

27 February 2020

The Manager
Content Projects and Policy Section
Australian Communications and Media Authority
PO Box Q500, Queen Victoria Building NSW 1230

Dear Sir/Madam

Submission to public consultation into impartiality and commercial influence in broadcast news - consultation 02/2020

I refer to the above consultation process, and provide a submission to the Australian Communications and Media Authority (**ACMA**) on behalf of the Institute of Public Affairs (**IPA**).

The IPA is an independent, non-profit public policy think tank, dedicated to preserving and strengthening the foundations of economic and political freedom. The IPA supports the free market of ideas, the free flow of capital, a limited and efficient government, evidence-based public policy, the rule of law, and representative democracy. Throughout human history, these ideas have proven themselves to be the most dynamic, liberating and exciting. Our researchers apply these ideas to the public policy questions which matter today.

To assist ACMA in its deliberations, I enclose a recent report by the IPA, *More News is Good News: The Case Against Restricting Broadcast Journalism*. The report explores general principles relating to media regulation, as well as providing specific recommendations for policy-makers.

Yours faithfully,

Gideon Rozner
Director of Policy
Institute of Public Affairs

Encl.

February 2020



MORE NEWS IS GOOD NEWS:

THE CASE AGAINST RESTRICTING BROADCAST JOURNALISM

Gideon Rozner, Director of Policy

 **Institute of
Public Affairs**

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Introduction and context

In January 2020, the Australian Communications and Media Authority (**ACMA**) released a discussion paper on impartiality and commercial influence in broadcast news (the **Discussion Paper**).¹ In an email to stakeholders inviting public comment, the ACMA Chair Nerida O’Loughlin PSM wrote that:

Quality news is essential for effective participation in democracy and civil society. In the context of profound disruption to the media industry, many Australians are losing confidence in news. ACMA research shows that consumer concern extends to traditional news sources including television and radio. Issues of impartiality and commercial influence are areas of significant concern.

[...] In light of the above concerns the ACMA considers it timely to explore whether current regulatory arrangements are working effectively to safeguard the integrity and credibility of broadcast news in Australia.²

The issues raised in the Discussion Paper are not new. Notions such as the ‘death of journalism’, the proliferation of ‘fake news’ and the nefarious influence of ‘powerful voices in the media’³ have been prominent in the public debate – both in Australia and internationally – for many years. However, for reasons explained in the next section, such concerns are at best exaggerated and at worst simply wrong.

ACMA’s Discussion Paper is a particularly flawed contribution to the debate over the future of journalism. The ‘problem’ that AMCA has outlined does not appear to be supported by much evidence other than a series of polls with questionable methodology and focus groups with leading questions.

For example, the Discussion Paper notes that its quantitative research indicated that ‘there is community interest in, and significant concerns about, issues related to impartiality in news’, including that ‘news is reported from a particular point of view rather than being balanced or impartial’.⁴ That phrasing appears to mirror the question put to respondents in the course of ACMA’s research, which was as follows:

To what extent, if at all, are you concerned that news is reported from a particular point of view rather than being balanced or impartial?⁵

1 Australian Communications and Media Authority, *Impartiality and commercial influence in broadcast news – Discussion paper*, January 2020.

2 Email from Nerida O’Loughlin PSM to Institute of Public Affairs, 17 January 2020.

3 See “‘It has been a privilege’: Malcolm Turnbull signs off as Australian prime minister”, *The Guardian*, 24 August 2018, accessed 25 February 2020, <https://www.theguardian.com/australia-news/2018/aug/24/malcolm-turnbull-final-remarks-australian-prime-minister>.

4 Above n 1, 8.

5 Australian Communications and Media Authority, *Attitudes to news today: Impartiality and commercial influence – Quantitative research*, January 2020, 2.

Similar phrasing was used throughout the survey, asking respondents for their opinions about 'news' in general, rather than commercial broadcast news in particular. Further, one question expressly included a reference to news that would appear in print or online, not via broadcasting:

To what extent, if at all, are you concerned that news is made more dramatic or sensational in order to attract more readers or viewers?⁶

Accordingly, it is likely that many respondents based their answers on segments of the media landscape that are outside AMCA's regulatory remit, such as news reported in print or online. Many respondents also presumably responded positively to questions about media bias with public – not commercial – broadcasters in mind, given that evidence suggests that less than a third of people believe that the ABC represents the views of ordinary Australians.⁷

This raises a related but important question of whether – even if bias and undue commercial influence in news are an issue – AMCA is an appropriate regulator to address it. As the Australian Competition and Consumer Commission (**ACCC**) noted in the course of its digital systems inquiry (which was completed less than a year ago):

The ACCC considers that the regulatory frameworks governing media, communications and advertising also need to be addressed, as they do not allow competition on the merits. While the ACCC does not consider the functions of digital platforms and news media businesses to be comparable in all cases, where digital platforms do perform comparable functions to media businesses, they should be regulated similarly. The imbalance in the regulatory treatment of content delivered via traditional broadcasting, as compared to digital platforms, is distortionary and should be addressed.⁸

Accordingly, it is at the very least short-sighted that ACMA is contemplating another layer of regulation for the one segment of the news landscape that is within its jurisdiction. If ACMA does in fact implement whatever proposals emerge from this inquiry, it will further add to the lopsided regulatory environment and disadvantage commercial broadcasters, which are being undercut by unprecedented competition as it is.

6 Ibid, emphasis added.

7 'Poll: Only 32% Of Australians Believe The ABC Represents The Views Of Ordinary Australians', *Institute of Public Affairs*, 27 February 2020, accessed 27 February 2020, <https://ipa.org.au/publications-ipa/poll-only-32-of-australians-believe-the-abc-represents-the-views-of-ordinary-australians>.

8 Australian Competition and Consumer Commission, *Digital Platforms Inquiry – Final Report*, June 2019, accessed 26 February 2020, <https://www.accc.gov.au/system/files/Digital%20platforms%20inquiry%20-%20final%20report.pdf>, 2.

It should be noted also that ACMA's Discussion Paper quotes directly from the ACCC's work on digital platforms. For example, on page one of the paper ACMA notes that:

As advertising revenues shift from media businesses to digital platforms, the need to access a shrinking revenue pool may reduce incentives for media companies to invest in public-interest journalism. In its Digital Platforms Inquiry, the ACCC found that in the last 20 years, the number of people in journalism-related occupations has fallen, many local and regional news sources have closed, and the coverage of public-interest news topics by major newspapers has decreased.⁹

The fact that ACMA cites the ACCC's diagnosis of the commercial pressures on conventional media outlets and yet is apparently contemplating new regulations that would effectively exacerbate a major underlying cause – the uneven compliance burden between commercial, public and digital outlets – is as perverse as it is baffling.

ACMA's inquiry can therefore be most charitably described as a solution in search of a problem. It reflects a broader phenomenon that is driving Australia's red tape crisis:¹⁰ Self-interested regulators that overstate (or simply fabricate) a 'problem', with the conscious or unconscious aim of increasing their own funding, staff and relevance.

In light of the issues presented by ACMA's inquiry and the debate around news and the media more broadly, the Institute of Public Affairs has written this research report, which will outline the case against further regulation of broadcasting, as well as several recommendations on the way in which policy-makers can create a stronger news landscape.

⁹ Above n 1, 1.

¹⁰ See Darcy Allen and Chris Berg, ed., *Australia's Red Tape Crisis: The Causes and Costs of Over-regulation* (Brisbane: Connor Court Publishing, 2018).

Relevant principles

'Fake news' is fake news

At the heart of the growing debate over media regulation is concern over reported use of disinformation to influence the outcome of democratic elections, largely via the internet and social media platforms. A related phenomenon is 'fake news', which is properly understood as fabricated stories that are deliberately designed to resemble bona fide pieces of journalism.

Of course, fake news is largely, if not entirely, contained to the internet rather than conventional broadcasting, but the phenomenon is still relevant to the debate over trust in the integrity of news. Broadcast journalism cannot be filleted from the wider news ecosystem.

Concerns over fake news appear to have been caused – or at the very least significantly exacerbated – by the election of Donald Trump and the success of the Leave campaign in the UK. This opinion piece, written for the *Guardian* in late 2016, is a typical description of the perceived problem:

The most interesting question about 2016 is... whether this will go down as the year democracy revealed itself unworkable in the age of the internet – in which reality, already engaged in a life-or-death struggle with inverted commas, finally gave way to 'alt-reality'.

[...] The collective postmortem – on the left and right of politics – has focused on... the accidental or deliberate propagation of misinformation via social media. Many millions of people saw and believed fake reports that the pope had endorsed Trump; Democrats had paid and bussed anti-Trump protesters; [and] Hillary Clinton was under criminal investigation for sexually assaulting a minor. About the only accusation not levelled at Clinton was implication in the murder of JFK, and that was because Trump had already used it against his Republican primary rival Ted Cruz. If democracy is predicated on reliable information, it's in serious trouble right now.¹¹

Such claims – to the extent that they are verifiable, which is basically impossible in the case of statements like 'millions *believed* fake reports' – are at best highly exaggerated. Fake news does exist on the internet in general and social media in particular, but evidence indicates that its impact is limited.

¹¹ Andrew Smith, 'The pedlars of fake news are corroding democracy', *The Guardian*, 26 November 2016, accessed 26 February 2020, <https://www.theguardian.com/commentisfree/2016/nov/25/pedlars-fake-news-corroding-democracy-social-networks>.

One study conducted by a team of researchers from Harvard, Northeastern University and SUNY-Buffalo in the United States, for example, examined a large sample of Twitter users during the 2016 presidential election. The research concluded that 'fake news accounted for nearly 6% of all news consumption, but it was heavily concentrated'.¹² Specifically, the report found that:

- one per cent of Twitter users saw 80 per cent of the false or misleading or false content;
- 0.1 per cent of users shared around 80 per cent of it;
- on average, Twitter users were subjected to just 10 false news sources during the month leading up to the 2016 election; and
- on average, the proportion of false news stories among political news in a user's Twitter feed was just 1.18%.¹³

Relevantly, the study concluded that '[a] cluster of fake news sources shared overlapping audiences on the extreme right, but for people across the political spectrum, most political news exposure still came from mainstream media outlets'.¹⁴

Similarly, a separate study published in *Science Advances* indicated that 'sharing fake news was quite rare during the 2016 US election campaign', concluding that among accounts studied:¹⁵

The vast majority of Facebook users in our data did not share any articles from fake news domains in 2016 at all... [T]his is not because people generally do not share links: While 3.4% of respondents for whom we have Facebook profile data shared 10 or fewer links of any kind, 310 (26.1%) respondents shared 10 to 100 links during the period of data collection and 729 (61.3%) respondents shared 100 to 1000 links. Sharing of stories from fake news domains is a much rarer event than sharing links overall.¹⁶

Arguably, fake news as a problem has become overstated because it is often conflated with other poor practices like lack of balance, gratuitous editorialising, the presentation of opinion as fact and unduly selective presentation of facts in reporting. While these may constitute bad journalism, they do not meet the definition of fake news – the deliberate fabrication of news stories.

Accordingly, the term 'fake news' is increasingly being used to criticise unrelated phenomena like bias and even misguided opinion pieces (against which, for reasons explained later in this section, regulation is impossible and arguably undesirable).

12 Grinberg, Joseph, Friedland, Swire-Thompson and Lazer, 'Fake news on Twitter during the 2016 US presidential election', *Science*, Vol 363, Issue 6425, 374-378.

13 Ibid.

14 Ibid.

15 Guess, Nagler and Tucker, 'Less than you think: Prevalence and predictors of fake news dissemination on Facebook', *Science Advances*, Vol 5, No 1, accessed 27 February 2020, <https://advances.sciencemag.org/content/5/1/eaau4586>.

16 Ibid.

To the extent that trust is being eroded in news reporting, it is in part because of the exaggeration of fake news. It then follows that restoring this trust will involve a more sober assessment of the real extent of fake news and a clearer distinction between false reporting and 'bad' opinion.

Consumers can tell the difference

The regulatory focus on news and journalism – as opposed to other forms of content such as entertainment – arises from their important function in the popular debate around public policy issues. Literature abounds on the importance of a vibrant press to democratic governance, and political communication has been recognised by the High Court of Australia as an 'implied right', which is essential to participation in Australia's system of representative government:

To sustain a representative democracy embodying the principles prescribed by the Constitution, freedom of public discussion of political and economic matters is essential. As the European Court of Human Rights recognised... it would be a parody of democracy to confer on the people a power to choose their Parliament but to deny the freedom of public discussion from which the people derive their political judgments.

[...] [Accordingly, f]reedom of public discussion of government (including the institutions and agencies of government) is not merely a desirable political privilege; it is inherent in the idea of a representative democracy.¹⁷

It follows, then, that a democracy cannot function without a reasonably well-informed citizenry and that accordingly, there are compelling public policy reasons to ensure the existence of a robust press.

The problem, however, is in the superficially logical but simplistic assumption that a poorly-informed citizenry is an impediment, or even a 'threat', to democratic governance. Unfortunately, not only does this notion seem to be increasingly accepted in the abstract, but there is also an argument that Australia's (and the world's) current media landscape, such as it is, is creating a *misinformed* electorate, which is in turn leading to election results that are not a genuine reflection of popular will but a product of voters being fed 'bad' information.

This discussion of the role of News Corp in Australia's media landscape is an extreme but typical example of such thinking:

It sounds unreal to say that News Corp is not a media organisation. It sounds outré to say that it is instead a political propaganda entity of a kind perhaps not seen since the 19th century... We are stuck listening to the megaphoned opinions of the wrong people, who have been rewarded rather than penalised for their failure...

17 *Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1.

[...] [It is] an existential threat to democratic society. If you think this is hypothetical, or hyperbolic, look to the US post-Trump, or the United Kingdom post-Brexit, and realise that this is what these people fought for – and they want it to happen here. 'It's mind-blowing to look at the wreckage of UK politics, realize that it's basically all Rupert Murdoch's fault, and then look back to the US and realize that's *also* all Rupert Murdoch's fault', the American political analyst Matt Yglesias tweeted in March. It's a simplification – these are complex, multi-factorial events (and it's also Lachlan Murdoch's fault) – but it is not a simplification to say that the Murdoch media has ultimately been the decisive factor. The evidence, both quantitative and anecdotal, is very clear.

[...] Unable to fully implement its own agenda in the political arena, News has instead stymied the reforms of others, in particular making action on climate change impossible.

Similarly, former prime minister Malcolm Turnbull has reportedly attributed 'inaction on climate change' to Australia's current media landscape:

Mr Turnbull said that, until 20 years ago, people got information from 'curated media' such as *The Sydney Morning Herald* or the ABC whereas now 'people are able to choose the news they want; they can select their own facts'.

'When people start talking about alternative facts you're in serious trouble. You see this most notably on climate change,' he said.¹⁸

Sweeping claims such as these about the 'corrosive' effects of nefarious media influences on democratic outcomes rest on the dangerous assumption that the electorate cannot be trusted to make an informed decision upon weighing up a plurality of voices and perspectives across various media outlets. In other words, the suggestion seems to be that Australians are too stupid to decide for themselves, and must be given the 'right information' so that the electorate at large does not make the 'wrong decisions'.

Aside from being inherently elitist, sentiments like these vastly overstate the impact of the news media on public opinion. In relation to the nominated issue of climate change, it is obvious that the electorate has rejected so-called 'climate action' at almost every opportunity, most notably at the 2013 federal election – in which the opposition ran on a clear platform of repealing the *Clean Energy Act 2011* – and again in 2019, which was billed widely as a 'climate election'.¹⁹ Relevantly, these results have occurred despite strong support for climate mitigation among large sections of the media, as well as politics, the public service, academia and corporate Australia.

18 Jacqueline Maley, 'Politicians "from Donald Trump down" who insult Greta Thunberg are "absolutely ridiculous", says Malcolm Turnbull', *The Sydney Morning Herald*, 7 February 2020, accessed 27 February 2020, <https://www.smh.com.au/politics/federal/politicians-from-donald-trump-down-who-insult-greta-thunberg-are-absolutely-ridiculous-says-malcolm-turnbull-20200207-p53yqp.html>.

19 See, for example, Kate Lyons, 'Climate change takes centre stage in Australia's election', *The Guardian*, 7 May 2019, accessed 27 February 2020, <https://www.theguardian.com/australia-news/2019/may/07/climate-change-takes-centre-stage-in-australias-election>.

There is perhaps no greater illustration in living memory of the limits of media bias on public opinion than the 1999 republic referendum. As then-Justice Michael Kirby observed in 2000:

There were no real exceptions to the strong editorial line on the republic followed by the Australian media. Even the national broadcaster, the Australian Broadcasting Corporation, in the opinion of many [Australians for a Constitutional Monarchy] observers but also others, exhibited substantial bias in favour of the republic proposal and against the constitutional status quo. The print media, with virtual unanimity (a few isolated columnists apart) advocated change to a republic and support for the minimalist model proposed. The publications of News Limited were especially and most obviously strident. This was not confined to an editorial opinion in which a distinction was carefully preserved between the editors' opinions and news coverage. It extended into the factual reportage, the quantity and content of coverage provided to the opposing causes and the photographs, cartoons and other depictions that were published. Most of these showed the Queen and her supporters in a bad light and the republicans as the only cause which patriotic Australians could possibly support.²⁰

If public opinion was as susceptible to media influence as proponents of further regulation suggest, then one would expect the referendum result to be dramatically different to the clear No vote that eventuated.

There have been no developments in the media landscape in the 20 years since that would suggest the impact of such one-sided coverage would be any different if a similar referendum were held today. In fact, if anything the opposite is probably the case, given the explosion in the diversity of voices in public debate that has been facilitated by the internet and social media.

Finally, the results of ACMA's own research would suggest that Australians are discerning, savvy consumers of news media who are capable of recognising bias and making the distinction between reporting, analysis and opinion. Quantitative research released with the Discussion Paper, for example, reported that:

- 88 per cent of respondents were concerned that 'news is made more dramatic or sensational to attract more readers or viewers';
- 85 of respondents were concerned that 'news is reported from a particular point of view rather than being balanced or impartial';
- 83 per cent of respondents were concerned that 'journalists do not take enough care to check their facts or report stories accurately'; and
- 77 per cent of respondents were concerned that 'news does not provide enough coverage of important issues'.²¹

20 The Hon Justice Michael Kirby AC CMG, 'The Australian Republic Referendum 1999: Ten Lessons', *Law and Justice Foundation of New South Wales*, 3 March 2000, accessed 27 February 2020, <http://www.lawfoundation.net.au/ljf/app/&id=DF4206863AE3C52DCA2571A30082B3D5>.

21 Above n 5, 9.

The very fact that around 80 per cent of Australians – according to ACMA research – are concerned about issues of impartiality and accuracy in news reporting suggests that further regulation of the broadcast media is not necessary. As a matter of logic, Australians would not purport to be concerned about something that they do not notice. Accordingly, it is clear that consumers of news are able to navigate bias on their own. They do not need state coercion to do so for them.

Bias cannot be regulated

Even if we accept that state intervention is necessary to mitigate the effects of bias on consumers and, by extension, the nebulous and vaguely-defined distortion of democratic outcomes triggered by such bias, it is unclear how, if at all, such a problem could be regulated. Indeed, it is arguably undesirable and inarguably difficult in the extreme – if not literally impossible – to regulate something as intangible and subjective as bias out of Australia's media landscape.

ACMA's Discussion Paper claims that '[m]any international frameworks contain specific requirements for news to be presented impartially'.²² It cites regimes from other English-speaking countries, claiming that '[r]egulatory approaches in Canada, the UK, Ireland and New Zealand promote impartiality across news and current affairs programming as the presentation of a diversity of views over time on public interest matters.'²³

However, perceived bias in the media is no less of an issue in all of these countries as it is in Australia. For example:

- in Canada, a study by Abacus Data showed that people are twice as likely to say the quality of journalism is declining as improving, and 58 per cent of Canadians think that 'the news media generally favour one political party over another';²⁴
- in the United Kingdom, a study by the Pew Research Centre found that only 32 per cent of British adults say they trust the news media, and 29 per cent say that they do not trust it at all;²⁵
- in Ireland, a poll by Amarach Research found that just 27 per cent of people said that they trusted the media, whereas 54 per cent said they didn't;²⁶ and
- in New Zealand, a study by Victoria University Wellington indicated that the media was among the groups least trusted by New Zealanders, with about the same levels of trust as MPs and government ministers.²⁷

²² Above n 1, 13.

²³ Ibid.

²⁴ Bruce Anderson and David Coletto, 'Canadian news media and "fake news" under a microscope', *Abacus Data*, 29 April 2017, accessed 27 February 2020, <https://abacusdata.ca/canadian-news-media-and-fake-news-under-a-microscope/>.

²⁵ 'News Media and Political Attitudes in the United Kingdom', *Pew Research Centre*, 17 May 2018, accessed 27 February 2020, <https://www.pewresearch.org/global/fact-sheet/news-media-and-political-attitudes-in-the-united-kingdom/>.

²⁶ 'Fake news, Facebook and Donald Trump: Why do just a quarter of Irish people trust the media?', *thejournal.ie*, 26 May 2017, accessed 27 February 2020, <https://www.thejournal.ie/trust-in-the-media-3407617-May2017/>.

²⁷ Simon Chapple and Kate Prickett, *Who do we trust in New Zealand? 2016 to 2019*, accessed 27 February 2020, https://www.victoria.ac.nz/__data/assets/pdf_file/0011/1762562/trust-publication-2019.pdf.

Arguably, the reason that these schemes have failed is because bias is difficult to even define, let alone regulate. The most useful working definition of bias we could realistically hope for is that famously used by the United States Supreme Court to define pornography:

I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description, and perhaps I could never succeed in intelligibly doing so. But I know it when I see it.²⁸

More to the point, journalism, reporting and news without any bias whatsoever is arguably impossible. No matter how much airtime, column space or bandwidth is available, no journalist or news organisation could address every single aspect of every single news story. Any narrative, by its very nature, requires some level of editorial discretion.

The American Press Institute rightly points out that attempts to mitigate bias may actually be damaging to the quality of news:

[B]ias may not always be a bad thing... [I]t may serve to create narrative texture or make a story understandable. One can even argue that draining a story of all bias can drain it of its humanity, its lifeblood. In the biases of the community one can also find conflicting passions that bring stories to life. A bias, moreover, can be the foundation for investigative journalism. It may prompt the news organization to right a wrong and take up an unpopular cause. Thus, the job of journalists is not to stamp out bias. Rather, the journalist should learn how to manage it.²⁹

Of course, ACMA and other proponents of further broadcast news regulation may argue that ‘managing bias’ should be done by way of regulation. However, for reasons explained in this section, such a regime is extremely unlikely to ‘manage’ bias in a way that does not unduly interfere with news reporting. Journalism is a craft and an artform. It cannot and should not be neutered by a one-size-fits-all code imposed by a government regulator.

More news is good news

It is self-evident that a free press is essential to a functioning democracy. However, a free press is not a perfect press, and for reasons explained in this report, attempts to ‘improve’ the media through regulation are not only ineffective, but counterproductive. By definition, a regulated press is not a free press.

The only way to achieve true balance in Australia’s media landscape is to allow for as many voices and perspectives as possible, and to give consumers the widest choice available. As we have established, Australian news consumers are smart, discerning and media literate. The best thing policy-makers could do for democratic debate is allow them to make up their own mind.

²⁸ *Jacobellis v Ohio* (1964) 378 U.S. 184.

²⁹ ‘Understanding bias’, *American Press Institute*, accessed 27 February 2020, <https://www.americanpressinstitute.org/journalism-essentials/bias-objectivity/understanding-bias/>.

Recommendations for reform

The previous section of this report established that:

- the phenomenon of ‘fake news’ – which has arguably contributed to the ‘erosion of trust’ in the media – is at best highly exaggerated;
- Australians are savvy and media literate consumers of news, and are capable of detecting and accounting for bias without government intervention;
- the notion that nefarious ‘media interests’ are distorting the popular will as expressed at democratic elections is a highly erroneous one;
- even if bias were a significant problem in the Australian media landscape, there is extremely little, if anything, that state intervention can do about it; and
- the best and arguably only way to counter perceptions of bias in the media is to allow for a plurality of voices from which consumers of news can weigh up competing voices and perspectives.

Accordingly, policy-makers should consider ways in which news media market can be ‘opened up’ by lifting existing restrictions on broadcasters. In particular, the following options for reform should be examined:

1. *Abolish legislative and regulatory restrictions on free speech* – Free speech is obviously essential to a free press, and correspondingly, restrictions on speech are by definition an impediment to journalism.

Defamation law, in particular, is a perennial obstacle for journalists, not least of all because Australia’s regime is particularly favourable to complainants. In fact, Australia has been described as having ‘the most media-hostile laws in the common-law world’.³⁰ Further, given the expense of bringing a claim, defamation law is a recourse reserved for the wealthy – who have the means to publicly dispel genuinely defamatory accusations anyway – often at the expense of individual journalists with limited means to defend themselves. Accordingly, defamation law is not only damaging to Australia’s media landscape, it is inequitable. It should be abolished.

Similarly, restrictions on speech such as section 18C of the *Racial Discrimination Act 1975* should be repealed to maximise press freedom.

³⁰ Richard Ackland, ‘Your right to know: How Australia’s defamation law stifles public-interest journalism’, *The Guardian*, 30 November 2018, accessed 27 February 2020, <https://www.theguardian.com/media/2018/nov/30/your-right-to-know-how-australias-defamation-law-stifles-public-interest-journalism>.

2. *Abolish all 'codes' that apply exclusively to commercial broadcasters* – As established by the ACCC's digital platforms inquiry, regulatory regimes that apply specifically and exclusively to conventional commercial broadcasters are creating a lopsided regulatory landscape that disproportionately restrict certain media outlets for no public policy purpose. In the twenty-first century media landscape, there should be no regulatory distinction between a news report on a terrestrial station and one on YouTube, or between a news bulletin on radio and a podcast.
3. *Abolish ACMA* – It follows that if all codes affecting commercial broadcasters are to be abolished, then ACMA can and should be abolished. Residual functions of the regulator, such as spectrum management, should be transferred to the Department of Communications or other regulators.
4. *Privatise public broadcasters* – Aside from unnecessary regulatory restrictions, media outlets are also under commercial pressure from government-subsidised rivals. In particular, the ABC receives \$1.1 billion a year to produce content that is effectively given away for free, undercutting the remainder of the media landscape that must rely on advertising, subscriptions, voluntary donations and other means.

For reasons that are outside the scope of this report, the public policy case for broadcasting as a government program – if there ever was one – no longer exists.³¹ Accordingly, the ABC and SBS should be privatised.

³¹ See Chris Berg and Sinclair Davidson, *Against Public Broadcasting: Why we should privatise the ABC and how to do it* (Brisbane: Connor Court Publishing, 2018).

MORE NEWS IS GOOD NEWS: THE CASE AGAINST RESTRICTING BROADCAST JOURNALISM

About the Institute of Public Affairs

The Institute of Public Affairs is an independent, non-profit public policy think tank, dedicated to preserving and strengthening the foundations of economic and political freedom.

Since 1943, the IPA has been at the forefront of the political and policy debate, defining the contemporary political landscape.

The IPA is funded by individual memberships and subscriptions, as well as philanthropic and corporate donors.

The IPA supports the free market of ideas, the free flow of capital, a limited and efficient government, evidence-based public policy, the rule of law, and representative democracy. Throughout human history, these ideas have proven themselves to be the most dynamic, liberating and exciting. Our researchers apply these ideas to the public policy questions which matter today.

About the author

Gideon Rozner is Director of Policy at the Institute of Public Affairs. He was admitted to the Supreme Court of Victoria in 2011 and spent several years practicing as a lawyer at one of Australia's largest commercial law firms, as well as acting as general counsel to an ASX-200 company. Gideon has also worked as a policy adviser to ministers in the Abbott and Turnbull Governments, Gideon holds a Bachelor of Laws (Honours) and a Bachelor of Arts from the University of Melbourne.

Gideon has been published in a number of outlets including *The Australian*, *Daily Telegraph*, *Herald Sun*, *The Age* and *The Spectator Australia*, and has appeared on Sky News, 2GB, 3AW, ABC TV and Network Ten's *The Project*.

