

## ❖ Australian Media Monitor, March 2013

**Tim Dwyer**

**GMJ Vol. 6, Issue Two – Australian Media Monitor**

### \* Media reforms

A year after the *Convergence Review* recommendations were handed to the government – which included those made by the *Finkelstein Independent Media Inquiry* – the Gillard government decided to finally respond. The response was a very limited one given the voluminous discussion and recommendations of those far-reaching and important inquiries. The *Convergence Review's* innovative proposal for shoring-up Australian content, based on the new category of service provider to be called 'content services enterprises', were ignored. The *Finkelstein Inquiry's* recommendations for print media reform, similarly, were either ignored or highly modified.

Seven months out from an election, Senator Stephen Conroy, the Minister for Broadband Communications and the Digital Economy, announced the government's response by media release on 12 March, 2013.

The key elements of the reform package included:

- A press standards model which ensures strong self-regulation of the print and online news media.
- The introduction of a 'Public Interest Test' to ensure diversity considerations are taken into account for nationally significant media mergers and acquisitions.
- Modernising the ABC and SBS charters to reflect their online and digital activities.
- Supporting community television services following digital switchover by providing them a permanent allocation of a portion of Channel A.
- Making permanent the 50% reduction in the licence fees paid by commercial television broadcasters, conditional on the broadcast of an additional 1460 hours of Australian content by 2015.

A key recommendation was the creation a Public Interest Media Advocate. Senator Conroy announced that, 'The Advocate will decide whether a media merger of national significance can proceed ... (and) The Advocate will also authorise the independent self-regulatory body or bodies for dealing with news media standards and complaints' (Sen. Conroy, *Media Release*, March 12, 2013).

To say that the response met with widespread incredulity for the manner in which it was introduced to Parliament would be a gross understatement. In fairness, the dictates of the electoral cycle were always going to make the task extremely difficult. It was basically a no-win situation for the government, leaving many asking the question why respond in the lead up to the election when a hostile group of media owners had pre-judged the outcome? Some more cynical pundits suggested the intention of introducing the package was to create a distraction away from the Prime Minister during the final week before a break. So, it appears, the government's crash or crash through attitude was doomed to failure.

The headlines were predictable. Most controversially, News Corporation's *Daily Telegraph* would taunt, in a *News of the World*-style headline that itself became a trope of the media debate: 'Conroy Joins Them' (*Daily Telegraph*, March 13, 2013). The front page depicted a bewildered looking Conroy alongside the comment 'These despots believe in controlling the press', accompanied with images of Stalin, Mao, Castro, Kim, Mugabe and Ahmadinejad.

Even the more usually moderate voices of the News camp went over the top: 'Conroy serves up media mess', *Business Spectator*, Bartholomeusz (March 12, 2013); while Mark Day wrote in *The Australian* 'Such a long wait, and still a dog's breakfast' (March 13, 2013). The front page of *The Australian* splashed 'Press Tsar to regulate standards' and down the page another story with the headline, 'Fear over new monitor's power'. The former story began 'Labor has infuriated publishers by proposing a new federal regulator to oversee press standards and rule on mergers, as part of a wider overhaul to be rushed through parliament, despite fears it could trigger a \$4 billion television takeover'. In fact, in proposing to remove the 75%

audience reach rule, which has been in place from the late 1980s to prevent unrestrained concentration of ownership and thus voice diversity, the Nine Network was poised to implement a merger with regional television and radio group Southern Cross Austereo. Instead, the amendment repealing the 75% reach proposal was referred to a committee, from which it would not emerge. The committee was unable to find a consensus between the warring free to air networks. Not a good look in the lead up to an election.

Senator Conroy gave the parliament approximately 10 days to pass the media reform package of six separate bills dealing with his core reforms. Passage of the bills would come down to gaining agreement from the Independent MPs Oakeshott, Windsor, and Thompson. Katter was also working on amendments for an alternative 'panel' model, rather than the single judge-like role of the Public Interest Media Advocate. In the end it was all a bridge too far (Daley and Holgate, 'Crossbench could kill media package' AFR, March 15, 2013).

The central component of a public interest test, administered by a 'Public Interest Media Advocate' was derided as a 'political interest test'. Day wrote: 'The workings of public interest test have not been defined by Conroy. There are no standards, measures or mathematical equations that can be used to measure public interest.' This has been the standard critique from News for any regulatory reforms which attempt to lift standards for the parlous state of news media in this country.

The worrying problem is that this self-interested critique contains a kernel of truth: a public interest merger test administered by a conservative appointee, could potentially have irreversible adverse consequences for news media diversity. The challenge for government is to construct a mechanism that is insulated from the government of the day, which of course is not an easy task. Better still, introduce media ownership rules that limit media concentration, are transparent and easy for all to understand, and which do not require a public interest test in the first place.

I argued in *The Conversation* that the starting point for debates on Australian media ownership must be the seemingly obvious point that our print media is among the most concentrated in the world. <http://theconversation.com/australias-lamentable-media-diversity-needs-a-regulatory-fix-12942>. New rules which attempt to ameliorate media concentration need to take into account traditional media's transition to new media distribution, people's changing modes of media consumption, and the way in which old media such as newspapers often set the agenda for the rest of the media.

Some of the best critiques of these reforms were hidden from a broader public view. For example, Margaret Simons' piece for *Crikey* ('Six step approach for genuine media regs reform', March 19, 2013), systematically outlined what was necessary for improving the bills, including amending the 'dangerously wide discretion' for the PIMA in deciding whether a news organisation is meeting the requisite standards. Other issues she validly notes for genuine reform are the need for an arms length appointment process for PIMA board members, the need for a 'converged' system of regulation – the whole point of the convergence review – and that the process of a 'privacy exemption' for news media organisations to be linked to the introduction of a well thought-through system of convergent news regulation.

Professor Terry Flew argued in *The Conversation* ('Low key Conroy proposals are media reform lite', March 13, 2013) that the government's response to the *Convergence Review* and *Finkelstein Inquiries* were 'old world thinking', trapped within the silos of the established media. He rightly asks (paraphrasing the *Convergence Review*), 'Where are the rules for new media to tackle the challenges of the future?'

The ex-Productivity Commission Associate Commissioner, Stuart Simpson made some partly useful observations in his opinion piece 'Relevance of media reforms lost in a digital world' (*Australian Financial Review*, March 13, 2013). He notes that the PIMA public interest test (similar to a test he and the late Richard Snape recommended way back in 2000 for the Productivity Commission's *Broadcasting* report), would have limited impact on the two major print/digital media franchises, unless there was a merger between them at some point. He's probably right when he says the proposed reforms deliver 'the government the right headlines and sound bites to its political constituencies seven months from an election'. But it's important to remember that these two organisations underpin the wider news media agenda in Australia, and they're effectively convergent media organisations already working across traditional and new platforms. As he says, there is a stampede of Australians to their mobile phones for accessing various kinds of media content, including news, and that internet video distribution is changing the media's industrial landscape pretty quickly.

In my opinion these observations all support the idea that Australia needs rules that can respond to concentration of media across all access platforms. Survival of powerful media organisations should not be the main concern of governments: rules for supporting diversity of news and viewpoints for audiences should not be traded off for measures which attempt to save slow moving traditional media corporations.

In the upshot, only two of six pieces of legislation were passed in this hasty and much-criticized media reform process. The main consequence of the new laws was to make permanent licence fee rebates, thereby continuing to gift hundreds of millions of dollars to the commercial television networks. However, the most controversial proposal arising from the government's response to the reviews, the introduction of a Public Interest Media Advocate who would administer a public interest test over media mergers, was unable to gain the necessary support for it to pass into law.

It met with a storm of criticism, primarily from the very media organisations it was directed towards, and these corporations breathed a sigh of relief when the key bills were defeated and ultimately withdrawn (Holgate, 'Media bosses relax', and Daley, 'Conroy admits defeat as bills bit the dust', *Australian Financial Review*, March 22, 2013). The proposal to have a body or person overseeing the self-regulation of the print media was deemed to be politically unattainable.

These bills may re-emerge as election fodder, but I tend to agree with Laura Tingle when she opines (in 'The pillars of society are crumbling around us', *Australian Financial Review*, March 15, 2013) that 'Media reform is not an issue that will define a

policy difference of interest to voters at the election, or even a policy designed to highlight areas where the government has produced change'.

**\* NBN news**

There is a constant stream of NBN criticism from sections of the media. An election around the corner means a Liberal-led coalition government may make good their promise to wind back, and indeed dismantle much of the existing implementation. It's on the cards that Australia would then quickly lose its status as a world-leader for 21st century, high-speed broadband policy innovation.

In 'Wireless-only rise a risk to network', (Bartholomeusz, March 30-31, 2013 *The Australian* reprinted from the online publication *Business Spectator*, and now owned by News Limited), it is argued that 'increasingly sophisticated wireless networks' are tending to lend weight to the questioning of the economics underpinning the NBN. The author bases this claim on information contained in the NBN's own recent submission to the ACCC.

Many will not be surprised to note that this story provides excellent ammunition for the Opposition's Shadow Minister for Communications and Broadband, Malcolm Turnbull, who is keen to push the idea of a 'lower cost NBN using a mix of technologies'. In fairness, the article does mention that 'NBN Co has shown considerable sensitivity to the threat posed by wireless to its fragile economics', and other somewhat more ambivalent arguments, but they're buried further down in the piece. There's also the argument about the rise of (and preference for) mobile communications among many Australian communications consumers.

Another piece, by Alan Kohler, 'Coalition to end NBN Monopoly' (*Business Spectator*, 2 April), takes a similar line about the need to reform the existing NBN plan. He argues, 'But by only running fibre to the nodes, and by allowing Telstra to compete with the NBN in the cities, the Coalition will cut the sticker price of the NBN to about \$20 billion and thus make it happen more quickly and eventually become a more profitable business, which is what it has been promising to do'.

So clearly we can expect to see and read a whole lot more detail about what the conservatives will do to the NBN in the lead up to the election.

Speaking of broadband, I'd like to mention an excellent new piece of research now available from researchers at the Swinburne University of Technology and the University of Melbourne. *Broadbanding Brunswick. High-speed Broadband and Household Media Ecologies: A Report on Household Take-up and Adoption of the National Broadband Network in a First Release Site* weighs up the often complex factors which are influencing consumer's decisions in signing up to NBN plans. Strongly recommended for those looking for evidence-based policy research on high-speed broadband adoption in Australia. The report is available from ACCAN's website at: [http://accan.org.au/files/Broadbanding\\_Brunswick.pdf](http://accan.org.au/files/Broadbanding_Brunswick.pdf)

**\* About the author**

Dr. Tim Dwyer is Senior Lecturer in Media and Communications at the University of Sydney. He is the author of *Media Convergence* (Maidenhead, Berkshire, McGraw Hill/Open University Press, UK, 2010) and *Legal and Ethical Issues in the Media* (2012, Basingstoke, Hampshire, Palgrave Macmillan, UK).

E: [timothy.dwyer@sydney.edu.au](mailto:timothy.dwyer@sydney.edu.au)