



How long is your arm's length?

The government may have voted with its Budget on the idea of an independent national broadcaster. But independent regulators might be back in vogue - at least, on a case-by-case basis...

If the rumours are to be believed, the government is thinking hard about a new way of changing Australia's media ownership and control rules.

Don't change them at all. Instead, provide a specialist regulator with a power to waive the rules where it's In The Public Interest.

The Public Interest? Didn't we go through the old *Broadcasting Act 1942* just five years ago and remove all traces of that mischievous notion? The Australian Broadcasting Tribunal was steeped in it, which proved to be its political death. Too many questions, too many inquiries, too many powerful people held up on their way to the bank. In all, far too independent.

The *Broadcasting Services Act 1992* was supposed to get rid of a lot of that. The quasi-judicial Tribunal was replaced by an 'Authority' with less to do in key areas (self-regulation replacing direct regulation, price-based allocations replacing merit selections for licences), but more clearly an arm of government in many of those areas that remained and with a much less flexible brief to act 'in the public interest'.

But independent agencies have one big attraction for governments. They carry the can for their own actions. The less independent they are, the more likely it is that governments are going to have to carry it for them.

The ACCC recently got thrown the politically torrid telephone directory assistance (013) charging issue (see *separate story this issue*), with the Minister indicating in advance that he would accept the Commission's finding.

Media ownership is a much tougher call. For the government, a waiver process has the intellectual respectability that comes from long experience in US broadcasting law. The problem is, there is a real array of major media players in the US, although even that is suffering in the merger mania that has followed the passage of the *Telecommunications Act 1996*, designed to spur competition in media and telecommunications markets.

In Australia, where News Corp rustles its two-thirds of major metropolitan daily newspaper circulation, News and PBL 'equalise' their interests in pay TV, Microsoft chooses PBL as its on-line content partner, and the AFL discovers that there are only two people in the country capable even of dreaming about acquiring the television rights to the country's major winter sport, the idea that the public interest could be served by waiving the application of the current media ownership rules in any foreseeable situation, seems quite fantastic.

It will be some Broadcasting Authority indeed that can find public interest in any proposal for major media mergers in Australia, yet what else can a government that contemplates such a proposal have on its agenda? You can almost hear the hard disks in DOCA whirring back to those pre-1992 drafts of Ministerial correspondence: 'The ABA is an independent, arms' length statutory authority and I have no role in its decision-making processes...'

Jock Given

A one day conference

organised by the
Communications Law Centre
and Clayton Utz in association
with CAMLA

Five years of the Broadcasting Services Act: Time for Reform?

Wednesday, 15 October 1997
at

Clayton Utz
1 O'Connell Street
Sydney

9.00 am - 5.30pm

\$325.00 (full)

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