



Submission to the

Review of the News Media and Digital

Platforms Mandatory Bargaining Code

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Introduction

The Australian Press Council welcomes the opportunity to make a submission to the Review of the News Media and Digital Platforms Mandatory Bargaining Code.

The Press Council has a strong interest in the maintenance of a viable and independent news media industry in Australia. It has made submissions on the impact of the digital platforms on the commercial news media sector and the consequences for public interest journalism to both the ACCC (as part of its Digital Platforms Inquiry) and to the Treasury (on the Government response to the ACCC Digital Platforms Report). In January 2021 and August 2020 respectively, it made submissions on the Professional Standards Test in the News Media and Digital Platforms Mandatory Bargaining Code Bill 2020, and on the Exposure Draft of the Bill.

The Press Council reiterates its previously expressed concerns in relation to the Professional Standards Test in the Code. It also makes some additional observations on select questions raised by the Review in relation to the application process.

The Australian Press Council

The objects of the Press Council, as stated in its Constitution, are to promote freedom of speech through responsible and independent print and digital media, and adherence to high journalistic and editorial standards. As such, the Professionals Standards Test and how it is applied is of deep interest to the Press Council.

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 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 currently covers more than 450 print and online mastheads. Constituent bodies include most of the major newspapers in Australia. The Press Council's role is not to represent the media and individual members of the Press

Council may wish to make their own submissions to the Review.

The Press Council sets General Principles covering accuracy and clarity; fairness and balance; privacy and the avoidance of harm; and integrity and transparency. It has approved Specific Standards on the coverage of suicide and contacting patients in care. It has also approved a Statement of Privacy Principles (in consultation with the Federal Privacy Commissioner) and Advisory Guidelines on a range of journalistic issues.

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.

Registration tests

The Review asks the following questions:

- **Q9:** Did the registration tests operate to ensure that news businesses were registered where, and only where, this was consistent with the policy objectives of the Code?
- **Q 10:** If not, which of the registration tests could be improved, and how, to ensure consistency with the policy objectives of the Code?
- **Q11:** Are additional registration criteria needed, or are registration criteria unnecessary to meet the policy objectives of the Code?

The Professional Standards Test

In answer to the above questions, the Press Council submits that the Professional Standards Test should be improved and that some of the elements of that test should be repealed and/or replaced.

The Professional Standards Test is described in s 52P of the *Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Act 2021* (the Act) and the Press Council supports the inclusion of such a test as part of the bargaining code. Only those businesses which adhere to professional standards should receive the benefit of access to bargaining rights with digital platforms mandated by Australian law. It is also essential that the public can be confident in the standards that are set and their application.

The Press Council endorses the Act's recognition in s 52P(1)(a)(i) that the Australian Press Council Standards of Practice are an appropriate measure of professional practice for news media businesses. However, as outlined below, the Press Council remains concerned about a number of subsequent provisions.

First, the Press Council has concerns about s 52P(1)(a)(iv) that allows a news source to meet the Professional Standards Test if it is subject to internal editorial standards that are analogous inter alia to the Press Council's Standards of Practice to the extent that they relate to the provision of quality journalism. As the Press Council has previously submitted, it believes that high standards of media practice and transparent complaints processes

require that the standards set and the complaints handling involved be under the auspices of a body entirely independent of a news business. The Press Council offers an independent complaints mechanism. In particular, its member publishers do not sit on adjudication panels. Adjudication panels are composed entirely of public members and independent journalist members.

It is not clear that high standards of practice will always result in cases where rules are only applied via an internal process, or via a body whose complaints-handling process is not entirely independent and where standards and principles by which decisions are made are not developed through robust processes that are publicly available.

The Press Council understands that some news bodies that have been granted eligibility status under the Code have relied on internal editorial standards that are an exact replica of select standards of the Press Council. The ease with which a body can merely copy and paste the Press Council's standards without demonstrating adherence to them is of concern. In such a scenario, the additional scrutiny of an independent and transparent complaints process is absent. For example, there is no data about the number of complaints lodged, nor transparent data about compliance with the standards, nor published adjudications determining whether or not there has been a breach of the standards. Allowing the proliferation of internal editorial standards without a concomitant independent complaints process can lead to the dilution of trust in adherence to professional standards and to a lowering of journalism standards.

In contrast, Press Council members are bound by the Press Council's Constitution that imposes binding requirements. These include to commit to the Press Council's Standards, promulgate them to staff, ensure complaints are dealt with in accordance with the Press Council's procedures, and comply with the Press Council's requirements for the publication of adjudications. These binding commitments are an integral component in maintaining high standards of journalism.

Recommendation 1: s 52P(1)(a)(iv) should be repealed

The Press Council remains concerned that s52P(1)(a)(v)) allows the Government to make regulations that would replace the Press Council Standards. The Press Council considers that such a provision might allow a government to intervene to set standards which might constrain freedom of the press and freedom of speech beyond reasonable professional standards. It might also be interpreted as the Press Council's Standards of Practice not being sufficiently robust to meet the Professional Standards Test. Any such perception could act as a disincentive to Press Council membership.

The Press Council is also concerned that its members may face the prospect of having to comply with the Press Council Standards of Practice (as members of the Press Council) in addition to any rules that might replace these under s 52P(1)(a)(v), thereby subjecting them to an unnecessary and additional regulatory burden. Such a provision has not been considered necessary in other legislation such as the journalism exemption in s 7B of the *Privacy Act 1988* (Cth), which is available to members of the Press Council.

The Press Council notes that s 52(1)(a)(vi), which allows for the making of other rules as

specified in the regulations, could have the practical effect of overriding the Press Council's standards by offering an alternative set of rules. Such rules could potentially be less stringent and less onerous on publishers, diluting their responsibilities and thereby adversely impacting news quality.

If such rules were made the legislation is silent on any complaints-handling mechanism that would be associated with these rules. A situation where rules were made by Government and complaints made about adherence to these rules was also handled by Government would raise serious concerns about the freedom of the press in Australia.

In addition, the Press Council considers that it is undesirable and potentially confusing, especially for consumers, to allow a proliferation of potentially inconsistent rules in relation to professional standards.

The Press Council appreciates that there may be instances where the Government may want the flexibility to accommodate codes or standards developed by independent industry bodies separate from those listed in the Act. As the Press Council has previously suggested, the Minister should be empowered to make a declaration that an industry body or code is deemed to satisfy the requirements of the professional standards test but such a declaration can only be made if the body or code meets minimum standards around independence of its complaints-handling process, and transparency of its standards, principles and operations.

Sections 52P(1)(a)(v) and (vi) go well beyond supporting such an arrangement and would allow the Government to develop and impose its own set of professional standards. The Explanatory Memorandum to the Bill provided no guidance on how the proposed regulation-making power will operate, including in what circumstances and how any rules would be developed and imposed and, critically, on how such additional rules will be enforced.

The Press Council believes it is inconsistent with the concept of a free and independent press and the support of public interest journalism for the Government to be setting and enforcing standards of professional conduct for the print and online media sector.

Recommendation 2: Section 52P(1)(a)(v) and (vi) should be repealed and replaced with a provision that empowers the Minister to make a declaration that an industry body or code is deemed to satisfy the Professional Standards Test subject to the body or code meeting minimum standards relating to independence of its complaints-handling process and transparency of its standards, principles and operations.

Ideally there should be a uniform set of standards that are developed outside Government and with a complaints-handling system that is independent of both Government and publishers. Media convergence is already leading to overlapping standards and complaints-handling processes with the risk of inconsistency and loss of public awareness and

confidence. The Act as currently drafted allows further fragmentation when moves in the other direction are needed.

Partial description of the Professional Standards Test in the Consultation Paper

The Press Council notes that the Consultation Paper only partially describes the Professional Standards Test as it states (at page 12) that “The Professional standards test requires that each news source is subject to external professional standards as applicable, as listed in paragraph 52P(1)(a).”

This statement does not present the complete test as s 52P(1)(iv) also allows for internal editorial standards that are analogous to specified rules, including those of the Australian Press Council. As stated above, and for the reasons expressed above, the Press Council recommends the repeal of s 52P(1)(a)(iv).

Similarly, the Consultation Paper is silent on the other limbs of the Professional Standards Test (namely 52P(1)(a)(v) and (vi)) that would allow a news business to meet the test if it is subject to rules specified in regulations. As stated above, and for the reasons expressed above, the Press Council recommends the repeal of s 52P(1)(a)(v) and s 52P(1)(a)(vi).

It is important for the integrity of standards that they are independently developed and independently applied.

Application for registration

The Review asks the following questions:

- **Q 13** Are there any improvements that could be made to the ACMA’s guidelines?
- **Q14:** Are there any improvements that could be made to how the ACMA administers the application and assessment process generally?

The Press Council suggests that it would be useful for the ACMA’s guidelines to explain that an applicant can only claim that it is ‘subject to’ the professional standards of a nominated body, such as the Press Council, if it is a member of that body.

The Press Council suggests that it would also be useful, as part of the application process, for the ACMA to ask applicants expressly whether they are a member of the Press Council (or other relevant body) and to provide proof of membership to the ACMA.

As it stands, the ACMA’s guidelines state that applicants need to demonstrate that each news source they nominate has professional editorial standards, including a mechanism for complaints. Applicants must indicate if they are subject to any of the professional standards tests in the drop-down menu. The ACMA’s online application form provides a drop-down menu that requires applicants to mark the box of professional standards to which they are subject. This could be facilitating applicants marking that they are subject to the Press Council’s standards without being a member of the Press Council and, therefore, without being bound by the Press Council’s Constitution that imposes binding requirements on members.

The Press Council has been prompted to make this suggestion because it noticed, with concern, that some of the websites of news businesses that were not members of the Press Council (but had nonetheless obtained eligibility status under the Code) had:

- stated that they adhered to the standards of the Australian Press Council;
- reproduced the Press Council's Standards of Practice word for word; and/or
- stated that readers could appeal to the Australian Press Council if they were not satisfied with the outcome of a complaint.¹

Such representations were likely to mislead readers that those publications were members of the Press Council when they were not and also wrongly portrayed the Press Council as an appeals body for complaints that have been internally handled by the publications. Moreover, such scenarios dilute trust in high quality journalism.

It may also be useful if ACMA's application form were to ask applicants express questions to demonstrate the robustness of their complaints process, including avenues for review.

Recommendation 3: The ACMA's guideline should be amended to explain that an applicant can only claim that it is 'subject' to the professional standards test of the Australian Press Council if it is a member of the Council.

Recommendation 4: As part of the application process, applicants should be required to state expressly whether they are a member of the Australian Press Council (or other relevant professional standards body) and provide proof of membership to the ACMA. Applicants should also be asked express questions to demonstrate the robustness of their complaints process, including avenues for review.

Thank you for the opportunity to make this submission.

Yvette Lamont

CEO and

Executive Director

¹ Corrections to some of those websites have since been made.