

Independent Inquiry into
Media and Media Regulation

Public Hearings

Held at the Duxton Hotel
1 St Georges Terrace
Perth, Western Australia

Tuesday, 6 December 2011 at 8am

Before: Mr Ray Finkelstein QC and
Dr Matthew Ricketson

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DR JOSEPH FERNANDEZ

MR FINKELSTEIN: Dr Fernandez, thank you very much for coming along this morning.

DR FERNANDEZ: You are very welcome.

MR FINKELSTEIN: Just a few formal matters for the record, because we do keep a transcript of the proceeding. Is your full name Dr Joseph Fernandez?

DR FERNANDEZ: Joseph Martin Fernandez - that's the full name.

MR FINKELSTEIN: Thank you. And are you an Associate Professor in the Department of Journalism at Curtin University?

DR FERNANDEZ: That's correct.

MR FINKELSTEIN: Good. I have a submission from you, which you have made to the Inquiry. I want to ask you some questions, not necessarily about the submission, though, but about related matters. But before I ask you anything, would you just like to summarise the views that you have put in the submission and, if I could ask, as well, anything else that you think might be helpful to the Inquiry?

DR FERNANDEZ: Thank you, Mr Chair. Thank you for having me in the first place. I value this opportunity to address this committee in relation to my submission.

The thrust of my submission is to advocate the truth imperative, which I will speak about a bit more shortly, in the ethics practice codes in Australia. I find there is a gross lack of reference to truth in many of the codes, including the broadcast codes. The MEAA Code refers to a need for respect for truth, but truth as an imperative does not appear in any of its numbered clauses. The Press Council's Statement of Principles makes no reference whatsoever to truth in its Statement of Principles, and this troubles me, because - ask any journalist - in many of the international ethics codes, for the International Federation of Journalists, for instance, the truth imperative occupies a very prominent place. It is said that journalism's first obligation is to the truth. But

1 this kind of emphasis is missing from our codes. So that
2 is basically where I am coming from.

3
4 I realise that the term "truth" is a very complex
5 term, and it can get bogged in philosophical debates about
6 the coherence type of truth, the correspondence type of
7 truth, and so on, and these debates have exercised our
8 minds for centuries. I'm not sure that there is any common
9 ground as to what "truth" itself means. My view, however,
10 is that we need not be terribly detained or discouraged by
11 the lack of clarity as to what "truth" means. I think
12 "truth" can be given some kind of practical, functional
13 application insofar as the practice of journalism is
14 concerned.

15
16 The other point I'd like to stress is that this
17 pursuit of the truth ideal should not be applied in a
18 manner that tends to "kneecap" - the term I used in my
19 submission - or to censor the media, or to trip them up at
20 every turn, but, nevertheless, I think it is a term that
21 even the media itself are quite ready to admit to having as
22 its vocational calling. That's basically a summary.

23
24 MR FINKELSTEIN: Leaving aside the kind of philosophical
25 content that the word "truth" might carry, most of the
26 journalist codes - from its union and I think also from the
27 Press Council - tend to emphasise the word "accuracy"
28 rather than "truth". I understand that you would prefer it
29 not to be that way, but I'm not quite sure why there is a
30 problem, if journalists individually strive for accuracy,
31 or even by the publishers are required, say, as a matter of
32 their contract of employment, or whatever, to strive for
33 accuracy in their reporting. Can I have your views on
34 that?

35
36 DR FERNANDEZ: I have made a reference to that point in my
37 submission.

38
39 MR FINKELSTEIN: You have. I would be helped by it if you
40 could explain it a bit further.

41
42 DR FERNANDEZ: I think a succinct way of looking at this
43 is by looking at the proposition that "accuracy" refers to
44 the isolated facts in relation to a particular matter. So
45 it may be true or it may be an accurate fact that, on a
46 particular street, the address 653 is the place of
47 operation of a brothel. It may be accurate to say that a

1 certain reverend or pastor was seen entering that address.
2 Already you can see a kind of problem emerging there, which
3 is whether it is true that that reverend or pastor
4 patronised the services that were available at that
5 brothel: that's a completely different question.
6

7 So it can be said in the defence of media that both
8 those claims are accurate, but is it true that that pastor
9 engaged in immoral activity at that address? I say you
10 would come up with a possibly different answer.
11

12 MR FINKELSTEIN: An answer. Yes. That's quite
13 interesting. It might be an exaggeration to say every code
14 of ethics which applies, which has been adapted to apply,
15 to journalists doesn't put it in this context, but the
16 general theme running through most codes is accuracy and
17 fairness.
18

19 Now, if you had to actually start from scratch and
20 draft a new code and work out what is your prime objective,
21 or one of the prime objectives, of a news reporter's
22 obligations, if you had a sort of "accuracy and fairness"
23 standard, that would probably do the trick, wouldn't it?
24

25 DR FERNANDEZ: Well, from the example that I have just
26 given, the accurate --
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28 MR FINKELSTEIN: It might be accurate but unfair?
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30 DR FERNANDEZ: But unfair.
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32 MR FINKELSTEIN: Because the inference that the author is
33 leading the reader to draw for himself or herself might be,
34 in your language, untruthful, but perhaps just unfair in
35 the circumstances.
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37 DR FERNANDEZ: Well, my argument is: if you are
38 comfortable with the fact that it is unfair, why are we
39 uncomfortable with the fact that it is also untrue? And if
40 not, why not get to the point --
41

42 MR FINKELSTEIN: Fair enough.
43

44 DR FERNANDEZ: -- and say that, you know, this is true or
45 untrue, and was your claim true?
46

47 DR RICKETSON: Perhaps another way to ask it or think

1 about it would be: if truth was put in prime position, as
2 your submission says, what would flow from that, do you
3 think, that would improve the situation?
4

5 DR FERNANDEZ: I think it would first of all foreground it
6 in the minds of journalists, that every publication, every
7 claim that is made through publication, should withstand
8 that basic question: is it true or not? And I think that
9 would achieve a great deal, as it has already been
10 established in many of the codes that actually do already
11 have it in international codes, where the first item in the
12 code of ethics is, "Journalism's first obligation is to the
13 truth." If journalists accept that in theory, and in terms
14 of their predisposition to truth, I think it shouldn't be
15 too difficult to take that extra step and say, "Okay, let's
16 put it there in the code expressly."
17

18 MR FINKELSTEIN: Let me take you back one step.
19

20 DR FERNANDEZ: Sure.
21

22 MR FINKELSTEIN: A lot of your submission assumes that it
23 is appropriate to impose standards on publishers or on
24 journalists, but it is not necessarily self-evidently an
25 obvious proposition. Can I ask you to explain why you
26 think there ought be some obligation, or that there has to
27 be some accountability mechanism, imposed on the press or
28 on journalists, or both?
29

30 DR FERNANDEZ: Okay. I have to tread very carefully here,
31 because I feel I might be walking into a lion's den in
32 terms of the control element. My previous position --
33

34 MR FINKELSTEIN: We will get to that next.
35

36 DR FERNANDEZ: Thank you. My background is as a newspaper
37 editor for 14 years in a country that is not at the
38 forefront of the espousal of the ideals of freedom of
39 speech. I just got back yesterday after spending ten days
40 in that country, Malaysia. During that time, in my
41 experience as a journalist, I found it extremely difficult
42 to function as a journalist. Which is not to say that the
43 kinds of controls that were in force in that country,
44 including the licensing of newspapers with licences that
45 expire automatically on 31 December - I'm not saying that
46 the spirit behind such licensing is totally unacceptable,
47 but the danger is in the manner in which it gets to be

1 applied.

2
3 What I fear, from the way we seem to be moving in
4 Australia, is that there is an incremental creep of
5 legislative and other controls. That troubles me.
6 I migrated to Australia because I found it to be a place
7 that upheld liberal, democratic principles and the ideals
8 of freedom of speech, but I have become incrementally
9 pessimistic over the years, and it is that which I do not
10 want lost, in spite of the fact that I seem to be agreeable
11 to the kind of control that potentially can come out of my
12 advocacy of a truth imperative. So there is a
13 contradiction there. But it is a balancing --

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15 MR FINKELSTEIN: Is it really a contradiction, or just two
16 values that have to be balanced one against the other?

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18 DR FERNANDEZ: Indeed, yes.

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20 MR FINKELSTEIN: And then you just work out which way the
21 scale is going to go?

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23 DR FERNANDEZ: Yes. I was probably being self-effacing
24 there by calling it a contradiction, but it is really the
25 question of balancing it and getting the right balance.
26 I acknowledge that there is no such thing as an unfettered
27 right to freedom of speech. The very protection of that
28 freedom itself necessitates some form of regulation and
29 control, and so I'm comfortable with that.

30
31 MR FINKELSTEIN: We have had some submissions - to be
32 fair, not a whole lot, but from some important people or
33 powerful people - suggesting that there ought be some kind
34 of licensing regime established. Now, I haven't quite got
35 the sense of where you would stand on that. I think you
36 would accept that there might be some rational
37 justifications for a licensing regime, but if you are doing
38 the weighing-up process, then you would weigh up against
39 the licensing regime?

40
41 DR FERNANDEZ: I would first of all want to see greater
42 clarity as to what exactly "licensing" means. The kind of
43 licensing that I have come to understand is the kind that
44 I spoke about in Malaysia, where "licensing" means one
45 cannot publish in a particular medium or platform without
46 an express approval from the government.

1 MR FINKELSTEIN: Correct. And one suggestion was that
2 that approval should only be granted to people who satisfy
3 particular criteria, and the standard one which is taken
4 from the broadcasting world is "fit and proper person".

5
6 DR FERNANDEZ: Yes.

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8 MR FINKELSTEIN: Whatever that means.

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10 DR FERNANDEZ: Yes. I am opposed to going down that
11 track, because it opens up a whole Pandora's box as to who
12 gets to arbitrate: who gets to arbitrate that question of
13 fitness and being proper for the holding of a licence? It
14 goes into issues of character testing and a whole raft of
15 other things.

16
17 I am quite satisfied that we have a reasonably good,
18 robust, efficient system of laws and regulations as it
19 stands. What further demonstrable need is there to add to
20 this arsenal?

21
22 MR FINKELSTEIN: Fair question. But, historically, both
23 here and in many other countries - in particular, many
24 western countries - there has been licensing of
25 broadcasting, often with requirements like, "You have to be
26 a fit and proper person" - whatever that means - "to apply
27 for a broadcast licence". Sometimes it has to do with
28 character; sometimes it has to do with financial standing,
29 so you get the licence but you can't be a \$2 paid-up
30 capital company and go broke the next day.

31
32 DR FERNANDEZ: Sure.

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34 MR FINKELSTEIN: But part and parcel of the licensing
35 regime has been the imposition of standards on the
36 broadcaster, mandated by legislation, and it is not
37 confined to public broadcasters where it's the public money
38 that's being used. I know that there's a lot of complaint,
39 historically, about that in Australia and elsewhere, but
40 have you perceived there to be a problem with the licensing
41 and the imposition of standards on licensees in the
42 broadcast area - either TV or radio?

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44 DR FERNANDEZ: I have been troubled by that to the extent
45 that it exposes a contradiction in the regulatory rules
46 that apply to, say, the broadcast on the one hand, and
47 print and online on the other. So, from that perspective,

1 very clearly there is an inconsistency in the way --

2

3 MR FINKELSTEIN: One hundred per cent right. And it might
4 be that you resolve it by making them all liable to the
5 same regime or liberalise the whole process and make all of
6 them as completely independent as can be from any kind of
7 regulation.

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9 DR FERNANDEZ: That's, once again, a question of the
10 balancing act that one strives for. If one had a stark
11 choice whether it should be one or the other, I would come
12 down on the side of freedom rather than greater regulation.

13

14 MR FINKELSTEIN: Can I say that it seems to be, from what
15 everybody has said and what many people have written, it is
16 assumed that every form of regulation - government
17 regulation in particular - necessarily implies a
18 restriction on free speech or a free press. But that also
19 is not self-evidently correct, in my mind, at least. If,
20 for example, there was an obligation to give equal time to
21 opposing viewpoints, as an example - and some jurisdictions
22 either have or have had that kind of regulation - that
23 seems to be something which furthers free speech rather
24 than restricts it; yet, everybody says it's a restriction
25 on free speech. The logic of it escapes me.

26

27 DR FERNANDEZ: Okay. I can't speak for what everybody
28 else says.

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30 MR FINKELSTEIN: No, no, I understand that.

31

32 DR FERNANDEZ: I said earlier in my remarks that I accept
33 that some form of control in furtherance of the protection
34 of freedom of speech would be justified, so I'm not asking
35 for an unfettered, blanket free --

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37 MR FINKELSTEIN: Oh, no, my point is slightly different.
38 Not that free speech is absolutely unrestricted - there are
39 a few people who hold that view, but it is not a seriously
40 maintained view in most quarters - but I'm talking about a
41 requirement that in fact has a positive effect on free
42 speech; allows more voices to be heard rather than
43 restricting what any voice might want to put.

44

45 DR FERNANDEZ: The current legal framework in this country
46 does not expressly capture the free speech ideal, and that
47 is one of the problems that I have. We have had to rely on

1 the High Court to develop the implied freedom of political
2 communication, for instance. You used the term
3 "government". Why hasn't government taken the lead and
4 crystallised this as an ideal that is reflected, say, in
5 the Constitution or through legislative means?
6

7 So we can't really rely on politicians to empower the
8 enemy, so to speak, to undermine them. So I am not very
9 confident when it is suggested that governments can be
10 relied on to advocate freedom of speech ideals. It is
11 simply not the case, from my experience.
12

13 MR FINKELSTEIN: Again, that's not an uncommonly expressed
14 view, and government often has self-interest reasons to do
15 what they can to either shut down or restrict speech,
16 especially if it is opposing the government or the
17 government view or the government policy. But why aren't
18 the power groups that, by and large, run the media in most
19 countries - because not everybody can get a printing press
20 and set up a production chain and communicate to a couple
21 of million people; they can write letters to their
22 friends - why isn't that power group just as interested in
23 restricting specific kinds of speech on specific subject
24 matter as might be a group of politicians? If they have a
25 power to protect or a power base to protect, I don't
26 understand why one power group is to be more or less
27 trusted than another power group.
28

29 DR FERNANDEZ: I'm afraid I'm not entirely competent to
30 answer that question, as to what drives different power
31 groups, but it is also, I think, the fault, if I can use
32 that term, of governments for the kind of regulatory
33 systems that permit the concentration of ownership in
34 particular media houses or individuals. I think greater
35 diversity in ownership might be able to address that
36 problem to a significant extent.
37

38 MR FINKELSTEIN: Well, that's fair enough. It is just
39 interesting, if you take a historical perspective:
40 governments change more often than owners of the press.
41

42 DR FERNANDEZ: Indeed. Indeed. In my time as a newspaper
43 editor, I have seen four chief ministers come and go. But
44 this is where I think the media's role tends to be
45 underestimated. To a large extent, I think the problems
46 that we face in Australia in regard to media houses
47 dictating the agenda is the product of heavy concentration

1 of ownership, where you have now ownership of media houses
2 that cuts across platforms. This I don't think is a very
3 healthy situation.

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5 MR FINKELSTEIN: Because there are not enough voices
6 speaking?

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8 DR FERNANDEZ: Not enough voices, yes.

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10 MR FINKELSTEIN: What about the internet, the online
11 media? Is that likely to be a platform where a
12 sufficiently large number of people can speak on whatever
13 topic they like, at a relatively little cost, and so forth,
14 to make the otherwise potentially significant problems of
15 concentration go away?

16
17 DR FERNANDEZ: Sure. I think in that regard, the horses
18 have bolted. The internet is definitely a force to be
19 reckoned with, but, at the same time, the ease with which
20 all and sundry are able to publish has thrown up a whole
21 range of other kinds of problems, where the reach of the
22 long arm of the law appears not to be able to adequately
23 deal with that publication facility, and I don't think that
24 that publication avenue that people enjoy now is
25 sufficiently organised to be a force to be reckoned with in
26 the sense of a unified voice.

27
28 For instance, when you talk of News Limited, one can
29 assume that there exists a power structure that is able to
30 control that empire, whether it happens in reality or not;
31 there is that infrastructure that enables that kind of
32 control. With the internet --

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34 MR FINKELSTEIN: But that is true, isn't it, of any large
35 institution, though?

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37 DR FERNANDEZ: It is. I am contrasting that with the
38 internet.

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40 MR FINKELSTEIN: Where you have odd people?

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42 DR FERNANDEZ: Yes. It is a disparate field. There is no
43 structure. There is no rhyme or reason as to how the
44 internet, per se, will respond to particular issues. All
45 that it presents to us is the avenue; the avenue that is
46 very hard to keep on leash. That, in itself, does not
47 present us with an identifiable group out there.

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MR FINKELSTEIN: A cacophony of sound is what some commentators say.

DR FERNANDEZ: A cacophony of sound - that's the phrase I'm looking for, yes.

MR FINKELSTEIN: Can I shift track for a minute. I am interested to know what your experiences as a journalist were in Malaysia and, in particular, what kind of control mechanisms existed over the press and over journalists - defamation actions at the suit of the politician being one quite popular one that I read about here. I'm not so much interested in political control, because whatever problems we have here, they are not the same as the kinds of problems that exist in places in the world like Malaysia, but what I am interested in is whether there was any control over standards, like codes of ethics, codes of conduct, that kind of thing. What kinds of control mechanisms were there and how did they play out?

DR FERNANDEZ: Okay. There was no formal statement of principles or media council or press council; although, for many years, there was talk of moving in that direction. But, in my mind, that was really quite superfluous, because the regulatory system was so tight and its force applied with such severity that, to a large extent, the media was rather docile. So the question of a breach of standards very rarely crept up as a serious issue.

MR FINKELSTEIN: Leaving aside political views that might have been imposed on the editor and on journalists, when the press was reporting on ordinary people doing ordinary things - that is, outside the party political sphere - there must have been occasions when the citizens said, "Well, I know you said that, but that's false" or "I know you said that, but that's an exaggeration" or "I know you said that, but there is a different view of the world." So if I take it out of the realm of press and government and look at the role of press and citizen, what about in that area?

DR FERNANDEZ: If I understand your question correctly, whether they had something akin to the complaints mechanism of the Press Council or the MEAA?

MR FINKELSTEIN: Something - anything. Anything, yes.

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DR FERNANDEZ: They didn't. They didn't have anything that approximated those structures. Very often a letter to the editor might do the trick, or even a phone call. A threatening phone call about the alternative, which was "You will hear from my lawyers", would do the trick. I would frequently receive those sorts of demands and very promptly would assess my risk situation and very quickly come to a conclusion as to what I needed to do in order to defuse that potential complaint.

MR FINKELSTEIN: Do you think that the system in Malaysia would have improved if major press outlets had codes of conduct which were binding on the reporters?

DR FERNANDEZ: Yes.

MR FINKELSTEIN: I don't mean binding through an outside mechanism just yet - we will do it a step at a time - but just establishing internally, in the organisation, a code of conduct or a code of ethics, whatever you want to call it, to which reporters had to conform?

DR FERNANDEZ: I have no problem with the introduction of such a code. I just don't see that it would yield any serious practical benefit, because of what I construed to be the general level of compliance already with the ideals that such codes would advocate.

MR FINKELSTEIN: You are speaking about the journalists and reporters in Malaysia?

DR FERNANDEZ: In Malaysia, yes, I am. Was that your question?

MR FINKELSTEIN: It was, yes. I just wanted to clarify.

DR FERNANDEZ: Yes. Yes.

MR FINKELSTEIN: By what means did the reporters come to understand what might have been a responsibility on their part? I'm trying to use the word "responsibility" in a loose sense - I don't mean a legal responsibility.

DR FERNANDEZ: Through the management, for instance; the in-house rules. Most media houses have their own internal ethics codes, which they have borrowed and massaged from

1 other sources.

2
3 During my time, we were quite frequently relying on
4 international groups coming in to conduct training and to
5 impress upon us the international practice, in terms of
6 ethics codes. So the values, the ideals, espoused or
7 contained in these codes are not alien to Malaysian
8 journalists.

9
10 MR FINKELSTEIN: No, I didn't mean to imply that. I was
11 just trying to work out the means by which standards are
12 implemented. Everybody might know, "Let's be accurate and
13 let's be fair and let's be truthful" - whatever it might
14 be; but I'm trying to work out whether, in the absence of
15 some kind of --

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17 DR FERNANDEZ: Enforceable --

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19 MR FINKELSTEIN: -- external enforcement, yes, whether it
20 works in any event?

21
22 DR FERNANDEZ: Yes, well, it isn't there at the moment, as
23 far as I understand, and there is no urgency being
24 demonstrated by anyone to bring about such a mechanism.

25
26 Years ago, when I was still living in that country,
27 this subject did surface at conferences and other fora as
28 to the need for a kind of media council or press council,
29 but, at the same time, a substantial number of voices was
30 also saying that we can't seriously contemplate the
31 introduction of that structure without simultaneously
32 arguing for a dismantling of existing draconian restrictive
33 laws.

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35 MR FINKELSTEIN: If the restrictions were lifted, would
36 that have been a good reason to establish something like a
37 media council?

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39 DR FERNANDEZ: Indeed. Indeed. I have no problem with
40 that, and I would say the vast majority of the voices in
41 that country would have been quite comfortable with these
42 two targets being pursued simultaneously - dismantling of
43 restrictive laws; introduction of greater self-regulatory
44 mechanisms.

45
46 MR FINKELSTEIN: What do you see as the advantage of
47 regulatory mechanism? That's the first question. Then

1 I would ask you why self, why not compulsory. But first of
2 all, just sticking with the idea of having some kind of
3 regulation, would you accept as a broad proposition that
4 the press generally, being as powerful as it is, ought be
5 accountable in some way for what it does?
6

7 DR FERNANDEZ: Indeed. I have no difficulty with that.
8 The question is what "accountability" means. Just using
9 the example of some of the points that have emerged as a
10 result of this Inquiry, I saw the figure of a \$30,000
11 fine - the power to impose fines of up to \$30,000 being --
12

13 MR FINKELSTEIN: That was very much a hypothetical, you
14 understand?
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16 DR FERNANDEZ: Indeed. I am just using that hypothetical
17 to answer the question.
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19 MR FINKELSTEIN: Fair enough.
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21 DR FERNANDEZ: I would be very concerned. First of all,
22 the amount itself is not small, it is a very significant
23 amount; and the other thing that I would be very concerned
24 about is the management of the process that would allow for
25 that sort of penalty to be imposed.
26

27 MR FINKELSTEIN: Do you want to explain that?
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29 DR FERNANDEZ: Well, anecdotally, if I can cite an
30 example, I once was a complainant to the Press Council. It
31 was a very educational experience for me. I wasn't
32 terribly impressed with the process that the complaint went
33 through, and I was rather troubled by the panel before
34 which I appeared to argue my case, where it appeared that
35 either the panel as a group, or in substantial numbers, had
36 already prejudged the matter. From one of them, in
37 response to my summary of my complaint, the response,
38 rather flippantly, I thought, was, "But that was a bloody
39 good story, wasn't it?" That's the kind of thing that
40 troubles me.
41

42 If we are going to go down that track, the people who
43 administer that kind of infrastructure need to be
44 professionals, need to be trained, need to understand the
45 full ramifications of getting it wrong, and the people at
46 large need to have confidence in that system. It's not
47 just a question of justice being done, as you well know,

1 Mr Chair, but a question of justice being perceived to be
2 done as well.
3
4 MR FINKELSTEIN: Do you know enough about the workings of
5 the current Press Council here to be able to express an
6 opinion one way or another whether it fits the bill, so far
7 as its mechanisms are concerned?
8
9 DR FERNANDEZ: I can see that they have been going through
10 a pace, a rapid pace, of reform.
11
12 MR FINKELSTEIN: They have been.
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14 DR FERNANDEZ: I have read the Press Council's submission
15 twice - thrice - on the plane yesterday as well. It is
16 clearly taking on a very comprehensive approach towards
17 lifting its game, and I welcome that - you know, this
18 holistic approach. But I need to see more as to how it
19 will deliver on the various aspirations.
20
21 MR FINKELSTEIN: You might have to wait a couple of years
22 for that.
23
24 DR FERNANDEZ: That's right - the aspirations that it has
25 enunciated.
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27 MR FINKELSTEIN: One of the suggestions that the Press
28 Council makes, and that it will hope to achieve, is to
29 streamline its procedures so that it can deal with
30 complaints on a much more expeditious basis. Now, if it
31 involves a sort of quasi mediation where somebody rings up
32 the editor and says, "What are you doing? How about
33 this?", and it gets fixed up in the space of a day or so
34 through a phone call, that is fine. But looking at the
35 worst, where a complaint isn't dealt with informally like
36 that but goes to a hearing, you could have a sort of quasi
37 court process, which would turn the whole thing into a
38 nightmare, or you could give everybody just a couple of
39 minutes to say their piece, or maybe even do it in written
40 submissions not exceeding a couple of pages, and just get
41 it done quickly, the price being that you will maybe have
42 the odd wrong decision, but if you were being really
43 utilitarian about it, that might be a small price to pay.
44 Do you reckon that would be fair or unfair?
45
46 DR FERNANDEZ: This is a very complex question, Mr Chair.
47 Once again, my attitude to this is influenced by my own

1 experience with complaints mechanisms. Where the making of
2 a complaint is facilitated - it is greatly facilitated;
3 that is, where people are invited to make complaints -
4 chances are, the number of complaints that will be received
5 will escalate dramatically.

6
7 MR FINKELSTEIN: Is that a good or bad thing?

8
9 DR FERNANDEZ: It can be a bad thing. Let me give you an
10 anecdotal account of why I have deep reservations, and I'm
11 not sure as to how much I should say, because it involves
12 matters which may be confidential. But, for the sake of
13 transparency, let me spill the beans, so to speak.

14
15 I was the subject of a complaint at the university at
16 which I work, and this came about as a result of the ease
17 with which complainants could make a complaint. This
18 sprang against a backdrop of investigations by our local
19 corruption and crime commission investigations, and so on,
20 and the university wanted to be seen as being proactive in
21 attending to complaints, with the result that people were
22 now able to merely go online and lodge a complaint. So no
23 difficulty there with articulating a complaint. There was
24 only one problem: there was no scrutiny as to the merits
25 of the complaint, and so I was totally taken aback to see
26 my name mentioned as one of the persons complained against.

27
28 After a great deal of toing and froing I was cleared,
29 basically. It was found that there were absolutely no
30 grounds whatsoever for me to be named as a complainant. In
31 the thick of it, because I was so offended and outraged by
32 having been named as a complainant, I felt it necessary to
33 engage legal counsel to help me clear my name. I had to do
34 this on my own steam.

35
36 MR FINKELSTEIN: And at your own cost?

37
38 DR FERNANDEZ: At my own cost. As we speak, I received my
39 latest bill yesterday, which has brought the total of my
40 expenses to more than \$7,000.

41
42 MR FINKELSTEIN: In the Press Council's submission,
43 I think they make clear there, or in some correspondence
44 that I have from them - I'm pretty sure it is in the
45 submission - that they have a sort of gatekeeper: when a
46 complaint comes in, there is somebody there who assesses
47 whether it is a complaint that has some substance to it and

1 ought be pursued or it just is rejected. And there is an
2 appeal process by which, if a person is dissatisfied with a
3 decision that says his or her complaint is not worth
4 pursuing, or is not a legitimate complaint, he or she can
5 take the point one stage higher and get the "We are not
6 going to proceed with this" decision reviewed. But if it
7 has that sort of mechanism, if that is institutionalised
8 rather than in the informal way that it is done now, that
9 would address that kind of problem.

10
11 DR FERNANDEZ: Yes, it would. It would.

12
13 MR FINKELSTEIN: Because I assume that if a press council
14 becomes better known than it presently is - which is one of
15 the points that the Press Council's submission makes;
16 I think at the moment it attracts about 450 complaints
17 per annum, which might be rather small in the overall
18 scheme of things - and if it is publicised and if it
19 publicises its activities, it might jump up a whole lot,
20 and you will, no doubt, get many complaints which are just
21 silly or frivolous or vexatious. But if you have a
22 mechanism by which you can get rid of them and get rid of
23 them pretty well on the spot, it is not so much a problem.

24
25 DR FERNANDEZ: Sure.

26
27 MR FINKELSTEIN: What about the personnel - the kind of
28 person, the qualifications of the person who handles the
29 complaint? At the moment, they are a mixture of
30 journalists, or people with a journalist background, and
31 lay people. Do you have a view about lay people having the
32 ability, because of lack of knowledge, rather than anything
33 else, in effectively dealing with complaints about press
34 breaching codes of ethics or standards?

35
36 DR FERNANDEZ: Yes, this is akin to the question of: are
37 juries good or not --

38
39 MR FINKELSTEIN: Yes.

40
41 DR FERNANDEZ: -- are they suited to the task? I think,
42 for the sake of public confidence in whatever mechanism,
43 I guess a degree of public participation would be
44 justified. But I think the bottom line should be that
45 whoever is responsible for administering that sort of
46 process really needs to be up to it. They need to be
47 qualified in understanding what the objective of a

1 particular code provision is and understanding what the
2 process is, or should be, to determine the relevant facts
3 that should be taken into account in applying those
4 principles. It can be a very technical process.

5
6 MR FINKELSTEIN: Yes. I think, at the moment, the lay
7 people might have a majority on the Press Council Judiciary
8 Committee, or whatever they call themselves, and it struck
9 me to look at whether that was sensible or not.

10
11 DR FERNANDEZ: Mmm.

12
13 MR FINKELSTEIN: I can understand that there ought be
14 public representatives so it is not a closed shop and an
15 in-house group of people looking after themselves. That
16 would defeat the object of having a press council. But
17 I wonder whether effective decision making can take place
18 where the majority of the people do not understand how a
19 news room works and the pressures that are imposed on
20 journalists who have to get stuff out quickly - they might
21 have half an hour or an hour or less. It goes back to your
22 original submission about truth: fine in an ideal world,
23 you can strive for the truth; but if you have half an hour
24 to get the story out and you have checked it as well as you
25 can but there is no time to do more - a layperson, not
26 connected with the media in any way or fashion, might
27 simply not appreciate the pressures that the people who are
28 running it are under, and you would, from your own
29 experience.

30
31 DR FERNANDEZ: Sure. Sure. I think the term used in one
32 of the English judgments was "the exigencies of production"
33 needing to be taken into account, and I am all for such
34 exigencies of production to be taken into account.

35
36 But, at the same time, I think we ought not forget
37 that the exigencies of production are but one of the
38 factors that come into play. Given our 24-hour news cycle,
39 the rush to publication, there are things that can be said
40 and things that cannot be said within stipulated deadlines.
41 So if something cannot be verified to the extent
42 necessary - and the extent of verification that is
43 required, I think, increases proportionately to the
44 severity of the claims that are being made, the allegations
45 that are being made - so there is no empirical formula one
46 can apply as to what is an appropriate level of checking
47 that can be carried out, but all of that can be evaluated

1 when a complaint arises, and exigencies of production
2 should not be cited as a catch-all excuse that gets someone
3 off the hook. Yes, it can be taken into account where
4 there is a competing public interest in the information
5 being put out there before more harm is done, for instance.
6 So if it is that kind of a circumstance that has led to the
7 error being published, I think reasonable people would be
8 quite prepared to accept that as a valid excuse.

9
10 MR FINKELSTEIN: Do you think the reasonable people should
11 be people who are or have been journalists, or would you
12 leave the position - in an ideal world, if you had a choice
13 about it - where you left the majority decision in the
14 hands of lay people, with the professional journalist or
15 reporter on the decision-making body making up a minority?
16 Or do you think that it is enough that there is somebody
17 there just to express the view?

18
19 DR FERNANDEZ: I'm not comfortable with the apportionment
20 or the organisation of that decision-making group into
21 specific quotas that represented journalists and the
22 community and specialists, and so on, because of the
23 amorphous nature of what "reasonable" is. Merely being the
24 professional, on the one hand, a member of the public on
25 the other, does not necessarily mean that --

26
27 MR FINKELSTEIN: Not qualified to do anything, really.

28
29 DR FERNANDEZ: Exactly. So it is a very interesting
30 question. It is one that I think the courts, too, have
31 grappled with for a long time, and I have not seen any
32 finality to that, or solution to how that objective level
33 of reasonableness can be attained. But, at the same time,
34 I think it is important that the rule that is being applied
35 is first of all clear, as to what it is seeking to achieve.
36 The second important factor is to ensure that those
37 administering that rule are applying it in a way that takes
38 into account the different factors that need to be taken
39 into account.

40
41 MR FINKELSTEIN: It might be difficult to have clear
42 rules, because they get too specific, and too many other
43 circumstances fall by the wayside. That's why general
44 rules are usually preferred, because you can try and fit as
45 much under them as possible.

46
47 DR FERNANDEZ: Sure.

1
2 MR FINKELSTEIN: Although that makes it harder - I suppose
3 you could have general rules and examples, specific
4 examples, of how they are applied in specific, commonplace
5 circumstances, which might sort of be a happy medium
6 between the position that you are articulating and what
7 happens to be the practice at the moment.
8
9 DR FERNANDEZ: Sure. The problem with general rules is
10 that the manner in which it is applied, I think, will be
11 more vulnerable to vagaries as a result of the change in
12 the constitution of the group that applies it.
13
14 MR FINKELSTEIN: Yes.
15
16 DR FERNANDEZ: Don't you think so?
17
18 MR FINKELSTEIN: Yes, yes. But anything that is
19 administered by people has that problem, doesn't it?
20
21 DR FERNANDEZ: Sure.
22
23 MR FINKELSTEIN: When they swap us over for machines, we
24 will all do okay. Let me ask you this: to what extent
25 would you regard the following requirements or dictates as
26 either an impediment or restriction on free speech or a
27 free press, or not: if there was a mandatory obligation
28 imposed by, say, a press council - the Press Council - in
29 it an appropriate circumstance, to require the paper to
30 publish a retraction - not just the Press Council
31 determination, as is currently the position, but where the
32 Press Council, the body who decides on a complaint, says,
33 "The appropriate thing to do, in this case, is to publish a
34 retraction and here is the draft. Will you please publish
35 this". Would you regard that as an impediment on free
36 speech or a free press and, if "yes", an unreasonable one?
37
38 DR FERNANDEZ: Not if the content of that retraction has
39 been arrived at with the level of scrutiny and verification
40 that ought to have gone into it. So if something has been
41 quite clearly established to be false and all the facts
42 point towards that thing being false, then I see no problem
43 with that retraction being required.
44
45 MR FINKELSTEIN: And presumably you would have the same
46 answer for a correction? In other words, a finding by,
47 say, the Press Council, the relevant subcommittee, that

1 "The assertion that X happened - after a finding that it
2 didn't happen - I want you, the paper, to correct it, say
3 it didn't happen this way, it happened some other way, and
4 here is the formula to be applied in order to implement the
5 correction"?

6
7 DR FERNANDEZ: Sure. At the same time, one caveat to that
8 would be what the effect of such publication of a
9 retraction or a correction might be on the legal rights of
10 the party that is publishing that correction.

11
12 MR FINKELSTEIN: That's fair comment, yes. It could
13 amount to a concession, which could be used in a civil
14 court.

15
16 DR FERNANDEZ: Indeed.

17
18 MR FINKELSTEIN: If there was an action.

19
20 DR FERNANDEZ: Indeed. And the two structures - you know,
21 the Press Council method of arriving at that correction or
22 clarification and the structure that is observed in the
23 court system - might lead to two different outcomes in
24 terms of that content that resulted in that correction or
25 clarification. So I would be very conscious about not
26 compromising the defendant's position in that regard.

27
28 MR FINKELSTEIN: There is a debate, not so much taking
29 place in Australia, funnily enough, but taking place in
30 plenty of other common law countries that have press
31 councils, whether the press council, as it commonly does
32 and as the Australian Press Council does do, imposes a
33 requirement that a person who brings a complaint to the
34 Press Council is required to waive his or her legal rights.

35
36 Now, there is a nice argument about whether you can do
37 that. I, myself, don't have any doubt that you can. And
38 assume that you can effectively waive a right to go to
39 court. That would overcome the problem about a mandated
40 correction or a retraction attracting some problem in a
41 civil court, because, at least in this scenario, there
42 ought never be civil proceedings; but it leads to this
43 question: do you think that if you had a press council
44 that could deal with complaints effectively and
45 efficiently, that it ought impose a requirement on its
46 decision to act that the complainant give up any civil
47 claims?

1
2 DR FERNANDEZ: Yes, I am in favour of that requirement of
3 a waiver, for the reasons that I have expressed earlier.
4 There are two pathways open to a potential complainant:
5 one is the Press Council complaints pathway; or litigation,
6 and two pathways open up different processes and even rules
7 that may apply, and there is a serious question that may
8 arise as to whether one is being used to facilitate the
9 other, if there were no waiver in force.

10
11 MR FINKELSTEIN: It is a view that I have some sympathy
12 for, but it raised in my mind this question: if you are
13 going to - although it is voluntary - require people to
14 give up their right to go to court, and lots of the
15 complaints people make about the press wouldn't end up in
16 court in any event, because the nature of the complaint
17 couldn't end up in court because there is no allegation of
18 invasion of a legal right, but in those cases where there
19 is potential invasion of a legal right, would you think it
20 appropriate that a press council has power as part of its
21 armoury of enforcement provisions to be able to award
22 compensation in an appropriate case of a relatively
23 smallish amount? In other words, put a cap on it of
24 \$25,000, \$30,000, \$40,000, something like that? Not to
25 approximate what might happen in a court, but because
26 people will be required, or may be required, to give up any
27 compensation claims that they may have in favour of a
28 quick, cheap, efficient process to right or correct an
29 error, or whatever it might be. Would it be fair, in that
30 circumstance, to say, "Well, at least the Press Council
31 can, in an appropriate case, order \$10, \$100, \$1,000, up to
32 a maximum cap" - it is an arbitrary figure - "of \$30,000",
33 something like that? Or do you think that that starts to
34 make the Press Council look more like a court than an
35 efficient adjudicator of disputes between citizens and
36 press?

37
38 DR FERNANDEZ: Sure. I have nothing against a parallel
39 system that is a lot more efficacious, is cheaper, and is
40 more readily invocable by the ordinary members of the
41 public. I am not sure whether the Press Council, in its
42 presently constituted state as an association, is the right
43 kind of entity to be given that sort of role.

44
45 MR FINKELSTEIN: The last thing you want to do is put
46 lawyers on it, though.
47

1 DR FERNANDEZ: Okay. Am I to understand, then, that
2 people who are administering this particular process are
3 not required to have --
4
5 MR FINKELSTEIN: Like the current people - part
6 journalists, part representatives of proprietors, part
7 members of the public.
8
9 DR FERNANDEZ: Okay.
10
11 MR FINKELSTEIN: By and large, people who have never
12 awarded a sum of damages to anybody for anything in their
13 past life, but maybe presided over - it might be that you
14 would want somebody like a lawyer who would chair the whole
15 association, so you have somebody there saying, "This is
16 getting a bit over the top; you can't do it".
17
18 DR FERNANDEZ: That's my point. Really, once you have
19 rules, whether the rules are applied in a manner that can
20 withstand scrutiny, as opposed to the application of rules
21 on whim and fancy, with no disciplinary content to it -
22 that's my concern. I mean, you may call them lawyers,
23 but - well, I will call them anyone who has that competency
24 to apply the rules.
25
26 MR FINKELSTEIN: Yes. Would you think that kind of thing
27 would be still justified - that is, the imposition of some
28 money compensation --
29
30 DR FERNANDEZ: That would be a fair alternative to
31 requiring a waiver of legal remedies.
32
33 MR FINKELSTEIN: What about if you still did it in the
34 hypothetical quick, summary, informal process - that is,
35 compensation but in a procedure which is not going to
36 approximate anything like a courtroom?
37
38 DR FERNANDEZ: I think one of the --
39
40 MR FINKELSTEIN: In other words, you run the risk of some
41 kind of capriciousness in the result.
42
43 DR FERNANDEZ: Sure. I think on the one hand, we can
44 attain the goal of assuaging the complainant, whoever is
45 bringing a complaint, getting a result, going away very
46 happy. But I do wonder about the usefulness of that
47 process in terms of guidance for future decisions - you

1 know, the question of precedent setting, for instance: to
2 what extent can that particular decision, or the manner in
3 which that decision was reached, be useful in similar cases
4 that come about?

5
6 MR FINKELSTEIN: Presumably, a body of sort of like
7 principles, that sort of thing, would be established over a
8 period of a couple of years.

9
10 DR FERNANDEZ: Yes. So as long as we are moving down that
11 track, I would be --

12
13 MR FINKELSTEIN: Not offended by it?

14
15 DR FERNANDEZ: -- not offended by it, yes. I would be
16 very cautious in welcoming it, but as long as those
17 concerns are addressed, that it doesn't turn into another
18 arbitrary whim-and-fancy ad hoc resolution of complaint,
19 but one that is, over a period of time, able to generate
20 not only precedent, but also facilitate the clarification
21 of the rules so that practitioners know what --

22
23 MR FINKELSTEIN: Where they stand, because you need some
24 certainty.

25
26 DR FERNANDEZ: Exactly. Yes, some certainty.

27
28 MR FINKELSTEIN: Yes. In large measure, I suppose, the
29 problem is it is going to depend on the personalities of
30 the people involved, and it will be either good or bad or
31 somewhere in between, dependent on who is there either
32 running the show or administering it?

33
34 DR FERNANDEZ: Pretty much like the court system.

35
36 MR FINKELSTEIN: Exactly like that, which is a nice way to
37 finish, isn't it? Doctor, we have run out of time, but is
38 there anything else you want to add, arising out of the
39 discussion that we have had?

40
41 DR FERNANDEZ: Just one point, really. In spite of all
42 that I have said in my submission, in the back of my mind
43 is this concern as to where this Inquiry will lead in terms
44 of new rules and strictures that may be put into force.

45
46 I was very uncomfortable about the timing of this
47 Inquiry and the apparent nexus between what we are trying

1 to do here and events in England with the phone-hacking
2 scandal; and the Minister's remarks to the media
3 accompanying the announcement of the Inquiry did not
4 inspire a lot of confidence in me as to where he was coming
5 from. Maybe he is having second thoughts about things that
6 he said.

7
8 MR FINKELSTEIN: I think you can tell from the Inquiry
9 website, the Minister has not made any submissions to the
10 Inquiry.

11
12 DR FERNANDEZ: That's very good. So that's all I wanted
13 to say, Mr Chair. Thank you for the opportunity to address
14 this committee.

15
16 MR FINKELSTEIN: Yes. Thank you very much, doctor.
17 Thank you.

18
19 SHORT ADJOURNMENT

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1 MR TONY McCARTHY
2 MR BOB CRONIN AM
3 MR BRETT McCARTHY

4
5 MR FINKELSTEIN: Mr Cronin, thank you very much for coming
6 along, and the two Messrs McCarthy, as well.

7
8 MR BRETT McCARTHY: No relation.

9
10 MR FINKELSTEIN: Are you renouncing your friend here?

11
12 MR BRETT McCARTHY: No, just for accuracy's sake, pointing
13 out that we are not related.

14
15 MR FINKELSTEIN: Thank you all for coming along. I have
16 questions to ask, as you might have guessed, but,
17 Mr Cronin, would you like to start off by summarising the
18 submission or making any preliminary comments that you
19 like?

20
21 MR CRONIN: Well, thank you, sir, and thank you for
22 hearing from us. We welcome the opportunity to put our
23 view on the matters under consideration.

24
25 In that view, there is one fundamental question that
26 underpins all else, and that is whether Australia is to
27 remain a free and robust democracy in which everyone is
28 entitled to receive and impart views and opinions, or
29 whether we are to move to what some others have described
30 as a "guided democracy", in which the rulers of the day
31 have the right to regulate what people say, hear, write or
32 read.

33
34 Now, some may say that's drawing a long bow, based on
35 what has already been proposed by others at this Inquiry,
36 but as the US Supreme Court said in *Boyd v The United*
37 *States*:

38
39 It may be that it is the obnoxious thing in
40 its mildest and least repulsive form, but
41 illegitimate and unconstitutional practices
42 get their first footing that way, namely,
43 by silent approaches and slight deviations
44 from legal modes of procedure.

45
46 Or, as one of the Chinese ministers observed when I was in
47 Shanghai, once you open the windows, a few flies and

1 mosquitoes are bound to fly in.

2
3 One need look no further than the recent proposals by
4 the Immigration Department for media access to detention
5 centres to understand the inherent desire of governments
6 and their bureaucrats to control the flow of information.
7 Any form of government control of the media is simply
8 irreconcilable with our system of democracy. I would have
9 hoped that that argument had long been put to bed in
10 Australia, but apparently not.

11
12 There should be no doubt that this Inquiry had its
13 genesis in the desire of some members of the ruling
14 political elite to regulate the flow of information that is
15 not always to their liking.

16
17 I would also like to address some of the errors of
18 fact and erroneous assumptions that have been bandied
19 about. One of these, put forward as far as I can see
20 without a scintilla of evidence, is that journalists
21 routinely are inaccurate and biased, they lack integrity
22 and ignore accepted press principles.

23
24 In my experience, spread over seven newspapers and
25 50 years in Australia, journalists whose reports are found
26 to be inaccurate, biased, unfair or unbalanced are
27 mortified to be found out. They are ridiculed by their
28 peers and castigated by their editors. Repeat offenders
29 quickly earn a reputation that seriously limits their
30 careers.

31
32 The print medium in Australia is a relatively small
33 community. Many of the editors know each other, and they
34 cross-check on people seeking jobs. A journalist with a
35 reputation for inaccuracy or bias will find it impossible
36 to advance on one newspaper, and very difficult to move to
37 another. It is all done by word of mouth.

38
39 I take virtually no notice of written references, when
40 I can simply pick up the phone and call an editor that
41 I know where the person might have worked previously and
42 say, "Well, is this bloke any good?"

43
44 In hiring people, I try to avoid those I suspect to be
45 cause-driven or zealots of any kind who, therefore, may
46 have a propensity for bias.

1 The need for accuracy, fairness and balance is drummed
2 into journalists from the day they enter the industry, and
3 it has been through all of my time in the business. Those
4 principles are uppermost in the consciousness of most
5 journalists. I don't say they never slip up, but they
6 strive to uphold those principles all the time.

7
8 It is critical, and observed at The West, that there
9 must be a clear distinction between what is reported as
10 fact and what is offered as opinion. Readers can decide
11 whether the opinion or conclusion expressed is something
12 with which they agree or disagree. If ten readers read a
13 story, they may well come to ten different views, but they
14 are entitled to reach their conclusions on accurately
15 stated facts, and this is something that my friend
16 Mr McCarthy regularly stresses to reporters at The West
17 Australian.

18
19 It is a question of trust and integrity. The readers
20 are not stupid. They accept that the paper's opinions may
21 differ from theirs. But if they decide that your
22 newspaper's facts are unreliable, they simply stop buying
23 it. They have other options. There is a great diversity
24 of news sources available in Australia. In the mainstream
25 print market, we at The West Australian compete daily with
26 The Australian and the Australian Financial Review, and, to
27 a lesser extent, The West competes with the 23 regional
28 newspapers in our group, which have different reporters,
29 different editors and different focus. Each tries to
30 maximise its readership in its own field or geographical
31 location.

32
33 As the Editor in Chief of the Group I monitor all of
34 our regional newspapers, as well as The West - not to make
35 sure that they are following some predetermined line,
36 because there simply isn't one, but to make sure that they
37 are abiding by the principles I have outlined and which are
38 embedded in our board's statement of editorial policy,
39 which was included with our formal submission.

40
41 In the online field we compete for readers' approval
42 with a plethora of news and opinion offerings from home and
43 abroad. Increased regulation of Australian newspapers,
44 which are already under strain, will have absolutely no
45 effect on overseas internet publications or rogue bloggers.
46 Most of the credible online news portals in Australia are
47 funded and underpinned by newspaper publishers, and we have

1 seen some American cities where a newspaper has folded,
2 then the online offerings simply disappear because there is
3 no content for them to publish.
4

5 If Australian publishers go under because of increased
6 regulation, compounding an already difficult financial
7 environment, Australians will be deprived of access to
8 credible news sources from an Australian perspective.
9

10 My experience at SBS tells me that many migrant groups
11 are already accessing foreign news sources to the exclusion
12 of mainstream Australian media, and I think that's a
13 serious problem for social cohesion in Australia.
14

15 To the extent that it is suggested that
16 (a) journalists' reports are wilfully biased; or (b)
17 journalists blindly accept the truth of statements put
18 forward by the spin doctors of government departments or
19 corporations; or (c) that serious errors are not treated
20 seriously by reporters or dealt with appropriately by
21 editors in most cases, I say those contentions are wrong.
22

23 Which brings me to the drive by the Chairman of the
24 Australian Press Council for more power, and I mean "power"
25 with a capital "P" - more resources, more regulation, more
26 coercion and more punishment of the media.
27

28 I find it odd that a man heading an organisation with
29 preservation of the freedom of the press as one of its
30 fundamental objectives appears to be driving in the
31 opposite direction.
32

33 Article 2 of the Charter of Press Freedom, adopted by
34 the Press Council in 2009, says - and I quote:
35

36 The press shall not be subject to
37 government licence and government
38 authorities should not interfere with the
39 content of news nor restrict access to any
40 news source.
41

42 Yet Professor Disney appears to support some level of
43 government involvement in the regulation of the media.
44

45 Our company, on behalf of all of our publications,
46 subscribes to the principles of the Press Council - and
47 again this is spelt out in the board's published editorial

1 policy - but we do not support the concept of a
2 super-regulator with government funding to become a huge,
3 unwieldy bureaucracy.
4

5 The Press Council in its present form provides a
6 quick, cheap and effective remedy for people who are unable
7 to resolve their grievances with newspapers. It was
8 designed as an alternative to the defamation law, which,
9 because of its complexity and the huge costs involved, is
10 often available only to the rich and powerful.
11

12 At the same time, the costs involved in defamation
13 actions are a constant reminder to journalists and editors
14 that the old adage, "Publish and be damned", might well
15 turn out to be an economic prophecy.
16

17 Most complaints against newspapers are settled without
18 recourse to either the Press Council or the courts. If we
19 receive a complaint and are convinced we have erred, we
20 seek to rectify matters immediately by publication of
21 corrections, retractions and, where appropriate, apologies.
22 But if the complaint boils down to a difference of opinion,
23 we offer publication of a letter to the editor or even an
24 extended op-ed piece putting a different point of view.
25

26 We recently published an opinion piece by
27 Police Commissioner Karl O'Callaghan, in which he referred
28 to the incidence of offending by young Aboriginals as "the
29 elephant in the room". This was quickly followed by
30 separate pieces from the head of the Aboriginal Legal
31 Service, Dennis Eggington, and Aboriginal elder
32 Jim Morrison, with whom Tony and I consult fairly regularly
33 on indigenous issues, and, interestingly, Eggington and
34 Morrison put forward strongly divergent views on the same
35 issue in their separate pieces. These pages are open to
36 all comers, although obviously not every offered piece can
37 be published.
38

39 Our medical coverage is informed by a panel of eminent
40 doctors. Our staff have regular legal seminars provided by
41 our external lawyers, as well as seminars on mental health
42 and suicide reporting provided by the Mindframe
43 organisation. Junior reporters also have regular talks
44 from their more senior colleagues about the pitfalls that
45 they are likely to fall into and the need for accuracy and
46 fairness in their reports.
47

1 The Press Council Chairman has expressed the view that
2 editors appearing before the Council are combative. With
3 respect, that is hardly surprising. Generally, complaints
4 against our newspapers only reach the Council if the editor
5 does not accept that the complaint is valid. Few
6 complaints to the Council are of the calibre that would
7 cause concern in a defamation action.
8

9 The Press Council does not need a super-bureaucracy to
10 deal effectively with the complaints it receives. It
11 accepts for adjudication many complaints that are trivial
12 or are raised by third parties with an axe to grind, but it
13 deals adequately and expeditiously with all the complaints
14 it receives, and it does not need to do anything else.
15

16 My concern is that in recent times, rather than
17 dealing harshly with obviously egregious errors in
18 newspapers, the Council has become a cudgel with which
19 zealots, bigots, academics and despotic politicians are
20 able to beat up on newspapers which dare to depart from
21 their view of the world.
22

23 Let me give you just one example. If I could refer
24 you to these pages. The first article I refer to is the
25 one headed "A Town in Crisis", with the big picture of
26 Mr Munda on the front page. Could I just say at the outset
27 that The West Australian and The Australian are probably
28 the only two newspapers in Australia that consistently and
29 seriously report on indigenous affairs. And, contrary to
30 what some people might say, we don't do that because it
31 increases the circulation, because all of our research says
32 that it doesn't. But we do it because we believe it is the
33 right thing to do. The plight of indigenous people needs
34 to be drawn to the public's attention.
35

36 So in March last year we published this front page.
37 At the bottom, you will notice there is a report released
38 by the State Government revealing alarming levels of
39 alcohol abuse, child neglect, violence and overcrowding in
40 an Aboriginal community known as "The Village" in
41 Roebourne. The picture that we published is of an
42 Aboriginal man, Mr Cyril Munda, in what the caption
43 described as "his filthy kitchen" and which quoted Mr Munda
44 as saying, and I quote, "No-one should have to live in such
45 conditions". It provoked a flood of responses to the
46 letters pages, many of which were predictable, and several
47 of those letters were published.

1
2 The picture was taken by a photographer well known to
3 the Roebourne community, and she was accompanied by a local
4 elder, when Mr Munda invited her into his home to take the
5 picture.
6

7 Mr Munda was happy with the result, and became
8 something of a local hero for having brought the plight of
9 the Roebourne Village to public attention.
10

11 Two months later, the State Government announced a
12 \$5 million project to replace 25 dilapidated homes in The
13 Village with a new housing estate. The West's report of
14 the project announcement on May 25, which is on this
15 page (shown), was accompanied by a photograph, taken by the
16 same photographer, of Mr Munda playing his guitar in his
17 local church surrounded by smiling supporters, and saying
18 that he was very excited by the Government's decision.
19

20 But two Curtin academics complained to the Press
21 Council that the photo and caption had breached Mr Munda's
22 trust and humiliated him. The West defended the complaint,
23 but it was upheld by the Council and we duly published
24 their adjudication.
25

26 Earlier this year, Brendon Grylls, who is the
27 Minister for Regions, visited the new housing estate that
28 is under construction in Roebourne and said the defining
29 moment in getting action on the plight of the indigenous
30 people in The Village had been the publication of the
31 picture on the front page of The West.
32

33 In reporting those comments, The West said the picture
34 had been the subject of a complaint to the Press Council
35 which had been upheld. That's this page here.
36

37 Now, the statement in the story that he had complained
38 about the picture - and I might point out that Mr Grylls
39 didn't talk about the caption or the letters to the editor
40 or anything else; he purely talked about the publication of
41 the picture - in saying that it had been the subject of a
42 complaint which had been upheld, it was based on the
43 opening paragraph of the complaint, which said, and
44 I quote:
45

46 On the 16th of March 2010 The West
47 Australian newspaper featured a

1 front-page story on conditions in the town
2 of Roebourne in the State's north. The
3 headline, "A Town in Crisis", was
4 accompanied by a picture, 265mm by 160mm,
5 that was 2.5 times the size of the story.
6

7 Now, to our way of thinking, that was a complaint about the
8 picture. The two academics, however, then complained again
9 to the Press Council, saying their original complaint was
10 not about the picture, but about the caption and the
11 subsequent published letters. Despite the fact that its
12 original adjudication began, and I quote:

13
14 The Press Council has considered a
15 complaint against The West Australian about
16 a photograph and caption ...
17

18 the Council upheld the second complaint on the ground that
19 the first complaint was not about the picture. I mean, we
20 were totally bemused by that ruling, but, again, we
21 published the adjudication.
22

23 There is no issue, but Tony reminds me that soon after
24 this first page was published, the photographer went back
25 to The Village and saw Mr Munda and the other people there,
26 showed them the front page that we produced, and they said,
27 "That's excellent; we are very happy with that".
28

29 MR TONY McCARTHY: Could I just say, Mr Chairman - sorry
30 to interrupt Mr Cronin - the complaint by the academics at
31 Curtin was not about whether or not Mr Munda was upset
32 about this; Mr Munda was very happy about it. The
33 complaint was - if you look at the caption at the bottom of
34 the picture - that the caption and the picture
35 misrepresented the fact that this story was about generally
36 the conditions at Roebourne, not about Mr Munda. That was
37 the complaint, and that was the finding by the Press
38 Council. The finding by the Press Council was that this
39 breached the Press Council's principles because the picture
40 and the caption distorted the story because it
41 misrepresented that the story was about the general
42 conditions at Roebourne, not about Mr Munda's kitchen.
43

44 We said, "Well, the story is clearly about Roebourne
45 generally. The picture and the caption are a picture and a
46 caption saying, 'Here is an example of what it is like in
47 Roebourne' ". Nevertheless, the Press Council made a

1 finding, "No. It breaches the Press Council's principles
2 because it misrepresents what the story is about."
3

4 The second complaint was a complaint where this story
5 actually said that there was a complaint about the picture.
6 Another complaint, "No, no, no, our original complaint was
7 not about the picture; our original complaint was about the
8 picture and the caption." So there was another
9 adjudication that we had breached the principles, because
10 we had misrepresented that the original complaint was about
11 the picture and the caption, not just about the picture.
12

13 Now, we published both those adjudications. We were
14 very unhappy - as newspapers are - about publishing
15 adjudications.
16

17 The reason why we bring these stories to your
18 attention is because we want to illustrate to you the
19 nature and calibre, if I can put it that way, of issues
20 that are dealt with by the Press Council. I will have
21 something to say about that later, but I just wanted to
22 clarify what these stories are about.
23

24 MR CRONIN: So, I mean, fundamentally, we disagreed
25 totally with the Press Council's view on this matter.
26 Newspapers regularly publish pictures. You cannot really
27 publish a picture of the alcohol abuse and everything else
28 that is going on in Roebourne Village. You have to
29 photograph something that illustrates the situation.
30

31 Not long after that, we published a picture on the
32 front page of Brendan Fevola taking No-Doz tablets in the
33 dressing room. That was a story about the fact that the
34 use of No-Doz was widespread in the AFL. The story didn't
35 mention Brendan Fevola, but, I mean, how can you take a
36 picture of widespread No-Doz use in the AFL? You can't.
37 You have to take a picture that illustrates the situation.
38

39 We felt that that picture was a very powerful picture
40 that would bring home to people exactly what the problem
41 was in Roebourne, and, as a result, according to
42 Brendon Grylls, the publication of the picture led directly
43 to the Government action to fix it.
44

45 So we make no apologies for that. We would do it
46 again tomorrow. These guys would complain again to the
47 Press Council. They would issue the same adjudication and

1 we would publish the adjudication. We do that because we
2 have a commitment to publish adjudications and we honour
3 those commitments, even when we don't agree with them.
4

5 The Chairman of the Council said at a recent meeting
6 that I attended at the Council that the principles of open
7 justice were irrelevant in determining whether the
8 Council's principles had been breached. He raised concern
9 that a court report in the Geelong Advertiser had mentioned
10 that the defendant had dreadlocks, and he questioned
11 whether that was fair. Now, I think that's a very
12 dangerous path for the Press Council to go down. I'm
13 reminded that Lord Denning, in his 1955 book, "The Road to
14 Justice" said:

15
16 The role of the press reporter is to report
17 fairly and accurately everything he hears
18 or sees in the courtroom, so that the
19 reader would have the same knowledge as if
20 he were in the court.
21

22 Now, Mr Disney said that was completely irrelevant, the
23 question was: had it breached the Press Council's
24 principles?
25

26 As I said earlier, our company subscribes to the
27 Council's principles. We are voluntary members of the
28 Council and have been for about 30 years. But I do not
29 think that membership of the Council is necessarily a
30 prerequisite to quality journalism.
31

32 Certainly, I believe that coercion by way of
33 legislation or government regulation, backed by the threat
34 of fines or other sanctions, would lead inevitably to
35 government control of the press.
36

37 Nor do I subscribe to the view that the Council is a
38 toothless tiger. My own experience - and from talking to
39 other editors I know - is that editors feel acutely the
40 embarrassment of publishing adverse adjudications, but they
41 do it because they accept that, where a matter cannot be
42 resolved with a complainant, they see abiding by the
43 umpire's decision as the honourable thing to do, even if
44 they strongly disagree with the decision.
45

46 In summary, I do not believe the Press Council needs
47 more resources. It does not need a huge and cumbersome

1 bureaucracy. In particular, it does not need government
2 funding. That, in my submission, is the first step to
3 government control.
4

5 We are happy, sir, to answer any questions you may
6 have, and I am sure you will have some.
7

8 MR FINKELSTEIN: I do. I want to start off with
9 membership of the Press Council, your membership of the
10 Press Council, and not only yours but other media
11 organisations who have agreed voluntarily to become members
12 and be bound by the standards that the Press Council has
13 set. One approach to that, and tell me if I have a wrong
14 take on it, is this: like it or not, a fact of life is that
15 the press - I am talking about the print press more than
16 any other branch of the press - has significant, if not
17 enormous, power.
18

19 If that is a fair statement, the exercise of that
20 power carries with it certain responsibilities. Some of
21 those responsibilities are of the kind you see in the Press
22 Council's standards. Agreeing to subscribe to those
23 standards and becoming a member of the organisation itself
24 is, at least to some extent, a recognition that the press -
25 I am not singling out your organisation, but the press
26 generally - has to meet certain standards because, if for
27 no other reason, that is what the community expects and is
28 entitled to get.
29

30 MR CRONIN: Yes, I agree with that, but that power is
31 really determined by the people because if we abuse that
32 power, and various newspapers at various times may have
33 slipped off the pedestal, if you like, we get punished by
34 the readers.
35

36 The power only exists as long as the readers give you
37 the power. If the readers decide that you are misusing the
38 power, that you are publishing unreliable information, that
39 your comments are unreasonable and outrageous, they just
40 stop buying the paper. That is where the control lies.
41 The control of newspapers rests entirely with the readers,
42 as it should.
43

44 When West Australian Newspapers first became a public
45 company, I was invited to the first board meeting, along
46 with the editor of the time, Paul Murray, who I think you
47 will hear from later in the day. We were asked, "To whom

1 do you see your responsibility?" We said, "The readers."
2 Now, I suspect that the board at that time thought that was
3 probably the wrong answer because they saw their
4 responsibility as the shareholders. I said, "Fine, that's
5 your responsibility. You look after that." But my
6 responsibility is to the readers and that is where my
7 responsibility lies. If I don't carry out that
8 responsibility or Brett doesn't carry out that
9 responsibility, or any of our other editors don't carry out
10 that responsibility, the readers punish us - and I have
11 seen it happen.

12
13 MR FINKELSTEIN: But the means by which or the manner in
14 which you carry out that responsibility, presumably is to
15 maintain certain standards?

16
17 MR CRONIN: Correct.

18
19 MR FINKELSTEIN: That is one method of doing it; it is not
20 the only method of doing it. A factor in setting up and
21 becoming a member of the Press Council is to have a
22 mechanism by which there is an arbitrator, in a loose
23 sense, to deal with disputes between your readers and you
24 or your staff when it is suggested that the standards have
25 not been met.

26
27 MR CRONIN: Yes, that is absolutely right. As I have said
28 in my statement, if someone complains and the editor says,
29 "Yes, this complaint is justified. The reporter obviously
30 got it wrong. I am now convinced that we are wrong", we
31 correct it automatically. When it goes to the Press
32 Council is when the editor says, "Well, no, you're saying
33 that that's wrong, but I have a lot of evidence that says
34 that's right. You put up your evidence. I will look at
35 it. If I don't agree with it and you don't agree with me,
36 we will go off to the umpire and see what he says and we
37 will abide by the decision." That is what we do.

38
39 MR FINKELSTEIN: Which is to say, Mr Cronin - and is it
40 any more than to say this? - some disputes are easily
41 resolvable. With some you can come along and say, "You say
42 that is a photograph of me, but have a look at the colour
43 of that person's eyes. They have blue eyes. That's not
44 me." You can resolve that on the spot.

45
46 MR CRONIN: Yes.

47

1 MR FINKELSTEIN: Some disputes are more complicated to
2 resolve. They are contestable.

3
4 MR CRONIN: Yes.

5
6 MR FINKELSTEIN: So you have an organisation like the
7 Press Council, which is sort of an intermediary, that is
8 not your representative, not the complainant's
9 representative, to sort out a contestable dispute.

10
11 Professor Disney's approach is to say, in effect, "I
12 cannot do my job properly. There are deficiencies in the
13 mechanisms that I have available to me as chair of the
14 Press Council. There are problems about funding so that
15 the Press Council cannot carry out its activities
16 efficiently", and so on.

17
18 I understand that is another contestable issue. You
19 contest that and others contest it as well, and in a sense,
20 I might be the middleman/arbitrator of that, but assume for
21 the purposes of my question - I am not asking you to accept
22 the proposition merely to assume it for the purposes of my
23 question - that Professor Disney is right when he says that
24 his organisation, the Press Council, cannot operate
25 effectively or efficiently. Just assume that. This is an
26 organisation which the media set up as a self-regulating
27 mechanism to ensure that the media observe appropriate
28 standards - I should add here, to make the question even
29 longer, that the standards are worked out not by any
30 external person but in consultation; the media helped set
31 the standards that the Press Council operate under and
32 impose on the press - so would it be acceptable to have a
33 regulator which cannot do its job properly? In other
34 words, you have to accept my original proposition --

35
36 MR CRONIN: No, I accept your proposition.

37
38 MR FINKELSTEIN: -- that it cannot do its job properly,
39 accepting that Professor Disney is correct.

40
41 Looking at it from my perspective, what justification
42 is there for allowing a position to continue where the
43 regulator that the press thinks is okay for itself - that
44 is, it does not relevantly or seriously impinge on
45 editorial independence, on free speech, on a free press -
46 can say, "Well, we have a regulator and we are happy with a
47 bad regulator"? I don't mean bad in the sense of

1 complaining about a particular decision, but bad in the
2 sense of it cannot do its job properly.

3
4 MR CRONIN: Well, if Professor Disney says he cannot do
5 his job properly, my first question would be, "What is your
6 job?". It is a bit like if Brett McCarthy and I were to go
7 to the chief executive and say, "Look, we can't do the job
8 properly. We need another 30 reporters and an extra
9 \$10 million a year on the editorial budget", we would have
10 to come up with a bit more evidence than that. The first
11 thing he will say is, "Well, what is it that you want to
12 cover that you are not covering and do you really need to
13 cover it before I stump up more money for more reporters?"
14 It is not as easy as that.

15
16 To some extent, the Press Council is probably pretty
17 busy. They may even be too busy. Perhaps they need
18 another person, but I don't think that they need a massive
19 bureaucracy and you would need to ask Professor Disney what
20 does he intend to do with the money.

21
22 MR FINKELSTEIN: I did, in a sense. I think the rough
23 figures that he gave me in terms of the dollars are that he
24 said he gets about \$1 million and he wants about
25 \$2 million.

26
27 MR CRONIN: Brett and I are in the same boat. We get
28 about \$20 million and we want another \$20 million.

29
30 MR FINKELSTEIN: What I was going to say was that a
31 100 per cent increase sounds a lot, but it is relative.
32 You want \$20 million, you want to get another \$20 million,
33 Professor Disney only wants another \$1 million, so putting
34 it in terms of a 100 per cent increase might be looking at
35 it quite the wrong way. But by asking for another
36 \$1 million, he does not seem, to me at least, to be asking
37 for a major bureaucracy.

38
39 Put that aside for a minute, because I do want to come
40 back to what are really a couple of key questions. One of
41 them is if the Press Council is not doing its job in the
42 way that it was set up to do, then at least it sounds like
43 there is something rotten in the state of Denmark at the
44 Press Council. The question that you raise is, I think,
45 maybe not as important but very important, and that is:
46 what are the functions of the Press Council and what should
47 they be? I am very interested to get your take on it.

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I saw some publications that the Press Council put out in the past and Professor Disney says he does not have the money to do them any more. It was called "State of the News Print Media."

MR CRONIN: Yes, I remember that publication.

MR FINKELSTEIN: I think the last one I saw was published a couple of years ago. I read it and I found it to be an enormously informative document and the kind of information that somebody should be collecting, whether it is the Press Council or a university or a think-tank or whoever it might be, but valuable information for the media, for the public, for government, whoever is interested in the operation of the media. There was a time, obviously, when those who were running the Press Council thought that it should be collecting that kind of information and putting out that kind of publication. Do you have a view about that?

MR CRONIN: Yes, I think that is an important function of the Press Council. You will probably find that when the Press Council put out those publications, it had exactly the same staff as it has now.

MR FINKELSTEIN: It is true because a lot of the work was done by academics, probably free of charge. There were a dozen sections or so and each section had a different author and it was attributed. I had a quick look at them and most of them looked like academics. Maybe not all of them were.

MR CRONIN: There is no question that those publications are valuable publications. One of the reasons the Press Council was set up - it was set up by the publishers - and this was one of its prime tasks, was to advocate and protect the freedom of the press.

MR FINKELSTEIN: Correct.

MR CRONIN: It would regularly make statements on issues. I was at the Press Council last week - I think it was last week - when this issue came up about the bizarre attempt by the Immigration Department to muzzle the media getting access to detention centres by saying, "If you go in there, you can't interview anyone except department officials and then when you write your story or take your photograph, you

1 have to give it to us for approval before you can publish
2 it." No editor worth two bob would agree to that
3 proposition.
4

5 The Press Council has never made a statement about it.
6 I would have thought that they would have been out there on
7 day one. The MEAA made a statement. Various publishers
8 have made a statement saying, "This is outrageous and we
9 don't agree with it." The Press Council has not said a
10 word. How difficult is it to figure out that that is an
11 attack on freedom of the press and to just issue a
12 10-paragraph statement? You don't need \$1 million to do
13 that. You need the will and the desire to carry out what
14 is your core function.
15

16 My concern with Disney is he has gone away from that
17 function altogether. He never talks about freedom of the
18 press. I have never heard him mention it. He talks about
19 punishment, coercion, more standards. He wants a standards
20 officer to rewrite the standards. What is wrong with the
21 standards? There is nothing wrong with the standards. It
22 is the fact that the standards are not always met that is
23 the problem and part of Professor Disney's job is to issue
24 adjudications that enforce the standards.
25

26 MR FINKELSTEIN: There is a debate that does not seem to
27 be going to on very much in Australia - although, listening
28 to you, Mr Cronin, the debate is going to start up here as
29 well - about whether or not a Press Council - I'm not
30 talking about the Australian Press Council - should have,
31 as do most of the ones that I have looked at around the
32 world, as one of the principal objects promoting free
33 speech. There is an argument, and it is not necessarily a
34 foolish argument, that says that if you are going to be a
35 Press Council that is a sort of a self-regulator,
36 concentrate on that and leave promotion of free speech or
37 whatever else it might be to others, the press can do that
38 well enough themselves. But you would not take that side
39 of the debate. As I hear what you are saying, you would
40 see a Press Council as having more than just a regulatory
41 function, but also a promotion of free speech function.
42

43 MR CRONIN: Yes, because the two go together. As you
44 observed earlier, unless you have responsibility, unless
45 you have integrity, unless you are committed to accuracy
46 and all of the other principles that are outlined in the
47 Press Council's principles, you probably don't have the

1 right to the freedom of press that we are talking about.
2 Every right has a responsibility.

3
4 MR TONY McCARTHY: Mr Chairman, may I say a couple of
5 things on those points before we get on to other things?

6
7 MR FINKELSTEIN: Yes.

8
9 MR TONY McCARTHY: With regard to the proposition that you
10 put that assuming that Professor Disney is right and he
11 does not have the money to operate is something wrong,
12 I think the answer is clearly yes. You have to have a
13 Press Council that can operate efficiently and function
14 properly. The real question - I don't think that that
15 issue can be dealt with without getting to the bottom of
16 the issue and I think you will probably have to be the
17 adjudicator on it - is what is the Press Council doing, on
18 the one hand, and what should it be doing, on the other?

19
20 Then there is the question of whether or not the
21 \$1 million is a lot of money or not a lot of money which is
22 relative to what the Press Council is doing and what it
23 should be doing. I think those are the issues that really
24 are at the root of the propositions that you are putting.

25
26 MR FINKELSTEIN: Yes.

27
28 MR TONY McCARTHY: One fundamental problem with what I
29 understand the Press Council is proposing is that the Press
30 Council proposes that it have the power to fine newspaper
31 in the figure of \$30,000.

32
33 MR FINKELSTEIN: That was a thing put on the table.

34
35 MR TONY McCARTHY: Fine a newspaper and presumably
36 enforce the fines?

37
38 MR FINKELSTEIN: For constitutional reasons they might not
39 be able to do it themselves. They might have to go to
40 court.

41
42 MR TONY McCARTHY: Exactly. That is one of my points.
43 There is no point in having the ability to be able to fine
44 someone unless you can follow through with it.

45
46 MR FINKELSTEIN: No, no. I don't disagree with that. The
47 only mechanism - the only likely lawful mechanism - is that

1 if a Press Council had power to impose the fine, it could
2 not enforce the ruling. It would likely be necessary for
3 the Press Council then to go to a court of competent
4 jurisdiction, which might be a Federal Court or a Federal
5 Magistrates Court, and have the court do it.

6
7 The practical problem there is you would effectively
8 have a rehearing of the issue because presumably the court
9 would not enforce it unless it was satisfied that there was
10 a reason for extracting the fine, whatever it might be.

11
12 MR TONY McCARTHY: There is a bigger practical problem
13 than that. You are going to have lawyers involved.

14
15 MR FINKELSTEIN: At that level, even I could not keep them
16 out.

17
18 MR TONY McCARTHY: Exactly; exactly my point. You are
19 going to go, on that point alone, from a system where you
20 have a very efficient, non-legal effective method of
21 resolving those issues to a system that will get out of
22 control. Once the lawyers get their hands on it, it will
23 get out of control.

24
25 Before I get on to the second point, the other
26 thing that I understand is proposed - one of the
27 other penalties, if I can put it that way that is being
28 proposed - is something in the order of taking away
29 legislative rights that publishers have such as the
30 privacy --

31
32 MR FINKELSTEIN: No, that came up in this context: one of
33 the suggestions, made not only by the Press Council, is as
34 an encouragement for membership because if we keep a
35 voluntary organisation, people can join in like your
36 organisation has --

37
38 MR TONY McCARTHY: Quite.

39
40 MR FINKELSTEIN: -- or they can walk away like some
41 organisations have walked away. So it was suggested that,
42 if we are going to keep a voluntary system, purely
43 voluntary, a method of making sure that everybody is
44 subject to the voluntary system is means of encouragement -
45 these were not means of punishment - to get the benefit of
46 self-regulation and benefit of the statutory rights you
47 have under privacy and trade practices and consumer

1 legislation and one is contingent on the other. So it was
2 not a means of punishment.

3

4 MR TONY McCARTHY: No. It is a means of encouragement and
5 if you don't --

6

7 MR FINKELSTEIN: It is to make sure that the Press Council
8 has as much coverage as it can get.

9

10 MR TONY McCARTHY: Yes, but it is a means of encouragement
11 which has as the stick, "If you don't cooperate, your
12 rights under this legislation will be taken away."

13

14 MR FINKELSTEIN: You can use the word "cooperate", but it
15 is, "If you" --

16

17 MR TONY McCARTHY: Don't participate.

18

19 MR FINKELSTEIN: "If you do not participate in membership
20 of the Press Council" - correct; exactly that. That was --

21

22 MR TONY McCARTHY: So if you do not participate, you will
23 suffer a consequence.

24

25 MR FINKELSTEIN: There are certain advantages that attract
26 with membership and if you are not a member, you do not get
27 the advantage, because the benefits that those two pieces
28 of legislation give are only to the press. They are not to
29 anybody else. I don't have the benefit of it. You don't
30 have the benefit of it.

31

32 MR TONY McCARTHY: I know. I understand. But it is: is
33 the glass half full or is the glass half empty?

34

35 MR FINKELSTEIN: You could argue it that way.

36

37 MR TONY McCARTHY: Yes. The point I am getting to is
38 this: I don't think that Seven West Media and The West
39 Australian will ever agree, voluntarily agree, to those
40 sorts of proposals. I don't think other publishers will
41 agree to those proposals.

42

43 MR FINKELSTEIN: They might not.

44

45 MR TONY McCARTHY: If they don't, and I think they won't,
46 then the only way to implement those proposals is by
47 legislation.

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MR FINKELSTEIN: Correct.

MR TONY McCARTHY: Once you have the government legislating in that area, you have the government directly interfering with freedom of the press.

MR FINKELSTEIN: There is a flipside, and I was going to raise it directly with Mr Cronin. As I see the flipside of the argument, one can say, to pick up a point that a number of people have made, once you allow the government in to fund, then it will call the tune and that is not an illegitimate concern. But looking at it from an outsider's perspective, don't you achieve pretty much the same thing exercising power in pretty much the same way by withholding funding, if the Press Council is not being sufficiently funded?

The government gets its way by funding because, being a funder, I'll say, "Okay, you want my money. This is what I want you to do", but don't you get a corresponding benefit on the opposite side withholding funding so that the Press Council cannot do its job properly and use the money for the opposite purpose or use the withholding of the money? Isn't that just a straight exercise of power, again on the assumption that the Press Council is not being adequately funded as at now?

MR TONY McCARTHY: That is the problem. The answer is yes, if the assumption was right.

MR FINKELSTEIN: And what happens if the assumption is right?

MR TONY McCARTHY: Well, obviously the answer is yes --

MR FINKELSTEIN: Well, that is the contestable issue.

MR TONY McCARTHY: -- but the assumption is wrong.

MR FINKELSTEIN: I understand that, but if the assumption is fairly based, then it might be objectively wrong to have a system where you can control the Press Council. Just like you want the government not to control the Press Council, you control the Press Council by saying, "I'm not going to give you the money so you can't do what you want to do"?

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MR TONY McCARTHY: But, Mr Finkelstein, with respect, that is the same proposition that we started with: assuming that the Press Council can't function, is there something wrong? The answer is in question. The answer to the second proposition which is putting it --

MR FINKELSTEIN: No, I am looking at it in terms of power: Here is an exercise of power by the press.

MR TONY McCARTHY: But it is the same point. Something is wrong; okay? And that is another thing that's wrong.

MR FINKELSTEIN: Just to sort of even the debate out a bit, I can't remember who it was, but the people who came from News Corp to the Melbourne hearings accepted the proposition that the Press Council was not adequately funded. It is not like there is just a group of people out in the community who have an axe to grind or Professor Disney who might be a power seeker who wants to increase his ability to do whatever he can do under the auspices of the Press Council.

DR RICKETSON: Two former chairs of the Press Council presented that same view to us as well.

MR FINKELSTEIN: The same view, yes.

MR TONY McCARTHY: And one former chair presented the opposite view.

DR RICKETSON: Yes.

MR FINKELSTEIN: The opposite view, correct. Which is to say that --

DR RICKETSON: We have three against one.

MR CRONIN: I might be able to give you a little historical perspective on News Limited. News Limited and Fairfax were the instigators of cutting the Press Council's funding in 2008 or 2009, I think it was.

MR FINKELSTEIN: Yes. I have some stats to say that they will get their dollars back by next year.

DR RICKETSON: At 33 per cent.

1
2 MR CRONIN: They will, and it has all come back. But
3 those cuts were, in my view, in response to the GFC. The
4 Press Council wanted an increase in its funding of
5 something like 20 per cent. In our company, in the GFC,
6 any budget increases were limited to 3 per cent because the
7 revenue was not coming in, so being a prudent company, we
8 limited the cost increases.

9
10 At the moment I think News Limited would probably
11 agree with anything that Professor Disney said for reasons
12 that I am sure you would understand.

13
14 MR TONY McCARTHY: Can I go back to the points that I was
15 making and coming to the point where we are discussing such
16 questions as: are the assumptions right? Is the Press
17 Council doing its job? What is its job and what is it
18 doing? In my respectful submission, what this Inquiry
19 should do is get its hands on the adjudication files of the
20 Press Council for the last three years and then make a
21 random selection from those files.

22
23 MR FINKELSTEIN: I think, at the moment, somebody is
24 looking at them all without them being randomly selected.

25
26 MR BRETT McCARTHY: It is exactly as Bob says. If we want
27 \$20 million more to increase the size of The West
28 Australian staff and report on different things and we
29 don't get that money, we then make decisions as to what we
30 are going to cover, how we are going to cover it and how we
31 are going to deploy the people that we have. That is where
32 that argument will come to. It will be, "Well, are you
33 hearing, are you adjudicating on complaints that are worthy
34 of being heard?" That is where it comes back to what you
35 need to decide, doesn't it?

36
37 MR FINKELSTEIN: It is a chicken and egg argument. I have
38 looked at reviews of the activities of press councils
39 around the world and a common theme is nobody knows who
40 they are. One explanation for what you might say are
41 relatively trivial complaints that come up before the Press
42 Council and get dealt with by it is that not enough people
43 know that the Press Council is there and what it does.

44
45 One of the things that Professor Disney referred to,
46 either in his written submission or in the oral
47 presentation, was what he sees as a need to promote its

1 existence and its functions and what it can do. I have
2 read the same thing in New Zealand. I have read the same
3 thing in South Africa. I have read the same thing in
4 England and in Ireland - I think the world in England is
5 changing quite dramatically - about the existence of the
6 Press Council and people's knowledge of its existence, but
7 it is a common theme that runs through every serious
8 examination of a Press Council - nobody knows what it does.
9 If nobody knows what it does, then, of course, you will get
10 a handful of complaints and --

11
12 MR TONY McCARTHY: No, no, Mr Finkelstein, with respect,
13 I understand the Press Council last year had something like
14 400 complaints. Now, there are 400 people who know who
15 the Press Council are. One would expect, all other things
16 being equal, that within those 400 complaints from
17 400 people who know who the Press Council are, you will see
18 some of these very serious egregious breaches in there.

19
20 MR FINKELSTEIN: What comes with that stat, though, is
21 some of the very serious ones might have been some of the
22 ones that were dealt with by a phone call. In other words,
23 if they are serious and if the press is truly at fault, why
24 would a rational editor allow it to go to a determination?
25 They would just say, "We got caught out. We have to fix
26 it", and they fix it.

27
28 One of the points that Professor Disney made in his
29 submission is the stats that they publish do not tell you
30 the true picture because what they do not tell you is the
31 complaints that are dealt with quickly, informally, by a
32 phone call or two, and within 24 or 48 hours.

33
34 You will know some of that because you, Mr Cronin, you
35 get the phone calls.

36
37 MR TONY McCARTHY: Yes, but that is a good system.

38
39 MR BRETT McCARTHY: Also, as Bob pointed out, it does not
40 always get escalated to the Press Council; in fact, in most
41 cases it doesn't, because when we have made errors that we
42 accept, we simply deal with them directly with the person
43 who has complained and correct it and move on and it does
44 not get to that stage. So I wonder whether it is that
45 people do not know about the Press Council or that, in a
46 lot of ways, newspapers are dealing with complaints in
47 quite an acceptable way with the people who are making

1 them. Certainly that has been the experience.
2
3 DR RICKETSON: Do you have any records of that in your own
4 organisation? In the presentation from Fairfax, for
5 example they had done quite --
6
7 MR TONY McCARTHY: No, the answer is no.
8
9 DR RICKETSON: I don't know if you saw it, but they looked
10 at the number of complaints and --
11
12 MR BRETT McCARTHY: I know that they have employed a
13 reader's editor now.
14
15 DR RICKETSON: No, it was independent of that. They
16 looked at the number of complaints they were receiving and
17 the kinds of complaints --
18
19 MR BRETT McCARTHY: They actually keep the hard data.
20
21 DR RICKETSON: Yes, how they were dealing with them,
22 whether they were resolved or not, or whatever. I am just
23 wondering if --
24
25 MR TONY McCARTHY: No, the answer is no. But one answer
26 to the proposition that you have just put, Mr Finkelstein,
27 is that that is a good thing if the serious things get
28 dealt with without them being taken to a complaint because
29 it obviously means that the complainant is satisfied.
30
31 The second thing is that if that is in fact the case,
32 and that is the reason why you don't see serious egregious
33 complaints in the Press Council's file, that will explain
34 to you what the Press Council is doing, and it does not
35 need this massive funding to deal with what it is not
36 getting, because the system is otherwise working well.
37
38 I still think you should have a look at their files
39 and what you will see in my submission is what they are
40 dealing with, and it may be because the serious matters
41 have been dealt with by the newspapers. All of the
42 newspapers, as far as I am aware, try very, very hard to
43 deal with complaints to the satisfaction of the complainant
44 before they are taken elsewhere. That should not be
45 interfered with by the creation of this bureaucracy.
46 I think what you will find, if you look at the Press
47 Council's files, is complaints of the calibre of this. You

1 will not see egregious serious complaints there.

2
3 DR RICKETSON: But that is an assertion on your part.
4 You don't have evidence for that. That is just an
5 assertion on your part, isn't it?

6
7 MR TONY McCARTHY: It is an assertion on my part, but it
8 is not an assertion without any basis. I will expose the
9 basis upon which I say it. I am aware of the complaints,
10 because of my role at the newspaper, that come in to --

11
12 DR RICKETSON: But again you don't have records for that.
13 That is --

14
15 MR CRONIN: No, no, we have records of the Press Council
16 complaints, but we don't have records of people who ring me
17 up and say, "Listen, you got that wrong", and then I would
18 say to Brett, "Well, you'd better have a look at this
19 because I think we might have got it wrong."

20
21 MR TONY McCARTHY: But, Professor Ricketson, I am telling
22 you, from my own experience - you can either accept what
23 I say or not, but I am telling from my own experience -
24 that the complaints we get to the Press Council are of this
25 calibre.

26
27 As you know, lawyers are not allowed, for very good
28 reason, into the Press Council complaints process, so
29 I don't participate, but I obviously look at and help look
30 at identifying the real issues to keep our responses
31 concise and to the point and to advise on what approach we
32 should be taking, whether there really is or is not an
33 issue, and that is my job. One of my jobs is to apply an
34 independent mind to these things.

35
36 Mr Cronin can tell you, and Mr Brett McCarthy can tell
37 you, of the nature of the complaints because they go there
38 to the Press Council. But the point I am making is this:
39 from my own experience, and I think my experience will not
40 be any different from that of any other newspaper, you will
41 find that the complaints that are dealt with by the Press
42 Council are of this calibre.

43
44 What I am saying is that that puts into context the
45 other \$1 million. We are not dealing here with a body that
46 is dealing with incredibly complex difficult problems with
47 lots of documents and lots of evidence and lots of

1 procedures to go through. They are relatively small
2 issues. I think that you will find that the Press Council
3 is adequately funded to do that job and that any increase,
4 in particular a 100 per cent increase, will give rise to a
5 bureaucracy which, together with the other proposals that
6 will require legislative change, together with the
7 consequences of the changes requiring enforcement to go to
8 a court, will lead to a real risk of the destruction of
9 this very simple process which people can take advantage of
10 and get a resolution. The editors and the publishers don't
11 like it when an adjudication goes against them but,
12 nevertheless, they cop it and they publish.

13
14 It seems to me that, on that basis, the general issue
15 of government funding for matters other than complaints is
16 a matter that needs to be considered. In my submission, it
17 needs to be considered in this way: if the Press Council is
18 going to do all of these other things, which are very
19 worthy things to do, in relation to the standards of
20 journalism and print media in Australia, if they are going
21 to, as was suggested, continue the publication that you
22 mentioned, the "State of the Media", or whatever it is,
23 there were three options put forward by Mr Finkelstein as
24 to how that could happen. It could either be done by the
25 Press Council, it could be done by a university or it could
26 be done by a think-tank.

27
28 If the government really wants to fund something of
29 real benefit to print media and the status and expertise of
30 journalism in Australia, it should put its money into a
31 university or a think-tank. That is where the money should
32 be going to and particularly for these other things. The
33 Press Council can keep dealing with the complaints of the
34 calibre it is dealing with in a very low-key and efficient
35 and quick way. The money from government should not go
36 into that for fear of interfering with freedom of the
37 press.

38
39 If the government really wants to do something in the
40 interests of the media, put it into a university; put it
41 into a think-tank where you actually have academics who can
42 do that work, who can teach journalists, who can write
43 papers, not people in the Press Council, who are not those
44 sorts of people. As you said, Mr Finkelstein, that
45 document was probably written by academics, who did it for
46 nothing. Put the money in there. It seems to me that that
47 will actually really test the mettle of the government.

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What does the government really want out of this Inquiry? Does it really want to put money into becoming involved in the complaints procedure, in interfering with freedom of the press, or does it really want to put money into improving journalism in the print media in Australia? It seems to me it could be summed up in this way: what we really need and what we need the government to put money into is that we need an ANU not a KGB. That is what the government should be looking at.

MR FINKELSTEIN: That is just to get a catchy handle on it, isn't it? You saved that one up.

MR CRONIN: May I ask you a question to come back to the funding issue? Has any thought been given to who would set or how the Press Council's budget would actually be set regardless of whether the funding is coming from the publishers or from the government? Who sets the budget?

MR FINKELSTEIN: I have given that some thought to try and work out a mechanism by which, if it was going to be government funded, it would not be the government --

MR CRONIN: I am sorry you are thinking about that, but anyway.

MR FINKELSTEIN: No, no, that it would not be set quite like, "Here is a sum of money" like you read in the Budget Papers each year.

One kind of mechanism, if it was going to be government funding, would be to have an independent organisation, like the auditors or something like that, certify what is reasonably required. You would have to set out the ground rules about the activities first because unless you tie it to specific activities, then you would not know what you were funding. You would work out the activities, get the auditors to certify the amount required and if the government decides not to put up the amount that is precisely certified, then the minister has to go into the House and explain why not.

You cannot, I don't think, otherwise tie the Treasury in perpetuity to handing over a specific sum of money. There is no such thing. You would need an Appropriations Bill. It is really to try and make any funding, or any

1 withholding of funds, which is more important, apparent to
2 the world by requiring the ministerial statement, and you
3 can build that into legislation. In other words, if the
4 government does not pay what is required, then the world
5 would know about it straight away.

6
7 MR CRONIN: It might be instructive to go back and have a
8 look at what Richard Alston did to the ABC --

9
10 MR FINKELSTEIN: With his list of 44 questions or
11 something.

12
13 MR CRONIN: -- when he had a series of disagreements with
14 them over the first Iraq war. He simply chopped their
15 funds.

16
17 MR FINKELSTEIN: Correct. In a sense if it is --

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19 DR RICKETSON: No, sorry, that was over the second Iraq
20 war and the government had already chopped their funds by
21 that point. I think the government chopped their funds as
22 soon as it came in in 1996.

23
24 MR CRONIN: But he threatened them with further cuts, and
25 I think in fact there were further cuts in about 2001. So
26 if you want to know whether governments see funding as a
27 source of power, then there it is.

28
29 MR FINKELSTEIN: Yes, I know that, but the funding
30 question is not just limited to the Press Council as
31 presently constituted. There is another issue, and it
32 comes up also in relation to the encouragements to become a
33 member. We are likely to see a growing number of online
34 news organisations.

35
36 At the moment, the Press Council, by agreement,
37 regulates the online activities of its members, but it has
38 no jurisdiction over the Crikeys of the world and they do
39 what they like. If the Crikeys of the world become major
40 players in the provision of online news, there is something
41 inherently unbalanced in having a regulatory system which
42 picks up the news organisations, say the press because they
43 voluntarily subscribe themselves to the authority of the
44 Press Council, and everybody else who is competing with
45 them online just ignores those standards and has no
46 standards imposed upon them. The suggestion for having
47 encouragements to voluntarily move over to the Press

1 Council were largely made to get the online news
2 organisations, who have never had anything to do with the
3 Press Council, to incentivise them to join up. That is
4 really how that sort of discussion arose.
5

6 But the problem is even wider than that. I have now
7 known for a couple of months the new buzzword
8 "convergence". It is a nice buzzword. People write about
9 it and it is good. You can even have committees about it
10 now too. But there is a question in my mind. One of the
11 things I think we have to look at is; is there any rational
12 reason why you would regulate standards of press and, to
13 the extent that you can get them, the online news content
14 providers and not have the same body deal with the
15 broadcasters, radio and TV?
16

17 I have looked at the standards - leaving aside ABC and
18 SBS, who have the specific statutory obligations of not
19 quite equality of time, but that kind of thing, and nobody
20 is proposing that directly for the press - one thing that
21 is exercising my mind is if there will be any form of
22 regulation of standards, not content, but standards, then
23 why would you have ACMA doing the broadcasters and the
24 Press Council doing media and the online element of the
25 media's operations? Wouldn't it be rational to take out of
26 ACMA control of standards or its function of standards and
27 put one body that looks after the standards of news
28 regardless of platform?
29

30 MR CRONIN: One of the problems you will eventually run
31 into in relation to the electronic media, not just online,
32 but also broadcast television, is where is the boundary of
33 your regulation going to end? I read the shanghaidaily.com
34 website most days and I can tell you it is not entirely
35 accurate. It is certainly not balanced, nor do I think it
36 is always fair. But that is readily accessible to
37 everybody in Perth.
38

39 SBS Television, of which I happen to be a director pro
40 tem, broadcasts from about 5am until noon news from around
41 the world, including from Beijing. That news is broadcast
42 in Chinese, but I don't think that it is totally fair and
43 balanced. There is a problem with all of the electronic
44 media including broadcast television. A lot of people
45 I know watch Al Jazeera. I have relatives who are
46 Italians. They watch Italian television. The old people
47 in particular watch Italian television all the time. They

1 do access local media, but they get a lot of their from
2 overseas television and certainly from overseas websites.

3
4 MR FINKELSTEIN: You would just have to make a value
5 judgment, I suppose, to deal with that. Let us leave aside
6 the definitional issues of who is the news provider and who
7 do you regulate in the first place; do you do individual
8 bloggers or do you do it on function. Is it like a news
9 outlet that tries to get to a mass audience? The
10 definitional problems are endless, but it might be that we
11 don't have any real interest in regulating the content of
12 foreign news. So if a London newspaper, through its online
13 service, broadcast a whole lot of things which anybody in
14 the world can pick up and it is inaccurate about what is
15 happening in London or Middlesex, or wherever it is, you
16 just leave it alone. Australia's interest is more in
17 regulating what news organisations say about Australia and
18 Australian affairs and Australian political affairs and
19 Australian individuals. In any event, there are
20 jurisdictional problems like: do we ever have jurisdiction
21 over somebody who broadcasts from Afghanistan or Uzbekistan
22 or Mexico?

23
24 MR CRONIN: So if we moved our website server to Vanuatu,
25 we would be free of Professor Disney forever.

26
27 MR FINKELSTEIN: No, you would not be because they would
28 ring me up for legal advice and I would tell them half a
29 dozen ways to get you. That is not a problem. As long as
30 you have a presence here, you are gone. But if you have no
31 presence here, then you might be technically beyond the
32 reach of Australia.

33
34 But all that says is we live in an imperfect world and
35 there have to be new ways. There are people who write
36 articles about this and say we need a new international
37 order. It will never happen in my lifetime. The problems
38 are immense, but that is not to say that you do not begin
39 somewhere, and this is not a climate change argument
40 either. There is lots which can be done, but I am
41 interested in your view in - I wouldn't call it a super
42 regulator, because that has pejorative overtones - a one
43 -stop shop. In other words, you in press and you online,
44 and if you have your own radio stations as well, you and
45 your broadcasters --

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47 DR RICKETSON: And television.

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MR FINKELSTEIN: -- and TV - so a one-stop shop, one person to whom all complaints can go. The standards will be different. I am not talking about standards across the board. I am really talking about standards about news and public affairs commentary. I am not talking about the entertainment shows and all that kind of thing.

MR BRETT McCARTHY: You are talking about a separate set of standards for TV and press but administered by the same body; is that right?

MR FINKELSTEIN: Correct, absolutely.

MR BRETT McCARTHY: So separate standards, but administered by that body?

MR FINKELSTEIN: Yes, to the extent that they need to be separate. There would be so much overlap, I imagine that 80 per cent of the standards, when properly developed by industry not by government, would be pretty much the same, but you will have special things; for example, when you have an internet site and people can log on to your site and put their own comments. I cannot, as of right, write a letter to the editor in your paper. You make a choice about whether you publish my letter or not.

But on your internet site - with some sites, not all - where I choose whether I log on and I can put whatever commentary I like, there might be some obligations on the operator, the owner of the site, to go through it and say, "This is outrageous stuff. I'm going to have to get rid of this and somebody has to look at it every 24 hours", or whatever else. Some news organisations do that, some don't.

That is why I am suggesting that there may have to be some different sets of rules covering different platforms because the ways they operate are different; so you have physical differences. A different set of standards might have to apply to accommodate the physical differences. But apart from ironing out those sort of necessary differences because of the way they function, what is the matter with a one-stop shop?

MR CRONIN: You would have to, presumably, take all of the regulatory functions in relation to balance and fairness,

1 et cetera, accuracy, out of ACMA.

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MR FINKELSTEIN: Correct?

MR CRONIN: You couldn't leave the television stations in sort of double jeopardy.

MR FINKELSTEIN: No, no. Take it out of ACMA.

MR CRONIN: One of the biggest complaints to ACMA, of course, is about classification issues where the channel puts on a documentary at 7.30 and someone drops a four-letter word and you are not supposed to have that before 10 o'clock at night, so that becomes a classification issue, which obviously does not apply to newspapers.

The classification issue is very tricky when you get into the online area because most online sites now run video and ACMA will say it is a classification issue. But how can you have a time restraint on a website, because anyone can access it any hour of the day or night? Some of those porn sites that are available online certainly would not get on free-to-air television, but people are still accessing them, I believe.

DR RICKETSON: We won't ask whether you that's an assertion or based on evidence or not.

MR TONY McCARTHY: Mr Chairman, can I tell you what I think is wrong with the one-stop shop?

MR FINKELSTEIN: Yes.

MR TONY McCARTHY: Many years ago I made the mistake of asking a judge, and it was not you, whether or not the judge was following what I was saying in court. The judge looked at me and said, "It sounds good when you say it quickly, Mr McCarthy." That is the problem here.

The one-stop shop sounds good, but I am not sure it will work for this reason: many years ago there was a procedure. Something was introduced where all the professions around Australia were standardised. They all had one set of rules. They abolished all the professional bodies and they all went to SAT.

1 SAT was going to be a one-stop shop for all
2 professional complaints and they all had standardised
3 rules. You could be admitted anywhere in Australia and you
4 could be a doctor here, and all of that stuff. It was all
5 marvellous and it was going to produce a one-stop shop.
6

7 The problem with that sort of thing is that it creates
8 an organisation where, as a consequence of its size alone,
9 it becomes unwieldy. It requires rules. It requires
10 procedures. It requires lots of people and the efficiency
11 breaks down.
12

13 I, at the time of this change, was on the Veterinary
14 Surgeons Board. I used to sit on the Veterinary Surgeons
15 Board and we used to hear complaints relating to vets. It
16 was all done very quickly with a minimum of fuss and very
17 efficiently. As soon as this procedure got brought
18 together and you had to go to SAT, because the structure
19 was such that it required rules and organisation, it became
20 unwieldy. That is the problem I see with a one-stop shop.
21 Again, the Press Council is working very well. Why
22 interfere with it?
23

24 MR BRETT McCARTHY: The government will always regulate
25 access to the public asset, which is the airwaves. If you
26 are going to put it together as a one-stop shop, you then
27 have to accept the proposition, which we don't, that the
28 government will have some funding and influence over that
29 regulator, which will then regulate the press as well.
30

31 MR FINKELSTEIN: If you had a body that regulated press,
32 online and broadcasters, then in the practical world, it
33 couldn't be anything other than government funded because
34 it just would not work any other way. I understand that.
35 I have thought about whether you could avoid that, but
36 I think realistically it would necessarily require
37 government funding.
38

39 But it would not necessarily require government
40 involvement in setting standards because the organisation
41 could do that, like the Press Council does. What I would
42 also regard as quite significant, if you had a body other
43 than the Press Council, is that you would not have the
44 government appoint the members. In other words, if there
45 was going to be some shift away from the Press Council,
46 I think it would work best by avoiding what is probably
47 quite a legitimately held view about government

1 interference and by eliminating the possibility of that, to
2 the extent you can over money. But the ABC experience
3 tells you that there is a limit to that. But if you kept
4 the setting of standards out of government hands and if you
5 kept the appointment of all the personnel out of government
6 hands, then, at least at first glance, it looks like you
7 could set up an organisation which has no or almost no
8 political interference.

9
10 MR TONY McCARTHY: It comes down to the money.

11
12 MR FINKELSTEIN: It comes down to the money?

13
14 MR TONY McCARTHY: It always comes down to the money.

15
16 MR FINKELSTEIN: I did also toy with the idea of a levy.
17 In other words, instead of making the payment by the media
18 organisations voluntary, there would be some mechanism. It
19 would not be government money, but it would be government
20 exaction by a levy so that you would still pay for it but
21 you would not have a choice about when you will pay and how
22 much.

23
24 MR TONY McCARTHY: You could reintroduce Elizabeth I's tax
25 stamps - do it that way.

26
27 MR FINKELSTEIN: There is something not bad about
28 Elizabeth I. That might not have been one thing, but you
29 cannot reject it completely, not that I am suggesting I am
30 a royalist.

31
32 At least that will not be government money then and it
33 gets rid of that possibility. One of the problems with the
34 system - whether you can do anything about it and whether
35 you should do anything about it are completely separate
36 questions, but problems they are - is no full coverage. If
37 the print press is covered, the online press or news
38 suppliers ought be covered. You have to do something about
39 getting them all in. Forget about one-stop shop; this is
40 one in, all in once you define what kind of information has
41 to be in.

42
43 That is one thing, and the second thing is the
44 voluntariness of payment. You could force people in by
45 having incentives and saying, "You are not subject to
46 certain legislation if you are in. You would be subject to
47 the legislation and stay out if you like." That would make

1 it, in a sense, voluntary; or you could just say, "You are
2 covered. Here is a piece of legislation that says all of
3 you organisations, you are all covered and here is the
4 second Bill which deals with the way in which the payment
5 out of your funds will be exacted by a levy." So again you
6 would get coverage and you would get money and it is not
7 government money.

8
9 Coverage is a big issue or will become an increasingly
10 big issue because I do not expect - I don't know anybody
11 who expects - the on-liners to be flocking to the Press
12 Council saying, "Sign me up." It is possible that that
13 might happen.

14
15 One of the things that Professor Disney spoke about or
16 wrote about in his submission was to make it attractive for
17 PR purposes to be a member. You could say, "I am an
18 accredited member." It is a bit like --

19
20 MR BRETT McCARTHY: It is like getting the Heart
21 Foundation tick on your hamburger, isn't it?

22
23 MR FINKELSTEIN: It is that kind of thing, yes. But it is
24 a possibility. I do not regard that as in the real world
25 of possibilities; it would be nice if it worked, but it
26 won't. So a problem for us is: do we stay with a system
27 which has this kind of imperfection about it, coverage and
28 funding being two of the key elements?

29
30 Professor Disney says some organisations - he does not
31 single out yours at all - either will not print the
32 adjudication or will print it in a way where he thinks it
33 is stuck down the back so nobody would notice it. The
34 principles that have to be developed, whatever they will
35 be, cannot depend on one organisation, say yours, being a
36 model citizen because there are plenty of people who are
37 not model citizens. That is me making speeches now, not
38 asking questions.

39
40 MR TONY McCARTHY: As Mr Cronin said at the beginning, the
41 starting point is you either accept the principles we have
42 articulated in our submission for why you should not have
43 any government interference at all or you don't. That
44 seems to us to be a fundamental issue which should be
45 observed in Australia.

46
47 We hear what you say. The system is not perfect. In

1 our submission we recognise that, but there are very, very
2 real and important reasons why that is the best system.
3 Government should not be involved in any way, shape or
4 form, even in the most inconspicuous way, in what appears
5 in newspapers. Our answer to your propositions,
6 Mr Finkelstein, is for those reasons, no, we do not agree.
7

8 MR FINKELSTEIN: Have a look at England as an example.
9 Three Royal Commissions and two government inquiries said
10 to the press in the UK, "This is your last chance before we
11 legislate." Nobody ever legislated. From 1974, which was
12 the time of the second or third Royal Commission, I can't
13 remember which, the outsiders who were looking at it - it
14 was not the government who was looking at it, not the press
15 and they were not in-house inquiries - every outside person
16 who looked at it said, "Unless you reform, there must be
17 legislation. It's the only way it can work." They have
18 done that decade after decade after decade, and this is
19 where they have got themselves. The answer might be that
20 if they had legislated some kind of statutory code with as
21 many in-built mechanisms to keep the body independent from
22 government, it may be that the press there would not be in
23 the trouble it is in now.
24

25 MR TONY McCARTHY: No, I disagree, with respect, with
26 that. My view on what has happened in England is simply
27 this: there has been criminal activity. It is nothing to
28 do with press standards. This is just basic criminal
29 activity.
30

31 MR FINKELSTEIN: It does not matter. They are arguing
32 that over there, but it happens to breach all the standards
33 as well. If the reporters had maintained the standards
34 which they laid down for themselves then there would not
35 have been this kind of criminal activity.
36

37 MR TONY McCARTHY: No. If the government had properly
38 investigated this, if, as with other criminal activities,
39 it had properly investigated this, instead of leaving it to
40 the press to actually expose it - this was exposed by the
41 press - they would have exposed it.
42

43 MR FINKELSTEIN: But the thing that they would have
44 exposed is a failure to maintain the standards which the
45 press had set for themselves.
46

47 MR TONY McCARTHY: I put it simply it is a failure to not

1 commit criminal offences.

2

3 MR BRETT McCARTHY: Yes, it also breaches the standards,
4 but the basis of it is that it is illegal activity.

5

6 DR RICKETSON: But you might also ask why the government
7 or its agencies did not investigate thoroughly and fully
8 enough in the first place?

9

10 MR TONY McCARTHY: Quite. That is a very important
11 question.

12

13 DR RICKETSON: I think both the current Prime Minister and
14 also Alan Rusbridger, the editor of The Guardian, in his
15 Orwell Lecture recently had pointed to the role of the
16 media in the government's and the police's inability or
17 unwillingness to investigate those matters fully in the
18 first place.

19

20 MR TONY McCARTHY: Well, that is just further criminal
21 activity.

22

23 The other point I want to make about this is: is
24 there any suggestion at all that anything like this occurs
25 in Australia? Have you heard any evidence to suggest that?
26 Yes? Well, I am very surprised because I think I would
27 know and Mr Cronin would know and Brett McCarthy would know
28 if it were to happen in our organisation.

29

30 MR FINKELSTEIN: In a sense, though, I don't see our task
31 to be anything parallel to what is happening in the UK to
32 inquire into whether there has been breaches of the Privacy
33 Act or the Surveillance Act, or whatever it might be, or
34 the civil laws of trespass, but to see whether the position
35 that we find ourselves in is one where everything is
36 working well enough and you leave it alone or it needs to
37 be strengthened or it needs to be changed in some
38 relatively significant way. That is the sort of range --

39

40 MR TONY McCARTHY: And I think we are in the first
41 category.

42

43 MR FINKELSTEIN: Yes, I know, and we are testing that to
44 see whether that is a position with which we ought to live
45 understanding, on the one hand, the more the argument is
46 that you are interfering with editorial independence and
47 free speech and all the rest of it

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As I said, I think to Dr Fernandez this morning, in the end, it might be just a balancing exercise, because most people do not assert that you cannot interfere with free speech to some extent at least. You certainly do not assert it. There are a few libertarians around who do assert that, but it has never been a mainstream view. The question is whether a little bit more really is regulation, either strengthening self-regulation or supplementing self-regulation, or doing something different like having a one-stop shop regulator for the media rather than for the press is in the long term interests of both the press and the consumer - but we will run out of time.

I do have to ask you some business questions, Mr Cronin. One of the things that we are asked to inquire into is what support, if any - I emphasis the "if any" because most of the media proprietors who have come along have opted for the "None" answer - should government give and what type of support should it give for people who want to compete with you? That is why I know what you are going to say - how many competitors do you want and will you tell me how the government should encourage those competitors?

Having regard to the new platforms online, it is not only a problem for start-ups, and so on. I have been reading about the decline in circulation in the United States and the decline in revenue and the death of newspapers generally. The figures that I have seen here show a not insignificant decline in circulation, but remarkably nothing like the American figures for decline in revenue. Some of the information that I have suggests that some of the decline in revenue just has to do with current bad economic circumstances rather than anything else - these are global figures, not per newsagency - so what you lose in classifieds, and so on, gets picked up with online advertising to some extent at least.

A question for me is: what, if anything, ought a government be doing to support existing media and what, if anything, ought a government be doing to support new entrants? I know the barriers to entry getting online are nothing or next to nothing until you start to take into account the cost of wages. If you want to run a proper newsagency and you just don't aggregate, then you have to employ staff, you have to employ journalists. The better

1 the job you want to do, the more journalists you have to
2 employ and so on. So I take with a grain of salt the
3 argument that says it costs you nothing to go online. It
4 will cost me nothing to go online, but I do not provide
5 anything to anybody that is worth read.

6
7 Anyhow, in the general sense, what is your attitude?
8 This is not so much government interference but government
9 support, if I could put a nice spin on it.

10
11 MR CRONIN: My view is that, from a government
12 perspective, the media should not be treated any
13 differently from any other business. I think it is always
14 a very unwise path for government to try to pick winners in
15 a business sense. As a free enterprise person, I just
16 don't think that there is any place for government in
17 trying to pick winners, in media or in any other business.

18
19 In terms of the newspapers, there is no doubt in the
20 wide world that most newspapers are suffering circulation
21 declines. It is a daily battle. We have had a bit of
22 success over the last few years in managing to get our
23 circulation up in a couple of the audits, mainly thanks to
24 Brett McCarthy. However, circulation is a battle, there is
25 no doubt about that. People have other options. They can
26 go online. They can go on iPads. You can read The New
27 York Times on your iPad if you want to.

28
29 Our view is that there is a substantial future for the
30 print media and that all media companies need to manage the
31 transition from print to online, at whatever speed that is
32 going to happen, and I don't think anyone has quite figured
33 out what the Australian model for that will be.

34
35 Should the government encourage opposition start-ups?
36 Well, I do not really understand why. I think it is
37 certainly a lot cheaper to start an online operation than
38 it would be to start a newspaper. To start a newspaper
39 like ours, you would need at least \$200 million for
40 presses. You would probably need another \$50 million for
41 land and buildings and whatever.

42
43 It is big bucks to start a newspaper. It is much less
44 to start online; but you are right, you do need to pay
45 wages and all of that. But new newspapers have started up
46 in my lifetime. The Australian is one that started and ran
47 at a loss for a hell of a long time.

1
2 If you want to start any sort of a business, you can
3 expect to run at a loss for the first little while. You
4 need to convince investors to invest in that business and
5 that you have a plan that says, "I will employ journalists
6 that people will want to read and I will set up an online
7 portal and it will make a huge amount of money out of
8 advertising dollars" - well, good luck - and if you can
9 raise the money, you can start the business. I just do not
10 see why you would want the government involved in any of
11 that.

12
13 MR BRETT McCARTHY: But isn't the government involved
14 already by funding the ABC which has moved into the
15 areas --

16
17 MR CRONIN: They are moving into print.

18
19 MR BRETT McCARTHY: They have moved into the print area
20 anyway.

21
22 MR CRONIN: SBS has online presence. SBS is in the
23 marketing of DVDs.

24
25 MR FINKELSTEIN: One of the reasons why some submissions
26 suggest some kind of government support is an issue which
27 has been raised for 50 years - the concentration of
28 ownership; that is, the lack of diversity of viewpoints.
29 That is the principal reason, and talking about news rather
30 than the other kinds of things you can get in papers and on
31 TV and on radio. It is to see whether or not we will be
32 guaranteed as good a quality news as can be made available.
33 That is not a bad thing in the sense that is the
34 justification for free speech - you need the facts to
35 partake in the political process.

36
37 This is not an issue just in Australia. The English
38 keep on looking at problems with concentration. I think
39 the first press inquiry in Victoria was brought about
40 because of concerns about concentration and that was back
41 in the 1950s or 1960s or something like that. So that is
42 the trigger for the term of reference that we have which
43 is: what if anything should a government do to encourage
44 news, not just another broadcaster and that kind of thing?

45
46 MR CRONIN: With regard to the lack of diversity argument
47 in Australia, I just don't accept that. You keep hearing

1 this figure bandied about that News Limited has 70 per
2 cent. I doubt that that is actually the correct figure,
3 but let us assume that it is. There are something like
4 2,500 newspapers in Australia, regional newspapers,
5 community newspapers, metropolitan dailies, national
6 dailies like The Australian and The Australian Financial
7 Review. There are all of these television stations and
8 there is any number of online sites who are all providing
9 news and information.

10
11 I just do not think that the lack of diversity
12 argument washes. It is an easy thing for politicians to
13 say. As Tony said, if you say it fast, it sounds good -
14 lack of diversity - but not when you really get down to
15 analyse it.

16
17 In our own case, these are all our regional
18 newspapers, and there is something like 23 of them. They
19 all have different journalists from those on The West.
20 They have different editors. They operate in different
21 communities. They have a different focus in the news that
22 they cover, and each paper is put together in that same
23 process that you saw yesterday. They do their own thing
24 totally independently.

25
26 As I said in my submission, I have responsibility for
27 all of these newspapers, so I handle complaints that they
28 get and I monitor these newspapers to make sure that they
29 are sticking to the standards. But they are basically
30 doing their own thing. So even within our own group,
31 I would argue that there is a certain level of diversity.

32
33 MR FINKELSTEIN: That is looking at it from a supply side,
34 but if you look at a demand side, if I live in Adelaide or
35 in Brisbane or if I live in a small country town, there are
36 plenty of small country towns that are one-newspaper towns.

37
38 MR CRONIN: Yes, but surely you are not suggesting that
39 they will become two-newspaper towns?

40
41 MR FINKELSTEIN: No, but online might be a viable
42 alternative source.

43
44 DR RICKETSON: And should government have a role in
45 supporting that at all?

46
47 MR CRONIN: People in small communities can read The

1 Australian, The Australian Financial Review, The West
2 Australian, The New York Times, The Shanghai Daily, and any
3 other newspaper in the world.

4
5 MR FINKELSTEIN: They can, but they don't.

6
7 MR CRONIN: That is a different argument.

8
9 MR FINKELSTEIN: They will read the local papers. The
10 reason why they will not read The New York Times is because
11 The New York Times will not tell them what their city
12 council is doing. What they are interested in is what
13 these --

14
15 MR CRONIN: No, but these newspapers do though.

16
17 MR FINKELSTEIN: Yes, I know that, but if I live in a
18 country town and I get one of those newspapers, I might be
19 better off with two and I will know more about what is
20 happening in my community than worrying about what is
21 happening in New York. That is the kind of lack of
22 diversity which to some is a real issue.

23
24 MR CRONIN: I can understand that it is an issue, but the
25 resolution of that - we have websites for these newspapers.
26 They all have their own websites. They are absolutely not
27 viable. In order to make any money out of websites, you
28 need to have a certain level of news. You will never get
29 enough news on the website dealing entirely with the
30 happenings in Narrogin to bring in enough dollars to pay
31 the electricity bill that runs your computer. It just will
32 not happen. The money is not there in most of these towns.
33 Who is going to advertise in a town that has one butcher,
34 one baker, one service station, and a grain store?

35
36 MR FINKELSTEIN: No, that is impossible. That will not
37 happen, but there are regional towns, maybe not in Western
38 Australia, but there are a bunch of them in Victoria, where
39 you have a couple of hundred thousand people living there
40 and they have one newspaper. The Geelong Addy services,
41 I don't know how many people live in Geelong, a quarter of
42 a million perhaps.

43
44 DR RICKETSON: Closer to a million, I think.

45
46 MR FINKELSTEIN: Okay, a million people live in Geelong.

47

1 MR CRONIN: Well, there are 2 million in Perth and there
2 is only newspaper here and let me tell you if there were
3 two newspapers here, the quality of journalism in both
4 papers would be a lot lower than it is in The West.

5
6 MR FINKELSTEIN: Is that to say that, so far as the print
7 media is concerned, unless you have a city of many
8 millions, the market is not big enough - this is sort of a
9 natural monopoly argument - to accommodate two?

10
11 MR CRONIN: Multiple newspapers?

12
13 MR FINKELSTEIN: Yes.

14
15 MR CRONIN: Yes, I believe that to be the case. I hear
16 journalists on The West saying, "Oh, it would be great if
17 we had competition." One reason is that they like the idea
18 of competing, but the other thing is that they think, "If I
19 get cheesed off with Brett McCarthy, I will go and work for
20 Hiram Finkelstein on the opposition paper." I keep saying
21 to them, "Listen, if you did have another newspaper here,
22 your wages would probably be lower than they are. You
23 would not be able to travel around like you do". Good
24 journalism, as Professor Ricketson I am sure is aware,
25 costs a lot of money.

26
27 We spend lots of money on sending reporters to
28 Christmas Island. Every time there is a major happening up
29 there, we have to go up there and it cost as a fortune to
30 go there. If our revenue base were to shrink, we would not
31 go. We could not afford to go. We send reporters to cover
32 test cricket in England. We send people to the Olympic
33 Games and all the rest of it.

34
35 If another newspaper were to come here and take away,
36 say, 20 per cent of our advertising revenue, then a lot of
37 the things - and I am sure Brett McCarthy will tell you the
38 same - which I believe are essential to producing quality
39 journalism for our newspapers that we do now, we would not
40 be able to do. I really just do not see how you could have
41 a website servicing a town even the size of Ballarat or
42 Bendigo that will be economically viable. I just do not
43 see how that can happen.

44
45 MR FINKELSTEIN: Is a logical conclusion from that, if you
46 put aside the established media going online, that in
47 Australia at least we cannot really look forward to seeing

1 serious news produced for online distribution; that is, if
2 I ignore your company and Fairfax and News as the suppliers
3 of online news and look at who else in the world there
4 might be who will supply local news that is properly
5 collected by a group of reporters than had properly
6 analysed and printed and distributed?

7
8 MR CRONIN: You are talking something like Crikey.

9
10 MR FINKELSTEIN: Like Crikey.

11
12 MR CRONIN: Whether Crikey could get to be a major
13 publisher?

14
15 MR FINKELSTEIN: Or a second Crikey.

16
17 DR RICKETSON: If not major, just a range of them maybe
18 still relatively small.

19
20 MR BRETT McCARTHY: There will be niches. I think there
21 already are those niches being set up online. If you look
22 particularly at the financial areas, there are some there
23 and I think there that will be those niches.

24
25 MR FINKELSTEIN: General news and public affairs?

26
27 MR BRETT McCARTHY: But general news, I think is going to
28 be very, very difficult.

29
30 DR RICKETSON: One of the things that we have had
31 presented to us by various people is that if you look at
32 the range of news and public affairs, and so on, online in
33 Australia, leaving aside The New York Times and people
34 overseas, et cetera, the bulk of it is coming from the
35 established mainstream news providers, yourselves, Fairfax
36 Media, News Limited, the ABC and SBS.

37
38 In terms of your arguments or the questions about
39 diversity of a range of sources of news, serious news and
40 public affairs, the mere fact that you can get The New York
41 Times on your iPad does not really help you in that sense.
42 So that is one of the directions from which this kind of
43 line of questions is coming from; that is, the question of
44 government encouragement for other start-ups to provide
45 more diversity not only of views but of news gathering -
46 whether it is investigate, whether it is analysis, whether
47 it is just straight news reporting in a local community.

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MR CRONIN: They could probably spin that off from the ABC or from SBS. But in terms of encouraging private enterprise start-ups, unless the government is prepared to just throw masses of money at it, I cannot see how that will work.

MR FINKELSTEIN: One way is to subsidise, and some countries do subsidise. But there might be other mechanisms - I am just not sure how easy they would be - to generate enough benefits. The old example that everybody trots out historically is when newspapers started up here, we had second-class post. You distributed your newspapers, magazines and periodicals at a postage rate much less than everybody else. It was a classic government subsidy to encourage the press. I don't know whether we still have second-class post - has it gone? What, have they privatised Australia Post?

MR CRONIN: I haven't heard of it.

MR FINKELSTEIN: Not only here but in England and in the United States, that was regarded as a perfectly appropriate government subsidy for the press. It no doubt saved the press vast sums of money, making some organisations profitable where they may not have been.

The question is: is there something equivalent that the government can do for online like the government did for generations for the print? Can it and should it really? There are two questions. Presumably the government can always do something, but the big question is also should it, so that if people want a serious alternative source of news commentary, it can be made available.

MR CRONIN: I can't think of anything off the top of my head. What I do know about second-class post was I used to get the Readers Digest by second-class mail and I would write on it, "Return to sender" and I know that it went first-class mail to the publishers. I don't know whether that was a very good use of government money.

MR FINKELSTEIN: No. Why did you send it back?

MR CRONIN: Well, I had not ordered it, had no interest in reading it and they persisted in sending it to me.

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MR FINKELSTEIN: You don't want to buy into the discussion about --

MR CRONIN: No, I am happy to buy into it, but I simply cannot think of any mechanism, off the top of my head, that would enable the government to encourage a diversity of websites apart from, as I said, spinning them off from one of the existing - or setting up a new national broadcaster.

MR FINKELSTEIN: One thing that has happened in a couple of the states in the United States, and I don't think it is federal, is the setting up a special kind of company which is given quasi-charitable status. They are limited in the amount of dividends. They are not quite not for profits, because they encourage investment from the kind of charitable institutions that exist over there that we don't have over here, although the Press Council does get a little bit of money from one charitable institution, an Australian charitable institution, but certain tax advantages flow from - what are they called?

DR RICKETSON: Low cost, low profit.

MR FINKELSTEIN: Yes, low cost, low profit. So there is a cap on dividends and you get tax deductions for your investment in the company. It is a method by which you encourage capital investment by people who are involved in the philanthropic organisations of the world. It has had a measure of success in the United States. It is sort of an indirect subsidy because you reduce the tax rate, and there are people looking at that kind of assistance to start up media companies.

MR BRETT McCARTHY: The government needs to understand that if there is a vibrant country newspaper operating in a small community that is presently employing a dozen people and making enough profit to continue and if the alternative low cost, low profit is set up, that will then put the other business out of action and you will be back to where you were with one source and you will have made a dozen people unemployed and lost that to the town.

MR CRONIN: You would have killed the local newspaper. That would probably be the result of that.

MR BRETT McCARTHY: I think those questions would arise.

1 It is interesting. I had not heard of that in the States.
2 Are they doing it where there is no other source or -
3 I don't know.
4
5 MR FINKELSTEIN: I think it has been used in those places
6 where there is no paper.
7
8 MR BRETT McCARTHY: Nothing else?
9
10 MR FINKELSTEIN: Yes.
11
12 DR RICKETSON: They have had many more newspapers close,
13 as you know, over there.
14
15 MR FINKELSTEIN: I don't think it has been used to create
16 competition; rather it has been used to make sure that some
17 local community does have access to local news.
18
19 DR RICKETSON: It does not sound like it is exciting you
20 enormously, though.
21
22 MR CRONIN: No, it doesn't sound like the sort of thing
23 that we would probably go into, but --
24
25 DR RICKETSON: There might be a model there.
26
27 MR FINKELSTEIN: We will look at it. I think we have just
28 about run out of time. You can have the last word if you
29 like, Mr Cronin - in the sense that I will have the last
30 word, but you can have the last word.
31
32 MR CRONIN: I realise you will have the last word, but --
33
34 DR RICKETSON: He might write an editorial about it.
35
36 MR FINKELSTEIN: That's true.
37
38 MR CRONIN: There is every chance.
39
40 MR FINKELSTEIN: Yes, you will have the last word, I know.
41
42 MR CRONIN: What is that saying - you should never buy a
43 fight with a man who buys his ink by the barrel.
44
45 DR RICKETSON: So we have been told.
46
47 MR CRONIN: We have nothing more really except to say

1 thank you for hearing from us. We appreciate the
2 opportunity. We appreciate very much that you came
3 yesterday to have a look at the operation and I hope you
4 found that useful.

5
6 MR FINKELSTEIN: It was very useful.

7
8 MR CRONIN: And I don't envy you your job.

9
10 DR RICKETSON: Everybody says that too. Thank you very
11 much.

12
13 MR BRETT McCARTHY: Thank you.

14
15 MR CRONIN: Thank you.

16
17 MR TONY McCARTHY: Thank you.

18
19 MR FINKELSTEIN: Thank you.

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21 SHORT ADJOURNMENT

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1 MR BRET CHRISTIAN

2

3 MR FINKELSTEIN: Mr Christian, thanks very much for coming
4 along. I don't think we are going to take up an inordinate
5 amount of time with questioning but, first things first, is
6 there anything you want to raise with us first, before I
7 ask some questions?

8

9 MR CHRISTIAN: I have prepared a short summary of my
10 written submission, if you would like me to read it.

11

12 MR FINKELSTEIN: Yes, please do that.

13

14 MR CHRISTIAN: Thanks for inviting me along and if I cover
15 any ground that was covered by the previous speakers, I
16 apologise, but this was written beforehand.

17

18 I have given this independent inquiry a more detailed
19 written submission with some supporting evidence. This is
20 a summary of its main points which covers two matters in
21 the issues paper: how to finance good journalism in the
22 future and regulation.

23

24 I am the proprietor and editor of the Post group of
25 suburban newspapers that circulate between Perth city and
26 the Indian Ocean. At Post newspapers we buck the trend
27 that is threatening quality journalism in paid newspapers
28 and free to air television. At the Post revenue has
29 increased so that there is more money for good journalism
30 and more space in which to publish it. Paid newspapers
31 have been losing circulation and readers at an alarming
32 rate. The internet is partly responsible but the trend
33 accelerated once general news sites became credible.
34 Readers who were previously turned off paid papers by
35 political bias could now opt out, and they did. The net
36 has educated readers and viewers to a higher level. They
37 are now hypercritical. If editors try to put one over the
38 readers, they will flee.

39

40 There is a local example of this, which commendably
41 has been corrected by a change in board CEO and editorial
42 personnel. At the Post we do our best to observe the code
43 of ethics and to get all points of view prior to
44 publication. We correct mistakes and publish critical
45 letters. We publish up to five pages of letters to the
46 editor each week. We don't run editorials. We don't tell
47 our readers what to think. They tell us what they think.

1 The key is to be honest with your readers, genuinely engage
2 them as equals and don't shirk the hard stories.

3
4 An important safeguard for honest journalism is
5 diversity. If the Guardian newspaper had not existed, the
6 crimes of the News of the World would never have been
7 exposed. I have provided evidence to this inquiry from the
8 News Limited website that supports my view that the
9 suburban newspapers managed here by that company engage in
10 predatory pricing. Its effect is to threaten the existence
11 of the independent publishers. Diversity is the best
12 regulator, which brings us to regulation.

13
14 Regulation of a free press is a contradiction in
15 terms. The atrocities exposed by the Guardian newspapers
16 and the Leveson inquiry in London seem certain to lead to
17 recommendations for some kind of press regulation there.
18 Is it needed here? Most media workers try hard to do the
19 right thing, to adhere to the code of ethics. So here we
20 are concerned with extreme cases, with gross abuses of the
21 imbalance of power that exists between the media and the
22 subjects of its reports.

23
24 Options put forward include legislating to give the
25 Press Council more power, with compulsory membership,
26 roping-in radio, television and news websites and the
27 ability to impose fines. The fines idea scares me. A
28 \$30,000 fine for a large newspaper company would be like
29 parking meter money, but for us it would be a very large
30 whack.

31
32 The other problem with small papers with the Press
33 Council is the paper war it creates, the amount of time it
34 takes to an organisation where every person has to chip in
35 to get the paper out. One or two days dealing with a Press
36 Council complaint, often frivolous, is extraordinarily
37 debilitating.

38
39 It would be impossible to police the internet,
40 television, et cetera, with the great number of news and
41 pseudo-news sites on the net. Fearless truthful reporting
42 is fundamental to a healthy democracy. There are already
43 enough ways to kill a story. A beefed-up Press Council
44 only adds another layer. Government funding of the Press
45 Council is a concept beloved of banana republics.

46
47 The Press Council was established for the wrong

1 reasons, which I believe has caused its inherent
2 weaknesses. In my opinion, the infinite diversity of the
3 net has made the Press Council redundant. We are already
4 regulated by laws against phone hacking, certain types of
5 surveillance, reputation-damaging false reports, as well as
6 being subject to the Criminal Code, contempt of court
7 strictures and the common law. Common decency, so sadly
8 lacking on some London tabloids, can be addressed by good
9 corporate governance.

10
11 Board members have a responsibility not just to their
12 shareholders but for adverse effects in society of their
13 products, whether it is fake news or asbestos. Media
14 company board members live in the communities where their
15 company's products are consumed. It is not possible for
16 them to remain unaware of sustained abuses of power by the
17 organisations they govern. They are ultimately
18 responsible.

19
20 MR FINKELSTEIN: Thanks, Mr Christian.

21
22 If you had your way in your perfect world, would you
23 get rid of the Press Council?

24
25 MR CHRISTIAN: Yes. I think its time is up.

26
27 MR FINKELSTEIN: Isn't it necessary for there to be
28 some mechanism to arbitrate or stand between a reader
29 and a particular news outlet if there is a dispute between
30 the two and you don't want the dispute to end up in court?

31
32 MR CHRISTIAN: Well, I think there are other avenues for
33 readers to take. If there have been lies written about
34 them or if their reputation has been damaged, well, go for
35 it. I mean, in a perfect world, if I was the editor, say,
36 of The West Australian, I would resign from the Press
37 Council and appoint somebody like Mr Fernandez as a
38 readers' advocate or as an arbitrator between the readers
39 and the reporters and the editorial staff.

40
41 MR FINKELSTEIN: That's fair enough, but is that really
42 saying that the function - sorry, not the function - the
43 role of the Press Council is something which is useful, but
44 it is better carried out by, say, an ombudsman or readers'
45 advocate rather than the Press Council proper?

46
47 MR CHRISTIAN: Yes. I do believe that, yes.

1
2 MR FINKELSTEIN: Why would you favour the one over the
3 other?
4
5 MR CHRISTIAN: Speed is one of the big factors. Getting a
6 problem addressed quickly is as important almost as getting
7 it addressed at all, you know. That is one of the big
8 problems with ACMA; it takes six months or nine months to
9 reach a decision. The Press Council, with all the
10 backwards and forwards, can take months as well.
11
12 MR FINKELSTEIN: I think the stats that we have show that
13 the average is three months. You don't learn much from
14 averages because it could mean the case could take nine
15 months, but the average still - one case can take nine
16 months and still the average can be three. But is your
17 take on it really that, if you have disputes with readers
18 or disputes about the subject matter of an article, they
19 are the kinds of things you should be able to sort out in a
20 day or two and then get on with life?
21
22 MR CHRISTIAN: Exactly, yes. Our policy is to correct any
23 errors or disputes, to resolve them in the next issue and
24 that is well under a week with our deadlines. I mean, if
25 that means me getting in my car and driving to see somebody
26 and chat to them, I'll do it.
27
28 MR FINKELSTEIN: But what about those kind of disputes
29 where you have a view and the complainant has a view and
30 you can't broker or find a bridge to meet the gap between
31 you?
32
33 MR CHRISTIAN: Well, we will always offer them the right
34 of reply.
35
36 MR FINKELSTEIN: Is that a universal rule?
37
38 MR CHRISTIAN: Yes. Oh, yes, "Write us a letter."
39
40 MR FINKELSTEIN: And you will publish it?
41
42 MR CHRISTIAN: We will publish it, yes. I can think of
43 four critical letters we have published in the last month,
44 one from Mr McCarthy, from Brett McCarthy. One was about
45 alleging racism in one of our reports, one was alleging
46 that we denigrated people with mental illness, and we
47 published them, and I think in the second two cases, we

1 gave our points of view. I thought the complaints weren't
2 justified. I think actually Brett McCarthy's was, as it
3 turned out, but the other two were not.

4
5 MR FINKELSTEIN: But you published the --

6
7 MR CHRISTIAN: We published all four, yes.

8
9 MR FINKELSTEIN: If a letter to the editor makes a
10 reasonable rather than an insane kind of statement, is it
11 your practice, generally speaking, to publish all the
12 letters you receive?

13
14 MR CHRISTIAN: That's the aim. If we get flooded with
15 letters, we will summarise them in the paper and then
16 publish them on the net. So, they get published one way or
17 another.

18
19 MR FINKELSTEIN: Okay. Do you think that that ought be a
20 practice that is best if it were universally adopted?

21
22 MR CHRISTIAN: Well, I like it. We certainly do it. I
23 think it would be an excellent idea, yes.

24
25 MR FINKELSTEIN: But do you do it as a matter of principle
26 or it fills up space and readers actually like the debate
27 that goes on through the letters to the editor page?

28
29 MR CHRISTIAN: We love the debate, but as a matter of
30 principle, too. As I said, we are there to listen to what
31 people say, rather than us tell them what to think, and it
32 draws some terrific responses from people.

33
34 MR FINKELSTEIN: In a sense, that does not surprise me
35 because if people have an outlet and they have something to
36 say, there are probably plenty of people in the world quite
37 happy to make use of the outlet, but the mainstream press
38 does not seem to be happy with in effect an unlimited right
39 to have your letter published in the letters to editor page
40 and would see anything that's compulsory about that as
41 being an interference with editorial freedom. Do you see
42 it like that?

43
44 MR CHRISTIAN: I think they try to publish the most
45 interesting letters and they would say, "We don't publish
46 the boring ones and the ones criticising us are boring."
47 That's what they would say.

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MR FINKELSTEIN: Yes, but just from the perspective of having a diversity of views, which is one of the issues that you raise, isn't better access to the audience, the readers, via the letters to the editor page a good way of fostering or ensuring genuine diversity of views?

MR CHRISTIAN: Definitely, yes. Definitely, and people will always surprise you. I mean that's what makes getting out of bed in the morning as a newspaper person interesting because something will always surprise you. There's always something you hadn't thought of, nobody had thought of, and they will come up with it and that makes the letters pages probably the best read part of the paper.

MR FINKELSTEIN: If you had a readers' advocate employed by the organisation, I suppose you could do it via an ombudsman as well, but if you had a readers' advocate, would a person who holds that position - not would - would it be appropriate to give to the person who holds that position the power to tell the paper to publish either this letter to the editor or this correction or this retraction?

MR CHRISTIAN: It would be very appropriate to give them that power and I think they should have a sort of arbitrator's judicial-type role. They could sit between the reader who is complaining and the reporter who had written the report, and possibly the editor as well, and say, "You're wrong. You didn't make all the calls. You didn't get all the facts or you misquoted this person. Fix it. How are you going to fix it?" With a good person in that role, I think you would actually have a much better paper.

MR FINKELSTEIN: Why would a readers' advocate having that power be preferable to giving, say, the Press Council the same power?

MR CHRISTIAN: My experience with the Press Council is very uneven. I have seen them actually perform particularly well in that role and I have seen them perform particularly horribly.

MR FINKELSTEIN: Is that kind of thing personality dependent?

MR CHRISTIAN: I think it is, yes.

1
2 MR FINKELSTEIN: You get good people in the job, you get
3 bad people in the job --
4
5 MR CHRISTIAN: Yes, I think it is.
6
7 MR FINKELSTEIN: And bad people do a bad job.
8
9 MR CHRISTIAN: Yes, I think it is, yes. Yes. And there's
10 the time problem. A hurt is much less if it's taken away
11 quickly.
12
13 MR FINKELSTEIN: Yes.
14
15 MR CHRISTIAN: And that would be a critical part of that
16 advocate's job.
17
18 MR FINKELSTEIN: I wonder if you had a person like that,
19 whether performing that role at the Press Council or
20 performing the role in-house, say, with your own paper,
21 whether you would have some kind of training. I know that
22 mediators, for example, often go off to mediation courses
23 all over the country. I mean, there are ways you can teach
24 people the fundamental aspects of particular jobs and tasks
25 and it might be this kind of person, you just don't select
26 them out of the thin air, but maybe they ought to be
27 appropriately trained in some way.
28
29 MR CHRISTIAN: They would need some reporting training
30 because you would need to know how reporters work. It is
31 no great mystery, but until you have actually done it, it
32 is a bit hard to understand.
33
34 MR FINKELSTEIN: Yes.
35
36 MR CHRISTIAN: How the germ of a story can become a large
37 story or a large story can fall over, you know.
38
39 MR FINKELSTEIN: Yes, I see.
40
41 MR CHRISTIAN: And the feeling that that gives you when
42 you work for a week on something and not a word makes it to
43 print.
44
45 MR FINKELSTEIN: Yes, I understand that. I raised,
46 I think this morning early on with Dr Fernandez, this
47 question about the Press Council, about what is the

1 utility of having lay members, ie, people unconnected with
2 the press who haven't been journalists, haven't worked in
3 newspapers, and I understand one answer necessarily is it
4 makes the body look more independent. It's not just owned
5 and paid for and run by the press; there are independent
6 people there, in a sense for transparency reasons. But you
7 seem to think that sort of a person who is a stranger to
8 the industry can't do as good a job in disputes between a
9 reader and the press than would a person who has been
10 intimately involved.

11
12 MR CHRISTIAN: No, it is a bit like asking me to get up
13 and defend a murderer. I sort of know what they do, I have
14 seen them do it, but I don't think I could do it. Always
15 with Western Australia there is a problem and that is time
16 and space and if you had, say, a really good trained
17 mediator based in Melbourne or Sydney or at one of the
18 universities, they would have to be on the east coast
19 somewhere, getting them over here is always a performance.

20
21 As you know, it is a performance and you would tend to
22 bank things up so that you'd say, "Oh, the mediator is
23 coming in March, you know, we're all going to knock them
24 all off one after the other then," whereas in Sydney you
25 can hop on a plane and be in Melbourne in an hour and be
26 back in time for lunch. It is a very different set of
27 circumstances.

28
29 MR FINKELSTEIN: Let me ask you questions about the paper
30 proper and your competitors. You complain about predatory
31 pricing. I used to lose all my predatory pricing cases; I
32 have strong views about it that nobody agrees with. But
33 what is your main form of competition?

34
35 MR CHRISTIAN: It would be the News Limited, West
36 Australian Newspapers consortium basically trying to put us
37 out of business.

38
39 MR FINKELSTEIN: In what way do they compete with you?

40
41 MR CHRISTIAN: I am not just saying us, but all the
42 independent papers in Perth, their advertisers are targeted
43 by sales people who are apparently given a brief to get the
44 advertisements from us at any price.

45
46 MR FINKELSTEIN: How do you keep them from migrating
47 across, or do you have to just split the advertising

1 dollar?
2
3 MR CHRISTIAN: We just try to have a better paper and more
4 readers. That's all we can do.
5
6 MR FINKELSTEIN: In the end, won't the advertisers place
7 their advertisements with the paper that has the biggest
8 circulation?
9
10 MR CHRISTIAN: Or bigger readership. A lot do and the
11 paper is a good size, but there are those that will go on
12 price only and ultimately there are papers, I think, that
13 are vulnerable to that sort of unfair competition. It is
14 very hard not to sound like a whinger in this situation
15 because you could say, "Oh, competition is great, it gives
16 the businesses cheaper advertising rates," which is true,
17 but when it is uneven, when it is targeted to existing
18 papers or to independent papers only, when you have the
19 might of the News organisation behind you and to know they
20 own the presses, it is difficult.
21
22 MR FINKELSTEIN: What kind of competition do you face from
23 online operations?
24
25 MR CHRISTIAN: None.
26
27 MR FINKELSTEIN: Do you anticipate any in the foreseeable
28 future?
29
30 MR CHRISTIAN: It would be very hard to do. Our paper is
31 online and in fact it was the first newspaper in Perth to
32 go online in 1996. We've had many attempts from people to
33 buy our news service, to start an online service, which we
34 have never sold them. It is very, very expensive to
35 provide the local news service that we provide. We
36 probably have an editorial staff of about eight and a lot
37 of them are quite senior people.
38
39 MR FINKELSTEIN: Do all of them contribute to the online
40 material as well?
41
42 MR CHRISTIAN: The paper itself goes online, so we hold it
43 all back until publication day.
44
45 MR FINKELSTEIN: What has going online meant for your
46 advertising revenue?
47

1 MR CHRISTIAN: Minimal.
2
3 DR RICKETSON: Minimal gain or minimal loss?
4
5 MR CHRISTIAN: Minimal gain, yes. Look, as The West
6 Australian newspaper people said, "You show me a way to
7 make money out of an online news service and they'll
8 probably marry me." You can't do it. The online services
9 that are successful, news services in Australia, I have
10 been told directly by one, and I'm not sure if it applies
11 to all, but one very big one in Australia, they do not
12 factor in the cost of the journalists, the print
13 journalists who contribute to it. It is actually not
14 regarded as a cost, which means is extraordinary that they
15 can say, "Well, we make a profit." But without the print
16 paper they wouldn't have that content.
17
18 MR FINKELSTEIN: They have good accountants.
19
20 MR CHRISTIAN: Fantastic.
21
22 MR FINKELSTEIN: On diversity, diversity of views,
23 diversity of the media generally, I understand that you are
24 concerned about the lack of diversity.
25
26 MR CHRISTIAN: Yes.
27
28 MR FINKELSTEIN: At what level, though? Are you talking
29 about at a local level, the kind of audience that you cater
30 to and the lack of diversity for local news content?
31
32 MR CHRISTIAN: Well, I was really looking at the media
33 globally or Australia-wide. I think there is a huge lack
34 of diversity and a fear of getting one of the big
35 organisations off-side because they come down on you like a
36 tonne of bricks.
37
38 MR FINKELSTEIN: In what way and for doing what?
39
40 MR CHRISTIAN: The editorial columns they use. I have not
41 experienced it myself, but I have seen it happen to people
42 who dared to criticise. For instance, The West Australian
43 under its old management, I would quarantine the new regime
44 from how it operated in the early 2000s, but you took them
45 on at your peril. They would personally attack people who
46 criticised them. If you wrote a letter complaining about
47 something, you would get an abusive phone call or an

1 abusive letter; extraordinary behaviour.
2
3 MR FINKELSTEIN: Extraordinary on one hand, but is that
4 just what happens when you have a free press?
5
6 MR CHRISTIAN: Yes, but it is a negative for your business
7 as well. In the end, that sort of behaviour, you lose
8 readers in droves, so it is not a long-term option to
9 behave that way.
10
11 MR FINKELSTEIN: Mr Cronin said the biggest check on his
12 market is the readers. If they don't like what he's doing,
13 they'll move away. Precisely where they are going to move
14 I'm not sure, but that is not an uncommon view expressed by
15 the print media, that they are constrained in what they do
16 and how they do it because they will lose readership. Do
17 you agree with that?
18
19 MR CHRISTIAN: I do agree with that, yes. And now there
20 is an alternative for a state newspaper like Mr Cronin's,
21 there is an alternative for state news. Now, you are not
22 going to get everything that the print edition of the West
23 gives you, but the readers have got the impression that you
24 do. So, they will stop buying the papers. I can read the
25 international news and the Stock Exchange quotes and
26 everything else that I used online to buy the paper for
27 online, so why bother, and the local police press releases
28 basically, who got murdered, who got run over.
29
30 MR FINKELSTEIN: Coming back to the Press Council, do you
31 think not only that it's not only the discipline of
32 readers, but the existence of something like a Press
33 Council that helps ensure as much as possible journalists
34 comply with the ethical rules that govern their trade or
35 calling, the union's rules, the actual organisation for
36 whom they work's rules about fairness and accuracy and all
37 the rest of it?
38
39 MR CHRISTIAN: I think they are more afraid of Media Watch
40 than the Press Council.
41
42 MR FINKELSTEIN: Lots of people say that and it's probably
43 true. But why are they frightened of Media Watch?
44
45 MR CHRISTIAN: Exposure, which is what they do to other
46 people.
47

1 MR FINKELSTEIN: What about then, instead of putting money
2 into a Press Council, I suggest to the government they
3 should fund Media Watch 15 minutes every day instead of
4 every Monday.
5
6 MR CHRISTIAN: Great idea, yes.
7
8 MR FINKELSTEIN: Do you reckon it would work?
9
10 MR CHRISTIAN: It's an office joke. If you want to really
11 scare someone, if something happens, say "It's Media Watch
12 on the phone for you." It ruins their whole day.
13
14 MR FINKELSTEIN: But a joke with a purpose.
15
16 MR CHRISTIAN: Yes. Yes. If you rang up and said "It's
17 the Press Council," they'd say "Oh, go away, it's another
18 looney on the phone."
19
20 MR FINKELSTEIN: Is that because of - that would be good
21 if it was Media Watch, wouldn't it?
22
23 MR CHRISTIAN: Yes.
24
25 MR FINKELSTEIN: Is part of the concern about being caught
26 out or referred to by Media Watch because of who the
27 presenter is, the way it's presented or the large audience
28 or largish audience that watch Media Watch?
29
30 MR CHRISTIAN: That's true. There used to be
31 advertisements in the local paper, in The West Australian,
32 informing you about the Press Council. Now, I don't recall
33 seeing one for some time. I remember when it was first set
34 up that they were quite frequent and quite obvious. I may
35 have missed them, but I certainly don't recall seeing one
36 for a long time.
37
38 MR FINKELSTEIN: No, but one of the things the Press
39 Council put in its submission is that it wants the press to
40 publicise its existence much more widely and prominently
41 than has happened in the past, is one of the things they
42 complain about, or refer to the lack of public awareness of
43 them as an institution.
44
45 DR RICKETSON: Some newspapers are doing that now,
46 actually publishing the little dinkus for the Press Council
47 and the fact that you can and are encouraged to complain to

1 them if you have a problem. It is in The Australian each
2 day. I think it's in The Herald Sun. I am trying to think
3 where else I have seen it, but certainly I have seen it in
4 those two newspapers.

5
6 MR CHRISTIAN: Yes. Yes.

7
8 MR FINKELSTEIN: Have you had complaints against your
9 paper referred to the Press Council?

10
11 MR CHRISTIAN: Yes, we have, yes.

12
13 MR FINKELSTEIN: And by and large - I know you don't like
14 them - but is it because of the way that the complaints
15 were handled?

16
17 MR CHRISTIAN: Look, mostly it is a matter of going
18 through the motions. Virtually all but one complaint was
19 frivolous - no, I wouldn't say frivolous, was obvious to me
20 could be answered satisfactorily and addressed. In fact,
21 all of them could be satisfactorily addressed. There was
22 one that was upheld and that was made by a member of the
23 Press Council, so we were never going to win that one and
24 we didn't.

25
26 MR FINKELSTEIN: So a member of the Press Council
27 complained to the Press Council and there was a
28 determination by the Press Council.

29
30 MR CHRISTIAN: Yes.

31
32 DR RICKETSON: When was that?

33
34 MR CHRISTIAN: When? Maybe 10, 11 years ago now, quite a
35 long time.

36
37 MR FINKELSTEIN: Did you complain about it and say "Get an
38 outsider to deal with it"?

39
40 MR CHRISTIAN: Yes, all of that. All of that.

41
42 MR FINKELSTEIN: Didn't help?

43
44 MR CHRISTIAN: Didn't help.

45
46 MR FINKELSTEIN: Was it a complaint of a serious kind?

47

1 MR CHRISTIAN: No. No. It was a nuance of a report of a
2 council meeting.
3
4 DR RICKETSON: Was the member of the council a member of
5 the public or a member of another media organisation?
6
7 MR CHRISTIAN: Media organisation.
8
9 DR RICKETSON: It sounds like a matter for Media Watch.
10
11 MR CHRISTIAN: It does, yes, and we actually published
12 their determination, not in full, we just said we had a
13 finding against us by the Press Council on this matter and
14 they said, "No, that's not sufficient, you have to publish
15 the whole thing." I said, "We're not a member of the Press
16 Council, we're not going to" and so they bought an
17 advertisement in the Sunday paper and ran it at the
18 insistence of their member/complainant.
19
20 MR FINKELSTEIN: We have heard lots of complaints or
21 comments, maybe not even complaints, that the press is
22 one-sided politically, pushing for a political party and
23 pushing against particular policies of another political
24 party. Assume that to be right, is that really what you
25 get when you have a free press?
26
27 MR CHRISTIAN: Look, I know nothing of that. It has never
28 come through in anything I have read of the determinations.
29 That is the first I have heard of it.
30
31 MR FINKELSTEIN: Just reading the papers.
32
33 DR RICKETSON: In the newspapers, not the council, but
34 actually just reading the papers.
35
36 MR CHRISTIAN: That the papers all have one particular
37 political bias?
38
39 MR FINKELSTEIN: Yes. This is a sort of follow-on to the
40 lack of diversity.
41
42 MR CHRISTIAN: Yes. Australian papers have always been
43 pretty conservative.
44
45 MR FINKELSTEIN: But should that be a problem for anybody?
46
47 MR CHRISTIAN: It would be good to have more points of

1 view. It always is good to have more points of view. I
2 mean, we would love to have The Guardian in Australia.
3 That apparently is genuinely courageous and independent, as
4 it's proved in the last couple of years, and is not
5 toadying to any political party of any kind.

6
7 MR FINKELSTEIN: In legislation which regulates the
8 broadcasters, radio, TV, both here and in other countries,
9 there's an obligation for balance, balanced reporting on
10 matters of public interest and so on.

11
12 MR CHRISTIAN: Yes.

13
14 MR FINKELSTEIN: Do you think that that is an appropriate
15 obligation to impose on the print media?

16
17 MR CHRISTIAN: I think the marketplace imposes it. I mean
18 if you are quite clearly continually focused on one
19 particular party, either for one or against another,
20 eventually you will only have - roughly half the people
21 vote one way and half the other - eventually half your
22 potential readers will vanish. They will say, "I'm sick of
23 this. I'm not going to put up with it any more."

24
25 MR FINKELSTEIN: That is true if you have an alternative.

26
27 MR CHRISTIAN: Yes, well you have now.

28
29 MR FINKELSTEIN: But if you don't have an alternative, what
30 do you do then?

31
32 MR CHRISTIAN: Well, you do have a alternative, which is
33 the net.

34
35 MR FINKELSTEIN: Do you think that most readers are
36 sufficiently sophisticated to understand when a paper
37 publishes matters of opinion as opposed to asserting that
38 as a fact?

39
40 MR CHRISTIAN: I don't know whether they consciously do,
41 but I think there is a real feeling when you read a paper
42 that weaves opinion into what purports to be an objective
43 news story, there is a feeling of unease and there is a
44 feeling that eventually they get tired of trying to work
45 out what the paper is trying to do. They see through it
46 very quickly.

1 I think the net has educated people to be much more
2 discerning and I think papers do that sort of thing at
3 their peril. I think more and more they will lose the sort
4 of readers who in the end buy a paper for good journalism
5 and this particular paper might have fantastic journalism,
6 really good reports, lots of really committed journalism,
7 but interspersed in it there are these stories you're
8 talking about, these sort of time bomb things that have got
9 opinion woven through them or have misleading headings and
10 eventually it becomes so much of a strain that people won't
11 bother, they don't bother, and that's why papers that have
12 been trying to pull this for too long lose sales.

13
14 MR FINKELSTEIN: Which means that because of the
15 information that's now available on-line, that acts as some
16 kind of discipline on the print media to try and be as
17 accurate and as fair as possible.

18
19 MR CHRISTIAN: Yes. It used to be if you read a newspaper
20 like that and you knew there was some trickery involved,
21 the normal reader might not know how that trickery is done,
22 but they get the feeling that there was. They didn't like
23 it, but they had to keep buying the paper to remain
24 informed about their community because of the good stuff
25 that was in the paper and now they believe that you can
26 read that stuff elsewhere. In Perth there are three daily
27 news sites, you can read the general sort of run of the
28 breaking news and so if they feel they don't need it they
29 won't make the effort to try to interpret what the paper's
30 trying to do. So the paper would actually be much better
31 off just telling the objective truth.

32
33 MR FINKELSTEIN: Your paper tends to have a reasonable
34 amount of local news. Is there anything online that
35 provides the same kind of local content that your paper
36 does, so that if somebody wanted an alternative news source
37 for the kind of information that you provide in print and
38 on-line, is there an alternative to which people can go?

39
40 MR CHRISTIAN: No. You will often see the exclusive
41 tag on stories. Well, every story in the Post is
42 exclusive, otherwise it wouldn't be in there. We have
43 generated that journalism ourselves. I think that edition
44 you've got in front of you has 27 general news pages,
45 probably 170 stories. All originated in our office. We
46 don't have the luxury of cables, you know, of the wire
47 services. If we are a bit short of news one day, we can't

1 just stick some overseas stories in, we have to generate
2 everything ourselves.

3
4 MR FINKELSTEIN: But leaving aside the fact that you
5 generate it all, is there somewhere else where somebody
6 could go and get a different perspective on the kinds of
7 topics that you write about?

8
9 MR CHRISTIAN: There's the News Limited paper, yes, that
10 circulates in the same area. We believe we do a better
11 job. They probably think they do a better job.

12
13 MR FINKELSTEIN: Yes. Is that true of much of the local
14 press, that there is at least an alternative source for
15 which people who live in a locality interested in local
16 news can go to?

17
18 MR CHRISTIAN: About half of metropolitan Perth is covered
19 by independent papers like ours. In the other half it's
20 only covered by the News, West Australian Newspapers
21 consortium.

22
23 MR FINKELSTEIN: Was there greater coverage in the past
24 than these papers, the other local papers, or were there
25 other local papers in those areas, that is the other half
26 where West Australian News dominates or is the monopolist
27 and they have gone out of business or something like that?

28
29 MR CHRISTIAN: Sporadically, yes. Ever since federation,
30 probably, or even prior to federation there were various
31 local papers that were born and died, but a lot of those
32 areas I'm talking about are completely new. They were
33 farms 25 years ago. They are just new subdivisions.

34
35 MR FINKELSTEIN: What about in country towns? Are there
36 independent papers like yours in sizeable country towns?

37
38 MR CHRISTIAN: Very, very few. The Fairfax country
39 papers, which used to be Rural Press, probably dominate.
40 Although with West Australian Newspapers, you saw the stack
41 of regional and rural papers that they publish, so there
42 are those two groups and they vary wildly in quality.
43 I mean some are very good, some are not worth worrying
44 about.

45
46 MR FINKELSTEIN: Are they print and online, or mostly
47 print?

1
2 MR CHRISTIAN: Yes, most of them have an online, fairly
3 static-type of online presence. They put a lot of their
4 stories up, yes.
5
6 MR FINKELSTEIN: Do you see the provision of online news
7 in the long term as a threat to the independent press
8 publishers?
9
10 MR CHRISTIAN: I think it's more of an opportunity. I
11 really think the publishers are in the box seat, in a way,
12 as we already have a base of which to pay journalists to
13 gather and write the news.
14
15 MR FINKELSTEIN: So you are not one of a largish number of
16 people, sort of a prophet of doom for the print media?
17
18 MR CHRISTIAN: I can only look to America where there are
19 some cities the size of Perth with no daily newspaper and
20 that is a worry.
21
22 MR FINKELSTEIN: Yes, but I am interested to know whether
23 you think that might happen to our cities or that for one
24 reason or another we happen to be different, consumers
25 happen to be different.
26
27 MR CHRISTIAN: I think it could, but it really depends on
28 how the news, existing newspapers respond to the web,
29 whether they embrace it and use its best features or
30 somehow succumb to it. The worst thing you can do is talk
31 down to and bully your readers because they will flee and
32 you really do wonder about the mindset of a paid paper
33 making their news service available free. I cannot fathom
34 why they ever did that. I think that particular horse has
35 bolted now. I think there are attempts worldwide to wind
36 back that clock and make those services paid again.
37
38 MR FINKELSTEIN: Some of them are quite successful. I
39 think the New York Times doesn't do too badly with the
40 uptake for its --
41
42 MR CHRISTIAN: Yes, but that is a specialist paper. In a
43 way we are a specialist paper, too, because we have a
44 specialist area, we specialise in an area, just, say, as
45 The Australia Financial Review specialises in what it does.
46 We specialise in a particular geographical area and all our
47 content is original, you can't get it anywhere else, so

1 really that's why The New York Times is successful, I
2 think, because their content is unique.

3
4 DR RICKETSON: Can I ask you: in terms of advertising
5 revenue on-line and in print and so on, I mean that's one
6 of the challenges that major news proprietors face, which
7 is that a number of on-line entrants have started up and
8 have taken quite a lot of advertising revenue, classifieds
9 and to a lesser extent for display.

10
11 Just looking through your paper here, you have a lot
12 of display advertising in here. I am wondering if that
13 market is still with you in print or whether in fact you've
14 got on-line competitors for your advertising as distinct
15 from your news.

16
17 MR CHRISTIAN: There are definitely online competitors,
18 say for real estate advertising. There are the real estate
19 sites, car sites. I wouldn't be bold enough to say that
20 we'd have it for ever. I think --

21
22 DR RICKETSON: But it doesn't seem to be going at the
23 moment.

24
25 MR CHRISTIAN: No - well, it has increased quite
26 significantly in the last two years.

27
28 DR RICKETSON: Any idea why?

29
30 MR CHRISTIAN: Again the experience in the United States
31 has been that big cities or medium-sized cities where the
32 daily paper is losing sales, readership and advertising,
33 the suburban papers are thriving.

34
35 MR FINKELSTEIN: Is that because demand for local news is
36 really never going to dissipate?

37
38 MR CHRISTIAN: I think that is true, yes. Yes.

39
40 MR FINKELSTEIN: Yes, in a sense it doesn't surprise me
41 that readers or people who live in a particular area are
42 pretty keen to find out what's going on in that area and
43 you can produce the kind of news that wouldn't get into a
44 major daily because it's too localised.

45
46 MR CHRISTIAN: Well, they do. They do plunder our paper
47 and rerun our stories after we publish them.

1
2 DR RICKETSON: Without acknowledgment or with
3 acknowledgment?
4
5 MR CHRISTIAN: Of course without acknowledgment. But
6 there is this need for people to know what's going on in
7 their community, but I think more significantly than that
8 people feel they have some control over what goes on in
9 their community. You can read in the paper about a huge
10 blow-up in Parliament House in Canberra, a no confidence
11 motion or something and everyone gets terribly excited
12 about it, but what can you do about it? Nothing.
13
14 MR FINKELSTEIN: Whereas if it is the local council you
15 might be able to do something.
16
17 MR CHRISTIAN: Yes. If someone wants to build a
18 six-storey block of flats next to your garden and look into
19 your house, well, it excites you and you feel you can do
20 something about it.
21
22 MR FINKELSTEIN: Which means that really you wouldn't
23 anticipate the kind of local paper that you have having
24 significant survival problems into the future.
25
26 MR CHRISTIAN: I can predict anything except the future.
27 I would hate to try and predict it, but at the moment it's
28 going well and we are able to employ good people and more
29 of them.
30
31 MR FINKELSTEIN: You can always look to the past for
32 purposes of predicting the future and what you might be
33 able to see is we don't see the same kind of decline in
34 circulation that you have seen or read about in the United
35 States with the United States newspapers and even with our
36 major national or state newspapers. If your circulation is
37 still pretty good, then they might tell you that there are
38 factors at play which means that there's going to be a
39 continuing demand for a kind of news.
40
41 MR CHRISTIAN: Yes. That shows no signs of abating. In
42 fact, we have left out a number of good stories this week
43 because we just couldn't fit them in; there is that much
44 about. I think one of the other things, too, is that a lot
45 of American papers I've seen, I wouldn't give you two bob
46 for them. They are really not that well done. I think
47 Australian papers aren't much --

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MR FINKELSTEIN: No loss, you mean?

MR CHRISTIAN: No. No. I think Australian papers have responded much better to the sort of threats that saw off some of the ones that have gone out of business in America. One of the big problems in the States was that there was a Federal law passed which you probably know about which enabled papers competing in the same town to share the same back office.

MR FINKELSTEIN: Yes.

MR CHRISTIAN: And so when it came to the crunch - that was great when it was going well and they saved money on computers and on staff - but when the problems arose with revenue, they couldn't sell the paper, so both closed. They were manacled together and they went over the side of the ship and neither of them could swim. What was suppose to be a saviour for papers actually became a dead weight.

MR FINKELSTEIN: I hadn't picked up that.

MR CHRISTIAN: Some of them went online and I think are struggling along now, so we don't have that problem.

MR FINKELSTEIN: Okay. I am about done.

DR RICKETSON: You may or may not know this, Mr Christian, but you have said here in your Skype box on page 2 that you are read by 78,000 people, which is 40 per cent more than any other local publication. You have about 115 or thereabouts pages in your paper here. What sort of size is the competitor? Any idea what sort of ratio of advertising to editorial they have in theirs?

MR CHRISTIAN: I think they have about the same number of pages week-for-week. They would jam more advertising in than we do.

DR RICKETSON: Right. What is your ratio, roughly?

MR CHRISTIAN: We don't have one.

DR RICKETSON: It varies. It is supply and demand as to how much advertising is there around?

1 MR CHRISTIAN: Yes. It depends a little bit on the
2 configuration of the press, too, whether you can, if you
3 have to increase the size, whether you can go up in lots of
4 four pages or in eights, get one more full page and that
5 forces you to go another eight pages, then that makes more
6 space available. It is a weekly juggling act.
7

8 DR RICKETSON: All right. Thank you very much.
9

10 MR FINKELSTEIN: Thank you.
11

12 MR CHRISTIAN: Thank you.
13

14 SHORT ADJOURNMENT
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1 MR PAUL MURRAY
2
3 MR FINKELSTEIN: Mr Murray, thanks very much for coming.
4
5 MR MURRAY: Thank you.
6
7 MR FINKELSTEIN: You've been working this morning.
8
9 MR MURRAY: Yes. I have just finished. It has been an
10 eventful morning.
11
12 MR FINKELSTEIN: We haven't had anybody from the radio
13 yet.
14
15 MR MURRAY: Well, I am not actually here from radio. I
16 will cover that in my open remarks, if I may.
17
18 MR FINKELSTEIN: You begin.
19
20 MR MURRAY: Thank you. Thanks for the opportunity to
21 appear before you today. I will keep these opening
22 comments brief.
23

24 I think I should make the point right at the outset
25 that I am here in an independent capacity. I was the
26 editor of The West Australian from 1990 to 2000, but these
27 days I am employed by them only on a freelance basis. So
28 I write columns for the paper, but I am not an employee of
29 the newspaper as such. It is as a freelance contributor.
30

31 My main pay cheque, I suppose, comes from Fairfax,
32 through Fairfax radio, but I don't contribute to any of
33 Fairfax's print or online organs. So I am not actually
34 speaking to you as a Fairfax employee under the terms of
35 this Inquiry either.
36

37 I did sit on the Australian Press Council for
38 10 years, from 1990 to the year 2000. Unlike a lot of
39 other editors who flicked that off to other members of the
40 editorial staff, I actually was The West Australian's
41 representative on the Press Council. So I attended most of
42 the meetings during that period. But my experience of
43 course with them is now 11 years distant. So I let you
44 know about that also.
45

46 I would like to say I think this Inquiry was shown to
47 be unnecessary simply by the inability of anyone in the

1 Gillard government to put up a sound argument to justify
2 its existence. Now, in saying that, I mean no disrespect
3 to the inquirers, who I know have taken on this job in good
4 faith and clearly have the respect of the media industry,
5 which has obviously decided to cooperate fully. So
6 I appreciate also the invitation to speak to you today.
7

8 It is often said that no-one should fear an
9 investigation if they have nothing to hide, and I have
10 always thought there is something in that, even though open
11 inquiries sometimes do have the potential for mischief
12 making, even with the most innocent of subjects. That is
13 something that we are very familiar with here in
14 Western Australia through the existence of the Corruption
15 and Crime Commission and the way it operates.
16

17 We all know the genesis of this Inquiry was in
18 unscrupulous media activities overseas. However, to my
19 knowledge, no-one has yet shown that they are systemically
20 pursued here or even in any form pursued here. So I won't
21 go over that ground again.
22

23 What this shows to me, the calling of this Inquiry, is
24 one of the failings of the modern Australian political
25 system, and that is that it is almost completely reactive,
26 usually reacting to perceived crises, rather than dealing
27 with issues of change as they emerge gradually.
28

29 On that basis, there would be much to examine in the
30 operations of the traditional media in Australia.
31 Politicians have shown less enthusiasm for that, although
32 the convergence inquiry was a departure, I must admit, and
33 it unfortunately seems to have been subsumed by this
34 Inquiry.
35

36 My basic attitude to journalism is that the press
37 should be as free as it is decently possible for it to be.
38 I fundamentally disagree with the proposition that a free
39 press can be made better by more regulation. Journalism
40 responds best, in my view, to the democratic pressures of
41 public opinion rather than the threat of legal penalty.
42 This can often be frustrating for those in politics who
43 like to bend certain elements of the media to their own
44 will. But we have 110 years of a successful federation and
45 the polity that supports it as evidence of the benefits of
46 a light hand on media regulation.
47

1 At a time when the internet and the rise in new media
2 has opened up a multiplicity of new voices, which is one of
3 the longstanding genuine criticisms of the traditional
4 media, and that in itself throws up huge challenges to the
5 revenue streams that have funded 200 years of robust
6 journalism in this country, it seems a strange time to try
7 to re-regulate those dinosaurs who are struggling to find
8 their way in this new environment still pursuing real
9 journalism rather than the anarchic bastardisation of it
10 that is the rule in much of the so-called new media and its
11 illusory citizen journalism.
12

13 I must say in terms of questions of balance, when
14 I started in journalism, reporting politics, especially
15 around election time, we used to go to the trouble of
16 counting the column inches in our newspaper reporting and
17 reporting on that to the editor at that stage as if that
18 was some way of ensuring some sort of balance in newspaper
19 coverage, which always becomes more critical around
20 election time.
21

22 Of course, that never took into account the fact that
23 if one party was getting the top 15 centimetres of the
24 story it might be seen as being a little more important
25 than the bottom 15 centimetres of a story. But these were
26 the sort of things we used to do to try to get this idea of
27 balance in coverage, particularly in reportage.
28

29 People now are much more able to select only the news
30 that they want in its digital delivery. You don't look at
31 every story on a page these days. You generally click and
32 open up those articles that interest you and you pass by
33 the rest. So that is a very different way, I think, of
34 accessing news these days than was the case when newspapers
35 ruled the roost.
36

37 This idea of "my news", people getting use tailored to
38 suit their own interests, I think has become a reality. If
39 they want to, they can just go and read the Gillard
40 government's press releases in a day and not worry about
41 any of the traditional media. It is completely open to
42 them. If they wanted to get their news coverage in that
43 source, they could choose to do so.
44

45 Very early on in your discussion paper, you raised an
46 issue that I think is at the very heart of the reasons for
47 this Inquiry. You canvassed what was termed as the search

1 for truth on political issues, asking whether people
2 holding opposing views have an opportunity to express their
3 views in the media. I think it is point 1.4 in your issues
4 paper.

5
6 Frankly, if I was looking for truth, politics would be
7 the last place I would go searching for it. The truth may
8 sometimes be an accidental casualty in journalism, but it
9 is wilfully murdered daily, in fact hourly, in politics by
10 its practitioners. I wanted to say that politics,
11 especially at the federal level but not exclusively, these
12 days is so wound up in spin and mired by obfuscation that
13 I find it incredible that its practitioners are actually
14 criticising the media for not being purveyors of truth on
15 politics.

16
17 My view is these days, given what I have said about
18 spin and obfuscation, the media actually has a better
19 chance of informing the public through analysis and
20 commentary on political matters than they do through
21 slavish reportage of what its practitioners say.

22
23 If you have a look at the way that has changed over
24 time, you need to go no further than the ABC. The sort of
25 coverage by someone like Chris Uhlmann would have been
26 undreamed of 10 years ago on the ABC. That would have been
27 frowned on, the amount of commentary that Chris Uhlmann
28 includes in his daily coverage. In fact I still have
29 friends at the ABC who wonder how it fits in with their
30 charter obligations.

31
32 If you go to the ABC's Drum, the site "The Drum" on
33 its website, that is the same. The ABC also has been
34 sucked into this new approach to covering politics, and
35 I use the term "covering" rather than reporting politics
36 because I think that many of us in the media these days,
37 confronted with what politics throws at us, see the best
38 way of covering it is actually through analysis and through
39 commentary and the freedoms that gives you rather than just
40 reporting the words that come out of the mouths of
41 politicians.

42
43 This is an inquiry I believe that is borne out of
44 politics, not out of the needs of the media or the needs of
45 the public. The sole focus of it seems to be on the
46 reporting of politics, which I find quite fascinating given
47 the broad scope of what we cover in the media. There

1 doesn't appear to have been much interest at all in
2 business, sport, the arts, science, medicine - all these
3 other sectors that are incredibly important to the way we
4 live our lives. The (indistinct) sectors in Australia have
5 the same problems with the Australian media that some of
6 the people in politics have, because I don't see them
7 expressed certainly as often or as violently as we hear
8 from those in politics.

9
10 So I think you should disavow yourselves of any notion
11 of there being truth to find in politics or that journalism
12 will help politicians find it themselves. My view is that
13 politics these days is pretty much a marketing exercise.
14 It stopped being about principle a generation ago, in my
15 view, and I am someone who has been around reporting on
16 politics in this country since 1973, so coming up to
17 40 years.

18
19 That issue you canvassed - that issue of fairness and
20 balance and access - looks to me like someone putting in a
21 bid for what eventually is just column space in the free
22 press for their own views. John Stuart Mill says that
23 truth is found by its conflict with error on liberty, and
24 that may regularly be true in the courts and often true
25 about good journalism, but in reality it just stirs the mud
26 in politics.

27
28 It does show what those who agitated for this Inquiry
29 are all about, though. It is more about the protection of
30 those within the political sphere, protection from
31 criticisms that they feel are unjust and which they think
32 will hurt them electorally, rather than their concerns for
33 the information that is flowing to ordinary Australians.
34 In 30 years of journalism I can honestly say that
35 governments that end up on the wrong end of media reporting
36 always have themselves to blame. I have never seen a good
37 government get what you might call oppressive media
38 treatment, but I have seen plenty of bad governments get
39 overly generous media treatment.

40
41 My final point - I hope I haven't gone on too long -
42 is the one I hope you will give the most consideration to,
43 and that is that this Inquiry shouldn't fall into the trap
44 of thinking it needs to do something to justify its
45 existence, and that is especially the case when doing
46 nothing may be the very best thing for you. That is my
47 written submission to you.

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MR FINKELSTEIN: Could I ask some questions?

MR MURRAY: Please.

MR FINKELSTEIN: Your view of the current state of politics would, I think, lead to the conclusion that the role of the press is more important now than it has been in the past.

MR MURRAY: Yes, I think that is right, and I think we find ourselves much more in a sort of adversarial position than we certainly did when I came into the business.

MR FINKELSTEIN: And your view of politicians would suggest for probably the same reasons that the ordinary man and woman in the street would rely a lot more on news for purposes of working out what the government of the day is or isn't doing, what the opposition of the day is or isn't saying and so on.

MR MURRAY: Yes, to the extent that they are interested and connected.

MR FINKELSTEIN: And doesn't that suggest that the press necessarily becomes much more powerful in setting agendas and influencing debate?

MR MURRAY: I don't know that it does because I think you have got to get into sort of the areas of quantitative analysis there. I think our audiences are much smaller in real terms. I am saying you need to get quantitative, and I will now go the other way. My gut feeling is that less people are connected with the political process these days than --

MR FINKELSTEIN: Because they have stopped caring?

MR MURRAY: Yes, I think they have switched off. They have more important things in their life. Certainly the penetration levels just of the print media, which are the ones which probably give the most detailed coverage of politics, have fallen away dramatically.

Have a look at the coverage of politics on the top-rating television news programs. I mean, it is wafer thin to say the best.

1
2 MR FINKELSTEIN: One relevant measure, though - I suppose
3 it is probably not necessarily true in a country where
4 there is compulsory voting - is not so much the size of the
5 audience but the type of audience; that is, are they people
6 who are important to influence decision makers, that kind
7 of thing.
8
9 MR MURRAY: I find that a totally elitist argument and it
10 is one that I always --
11
12 MR FINKELSTEIN: It is a very elitist argument.
13
14 MR MURRAY: Yes, and it is one that I always dismissed
15 when I was the editor of the newspaper. I mean, to run a
16 successful newspaper you try to get to as broad an audience
17 as is possible.
18
19 MR FINKELSTEIN: Yes.
20
21 MR MURRAY: Now, some newspapers, like the Australian
22 and The Australian Financial Review, can get by on dealing
23 with a discrete audience. For the rest of us in
24 metropolitan daily newspapers, that was never an option.
25 You were always trying to get to the broadest audience you
26 could. So therefore you tailored your approach with that
27 in mind.
28
29 MR FINKELSTEIN: As now a person on the radio, content of
30 the broadcast media is, so far as I can tell, much more
31 closely regulated than the print media, no doubt because of
32 licensing rules and the content obligations, which might be
33 tougher for the ABC and SBS because they are publicly
34 funded. But I am very interested to know whether the kinds
35 of obligations which are imposed on broadcasters affect
36 what you say compared with what you would like to say when
37 you broadcast.
38
39 MR MURRAY: By my appearance here today, I am missing a
40 scheduled briefing by a Fairfax lawyer on our obligations
41 under the codes of conduct that we operate in broadcasting.
42 So I have to make up for that tomorrow afternoon. So these
43 matters are taken seriously.
44
45 MR FINKELSTEIN: Yes, but --
46
47 MR MURRAY: I am just leading into that. I know

1 the - I don't want to use the word "shackles" - parameters
2 in which I have to operate in radio and I am happy about
3 that. I mean, I have been a journalist for a long time and
4 I take my obligations seriously. So I don't see it as any
5 great impost to provide the balance and the sense of
6 fairness that's required under the radio code of conduct.

7
8 MR FINKELSTEIN: I read in commentary, I think for the
9 most part not by practising journalists or people who
10 practice in journalism but mostly academic writers who come
11 from a legal background or write about the media, that if
12 you impose obligations of fairness or balance that will
13 inevitably have a chilling effect on content. But
14 everybody who looks at those kinds of statements say, "Yes,
15 but there's never been any quantitative analysis of whether
16 that's assertion." But you are a person who I can ask
17 directly. Do you feel inhibited, compared with, say, your
18 role in the print?

19
20 MR MURRAY: I have a foot in both camps. I write two
21 columns a week for The West. I am going home this
22 afternoon to write one for tomorrow's paper. I feel no
23 more constrained in my commentary on radio than I do in my
24 commentary for the newspaper. It is very similar.
25 I mean, what constrains me is the general upbringing that
26 I have had in journalism that there are standards that we
27 live up to.

28
29 When I grew up I was a member of the union. I lived
30 by the code of - the value ethics of the AJA when
31 I started, the MEAA later. I was never found to be in
32 breach of that. In fact I never actually had an action
33 taken against me. When I was the editor of the newspaper
34 I took seriously every time we were ever called before the
35 Australian Press Council.

36
37 I don't think those matters of balance and fairness
38 are the things that are seen by journalists to have what
39 you call the chilling effect. The chilling effect is much
40 more in later years in terms of the anti-vilification laws
41 and the process and the fines that might be imposed there.
42 On the defamation law and contempt of court, I can tell you
43 that I had two contempt of court actions taken - I was
44 successfully prosecuted - you're not even prosecuted on
45 contempt of court. You walk in guilty and you try to prove
46 your innocence. You're (indistinct) when you arrive.
47 Anyway, I've got two strikes on that. That was pretty

1 chilling for me because my lawyers, one of whom became a
2 District Court judge, told me that three strikes and you're
3 out was the likelihood in that case. They are the things
4 that we find chilling, not matters of balance or fairness.

5
6 MR FINKELSTEIN: That's interesting, because they are the
7 laws that apply to everybody in the country.

8
9 MR MURRAY: Of course.

10
11 MR FINKELSTEIN: They don't simply ask people in the press
12 that.

13
14 MR MURRAY: But we are often more exposed to them in what
15 we do, as we would say, in the public interest.

16
17 MR FINKELSTEIN: Fair enough, and your job puts you in the
18 firing line in the way that the ordinary --

19
20 MR MURRAY: Yes.

21
22 MR FINKELSTEIN: But they are not laws designed for the
23 press.

24
25 MR MURRAY: No, we know that.

26
27 MR FINKELSTEIN: I am not sure from what your comments
28 have been about accepting or abiding by and probably
29 thinking important the codes of conduct and ethics
30 promulgated by many press organisations, by the union and
31 the Press Council, why you see something nastyish about a
32 Press Council whose function principally is to see that
33 those rules are abided by. In other words, you like the
34 rules and you abide by the rules and presumably from what
35 you say you would abide by them whether there is a Press
36 Council or not.

37
38 MR MURRAY: I don't know anyone in the press these days
39 who is unhappy with the Press Council as it is currently
40 constructed, other than I think it could be a lot better in
41 the way it does things. But I don't think government
42 regulation or government involvement in the Press Council
43 would take us anywhere but backwards.

44
45 MR FINKELSTEIN: I suppose it depends on what the
46 government does with the Press Council, but if it is taking
47 steps to make it able to carry out its functions more

1 efficiently --

2
3 MR MURRAY: By funding it?

4
5 MR FINKELSTEIN: Take that, yes

6
7 MR MURRAY: Yes, well, I don't see - and this is easy for
8 me to say because I am no longer in a corporate position in
9 a newspaper - any reason why the media shouldn't fund the
10 Press Council adequately.

11
12 MR FINKELSTEIN: One way that I have raised with people
13 is, instead of the government funding, the government can
14 impose the levy on the media, and the media will still pay
15 for it, it's just that if they are not voluntarily paying
16 enough they will be coerced by a levy to pay the right
17 amount. So no money will go to the government

18
19 MR MURRAY: Yes.

20
21 MR FINKELSTEIN: But it will be a method of ensuring that
22 what the Press Council needs for efficient operation it
23 gets.

24
25 MR MURRAY: As I say speaking totally independently,
26 I would certainly think that that is the better way of
27 addressing it than to have direct government funding which
28 I think most journalists would have a problem with, or they
29 should.

30
31 MR FINKELSTEIN: One problem about a levy might be - or
32 one of the issues that are raised about the Press Council
33 is coverage. The people who are covered by its rulings and
34 rules are those who have voluntarily signed up to that.

35
36 MR MURRAY: Yes.

37
38 MR FINKELSTEIN: But with the internet and news content
39 being supplied via the internet and the standard press
40 going on the internet as well with their online
41 publications and so on, there's something odd about people
42 doing the same thing on that platform but not subject to
43 the same rules. That might mean you need to have a system
44 which catches everybody because it could work unfairness
45 with some people covered by codes of conduct and others
46 free to disregard them at will.

1 MR MURRAY: Yes. That was happening even during my time,
2 going back 11 years on the Press Council. That was an
3 issue for us then.
4
5 MR FINKELSTEIN: Sure. But it's an issue one would think
6 ought be dealt with to get rid of that inherent unfairness.
7
8 MR MURRAY: Yes, I agree with you.
9
10 MR FINKELSTEIN: And it is hard to work out how you do
11 that otherwise than by legislation, because you can't force
12 people to sign up if they don't want to.
13
14 MR MURRAY: Yes. A site on the internet can be ephemeral
15 in its very nature. It can just disappear tomorrow. It
16 doesn't have the bricks and mortar nature of the
17 established press. It doesn't have the revenue streams,
18 all those things that hold us in a legal framework.
19
20 MR FINKELSTEIN: Yes. But would you see anything in
21 principle wrong --
22
23 MR MURRAY: No.
24
25 MR FINKELSTEIN: -- with making sure that people who carry
26 out the like activity - the fact that they do it in print
27 or online or anywhere else should not make any difference;
28 if the substance of what they do is the same, then they
29 should be subject to the same kind of ethical rulings?
30
31 MR MURRAY: Yes, I absolutely agree with that, and it's
32 one of the problems that I think most traditional
33 journalists like myself have with a lot of the new media,
34 is that it's not prepared to live up to those standards
35 that we hold dear.
36
37 MR FINKELSTEIN: The other thing that I have been thinking
38 about and raised with people is, although the standards
39 imposed on broadcasters are different from the standards
40 imposed on the print, and in some respects tighter,
41 harsher, it occurred to me just looking at it from an
42 efficiency point of view, not from any other, that there's
43 something to be said for one person or one body or one
44 organisation, whatever you want to call it, regulating
45 conduct on any platform so that if you've got print and you
46 are online and you have the radio station, you have the
47 same people sort of crossing over from one to the other, it

1 seems there is sort of just a managerial - from a
2 managerial viewpoint one person should regulate conduct. I
3 am not talking about licensing and licensing conditions and
4 all that kind of thing and local content and that, but just
5 straight regulation of standards.
6

7 MR MURRAY: This is where I am likely to get myself into
8 trouble but, I mean, I will just speak frankly with you.
9 I think it is how the regulator operates, and I don't want
10 to issue a sort of invitation to ACMA to take any
11 particularly new interest in my program than they would do
12 normally. However, I don't think that many of us would see
13 ACMA as a vigorous regulator in those areas.
14

15 MR FINKELSTEIN: The thing that I have in mind as a
16 possibility is taking standards out of ACMA and putting it
17 into one - making a slightly bigger Press Council and
18 saying, "With your standards, the way that you deal with
19 print you should also deal with online, plus all relevant
20 people online, plus radio and TV to the extent that it's
21 news or public affairs." I am not talking about --
22

23 MR MURRAY: And this is because of the way the
24 technologies are converging and who knows where print ends
25 up and --
26

27 MR FINKELSTEIN: Exactly that, yes.
28

29 MR MURRAY: I don't know if I can particularly help you
30 there in that. But I know the issues, yes.
31

32 MR FINKELSTEIN: Okay. A reason for distinguishing - this
33 is sort of partly an answer to the question that you put
34 about the issues paper, why it is concentrating on news
35 rather than the entertainment side of things --
36

37 MR MURRAY: It mainly seems to be interested in politics
38 more than what we would generally hold out to be the broad
39 spectrum of news.
40

41 MR FINKELSTEIN: I will tell you my take on it is that
42 I would be much more concerned with the regulation of news
43 and imposing obligations on those who collect and analyse
44 news because of the inherent importance of the democratic
45 process than I would if somebody is writing a review about
46 the latest model Holden. In other words, I think that news
47 plays such an important part in the kind of society we live

1 in in a way that car reviews and holiday reviews don't.
2 And if you are looking at free speech it is usually about
3 news; it is not about car reviews.

4
5 MR MURRAY: But are you still talking about coverage of
6 politics?

7
8 MR FINKELSTEIN: Public affairs, not --

9
10 MR MURRAY: On any day there would be more people who are
11 interested in the release of the new Holden than are
12 interested in Julia Gillard's latest speech.

13
14 MR FINKELSTEIN: That might be true, but most of
15 us - that's a fair comment.

16
17 MR MURRAY: And there is a fair commercial imperative in
18 it for Holden that it is done with all the sorts of
19 standards that she might expect to be brought to bear on
20 the reporting of her speech.

21
22 MR FINKELSTEIN: But, to the extent that free speech
23 raises itself as an issue, there are no really big policy
24 concerns about free speech and the new Holden.

25
26 MR MURRAY: Yes. Let me --

27
28 MR FINKELSTEIN: If people want to regulate how you write
29 about Holdens and all that kind of thing or entertainment
30 or travel, most people probably couldn't care less.

31
32 MR MURRAY: Yes. What about business; talk about
33 business, or medicine or all these other issues, the arts?
34 Let me tell you one of the problems I had in the Press
35 Council as a practitioner was the amount of slack that the
36 Press Council was cutting to what they call by-lined
37 articles. That is genuinely opinion pieces. But almost
38 everything these days in the newspaper appears with a
39 by-line, and that's just to personalise the story, for no
40 other particularly good reason. We came from a period
41 where by-lines were only ever put on excellent work to the
42 time where by-lines are now put on complete dross.

43
44 The Press Council used to - I used to be so frustrated
45 in this - set a different standard for what they called
46 by-lined articles in terms of their need to be factual.
47 I always think you need to have an absolute proper factual

1 basis to then go on to make any sort of commentary. This
2 to me was completely misread. The Press Council used to
3 completely misread its own principles on this matter, and
4 stories that appeared in the news pages which were not
5 matters of commentary at all were regularly excused from
6 getting negative opinions of them from the Press Council
7 because they were seen as a by-lined item.

8
9 MR FINKELSTEIN: Do you think that is still happening?

10
11 MR MURRAY: I don't know. As I said, I am 11 years
12 distant from it, but I always thought that was a bad thing.
13 I will take it to what I said in my introductory comments,
14 is that in this new method I think the media is taking in
15 covering politics these days that that analysis and
16 commentary, which are truly in a by-lined article area,
17 genuinely in that, has become much more important in terms
18 of the media coming to grips with the way politics is
19 played these days.

20
21 MR FINKELSTEIN: Can you just explain that?

22
23 MR MURRAY: Yes, because when I started in politics in
24 1973 you would sit in the gallery and you would report on
25 the debate in the House. You rarely see in the media these
26 days reports on debates. It's past. It's the old days.
27 The newspaper of record style of journalism has gone. So,
28 unless it is a big debate in parliament on the mining tax
29 or whatever and it goes through in a late night sitting,
30 you might see some reference to what was said during the
31 debate, but we don't have reports of debates any more. We
32 have moved on from that.

33
34 So that sort of reportage of what comes out of
35 politicians' mouths is not the way politics is covered
36 these days. Politics is much more interpreted by
37 experienced journalists, or you would hope it to be by
38 experienced journalists, and that comes through articles
39 that look like analysis or look like commentary. You cover
40 that in your issues paper and you say whether there should
41 be clear distinctions between it.

42
43 When I was the editor of The West, I used to do that
44 and I used to insist that we had a little dinkus that went
45 on if something was analysis that used to be, bang, and the
46 reading public would know, "This is analysis. This isn't
47 the sacred reporting of facts."

1
2 We went away from that. That is just no longer the
3 way it is happening. I couldn't see that you could do that
4 any more. I was keen to do it because I was also at that
5 stage wanting to draw the distinction between what
6 reporters reported and then what they later interpreted.
7 But I just think the media generally has moved way past
8 that.

9
10 MR FINKELSTEIN: Is that partly because of how politics is
11 played out --

12
13 MR MURRAY: Yes.

14
15 MR FINKELSTEIN: -- or that the reader is more interested
16 in the latter rather than what used to be --

17
18 MR MURRAY: It may be a bit of both. But I certainly
19 think - and Lindsay Tanner sort of goes over this sort of
20 ground in his book - that it's just the way politics has
21 developed and that symbiotic relationship between political
22 reporters and politicians has developed, for better or for
23 worse.

24
25 MR FINKELSTEIN: Your experience on the Press Council, did
26 that lead you to conclude that the institution was a good
27 institution, forgetting about how it might have worked on a
28 particular case in a particular period, but just as an
29 institution as a means of holding the press accountable to
30 its own standards?

31
32 MR MURRAY: Inherently, yes. The things that I was always
33 on the look-out for, and that would have been things like
34 newspaper members, caucusing on issues et cetera, seeking
35 support from each other, I never saw happen. I was waiting
36 for it to happen and it would have been my worst fears that
37 it happened like that. I didn't see it happen.

38
39 One of the problems I had when I was on the complaints
40 committee - what I used to complain about, and if you go
41 back and look at the Press Council news I actually wrote
42 items about it, complaining about it - was what I saw as a
43 lack of forensic approach to putting the principles into
44 actions. I often think that the Press Council - because a
45 lot of the public members don't come from that sort of
46 background, they didn't bring a sort of disciplined mind
47 to, "These are the principles. How do they apply to this

1 bit?" They were more likely to go with whether they
2 felt - you know, with their emotions, I suppose.

3
4 But it's a big group. Any one day when I was on the
5 Press Council there might have been 16 or so people there.
6 So in that big group I think those things are leavened.
7 The debates were always open, in my view. I got done over
8 a few times in the Press Council I thought very unjustly.
9 But I probably got away on a couple of times when
10 I deserved a rap. But that's just the way those sort of
11 big bodies operate. In the main, I was happy with the way
12 it operated.

13
14 MR FINKELSTEIN: You rather take the position that having
15 a large dispute resolving body tends to be a good thing.
16 From an outsider's perspective, it looks to me to be
17 hopelessly inefficient. Instead of having 15 people, nine,
18 or seven, I would have a tribunal handling the majority of
19 complaints if they are relatively straight of one or three
20 maximum so you get a majority.

21
22 MR MURRAY: There is your choice. Your choice would be to
23 go for a very tight group of very experienced people who
24 would bring that forensic approach that I appreciate, or
25 you go for the more democratic group and you try to bring
26 the public's view on these matters to bear on those media
27 representatives who are in the room.

28
29 MR FINKELSTEIN: If it was your choice, which way would
30 you choose?

31
32 MR MURRAY: Given I had so much problem with that forensic
33 approach, I would probably go for that. I would go for the
34 smaller group with expertise.

35
36 MR FINKELSTEIN: Would it be enough to have two out of
37 three with expertise? I know there is an issue in my mind
38 and in others as well about having lay people on a body
39 that makes decisions where they would be helped by having
40 the knowledge and disadvantaged maybe to a considerable
41 extent by being outsiders because they don't understand how
42 the press operates, they don't understand the pressures on
43 a reporter and so on, but at the same time having members
44 of the public there makes it more transparent, more open
45 and all the rest of it. But you might pay a price for the
46 openness and transparency.

1 MR MURRAY: In my time we had some excellent public
2 members. HP Lee, who was a professor of law, was a
3 fantastic public member.

4
5 MR FINKELSTEIN: It may be that lawyers bring a different
6 kind of discipline or kind of thing that you are talking
7 about, whereas if you haven't got a lawyer there but, say,
8 a businessperson or from the social sciences or
9 something --

10
11 MR MURRAY: We had public members who came from - one who
12 came from the Greens in Tasmania. There was another one
13 who represented the mining industry in the Northern
14 Territory. I don't think they brought much to the table at
15 all. With all due respect, we don't want a world run by
16 lawyers, but they are very useful when you are in this sort
17 of quasi-judicial area.

18
19 MR FINKELSTEIN: I actually like the idea of having at
20 least one lawyer there so that - chair. It wouldn't be a
21 bad thing to make it mandatory for the chair to be
22 either --

23
24 MR MURRAY: In my time they were, actually. In my time it
25 was David Flint; the former Commonwealth Ombudsman, Dennis
26 Pearce.

27
28 MR FINKELSTEIN: And you would regard that as a good
29 thing?

30
31 MR MURRAY: Yes. They did try to bring that approach to
32 the - that lawyerly mind to the issues at hand.

33
34 MR FINKELSTEIN: The last topic that I am going to ask you
35 about is powers of the Press Council. The way that it
36 operates at the moment, as you know, it's no different to
37 when you were on the Press Council, is if it settles things
38 by negotiation, well and good. But if it goes to
39 adjudication by the complaints committee then all that can
40 happen is that the paper can be asked to publish the
41 adjudication. Most times it does, but sometimes it doesn't
42 or it doesn't do it as prominently as the current chair
43 would like it to happen.

44
45 But what do you think about having the Press Council
46 have additional powers, e.g. compelling corrections or
47 retractions to be published and maybe even allowing a

1 complainant to have his or her say on a particular topic?
2 Not a free say, something that is checked to make sure it
3 is appropriate; a bit like a letter to the editor but,
4 "Here's the letter and we, the Press Council, have said
5 this is okay to publish and you should publish it"?

6
7 MR MURRAY: I think that's just inimical to the concept of
8 a free press and I never supported it. I had a policy when
9 I was the editor that we fixed up on the page that we
10 mucked up, and that came at some pain when you messed up on
11 page 1. But that was to sort of try to build some trust
12 with the readers that we weren't burying things. So
13 I thought that that was a way of handling it.

14
15 MR FINKELSTEIN: You must have thought that it was a
16 proper way of handling it?

17
18 MR MURRAY: Yes. But these are decisions I think should
19 be taken by editors. Editors are the people who are
20 responsible for building trust with the readers, and they
21 are the best people to do that job and these are decisions
22 I think that have to be independently taken by editors.
23 This is frustrating in dealing with the press, I think,
24 because we are not all the same.

25
26 MR FINKELSTEIN: But, if you have people with the
27 requisite understanding on the Press Council, why aren't
28 they in as good a position to say what's appropriately done
29 as the editor himself? I know it is telling the editor
30 what to do, I understand that; but here you might have five
31 editors telling one editor what is the correct thing to do
32 in this case.

33
34 MR MURRAY: I wasn't prepared to take instructions from
35 the chairman of my board of directors. So I would see
36 myself being less prepared to take instruction from the
37 Press Council. If you take your responsibilities as an
38 editor seriously, I think that's the way you view it.

39
40 MR FINKELSTEIN: But when you sign up to the Press Council
41 you at least sign up to an obligation to publish an
42 adjudication.

43
44 MR MURRAY: Yes. In my time only twice that wasn't done.
45 Unfortunately once in this state by a person that you have
46 just taken evidence from, actually, and only one other time
47 that I know of by one of the majors. That's the only time

1 in my 10 years that an adjudication wasn't published.

2
3 MR FINKELSTEIN: I think that Professor Disney's complaint
4 or observation - I don't know whether I would put it as a
5 complaint - is not that they haven't been published but
6 they haven't been published as prominently as he thought
7 was appropriate in the circumstances.

8
9 MR MURRAY: Yes.

10
11 MR FINKELSTEIN: In other words, it was buried somewhere.

12
13 MR MURRAY: And I think that's a bad mistake by those of
14 us in the business to do that. You just have to take your
15 cuts publicly.

16
17 MR FINKELSTEIN: But is it a big step to be required, say,
18 by the Press Council to publish on page 5 because the
19 offence happened on page 5 and publishing a retraction on
20 page 5?

21
22 MR MURRAY: I don't think so because they were my
23 standards. But I don't want to put myself in a position of
24 imposing them on others.

25
26 MR FINKELSTEIN: No, but I could recommend it if I thought
27 it was an appropriate standard. If it is an appropriate
28 standard, why shouldn't it apply?

29
30 MR MURRAY: I think it is a fair standard I think in terms
31 of the way I always viewed it, and that is that this is a
32 relationship of trust between the consumer of the printed
33 word and those selling it to them. I think it was totally
34 in accordance with that.

35
36 MR FINKELSTEIN: If I might say so, that makes sense. But
37 there is still enormous resistance to making it obligatory.
38 In other words, even you do that. You say, "It's a great
39 idea and I do it, but I shouldn't be forced to do it." But
40 if it is a great idea and it should be done, why shouldn't
41 you be forced to do it? My kids do that. They'll say,
42 "I'll do it, and you can't tell me." But if it is a really
43 good idea - in other words, if objectively or rationally
44 it's an appropriate thing for the press to do - what's the
45 matter with saying, "You've got to do it"?

46
47 MR MURRAY: Because it goes to this level of compulsion.

1 It's the thin edge of the wedge, I suppose, over the
2 imposition of these sort of issues which we see as being
3 restraining free speech.
4

5 MR FINKELSTEIN: So what you are talking about is you are
6 not talking about this step but the next step.
7

8 MR MURRAY: Yes.
9

10 MR FINKELSTEIN: Because once somebody has their leg in,
11 you can then get crushed in the rush. (Indistinct) that you
12 write enough of the time for that to be a problem.
13

14 MR MURRAY: The good thing about this Inquiry, regardless
15 of what I said at the start, is that these issues are out
16 and being aired, and hopefully practitioners, particularly
17 those with editorial responsibilities, listen. That's the
18 way these matters should be influenced, not with the heavy
19 hand of regulation, but by getting them out and making the
20 media respond.
21

22 MR FINKELSTEIN: I was trying to work out some soft method
23 of regulation, even if it might be slightly heavier than
24 presently exists and it still be acceptable in the sense
25 that, "Okay, so it's a bit tougher than it was yesterday,
26 but it doesn't constitute a real interference with either
27 editorial independence or free press."
28

29 MR MURRAY: I suppose that would then entail some sort of
30 agreement by those who sign up to the Press Council at that
31 stage.
32

33 MR FINKELSTEIN: But you know the problem with agreement,
34 though, because what do you do with online? You are not
35 going to get agreement. Part of the problem is people who
36 ought be subject to the same standards that those who
37 agreed to be subject to are not going to do it by
38 agreement. It does strike me as odd that you have a bunch
39 of people online, free of constraint, with a lot of
40 responsible people online voluntarily agreeing to be
41 restrained.
42

43 MR MURRAY: Can I just pose the question: should we then
44 be looking at the size of the audience and not really
45 worrying too much about a site that gets 20 hits a day by
46 people who are interested in --
47

1 MR FINKELSTEIN: Couldn't agree more. I agree with that
2 100 per cent because I would not think that any rational
3 person would say, "We are going to regulate every blogger
4 on the internet." You would have to be mad to do that.

5
6 MR MURRAY: White Supremacist Weekly you are probably not
7 going to get to sign up.

8
9 MR FINKELSTEIN: 100 per cent right. I agree. But then
10 the question is - and I have figures in my head, got an
11 audience of 50,000 is enough to be caught, something like
12 that, like a person who can influence a significant
13 audience.

14
15 MR MURRAY: Yes.

16
17 MR FINKELSTEIN: And something like 25,000, 50,000 people
18 I would regard as a significant enough audience; and not
19 only that, a player like that might also start to get
20 advertising dollars as well.

21
22 MR MURRAY: Indeed.

23
24 MR FINKELSTEIN: And become more than a one-man show.
25 There are suggestions of getting them in by saying, "You
26 get benefits, not subject to the Privacy Act or the Trade
27 Practices Act provisions to which news are exempt," that
28 kind of thing. That's an indirect method of getting them
29 to voluntarily sign up. The other method is to say, "You
30 are in," in other words by an Act of parliament that says,
31 "Because of the function you perform, including some
32 objective criteria like what is the size of your audience
33 in the last 12 months or something, you just are caught.
34 You are subject to the same rules as everybody else."

35
36 MR MURRAY: One of the great things about the new
37 technology is actually you can actually get those hits.

38
39 MR FINKELSTEIN: Correct.

40
41 MR MURRAY: So the hard data is easy enough to get.

42
43 MR FINKELSTEIN: Yes. I have to stop, only because we are
44 going to catch a plane, not because I haven't got more
45 things to ask you about.

46
47 MR MURRAY: I am happy if you want me to do so by email or

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whatever, I would be happy to help you out.

MR FINKELSTEIN: I might take you up on that. Is there anything else you want to say finishing off?

MR MURRAY: No, thank you very much.

MR FINKELSTEIN: Thank you for showing up.

MR MURRAY: Pleasure.

THE INQUIRY ADJOURNED ACCORDINGLY