Submission 009
Received 19 March 2013

QUEENSLAND COUNCIL FOR CIVIL LIBERTIES
GPO Box 2281 Brisbane 4001

The Committee Secretary
Joint Select Committee on Broadcasting Legislation

Dear Madam/Sir

Broadcasting Legislation Enquiry

Please see below the QCCL's brief comments in relation to this legislation. The comments are necessarily brief given the public debate and the potential that this legislation will not proceed.

Should the issue proceed further we reserve the right to make more detailed submissions.

At the outset we record our fundamental objection to the way this legislation has been handled by the Minister. Whilst we acknowledge, as the Minister says, that this policy area has been the subject of long debate it is entirely unsatisfactory that consideration of the actual Bills might be limited to a period of a few days. Policy is one thing, but the actual legislation implementing that policy is another matter. The legislation requires its own proper consideration and debate, particularly in an area of fundamental importance to our democracy such as the regulation of the media.

The QCCL's areas of concern are:

1. The failure to introduce a statutory right to privacy;
2. The public interest test;
3. Standards regulation.

1. **Privacy**

We condemn the government for its failure to introduce privacy legislation. We consider that a statutory right to privacy along the lines recommended by the Australian Law Reform Commission to be absolutely vital. We do not see why it is necessary to refer this topic back to the Australian Law Reform Commission given that it has already been the subject of reports by that Commission, the New South Wales Law Reform Commission and the Victorian Law Reform Commission. This is a clear failure of political will by the government.

2. **Public Interest Test**

A public interest test in relation to media mergers is common throughout the world including being present in the law in the UK, Germany and the United States.

It has been recommended by the Productivity Commission and by the Convergence Review.

It has been regularly recognised that mergers in the media give rise to different issues from those in other areas of the economy. In the media context consideration needs to be given to issues other than concentration including the centrality of freedom of speech to democracy.

For this reason it is recognised that a separate public interest test needs to be applied to the media.

The traditional media remains very powerful despite the development of the internet and other communications technologies. It is possible that the power of the traditional media may increase over time because it still retains a reputation for reliability that has not yet been achieved by many of the players in the digital universe. In fact, the most popular websites in Australia continue to be those operated by traditional media entities.

In the circumstances, we support the general thrust of the government's legislation on this topic. The only criticism we would make is that it seems to us that the test is better expressed in the legislation in the United Kingdom because it refers to a broader series of matters and we would recommend that the government amend the test to bring it into line with the UK model.

3. **Standards regulation**

The government's model bears some resemblance to the Leveson model. The QCCL supports the Leveson's main proposal. We do not support his proposal for last resort compulsory statutory press regulation. That would be too high a price for freedom of speech.

Under the main Leveson proposal media organisations that agree to a robust and independent model of self-regulation obtain certain benefits from the legal system. Leveson recommends incentives for media organisations to participate in these schemes. These include exemptions from proposed exemplary damages, discounts in legal costs. The Bill's loss of protection under the *Privacy Act* is a form of incentive along these lines. However the Bill needs to provide further incentives along the lines proposed by Leveson.

The public gets the benefit of a cheap and quick method of complaint against media which can result in the imposition of damages and fines by the self-regulating agencies.

Whilst we consider some of the hue and cry about the role of the Public Interest Media Advocate in the self-regulation system is over blown, we do agree that the independent statutory authority is an unnecessarily burdensome regulation on the media. The question of whether or not the self-regulatory system complies with the legislation should be left to the

Courts in the context of disputes between media organisations and those bringing claims for either defamation or breach of privacy.

Summary

In short, in our view the legislation is fundamentally heading in the right direction but could be improved in the areas indicated particularly by removing the Public Interest Media Advocate from the process of approving the self-regulatory bodies

Yours faithfully

Michael Cope
Executive Member
For and on behalf the
Queensland Council for Civil Liberties
18 March 2013
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