NEWS MEDIA (SELF-REGULATION) BILL 2013

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Broadband, Communications and the Digital Economy, Senator the Honourable Stephen Conroy)
OUTLINE

The News Media (Self-regulation) Bill 2013 and the News Media (Self-regulation) (Consequential Amendments) Bill 2013 together with the Public Interest Media Advocate Bill 2013, the Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013, the Broadcasting Legislation Amendment (News Media Diversity) Bill 2013 and the Television Licence Fees Amendment Bill 2013 form a package of measures representing the Australian Government’s response to two independent media reviews conducted in 2011 and 2012 - the Convergence Review and the Independent Inquiry into the Media and Media Regulation.

The News Media (Self-regulation) Bill 2013 and the News Media (Self-regulation) (Consequential Amendments) Bill 2013 respond to matters raised in the Convergence Review and the Independent Inquiry into the Media and Media Regulation relating to standards of media news and commentary.

The Public Interest Media Advocate Bill 2013 creates a new independent statutory office which will perform functions under the News Media (Self-regulation) Bill and the public interest test to be established in the new Part 5A of the Broadcasting Services Act 1992.

The Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013 responds to matters raised in the Convergence Review in relation to use of the sixth channel of television broadcasting spectrum, Australian content and public broadcasting, and includes certain other measures.

The Broadcasting Legislation Amendment (News Media Diversity) Bill 2013 responds to matters raised in the Convergence Review in relation to the importance of diversity of media control by introducing a public interest test for transactions involving significant news media voices.

The Television Licence Fees Amendment Bill 2013 provides for the 50 per cent reduction in the licence fees paid by commercial television broadcasters currently specified in regulations to be made permanent in legislation on an ongoing basis.

The two Bills that are the subject of this Explanatory Memorandum are as follows:

- the News Media (Self-regulation) Bill 2013 (the Self-regulation Bill); and
- the News Media (Self-regulation) (Consequential Amendments) Bill 2013 (the Consequential Amendments Bill).

The purpose of the proposed Bills is to improve the effectiveness and the responsiveness of self-regulatory arrangements for print and online news media. The Bills will do this by promoting compliance by significant providers of print and online news and current affairs with standards of practice, and by encouraging effective complaints handling.
arrangements to respond to complaints regarding breaches of those standards. The Bills will promote adherence to standards of practice in relation to matters such as fairness, accuracy and privacy.

**News Media (Self-regulation) Bill 2013**

The Self-regulation Bill allows the Public Interest Media Advocate to declare a specified body corporate to be a ‘news media self-regulation body’. In practice, a specified body is expected to be a self-regulatory industry body. The Public Interest Media Advocate would be appointed under the proposed *Public Interest Media Advocate Act 2013*.

The Public Interest Media Advocate must not make a declaration unless the body corporate meets a number of basic eligibility criteria, including a requirement that it be a registered company limited by guarantee; and a requirement that it has a binding ‘news media self-regulation scheme’ applying standards to its ‘news media organisation members’ in relation to their ‘news or current affairs activities’.

In deciding whether to declare that a particular body is a ‘news media self-regulation body’, the Public Interest Media Advocate must have regard to a number of matters including the extent to which the body corporate has arrangements in place to deal effectively with complaints; and the extent to which the body corporate’s standards deal with privacy, fairness, accuracy and other matters relating to the professional conduct of journalism.

A specified ‘news media organisation’ will only continue to qualify for the ‘Journalism’ exemption from the privacy obligations imposed under the *Privacy Act 1988* (the Privacy Act), if it is a member of a declared ‘news media self-regulation body’ and has not had its rights as a member suspended (see below under the heading ‘News Media (Self-regulation) (Consequential Amendments) Bill’).

A ‘news media organisation’ is defined by reference to its ‘news or current affairs activities’. A number of activities are excluded, including activities relating to material disseminated by a broadcasting or datacasting service. A small business operator (within the meaning of the Privacy Act) is also excluded from the definition of ‘news media organisation’.

Membership of a ‘news media self-regulation body’ would be voluntary. However, as noted above, a ‘news media organisation’ (as defined), would lose the Privacy Act exemption if it failed to become a member by a specified date.

**News Media (Self-regulation) (Consequential Amendments) Bill 2013**

The Consequential Amendments Bill amends subsection 7B(4) of the Privacy Act so that the subsection only applies to a ‘news media organisation’, if the organisation is a member of a ‘news media self-regulation body’ and its rights as a member of that body have not been suspended. ‘News media organisation’ and ‘news media self-regulation body’ have the same meaning as in the *News Media (Self-regulation) Act 2013*.

Subsection 7B(4) currently provides that an act done or a practice engaged in by a media organisation is exempt for the purposes of paragraph 7(1)(ee), if it is done in the course of
journalism and at a time when the organisation is publicly committed to published privacy standards. This means in effect that the activities of ‘news media organisations’ that currently qualify for the exemption are not subject to the Privacy Act provisions that relate to the obtaining, keeping and disclosing of personal information.

Under the proposed amendments, a ‘news media organisation’ that is not a member of a ‘news media self-regulation body’ or has had its membership suspended, would no longer qualify for the exemption and would, therefore, be subject to the provisions of the Privacy Act.

This means that the Privacy Act provisions relating to complaints by individuals and oversight by the Office of the Australian Information Commissioner, would apply to such organisations.

**FINANCIAL IMPACT STATEMENT**

The reforms in the Self-regulation Bill are not expected to have any direct financial impact on the Government.

The amendments in the Consequential Amendments Bill are not expected to have any direct financial impact on the Government.
Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

News Media (Self-regulation) Bill 2013

The Self-regulation Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (the Act).

Overview of the Self-regulation Bill

The Self-regulation Bill is intended to promote compliance by significant providers of print and online news and current affairs with minimum standards both in the practice of journalism, and in the effectiveness of complaints handling arrangements. The Self-regulation Bill will operate to encourage news media organisations to become part of a ‘news media self-regulation body’.

The Self-regulation Bill will enable the Public Interest Media Advocate to declare that a specified body corporate is a news media self-regulation body. The Public Interest Media Advocate would be appointed under the proposed Public Interest Media Advocate Act 2013. The Public Interest Media Advocate must not make a declaration unless the body meets a number of basic eligibility criteria, including a requirement that it be a registered company limited by guarantee; and a requirement that it has a binding ‘news media self-regulation scheme’ applying standards to its ‘news media organisation members’ in relation to their ‘news or current affairs activities’.

In deciding whether to declare that a particular body corporate is a ‘news media self-regulation body’, the Public Interest Media Advocate must also have regard to a number of matters including the extent to which the body corporate has arrangements in place to deal effectively with complaints; and the extent to which the body’s standards deal with privacy, fairness, accuracy and other matters relating to the professional conduct of journalism.

Under proposed amendments to the Privacy Act 1988 (the Privacy Act) contained in the Consequential Amendments Bill, a specified ‘news media organisation’ will only continue to qualify for the ‘journalism’ exemption from the ‘privacy’ obligations imposed under the Privacy Act, if it is a member of a declared ‘news media self-regulation body’.

By being a member of a declared news media self-regulation body, a news media organisation will retain the exemption from the National Privacy Principles and other provisions of the Privacy Act that it currently enjoys under subsection 7B(4) of the Privacy Act but will commit to observance of standards framed more specifically for the print and online media through its membership of a news media self-regulation body declared by the Public Interest Media Advocate. This approach of linking membership of a recognised body to certain privileges of journalism is a simple and transparent
mechanism to promote effective and independent self-regulation of print and online news media organisations.

**Human rights implications**

The Self-regulation Bill engages the following human rights:

- the prohibition on arbitrary or unlawful interferences with privacy
- the right to freedom of expression
- the right to freedom of association, and
- the right to take part in public affairs.

**Prohibition on arbitrary or unlawful interferences with privacy**

Article 17 of the International Covenant on Civil and Political Rights (ICCPR) provides that no-one shall be subjected to arbitrary or unlawful interference with their privacy. This includes a right to secrecy of personal information. Collecting, using, storing, disclosing or publishing personal information amounts to an interference with privacy.

The protection from arbitrary and unlawful interference with privacy may be subject to permissible limitations where such limitations are authorised by law and are not arbitrary. In order for an interference with privacy not to be arbitrary, the interference must be in accordance with the provisions, aims and objectives of the ICCPR and reasonable in the particular circumstances. The United Nations Human Rights Committee has interpreted the requirement of ‘reasonableness’ to imply that any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case.

Regarding the engagement of the right to privacy in relation to the operation of a declared news media self-regulation body, there is some possibility—though it is likely to be remote—that a news media self-regulation body may give too great an emphasis to freedom of expression through not having regard to the need to protect against arbitrary and unlawful interferences with privacy, or alternatively, would limit the freedom of expression by emphasising the right to privacy.

This issue is addressed in the Self-regulation Bill by requiring the Public Interest Media Advocate, in making or revoking a declaration in relation to a news media self-regulation body, to have regard to the need for freedom of expression and the need to protect individual privacy. Further, in having regard to the need to protect individual privacy, the Self-regulation Bill requires the Public Interest Media Advocate to consult publicly and with the Privacy Commissioner prior to making or revoking a declaration in relation to a news media self-regulation body.

Accordingly, any limitations placed on privacy are reasonable, necessary and proportionate to the legitimate aim of ensuring that the self-regulatory arrangements will operate effectively, appropriately, and in a way that ensures media standards are recognised and adhered to.
In addition, the News Media Self-regulation Bill provides for a statutory review of the operation of the proposed News Media Self-regulation Act. A measure is included so that a report of the review 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. This is an important safeguard against arbitrary interferences with privacy under Article 17 of the ICCPR.

The Self-regulation Bill is therefore consistent with Article 17 of the ICCPR and will balance the rights of the news media to publish, and the rights of individuals in relation to privacy and reputation.

Right to freedom of association

The Self-regulation Bill establishes a scheme that encourages specified news media organisations to become members of a declared news media self-regulation body. However, membership of the news media self-regulation body remains voluntary under the scheme. Accordingly, the Self-regulation Bill does not limit the right to freedom of association.

Right to freedom of expression

Article 19 of the ICCPR provides that everyone has the right to freedom of expression, including the freedom to seek, receive and impart information and ideas. To the extent that specified news media organisations will not have exemptions from the Privacy Act available to them unless they are members of a declared news media self-regulation body, the Self-regulation Bill will also engage Article 19 of the ICCPR.

Under Article 19, any limitations placed on the right to freedom of expression must be provided by law and necessary to respect the rights or reputations of others or protect national security, public order, or public health and morals. The relevant provisions of the Self-regulation Bill are consistent with Article 19 of the ICCPR as they are provided for by law and are necessary for respecting the rights or reputations of others.

The measures contained in the Self-regulation Bill will promote news media organisations’ respect for the privacy of individuals through effective and transparent self-regulation which includes mechanisms to achieve compliance with appropriate standards of practice and opportunities for individuals to have concerns addressed. The Self-regulation Bill is therefore consistent with Article 19 of the ICCPR and will balance the rights of the news media to publish, and the rights of individuals in relation to privacy and reputation.

Right to take part in public affairs

Article 25 of the ICCPR provides that everyone has the right to take part in the conduct of public affairs. According to the United Nations Human Rights Committee, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential to the enjoyment of this right and this implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.
It may be arguable that the application of the Privacy Act provisions to news media organisations that do not join a news media self-regulation body (or to those organisations that were suspended or expelled from a news media self-regulation body), could potentially be construed as a ‘restraint’ on the free press to comment on public issues and to inform public opinion, such that the Self-regulation Bill engages Article 25 of the ICCPR.

The Privacy Act provisions merely set transparent, reasonable and generally applied and accepted standards in relation to the handling of personal information. It should also be noted that news media organisations will have the alternative option of being subject to the privacy standards formulated by the news media self-regulation body, and that in declaring such a body, the Public Interest Media Advocate must have regard to the need for freedom of expression and the need to protect individual privacy.

There may also be a possibility, albeit potentially remote, that a news media self-regulation body may limit the freedom of the press to comment on public issues by emphasising the right to privacy.

However, if a circumstance were to arise where the right to freedom of expression (including the right to take part in public affairs) or the right to privacy were impossibly limited, the Public Interest Media Advocate could revoke the news media self-regulation body’s declaration in order to ensure the protection and fulfilment of these rights under the ICCPR. In revoking a declaration, the Public Interest Media Advocate must have regard to the need for freedom of expression and the need to protect individual privacy and also provide an opportunity for affected news media organisations to participate in an alternate news media self-regulatory body.

**Conclusion**

The Self-regulation Bill is compatible with human rights and freedoms because it will promote the balance between freedom of the press and the rights of individuals.
Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

News Media (Self-regulation) (Consequential Amendments) Bill 2013

The Consequential Amendments Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (the Act).

Overview of the Consequential Amendments Bill

The Consequential Amendments Bill is intended to promote compliance by significant providers of print and online news and current affairs with minimum standards both in the practice of journalism, and in the effectiveness of complaints handling arrangements. The Consequential Amendments Bill amends the Privacy Act 1988 (the Privacy Act), so that a specified ‘news media organisation’ (within the meaning of the proposed News Media (Self-regulation) Act 2013) will only continue to qualify for the ‘journalism’ exemption from the ‘privacy’ obligations imposed under the Privacy Act, if it is a member of a declared ‘news media self-regulation body’ (within the meaning of the proposed Self-regulation Act).

The proposed Self-regulation Act will enable the Public Interest Media Advocate to declare that a specified body corporate is a news media self-regulation body. The Public Interest Media Advocate would be appointed under the proposed Public Interest Media Advocate Act 2013. The Public Interest Media Advocate must not make a declaration unless the body meets a number of basic eligibility criteria, including a requirement that it be a registered company limited by guarantee; and a requirement that it has a binding ‘news media self-regulation scheme’ applying standards to its ‘news media organisation members’ in relation to their ‘news or current affairs activities’.

In deciding whether to declare that a particular body corporate is a ‘news media self-regulation body’, the Public Interest Media Advocate must also have regard to a number of matters including the extent to which the body corporate has arrangements in place to deal effectively with complaints; and the extent to which the body’s standards deal with privacy, fairness, accuracy and other matters relating to the professional conduct of journalism.

By being a member of a declared news media self-regulation body, a news media organisation will retain the exemption from the National Privacy Principles and other provisions of the Privacy Act that it currently enjoys under subsection 7B(4) of the Privacy Act but will commit to observance of standards framed more specifically for the print and online media through its membership of a news media self-regulation body declared by the Public Interest Media Advocate. This approach of linking membership of a recognised body to certain privileges of journalism is a simple and transparent mechanism to promote effective and independent self-regulation of print and online news media organisations.
Human rights implications

The Consequential Amendments Bill engages the following human rights:

- the prohibition on arbitrary or unlawful interferences with privacy
- the right to freedom of expression
- the right to freedom of association, and
- the right to take part in public affairs.

Prohibition on arbitrary or unlawful interferences with privacy

Article 17 of the International Covenant on Civil and Political Rights (ICCPR) provides that no-one shall be subjected to arbitrary or unlawful interference with their privacy. This includes a right to secrecy of personal information. Collecting, using, storing, disclosing or publishing personal information amounts to an interference with privacy.

The protection from arbitrary and unlawful interference with privacy may be subject to permissible limitations where such limitations are authorised by law and are not arbitrary. In order for an interference with privacy not to be arbitrary, the interference must be in accordance with the provisions, aims and objectives of the ICCPR and reasonable in the particular circumstances. The United Nations Human Rights Committee has interpreted the requirement of ‘reasonableness’ to imply that any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case.

Regarding the engagement of the right to privacy in relation to making the application of the journalism exemption contingent upon membership of a declared news media self-regulation body, there is some possibility—though it is likely to be remote—that a news media self-regulation body may give too great an emphasis to freedom of expression through not having regard to the need to protect against arbitrary and unlawful interferences with privacy, or alternatively, would limit the freedom of expression by emphasising the right to privacy.

This issue is addressed in the proposed Self-regulation Act by requiring the Public Interest Media Advocate in making or revoking a declaration in relation to a news media self-regulation body, to have regard to the need for freedom of expression and the need to protect individual privacy. Further, in having regard to the need to protect individual privacy, the proposed Self-regulation Act requires the Public Interest Media Advocate to consult publicly and with the Privacy Commissioner prior to making or revoking a declaration in relation to a news media self-regulation body.

Accordingly, any limitations placed on privacy are reasonable, necessary and proportionate to the legitimate aim of ensuring that the self-regulatory arrangements will operate effectively, appropriately, and in a way that ensures media standards are recognised and adhered to.
The Consequential Amendments Bill is therefore consistent with Article 17 of the ICCPR and will balance the rights of the news media to publish, and the rights of individuals in relation to privacy and reputation.

**Right to freedom of association**

The Consequential Amendments Bill, together with the proposed Self-regulation Act, establishes a scheme that encourages specified news media organisations to become members of a declared news media self-regulation body. However, membership of the news media self-regulation body remains voluntary under the scheme. Accordingly, the Consequential Amendments Bill does not limit the right to freedom of association.

**Right to freedom of expression**

Article 19 of the ICCPR provides that everyone has the right to freedom of expression, including the freedom to seek, receive and impart information and ideas. To the extent that specified news media organisations will not have exemptions from the Privacy Act available to them unless they are members of a declared news media self-regulation body, the Consequential Amendments Bill will also engage Article 19 of the ICCPR.

Under Article 19, any limitations placed on the right to freedom of expression must be provided by law and necessary to respect the rights or reputations of others or protect national security, public order, or public health and morals. The relevant provisions of the Consequential Amendments Bill are consistent with Article 19 of the ICCPR as they are provided for by law and are necessary for respecting the rights or reputations of others.

The measures contained in the Consequential Amendments Bill together with the proposed Self-regulation Act will promote news media organisations’ respect for the privacy of individuals through effective and transparent self-regulation which includes mechanisms to achieve compliance with appropriate standards of practice and opportunities for individuals to have concerns addressed. The Consequential Amendments Bill is therefore consistent with Article 19 of the ICCPR and will balance the rights of the news media to publish, and the rights of individuals in relation to privacy and reputation.

**Right to take part in public affairs**

Article 25 of the ICCPR provides that everyone has the right to take part in the conduct of public affairs. According to the UN Human Rights Committee, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential to the enjoyment of this right and this implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.

It may be arguable that the application of the Privacy Act provisions to news media organisations that do not join a news media self-regulation body (or to those organisations that were suspended or expelled from a news media self-regulation body), could potentially be construed as a ‘restraint’ on the free press to comment on public issues and to inform public opinion, such that the Consequential Amendments Bill engages Article 25 of the ICCPR.
The Privacy Act provisions merely set transparent, reasonable and generally applied and accepted standards in relation to the handling of personal information. It should also be noted that news media organisations will have the alternative option of being subject to the privacy standards formulated by the news media self-regulation body, and that in declaring such a body, the Public Interest Media Advocate must have regard to the need for freedom of expression and the need to protect individual privacy.

There may also be a possibility, albeit potentially remote, that a news media self-regulation body may limit the freedom of the press to comment on public issues by emphasising the right to privacy.

However, if a circumstance were to arise where the right to freedom of expression (including the right to take part in public affairs) or the right to privacy were impermissibly limited, the Public Interest Media Advocate could revoke the news media self-regulation body’s declaration in order to ensure the protection and fulfilment of these rights under the ICCPR. In revoking a declaration, the Public Interest Media Advocate must have regard to the need for freedom of expression and the need to protect individual privacy and also provide an opportunity for affected news media organisations to participate in an alternate news media self-regulatory body.

**Conclusion**

The Consequential Amendments Bill is compatible with human rights and freedoms because it will promote the balance between freedom of the press and the rights of individuals.
NEWS MEDIA (SELF-REGULATION) BILL 2013
NOTES ON CLAUSES

Part 1 - Preliminary

Clause 1 – Short title

Clause 1 is a formal provision specifying the short title for the Act. When enacted, the Self-regulation Bill is to be cited as the News Media (Self-regulation) Act 2013.

Clause 2 – Commencement

Clause 2 sets out when the provisions of the Act commence. The provisions specified in column 1 of the table will commence, or will be taken to have commenced, on the day specified in accordance with column 2 of the table.

The covering clauses (sections 1 and 2) and anything not elsewhere covered by the table commence on the day the Act receives the Royal Assent.

Clauses 3 to 16 commence on the latest of the day after the Act receives the Royal Assent; the day the News Media (Self-regulation) (Consequential Amendments) Act 2013 receives the Royal Assent; and the day section 3 of the proposed Public Interest Media Advocate Act 2013 commences. However, sections 3 to 16 do not commence at all if the proposed News Media (Self-regulation) (Consequential Amendments) Act 2013 does not receive the Royal Assent or section 3 of the proposed Public Interest Media Advocate Act 2013 does not commence.

Clause 3 – Simplified outline

Clause 3 provides a simplified outline of the Self-regulation Bill and the associated provisions of the Privacy Act. The note to clause 3 explains that the ‘Public Interest Media Advocate’ referred to in the simplified outline is appointed under the Public Interest Media Advocate Act 2013.

Clause 4 – Definitions

Clause 4 sets out definitions of key terms used in the Self-regulation Bill.

A ‘news media organisation’ to which the Self-regulation Bill applies, must be a corporation for the purposes of section 51(xx) of the Constitution. However, a small business operator, within the meaning of the Privacy Act, is excluded from the definition. A ‘news media organisation’ is also defined by reference to its activities. These must be wholly or principally ‘media-related activities’ and consist of, or include, ‘news or current affairs activities’.

The term ‘news or current affairs activities’ has the meaning given by clause 5.
Other terms are explained in more detail in the notes on the clauses of the Self-regulation Bill which use the term.

**Clause 5 – News or current affairs activities**

Clause 5 defines ‘news or current affairs activities’ for the purposes of the proposed Self-regulation Act.

Subclause 5(1) sets out the types of activities in relation to specified material that are ‘news or current affairs activities’. The activities, as set out in paragraphs 5(1)(a) to (c), are:

(a) the collection; or
(b) the preparation for dissemination; or
(c) the dissemination;

of specified material for the purpose of making it available to the public.

The relevant material as specified in paragraphs 5(1)(d) and (e) is material having the character of news or current affairs; and material consisting of commentary or opinion on, or analysis of, news or current affairs.

Subclause 5(2) provides exceptions to the definition of ‘news or current affairs activities’. Accordingly, subclause 5(1) is expressed not to apply in the circumstances set out in paragraphs 5(2)(a) to (h).

Subclause 5(1) does not apply to material where the relevant newspaper, periodical, newsletter or ‘online service’ (as defined in clause 4) in which it is disseminated (or is to be disseminated), is not targeted to the public in Australia, or is targeted to a special interest group.

It is intended that subclause 5(1) could still apply to material targeted at a special interest group, if the material was published by a print or online news service targeted to the general Australian public. It is only where the publication or service itself is targeted at a special interest group that subclause 5(1) would not apply to the relevant material.

Material disseminated, or to be disseminated, in book form (that is, in a printed, electronic or audio book) is also excluded from the application of subclause 5(1). It is intended, for instance, that subclause 5(1) would not apply to relevant material such as a political biography published in book form.

Material included in a designated broadcasting or datacasting service is also excluded from the application of subclause 5(1). A designated broadcasting or datacasting service is defined in clause 4 to mean a licensed or retransmitted broadcasting or datacasting service within the meaning of Schedule 7 to the Broadcasting Services Act 1992 (the BSA); or a national broadcasting service within the meaning of the BSA. It is intended, for example, that material included in news bulletins or current affairs programs disseminated via a licensed broadcast service would be exempt from the definition of ‘news or current affairs activities’.

It is also intended to exempt material that is disseminated, or is to be disseminated, by means of a newspaper, periodical, newsletter or online service that is associated with a
designated broadcasting or datacasting service. For instance relevant material included on a licensed broadcaster’s website associated with its broadcasting service, would be excluded.

Anything done by the provider of a ‘news or current affairs aggregation service’ for the purposes of the provision of such a service will also be excluded from the definition of ‘news or current affairs activities’. Clause 4 defines ‘news or current affairs aggregation service’ to mean an online service or any other service that does no more than aggregate material having the character of news or current affairs or material consisting of commentary or opinion on, or analysis of, news or current affairs. The exemption would not apply to a service that consisted partly of news or current affairs material produced by the service provider and partly aggregated material.

The Public Interest Media Advocate may also make a legislative instrument specifying a class of material or a class of activities to which subclause 5(1) does not apply. This is intended as a reserve power to allow the Public Interest Media Advocate to address any relevant unintended application of subclause 5(1). As noted under clause 3 above, the Public Interest Media Advocate is appointed under the proposed Public Interest Media Advocate Act 2013. Clause 21 of that Bill provides that the Public Interest Media Advocate will be specifically exempt from direction by the Minister or the Government in relation to the exercise of the Public Interest Media Advocate’s powers.

Clause 6 – Extension to external Territories

Clause 6 extends the Act to all of the external Territories.

Part 2 – News media self-regulation body

Division 1 – Declaration

Division 1 of Part 2 of the Self-regulation Bill provides for the Public Interest Media Advocate to declare a specified body as a ‘news media self-regulation body’ and specifies the conditions and requirements for making such a declaration and when it takes effect.

‘News media self-regulation body’ is defined in clause 4 as having the meaning given by subclause 7(1).

Clause 7 – News media self-regulation body

Subclause 7(1) provides that the Public Interest Media Advocate may, by writing, declare that a specified body corporate is a ‘news media self-regulation body’ for the purposes of the proposed Self-regulation Act. It is intended that the Public Interest Media Advocate could declare more than one ‘news media self-regulation body’.

Eligibility requirements

Subclause 7(2) sets out the basic eligibility requirements that must exist in relation to a body corporate before the Public Interest Media Advocate can declare it to be a news media self-regulation body. The body corporate must be a body corporate registered under
Part 2A.2 of the Corporations Act 2001 and be a company limited by guarantee. The body corporate must also have a ‘news media self-regulation scheme’.

‘News media self-regulation scheme’ in relation to a body corporate is defined in clause 4. A key feature of the scheme, which must be in writing, is that it must be binding on ‘news media organisation members’. A ‘news media organisation member’ in relation to a body corporate is defined in clause 4 to mean a ‘news media organisation’ that is a member of the body corporate (see discussion above under clause 4 in relation to ‘news media organisations’).

The scheme must also authorise the body corporate to formulate standards in relation to the ‘news or current affairs activities’ of its ‘news media organisation members’ (see discussion above under clause 5 in relation to ‘news or current affairs activities’). The body corporate must also be authorised to investigate breaches of the standards (either in response to a complaint or on its own initiative) and to take relevant remedial action if it is satisfied in the course of an investigation that the member has breached a standard.

Subclause 7(2) further provides that the only circumstances in which the body corporate can have the power to expel a ‘news media organisation member’ or suspend the member’s rights as a member, are circumstances that involve failure to pay a specified fee or charge or a breach of a ‘remedial direction’ given by the body corporate under the ‘news media self-regulation scheme’. ‘Remedial direction’ is defined in clause 4 to include a direction to publish an apology or a correction.

Matters to which the PIMA must have regard

Subclause 7(3) sets out the matters to which the Public Interest Media Advocate must have regard in deciding whether to make a declaration under subclause 7(1) in relation to a body corporate.

The matters set out in paragraphs 7(3)(a) to (n) relate to a range of considerations including the effectiveness, or likely effectiveness, of the body corporate’s ‘news media self-regulation scheme’ and the scheme’s standards relating to privacy, fairness, accuracy, and other matters relating to the professional conduct of journalism as well as the scheme’s complaints handling processes, independence and transparency.

Other matters relate to remedial action that the body corporate can take and the circumstances in which a news media organisation member can be expelled or have its rights as a member suspended. The Public Interest Media Advocate must also have regard to matters relating to: review arrangements for the body corporate’s ‘news media self-regulation scheme’ (including its standards and implementation); public awareness programs relating to the scheme; and the body corporate’s funding and membership arrangements.

In making a declaration the Public Interest Media Advocate must also have regard to the need for freedom of expression and the need to protect individual privacy as set out in paragraphs 7(3)(o) and (p). These provisions are intended to ensure the Public Interest Media Advocate has regard to these important rights when considering the declaration of a body corporate as the ‘news media self-regulation body’. It is also intended that these
provisions will assist in ensuring Australia meets its international obligations in relation to these rights.

Paragraphs 7(3)(q) and 7(3)(r) also provide that the Public Interest Media Advocate must have regard to the need to minimise the number of news media self-regulation bodies and to such other matters (if any) as the Public Interest Media Advocate considers relevant.

Subclause 7(4) provides that, in circumstances where a body corporate requests (in writing before 28 April 2013) the Public Interest Media Advocate to make a declaration under subsection 7(1), and provides such information as is reasonably necessary for the Public Interest Media Advocate to make a decision on the request, then the Public Interest Media Advocate must take reasonable steps to ensure that it makes a decision before 25 June 2013 and, if it decides to make a declaration under subclause 7(1), to ensure that the requested declaration takes effect before 28 June 2013.

If no declaration takes effect before 28 June 2013, the operative provisions of the proposed News Media (Self-regulation) (Consequential Amendments) Act 2013, will commence on 1 July 2013. This would mean that all ‘news media organisations’ as defined in clause 4 would lose the benefit of the ‘journalism exemption’ in subsection 7B(4) of the Privacy Act.

This means, in effect, that if no declaration takes effect before 28 June 2013, the general Privacy Act provisions relating to complaints by individuals and oversight by the Office of the Australian Information Commissioner, would invariably apply to ‘news media organisations’ from 1 July 2013.

If a declaration does take effect before 28 June 2013, the operative provisions of the proposed News Media (Self-regulation) (Consequential Amendments) Act 2013, commence the day after the end of the period of one month beginning on the first day before 28 June 2013 on which the declaration takes effect.

If the Public Interest Media Advocate’s declaration of a ‘news media self-regulation body’ takes effect before 28 June 2013, a ‘news media organisation’ will have one month to become a member of a declared body before losing the ‘journalism exemption’ (subsection 7B(4) of the Privacy Act).

These provisions are intended to provide certainty and a clear incentive for news media organisations to act to establish and join a news media self-regulation body.

Declaration not disallowable

Subclause 7(5) provides that a declaration made under subclause 7(1) is a legislative instrument, but section 42 (disallowance) of the Legislative Instruments Act 2003 does not apply to the declaration.

The exemption from disallowance is intended to provide ‘news media organisations’ with certainty about the timing requirements for becoming members of the declared ‘news media self-regulation body’. The exemption will also provide certainty to the ‘news media self-regulation body’ and individuals who will be affected by the new arrangements.
The exemption is also warranted in this case in light of the detailed criteria to which the Public Interest Media Advocate must have regard before making a declaration and the consultation requirements that must be met before a declaration is made. The consultation requirements are set out in clause 8 (discussed below) and include mandatory public consultation and a requirement to consult the Privacy Commissioner.

Clause 8 – Consultation and publication

Clause 8 provides that before making a declaration under subclause 7(1) in relation to a body corporate, the Public Interest Media Advocate must consult the Privacy Commissioner. The Public Interest Media Advocate must also cause to be published on the Department’s website a notice setting out the draft declaration and inviting public submissions within 14 days after the notice is published. The notice must also set out the body corporate’s news media self-regulation scheme and the initial views of the Public Interest Media Advocate concerning the matters to which it must have regard under subclause 7(3). The Public Interest Media Advocate is also required to consider any submissions received within the 14 day period.

Clause 9 – When declaration takes effect

Clause 9 provides that a declaration made under subclause 7(1) takes effect at the start of the day specified in the declaration. However, 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

Division 2 of Part 2 of the Self-regulation Bill provides for the Public Interest Media Advocate to revoke a declaration in relation to a body corporate and specifies the conditions and requirements for revoking such a declaration and when the revocation takes effect.

Clause 10 – Revocation of declaration

Mandatory revocation

Subclause 10(1) sets out the circumstances in which the Public Interest Media Advocate must revoke a declaration. In effect, the Public Interest Media Advocate must revoke a declaration when the eligibility requirements discussed in relation to subclause 7(2) above no longer exist. However, subclause 10(2) provides that subclause 10(1) has effect subject to subclause 10(6).

Subclause 10(6) is discussed in more detail below. In effect it prevents the Public Interest Media Advocate revoking a declaration unless the Public Interest Media Advocate has taken reasonable steps to ensure that a declaration in relation to another body corporate will be in force at least 6 months before the revocation takes effect. This will provide a lead time for members of the old body to join a news media self-regulation body.

Discretionary revocation
Subclause 10(3) provides that the Public Interest Media Advocate may revoke a declaration in relation to a body corporate if the Public Interest Media Advocate has reasonable grounds to believe that, since the declaration was made, there has been a significant change in relevant circumstances or there has been a change in relevant community standards. This provision is intended to encourage a declared body corporate to adapt to relevant changes so that the declared body corporate and its ‘news media self-regulation scheme’ reflect current circumstances and community standards.

Subclause 10(4) provides that in revoking a declaration the Public Interest Media Advocate must have regard to the same matters that he or she must have regard to in making a declaration as set out in paragraphs 7(3)(a) to (n). These matters are discussed in more detail above in relation to subclause 7(3).

Subclause 10(4) also specifically provides that in revoking a declaration under subclause 10(3) the Public Interest Media Advocate must also have regard to the need for freedom of expression and the need to protect individual privacy, given the importance of these rights.

Paragraph 10(4)(d) provides that the Public Interest Media Advocate must have regard to such other matters (if any) as the Public Interest Media Advocate considers relevant.

Subclause 10(5) makes the Public Interest Media Advocate’s discretion to revoke a declaration subject to subclause 10(6), discussed below.

Replacement declaration

Subclause 10(6) prevents the Public Interest Media Advocate revoking a declaration relating to a body corporate unless the Public Interest Media Advocate has taken reasonable steps to ensure that a declaration in relation to another body corporate will be in force at least 6 months before the revocation takes effect. The intention is to provide a ‘news media organisation member’ with a reasonable opportunity to join another declared body, in the event that the declaration for its news media self-regulation body is revoked. In such circumstances the Public Interest Media Advocate will have taken reasonable steps to ensure that another ‘news media self-regulation body’ is declared and that the declaration is in force 6 months prior to the revocation taking effect.

Revocation not disallowable

Subclause 10(7) provides that a revocation made under subclause 10(1) or (3) is a legislative instrument, but section 42 (disallowance) of the Legislative Instruments Act 2003 does not apply to the declaration.

The exemption from disallowance is intended to provide a ‘news media organisation’ with a measure of certainty about the need to become a member of any other declared ‘news media self-regulation body’. The exemption will also provide certainty to the ‘news media self-regulation body’ and individuals who will be affected by the new arrangements.

The exemption is also warranted in this case in light of the detailed criteria to which the Public Interest Media Advocate must have regard before revoking a declaration and the consultation requirements that must be met before an instrument of revocation is made.
The consultation requirements are set out in clause 11 (discussed below) and include mandatory public consultation and a requirement to consult the Privacy Commissioner.

Clause 11 – Consultation

Clause 11 provides that before revoking a declaration under subclause 10(3) (Discretionary revocation), the Public Interest Media Advocate must consult the Privacy Commissioner. The Public Interest Media Advocate must also cause to be published on the Department’s website a notice setting out the draft instrument of revocation and inviting public submissions within 28 days after the notice is published. The Public Interest Media Advocate is also required to consider any submissions so received. As noted in the discussion in relation to subclause 10(6) above, these mandatory extensive consultation requirements warrant the exemption from the disallowance provision of the Legislative Instruments Act 2003.

Clause 12 – When revocation takes effect

Clause 12 provides that a revocation made under subclause 10(1) or (3) takes effect at the start of the day specified in the declaration. However the day specified in the instrument of revocation must be later than the day on which the declaration is registered under the Legislative Instruments Act 2003.

Part 3 – Miscellaneous

Clause 13 – Online service provider

Subclause 13(1) provides that, for the purposes of the Self-regulation Bill, a person does not provide an online service merely because the person supplies a carriage service that enables content to be delivered or accessed.

Subclause 13(2) provides that, for the purposes of the Self-regulation Bill, 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.

These rules reflect corresponding provisions in clause 5 of Schedule 7 to the BSA and are included to maintain consistency.

Clause 14 – Implied freedom of political communication

Clause 14 provides that the proposed Self-regulation Act does not apply to the extent, if any, that it would infringe any constitutional doctrine of implied freedom of political communication.

Clause 15 – Review of this Act

Subclause 15(1) provides that before the end of the 3-year period beginning on the first day on which a declaration under subclause 7(1) takes effect, the Minister must cause a review to be commenced of the operation of the proposed Self-regulation Act. The duration of the review is not specified, as it will depend on the range and complexity of issues that emerge during the first three years of the Act’s operation.
Subclause 15(2) provides that a review under subclause (1) must provide for wide public consultation, including consultation with the Public Interest Media Advocate and each news media self-regulation body.

Subclause 15(3) provides that the Minister must cause to be prepared a report of a review under subclause 15(1).

Subclause 15(4) provides that a report of a review under subclause 15(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.

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

**Clause 16 - Regulations**

Clause 16 provides that the Governor-General may make regulations prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to the proposed Self-regulation Act.
NEWS MEDIA (SELF-REGULATION) (CONSEQUENTIAL AMENDMENTS) BILL 2013

NOTES ON CLAUSES

Clause 1 – Short title

Clause 1 is a formal provision specifying the short title for the Act. When enacted, the Consequential Amendments Bill is to be cited as the News Media (Self-regulation) (Consequential Amendments) Act 2013.

Clause 2 – Commencement

Clause 2 sets out when the provisions of the Act commence. The provisions specified in column 1 of the table will commence, or will be taken to have commenced, on the day specified in column 2 of the table.

Sections 1 to 3, and anything not elsewhere covered by the table, commence on the day the Act receives the Royal Assent.

Schedule 1 commences the day after the end of the period of one month beginning on the first day before 28 June 2013 on which a declaration under subsection 7(1) of the proposed News Media (Self-regulation) Act 2013 takes effect.

If no declaration under subsection 7(1) of the proposed News Media (Self-regulation) Act 2013 takes effect before 28 June 2013, the provision(s) commence on 1 July 2013.

However the provision(s) do not commence at all if section 3 of the News Media (Self-regulation) Act 2013 has not commenced before 28 June 2013.

Clause 3 – Schedule(s)

Clause 3 provides that each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1 – Amendments

Privacy Act 1988

Item 1 – At the end of subsection 7B(4)

Item 1 amends subsection 7B(4) of the Privacy Act by inserting proposed paragraph 7B(4)(c).

Subsection 7B(4) currently provides that an act done or a practice engaged in by a media organisation is exempt for the purposes of paragraph 7(1)(ee) of the Privacy Act if it is
done in the course of journalism and at a time when the organisation is publicly committed to published privacy standards. In effect, this means that the activities of ‘news media organisations’ that currently qualify for the exemption are not subject to the Privacy Act provisions that relate to the obtaining, keeping and disclosing of personal information.

Under the proposed amendment a ‘news media organisation’ that is not a member of a ‘news media self-regulation body’ or has had its membership suspended, would no longer qualify for the exemption and would, therefore, be subject to the provisions of the Privacy Act that relate to the obtaining, keeping and disclosing of personal information. Such a news media organisation could also be subject to an approved privacy code under the Privacy Act.

**Item 2 – After subsection 7B(4)**

Item 2 amends section 7B of the Privacy Act by inserting proposed subsection 7B(4A).

Proposed subsection 7B(4A) provides that proposed paragraph 7B(4)(c) does not apply to the extent (if any) that it would infringe any constitutional doctrine of implied freedom of political communication.