

Australian Press Council Submission – Senate Environment and Communications Legislation Committee Inquiry into the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024

The Australian Press Council welcomes the opportunity to contribute to the Senate Environment and Communications Legislation Committee’s inquiry into the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024.

The Australian Press Council

The objects of the Press Council are to promote freedom of speech through responsible and independent print and digital media, and adherence to high journalistic and editorial standards.

The Press Council is the principal body with responsibility for setting and promoting high professional standards for publisher members and for considering, dealing with and responding to complaints about Australian newspapers, magazines and associated and stand-alone digital outlets. It seeks to meet its objectives by:

- a) encouraging and supporting initiatives by the print and digital media to address the causes for readers’ complaints and concerns;
- b) keeping under review and, where appropriate, challenging political, legislative, commercial or other developments which may adversely affect the dissemination of information of public interest and may consequently threaten the public’s right to know;
- c) making representations to Governments, public inquiries and other forums as appropriate on matters concerning freedom of speech and access to information;
- d) undertaking research and consultation on developments in public policy affecting freedom of speech, and promoting public awareness of such issues; and
- e) promoting an understanding of the objects and activities of the association especially among editors, journalists and journalism schools.

The Press Council considers complaints about print and online publications. Where appropriate, it seeks to achieve agreed remedies, issues letters of advice to publishers and publishes formal adjudications regarding certain complaints.

The Press Council currently covers approximately 490 print and online mastheads. Constituent bodies include most of the major newspapers and magazine publishers in Australia. The Press Council’s role is not to represent the media, and constituent members of the Press Council may wish to make their own submissions to the Bill.

Our Submission

The Press Council supports the proposal that professional news content will not be within the scope of the Bill. This is consistent with the Press Council’s “Charter for a Free Press in Australia”.

The Press Council’s submission focuses on areas which relate directly to our purpose and responsibilities. These are:

1. The definition of “news content”;
2. The definition of “professional news content”; and

3. Compliance with professional standards by organisations claiming to be covered by the professional news content exclusion.

Definitions of News Content and Professional News Content

The Press Council is concerned that the definitions of “news content” and “professional news content” contained within the Bill is too narrow and, as a result different material published by a person that meets the criteria of professional news content may or may not be exempt. The Press Council believes this situation is potentially confusing to consumers, creates compliance issues for news sources and could create difficulties for the regulator.

In support of this view, the Press Council notes that the Bill defines “news content” at section 16(3) as content that reports, investigates or explains any of the following:

- a) issues or events that are relevant in engaging persons in public debate and in informing democratic decision-making;
- b) current issues or events of public significance for persons at a local, regional, national or international level;
- c) current issues or events of interest to persons.

This definition of “news content” does not capture all material published by Press Council members. It is restrictive and it is foreseeable that some content published by our members which would ordinarily be considered as ‘news’ would fall outside the proposed definition of “news content”. For example, an opinion piece about a historical event would not fall within the definition of ‘reporting’, ‘investigating’ or ‘explaining’ on a ‘current’ issue or event. A letter to the editor expressing the opinion of a reader would not fall within the definition of ‘reporting’, ‘investigating’ or ‘explaining’.

The Press Council believes the simplest means of addressing this issue is by excluding from the Bill’s coverage all material published by Press Council members.

Further, the definition of “professional news content” at section 16(2) limits the exemption to content “produced” by Press Council members and the like. It is unclear the purpose of the use of this term, and it is undefined. Members of the Press Council are subject to the standards and policies, and complaint handling processes for all that they publish, not just what they “produce”. Therefore, the word “produced” in section 16(2) should be replaced with the term “published”, and “produces, and” in section 16(2)(a) should be deleted.

Editorial Independence Criteria

The Press Council welcomes the acknowledgement that adherence to the Press Council’s Standards of Practice is a means of meeting the requirements to be excluded from the proposed powers under the Bill. However the Bill includes a further requirement that the producer of the content should have editorial independence from the subjects of the person’s news coverage.

The Press Council believes that this additional requirement is not only unnecessary but may interfere with news reporting.

The issue of transparency around reporting is dealt with under the Press Council’s General Statement of Principles and can be seen in operation in the way that persons are to declare any conflicts at the foot of news items.

If the current provision is retained, material reported by a person for example about its own shareholders Annual General Meeting or a person reporting on issues which involve its staff or senior managers e.g. industrial disputes, is not excluded from the proposed powers.

Comments

The Press Council notes that in the earlier exposure draft of this legislation, circulated last year, there was explicit mention in supporting documentation that comments made by readers in response to professional news content might not automatically be excluded for misinformation purposes. This matter does not appear to be explicitly covered by this Bill nor the supporting explanatory memorandum or second reading speech.

While the Press Council believes that while comments by users about professional news content on third party digital platforms should be within scope of the legislation, it does not believe it is appropriate when applied in respect of the newspaper, magazine, tv program, channel, website or av content that the professional news content was originally published on.

The Press Council believes that in this circumstance comments by users in response to professional news content should be granted a special exemption so that the right balance is struck between combatting misinformation and protecting freedom of expression.

Firstly, comments from users should be exempt because the comments are made in response to a verifiable, accountable, and trustworthy source of information. Accordingly, any misguided user comments would not be read by another user in isolation, but instead, in combination with the professional news content which addresses the issue or event of discussion.

Secondly, user comments are also made in a context that is uniquely conducive to constructive public debate and discussion because they are monitored by a professional news source, and the news source that publishes the comments becomes responsible for them. Press Council members are already responsible for the content of news comments. In order to preserve the perceived and real independence of professional media, persons producing professional news content should not be required to apply misinformation and disinformation criteria to user comments.

Compliance with professional standards by organisations claiming to be covered by the professional news content exclusion

The Press Council is concerned that while the Bill lists the means by which professional news content can be excluded from the proposed powers there does not appear to be any means or test around how a news source demonstrates compliance with the various rules attached to professional news content.

The Press Council is aware of instances where organisations either pass themselves off as members of the Press Council or claim to adhere to the Standards of the Press Council without being a member.

The legislation should contain provisions that direct the ACMA to ensure that claims by a person that they meet the requirements of professional news content are bona fide and that there is an independent complaints-handling process in place to ensure compliance with standards. This is vital to the integrity of the exclusion and the confidence consumers have in the integrity of news material being reported to them.

Conclusion

The Press Council thanks the Committee for the opportunity to make this submission and would be pleased to expand on the points above if requested.