

**AMNESTY
INTERNATIONAL**



DEFENDING HUMAN RIGHTS

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Senator Sarah Hanson-Young
Senate Standing Committees on Environment
and Communications
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Dear Senator Hanson-Young

RE: SUBMISSION TO THE INQUIRY INTO MEDIA DIVERSITY IN AUSTRALIA

Amnesty International Australia welcomes the opportunity to provide this submission to the Senate Standing Committees on Environment and Communications' inquiry into media and diversity. In this submission, Amnesty International Australia puts to the Committee that there is an important connection between media diversity and the right to freedom of expression. **Specifically, a more diverse media leads to a better protected and a stronger right to freedom of expression.**

From the outset, Amnesty International Australia submits that a Federal Human Rights Act that protects freedom of expression, will in turn protect and increase media diversity in Australia.

A diverse media environment means a media structure that is:

1. comprised of competing media outlets which are independent from each other or a central owner;
2. diversified on separate but overlapping planes of ownership, political views, cultural outlooks and regional interests;
3. able to communicate to all corners of society;
4. capable of conveying a great variety of information and opinion;
5. designed to draw information from a wealth of different sources.¹

Such a structure is best placed to protect and strengthen the right to freedom of expression.

The right to freedom of expression is protected in Article 19 of the *Universal Declaration of Human Rights*.² Formal legal protection for freedom of expression is found in Article 19 of the *International Covenant on Civil and Political Rights*³, a treaty ratified by 173 states⁴, including Australia.

¹ Haraszti, Miklos, 'Media pluralism and human rights', *Human rights and a changing media landscape*, p. 104

² United Nations General Assembly Resolution 217A (III), 10 December 1948.

³ United Nations General Assembly Resolution 2200A(XXI), adopted 16 December 1966, in force 23 March 1976.

⁴ United Nations, *Status of Ratification Interactive Dashboard*, 19 November 2020: <https://indicators.ohchr.org/>

The right to freedom is also upheld in international law to which Australia is not signatory, but of which should be noted: the *European Convention on Human Rights*⁵, *Charter of Fundamental Rights of the European Union*⁶ and the *Declaration of Principles on Freedom of Expression in Africa*⁷.

The right to freedom of expression prevents States from interfering with or restricting individuals' enjoyment of the right, and importantly in relation to the promotion of media diversity, it also places a positive obligation on States to take measures to promote an environment which supports the free flow of information and ideas in society. International law recognises generally that States must put in place positive measures to ensure rights.⁸

The *Joint Declaration on Media Independence and Diversity in the Digital Age*⁹ - to which Australia is not a signatory - sets out strong principles that reiterate the need for media diversity in order for the media landscape to uphold human rights. Importantly, it states that States should:

promote media diversity, including at the local level and, among other things, through ensuring community media have space to operate on all distribution platforms and adequate resources.

The Joint Statement also recognises that in the modern media environment, threats to media diversity are often economic. As such, it notes that:

States should put in place appropriate measures to create an economic environment which supports a diverse media landscape, including legacy media and media serving local and rural communities, and which do not undermine the independence of the media, such as independent or uniform subsidy systems, tax relief.

It also notes that:

States should put in place strict requirements of transparency of media ownership, along with effective rules and systems to prevent monopolies or undue concentration of media or cross-media ownership. This should include requiring the approval of independent regulatory bodies before mergers or acquisitions which pose a threat to free competition or diversity can take place and may include limits on the extent of concentration of media or cross-media ownership.

Freedom of expression is only possible under a media market that is not marred by a monopoly, or monopoly-like conditions.

⁵ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 10, as amended by Protocols Nos. 11 and 14*, 4 November 1950

⁶ European Union, *Charter of Fundamental Rights of the European Union, Article 11*, 2010

⁷ African Commission on Human and Peoples' Rights, *Declaration of Principles on Freedom of Expression in Africa*, 2002

⁸ International Covenant on Civil and Political Rights, Article 2

⁹ Office of High Commissioner for Human Rights, *Joint Declaration on Media Independence and Diversity in the Digital Age*

Ownership of Australia's newspapers is one of the most concentrated in the world. The Herfindahl-Hirschman Index (HHI) shows that in 2011 Australia had the most concentrated newspaper industry out of any country studied except for China and Egypt.¹⁰

Australia's content media industry is the tenth most concentrated in the world. Worryingly, it is steadily getting more concentrated - following trends also seen in Switzerland, the Netherlands, Italy, Turkey, France and Russia.¹¹ It is also worth pointing out that the media of several of the countries that ranked more highly are largely state-owned, such as in China and Egypt.¹²

Under the guise of the industry's changing landscape, media ownership and regulation changes in 2017 may contribute to decreased media diversity. This included repealing restrictions such as the two out of three rule, which stops companies owning newspaper, radio and television stations in the same city.¹³

At the time, the government also attempted to remove 'the 75% reach rule': a rule that specified that a single person, or company, cannot be in control of commercial television broadcasting licences where the reach exceeds more than 75% of the Australian population.

Existing media ownership controls provided by the *Broadcasting Services Act 1992* include: a person must not control television broadcasting licences whose combined licence area exceeds 75 per cent of the population of Australia, or more than one licence within a licence area¹⁴, A person must not be in a position to control more than two radio licences in the same radio licence area¹⁵, and various controls regarding cross-media ownership.¹⁶

Amnesty International Australia notes that these ownership regulations should only ever be strengthened, not removed nor diminished. The government should adopt a legislative test that outlines whether or not reform increases or decreases media diversity, and therefore the right to the freedom of expression. Similarly, a strengthened Parliamentary Joint Committee on Human Rights could also ensure that freedom to the right of expression is respected in any relevant legislative changes.¹⁷

Amnesty International Australia also recommends that the s3(1) of the *Broadcasting Services Act 1992* so that it has an express objective to ensure the right to freedom of expression, such as: to promote the right to freedom of expression through ensuring a diverse media landscape.

Although the principle of media diversity disallows owners or outlets from becoming too powerful through monopoly-like conditions, it nevertheless requires strong media enterprises that can successfully compete and maintain their independence in the face of political or commercial pressures. These pressures might include changes in the industry, such as the move to digital,

¹⁰ Noam, Eli, *Who Owns the World's Media?: Media Concentration and Ownership around the World*

¹¹ Noam, Eli, *Who Owns the World's Media?: Media Concentration and Ownership around the World*

¹² Evershed, Nick, 'Australia's newspaper ownership is among the most concentrated in the world', *The Guardian*, 14 Nov. 2020

¹³ *Broadcasting Legislation Amendment (Broadcasting Reform) Act 2017*

¹⁴ s53, *Broadcasting Services Act 1992*

¹⁵ s54, *Broadcasting Services Act 1992*

¹⁶ s60-61, *Broadcasting Services Act 1992*

¹⁷ Amnesty International Australia, [Submission to the Australian Human Rights Commission Free & Equal Consultation](#), p22

criminalisation or targeting of journalists, and small market sizes. In order to prevent such fragility, regulation may draw on taxpayer funded support. However, these subsidies must be content-neutral and pluralistic.¹⁸

A more diverse media leads to a better protected and a stronger right to freedom of expression. Australia needs a strict legislative protection of the right to freedom of expression, which would then be reflected in media ownership laws and regulations. This protection should be in the form of a Federal Human Rights Act.

As well as the right to freedom to expression, a Federal Human Rights Act would also contain as a minimum: right to recognition and equality (including non-discrimination), right to life, right to freedom of movement, right to privacy and reputation, right to religion and belief, right to peaceful assembly and freedom of association, cultural rights (right to enjoy culture, declare and practise religion and use their language), rights to education and the rights of children in the criminal process, and their access to health care.

Amnesty International believes that a national Human Rights Act should be based on the dialogue model adopted in the UK, NZ, Victoria and ACT. This model will create a fair, just and equal society for everyone and protect rights recognised under international human rights treaties in which Australia is a party.

This submission has outlined a number of recommendations that the government can take to ensure media diversity, which is intrinsically linked to the right to freedom of expression, and calls on the Committee to ensure that the protection of right to freedom of expression is at the heart of its deliberations.

For further information or to discuss this submission, please contact Joel MacKay at
or .

Yours sincerely,

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¹⁸ Haraszti, p127