

Submission to the Independent Inquiry into Media and Media Regulation

Australian Greens Leader Senator Bob Brown

Introduction

“A cynical, mercenary, demagogic, corrupt press will produce in time a people as base as itself.” – Joseph Pulitzer (1847-1911), inscribed on the gateway to the Columbia School of Journalism in New York.

Joseph Pulitzer, newspaper proprietor and editor, was not only aware of the potential of the media to corrupt and be corrupted, but he championed its independence saying “our republic and its press will rise or fall together”. That is, freedom is only as strong as the media which informs democracy.

Independence of the press from political interference is one thing, but what of its independence from oligarchy or self-serving wealth? Successive U.S. presidents from Cleveland to F.D. Roosevelt to Eisenhower warned about the corrosive influence on democracy of corporate power and influence.

In 2011, in Australia and, no less the U.S., this influence is as alarming and demonstrably destructive of media ethics as it is of the basic democratic right of the people to be informed fully, fairly and fearlessly.

The Media, Entertainment and Arts Alliance Code of Ethics for journalists (the Code of Ethics) incorporates this ideal, in defence of that right, not least where in item 1 it requires journalists to: *“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.”*

In an age in which editorial opinion, necessarily biased and unbalanced, spills into news reporting and headlines, the Code of Ethics has become a hollow vessel, with its nobility of intent sidelined.

These problems for democracy come together in Australia where up to 70 per cent of the press is owned by one corporation. This oligarchy headlines opinion on front pages and brazenly campaigns to make or break governments.

If the elected representatives are not to rein in this debasing of the ideals of the fourth estate, who should or will?

Yet the very call for this review of the media's role, two decades since any previous review, was met with some extraordinary claims that proponents (this one included) are 'totalitarian' and Gestapo-like. Appendix 1 contains some examples of criticisms I have faced for my call for a media inquiry. A call to review the press was branded by the press as a call to destroy the press. If successful this biased self-advocacy would leave the media alone - unlike politics, business, culture, sport, education and civic progress - closed to the scrutiny of representative democracy.

This Inquiry begins trammelled by the fear that it has been branded in the newspapers as well as opinion columns as unwarranted or illegitimate before a submission is collected, a hearing held or a finding contemplated.

However, and perhaps all the more so, the Inquiry is important, not just for ensuring the national ethos of a fair go, but to see if the self-advocated ethics of the fourth estate are more than a relict of theoretical probity.

It is my submission that the profession's ethics are, in important aspects undermined, that the public esteem for the news media is depressed and that the concentration of ownership, at least of the print media, is corrosive of the fabric of Australian democracy and ought to be remedied.

As Charles Sampford and Robyn Lui suggest, "if the public interest is to be served, the integrity of the role of the media should be recognised and enhanced rather than compromised"¹. The Inquiry presents the opportunity to not only gauge how well the media serves the modern Australian public but to present recommendations on how media operations can better serve the community.

A proposal to support quality journalism

There is clearly a problem with media diversity in Australia. We have some of the greatest concentration of media ownership in the world, notably of course in the fact that News Limited owns some 70 per cent of the print media. There have been numerous suggestions proposed over many years of how to best address media diversity in Australia.

¹ Sampford, C. and Lui, R. 2004. *Media Ethics Regime and Ethical Risk Management in Australia*, Journal of Mass Media Ethics, vol. 9, no. 2, p. 86-108.

The Australian Greens support the proposal for tax deductible status for not-for-profit journalism enterprises².

Almost all the news media in Australia is owned by private corporations, outside of the ABC and SBS. There is an inherent censorship in a system which is controlled by private enterprise. As Charles Sampford and Robyn Lui argue, “media institutions face particular dilemmas because they are, simultaneously, key elements of an effective democracy and, for the most part, commercial entities seeking success in the market³.”

An important additional mechanism to enhance diversity in the media is independent and not-for-profit journalism enterprises. As noted by the Issues Paper prepared by the Inquiry, ‘support’ for independent journalism is a key issue for consideration.

A group of prominent journalism academics have put forward the idea of tax deductible status for not-for-profit journalism enterprises, using the U.S. model as an example. They note that, “more than 60 non-profit centres have been created in the United States since 2006 because philanthropists have realised that mainstream news media either have too few resources to undertake investigative journalism or are too focused on populist, celebrity-based writing. Investigations by centres such as ProPublica, The Centre for Public Integrity and The Centre for Investigative Reporting are now routinely published in the mainstream media and specialist websites.⁴”

Supporting a system of tax deductibility for not-for-profit journalism enterprises to operate in Australia would provide a platform for more media voices, particularly in investigative and in-depth journalism. It is difficult to estimate the cost of such a scheme and further work would have to be done in this regard.

In addition to the above proposal, and given the current concentration of media ownership, I urge the Inquiry to consider what further legal mechanisms or policies could be implemented to ensure more media diversity and that in the future no media proprietor owns more than 70 per cent of the print media.

² Letter to Senator Bob Brown, 17 August 2011 from: Bill Birnbauer, Senior Lecturer, Journalism, Monash University; Wendy Bacon, Professor of Journalism, Australian Centre for Independent Journalism; Dr Margaret Simons, Convenor Journalism, Swinburne University & Chair of Public Interest Journalism Foundation; Professor Chris Nash, Head of Journalism, Monash University; Dr Matthew Ricketson, Professor of Journalism, University of Canberra; and Associate Professor Philip Chubb, Deputy Head of Journalism, Monash University.

³ Sampford, C. and Lui, R. 2004. *Media Ethics Regime and Ethical Risk Management in Australia*, Journal of Mass Media Ethics, vol. 19, no. 2, p. 86-108.

⁴ Letter to Senator Bob Brown, 17 August 2011, Bill Birnbauer et al.

Cross-media ownership rules

The current cross-media rules have limited scope and do not apply to a range of platforms, including national newspapers and online media services. As outlined in one of the Convergence Review's discussion papers, a key aim of the cross-media ownership rules is to limit the extent of influence and media concentration, to ensure diversity of voices in the media market, and try to ensure that consumers have access to a minimum number of different 'voices' in defined areas through various platforms⁵. In the converging media world, this is clearly an issue of importance that should be considered for the regulation of print and online media.

Fit and proper person test

Television and radio broadcasters must be licensed and are regulated by a statutory authority, the Australian Communications and Media Authority (ACMA). The Broadcasting Services Act imposes a 'suitability test'. This means that the ACMA "must consider the suitability of a person or company to be a licensee having regard to whether or not there is a significant risk of an offence, breach of civil penalty provision, or breach of broadcasting licence condition occurring."⁶ Prior to the suitability test a broader fit and proper person test applied for broadcasting licences. With the move of newspapers into the digital age it is not logical that broadcast proprietors must be licensed and subject to a suitability test when print proprietors are not.

The concept of a fit and proper person is in a great deal of legislation that regulates the private use of a public resource or good. Should not a fit and proper person test for the people and corporations who control the flow of information, the currency of our democracy, be considered as an appropriate policy response to media regulation?

Power and influence

The media is owned by the wealthy. As the Productivity Commission found in their 2000 Broadcasting Inquiry Report, "the public interest in ensuring diversity of information and opinion, and in encouraging freedom of expression in Australian media, leads to a strong preference for more media proprietors rather than fewer.

⁵ Department of Broadband, Communications and the Digital Economy. 2011. Convergence Review Discussion paper – *Media Diversity, Competition and Market Structure*. Australian Government. Available at:

http://www.dbcde.gov.au/_data/assets/pdf_file/0004/139270/Paper-2_Media-diversity_competition_access.pdf, p. 14.

⁶ Ibid, p. 18.

This is particularly important given the wide business interests of some media proprietors⁷. Media proprietors are often involved in other business activities which may attract coverage by their media outlets and subject them to conflicts of interest. Further extension of power and dominance in the media landscape should be avoided.

A principle reflected in the objectives of legislation dealing with regulation is the 'influence' principle, which provides that the level of regulation applying to a service should be in proportion to the level of influence the service has in shaping community views⁸. With one proprietor controlling 70 per cent of the print media in Australia, the level of influence is excessively high, particularly when the News Limited print media also often sets the daily agenda for other news and current affairs programs across platforms and broadcasters, including the ABC.

In a letter to the editor of *The Australian* dated 5 October 2011, I posed the question why not be 'risk-averse' if you can be so readily verbally on its front page. This was in relation to George Megalogenis's observation⁹ on the same day that political debate has become risk averse and yet on the same front page, a subheading claimed "Australia needs a fat tax like Denmark, says Bob Brown". This was based on a quote from one of my contributions to the recent Tax Forum; "overweight and obesity costs the economy directly \$8 billion and indirectly up to \$50 billion to \$60 billion a year, so we should look at the Danes' saturated fat tax." So 'look at' became a 'needs' headline.

Whilst the media hound people, they do not like to be hounded themselves. The case of *The Australian's* campaign against Professor Larissa Behrendt is a good example. A September editorial in *The Australian*, *Fight it out at the ballot box, not at media inquiry*¹⁰, illustrated *The Australian's* offence at finding itself in a position of role reversal.

⁷ Broadcasting Inquiry Report, 2000, Productivity Commission, Available at: http://www.pc.gov.au/_data/assets/pdf_file/0003/26598/broadcst.pdf, p. 314.

⁸ Department of Broadband, Communications and the Digital Economy. 2011. Convergence Review Discussion paper – *Media Diversity, Competition and Market Structure*. Australian Government. Available at: http://www.dbcde.gov.au/_data/assets/pdf_file/0004/139270/Paper-2_Media-diversity_competition_access.pdf, p. 12

⁹ *Risk-free debate getting nowhere*, 5 October 2011, George Megalogenis, *The Australian*, p. 4.

¹⁰ *Fight it out at the ballot box, not at media inquiry*, 20 September 2011, Editorial, *The Australian*, p. 13.

Standards

The media has a responsibility and obligation to the public to report with fairness and balance, and to provide recourse to individuals who believe they have been misrepresented. These responsibilities are recognised in the Media, Entertainment and Arts Alliance Code of Ethics (the Code of Ethics) and individual media companies' internal codes of practice.

The media landscape in Australia is primarily self-regulated through the Code of Ethics and the role of the Press Council. The questions are whether this self-regulatory regime is sufficient and whether there should be independent oversight and enforcement of such standards.

As a case in point, I note the recently released *Crossing the Line* report by the Victorian Office of Policy Integrity (OPI) which details "the outcome of an OPI investigation concerning the conduct of a member of Victoria Police undertaking secondary employment as a Ministerial Adviser and his relationship with a Deputy Commissioner of Victoria Police"¹¹. The report includes the recommendation; "*If the Australian Government's proposed inquiry into the media proceeds, the use of the media in the campaign against former Chief Commissioner Overland deserves consideration.*"

The Australian Greens support the Code of Ethics, but it is not being implemented or upheld as it should. The Code of Ethics needs to be considered in light of the apparent tension between upholding the public interest and serving commercial interests.

Here is the Code of Ethics, notable for its use of the words 'fairness', 'accuracy' and 'independence'¹²:

1. *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.*
2. *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.*

¹¹ *Crossing the Line*, Parliamentary Report, tabled October 2011. Office of Police Integrity, Victoria. Available at: <http://www.opi.vic.gov.au/index.php?i=16&m=8&t=1>

¹² Media Alliance Code of Ethics. Media, Entertainment and Arts Alliance website. Available at: <http://www.alliance.org.au/code-of-ethics.html>

3. *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.*
4. *Do not allow personal interest, or any belief, commitment, payment, gift or benefit, to undermine your accuracy, fairness or independence.*
5. *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.*
6. *Do not allow advertising or other commercial considerations to undermine accuracy, fairness or independence.*
7. *Do your utmost to ensure disclosure of any direct or indirect payment made for interviews, pictures, information or stories.*
8. *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.*
9. *Present pictures and sound which are true and accurate. Any manipulation likely to mislead should be disclosed.*
10. *Do not plagiarise.*
11. *Respect private grief and personal privacy. Journalists have the right to resist compulsion to intrude.*
12. *Do your utmost to achieve fair correction of errors.*

Need for improvement

Can we truly say our newspapers are complying with their Code of Ethics? Which newspapers let the readers know the conflicts of interest of their opinion writers and proprietors?

Sampford and Lui argue that “rather than rewarding media organisations for acting ethically, there is often a perception that media organisations are rewarded because they threaten to act unethically¹³.” They further argue that an “ethics regime should be part of a sound risk management policy for the media industry and the public it is intended to serve”¹⁴. The media’s own Code of Ethics is a good one and for the sake of journalists we ought to have a system whereby those who infringe the Code, including the owners, are called to account. How can the media use its extraordinary

¹³ Sampford, C. and Lui, R. 2004. *Media Ethics Regime and Ethical Risk Management in Australia*, Journal of Mass Media Ethics, vol. 19, no. 2, p. 86-108.

¹⁴ Ibid.

power as the fourth estate morally when those who own and control it are not accountable to the public they supposedly serve?

Role of the Press Council

There needs to be fair and reasonable opportunity to respond to claims and criticisms beyond what the Press Council currently offers.

A particular area in which the Press Council needs to improve is in the timing of its decisions. For example, the 2005 Press Council claim¹⁵ against the 2004 Herald Sun article *Greens back illegal drugs* was upheld six months after the publication of the original article. The infringing article caused irrevocable harm to the Australian Greens during the 2004 election, and may have cost one candidate his rightful seat in the Senate.

The Press Council, through its three key functions of investigating complaints, upholding standards and developing policy, should contribute to generating trust in the quality of the news. To do this effectively, the Press Council needs additional resources. A body that is majority funded by the industry it serves, particularly when the industry is dominated by a sole proprietor, does not have the best funding model for ensuring independent and impartial judgements and policies that are in the public interest. I urge consideration of a joint funding model for the Press Council to secure a degree of independence from both those it represents and the government.

The governance of the Press Council should contribute to strengthening and increasing the transparency and accountability of the media. The Press Council's membership could be enhanced by input and oversight from university schools of journalism, for example.

Given the convergence of media through the development of new technologies and the remit of this Inquiry to also consider online media, similar regulation to that which applies to broadcast media should be considered for print and online media. A statutory role for the Press Council should be established.

A useful model for Press Council reform may be the Norwegian Press Complaints Commission (PFU) - a one-stop shop media ethics complaints regime which has operated since 1996. The PFU is an independent industry based body funded by its

¹⁵ Press Council adjudication no. 1270 (adjudicated February 2005). Available at: <http://www.austlii.edu.au/au/other/APC/2005/3.html>

members and in part indirectly by the Norwegian government. The PFU covers all media formats and has the right to initiate its own investigations, including if the publication is not a member¹⁶.

Free speech

The Australian Greens earlier this year supported new shield laws for journalists and whistleblowers. Effective shield laws for journalists and public service whistleblowers act as an encouragement to vigilance and integrity and recognize that if journalists cannot protect their sources people will not come forward to expose wrong-doing and abuses of power¹⁷.

As is universally recognised, freedom of speech is essential to a vibrant and sustainable democracy. However, free speech is not an absolute. For example, laws of defamation protect citizens from unwarranted outrage.

Holding the media to its own ethical standards is not a restriction on free speech. Free speech for the press involves, through its own Code of Ethics, fair speech: which comes with a high degree of responsibility.

A well-developed regulatory framework for the press can enhance the quality of free speech in a democracy. Without some degree of regulation, the right to redress for those who have been misrepresented where the press has made an error can not be assured, as for most people access to mainstream media to present a counterargument or response is not guaranteed. The press is in a privileged position compared to the majority of a nation's citizens and some regulation is necessary to ensure a fair degree of access for citizens to the press – as called for in the Code of Ethics.

As Justice Felix Frankfurter of the U.S. Supreme Court said in 1946, “without a free press there can be no free society ... Without a lively sense of responsibility a free press may readily become a powerful instrument of injustice.”¹⁸

The Inquiry is an important opportunity for that injustice to be limited by some requirement of adherence to the industry's own Code of Ethics.

¹⁶ For further information see the submission to the Inquiry by Dr Johan Lidberg, Senior Lecturer, School of Journalism Australian and Indigenous Studies, Monash University.

¹⁷ *Greens welcome new shield law for journalists*, 21 March 2011, Senator Scott Ludlam, Media Release.

¹⁸ *In Pennekamp v. Florida*, 1946, U.S. Supreme Court

APPENDIX 1

Examples of criticisms of Senator Bob Brown and the Australian Greens for supporting a media inquiry

Explanatory note: following the headline is a summary in brackets of the criticism levelled at Senator Brown

The real threat to the media isn't the News of the World [*Disgraceful slander*]

Herald Sun, 9/7/2011

Andrew Bolt, blog

"...Brown's call is a disgraceful and opportunistic slander."

Bob Brown and his chamber of secrets [*Prejudicial and dishonourable*]

The Adelaide Advertiser, 15/7/2011

Editorial, p. 20

"...It is disturbing that a senior member of the national legislature is so casually acquainted with the facts and so prejudicial with his comments. It neither instils faith that such an inquiry is honourably motivated nor that calls for tighter regulation are other than an attempt to limit public scrutiny of the privileged few who strut the halls of power."

Robust vibrant, media is vital for democracy [*Totalitarianism*]

The Weekend Australian, 16/7/2011

Editorial, p. 15

"...Implicit in the attacks by people such as Greens leader Bob Brown is that the profit motive corrupts. We are not surprised he should see special virtue in publicly funded media, and not just because of the favourable treatment he and colleagues enjoy on the ABC."

A threat to freedom [*Profit motive 'corrupts' – Brown*]

Northern Territory News, 18/7/2011

Andrew Bolt, p. 11

"...Yet the Greens leader proposed on Thursday laws to stifle the freedom of newspapers to publish articles like this. Articles by conservatives....Be very clear about this threat - this first step to totalitarianism."

Calls for reviews naive and half-baked [*Self-serving*]

Australian Financial Review, 18/7/2011

Neil Shoebridge, p. 41

"...But the self-serving, predictable calls for media industry inquiries are simply designed to score political points. If Gillard and Brown have serious concerns about the structure and conduct of Australian media companies, they should suggest some serious solutions."

Two wrongs won't make things write [*Smear*]

Daily Telegraph, 19/7/2011

Sarra Le Marquand, p. 18

"...Within days of the scandal coming to light there were calls for a parliamentary inquiry into the Australian media, with Greens leader Bob Brown proposing an investigation into ownership, ethics and regulation. The insinuation is clear: that despite absolutely no evidence or suggestion similar practices have occurred in Australia, at last a golden opportunity to smear local journalists has presented itself."

Call for media inquiry is just a witch hunt [*Warped by mindless sycophants*]

Daily Telegraph, 22/7/2011

Piers Akerman, p. 35

"...In the current climate, the Green cultists have assumed the role played by the Puritans in New England in the late seventeenth century. Then, drawing on warped teachings from the Bible, the original Puritans launched a fanatical and self-righteous jihad against members of the community, mostly elderly women and people at the poorest end of the spectrum, with accusatory denunciations not dissimilar to those made by Brown and his mindless sycophants against those who question their pursuit of their extremist agenda."

Greens turning up the heat on freedoms [*Flagrant design*]

Daily Telegraph, 27/7/2011

Miranda Devine, blog

"...There is the media inquiry flagrantly designed by the government and Greens to punish only the media organisation whose newspapers (such as this one) have most embarrassed them and exposed their mistakes."

Boswell slams Greens' 'totalitarian' agenda [*Totalitarian*]

The Australian, 2/8/2011

Matthew Franklin, p. 5

"A QUEENSLAND senator has labelled a Greens push for greater control of the media as "totalitarian" and attempted to link Julia Gillard with a book advocating a socialist takeover of the environmental movement."

Free speech under threat [*Soviet Union*]

Herald Sun, 14/9/2011

Andrew Bolt, p. 30

"...Just listen to the politicians demanding this inquiry and helping to write its terms of reference. You'd think you were in the Soviet Union. Truly."

Pollies' misguided war against words [*Witchhunt*]

Sunday Mail Brisbane, 18/9/2011

Andrew Bolt, p. 50

"...Well, here's one thing that Greens leader Bob Brown is already considering for this media inquiry that he first demanded: a witchhunt against the News Limited newspapers, which don't pay him enough respect."

Fight it out at the ballot box, not at media inquiry [*Pillory*]

The Australian, 20/9/2011

Editorial, p. 13

"SOMETIMES a statement takes on a life of its own. Think of Winston Churchill's words in 1940: "We shall fight on the beaches, we shall fight on the landing grounds, we shall fight in the fields and in the streets." We make no comparison as to gravitas but we note that a single sentence in an editorial in these pages last year has become something of a call to arms for Bob Brown and his Greens. On September 9, almost three-quarters into an editorial focused not on the Greens but on Labor and Julia Gillard's challenges, we said Senator Brown "and his Green colleagues are hypocrites; that they are bad for the nation; and that they should be destroyed at the ballot box". It was a statement of the obvious voters alone will decide on the Greens but we have been pilloried for it all the same."

Bolt case has ominous echo [*Muzzling critics of totalitarianism*]

Herald Sun, 30/9/2011

Miranda Devine, p. 40

"...The Greens are salivating at the prospect of muzzling their critics. Bob Brown has leapt on the revelations of journalistic malfeasance half a world away to call for a "watchdog" on Australian journalists The Greens leader complains of what he calls a narrow range of media opinion and the fact there is no licensing or independent overview of major newspapers. But it's really only one strand of opinion that Brown dislikes: conservative opinion that dares to question or criticise green totalitarianism."

Yes, there's a silver lining to PM's green salad days [*Fascism*]

The Australian, 5/10/2011

Janet Albrechtsen, p. 14

"...We learned that the Greens have a peculiar view of freedom of the press. When Brown labelled News Limited the "hate media", it became clear that a newspaper knows it is doing precisely the right thing when the Greens are upset by the scrutiny. And now the Greens leader is suggesting individual journalists should be licensed. This is the green face of fascism."