

## CENTRE FOR POLICY DEVELOPMENT ISSUE BRIEF:

### Media Ownership and Regulation in Australia

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#### About this publication

This Issue Brief was prepared by the Centre for Policy Development (CPD). This publication has been subject to an informal peer review process – the author would like to thank Wendy Bacon, Tim Dwyer and David McKnight for their useful feedback and suggestions. All conclusions and any errors that remain are the author's own.

CPD would like to note that our findings on complaints rates are based on the latest available information from ACMA and APC, and that given the short timeframe for preparing this briefing paper, these organisations have not been given an opportunity to review these findings.

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#### Main Points:

- Australia's print media ownership is much more highly concentrated than that of most other Western countries
- The ownership of Australian TV and radio is following the international trend<sup>1</sup> towards increasing concentration
- Changes to Australia's media ownership laws have tended to increase this concentration over time
- The emergence of new media does not remove the need for regulation to prevent too much media power from becoming concentrated in too few hands – all but one of the 12 news sites in Australia's top 100 most visited sites are owned by major existing media outlets
- Audience and reader complaints about the media are increasing:
  - Complaints to the government regulator of broadcasting, the Australian Communications and Media Authority, have risen 57% in 5 years, and complaints to the newspaper industry self-regulator the Australian Press Council, are 42% above the long-term average.

#### Contents

<b>Introduction</b> .....	<b>2</b>
<b>Section 1: Media concentration and regulation of media ownership</b> .....	<b>2</b>
Regulation of Media Ownership .....	6
Media ownership regulation over time.....	3
Table 3: Australia's commercial media landscape.....	7
Australia in comparison.....	9
Table 4: Media concentration.....	9
<b>Section Two: Media watchdogs and complaints</b> .....	<b>11</b>
Complaints rates over time .....	11
Table 5: ACMA complaints over 5 years .....	11
Table 6: APC complaints over 21 years.....	12
How does the Australian media's self-regulation measure up? .....	12
Table 5: Best practice characteristic of codes and MCC.....	14
<b>Conclusion</b> .....	<b>15</b>

## Introduction

A free, open and diverse media that has the unhindered power to inform the population on issues of public interest has always been a crucial component of a functioning democracy.<sup>2</sup> A free and diverse media sector can enforce transparency and accessibility in politics and can help to ensure that leaders within government and business are accountable for their actions.

Australia has some of the most concentrated media ownership in the Western world.<sup>3</sup> Despite the entry of significant new players and major shake-ups in industry structure and ownership, the long-term trend has been for concentration of ownership to increase over time. This would be a cause for concern in any sector, but is particularly worrying in one that has such a strong impact on our democracy and culture, and where laws to limit concentration have been watered down by successive governments, sometimes with the apparent aim of procuring favourable coverage.

In any situation where market power is highly concentrated, it is especially important that consumers have access to effective and responsive complaints mechanisms. Complaints to Australian regulatory and self-regulatory bodies such as the Australian Communications and Media Authority (ACMA) and the Australian Press Council (APC) are rising significantly, yet it is not clear that the public has access to sufficiently rapid or effective responses or sanctions when media performance fails to live up to its own codes or widely shared public standards.

This issue brief is divided into two sections. The first section analyses the concentration of media ownership and laws regulating media ownership in Australia, and then compares the situation here to that in other developed nations. The second section looks at the role of the industry regulators and at self-regulation within the industry.

## Section 1: Media concentration and regulation of media ownership

Historically, the relationship between Australian governments and Australian media has been characterised by two main weaknesses: insufficient protection of free speech<sup>4</sup> and freedom of information<sup>5</sup> on the one hand, and insufficient protection of the public interest against the potential for abuse of media power on the other hand. This section concentrates on the latter.

### Why care about concentrated ownership?

Highly concentrated media ownership can reduce the diversity of opinions which have a chance to be aired in public and, in the worst cases, can make it less likely that public interest news stories will be published. The UK-based group Article 19, which campaigns for freedom of expression around the world, lists the following threats to freedom of expression from concentrated ownership:

- Reduced diversity of viewpoints in the media
- Content sharing can mean that the same news appears in the papers and on TV and radio, and that there is little news of specific local or regional interest
- Reduced competition can stifle the emergence or survival of smaller outlets, reduce innovation and lead to higher prices<sup>6</sup>

The high concentration of media ownership in Australia has led to concerns about the implications of having so much potential to influence public opinion and elected governments in so few hands<sup>7</sup> There are also concerns that content diversity has decreased through the concentration of operations. Looking at the news radio market there has been a move towards networked programming, especially of news content, and in all media there is an increasing supply of international news from corporate partners facilitated by new information technologies, which has reduced Australian media content and coverage.<sup>8</sup>

While the internet does provide Australians with a seemingly endless supply of alternative news and information sources, we typically seek our data from within the pre-existing media ecosystem. Analysis of the Google top 100 websites visited by Australians in 2010 reveals that we regularly look at only 12 websites that could be classified as 'news based'. As table 1 indicates, of these 12 websites, 8 are owned by News Limited or Fairfax, with the rest owned by the ABC, BBC (British Broadcasting Corporation) PBL media and Microsoft.

## Table 1: Where do Australians seek their online news?

(Source: google adplanner data<sup>9</sup>)

Top online news sites visited by Australians	Government/other	News Limited	Fairfax
<b>Website:</b>	Abc.net.au BBC.co.uk Ninemsn.com.au msn.com	News.com.au HeraldSun.com.au Theaustralian.com.au Couriermail.com.au Dailytelegraph.com.au	Smh.com.au Theage.com.au Brisbanetimes.com

## The history of media ownership regulation

“Legislators have long been concerned about the ‘powerful influence for good or evil’ of broadcasting (Joint Parliamentary Committee on Wireless Broadcasting 1942) and over time have sought to regulate against concentration of ownership with various measures, including limits on services with common ownership, prohibition of cross-media ownership, and control of foreign ownership, as well as implementing specific regulations for delivery of a diversity of information and entertainment to the public.”<sup>10</sup>

Government intervention to protect media diversity has a long history in Australia – as does the winding back of such interventions.

The cross-media ownership laws brought in by the federal Labor Government in 1987 was the start of modern media change. The laws strictly prohibited the control of more than one commercial television license or newspaper or commercial radio license in the same market, thus aiming to reduce the potential for undue media concentration.<sup>11</sup> As noted in Table 2 however, these changes also led to increased concentration in some markets, and were widely seen as rewarding Labor allies.

These laws were in place until changes brought in by the Howard government in April 2007. The changes were described at the time by then Labor Shadow Minister for Communications Stephen Conroy as leading to “a massive handing of concentration of media ownership to the most powerful people in the land already,” which should be considered “bad for democracy, (and) bad for diversity of opinion.”<sup>12</sup> While still maintaining the rule that any one actor must control no more than one commercial television station or two commercial radio stations, changes allowed for the lowering of total media outlets to five in suburban markets and four in regional markets.<sup>13</sup> Since these changes were brought in, cross media concentration has increased in Australia. The laws also brought changes over who can own our media. Today, more international owners can own a significant share of our media infrastructure.

## Table 2: Timeline of recent changes to Australia’s media ownership rules

Period	Change	Impact	Notes
1981 (when the Fraser government gained control of the Senate)	Amendments to pre-existing legislation to: <ul style="list-style-type: none"> <li>Water down foreign ownership restrictions</li> <li>Remove the requirement that the Australian</li> </ul>	Rupert Murdoch was allowed to maintain ownership of an Australian TV station while giving up Australian residency and then citizenship. <sup>16</sup>	The amendments came to be known as the ‘Murdoch amendments’.

Period	Change	Impact	Notes
	<p>Broadcasting Tribunal approve share transactions in companies holding licenses,<sup>14</sup></p> <ul style="list-style-type: none"> <li>Remove the Tribunal's power to deny a TV license on public interest grounds.<sup>15</sup></li> </ul>		
1987	<p><b>Cross media ownership laws</b> introduced by the Hawke-Keating government. The changes:</p> <ul style="list-style-type: none"> <li>Changed rules on regional commercial TV markets where owners had a monopoly, to force three owners to compete in the same viewing area;</li> <li>Introduced the first cross-ownership rules to prevent the owner of a newspaper or monopoly radio station from also owning a television station in the same market;</li> <li>Abolished the rule that no one could have more than two TV stations no matter how many people those stations reached, and replaced it with a new 75 percent limit on the percentage of the total viewing audience that could be reached by any one owner.<sup>17</sup></li> </ul>	<p>While the laws were intended to restrict the concentration of media ownership they in fact allowed a major increase in the concentration of some markets, especially the newspaper market.</p> <p>After the changes Rupert Murdoch's News Ltd "moved from being the smallest newspaper company to publishing more than 60% of the nation's newspapers and holding a monopoly in four capital cities."<sup>18</sup></p>	<p>The changes were introduced in line with Labor's pre-existing platform of protecting media diversity. Keating described the changes as making owners choose between being 'queens of the screen or princes of print'.</p> <p>But it was also widely believed that the government wished to reward its friends in the media and punish its enemies. The changes suited Packer and Murdoch and inconvenienced Fairfax and the Herald and Weekly Times, who had been critical of the Hawke government.<sup>19</sup></p>
1992	<p><b>Broadcasting Services Act</b> passed, incorporating 1987 changes. Divides broadcasting services into different categories and applies different levels of regulation to each category 'according to the degree of influence that different types of broadcasting services are able to exert in shaping community views in Australia.'<sup>20</sup></p>		<p>The Broadcasting Services Act has been amended many times, particularly in an attempt to keep up with new technologies, and is now 10 times its original length.<sup>21</sup></p>
1996	<p>Howard government floated options for abolishing cross-media laws after a pre-election commitment to do so, but dropped the proposal after nervousness from backbench.<sup>22</sup> A bill to water down the rules was later put up in 2002 but was rejected by the Senate.<sup>23</sup></p>		<p>Kerry Packer had challenged cross media ownership rules &amp; expressed support for the opposition in 1995</p>

Period	Change	Impact	Notes
2000	<b>Productivity Commission Broadcasting Review</b> recommended that current cross-media ownership rules be replaced with the inclusion of a media-specific public interest test in Australia's competition law <sup>24</sup>	This recommendation is being considered as an option by the current Convergence Review	
<b>April 2007</b> (when the Howard government had control of the senate – although it took Stephen Fielding's vote to pass the bill after Barnaby Joyce crossed the floor to oppose it <sup>25</sup> )	<b>'Broadcasting Services Amendment (Media Ownership) Bill 2006'</b>  Repealed the broadcasting-specific restrictions on foreign investment in the commercial and subscription TV sectors;  Repeal of the cross-media rules in the BSA; and  Rescission of the newspaper-specific foreign ownership rules under Australia's foreign investment policy (FIP)".	The Government stated that the new regime would allow Australia to prepare for and respond to a media environment that faces dramatic change in the availability of communication platforms.  1. Greater foreign ownership of Australian media.  2. Greater cross cross-media ownership, reducing over all media diversity. Seeing Murdochs, the Gordons, the Stokes and Packers gaining greater total market share. <sup>26</sup>  Fairfax was able to buy Rural Press, bringing nine more newspapers and seven commercial radio licences under the control of Fairfax Media. <sup>27</sup>  The number of controllers of commercial radio went from 34 in 2007 to 32 in 2010, and the number of controllers of commercial TV went from 8 in 2007 to 7 in 2010, despite the release of new licenses. <sup>28</sup>	Described by then Labor Shadow Minister for Communications Stephen Conroy as leading to “a massive handing of concentration of media ownership to the most powerful people in the land already...bad for democracy, (and) bad for diversity of opinion” and by Stephen Mayne as “a free-for-all on media ownership which will only serve to further entrench the power of Australia's two wealthiest families, the Murdochs and the Packers.”  In a Roy Morgan poll at the time, 82% of Australian journalists thought the changes would have a negative impact on the integrity of reporting and 85% thought they would reduce diversity. <sup>29</sup>
2011 (ongoing)	<b>Digital Convergence Review.</b> Has floated the possibility of adopting the Productivity Commission's recommendation to replace cross-media ownership laws with a media-specific 'public interest test' on mergers and acquisitions.	The impact of the review on media concentration could be profound, if it resulted in the replacement of what's left of the cross-media ownership laws with a test that may be more adaptable in a new era, but also potentially more open to subjective and shifting interpretations.	

## The political impact of media concentration

This brief does not cover the issue of political ‘bias’ or ‘balance’ in the editorial policies of major media organisations or the potential political impact of such editorial policies on citizens or their elected representatives. However in the context of a discussion of media regulation it is necessary to look at one political consequence of highly concentrated media ownership: the extent to which it can empower media owners to influence media regulation in their own favour.

There is evidence that Australia’s media policy, over many decades, has been unduly influenced by what Julianne Schultz described as “the power of the owners of the news media who were prepared to trade uncritical coverage for favorable policy decisions.”<sup>30</sup>

Influential relationships between media owners and politicians have been recorded as far back as the 1930s. Rupert Murdoch’s father Sir Keith Murdoch was thanked by Prime Minister Joseph Lyons for his ‘great help’ in the elections, and Lyons made media policy decisions that were beneficial to Murdoch during his time in office.<sup>31</sup>

When appearing before a parliamentary inquiry into the print media in 1991, former Prime Minister Malcolm Fraser suggested that high levels of media concentration made it particularly difficult for politicians to resist the temptation to give in to pressure from owners:

"I think the pressures were probably all in conversations and lobbying and the sorts of activities that politicians are all very much aware of. Because it exists, because we live in this kind of world and it cannot be stopped, if that pressure is coming from one or two extraordinarily dominant media owners it can get very difficult."<sup>32</sup>

## Media concentration today

Australia has an unusually high concentration of media ownership compared to other liberal democracies. Australia has experienced a steady but significant decline in the quantity of press titles.<sup>33</sup> If we start our analysis in 1923, we can see that there were 26 metropolitan daily newspapers in Australia owned by 21 proprietors. Jumping forward to 1950, the total dropped to 15 metropolitan titles with a total of 10 owners. By the late 1980s, there were just three major organisations, which owned all of the suburban news titles: the Herald and Weekly Times Limited, News Limited and the John Fairfax Group. In 1987, News Limited merged and took over both the Herald and Weekly Times with the consent of the Hawke Labor government, which regarded the Herald group as ‘anti-Labor’.<sup>34</sup> In the decades since, more news media outlets have stopped printing, including all of Australia’s afternoon newspapers.

With the exception of Sydney and Melbourne, no large urban center has more than one daily newspaper. There are only two national daily papers in Australia today, the *Australian* and the *Australian Financial Review*. Only the *Canberra Times* and the *West Australian* were outside the ownership of the two major organisations, however in 2007 the owner of the *Canberra Times*, Rural Press Limited, merged with the Fairfax group, leaving one.

News Limited controls the majority of the newspaper market in Australia with almost 70 per cent of the market-share within the capitals compared to 21 per cent for Fairfax.<sup>35</sup> The two big organisations also own many smaller papers as well as the majority of suburban titles. A small number of companies also control the commercial radio and television networks and this number is soon set to decrease following the takeover of Austero by Southern Cross.<sup>36</sup> Pay television in Australia is dominated by Foxtel (25 per cent owned by News Limited) and Austar (merger with Foxtel pending),<sup>37</sup> and the four highest rating Internet news services are owned by the existing news sources.<sup>38</sup>

### Table 3: Australia's commercial media landscape

Ownership information in the following table is drawn primarily from Abjorensen (2007) and the ACMA media control database. Print circulation figures are drawn from the Audit Bureau of Circulations.<sup>39</sup>

<p><b>News Australia Holdings</b> – parent company is News Corporation, controlled by the Murdoch family</p> <p>Pay television: 25% of Foxtel, Australia's dominant pay TV provider<sup>40</sup>, part ownership of Sky Network Television. Foxtel's takeover bid for Austar is pending.</p> <p>Newspapers: 70% of the metropolitan daily news market – <i>The Australian</i> (national, circulation 136,268) <i>Daily Telegraph</i> (Sydney, circulation 363,399), <i>Herald Sun</i> (Melbourne, circulation 500,800), <i>The Advertiser</i> (Adelaide, circulation 180,807), <i>The Courier-Mail</i> (Brisbane, circulation 206,110), <i>The Mercury</i> (Hobart, circulation 44,221), and <i>Northern Territory News</i> (Darwin, circulation 21,103), with the addition of other regional papers (The Cairns Post, The Gold Coast Bulletin, Townsville Bulletin, Geelong Advertiser), and suburban weekly publications.</p> <p>Lachlan Murdoch also has a stake in Channel Ten</p>
<p><b>Consolidated Media Holdings</b> – previously controlled by the Packer family, formally known as Publishing and Broadcasting Limited (PBL)</p> <p>Television: a stake in Channel Ten</p> <p>Pay television: 25% of Foxtel and 50% of Premier Media Group which owns Fox Sports</p>
<p><b>Seven West Media</b> – controlled by Kerry Stokes</p> <p>Television: Channel 7 (Sydney, Melbourne, Adelaide, Brisbane, Perth and regional QLD)</p> <p>Pay Television: has a stake in Consolidated media holdings, which owns 25% of Foxtel and Fox Sports</p> <p>Radio: Redwave Media (various stations in regional and remote WA)</p> <p>Newspapers: The West Australian (the sole metropolitan daily not owned by News Ltd or Fairfax) and various West Australian regional newspapers</p> <p>Other print media: Pacific Magazines (including <i>Home Beautiful</i>, <i>Who</i>, <i>New Idea</i>)</p>
<p><b>Fairfax Media</b></p> <p>Newspapers: 21% of the metropolitan daily news market <i>Sydney Morning Herald</i> (Sydney, circulation 204,421), <i>The Age</i> (Melbourne, circulation 190,100), <i>Australian Financial Review</i> (national, circulation 75,339), <i>Canberra Times</i> (Canberra, circulation 32,116) and regional newspapers in important cities such as Newcastle and Wollongong as well as suburban weekly publications in Sydney and Melbourne.</p> <p>Other print media: Magazines, including – <i>Business Review Weekly</i>, <i>Personal Investor</i></p> <p>Radio: various metropolitan and regional radio licenses including 2UE in Sydney, via its takeover of Southern Cross Radio</p>
<p><b>Nine Entertainment Co</b></p> <p>Nine Entertainment Company is majority owned by CVC Asia Pacific Limited</p> <p>Television: Nine Network (Sydney, Melbourne, Brisbane and Darwin). NBN broadcasting to</p>

Central Coast NSW and Gold Coast QLD

Pay television: Sky News (joint venture with Seven and British Sky Broadcasting)

Other print media: APC magazines (several titles including *Women's Weekly* and *Cleo*)

Online: ninemsn

**Southern Cross Media**

Television: Southern Cross Ten (regional areas of NSW, Victoria, Queensland and Tasmania)

Radio: 68 commercial radio stations across (mostly) regional Australia. Has a stake in the Austereo Group, which owns the Today FM network and the Triple M network

**Ten Network Holdings**

Television: Channel 10 (Sydney, Melbourne, Adelaide, Brisbane and Perth)

**WIN Corporation** – controlled by the Gordon family which also has a stake in Channel 10

Television: Regional (QLD, NSW, VIC, ACT and TAS)

Radio: FM stations in Wollongong and Campbelltown.

## Australia in comparison

As table 4 indicates, when Australia is placed in direct comparison with similar Western developed democracies our extreme level of print media ownership concentration is clear.

**Table 4: Media concentration**

	Population <sup>1</sup>	Approximate circulation share of top 3 newspaper companies <sup>2</sup>	TV networks' HHI <sup>3</sup> concentration <sup>4</sup> (lower is better)	Radio networks' HHI concentration <sup>5</sup> (lower is better)
<b>Australia</b>	22 million	98%	1600 ( <b>moderately concentrated</b> )	1200 ( <b>moderately concentrated</b> )
<b>United States</b>	307 million	26%	2,164 ( <b>highly concentrated</b> )	1750 ( <b>moderately concentrated</b> )
<b>Spain</b>	46 million	55%	2207 ( <b>highly concentrated</b> )	3366 ( <b>highly concentrated</b> )
<b>Japan</b>	127 million	39%	2116 ( <b>highly concentrated</b> )	1000 ( <b>moderately concentrated</b> )
<b>France</b>	62 million	42%	2025 ( <b>highly concentrated</b> )	1311 ( <b>moderately concentrated</b> )
<b>United Kingdom</b>	62 million	62%	2550 ( <b>highly concentrated</b> )	2616 ( <b>highly concentrated</b> )
<b>Sweden</b>	9 million	85%	2834 ( <b>highly concentrated</b> )	1516 ( <b>moderately concentrated</b> )
<b>The Netherlands</b>	16 million	88%	2549 ( <b>highly concentrated</b> )	2500 ( <b>highly concentrated</b> )
1. Population figures sourced from Google Data				
2. Numbers calculated by taking the three largest newspaper organisations' total market share in each nation and dividing this figure against the total market share of each country. Total circulation figures obtained though UNESCO daily newspaper circulation statics. <sup>41</sup>				
3. The Herfindahl-Hirschman Index ('HHI') is a commonly accepted measure used by economists to measure market concentration. The HHI is equal to the sum of the squares of the individual market shares of each firm operating in a market. $HHI = (share_1)^2 + (share_2)^2 + \dots + (share_n)^2$ . A market with an index score between 1000 and 1800 is deemed moderately concentrated, and a market with an HHI above 1800 is deemed highly concentrated.				
4. Australia data sourced from Papandrea, F. (2010) <sup>42</sup> International data sourced from Noam (2009), table 1.1.				
5. Australia data sourced from Papandrea, F. (2010) US data sourced from Noam (2009), Spain data sourced form Sánchez-Tabernero (2008), Japan data sourced from Nakamura (2011), France data sourced from Badillo (2009), UK data obtained by averaging major markets' calculated HHI's, data sourced from Goddard, G. (2002), Sweden data sourced from Gronlund (2005), Denmark data sourced from van Dale (2009) <sup>43</sup>				

As Table 4 illustrates, Australia has the highest concentration of print media across the counties sampled. This table also shows that radio and TV are much more diversely owned sectors, and appear more diverse than in comparable countries.

However, there is evidence that the concentration of newspaper ownership may pose more of a risk to overall media diversity than the concentration of electronic media ownership. A recent study by the Pew Research Center's Project for Excellence in Journalism<sup>44</sup> found that newspapers are still the dominant source of 'new news'. They therefore play a disproportionate role in driving the overall news cycle:

"The study, which examined all the outlets that produced local news in Baltimore, Md., for one week...finds that much of the "news" people receive contains no original reporting. Fully eight out of ten stories studied simply repeated or repackaged previously published information. And of the stories that did contain new information nearly all, 95%, came from traditional media—most of them newspapers. These stories then tended to set the narrative agenda for most other media outlets."

If this pattern is replicated in Australia – and it is likely that it is<sup>45</sup> – then the News Limited and Fairfax duopoly would be setting 'the narrative agenda' for most of Australia's media landscape.

In addition, both radio and TV news networks draw heavily on newsfeeds from the Australian Associated Press, which is majority owned by Fairfax (45%) and News Limited (45%) – AAP notes that its shareholders do not influence its editorial operations, but the fact that electronic media is so dependent on a source controlled by the largest print media owners qualifies its apparent diversity somewhat.<sup>46</sup>

Content sharing deals between media organisations are also becoming more commonplace. Network Ten, for instance, provides Fairfax Digital access to its own media coverage.<sup>47</sup>

This type of influence on the diversity of media content is not picked up by the standard economic analysis of market concentration used to evaluate the TV and radio sectors in Table 4.

## Section Two: Media watchdogs and complaints

Both the Australian media industry and the journalists within it are ‘regulated’ by an assortment of organisations. The business arrangements and corporate dealings of media organisations are watched by the Australian Securities and Investments Commission (ASIC), the Australian Competition and Consumers Commission (ACCC) and state Offices of Fair Trading, which wield extensive legislative powers. Industry-based self-regulatory bodies examine the behavior of journalists and publishers employed within media organisations, which watch over a range of codes of ethics and codes of practice. Part two of this issue brief focuses on the regulatory side of the Australian media landscape, looking into the complaints driven regulatory environment including the government broadcasting regulator, the Australian Communications and Media Authority (ACMA); the voluntary print media regulator, the Australian Press Council (APC), along with a brief consideration of the roles of the Media Entertainment Arts Alliance and the workplace codes of media organisations.

### Complaints rates over time

ACMA and APC are the two main bodies that handle public complaints on the Australian media. They function as points of contact for external parties to lodge a complaint on radio and television media content (ACMA) and print media content (APC). Their role is to investigate breaches of media codes; they also play the role of mediators between outlets and their audience. Table 5 summarises ACMA’s complaints, investigations and findings over the past 5 years, and Table 6 summarises the APC complaints, adjudications and findings over the past 3 years, and compares them to the 21-year average.

**Table 5: ACMA complaints over 5 years**

Data drawn from ACMA (2010)<sup>48</sup>

Year	2005 /2006	2006 /2007	2007 /2008	2008 /2009	2009 /2010
<b>Total Complaints</b>	1315	1330	1218	1772	2061
<b>Total investigations</b>	142	138	136	194	189
<b>Breach finding</b>	34	45	47	80	74
<b>Non-breach finding</b>	108	91	89	109	111
<b>Percentage of complaints investigated</b>	11%	10%	11%	11%	9%

## Table 6: APC complaints over 21 years

Data drawn from Australian Press Council Complaints Statistics, published and unpublished<sup>49</sup>

Year	2010 /2011*	2009 /2010	2008 /2009	2007 /2008	2006/ 2007	2005/ 2006	1988 -2009	Yearly average from 1988-2009	2009 compared to yearly average
<b>Total complaints</b>	566	529	506	457	421	420	8387	399 a year	33% above average
<b>Total adjudications</b>	-	31	33	35	40	30	1058	50 a year	6% of complaints adjudicated in 2009 compared to 12% average
<b>Complaints upheld</b>	-	13	14	11	11	8	435	21 a year	42% of adjudicated complaints upheld (same as average)
<b>Complaints dismissed</b>	-	19	18	18	21	13	599	29 a year	61% of adjudicated complaints dismissed (slightly above average)

\*Total complaints for 2010/2011 is an unpublished figure supplied by the Australian Press Council. Data not yet available on adjudications for 2010/2011.

These two tables tell similar stories. Focusing on ACMA to begin with, complaints are on the rise with a difference of 750 complaints per year between 2005 and 2010 – a 57% increase in 5 years. Only a small and static proportion of the growing number of complaints is investigated, and it appears that an increasing proportion of the complaints that are investigated are found to be in breach.

Looking at the APC, complaints in 2010/2011 were significantly (42%) above the 21-year average. This is a simple average as trend data is not available. The last few years also appear to be well above the long-run average.

The proportion of complaints adjudicated by the APC in 2009 (6% of that year's complaints) was half the long-term average, however this may not be significant (there is significant variation in complaints over the past 5 years, and could be explained by factors such as an increasing proportion of complaints dismissed as inappropriate, complaints that were successfully mediated without adjudication, referred to other bodies, etc).

## How does the Australian media's self-regulation measure up?

The Taskforce on Industry Self-Regulation,<sup>50</sup> noted that self-regulatory arrangements should be planned to address the nature and risk of market failure as well as the consequences of taking no action. Therefore, self-regulation can take many forms in Australia, including: information campaigns; service charters; an internal complaints system which handles departments and procedures; industry accreditation; licensing

and/or membership certification; quality assurance systems; standards; codes and dispute resolution schemes.<sup>51</sup>

In the past few years there has been a tendency for individual workplaces to put in place their own codes. These organisational codes add a further layer to the self-regulatory environment of the media industry, aiming to boost socially responsible journalism and corporate behaviour.

Due to the modern nature of the Australian media landscape, the majority of organisations within the present system of journalistic self-regulation are not exclusively concerned just with journalism. Instead, they oversee a range of related media industries.<sup>52</sup> Most journalists are therefore covered by more than one code. Codes include the MEAA Code of Ethics (the most well-known by journalists), the APC Statement of Principles, the Free Television Codes of Practice, the Commercial Radio Codes of Practice, the ABC charter and statement of independence and the Internet Industry Association Codes of Practice.

With the exception of the workplace codes, all self-regulatory organisations have set out procedures by which the codes can be enforced and reviewed. One point to note is that the Internet Industry Association Codes of Practice makes no specific mention of journalism or the products of journalism, news and current affairs.<sup>53</sup>

### **Best practice self-regulation**

Self-regulation in the media sector needs to meet a more complex and stringent set of requirements than that of industries producing simpler and less socially and politically sensitive ‘products’. It is however interesting to compare the media’s current self-regulation practices to what is regarded as best practice in self-regulation more broadly.<sup>54</sup> The Australian Taskforce on Industry Self-Regulation put it in the following, somewhat narrow, terms: “good practice in self-regulation can be understood as significantly improving market outcomes for consumers at the lowest cost to business”.<sup>55</sup> To achieve these aims it suggested that industries should:

1. Consult within industry, consumers and government;
2. Maximise scheme exposure;
3. Guarantee documents relating to the scheme are easily understood;
4. Proliferate alertness of the scheme in terms of rights, agreements and duties and how to lodge complaints;
5. Create a strong administrative body which aims to identify issues and collect raw data;
6. Watch the scheme, increase its credibility and monitor overall finances;
7. Collect data as indicators of methodical problems;
8. Increase transparency of processes and procedures;
9. Include appropriate dispute resolutions to redress complaints;
10. Include a range of sanctions;
11. Manage risk of anti-competitive practices involved in scheme;
12. Monitor and review the scheme;
13. Ensure cost effectiveness, although not at the expense of sacrificing consumer rights

Table 5 drawn from Breit (2005) analysis, categorises the strengths and weaknesses in today’s journalistic self-regulation system based on the above criteria.<sup>56</sup> While ACMA is a government regulator not an industry self-regulator, its processes are also included in the table for interest.

**Table 5: Best practice characteristic of codes and MCC**

<b>Taskforce</b>	<b>MEAA</b>	<b>APC</b>	<b>Workplace codes</b>	<b>ACMA (not self-regulation)</b>
<b>Consultation</b>	Formal review	Formal & informal review	Informal review	Formal & informal review
<b>Coverage &amp; publicity</b>	Not well publicised	Well publicised	Not well publicised,	Well publicised
<b>Awareness of scheme</b>	Low	High	Low	High
<b>Clarity of documentation</b>	Journalists' obligations clear Consumer obligations not stated	Publishers' obligations clear Consumer obligations not stated	Journalists' & business management obligations clear Consumer obligations not stated	Legalistic language, long and complex
<b>Complaint scheme</b>	Website	Website and phone	Not well publicised but available on internet search	Website and phone
<b>Education schemes</b>	Low	Attempts to educate public and future journalists	Low	A focus of the new scheme
<b>Administration</b>	Low transparency	Limited transparency	No real transparency	Limited transparency
<b>Complaint handling procedures</b>	Closed hearings Reports unavailable.	Closed hearings Public report	Closed process Possibility for report (assumed at publishers' discretion)	Public hearings Reports available
<b>Range of sanctions</b>	Limited	Limited	Sanctions not specified	Moderate
<b>Monitoring &amp; review</b>	Formal	Formal & informal	Informal	Formal & informal

Breit's analysis suggests that, at the time, some common elements of good practice were missing from the structure of self-regulation. In particular the range of sanctions could potentially be strengthened, as could the transparency of administering complaints-handling procedures. On ACMA's part, the 'legalistic and complex' documentation could be improved to make it more accessible to members of the public wanting to make a complaint.

One additional point is worth noting on the newspaper industry's self-regulation. As the sector which is struggling most to adapt to additional competitive pressures in the new media landscape, the budget of an

industry-funded self-regulator like the Australian Press Council is likely to be vulnerable. The budget was in fact cut by 33 per cent in 2009,<sup>57</sup> although funding was subsequently restored<sup>58</sup>.

All industry-funded watchdogs are also vulnerable to being undermined by their funders if they start barking too loudly. The former chairman of the APC Ken McKinnon used his final Annual Report to suggest that the independence of the Press Council was being undermined by industry:<sup>59</sup>

“when every penny for every activity depends on specific industry approval, funding authorities can easily use the veto to avoid potential embarrassment, ensuring no facts that might be inconvenient are collected. More dangerously from the point of view of the perceived independence of the Council, funding authorities are seen to be calling every shot”<sup>60</sup>

The current APC chair Julian Disney has said that he accepted the position on the condition of being able to improve the organisation’s performance. He also said that the organisation’s standards project is aiming to be two-thirds funded from non-media sources, with some funding secured from the Myer Foundation and additional funding sought from the Federal Government.<sup>61</sup>

It is precisely at a time of intense financial pressure that media standards are most likely to slip – this is therefore the point at which regulatory or self-regulatory bodies need to be at their most effective. There are signs that the Press Council’s role as a self-regulator is improving – for example it is apparently seeking to raise the prominence given to its findings<sup>62</sup> (a common criticism is that papers often bury its findings in the back pages). It remains to be seen whether it will be sufficiently independent, well-resourced and powerful to enforce the higher standards which are so clearly needed given the rising level of consumer complaints.

## Conclusion

This issue brief has been an analysis of the Australian media ecosystem. In part one, it has assessed the current state of media concentration in Australia, remarking on its high concentration, comparatively, to other developed democracies. It then explains recent historical developments, notably the deregulation of cross media ownership laws. Part two looked at the regulations within the media ecosystem, considering both the peak regulatory bodies the APC and ACMA, noting the rise in complaints to the ACMA over a 5 year period. The brief concluded with an analysis of self-regulation within the industry, finding that at present the media industry is not conforming to ‘best practice’ standards for industry self-regulation recommended by the Australian Federal Government.

A fully resourced investigation into the structure of Australia’s media ownership and regulation would be able to analyse the wider consequences of the high level of concentrated media ownership in this country. This would then allow evidence-based judgments to be made on appropriate forms of ownership regulation and on the regulation or self-regulation of standards. The evidence assembled for this Issue Brief indicates that the growth of online access platforms for incumbent news media organisations is by itself sufficient reason to review the relationship between media ownership and appropriate laws and regulatory frameworks.

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