



# **Submission by the Australian Press Council to Privacy Act Review**

**March 2023**

**The Australian Press Council**

**Address:** Level 6, 53 Berry Street, North Sydney 2060 **Phone:** (02) 9261 1930 or 1800 025 712

## **Introduction**

The Australian Press Council welcomes the opportunity to make this submission to the Privacy Act Review.

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

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 sets General Principles covering accuracy and clarity; fairness and balance; privacy and avoidance of harm; and integrity and transparency. Of particular note, the APC's General Principle 5 provides that publications are free to publish as they wish provided that they take reasonable steps to avoid intruding on a person's reasonable expectations of privacy, unless doing so is sufficiently in the public interest.

The APC has approved Specific Standards on the coverage of suicide and of contacting patients in care and Advisory Guidelines on a range of journalistic issues. Importantly, it has also approved a Statement of Privacy Principles. The Privacy Principles cover collection of personal information; use and disclosure of personal information; quality of personal information; security of personal information; anonymity of sources; correction, fairness and balance; and sensitive personal information.

## **Scope of this Submission**

In making this submission the Press Council will limit its comments to proposals that directly impact the operation of Australian newspapers, magazines and digital news sites.

Prior to addressing issues around the journalism exemption, which is the primary focus of this submission, the Press Council has some comments about other elements of the Review Report.

### **Direct Right of Action and Statutory Tort for Serious Invasions of Privacy**

The Press Council does not object to proposals to amend the Privacy Act to allow for a direct right of action or a tort for serious invasions of privacy if it is clearly understood that the journalism exemption extends to protect the media sector from these provisions. In the absence of such an exemption the Press Council does not support the inclusion of the proposed provisions in the Privacy Act.

The Press Council believes that current laws and complaint mechanisms are adequate and provide effective protection of individual privacy. There is a risk that introducing such measures could have a significant chilling and deleterious effect on investigative journalism and reporting.

### **Rights of the Individual – erasure**

The Press Council does not object to proposals that expand the rights of individuals under the Privacy Act, however it believes that the journalism exemption should extend to protect the media from the provisions relating to right of erasure, or failing a full exemption, boundaries should be put around how the right applies to material retained by journalists and media organisations. This is of critical importance to the maintenance of a free press. News media organisations have many legitimate business reasons for retaining personal data for public interest journalism purposes.

### **Journalism Exemption**

The Press Council unequivocally supports the retention of the journalism exemption in the Privacy Act. The existence of the exemption is an important recognition of the benefits of public interest journalism to Australian society and democracy. It is also an important element in protecting press freedoms.

The Press Council notes discussion in the Review Report about changing the scope of the current exemption but supports the position adopted by the Report to not propose any changes to the current scope.

The assertion in the Review Report that ‘Digital Native’ media services are not captured by current media regulation ignores that fact that current membership of the Press Council includes Private Media, Region Media, Focal Attractions, Dailymail.com Australia Pty Ltd and Man of Many Pty Ltd, all digital only publishers. The Press Council is open to other digital only publishers joining that wish to avail themselves of the membership benefits of the association.

#### Proposal 9.1

The Press Council supports the proposal that to benefit from the journalism exemption a media organisation must be subject to privacy standards overseen by a recognised body relevant to the sector and welcomes the express recognition of the Australian Press Council in this regard.

The Press Council believes that a robust and effective privacy standard is an important and necessary part of any regulatory scheme, but of equal importance is an independent complaints and review process that gives integrity to that standard. The Australian Press Council has a complaints process that is independent of publishers. No publisher sits on the

Press Council's Adjudication Panels. The Press Council considers that it is not sufficient for an organisation to simply have a privacy standard in place but should also have a mechanism to enable independent assessment and review of complaints made under that standard. Proposal 9.1 should be amended to reflect this position.

#### Proposal 9.2

The Press Council does not support the ACMA having a role in setting standards or criteria for standards that might apply to the Australian print media and online news industry. The concept of government-imposed standards is inconsistent with the concept of freedom of the press, particularly when there is no evidence that the existing Statement of Privacy Principles developed by the Press Council is failing.

The APC's Statement of Privacy Principles was developed in consultation with the then Federal Privacy Commissioner and the Press Council believes that in regards to the print and digital media sector, Proposal 9.2 would be better written to indicate that in developing privacy standards for the print and digital media, industry should *consult* with the OIAC, which reflects current practice.

The Press Council holds no view on the appropriateness of ACMA or OIAC involvement in drafting privacy standards or criteria for other sectors of the media industry.

#### Proposal 9.3

The Press Council supports in principle the proposal to conduct a further review of the journalism exemption three years after any amendments are made. Full support for such a proposal cannot be provided in the absence of knowledge about the terms of reference for such a review.

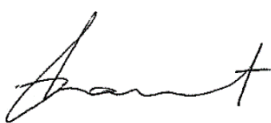
The Press Council has concerns about the proposal that a review of the exemption involve an audit of complaints of alleged privacy breaches if that audit involves a Government entity reviewing or assessing the decisions of the Press Council. Such government oversight runs counter to the concept of a free and independent press.

#### Proposal 9.4

The Press Council does not support Proposal 9.4 - that the security and destruction obligations of APP11 apply to journalism activities of media organisations. The Press Council is of the view that material collected by journalists in relation to a story may have continuing importance into the future, either in relation to original reporting or new stories. The Press Council also considers that the APC's current Statement of Privacy Principles around the protection of data are adequate to address any concerns.

#### Proposal 9.5

The Press Council agrees that if the Notifiable Data Breach reporting obligation is to apply to the print and digital media sector then it must be in a modified form so that media organisations do not need to inform impacted individuals of a data breach if the public interest in journalism outweighs the interests of the individual.



Yvette Lamont  
Executive Director