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FORMER HIGH COURT JUDGE: MEDIA REGULATOR POTENTIALLY “UNCONSTITUTIONAL”

“IPA commissioned legal advice from former High Court Justice Ian Callinan demonstrates that attempts to regulate the media may be unconstitutional,” said Simon Breheny, Director of the Legal Rights Project at free market think tank the Institute of Public Affairs.

Following the then Communications Minister Stephen Conroy’s announcement of a news media regulator, the IPA engaged former Justice of the High Court of Australia Ian Callinan AC QC and Sydney barrister and constitutional expert Caspar Conde to provide legal advice on the constitutionality of the government’s proposals. We have now obtained that advice, which shows that key aspects of the scheme “are very arguably unlikely to be valid under the Constitution.”

“In particular, the broad powers granted to the proposed media regulator ‘are likely to be subject to a successful challenge for unconstitutionality’,” said Mr Breheny.

“However, Australians can’t rely on the Constitution to protect freedom of the press.”

“The advice indicates that well drafted provisions are likely to be upheld by the High Court. Australians should be aware that we do not have robust constitutional protections for free speech. The implied right to freedom of political communication is not an adequate protection of a free press,” said Mr Breheny.

“The government remains committed to these proposals – this scheme was only shelved because it did not have enough support to guarantee passage of the legislation through the parliament,” said Mr Breheny.

“This advice shows the vital importance of organisations such as the IPA that fight for free speech. The Australian Constitution and the High Court cannot be relied on to protect us from restrictions on freedom of speech. The role of civil society is essential,” said Mr Breheny.

On 12 March 2013, then Gillard government communications minister Stephen Conroy announced a *de facto* press licensing scheme. The scheme would have granted special journalistic privileges only to news media organisations that signed up to government-approved press standards bodies.

Mr Breheny appeared before the Senate Environment and Communications Legislation Committee inquiry into the News Media Reform Bills Package on 19 March 2013.

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