

SENATE ENVIRONMENT AND
COMMUNICATIONS
REFERENCES COMMITTEE:
Media diversity in Australia



GetUp briefing paper 2:

How media concentration led to News Corp's COVID-19 misinformation and regulatory inaction

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Introduction

In July 2021, Sky News' YouTube channel was suspended by platform owner Google due to the publication of content not compliant with YouTube policies.¹ While it did not specify which content was in violation, YouTube clarified that it doesn't "allow content that denies the existence of COVID-19 or that encourages people to use hydroxychloroquine or ivermectin to treat or prevent the virus".² With 1.8 million YouTube subscribers,³ the ban meant Sky News could neither upload content nor stream on the platform for seven days.⁴

These events highlighted three major factors that have been systematically undermining the functioning of Australia's democracy:

- 1.** Excessive levels of media concentration have directly contributed to the spread of COVID-19 misinformation in Australia – particularly from News Corp, the most powerful news organisation in the country.
- 2.** Excessive media concentration has generated a power imbalance between broadcasters and the Australian Media and Communications Authority (ACMA). The resulting regulatory capture means ACMA has

¹ Sky News, 1 August 2021a.

² Meade, 1 August 2021.

³ Sky News, 1 August 2021a.

⁴ Ward, 1 August 2021.



failed to act to stop the spread of COVID-19 misinformation – instead ACMA’s role in sanctioning broadcasters has been played by publicly unaccountable private multinational companies.⁵

3. ACMA, as media regulator, has violated its own mandate in failing to act to counter COVID-19 misinformation⁶. This is despite ACMA confirming the damaging consequences of inaction, and that “platforms, public authorities, independent fact-checkers, news media and users all have a role to play”⁷.

Recommendations:

Overhaul Australia's media ownership laws

- An overhaul of the media regulation changes that have effectively entrenched media concentration, including the 2017 repeal of the two out of three rule.
- Reintroducing caps on single-media and cross-media ownership in specific geographical markets, with exemptions in exchange for enforceable public service obligations – for example, the delivery of local

news.

An ACMA with teeth

Media regulator should be provided:

Enhanced legislative authority that secures independence and its capacity to use its investigatory powers at any time

- introducing specific appointment guidelines in line with international standards, including ensuring the ineligibility of members with prior connections to powerful media players.
- Adequate funding to independently carry out its duties, functions, and responsibilities, including increased monitoring and reporting on the Australian media and communications sector.

⁵ Muller, 7 August 2021; Visentin, 2 August 2021.

⁶ *ibid.*

⁷ ACMA, June 2020: p14.



- A mandate to conduct periodic plurality reviews and monitor and publicly report on media market status and developments, including detailed information about revenue, expenditure, and ownership of Australian media outlets.
- A mandate to request information from media organisations about ownership, revenue, and shares across platforms.
- A mandate to impose new transparency requirements, including a public register for politicians to document every meeting with media executives and owners during their time in office.

Factor 1: Media concentration contributes to the production and spread of COVID-19 misinformation, particularly across News Corp platforms

How media concentration leads to the *production* of misinformation

As discussed in detail in our original submission to the Senate Committee – *Who Controls Our Media? Exposing the impact of media concentration on our democracy*⁸ – the detrimental effects of media concentration on the quality of journalism have been demonstrated in Australia and an array of jurisdictions around the world.

This includes reduced “degrees of editorial freedom”⁹ and “a perceived decrease in quality of the remaining newspapers serving local markets”.¹⁰ Moreover, media concentration leads to a “reduced sense of responsibility in media institutions”¹¹ – explored in depth in the 2012 Leveson Inquiry¹² – and declining quality of news outputs, including a lack of fact-checking and editorial oversight. It is this environment that is critical to the production and spread of misinformation.

⁸ Brevini & Ward, 2021.

⁹ High Level Group on Media Pluralism in Europe, January 2013.

¹⁰ Abernathy, 2020: p16.

¹¹ Brevini, 2021.

¹² Brevini & Ward, 2021: p26; see also Leveson, 2012.



News Corp's COVID-19 misinformation production is a key example of how this has played out in the Australian context. News Corp – Australia's biggest dominant media player – can produce misinformation because it can afford to be less responsible in the presence of systemic conditions of media concentration.

Since our submission to the Senate Committee, we undertook an analysis of specific News Corp outlet coverage (*The Australian*, *Sky News*, *The Courier Mail*, *The Daily Telegraph*, *Herald Sun* and relevant social media platforms) of significant COVID-19-related events in the period between the beginning of the first Melbourne lockdown in 2020, the spread of the Delta variant and 2021 vaccine rollout. Our findings revealed:

1. COVID-19 misinformation was primarily spread through the commentaries, editorials and opinion pages of News Corp mastheads, and on Sky News. COVID-19 misinformation was not commonly present in the news reporting of the most popular News Corp outlets.
2. The opinion writers that promote misinformation from News Corp columns are essentially of two types:
 - a. They are either professing to be COVID-19 sceptics themselves, like Alan Jones who famously used his last *Daily Telegraph* column to argue that COVID-19 is no worse than the flu for healthy people;¹³ or
 - b. They are promoters of personalities known for their anti-vaccination and COVID-19 sceptic views, like Sky News presenters Andrew Bolt, Chris Kenny and Peta Credlin. For example, when in April 2021 Liberal MP Craig Kelly was permanently banned from Facebook for repeatedly spreading COVID-19 misinformation, Sky News editors hosted him, allowing him to keep casting doubts on COVID-19 vaccine efficacy. He was hosted by Chris Kenny, Cory Bernardi and Alan Jones, with Jones repeatedly lauding him as an "inspiration"¹⁴ and "courageous".¹⁵

¹³ Jones, 22 July 2021.

¹⁴ Jones, A, 27 May 2021.

¹⁵ Jones, A, 1 July 2021.



The reliance on using opinion pieces to spread COVID-19 misinformation and cast doubt is a common and customary strategy at News Corp. It allows for the dissemination of misleading information across the most popular platforms, and protects the broadcaster from criticism. This strategy was found to be prevalent by previous studies on News Corp's coverage of climate science.¹⁶ In their study, Bacon and Jegan found the majority of reportage by News Corp was accepting of climate science findings, while climate denialism and misinformation were dominant in commentaries, editorials, opinions bulletins, casting major doubts on the value of climate science.¹⁷

These types of strategies for spreading misinformation adopted by News Corp are established beyond Australian borders. Research has shown how climate denialism has been similarly spread by News Corp through editorials and opinion pieces in the US and UK.¹⁸

In a media environment with fewer and fewer voices – that is, highly concentrated – it's not only easier for media outlets to produce misinformation, but to spread it too.

How media concentration leads to the spread of misinformation

A previous report to the Senate Committee revealed how Australia's alarming levels of cross-media concentration magnifies and increases the reach of misinformation.¹⁹ That is, how the ownership of media organisations across platforms – print, radio, TV and online – enables the amplification and distortion of misleading messages because of the reduction in safeguards across the same owned platforms.

The spread of COVID-19 misinformation, especially by powerful media organisations like News Corp, has brought this into stark focus. For example, in

¹⁶ Bacon & Jegan, 2020.

¹⁷ *ibid.* p8.

¹⁸ McKnight, 2010.

¹⁹ Brevini & Ward, 2021.



addition to being available as a YouTube channel, Sky News is broadcast nationally on Foxtel with almost 4 million subscribers (its evening reach equals the ABC²⁰).²¹ It is also broadcast as Sky News Regional on free-to-air commercial television – through partnerships with WIN and Southern Cross Austereo – to approximately eight million people in regional areas across Victoria, NSW, Queensland and South Australia.²² Sky News Radio is also on the Australian Radio Network's iHeartAustralia digital audio,²³ while News Corp has a 15% holding interest in HT&E, owner of Australian Radio Network.²⁴

It is this concentrated environment – where ownership is concentrated across media platforms – that allows for the replication and spread of messages throughout the media, with few or no safeguards to ward against the propagation of misinformation. It is also in this kind of concentrated environment, with little media diversity, that it becomes more difficult for the public to contrast the reliability of such sources.

Stronger cross-ownership and ownership regulation would ensure not only the reduction of power that leads to the production of misinformation, but would also actively stem the spread of it.

Recommendation: Overhaul Australia's media ownership laws

Factor 2: Media concentration has led to regulatory capture

ACMA's inaction regarding Sky News' COVID-19 misinformation must be understood within the context of a highly concentrated media market where the excessive political and economic power of key media owners results in a critical power imbalance with the independent regulator. That is, media concentration has led to regulatory capture, whereby ACMA fails to regulate the media sector according to public interest, but instead through the commercial interests of the

²⁰ Brevini & Ward, 2021.

²¹ News Corp, 2020.

²² Sky News, 1 August 2021b.

²³ Wilson, 23 March 2020.

²⁴ HT&E, n.d.



media outlets. Two major failures have resulted from this context and led to ACMA's inaction. Firstly, its adherence to a system of 'co-regulation' regarding broadcasting complaints. Secondly, the lack of clear accountability and governance guidelines that secure independence of its members.

Coregulation: A code of practice 'co-regulation' system, established under the *Broadcasting Services Act* (BSA) in 1992, requires broadcasters to respond first to complaints. If a complainant does not accept the broadcaster's decision or if the broadcaster does not respond within 60 days, the complaint may be sent to ACMA.²⁵ ACMA endorsed the current system to the Senate Committee in the evidence it gave on 6 September 2021, noting "its powers... reflect the co-regulatory nature of the framework".²⁶ The co-regulation framework ACMA inherited has been described as closer to self-regulation, including by the Productivity Commission.

However, in the context leading up to YouTube's ban, it is clear this system failed. Moreover, ACMA could have done more, with a range of powers under current legislation it has chosen not to use (see *Briefing Paper 1*). For example, the BSA states ACMA may investigate any complaint "if [it] thinks that it is desirable to do so".²⁸ This means ACMA can actively investigate potential or alleged breaches of licence conditions or code of practice matters, whether or not a complaint has been made to the broadcaster in question.

If the Minister or Government had taken an interest, or were concerned about health and medical misinformation in the media, they could have "direct[ed] the ACMA in writing to investigate any matter with respect to which the Parliament is given power to make laws by paragraph 51(v) of the Constitution".²⁹

²⁵ *Broadcasting Services Act 1992* (Cth): s148-150.

²⁶ Senate Environment and Communications References Committee, 6 September 2021.

²⁸ *Broadcasting Services Act 1992* (Cth): s149.

²⁹ *Id.* s170.



In addition, Section 170 of the BSA gives ACMA even broader powers, stating it “may conduct investigations for the purposes of the performance or exercise of *any* of its broadcasting, content and datacasting functions”[emphasis added].³⁰

If none of these powers seemed appropriate, ACMA could still have obtained information about, and investigated, the issues and content that concerned Google/YouTube. However, while ACMA has the power to conduct investigations, hold hearings, and consult “as it thinks fit” to inform “itself on any matter relevant to its broadcasting, content and datacasting functions”,³¹ in evidence to the Senate Committee ACMA stated it was not “aware of the content that has been taken down by Google”.³²

The system of co-regulation has been utterly ineffective in addressing misinformation in the media. ACMA’s lack of action – despite its broad powers – is testament to this. Instead, co-regulation too easily reverts to self-regulation in a highly concentrated media environment, where power and influence of media owners limits the ability of the regulator to act in the public interest. This is regulatory capture.

Governance and appointment guidelines: The guidelines pertaining to the independence of ACMA’s membership are inadequate to counter the concentration of power held by a small group of media organisations. This is because appropriate guidelines on the eligibility of ACMA members to guarantee ACMA’s independence and avoid increased opportunities for regulatory capture do not currently exist. In order to properly fulfil its role as Australia’s media regulator, ACMA should rectify this immediately.

International examples provide useful guidelines to do this. The Council of Europe stresses the importance of rules and procedures for media regulators, recommending rules “to protect them against any interference, in particular by

³⁰ *ibid.*

³¹ *Broadcasting Services Act 1992* (Cth): s168

³² Senate Environment and Communications References Committee, 2021: p. 41.

political forces or economic interests”.³³ As such, it recommends rules to avoid “members of regulatory authorities having conflicts of interests, regarding their interests in the media or related sectors.”³⁴ It also recommends the rules should guarantee members “are appointed in a democratic and transparent manner”.³⁵

Recommendation: An ACMA with teeth

Factor 3 : The impact on public health

The Senate Committee hearing of 6 September 2021 noted concerns about the ability of the Australian media regulator to be proactive in a period of emergency such as the current pandemic. This is because any inability of the media regulator to act on this issue poses a real threat to the health and safety of Australian communities.

While ACMA has made some attempt to provide COVID-19 information to the community its approach has been exceptionally narrow and limited, given the extent of misinformation circulating in mainstream, online and social media. ACMA’s website provides information regarding COVID-19 – including on systems and changes to advertising rules to allow for public health information – but fails to adequately serve the public with proactive information actions to counter misinformation.

This approach can be contrasted with similar agencies abroad, such as the UK media and communications regulator, Ofcom. While ACMA appears to have been lacking in proactive action concerning COVID-19 misinformation (and even in taking action regarding potential Code of Practice breaches), Ofcom provides a case study of an alternative approach.

³³ Council of Europe Committee of Ministers, 2000: I(3).

³⁴ *ibid.* I(4)

³⁵ *ibid.* I(5)



In contrast to ACMA, Ofcom has a series of resources for the community relating to COVID-19 issues organised on a single page, which has a clear aim of combatting and debunking COVID-19 misinformation, thereby empowering UK citizens to better protect themselves. It includes information about COVID-19 ‘fact-checking and debunking’, links to official sources, parental and children’s support information, and tips for countering misinformation sources. Ofcom also publishes a weekly update on COVID-19 news and information³⁶.

This proactive approach includes its pursuit of complaints. For example, Ofcom acted swiftly following two separate complaints it received about broadcasts in April 2020 that contained COVID-19 misinformation (one from London Live and one from ITV). It completed its investigations within one to two weeks and issued sanction notices to the broadcasters: on 20 April 2020, Ofcom issued London Live with a notice regarding “potential harmful content about” COVID-19; and on 21 April 2020, Ofcom published its guidance notice in relation to the *This Morning* broadcast on TV.³⁷

ACMA’s approach extends to its disproportionate focus on “social media or platform misinformation”,³⁸ while overlooking the impact of misinformation coming from established media outlets. This approach indicates a lack of understanding of how misinformation is produced and shared across all platforms – the bushfire and COVID-19 crises have demonstrated that very often social media replicates and amplifies misinformation produced by mainstream outlets, including in print, radio and TV. Instead, ACMA’s approach seems to assume misinformation is primarily created by users, rather than broadcasters.

Recommendations: An ACMA with teeth

³⁶ Ofcom, n.d.

³⁷ Ofcom, 19 September 2021.

³⁸ see for example ACMA, June 2020.



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