

CHAPTER 9

OTHER ISSUES

A. CROSS-MEDIA OWNERSHIP RULES

Background

9.1 Prior to 1987 there were restrictions on the number of commercial radio and television licences a person could own. There were no restrictions on cross-ownerships with newspapers. Cross-ownership restrictions which limit common ownership of newspapers and commercial radio and television were introduced for the first time by the Government in 1987 as an integral part of a legislative package which repealed the 32 year old two station rule governing the ownership of commercial television and replaced it with an audience reach rule. The Government retained the limits on the extent of radio ownership as well as the 'one-to-a-market' rule. The latter prohibited multiple ownership of radio or television licences in any service area.

9.2 The two station rule prevented a person from holding a prescribed interest in more than two commercial television licences throughout Australia. This rule equated an interest in stations in Sydney and Melbourne with an interest in stations in Mildura and Wagga despite massive differences in the population of their service areas. The audience reach rule allows persons to hold prescribed interests in any number of

commercial television licences as long as the combined population of their service areas does not exceed 60 per cent of the Australian population.

9.3 In explaining the case for cross-media ownership restrictions, the then Minister for Communications, the Hon. Michael Duffy MP, said in his second reading speech on the *Broadcasting (Ownership and Control) Bill 1987* that:

If competition is to be enhanced, an essential part of the reform program is to limit cross-media ownership, that is, the common ownership of television-newspaper and television-radio interests within the television services areas. Cross-media ownership has a long history in this country going back to the 1920s when newspaper interests decided to become involved in the new broadcasting industry. It is of concern because it can limit public access to diversity of opinion, information, news and commentary. It can inhibit competition, produce monopolies, and affect employment opportunities.

9.4 Minister Duffy went on to say that raising the national ownership limit for commercial television without placing limits on cross-media ownership would produce an unacceptable level of media concentration in local television areas. Cross-media ownership rules were introduced in order to:

- (a) support competition policy;
- (b) discourage concentration of media ownership in local markets; and

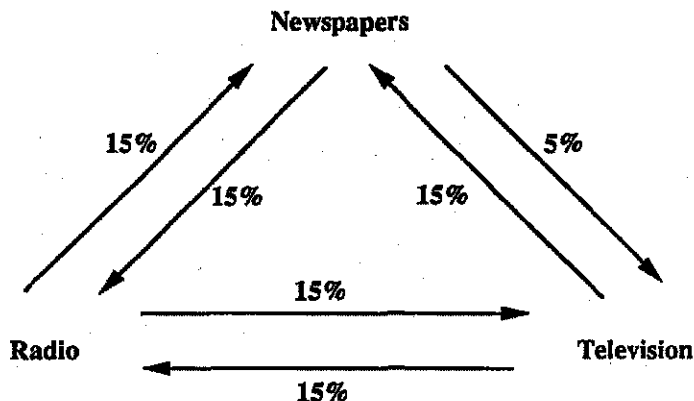
- (c) enhance public access to a diversity of viewpoints, sources of news, information and commentary.

(House of Representatives, *Debates*, 29 April 1987, pp. 2191-96)

9.5 These cross-media ownership limits restrict the ability of any one player to dominate a particular market or markets. Specifically, the cross-media rules limit the prescribed interests (control or indirect or direct interests above a certain level) a commercial broadcaster (i.e. television or radio) can have in newspapers in the same service area as that of the broadcaster. A newspaper is deemed to share the same market as a commercial television or radio station if more than 50 per cent of the newspaper's circulation is in the station's service area. Combinations of television and radio stations are not allowed if they serve the same market or their markets overlap by 30 per cent or more. There are no cross-media ownership restrictions applying to national newspapers and magazines.

9.6 Details of the prescribed interest for media within the same service area are shown in the following diagram:

LIMITS FOR SERVICES IN THE SAME DISTRIBUTION AREA



9.7 Cross-media interests between television and radio and television and newspapers held on 27 November 1986 which would have been in conflict with the cross-media rules were 'grandfathered' - i.e. they were exempted from the rules as long as those interests were not increased or sold. However, any new owner was required to comply with the cross-media ownership rules. The grandfathering provisions for radio and newspapers were introduced a year later - on 27 October 1987. Significant changes in media ownership since have resulted in the cross-media ownership rules applying to most service areas.

9.8 Prior to the introduction of cross-media ownership rules there were ten radio service areas where the only commercial radio service and the commercial television service were commonly owned. There were an additional nine areas where one of the commercial radio services and the commercial television service were owned in common. (BTCE, 1991) In some of those cases the common ownership extended to the local newspaper.

9.9 Tables 9.1 and 9.2 at pages 300 and 302 show cross-media ownership of major print media groups in June 1986 and the current situation.

9.10 The tables show that substantial cross-ownerships were in place in June 1986. Although the pre-existing cross-ownerships were sanctioned by the grandfather provisions of the cross-media rules, the sanctions could be retained only while shareholdings remained unchanged (i.e. neither increased nor decreased). Before 1987 it was common for newspaper groups

to also have major interests in radio and television. For example, the Herald and Weekly Times and John Fairfax groups had substantial television and radio interests.

9.11 The takeover of HWT by News Limited meant that the previously sanctioned cross-ownerships became in breach of the Broadcasting Act and had to be disposed. The takeover also placed the previously unaffected News Limited's interests in ATV (Melbourne) in breach of the Act (previously News Limited had no newspaper interests in Melbourne). The sanctioned cross-ownerships of the Fairfax group and Consolidated Press Holdings (ACP/CPH) were disposed of when these groups sold their broadcasting interests during 1987-88. ACP/CPH recently reacquired most of its previously held broadcasting interests following the failure of Bond Media to comply with its financial obligations to ACP/CPH.

9.12 Now there are two major newspaper groups: News and Fairfax; three major television groups: Nine, Ten (Wesgo) and Seven (in receivership); and a number of radio groups: Hoyts Media, Austereo, Wesgo and Australian Radio Network. None of these groups have cross-media holdings.

Table 9.1: Major Print Media Groups with Prescribed Interests¹ in Broadcasting (30 June 1986)

GROUP	PRINT	RADIO	TELEVISION
News Ltd	The Australian (National) Daily Telegraph (Sydney) Daily Mirror (Sydney) The Sunday Telegraph (Sydney) Daily Sun (Brisbane) Sunday Sun (Brisbane) News (Adelaide) The Sunday Times (Perth) Northern Territory Times (Darwin) Townsville Bulletin Country/Suburban Newspaper Interests Major Magazine Interests	3FOX (Melbourne) 4AM (Atherton)	TEN (Sydney) ATV (Melbourne)
HWT	The Herald (Melbourne) The Sun News-Pictorial (Melbourne) The Sunday Press ⁵ (Melbourne) The Courier Mail (Brisbane) Telegraph (Brisbane) The Sunday Mail (Brisbane) The Advertiser (Adelaide) West Australian (Perth) Mercury (Hobart) Sunday Tasmanian (Hobart) Geelong Advertiser Bendigo Advertiser Kalgoorlie Miner Lithgow Mercury The Manly Daily Mercury (Maitland) Country/Suburban Newspaper Interests Magazine Interests	3DB (Melbourne) 3GL (Geelong) 4AK (Oakey) ³ 4BK (Brisbane) ² 5AD (Adelaide) ³ 5PI (Crystal Brook) ³ 5SE (Mount Gambier) ³	HSV (Melbourne) ADS (Adelaide)

Fairfax	The Australian Financial Review (National) The National Times (National) The Sydney Morning Herald The Sun (Sydney) The Sun-Herald (Sydney) The Age (Melbourne) The Sunday Press (Melbourne) ⁵ The Canberra Times Newcastle Herald Illawarra Mercury (Wollongong) The Warrnambool Standard Country/Suburban Newspaper Interests Magazine Interests	2CA (Canberra) 2GB (Sydney) 2WL (Wollongong) 3AW (Melbourne) 4AY (Ayre) 4BH (Brisbane) 5DN (Adelaide) 4MMM (Brisbane) 2AD (Armidale) ²	ATN (Sydney) BTQ (Brisbane)
ACP/CPH	Country/Suburban Newspaper Interests ⁶ Major Magazine Interests	2UE (Sydney) 3AK (Melbourne) 6AM (Northern) 6PM (Perth) 6KG (Kalgoorlie) 6GE (Geraldton)	TCN (Sydney) GTV (Melbourne)

- Notes:
1. Prescribed interest defined as a shareholding of at least 15 per cent for radio and 5 per cent for television.
 2. Interest through Queensland Press in which HWT held 41.5 per cent of the issued shares.
 3. Interest through Advertiser Newspapers Ltd in which HWT held 36.57 per cent of the issued shares.
 4. Interest through Rural Press Ltd in which Fairfax held 47.17 per cent of the issued shares.
 5. Jointly owned by HWT & Fairfax.
 6. Prescribed interests defined as an interest exceeding 15 per cent of shareholdings for radio and 5 per cent for television.

Source: Compiled from information provided by ABT and various other sources.

Table 9.2: Major Media Groups (30 June 1991)

GROUP	PRINT	RADIO ¹	TELEVISION ¹
News Ltd	The Australian (National) Daily Telegraph Mirror (Sydney) The Sunday Telegraph (Sydney) The Herald-Sun (Melbourne) The Sunday Sun (Melbourne) The Sunday Herald (Melbourne) The Courier Mail (Brisbane) The Sunday Sun (Brisbane) The Sunday Mail (Adelaide) The Sunday Times (Perth) The Mercury (Hobart) Sunday Tasmanian (Hobart) Northern Territory Times (Darwin) Sunday Territorian (Darwin) Bendigo Advertiser Geelong Advertiser Townsville Bulletin Manly Daily Country/Suburban Newspaper Interests Major Magazine Interests	---	---
Fairfax	The Australian Financial Review (National) The Sydney Morning Herald The Sun-Herald (Sydney) The Age (Melbourne) The Sunday Age (Melbourne) Newcastle Herald Illawarra Mercury (Wollongong) The Warrnambool Standard Country/Suburban Newspaper Interests Magazine Interests	---	---

ACP/CPH ²	Major Magazine Interests	6PPM (Perth) 6KG (Kalgoorlie) 2UE (Sydney) ³	NTD (Darwin) GTV (Melbourne) TCN (Sydney) QTQ (Brisbane) ITQ (Mt Isa) TNQ (Regional Qld) QQQ (Remote Commercial Television Service)
Austereo Ltd	-----	2CA/2ROC (Canberra) 3FOX (Melbourne) 5SSA (Adelaide) 2DAY (Sydney) 4BBB (Brisbane) 8DN (Darwin) (25%) 4SEA (Gold Coast) (5.53%) 7TTT (Hobart) (10.45%)	-----
The Australian Broadcasting Co. Pty Ltd (Albert Family)	-----	2CC/2KIX (Canberra) 2UW (Sydney) 3TTT (Melbourne) 4BC (Brisbane) 4GR (Toowoomba) 4MB (Maryborough) 4RO (Rockhampton) 4QFM (Ipswich) (15%) 4SB (Kingaroy) (14.91%)	-----
Hoyts Media Ltd	-----	2MMM (Sydney) 3MMM (Melbourne) 3CAT (Geelong) 4GGG (Gold Coast) 4MMM (Brisbane) 6NOW (Perth) 5DDN (Adelaide) (7.69%)	-----

Table 9.2 (Cont'd): Major Media Groups (30 June 1991)

GROUP	PRINT	RADIO ¹	TELEVISION ¹
Wesgo Communications Pty Ltd	----	2GO (Gosford) 2WS (Western Sydney) 4KQ (Brisbane) 2AY (Albury) 3MP (Melbourne) 3BO (Bendigo)	----
Qintex Television ⁴ (Seven Network)	----	----	MVQ (Mackay) SEQ (Wide Bay) SAS (Adelaide) ATN (Sydney) BTQ (Brisbane) HSV (Melbourne) TVW (Perth)
Northern Star ⁴ (Ten Network)	----	----	TEN (Sydney) ATV (Melbourne) TVQ (Brisbane)
Paul Ramsay Holdings (Prime TV)	----	----	CBN (Southern NSW) NEN (Tamworth/ Taree) RVN (Wagga Wagga) AMV (Albury-Wodonga)

- Notes:
1. Prescribed interest defined as a shareholding of at least 15 per cent for radio and 5 per cent for television, figures in brackets indicate levels of smaller interests.
 2. All radio and all television interests [except NTD (Darwin)] were re-acquired in 1991 from Bond Media Ltd following the latter's failure to meet a deadline for financial commitments.
 3. Subsequently sold to ensure compliance with cross-media ownership restrictions prohibiting common ownership of radio and television services in the same market.
 4. Receivers appointed.

Source: Compiled from information provided by ABT and various other sources.

9.13 There are three aspects of the cross-media ownership rules which the Committee examined, namely;

- . the need for cross-media ownership rules;
- . whether national newspapers and magazines should be brought within the rules; and
- . proposals to change the cross-media ownership rules.

The Need for Cross-Media Ownership Rules

9.14 The need for cross-media ownership limits requires an examination, if not a balancing, of two different factors - economic and social - to find out whether the benefits outweigh the costs in both the short and medium or the longer terms.

9.15 Treasury said that the ownership of assets in more than one section of the media creates:

- . economic costs in terms of higher prices and reduced quality and quantity of product to consumers and/or advertisers; and
- . social costs in terms of concentrating political power and reducing the range of views/opinions available to the public. (Submissions p. 2833)

9.16 Treasury stated that the economic costs of cross-media ownership are arguably not very substantial and that on purely economic grounds there is little economic justification for cross-media restrictions. In its submission, Treasury stated:

The economic costs of cross-media ownership are arguably not likely to be very substantial. ... Cross-media ownership of itself does not appear to result in substantial economies of scale and scope and thus cost reductions, ie it is not obviously cheaper to run a newspaper/TV combination than to run them separately.

...

The corollary of this is that to maintain the existing cross-media restrictions would be unlikely to impose significant economic costs (though it would run the risk of good owner-managers in one medium being unable to apply their management skills in another medium, in a particular regional market).

...

Moreover, with three independent TV stations and two independent newspapers, the prospects of monopoly pricing of particular goods and services in each regional market may be fairly low. Thus on purely economic grounds, there is little justification for cross-media restrictions. (Submissions pp. 2833-34)

9.17 As to social issues, the main concern according to Treasury was that 'cross-media ownership would reduce the already small number of influential media owners in Australia and thus severely reduce diversity of information sources in society of a whole'. The submission continued:

In particular, there are currently five main owners in Australia - three television network owners and two newspaper owners. Cross-media ownership could reduce this group of five to just three (if each newspaper group was owned jointly with a television network) - a very small number in terms of most democratic, pluralist societies.' (Submissions p. 2834)

9.18 There was both explicit and implicit support for the cross-media ownership rules in other submissions. Mr Brenchley said that:

Cross-media rules are important in both lessening concentration of print ownership and generating new players in the media industry. A diversity of ownership, and hence outlets for facts and commentary, is widely regarded as essential for media in a pluralistic society such as Australia. (Submissions p. 145)

9.19 The AJA said that: 'By comparison with overseas countries, the cross-media rules were long overdue' and that they 'eliminated an important distortion in Australian media ownership'. Implicit support for the rules came from the ACTU which said the rules should be strengthened and the CLC which recommended lower limits. (Submissions pp. 816, 104 and 1047 respectively)

9.20 A majority of the Committee is convinced that the social benefits of cross-media ownership restrictions outweigh any economic costs. Treasury said that there is a real risk that 'the removal of cross-media legislation could lead to further ownership concentration of the overall media without significant offsetting economic benefits'. (Submissions p. 2838) The Committee also agrees with the view of Treasury that current cross-media ownership restrictions do not result in significant economic costs.

9.21 The Treasury view was that in the medium term appropriate trade practices legislation and removal of regulatory barriers to entry 'are an effective means of promoting diversity and efficiency in the media as a whole'. The Treasury concluded:

Accordingly, in future, if competition in the electronic media intensifies with the removal of regulatory barriers to entry, the need for cross-media regulation could be reviewed. (Submissions p. 2838)

9.22 Others did not see any need for the cross-media ownership rules if there were free entry into broadcasting. The Australian Press Council suggested that with the substantial lessening of competition test in Trade Practices legislation and with the relaxation of the legal barriers to the use of new technologies the cross-media ownership rules should go completely. (Transcript p. 1113) Mr McGuinness considered the rules to be a 'non-issue', that they 'could be abolished with no harm to anyone' if there were free entry into the electronic media. He added that even if the market could support say four major players 'they would be under challenge continually by people operating on the margins', as is the case with radio in Sydney and Melbourne. (Transcript pp. 794-97)

9.23 Since entry into the electronic media is regulated this is a sufficient cause for cross-media rules. In the United States there are few regulatory barriers to entry in the electronic media but there are cross-media rules. Freedom of entry and availability of sufficient radio frequency spectrum capacity are preconditions for the existence of a large number of players in the electronic media. By themselves, they do not guarantee such numbers. The intention behind the cross-media ownership limits is to

prevent undue influence of public opinion by the few by enhancing public access to a diversity of viewpoints, sources of news, information and commentary. It may be that sometime in the future there could be such a proliferation of players and such limited chances of high concentration because of pure or 'atomistic' competition, that the cross-media rules would be irrelevant. Until that time the Committee considers that the rules should continue.

Inclusion of National Newspapers and Magazines in Cross Media Rules

9.24 There were proposals that national newspapers and magazines be included in the cross-media rules. Mr Brenchley argued that 'magazines should be brought within the cross-media ownership rules ... (because) clearly, they are part of the national buying market'. He added that magazines should be treated as another and separate cross-media ownership area. (Transcript pp. 697, 701) The Communications Law Centre also wanted certain magazines (defined as a publication 'a substantial portion of which is devoted to news or comment on political, financial or economic matters') brought within the rules. (Submissions pp. 1048, 1040)

9.25 The CLC also proposed that newspapers be covered by the cross-media ownership rules when any of their circulation is in the broadcast area of a licensee. The view of Mr Brenchley was that 'national newspapers are wrongly excluded from cross-media ownership now'. (Transcript p. 699)

9.26 When questioned why national newspapers should not be included in the cross-media ownership rules the Department of Transport and Communications said that these newspapers 'really have a very minor

influence on the availability of sources of information in a particular area'. The Department went on to say that 'you really would not be serving the policy objectives of those rules, which is simply to ensure that there is a variety of sources from which people can choose to draw their information on news and current affairs'. The Department added that the decision taken at the time was that 'national newspapers and magazines, have an overlay (and) are an additional source of information in any particular area and, therefore, they could not be regarded as being a necessary part of the limits'. (Transcript pp. 1569-70)

9.27 The Communications Law Centre has pointed out that ACP controls the Nine Network (television), the country's strongest with a potential audience of 58 per cent of the population, eight radio stations¹, Sky Channel, the only satellite television service, and over 50 per cent of the circulation of the top 30 magazines. (Submissions p. 1048) News Limited has over 60 per cent of the market for metropolitan and national newspapers. It also has a large share of the magazine market.

9.28 The different sections of the media have several common characteristics and one of these is the power to influence public opinion. Magazines have large circulations and a larger readership. For example, the circulation of *Woman's Day* (average weekly circulation of 1.01 million) and *New Idea* (1.00 million) exceed the weekly circulation of *The Australian* (0.92 million). Magazines are widely read. Women's magazines have

¹ This figure is different to that in Table 9.2.

influenced public opinion on many issues; for example, in encouraging women to enter the workforce during World War II and in supporting the monarchy.

9.29 Although national newspapers and magazines have the power to influence public opinion, the Committee recognises the practical difficulties and inequity of introducing them into the cross-media ownership rules. A majority of the Committee considers that it would be very restrictive to prohibit the owner of a national newspaper or magazine from having interests in any television licence in Australia. An example reinforces this point. If there is a new owner of *The Australian Financial Review* or *The Bulletin* magazine who has no other media interests, it would be difficult to justify preventing this person from owning any television interests while the owner of *The Sydney Morning Herald* and *The Age* was permitted to own television licences everywhere except Sydney and Melbourne.

9.30 There is an additional objection in respect of magazines and the suggestion that the cross-media ownership rules apply only to those magazines which have a substantial portion devoted to news or comment on political or financial matters. Which magazines would be included - *The Australian Womens' Weekly*? *New Idea*? *Wheels*? *The Bulletin*? or *Dolly*?

Proposals to Change the Cross Media Ownership Rules

9.31 As can be seen from the diagram at paragraph 9.6 the prescribed interests for media within the same service are different. This has drawn criticisms of inconsistency from Mr Brenchley and the CLC. (Submissions pp. 145 and 1047)

9.32 The Department of Transport and Communications explained the basis of the 5 per cent and 15 per cent limits. It said that:

The conventional wisdom is that control of about 20% of the voting rights of a public company is likely to give actual control. A more than 15% rule, therefore, would normally give the Australian Broadcasting Tribunal notice of interests approaching control and the ability to vet the holders of those interests.

The more than 5% rule for television reflected both the greater perceived impact of television and the greater equity base of those more expensive enterprises. (Exhibit 13)

9.33 The calls for consistency have been addressed in the Exposure Draft of the Broadcasting Services Bill 1992. The proposed changes which apply to cross-media ownership restrictions are:

- . abolish cross-media ownership limits for radio;
- . prohibit companies having a prescribed media interest from controlling another company with cross-media interests in the same service area;
- . deem that a 15 per cent interest in a company will provide control unless the proposed Australian Broadcasting Authority (ABA which is to replace the Australian Broadcasting Tribunal), after investigation, determines otherwise; and
- . provide for heavy penalties for breaches.

9.34 The Explanatory Papers said that the *Broadcasting Act 1942* had a rigid approach which created loopholes for exploitation and avoidance. The Act has not kept pace with the intricate corporate structures and financial arrangements of today's global marketplace.

9.35 Mr Peter Westerway, Chairman of the Australian Broadcasting Tribunal, had this to say on control:

... control is what matters, ownership is really quite irrelevant. Ownership is a matter of counting up shares and so on but, if it does not tell you who controls it, it does not really quite matter who owns it. (Transcript p. 1509)

9.36 The control provisions in the 1992 Bill are designed to be flexible and responsive to changing circumstances while still providing clear and unambiguous rules that must be observed. According to the Department of Transport and Communications, a key element in the approach to control has been to avoid defining every possible scenario deemed to be control. The new approach requires the ABA to monitor the industry without waiting for a transaction or other trigger and empowers it to investigate and decide at any time where it considers a breach of control limit exists. (Transcript pp. 1562-63)

9.37 Heavy penalties are proposed, up to \$10 million a day, for a company as a disincentive to breaches of control limits. Given the high level of penalties proposed it is important to afford to licensees a degree of regulatory certainty about control. Section 76 of the 1992 Bill provides what

can be called a 'clearance mechanism' which allows persons to seek from the ABA a binding opinion on whether their proposal would be regarded as constituting control. (Transcript p. 1564)

9.38 There were also calls for and arguments against zero limits. Mr Brenchley agreed with the proposition that cross-media ownership limits could be brought back to zero with the existing shareholdings being quarantined or 'grandfathered'. (Transcript p. 700-01) Mr Cowley said that if there were to be cross-media rules the easiest way is to have zero limits:

If the Australian Government - whoever is the Australian Government - sustains the law as it exists that if you own print then you cannot own television, the easiest way to deal with it is to make it nil. You can either have no shares in newspapers or no shares in television. (Transcript p. 459)

9.39 The AJA, the CLC and the Department argued against zero limits. The AJA said that 'it would simply be impractical to have zero' because of the 'interlocking nature of shareholdings in the world today'. (Transcript p. 194) The CLC said that:

We have proposed a five per cent limit, rather than zero cross-media holdings, because of the likelihood of inadvertent breaches of a zero limit by investors such as major financial institutions with varied portfolios and no connection with the running of the media outlets involved. (Submissions p. 1048)

The Department said that zero limits could be:

... a potentially huge problem in a wider commercial world anyway, where large corporations and conglomerates are a way

of life ... (and) may create a whole lot of other commercial problems in the wider marketplace. (Transcript p. 1577)

9.40 Zero limits would prohibit for example News Limited from owning any shares in any company which owns one or more shares in a broadcasting company or any insurance company or bank which in turn has any broadcasting investments. For these reasons a majority of the Committee concludes that zero limits are impractical.

9.41 The CLC proposed that 'the threshold for all cross-media holdings be a uniform five per cent'. (Submissions p. 1047) The Committee notes that under the draft bill an individual or company who has less than 15 per cent and exercises control will be in breach of and place itself in danger of penalties of up to \$10 million a day for a company. Under the draft bill (Schedule 2) a person who has company interests exceeding 15 per cent in a company is, in the absence of proof to the contrary, to be regarded as being in a position to exercise control of the company.

9.42 The Committee supports the view that control should be the central issue. To fix on any figure would be arbitrary. If a company has control the cross-media ownership rules should apply. If a company has no control it cannot determine the opinions which are printed or broadcast and so there is no need for the cross-media ownership rules to limit other media holdings.

9.43 The Broadcasting Services Bill 1992 Exposure Draft excludes radio from the cross-media rules. The reason given is that:

Radio is no longer subject to cross-media limits in recognition of its maturity as an industry, the number of outlets and the lesser power to influence of individual outlets. (Explanatory Papers, 8 November 1991, p. 23)

9.44 On the other hand it can be argued that the exemption of radio militates against one of the basic policy objectives of the cross-media ownership rules, namely, to enhance public access to a diversity of viewpoints, sources of news, information and commentary.

Conclusions and Recommendations

9.45 As discussed earlier in this report, the existence of a diversity of viewpoints is an important ingredient in a democratic society. Such diversity is enhanced by diversity of ownership. The increase in concentration in the print media and its potential to reduce diversity of viewpoints is one of the major issues that has been addressed in this report.

9.46 But there are dangers in focussing too narrowly on one section of the media thereby ignoring the importance of the information market and the marketplace of ideas. Cross-media rules prevent any further erosion of diversity and are thus an integral part in preserving diversity of ownership, a sine qua non for promoting diversity of viewpoints. They can be preserved with little loss of economic efficiency.

9.47 Some members of the Committee argued strongly that a zero or 5 per cent limit should apply to cross-media ownership, but in the final analysis the Committee agreed that emphasis should be placed on whether or not control was being exercised, as proposed in the Draft Broadcasting Services Bill.

9.48 The Committee concludes that cross-media ownership rules have acted to enhance diversity of ownership in the Australian print media. The Committee recommends that:

in the current circumstances, cross-media ownership limits for radio be retained. However, the Government may need to review this matter as new technology expands the number of radio services available; and

the Government proceed with amendments to the other parts of the cross-media ownership rules in the Broadcasting Services Bill 1992 (Exposure Draft) which uses the concept of control to underpin limits on cross-media ownership and presumes that a holding of 15 per cent or more gives a person control, in the absence of proof to the contrary.

B. FOREIGN OWNERSHIP

Background

9.49 The Government's foreign investment policy encompasses the foreign ownership of newspapers. The policy 'recognises the substantial contribution foreign investment has made, and can continue to make, to the development of Australia's industries and resources' because 'capital from other countries supplements Australia's domestic savings and adds to the funds available for investment'. This recognition of the value of foreign investment needs to be tempered by the awareness that in certain circumstances foreign investment could be contrary to the national interest.²

9.50 Procedures for examining foreign investment proposals and the Government's general policy are set out in the *Foreign Acquisitions and Takeovers Act 1975* and Ministerial and Department of Treasury statements. The Treasurer is responsible for the administration of this policy and is advised by the Foreign Investment Review Board (FIRB).

9.51 The Government expects the following categories of proposals by foreign interests to be submitted for examination prior to implementation:

- (a) proposals falling within the scope of the *Foreign Acquisitions and Takeovers Act 1975* which include -

² The information in paragraphs 9.49 to 9.52 is based on: Department of the Treasury, 1990.

- acquisition of shareholdings of 15 per cent or more in Australian companies that have total assets valued at more than \$5 million;
 - takeovers of Australian companies and businesses by means other than the acquisition of shares, for example, by the purchase of assets or interests in assets, where the total assets of the target company or business are valued at more than \$5 million;
- (b) investment proposals not coming under the *Foreign Acquisitions and Takeovers Act 1975* but falling within certain categories which include -
- proposals irrespective of size in the media sector.

9.52 The Department of the Treasury publication, *Australia's Foreign Investment Policy, A Guide for Investors*, says that:

Foreign investment in mass circulation newspapers is restricted. All proposals by foreign interests to establish a newspaper in Australia or to acquire an existing newspaper business are subject to case-by-case examination irrespective of the size of the proposed investment. Approval is not normally given to proposals by foreign interests to establish ethnic newspapers in

Australia, unless there is substantial involvement by the local ethnic community and effective local control of editorial policy. (Department of the Treasury, 1990, pp. 5-6)

9.53 The AJA said that in 1986 the Australian media was substantially Australian owned. (Submissions pp. 811-12) Today (1992) News Limited has over 60 per cent of the market (based on circulation) for metropolitan and national newspapers. The Chief Executive of News Corporation, the parent company of News Limited, is an American citizen. The major shareholder of the John Fairfax Group is a Canadian. Australian Provincial Newspapers (APN) has close to 30 per cent (based on circulation) of the market for regional daily newspapers. APN is owned 15 per cent by Independent Newspapers, Ireland's largest media and communications group in which the Chairman, Dr A J F O'Reilly, holds a 28 per cent interest. The remaining 85 per cent of APN is owned by the O'Reilly Trust. (Submissions p. 229)

The FIRB Process

9.54 The Foreign Investment Review Board is an advisory body which was established in April 1976. It consists of a chairman and three members, one of whom is the Executive Member of the Board and also the head of the Finance and Investment Division of the Department of the Treasury which provides administrative services to the Board.

9.55 The FIRB has several major functions. One of these is to examine proposals by foreign interests for investment in Australia and to make recommendations to the Government (i.e. the Treasurer) on those proposals.

9.56 There are several distinct phases of the FIRB process - notification, examination, reporting and the Treasurer's decision. The FIRB process commences with the notification of proposals by the relevant parties to the Treasurer, at least for proposals falling within the 1975 Act.

9.57 Examination of the proposal is the second phase. Treasury said that:

In considering the national interest implications of a foreign investment proposal in the newspaper industry, the Treasurer would have regard to a range of relevant issues, including the special nature of the industry, the effect on concentration and competition, and any concerns in the community which warrant attention. (Submissions p. 2835)

9.58 Mr George Pooley, First Assistant Secretary, Finance and Investment Division and Executive Member, Foreign Investment Review Board said that the FIRB would look at all the issues that have been publicly discussed, the degree of foreign ownership, the degree of foreign control, the benefits of the proposal and any different views on those benefits. (Transcript p. 1614) The second reading speech of the Foreign Takeovers Bill (1975) said matters which may be taken into account include the net economic benefits of the takeover such as competition, productive

capacity, new markets, quality and range of products and so forth. (House of Representatives, *Debates*, 22 May 1975, p. 2678)

9.59 Mr Pooley said that all factors taken into consideration by the FIRB have to be weighted. The FIRB makes some recommendations, but they are put in such a way that it is for the Treasurer to do the weighing'. The FIRB report, made in writing to the Treasurer, is very much a collection of information with analysis and evaluation. During the FIRB examination the Executive Member may have discussions with the Treasurer. This member is also the intermediary between the Treasury and the FIRB. (Transcript pp. 1617-18 and 1624)

9.60 The Treasurer's decision is communicated to the potential foreign investor and this is the last phase of the FIRB process. Mr Pooley said that it is normal in many circumstances to explain to the foreign investor why the proposal was not approved. He added that 'there have been a number of instances when the Treasurer of the day has decided to give no reason at all'. For major cases there would be a public statement but sometimes the Treasurer would hold a press conference. (Transcript pp. 1613 and 1621)

9.61 Many proposals for foreign investment in Australia are submitted to government each year. More than 2 900 proposals for investment were submitted to the Government during 1989-90. Of these 232 were withdrawn, 2 620 were approved and 61 were rejected. Large proposals accounted for about two-thirds of the total proposed investment. There were 105 proposals each with an expected investment of more than \$50 million and they accounted for \$15 billion of expected investment. (Department of

the Treasury, 1991, p. vi) The Committee understands that decisions on the smaller proposals are made by the Minister Assisting the Treasurer.

9.62 The Committee's Inquiry is into the print media and it would be useful to describe the FIRB process as it applied to the two foreign bidders for the Fairfax newspapers, Tourang Limited and Independent Newspapers PLC.

9.63 Some proposals for foreign investment in the print media have been rejected in recent years. In 1988 the Hon. Paul Keating MP, when Treasurer, refused approval for a Malaysian company to buy half of the now defunct Perth *Daily News*. He is also reported as stating that approval would not be given for (the late) Mr Robert Maxwell to take over *The Age* in 1988 or to obtain a 49 per cent holding in West Australian Newspapers in 1990. (Submissions p. 812)

9.64 There was also speculation in the media that Mr Warwick Fairfax, the then owner of John Fairfax, was attempting to get one of the quality newspapers in the United States to buy into the Group. It was reported in 1990 that the Pearsons group, the London publisher of the *Financial Times* would buy *The Australian Financial Review*. (*The Australian Financial Review*, 13 December 1990)

9.65 When examining the proposals from Tourang Limited and Independent Newspapers PLC, the FIRB liaised with the Australian Broadcasting Tribunal and the Trade Practices Commission, had the benefit of public comment made by supporters and opponents of each of the foreign bidders for Fairfax and had contact with the adviser to the receiver. As the

process developed, the Executive Member of the FIRB had a number of discussions with the then Treasurer, the Hon. John Kerin MP, because of the unusual nature of the proposals, and also with members of the FIRB. (Transcript pp. 1615-16)

9.66 The Treasury submission referred to a resolution by the Federal Caucus of the Labor Party to oppose foreign voting equity exceeding 20 per cent in relation to the then current bidding for the Fairfax Group. (Submissions p. 2835) This resolution set the framework for decisions by Treasurers Kerin and Willis.

9.67 The proposal by Independent Newspapers PLC which had 20 per cent of voting shares to be held by Dr O'Reilly was accepted by Treasurer Kerin. The first proposal by Tourang had 20 per cent voting shares by the UK Daily Telegraph PLC, 15 per cent non-voting debentures that were to be owned by Hellman and Friedman and an estimated 5 per cent by the non-voting US junk bond holders. That made a foreign economic interest of about 40 per cent, both voting and non-voting taken together. It should be noted that by this time Mr Packer had withdrawn from the Tourang syndicate. The first proposal by Tourang Limited was rejected by Treasurer Kerin who did not make a public statement but instructed the Executive Member of the FIRB to tell Tourang that the proposal had not been accepted.

9.68 In the second Tourang proposal the Daily Telegraph had 14.9 per cent voting shares (reduced from 20 per cent), Hellman and Friedman's percentage of non-voting debentures was reduced from 15 to 5 per cent and

the estimate for junk bond holders stayed the same at 5 per cent. This proposal was accepted by Treasurer Willis. (Transcript pp. 1622-23)

9.69 *The Australian Financial Review* reported (23 January 1992) that Treasurer Dawkins rejected a request from Hellman and Friedman to increase its non-voting debentures from 5 per cent to 15 per cent.

Attitudes to Foreign Investment

9.70 There were strongly opposing views to foreign investment ranging from total opposition to complete acceptance.

9.71 Several arguments were advanced opposing foreign ownership and control of newspapers in Australia. Mr David Bowman said:

It seems absurd to allow someone who owes allegiance to another country to exercise in Australia the political power and influence that possession of Australian newspapers can bring. (Submissions p. 312)

9.72 Mr Fraser was opposed strongly to the foreign ownership and control of Australian newspapers. The reasons he advanced were related to concern about the cultural impact of foreign investment in the print media, its influence and to conflict of interest. Mr Fraser said:

To have something of Australian origin is important for identity, culture, and maybe it is even important for Australian pride. We also need to have our news and world events interpreted through Australian eyes. That will not necessarily happen if, through increasing internationalisation of the media, for

example, or increasing foreign ownership of the media in Australia, more and more syndicated articles and more and more things come from overseas. ... I think it is wrong for the media in Australia to be owned by foreigners because Australia ought to be interpreted through Australian eyes.

...

Again, if the ownership of Australian newspapers or other media is significantly in American hands and if those owners want some arrangement from the United States because of other commercial relationships, then it is so easy to say to the administration, 'Do not worry about that little government down in Australia. I own most of the newspapers that are published there. I can make sure that that Australian feeling, that Australian identity, does not get much support from the public'. It could make it very difficult for a government to do what it ought to do in terms of looking after Australia's interests in a world that is very competitive, tough and often very difficult. (Transcript pp. 904-05, 934 and 905-06)

9.73 Mr Fraser also said that the practice in many other countries, either by convention or law, is to maintain media control for the nationals of that country. This is largely true in the United States:

I do not think an Anglo-Saxon would have much chance of buying *Le Monde* or the Italian equivalent. If any non-American tried to buy the *Wall Street Journal* one would find that the national security legislation - which is all encompassing and does not go to just military matters or security matters of that kind - could be used. (Transcript p. 903-04)

9.74 In their submissions, the Australian Journalists' Association and the Communications Law Centre advanced further arguments. These included the critical roles - both political and cultural - played by the media. They also argued that a locally owned press is more accountable. The AJA

said that the media 'are the conduits of Australian cultural life and it threatens us with a crippled colonial culture for those conduits to be in the hands of foreigners'. The CLC said that an 'English - speaking nation with as small a population as Australia's must retain control of its media to ensure its culture is not swamped by foreign information and entertainment'. (Submissions pp. 813 and 1049)

9.75 Some of these arguments were dismissed virtually out of hand by other witnesses. Mr McGuinness described as 'nonsense' the view that foreign owners would side with their countries when there were national conflicts of interest, because they would not have 'a prayer of success in Australia'. (Transcript p. 792) Mr Cronin described as 'totally absurd' the 'notion that foreign ownership could in some way change the Australian character of the newspaper'. He went on to say :

I cannot see how an owner who was simply employing these same people to do the job would change the character of the paper. If he were to bring in presumably journalists and editors from overseas to run the paper, I think he would then run the risk of alienating the readers.

...

I think if you were to produce a paper like the London *Sun* or the London *Mirror* in Perth, you would not sell very many. You would outrage the readers and they would not go for that sort of paper. I think that argument in terms of foreign ownership is ridiculous. (Transcript p. 1404)

9.76 Mr Brenchley did not 'shy away from foreign ownership of newspapers in Australia'. He said:

I would personally welcome foreign owners of newspapers in Australia. I think it would be healthy for diversity; it would be healthy to broaden our minds in Australia and make us a bit more international in the way we look at life. I think we have a somewhat insular view that this is necessarily bad. I do not share that view at all.

...

The thing about foreign owned newspapers in Australia is that they cannot take them away. Moreover, the readers do not have to agree with them or, indeed, buy them. You go out and spend your money and buy a newspaper. You can exercise your right and not buy if you want to. (Transcript p. 720)

9.77 Some advocated the complete free entry of foreigners into the print media. Mr Kerry Packer said that other than Australia 'nowhere in the English-speaking world are you restricted from owning newspapers'. He said that:

Rupert Murdoch, the Australian, went to England and was allowed to buy newspapers in England; went to America and was allowed to buy newspapers in America; went to Hong Kong and was allowed to buy newspapers in Hong Kong; went to Australia and was allowed to buy newspapers in Australia. Rupert Murdoch then became an American. He has papers in Australia. He has the same thing. It did not matter about his nationality at all. You have Conrad Black, Canadian, who has 150 newspapers in America, the *Daily Telegraph* in England and the *Jerusalem Post*, or whatever it is, in Israel. Nobody is trying to stop him from owning newspapers anywhere. It is an

absolutely, completely open register. You have Maxwell owning a paper in America and one in England - a Czech.³ (Transcript p. 1177)

9.78 In October 1990 a national opinion poll on print media ownership was conducted by Irwin Saulwick and Associates. The poll had a sample of 1 000 persons and asked three questions - whether the government or the market should determine who can own newspapers and magazines in Australia, whether an organisation which owns a daily newspaper in a capital city should be allowed or not allowed to own a television station in the same city and whether citizens of other countries should be allowed or not allowed to own daily newspapers in Australia.

9.79 The poll showed opposition to foreign ownership to be widespread. Seventy-one per cent of people said it should not be allowed and only twenty-six per cent said it should. The figures are said to replicate almost exactly the results of an 1988 Saulwick Poll when similar questions were asked on foreign ownership.⁴ The level of opposition to foreign ownership was consistent across the political spectrum and in city and country. (*The Age*, 16 November 1990, *The Sydney Morning Herald*, 16 November 1990)

³ The Committee understands that the late Mr Robert Maxwell was a British citizen.

⁴ Nearly two-thirds of those interviewed said that market forces, not governments, should decide who owned newspapers and nearly as many were prepared to allow newspapers and television stations in the same city to be owned by the same person.

Proposals to Regulate Foreign Investment

9.80 Several submissions proposed that there be strict limits on foreign investment. The CLC opposed further foreign control of the Australian print media in the absence of diversification of control of existing titles and limits on total holdings of any one owner.

Pending such reform, the *Foreign Acquisitions and Takeovers Act* should be amended to state explicitly that foreign holdings in the print media will be limited to 20 per cent and, in any case, will preclude foreign control if that is sought to be achieved by any other means. (Submissions p. 1048)

9.81 Both the CLC and the AJA advanced arguments against foreign control of the print media - see paragraph 9.74. The AJA argument for strict limits was based on the 'logic of consistency of applying' the foreign ownership limit of 20 per cent in broadcasting to the print media. The AJA recommended that:

... an unambiguous formulation be adopted that no foreign individual or corporation be entitled to own more than 20 per cent of any newspaper, magazine or other periodical.

... the Foreign Takeovers Act be amended to reflect this formula. (Submissions p. 815)

9.82 Several witnesses argued that a key issue in examining foreign investment proposals was the promotion of diversity of ownership. For example, Mr Kennan said that the Victorian Government was 'not xenophobic about foreign ownership ... diversity and concentration ... is the

primary principle'. He added that the 'quality of a foreign investment ... should be taken on its merits'. (Transcript pp. 566 and 605)

9.83 Other witnesses used examples to support their point. Mr Noonan, who did not see the need for arbitrary limits on foreign ownership said that a new London newspaper, *The Independent*, 'is often held up as an example of a good newspaper that is providing a greater diversity of opinions and views (yet a) substantial shareholder in that company is El Pais of Spain'. (Transcript p. 868)

9.84 Mr Suich said it was 'not ... necessarily ... a bad thing' if the Fairfax papers should get split up and the *LA Times*, the *Washington Post*, *The Independent* of London or even the *Daily Telegraph* ended up with significant shares of those papers. Mr Taylor, who 'from a nationalist point of view ... would like to see all media in this country owned in this country', said his 'nationalistic fervour would almost certainly die a few per cent' if the *New York Times* wanted to make a bid for an Australian newspaper. (Transcript pp. 1272 and 1127-28)

9.85 The Treasury submission argued that 'restricting foreign ownership too strictly may impose significant costs on the newspaper industry and, indeed, reduce competition and diversity in the longer term'. (Submissions p. 2838) Treasury describe the anti-competitive effects of foreign ownership restrictions in the following way:

As entry into the newspaper industry is both costly and risky, foreign ownership limitations have the potential to significantly reduce competitive forces.
(and)

... imposing highly restrictive limits on newspapers may lead to a further reduction in competition ... and the prospects are diminished of increasing newspaper diversity through the establishment of new (at least partly foreign-owned) papers.
(and)

At worse, restricting foreign ownership too tightly may contribute to some newspapers failing and new entrants not emerging, thus stifling an important avenue for encouraging print media diversity. (Submissions p. 2836)

Conclusions and Recommendations

9.86 The Committee considers that it is contradictory to seek increased diversity of ownership on the one hand whilst at the same time prohibiting any foreign investment in Australian newspapers. Such a ban is not practical. It could reduce potential foreign investment and thus negate possible benefits such as the injection of capital, expertise and technology, better management, greater efficiency and increased quality of product.

9.87 The Committee supports limits on foreign ownership or control of Australian newspapers and magazines.

9.88 The Committee rejects both a total ban on foreign investment and uninhibited free entry of foreign investors into the print media. The choice is to recommend either fixed limits (as is the case with the electronic media) or limits which can be relaxed in circumstances where it is concluded that it is in the national interest to allow greater foreign investment.

9.89 The Committee concludes that all proposals for foreign investment in the print media should continue to be subject to examination by the FIRB to ensure that Government has relevant analysis and advice on the proposals.

9.90 The Committee recognises that the present 20 per cent limit on foreign ownership is an arbitrary figure. While it is consistent with other arbitrarily determined limits (as for television) it is of concern to some Members of the Committee that it has become a benchmark figure. The best reason for using such a figure is to act as a guideline for prospective investors which alerts them to the important public policy considerations in this industry. The 20 per cent limit should be viewed in this context.

9.91 On balance the Committee concludes that subject to normal national interest requirements proposals with up to 20 per cent foreign control should be approved. Proposals involving higher levels of foreign control should be approved only if the government believes that a strong case has been made that it is in the national interest or other arguments apply. One such argument could be that the newspaper is in danger of ceasing production.

9.92 A very large number of proposals for foreign investment are submitted to government every year. For major cases the Treasurer makes a public statement. (see paragraphs 9.60 and 9.69) Given the importance of the print media, the Committee considers that the Treasurer should always publish his reasons for accepting or rejecting proposals for foreign investment in the print media. An appropriate recommendation is made.

9.93

The Committee recommends that:

- . the Foreign Investment Review Board continue to examine all foreign investment proposals in the print media;**
- . Government guidelines for foreign investment in the print media be amended to show that, subject to the normal national interest requirements, proposals with up to 20 per cent foreign control be approved;**
- . for all proposals above 20 per cent a case would have to be made that the proposal is in the national interest or that special arguments (e.g. failing company) apply; and**
- . the Treasurer publish reasons for accepting or rejecting foreign investment proposals in the print media.**

C. IMPACT OF NEW TECHNOLOGY

9.94 The impact of technological change on the print media was raised in two different contexts in the submissions and evidence before the Committee - first, the influence of technological change on production processes and economies of scale; second, the impact of new developments in communication technologies on existing services, such as broadcasting, and on the creation of new services which are likely to be competing for audiences with print media. In addition, new technology raises many other issues including individual freedom, privacy and regulation and control of new services. However, such issues were beyond the scope of this Inquiry and were not dealt with by the Committee.

9.95 A brief outline of the impact of technological change on newspaper production was provided in the submission by News Limited:

Australian newspapers used printing and production methods dating from before the turn of the century until the 1970s, when rapid advances in technology transformed the industry. Since then, journalists' pen and paper, printers' hot-metal linotypes and the cumbersome plates for the presses have faded into history as newspapers embraced these new developments.

Since 1980, almost all stories for News Ltd publications have been written by reporters and processed by sub-editors by computer. Pictures are computer enhanced to achieve the best possible reproduction, and artists have thrown away their brushes in favour of the Apple Macs.

Phototypesetters replaced hot metal in the composing room from about 1980. New technology today will allow sub-editors to create a complete newspaper page on screen (pagination)

and then send it direct to phototypesetting, the step before plates are made.

New-age computers will also allow sub-editors to concentrate on the story instead of being distracted by what can be a bewildering series of computer commands.

Digital cameras, which can move pictures direct to computer, have been developed and will soon be suitable for newspaper use.

Facsimile transmission has revolutionised newspaper production. It made possible the printing of *The Australian* in more than one centre from the late 1960s. News spent \$5 million in 1987 to upgrade its national fax network. This network facilitated the (corporation's) national advertising booking system. ... And it will allow transmission of news pages from city headquarters to the new multi-million dollar printing plants in Adelaide, Melbourne, Sydney and Brisbane.

These offset plants will print newspapers of a quality and colour capability never before seen in Australia.
(Submissions pp. 369-70)

9.96 The elements of new technology already introduced by News Limited are not too distant from the 'future newspaper' described by Anthony Smith in his book *Goodbye Gutenberg: The Newspaper Revolution of the 1980s* which was published in 1980 predicting that:

The (future) newspaper ... will start with the newsroom and advertising staffs' feeding copy through video-display units (vdt's) into a computer, where the material, including photographs, will be arranged and edited electronically into newspaper pages with the help of a larger set of vdt's. The computer will then automatically drive a plate maker, which functions with laser beams, to create the necessary printing plates; it simultaneously takes readings off the plates to guarantee the correct setting of the controls on the presses to

which the plates pass automatically. The presses are equipped not only to print the copies as required but also insert preprints and advertising throwaway sheets at the same speed as the press run itself. The ultimate system also bundles and wraps the completed newspapers and delivers them, addressed, to the trucks allocated to delivery in each zone. (Smith, 1980, pp. 85-86)

9.97 The main impact of these innovations appears to have been on the production and distribution processes and to a lesser extent on information gathering. As the above summary points out various traditional activities have been totally replaced by the use of computers. Phototypesetting, for example, has replaced the traditional linotype setters, proofreaders and compositors. Virtually all these functions are now performed by journalists and sub-editors on a computer terminal. Similarly, the transmission of finished pages by facsimile does away with the need to transport bulky finished newspaper copies. By facilitating local printing, facsimile transmission has improved delivery times in distant centres. The impact on employment in other areas such as sales and administration has been relatively small.

9.98 The video display unit has become the tool of trade for journalists and editors. Journalists prepare their stories directly on a VDU and may move those stories electronically between themselves and sub-editors. All the necessary text manipulations and layout (editing, correcting, transposing, rearranging lines of print, placing advertisements, etc.) are also performed directly on VDUs. When the story or page layout is complete it is stored electronically ready to be recalled on a VDU screen for phototypesetting. The complete text for a newspaper is thus prepared at a central location with inputs from journalists and editors who are not

necessarily at the same location. Finally, the complete text is distributed electronically to one or more locations for printing.

9.99 Paradoxically, the changes in technology have had two diverging effects on barriers to entry. For small print run publications the cost of entry to the industry has declined. However, cost of entry for large metropolitan newspapers has increased significantly through the need to install state of the art computer systems and colour printing facilities. Mr Reynolds told the Committee:

The barrier to entry for smaller newspapers is much less than it was with the change in technology and in desktop publishing.

...

The initial cost of the plant and of the technology of getting into large-scale metropolitan newspapers is very high indeed - witness the sort of cost structure that it is publicly stated that News Limited is involved with in re-equipping its plants throughout Australia. (Transcript pp. 412 and 418)

9.100 Mr Suich conveyed a similar impression:

... both the new desktop publishing technology and the highly competitive nature of the printing industry in Australia make it relatively simple to produce small newspapers. ... the capital requirements of investing in newspaper presses to produce large newspapers - that is, city-wide dailies or nationals or even city-wide weeklies - is such as to be pretty large. (Transcript p. 1261)

9.101 Magazine production has also benefited from technological change. Desktop publishing technology, for example, has substantially reduced production costs and has brought a 'professional look' to many small circulation newsletters.

9.102 With regard to new technology, the major concern raised with the Committee was the expectation that rapid development of electronic information services could erode the market for newspapers.

9.103 Messrs Fred Kenyon and Des Morton for News Limited predict that:

In the next 10 years it is likely the distinction between different media types will become increasingly blurred as publishing companies begin to make their product available through a variety of new electronic delivery systems and consumers become more familiar with computer technology. (Submissions p. 1585)

9.104 Although newspapers are likely to undergo significant change in the years ahead, they are unlikely to disappear as an information medium in the foreseeable future. In this regard, Dr Brown remarked:

From most of the studies I have seen - I tend to agree with the general thrust of them - there will still be a major media that we now call newspapers; that is, a daily publication in printed hard copy. Despite all the advances in electronic communication in the foreseeable future, it appears that we will still have that form of media. So my guess is, backed by a number of studies in the area, that that form of media will not be overtaken in the foreseeable future. (Transcript p. 1000)

9.105 It would appear that the major newspaper publishers in Australia have reached a similar conclusion. News Limited told the Committee that it was 'in the middle of \$1 billion capital expenditure program, the largest it has undertaken in Australia'. (Submissions p. 371) The bidders for the Fairfax groups appearing before the Committee also indicated their commitment to large capital expenditure to re-equip the existing production facilities. It is highly unlikely that such large investments would be undertaken in a moribund industry.

9.106 Undoubtedly, new electronic services competing with existing media, will be developed. Subscription television (Pay TV) is on the horizon. The number of radio services is expanding. Video recorders have already achieved a high rate of penetration in Australian households and personal computers are becoming very popular.

9.107 Information delivery systems are also changing rapidly. The second generation of AUSSAT satellites scheduled to be in place later this year will have capacity to provide television, audio and data services directly to the home. Optical fibre is already in place on major telecommunication trunk routes and is planned for the central business districts of Sydney and Melbourne. The extension of optical fibre links to households is likely to commence in the next decade and will provide consumers with the capacity to access a multitude of services.

9.108 Advances in transmission technologies will also impact on the availability of services. These advances will allow greater and more intense

utilisation of the broadcasting electromagnetic spectrum. Not only will they lead to more services but also the quality of the available services will improve.

9.109 These developments will offer both challenges and opportunities to the print media. Messrs Kenyon and Morton gave examples of new electronic information services already being offered to consumers by newspaper organisations overseas, e.g. electronic classifieds. (Submissions pp. 1602-04) They concluded that: 'The basic laws of supply and demand will impel newspaper companies to be in the forefront of these changes by rapidly expanding the means by which they deliver information'. (Submissions p. 1606)

9.110 What do these changes mean for the print media and the community? The new technologies are not the first to challenge the print media. Both radio and television were regarded as potential threats. Those 'threats' were met by the direct involvement of print media in broadcasting. The new challenges facing the industry also offer many opportunities for the delivery of new information services. With their well developed information repositories and substantial strengths in information gathering, print media industry operators have many advantages and are well placed to participate in the delivery of the new services in response to consumer demand. Telecommunication deregulation has already removed restrictions on the provision of value-added services, such as information services, and should continue to provide opportunities to willing participants.

9.111 The current situation is well summarised by Anthony Smith as follows:

The newspaper medium has been in this condition before. Every century or so this important carrier of social information has undergone a major technical transformation and has been reorganised financially and juridically; on each occasion it seemed as if the form in its traditional guise was on the verge of collapse, but quite quickly it became apparent that the process at hand was one of renewal rather than reversal.

If one glances back over the history of this medium as if it were recorded on a fast-moving film, one would witness a constant and progressive gathering of different types of information into a single form. The newspaper has grown bigger and bigger as a response to the increasing variety of tastes and interests within its audience. After three and a half centuries this process is reaching its culmination, and the next technological stages in newspaper history and in the history of communication devices in general must lead to the stripping away of some forms of information from the newspaper and to their transmission to readers in other ways. One can look at it a different way and argue that the dividing lines between different print media, ranging from the broadsheet to the newspaper, the weekly and monthly magazine, the paperback, the pamphlet, and the hard-cover book, are all shifting as a result of opportunities offered by new techniques and changing markets. (Smith, 1980, p. 319)

9.112 For the community, the technological changes will result in an array of new services as well as a significant expansion of traditional services. The barriers to entry in the provision of value-added communication services are likely to be lowered. The future market is likely to be characterised by stronger competition for audiences and by a greater diversity of services. As services expand, the more diverse needs of consumers are likely to be satisfied and greater emphasis is likely to be placed on niche markets. Small

specialist information providers are likely to emerge and play a greater role in the market. The creation of smaller markets could mean that the power of major media groups to influence public opinion may be diminished.

MICHAEL LEE, MP
Chairman

March 1992

DISSENTING REPORT

by Mr W Smith MP, Mr P Costello MP, Rt Hon. I Sinclair MP,
Mr P Shack MP and Mr A Somlyay MP

It is known this Committee was created to meet an internal ALP political problem that arose at the National ALP Convention of 1991 in Hobart. It was created for the wrong reasons at the wrong time. The expansion of the members of the Committee from 10 to 12 was to humour the 'factions' within the ALP. A feature of the Inquiry was the necessity of the ALP to accommodate these factional imperatives.

The dissenters entered into the Inquiry with the knowledge that the reason for it, and the climate in which it was to proceed, was driven by blatant political considerations beyond the normal standards for such Committee work of the Parliament of Australia.

The nature of our system of government meant our participation was 'under protest' as was outlined in the Parliament by the Deputy Chairman on 22 August 1991 and on 26 February 1992 at the time of its extension.

The dissenters participated in the hearings of witnesses and the preparation of the report. Our fundamental dissent is that the Inquiry system of the Parliament of Australia has blatantly bowed to the needs of internal party disputes. This is a precedent that does not augur well for the proper functioning of our Parliamentary democracy.

On the substance of the Inquiry we have determined to briefly record dissent on several major issues upon which the majority reached agreement. The extent of submissions and work of the Committee Secretariat is appreciated by the whole Committee.

The notoriety of events during the course of the Inquiry focussed national attention on deliberations of this Committee and was a cause for much comment publicly on the role of the Committee. It should be clear that this Committee did not (and could not) determine the outcome of the Fairfax sale. As it transpired, the existing legal regime did in fact operate, not to universal satisfaction, nevertheless it did work. The Committee, in an inappropriate manner, was absorbed in a matter in which it should not have been involved. A 'sideshow' was created to satisfy ALP factional sensitivities to the detriment of the Committee system of the Australian Parliament.

The matters upon which we dissent are as follows:-

1. Cross-Media Rules for Radio
2. Foreign Investment
3. Bureau of Transport and Communications Economics research role
4. Chapter 7: Improving Competition and Diversity

1. **Cross-Media Rules**

The cross-media ownership rules are an adjunct to competition policy. We have supported the principle of such rules given acknowledged concentration in the media industry. However, it is but a transitory requirement of public policy that there be such rules as over time the

industry will more correctly become subject to the broader competition policy legislative requirements under Trade Practices legislation.

Most comment on the current Draft Broadcasting Services Bill has been directed formally to the Government by interested parties. The Government has yet to finalise its position on the Draft Bill.

We dissent from the Committee recommendation that the cross-media rules as they relate to radio be maintained. In common with the draft Broadcasting Services Bill we believe cross-media rules should no longer apply to radio. This is in recognition of the dramatic technological change taking place in radio and the mature nature of the industry. It should be noted that on this crucial issue the Committee did not receive a detailed submission from the radio industry. In our view this matter should be subject to greater investigation prior to a final position of policy being established.

With regard to other aspects of cross-media rules, the proposed change in the Broadcasting Services Bill to explain 'control' determinations is far preferable to the existing complex and arbitrary arrangements and is more reflective of commercial reality.

2. Foreign Investment

We do not believe the proposed 20 per cent limit as put forward by the majority is appropriate. In our view, each application ought to be dealt with on a case-by-case approach. The underlying test ought to be that where any proposal manifestly leads to a greater increase in market concentration and a decrease in competition it should not enjoy support.

We agree with the majority recommendation that the Treasurer publish reasons for decisions to accept or reject Foreign Investment Review Board advice. We hope the Government will give effect to this and release details of the most recent of its contradictory decisions relating to foreign investment applications. The harm done to the Australian investment climate by recent events should not be under-emphasised. A consistency of approach is necessary, not a political whim as the Government's most recent actions illustrated for all the world investment community to see.

3. Bureau of Transport and Communications Economics (BTCE)

The opinion of the majority that the BTCE undertake on-going research into the print media industry, although not a formal recommendation, is rejected. While it is recognised that a 'line of data' on print media should be more readily available, perhaps via the Australian Bureau of Statistics (and indeed this was a recommendation of the Griffith's Inquiry, *Mergers, Takeovers and Monopolies*) we do not agree that a continuous rolling inquiry by a government-funded body such as the BTCE is justifiable or appropriate.

4. Chapter 7: Improving Competition and Diversity

The principal recommendation of Chapter 7 is that there be a new statutory test 'for print media mergers'. It is important to note that this recommendation is directed at the merging of corporations, not papers. The merger of papers within the one corporation would be unaffected.

The most far-reaching acquisition in the print media in Australia in recent times was the 1987 acquisition of the Herald and Weekly Times (HWT) by News Limited. It occurred under the current (post 1977) 'dominance test' in Section 50 of the Trade Practices Act. The informed opinion provided to the Committee was that the acquisition would not have been prevented had a different 'substantial lessening of competition' test applied, nor would different terms from those actually imposed have been secured if that had applied.

The relevant markets in the print industry were found to be the geographic, state or metropolitan areas where HWT newspapers circulated. In these markets, after divestment in Brisbane and Adelaide, substituting one owner of HWT shares with another (News), led neither to dominance nor substantially lessened competition.

If the acquisition of HWT by News Limited is seen as a rationale for a different merger test, it is no rationale for a 'substantial lessening of competition' test.

We believe that the misconception that the current s.50 allowed this acquisition - whereas the previous one would have prevented it - has coloured the thinking of the Committee and is the primary reason for the recommendation for a changed test in relation to the print industry.

The Committee Report argues [7.100] 'further decreases in competition would not be ruled out totally if the current merger threshold test were retained'. The point is, however, whether they would be ruled out totally by the different test proposed. The answer is no. A changed test would not

produce the outcome of totally ruling out any further decreases in competition. Indeed why should further mergers be totally ruled out in any event? The majority apparently does not want this because it proposes authorisation for further mergers. This line of argument does not make out the conclusion that a new test is necessary.

There is no precision in differentiating the current test from the one the majority proposes. The current test has now been the subject of Court interpretation and has been interpreted more broadly than many thought. A new test would bring uncertainty - it would take several years for litigation to amplify its meaning - and there is no clear answer as to what transactions it would allow (which are currently prohibited) and what transactions it would disallow (which are currently permitted). We feel that the majority has proposed increased uncertainty without any coherent explanation of how the new test will bring materially different (and better) consequences.

The Report argues [7.114] that over time 'the tighter merger test will lead to increased competition'. Plainly it will not. Anti-merger provisions are designed to prevent numbers in an industry declining by merger. They are not designed to produce increasing numbers in an industry. This form of overstatement illustrates the magical hopes which are being invested in a new merger test. Vesting false hopes in such a test will lead to disappointment.

The promotion of competition involves larger questions such as market size, profitability, barriers to entry, availability of investment - matters covered elsewhere in the report. One thing that would help rather than hinder new owners in the print industry would be regulatory simplicity and legal

certainty to facilitate long-term decision making and investment. The time and cost of coming to understand, comply with, and get regulatory approval is a cost which diminishes rather than enhances competition. A highly complicated regulatory system also closets existing players. If the existing market is to be as competitive as possible then the existing players must not be shielded from competitive forces.

The introduction of mandatory pre-notification of proposed mergers and acquisitions, and new tests to stop mergers or acquisitions, all add to the comfort zone of existing proprietors. It makes it more complicated, more time consuming to make a bid for an existing proprietor. It increases the avenues they can take to defend themselves against challenge. It works in favour of status quo not change.

We believe the existing proprietors should not be shielded from competitive forces. We have reservations about the proposed mandatory pre-notification as a result.

We also have serious reservations about the role the majority of the Committee proposes for the Trade Practices Commission in authorising mergers which substantially lessen competition. The Committee proposes that in giving authorisations the likely impact of the merger on:-

- (i) free expression of opinion;
- (ii) fair and accurate presentation of news;

be taken into account.

The Trade Practices Commission has the predominant role of preventing trading practices which injure consumers through price fixing, resale price maintenance, misleading and deceptive conduct etc. It has no expertise in adjudication on whether there is fair and accurate presentation of news, or the likely impact on new ownership of free expression of opinion.

We are concerned that a Government-appointed body with coercive powers should be delegated such a sensitive task. We have no concern with the Commission continuing to handle authorisations on competition grounds - as it does at present. We have serious disquiet in extending its obligation into more nebulous, contentious areas where it has no professed expertise.

We dissent from the recommendations in Chapter 7.

Warwick Smith MP

Peter Costello MP

Ian Sinclair MP

Peter Shack MP

Alex Somlyay MP

March 1992

DISSENTING REPORT

by Rt Hon. Ian Sinclair MP

While the background to this Inquiry suggests its origin in community concern for the increasing concentration of media ownership, its genesis was more subjective.

The National ALP Conference debate in Hobart in 1991 concentrated particularly on the alleged implications of the Tourang Limited bid for the John Fairfax Group with the proposed 14.9 per cent shareholding in Tourang by Mr Kerry Packer and its Chief Executive Officer, Mr Trevor Kennedy, who was formerly Mr Packer's Chief Executive Officer in Consolidated Press Holdings Limited.

While this Inquiry was never intended by the Government to be the determinant of the successful bidder for Fairfax, it is no coincidence that the Tourang bid only succeeded following the withdrawal of Mr Packer and the resignation of Mr Kennedy and Mr Malcolm Turnbull from the Tourang Board.

That this Inquiry was always irrelevant in considering the Fairfax bidders was highlighted further by evidence given by Treasury officers on the diversity of matters deemed relevant to the Treasurer's consideration of recommendations to him from the Foreign Investment Review Board.

I concur with the dissent of my Opposition colleagues on all matters except that part relating to cross-media ownership.

It is my view, contrary to the Committee Report, that the breakup of the cross-media conglomerates which existed before 1987 occurred for reasons other than the cross-media ownership rules introduced to the Broadcasting and Television Act in that year.

Competition policy in the media is determined primarily by the restraints of the Broadcasting and Television Act (and potentially by the draft Broadcasting Services Bill) and by the Trade Practices legislation.

These are adequate to prevent market domination within and across each media segment by any individual proprietor.

Another factor is the consequence of television aggregation on the financial viability of television stations.

Significant capital investment on television aggregation coinciding with the nation's economic recession means that advertising revenue is split among three proprietors (as well as SBS where relevant) in limited markets and is insufficient to generate necessary cash flows.

This prejudices television localism which requires the presentation of local news, sport and other items and the production of local television programmes. Localism is vital for an effective national television policy to meet the diverse requirements of the many communities and interest groups around Australia.

Historically newspaper proprietors sponsored the establishment of local radio stations and the owners of print and radio together developed regional television.

Similarly today, cross-media ownership offers the best prospect for the return to economic viability of financially stressed television stations as well as continued localism.

Quite apart from competition policy technological change is constantly and substantially increasing the diversity of electronic media and will increase competitive outlets.

For these reasons it is my view that cross-media ownership rules are unnecessary to maintain media competition sufficient to ensure there is no undue concentration of influence on public opinion.

Ian Sinclair MP

March 1992

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CONDUCT OF THE INQUIRY

Establishment of the Committee

0.1 There have been calls for an inquiry into media concentration each time a newspaper takeover has been proposed. These calls became more pronounced with the takeover of the Herald and Weekly Times by News Limited in February 1987 and the placement into receivership of the John Fairfax Group in December 1990. A motion to appoint a Royal Commission into the press, which was placed on the House of Representatives Notice Paper of 12 February 1991, was debated in the House of Representatives on 7 March 1991. (House of Representatives, *Debates*, 7 March 1991, pp. 1509015)

0.2 The proposal for the establishment of a select committee on the print media arose out of a substantial degree of public concern expressed recently about the level of concentration of media ownership, particularly print media ownership in Australia. The genesis of the inquiry was a resolution passed at the ALP Conference in Hobart, Tasmania, in late June 1991, which stated that:

The Labor Government will convene a full public inquiry into the state of the media print industry in Australia. The inquiry will be in the form of a parliamentary inquiry which will have as its reference the scope to examine the questions of ownership, distribution and information gathering sources. The inquiry will examine the extent to which ownership of various sectors of the industry provide a bar to entry for would-be competitive

alternatives as well as examining what, if any, regulations should be introduced to limit or arrest concentration of ownership in the industry.

The reference for the parliamentary inquiry will be processed so as to ensure that the inquiry begins at the start of the next parliamentary session.

0.3 The House of Representatives Select Committee on the Print Media was subsequently appointed by a resolution of the House on 22 August 1991 on a motion from the Hon. Kim Beazley MP, Leader of the House and the then Minister for Transport and Communications. The major difference between this resolution and the ALP conference resolution is that the former includes the practicability of editorial independence.

0.4 In moving for the establishment of the Committee, Mr Beazley indicated that concentration of media ownership in the area of print media would not be the only issue to be addressed. He said that 'it will be an opportunity also to examine a whole series of matters internal to the print media industry, and also ... issues related to government broadcasting policy in the electronic media and any concerns about the question of cross-media ownership which might arise'. (House of Representatives, *Debates*, 22 August 1991, p. 403)

0.5 The resolution of appointment, which included the Committee's terms of reference, is included at Attachment 1 of this Appendix.

0.6 Under the resolution of appointment, the Committee was given a reporting date of 19 December 1991. The Minister said that this tight deadline was necessary because the Government wanted to receive early

advice on matters about which it had to make decisions. In November it became apparent that, in view of the large volume of submissions which arrived well after the closing date and the need to finalise the report at the conclusion of the program of public hearings, the Committee requested an extension of time in which to report. On 28 November 1991 the time for bringing up the report was extended. A subsequent extension was granted on 26 February 1992.

Submissions

0.7 The terms of reference for the Inquiry were advertised in Australia's daily national and metropolitan newspapers on 28 August 1991 and in *The Australian Financial Review* on 30 August 1991. Interested persons and organisations were invited to lodge submissions by Friday 20 September 1991. In addition to advertising in the press, the Committee also wrote to or contacted over 40 individuals and organisations with specific interest or expertise in the print media, requesting or inviting submissions. These included the bidders for the Fairfax Group, major newspaper/magazine groups, other key organisations, such as the Australian Journalists' Association and the Australian Council of Trade Unions, and some editors. All Members of the House of Representatives, Senators, and all State Premiers and Chief Ministers were also invited to make a submission to the Inquiry.

0.8 The Fairfax bidders were requested to lodge submissions and appear before the inquiry because of their potential significance to the future of Australia's print media industry. In addition to writing directly to the five publicly known bidders, a letter was also sent to Baring Brothers

Burrows, advisers to the Receivers, asking them to inform other bidders whose intentions may not have been made public of the Committee's request that they make a submission.

0.9 After publicity about the CS First Boston's proposal to float the group, CS First Boston were also requested to appear before the Committee. CS First Boston, which originally declined to submit, subsequently agreed to hold informal discussions with the Committee.

0.10 Of those requested to make a submission, who declined, most replied indicating the reasons for not making a formal submission. They included the Managing Director of *The News* in Adelaide; the Director of West Australian Newspaper Holdings Ltd; the Managing Director of *The Canberra Times*. Others, like the Managing Director of Sun Newspapers in Brisbane, sought additional information prior to considering the request to submit. In the event, no submission was forthcoming and in December 1991 the paper closed.

0.11 Submissions continued to be received right up until March 1992 allowing the maximum opportunity for interested parties to participate in the inquiry and contribute to the information flow. Although some of these submissions were one or two pages, substantial submissions were received from organisations such as the Australian Journalists' Association, Australian Centre for Independent Journalism, Communications Law Centre, Trade Practices Commission and News Limited. One of the features of the evidence was the debate through submission and counter-submission on a number of matters.

0.12 Over 160 submissions have been received, totalling in excess of 3000 pages, together with several exhibits and other informal papers, publications and correspondence. Sensitive material and 'commercial-in-confidence' material was also received, which will remain confidential. A list of submissions received by the Committee is provided at Appendix 2. A list of exhibits is provided at Appendix 3.

Public (and in-camera) Hearings

0.13 Prior to the commencement of the public hearings, the Committee undertook an extensive program of briefings and inspections in order for the Committee to be better informed about issues relevant to the inquiry. On 3 September 1991 officers from the Trade Practices Commission briefed the Committee on the Trade Practices Act and their involvement in various aspects of the print media industry; officers from the Attorney-General's Department also briefed the Committee on the Trade Practices Act and the powers of the Commonwealth to regulate the print media under the Constitution and Mr John Wallace, Journalism Coordinator, Royal Melbourne Institute of Technology, who had worked as a media consultant to the Norris inquiry into ownership and control of newspapers in Victoria in 1981, provided information to the Committee on the procedures of the Kent Royal Commission in Canada, the Norris inquiry in Victoria and other matters concerning the print media.

0.14 The Committee also accepted invitations from News Limited and the John Fairfax Group to observe their operations. Inspections were made of the premises of *The Australian* and *The Daily Telegraph Mirror* at News Limited's Surry Hills plant in Sydney on 18 September and *The Age* at

David Syme & Co. Ltd in Melbourne on 30 September. During the course of these inspections the Committee was briefed by senior officers in each organisation. The Committee was invited to observe the afternoon news conferences when decisions on the content of the newspaper were considered. Informal discussions were also held with the staff of each of the papers. In addition, in Melbourne, the Committee met informally with representatives of The Age Independence Committee.

0.15 During this preliminary stage of the inquiry, the Parliamentary Research Service was also commissioned to prepare a number of papers on overseas regulation of the print media.

0.16 A note on Advice to Witnesses was prepared which covered legal representation, televising of public hearings, in-camera evidence, privilege and the taking of evidence on oath or affirmation. This note was distributed to all witnesses prior to their appearance before the Committee. A copy of the note was made available to all witnesses during each hearing. This note is included as Attachment 2 of this Appendix.

0.17 Given the public interest in the print media inquiry, the Committee passed a resolution permitting the televising and broadcasting of its proceedings. In accordance with the guidelines for televising, witnesses were informed of this and given an opportunity to lodge an objection to the televising of the proceedings. Only one witness, Mr Kerry Packer, lodged an objection to the live broadcast of his evidence. Mr Packer stated that he had no objection to a full delayed broadcast or access to excerpts by the various stations. He objected to the ABC decision to broadcast his evidence live

when the evidence of other witnesses had not been broadcast live. After consideration the Committee resolved that Mr Packer's objection to the live broadcast of his evidence be not accepted.

0.18 The proceedings of all of the public hearings were televised by the Sound and Vision Office of the Department of the Parliamentary Reporting Staff. Use was made of excerpts of these proceedings on all television networks throughout the inquiry. As mentioned above, the ABC elected to take the broadcast of one session to air as a live broadcast. This is believed to have been the first occasion on which the proceedings of a parliamentary committee have been televised live from either House.

0.19 The Committee conducted 67 hours of public hearings during 14 days and nights where evidence was taken from 72 witnesses. A total of 1630 pages of evidence was taken, excluding evidence taken during in-camera hearings.

0.20 As previously mentioned, prior to the hearings, witnesses were advised of their rights in relation to legal representation and all of the other special provisions relating to televising of the hearings, in-camera evidence and privilege. In order to impress upon the witnesses the gravity of the occasion, all witnesses were required to give evidence on oath or affirmation. Counsel was allowed to be present in an advisory capacity to assist witnesses during hearings.

0.21 Not all of those who appeared as witnesses at public hearings had previously made submissions to the inquiry. Some like Mr Padraic McGuinness were invited to appear because of their broad experience;

others like Mr Max Suich and Mr Peter Isaacson were invited because of the special positions they hold as independent publishers in the print media industry; others like the Rt Hon. Malcolm Fraser requested the Committee to allow him to give evidence without making a formal written submission. The Chairman of the Executive Committee of the John Fairfax Group, Mr Greg Taylor, also appeared without making a formal submission as the Committee deemed it imperative to hear from representatives of the senior management group of one of the major publishing groups.¹ Others included Mr Kerry Packer and Mr Richard Walsh from Australian Consolidated Press. Mr Packer was invited because of the importance of the information which a multi-media proprietor could provide to the Committee, whilst Mr Walsh's experience in the magazine market provided useful comparisons to the newspaper industry. The Australian Broadcasting Tribunal also appeared without making a formal submission because of the Committee's interest in their role in monitoring and investigating matters arising under the Broadcasting Act.

0.22 In-camera evidence was also taken on three occasions, from seven witnesses. In the case of one of the witnesses, a protest from a legal representative of News Limited about that witness giving evidence in-camera was rejected by the Committee which allowed the witness to proceed with in-camera evidence.

¹ The Committee went to great lengths to ensure that a representative from the Fairfax Group would appear. The correspondence between the Chairman and the Receiver Manager and between the Chairman and the Managing Director of David Syme & Co. Ltd, Mr Greg Taylor, requesting the appearance of representatives of the Fairfax senior executive management committee was subsequently authorised for publication.

0.23 A list of witnesses and the dates on which they appeared at public hearings is provided at Appendix 4.

0.24 As the inquiry was drawing to a close a further briefing was held jointly with officers from the Trade Practices Commission and Attorney-General's Department to explore a number of emerging approaches.

Evidence

0.25 In order to facilitate the information flow between interested parties, many of whom sought a right of reply to matters raised in submissions or in public hearings, the submissions authorised for publication and the transcripts of evidence were made available to all interested parties. Bound volumes of this evidence will be available for inspection at the House of Representatives Committee Office, the Parliamentary Library, and the National Library of Australia.

Developments During the Inquiry

0.26 1991 has seen a number of developments in the print media industry, of which perhaps the most significant has been the sale of the John Fairfax Group, which was placed in the hands of receivers in December 1990. The major publicly known bidders included Australian Independent Newspapers Pty Ltd, Independent Newspapers PLC, Jamison Equity Ltd, Plandice Pty Ltd and Tourang Ltd.

0.27 During the period in which the Fairfax Group was in receivership, the Government introduced a bill to amend the *Broadcasting Act 1942* to require the Australian Broadcasting Tribunal to have regard to associate relationships in the exercising of their powers. The Bill was passed in the House of Representatives on 8 October 1991 and referred to the Senate. The Bill, as amended by the Senate, became an Act on 21 October 1991.

0.28 At the same time, Australia's foreign investment guidelines also became a major issue for Labor's Caucus. At a special meeting of the Federal Parliamentary Labor Party on 10 October 1991, a motion was passed which supported Australian ownership in the print media, with the proviso that, in the context of the current bidding for the Fairfax Group, foreign control be limited to 20 per cent. The Treasurer was requested to keep Caucus briefed on developments in this matter.

0.29 A major focus throughout the inquiry has been public concern about the future of Fairfax publications. Such community concern prompted eight senior retired political figures to call for diversity of media ownership in October 1991. In the heading to an Open Letter which was published in *The Age* on 16 October, they claimed that 'the Fairfax newspaper sale is the last chance to arrest the growing concentration of Australian media ownership'. The letter expressed concern about market dominance in the media, the danger of media power being used to influence policies and opposed foreign control of the media. It was widely interpreted as opposing the bids by Independent Newspapers PLC and Tourang Ltd, both of which had a high proportion of foreign ownership.

0.30 A large group of Federal politicians also petitioned the Prime Minister on the matter. The petition, drafted by Mr David Connelly, MP, and co-sponsored by Mr John Langmore MP, was signed by 137 Members and Senators. The petition, which was forwarded to the Prime Minister on 24 October 1991, asked the Prime Minister to:

... oppose the sale of the Fairfax Group to any individual or consortium that would result in a greater concentration of media ownership, and thus a diminution of competition in and diversity of information sources in Australia.

0.31 Concern about possible breaches of the merger provisions of the Trade Practices Act prompted the Trade Practices Commission to announce that they intended to examine the three remaining Fairfax bidders (Jamison Equity and Plandice had withdrawn) for possible breaches of the Act. After conducting investigations in both the Sydney and Melbourne markets, the Commission issued a News Release on 11 December 1991 in which it concluded that a challenge under section 50 of the Trade Practices Act appeared unlikely to succeed.

0.32 In addition to the inquiry by the Trade Practices Commission, the Australian Broadcasting Tribunal (ABT) was prompted to launch an inquiry at the end of November into possible cross-media implications of the Tourang consortium's bid for Fairfax. With the subsequent withdrawal of Mr Packer from the consortium, the ABT was satisfied that there were no longer any cross-media impediments to the Tourang bid, and the inquiry lapsed in early December 1991.

0.33 At the same time, the Foreign Investment Review Board was examining proposals from Tourang and Independent Newspapers. As the process developed the Executive Member of the FIRB had a number of discussions with the then Treasurer, the Hon. John Kerin MP. The first proposal by Tourang was rejected by Treasurer Kerin who did not make a public announcement but instructed the Executive Member to tell Tourang the reasons the proposal was not accepted. The company made a second proposal, the FIRB made a recommendation to the new Treasurer, the Hon. Ralph Willis MP, who made a public announcement accepting the proposal.

0.34 The sale of the John Fairfax Group was finally resolved when the receivers announced, on 16 December 1991, that the successful bidder was the Tourang consortium.

0.35 On a related matter, at the State level, a Private Member's Bill on Print Media Ownership was foreshadowed for introduction into the Victorian Parliament by the Hon. Race Mathews MLA, in November 1991. The proposed Bill is a direct outcome of the Victorian Government's Working Party into Print Media Ownership which presented its report to the Victorian Attorney-General on 24 December 1990. The Bill is designed to halt the concentration of ownership and control of the print media. The main proposal is for the creation of a Press Diversity Tribunal to examine proposed transactions. In determining whether to authorise a transaction, the Tribunal would be 'guided by the principle that further concentration of ownership or control of newspapers is contrary to the public interest'. The Committee understands that the proposed Bill is likely to be placed before the Victorian Parliament in March 1992.

**HOUSE OF REPRESENTATIVE SELECT COMMITTEE
ON THE PRINT MEDIA**

RESOLUTION OF APPOINTMENT

- (1) That a select committee be appointed to inquire into and report on:
 - (a) structural factors in the print media industry inhibiting competition between publications, including ownership, production (including paper supply) and distribution arrangements;
 - (b) the print media's distribution and information gathering arrangements;
 - (c) the extent to which the ownership or control of various sectors of the print media industry provides a barrier to entry by competitive alternatives;
 - (d) the adequacy of current Commonwealth legislation and practices to foster competition and diversity of ownership in the print media; and
 - (e) the practicability of editorial independence between proprietors and journalists.

- (2) That the committee consist of 12 members, 7 members to be nominated by the Government Whip or Whips, 5 members to be nominated by the Opposition Whip or Whips or by any independent Member.

- (3) That every nomination of a member of the committee be forthwith notified in writing to the Speaker.
- (4) That the committee elect a Government member as its chairman.
- (5) That the committee elect a deputy chairman who shall perform the duties of the chairman of the committee at any time when the chairman is not present at a meeting of the committee and at any time when the chairman and deputy chairman are not present at a meeting of the committee the members present shall elect another member to act as chairman at the meeting.
- (6) That the committee have power to appoint subcommittees consisting of 3 or more of its members and to refer to any subcommittee any matter which the committee is empowered to examine.
- (7) That the committee appoint the chairman of each subcommittee who shall have a casting vote only, and at any time when the chairman of a subcommittee is not present at a meeting of the subcommittee the members of the subcommittee present shall elect another member of that subcommittee to act as chairman at that meeting.
- (8) That the quorum of a subcommittee be a majority of the members of that subcommittee.

- (9) That members of the committee who are not members of a subcommittee may participate in the public proceedings of that subcommittee but shall not vote, move any motion or be counted for the purpose of a quorum.
- (10) That the committee or any subcommittee have power to send for persons, papers and records.
- (11) That the committee or any subcommittee have power to move from place to place.
- (12) That a subcommittee have power to adjourn from time to time and to sit during any sittings or adjournment of the House.
- (13) That a subcommittee have power to authorise publication of any evidence given before it and any document presented to it.
- (14) That the committee have leave to report from time to time.
- (15) That the committee report by 19 December 1991.
- (16) That the foregoing provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

ADVICE TO WITNESSES

1. LEGAL REPRESENTATION

There are no provisions or precedents for witnesses before a committee of the House to be represented by counsel in the strict legal sense.

Traditional committee practice has allowed counsel to be present in an advisory capacity to assist witnesses during hearings. The limitations placed on counsel attempt to ensure that the witnesses answer the questions and present their evidence while giving them the opportunity to seek advice, for example, on legal matters.

Where a lawyer assists in the preparation of a submission, committee practice has allowed that person to appear in his own right as a witness having specialist knowledge in those areas.

Of course there could be situations where it would make sense to allow counsel to answer questions - eg those which deal with complex legal matters but, if this is to be the case, the counsel will be requested to appear as witnesses themselves.

2. TELEVISIONING OF PUBLIC HEARINGS

Given the public interest in the print media Inquiry, the Committee has passed a resolution permitting the televising and broadcasting of its public hearings. The letters inviting persons to appear before the Committee have

asked these persons if they have any objection to the televising of the proceedings. To date the Secretariat has received no objections.

3. IN-CAMERA EVIDENCE

In-camera proceedings will not be broadcast or televised. Witnesses have the right to request that all or part of their evidence be dealt with in camera at an in-camera hearing, but the Committee will agree to this only if the reasons are compelling; for example 'commercial-in-confidence' evidence. I should point out that the Committee reserves the right to authorise disclosure or publication of evidence even if it has initially been taken in-camera.

4. PRIVILEGE

The evidence given at public hearings of Parliamentary committees has privilege to ensure that witnesses can speak freely. However, the Committee will not allow witnesses to misuse this Committee's hearings. I should point out that the giving of false evidence or the deliberate misleading of the Committee may be dealt with as a contempt of the House. The Committee would be obliged to report any such matter to the House.

5. EVIDENCE ON OATH OR AFFIRMATION

Finally witnesses will be required to give evidence on oath or affirmation. This will serve to impress upon witnesses the gravity of the occasion.

(Issued under the direction of the Chairman, Michael Lee MP, 1 October 1991)

APPENDIX 2

SUBMISSIONS

Submission Number	Organisation/Person
1	Mr Rowland Gough, VIC
2	Mr Chester Holt, NSW
3	Advance Australia Party
4	Queensland Newsagents Federation Ltd
5	Mr J D Alford, WA
6	K L Bedford, QLD
7	Australian Associated Press
8	Mr J D Alford, WA
9	Catholic Women's League, Australia
10	Mr K J Rae, NSW
11	Senator Bob Collins
12	M J Sanderson, WA
13	Australian Council of Trade Unions (see also Submission No. 109)
14	Dr Allan Brown Senior Lecturer in Economics Griffith University
15	Mr Fred Brenchley Media Consultant
16	Mr Michael J Gill <i>Business Daily</i>
17	Mr David Griffiths, VIC
18	Australian Newsagents' Federation Ltd

- 19 Mrs Margaret Carter, VIC
20 Printing & Kindred Industries Union
21 Mr Stewart Harris, NSW
22 The Age Independence Committee
(see also Submission No. 110)
23 Independent Newspapers, PLC
24 Department of Journalism
University of Queensland
25 Mr David N Bowman
Journalist
26 Professor John Henningham
Professor of Journalism
University of Queensland
27 News Limited - Part I
28 Trade Practices Commission
29 The Perth P.E.N. Centre
30 Ms Fiona Coulthard, WA
31 Ms Ruth Butterfield, WA
32 Regional Dailies of Australia Limited
33 Mr Peter Montford, NSW
34 Neville Jeffress Pidler Pty Ltd
35 The Australian Journalists' Association
36 CONFIDENTIAL SUBMISSION
37 Australian Newsprint Mills Limited
38 West Australian Newspapers Limited
39 Mr Peter Krummel, VIC
40 Mr Tony Paynter, NSW
41 McPherson Newspapers Pty Ltd
42 Australian Independent Newspapers Pty Limited

43	Attorney-General's Department
44	Communications Law Centre
45	Friends of Fairfax
46	Australian Centre for Independent Journalism
47	Plandice Pty Ltd
48	Mr Gerard Noonan Editor <i>The Australian Financial Review</i>
49	Tourang Limited
50	Communications Law Centre Memorandum of Advice by Mr Peter Hanks
51	Mr Collinridge Rivett, NSW
52	Northern Territory Government
53	Mr Andrew Smith, WA
54	Mr Jon Axtens, NSW
55	Australian Civil Liberties Union
56	Mrs A E Dorne, NSW
57	Australian Press Council
58	Tourang Limited
59	Tourang Limited
60	Friends of Fairfax
61	Mr J D Alford, WA
62	Mrs L E Fowler, WA
63	Australian Associated Press
64	Victorian Government
65	Westpac Banking Corporation
66	Mr Austin Donnelly, QLD
67	Australian Journalists' Association - Darwin Sub-Branch

- 68 Minter Ellison
- 69 Mr Peter Chamen, NSW
- 70 Free Press
- 71 Catholic Communications Commission of the Archdiocese
of Canberra and Goulburn
- 72 Independent Newspapers, PLC
- 73 Mrs Margaret Carter, VIC
- 74 Mr Leonard Banks, VIC
- 75 News Limited - Part II
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- (a) Professor Robert Officer
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 - (b) Mr Fred Kenyon and Mr Des Morton
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- 76 News Limited
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'A Comparative Analysis of Bias in Newspapers Published
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- 77 Tourang Limited
- 78 Mr Paul Desmond, WA
- 79 News Limited
- 80 Mr Cratis Hippocrates and Dr Stuart Cunningham
School of Media and Journalism
Queensland University of Technology
- 81 Professor Robert Baxt
Former Chairman of the Trade Practices Commission
- 82 Catholic Communications Commission of the Archdiocese
of Canberra and Goulburn
- 83 The Hon. Warren Snowdon, MHR

- 84 Mr Paul Chadwick
Communications Law Centre
- 85 Attorney-General's Department
Office of International Law
- 86 News Limited
- 87 Mr Paul Kelly
Editor-in-Chief
The Australian
- 88 Mr Paul Knobel, NSW
- 89 Mr Peter Young
Senior Research Fellow in Defence Studies
School of Media and Journalism
Queensland University of Technology
- 90 Sir Laurence Street, NSW
- 91 Mr Monty Hollow, VIC
- 92 Australian Independent Newspapers Pty Limited
- 93 Mr Greg Copley, QLD
- 94 Mr Jon Axtens, NSW
- 95 Mr Keith Ashton, NSW
- 96 Rationalist Society of Australia
- 97 *Northern Territory News*
- 98 Free Speech Committee
- 99 Australian Centre for Independent Journalism
- 100 Australian Journalists' Association - Victoria Branch
- 101 Mr John Sampson, NSW
- 102 News Limited - Supplement to Part II
a) Professor Peter Swan and Dr Gerald Garvey
'Can Government Intervention into the Print Media
to Reduce Concentration be Justified?'

- b) Dr John Penhallurick and Dr Graeme Osborne
'A Comparative Analysis of Bias in Newspapers
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Final Report, October 1991
- 103 Printing and Kindred Industries Union
- 104 Mr Mark Pearson
Assistant Professor
Co-ordinator of Journalism Programs
Bond University
- 105 Mr Ranald Macdonald, VIC
- 106 Senator Chris Schacht
- 107 Mr Jack Lunn
Editor-in-Chief
Queensland Newspapers Pty Ltd
- 108 Australian Consolidated Press Limited
- 109 Australian Council of Trade Unions
(see also Submission No. 13)
- 110 The Age Independence Committee -
Attachments (see also Submission No. 22)
- 111 Mr Frank Alcorta
Political Reporter
Northern Territory News
- 112 Friends of Fairfax
- 113 Mr Michael Foott, VIC
- 114 Australian Journalists' Association - Queensland Branch
- 115 Mr Fred Brenchley
Media Consultant
- 116 CONFIDENTIAL SUBMISSION
- 117 Mr Harry Freeman, QLD
- 118 Mr Jim Rose, ACT
- 119 Robin Fitzsimons, NSW

- 120 Mr Terry Vine
Associate Editor
Herald-Sun
- 121 Mr Piers Akerman
Editor-in-Chief
Herald-Sun
- 122 Mr Peter Game
Feature and Leader Writer
Herald-Sun
- 123 News Limited
- 124 J Wilson, VIC
- 125 Mr Michael Gill
Business Daily
- 126 Australian Journalists' Association - Victoria Branch
- 127 News Limited
'Background notes prepared by News Ltd in response to
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- 128 Mr Colin Hollis, MP
- 129 Mr James Dyas, WA
- 130 Mr Patrick Roe, VIC
- 131 Mr Allan Morris, MHR
- 132 Ms Wendy Bacon
University of Technology
Sydney
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- 133 News Limited
- 134 Australians For Animals
- 135 Mr Jon Axtens, NSW

- 136 Australian Centre for Independent Journalism
Diane Powell 'News on News - A Study of how News Corporation covers itself'
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- 137 Mr Bruce Grundy & Mr Lawrence Apps
Department of Journalism
University of Queensland
- 138 Mr David Aspinall
Chief Executive
West Australian Newspapers Limited
- 139 Mr Colin Grinham
Chairman
Australian Newsagents' Federation Ltd
- 140 Mr Lim Say Boon, VIC
- 141 Mr George Masterman, QC, NSW
- 142 Mr Philip McLaren, NSW
- 143 Mr John Alexander
Editor-in-Chief
The Sydney Morning Herald
- 144 Australian Supermarket Institute
- 145 Mr Jack Lunn
Editor-in-Chief
Queensland Newspapers Pty Ltd
- 146 *Sydney Morning Herald* Journalists
- 147 The Australian Journalists' Association
- Queensland Branch
- 148 K J Brown, NSW
- 149 Dr Allan Brown
Senior Lecturer in Economics
Griffith University
'Response to Peter Swan and Gerald Garvey's "Can Government Intervention into the Print Media to Reduce Concentration be Justified?"'
- 150 Department of The Treasury

- 151 Friends of Fairfax
- 152 Mr Michael Gill
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'Relating to the News Limited reply to my submissions and evidence to the select committee'
- 153 News Limited
(a) 'Answers to Questions Posed by the Select Committee on the Print Media by Peter L Swan on behalf of News Limited'; and
(b) 'Response to Diane Powell's "News on News" by Dr John M Penhallurick and Dr Graeme W Osborne
- 154 Copyright Agency Limited
- 155 News Limited
'A Response by R.R. Officer'
- 156 Australian Broadcasting Tribunal
- 157 Mr Jack Lunn
Editor-in-Chief
Queensland Newspapers
- 158 Mr Patrick Murphy, QLD
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- 160 Darling Downs Victims of Crime Association
- 161 News Limited
- 162 News Limited
'Some Comments on the Response by Allan Brown to the Print Media Study by Peter Swan and Gerald Garvey and to the submission of the Trade Practices Commission'
- 163 Australian Broadcasting Tribunal
- 164 News Limited
'An Analysis of Voting Indications in Pre-Federal Election Editorials in Australia's Major Newspapers, 1955-1990', Aileen Berry and John Penhallurick, October 1991

APPENDIX 3

EXHIBITS

1. Friends of Fairfax: 'Charters of Editorial Independence'

'Competition Diversity in Australia's Print Media'

Various press clippings
2. Friends of Fairfax: Video: 'Media Watch: The Last Word', three episodes of 12 and 19 August and 2 September 1991
3. The Age Independence Committee: Article in the *Jerusalem Post* 1975
4. The Age Independence Committee: Article in *The Age*, December 1990
5. The Age Independence Committee: Legal opinions on a possible syndicate proposing a bid for the Fairfax newspapers
6. Mr Michael Gill: *Business Daily*, 12 August 1987
7. Mr Gerard Noonan
The Australian Financial Review: Article in *The Economist*, 18 August 1990
8. Mr Max Suich: *Independent Monthly*, November 1991

9. Rural Press: Rural Press Limited Annual Report 1990/1991
Chairman's Address to AGM 31 October 1991
10. Australian Council of Trade Unions: 'The Promotion of Press Diversity: Options Available to the Australian Government'
11. Mr Bruce Grundy and Mr Lawrence Apps: Company extracts - Queensland Press Limited, Queensland Newspapers Pty Limited, Lanray Industries Limited, Sunshine Plantation Pty Ltd

The News Corporation Limited Annual Report 1990 and 1991 - extracts

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12. Mr George Masterman, QC: Century Newspapers Ltd and Thomson Regional Newspapers Ltd, Report of The Monopolies and Mergers Commission, London, April 1989

Mr David Sullivan and The Bristol Evening Post PLC, Report of The Monopolies and Mergers Commission, London, May 1990

Correspondence from J Price, M Gibson, E Dobbie
13. Department of Transport and Communications: 'Concept of Ownership or Control Limits in the Broadcasting Act 1942'

WITNESSES

All Public Hearings were held in Canberra

TUESDAY 1 OCTOBER 1991

Tourang Limited

Mr Trevor John Kennedy
Managing Director

WEDNESDAY 2 OCTOBER 1991

Trade Practices Commission

Professor Allan Fels
Chairman

Professor Brian Leslie Johns
Deputy Chairman

Mr Christian Jose
Supervising Project Officer

Mr Paul Rudnev
Director

Mr Hank Spier
First Assistant Commissioner

Friends of Fairfax

**Mr Alan Richard Kennedy
Spokesperson**

Attorney-General's Department

**Mr James Randal Dick
Assistant Secretary
Competition Policy Branch**

**Mr Denis Alfred Jessop
Senior General Counsel
Office of General Counsel**

Australian Journalists' Association

**Ms Jacqueline Patricia Park
Federal Industrial Officer**

**Mr Christopher John Warren
Federal Secretary**

THURSDAY 3 OCTOBER 1991

The Age Independence Committee

**Mr Claude Rainer Forell
Vice-Chairman**

**Mr David Wilson
Chairman**

Australian Independent Newspapers Pty Ltd

Mr Colin Robert Galbraith
Legal Adviser

Mr James Bolton Leslie
Chairman of Board

Mr Robert Samuel McKay
Managing Director

Communications Law Centre

Mr Paul Chadwick
Victorian Coordinator

Ms Anne Davies
Director

Australian Centre for Independent Journalism

Mr Eric Beecher
Board Member

Professor Julianne Schultz
Director

FRIDAY 4 OCTOBER 1991

Independent Newspapers, PLC

Mr Liam Healy
Chief Executive
Independent Newspapers, PLC

Mr Michael Hoyle
Partner
Corrs Chambers Westgarth

Mr Peter John Hunt
Director
Bankers Trust Australia Ltd

Mr John Cyril Reynolds
Chief Executive
Australian Provincial Newspapers

News Limited

Mr Kenneth Edward Cowley
Chief Executive

Mr Paul John Kelly
Editor-in-Chief
The Australian

FRIDAY 18 OCTOBER 1991

Mr Michael John Gill, Victoria

Government of Victoria

Mr James Harley Kennan, QC, MP
Attorney-General of Victoria

Australian Newsagents Federation

Mr Colin William Grinham
Chairman

Mr Brian John Sinclair
Vice-President

Mr David Noel Bowman, New South Wales

MONDAY 21 OCTOBER 1991

Mr Fred Brenchley, New South Wales

Professor John Paul Henningham
Professor of Journalism
Department of Journalism
University of Queensland

Mr Padraic Pearse McGuinness, New South Wales

Regional Dailies of Australia Ltd

Mr Richard William Sinclair
Chief Executive Officer

TUESDAY 22 OCTOBER 1991

The Australian Financial Review

Mr Gerard Noonan
Editor

Australian Associated Press

**Mr Peter John Brown
Editor-in-Chief**

**Mr Geoffrey Ernest Want
Sales and Marketing Manager**

Rt Hon. John Malcolm Fraser, Victoria

Department of Journalism, University of Queensland

**Mr Lawrence Patrick Apps
Reader**

**Mr Grahame Bruce Grundy
Head of Department**

WEDNESDAY 23 OCTOBER 1991

**Dr Allan Gregory Brown
Senior Lecturer in Economics
Griffith University**

Australian Newsprint Mills Ltd

**Mr Graham Ogilvie
Managing Director**

**Mr David Skelton
Finance Director**

Peter Isaacson Publications Pty Ltd

**Mr Peter Stuart Isaacson
Managing Director and Editor-in-Chief**

MONDAY 4 NOVEMBER 1991

Australian Press Council

**Professor David Edward Flint
Chairman**

John Fairfax Group/David Syme & Co. Limited

**Mr Gregory John Taylor
Chairman
Executive Committee
John Fairfax Group; and
Managing Director
David Syme & Co. Limited**

Consolidated Press Holdings Ltd

**Mr Kerry Francis Bullmore Packer
Executive Chairman**

News Limited

**Professor Robert Rupert Officer
Consultant**

**Professor Peter Lawrence Swan
Consultant**

Independent Monthly

**Mr Maxwell Victor Suich
Editor and Publisher**

Printing and Kindred Industries Union

**Mr John Cahill
Secretary-Treasurer**

**Mr Michael John Duffy
President**

TUESDAY 5 NOVEMBER 1991

Australian Consolidated Press Limited

**Mr John Richard Walsh
Chief Executive Officer**

FRIDAY 8 NOVEMBER 1991

Australian Council of Trade Unions

**Mr Andrew Casey
Communications Campaign Officer**

**Mr William Clements Mansfield
Assistant Secretary**

**Mr Peter Moylan
Industrial Officer**

West Australian Newspapers Ltd

**Mr David Roy Aspinall
Chairman
and
Chief Executive Officer**

**Mr Robert Edward Cronin
Editor-in-Chief**

Professor Robert Baxt, Victoria

Advertising Investment Services

**Mr Stephen Eyres Allen
Managing Director**

TUESDAY 26 NOVEMBER 1991

Australian Broadcasting Tribunal

**Mr Giles David Tanner
Acting Assistant Director
Ownership and Control**

**Mr Peter Brian Westerway
Chairman**

WEDNESDAY 27 NOVEMBER 1991

Mr George Gurney Masterman, QC, New South Wales

WEDNESDAY 18 DECEMBER 1991

Department of Transport and Communications

**Mr Alexander James Blunden
Director
Special Projects
Commercial Services Branch
Broadcasting Policy Division**

**Mr Christopher Mark North
Assistant Secretary
Development and Planning Branch
Broadcasting Policy Division**

**Mr Anthony John Shaw
First Assistant Secretary
Broadcasting Policy Division**

Department of The Treasury

**Mr Roger Stephen Brake
Senior Research Officer
Communications and Public Enterprise Policy Section
Structural Policy Division**

**Mr David John Imber
Acting Assistant Secretary
Infrastructure and Resource Allocation Branch**

**Mr Richard Edward Murray
Acting First Assistant Secretary
Structural Policy Division**

**Mr Frederick George Herbert Pooley
First Assistant Secretary
Finance and Investment Division; and
Executive Member
Foreign Investment Review Board**

Dr Darryl Milburn Roberts
Director
Finance and Investment Division

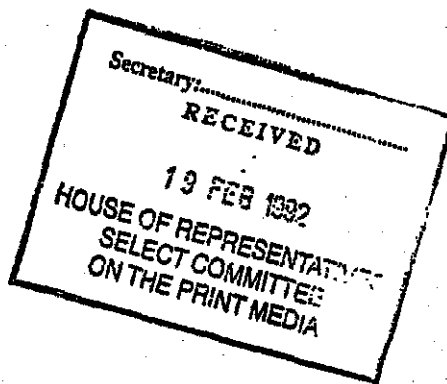


Attorney-General

APPENDIX 5

The Hon. Michael Duffy M.P.
Parliament House
Canberra ACT 2600

Mr Michael Lee MP
Chairman
House of Representatives
Select Committee on the
Print Media
Parliament House
CANNBERRA ACT 2600



Dear Mr ~~Lee~~, *Michael*

I refer to your letter of 12 December 1991 in which you seek advice on the Commonwealth's constitutional powers to regulate the print media.

Attached is a paper prepared by officers of my Department which outlines both the general powers of the Commonwealth in this area, and the ability of the Commonwealth to implement various proposals which were put to the Committee during its recent hearings.

Yours sincerely

MICHAEL DUFFY

Constitutional Power of the Commonwealth to Regulate the Print Media

The House of Representatives Select Committee on Print Media ('the Committee') seeks advice on the constitutional powers of the Commonwealth to regulate the print media. The Committee also asks whether the Commonwealth has the constitutional power to implement several specific proposals which were put to the Committee during its recent hearings.

Introduction

The Commonwealth can act only in respect of matters authorised by the Constitution either specifically (e.g. the enumerated powers in s.51) or by implication (e.g. the implied nationhood power). The Constitution also contains some provisions that operate so as to limit the exercise of constitutional power (e.g. s.92 - freedom of inter-State trade, commerce and intercourse).

Those powers and limitations in relation to the print media are considered in Parts A and B, below.

Part C briefly addresses the effect of international agreements.

Part D addresses the specific proposals referred to by the Committee.

A. Commonwealth's Constitutional Power

The Commonwealth does not currently have the power to legislate on all matters affecting the print media. There is no specific legislative power which allows the Commonwealth to regulate the print media (cf. s.51(v) of the Constitution which allows the Commonwealth to regulate, among other things, broadcasting by television and radio).

Despite this, the Commonwealth possesses several legislative powers, discussed below, which allow it to regulate various aspects of the print media. If fully used they would allow the Commonwealth to regulate a substantial proportion of the print media and print media activities.

(i) Interstate and Overseas Trade and Commerce

Section 51(i) of the Constitution allows the Commonwealth to make laws with respect to 'trade and commerce with other countries, and among the States'. Under this power, the Commonwealth could require individuals and corporations undertaking overseas and inter-State trade in the print media to comply with specified conditions. Such conditions would not need to relate directly to matters of trade and commerce. It would be enough if they were to qualify the right to engage in interstate or overseas trade and commerce.

Under s.51(i) the Commonwealth may regulate intrastate trade and commerce if that regulation is incidental to the regulation of interstate trade and commerce. But the High Court has traditionally taken a narrow view of the matters which may be characterised as incidental to interstate trade and commerce, and there appears to be little scope for regulating intrastate trade and commerce in the print media under s.51(i).

(ii) Corporations

Section 51(xx) of the Constitution confers power on the Commonwealth to make laws with respect to 'foreign corporations and trading or financial corporations formed within the limits of the Commonwealth'. A corporation may be a trading corporation for the purposes of s.51(xx) even if it is not engaged exclusively in trade - it is enough that a 'substantial' or 'significant' part of its activities include trade. It follows that all corporations which are commercially engaged in the print media would be trading corporations for the purposes of s.51(xx).

The extent to which the Commonwealth can legislate to control the non-trading activities of trading corporations under s.51(xx) is unresolved by existing High Court cases. In the Tasmanian Dam case (1983) 158 CLR 1 some Justices proposed a wide view, others a narrow view of Commonwealth power. The 'wide view' is that the power conferred by s.51(xx) enables the Commonwealth to control all of the activities of a trading corporation. On this view, a law which prescribes 'a trading corporation shall ...' or 'a trading corporation shall not ...' would, without more, be valid. The 'narrow view' is that the power in relation to trading corporations is limited to the control of conduct engaged in preparatory to, or in the course of, their trading activities.

Even if one accepts the narrow view, the Commonwealth would still have plenty of scope to control the participation of trading corporations in the print media given that this participation would ordinarily take the form of trading activity. Further, the Commonwealth may under s.51(xx) regulate acts done for the purpose of trading activities of trading corporations by reference to considerations which are unrelated to trade. For example, the Commonwealth could prohibit the acquisition of newspapers so as to prevent an undue concentration of ownership.

(iii) Territories

Section 122 of the Constitution confers plenary power on the Commonwealth to legislate in relation to the Territories. It follows that the Commonwealth could regulate all aspects of print media in, or in relation to, the Territories.

(iv) Indirect Regulation

The Commonwealth may indirectly regulate some aspects of the print media where to do so is incidental to the exercise of a Commonwealth power that enables the regulation of related activities. For example, the cross-media ownership rules prescribed in the Broadcasting Act 1942, enacted pursuant to s.51(v) of the Constitution in the course of regulating the ownership and control of commercial radio and television

licences, regulate the relationship between ownership and control of those licences and ownership and control of newspapers associated with the service areas of those licences.

The Commonwealth could also indirectly regulate the print media through the taxation power in s.51(ii) by encouraging or discouraging particular conduct through the imposition of special taxes and tax concessions.

(v) Commonwealth-State co-operation

The Constitution allows the Commonwealth to seek the co-operation of the States so as to enable effective Australia-wide regulation of matters not within Commonwealth power. The Commonwealth could, for example, seek a reference of powers from the States in relation to the print media under s.51(xxxvii) of the Constitution. There are considerable practical difficulties in obtaining the agreement of all States to references of power and regulation of the print media would probably be no exception. Unanimity is not essential, but referral of power by one State, or a few States, only would clearly be less effective.

An alternative means of co-operation, and one which would be more attractive to the States, would be for the Commonwealth and the States to enact complementary legislation which prescribed a uniform scheme for the regulation of the print media. Such a legislative scheme by the Commonwealth and New South Wales regarding the Coal Industry has been upheld by the High Court (R v. Duncan; ex parte Australian Iron and Steel Pty Ltd (1985) 158 CLR 535).

B. Limitations on Commonwealth's Power

The most significant limitation on the legislative powers of the Commonwealth has been the declaration in s.92 that 'trade, commerce and intercourse among the States ... shall be absolutely free ...' which had caused the striking down by the High Court of many regulatory statutes in the past.

Section 92 is no longer as great an impediment to statutory regulation by the Commonwealth and the States. It is now established that s.92, at least in relation to trade and commerce, only prevents the Commonwealth or the States from imposing discriminatory burdens (that is discriminatory between intrastate and interstate trade and commerce) which have a protectionist purpose or effect (Cole v. Whitfield (1988) 165 CLR 360).

The High Court in Nationwide News Pty Ltd v Wills recently heard argument that s.92 confers a different and wider protection in relation to interstate 'intercourse' than it does in relation to interstate 'trade and commerce'. Allied to this have been recent suggestions that the Constitution impliedly guarantees freedom of speech. The precise basis for this implication and its scope will become clearer when Wills is decided and the constitutional challenge to the Political Broadcasts and Political Disclosures Act 1991, to be heard in March 1992, has been resolved. However, neither s.92 nor freedom of speech considerations are likely to prevent the Commonwealth from enacting a non-discriminatory statutory scheme to regulate an activity in the public interest such as one finds in the Trade Practices Act 1974.

C. International Agreements

Suggestions of regulation of the print media often give rise to objections of restriction of freedom of speech and freedom of the press. Civil and political rights, including freedom of expression, have for some time been the subject of an international agreement to which Australia is a party. An international agreement of itself cannot, as a matter of law, fetter the constitutional powers of the Commonwealth. Despite this, relevant obligations which the Commonwealth has assumed under an international agreement will be of obvious practical importance to any legislative proposal to regulate the print media.

The Office of International Law in this Department prepared a paper for the Committee which outlined the relevance of Article 19(2) of the International Covenant on Civil and Political Rights ('the Covenant') (A copy of the paper is attached). Article 19(2) provides that the right to the freedom of expression includes 'freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, or in writing, or in print, or in the form of art or through any other media.'

The Office of International Law concluded that the Commonwealth could impose some form of licensing system in relation to the print media similar to that at present used for radio or television provided the system is designed to ensure the integrity of the controllers of media and did not impair the general ability to disseminate ideas or information.

D. Specific Proposals

The following specific proposals were put to the Committee during its recent hearings:

1. Prohibit print media mergers or takeovers which are not approved by a statutory authority (such as the Trade Practices Commission) or by a nominated Minister, if they are not deemed to be 'in the public interest';
2. Amend the Trade Practices Act 1974 to require mandatory authorisation for all print media takeovers and mergers and set requirements which must be met for authorisation to be granted;
3. Place limits on the number of titles a corporation or individual proprietor can own;
4. Require divestiture of newspaper titles if a corporation or individual proprietor exceeds ownership limits;
5. Limit or prohibit media proprietors from being involved in non-media business activities;
6. Require print media corporations or individual proprietors to abide by a charter of editorial independence and/or require that editors be appointed under specified contracts.

The specific proposals put to the Committee involve a form of regulation similar to that which already applies to corporations and others under the Trade Practices Act and to broadcasters under the Broadcasting Act. The restrictions which the Constitution imposes on the Commonwealth's legislative power are unlikely to fetter the Commonwealth's power to implement the proposals.

Section 51(xx) of the Constitution would allow the Commonwealth to implement the proposals in relation to trading corporations given that the proposals would involve the regulation of those corporations' trading activities. For example, a law which required a trading corporation in the print media to abide by a charter of editorial independence when publishing a newspaper or required such corporations to engage editors under specified contracts would be supported by s.51(xx). Section 51(xx) would also allow the Commonwealth to apply the proposals to foreign corporations.

The Commonwealth could, under s.51(i), prevent both corporations and individuals from engaging in interstate and overseas trade and commerce in the print media unless those corporations or individuals complied with statutory requirements in relation to such things as ownership and editorial control. Section 122 of the Constitution would allow the Commonwealth to implement the proposals in the Territories.

The difficulty which the Commonwealth has in enacting a comprehensive statutory regime in relation to print media centres on its lack of power with respect to the intrastate trade in print media by individuals. For example, the Commonwealth's power to regulate the printing, publication and sale by an individual of the Sydney Morning Herald in New South Wales is limited. The Commonwealth could prevent such individuals from engaging in conduct over which the Commonwealth may exercise control e.g. the holding of shares in a television licensee. It could also encourage or discourage individuals from engaging in specified conduct by use of its taxation power. However, the Commonwealth could exercise little direct control over individual, intrastate publishers and it is doubtful whether it could enact legislation which ensured that such individuals complied with the proposed provisions.

Attorney-General's Department

February 1992



ATTORNEY-GENERAL'S DEPARTMENT
OFFICE OF INTERNATIONAL LAW

Telephone: (06) 250 6666
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Robert Garran Offices
National Circuit
Barton ACT 2600

**Relevance of the International Covenant on Civil and
Political Rights (the Covenant) to the Regulation of the Print
Media**

The question has been raised as to the relevance, if any, of the International Covenant provisions concerning freedom of expression to attempts to regulate the print media.

The relevant provision of the International Covenant is Article 19. Paragraph 2 of that Article provides that the right to the freedom of expression includes "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, or in writing, or in print, or in the form of art, or through any other media". It is provided, however, that the exercise of this right "carries with it special duties and responsibilities". Certain restrictions are therefore possible if they are provided by law and are necessary for respect of the rights and reputations of others, protection of national security, public order, public health or morals.

In interpreting and considering the application of this provision one needs to distinguish between measures of control over the content of particular print media and controls applied to the business enterprises relevant to the print media themselves. Clearly, restrictions that go to the content of information or ideas contained in the media would directly raise issues as to their compliance with Art.19.

This is not to say that certain restrictions are not permissible, just as certain restrictions are imposed on the content of radio and television. I do not understand, however, that this is the primary focus of the Committee's inquiry.

The other aspect, and the one which appears of more concern to the Committee, relates to controls on the ownership and control of the media itself.

There is no specific provision in the Covenant dealing with the diversity of media ownership. Obviously, however, in a situation where there was no practical opportunity for persons to express their views in a particular form due to lack of media outlets, the question may arise whether there was not some duty on governments, in order to comply with Art.19, to take some action. However, the extent of any such duty is not at all clear. The circumstances in which particular concentrations of media outlets were so great that there could be said to be such lack of opportunity to express ideas or opinions that an international obligation on government to take action is difficult to imagine. In the television area, for example, State run or licensed monopolies have been regarded as consistent with Art.19 so long as there are other media outlets.

I draw attention, however, to statements by the European Commission on Human Rights concerning the application of a provision similar to Art.19 contained in the European Convention on Human Rights.

"Reference to the European Convention on Human Rights provides useful guidance on the scope of Australia's obligations under Article 19 of the ICCPR. However it should be borne in mind that Article 10 is the only major human rights instrument which expressly delimits the permitted limitations on the exercise of freedom of expression by requiring that those limitations are such as are 'necessary in a democratic society'."

In De Geillustreerde Pers N V v Netherlands (5178/71) the Commission said the following:

"Be that as it may, the Commission considers that the protection of the commercial interests of particular newspapers or groups of newspapers is not as such contemplated by the terms of Art.10 of the Convention. These matters might perhaps raise an issue under this provision where a State fails in its duty to protect against excessive press concentrations, but this obviously is not the position in the present case." (emphasis added)

Unfortunately, the Commission did not elaborate and its remarks are only obiter. They do, however, indicate that an issue may arise if, for instance, the ability to disseminate information or ideas was seriously limited as a result of concentration of print or other media outlets.

In a major preliminary report by Mr Danillo Turk and Mr Louis Joinet to the Commission on Human Rights on "The right to freedom of opinion and expression", the special rapporteurs made the following comments on their perception of the relationship between "Media pluralism" and "democratic society". These comments draw heavily from the better established European Convention jurisprudence. However, the comments provide a persuasive analytical account of the relationship between the freedom of expression and a democratic society:

"174. The principle of pluralism, which prevails over the principle of the majority, identified as a criterion of a democratic society in connection with negative sanctions, brings us to the question of the positive obligations of States to avoid concentrations of the press. In other words, the State must assure the exercise of the right to freedom of expression, notably by guaranteeing, the existence of media that can make this right effective. It must also ensure that freedom of expression is not threatened by third parties; since the individual is entitled to pluralist information, the State is bound to take all measures to assure diversity of the media.

175. The European Court has never been invited to study this question, but the Commission (Case of De Guillustreed Pers N.C.v/Netherlands) has noted that the problem of respect for Article 10 of the Convention might arise if a State failed in its obligation to prevent excessive concentrations of the press (report of 6 July 1976, DR 8, p.5). From this viewpoint, the ownership, control and economic organization of the communications media in a democratic society should receive special attention."

So far as Constitutional power is concerned, it would be difficult to establish an adequate basis in the provisions of Art.19 to support any comprehensive Commonwealth legislation that regulated print media concentration. The provisions of Art.19 are designed primarily to promote the freedom of expression. They restrict what can be done rather than positively authorising particular action. This has particular significance for purposes of any legislative reliance on the external affairs power. I consider that it would be difficult to derive from the Covenant provisions any support for constitutional purposes for coercive laws restricting the operations of the press. This does not mean that any such laws, based on some other constitutional power, would infringe the Covenant provisions. As indicated, certain restrictions on press content can be supported if necessary for protection of interests of others or morals or, more general public order objectives. Such restrictions do have to be justified in accordance with Art.19(3) of the Covenant.

In the absence of precise proposals as to the form any restrictions of the print media may take it is difficult to give specific advice whether any particular restrictions could be justified by reference to the criteria set out in Art.19(3). On the other hand, as a general rule, there would not appear to be any problem under the Covenant in relation to restrictions on shareholdings or involvement of foreign interests. Such restrictions are primarily designed to further competition or protect Australian economic or cultural interests and do not themselves directly impact on the freedom of expression itself. Similarly, some form of licensing,

along the lines of that at present used for radio and television may also be permissible. Such a system is designed to ensure the integrity of the controllers of the media. Such a system, provided it did not impair the general ability to disseminate ideas or information would not appear to infringe the Covenant provisions.

Office of International Law
22 October 1991

Extract from

FAIR TRADING ACT 1973 (UK)

Sections 57-62

PART V MERGERS

Newspaper merger references

57-(1) In this Part of this Act-

- (a) "newspaper" means a daily, Sunday or local (other than daily or Sunday) newspaper circulating wholly or mainly in the United Kingdom or in a part of the United Kingdom;
- (b) "newspaper proprietor" includes (in addition to an actual proprietor of a newspaper) any person having a controlling interest in a body corporate which is a newspaper proprietor, and any body corporate in which a newspaper proprietor has a controlling interest;

and any reference to the newspapers of a newspaper proprietor includes all newspapers in relation to which he is a newspaper proprietor and, in the case of a body corporate, all newspapers in relation to which a person having a controlling interest in that body corporate is a newspaper proprietor.

(2) In this Part of this Act "transfer of a newspaper or of newspaper assets" means any of the following transactions, that is to say-

- (a) any transaction (whether involving a transfer or not) by virtue of which a person would become, or would acquire the right to become, a newspaper proprietor in relation to a newspaper;
- (b) any transfer of assets necessary to the continuation of a newspaper as a separate newspaper (including goodwill or the right to use the name of the newspaper);

- (c) any transfer of plant or premises used in the publication of a newspaper, other than a transfer made without a view to a change in the ownership or control of the newspaper or to its ceasing publication;

and "the newspaper concerned in the transfer", in relation to any transaction falling within paragraph (a), paragraph (b) or paragraph (c) of this subsection, means the newspaper in relation to which (as mentioned in that paragraph) the transaction is or is to be effected.

(3) In this Part of this Act "average circulation per day of publication", in relation to a newspaper, means its average circulation for the appropriate period, ascertained by dividing the number of copies to which its circulation amounts for that period by the number of days on which the newspaper was published during that period (circulation being calculated on the basis of actual sales in the United Kingdom of the newspaper as published on those days); and for the purposes of this subsection "the appropriate period"-

- (a) in a case in which an application is made for consent under the next following section, means the period of six months ending six weeks before the date of the application, or
- (b) in a case in which a transfer or purported transfer is made without any such application for consent, means the period of six months ending six weeks before the date of the transfer or purported transfer.

(4) For the purposes of this section a person has a controlling interest in a body corporate if (but only if) he can, directly or indirectly, determine the manner in which one-quarter of the votes which could be cast at a general meeting of the body corporate are to be cast on matters, and in circumstances, not of such a description as to bring into play any special voting rights or restrictions on voting rights.

58.-**(1)** Subject to the following provisions of this section, a transfer of a newspaper or of newspaper assets to a newspaper proprietor whose newspapers have an average circulation per day of publication amounting, together with that of the newspaper concerned in the transfer, to 500,000 or more copies shall be unlawful and void, unless the transfer is made with written consent given (conditionally or unconditionally) by the Secretary of State.

(2) Except as provided by subsections (3) and (4) of this section and by section 60(3) of this Act, the consent of the Secretary of State under

the preceding subsection shall not be given in respect of a transfer until after the Secretary of State has received a report on the matter from the Commission.

(3) Where the Secretary of State is satisfied that the newspaper concerned in the transfer is not economic as a going concern and as a separate newspaper, then-

- (a) if he is also satisfied that, if the newspaper is to continue as a separate newspaper, the case is one of urgency, he may give his consent to the transfer without requiring a report from the Commission under this section;
- (b) if he is satisfied that the newspaper is not intended to continue as a separate newspaper, he shall give his consent to the transfer, and shall give it unconditionally, without requiring such a report.

(4) If the Secretary of State is satisfied that the newspaper concerned in the transfer has an average circulation per day of publication of not more than 25,000 copies, he may give his consent to the transfer without requiring a report from the Commission under this section.

(5) The Secretary of State may by order made by statutory instrument provide, subject to any transitional provisions contained in the order, that for any number specified in subsection (1) or subsection (4) of this section (whether as originally enacted or as previously varied by an order under this subsection) there shall be substituted such other number as is specified in the order.

(6) In this section "satisfied" means satisfied by such evidence as the Secretary of State may require.

59.-(1) Where an application is made to the Secretary of State for his consent to a transfer of a newspaper or of newspaper assets, the Secretary of State, subject to the next following subsection, shall, within one month after receiving the application, refer the matter to the Commission for investigation and report.

(2) The Secretary of State shall not make a reference to the Commission under the preceding subsection in a case where-

- (a) by virtue of subsection (3) of section 58 of this Act he is required to give his consent unconditionally without requiring a report from the Commission under this section, or

- (b) by virtue of subsection (3) or subsection (4) of that section he has power to give his consent without requiring such a report from the Commission, and determines to exercise that power,

or where the application is expressed to depend on the operation of subsection (3) or subsection (4) of that section.

(3) On a reference made to them under this section (in this Act referred to as a "newspaper merger reference") the Commission shall report to the Secretary of State whether the transfer in question may be expected to operate against the public interest, taking into account all matters which appear in the circumstances to be relevant and, in particular, the need for accurate presentation of news and free expression of opinion.

60.-(1) A report of the Commission on a newspaper merger reference shall be made before the end of *such period (not being longer than three months beginning with the date of reference, as may be specified in the [REFERENCE] or of such further period (if any) as the Secretary of State may allow for the purpose in accordance with the next following subsection.*¹

(2) The Secretary of State shall not allow any further period for a report on such a reference except on representations made by the Commission and on being satisfied that there are special reasons why the report cannot be made within the *period specified in the newspaper merger reference* and the Secretary of State shall allow only one such further period on any one reference, and no such further period shall be longer than three months.

(3) If on such a reference the Commission have not made their report before the end of the period specified in *the newspaper merger reference*¹ or of any further period allowed under subsection (2) of this section, the Secretary of State may, without waiting for the report, give his consent to the transfer to which the reference relates.

61.-(1) In making their report on a newspaper merger reference, the Commission shall include in it definite conclusions on the questions comprised in the reference, together with-

- (a) such an account of their reasons for those conclusions, and

¹ Amendments made by Companies Act 1989, Sch. 19, para. 2.

- (b) such a survey of the general position with respect to the transfer of a newspaper or of newspaper assets to which the reference relates, and of the developments which have led to that position,

as in their opinion are expedient for facilitating a proper understanding of those questions and of their conclusions.

(2) Where on such a reference the Commission find that the transfer of a newspaper or of newspaper assets in question might operate against the public interest, the Commission shall consider whether any (and, if so, what) conditions might be attached to any consent to the transfer in order to prevent the transfer from so operating, and may, if they think fit, include in their report recommendations as to such conditions.

62.- (1) Any person who is knowingly concerned in, or privy to, a purported transfer of a newspaper or of newspaper assets which is unlawful by virtue of section 58 of this Act shall be guilty of an offence.

(2) Where under that section the consent of the Secretary of State is given to a transfer of a newspaper or of newspaper assets, but is given subject to one or more conditions, any person who is knowingly concerned in, or privy to, a breach of that condition, or of any of those conditions, as the case may be, shall be guilty of an offence.

(3) A person guilty of an offence under this section shall be liable, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(4) No proceedings for an offence under this section shall be instituted-

- (a) in England or Wales, except by, or with the consent of, the Director of Public Prosecutions, or
- (b) in Northern Ireland, except by, or with the consent of, the Director of Public Prosecutions for Northern Ireland.

APPENDIX 7

LIST OF MAJOR EVENTS LEADING TO CURRENT INDUSTRY STRUCTURE

- 1970 May: *Newsday* (Melbourne, Syme) closes. (1) (Submissions p. 790)
- September: John Fairfax acquires 25% of Land Newspapers. (2)
- 1971 February: Fairfax launches *National Times*. (1,2)
- 1972 June: News buys the *Daily Telegraph* and the *Sunday Telegraph* from Australian Consolidated Press. (1)
- July: Fairfax takes a majority shareholding in Syme, making it a subsidiary. (1,2)
- 1973 HWT/Syme launch the *Sunday Press* in Melbourne as a joint venture.
- 1974 *Canberra News* (Fairfax) closes. (2) (Fairfax acquired *Canberra Times* in 1964 - Submissions p. 764)
- 1976 July: Australian Press Council set up.
- 1977 TPC merger threshold test changed from substantial lessening of competition to dominance or substantially strengthened dominance.
- 1978 April: Fairfax acquires full ownership of Newcastle Newspapers (2), also Sungravure (the magazine publishing arm of Fairfax (2) with titles such as *Woman's Day*, *People with Pix*, *Dolly*, *Cosmopolitan*). (3)

- 1979 November: News bids for HWT; Fairfax buys 14.9% stake in HWT to avert takeover threat. (1,2) Fairfax has a bigger stake (in value terms) in HWT than in its subsidiary, Syme.
- October: *Nation Review* closes.
- 1980 Fairfax acquires interests in regional newspapers in NSW (15% *Dubbo Liberal*, also Norland Publishing Group in 1981 - Northern Tablelands NSW) (Submissions p. 767)
- Holmes a Court launches the *Western Mail*. (Submissions p. 791)
- July: *Newcastle Sun* closes. (2)
- November: *Western Mail* launched in Perth. (1)
- 1981 December: Holmes a Court makes unsuccessful bid for HWT.
- Fairfax launches BRW Publications (business magazines) with Syme.
- 1982 August: News launches Brisbane's daily *The Sun*. (Submissions p. 334)
- HWT acquires 12% Queensland Newspapers. (Submissions p. 1223)
- 1983 September: Fairfax acquires the remainder of David Syme and Co. Ltd.
- 1984 Fairfax buys ACP out of their joint Sydney suburban newspaper publishing companies, Suburban Publications Ltd and Suburban Community Newspapers. (ACP sells its other regional and suburban newspapers to HWT - see below). Fairfax buys into Longbeach Publications Ltd (Gold Coast papers). Fairfax lifts its holding in Rural Press to 45%.
- Fairfax buys 50% of Datamail.

October: HWT buys 50% of Automail and 49% of Direct Marketing. (1)

BRW goes into partnership with Time Inc (US) - to publish *Time* in Australia; this was to counter ACP's incorporation of *Newsweek* in *The Bulletin*.

October: Sun-Herald launches *The Good Weekend* magazine. (3)

1985: News buys *The Independent* (Perth) (Submissions p. 790).

1986 Herald and Weekly Times (HWT) buys Packer's suburban and regional newspapers. Kerry Packer's plan to purchase 30% of HWT stock and to merge ACP media assets into HWT is aborted after opposition from the HWT Board. (1)

Fairfax changes *National Times* to *Times on Sunday*.

HWT buys Leader Associated Newspapers (Melbourne suburbans). (1) (Submissions p. 1223)

December: News Limited launches second bid for HWT. (1)

December: Holmes a Court launches counter-bid for HWT. (1)

December: Melbourne *Herald* weekend edition closes. (1) (Submissions p. 1223)

1987 January: Fairfax launches bid for Queensland Press Limited (an HWT subsidiary). (1)

January: News outbids Holmes a Court and Fairfax. (1)

January: Fairfax bids for the whole of HWT, but HWT Board does not recommend the offer. (1)

February: News wins control of HWT. (1) Trade Practices Commission requires divestiture of papers in Brisbane, Adelaide and Perth where News would have all the metropolitan papers in these cities as a result of the takeover.

News divests its old titles, the *Brisbane Sun* and the *Adelaide News* to Northern Star Holdings, and keeps the HWT papers in these cities.

Bell Group proposes to acquire West Australian Newspapers, publishers of *The West Australian* the *Daily News*, and 50% of Community Newspapers. Bell already owned suburban newspapers. The TPC required partial divestiture of assets; Bell sold its suburban papers (to Community Newspapers) and the *Daily News* (to United Media). United Media subsequently sold *Daily News* to Community Newspapers. (Submissions p. 463)

Cross media ownership rules introduced into the *Broadcasting Act*.

July: Launch of *Business Daily*.

August: *Business Daily* folds. (Submissions pp. 158ff and p. 1034)

August: Northern Star sells the *Brisbane Sun* and the *Adelaide News* to the management of these papers. (1)

Warwick Fairfax launches takeover bid for Fairfax, and plans to sell Fairfax shares in AAP and ANM to News Limited. Treasurer blocks the sale of AAPIS under the *Foreign Takeovers Act*. TPC obtains Federal Court injunction blocking News purchase of Fairfax stake in ANM.

September: News sells its shares in Provincial Newspapers Queensland. PNQ acquires most of the regional papers of Northern Star Holdings. Queensland Press acquires the 50% of Quest Media it does not hold. (Submissions p. 488)

November: News proposes to acquire *The Canberra Times*, *The Australian Financial Review*. Australian Consolidated Press proposes to acquire *Business Review Weekly*. TPC informs the parties that it considered such purchases were likely to breach the merger provisions in the *Trade Practices Act*. (Submissions p. 479)

December: *Western Mail* closes in Perth. (1) (Submissions p. 1223)

December: Treasurer blocks proposed sale of Fairfax shares in AAP to News. (Submissions p. 2842)

Fairfax sells its Sungravure magazines to ACP.

John B Fairfax buys the Fairfax interests in Rural Press, Macquarie Publications, the *Queanbeyan Age*, and the partnership in Eastern Suburbs Newspapers.

1988

February: Brisbane *Telegraph* (News Limited's evening paper) closes. (1) (Submissions p. 1223) The *Daily Sun* in Brisbane (owned by management) switches from a morning to an afternoon paper. (1)

March: *Times on Sunday* (formerly *National Times*) and *Sydney Sun* (Fairfax papers) close. (1) (Submissions p. 1223)

May: News sells to Reuters half those AAP shares in Reuters which it had acquired from Fairfax and Holmes a Court, following concern by the Reuters Board that News had obtained control in breach of the Reuters Articles. (1)

May: Bond Corporation acquires Bell Group, and thereby West Australian Newspapers. (Submissions p. 550)

Foreign investment objections raised in relation to Robert Maxwell's interest in *The Age*.

June: TPC authorises purchase of half of Australian Newsprint Mills by Fletcher Challenge. (1)

July: Australian Provincial Newspapers (Haswell) buys Provincial Newspapers Queensland (regional Queensland newspapers). (Submissions pp. 229,479).

October: Brian Coppin acquires control of United Media.

1989 *Sunday Observer* (Peter Isaacson Publications) and *Sunday Press* (joint venture - HWT/Syme) close. (Submissions pp. 1223 and 1034). News and Age start their own Sunday papers.

October: *AFR Investor* closes after 2 months of publication. (Submissions p. 1034)

1990 January: West Australian Newspapers proposes to acquire United Media. TPC obtains an injunction preventing the acquisition.

March: West Australian Newspapers applies for TPC authorisation to acquire United Media. Authorization is denied. (Submissions p. 463)

June: Foreign investment objections raised in relation to interest shown by Robert Maxwell in acquiring 49% of West Australian Newspapers; approval was also refused for 1988 offer by Malaysian company for the *Daily News* (Perth). (Submissions pp. 812 and 925)

June: *Age Monthly Review* closes after 8 months of operation. (Submissions p. 1034)

July: Mathews Inquiry into newspaper ownership in Victoria set up. The Committee reported in December, recommending that the Victorian Government introduce legislation to prevent further print media concentration. (Submissions p. 1415)

July: West Australian Newspapers applies for TPC authorization to buy *Daily News* alone. Authorization is denied.

Daily News (Perth) closes. (Submissions p. 1223)

October: News Limited merges its morning and afternoon papers in Sydney (*Telegraph Mirror*) and Melbourne (*Herald Sun*). (Submissions p. 1034)

October: Rural Press and Harris and Company acquire The Examiner Newspaper Pty Ltd (Launceston). (Submissions p. 583)

December: Fairfax put into receivership.

1991 *Sunday Herald* (News, Melbourne) closes.

West Australian Newspapers in receivership. (Submissions p. 1223)

December: Brisbane *Sun* closes.

Public float of 55 per cent of Pacific Magazines and Printing Limited by News Limited completed.

Tourang Consortium acquires Fairfax Group.

1992 January: public float of West Australian Newspapers.

February: public float of 55 per cent of Australian Consolidated Press Group Ltd launched (to close in April 1992).

Sources: (1) Chadwick, 1989
(2) Souter, 1981
(3) Souter, 1991

**MEDIA'S SHARE OF NATIONAL & NON-NATIONAL
ADVERTISING 1980-1990**

		TELEVISION	RADIO	NEWSPAPERS	OTHER PRINT	OUTDOOR TRANSPORT & CINEMA
NATIONAL ADVERTISING	1980	46.6	5.6	21.0	14.6	12.3
	1981	48.5	5.7	20.6	14.3	10.9
	1982	48.7	5.9	21.0	14.2	10.2
	1983	49.7	6.3	19.2	13.8	11.0
	1984	50.7	5.6	19.8	13.0	10.9
	1985	51.3	6.2	19.4	12.2	10.9
	1986	53.5	5.4	20.1	12.3	8.6
	1987	51.3	5.6	19.4	11.8	11.9
	1988	49.7	5.6	21.6	11.8	11.3
	1989	51.1	5.1	20.9	11.8	11.2
	1990	52.5	7.8	18.6	11.4	9.7
NON- NATIONAL ADVERTISING	1980	13.8	12.8	63.8	3.3	6.4
	1981	13.6	12.0	66.7	2.6	5.1
	1982	14.3	12.2	65.8	3.0	4.8
	1983	14.2	12.7	65.6	2.5	5.1
	1984	14.9	13.4	64.5	2.5	4.8
	1985	12.2	13.0	67.3	2.7	4.8
	1986	12.1	13.7	66.3	2.9	5.0
	1987	13.9	13.5	65.0	2.8	4.8
	1988	13.0	12.7	66.3	3.2	4.7
	1989	12.4	12.6	67.6	2.9	4.6
	1990	13.1	9.9	69.0	3.5	4.5

Notes: National advertising generally refers to display advertising placed in two or more major markets.

Non-national advertising generally includes retail, classified, semi-display, local and other non-display advertisements.

Source: Commercical Economic Advisory Service of Australia (1991)

**EFFECT OF LIMITS PROPOSED BY
THE COMMUNICATIONS LAW CENTRE ON NEWS LIMITED**

CLC proposed mutually exclusive limits are:

- . 1 national daily, 1 metropolitan daily and 1 metropolitan Sunday paper
- . 25 per cent of regional daily circulation in any one state and 25 per cent aggregate Australian circulation
- . 25 per cent of suburban circulation in any one city and 25 per cent aggregate Australian circulation
- . 25 per cent of aggregate Australian circulation of magazines.

Current News Limited holdings are:

- . 1 national newspaper
- . 5 state capital city daily papers
- . 6 state capital city Sunday papers
- . Darwin's NT News and Sunday Territorian
- . 17 per cent of regional dailies circulation
- . 45 per cent of Sydney suburban circulation
- . 51 per cent of Melbourne suburban circulation
- . 100 per cent of Adelaide suburban circulation
- . more than 25 per cent of Australian magazine circulation.

Application of the limits could result in a multitude of combinations. The following represents the minimum possible number of mutually exclusive units without taking account of criteria which prohibit common ownership in adjacent areas (eg as proposed for regional dailies).

- . 1 national + 1 capital city daily + 1 capital city Sunday paper
- . 4 other groups made up of 1 capital city daily and 1 capital city Sunday papers
- . 1 Sunday Newspaper (left over from above groupings)
- . Darwin's daily and Sunday paper plus regional dailies
- . 2 suburban groups in Sydney
- . 2 suburban groups in Melbourne
- . 4 suburban groups in Adelaide
- . 2 magazine groups.

Source: Compiled by the House of Representatives Select Committee on the Print Media

AJA CODE OF ETHICS

Respect for truth and the public's right to information are overriding principles for all journalists. In pursuance of these principles journalists commit themselves to ethical and professional standards. All members of the Australian Journalists' Association engaged in gathering, transmitting, disseminating and commenting on news and information shall observe the following code of ethics in their professional activities. They acknowledge the jurisdiction of their professional colleagues in AJA judiciary committees to adjudicate on issues connected with this code.

1. They shall report and interpret the news with scrupulous honesty by striving to disclose all essential facts and by not suppressing relevant, available facts or distorting by wrong or improper emphasis.
2. They shall not place unnecessary emphasis on gender, race, sexual preference, religious belief, marital status or physical or mental disability.
3. In all circumstances they shall respect all confidences received in the course of their calling.
4. They shall not allow personal interests to influence them in their professional duties.

5. They shall not allow their professional duties to be influenced by any consideration, gift or advantage offered and, where appropriate, shall disclose any such offer.
6. They shall not allow advertising or commercial considerations to influence them in their professional duties.
7. They shall use fair and honest means to obtain news, pictures, films, tapes and documents.
8. They shall identify themselves and their employers before obtaining any interview for publication or broadcast.
9. They shall respect private grief and personal privacy and shall have the right to resist compulsion to intrude on them.
10. They shall do their utmost to correct any published or broadcast information found to be harmfully inaccurate.

Source: Submissions p. 1109

**AUSTRALIAN JOURNALISTS' ASSOCIATION
MODEL CHARTER**

Preamble

The proprietor and the editorial staff, represented by the Australian Journalists' Association, agree that the media is a unique business which imposes on them responsibilities to the community.

The chief responsibility is to provide news that is as accurate, fair and complete as possible and comment that reflects the diversity of opinion within the community. The owner and staff properly claim the prestige and influence a paper may command only if they fulfil the responsibilities it entails. Commercial success depends on a reputation for meeting the responsibilities and being seen to meet them.

Accordingly, the proprietor and editorial staff undertake to abide by this charter, which is intended to preserve the reality and appearance of editorial independence. The proprietor agrees to incorporate this charter into the company's articles of association.

Editorial trustees

The proprietor will establish a board of five editorial trustees separate from the company's board of directors.

The trustees will be agreed by negotiation and acceptable to both the proprietor and editorial staff. Selection will be based on ability, experience and independence to try to ensure the trustees' decisions command the confidence of the proprietor, editorial staff and the community.

Appointments will be for three years.

The vote of each trustee will have equal weight and decisions will require at least three votes in favour.

The main function of the board of editorial trustees will be to settle disputes between the proprietor and an editor, either of whom may approach the trustees to mediate in a dispute which the two have been unable to settle by negotiation.

The proprietor and editors agree that the trustees' decision will be final and that the decision and reasons will be published in full in the relevant paper.

Editors

Appointment or dismissal of editors will require the approval of the trustees.

The editor will be fully consulted during the fixing of any budget for editorial expenditure and editorial and advertising space. Subject only to such budgets, the editor will have sole control of content.

No editor will be restrained or directed in reporting news or opinion that might directly or indirectly conflict the opinions with or interests of the proprietor, whether political, financial or otherwise.

Only the editor or his or her delegates may appoint, instruct, direct or dismiss journalists, artists and photographers.

Ethics

The proprietor subscribes to the AJA code of ethics. No employer shall require a member to work other than in accordance with the (AJA) code of ethics.

Source: Submissions pp. 1107-08

'THE AGE' CHARTER

1. That the proprietor/s publicly declare a commitment to the fundamental and long-standing principle of editorial independence.
2. That the proprietor/s acknowledge that journalists, artists and photographers must record the affairs of the city, state, nation and the world fairly, fully and regardless of any commercial, political or personal interests, including those of any proprietors, shareholders or board members.
3. That editorial staff shall not be required to work other than in accordance with the Australian Journalists' Association's Code of Ethics.
4. That full editorial control of the newspaper, within a negotiated, fixed budget, be vested with the editor, and that the editor alone shall determine the daily editorial content of the newspaper.
5. That the editor alone shall hire, fire and deploy editorial staff.
6. That the editor shall not sit on the board of the owning company or companies, or any non-publishing subsidiary companies, and shall not be directly responsible to the board but to its appointed management.

7. That the editor must at all times carry out his or her duties in a way that preserves the independence and integrity of 'The Age'.
8. That the principles of this charter shall also apply to the 'Sunday Age'.

Source: Submissions p. 2309

PRESS COUNCIL COMPLAINT FORM (EXAMPLE)

AUSTRALIAN PRESS COUNCIL COMPLAINT FORM

PAGE 1

1. I _____
of _____
phone _____ fax _____
2. Complain about an article published on _____
in _____ entitled _____

3. I believe the article (enclosed) breaches the following principle(s)
(Please tick)
1. Newspaper readers are entitled to have news and comment presented to them honestly and fairly, and with respect for the privacy and sensibilities of individuals.
 2. A newspaper has an obligation to take all reasonable steps to ensure the truth of its statements.
 3. Rumour and unconfirmed reports, if published at all, should be identified as such.
 4. News obtained by dishonest or unfair means, or the publication of which would involve a breach of confidence, should not be published unless there is an over-riding public interest.
 5. A newspaper is justified in strongly advocating its own views on controversial topics provided that it treats its readers fairly by:-
 - * making fact and opinion clearly distinguishable;
 - * not misrepresenting or suppressing relevant facts;
 - * not distorting the facts in text or headlines.
 6. Billboards and posters advertising a newspaper must not mislead the public.
 7. A newspaper has a wide discretion in matters of taste, but this does not justify lapses of taste so repugnant as to bring the freedom of the press into disrepute or be extremely offensive to the public
 8. The publication of material disparaging or belittling individuals or groups by reference to their sex, race, nationality, religion, colour, country of origin or intellectual or physical disabilities is a breach of ethical standards.
 9. A newspaper should not, in headlines or otherwise, state the race, nationality or religious or political views of a person suspected of a crime, or arrested, charged or convicted, unless the fact is relevant.

ACKNOWLEDGEMENTS

In addition to thanking those who prepared submissions and/or appeared before the Committee, the Committee also wishes to express its appreciation for the assistance it received from many individuals and organisations who made themselves available and shared with the Committee their expertise and advice. Staff from the British and Canadian High Commissions, the French and Swedish Embassies and the United States Information Service provided valuable reference material and followed up our numerous requests for information. Officers from the Trade Practices Commission, the Attorney-General's Department and Mr John Wallace from Royal Melbourne Institute of Technology held useful discussions and briefings with the Committee. The management and staff of News Limited and David Syme & Co Ltd were most helpful during the Committee's inspections of their premises. In addition, the Committee thanks the companies which gave their permission to use mastheads from their newspapers and magazines in the cover of the Report.

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