



**Australian  
Press Council**



**Submission to the  
Attorney-General's Department  
Review of Secrecy Provisions**

**May 2023**

The Australian Press Council welcomes the opportunity to provide a submission to the Attorney-General's Department Review of Secrecy Provisions.

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

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

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

The Press Council currently covers approximately 450 print and online mastheads. Constituent bodies include most of the major newspapers and magazine publishers in Australia. The Press Council's role is not to represent the media, and constituent members of the Press Council may wish to make their own submissions to the Review.

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

The Press Council has binding Standards (namely the Statement of General Principles, the Statement of Privacy Principles, and Specific Standards on the Coverage of Suicide and Contacting Patients) as well as a range of Advisory Guidelines that support its work and promote high standards of public interest journalism.

The Press Council's Charter for a Free Press in Australia sets out a number of principles relating to freedom of the press, including the principle that "Laws, regulations and practices which in any way restrict or inhibit the right of the press freely to gather and distribute news, views and information are unacceptable unless it can be shown that the public interest is better served by such laws, regulations or practices than the public interest in the public's right to know."

The operation of a free and open press is an important foundation to Australia's democracy. A free press ensures the public is properly informed on matters of public interest. This is an important element of public interest journalism holding governments and decision makers to account for their decisions and actions.

The Press Council acknowledges that there are instances the public or national interest may best be served by maintaining secrecy around certain issues, decisions or processes. However, its starting position is that a compelling case must exist before the media is proscribed from publishing certain information that it may hold.

### **Question 6 Discussion Paper: Re Public interest journalism principles**

The Press Council notes that the Discussion paper addresses the issue of public interest journalism and there is discussion about what principles might be taken into account in determining access to the public interest journalism defence.

The Press Council supports the continued existence of public interest journalism defences. A journalist should never face the prospect of criminal prosecution and detention for simply reporting important facts that should be brought to the public's attention. Given that the secrecy offences that apply to journalism apply criminal penalties (and imprisonment), it is imperative that journalists are afforded the utmost due process. Public interest journalism defences are fundamental to due process.

Obviously, facts and information that should be brought to the public's attention are not always the same as what the public may simply be interested in. The Press Council has some parameters for determining what is "sufficiently in the public interest" for the purpose of applying its General Principles. These are as follows:

**"Sufficiently in the public interest":** The necessary level of justification in the public interest is proportionate to the gravity of the potential breaches of the Principles. Relevant factors to consider may include, for example, the public interest of:

- (a) ensuring that everyone has genuine freedom of expression and access to reliable information;
- (b) protecting and enhancing independent and vigorous media; public safety and health; due administration of justice and government, personal privacy and national security;
- (c) exposing or preventing crime, dishonesty and serious misconduct or incompetence (especially by public figures).

### **Question 8 Discussion Paper: Re Attorney-General's consent to prosecute journalists for certain offences**

As a matter of principle, the Press Council supports the highest levels of scrutiny of any decision to prosecute a journalist for certain offences. It therefore supports continuation of the requirement for the Commonwealth Director of Public Prosecutions to obtain the Attorney-General's written consent before proceeding with the prosecution of a journalist in the circumstances outlined in the Discussion Paper. In line with the principle of ensuring the highest level of scrutiny of any such prosecutorial decision it would appear favourable to have this requirement in legislation rather than by Ministerial direction.