

Chapter 1

Introduction and background

Referral

1.1 On 10 May 2017 the Senate established the Select Committee on the Future of Public Interest Journalism, to inquire and report on the following matters:

- (a) the current state of public interest journalism in Australia and around the world, including the role of government in ensuring a viable, independent and diverse service;
- (b) the adequacy of current competition and consumer laws to deal with the market power and practices of search engines, social media aggregators and content aggregators, and their impact on the Australian media landscape;
- (c) the impact on public interest journalism of search engines and social media internet service providers circulating fake news, and an examination of counter measures directed at online advertisers, 'click-bait' generators and other parties who benefit from disinformation;
- (d) the future of public and community broadcasters in delivering public interest journalism, particularly in underserved markets like regional Australia, and culturally and linguistically diverse communities;
- (e) examination of 'fake news', propaganda, and public disinformation, including sources and motivation of fake news in Australia, overseas, and the international response; and
- (f) any related matters.¹

Background to the inquiry

1.2 This inquiry was initiated to look into the current state of public interest journalism in Australia and globally, to consider what the role government should play in assisting the sector in meeting the challenges and capitalising on the opportunities of the digital age.

1.3 In so doing, the committee was interested in investigating the potential ways that the Commonwealth could seek to encourage and maintain a healthy media ecosystem, particularly ensuring that public interest journalism is supported by the Commonwealth in appropriate and meaningful ways, and appreciated by Australians as a public good and essential component of our democratic system.

1.4 The committee's work has been underpinned by three considerations.

1.5 The first is identifying the nature of the challenges and opportunities the media sector currently faces. This has necessitated not only considering the challenges facing traditional media providers from the new online digital media environment—

1 *Journals of the Senate*, No. 40, 10 May 2017, pp. 1330–1331.

including gaps in service provision to particular groups, but also the opportunities for innovation for new and existing players in the sector.

1.6 Second, the committee has focussed on identifying what the role of government should be in assisting industry to mitigate these challenges and take advantage of the opportunities presented. In this regard, policy options that emerged in evidence tended to focus on either direct assistance measures to producers through targeted, stringently-applied subsidies, or on indirect reforms to the tax system or relevant regulatory frameworks. It was apparent that a great deal of care should be applied in considering these options, not only to ensure the sector is effective and diverse, but also that any Commonwealth policy adjustments serve to maintain the freedom of the press from political interference or censorship.

1.7 Lastly, this inquiry has been guided by a consideration of how the cost of any potential policy measures could be offset in the Commonwealth Budget.

Definitions, role and importance of public interest journalism

1.8 The evidence received by the committee overwhelmingly noted that, even if there is no unanimously accepted single definition of public interest journalism, there are certain behaviours, institutions and principles that have been commonly cited when discussing its role and importance in healthy democracies.

1.9 The Civic Impact of Journalism Project summed up a number of roles and functions that public interest journalism plays, noting these had been widely recognised as features of good journalistic practice for 'at least 70 years':

- to keep the public up to date with what is going on in the world
- to provide the public with reliable information on which they may base choices as participants in political, economic and social life
- to provide a forum for the exchange of ideas and opinions
- to be a watchdog on those in power
- to help societies understand themselves
- to provide the material upon which members of a society can base a common conversation (and that)
- These functions all contribute to the working of capitalist democracies.²

1.10 Dr Denis Muller, a fellow at the University of Melbourne's Centre for Advancing Journalism, agreed that the foundational principles of good journalism had remained unchanged since the post-war period. In particular, he noted that the principles expressed by the 1947 United States Commission on the Freedom of the Press (Hutchins Commission) still held true, namely that the press had a social responsibility to provide five basic services:

A truthful, comprehensive, and intelligent account of the day's events in a context which gives them meaning;

A forum for the exchange of comment and criticism;

The projection of a representative picture of the constituent groups in the society;

The presentation and clarification of the goals and values of the society;

Full access to the day's intelligence.³

1.11 The submission made by the ABC noted that the term 'public interest journalism' is regularly used synonymously with the terms 'quality journalism', 'investigative journalism' and 'accountability journalism'. It noted that these terms implicitly recognise that there is a crucial difference between journalism that serves the public good, and journalism that seeks solely to entertain:

...not all journalism is designed to provide a community benefit. Certainly, it is commonly understood that what is in the public interest does not always correlate with that in which the public is interested. Defining the public interest can be challenging, much less determining the best means of its delivery.⁴

1.12 It was frequently noted in evidence received by the committee that public interest journalism should work to ensure the accountability of powerful individuals or governments. As Professor Bill Birnbauer submitted:

Definitions of investigative and public interest journalism vary but there is general consensus among journalists and media academics that such journalism provides new information on issues of public importance that governments, companies and powerful interests may want to keep secret.⁵

1.13 Several submissions highlighted Mr Steve Harris' 1994 articulation of the purpose and value of public interest journalism to society, which emphasises that good journalism should be independent from vested interests, and seek to build 'good faith with the reader':

The primary purpose of gathering and distributing news and opinion is to serve society by informing citizens and enabling them to make informed judgements on the issues of the time. The freedom of the press to bring an independent scrutiny to bear on the forces that shape society is a freedom exercised on behalf of the public. Journalists are committed to ensuring that the public's business is conducted in public, and must be vigilant against

3 The Commission on Freedom of the Press, *A Free and Responsible Press: A General Report on Mass Communication: Newspapers, Radio, Motion Pictures, Magazines, and Books*, University of Chicago Press, Chicago, 1947, pp. 20–21. For a discussion of these principles see Dr Denis Muller, Senior Research Fellow, Centre for Advancing Journalism, University of Melbourne and Professor Margaret Simons, Board Member, Public Interest Journalism Foundation, *Committee Hansard*, 21 August 2017, p. 8.

4 ABC, *Submission 58*, p. 3.

5 *Submission 1*, p. 1. See also, for example, Schwartz Media, *Submission 10*, p. 3.

anyone who would seek to exploit the press for selfish purposes or seek to restrict the paper's role and responsibilities. Good faith with the reader is the foundation of good journalism.⁶

1.14 The ABC noted Mr Eric Beecher's description of quality journalism, as:

...journalism that reports and analyses the institutions of democracy—governments, parliaments, the public service, courts, police and army, academia, business, science, education, media and other key institutions. It is the journalism that fertilises society with ideas, commentary and analysis. And it is journalism that needs to be conducted responsibly because it operates under a tacit public trust.⁷

1.15 A number of perspectives heard by the committee indicated that journalism had at its core a set of professional practices and ethical standards committed to handling information responsibly and responding to complaints diligently. For example, Mr Misha Ketchell, the Editor of *The Conversation*, commented:

My view would be that if you want to draw a boundary around what qualifies as journalism, part of what qualifies as journalism is a set of practices, which are around ethical conduct, reliable handling of information and having complaints procedures. That would be how I distinguish what we think of as journalism and what we don't.⁸

1.16 The submission made by Deakin University drew out some more specific examples of what journalistic activities could be considered as 'in the public interest':

- detecting or exposing crime or serious misdemeanour
- detecting or exposing seriously anti-social conduct
- protecting public health and safety
- preventing the public from being misled by a statement or action of an individual/body [and]
- detecting or exposing hypocrisy, falsehoods or double standards of behaviour on the part of public figures or public institutions and in public policy.⁹

1.17 Some evidence observed that although it was expensive to produce, there were clear economic benefits to public interest journalism. Dr Birnbauer submitted that:

6 Public Interest Journalism Foundation, *Submission 13*, p. 2; Deakin University, *Submission 19*, p. 3; Freeline Group, *Submission 51*, p. 2. This definition is originally found in Steve Harris, 'Professional practice policy' in *Australian Press Council News* (February 1994), pp. 8–9. The need for good journalism to build trust with the reader was also noted by the ABC, *Submission 58*, p. 3.

7 ABC, *Submission 58*, p. 3, citing Mr Eric Beecher, *Submission to the Independent Media Inquiry* (2011), pp. 1–2.

8 *Committee Hansard*, 21 August 2017, p. 35.

9 Deakin University, *Submission 19*, p. 3.

Investigative journalism is much talked about by media organisations but is limited to a handful of reporters within media organisations because it cannot readily be monetised. It is expensive to do, takes a long time, sparks legal action and upsets powerful interests. It takes a big commitment by media organisations; just five major US media organisations provide about 50 per cent of all the investigative journalism. The societal benefits can be huge: lives saved, corruption exposed, environments improved, governments and corporate interests held accountable. A study by a media economist found that for each \$1 spent on a specified investigative story, \$287 in policy benefits resulted.¹⁰

1.18 The Civic Impact of Journalism research project reflected that, even if there was a small audience for journalism working in the public interest, it often had a disproportionate effect:

It is possible to measure how many people saw a piece of news content, but this is not all we mean by impact. If the item is a piece of light entertainment, quickly forgotten, then the fact that it was seen by many hardly matters.

On the other hand, a long-form piece of investigative journalism might be read by very few people, but if they have the power to make decisions and changes, then the impact may be very great—for example, a royal commission.¹¹

1.19 Associate Professor Simons suggested that, while definitions of the practice of journalism have remained consistent over time, the nature of the institutions has changed a great deal in recent years:

The functions [of journalism] have not changed a great deal, but the ways in which it is practised have changed. Previously, you might have defined journalism by the institution in which it occurred...While journalism is still taking place often within institutional frameworks, there are also citizens who meaningfully participate in journalism. For example, somebody like Greg Jericho was making a real contribution to political commentary and now has a job at *The Guardian* in Australia, but for some time he was operating as an individual blogger. That's unusual, but I think it's really important to recognise. Indigenous X was founded by a single person. It now might have some sort of institutional framework around it, but I think it's important to recognise that journalism is about the function performed rather than necessarily where it's performed.¹²

1.20 Dr Muller agreed with this perspective. He argued that, while public interest media should always be underpinned by the ambition to inform a vibrant public

10 Sub 1, p. 5. See also Mr Ray Bange, *Submission 47*, p. 6.

11 *Submission 14*, p. 2. See also *Submission 14* attachment 2 (Margaret Simons, 'Trump, Fake News and shrinking newsrooms: does journalism still matter in the digital age?', *The Guardian*, May 29, 2017), p. 2.

12 *Committee Hansard*, 21 August 2017, p. 8.

sphere of debate, this is increasingly difficult in an online media environment where media sources and patterns of consumption are fragmented:

...[public interest journalism] keeps the public up-to-date with what's going on; gives them reliable information upon which they may base choices as citizens and participants in social life; provides a forum for the exchange of ideas and opinions; holds a mirror up to societies; and provides the material upon which members of a society could have a common conversation, which is a very important function now that we have the fragmentation of the conversation online.¹³

1.21 Further to this, Dr Glenn Fuller, an Assistant Professor at the University of Canberra's News and Media Research Centre, noted that the idea of a singular 'public' had also become fragmented over time:

The way we talk about the public has changed. What's interesting is that we don't have a singular, mainstream conception of the public anymore. News producers are keenly aware of their audiences as a market and they service those markets. In doing so, they actually produce a new kind of public. So a newspaper in Sydney is very aware of its Sydney audience, and it will service that Sydney audience. In doing so, it actually produces a Sydney public. That may not be in the public interest, if we think about it in a national context.¹⁴

Oversight of media in Australia

1.22 Media content in Australia is predominantly regulated by platform rather than content. The 2012 Convergence Review set out what this means in practice:

Radio and television broadcasters are regulated by the Australian Communications and Media Authority (ACMA). The ACMA makes regulatory standards for Australian content...and children's television content. The current legislation also provides for radio and television broadcasters to develop and maintain codes of practice that reflect community standards. These co-regulatory codes cover matters such as inappropriate or offensive content, fairness and accuracy in news and current affairs programs and complaints procedures. Internet content is only subject to the prohibited content scheme in schedules 5 and 7 of the *Broadcasting Services Act 1992* (BSA), which also provides for a co-regulatory code to include measures aimed at preventing the provision of prohibited content. Newspapers have self-regulatory standards of practice administered by the Australian Press Council (APC).¹⁵

1.23 In effect, Australian media standards regulation is provided for as follows:

13 *Committee Hansard*, 21 August 2017, p. 8.

14 *Committee Hansard*, 22 November 2017, p. 2.

15 Australian Government, *Convergence Review: Final Report*, March 2012, p. 39. Note the Convergence Review is discussed at greater length below.

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- Broadcast media is subject to statutory regulation through the ACMA, although online streaming is not, even if a provider voluntarily adheres to regulatory standards in their online activities.
 - Print media (and associated online activities) is self-regulated, either through the APC or other industry regulator on one hand, or self-application of codes of conduct on the other.
 - Australian online providers are not subject to any oversight mechanisms, although some choose to be members of the APC or develop internally-driven codes of conduct. It should be noted that these providers are still subject to general Commonwealth and state legislation, including regarding libel and other offences under Australian law; and
 - Overseas publishers are not subject to any Australian regulation or laws or, if they are, these laws are difficult to enforce.¹⁶

The print media and associated online outlets

1.24 Regarding the oversight of media standards in the print media, the APC is the national industry-funded body that is responsible:

...for promoting good standards of media practice, community access to information of public interest, and freedom of expression through the media. The Council is the principal body with responsibility for responding to complaints about Australian newspapers, magazines and associated digital outlets.¹⁷

1.25 The APC's website outlines its key roles:

- developing standards that constitute good media practice and are applied by the Council when considering complaints;
- responding to complaints from the public about material in Australian newspapers, magazines and associated digital outlets;
- issuing statements on policy matters within its areas of interest, including through submissions to parliamentary committees, commissions and other public bodies.¹⁸

1.26 The Finkelstein Report asserted that 'it is not easy to assess the effectiveness of the APC' as there are 'several difficulties with its structure'. Although it acknowledged that the body had its supporters, the Finkelstein Report noted significant criticisms of the APC. Many of these stemmed from the APC's reliance on industry funding from only a few large media groups, who were able to 'exert both formal and informal pressure' including threats to withdraw funding, which impeded

16 See the Hon R. Finkelstein QC assisted by Professor M. Ricketson, *Report of the Independent Inquiry into the Media and Media Regulation*, 28 February 2012, p. 279.

17 Australian Press Council, 'About the Council', www.presscouncil.org.au/about/ (accessed 19 October 2017).

18 Australian Press Council, 'About the Council', www.presscouncil.org.au/about/ (accessed 19 October 2017).

the APC in exercising its functions.¹⁹ Other criticisms that the APC was perceived to have included:

- An inability to properly investigate a complaint for lack of binding powers;
- A lack of resources to properly discharge its duties due to lack of funding;
- Insufficient powers of enforcement of decisions;
- The appearance of a lack of independence from its publisher members; and
- Insufficient streamlining of complaints procedures.²⁰

1.27 Some evidence received by the committee agreed that there were shortcomings with the APC model. As well as the issues noted by Finkelstein, it was observed that although membership of the APC covered established media effectively, it did not fully cover new media, where membership was optional for each organisation.²¹

1.28 In Australia there are several other mechanisms by which sections of the print media and their online outlets are self-regulated outside the APC, as outlined by the Finkelstein Review, including:

- the independent adoption of ethical codes or standards by media outlets, which at a minimum impose obligations of fairness and accuracy. This can include the appointment by some newspapers of an ombudsman or readers' representative/editor to handle complaints from the public independently of the APC;²² and
- the establishment of other voluntary regulatory bodies to handle complaints, such as the Independent Media Council, which was set up for some media organisations in Western Australia following the Finkelstein Inquiry.²³

A further note on the Australian Press Council (APC)

1.29 The committee notes that, despite early indications that it would inform this committee's work, and following numerous approaches from the committee seeking

19 The Hon R. Finkelstein QC assisted by Professor M. Ricketson, *Report of the Independent Inquiry into the Media and Media Regulation*, 28 February 2012, p. 235.

20 The Hon R. Finkelstein QC assisted by Professor M. Ricketson, *Report of the Independent Inquiry into the Media and Media Regulation*, 28 February 2012, pp. 235–238.

21 See evidence given to the committee by Ms Tory Maguire, Editor-in-Chief, HuffPost Australia and Mr Simon Crerar, Editor-in-Chief, BuzzFeed Australia, which indicated that where the Huffpost is a member of the APC, BuzzFeed have chosen not to take up membership, as their own internal processes and editorial standards are articulated publically, and their corrections policy 'very strict'. *Committee Hansard*, 17 May 2017, pp. 56–57.

22 The Hon R. Finkelstein QC assisted by Professor M. Ricketson, *Report of the Independent Inquiry into the Media and Media Regulation*, 28 February 2012, pp. 235–237.

23 Mr Tim Burrowes, Founder and Content Director, Mumbrella, *Committee Hansard* 11 July 2017, p. 8. See the Independent Media Council's website at www.independentmediacouncil.com.au/index.html (accessed 30 January 2018).

cooperation, the APC chose not to make a submission or give evidence at a hearing, and so did not address the matters raised above.

1.30 The committee considers it profoundly disappointing that the APC chose not to participate in a significant discussion about the challenges and opportunities its members face in the digital age.

The Australian Communications and Media Authority (ACMA)

1.31 The ACMA's role in regulating media services and content, including news, is primarily concerned with television and radio broadcasting. Its submission outlined its role and powers:

The ACMA is the independent statutory authority responsible for the regulation of broadcasting, radiocommunications, telecommunications and some online activities. Its functions as a media regulator are set out in legislation—principally the *Australian Communications and Media Act 2005* and the *Broadcasting Services Act 1992* (the BSA). To better perform its legislated functions, the ACMA seeks to inform itself about issues facing the media industry including by undertaking its own research from time to time.²⁴

1.32 The ACMA submitted that, in respect of public interest journalism, its role and responsibilities under the BSA were 'principally concerned with the conduct of radio and television broadcasters' and, to a much lesser degree, with those newspapers with a commercial television or radio broadcasting licence area.²⁵

1.33 The ACMA told the committee that a specific Object of the BSA is:

...to encourage providers of commercial and community broadcasting services to be responsive to the need for a fair and accurate coverage of matters of public interest and for an appropriate coverage of matters of local significance.²⁶

1.34 ACMA further outlined that:

...A number of other BSA Objects relate in part to the provision and diversity of news over broadcasting services. These are less directly relevant to public interest journalism but serve to emphasise the importance of a diverse, efficient and competitive broadcasting sector and the value of high quality programming that is consistent with community standards.²⁷

1.35 The BSA provides for a co-regulatory regime for television and radio broadcasters to advance Object (g), in which broadcasters develop codes of practice and for addressing and redressing complaints about breaches of these codes, which are then registered with ACMA. These co-regulatory codes all have provisions requiring broadcasters to meet public interest standards in news coverage, including

24 *Submission 28*, p. 1.

25 *Submission 28*, p. 1.

26 *Broadcasting Services Act 1992*, Section 3(1)(g), *Submission 28*, p. 2.

27 *Submission 28*, p. 2.

impartiality, fairness and accuracy. The ACMA has the ability to deal with complaints not adequately addressed by broadcasters implementing their own codes of practice themselves.²⁸

1.36 The ACMA noted that although there is no general requirement under the BSA for broadcasters to provide minimum news services, there are provisions designed to require commercial regional broadcasters in both radio and television to local news.²⁹

1.37 The ACMA submitted that it also has some responsibility for broadcast political matter and election advertisements. This is designed to:

...facilitate reasonably balanced access to licensed television and radio broadcasting services by different political opinion holders, whilst informing audiences about who is trying to persuade them to think or to act in response to broadcast election or political matter.³⁰

1.38 More specifically, the ACMA's responsibilities include setting out the required standards for broadcasters:

During an election period, if a broadcaster broadcasts 'election matter', the broadcaster must give reasonable opportunities for the broadcast of election matter to all previously elected political parties contesting the election.

Where a television or radio licensee broadcasts 'political matter' at the request of another party (such as a political party or other political campaigner), a licence condition in Schedule 2 to the BSA requires the licensee to immediately broadcast the 'required particulars' of that political matter. The required particulars must identify the source of the political matter (such as the political party) and the name of the person who authorised it.³¹

1.39 The ACMA also has some responsibility for oversight of control and diversity rules under Part 5 of the BSA, which sets out 'rules intended to limit the number of media operations that may be controlled by individual entities'. The ACMA suggested these rules were to encourage competition and innovation in the media, as well as a plurality of views expressed, but noted this did not target news specifically:

The ACMA understands that the original intention of the media control and diversity rules was to maximise the number of opinions expressed via commercial media...

28 ACMA noted it had registered codes made by the following industry bodies: Free TV Australia; Commercial Radio Australia; the Community Broadcasting Association of Australia (CBAA); the Australian Subscription Television and Radio; the Australian Narrowcast Radio Association; and the Australian Community Television Alliance. ACMA also noted that the public broadcasters ABC and SBS are required by their statutes to develop codes, which are then notified—rather than registered with—the ACMA. *Submission 28*, p. 2.

29 *Submission 28*, p. 3.

30 *Submission 28*, p. 3.

31 *Submission 28*, p. 3.

However, the ACMA notes that the media control and diversity rules are not directed specifically at the promotion or preservation of news services provided by media organisations. While the ACMA has consistently and effectively enforced the media control and diversity rules in the BSA, its remit does not extend to specific consideration of the diversity or viability of public interest journalism when considering matters of media control and diversity.

1.40 The ACMA also plans and licences community broadcasting services under the BSA. Although the ACMA cannot mandate that the provision of news services be a condition of a broadcasting licence being granted, it 'encourages...community broadcasting licensees to provide local news services'. It noted:

...that many community broadcasting services do not provide their own news but rather provide networked news sourced from centralised providers such as the Community Radio Network or Australian Independent Radio News. Where news and current affairs are provided they are subject to the applicable requirements of the CBAA code.

In the ACMA's opinion, while community broadcasters can and do play an important role in supplementing the news services provided by commercial and national services in their communities, many if not most community broadcasting licensees lack the resources to provide comprehensive and sustainable local news services.³²

1.41 The ACMA also conducts research on a range of issues regarding the Australian media landscape. In particular, the ACMA highlighted the findings of its research into local content in regional Australia (2017), and its inquiry into contemporary community safeguards (2014).³³

Media Entertainment and Arts Alliance Journalist Code of Ethics

1.42 The Media, Entertainment & Arts Alliance (MEAA) is the largest union and industry advocate for Australia's creative professionals on any platform (print, broadcast and digital), including journalists, editors, photographers, designers, producers, artists, cartoonists, and sub-editors. It administers a Journalist Code of Ethics that binds all members of MEAA Media, and which is registered with the Fair Work Commission. The aspirations of the code are stated as follows:

Respect for truth and the public's right to information are fundamental principles of journalism. Journalists search, disclose, record, question, entertain, comment and remember. They inform citizens and animate democracy. They scrutinise power, but also exercise it, and should be responsible and accountable.³⁴

32 *Submission 28*, p. 4.

33 A summary of this research was supplied as an attachment by the ACMA, *Submission 28* attachment 2 ('ACMA Research-news and current affairs').

34 MEAA, *Fact Sheet: The MEAA Journalist Code of Ethics*, www.meaa.org/faqs-meaa-journalist-code-of-ethics/ (accessed 5 January 2017).

1.43 Members commit to four principles: honesty; fairness; independence; and respect for the rights of others. They also commit to educate themselves about the following standards:

Report and interpret honestly, striving for accuracy, fairness and disclosure of all essential facts. Do not suppress relevant available facts, or give distorting emphasis. Do your utmost to give a fair opportunity for reply.

Do not place unnecessary emphasis on personal characteristics, including race, ethnicity, nationality, gender, age, sexual orientation, family relationships, religious belief, or physical or intellectual disability.

Aim to attribute information to its source. Where a source seeks anonymity, do not agree without first considering the source's motives and any alternative attributable source. Where confidences are accepted, respect them in all circumstances.

Do not allow personal interest, or any belief, commitment, payment, gift or benefit, to undermine your accuracy, fairness or independence.

Disclose conflicts of interest that affect, or could be seen to affect, the accuracy, fairness or independence of your journalism. Do not improperly use a journalistic position for personal gain.

Do not allow advertising or other commercial considerations to undermine accuracy, fairness or independence.

Do your utmost to ensure disclosure of any direct or indirect payment made for interviews, pictures, information or stories.

Use fair, responsible and honest means to obtain material. Identify yourself and your employer before obtaining any interview for publication or broadcast. Never exploit a person's vulnerability or ignorance of media practice.

Present pictures and sound which are true and accurate. Any manipulation likely to mislead should be disclosed.

Do not plagiarise.

Respect private grief and personal privacy. Journalists have the right to resist compulsion to intrude.

Do your utmost to achieve fair correction of errors.³⁵

1.44 Under the code, anyone can make a complaint if they believe a journalist has breached the standards. However, as the code is self-administered, MEAA is unable to investigate or take action against individuals who are not MEAA members.³⁶

35 MEAA, *Fact Sheet: The MEAA Journalist Code of Ethics*, www.meaa.org/faqs-meaa-journalist-code-of-ethics/ (accessed 5 January 2017).

36 MEAA, *Fact Sheet: The MEAA Journalist Code of Ethics*, www.meaa.org/faqs-meaa-journalist-code-of-ethics/ (accessed 5 January 2017).

Reviews of the media sector in Australia

1.45 This section outlines some recent reviews of the media sector in Australia that have shaped Commonwealth policy and provided a context for this committee's work.

The Convergence Review

1.46 The Convergence Review was established in March 2011, to consider the effects of, and possible Commonwealth responses to, the convergence of media—i.e. media being increasingly delivered online rather than in traditional ways.³⁷ The Review arose after it became apparent that many aspects of the existing regulatory regime were outdated, unnecessary or ineffective in taking into account these changes.³⁸ It set out to:

...examine the operation of media and communications regulation in Australia and assess its effectiveness in achieving appropriate policy objectives for the convergent era. The terms of reference for the Review covered a broad range of issues, including media ownership laws, media content standards, the ongoing production and distribution of Australian and local content, and the allocation of radiocommunications spectrum.³⁹

1.47 In specific relation to news, the Convergence Review report noted:

News and commentary play a vital role in any democracy. Content service enterprises that provide news and commentary should meet appropriate journalistic standards in fairness, accuracy and transparency regardless of the delivery platform. The Review has taken into account the findings of the Independent Media Inquiry. While agreeing with much of the analysis and some of the findings of the Independent Media Inquiry, the Convergence Review recommends an approach based on an industry-led body for news standards rather than a statutory body.⁴⁰

1.48 The Review looked at the future of media and communications in Australia, and advocated for wholesale reform of our national oversight and regulatory system. It was guided by a number of principles, including that:

[C]itizens and organisations should be able to communicate freely and, where regulation is required, it should be the minimum necessary to achieve a clear public purpose.⁴¹

1.49 The Convergence Review found that there was a need for regulation in a number of areas: media ownership; content standards, including news content standards; and quotas for Australian and local content.⁴²

37 Dr Rhonda Jolly, *Media reviews: all sound and fury?* Background Note, Parliamentary Library, Canberra, 5 October 2012, p. 1.

38 Australian Government, *Convergence Review: Final Report*, March 2012, p. 1.

39 Australian Government, *Convergence Review: Final Report*, March 2012, p. vii.

40 Australian Government, *Convergence Review: Final Report*, March 2012, p. x.

41 Australian Government, *Convergence Review: Final Report*, March 2012, p. 4.

42 Australian Government, *Convergence Review: Final Report*, March 2012, pp. 2–4.

1.50 The review found that 'content service enterprises' (CSEs) should be subject to a common classification scheme, regardless of the platform they used to deliver their services. Additionally, CSEs would be subject to certain ownership rules, and would be expected to meet certain community standards regarding the content they provide, as well as to contribute to the availability of Australian content.⁴³

1.51 It proposed that certain criteria would apply in defining CSEs, including revenue thresholds set at a high level to exclude small or developing enterprises, although it noted that this threshold should be regularly reviewed. Under the thresholds proposed by the Convergence Review, around 15 media organisations would have been considered CSEs, including some broadcasters and larger newspaper companies. However, at that time, Telstra, Apple and Google would not have been considered CSEs under the proposed thresholds.⁴⁴

1.52 One of the key recommendations made by the report was the proposed establishment of two bodies: a statutory regulator to replace the ACMA; and an industry-led body to deal with journalistic standards for news and commentary.⁴⁵

1.53 The Convergence Review recommended that the new communications regulator would take responsibility for implementing the recommendation made by the Australian Law Reform Commission (ALRC) on classification in 2012 that there should be a new national classification scheme.⁴⁶

1.54 It was proposed that the industry-led body covering news standards would absorb the news and commentary-related functions of the APC and the ACMA, and cover all platforms. It would enforce a media code aimed at promoting fairness, accuracy and transparency in news and commentary, and be able to adjudicate and provide remedies for complaints. It could also refer serious or persistent breaches to the communications regulator.⁴⁷

1.55 CSEs would be required to hold membership of this body, and would provide most of its funding, with government contributing to certain aspects of its functions or projects. Bodies not considered CSEs could elect to hold membership.⁴⁸ It would have jurisdiction only over CSEs and opt-in members, and so there would be no regulation covering social media.⁴⁹

43 Australian Government, *Convergence Review: Final Report*, March 2012, pp. 2 and 41.

44 Australian Government, *Convergence Review: Final Report*, March 2012, pp. ix, 2, and 10.

45 Australian Government, *Convergence Review: Final Report*, March 2012, p. 38.

46 Australian Government, *Convergence Review: Final Report*, March 2012, p. 38; Australian Law Reform Commission, *Classification—Content Regulation and Convergent Media: Final Report*, ALRC Report 118, February 2012, p. 24.

47 Australian Government, *Convergence Review: Final Report*, March 2012, pp. 51–53.

48 Australian Government, *Convergence Review: Final Report*, March 2012, pp. 51–53.

49 Australian Government, *Convergence Review: Final Report*, March 2012, p. x.

The Finkelstein Review

1.56 The Finkelstein Review was established in 2012 to assess whether Australia's media codes of practice were effective, and to gauge the impact of new technologies on traditional media. It focussed almost exclusively on the traditional print media sector.

1.57 Having regard to the effectiveness of media codes of practice, Finkelstein recommended that there were clear deficiencies that should be addressed. Most significantly, he recommended the Commonwealth establish a 'News Media Council', a new statutory body funded by government—though kept at arms-length, which would take over the media accountability functions of the APC and the ACMA across all platforms. In this report, Finkelstein wrote:

I therefore recommend that a new body, a News Media Council, be established to set journalistic standards for the news media in consultation with the industry, and handle complaints made by the public when those standards are breached. Those standards will likely be substantially the same as those that presently apply and which all profess to embrace.

Moreover, I recommend that the News Media Council have those roles in respect of news and current affairs coverage on all platforms, that is, print, online, radio and television. It will thus explicitly cover online news for the first time, and will involve transferring ACMA functions for standards and complaints concerning news and current affairs. It will replace the voluntary APC with a statutory entity. In an era of media convergence, the mandate of regulatory agencies should be defined by function rather than by medium. Where many publishers transmit the same story on different platforms it is logical that there be one regulatory regime covering them all.

The News Media Council should have secure funding from government and its decisions made binding, but beyond that government should have no role. The establishment of a council is not about increasing the power of government or about imposing some form of censorship. It is about making the news media more accountable to those covered in the news, and to the public generally.⁵⁰

1.58 Regarding more direct assistance for the sector, Finkelstein Report concluded that government intervention was not necessary at that time.⁵¹ However, it did reach a number of potential options for future actions the government 'may be able to draw upon should action be needed'.⁵²

1.59 This included directing the Productivity Commission (PC) to conduct an inquiry considering the health of the news industry, what the Commonwealth's role

50 The Hon R. Finkelstein QC assisted by Professor M. Ricketson, *Report of the Independent Inquiry into the Media and Media Regulation*, 28 February 2012, pp. 8–9.

51 The Hon R. Finkelstein QC assisted by Professor M. Ricketson, *Report of the Independent Inquiry into the Media and Media Regulation*, 28 February 2012, pp. 10–11.

52 The Hon R. Finkelstein QC assisted by Professor M. Ricketson, *Report of the Independent Inquiry into the Media and Media Regulation*, 28 February 2012, p. 331.

should be in supporting the media sector, and 'the policy principles by which any government support should be given to ensure effectiveness, as well as eliminating any chance of political patronage or censorship'.⁵³ The Finkelstein Report suggested the following areas should be considered by a PC inquiry:

- Local and regional needs, especially where service gaps in news exist. This should take into account the merits of increasing government assistance to the Community Broadcasting Foundation to bolster local news and community reporting services, particularly where local newspapers do not exist;
- Strengthening the news capacity of the ABC, as 'In the multichannel TV environment, further fragmented by the internet, national broadcasters have become more rather than less central. This has clearly been the case with the BBC.'
- Incentives for private/ philanthropic investment in news, particularly by offering tax deductions for 'a portion' of donations for the establishment of new non-profit news ventures or ongoing operational funding;
- Subsidies to offset the cost of producing 'investigative and public interest journalism', including considering the models offered by film production tax rebates for producing Australian films; and
- Subsidising the professional development of journalists through the Australian education system, or through the establishment of a Centre for Investigative Journalism at a university or through a network of universities.⁵⁴

ACCC inquiry into digital platform providers

1.60 On 4 December 2017, the Federal Government announced that the Australian Competition and Consumer Commission would conduct an inquiry into digital platform providers such as Facebook and Google. According to the ACCC, this inquiry 'will look at the effect that digital search engines, social media platforms and other digital content aggregation platforms are having on competition in media and advertising services markets'.⁵⁵

1.61 When announcing this inquiry, Mr Rod Sims, the ACCC's Chairman, stated:

We will examine whether platforms are exercising market power in commercial dealings to the detriment of consumers, media content creators and advertisers. The ACCC will look closely at longer-term trends and the effect of technological change on competition in media and advertising...

53 The Hon R. Finkelstein QC assisted by Professor M. Ricketson, *Report of the Independent Inquiry into the Media and Media Regulation*, 28 February 2012, p. 11.

54 The Hon R. Finkelstein QC assisted by Professor M. Ricketson, *Report of the Independent Inquiry into the Media and Media Regulation*, 28 February 2012, pp. 331–333.

55 ACCC, 'ACCC commences inquiry into digital platforms', Media Release, 4 December 2017, www.accc.gov.au/media-release/accc-commences-inquiry-into-digital-platforms (accessed 5 December 2017).

We will also consider the impact of information asymmetry between digital platform providers and advertisers and consumers.⁵⁶

1.62 The ACCC is expected to produce a preliminary report in December 2018, with a final report in June 2019.⁵⁷

Recent changes to Australian media laws and other relevant legislation

1.63 Over the course of this committee's work some relevant pieces of legislation have come before Parliament, which will be discussed in turn. First, this section outlines the provisions of the highly contested Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017 (Broadcasting Bill), which was passed by Parliament on 14 September 2017, as well as subsequent bills introduced into Parliament to give this legislation effect.

1.64 Secondly, it briefly discusses the bill recently introduced by the government that looks to set up a Foreign Influence Transparency Scheme (FIT Scheme) to curb foreign influence on Australia's political system, including 'fake news' content.

Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017

1.65 The Broadcasting Bill made the following changes to the Australian media framework:

- The abolition of the '75 per cent audience reach rule', which prohibited commercial television broadcasting licensees from controlling licences whose combined licence area populations exceeded 75 per cent of the Australian population;
- The abolition of the '2 out of 3 cross-media control rule', which prohibited control over more than two out of three regulated media platforms in any one commercial radio licence area;
- Provision of additional local programming obligations for regional commercial television broadcasting licensees;
- Amendments to measures relating to the anti-siphoning scheme and the anti-siphoning notice, including extending the automatic delisting period and removing the multi-channelling rule;
- The abolition of broadcast licence fees and replacement with a more modest spectrum charge paid by commercial broadcasters.⁵⁸

56 ACCC, 'ACCC commences inquiry into digital platforms', Media Release, 4 December 2017, www.accc.gov.au/media-release/accc-commences-inquiry-into-digital-platforms (accessed 5 December 2017).

57 Full details of the inquiry, including its terms of reference, are available at: www.accc.gov.au/about-us/inquiries/digital-platforms-inquiry (accessed 15 December 2017).

58 Parliament of Australia, *Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017*, www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r5907 (accessed 30 January 2018).

1.66 In order to pass this legislation, the government made a series of concessions to crossbench senators. The Nick Xenophon Team (NXT) negotiated a Regional and Small Publishers Jobs and Innovation package, which includes a \$50 million innovation fund for small and/or regional publishers with a turnover of between \$300,000 and \$30 million a year. These grants are capped at \$1 million for each publisher and open from mid-2018, and are contingent on APC membership.

1.67 The government also provided for a cadetship program for up to 200 places with small or regional publishers of up to \$40,000 each, as well as 60 regional journalism scholarships.⁵⁹ The Department of Communications and the Arts provided the following information to the committee on notice:

The Regional and Small Publishers Cadetship Program will support both on-the-job and formal training for journalism cadets. Of the 100 cadetships that will be offered in 2018-19 and 2019-20, between 80 and 90 will be for attachments to regional publications. The Regional Journalism Scholarships will support students from regional areas of Australia to take up opportunities to study journalism. Guidelines for the measures comprising the Regional and Small Publishers Jobs and Innovation Package are currently being developed and more details are expected to be available in 2018.⁶⁰

1.68 A further concession made by government was that it would direct the ACCC to undertake an inquiry into the market dominance of aggregators, their advertising practices, and the effects these have had on the state of public interest journalism, as outlined above.

1.69 As well as the above concessions, the government also committed to a number of proposals advanced by Pauline Hanson's One Nation (PHON) party. As well as a \$12 million boost to community radio sector funding, these measures included:

- Undertaking a review of the ABC's competitive neutrality;
- Increased financial transparency on the part of the ABC, particularly disclosing the salaries and conditions of all staff with packages of over \$200,000 a year;
- Increasing the ABC's services to regional and rural areas; and

59 The Hon Malcolm Turnbull, Prime Minister, and Senator the Hon Mitch Fifield, Minister for Communications, 'Joint Prime Minister—A New Era For Australia's Media', *Media Release*, 14 September 2017, <http://mitchfifield.com/Media/MediaReleases/tabid/70/articleType/ArticleView/articleId/1435/Joint-Prime-Minister--A-new-era-for-Australias-media.aspx> (accessed 9 November 2017).

60 Department of Communications and the—answers to questions on notice (received 22 December 2017), p. 1.

- Introducing legislation into Parliament to insert the need to be 'fair and balanced' into the ABC's charter.⁶¹

1.70 At the time of writing, the Senate Environment and Communications Legislation Committee is inquiring into the provisions of three bills subsequent to NXT and PHON negotiations to pass the Broadcasting Bill:

- Australian Broadcasting Corporation Amendment (Fair and Balanced) Bill 2017;
- Australian Broadcasting Corporation Amendment (Rural and Regional Measures) Bill 2017; and
- Communications Legislation Amendment (Regional and Small Publishers Innovation Fund) Bill 2017.

1.71 As these bills are under consideration by another Senate committee, this committee will not be making any substantive comment in this report.

1.72 The committee notes that the Government first introduced the Broadcasting Bill to abolish the 'two out of three cross-media control rule' in March 2016.⁶² Given public interest concerns about the high level of media concentration in Australia, the proposed repeal of the two out of three rule was resisted strongly and it remained on the statute books for over 18 months until various negotiations with crossbench senators saw its repeal in late 2017.

1.73 The committee further notes that none of the concessions or bills negotiated by crossbench senators in exchange for support for the repeal of the two out of three rule address the high level of media concentration in Australia or encourage diversity in control of the more influential broadcasting services in Australia. Indeed, the bills relating to the Australian Broadcasting Corporation are clearly a blatant political attack on the ABC, for no real public policy rationale or public good.

Foreign Influence Transparency Scheme (FIT Scheme)

1.74 On 7 December 2017, the government introduced a tranche of legislation into Parliament, including a bill to establish the Foreign Influence Transparency Scheme (FIT Scheme) The committee understands that the legislation is partly aimed at countering potential foreign interference in Australia, including the potential effects of 'fake news'. Answers to questions on notice from the Attorney-General's Department

61 See Lucy Battersby, 'One Nation wins ABC changes in media reform deal', *Sydney Morning Herald*, 15 August 2017, www.smh.com.au/federal-politics/political-news/abc-sbs-funding-could-unlock-media-reform-say-greens-20170815-gxwgrq.html (accessed 8 January 2018); and Dennis Muller, 'How the government and One Nation may use media reforms to clip the ABC's wings', *The Conversation*, <https://theconversation.com/how-the-government-and-one-nation-may-use-media-reforms-to-clip-the-abcs-wings-84615> (accessed 8 January 2018).

62 Senator the Hon Mitch Fifield, *Transcript—Press Conference, Parliament House Canberra*, 1 March 2016, <http://mitchfifield.com/Media/MediaReleases/tabid/70/articleType/ArticleView/articleId/1105/TRANSCRIPT--Press-Conference.aspx> (accessed 30 January 2018).

stated that the scope of information or materials covered under the legislation is broad and:

...could include fake news content, whether disseminated via hard copy, online or through other platforms. For example, the publication of information that is intended to sway the public's vote in a federal election, or persuade the federal government on a policy matter, if done on behalf of a foreign principal, may give rise to registration and disclosure obligations under the scheme.

The scheme will require disclosures to be made in any information or materials communicated on behalf of a foreign principal. This is intended to provide transparency about the forms and sources of foreign influence in communications products, to assist the Australian Government and the public to assess such products, their provenance, content and the veracity of the information being communicated.⁶³

1.75 The committee understands that the scheme defines 'communications activity' broadly, and so it could capture distribution of fake news content in hard copy, online or through other platforms. Moreover, some public commentary on the FIT Scheme has suggested it may capture some Australian organisations campaigning on political issues that receive donations from overseas.

1.76 The committee is encouraged that the Commonwealth has proactively moved to mitigate the undue influence of fake news in electoral processes. However, it is yet to be seen whether this bill will be fit for purpose, or whether it would also unfairly stifle or compromise legitimate commentary on government policy.

1.77 As the bill to establish the FIT Scheme is currently before the Parliamentary Joint Committee on Intelligence and Security, this committee makes no substantive comment here, although notes it looks forward to the scrutiny consideration by Parliament will afford.

Freedoms and responsibilities of the press

1.78 The longstanding principle of the freedom of the press as an indispensable pillar of democracy was discussed comprehensively in the Finkelstein Report, including the principle that the press should be independent from government interference and a degree of immunity from regulation.⁶⁴

1.79 Finkelstein noted that there should only be limited restrictions on the freedom of the press in some areas, including instances affecting:

- the protection of individual interests against false or misleading statements

63 Attorney-General's Department - answers to questions on notice (received 21 December 2017), pp. 1–2.

64 For a more full discussion of the history, philosophy and ethics that underpin and inform ideas about freedom of speech the freedom of the press, particularly in the Australian media sector, see The Hon R. Finkelstein QC assisted by Professor M. Ricketson, *Report of the Independent Inquiry into the Media and Media Regulation*, 28 February 2012, pp. 23–53.

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- the protection of community standards;
 - protection against violence and disorder;
 - protection from external aggression;
 - protection of national security;
 - the protection of the administration of justice, and
 - the protection of private property.⁶⁵

1.80 This committee has no wish to replicate the work undertaken by the Finkelstein inquiry, given how comprehensively that report set out the historical, philosophical and ethical grounds for democracies to have a free press that operates without compromise or impediments, and noted the role and responsibilities of the press to provide reliable information to ordinary citizens, so they are able to participate in society and the democratic process.

1.81 Nonetheless, the committee notes that Finkelstein summarised its central task as considering:

...how to accommodate the increasing and legitimate demand for press accountability, but to do so in a way that does not increase state power or inhibit the vigorous democratic role the press should play or undermine the key rationales for free speech and a free press.⁶⁶

1.82 These words echo the concerns that have informed this committee's work. The committee explicitly notes its support for a free and robust Fourth Estate, as outlined above. The committee's deliberations have been closely guided by this imperative.

Structure of this report

1.83 This report consists of seven chapters:

- This chapter provides an overview of the administration of the inquiry; discusses definitions of public interest journalism and the guiding principles that have informed the committee's work; and provides outlines of recent reviews of and legislation affecting the Australian media sector.
- Chapter 2 sets out the principal issues examined by the committee, including the shift to digital platforms that has affected traditional media, the growth of aggregators and online advertising, the loss of journalist jobs, and the subsequent effects on public interest journalism. This chapter also includes an overview of the phenomenon of 'fake news' and its effects on democratic systems globally.

65 The Hon R. Finkelstein QC assisted by Professor M. Ricketson, *Report of the Independent Inquiry into the Media and Media Regulation*, 28 February 2012, p. 38.

66 The Hon R. Finkelstein QC assisted by Professor M. Ricketson, *Report of the Independent Inquiry into the Media and Media Regulation*, 28 February 2012, p. 53.

- Chapter 3 sets out the opportunities offered by the shift away from traditional media platforms, and toward digital, including the benefits of new approaches to journalism and unprecedentedly large online audiences.
- Chapter 4 considers the specific relationship between the news media and aggregators, and discusses the possibility of imposing a levy on aggregators.
- Chapter 5 looks overseas to briefly examine how the policy and reform issues raised in the report have been addressed in other countries.
- Chapter 6 considers ways that the Commonwealth directly supports public interest journalism, including through its public broadcasters, as well as potential models for direct support in the future. It outlines the benefits and pitfalls of offering direct subsidies to media organisations. This chapter also considers a number of other issues, including whether the Commonwealth could do more to encourage news literacy in Australia, either through public awareness campaigns or the education system.
- Chapter 7 looks at ways the Commonwealth could indirectly support a healthy public interest journalism sector through reforms to its tax and legal systems, as well as a number of other policy adjustments.

Conduct of the inquiry

1.84 Details of the inquiry, including links to its terms of reference and associated documents were placed on the committee website at: www.aph.gov.au/Parliamentary_Business/Committees/Senate/Future_of_Public_Interest_Journalism

1.85 The committee directly contacted a number of relevant organisations and individuals to notify them of the inquiry and invite submissions by 15 June 2017, but also expressed its willingness to receive submissions after this date on its website. Submissions received by the committee are listed at Appendix 1.

1.86 The committee held seven public hearings: in Sydney on 17 May 2017; Melbourne on 19 May 2017; Sydney on 11 July 2017; Melbourne on 21 August 2017; Sydney on 22 August 2017; Canberra on 22 November 2017; and Sydney on 23 November 2017. A list of witnesses who gave evidence at hearings is available at Appendix 2, and all Hansard transcripts can be accessed through the committee's website.

Acknowledgements

1.87 The committee would like to thank those individuals, institutions and organisations that made submissions to the inquiry, as well as all witnesses who provided evidence at public hearings.

1.88 Finally, the committee considers it appropriate to record its sadness at the death of Mr Michael Gordon, one of this country's most respected journalists, who died at the time the committee was completing its final deliberations. The committee would like to formally recognise Mr Gordon's immense contribution to Australian public interest journalism over his long and celebrated career.