



**AUSTRALIAN
PRESS
COUNCIL**

SUBMISSION

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**Australian Press Council Submission to the
Senate Committee for Environment, Communications,
Information Technology and the Arts inquiry into
Broadcasting Service Amendment (Media Ownership) Bill 2006
and related bills**

Executive summary

The Australian Press Council accepts the need for the government to change limitations on cross-media ownership. It believes that any such changes need to ensure that there remains a diversity of Australian voices in the media, that the rules governing mergers and acquisitions within the media sector be fair and that Australian newspapers remain independent of government regulation or control. The Council doubts that the proposed changes will achieve these objectives.

It sees a real possibility that the changes will result in a serious reduction in the diversity of viewpoints and voices in Australian media. Worse, it fears that the changes will lead to the capacity for government interference in the traditional freedom of Australian newspapers. The granting of regulatory powers over the print media to the Australian Communications and Media Authority, a government-appointed body, is a dangerous step and could lead to further government intrusion into a free and unlicensed press, to the detriment of the people's right to be informed on matters of public interest and concern.

Overview

The Press Council agrees that reform of the foreign ownership and cross-media ownership regulations is necessary but foresees considerable and continuing problems if the proposals in the legislation are adopted in their current form.

The Press Council agrees that foreign takeovers and acquisitions in the media should be subject to Government's Foreign Investment Policy (FIP) under the *Foreign Acquisitions and Takeovers Act* (FATA) as are all other such acquisitions. The Council believes that applying 'sensitive sector' status to media acquisitions will enable those administering the Act to have regard for Australian content in the media as an issue of key importance in any such takeover or acquisition.

On the question of cross-media rules, the Council believes that the proposals need further consideration. The inclusion in the *Broadcasting Services Act* (BSA) of regulations that restrict ownership in the print media and that give powers to the Australian Media and Communications Authority (ACMA) to have some supervision of print media newsrooms is inimical to the traditional freedom of the Australian press to be free of government supervision and control.

The Council's view remains that the Australian Competition and Consumer Commission (ACCC) should be the regulator of mergers and acquisitions, under the *Trade Practices Act*, supplemented if necessary by a media-specific public interest test. However, it recognises that the government is intent on using ACMA as the body to oversight the cross-media ownership regime. Regardless of which body is given the carriage of administering the regime, it is necessary that the rules be transparent and fair and the bases on which decisions will be made on particular proposed mergers and acquisitions be known to all parties.

Public right to information through a free press

For the effective functioning of Australian democracy, there must be sufficient and sufficiently diverse sources of news and comment to ensure that members of the public are always promptly and well enough informed to make their own judgments about governance, regulation, sport, entertainment or other matters. No law or amendment to a law should restrict these fundamental citizenship rights.

Access by all Australians to full, truthful, unbiased information about world and domestic events, and to a plurality of opinions on those matters from an Australian perspective, is the key issue to be considered in determining government policy on media ownership. The Press Council preserves established press freedoms by ensuring that the print media remain capable of serving the public free of any form of government regulation or licensing. The Council helps maintain high journalistic standards by, among other things, resolving, mediating and adjudicating complaints made by readers about material published in newspapers and magazines. It is against the background of its responsibilities that the Press Council raises the following concerns with aspects of the Government's proposals.

The number of voices

Instead of removing regulation of cross-media ownership from the BSA, the legislation seeks to impose a bureaucratic regime to be administered by the electronic media regulator. The regime proposed relies on what could be seen as arbitrary distinctions in types of markets and in the minimum number of owners in different markets. The Council believes that the Committee needs to reconsider the basis on which the division between the five metropolitan centres and other centres is made. There also needs to be consideration of the basis on which the minimum of five owners and four owners, respectively, has been arrived at. The Council can see no clear rationale or methodology for the distinction between what is a metropolitan centre and what is not, or for the setting of the minimums.

By limiting the definition of metropolitan centre to the five mainland state capitals, the proposals would appear to unfairly restrict the diversity of voices in, among other areas, the Gold Coast-Tweed conurbation, the Hunter, the Illawarra and Canberra and environs. There appears no justification for the decision to impose the five-owner minimum to some centres and not others. With the likelihood that many 'regional' centres will grow at rates higher than some of the mainland capitals, the arbitrary nature of the distinction made in the legislation will soon become apparent.

Similarly, the government makes no convincing case that five and four are the appropriate numbers for the minimums to be applied, whatever the distinction made between larger and smaller centres. While the minimum of four will fail to protect diversity in many regional areas, the minimum of five appears to be artificially low for most capital cities. Considerable loss of diversity is likely to occur in the future should the new rules be introduced.

While it might be argued that the new media are providing a backdrop against which a reduction in the diversity of other media have less impact, the fact remains that the local news sites mainly visited by Australian Internet users are those of the established media. The sites operated by Fairfax Media, News Interactive, Nine-MSN, Seven-Yahoo and the ABC account for an overwhelming number of hits on Australian news sites. In other words, far from providing an argument for greater diversity, the Internet (and subscription television services) indicate that the same voices already heard in the mainstream media are also heard in the new media. Further, it is highly likely that the consolidation of ownership of the mainstream media that will take place after the introduction of the legislation will lead to a reduction in the number of content providers for Australian news sites on the Internet. The loss of only a couple of these would see a severe restriction in the different viewpoints available to the Australian public.

Government regulation of newspapers is incompatible with a free society

The inclusion of proposals giving ACMA supervision over the registration of commercial media groups in a given market and over the conflict disclosure provisions of the proposed regime, as well as enhanced enforcement powers in areas that would involve newspapers, introduces government control over the press in its journalistic role.

It is unacceptable for ACMA or any other government authority to have such power.

The Council concedes that, if ACMA is to be given supervision of the regime of cross-media ownership, the registration requirements are not in themselves a major intrusion into the currently unlicensed nature of the print media. However, giving a government-appointed authority the proposed power over the press, on questions of disclosure of conflicts of interest, will be an historic departure. It breaches the established conventions under which the press has operated in Australia since Federation. Any move towards government control of newspapers in this country needs to be resisted strongly. Once print media independence from government is compromised, however innocently that first step is portrayed, there will exist the strong possibility of additional amendments, further limiting and managing the press. As the freedom of the press is the freedom of the people to be informed, government interference in the editorial processes of newspapers could limit the ability of the press to provide information necessary for the proper functioning of a liberal democracy.

Additionally, the requirements will mean that the print media will be answerable to two different organisations for a single aspect of its ethical behaviour. Since 1996, the Press Council's Statement of Principles has specifically mandated that publications should disclose potential conflicts (of any sort) that might influence their reporting of, or commentary on, the news. The Council has dealt with several complaints about alleged breaches of the principle and has successfully settled each one either by mediation or by adjudication. Under the regime that will be established by the legislation, newspapers, which subscribe to the Australian Press Council Statement of Principles, will also be answerable to the government-appointed electronic media licensing authority.

The government has avoided such regulatory oversight in other areas. In the changes to the *Privacy Act* to expand its operations to include the private sector, the government inserted a media exemption for those organs of the media that publicly subscribed to a set of privacy standards. The Press Council has successfully administered such a set of standards for the print media over the past five years. The government-appointed Privacy Commissioner has been kept at arm's length from the press. In working through the changes to the Financial Services legislation, particularly those applying to the licensing of those offering personal financial advice, the government was able to develop, in cooperation with the media, a light touch regime that required the press to ensure that potential conflicts of interest were adequately disclosed. That system has been working for a number of years without any arm of government suggesting that they are dissatisfied with it. The Press Council sees no reason why the cross-media ownership legislation needs to depart from these precedents and introduce a statutory disclosure requirement that essentially duplicates a system overseen by the Council that has been successfully operating for over 30 years.

The Press Council objects in principle to the imposition of a government-appointed and controlled authority over any aspect of newspaper editorial content. The Council's objection is not based on the current composition of the ACMA or any evident partisanship within that body, but on the principle of the necessary independence of newspapers from government regulation and control.

Conclusion

The Australian Press Council does not oppose in principle changes to cross media ownership laws. However, the proposed legislation adds another level of bureaucracy and introduces government regulation into the editorial processes of the print media, developments that are to be deplored; developments that the Senate Committee needs to address by proposing changes to the legislation that would ameliorate the sections that threaten the traditional values of the Australian community – of a free press, unfettered by government regulation and control.

The Australian Press Council

The Australian Press Council is a voluntary association of organisations and persons established on 22 July 1976. The membership of the Council is set out below.

The objects of the Australian Press Council are to promote freedom of speech through responsible and independent print media, and adherence to high journalistic and editorial standards, by:

1. Considering and dealing with complaints and concerns about material in newspapers, magazines and journals, published either in print or on the Internet;
2. Encouraging and supporting initiatives by the print media to address the causes for readers' complaints and concerns;
3. Keeping under review, and where appropriate, challenging political, legislative, commercial or other developments which may adversely affect the dissemination of information of public interest, and may consequently threaten the public's right to know;
4. Making representations to governments, public inquiries and other forums as appropriate on matters concerning freedom of speech and access to information;
5. Undertaking research and consultation on developments in public policy affecting freedom of speech, and promoting public awareness of such issues.

**The Australian Press Council
Members
September 2006**

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Pam Walkley
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Gerard Noonan
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Panel of Public Members (9 members - 7 attend each meeting)

Professor H P Lee (Vic) [Vice-Chairman]
Cheryl Attenborough (Tas)
Francesca Beddie (NSW)
Helen Edwards (SA)
John Fleetwood (SA)
Brenton Holmes (ACT)
Wendy Mead (Qld)
Katherine Sampson (Vic)
Lisa Scaffidi (WA)

Panel of Independent Journalist Members (3 members - 2 attend each meeting)

Bruce Baskett
Adrian McGregor
Sandra Symons

Journalist Member representing the Media Entertainment and Arts Alliance

Alan Kennedy

Panel of Editor Members (2 members - 1 attends each meeting)

Gary Evans, Lloyd Whish-Wilson

Executive Secretary (non voting)

Jack R Herman