

CHAPTER 6

MEDIA COMPLAINTS COMMISSION

Introduction

6.1 This Committee has found substantial evidence to question the efficiency and effectiveness of self-regulation and co-regulation in Australia's information and communications industries. Self-regulation in the print media industry appears to be failing the community. In the television and radio industries, co-regulation has attracted widespread criticism. Standards for advertisements are not being adequately enforced.

6.2 The community is confused about where specific complaints ought to be directed across all the industries, and the ensuing delays and complexity involved in making a complaint further exacerbate these difficulties.

6.3 There is broadly based evidence to support the establishment of a statutory body to deal with complaints about Australia's information and communications industries. The Committee therefore recommends that the Government establish a Media Complaints Commission (MCC) to oversee various existing bodies and processes which currently regulate these industries. Table 6.1 details the regulatory bodies and processes that come within the MCC.

Table 6.1

Scope of the MCC

Complaints-handling body	Source of complaints	Regulatory codes
Australian Press Council (APC)	Newspapers and magazines published in Australia	<ul style="list-style-type: none">• APC Statement of Principles
Australian Broadcasting Authority	All Australian television and radio broadcasters, and Internet service providers	<ul style="list-style-type: none">• Federation of Australian Community Television Stations Industry Code of Practice• ABC Code of Practice• SBS Code of Practice• Federation of Australian Radio Broadcasters Codes Of Practice• Internet Industry Code of Practice

Advertising Standards Board	Advertising Industry (members of the Australian Association of National Advertisers)	<ul style="list-style-type: none"> Australian Association of National Advertisers Code of Ethics
Australian Broadcasting Corporation Independent Complaints Review Panel	ABC television and radio	<ul style="list-style-type: none"> ABC Code of Practice

Sectors included in the MCC

6.4 The regulatory schemes for print media, television, radio and Internet content are all included in the MCC. It is clear from previous chapters that the complaints-handling procedures and enforcement of regulatory codes in these sectors are inadequate, and need to be simplified and strengthened.

6.5 Also included is the self-regulatory scheme for advertising which applies to the print media, television and radio industries. The enforcement of this scheme must be improved.

Advertising Standards Board

6.6 The principal regulatory scheme for the content of advertisements is the Australian Association of National Advertisers (AANA) Code of Ethics, which establishes standards for a range of issues, including language, ethnicity, and the depiction of sex and nudity. The types of advertisements that the Code of Ethics covers are as follows:

... the term “advertisement” shall mean matter which is published or broadcast, other than via internet, direct mail or point of sale, in all of Australia or in a substantial section of Australia for payment or other valuable consideration and which draws the attention of the public, or a segment of it, to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly that product, service, person, organisation or line of conduct.¹

6.7 Complaints about advertisements are heard by the Advertising Standards Board (ASB). Usually, a complainant will address their complaint to the media outlet that carries the advertisement, which will then refer them to the ASB. In the case of advertisements such as a billboard advertisement, complaints are addressed directly to the ASB.

6.8 The AANA Code of Ethics is enforced by the ASB. The ASB’s powers are limited, however, as its authority rests on the advertising industry’s voluntary

1 http://www.aana.com.au/sitemap/searchredirect.asp?searchPge=/about/01_2_ethics.htm&DocTitle=aana%20-%20about%20-%20code%20of%20ethics, as at 5 April 2000.

adherence to the AANA Code of Ethics.² If the ASB finds a breach of the AANA Code of Ethics, it can recommend that an advertisement be removed or modified. The agency responsible for the advertisement, however, does not face a penalty if it does not follow the recommendation.

6.9 In a recent case the ASB recommended that a billboard advertisement for men's shoes be withdrawn, after it found a breach of the AANA Code of Ethics. The shoe manufacturer refused to remove the advertisement, highlighting the lack of effective enforcement and regulation of advertisements.³

Sectors excluded from the MCC

6.10 The operations of the Media, Entertainment and Arts Alliance (MEAA) and the Telecommunications Industry Ombudsman (TIO) are outside the scope of the MCC.

Media, Entertainment and Arts Alliance

6.11 As stated earlier in this Report, the MEAA is responsible for dealing with complaints that are made against its member journalists. The MEAA is the union for the media, entertainment, sports and arts industries. It has a variety of functions, including hearing complaints about its member journalists. The Committee feels that the activities of a union fall outside the MCC, which is intended to deal only with the regulation of Australia's information and communications industries. Further, the activities of the journalists are otherwise monitored through the regulatory regimes that apply to television, radio and the print media.

Telecommunications Industry Ombudsman

6.12 The TIO handles complaints about the carriage of telephony and Internet services as opposed to their content. Evidence suggests that the TIO is dealing successfully with a high volume of complaints annually (64 394 complaints in 1998-99).⁴ In view of the effectiveness of the TIO, and volume and type of complaints that it deals with, the Committee feels that it should not come within the scope of the MCC.

Structure of the Media Complaints Commission

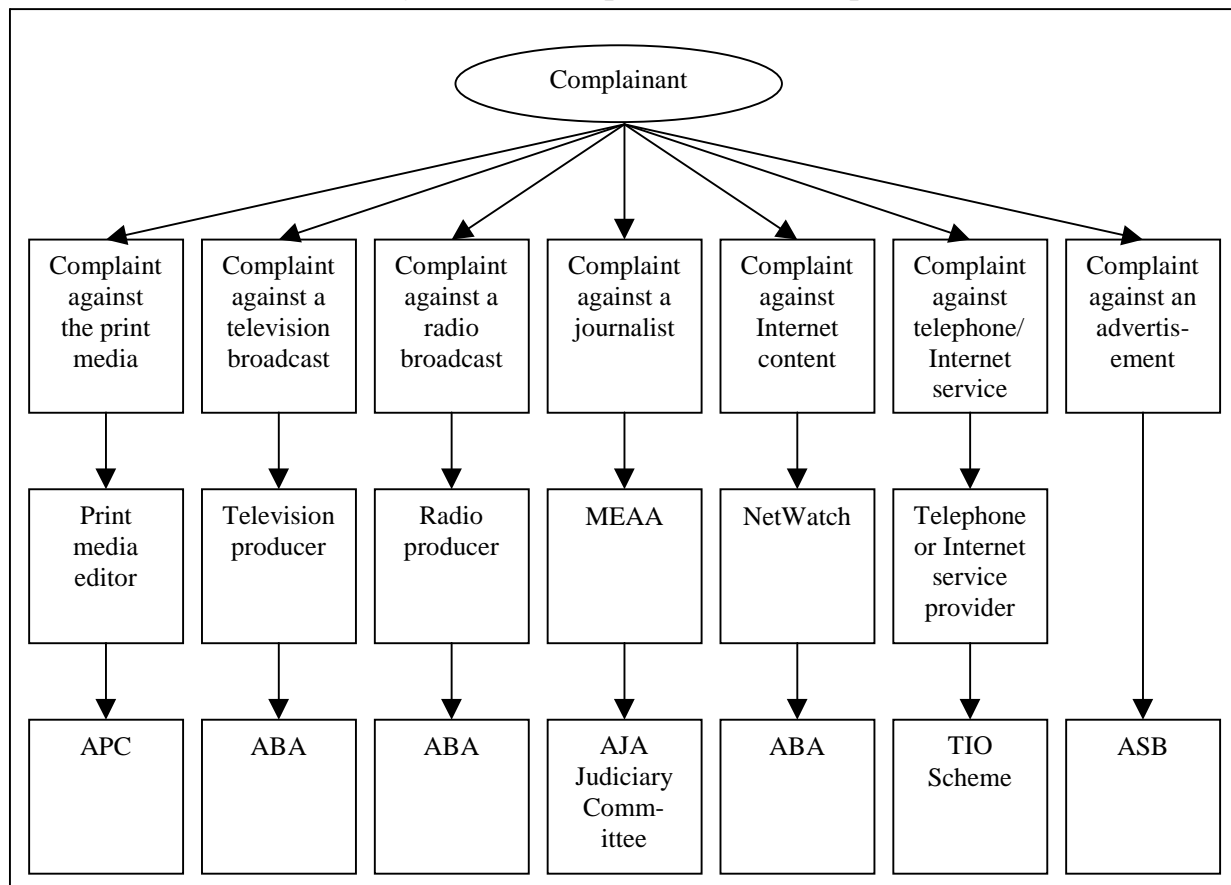
6.13 Figure 6.1 provides an overview of the existing complaints-handling procedures. It begins at the top with an individual who makes a complaint and then traces the various stages to their complaint (these are outlined in greater detail in the preceding chapters to this report).

2 <http://www.advertisingstandardsbureau.com.au/bureau/industry.htm>, as at 5 April 2000.

3 'Sexist ad fallout hits watchdog', *The Courier Mail*, Saturday 18 March 2000; 'Windsor Smith stands by its offending image', *The Age*, Thursday 23 March.

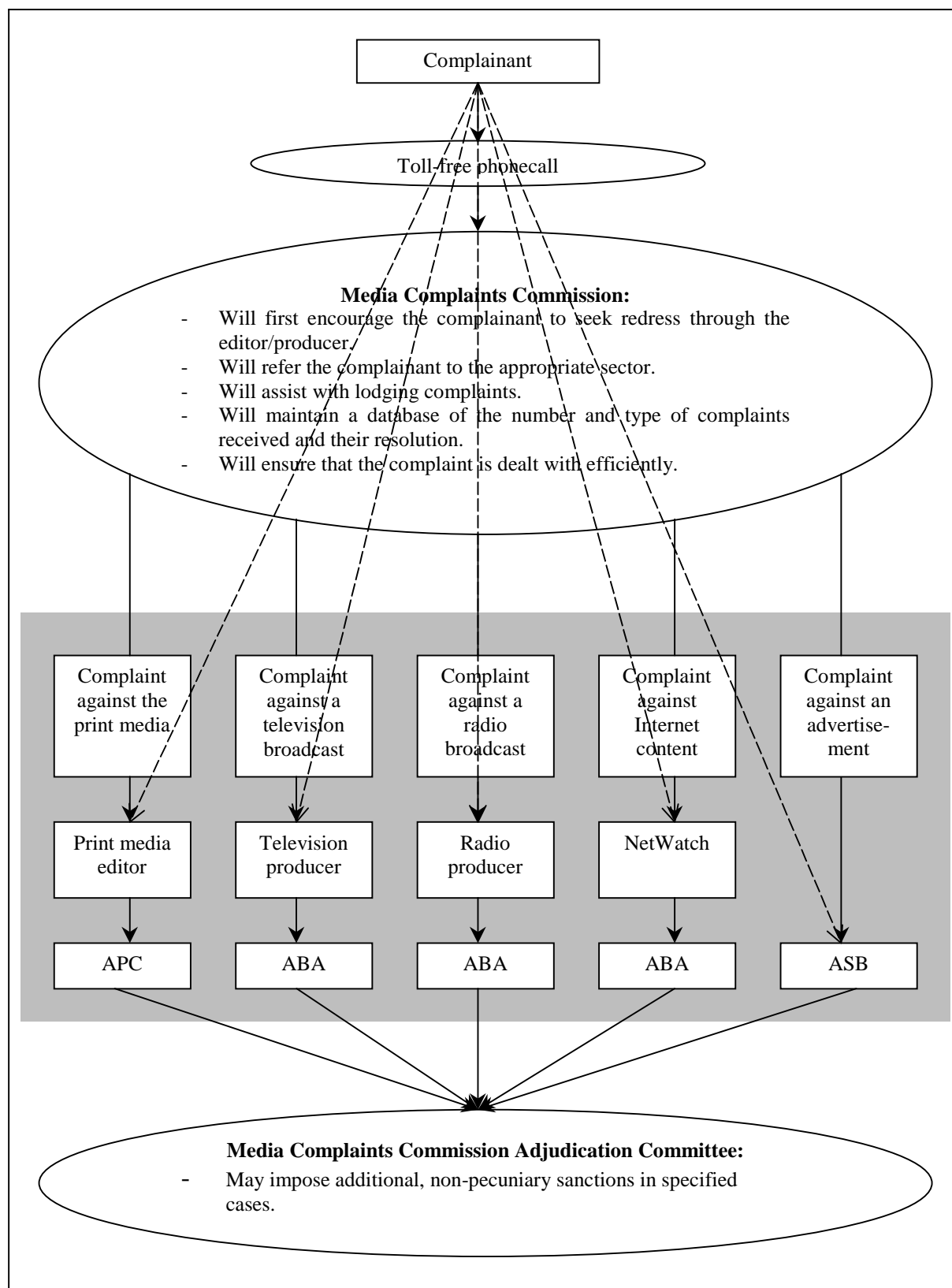
4 Telecommunications Industry Ombudsman, *Annual Report 1998-99*, p. 2.

Figure 6.1

Overview of existing complaints-handling procedures

6.14 Figure 6.2 outlines the structure and complaints-handling process of the MCC.

Figure 6.2

Media Complaints Commission

Explanatory notes for Figure 6.2

- The broken lines at the top of the diagram indicate that the complainant will be encouraged to seek redress through the print media editor or the radio/television broadcaster at the first instance. This reflects existing practice. However, the outcome of the complaint will be recorded by the MCC. The onus rests with the editor/broadcaster to inform the MCC of the outcome.
- If the complaint remains unresolved, the MCC will pass it on through the established channels, starting again with the relevant editor/broadcaster.
- The self-regulatory codes that currently apply in the grey area will continue to be developed according to existing practice. For example, the Australian Press Council will be responsible for the development of its Statement of Principles.
- The MCC Adjudication Committee will have powers to impose additional, non-pecuniary sanctions in cases where a breach of the self-regulatory codes has been found. It will decide on the nature of the sanctions on a case-by-case basis.
- The constitution of the MCC Adjudication Committee will be based on a tripartite structure. That is, it will have ten members - three industry representatives, three community representatives and three Government representatives. The Chair will be a statutory appointment.

Benefits of the Media Complaints Commission

6.15 The benefits of the MCC are summarised below and discussed in greater detail in the remainder of this Chapter:

- The MCC provides a one-stop-shop for complaints involving Australia's information and communications industries. This will simplify existing procedures.
- The MCC will provide resources such as secretarial and monitoring services that will help individuals to lodge the complaint and be aware of its progress. Resources include interpreting and writing complaints for people with language difficulties. By assisting people in this way, individuals and community bodies will be more effectively empowered.
- While convergence may make it more difficult for consumers to distinguish between different media outlets, the MCC will assist to identify the responsible outlet.
- The MCC supports self-regulation by Australia's information and communications industries, therefore preserving their role in setting their own regulatory standards with respect to issues such as the freedom of the press and privacy.
- The MCC Adjudication Committee will be able to impose stronger sanctions to enforce the self-regulatory codes.

Privacy

6.16 The Committee consistently heard evidence relating to the failure of the self and co-regulatory models in Australia's information and communications industries.

6.17 The Committee notes that privacy was at the base of many of the complaints. This is an issue on which there are differing views. That is, the freedom of the press and the right of people to know about public issues must always be balanced with a person's right to privacy. The Committee also recognises the new Privacy Amendment (Private Sector) Bill 1999 and the fact that media groups appear to have successfully lobbied to be exempted from its privacy provisions. In arguing for the exemption, the APC submitted to the Attorney-General that:

- 'The loss of access to information is society's loss not that of the press as the freedom of the press is based on the interest of the public in not having limits placed on the information with which it is provided'.
- 'The move to privatisation of government activity has resulted in a loss of access to information that was formerly available through such mechanisms as freedom of information and parliamentary oversight. The extension of privacy legislation to the private sector exacerbates this restriction on the availability of information relating to matters of genuine public interest.'⁵

6.18 Whilst the Committee recognises that there are arguments against further restrictions on gaining access to information, it is nevertheless extremely concerned about the serious breaches of privacy that have occurred.

6.19 The MCC's role in collecting data on all complaints against the information industries, will provide a heightened level of awareness about the nature of the complaints. This will enable a greater scrutiny of the adequacy of self-regulation with respect to issues such as privacy, and will therefore assist information industries to develop improved self-regulatory codes.

Complaints-handling process

6.20 The Committee has identified two major categories which could be addressed by the new MCC in improving existing complaints-handling procedures:

- More effective enforcement of self-regulatory codes.
- Increased awareness of the complaints procedures.

5 Australian Press Council Submission to the Attorney General, the Hon Daryl Williams, QC, 13 October 1999, pp. 2-3.

More effective enforcement of self-regulatory codes

6.21 The MCC Adjudication Committee will be able to impose non-pecuniary sanctions in addition to those that currently exist, that will further enforce the self-regulatory codes. For example, the MCC Adjudication Committee may order that an adjudication by the ABA be broadcast at a specified time on a television or radio station. Likewise, with the print media, it may order that an adjudication by the APC be published in full on page three of a newspaper. In addition, the MCC Adjudication Committee could order that a radio or television broadcaster be prevented from broadcasting advertising content for a period of time.

6.22 Currently, the complexity involved in making a complaint and the perception of an inadequate outcome, may discourage individuals from engaging in existing complaints-handling procedures. The inability or lack of willingness of people to engage the existing procedures undermines the effectiveness of the self-regulatory codes. By acting as a one-stop-shop for complaints, providing more effective sanctions, and improving accessibility to people with language problems by way of interpreting facilities, the MCC will empower individuals to more actively engage the complaints-handling process. Consequently, the self-regulatory codes of practice will be put to greater use.

6.23 The MCC will be an independent statutory body accountable to the Federal Parliament. Consequently, its activities will be more easily scrutinised and it would be required to provide a full account of its performance in its annual report to the Federal Parliament, including measures taken to proactively enforce the self-regulatory codes of practice. This will generate confidence in the public in the self-regulatory codes of the information and communications industries.

Increased awareness of the complaints-handling process

6.24 The Committee heard in evidence that the community generally lacks awareness of the various regulatory models that apply across Australia's information and communications industries, and is confused about the scope of the various regulatory codes and the role they play in the complaints-handling process.

6.25 The MCC will be a first point of contact for any complainants in need of guidance. The MCC will be promoted as part of a national education campaign as the single, national complaints-handling forum to which all complaints about the media can be directed.