

Submission to the Environment and Communications References Committee:

Inquiry into Media Diversity in Australia

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FIGHTING INEQUALITY IN AUSTRALIA

Contents

- About Per Capita 3**
 - Emma Dawson 3

- Background 4**
 - Terms of Reference 4
 - Scope of this submission 4

- Media Diversity in the Digital Era 5**
 - Does diversity still matter? 6
 - Why regulate? 6
 - Strengthening media diversity through public infrastructure 7

- Key Recommendation 10**

About Per Capita

Per Capita is an independent progressive think tank, dedicated to fighting inequality in Australia. We work to build a new vision for Australia based on fairness, shared prosperity, community and social justice.

Our research is rigorous, evidence-based and long-term in its outlook. We consider the national challenges of the next decade rather than the next election cycle. We ask original questions and offer fresh solutions, drawing on new thinking in social science, economics and public policy.

Our audience is the interested public, not just experts and policy makers. We engage all Australians who want to see rigorous thinking and evidence-based analysis applied to the issues facing our country's future.

Emma Dawson is Executive Director of Per Capita. She has worked as a researcher at Monash University and the University of Melbourne; in policy and public affairs for SBS and Telstra; and was Senior Policy Adviser for Broadcasting and Digital Media to Communications Minister Stephen Conroy in the Rudd and Gillard Governments.

Emma has published reports, articles and opinion pieces on a wide range of public policy issues. She is a regular contributor to Guardian Australia, The Age, Independent Australia and The Australian Financial Review, and a frequent guest on various ABC and commercial radio programs nationally. She appears regularly as an expert witness before parliamentary inquiries and often speaks at public events and conferences in Australia and internationally.

Emma is the co-editor, with Professor Janet McCalman, of the collection of essays ***What happens next? Reconstructing Australia after COVID-19***, published by Melbourne University Press in September 2020. She joined the Board of Australia21 at the ANU in June 2021.

Background

Terms of Reference

On 11 November 2020, the Senate referred an inquiry into the state of media diversity, independence and reliability in Australia to the Senate Environment and Communications References Committee with the following terms of reference:

The state of media diversity, independence and reliability in Australia and the impact that this has on public interest journalism and democracy, including:

- a. the current state of public interest journalism in Australia and any barriers to Australian voters' ability to access reliable, accurate and independent news;
- b. the effect of media concentration on democracy in Australia;
- c. the impact of Australia's media ownership laws on media concentration in Australia;
- d. the impact of significant changes to media business models since the advent of online news and the barriers to viability and profitability of public interest news services;
- e. the impact of online global platforms such as Facebook, Google and Twitter on the media industry and sharing of news in Australia;
- f. the barriers faced by small, independent and community news outlets in Australia;
- g. the role that a newswire service plays in supporting diverse public interest journalism in Australia;
- h. the state of local, regional and rural media outlets in Australia;
- i. the role of government in supporting a viable and diverse public interest journalism sector in Australia; and
- j. any other related matters.

Scope of this submission

This submission will touch on all the terms of reference listed for the inquiry, but is primarily concerned with the question of media diversity in the digital era, including the following issues:

- the impact of digital content distribution technologies on the ownership and control of media platforms;
- the rationale for regulating in an era of 'media plenty';
- the need for platform-neutral, content-based regulation; and
- the potential of publicly owned broadband infrastructure to strengthen and protect media diversity and democratise the means of content distribution.

The submission draws on the findings of the Final Report of the Australian Government's Convergence Review, released in March 2012, and which is attached as an appendix to the submission.

Media Diversity in the Digital Era

The advent of the internet and digital streaming technologies have led some to claim that there is no longer any need for government regulation of the media.

Media regulation in Australia in the analogue era was platform-based: print media was largely self-regulated, according to the established liberal-democratic principle that there should be no licensing of a free press, while broadcast media (radio and television) was necessarily licensed due to the scarcity of radiofrequency spectrum.

In the latter case, there was widely accepted justification for government regulating who could hold a licence to broadcast media content, part of which included setting conditions on content to ensure it met community standards and expectations.

While, in print media, the cost of entry into traditional publishing was prohibitive to new entrants, the production and dissemination of print media did not require the use of limited public assets like broadcast spectrum, so the case for government regulation has always been more hotly contested. There is, of course, a delicate balance between appropriate regulation of the media in the public interest and government overreach that seeks to control and limit the freedom of the press.

This distinction between platforms has collapsed in the wake of digital technologies. Digital content delivery means that 'print' content - the written word and still images - can be carried over the internet and published as pages on the worldwide web, and broadcast content - audio-visual, moving images and sound - can be streamed over the internet to screens. All this content can now be consumed on multiple devices, including mobile telephones, that can deliver all content forms on demand - at the time, and on the device, of the consumer's choice.

The 'era of media plenty', then, means that consumers have a virtually limitless range of content from which to choose. They can consume media content from multiple providers, and can create and distribute content themselves.

This has led to the development of the latest argument favoured by media proprietors to limit regulation of their content: that the wide range of content now available on multiple devices to consumers on demand means the question of 'diversity' is no longer a relevant consideration for policy makers.

Proponents of this argument contest that, in the era of media plenty, consumers have a more diverse content offering than ever before, delivered by technology and the market, and therefore there is no need for government to regulate in the area of diversity.

This argument willfully misrepresents the concept of diversity in the context of media regulation.

Does diversity still matter?

Regulating media diversity has never been about ensuring consumer choice: it is fundamentally a check on unelected power, and a means of ensuring that private media companies fulfil their role as participants in the social contract as 'the fourth estate' of social and political power.

That is, it matters not how many YouTube channels a person can access: the production and distribution of significant media content, especially news media, plays a fundamental role in the functioning of democracy.

While small producers and individuals are able to produce media content, the functions of public interest journalism, especially investigative and political journalism, require the kinds of resources still only available to big media companies.

Therefore, the media gatekeepers who wielded the power of the fourth estate in the analogue era have, by means of their existing power structures, both economic and political, and their command of the infrastructure of news gathering and journalism, extended that power into the digital era.

Why regulate?

When considering appropriate regulation of media diversity, the focus must always be on who controls the production and distribution of content. The purpose of media regulation is not to dictate or limit consumer choice: it is to ensure that those entrusted with the responsibility of producing content that plays a critical function in the democratic process are meeting community expectations and standards.

The purpose of media regulation in the area of media diversity is to prevent the concentration of media power into a small, ideologically homogenous cohort of people who may abuse the privilege of controlling the means of media production and distribution to further their own economic and political interests at the expense of the public interest.

In order to ensure that a diversity of views is presented to the public for consideration, it is imperative that a nation has a sufficient diversity of private media proprietors so as to allow for different perspectives, and to reduce the natural inclination towards the consolidation and control of social and political power.

This imperative was recognised by the Panel appointed to conduct the Australian Government's Convergence Review, a comprehensive analysis of Australia's media and communications policy settings, undertaken between March 2011 and March 2012. In its final report, the Reviewers noted that:

*The effects of convergence have been profoundly positive, resulting in new services, expanded consumer choice and greater competition. In light of these changes some submissions to the Review proposed that no regulation at all is necessary in the global digital world. **However, the Review concluded that convergence in itself does not totally remove the need for some regulation in the public interest** (my emphasis).¹*

The Convergence Review identified three areas in which, despite the plethora of platforms and content on offer in the digital era, government regulation was still necessary and justified in the public interest. They were:

- 1. Media ownership—A concentration of services in the hands of a small number of operators can hinder the free flow of news, commentary and debate in a democratic society. Media ownership and control rules are vital to ensure that a diversity of news and commentary is maintained.*
- 2. Media content standards across all platforms—Media and communications services available to Australians should reflect community standards and the expectations of the Australian public. As an example, children should be protected from inappropriate content.*
- 3. The production and distribution of Australian and local content—There are considerable social and cultural benefits from the availability of content that reflects Australian identity, character and diversity. If left to the market alone, some culturally significant forms of Australian content, such as drama, documentary and children’s programs, would be under-produced.²*

Having undertaken consultations with the vast majority of Australian media and communications organisations, receiving over 340 written submissions and 28,000 comments from the public, the Reviewers firmly rejected the argument put by existing media proprietors that the increased content choice provided by digital platforms obviates the need for government regulation of the media.

Ongoing regulation of these three areas of distinct public interest, which relate to the responsibility of the media to be truthful, accurate, careful and culturally accountable, remains imperative a decade later.

Strengthening media diversity through public infrastructure

The tension in media regulation as we move from the analogue to the digital era is between the old platform-based regulations (different rules according to the distribution platform, as outlined above) to uniform content-based regulation according to public interest principles.

¹ Australian Government, Convergence Review: Final Report, March 2012. P viii

² Ibid.

A shift to content-based regulation will create a level playing-field, upon which all content distributors (once broadcasters or publishers) are subject to the same regulatory framework in relation to media ownership and control, community standards and local content requirements.

The Convergence Review recommended such platform-neutral regulation of what would be known as 'Content Service Providers', and that there should be 'no licensing or any similar barrier to market entry for the supply of content or communications services, except where necessary to manage use of a finite resource such as radiocommunications spectrum'.³

In practice, of course, the concentration of media ownership and control in the analogue era was due not to significant regulatory impediments to allowing new entrants into the market, but rather to resource barriers, primarily of finance and infrastructure.

That is, control of analogue media has been maintained by a small cabal of wealthy national and multi-national corporations because they have the immense financial resources needed to access scarce distribution platforms, whether that be the wherewithal to own and operate a printing press or preferential access to limited broadcast spectrum.

The advent of digital communications technologies should have removed those barriers; instead, in Australia, the power of the established media proprietors has been wielded to delay, limit and undermine the full potential of digital technology to democratise the control of media content and communications.

The obstructionist, arguably luddite attitude of Australia's media companies to digital technology has significantly hampered Australia's economic growth and cultural development. In seeking to hold back the tide of technological change to protect an analogue business model, these companies have been aided and abetted by successive Coalition Governments: firstly in their ability to delay the switch from analogue to digital television under the Howard Government, which also delayed the development of 4G and 5G telecommunications networks across the country; and secondly in their determination to destroy the future-proof fibre-to-the-premises (FTTP) national broadband network launched by the Rudd Government.

The switch to digital television was eventually delivered, to great public benefit, by the Rudd and Gillard Governments, but the ill-fated 'multi-technology mix' NBN policy pursued by the Coalition Government since 2013 has undermined the promise that the original NBN held: that of radically democratizing the control of media and communications infrastructure and thereby reducing the power of established proprietors and encouraging new entrants into the market.

All media content will be delivered over broadband technology sooner rather than later, with the exception of short-wave radio for emergency services. A publicly owned wholesale broadband distribution platform could open the distribution of media content in Australia to new players.

3 Op. Cit. P. 3.

The original FTTP NBN was designed to have a number of 'ports' into the home: to allow for 'broadcast' television and radio, and telephone and internet services, from multiple providers. Critically, the original design included an additional port to allow for the future delivery of public service content, particularly programs of communication around education and health.

This, along with other key public interest elements of the network, such as the mandatory battery back-up, were dumped by the Coalition Government, which saw the NBN as an entirely commercial, market-service infrastructure project. Most of the changes made to the scheme were done so in order to preserve the power structures of the analogue media era and ensure that control of media content and distribution remained in the same privileged, private hands.

While no-one foresaw the coming of the COVID-19 pandemic, the benefit of having a direct, free-of-charge, public service communications portal for essential public health information and education services over the last 18 months seems obvious.

A trusted, public service communications channel for public health information would be an effective counter to the spread of disinformation on private media channels, which has been effectively dealt with only by international private industry codes rather than by the relatively powerless Australian regulator.⁴

A portal that could also be used to deliver public education services would, obviously, also have had the potential to provide meaningful support to students forced to undertake their schooling via online learning since the advent of the pandemic.

It could also afford considerable savings to the operational costs of Australia's two public broadcasters, who could, by government regulation, be carried free of charge on a dedicated government services portal into the home. Almost 20% of the funding provided to the ABC and SBS goes to transmission costs, most of which goes into the private profits of BAI Communications, a multinational corporation.

Once broadband access has been established as widely as the traditional broadcast footprint, all public broadcasting services could be delivered via the NBN, releasing 20% of the broadcasters' core funding to go back into content production, including public interest journalism and local / cultural content, significantly increasing the broadcasters' operating budgets at no additional expense to the taxpayer.

While the original conception of the NBN envisaged its sale to private interests once the build was complete and services established, there is a strong imperative now to reverse this policy and maintain the NBN in public ownership as a wholesale national communications network.

Commercial broadcasters are now providing online streaming services via the various retail service providers who operate over the NBN. All content delivery over the NBN, including that of the ABC and SBS, is currently subject to the same commercial arrangements that underpin the revenue needs of the network in order for it to become a viable commercial prospect.

⁴ <https://www.theguardian.com/media/2021/aug/01/sky-news-australia-banned-from-youtube-for-seven-days-over-covid-misinformation>

If the Government reversed course on privatization of this essential public infrastructure, it could set its own terms for the distribution of public interest content, such as public broadcasting, public health messaging and education services.

It could also offer discounted access for approved non-profit entities, such as independent public interest and investigative journalism or cultural content, vastly reducing the practical economic and infrastructure barriers that have prevented new and diverse voices from entering the market for content provision.

Established media proprietors know that a publicly owned NBN, combined with regulatory settings to provide free carriage for public broadcasters and allow preferred access for approved public interest journalism and cultural content, and the implementation of taxation policies and other measures to support independent / non-profit operators, would significantly democratise the control of media content and political communication. It would, arguably more than any other measure, reduce their control and distribute their power among the demos. This is the reason major media organisations have resisted every development in digital communications technology for the last 30 years.

Should the privatisation of the NBN proceed, Government will lose the option of reserving a portal into the premises for public interest content provision.

Key Recommendation

Per Capita strongly advocates that the Committee recommend to the Senate that the policy to privatise the NBN be reversed, and that the network be maintained in perpetuity as a publicly owned, wholesale communications infrastructure network. Further, we recommend that the NBN be retrofitted to include a dedicated public interest content portal, as was envisaged in the original design.

This would provide future governments with myriad options for using such a service to increase and maintain appropriate diversity of ownership and control of media and communications services in Australia, to the great benefit of the public.

