

Improving News Media Oversight: Why Australia needs a cross-platform standards scheme

ABSTRACT: Australia currently has 14 standards schemes that oversee journalists and news media, making for both duplication and inconsistency. The result is a torn and frayed patchwork leaving broadcasting heavily regulated but some areas of online content without any applicable standards or clear avenues for consumer complaint. In this article, we describe Australia's confusion of news media standards schemes amid the global challenges to media oversight in a digital age, including from the algorithmically driven delivery of news via social media and other digital services. We argue that internationally the ongoing disruption of news media is being accompanied by a parallel disruption of news media standards schemes. This creates significant uncertainty, particularly since citizens and journalists have contrasting expectations about news media oversight. However, this uncertainty also presents an opportunity for reform. We then draw on international scholarship and regulatory developments to make four high level arguments. First, Australia should implement a coherent cross-platform standards scheme to cover news content on TV, on radio, in print and online. Second, digital services and platforms ought to be brought under this scheme in their role as distributors and amplifiers of news, but not as 'publishers'. Third, this scheme ought to have oversight of algorithms. And fourth, citizens ought to be afforded a greater role in the operation of this scheme, which has significant potential to serve the public interest by improving public discourse.

Keywords:

news media, news standards schemes, codes of practice, press council, algorithms, digital platforms

Introduction

The benefits of journalism have been well-documented, and include informing the citizenry, holding the powerful to account, building community and fostering democracy (Wilding *et al.* 2018: 18-21).¹ However, these benefits flow from *good* journalism. That is, from journalism that adheres to well-established values including

¹ The authors would like to thank two anonymous reviewers for their insightful comments, as well as Caroline Mead, Georgina Dridan and Vidya Kathirgamalingam for their research assistance on both this article and a related, forthcoming report to be published by the UTS Centre for Media Transition.

accuracy and fairness. By contrast, *bad* journalism – such as journalism that is full of inaccuracies or that fosters racism or bigotry – can do significant harm. In Australia as in many other countries, news media standards schemes lay down standards that encourage good journalism and discourage and/or penalize bad journalism. They include codes of conduct and practice, such as the Commercial TV Industry Code of Practice, which are overseen by regulators such as the Australian Communications and Media Authority (ACMA).

These news media standards schemes are facing significant challenges. One major challenge stems from the ongoing and profound disruption of news media, which is having both positive and negative impacts for citizens and societies. On the one hand, news content reaches wider audiences than ever as online spaces enable unprecedented participation and democratization (Jarvis 2014) and as data journalism facilitates global exposés on the scale of the Pandora Papers (ICIJ 2021). On the other hand, journalists are losing jobs, news outlets are folding and misinformation is exacerbating a debilitating climate of distrust and polarisation (Bell & Owen 2017; Simons & Dixon 2019). In a digital context, dramatically new modes of news production and distribution are emerging. In 2021, the *Digital News Report* noted that for 54% of younger Gen Z news consumers, digital platforms – not news producers – are the main source of news (Park *et al.* 2021: 53). Amid all this upheaval, the oversight of news media becomes all the more difficult.

A second major challenge is that news media standards schemes are themselves undergoing change. Some traditional oversight bodies, such as the Australian Press Council, remain structurally unchanged, but must now also oversee emerging forms of digital news media. Meanwhile, governments and regulators have struggled to identify the most suitable ways of regulating online content more

generally, with the Senate Inquiry into Media Diversity in Australia highlighting gaping holes in the regulation of news content on platforms such as YouTube (Parliament of Australia 2021: 78-79), compared to print and broadcasting platforms. In this environment, alternatives to statutory regulation have been adopted, and Australia has followed the lead of the European Union in using industry-based self-regulation to counter the spread of misinformation and disinformation via digital platforms (Wilding 2021: 16). What's more, traditional news media standards schemes are being supplemented by new mechanisms such as Meta's Oversight Board. However, as Suzor (2019) has argued, important elements of accountability such as transparency in decision-making are often absent from these arrangements. Today's global oversight landscape is a hybrid of traditional schemes supplemented by a nascent array of new mechanisms, and their jurisdictions overlap in ways that are complicated and unclear. This means that the current disruption of news media is being accompanied by a complementary disruption of news media oversight.

A third major challenge is the inertia that has regularly stymied meaningful reform of news media oversight. In many countries, journalists and news proprietors have been famously resistant to the implementation or reform of standards. In the US, where the First Amendment has bred suspicion of news media oversight, local and regional news councils have existed at various times, but the National News Council that was established in 1973 to promote accuracy and fairness was disbanded in 1984 after a lack of support from major news media (Kenny & Ozcan 2012: 113-14). In the UK, dissatisfaction with an earlier incarnation of a Press Council and the recommendations of the Calcutt Committee in 1990 resulted in what was said to be a 'last chance' at industry self-regulation – namely, the formation of the Press Complaints Committee (Frost 2016: 277-78). A decade later, egregious and

widespread transgressions of phone hacking were exposed, with settlements made to victims by both the Murdoch press and Mirror Newspapers. A commitment to improved oversight coalesced following the Leveson Inquiry's recommendations in 2012, and two new standards and complaints bodies (IPSO and IMPRESS) were formed, but the commitment to improved standards has been questioned by some (Cathcart 2021: 53-55). And in Australia that same year, the Finkelstein Inquiry and the Convergence Review both recommended more coherent news media oversight bodies, but ultimately to little effect (Finkelstein 2012; Australian Government 2012). Efforts to improve and reform news media standards schemes are typically met with fierce resistance by news media who invoke column inches and air time to lobby against any oversight that is not expressly on their preferred terms.

In the face of these challenges, news media oversight warrants scrutiny. In this article, we focus on Australia's system of news media standards schemes. This system, it emerges, is messy, inconsistent and often ineffectual. For television, radio, print and online news media, there are more than a dozen oversight bodies. Over many years, Australian governments and industry bodies have woven together direct statutory regulation, co-regulation and industry-based self-regulation into a poorly stitched patchwork quilt. In response, our wider research has followed three main strands. First, we have surveyed the international academic literature. Second, we have analysed policy developments, including Australia's Finkelstein Inquiry and Convergence Review (both finalised in 2012), the UK's Leveson Inquiry and post-Leveson landscape, as well as developments in Ireland, Hungary, the Netherlands and the EU more broadly. And third, we have surveyed global news media standards schemes and reforms in Denmark, Norway, Ireland, New Zealand, Germany, Canada, the UK, the US, India and South Africa, as well as Australia.

In this article, we detail the challenges facing traditional news standards schemes, before summarising the challenges facing new oversight mechanisms. After describing recent developments in Australia, we then draw on international research to contrast what citizens and journalists want from news media standards schemes. Next, we turn to the issue of algorithmic oversight, before teasing out lessons from Norway and Denmark. Finally, we argue for a future of coherent and effective cross-platform oversight in Australia.

Challenges for traditional oversight schemes

Amid all this flux, it is important to define key terms. In this article, our focus is on ‘news media standards schemes’. These are schemes established to hold news media to certain standards, such as accuracy, fairness, objectivity and the public interest. These schemes thus seek to uphold the *quality* of journalism, sometimes under the threat of sanctions (Fengler *et al.* 2015: 251). In this article, we are concerned with a broad range of schemes, including codes of practice and codes of ethics in the form of in-house schemes, self-regulation, co-regulation and direct regulation. In practice, the lines between these categories are blurry, with terms such as ‘self-regulation’ used inconsistently among scholars and across jurisdictions. In Australia, self-regulation does not mean regulation of oneself; rather, self-regulatory bodies are bodies set up by industry to control standards in that industry (Frost 2016: 254). This means that Australian in-house schemes do not qualify as self-regulation. And even a formal, industry-based scheme with an independent complaint-handling function – such as the Australian Press Council, or APC – needs to be distinguished from co-regulatory schemes where industry associations draft rules, but where the

regulator (the ACMA) accepts unresolved complaints and can take enforcement action (Lee & Wilding 2021: 273).

Our focus in this article is also on ‘news media oversight’, which we define as a broader category than ‘news media standards schemes’. For our purposes, news media oversight encompasses the news media standards schemes outlined above, but also encompasses emerging digital mechanisms of media oversight (Frost 2016: 243-261). These emerging mechanisms range from content moderators to Meta’s Oversight Board, which oversees Facebook and Instagram. However, our usage of ‘oversight’ does not encompass the *ad hoc* (and often highly effective) role played by watchdogs such as the Australian television program *Media Watch*, or the satire of Jon Stewart’s *Daily Show* (Painter and Hodges 2010). In other words, we adopt ‘news media standards schemes’ as a subset of ‘news media oversight’. These definitions, we suggest, are uncontroversial.

By contrast, the term ‘accountability’ is not our focus. It is also more contested and fluid. So much so that Richard Mulgan (2000), who distinguishes potential and actual accountability and has identified different directions of accountability, has asked whether accountability is an ‘ever-expanding concept’. In 2000, Claude-Jean Bertrand identified three types of ‘media accountability system’: *documents*, which range from style books to written codes of ethics; *people*, who range from members of a standards council to readers’ editors; and *processes*, which includes education and research. Meanwhile, scholars Tobias Eberwein, Susanne Fengler and Matthias Karmasin (2017) tease out an account of ‘media accountability instruments’ and ‘media accountability infrastructures’. And in Australia, the Finkelstein Inquiry made accountability, which it defined in terms of social responsibility, a pillar of its argument for a News Media Council, writing that: ‘a free

press should be publicly accountable for its performance' (2012: 7). In this article, we do not parse these various usages of accountability. Instead, we use the term sparingly and in a non-technical sense, conscious that if our arguments about schemes and oversight are accepted, further questions need to be answered about accountability.

In terms of news media oversight, traditional schemes still dominate. As Aidan White wrote in 2015, 'journalism is increasingly a single stream of information disseminated simultaneously across different platforms ... but its regulation remains dominated by old fashioned notions of how media works.' These traditional media oversight schemes come in a variety of forms, but one common feature is that they are routinely criticized for their shortcomings, including because they 'lack teeth', most obviously in their failure to impose penalties such as fines. In some cases, this is because oversight schemes are funded by news media. As Paul Wragg (2020) asks in regard to the UK's IPSO, which is funded by member publishers, what is the point of a body issuing a fine that might jeopardise its very existence by alienating its funders? And as Matthew Ricketson (2021: 17) has observed in regard to the APC, 'the crumbling of the business model that long sustained commercial media has led to pressure from publisher members to reduce fees.' Given that one publisher, News Corp Australia, provides more than half the funding for the APC, Ricketson notes,

... it is hard to see how a council whose job it is to adjudicate on complaints made about its funders can operate with full independence when one of the funders contributes the lion's share of its money (2021: 18)

While in the US it has been said that community and philanthropic funding might provide support for a media council that is fully independent of industry (Kenney &

Ozcan 2012: 122), this is not a realistic option in Australia. The current existential threat for news media is, at times, also an existential threat for news media oversight bodies.

Aside from issues of efficacy and funding, Australia's system of news oversight is a confusing mess. There are self-regulatory standards schemes (such as the APC's Standards of Practice), there are co-regulatory schemes (such as the Commercial TV Industry Code of Practice, overseen by the ACMA) and there is direct government regulation (including the various laws that impact journalists, such as the *Defamation Act 2005* (NSW), the secrecy provisions in the *Criminal Code Act 1995* (Cth), the patchwork of state and territory statutes dealing with surveillance devices, or even the common law of trespass). As a result, journalists and news organisations operate under a tangle of rules and standards. For instance, a *journalist* writing articles for the website of the national public broadcaster, the ABC, or reporting for ABC radio or television is overseen by the Media Entertainment and Arts Alliance Journalist Code of Ethics - but only if she is a member of the MEAA. Her *employer* is overseen for its broadcast content by the ABC Code of Practice, but there is no formal oversight scheme relating to its online news content (Sunderland 2021). This differs from a cross-platform commercial news organisation such as Nine Entertainment, which is overseen by the Commercial Television Code of Practice (for TV broadcast content on the Nine Network), by the Commercial Radio Code of Practice (for broadcast content on radio stations such as 2GB, 4BC and 3AW), and by the APC Standards of Practice (for content on its online news sites and its apps). Content appearing on catch-up services or streaming services is not covered by any oversight scheme, even if it is identical to broadcast content. And while news and current affairs appearing on the Seven Network is subject to the same code of practice

as that on the Nine Network, print and online material appearing in *The West Australian* is subject to a separate oversight scheme from that appearing in *The Age* or *The Sydney Morning Herald*, as Seven West Media operates the Independent Media Council, which was set up after Seven West walked away from the APC in 2012.

In December 2018, research identified a total of 14 different codes that oversee Australia's journalists and news companies: seven codes for broadcasters; four codes for narrowcasters; the codes of the APC and the Independent Media Council; and the MEAA Journalist Code of Ethics (Wilding *et al.* 2018: 87-88). As the researchers noted, 'The current regulatory framework for the news media is fragmented' (Wilding *et al.* 2018: 5). What's more, as abundant as these traditional frameworks are, they have no jurisdiction over social networks, search engines or other digital services, which also play an important role in the news ecosystem.

Challenges for emerging oversight schemes

Traditional oversight schemes internationally are being supplemented by new oversight mechanisms. Some of these are audience-driven, given that digital audiences have an unprecedented ability to become involved. As European researchers wrote in 2011, the internet offers ways for audiences to actively engage in debate about quality of media content, in forms that include: one-person blogs; dedicated online watchdogs; digital ombud schemes; online forums; and via comments and criticisms on social media (Eberwein *et al.* 2011). Apart from audience-driven initiatives, new oversight mechanisms also include industry-driven initiatives such as the internal 'community standards' imposed and policed by digital platforms such as Twitter or Facebook.

One emerging issue concerns the relationship between traditional and emerging oversight. In what way, if any, can digital media's emerging oversight mechanisms be used as an effective adjunct to traditional schemes? In 2015, researchers asked 'whether the accountability instruments emerging online - like newsroom blogs, online ombudsmen and media criticism on the social web - successfully support or even replace these traditional instruments of self-regulation' (Fengler *et al.* 2015: 250). This issue becomes particularly relevant when self-appointed commentators with no ties to established media adopt the role of opponent to those institutions, without themselves adhering to professional codes or standards. As Wischnowski writes, whether these self-appointed watchdogs 'can be legitimate regulators of the flow of information remains hotly contested' (2011: 344). Similarly, the ability of, say, Facebook's content moderators effectively to fulfill a watchdog function against misinformation is hotly contested. While the academic literature often notes the dichotomy between traditional and new media oversight, there is little empirical data supporting either system as a preferred scheme, let alone providing a clear indication of their respective effectiveness. In the digital age, 'striking an appropriate regulatory balance for news content' is fraught (Bayliss-McCulloch 2013: 10).

New entrants include Meta's Oversight Board. At Facebook, both internal content moderators and the Oversight Board oversee the same set of rules: Facebook's community standards. These community standards run to dozens of pages and cover six sections: violence and criminal behaviour; safety; objectionable content; integrity and authenticity; respecting intellectual property; and content-related requests and decisions. For most of Facebook's history, these standards have been secret: Facebook was founded in 2004, but the standards were only made public in

2018 (Molitorisz 2020: 276). These standards are regularly updated and policed by tens of thousands of Meta-employed moderators. Sitting atop these moderators, the Oversight Board is an external oversight body generated by Meta and comprising international academics and experts. Announced in 2018 and ambitiously likened to the US Supreme Court, it handed down its first findings in January 2021, while still known as the ‘Facebook Oversight Board’ (Debré 2021). As far as possible, Meta is apparently seeking to keep the oversight of material on its platforms out of the hands of external regulators by setting up its own mechanisms. In the same way that traditional news media companies resist regulation and oversight, so too digital platforms resist regulation and oversight not on terms they themselves have crafted.

Recent developments in Australia

In Australia, there is growing acknowledgement that the existing system of media oversight is broken. In December 2021, an Australian Senate committee handed down its report following a year-long inquiry into media diversity (Parliament of Australia 2021). The inquiry was sparked by a petition led by former Prime Minister Kevin Rudd demanding a royal commission into the power and influence of the Murdoch media empire. In its hearings, the committee explicitly drew a link between, on the one hand, media diversity and concentration of ownership and, on the other, media standards and the quality of news. As the report noted:

The committee heard significant evidence that Australia’s system of media regulation is not effective, citing the weakness of its mechanisms, its inconsistent governance arrangements and standards across platforms, and the lack of oversight for digital media. Evidence to the committee testified to the

inability of existing regulators to ensure that standards of fairness and accuracy are maintained, and to prevent the spread of misinformation (Parliament of Australia 2021).

The report recommended the establishment of a judicial inquiry, with the powers of a royal commission, into media diversity, ownership and regulation: ‘It is clear that the current regulatory framework is not fit-for-purpose and significant changes are required.’ The report’s recommendations were blunt:

The committee believes that media convergence due to technological change has greatly strengthened the argument in favour of a single regulator across all platforms. As a consequence, the committee further recommends that the judicial inquiry’s terms of reference include consideration of a single, independent media regulator to harmonise news media standards and oversee an effective process for remedying complaints (Parliament of Australia 2021).

It should also be noted that the inadequacy of other aspects of content regulation, especially online content, was recognised in the recommendations by the Australian Competition and Consumer Commission, or ACCC, for addressing the ‘regulatory imbalance’ in the obligations applying to media businesses and to digital platforms (ACCC 2019: 174) and in subsequent legislative initiatives of the Federal Government, including the *Online Safety Act 2021* (Cth) as well as the proposed *Social Media (Anti-Trolling) Bill 2022* (Cth). Meanwhile, problems with the scheme applying to print and online news were highlighted when, in April 2021, the Media Entertainment and Arts Alliance (MEAA), Australia’s union for journalists,

announced that it was quitting the APC, one of Australia's most prominent standards bodies. As the MEAA's Karen Percy said: 'A credible regulator – where there are real consequences for breaches – is critical ... unfortunately the Press Council is no longer fit-for-purpose for the modern, cross-platform media industry' (MEAA 2021). However, one complication here is that some existing legislation explicitly enables a less active engagement with standards schemes. For instance, news media organisations that have publicly committed to published privacy standards, including those enforced by the APC, are largely exempt from the obligations contained in the *Privacy Act 1988*.

Another recent development is the News Media Bargaining Code (the 'Code'), which passed into law in Australia in February 2021 and seeks to address a market imbalance between digital platforms and news media businesses by prompting payments for the use of news content. Under s 52G of the *Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Act 2021* - which inserts a new Part IVBA into the *Competition and Consumer Act 2010* - a news business is eligible to register to participate in the Code's news bargaining scheme provided certain qualifying criteria are met. One of these, set out in s 52P, is the 'professional standards test'. That test is met if the applicable news sources are subject to: the rules of the APC or the Independent Media Council; the Commercial Television Code of Practice, the Commercial Radio Code of Practice or the Subscription Broadcasting Codes of Practice; a code registered under the governing Acts for the ABC or SBS; or to 'internal editorial standards that are analogous to' the foregoing schemes or to rules specified in the regulations that replace them.

The Code is a major missed opportunity for media standards. During the Code's development, we argued that it ought to mandate an *external* professional standards scheme for news media businesses:

As it stands, s 52P(1)(a)(iv) allows for an internal code of ethics with no independent input or consultation and with no independent system for addressing complaints. This provision does not encourage the provision of quality journalism. In fact, it could have the opposite effect, providing less incentive for membership of professional standards schemes (Centre for Media Transition 2020: 4).

As passed, the legislation authorises internal standards schemes for news media. (That said, s 52P and the Code generally will only be activated if the Treasurer 'designates' a digital service; this looks unlikely, given Google and Facebook have made deals worth hundreds of millions of dollars with news businesses.) With this world-first law that may be emulated overseas, the Australian Parliament chose to weaken existing mechanisms rather than mandate external regulatory oversight (Lee and Molitorisz 2021). As it stands, the Code missed the chance to promote *quality* news, to hold news media and digital platforms more accountable for the production and distribution of news, and even to prompt reform of media oversight schemes in Australia (Giotis, Wilding and Molitorisz 2022), including along the lines we propose below.

Oversight: citizens want more but journalists want less

News consumption habits have changed radically, with social media

increasingly where people access and interact with the news. In 2021, the *Digital News Report* charted the international rise of TikTok as a platform for news consumption (Newman *et al.* 2021). A year earlier, the 2020 *Digital News Report* revealed that young people's use of Instagram for news consumption had doubled in two years (Newman *et al.* 2020).

Despite changing appetites, citizens still 'expect high (and old) standards' to be maintained (Karlsson, Clerwall and Nord 2017: 152). Ironically, they still require journalists to scrutinise and analyse information in a way that is not expected of amateur user-generated content producers (Ross 2017: 93). It seems that audiences are not sympathetic towards errors from professional journalists, and even corrections do not make up for poor journalistic standards in the first place (Karlsson, Clerwall and Nord 2017: 160). In 2017, Canada's *Shattered Mirror* report found that, despite an increase in online news consumption, Canadians worry about the social cost associated with the demise of traditional news media: loss of rights, loss of investigative reporting and 'less accountability on the part of politicians and other powerful interests' (Public Policy Forum 2017: 44).

Citizens today expect old school standards, on a new school timetable. Research has found people expect complaints made via Twitter or Facebook to have received a response within three to six hours; this is significantly faster than the actual response time for a typical email complaint, which is six days (Istanbulluoglu 2017: 78). By contrast, complaints made under traditional standards schemes often require months, if not years, to resolve. Yet despite a rise in easily accessible online complaints forums, it is often conventional media's self-regulating institutions such as press council schemes that are often called upon to deal with online issues (Eberwein

and Porlezza 2016: 331). Citizens still want media professionalism, led by the qualities of ‘accuracy’, ‘objectivity’, and ‘the pursuit of the public interest’ (Molitorisz 2020a). What’s more, Australians remain deeply concerned about the prevalence of bias and commercial influence compromising the news, particularly online (ACMA 2020). The research suggests that, from the point of view of those who consume the news, participatory media oversight schemes constitute a valuable complement, but established and traditional schemes continue to play a vital and central oversight role.

To complicate matters, journalists and citizens have different expectations. In 2015, a comprehensive survey of 1,762 journalists in 14 countries found that journalists are sceptical of media accountability instruments and media self-regulation in general, and their support for new forms of digital oversight is ‘tepid at best’ (Fengler *et al.* 2015: 255). More recently, a 2020 Spanish study found citizens want journalists to be responsible to the audience, while journalists themselves feel particularly responsible to their conscience, to journalists’ code of ethics and to their sources (Chaparro-Domínguez, Suárez-Villegas and Rodríguez-Martínez 2020). Also revealing is Brian Cathcart’s analysis of the response of the *Guardian* to the Leveson Inquiry’s recommendation for increased press regulation: over time, the venerated news outlet shifted from indifference to pro-reform to indifference to anti-reform (Cathcart 2021: 48). The default position for journalists and news media is seemingly to resist external regulation. When resistance fails, the strategy becomes to seek regulation on their own terms.

That’s not to say that journalists regard existing oversight mechanisms as irrelevant in an increasingly networked world. Journalists generally seem to agree that

they consider press councils, ombud schemes and self-regulatory institutions to be soft options, but that those soft options still have more of an impact on their standards and procedures than newer methods of oversight (Cheruiyot 2017: 114).

Overseeing algorithms

As people increasingly obtain their news from online sources such as social media, algorithms are playing an ever greater role in determining which content rises to the surface, and which disappears from view. So how should algorithms be overseen? In Australia in late 2018, the ACCC recommended the introduction of an algorithmic regulator to oversee news (and advertising) content, thereby mandating a degree of algorithmic transparency (ACCC 2018: 11-12). By mid-2019, however, it had stepped back from this recommendation in the Final Report of its Digital Platforms Inquiry (ACCC 2019).

Overseas, moves are afoot. In December 2020, against a background of academic calls arguing for better algorithmic oversight (e.g., Diakopoulos and Koliska 2017), the European Commission proposed the *Digital Services Act*, which includes provisions to ensure algorithmic auditing and transparency, most notably in Article 29. In June 2021, the European Federation of Journalists recommended that the Act go even further, given the crucial role of algorithms in news distribution (Killeen 2021). Academics including Natali Helberger, however, have argued that the law ought to be redrafted in a way that doesn't just aim to minimise harms, but that more actively encourages digital platforms to build recommender systems that optimise for public values such as diversity (Helberger *et al.* 2021). This is an emerging theme in the scholarship: that we don't just want to minimise algorithmic

harms, but that we want to maximise algorithmic good. As Sandra González-Bailón has argued, algorithms are

... the key to finding a solution to the problem of information pollution ...
Algorithmic rankings can help manage the overflow of content. We can choose to design those algorithms to, for instance, incorporate signals of source quality in their recommendations ... (González-Bailón 2021)

Scholars have fleshed out various proposals. Damian Tambini argues that regulating algorithms too tightly may be counter-productive, and advocates ‘decentralized, competitive, plural media governance systems featuring “algorithmic pluralism” – strength in diversity of independent media and citizen-led resilience rather than censorship’ (Tambini 2021). Similarly, for Donovan and boyd, the answer lies in a more ambitious and positive approach than rule-setting and enforcement. Not unlike Helberger, they argue for a new editorial paradigm of ‘strategic amplification’, which requires both news media businesses and digital platforms companies to ‘develop and employ best practices for ensuring responsibility and accountability when producing news content and the algorithmic systems that help spread it’ (Donovan and boyd 2021).

Doing it differently: Norway and Denmark

Our wider research for this project included a review of the arrangements in seven other countries. This was based on earlier work where 16 countries were the subject of a preliminary review after repeatedly appearing in literature commenting on media oversight schemes. The full analysis of these arrangements will appear in a

forthcoming research report; here, where we emphasise the importance of cross-platform regulation, we offer comments on Denmark and Norway only. While our forthcoming report reviews various aspects such as funding, governance and complaint handling, here we note only the key aspects of the schemes' cross-media coverage and any statutory aspects associated with the industry-based schemes.

The Danish Press Council ('Pressenævnet') is part of a **co-regulatory** scheme: the Press Council manages a code of practice and hears complaints, but the scheme itself is established in legislation (under the *Media Liability Act 1991*, or 'Medieansvarsloven'); membership of it is mandatory for some news providers; and failure to comply with an order to publish a Council decision can be pursued in court (see Pressenævnet 2022). The *Media Liability Act* establishes an overall requirement for 'sound press ethics' and makes editors, journalists and media owners answerable to a code of practice (or 'Advisory Rules') that is shaped by the Press Council around this overall standard. The scheme has **cross-media coverage**: as well as broadcast media, print media are covered if they are published periodically, meaning at least twice a year, as are online media, including social media, that are published periodically and have a form of news presentation. However, the rules only apply to the media's editorial content and edited online discussions, so that unedited user comments on social media are not covered. In terms of **enforcement**, when the Council finds a breach it can make a ruling that the news outlet must publish, although it can also order that the publisher gives the complainant a right of reply. It cannot require a publisher to pay damages; however, where an outlet refuses to comply with an order of publication issued by the Press Council, the responsible editor risks a fine or up to four months in prison.

Norway's regulatory framework mirrors elements of the Denmark scheme with a *Media Liability Act 2020* ('Medieansvarsloven') and cross-media coverage. However, the scheme operated by the Norwegian Press Complaints Commission (Pressens Faglige Utvalg, or PFU) is **self-regulatory** rather than co-regulatory, membership is voluntary and the PFU is responsible for its own code of ethics and hearing complaints without the involvement of a government regulator (see Pressens Faglige Utvalg 2022). Unlike in Denmark, the *Media Liability Act* does not empower the Press Complaints Commission to hear complaints against publishers and there are no sanctions for PFU members' failure to comply with its orders. The PFU has **cross-media coverage**, including publishers' associated social media accounts, such as those on Facebook and Twitter. Furthermore, a journalist and editor can be held accountable for material published on their private profiles if it is 'in connection with his or her journalism' (Fielden 2012: 34-35). In terms of **enforcement**, while a breach finding means that the publication must publish the Committee's statement in a 'clearly visible place', the PFU has no powers to enforce or impose any financial penalty on individual journalists and publications, nor order any media to remove content.

An interesting feature of the Norwegian environment is that its *Media Liability Act* is used both to establish aspects of media freedom and to establish some obligations associated with good media practice. The purpose of the Act is set out in s 1 (in translation):

The law shall facilitate an open and informed public conversation by ensuring editorial independence and establishing clear responsibilities for content that is published in editor-controlled journalistic media.

The Act provides protections for editorial independence: a media owner or publisher may not issue instructions relating to that editor's decisions and may not demand the right to review or preview material prior to general publication (s 7). In this way, the Norwegian Act goes beyond the *Media Liability Act* of Denmark, which has been described as 'determining how and upon whom to place responsibility for actions in the media in contradiction with rules in other parts of Danish law, e.g. rules on defamation, copyright etc' (Dahl & Klingberg-Jensen 2014). The Danish Act does not include the Norwegian prohibition on publisher influence.

In Australia, by contrast, the obligations imposed on news media are scattered across many statutes and also derive from the common law, and similarly the 'privileges' accorded to news media are dispersed across multiple sites of law and regulation. One proposal for addressing the latter is the idea of a 'Media Freedom Act' advanced by the Association for Journalists' Freedom (2019). We have been cautious of this proposal on the basis that we think it is reasonable to link media freedoms to at least some baseline obligations concerning standards and quality.

Our review of international arrangements suggests that some aspects of the Danish and Norwegian frameworks could offer a way forward, although neither provides a perfect model for Australia. Their common feature of cross-media coverage provides an obvious advantage over current Australian arrangements. The Danish approach to embedding corresponding obligations and entitlements in the one coherent legislative source would represent a new model for Australia, while the Norwegian approach in providing some statutory recognition while allowing an independent body to formulate rules and hear complaints has a clear connection with the use of co-regulation in the Australian communications sector. However, the

Danish enforcement powers exceed what would be considered acceptable here, were print media to be included in the same scheme as broadcast media, while the Norwegian scheme has the opposite problem: the absence of any statutory reference and any effective enforcement of complaints decisions mean that the scheme is likely to be seen as an inadequate replacement for the Australian model of broadcasting co-regulation.

A future of cross-platform oversight

Internationally, regulators and scholars have proposed a range of solutions to improve news media oversight, including those described above. The precise configuration of a new Australian framework would need careful consideration by government and would need informed input from industry participants, both new and old. In this section, we advance some guiding principles for the reformulation of news media oversight in Australia.

First, Australia's fragmented standards schemes could be consolidated into a single scheme that is holistic, efficient and coherent. This single scheme would oversee TV, radio, print and online. This is not a novel proposal. In 2012, the Finkelstein Inquiry and, more importantly given the scope of its proposals, the Convergence Review, delivered their reports (Finkelstein 2012; Australian Government 2012). As they noted, Australia's fragmented oversight landscape is partly the result of Australia's Constitution, which made broadcasting a federal responsibility, and print – to the extent that it is regulated at all – a state responsibility. However, the advent of the internet makes possible a more streamlined federal approach, which both the Finkelstein Inquiry and Convergence Review supported (Pearson and Polden 2019: 78-79). While the former recommended a

statutory scheme for news standards, the latter drew on a recommendation presented by the APC that a new industry-based cross-platform standards body be developed to provide both standards of practice and an independent complaints scheme. As noted above, the recent Senate Inquiry into media diversity picked up on these themes.

Second, digital services and platforms could be incorporated into such a consolidated media oversight scheme. Along these lines, one common suggestion is that digital platforms should simply be legally designated as publishers, so that they would attract all the same responsibilities (as well as the same benefits) as news media businesses. That is, ‘social media platforms should be considered media companies and ... should be regulated by modified versions of existing press laws, adapted to suit the new technology’ (Niklewicz 2017: 335). However, we have argued elsewhere that although social media, search engines and other digital services play extremely significant roles in the news media landscape, this role is distinct from the role played by news media businesses (Wilding *et al.* 2018: 149). Specifically, digital platforms and services perform a news distribution role, rather than a news production role. As a result, a distinct category - or perhaps several categories, reflecting different types of digital services – setting out specific responsibilities (and benefits) could be created. As key distributors of news, digital platforms could help fund a cross-media standards scheme without also being subjected directly to journalistic standards concerning accuracy, fairness etc.

Third, as we have argued above, a consolidated cross-platform oversight scheme could also have the power to oversee algorithms, in a way that not only minimizes harms, but fosters quality news and journalism. To include digital services as distributors rather than producers of news, this scheme would recognise digital services as promoters of certain content and demoters of other content, via algorithms.

As such, the scheme could seek to foster the algorithmic amplification of quality news and require a degree of meaningful algorithmic transparency for regulators.

Meaningful transparency could take the form of ‘algorithmic explainers’ (Wilding *et al.* 2018: 72). A coherent, harmonized, efficient scheme ought not just seek to respond to complaints, identify transgressions and impose warnings and penalties. Rather, it ought to foster quality news, from production, through distribution, to consumption.

And fourth, a consolidated cross-platform news media standards scheme could allow for more citizen involvement, to align with citizen expectations, and also to utilize the interactive potential of digital media. Traditional non-participatory oversight can leave citizens dissatisfied (Akpabio and Mosanako 2018). People who consume the news, and who increasingly play an active role by posting, sharing, liking and commenting, ought to be able to play a greater role in establishing and monitoring the enforcement of standards.

Of course, these high level points prompt a series of difficult questions. Above all, what *form* should a cross-platform scheme take? Should it be implemented via direct regulation? Or the ‘co-regulation’ that characterizes the ACMA? Or the self-regulation that characterizes the APC? And what lessons can we learn from other jurisdictions, such as Denmark and Norway? One suggestion is that problems such as misinformation should be tackled neither by national (or supranational) government bodies nor by digital platforms, but by co-regulatory approaches in which digital platforms develop oversight mechanisms, which are then approved and overseen by government (Marsden, Meyer and Brown 2020). This, however, is not the approach Australia is adopting with its nascent disinformation code, which is technically a self-regulatory instrument, albeit with a limited degree of oversight by the ACMA

(Wilding 2021). This question also connects with the issue of accountability. That is, what type(s) of accountability do we want and expect of news media?

A second question is: how should a cross-platform scheme interact with emerging oversight schemes that target ‘third party’ comments on social media, such as Facebook’s policing of its community standards via content moderators and Meta’s Oversight Board? One suggestion here is that traditional regulators exercise some oversight of content moderation procedures, in a way that is sensitized to the more systemic problems of content moderation (Gillespie 2018). Digital services and platforms play increasingly pivotal roles in the news media landscape. In particular, social media platforms are not merely intermediaries and facilitators of speech, but active political agents that wield considerable opinion power. A single cross-platform scheme that oversees news media businesses, and also provides some oversight of digital platforms and services that carry news content (while not applying the same journalistic standards to user comments), deserves serious consideration. It stands to reason that there should be *some* level of genuinely external oversight for, say, the content moderation procedures of a social network.

A third, important issue – especially with media in flux – concerns the ongoing scope of any new framework. What sort of oversight should apply to a journalist working on a self-publishing platform such as Substack? How can we discern an influencer from an investigative reporter on social media, and which respective standards should apply? Which jurisdiction’s schemes and oversight should apply to the international exposés being published by the International Consortium of Investigative Journalists?

Finally, any attempt to craft a new framework for news media oversight must confront the inevitable critique based on concern for freedom of speech. While there

is a legitimate issue here – and it is why the first of the questions posed concerns the determination of the *form* the intervention should take – there is also a risk of the backlash encountered by the Finkelstein Inquiry, the Convergence Review and the Gillard Government’s responding suite of media reform bills in 2012 (see Flew & Swift, 2013; Lidberg & Hirst, 201; Fernandez 2013). However, the industry and policy environment of 2022 is different from that of a decade ago, with industry inviting the intervening hand of government in order to redirect advertising revenue from platforms to publishers and in the acceptance of state support for public interest journalism initiatives. Furthermore, there is a solid case for establishing that effective press regulation is not only desirable, but does not compromise press freedom: ‘It is only the realm beyond the zone of press freedom that the regulator may patrol. What happens inside that zone is not its concern’ (Wragg 2020: 2). Judicious, effective news media regulation does not diminish press freedom or free speech. In the same way that a law against murder or fraud promotes individual freedom (by decreasing the likelihood that you will be murdered or defrauded), so too regulation that effectively counters inaccuracy and unfairness in news media will promote press freedom and free speech (by supporting those outlets that are accurate and fair). An effective and coherent news media oversight scheme - that also oversees digital platforms in their role as news distributors - will work to promote, not to diminish, freedom of the press and free speech generally.

Conclusion

Australia’s news media standards schemes face significant challenges. In February 2021, the News Media Bargaining Code became law, with provisions for a ‘professional standards test’ for news media businesses that effectively undermined

external standards schemes by allowing for internal schemes. In April 2021, Australia's union for journalists announced it would leave one of Australia's longstanding standards and complaints bodies, the APC. And in December, a government inquiry into media diversity found that 'the current regulatory framework is not fit-for-purpose', recommending that a judicial inquiry be set up to consider 'a single, independent media regulator to harmonise news media standards.'

Australia currently has a proliferation of traditional standards schemes, with wide disagreement as to their efficacy, a distinct lack of coherence, and no clear path for the future. This article has not attempted to provide a detailed assessment of relevant bodies such as the Australian Press Council or the Australian Communications and Media Authority. Rather, it has drawn on international regulatory developments and scholarship to show the pressing need for a more coherent scheme that meets the needs of the digital news environment. Currently, news media standards schemes are unable to deal effectively with news content on print, radio and TV, let alone on social media, search engines and other digital services. Alongside traditional news media accountability schemes, we see an *ad hoc* set of emerging mechanisms, ranging from content moderators to Meta's Oversight Board. These too provide some oversight of news content. In the thick of all this change, now is the time to ask larger questions about reform of news media standards bodies. The current upheaval and confusion creates an opportunity. The disruption of news media demands reform of news media standards schemes, and what is wanted is holistic and expansive rather than patchy and piecemeal.

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CONTRIBUTOR DETAILS

Professor Derek Wilding is Co-Director of the UTS Centre for Media Transition where he teaches media law and regulation and is a chief investigator on two ARC Discovery Projects. He has worked in statutory and industry-based regulation, including with the Australian Press Council and the Australian Communications and Media Authority.

derek.wilding@uts.edu.au, <https://orcid.org/0000-0002-7806-8895>

Dr Sacha Molitorisz is a Senior Lecturer in the UTS Faculty of Law attached to the UTS Centre for Media Transition. Spanning media, law and ethics, his interests include news media oversight, journalistic ethics and digital privacy. Previously, he worked for two decades as a journalist. His book *Net Privacy: How we can be free in an age of surveillance* was published in 2020.

sacha.molitorisz@uts.edu.au, <https://orcid.org/0000-0002-6825-3392>

Centre for Media Transition, Faculty of Law, University of Technology Sydney.
Building 2, Level 15. UTS City Campus, Broadway. PO Box 123 Sydney 2007.