

COMMENTARY

EYES OF THE WORLD ON PRESS FREEDOM HERE

Countries like Burma may look to us and follow the example set by our government

LAURA R. HANDMAN
ALISON B. SCHARY

AS Australia gears up for an election, the world is watching to see whether the federal government will act on the media regulation recommendations from Judge Ray Finkelstein and the Convergence Review. What Australia does may chart a path for countries such as Burma, in the delicate process of considering media reforms after years of repression.

The Finkelstein report's call for a government-funded body policing the press and ordering corrective action — backed by threat of contempt of court, and without a right of appeal — would be a dangerous blow to a free press.

The Convergence Review is right to disavow Finkelstein's plan for a government-funded oversight body in favour of an industry-led body. However, serious problems remain.

Both reports call for an overarching media review council with membership mandatory for major news organisations. The Convergence Review insists its proposed new body would not be a "statutory authority", yet it

would legally require all major media entities to join and comply with its standards. This is a distinction without a difference. Furthermore, even the proposed "industry-led" body could refer "significant or persistent breaches" or a member refusing to comply with the council's regulations to a new "communications regulator". For all its pretensions to "self-regulation", the Convergence Review keeps the big stick of government oversight close at hand.

Government oversight of press coverage — whether by direct regulation or mandatory participation in an oversight body — presents a slippery slope away from a free press. Even seemingly noble aspirations to promote fair-

ness, balance and accuracy become troublesome when reduced to regulations. The concept of what is fair, balanced, or true is not black and white. In the past year, for example, the Australian Press Council has considered complaints from a man offended by an opinion column about gender relations that made "sweeping and unsubstantiated assertions" about the male population he believed were "inaccurate, unfair and unbalanced"; from a local city council for articles criticising it as "dysfunctional"; and from numerous government officials taking offence at unflattering coverage.

The Press Council, as a voluntary body whose members have contractually agreed to abide by its adjudications, is already well equipped to evaluate these complaints. But it is easy to see where a government-empowered oversight commission handling complaints like these would quickly devolve into a forum for manipulation.

Empowering a government regulator or panel of academics to determine in a vacuum what is "fair" or "true" — and to compel the press to alter its reporting, print a revision, or take down a story — subjects the press to an officially mandated version of truth and fairness.

In the past, the US has experimented with fairness requirements for broadcast media, requiring broadcasters to provide the opportunity for contrasting viewpoints on controversial issues. But this approach was abandoned by the US Federal Communications Commission decades ago, after finding broadcasters were deterred from airing controversial stories for fear of triggering the regulations.

Regulation of the media looks back to a time when column inches and broadcast channels were a scarce resource, and the prohibi-

tive cost of a printing press relegated the public to passive receivers of the news. But today's media landscape allows an open platform for individuals and organisations to participate in — and to criticise — press coverage.

In the US numerous "watch-dog" organisations scrutinise press coverage for errors and bias, using the internet and social media to publicise their analysis in real time. There is no reason why a government-backed fairness council would be better suited to guard the public interest than the public itself.

Another troubling aspect of the Convergence Review is its endorsement of Finkelstein's plan to link statutory defences for the press to membership in the review council. In other words — if you don't submit to the judgments of the media standards body, you will not be considered a journalist under the law, raising a spectre of government-controlled licensing of journalists, common in countries such as China.

The Finkelstein report details various so-called "privileges" held by the press. Many of these rights — including the right to protect confidential sources; to provide commentary; to gather personal information when investigating matters of public interest; and to access court proceedings and law enforcement records — are at the heart of the press's role in a democratic society. Such protections are not "privileges" that place the media above the public, they allow the press to inform the public.

News organisations have an incentive to get the story right, and to publish timely corrections for errors — their credibility depends upon it. The independent Press Council already provides mechanisms for the public to express concerns, and members have contractually agreed to publish the council's findings.

Editorial freedom is at the core

of a free press. Forcing media organisations to choose between mandatory, government-backed oversight and forgoing the legal protections necessary to function as journalists leaves no room for a free press.

Laura R. Handman and Alison B. Schary are with the law firm of Davis Wright Tremaine. Handman testified in congress in support of the SPEECH Act, which prohibits US courts from enforcing foreign libel judgments inconsistent with the first amendment of the US constitution.