



Chair
Professor Julian Disney AO
Executive Director
Dr Derek Wilding

20 December 2013

The Hon Malcolm Turnbull
Minister for Communications
Parliament House
Canberra ACT 2600
Via email: Deregulation@communications.gov.au

Dear Minister

Thank you for your letter in relation to regulation in the communications section.

As you know, many of the issues raised in your letter and accompanying papers focus principally on the broadcasting, telecommunications and radiocommunications sectors. However, as the Press Council has said on many occasions in recent years, there is merit in seeking some degree of convergence with a system of the kind which the Council currently operates in relation to print and digital publishing. Accordingly, I am attaching the submission which the Council made to the Convergence Review, and the Council's media release in response to the Review's final report.

Our Chair, Professor Julian Disney, would welcome an opportunity to discuss these and related issues with your Parliamentary Secretary. I will contact Mr Fletcher's office in January to ask whether a meeting can be arranged.

Yours sincerely

A handwritten signature in blue ink, which appears to read 'Derek Wilding', is positioned below the 'Yours sincerely' text.

Dr Derek Wilding
Executive Director



Australian
Press Council



**Submission to the
Convergence Review
in response to its Interim Report**

February 2012

The Australian Press Council

Address: Suite 10.02, 117 York Street, Sydney 2000 **Phone:** (02) 9261 1930 or 1800 025 712 **Fax:** (02) 9267 6826
Email: info@presscouncil.org.au **Web:** <http://www.presscouncil.org.au>

INTRODUCTION

1. The Australian Press Council was established in 1976 and is the principal body that sets and monitors standards of good practice for the publication of news and comment in Australian newspapers, magazines and their associated websites. It is also the principal body that considers complaints about reporting of news and comment across this range of publications.
2. It must be emphasised at the outset that the views which the Council expressed in its earlier submission to the Review and those expressed in this supplementary submission, relate solely to the regulation of news and comment. They do not relate to other aspects of content standards or to broader questions of regulation concerning, for example, media diversity or Australian content.
3. The Council's earlier submission addressed the following matters:
 - the Council's structure and areas of activity;
 - regulation of news and comment;
 - regulating print and online material;
 - developing a unified system.
4. The submission noted the rapidly growing risks of manifestly inconsistent standards being applied between the two regulatory systems – the broadcasting system administered by the Australian Communications and Media Authority, and the print and online system administered by the Press Council. It also noted that confusion and uncertainty about these respective areas of responsibility can cause considerable unfairness for complainants, would-be complainants, publishers and broadcasters. They can also weaken the efficiency, effectiveness and credibility of the regulators themselves.
5. The Council's submission summarised key measures which it has implemented, or will soon implement, under the program of sustained reform which it commenced in July 2010 to strengthen the Council's effectiveness across print and online coverage of news and comment. Further details of these measures and the Council's distinctive strengths are provided in Appendix 1 below, which is extracted from the earlier submission.
6. The submission emphasised that a key priority for the Council is to expand the range of online publications which are subject to its jurisdiction. It is already the principal regulator of online news and comment by virtue of its role in relation to websites of newspapers and magazines across Australia. But inappropriate gaps, inconsistency and confusion will remain while key websites of broadcasters, aggregators and bloggers remain outside its jurisdiction (and, indeed, outside the jurisdiction of any other regulator).
7. The Council's submission looked beyond current regulatory arrangements by proposing key elements of a "unified system" which would cover news and comment in all media and serve the public interest over the longer term. In doing so, it sought to recognise the opportunities and challenges of a rapidly changing media environment, especially those relating to convergence, technological developments and an increasingly internationalised market.

REGULATION OF NEWS AND COMMENT: THE INTERIM REPORT

8. In Chapter 2 of its Interim Report, the Convergence Review proposes that there be a "new regulator for the digital economy". The new regulator's role in relation to content standards is addressed in Chapter 11, where the Committee observes: "Content standards should ... reflect the importance of fairness, accuracy and ethical behaviour in relation to news, opinion and current affairs". The Review indicates: "The regulator will have an important role in overseeing content standards". It seems clear that, although

called an independent regulator, the body is intended to be a statutory authority and broadly similar in ambit and size to the ACMA. There is no indication, for example, that it would be appointed and funded other than solely by government.

9. Although the Interim Report does not deal specifically with regulation of news and comment, it seems that the new statutory regulator is intended to have that responsibility in relation to broadcasting. It is not entirely clear, however, whether news and comment in print and online media would be (a) directly regulated by the new body, (b) regulated by another body under powers delegated by the new statutory regulator, or (c) regulated by a separate body which is outside the purview of the new statutory regulator. Similar uncertainty arises in relation to the ambit of the proposed "one-stop shop for unresolved complaints about relevant content or services". Presumably this uncertainty reflects the Review's wish to consider the report of the Independent Media Inquiry before finalising its views.

10. This area of uncertainty is, of course, the area in which the Press Council now operates and to which its submission was addressed.

REGULATION OF NEWS AND COMMENT: THE PRESS COUNCIL'S VIEWS

11. As the Council indicated in its earlier submission, it considers that two basic principles should be followed when considering the longer-term future of regulatory arrangements for news and comment in print, online, broadcast and other media. They are:

- over time, one body should become principally responsible for setting and monitoring standards of practice for news and comment across all media, and for handling complaints about breaches of those standards;
- this body should be an Independent Council which has due independence from the media industry, governments and any other particular interest, and has adequate standards, powers and resources.

12. *A unified system:* The first of these principles, calling for a unified system, is similar to the concept of regulatory parity outlined by the Committee in its *Emerging Issues* paper. It aims to avoid inappropriate inconsistency, unfairness and confusion arising from similar material being subject to different standards and processes merely because of the media or platform in which it is published. In doing so, the unified system would assist both consumers and providers of news and comment, as well as the broader community.

13. *An Independent Council:* The second principle reflects the Press Council's firm belief that the principal regulatory body must be independent in practical operation from government, the industry and any other particular interest. This approach is necessary to strike appropriate balances between different elements of the overall public interest, and of sectoral or individual interests, without which the credibility of the media and the regulatory system are put at risk. The principle also reflects the Council's belief that, so far as possible, regulatory standards and adjudications of complaints should be determined by a body which includes both industry representatives and independent public members. The body should also be able to focus exclusively on issues of news and comment rather than other onerous regulatory functions, thereby increasing its ability to apply processes which are appropriately accessible, flexible and expeditious.

14. Further detail on the proposed Independent Council is provided in Appendix 2 below, which is extracted from the Council's earlier submission. It will be seen that the proposed Council is more akin to a strengthened version of the current Press Council, with the specialist ambit and distinctive strengths to which we have referred earlier, than to an all-embracing statutory authority which the Interim Report appears to envisage.

CONCLUSION AND RECOMMENDATION

15. The Press Council agrees that, over time, news and comment across all media should come to be regulated by the same body. But if the Interim Report is intended to indicate that the Review favours that body being a statutory authority, and having general responsibility for all or most aspects of media regulation, then the Press Council reiterates its strong disagreement with that view. For reasons explained in the earlier submission, it firmly believes that regulation of news and comment should be the responsibility of an Independent Council (of the kind outlined in Appendix 2) which is not responsible for other areas of media regulation.

16. The Council is happy to provide further information or answer any questions from the Committee.

APPENDIX 1: STRENGTHENING THE PRESS COUNCIL

1. The Council began a sustained reform program early in 2010 to strengthen its effectiveness in relation to print publishing and to expand its involvement with online publishing. In particular, the program aims to strengthen
 - the clarity and scope of the Council's Standards of Practice, especially for online material;
 - promulgation of the Council's Standards of Practice and monitoring of compliance;
 - the Council's processes for receiving, investigating, mediating and adjudicating upon complaints;
 - the Council's insistence on due prominence for publication of the Council's adjudications and of apologies, corrections or other remedial action provided by publishers in response to complaints;
 - the range and effectiveness of sanctions imposed by the Council or by processes initiated by the Council;
 - the degree of independence which is provided for the Council by its governance structures and funding;
 - the incentives for publishers, including solely online publishers, to become and remain subject to the Council's jurisdiction.
2. The Council's submission to the Independent Media Inquiry summarises progress to date in the reform program and the further initiatives which are being implemented or closely considered. Key elements include
 - developing Standards of Practice about online issues such as moderation of comment, storage in online archives and use of social media;
 - introducing a new low-fee schedule for online-only publishers (including bloggers);
 - improving the regularity and prominence of notices in publications advising readers about the Council's roles and contact details;
 - promoting the "APC" logo as a hallmark of print and online publishers who are bound by the Council's Standards and its complaints-handling process;
 - establishing a referrals panel, chaired by a retired judge, which can fine publishers for grave or persistent breaches of the Council's Standards;
 - clarifying the extent to which online-only publishers who join the Council are eligible for the same statutory rights and privileges as print publishers;
 - obtaining better and more secure funding for the Council, including through some public funding to boost its effectiveness in relation to online publishing.
3. These initiatives aim to consolidate the Council's distinctive strengths, which include
 - developing its own Standards of Practice across a wide and growing range of issues, with a special focus on online issues;
 - having active publishers and journalists, as well as prominent people in the community, on the bodies setting its Standards and making adjudications;
 - providing a no-cost complaints scheme that does not require legal representation or an adversarial process;
 - receiving and handling complaints from the outset, rather than only after the complainant has approached the publisher unsuccessfully and a considerable period may have elapsed;
 - facilitating mediated outcomes, such as an apology or retraction or the publication of a balancing article;
 - avoiding the constraints and delays of bureaucracy, so that most complaints are finalised within a month (including any time involved in mediation);
 - advocating from a public interest perspective on issues such as freedom of expression, freedom of information and privacy.
4. The aim of the Council's program of reform is to provide a system that operates effectively across print and online coverage of news and comment. Close liaison with the ACMA will be important to help promote as much consistency as is appropriate and feasible between standards of practice and complaints-handling processes in the print, online and broadcast regimes. The goal would be greatly assisted, of course, if key authorities or participants decided that broadcasters' online publications and aggregators' websites should be subject to the Council's jurisdiction.

APPENDIX 2: THE PROPOSED “INDEPENDENT COUNCIL”

Some key elements of the proposed Independent Council are outlined below. The Press Council already has a number of the proposed characteristics of the Independent Council and its current reform program aims to approach the model even more closely. But the Independent Council would need to be developed by creating an entirely new body or by substantially transforming the Press Council's composition and resources to reflect the interests and needs arising from expansion beyond print and online publishing.

Main roles and responsibilities

The core of the unified system should be an Independent Council which is responsible for

- setting and promulgating Standards of Practice for the publication of news and comment across all media;
- assessing levels of compliance with those Standards and handling complaints about possible breaches of them;
- promoting freedom of expression and access to information wherever it considers the public interest so requires.

Membership and funding

The membership of the Council should provide a sufficiently broad and authoritative range of experience and perspectives to make well-informed, independent and credible decisions.

The majority of the Council (including the Chair and Vice-Chair) should be people who have not worked in the media industry. At least one-third of the Council should be people with substantial experience in the media who have been nominated by providers*. The other members could be people who are or have been in the industry but are not nominees of a provider. No member should be appointed by a government or be a member of parliament.

The Council should be funded sufficiently to carry out its responsibilities and the funding commitments should be sufficiently long-term to ensure adequate independence. The majority of the Council's funding should be contributed by providers in accordance with agreed criteria. At least one-third of the funding should be contributed by government or other non-media sources.

Handling complaints

Providers should be required to set and publicise their own internal standards of good practice which are consistent with the Council's Standards. They should also be required to comply with principles specified by it in relation to the design and operation of their internal processes for handling complaints.

The Council should be required to investigate and consider complaints as informally and expeditiously as is compatible with due care and fairness. Providers should be required to cooperate in the Council's investigation of complaints relating to them. The Council should actively seek to mediate satisfactory resolutions of complaints wherever possible and appropriate.

The Council's adjudications should be the responsibility of a committee of which independent public members comprise the majority and the remainder have extensive experience in the media industry. It should have power to require appropriately prominent publication of adjudications, to issue reprimands or censures, and to call for the publication of retractions, apologies or other material which may remedy breaches of its Standards.

The Council should be able to refer a complaint for adjudication by a special panel if it considers an alleged breach of its Standards may be exceptionally grave or, together with earlier breaches, may constitute persistent non-compliance with its adjudications. The panel should be established by the Council and chaired by a retired judge. It should be able to fine providers up to a specified maximum amount and perhaps impose other sanctions.

The powers of the panel should be expressed in the contractual terms on which providers become subject to the Council's jurisdiction. If the panel is given a statutory rather than contractual basis, access to it should still be solely through referral by the Council and it should have to apply the Council's Standards.

* 'Provider' is used here to include print publishers, online publishers and organisations or people who publish material through broadcast or other media.

Monday 30 April 2012

The Convergence Review Final Report

The Chair of the Press Council, Prof Julian Disney, today said

“The Australian Press Council welcomes the report of the Convergence Review. The Review’s proposals are very similar to the phased changes recommended by the Press Council in its submission to the Review.”

First, the Review envisages the Council continuing to strengthen its scope and effectiveness in relation to print and online media. The recent doubling of its funding, strengthening of publisher obligations, and prevention of withdrawal by members at less than four years’ notice were announced after the Review had completed its report. But they illustrate the progress which has been made and will continue to gather pace.

Second, the Review proposes that over time a “news standards body” should be established. It would be very similar to the body which the Press Council suggested in its submission to the Review. In particular, it would

- cover all media
- not be established by government, nor be principally funded by government, nor have any government appointees
- be appropriately independent of media organisations, which would not have a majority on the new body and not be the sole source of funds
- set the standards of practice with which the media should comply
- have power to impose limited sanctions, including prominent publication of adjudications
- be able to refer serious or persistent breaches to a separate body which can impose substantial sanctions.

The Review goes further than the Council’s proposals by suggesting that the new body’s independence and effectiveness should be enhanced by

- requiring all major media organisations to be members of the new body
- encouraging other media organisations to join by making some key statutory privileges dependent on membership
- requiring early experience of the new body to be assessed as to whether it is working satisfactorily or, as a last resort, should be replaced by a statutory body.

Prof Disney says that the Council looks forward to discussing the Review’s constructive proposals in detail with the Government and other interested parties.

For further information or comment by Prof Disney, contact:

Derek Wilding 0425 242 401 derek.wilding@presscouncil.org.au

