

campaign
for
Australian Media Diversity

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Submission

**to the Senate Standing Committee on Environment,
Communications, Information Technology and the Arts**

**Inquiry into Broadcasting Services Amendment (Media
Ownership) Bill 2006 & Related Bills**

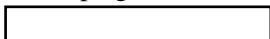
25 September 2006

A. Overview

The Campaign for Australian Media Diversity (CAMD) is a loose group of organisations and individuals that believe Australian democracy and culture depend upon diverse media ownership and healthy independent public broadcasting. Any government reform of Australia's media ownership laws should achieve greater diversity of media ownership in Australia. It must not risk any further concentration of media ownership or further loss of Australian culture. CAMD includes the Australian Society of Authors, Australian Writers' Guild, Choice (formerly the Australian Consumers' Association), Communications Law Centre, Federation of Ethnic Communities' Councils of Australia, Free Speech Victoria, Friends of the ABC (Vic), Liberty Victoria, Media Entertainment & Arts Alliance (MEAA), academics and individuals.

This submission refers to the Broadcasting Services Amendment (Media Ownership) Bill 2006, especially the removal of the cross-media rules, and one element of the Broadcasting Legislation Amendment (Digital Television) Bill 2006. In summary, the CAMD opposes the Media Ownership Bill. It will not achieve greater diversity of media ownership in Australia. On the contrary, it will allow further concentration. The whole aim of the removal of cross-media restrictions appears to be to permit consolidation of ownership of the main media forms: commercial television, commercial radio and daily newspapers. The bulk of the Bill attempts merely to limit the extent of that consolidation and impose detailed editorial requirements on broadcasters, especially in regional areas, as compensation for it. The Bill should be rejected by the Senate.

Glenys Stradijot
Campaign for Australian Media Diversity



B. General Points

Diversity in traditional media forms is still important

The Government has still not made a convincing case that the public will be better served by common ownership of commercial TV, commercial radio and newspapers in an area. It has made a case only that commercial media proprietors would like the cross-media rules removed and that the media landscape has changed significantly since the rules became law about 20 years ago.

TV, radio and newspapers remain the most important sources of news and information in Australia. The growth of online and mobile media is supplementing these established media forms in important ways. It is not, however, occurring in ways or at speeds that substantially diminish the significance of the three media subject to cross-media regulation.¹ The basic rationale for the cross-media rules, that the major media outlets in an area should be controlled by different people, remains valid.

Ownership still influences content

Introducing legislation to reform media ownership in 2002, the Hon Peter McGauran said: 'The government is committed to the need for ongoing diversity of opinion and information in the Australian media. It does not believe that diversity of ownership is necessary to achieve this.' CAMD disagrees with this assessment. It believes diversity of ownership is necessary though not sufficient for diversity of content or viewpoint.

The editorial position of News Corporation's newspapers around the world on the Iraq War is one recent example of homogeneity of perspective on a crucial matter of public interest.² Undertakings given by media companies bidding for AFL rights to support and promote the sport rather than 'bag' or 'demonise' it provide another more localised one.³

Governments should be extremely wary of direct intervention in the editorial operations of media. Their appropriate role is to ensure media enterprises are widely controlled and compete with each other, to maximise the chance that different perspectives will be offered on important issues.

The public is already concerned about concentration of media ownership

81% of Australians believe media ownership in Australia is too concentrated among a few rich families, according to the 2003 Australian Social Attitudes report.⁴

¹ These points are persuasively argued by Christian Downie and Andrew Macintoch in 'New Media or More of the Same? The Cross-Media Ownership Debate', Australia Institute, May 2006: <http://www.tai.org.au/> (25 September 2006).

² Robert Manne, 'Murdoch and the War on Iraq', in Robert Manne (ed) *Do Not Disturb: is the media failing Australia?* (Melbourne: Black Inc, 2005), pp. 75-98.

³ Jeni Porter, 'Soccer chief denies any attempt to silence critics', *The Age Sport*, 9 Nov 2005, p. 7.

⁴ Gibson, Wilson, Meagher, Denemar and Western, *Australian Social Attitudes: The First Report* (Sydney: UNSW Press, 2005), pp. 232-3.

Overseas precedents

Britain still outlaws cross-ownership of the major commercial television operation, ITV/Channel 3, and national newspapers with a national market share of more than 20%, or local newspapers with a market share of more than 20% in the relevant coverage area. ITV/Channel 3's share of the viewing audience in 2005 was 21.5%,⁵ around the same as all three Australian commercial networks' share of viewing from 6am-12 midnight, and considerably less than their share of prime-time viewing.⁶ That is, Britain outlaws cross-ownership between a commercial TV network with a similar or smaller share of the audience than all Australia's commercial networks, and newspapers with smaller market shares than those covered by cross-media rules in Australia.⁷

Media ownership rules in the United States are in a state of flux following a successful Supreme Court challenge to aspects of the new rules determined by the Federal Communications Commission in 2002. Those rules removed the blanket ban on newspaper/television and television/radio cross-ownership, among other rules, replacing them with limits derived from a sophisticated Diversity Index. The Index measures the availability of various media outlets and assigns a weight to each type of outlet based on its relative use by consumers. Despite the removal of the blanket cross-media ban, the Commission argued that small markets were at greatest risk for diversity concentration, and retained the prohibition on newspaper/broadcast and radio/television cross-ownership in markets with three or fewer television stations, while allowing TV stations to start new newspapers. Only in markets with nine or more television stations were cross-media combinations permitted without limit.⁸ The Commission is now reconsidering the rules in the light of the issues required to be revisited by the 2004 Supreme Court judgement, and its statutory obligation to periodically review broadcast ownership rules to determine whether they are necessary in the public interest as the result of competition.⁹

⁵ Annual % Shares of Viewing (Individuals) 1981-2005, Broadcasters' Audience Research Board (BARB): <http://www.barb.co.uk/TVFACTS.cfm?fullstory=true&includepage=share&flag=tvfacts> (21 September 2006)

⁶ Week 10-16 September 2006: figures from OzTAM, *The Australian, Marketing and Media*, 21 September 2006, p. 18.

⁷ The Communications Law Centre's most recent Media Ownership Update showed News Limited with 68% of capital city weekday newspaper circulation, 61% of Saturday circulation and 78% of Sundays; and John Fairfax with 22%, 24% and 20% respectively. Rural Press and APN both had more than 20% of regional daily circulation: figures for six months to December 2004: *Communications Update*, Issue 168 (June 2005), Table 19, p. 41.

⁸ Federal Communications Commission, Further Notice of Proposed Rule Making, released 24 July 2006: http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-06-93A1.pdf (21 September 2006).

⁹ See <http://www.fcc.gov/ownership/> (21 September 2006).

C. Removal of Cross-Media Rules

The second reading speech on the Ownership Bill justifies the removal of the cross-media rules in the following terms:

The regulatory framework in relation to the ownership and control of Australian media assets was developed in the mid-1980s. It focuses on regulating separately television, radio and newspapers – which at that time were essentially the only mass media. The framework imposes restrictions that impede commercial flexibility and access to capital for infrastructure and content investment. These restrictions hinder the ability of Australian media organisations to succeed in the new media environment. Most of all, by locking media companies into one platform, and by locking foreign investors out of our two most profitable media, they are fundamentally anti-competitive.

Impeding commercial flexibility and access to capital for infrastructure and content investment

The constraints that the cross-media rules place on the multi-platform and international ambitions of domestic media companies are greatly overstated.

They did not prevent News Corporation building one of the world's largest media companies from a base in Australia, nor PBL and the Seven Network building significant businesses across free-to-air television, print and online media with domestic and international (Microsoft and Yahoo! respectively) partners.

The rules allow creative cross-platform possibilities to be explored by contracting with creative partners. News Limited's *Australian* recently reported that News and the Ten Network had held discussions about striking a digital alliance.¹⁰

Hindering the ability of Australian media organisations to succeed in the new media environment

Cross-media rules are now driving innovation, not constraining it. Over the last two years or so, it has become technically possible, or much easier, for a newspaper to distribute audio and video to fixed and mobile receivers via the internet and mobile telecommunications networks; for a radio station to distribute text and video; and for a TV station to distribute text and audio. Established media players who are genuinely interested in exploring the rich possibilities of new media are getting on with it, not waiting for regulatory changes that will allow them to swallow or be swallowed by other established players.

If the real goal is to encourage established media players to succeed in the new media environment, the removal of cross-media rules is not a central issue.

Anti-competitive: locking media companies into one platform

Media companies are not locked into one platform. The rules have always allowed considerable cross-media holdings, because of the exclusion of many media forms, such as national daily newspapers, weekly and monthly magazines, and pay TV. Newer media, like the internet and mobile telephony/audio, have never been covered by cross-media restrictions.

¹⁰ *The Australian*, Media and Marketing, 21 September 2006, p. 15.

D. The Five/Four Media Groups Test

This test will allow far too great a level of consolidation among established media interests.

It would allow the number of significant media groups in the two biggest cities virtually to halve. Despite the overall number of competing broadcast services in metropolitan markets, the high degree of concentration in newspaper ownership already means joint control of TV stations and daily newspapers across the country would represent a particularly disturbing level of media consolidation in all Australian cities.

In regional areas, CAMD is concerned at the prospect identified in the Communications Law Centre's report *Content, Consolidation and Clout*, that the 'minimum number of commercial media groups' test would not prevent the formation of virtual monopolies of the major sources of news and information in large regional centres, where broadband take-up is lower than in the cities, and the local newspaper is particularly valued. The report argues that the minimum number of voices test 'is inconsistent in its application and ineffective in most markets as a means of protecting diversity'.¹¹ The capacity for such virtual monopolies to shape political, economic and social agendas by publicising or silencing particular people, organisations and positions, is extremely troubling.

Detailed editorial requirements administered by a government regulator, as proposed in the Bill, are a poor substitute for a media landscape in which a diversity of operators compete through the quality of their output.

E. The Role and Powers of the ACCC

The ACCC's powers under the Trade Practices Act to take action against mergers it believes will result in a substantially lessening of competition cannot be relied on to prevent a sweeping consolidation of commercial TV, radio and daily newspaper ownership across Australia.¹² The precise impact of the Trade Practices Act provision in a rapidly changing media landscape is highly uncertain.

CAMD notes that the Government's specialist adviser, the Productivity Commission, concluded that the merger provisions in the Trade Practices Act were not a good mechanism for regulating concentration in markets for ideas. While the Commission supported the removal of cross-media rules, it thought many other policy changes were required as well, including the introduction of a 'media specific public interest test' in the Trade Practices Act and a much more liberal approach to the allocation and use of spectrum for digital services.¹³ Neither the Bills, nor the policy announced by the Minister about the new digital services to be authorised (which is not part of the Bills), do this.

¹¹ Dwyer, Wilding, Wilson, Curtis, *Content, Consolidation and Clout: how will regional Australia be affected by media ownership changes?* (Sydney: Communications Law Centre, 2006): p. 170.

¹² See Jock Given, 'Media laws: should we rely on the regulators?', *Creative Economy*, 11 September 2006: http://www.creative.org.au/webboard/results.html?filename_num=100607 (21 September 2006)

¹³ Productivity Commission, *Broadcasting*, Report No 11, (Canberra: Productivity Commission, 2000).

F. Government Veto over the Allocation of Commercial Television Licences

The requirement in the Digital Television Bill for the Minister to specifically approve the allocation of commercial free-to-air television licences in the broadcasting services bands by ACMA, and the proposed power for the Minister to be able to veto other commercial TV licences, are a disturbing change to Australia's media regulatory landscape.

Direct Ministerial involvement in individual licensing decisions runs the risk that television licences become tools of political patronage, to be withheld or approved for reasons other than their capacity to serve the public interest. The Broadcasting Services and Radiocommunications Acts, passed in 1992, retained an important role for the Minister in high-level planning of spectrum use in Australia, but distanced him from decisions about individual licences. That architecture ensures that the allocation of a vital public resource is shaped by a Minister who is politically accountable, but not run by her day-to-day. The second reading speech cites no evidence that the proposed return to a discredited level of Ministerial involvement in individual licensing decisions will deliver public benefits that outweigh its costs.

In 2005, the Australian Communications and Media Authority, ACMA, was created as a response to the convergence of broadcasting and telecommunications. The Bill's proposed changes to the process of allocating commercial television licences would create further differences in the regulation of spectrum for broadcasting and telecommunications, and for different kinds of broadcasting, at a time when the stated aim is greater consistency.

The Government's only attempt to justify this shift was set out in its policy at the 2004 election: 'The issuing of commercial television licences has historically been a matter for the government of the day.'¹⁴ This 50-year-old rationale sits uneasily with the Government's concern that 'current regulatory settings...risk becoming outdated'.¹⁵

G. Recommendations

The Campaign for Australian Media Diversity recommends:

1. The Broadcasting Services Amendment (Media Ownership) Bill 2006 should be rejected.
2. The new powers in the Broadcasting Legislation Amendment (Digital Television) Bill 2006, allowing the Minister to prevent the allocation of commercial television licences, should be rejected.

¹⁴ *21st Century Broadcasting*, The Howard Government Election 2004 Policy, p. 12.

¹⁵ Senator the Hon Helen Coonan, Minister for Communications, Information Technology and the Arts, 'Meeting the Digital Challenge: Reforming Australia's Media in the Digital Age', Media Release 015/06, 14 March 2006.



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G. Recommendations

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