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INQUIRY INTO THE BROADCASTING LEGISLATION AMENDMENT (MEDIA REFORM) BILL 2016

SUBMISSION TO THE SENATE ENVIRONMENT AND COMMUNICATIONS COMMITTEE.

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(Please note that some of the research for this submission was done by journalism students at the University of Canberra as part of course work in a third year unit that is connected to UniPollWatch, an initiative by 28 journalism schools around Australia to report on the coming federal election

Please also note that the views expressed in this submission are mine acting in my capacity as a journalism academic and media commentator. They do not necessarily represent the views of journalism students at the University of Canberra. While most if not all students agree on the need for media plurality, there is a range of views about how best to achieve that).

This submission is aimed at encouraging the Senate Committee to consider whether the proposed amendments to the Broadcasting Services Act 1992 (BSA) will improve or detract from the diversity of news and journalism available to citizens in Australia.

In my view the proposed amendments have the potential to detract from media diversity in significant ways.

By media diversity, I am referring to the description given in policy background paper prepared by the federal Department of Communications in June 2014:

> Media diversity refers to the ability of citizens to access and consume a wide range of viewpoints without any one media owner or controller exercising too much influence. Among other factors, this is seen to support an informed citizenry and more effective democracy. It is arguably most important in relation to the news genre, due to its ability to inform and shape community views in a democracy[i]

The explanatory memorandum for the bill says the problem it seeks to address is that the "legislative framework governing the Australian media is no longer appropriate for the modern media environment" because it was devised in a pre-internet age.[ii] This is undoubtedly true; the question is whether the new bill adequately grapples with the legislative and regulatory issues thrown up since the arrival of the internet.

The response to the issue outlined in the explanatory memorandum is partial and piecemeal. Its first step is to say that the media landscape has changed irrevocably and that new entrants into content providing such as Netflix and into the broad media space such as Google have been able to compete against established media organisations untrammelled by burdensome regulation. Its second step is to say that in order to compete with these new players existing major media organisations in Australia should be released from restrictions imposed by analogue-era media laws – namely the "75 per cent audience reach rule" and the "two out of three cross-media control rule".

This response is in tune with a federal government that favours less regulation wherever possible. What is missing, though, are two alternative potential steps. First, if the arrival of global communication technology companies poses potentially existential risks to established Australian-based media companies, why not consider regulating them? This may be difficult to achieve in practice but it is not even contemplated in the bill or its explanatory memorandum. Second, if media diversity remains a goal of the government (and it says it does in the explanatory memorandum), why not consider mechanisms in the bill to encourage it? As it stands, the explanatory memorandum conflates supporting existing Australian-based media companies with media diversity.

No mechanisms are explored for the bill to encourage new entrants in the media landscape. The explanatory memorandum says that the government consulted widely in preparing the bill but the list of those consulted, on page 26, makes it clear that consultation stopped at the major media companies. The national public broadcasters, the ABC and SBS, are not listed; nor were community broadcasters or small or independent media outlets.

On the specific provisions in the bill, I support the abolition of the "75 per cent audience reach rule" rule for commercial television networks on the ground that this part of the existing legislation has been superseded by the advent of streaming video on demand technology which has enabled television networks to stream their content to more than the 75 per cent of the population prescribed in the Broadcasting Services Act.

On the proposal to introduce new local programming requirements for regional commercial television broadcasting licensees, I support the preferred option outlined in the explanatory memorandum subject to several points of clarification that are needed.

First, the definition of a "trigger event" in the bill is imprecise; it is given as a "change in control" of a licence that would result in the licence covering a market that exceeds 75 per cent of the population. It seems likely that the definition of "control" derives from the existing definition in the Broadcasting Services Act. More significantly, the "trigger event" only occurs in the context of the 75 per cent reach rule, not the two out of three cross-media control rule. So a merger or acquisition that resulted in ownership of two out of three licenses in a market but whose reach stayed within 75 per cent of the population would not be a trigger event, and so the new provision of local content rules wouldn't apply.

It may be that this possibility is inconsequential as the local content requirements are tied to population reach and are specifically for television content. However, it is theoretically possible that a radio or newspaper licensee could merge with a TV licensee in a regional market and share local content production, which could well mean fewer journalists on the ground and a decrease in discrete content. And yet this would not be regarded as a trigger event.

Such a scenario seems unlikely and clearly it is envisaged in the bill that the metropolitan commercial television networks will take over regional television networks, but it is worth including the issue in this submission, especially as there are already dwindling numbers of journalists in commercial regional newsrooms and the aim of this provision in the bill is to protect local news programming.

Second, the reporting requirements on the new local content requirements that result from a trigger event last only for two years. There is no reference in the bill or the explanatory memorandum to continuing reporting requirements. It may be expected that the new licensee will simply fall into line with existing local content requirements, but this is not explicitly stated in the bill or the explanatory memorandum. This leaves open the possibility that in future the continuing reporting requirements do not apply to licensees who are subject to the new local content requirements that flow from a trigger event.

On the "two out of three cross-media control rule", I would support this providing specific mechanisms are put in place to support independent quality journalism in Australia.

Let me outline why I believe such support is necessary and point to some of the potential forms it may take.

It is common ground that the media landscape in Australia is rapidly changing and that it probably will continue to change. Historically, the engine room for the unearthing and reporting of news as defined earlier in this submission has been the metropolitan daily newspapers. Two issues flow from this fact. First, ownership of metropolitan daily newspapers in Australia has been heavily concentrated since the late 1980s and is among the most concentrated in the developed world. Two companies, News Corporation Australia and Fairfax Media, own between them 86 per cent of metropolitan and national daily newspapers [iii].

Second, the crumbling of newspapers' long-standing business model that has been wrought by the internet, has led to several rounds of large scale redundancies of journalists, particularly in Fairfax Media and News Corporation Australia where an estimated one in seven journalism jobs were shed in 2012 [iv]. Less than a fortnight after the government's media bill was presented to parliament in March 2016, Fairfax announced a further 120-plus redundancies at its metropolitan newspapers. There is genuine anxiety about the company's ability to continue to provide the kind of high quality journalism for which it is well known. Nobody argues that the search for a sustainable business model in news media is easy but the regular statements by media executives committing themselves to quality journalism are sounding increasingly hollow as it is the journalists who appear to be bearing the brunt of cost cutting in media companies.

It is the work that journalists do that is the critical point here. Journalism, whether it is the kind of regular, comprehensive surveillance of what is going on in society or investigations disclosing abuses of power or worse, takes time, skill and a willingness to withstand crushing pressure from its targets. To the extent that major media companies' ability to continue providing such journalism is threatened, media diversity is threatened.

The explanatory memorandum says that there have been new entrants into the news media market and that they provide more than ample media diversity. Undoubtedly, *Crikey*, *Guardian Australia*, *Huffington Post* and *New Matilda* do provide diversity, but whether that is sufficient to offset the substantial and continuing loss of journalism jobs in major media companies is far less clear. It is doubtful, though, that even these new outlets see the future of news media as rosily as does the explanatory memorandum.

It is important, then, for government to consider again the question of whether it has a role to play in seeding or supporting quality independent journalism in Australia beyond what it already does in funding the ABC and SBS.

When this issue was last examined by the federal government, it considered the work of the Independent Media Inquiry, headed by Ray Finkelstein QC and assisted by the author of this submission. At that time - the inquiry operated between September 2011 and February 2012 – the inquiry concluded that there was no need for government to intervene but that "the situation is changing rapidly, and requires careful and continuous monitoring"[v] . Since then, the situation has indeed changed rapidly and there is a stronger case for government support.

Proposed solutions to the issue have been put forward in a submission to this senate inquiry by the Public Interest Journalism Foundation (PIJF), of which I am a board member and which I support and to which I refer the committee.

I also refer the committee to Annexure K of the Independent Media Inquiry's report, which examined the issue of government support for news media in detail [vi]. It showed that governments in Australia have provided considerable government support, directly and indirectly, to media companies over the past two hundred years. It also outlined several schemes being conducted overseas to fund or support quality journalism. A copy of the annexure is included with this submission.

[i] *Media control and ownership*, Policy background paper no. 3, Federal Department of Communications, June 2014, p. 4. Available at: file:///C:/Users/s424024/Downloads/Control_Background_Paper.pdf.

[ii] Broadcasting Legislation Amendment (Media Reform) Bill, 2016, Explanatory Memorandum, p.8.

[iii] *Report of the Independent Inquiry into the Media and Media Regulation*, by R. Finkelstein QC, assisted by M. Ricketson, February 2012, pages 58-60.

[iv] New Beats: A study of Australian journalism redundancies, available at: http://www.newbeatsblog.com/.

[v] *Report of the Independent Inquiry into the Media and Media Regulation*, by R. Finkelstein QC, assisted by M. Ricketson, February 2012, p. 11.

[vi] Ibid, pages 437-66.