News Media (Self-regulation) Bill 2013

No. , 2013

(Editorial, Communications and the Digital Economy)

A Bill for an Act relating to news media self-regulation, and for other purposes
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A Bill for an Act relating to news media self-regulation, and for other purposes

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the News Media (Self-regulation) Act 2013.
Part 1 Preliminary

Section 2

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<table>
<thead>
<tr>
<th>Provision(s)</th>
<th>Commencement</th>
<th>Column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table</td>
<td>The day this Act receives the Royal Assent.</td>
<td></td>
</tr>
<tr>
<td>2. Sections 3 to 16</td>
<td>The latest of: (a) the day after this Act receives the Royal Assent; and (b) the day the News Media (Self-regulation) (Consequential Amendments) Act 2013 receives the Royal Assent; and (c) the day section 3 of the Public Interest Media Advocate Act 2013 commences. However, the provision(s) do not commence at all if the events mentioned in paragraphs (b) and (c) do not occur.</td>
<td></td>
</tr>
</tbody>
</table>

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Simplified outline

The following is a simplified outline of this Act and the associated provisions of the Privacy Act 1988:
Part 1

Section 4

- Under this Act, the Public Interest Media Advocate (PIMA) may declare that a specified body corporate is a news media self-regulation body.

- A news media self-regulation body must have a news media self-regulation scheme that is binding on the news media organisation members of the body.

- Under subsection 7B(4) of the Privacy Act 1988, a news media organisation will not be eligible for exemption from that Act unless the organisation is a member of a news media self-regulation body.

Note: The Public Interest Media Advocate is appointed under the Public Interest Media Advocate Act 2013.

4 Definitions

In this Act:

**aggregate** includes provide links to.

**Australia**, when used in a geographical sense, includes the external Territories.

**carriage service** has the same meaning as in the Telecommunications Act 1997.

**constitutional corporation** means a corporation to which paragraph 51(xx) of the Constitution applies.

**content** means content:

(a) whether in the form of text; or
(b) whether in the form of data; or
(c) whether in the form of speech, music or other sounds; or
(d) whether in the form of visual images (animated or otherwise); or
(e) whether in any other form; or
(f) whether in any combination of forms.
control includes control as a result of, or by means of, trusts,
agreements, arrangements, understandings and practices, whether
or not having legal or equitable force and whether or not based on
legal or equitable rights.

designated broadcasting or datacasting service means:
(a) a licensed broadcasting service (within the meaning of
Schedule 7 to the Broadcasting Services Act 1992); or
(b) a national broadcasting service (within the meaning of the
Broadcasting Services Act 1992); or
(c) a re-transmitted broadcasting service (within the meaning of
Schedule 7 to the Broadcasting Services Act 1992); or
(d) a licensed datacasting service (within the meaning of
Schedule 7 to the Broadcasting Services Act 1992); or
(e) a re-transmitted datacasting service (within the meaning of
Schedule 7 to the Broadcasting Services Act 1992).

electronic communications means communications that are carried
by means of guided and/or unguided electromagnetic energy.

media-related activities means:
(a) the collection; or
(b) the preparation for dissemination; or
(c) the dissemination;
of material for the purpose of making it available to the public:
(d) in printed form; or
(e) by means of electronic communications.

Note: This defined term is used in paragraph (a) of the definition of news
media organisation.

news media organisation means a constitutional corporation
whose activities:
(a) are wholly or principally media-related activities; and
(b) consist of, or include, news or current affairs activities;
but does not include a small business operator (within the meaning
of the Privacy Act 1988).
news media organisation member, in relation to a body corporate, means a news media organisation that is a member of the body corporate.

news media self-regulation body has the meaning given by subsection 7(1).

news media self-regulation scheme, in relation to a body corporate, means a written scheme that:
(a) is binding on the news media organisation members; and
(b) authorises the body corporate to formulate standards that are applicable to news media organisation members in relation to the news or current affairs activities of those members; and
(c) authorises the body corporate to investigate breaches of the standards, whether:
(i) in response to a complaint; or
(ii) on the body corporate’s own initiative; and
(d) authorises the body corporate to take remedial action in relation to a news media organisation member if the body corporate is satisfied, in the course of such an investigation, that the member has breached such a standard.

news or current affairs activities has the meaning given by section 5.

news or current affairs aggregation service means:
(a) an online service; or
(b) any other service;
that does no more than aggregate any of the following material:
(c) material having the character of news or current affairs;
(d) material consisting of commentary or opinion on, or analysis of, news or current affairs.

online service means:
(a) a service that delivers content to persons having equipment appropriate for receiving that content, where the delivery of the service is by means of electronic communications; or
(b) a service that allows end-users to access content using electronic communications;
Part 1 Preliminary

Section 5

but does not include a designated broadcasting or datacasting service.

*PIMA* means the Public Interest Media Advocate.

Note: See the *Public Interest Media Advocate Act 2013*.

remedial direction includes:

(a) a direction to publish an apology; and

(b) a direction to publish a correction.

service includes a website.

5 News or current affairs activities

(1) For the purposes of this Act, *news or current affairs activities* are:

(a) the collection; or

(b) the preparation for dissemination; or

(c) the dissemination;

of any of the following material for the purpose of making it available to the public:

(d) material having the character of news or current affairs;

(e) material consisting of commentary or opinion on, or analysis of, news or current affairs.

(2) Subsection (1) does not apply to:

(a) material that is disseminated, or is to be disseminated, by means of:

(i) a newspaper; or

(ii) a periodical; or

(iii) a newsletter; or

(iv) an online service;

that is not targeted to the public in Australia; or

(b) material that is disseminated, or is to be disseminated, by means of:

(i) a newspaper; or

(ii) a periodical; or

(iii) a newsletter; or

(iv) an online service;
that is targeted to a special interest group; or
(c) material that is disseminated, or is to be disseminated, by means of:
   (i) a printed book; or
   (ii) an electronic book; or
   (iii) an audio book; or
(d) material that is disseminated, or is to be disseminated, by a designated broadcasting or datacasting service; or
(e) material that is disseminated, or is to be disseminated, by means of:
   (i) a newspaper; or
   (ii) a periodical; or
   (iii) a newsletter; or
   (iv) an online service;
that is associated with a designated broadcasting or datacasting service; or
(f) anything done by the provider of a news or current affairs aggregation service for the purposes of the provision of such a service; or
(g) material that is included in a class of material specified in a legislative instrument made by the PIMA; or
(h) an activity that is included in a class of activities specified in a legislative instrument made by the PIMA.

6 Extension to external Territories

This Act extends to every external Territory.
Part 2—News media self-regulation body

Division 1—Declaration

7 News media self-regulation body

(1) The PIMA may, by writing, declare that a specified body corporate is a news media self-regulation body for the purposes of this Act.

Eligibility requirements

(2) The PIMA must not make a declaration under subsection (1) in relation to a body corporate unless:

(a) the body corporate is a company that is registered under Part 2A.2 of the Corporations Act 2001; and

(b) the body corporate is a company limited by guarantee; and

(c) the body corporate has a news media self-regulation scheme; and

(d) the only circumstances in which the body corporate has the power to:

(i) suspend a news media organisation member’s rights as a member of the body corporate; or

(ii) expel a news media organisation member from the body corporate;

are circumstances that involve:

(iii) a failure by the member to pay a fee or charge payable by the member to the body corporate; or

(iv) a breach of a remedial direction given to the member by the body corporate under the news media self-regulation scheme.

Matters to which the PIMA must have regard

(3) In deciding whether to make a declaration under subsection (1) in relation to a body corporate, the PIMA must have regard to the following matters:
News media self-regulation body  **Part 2**  
Declaration  **Division 1**

Section 7

(a) the extent to which the body corporate’s news media 
self-regulation scheme has been, or is likely to be, effective 
(including whether the body corporate’s complaints handling 
processes and procedures have been, or are likely to be, 
carried out in a timely manner);

(b) the extent to which standards formulated under the body 
corporate’s news media self-regulation scheme deal with the 
following:
   (i) privacy;
   (ii) fairness;
   (iii) accuracy;
   (iv) other matters relating to the professional conduct of 
        journalism;

(c) the extent to which those standards reflect community 
standards;

(d) the extent to which the body corporate’s news media 
self-regulation scheme provides for the body corporate to 
publish, on the body corporate’s website:
   (i) the standards referred to in paragraph (b); and 
   (ii) statistics relating to compliance with the standards; and 
   (iii) periodic reports relating to compliance with the 
        standards; and
   (iv) the results of investigations, conducted by the body 
corporate under the scheme, of breaches of the 
        standards; and
   (v) other documents of the body corporate that are relevant 
to the scheme;

(e) the extent to which the body corporate’s news media 
self-regulation scheme provides for remedial action to be 
taken by the body corporate, including the power to:
   (i) give remedial directions to news media organisation 
       members; and
   (ii) suspend a news media organisation member’s rights as a 
        member of the body corporate in circumstances that 
        involve a breach of such a direction by the member; and
(iii) expel a news media organisation member from the body
corporate in circumstances that involve a breach of such
direction by the member;

(f) whether complaints can be made to the body corporate, in
relation to breaches of the standards referred to in
paragraph (b):
   (i) free of charge; and
   (ii) without the requirement that the complaint be first made
to, or considered by, a news media organisation;

(g) the extent to which decision-making under the body
corporate’s news media self-regulation scheme is
independent from:
   (i) news media organisations; and
   (ii) persons who are in a position to exercise control of
news media organisations; and
   (iii) persons who have significant influence over news media
organisations; and
   (iv) the Commonwealth Government; and
   (v) the governments of the States; and
   (vi) the governments of the Territories; and
   (vii) authorities of the Commonwealth; and
   (viii) authorities of the States; and
   (ix) authorities of the Territories;

(h) both:
   (i) the extent to which public awareness programs relating
to the body corporate’s news media self-regulation
scheme have been, or are likely to be, conducted by the
body corporate; and
   (ii) the extent to which such programs have been, or are
likely to be, effective;

(i) the extent to which the body corporate has arrangements to
conduct regular independent reviews of the following
matters:
   (i) the body corporate’s news media self-regulation
scheme;
   (ii) the standards referred to in paragraph (b);
(iii) the implementation of the body corporate’s news media self-regulation scheme;

(j) the extent to which the body corporate consulted the Privacy Commissioner in relation to the formulation of the body corporate’s news media self-regulation scheme;

(k) the extent to which membership of the body corporate is open to:
   (i) all news media organisations; and
   (ii) other persons whose activities consist of, or include, news or current affairs activities;

(l) the extent to which the body corporate’s membership processes are open, transparent and fair;

(m) whether the funding arrangements for the body corporate are sustainable for the body corporate;

(n) whether the fees and charges payable by news media organisation members to the body corporate are reasonable for those members;

(o) the need for freedom of expression;

(p) the need to protect individual privacy;

(q) the need to minimise the number of news media self-regulation bodies;

(r) such other matters (if any) as the PIMA considers relevant.

(4) If:

   (a) before 28 April 2013, a body corporate requests the PIMA, in writing, to make a declaration under subsection (1) in relation to the body corporate; and

   (b) the request is accompanied by the information that is reasonably necessary for the PIMA to decide whether or not to make the requested declaration;

the PIMA must take reasonable steps to ensure that:

   (c) before 25 June 2013, the PIMA decides whether or not to make the requested declaration; and

   (d) if the PIMA decides to make the requested declaration—the requested declaration takes effect before 28 June 2013.
Part 2  News media self-regulation body
Division 1  Declaration

Section 8

Declaration not disallowable

(5) A declaration made under subsection (1) is a legislative instrument, but section 42 (disallowance) of the Legislative Instruments Act 2003 does not apply to the declaration.

8 Consultation and publication

(1) Before making a declaration under subsection 7(1) in relation to a body corporate, the PIMA must:
   (a) consult the Privacy Commissioner; and
   (b) cause to be published on the Department’s website a notice:
      (i) setting out the draft declaration; and
      (ii) inviting persons to make submissions to the PIMA about the draft declaration within 14 days after the notice is published; and
   (c) consider any submissions that were received within the 14-day period mentioned in paragraph (b).

(2) The notice mentioned in paragraph (1)(b) must also set out:
   (a) the body corporate’s news media self-regulation scheme; and
   (b) the initial views of the PIMA concerning the matters set out in paragraphs 7(3)(a) to (r), so far as those matters relate to making the declaration.

9 When declaration takes effect

(1) A declaration made under subsection 7(1) takes effect at the start of the day specified in the declaration.

(2) The day specified in the declaration must be later than the day on which the declaration is registered under the Legislative Instruments Act 2003.
Division 2—Revocation of declaration

10 Revocation of declaration

Mandatory revocation

(1) If a declaration is in force under subsection 7(1) in relation to a body corporate, the PIMA must, by writing, revoke the declaration if:

(a) the body corporate is not a company that is registered under Part 2A.2 of the Corporations Act 2001; or

(b) the body corporate is not a company limited by guarantee; or

(c) the body corporate does not have a news media self-regulation scheme; or

(d) the body corporate has the power to:

(i) suspend a news media organisation member’s rights as a member of the body corporate; or

(ii) expel a news media organisation member from the body corporate;

in circumstances that do not involve:

(iii) a failure by the member to pay a fee or charge payable by the member to the body corporate; or

(iv) a breach of a remedial direction given to the member by the body corporate under a news media self-regulation scheme of the body corporate.

(2) Subsection (1) has effect subject to subsection (6).

Discretionary revocation

(3) If:

(a) a declaration is in force under subsection 7(1) in relation to a body corporate; and

(b) the PIMA has reasonable grounds to believe that, since the declaration was made:

(i) there has been a significant change in relevant circumstances; or
(ii) there has been a change in relevant community standards;
the PIMA may, by writing, revoke the declaration.

(4) In revoking, under subsection (3), a declaration in relation to a body corporate, the PIMA must have regard to the following matters:
(a) the need for freedom of expression;
(b) the need to protect individual privacy;
(c) the matters set out in paragraphs 7(3)(a) to (n);
(d) such other matters (if any) as the PIMA considers relevant.

(5) Subsection (3) has effect subject to subsection (6).

Replacement declaration

(6) The PIMA must not revoke, under subsection (1) or (3), a declaration relating to a body corporate unless the PIMA has taken reasonable steps to ensure that a declaration under subsection 7(1) relating to another body corporate will be in force at least 6 months before the revocation takes effect.

Revocation not disallowable

(7) An instrument of revocation under subsection (1) or (3) is a legislative instrument, but section 42 (disallowance) of the Legislative Instruments Act 2003 does not apply to the revocation.

11 Consultation

Before revoking, under subsection 10(3), a declaration under subsection 7(1), the PIMA must:
(a) consult the Privacy Commissioner; and
(b) cause to be published on the Department’s website a notice:
   (i) setting out the draft instrument of revocation; and
   (ii) inviting persons to make submissions to the PIMA about the draft instrument of revocation within 28 days after the notice is published; and
(c) consider any submissions that were received within the 28-day period mentioned in paragraph (b).
12 When revocation takes effect

(1) A revocation under subsection 10(1) or (3) takes effect at the start of the day specified in the instrument of revocation.

(2) The day specified in the instrument of revocation must be later than the day on which the instrument is registered under the *Legislative Instruments Act 2003.*
Part 3—Miscellaneous

13 Online service provider

(1) For the purposes of this Act, a person does not provide an online service merely because the person supplies a carriage service that enables content to be delivered or accessed.

(2) For the purposes of this Act, a person does not provide an online service merely because the person provides a billing service, or a fee collection service, in relation to an online service.

14 Implied freedom of political communication

This Act does not apply to the extent (if any) that it would infringe any constitutional doctrine of implied freedom of political communication.

15 Review of this Act

(1) Before the end of the 3-year period beginning on the first day on which a declaration under subsection 7(1) takes effect, the Minister must cause to be commenced a review of the operation of this Act.

(2) A review under subsection (1) must be conducted in a manner that provides for:

(a) wide public consultation; and

(b) consultation with:

(i) the PIMA; and

(ii) each news media self-regulation body.

(3) The Minister must cause to be prepared a report of a review under subsection (1).

(4) A report of a review under subsection (1) must not contain any information that is likely to enable the identification of an individual unless the individual has consented to the information being contained in the report.
Section 16

(5) The Minister must cause copies of a report to be tabled in each House of the Parliament within 15 sittings days of that House after the completion of the preparation of the report.

16 Regulations

The Governor-General may make regulations prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to this Act.