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Whither media regulation?

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Abstract
Several models of media regulation have developed in Australia, from the Australian Broadcasting Authority's rarely exercised legislative muscle through to the Australian Press Council, the watchdog regarded as having a hearty bark but no bite. In between there have been low profile MEAA judiciary committees, in-house codes of conduct, and even a failed experiment with a newspaper ombudsman. Some argue that the ABC's Media Watch program has been the most effective regulator of them all. What has happened with all these regulatory mechanisms and what kind of regulatory model best suits the Australian news media today? This paper reviews the attempts at governmental and self-regulation and proposes a self-funded model which stands to offer a realistic check on media excesses without further government interference.

This paper takes up the vexed issue of media regulation in Australia by reviewing the role and effectiveness existing regulatory mechanisms and floating a mechanism for a new model of “non-government” regulation which might supplement or replace the so-called “self-regulatory” systems which have been in place in recent decades. It represents a synthesis of some thoughts I have been fine-tuning in a range of research endeavours and writings over the past two years. The first section, reviewing the existing regulatory framework, draws upon material from a chapter on regulation in the forthcoming second edition of The Journalist's Guide to Media Law, due for publication in March 2004. The second section, detailing changing attitudes to press freedom, draws upon some research I reported upon to the Public Right To Know conference at the University of Technology, Sydney, last month. The final section, floating some new models for non-government regulation, is an extension and fine-tuning of my article in the forthcoming Asia-Pacific Media-Educator.

Media regulation today
A long list of laws impact upon the media but few are specially designed to apply only the media. The main areas of media law apply to the public generally, including defamation, contempt, confidentiality, intellectual property and the laws commonly bundled under the heading “privacy”. Specific complaints about inappropriate media behaviour are addressed either through the court system under these heads of law or via the regulatory or self-regulatory bodies authorized to adjudicate upon media breaches.

Regulation of the broadcast media has been reduced under the self-regulatory provisions of the Broadcasting Services Act 1992 and the print media have been left chiefly to control themselves through a range of partly effective mechanisms. Some view this as a legal accident. The Constitution gives the Commonwealth control over
broadcasting, but it only has control over the press when newspapers contravene Federal laws or when States decide to co-operate with uniform law reforms. Nevertheless, this may be under challenge, as explained later in this paper.

In the print domain, the trend has been towards self-regulatory mechanisms, including newspapers’ in-house codes of practice, the MEAA (Australian Journalists Association) ethics panel, and the industry-funded Australian Press Council. Broadcast media are regulated by the Australian Broadcasting Authority, operating under the Broadcasting Services Act 1992. This covers the full ambit of television, radio and Internet regulation. All media corporations also fall under the jurisdiction of the Australian Competition and Consumer Commission (ACCC), to the extent that they interact with consumers and are required to follow acceptable trade practices. The Commission investigates proposed mergers and takeovers for their impact upon the market. It also deals with breaches of the Trade Practices Act related to advertising.

**Australian Press Council**

The Australian Press Council was established in 1976 at a time when it appeared the then Federal Government might move toward greater regulation of the press (Pearson 1992, p. 116). Its primary goal, as outlined in the first object of its Constitution (Australian Press Council, 2003) is to “promote freedom of speech through responsible and independent print media, and adherence to high journalistic and editorial standards”. To do so, it:

- Deals with complaints about print media and their Internet products
- Encourages print media to address causes of complaints.
- Reviews and challenges developments threatening a free press.
- Represents the interests of free speech in public forums
- Undertakes research to these ends.

The Press Council is a non-profit organisation funded by newspaper publishers, whose membership has fluctuated from time to time, with major players often not represented. The AJA (now the MEAA) was in discussions about rejoining in 2003, according to its president Chris Warren (personal communication, September 8, 2003).

In 2002, the Press Council had 22 members, with nine (including the chairman) representing the public and the balance representing various sectors of the industry, including publishers (nine), journalists (two) and editors (two). (APC, 2002b). Complainants must waive their right to legal action on the matter complained about and the Press Council’s only punitive power is to announce its findings and to ask its members to publish them (Pearson 1992, p. 115). Adjudications are issued against newspapers or magazines themselves, rather than against particular journalists. Complaints can either be upheld in full or in part or dismissed. Member publications are expected to publish the Council’s adjudication on matters involving them, although from time to time they have refused to do so. Adjudications are published in the Council’s journal, the Australian Press Council News, and on its website at www.presscouncil.org.au. Statistics on the Council’s complaints handling are featured on its website at www.presscouncil.org.au/p_visit/complaints/stats02.html. In 2001-2002 it considered 298 letters of complaint, the bulk of which were from individual citizens. They concerned a range of issues covered by the Council’s Statement of Principles, with the largest categories of complaint being about inaccuracy or misrepresentation (13%), imbalance (12.1%), offensive coverage (9.5%) and racism or religious disparatement (8.2%). More than half of the complaints (51.2%) were
about metropolitan newspapers. Only 17.6% of complaints went to adjudication by the Council. The balance were either refused as inappropriate, referred to other organisations, withdrawn for legal action, not followed up by the complainant, withdrawn after correspondence, mediated, or subjected to some other action. Of those adjudicated, 38.6% were upheld wholly or in part, while 61.4% were dismissed.

The Press Council has been criticised for the dual role it sets out to perform: trying to defend press freedom while also claiming to be a tribunal to hear complaints against the media it is defending. Despite the criticisms, it has improved its performance significantly on both fronts in recent years. It has produced impressive submissions to government on some of the key legal threats to press freedom, some of which have clearly influenced policy-makers and legislators to modify their approaches. Examples include submissions on privacy, contempt, defamation, media ownership and surveillance. (See www.presscouncil.org.au/pcsite/new.html for these submissions). It has also produced a range of useful guidelines for the media on sensitive or controversial journalism topics, which have been used effectively by both tertiary institutions and media outlets in their education and training. The Council has elevated its public profile by taking its meetings to regional centres and different state capitals, by issuing press statements on pertinent topics and by administering a successful national essay competition based upon its principles.

At the same time, the Council has improved its complaint procedures in several ways. It has moved more towards a more legalistic system of identifiable precedent in its decision-making, when previously some of its decisions appeared ad hoc and out of sync with previous ones. It has also streamlined its complaints protocols so that complaints are handled more efficiently. The Press Council has embraced its role as a first port of call for complaints about all media operations by referring complaints to other regulatory bodies where appropriate.

Despite all these positive steps, there is no escaping the fact that the lack of regulatory teeth in the form of firm sanctions means that the Press Council appears destined to be perceived in many quarters as a high profile, often vocal, press freedom lobbyist wielding a mere feather when it needs to discipline one of its member publications.

*MEAA Ethics Committee*

Unlike the Press Council, the ethics panel of the Media, Entertainment and Arts Alliance (Australian Journalists Association) has actual disciplinary powers at their disposal for use against individual journalists who breach their Code of Ethics. Their powers extend to any journalists who are members of the Alliance. However, large pockets of journalists across several sectors are not members. Membership is strong throughout metropolitan newspapers and the public broadcasters (except at senior management levels), while it fluctuates throughout other areas of the media and in some, particularly the commercial television and radio sectors, is quite weak.

Members of the union are required to abide by the Code of Ethics. This is the primary document cited by journalists, lawyers, politicians and commentators whenever a journalism ethical issue arises. The Alliance’s ethical complaints procedures are outlined in section 8 of the Rules of the Media Entertainment and Arts Alliance (2002).

The new procedures resulted from changes put to the Alliance’s Federal Council in 2001 (The Alliance, 2001). The major changes involved moving the adjudication process from a cumbersome state branch-based procedure to a nationally based system involving non-journalists as full members of the ethics panel. The national
panel now consists of 21 journalist members and nine non-journalist citizens, from whom a three-member panel is chosen to hear a complaint. Criteria of geography, balance (of gender and media type) and non-journalist representation feed into the selection of each tribunal. A five-person panel including at least two non-journalists would handle appeals.

Complaints must be in writing with the complainants identifiable, and the committee has the right to refuse to investigate complaints it considers ‘vexatious, frivolous or trivial’ (Rules of the Media Entertainment and Arts Alliance, 2002, Clause 68b). It can discipline members for ‘failing to obey a summons to attend a meeting of a judiciary committee and failing to supply the Judiciary Committee with a reasonable explanation for non-attendance’. Anyone can complain about a journalist for a breach of the code. The State branch committee of the Alliance can initiate complaint proceedings even if no individual has complained. The chair of the ethics panel must convene a hearing within eight days of the complaint being received and advise the complainant that the complaint has been received and brief the journalist on the nature of the complaint (clause 68e). The defendant has the right to appear personally at the hearing. Both parties can call and cross-examine witnesses (clause 68f), but formal rules of evidence do not apply (clause 68h). The rules of natural justice are to be observed and the formalities of legal proceedings ‘shall be followed where necessary’ (clause 68h). Neither party has the right to legal representation (clause 68i). The panel can summon members to attend a meeting and direct members to provide it with written information and statutory declarations (clause 68f ii and iii). The panel decides whether to uphold or dismiss the complaint on a majority vote (clause 68j), and has the power to impose penalties including a warning, reprimand, fine of up to $1000, suspension from membership for up to a year and expulsion from membership (clause 66b). Either party can appeal within 28 days of being notified of the decision to an appeals panel, the rules for which are outlined in clause 69.

Under item 67 (h), the decisions and recommendations of the Ethics Panel shall be published in accordance with any guidelines which may be issued by the National Journalists’ Section Committee. According to MEAA President Chris Warren (personal communication, September 8, 2003), the issue of publication of adjudications was a difficult one because of potential defamation action by participants, so guidelines had still not been developed on this in late 2003. This makes it difficult to get information about MEAA ethics panel cases.

While the MEAA’s web site (www.alliance.org.au) outlines the complaints procedures, it does not feature any records of complaints against journalists. Thus, both their journalist members and the general public remain ignorant of the nature and progress of any complaints against AJA members. As Hippocrates (1996, p. 76) pointed out, journalists had little reason to fear the attentions of the judiciary committees because the frequency of complaints had reduced to a trickle. MEAA President Chris Warren (personal communication, September 8, 2003) confirmed the organisation received very few complaints each year, and that most were referred to the Australian Press Council, which the MEAA was considering rejoining as a member. In 2002, the union dealt with eight complaints against member journalists and received a further four complaints against non-members. Of the eight member complaints, four were classed as “inactive” in 2003 (most awaiting further information from the complainant) while three were dismissed and in one the member was found to have breached the code but an appeal was lodged. Publicity of the complaints procedure was restricted to the website, he said.
Unlike the Press Council, the MEAA does not require complainants to waive their legal rights. This can lead to admissions made by journalists during hearings being used against them and their proprietors in subsequent defamation actions. The Communications Law Centre (1995, p. 96) recommended complainants make simultaneous complaints about print journalists to both the MEAA judiciary and the Press Council so that both the newspaper and the journalist could be called to account.

**Australian Broadcasting Authority**

The Australian Broadcasting Authority is the Federal body responsible for regulating the operations of all broadcast media except the national broadcasters (the ABC and SBS). The ABA’s powers are set out in the Broadcasting Services Act 1992. They are wide-ranging, covering the planning of frequency allocations for broadcasting and narrowcasting, the licensing of services, the regulation of the ownership and control of the industry, and the regulation of the content of radio, television and Internet services (ABA, 2003). While all of the above are of some interest to journalists, the one which is most likely to impinge directly upon their work is the final one: regulating content. Under the 1992 Act, this was partly deregulated, with the responsibility for the development of codes of practice devolved to the main industry groups: the Federation of Australian Commercial Television Stations (FACTS) and the Federation of Australian Radio Broadcasters (FARB). Other codes of practice cover community broadcasting, narrowcasting, subscription television, and Internet services. The ABC and SBS have their own codes of practice which are notified to the ABA.

Of special interest to journalists are the FACTS (www.aba.gov.au/tv/content/codes/commercial.htm) and FARB (www.aba.gov.au/radio/content/codes/commercial.htm) guidelines covering accuracy and fairness in news and current affairs programs. The guidelines are, by definition, qualitative and subjective, requiring the licensees to present news and current affairs programs which are accurate, impartial and balanced, and to correct significant factual errors. News and current affairs programs should not be simulated to mislead or alarm, and fact and opinion must be distinguishable. Issues of privacy, grief, race, gender, sexual preference and disability must be handled sensitively.

For example, the FACTS Code of Practice 1999 relating to news and current affairs states as its objective:

4.1 This Section is intended to ensure that:
- 4.1.1 news and current affairs programs are presented accurately and fairly;
- 4.1.2 news and current affairs programs are presented with care, having regard to the likely composition of the viewing audience and, in particular, the presence of children;
- 4.1.3 news and current affairs take account of personal privacy and of cultural differences in the community;
- 4.1.4 news is presented impartially. (FACTS, 1999)

The section then proceeds to spell out specific guidelines for both news and current affairs in relation to the types of issues mentioned above.

Complaints of breaches of these guidelines are directed first to the commercial station involved. If the complainant is dissatisfied with the station’s response, he or she can take the complaint to the ABA for investigation. The ABA has a number of options available to it. It can dismiss the complaint as frivolous or vexatious and proceed no further; or it can direct the licensee to redress the breach; impose a condition on the broadcast licence which requires the licensee to comply with the
code of practice; or develop its own standard if it is of the view the existing code does not safeguard the community adequately. Failure by a licensee to comply with such directions from the ABA can result in suspension or revocation of the licence or the imposition of substantial fines.

**Australian Competition and Consumer Commission**

The Australian Competition and Consumer Commission is the body responsible for regulating trade practices in Australia. It polices the Trade Practices Act which, at s 52, specifically prohibits ‘misleading and deceptive conduct’. For news material, it allows for an exception to the provisions of the Act under s 65A, after politicians accepted that not every news outlet could vouch for the authenticity of every statement it quoted in news stories. However, the instant news material is sponsored, or run in return for some compensation in cash or kind, or is used to promote the news organisation’s own operations (such as in a promo), it falls within the Act and any misleading content leaves the media proprietor open to prosecution. Similar provisions operate under the equivalent fair trading laws in the States, extending to the behaviour of other businesses such as partnerships.

The Act leaves journalists and their organisations particularly vulnerable in the area of advertorials, if it can be shown that space has been devoted to the promotion of a company's products or services just because they happen to be advertising or they have reached some arrangement or understanding with some corporation to that effect. (Pearson, 2000, p. 62)

Under the “misleading and deceptive conduct” provisions media outlets can be sued by their readers, viewers or listeners misled by the statements or businesses affected by loss of trade as a result of the statements.

The other areas of concern are those promoting media companies’ own interests through their columns, such as give-aways, contests, newspaper in education initiatives, the promotion of new sections and editions, and the promotion of the company’s affiliated interests. False, misleading or deceptive statements in such stories are also on dangerous ground.

The provision raises serious questions about media companies’ cross-promotion of their related corporate interests, particularly in an age where concentrated conglomerates have substantial shareholdings and sponsorships across industries (Pearson, 2000, p. 64).

Recent attempts to extend the reach of the misleading and deceptive conduct provisions have met with mixed success. In the Carlovers Case (2000), a Malaysian businessman who was a majority shareholder in the Carlovers company tried to use the state-based fair trading version of the legislation to gag a freelance journalist who was sending emails to Australian and Malaysian journalists and media operations. NSW Supreme Court Justice David Levine removed the injunction on the grounds that the freelance reporter was protected by the “prescribed information provider” exemptions to the misleading and deceptive conduct laws. He also ruled the trade practices legislation could not be used as a gagging device or as an alternative to defamation action.

However, in the Cunnamulla Case (2003) explained in Craig Burgess’s paper later this afternoon, the Full Court of the Federal Court of Australia ruled that the misleading and deceptive conduct provisions could be used against a filmmaker who allegedly made false statements to encourage teenage girls to speak publicly about their sexual experiences. The Full Court ruled the undertakings the filmmaker
allegedly gave the teenagers were central to the overall trade or commercial activity that the director’s company were pursuing.

In-house codes of practice

Some of the larger media groups have also established codes of practice for journalists within their own newsrooms. These have operated at two levels. At one level, some have produced multi-point codes of conduct for the guidance of editors and journalists within their own newsrooms. Such codes are in operation at News Limited and Fairfax publications. For example, The Age Code of Conduct (1998, October) features an introduction and sections on professional practice, personal behaviour, conflicts of interest and plagiarism, 44 clauses in all. In 1999, the Age dismissed a sub-editor as a result of a breach of the conflict of interest section of the code. The sub-editor had been registering Internet domain names under the names of famous people and upset media and football personality Eddie McGuire by registering eddiemcguire.com (Bachelard, 1999, p. M09). He refused to give it up after the newspaper had run a story on the phenomenon and mentioned the site, increasing its value. Whether or not this was an actual conflict of interest became part of the debate in an unfair dismissal case the journalist ran against the newspaper. Interestingly, the MEAA was quoted as saying there had been no breach of the union’s code in the episode, indicating the in-house code occupied new ethical territory.

In addition to these codes, journalists at some organisations have developed “charters of independence” which establish a firewall between the media group’s management and their editorial operations. Fairfax newspapers have such charters, designed as a mechanism to protect the newsroom from interference from owners who might want to interfere with the journalistic process. (Age Charter, 2002).

Media Watch – the most effective regulator?

The above regulatory bodies vary markedly in their powers and influence over journalists and their behaviour. However, the institution many journalists fear most, and many quite simply despise, is the ABC’s weekly program Media Watch, which was first screened in 1989.

Its web site promotes it as follows: “Everyone loves it until they’re on it.” (www.abc.net.au/mediawatch/). Criticised for being sometimes trite, and often bitchy, Media Watch has exposed some of the nation’s most spectacular ethical breaches over the past decade. They include blatant instances of plagiarism and privacy invasion and, most famously, the expose of secret payments being made to talkback radio stars for their endorsement of products and services without the knowledge of their listeners. This became known as the “cash for comment” scandal, and was the subject of a major inquiry by the Australian Broadcasting Authority in 2000 (ABA, 2000).

While Media Watch itself has no sanctions available, the power of the program is in the fact that ethical breaches and glaring errors are screened on national television, when journalists know their colleagues are watching.

<table>
<thead>
<tr>
<th>Regulator</th>
<th>Website</th>
<th>Regulatory powers</th>
<th>Effectiveness</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian Press Council (APC)</td>
<td><a href="http://www.presscouncil.org.au">www.presscouncil.org.au</a></td>
<td>Self-regulatory body set up to promote press freedom and handle complaints against newspapers</td>
<td>Very effective as lobbyist for press freedom, but lack of sanctions minimizes effectiveness as a regulator of print media ethics.</td>
</tr>
<tr>
<td>Media, Entertainment and Arts Alliance (MEAA)</td>
<td><a href="http://www.alliance.org.au">www.alliance.org.au</a></td>
<td>Industrial union with the power to reprimand, fine, suspend and expel its journalist members.</td>
<td>Its Code of Ethics is the best known document in the field, but the MEAA’s complaints system is problematic because it is little known and only applies to union members.</td>
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<tr>
<td>---</td>
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<td>---</td>
</tr>
<tr>
<td>Australian Broadcasting Authority (ABA)</td>
<td><a href="http://www.aba.gov.au">www.aba.gov.au</a></td>
<td>Government regulator of the broadcast media, with potentially strong powers to fine broadcasters, place conditions on their licences and even suspend their licences.</td>
<td>While the ABA has strong powers, it rarely uses them. Most complaints are handled in-house or by an industry-based body and those that reach the ABA usually result in training of the personnel involved and rarely in licence conditions.</td>
</tr>
<tr>
<td>Australian Competition and Consumer Commission (ACCC)</td>
<td><a href="http://www.accc.gov.au">www.accc.gov.au</a></td>
<td>The government’s trade practices regulator has far reaching powers which can result in major fines for corporations engaged in misleading or deceptive conduct.</td>
<td>While corporations are often prosecuted under these powers, media organizations are granted exemptions under s.65A and, while being warned about advertorials, have not faced action over them.</td>
</tr>
<tr>
<td>In-house charters</td>
<td>N/A</td>
<td>Codes of conduct and charters of independence formulated in some large media groups.</td>
<td>Broadcast-based codes of conduct are part of the ABA’s regulatory system. Newspaper in-house codes and charters vary markedly in their degree of adherence and enforceability.</td>
</tr>
<tr>
<td>Media Watch</td>
<td><a href="http://www.abc.net.au/media">http://www.abc.net.au/media</a> watch/</td>
<td>No powers</td>
<td>While having no regulatory powers, this ABC televisión program is an excellent vehicle for promoting media ethics and carries great weight with working journalists.</td>
</tr>
</tbody>
</table>

**Criticisms of the media pose regulatory pressure**

The ineffectiveness of some of these bodies, and the reluctance of others to use their powers against media organizations, is at odds with the weight of negative community attitudes to the media, particularly in relation to recently elevated rights of privacy.

In the High Court for example, Justice Ian Callinan has challenged the rhetoric on the media’s role in society and its claims to press freedom with his minority decision in the Lenah Game Meats case in 2001. He questioned the notion of media freedom in
an age where information providers are multinational corporations with a vested interest in the sale of news. Further, he challenged the claim of news organisations to special privileges on public interest grounds to the detriment of the rights of others.

His points included these:

- The media’s position of independence has become ambiguous as the boundaries between news and comment, advertising and information, and journalism and government have blurred. (Para 254).
- The commercial value of information needs to be factored into discussions of, and judgments about, freedom of expression and related issues. (Para 256).
- At the same time as publishing technologies have expanded, ownership and control of media organizations has become more concentrated and is a matter of public concern. (Para 258).
- While the expression “marketplace of ideas” is used to justify free speech, it actually means everyone should have access to express their ideas in the public domain. Concentration of media control prevents this. (Para 261).
- The media’s claim to freedom of the press had taken on an “air of dogma”, as if this was a right superior to all other rights. (Para 273).

My paper to the PR2K conference in Sydney last month (Pearson, 2003) reported on research which identified a shift in the High Court’s attitude to media, journalism and free press principles, evident in five recent judgments by Justices Callinan and Kirby. It is encapsulated in the term ‘The Modern Media’ used by both Justices Callinan and Kirby in their Lenah Game Meats judgments. Its symptoms are the explicit questioning of previously established values and principles, including the media’s Fourth Estate role, the special position of public trust it holds, its special circumstances of production, and its ‘benefit of the doubt’ in the real of public interest issues such as court reporting defences and prior restraint.

The shift in attitude toward the media from the 20th to the 21st centuries is illustrated in this conditional matrix developed for that presentation.

### 6. Conditional matrix: The High Court’s ‘MODERN MEDIA’

<table>
<thead>
<tr>
<th>20th century media</th>
<th>The ‘Modern Media’</th>
</tr>
</thead>
<tbody>
<tr>
<td>Press as 4th Estate</td>
<td>Multinational corporations</td>
</tr>
<tr>
<td>Public right to know</td>
<td>Ascendancy of privacy</td>
</tr>
<tr>
<td>Not just another business</td>
<td>Just another business</td>
</tr>
<tr>
<td>Media’s special circumstances of production</td>
<td>Media’s excuses questioned and require explanation.</td>
</tr>
<tr>
<td>Shift to interpretive journalism</td>
<td>Objective factual base needed</td>
</tr>
<tr>
<td>Caution with prior restraint</td>
<td>Prior restraint acceptable</td>
</tr>
<tr>
<td>Fair and accurate court report</td>
<td>Needs further checks</td>
</tr>
<tr>
<td>Old world production</td>
<td>Responsibilities with new tech</td>
</tr>
<tr>
<td>‘Quality’ not prejudged</td>
<td>Priority for ‘journals of record’</td>
</tr>
</tbody>
</table>

An important question is the extent to which this High Court shift in attitude to the media reflects a broader attitudinal shift in modern society. Frustrations with the
performance and role of the media occasionally bubble to the surface in government debate and regulatory changes are mooted. Recent examples have been the Senate Inquiry into Information Technology (Parliament of the Commonwealth of Australia, 2000) which recommended a new regulatory regime, Senator Richard Alston’s criticisms of ABC Gulf War coverage, and the new Attorney-General Phillip Ruddock’s calls for a national defamation law (Ruddock, 2003).

The latter example is perhaps the most disturbing, not because of the possible outcome of simpler defamation laws which most of us would applaud, but for the threatening terms in which it was couched. In the press release announcing the Federal Government’s push (Ruddock, November 14), Minister Ruddock criticised the states for failing to reach agreement on uniform defamation laws. His final sentence was chilling: “If they fail to do so, the Australian Government will have to seriously consider using the Commonwealth Parliament’s constitutional powers to enact a national defamation law.” The implication of this was not just that the nation might get simpler defamation laws, but that the Federal Government might put its constitutional powers to the test on uniform media regulation in other areas. Once that water has been tested, there would be no impediment to shoring up the ABA’s powers to take in print media regulation as well.

**Models for development**

When all-media regulation at a federal level is on the horizon, it is time to consider other models which might offer more muscle than the existing mechanisms, yet keep government at arm’s length from the Fourth Estate. In many ways detailed above, “self-regulation” of the media has failed. The processes are poorly advertised, and any penalties available are rarely enforced.

Rather than extending the regulations controlling the media, my proposals take two forms:

a. Devices to make better use of existing laws instead of developing new ones.

b. Incentives for media organizations to co-operate, minimizing complaints in the first place.

The ideas are based on some formative suggestions I made in my article for the 2003 edition of the APME (Pearson, 2003).

1. Encouraging the ACCC to focus on large media corporations’ breaches of consumer laws under the misleading and deceptive conduct provisions of the Trade Practices Act. Media organisations need to be called to account for commercial abuses of the public trust we invest in them. When media corporations are being misleading or deceptive in their conduct they must surely forfeit the right to their exemption from prosecution under such legislation. Media regulators might develop closer working relationships with consumer regulators to pursue such transgressions. For example, when misleading material appears in an advertorial, a corporate promo, or a report upon the company’s own commercial interests, this should be exposed and the company pursued by the appropriate corporate regulator, not the media regulators. Use of such provisions might prompt media organizations to take notice and move to develop more honest and transparent reportage of their own operations.

2. Existing laws of defamation are beyond the reach of ordinary citizens. In Australia, legal aid is not available for the pursuit of such actions. Despite a trend in some jurisdictions towards lawyers taking on defamation suits on a no-win-no-fee basis, it is still usually only the very wealthy or the extremely principled who are
willing to take on major media corporations to defend their reputations. At the very least, regulatory bodies might invest in the provision of a means-tested legal referral service for individuals who clearly have been wronged in media coverage. Such a service might even be self-funded via the damages payments of successful litigation. This would be simply a more efficient use of existing laws rather than the introduction of new ones. This might well be sponsored by a corporate benefactor who shares a concern about the power abuses of major media corporations. Perhaps educators can play a role in identifying such a benefactor.

Thirdly, rather than operate in the negative, why not work in the positive with a system of corporate tax breaks for truly transparent and ethical media operators? A truly independent panel of citizens could adjudicate on a system of Ethical Accreditation for media outlets which can demonstrate the highest ethical standards in their newsrooms with a viable reward system such as certain tax breaks for compliance. The accreditation could be withdrawn at any time for transgressions reported by the public and adjudicated on by the panel. In other words, media organizations would lose nothing if they continued their current practices, but would be rewarded by government by becoming more ethical and transparent in their operations. This would need to be very carefully introduced, ensuring government was at arm’s length from the process other than in authorizing the Taxation Commissioner’s ruling on the tax allowance.

Conclusion

Our system of media self-regulation is flawed. We need workable new solutions to encourage news media transparency and ethics without creating new laws. These suggestions might well be flawed, but I hope they present a starting point for debate on such an important issue. As educators, we should not forget the power of education - not just of journalists or media managers, but of the public – about the media, ethical expectations and channels for complaint. Only by improving the public’s understanding of the reality and rhetoric of media freedom might we create grassroots pressure for media managers to improve their act. We have a duty to speak publicly on these issues. We also need to reach out to other faculties and the school system and the broader community to offer short courses and forums about the media, its role, and its accountability.

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