

SUBMISSION TO THE SENATE SELECT COMMITTEE ON THE FUTURE OF PUBLIC INTEREST JOURNALISM

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INTRODUCTION

It is widely agreed that a free and independent press is an essential part of a democratic order.¹ This submission addresses itself to the implications of the words *free* and *independent*. Government Intervention in the market for journalism risks undermining the reason we value publicly interested journalism in the first place – its role in providing a check on government and as a third-party watchdog on possible abuses of political, regulatory and fiscal power. When it comes to the profession of journalism and the industrial structure of the media, government is not a disinterested player. Even granting this parliament's best intentions, government intervention in the media opens up the risk of government interference with the media from future parliaments.²

It is undeniable that the supply of public interest journalism has shrunk in recent years. It is much harder to determine what the desirable supply of public interest journalism is. If the parliament wishes to intervene in the market for journalism, it will have to come to terms with this problem: is the optimal supply of journalism greater than the amount of journalism which audiences demand? It is certainly the case that there is a value in a free and independent press that is conceptually separate to market

¹ Robert A. Dahl, *On Democracy* (Yale University Press, 2015).

² This submission is informed by ongoing research project with Sinclair Davidson on public broadcasting, as well as my work on freedom of speech, media reform, and the regulatory consequences of digital change over a number of years: see Chris Berg, *In Defence of Freedom of Speech : From Ancient Greece to Andrew Bolt*, Melbourne; Subiaco, W.A.: Institute of Public Affairs; Mannkal Economic Education Foundation (2012); Chris Berg and Sinclair Davidson, "Section 18c, Human Rights, and Media Reform: An Institutional Analysis of the 2011-13 Australian Free Speech Debate," *Agenda: a Journal of Policy Analysis and Reform* 23, no. 1 (2016); Chris Berg and Sinclair Davidson, "Media Regulation: A Critique of Finkelstein and Tiffen," (2015) Available at SSRN: <https://ssrn.com/abstract=2669271>; Hugh Tobin and Chris Berg, "The Other Flurry of Media Mergers," *IPA Review*, 58, no. 4 (2006); Chris Berg, "Media Regulations Need Massive, Radical Reform, Not Minor Tweaking," *IPA Review*, 58, no. 1 (2006); Chris Berg, "Submission to the Independent Media Inquiry," (2011); Chris Berg, "The Finkelstein Report into Media and Media Regulation," (2012); Chris Berg, "Submission to the Inquiry into the Broadcasting Services Amendment (Media Ownership) Bill 2006 and Related Bills," (2006); Chris Berg and Simon Breheny, "Submission to the Acting Independent National Security Legislation Monitor Inquiry into Section 35p of the Asio Act," (2015); Chris Berg, "An Institutional Theory of Free Speech," (2017) Available at SSRN: <https://ssrn.com/abstract=2910563>.

interactions. Yet media policy in the digital age ought not be shaped by nostalgia for an industrial structure that prevailed when classified advertising cross-subsidised journalism. The final section of this submission paints a picture of a desirable media market in the digital age.

SHOULD THE GOVERNMENT PROVIDE JOURNALISM DIRECTLY?

Currently the government directly provides journalism through the Australian Broadcasting Corporation. This is not desirable, nor should such further direct state provision be seen as a desirable solution to the economic problems the committee seeks to address. The reason for this is that the ABC is neither as free or independent as it and its supporters proclaim.

No other media organisation is required to appear in front of a panel of senators on a regular basis to justify its editorial decisions. No other media organisation is as dependent on a single financial supporter at the ABC is - 91 per cent of the ABC's revenue comes from the government of the day. It is often claimed that the fortunes of private media organisations are hostage to whims of advertisers, but there are always more potential advertisers. Even a cursory glance at ABC revenues over time shows that it varies considerably according to the political persuasion of the government.

It may be objected that this funding pattern reflects different conceptions of the value of public broadcasting from different sides of politics. But that argument in itself suggests that the direct provision model represents no effective solution for the committee: perceptions of bias or one-sidedness on political issues are fatal for an organisation whose job could be seen as a neutral arbiter of political issues.

It is worth pointing out that the ABC's charter says nothing about the provision of journalism. The ABC has repeatedly refused to describe itself as a 'market failure' broadcaster and withdrawn from, rather than expanded into, many of the areas which are arguably underserved, such as state politics. The ABC is also steadfastly opposed to revisions to its charter that might constitute direction about what it ought to focus on.³ This hostility is readily understood if we conceive of the ABC as a large, extremely

³ See for example the ABC's strong opposition to amending the charter to focus on geographic diversity as well as cultural diversity in Australian Broadcasting Corporation, "Submission to the House of Representatives Standing Committee on Communications and the Arts Inquiry into the Importance of Public and Commercial Broadcasting, Online Content and Live Production to Rural and Regional Australia, Including the Arts, News and Other Services," (Sydney: Australian Broadcasting Corporation, 2016).

bureaucratic organisation, seeking to defend its turf and satisfy internal interest groups.⁴ An 85 year-old, one billion dollar, government-owned television and radio network is not the ideal vehicle for journalism in a digital age.

ALTERNATIVE APPROACHES FOR SUPPORTING PUBLIC INTEREST JOURNALISM

There are many policy means short of funding a public broadcaster that could increase the supply of public interest journalism. If this is the policy goal, there is no need for the government to own television and radio networks and the significant operating expenses which go along with that. For example, if it so chose, governments could put public interest journalism services out to tender. Or the government could support individual firms or journalists with grants in the same way the Australian Research Council supports research. However, while these approaches are likely to be less costly than paying for a public broadcaster, the likelihood of real or perceived political interference, or just funding decisions that favour particular sides of politics, would undermine their democratic function.

Government support of a free and independent media is subject to an extreme form of the planner's dilemma – that government planners lack the knowledge and incentives to choose winners. In the media case, government planners would have to support organisations which are specifically dedicated to countering the planners' interests, and would have to do so in a way that does not affect the political balance of the industry.

I expect that the committee would agree that any intervention in the media market must not favour any political party, any side of politics, or any ideological stance. But this is much easier said than done. David Marr famously described the "vaguely soft left inquiry" natural culture of journalism. A survey of over 600 journalists' voting intentions at the 2013 federal election found them to be considerably more left-leaning than the general population.⁵ No doubt most journalists view their job through a professional rather than political lens. Nor is political bias something to be regretted – many audiences clearly seek journalism that has a point of view. But it should be recognised that intervention in the

⁴ William A. Niskanen, *Bureaucracy and Representative Government* (Chicago: Aldine, 1971); William A. Niskanen, "Bureaucracy: A Final Retrospective," in *Reflections of a Political Economist : Selected Articles on Government Policies and Political Processes*, ed. William A. Niskanen (Washington, D.C.: Cato Institute, 2008).

⁵ Folker Hanusch, "Journalists in Times of Change: Evidence from a New Survey of Australia's Journalistic Workforce," *Australian Journalism Review* 35, no. 1 (2013).

market for public interest journalism is an intervention in the market for ideas that is likely to favour one side of politics over the other.

Deductable gift recipient status for journalism: If the committee is seeking positive mechanisms to support journalism, one low cost mechanism to do so would be through existing features of the Australian taxation system.

Currently the Australian Taxation Office allows for donors to a range of organisations to deduct the cost of that donation from their taxable income. Deductable gift recipient (DGR) status is available for 40 separate categories of organisation, such as libraries, museums, health promotion charities, environmental organisations and marriage guidance organisations. Currently organisations that conduct research, including social science research, are eligible for DGR status. The government could amend the rules to allow organisations conducting journalism to obtain DGR status.

This approach has a number of advantages. The government would not be picking winners in the media – DGR status would be available to organisations of every partisan stripe. The government would be encouraging media organisations to self-fund (through donations) rather than making a call on the public revenue. Money acquired through donations could of course be supplemented with advertising or any other revenue stream. Media firms would still be accountable to their audience and supporters.

However, there are some concerns with this model which the committee should be aware of. One significant risk is that even such a hands-off approach might encourage future parliaments to interfere with the free press, raising freedom of speech concerns.

Under the current DGR regime for research, organisations have to be approved by the CSRIO, the National Health and Medical Research Council, or the Department of Education and Training's Research and Higher Education Infrastructure Branch. DGR status for journalism organisations is likely to require a body – government or non-government – which determines what is a legitimate journalistic organisation. The debate over the Finkelstein inquiry's proposed News Media Council and Gillard government's proposed Public Interest Media Advocate very clearly exposed the freedom of speech concerns with such a *de facto* media licensing body. A non-government body empowered with the capacity to control entry into the profession of journalism is no answer either. Recent debates over possible partisan bias in the Australian Press Council should suffice to demonstrate the risks of such an approach.

Regulatory reform: A more desirable way to support the press is to look at the features of the Australian legal and regulatory system that make it harder for private media organisations to operate. The committee should consider laws that impose on freedom of speech, such as Australia's onerous defamation law, section 18C of the Racial Discrimination Act, and restrictions on reporting national security matters, as well as areas such as intellectual property (like the absence of a fair use provision in copyright) that increases legal risk in the use of newsworthy content. Reform of Australia's media ownership laws that prevent the efficient use of resources in the media sector, as well as more general regulatory reform to allow firms to be more responsive to rapid economic change, will also help media organisations better meet audience demands.⁶

THE FUTURE OF THE FREE PRESS

Pessimism about the future of journalism in Australia is understandable. But what future business models might support journalism is a question for entrepreneurs not parliament.

In the United States, enormous entrepreneurial energy has gone into the digital media realm, taking advantage of the extreme reductions in the cost of production and distribution of journalistic content. The United States media market now has an extremely vibrant media market that produces extremely high quality journalism. There are niche content providers of every partisan stripe competing alongside more 'objective' outlets such as *Politico*. Large traditional media outlets – such as the *Washington Post* and *New York Times* – are thriving, having restructured their offerings and business models to supply products that audiences want. While Australia has a smaller population than the United States, it is simply defeatism to suggest that we could not enjoy a proportional fraction of the vibrancy and energy that American audiences enjoy.

Finally, the committee should also consider how the significant changes the way media is consumed affect our idea of what public interest journalism is necessary and desirable. Even if the print advertising market had not bottomed out, the fragmentation of media audiences was likely to lead to the decline of the traditional model of large newspapers and broadcasters commanding a loyal audience. That is not something to be regretted. Audiences enjoy more news and entertainment than at any other time in human history. Ultimately, what matters is not how many journalists are employed, or whether

⁶ On the latter point see Chris Berg, "Regulation and Red Tape in a Small Open Economy: An Australian Overview" (2017). Available at SSRN: <https://ssrn.com/abstract=2965093>

parliamentarians feel that their actions are being adequately reported on, but whether consumers and citizens are satisfied with what they are being offered.

ABOUT THE AUTHOR

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The Cato Institute praised the "wit and grace" of his book *Liberty, Equality & Democracy*, and the Sydney Morning Herald described his *The Libertarian Alternative* as "spirited and sometimes wry". His other books include *Magna Carta: the tax revolt that gave us liberty* and *The Growth of Australia's Regulatory State*. He is also the editor of *100 Great Books of Liberty* and *The National Curriculum: A Critique*.

Dr Berg's articles have appeared in the *Wall Street Journal*, *The Australian*, the *Australian Financial Review*, and the *Sydney Morning Herald*, as well as magazines such as *Quadrant*, *Spectator Australia* and *Overland*. He has been a regular columnist with the *Sunday Age* and ABC's *The Drum*. His scholarly contributions have appeared in the *Australian Journal of Political Science*, *Econ Journal Watch*, *Agenda*, and *Trends in Anaesthesia and Critical Care*. He is a frequent media commentator on television and radio and appears regularly throughout the electronic press.

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