sort of de facto prescriptive arbitrator under the PIMA. The whole purpose of these provisions is about the independent role and the freedom of the press and all those issues and saying, 'The expectations of the community are that there should be some consideration of whether that body is working effectively and will work effectively.'

Senator BIRMINGHAM: Ms O'Loughlin, in the end it comes down to the judgement of whoever is appointed as the PIMA as to how these matters are actually interpreted and applied, does it not?

Ms O'Loughlin: It comes down to the guidance that is provided to the PIMA in the law as to what matters it must consider and how it goes about its business.

Senator BIRMINGHAM: And the PIMA has a long list of matters it must consider. It must then exercise its judgement as to whether those matters are adequately addressed.

Ms O'Loughlin: They have a number of matters that they must consider and then they can come to a conclusion.

Senator BIRMINGHAM: And the conclusion is they exercise their judgement as to whether the matters are addressed to their satisfaction or not.

Ms O'Loughlin: With objectives based legislation, yes, of course, it will be a judgement.

Senator BIRMINGHAM: It comes down to their judgement.

Dr Pelling: And there is a consultation process.

Senator BIRMINGHAM: And there is a consultation process, where every media critic in the country can make their comment on the satisfaction or otherwise as well as—

Ms O'Loughlin: Also, importantly, the Privacy Commissioner.

Dr Pelling: Going to a matter that you mentioned earlier, I am just looking at the explanatory memorandum and notice it must also set up the body corporate news media self-regulatory scheme and the initial views of the public interest media advocate concerning the matters to which it must have regard. So there is a capacity for them to provide views and then get comments from anybody who feels like putting in comments.

Senator BIRMINGHAM: I did not quite catch all of that, Dr Pelling.

Dr Pelling: I am just reading it out. You raised a point about what can be a company. Can the declaration that it puts out to the public have an explanation of the PIMA's views? The answer, according to the explanatory memorandum, is that it is a matter that it can include.

Senator BIRMINGHAM: It can include its reasons and those reasons, as reasons often could, could inherently have suggestions within them?

Dr Pelling: Well, initial views is what the EM says.

Senator BIRMINGHAM: To the appointment of the PIMA and who that person may be. The minister has said that the government will consult with the opposition. The minister has said that he does not foresee that it would be a former member of parliament or the like. Are there any requirements in the legislation that meet the minister's commitments there?

Ms O'Loughlin: There are requirements for the types of skills that the PIMA should have. There is not a specific inclusion in the legislation about the consultation with the opposition. But the minister has made that commitment publicly.

Senator BIRMINGHAM: And unlike the ABC Act, there is no specific prohibition on who could possibly be appointed to the PIMA? I was about to say a member of the PIMA, but of course there is only one, so it is who is appointed as the PIMA.

Ms O'Loughlin: In terms of the consultation process, there is information in the explanatory memorandum that clarifies that there would be consultation with the opposition. But there are not the exclusions in the act that are in the ABC Act about the exclusion of certain types of people. It is more in looking at the types of skills that you would want in an advocate. Those skills are laid out in the legislation itself.

Senator BIRMINGHAM: An example I have given is Nicola Roxon, the former Attorney-General, who has substantial experience in the law and substantial experience in public administration. She would meet the sole criteria that exists in the legislation?

Ms O'Loughlin: I am not going to speculate on who might meet the criteria, Senator.

CHAIR: Thanks, Senator Birmingham. One of the criticisms we had about the bill is division 1 on page 9 and 7C.

Ms O'Loughlin: Senator, my apologies. Which bill?

CHAIR: The News Media (Self-regulation) Bill at page 9, which sets out what PIMA has regard to. We went there earlier. We had a bit of a discussion about clause C, the extent to which those standards reflect community standards. Have you got that?

Ms O'Loughlin: Yes.

CHAIR: How do you make a judgement about community standards? The criticism is that this is too wide-ranging.

Ms O'Loughlin: The concept of community standards is actually fairly common across the codes of practice which are covered off by the Broadcasting Services Act currently. For example, the ACMA, in registering codes of practice for the commercial broadcasting sector, both radio and television, has to take into account community standards. I am sure Ms McNeill will correct me if I get that wrong. So it is a reasonably standard clause when we are looking at these types of issues of delivering content to the Australian community. I might ask Jennifer to comment on it. Normally that would be either through consultation processes, or research can be undertaken. They are the types of things that would test what community standards were at any given time. I will ask Ms McNeill if she wants to add to that.

Ms McNeill: Under the BSA, the ACMA must register codes of practice provided they meet a couple of preconditions. One of them is that they contain appropriate community safeguards. When the ACMA is forming a view on that, obviously they draw on the experience of the various members of the authority. They also draw heavily on community research that is conducted into attitudes to particular protections and to particular matters. We closely consider any apparent deficiencies that might have become manifest over time while a code has been in place—whether complaints are coming to us raising issues which are not covered off by codes and so forth. So it is possible to form a view on community safeguards and, by implication, community standards.

CHAIR: So it is not uncommon for an individual to rely on their experience? Is that why Ms O'Loughlin or whoever gets the PIMA role must be experienced?

Ms O'Loughlin: That is certainly part of it. As I said, the PIMA already has consultation processes built into that. That would be a way of testing community standards. Or it may wish to undertake research in a particular area to assist it in its decision making. But also its own experience and its own skills, within the skills and experience that we have requested under the law, would certainly add to that.

Dr Pelling: Senator, remember that the whole point of this is that the self-regulatory body brings forward its own proposal. So there is plenty of scope for the self-regulatory body, in bringing forward to that proposal, to argue a case and to demonstrate the research that it has based on its own intelligence out in the community about why it thinks a particular standard reflects the community standard.

Ms O'Loughlin: And specifically in relation to privacy, of course, the consultation with the Privacy Commissioner would tap into the experience and understandings of the commissioner around community standards as well in the area of privacy.

CHAIR: The commissioner is a part-time position, as I understand?

Ms O'Loughlin: That is correct, yes.

CHAIR: So there is not a huge amount of resources there, is there, because it is just monitoring; it is not actively managing, is it?

Ms O'Loughlin: The role of the PIMA is envisaged as a part-time position because the expectation is that in the area of the News Media (Self-regulation) Bill there will be one, two or three proposals perhaps come up at the beginning if the legislation is passed. Then there is a role for the PIMA if there is substantial change to that body. Or if there are substantial changes to the workings of that body, it would come back to the PIMA for assessment as to whether it should be revoked or accepted. So there is a peak of work at the beginning, but then we would expect that it would not be a position where it had a full-time role after that.

Dr Pelling: I also draw your attention to clause 18 of the media advocate bill, which says that assistance to the PIMA is given by any or all of the following: the ACMA, the ACCC, the department.

CHAIR: So what bill are we on?

Dr Pelling: I am looking at the Public Interest Media Advocate Bill, which is the bill that appoints the PIMA. I am looking at page 9, section 18. It sets out that a range of bodies may assist the PIMA in his or her functions. The assistance may include the provision of information, the provision of advice and making available resources and facilities, including secretariat services and clerical assistance.

CHAIR: Could that be ACMA?

Dr Pelling: ACCC, ACMA, the department or any other Commonwealth agency, department or authority of the Commonwealth may assist the PIMA.

Ms O'Loughlin: Because our expectation is also that a lot of the information that would be useful for the PIMA will be collected through processes with the ACMA or the ACMA's research through the ACCC. Of course, the department can also assist the PIMA.

CHAIR: So you would not be expecting PIMA to actually conduct any research but to seek the assistance of other bodies?

Ms O'Loughlin: The PIMA can call on the assistance of those agencies to fulfil its functions. For example, it may call on the ACMA to provide it with research that has been recently undertaken on community standards in a particular area, which may be relevant to its considerations.

CHAIR: There was some speculation today that PIMA may never make any determinations on anything after the initial set-up if the standards bodies—the press councils—actually do the job themselves. Is that correct?

Ms O'Loughlin: That is correct, Chair. The only time that the PIMA's responsibilities would be enlivened again is if there were a substantial change to that body. An example is if half its membership left or it pulled back on its standards. But once they are established and once they are declared, that really leaves the industry to perform its functions well.

Dr Pelling: There is also a requirement that the PIMA must give as soon as practicable after the end of each financial year a report to the minister for presentation to the parliament on its activities in the year and such other matters concerning the operation of the following provisions during that year. It lays out several provisions.

Ms O'Loughlin: That is correct. It could be that once the bodies are established, the PIMA's role is only brought back into effect if something radically changes.

CHAIR: We have had submissions from the Independent Media Council. I think the chair of that media council is a former politician, by the way, appointed by Mr Stokes. If the Press Council sets certain standards and

the Independent Media Council sets different standards—it is a Western Australian group—how do we deal with that? Does PIMA say that the community standard that has been set by the bigger organisation is the standard you should set if their standards are set lower?

Ms O'Loughlin: The PIMA's test is really around the extent to which the body corporate's news media self-regulation scheme has been or is likely to be effective—that is one of the core provisions—and that they have standards in place. So if two news media organisations came forward with schemes which deal with the matters that the PIMA is required to consider, then the PIMA could decide whether the two schemes met those criteria and were acceptable. Firstly, there are mandatory eligibility requirements, but the matters are really around the type of arrangements that have been put in place for the body around issues like accountability, transparency, that they have standards in place and that they have complaints handling processes in place. So it is feasible that the PIMA could approve both. I would expect that it is probably likely that through the public consultation process the different bodies that may be putting proposals up may look at the other schemes and adjust their schemes accordingly if they think there is benefit in doing so.

CHAIR: We are still on the self-regulation bill. I want to go to the revocation issue. Obviously, this is an important issue. This is purely hypothetical, but a revocation could be made against the Press Council if it were not meeting the standards. Is that correct?

Ms O'Loughlin: If it was appointed, declared originally by the PIMA and then something substantial changed.

CHAIR: So that revocation takes place. It has a number of members. The change that took place could be the behaviour of one individual member of the Press Council. What happens to all the other members of the Press Council who have not behaved in a manner to excite the attention of PIMA? Are you with me?

Ms O'Loughlin: Chair, the revocation is about the behaviour of the body, not the behaviour of individual members. The emphasis, again, is on the body and how they might handle the behaviour of their own members.

Dr Pelling: There is also a provision that says that PIMA must not revoke unless it has taken reasonable steps to ensure a declaration in relation to—

CHAIR: Yes. I was going to come to that replacement declaration. How would that work in practice? This is 10(6), I think. It is the replacement declaration. PIMA must not revoke under subsection 103 unless PIMA has taken reasonable steps to ensure that a declaration under 7(1) relating to another body corporate will be enforced at least six months before the revocation takes effect. Can you just explain to me what that means?

Ms O'Loughlin: The intent of that clause is to make sure that if one body fails, there is another body that the members may be able to move to in a reasonably timely manner so that they in good time would be able to access another organisation whereby the privacy exemptions afforded for that body would apply to those journalists.

Dr Pelling: So there is always a body, in other words, is the intention.

CHAIR: What happens if no-one wants to form a body?

Ms O'Loughlin: Then they would not be covered by the privacy exemptions.

CHAIR: So that is the incentive and the stick, really?

Ms O'Loughlin: That is the incentive, yes.

CHAIR: So if the existing body does not take steps to comply with its own self-regulation, that is probably the big trigger, is it not?

Ms O'Loughlin: The trigger for revocation, as in division 2, is there are mandatory revocations, which are around things like the body actually does not have a news media regulation scheme any more. Another is if the members decide that they do not want that scheme at all. But then there are some other discretionary revocation factors laid out where there have been significant changes in relevant circumstances and where there has been a change in relevant community standards. The intent there is that the PIMA would only look at discretionary revocation where something significant had changed. As I mentioned earlier, an example is that three-quarters of the members left the organisation and had not established an alternative organisation. Again, before revoking, there are consultation provisions that the PIMA must go through as well. The replacement declaration there is very much recognising the strong incentive in the bills around the access to the privacy provisions and that we do not want disruption in the industry if one scheme and one body fails and there is not a body that journalists could move to.

CHAIR: Can you walk me through the mandatory revocation of declaration? It says that if a declaration is in force under section 7(1) in relation to a body corporate, the PIMA must by writing revoke the declaration if—and then we go to (d)—the body corporate has the power to suspend a news media organisation member's rights as a

member of the body corporate or expel a news media organisation member from the body corporate. Then it goes on to say that if there are circumstances that do not involve a failure by the member or a breach of remedial direction. Can you explain that to us?

Dr Pelling: If you go back to 7(2), you will find there is an eligibility requirement, which is a compulsory eligibility requirement. There is a restriction. The only two circumstances—

CHAIR: I have that, yes.

Dr Pelling: that apply relate to a failure to pay a corporate fee or charge payable or a breach of remedial direction. So there is a narrow set of circumstances which applies in relation to the corporation. The mandatory revocation applies if the body corporate has powers which go beyond those limited set of circumstances.

Ms O'Loughlin: As my colleague has just put it, it is to make sure that the body corporate does not just expel people willy-nilly.

CHAIR: But they would have the power to expel provided it was in 7(2)(iii) or (iv)?

Ms O'Loughlin: That is correct.

Dr Pelling: Yes. The only circumstances where they have the power to expel will be a failure to pay a fee or a breach of a remedial direction, which they have themselves imposed.

CHAIR: If they expel a member for not meeting the standards, PIMA does nothing in relation to that, do they?

Ms O'Loughlin: That is correct, yes.

CHAIR: So the question of expulsion is not a PIMA matter; it is a self-regulation matter?

Ms O'Loughlin: The types of actions that the self-regulatory body might want its members to take if they are in breach of its standards would be a matter for the self-regulatory body.

CHAIR: Ms McNeill and Mr Cassidy, does the ACCC have this issue of community standards in your legislation?

Mr Cassidy: No. We do not.

CHAIR: But do you apply community standards at all?

Mr Cassidy: No. Not that I am aware of.

CHAIR: Ms McNeill, you have indicated you do.

Ms McNeill: We have the concept of appropriate community safeguards. I can see that there are some commonalities with the concept of community standards.

CHAIR: Could you take us to the commonalities?

Ms McNeill: Well, 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. But there are some other frameworks in which a similar concept operates. So 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.

Only recently we announced a project to undertake a holistic assessment of contemporary community safeguards. Again, that will be informed by research. The focus of our research necessarily reflects our remit. We typically in this context research expectations and attitudes around broadcast content as opposed to, for example, written content. If we are doing something similar in the telco space, where we also have a role, we will look at obviously the safeguards offered in the telco context. So our research is specific to the remit that we are pursuing at any point in time.

CHAIR: Thank you. Mr Cassidy, does the ACCC have a public interest test approach?

Mr Cassidy: We can do what is referred to as our authorisation process. Basically, what that is about is when they approach us, say, in relation to a merger or various other forms of conduct, we say, 'Look, this may well result in a lessening of competition. But we believe there are offsetting benefits as a result of which the commission should authorise us to undertake the conduct.' Those benefits can be fairly widely defined. So, in a sense, if you like, we do get into having to make a judgement about how on the one hand you compare an anti-

competitive cost with offsetting public benefits. If you like, you could characterise that, I suppose, as a public interest type test, but it is one is couched still in an economic framework, if I can put it that way.

CHAIR: Ms McNeill, what about ACMA? Do you have any public interest issues that you deal with?

Ms McNeill: Probably the closest analogue is this concept of community safeguards. Mr Cassidy has referred to the commission's authorisation role. Obviously, the diversity regime that we administer at the moment is not a discretionary regime. It does not have that kind of discretionary functionality built into it. It is much more based on numeric calculations and so on.

CHAIR: Ms O'Loughlin, what about the public interest in relation to mergers? Can you take me very briefly to PIMA's role in terms of making sure there is media diversity?

Ms O'Loughlin: The public interest test set for the PIMA is that in changes of control of significant news media voices, there is not a substantial lessening of diversity in the market. If there is to be a substantial lessening, it is in the public interest. So the test that the advocate is to apply is to look at the significant news media voices, where there may be changes of control through mergers or acquisitions. The advocate is charged with looking at how that transaction will actually affect diversity in the market. For example, at the moment, there are already a number of diversity rules in the current legislation. There is the two out of three rule and the four out of five rule. Neither of those rules actually addresses nationally significant voices at the national level. The current legislation is based around the concepts of radio licence areas. So it is all about who is operating within one licence area or another licence area. The proposals that the government has put forward do a number of things. Firstly, they allow for consideration of national voices, which have not been covered previously in the law. They also allow for changes in the influence or importance of those news media voices over time. For example, at the moment, the media diversity rules are only around commercial television and commercial radio.

CHAIR: Ms O'Loughlin, I will ask you to take this on notice because I have promised Senator McKenzie I will give her the call. We are about one minute away from adjourning. I know that she has a question she wants to ask. I am not sure if she wants to put that on notice. Could you take that on notice?

Ms O'Loughlin: Certainly we can provide you with more information.

Senator McKENZIE: Thank you so much. I would like to let you know that there will be questions on notice from me too, because I have more than one minute's worth of questions. Earlier in questioning from Senator Birmingham, you were outlining whether one worked for a major publication. There was criteria laid out about whether one was covered or not by the Privacy Act. I understand that. Are you not a journalist if you do not work for one of those particular organisations?

Ms O'Loughlin: You are certainly a journalist.

Senator McKENZIE: Are you protected under the Privacy Act if you work for a publication that turns over less than $3 million a year?

Ms O'Loughlin: The small business exemption.

Mr Glenn: Potentially, Senator, yes. The exemption works at the level of the media organisation rather than the level of the journalist.

Senator McKENZIE: So is the *Benalla Ensign* covered or the *Mirboo North Times*? Would they or the staff that work for them be covered under this legislation? This is a similar line of questioning to Senator Birmingham's *Women's Weekly* questions. If you could take that on notice, that would be great. Earlier, we went into great detail on community standards and what that represents. Clauses 10(3)(b) and (c) are about a significant change in relevant circumstances and a change in relevant community standards. Who decides what is relevant and who decides what is significant?

Ms O'Loughlin: Senator, it is a judgement for the PIMA under the current—

Senator McKENZIE: Thank you. That is fine. I am just conscious of time. Does the minister hire PIMA?

CHAIR: Ms O'Loughlin, have you finished your response? Ms O'Loughlin is entitled to finish the answer.

Ms O'Loughlin: It is a matter for the PIMA to be comfortable that they are significant changes, not that they are minor changes.

Senator McKENZIE: Absolutely. We heard that the minister appoints the PIMA.

Ms O'Loughlin: The minister appoints the PIMA.

Senator McKENZIE: Does the minister also have the power to sack the PIMA?

Ms O'Loughlin: As I mentioned earlier, there are provisions in the act for the termination of the PIMA under certain circumstances. I am happy to provide them on notice if that would help.

Senator McKENZIE: Thank you very much. I know we were talking about national significant voices and the diversity of voices. I am particularly interested in local content and local news et cetera. We have heard a lot of evidence around that over the last two days. Could you please provide your understanding of the implications of these media laws on that issue? I am particularly interested in the ACCC's role in protecting competition and diversity within the media environment and how you see PIMA enhancing or assisting. Is there a duality of crossover in terms of what you are looking at? I think that might be it.

CHAIR: Thanks very much. That concludes today's proceedings for the inquiry into the media reform bills. I thank all witnesses for their informative and sometimes feisty presentations. The committee has resolved that answers to questions on notice be returned by 8.00 am on Wednesday, 20 March 2013. In case I have missed anything, it is agreed that all documents tabled be accepted. I declare the hearing closed.

Committee adjourned at 10.01 pm