

THE PRICE OF FREEDOM: NEW MEDIA OWNERSHIP LAWS AND A FREE AUSTRALIAN PRESS

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I INTRODUCTION

‘Fewer voices. Fewer choices.’ This was the slogan chosen by the Media, Entertainment & Arts Alliance – the trade union and professional association of media workers – in our campaign against the new media ownership laws. There are many concerns with the changes, but chief among them is the attrition of diversity. This paper will look at the public’s attitude toward the new laws. It will then explore the market trends and foreign ownership of media companies in the context of the policy rationale for the reforms to cross-media ownership rules and to foreign ownership, of encouraging and enabling new services and players to emerge.¹ Finally, media competitiveness and the nature of the regulatory environment under the new laws will be examined.

II PUBLIC ATTITUDES

The Australian National University in 2005 compiled *Australian Social Attitudes: The First Report*, a poll of 4300 Australians on a range of social, economic and political issues, including the role and power of the mass media. Of those surveyed an 81 per cent majority thought ownership of the Australian media was too concentrated. Seventy per cent thought that the media should have less power and only 38 per cent thought that the media kept governments honest. Of those surveyed, 65 per cent got their news from commercial television on a daily basis.²

In his introduction to the mass media chapter of this publication, David Denmark said Australians were increasingly uneasy about media ownership being privately owned and controlled by a few powerful, profit seeking families. ‘Their concerns have basis in fact’, Denmark wrote, as ‘Australia has the most concentrated pattern of media ownership in any western country’.³

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1 See, eg. Australian Government, *Meeting the Digital Age, Reforming Australia’s Media in the Digital Age*, Discussion Paper on Media Reforms (2006) 38.

2 David Denmark, ‘Mass Media and Media Power in Australia’ in Shaun Wilson (eds), *Australian Social Attitudes: The First Report* (2005) 220-40.

3 Ibid 220.

In 2005, Rupert Murdoch's News Corporation controlled two-thirds of Australia's newspapers and dominated circulation, accounting for 68 per cent, 61 per cent and 78 per cent of capital city figures on Monday-Friday, Saturday and Sunday respectively. Fairfax accounted for most of the remainder: 22, 24 and 20 per cent of the same respective markets. Regionally, newspaper control was more evenly spread across a larger group of owners.⁴ In television, the concentration was similar: Channel Seven accounted for licences reaching 73 per cent of the population; Channel Nine 52 per cent and Channel Ten 66 per cent. The remaining licences were owned by regional affiliates which broadcast majority syndicated content from the three major networks, amplifying their reach and truncating diversity. This was the situation *before* the laws were reformed.

The concentration of mass audiences in the hands of a few large media groups provides extensive pull with big businesses, and politicians, who recognise their influence over public opinion. In Denmark's words, 'mass media *is* big business, with substantial economic and political leverage'.⁵ The power of commercial interests in a climate where commercial television is, in Denmark's words, the 'overwhelming leader in the news and information stakes', is troubling.

One of the arguments the Alliance presented in the months before the legislation went to Parliament was the threat that increased concentration of media ownership would have a detrimental effect on editorial independence.⁶ It was an argument that elicited little response from those who supported the bill. Victorian Senator Steve Fielding of the Family First Party, who gave the Government the clinching vote needed to pass the news laws in the Senate, said in his second reading speech: 'The concern about ownership is based on the assumption that ownership is the dominant factor that determines content and editorial priorities ... Where is the evidence that owners dictate the ideas that are published or broadcast and how often they do it?'.⁷

Those who work in the media are best qualified to answer that question. A survey of Alliance members conducted in August 2006 by Roy Morgan Research, in conjunction with crikey.com.au, found that media workers believed the Howard Government's changes to the cross-media and foreign ownership laws would attack media diversity, hand power to media owners, and undermine the quality of news reporting.⁸ Some 84.8 per cent of survey respondents said the Government's media law changes would reduce the diversity of media in Australia, while 82.6 per cent believed the changes would negatively affect

4 Communications Law Centre, *Communications Update: Media Ownership Issue*, 168 (2005).

5 Denmark, above n 2, 231.

6 Media, Entertainment and Arts Alliance, *Submission to Senate Environment, Communications Information Technology and the Arts Committee Inquiry Into Broadcasting Services Amendment (Media Ownership) Bill 2006 & Related Bills* (September 2006) <http://www.aph.gov.au/Senate/committee/ecita_ctte/cross_media/submissions/sub32.pdf> at 28 June 2007.

7 Second Reading Speech, Broadcasting Services Amendment (Media Ownership) Bill 2006 (Cth), Senate, 11 October 2006 (Senator Steve Fielding, Family First Party).

8 Roy Morgan Research, 'Journalists Strongly Oppose Government's Media Laws' (Press Release, August 10 2006) <<http://www.roymorgan.com/news/press-releases/2006/541/>> at 24 June 2007.

reporting integrity. On specific elements of the new laws, 87.2 per cent of journalists disagreed with the proposals to abolish the cross media ownership restrictions, 74.3 per cent disagreed with the removal of foreign ownership restrictions on TV stations, and 69.8 per cent believed that the current limit of three commercial free-to-air television stations in capital cities should be lifted to allow the entry of new players. Instead, the Government's legislation refused to open up the market for a fourth commercial free-to-air network.

The survey also revealed a link, in the minds of journalists, between media diversity and the integrity and quality of their work. Respondents said their reporting was already influenced by the political or commercial agendas of their employers. Some 48.4 per cent said they had felt obliged to take into account the commercial position of their employer, with 37.7 per cent of respondents being expressly instructed to toe the commercial line. Politically, 31.6 per cent said they had felt obliged to take into account their employer's political position, with 16.3 per cent saying they were actually instructed to do so. More than half, 52.9 per cent, said they felt unable to be critical of their media employer.

Journalists were also more cynical than the average Australian about media power, 71.4 per cent saying media owners had too much influence in determining the political agenda. 62.3 per cent believed media companies had too much influence in determining how people vote. This compared with 61 and 57 per cent respectively, in a Roy Morgan survey of the general public in the same period.⁹

The survey results echoed the concerns of former Prime Minister Paul Keating, who was the architect of the 1987 media ownership laws famously limiting broadcasters and publishers to being 'queens of the screen' and 'princes of print'. When the Howard Government last tried to change the cross-media restrictions in 2003, Keating warned that it would be naïve to assume that expanded news groups such as News Ltd would not use a newly-acquired television station, for example, as 'political propaganda tools'.¹⁰ He continued:

An enlarged media company will align its television and print whenever it suits it. Not every day, but when it counts'. 'If ... the television groups acquire Fairfax, or News Corporation acquires free-to-air television, the diversity of our media goes backwards. Pretty simple: they get bigger, our range of news and opinion gets smaller.'¹¹

Dr Andrew Leigh, an economist from the Australian National University, believes media bias and community attitudes exist in symbiosis, rather than the latter being caused by the former. The only way to influence this self-perpetuating cycle, he says, is to increase media diversity.¹² Leigh cites a paper

9 Roy Morgan Research, *Australians Oppose Government's Media Laws*, Finding No 4065 (2006) <<http://www.roymorgan.com/news/polls/2006/4065/>> at 24 June 2007.

10 Paul Keating, unpublished opinion article submitted to *The Sydney Morning Herald* (Sydney), 23 June 2003 (<http://www.abc.net.au/mediawatch/keating.htm>), in Alan Ramsey 'Walking All Over a Flight of Fancy on Our Media Laws', *The Sydney Morning Herald* (Sydney), June 28 2003.

11 Ibid.

12 Andrew Leigh, 'Economics of Media Bias', *The Australian Financial Review* (Melbourne), May 17 2007.

by Matthew Gentzkow and Jesse Shapiro,¹³ published in the US last year, positing that media companies slanted their coverage to match the prior convictions of their audience in order to build a reputation for quality. In other words, media tells the audience what they want to hear so they keep buying the product. Leigh writes:

In the Australian context this finding has a straightforward implication: policymakers who want to reduce bias should focus on boosting the number of independently owned media outlets rather than worrying too much about foreign ownership. All the news that is fit to print doesn't come from one source.¹⁴

III MARKET MOVES AND FOREIGN OWNERSHIP

Communications Minister Senator Helen Coonan made scant comment about the media diversity issue when promoting the legislation, except to say that she believed the new laws would allow new players to enter the Australian market due to the relaxation of the cross-media and foreign ownership rules. Launching the reform package in July last year, Coonan stated that '[b]y allowing new entrants into the Australian media industry, the Government will encourage increased diversity and new sources of information and entertainment'.¹⁵

In fact the evidence in the months since the laws passed through Parliament in October 2006, and in the weeks since their declaration on April 4, has been to the contrary. The only 'new' media players that have arrived on the scene amid the sharemarket jostling have been foreign private equity firms which are using leveraged buyout strategies to hive off existing media assets into new joint ventures.

The Nine Network and the ACP Magazines business of the Packer family's Publishing & Broadcasting Limited ('PBL') has been divested into a joint venture (PBL Media) with US private equity firm CVC.¹⁶ Packer has since moved to split his media and gaming assets, with the new vehicle Consolidated Media Holdings ('CMH') well positioned for large-scale acquisition.¹⁷ A capital ratio of 70:30 debt to equity means PBL Media can make extensive purchases, and CMH need only provide a fraction of the money.

The Seven Network and Pacific Magazines, both interests of the Stokes family, have also been divested into a new 50/50 joint venture with US private equity firm Kohlberg Kravis Roberts raising \$3.2 billion.¹⁸ Given that both Seven and PBL already have significant foreign shareholders, Australia's two leading television networks and two leading magazine publishers have now become

13 Matthew Gentzkow and Jesse Shapiro, 'Media Bias and Reputation' (2006) 114(2) *Journal of Political Economy*.

14 Leigh, above n 12.

15 Helen Coonan, 'New Media Framework for Australia' (Press Release, July 13 2006).

16 Katharine Murphy and Matthew Ricketson, 'Media laws not a free kick', *The Age* (Melbourne), 19 October 2006.

17 Nick Tabakoff, 'Packer Fires Up Media Asset Hunt', *The Australian* (Melbourne), 12 May 2007.

18 Lisa Murray, 'Seven Media Spin-off Wins Shareholder OK', *The Age* (Melbourne), 23 December 2006.

majority foreign-owned. The Ten Network is already 57 per cent foreign-owned, with Canada's Asper family offering their CanWest group stake for sale.¹⁹

The Ireland-based O'Reilly family, through its Independent News & Media in partnership with US private equity firms Providence Equity Partners and The Carlyle Group, has made three bids for APN News & Media, Australia's largest operator of regional newspapers, radio broadcasting and outdoor advertising. The latest offer – close to \$3 billion – was rejected by private equity shareholders, despite overwhelming agreement from APN's small shareholders. In terms of the number of shareholders, the bid had 80 per cent support.²⁰

News Ltd, owned by the Murdoch family's US-based News Corporation, bought the regional newspapers and magazines of the Hannan family's Federal Publishing Company in two deals worth about \$170 million each. The purchases make News Ltd the number three news stand magazine publisher in Australia and also give it a strong presence in community newspapers in the Sydney and Queensland markets. The newspaper purchase was scrutinised by the Australian Competition and Consumer Commission ('ACCC'), which seemed only interested in ensuring that advertisers were not disadvantaged by the fact that News Ltd already operated community newspapers in the same markets as the FPC Community Media Group. ACCC chairperson Graeme Samuel announced: 'We did consider the suburban Sydney issues, but made some extensive market inquiries and concluded there were sufficient advertising alternatives to provide a competitive constraint on News Ltd'.²¹ There seemed little consideration, however, for the readers in these communities.

The most notable single move since the laws came into effect was the \$9 billion merger of Fairfax and Rural Press, delivering Fairfax a third capital city masthead and scores of regional outlets.²² Austar and Southern Cross Broadcasting are both in discussions with potential bidders – none of whom are new players.²³

Is foreign ownership of the media important? It seems incongruous for the Howard Government to insist on majority-Australian ownership for Woodside Petroleum and Qantas, whilst abandoning foreign ownership restrictions for media organisations. The media is the vital fourth estate in a functioning democracy, informing society and keeping those in authority accountable. It is surely as important as the ownership of a resource project or an airline.

19 Helen Westerman, 'CanWest Tips Improved Performance From Ten Network', *The Age* (Melbourne), 12 January 2007.

20 Nick Tabakoff, 'O'Reilly \$3bn Bid for APN Doomed', *The Australian* (Melbourne), 25 May 2007.

21 Helen Westerman, 'News Gets Regulator OK to Buy Newspapers', *The Sydney Morning Herald* (Sydney), 18 January 2007.

22 Colin Kruger, 'Fairfax, Rural Press Deal Gets Court Approval', *The Sydney Morning Herald* (Sydney), 23 April 2007.

23 Mark Day and Nick Tabakoff, 'Price too High For Merger Mania', *The Australian* (Melbourne), 10 May 2007.

IV A MORE COMPETITIVE MEDIA?

So far there have been no new media players since the legislation was first discussed last July. Instead, entrenched domestic media have sought to enlarge their asset base and extend their reach. The scene is set, as it were, for increased concentration of media ownership, as smaller assets, such as regional television stations, are acquired by dominant groups (NBN by PBL Media, Channel Seven Perth by WIN Television).²⁴

After the laws passed through parliament, Senator Coonan was careful to emphasise the package was not 'mogul-specific'. She stated that '[i]t doesn't relate to any particular proprietor and in fact I've had to endure the sustained criticism and complaints from just about every one of them who are not happy with the whole arrangement'.²⁵ Prime Minister John Howard said it was economically unviable for there to be large numbers of media players, and increased concentration would not necessarily be the outcome of the new laws: 'I'm not sure that that will be the case. There is a certain concentration needed in a nation of 20 million people because we can't sustain an unlimited number of players for economic reason'.²⁶

In a nation where 81 per cent of people already believe the media is too concentrated, there seems little public interest argument for further condensing its ownership.

The traditional media companies have been enjoying strong profits for years, despite the challenges presented by the new media of the internet, pay-TV, blogs, and mobile phones. Globally newspaper growth has continued unabated, with stocks outside the US rising by an average 25 per cent in the past 12 months. In Australia specifically, buyouts and takeovers have helped inflate publisher stocks by 45 per cent.²⁷

As the challenges of new technologies arrive, the major media organisations rise to meet them. Channel Seven and Fairfax have both moved boldly toward new technologies, the latter launching a daring digital plan which includes a push for a new Channel B digital TV licence.²⁸ Analysts predict Channel Seven could earn up to \$200 million in cross-platform advertising deals this year, two-thirds of the market share, after launching a cross-platform sales unit.²⁹

A month after he split his media assets into a joint venture with CVC, James Packer predicted the upsurge in new media would mean that the number of media companies making more than \$100 million in profit in Australia would increase

24 Jane Schulze, 'PBL Media to Pay \$250m for Newcastle Affiliate', *The Australian* (Melbourne), 1 May 2007.

25 ABC Television, 'Tony Jones speaks with Senator Helen Coonan', *Lateline*, 18 October 2006.

26 'Howard Says Media Buyouts Unrelated to New Laws', *ABC News Online*, 19 October 2006.

27 Phil Serafino, 'India, China Newspaper Shares Surge as US Media Nosedives', *Bloomberg* (New York), 23 April 2007.

28 Nick Tabakoff, 'Fairfax in Digital TV Pitch', *The Australian* (Melbourne), 18 April 2007.

29 Lara Sinclair, 'Seven Well Positioned For Cross-Platform Windfall', *The Australian* (Melbourne), 3 May 2007.

from seven two years ago to 12 companies in 2007.³⁰ Among the seven were Fairfax, News, West Australian Newspapers, Independent Newspapers Ltd and the three free-to-air networks. Packer said this year Google, Seek, Foxtel, Fox Sports and eBay would join the \$100 million-plus media earners. Three of these are partly owned by Packer's PBL, while global giants Google and eBay are foreign-owned. No new players there.

Senator Coonan defended her media ownership changes as technology and consumer driven, and promised that technological change would address the issue of media diversity. She told the ABC in March that there will be 'some consolidation but I don't think it's going to be at the expense of diversity because I think the media landscape has simply moved on'.³¹ Examining internet trends, however, does little to assuage diversity concerns. The *Australian Survey of Social Attitudes 2005* found that 73.2 per cent of respondents never used the internet to access political news or information, with a further 13.7 per cent saying they used it fewer than one to two days a week.³² A Roy Morgan poll about internet news use last March found Fairfax and News Ltd sites were most popular, followed by NineMSN, ABC Online and Yahoo!7.³³ Of the top 20 Australian websites for April 2007, only one was a news site – news.ninemsn.com.au – which is owned by PBL. Most were internet search sites or personal mail, with YouTube, MySpace and eBay also taking a fair market share.³⁴ Again, there were no relevant new players.

Rural and regional Australia stands to suffer most from the condensation of ownership and content. In 2001 the House of Representatives Standing Committee on Communications, Transport and the Arts held an inquiry into regional radio, *Local Voices*, which documented the decline in local programming with the consolidation in commercial radio ownership.³⁵ An inquiry into regional television news and information programs in the same period conducted by the Australian Broadcasting Authority uncovered similar trends in regional television: Prime TV in 2001 cut news bulletins to Canberra, Newcastle and Wollongong while Southern Cross axed programs to Canberra, Townsville, Cairns, Darwin and Alice Springs. The report concluded that competing and diverse sources of news and broadcast of local information had

30 Brad Norington and Jane Schulze, 'Packer Eyes Fairfax, At Right Price', *The Australian* (Melbourne), 24 November, 2006.

31 ABC Radio, 'New media laws means more choice, says Coonan' *The World Today*, 30 March 2007 <<http://www.abc.net.au/worldtoday/content/2007/s1885807.htm>> at 24 June 2007.

32 Shaun Wilson et al, *Australian Survey of Social Attitudes 2005*, Australian Social Science Data Archive, The Australian National University (2006).

33 Roy Morgan Research, 'Old Media Dominates Online' (Press Release, March 1 2006) <<http://www.roymorgan.com/news/press-releases/2006/464/>> at 24 June 2007.

34 *Hitwise Australia Top 20 Websites – April 2007* (2007) Hitwise <<http://www.hitwise.com.au/datacenter/rankings.php>> at 24 June 2007.

35 House of Representatives Standing Committee on Communications Transport and the Arts, Australian Parliament, *Local Voices: An Inquiry Into Regional Radio* (2001) <http://www.aph.gov.au/house/committee/cita/regional_radio/Report/radioreport.pdf> at 24 June 2007.

declined since the mid-1990's, when aggregation was introduced to expand licence areas.³⁶

A 2006 Communications Law Centre study of media ownership in four regional centres – Wollongong, Townsville, Toowoomba and Launceston – found the minimum of four media owners would not provide adequate diversity nor promote and protect local cultures:

Local print media are seen as democratic institutions of paramount importance in sustaining local public spheres ... Citizens now feel that their newspapers are letting them down. Corporate pressures are prominent among the reasons for this. If their ownership becomes even more driven by corporate values, as is to be expected from any deregulation, this will further erode these public spheres.³⁷

Following the 2001 Australian Broadcasting Association investigation, a new licence requirement was imposed on regional commercial TV operators to broadcast a minimum content of local significance. Recognising the ongoing nature of this problem, the Government introduced a 'live and local' amendment in the latest media reforms.³⁸ This requires, following a 'trigger event', that a regional station broadcast 4.5 hours of local programming a day, and daily put to air 12.5 minutes of local news. A trigger event occurs when the minimum four voices diversity test has been reached in a regional area. Affected stations are also expected, under the legislation, to maintain the same local presence following a trigger event.³⁹

The amendment prompted criticism from regional operators and Commercial Radio Australia, who claimed such strict controls would send cash-strapped rural stations broke. 'If two media organisations merged the local radio, the local radio would be required to keep the same studios and staff levels forever – whether they needed them or not. It simply adds costs', Commercial Radio Australia said.⁴⁰

V INSIDE THE NEW MEDIA LAWS

The new media legislation does not only permit a decline in media diversity, it actively encourages it. The Government has set a minimum of five media companies in a capital city and four in regional areas.⁴¹ Dissenting Labor Senators, responding to the Senate Inquiry into the Bill, noted that such a move would more than halve the number of media companies currently operating in Sydney and Melbourne, leading to 'a massive concentration in the ownership of

36 Australian Broadcasting Authority, *Adequacy of Local News and Information Programs on Commercial Television Services in Regional Queensland, Northern NSW, Southern NSW and Regional Victoria (Aggregated Markets A,B,C and D)* (2002).

37 Tim Dwyer et al, *Content, Consolidation and Clout: How Will Regional Australia Be Affected by Media Ownership Changes?* (2006) 21.

38 *Broadcasting Services Act 1992* (Cth) ('Broadcasting Service Act') div 5C.

39 *Broadcasting Services Act* s 61CB.

40 Mark Day, 'Reforms Risk hanging Regional Radio Out to Dry', *The Australian* (Melbourne), 21 February 2007.

41 *Broadcasting Services Act* s 61AB.

the most influential media'.⁴² The major failing of the voices test is that it does not consider weight and influence of particular voices. This was pointed out by Channel Seven in its submission to the inquiry: 'The proposed 'voices' test is not an adequate protection for diversity in the media sector. This test would equate an operator the size of PBL with an outlet such as 2KY'.⁴³

Diversity is a nebulous concept and testing it is the responsibility of the ACCC and the Australian Communications and Media Authority ('ACMA'). Under the *Trade Practices Act 1974* (Cth) ('*Trade Practices Act*'), the ACCC is tasked with protecting competition, and is not required to take into consideration public interest when assessing mergers. In November 2005, ACCC chairperson Graeme Samuel told the Senate Estimates Committee that news and current affairs were not priced: 'It is not a market that you can economically test according to price'.⁴⁴ When asked whether the ACCC would consider the health of Australia's democracy when assessing possible mergers, Mr Samuel answered in the negative. It is also worth noting that the ACCC may ultimately be overridden by the Federal Court, and anti-competitive mergers thereby allowed to proceed.⁴⁵

ACMA was granted more extensive powers under the reforms, in response to concern from Labor and the minor parties. Writing to the industry in December 2006, ACMA chairperson Chris Chapman said:

It is important to note that ACMA has, firstly, new power to apply for an injunction to prevent a transaction that is likely to breach the media diversity and three-way control provisions and, secondly, can give remedial directions which require disposal of shares or other divestiture action ensuring that the particular contravention ceases.⁴⁶

However, there is no qualitative test to measure how and whether media diversity is undermined, except for the points system in the *Trade Practices Act* detailing what constitutes an 'unacceptable media diversity situation'.⁴⁷

Guidelines were issued in January 2007 outlining ACMA's position on exercising its enforcement powers, taking into consideration a broad and

42 Senate Environment, Communications, Information Technology and the Arts Committee, Australian Parliament, *Broadcasting Services Amendment (Media Ownership) Bill 2006, Broadcasting Legislation Amendment (Digital Television) Bill 2006, Communications Legislation Amendment (Enforcement Powers) Bill 2006 [Provisions], Television Licence Fees Amendment Bill 2006 [Provisions] and discussion paper by the Minister for Communications, Information Technology and the Arts on the two channels of spectrum for new digital services* (2006), 90
<http://www.aph.gov.au/senate/committee/ecita_ctte/cross_media/report/d02.htm> at 24 June 2007.

43 Seven Network, *Submission to Senate Environment, Communications Information Technology and the Arts Committee Inquiry Into Broadcasting Services Amendment (Media Ownership) Bill 2006 & Related Bills* (September 2006) 14
<http://www.aph.gov.au/Senate/committee/ecita_ctte/cross_media/submissions/sub30.pdf> at 27 June 2007.

44 *House of Representatives Hansard*, 2 November 2005, 83.

45 See, eg, *Australian Gas Light Company v Australian Competition & Consumer Commission* (No 2) [2003] FCA 1229.

46 Chris Chapman, *Amendments to the Control and Ownership Provisions of the Broadcasting Services Act 1992* (2006) 2
<http://www.acma.gov.au/webwr/_assets/main/lib101061/acma_letter_to_industry_media_reform.pdf> at 24 June 2007.

47 *Broadcasting Services Act* s 61AB.

somewhat ambiguous collection of factors, including ministerial directions.⁴⁸ It also stipulates, at 3.3, that intervention will generally involve the minimum enforcement required to achieve the desired result.

Of great concern to the Alliance is the delay in analogue switch off from 2008 to 2012. In its submission on digital reform last year, the Alliance argued that Australia could have twice as much free-to-air content as currently available, were the Government to capitalise on the capacity for digital. Opening the digital market to new players, by allocating one new digital channel as a commercial free-to-air service and the other as a national Indigenous station, was one way digital strategy could help increase diversity, the Alliance suggested. That would mean more Australian and local news, drama and other programming, and more economic opportunities.⁴⁹ The ACCC said it would be new and innovative content and services which would drive digital take-up in Australia.⁵⁰ Instead, the Government allocated two new channels for narrowcasting – a niche service with a limited audience that will only serve to entrench incumbent players.⁵¹ Currently, the auction of Channels A and B additionally seems to face intractable delay as a result of technological problems. This is largely related to the likelihood of significant free-to-air signal interference in Sydney were Channel B services to be rolled out at full capacity.⁵² As the centrepiece of the Government's digital media strategy, and *cause celebre* of diversity, the resolution of these problems is critical.

The latest ACMA digital uptake figures also cast some doubt on the diversifying power of digital. ACMA found that 40 per cent of households did not realise there is digital TV in their area, one-third were unaware analogue TV will eventually be switched off, and 14 per cent had never heard of digital TV. Only 17 per cent of televisions in Australia are capable of receiving digital signals.⁵³

48 ACMA, *Guidelines Relating to ACMA's Enforcement Powers Under the Broadcasting Services Act 1992* (2007) section 3

<http://www.acma.gov.au/webwr/_assets/main/lib101061/acma_enforcementpowers_guidelines.pdf> at 24 June 2007.

49 Media, Entertainment and Arts Alliance, *Submission to Department of Communications, Information Technology and the Arts Regarding Meeting the Digital Challenge – Reforming Australia's Media in the Digital Age* (2006) <http://www.alliance.org.au/images/stories/pdf/0604_dcita_digital.pdf> at 24 June 2007.

50 Evidence to House of Representatives Standing Committee on Communications, Information, Technology and the Arts Inquiry into the uptake of Digital Television in Australia, Australian Parliament, 10 August 2005 (ACCC).

51 See Media, Entertainment and Arts Alliance, above n 49.

52 Glenn Dyer, *There's no TV like A and B TV, no TV at all*, (1 June 2007) <www.crikey.com.au> at 1 July 2007.

53 ACMA, *Digital Media in Australian Homes 2006* (2007) <http://www.acma.gov.au/webwr/_assets/main/lib100845/digital_media_in_aust_homes-2006.pdf> at 24 June 2007.

VI CONCLUSION

Since the new media laws were passed and in the short time since their proclamation there has been no emergence of new players in the Australian media landscape. Some significant assets, including the Nine Network, have been sold off to offshore private equity firms, while other groups have moved to acquire their competitors or enlarge their asset base. Much has been made of the commercial interest, but the impacts on diversity – the voices and choices for the Australian public – remain unmeasured. Trigger events, designed to safeguard diversity and local content, threaten the livelihood of regional radio, while the digital strategy remains stymied by infrastructure problems. Journalists and citizens alike opposed the passage of these laws. To date, little has occurred to prove them wrong.