The role of Government in broadcasting regulation

Anne Davies agrues that the Government's plans to emasculate its broadcasting regulatory body may rebound on it

Governments enter shark infested waters when they attempt to directly regulate the media. Under the new Broadcasting Services Bill, the Federal Government plans to resume substantial powers currently in the hands of the Australian Broadcasting Tribunal. It is a development which should raise the deepest concerns within our community.

Government's role

The role of the government in the regulation of media is fundamental to the proper working of democracy. Frank Devine, columnist on and former editor of, *The Australian*, argued forcefully at a recent seminar on the print media inquiry that Governments should eschew any regulation of the media beyond trade practices regulation, if a healthy democracy was to be preserved.

In broadcasting there is a competing interest. The social and cultural influence of the mass media, combined with the fact that access to the market is limited by the availability of spectrum, has necessitated regulatory intervention in the public interest.

The question then becomes: how to structure that delicate relationship between government and the media?

In other democracies, notably in the US, the answer has been to create a regulator which is fiercely independent of government — to create a quasi-judicial body. The regulator is itself protected from undue influence by ensuring that its processes are transparent, and public. The reason is simple. In this electronic age, politicians' very survival hinges on relations with media proprietors, while at the same time, returns on investment and future market opportunities are often within the gift for governments. The potential for deals is undeniable. Of course, governments must ultimately retain responsibility for the direction of policy, but day to day regulatory issues are better handled by an independent body.

Proposed changes

For all its warts, the Tribunal serves this role. Now the Government is proposing to significantly claw back power over broadcasting. The major changes include:

- Standards — the new regulator, the Australian Broadcasting Authority, will be forced by the legislation to trial self regulation for a period. If self regulation fails, then the regulator may recommend a mandatory standard to the minister, who will decide whether it is warranted.
- Review of standards — the Minister will have the power to direct the Authority on reviews of standards.
- Licensing — the Minister will grant the new pay TV licence, based on a tender process, instead of the current system where the Tribunal awards licences.
- New services — narrowcast services will be subject to class licences only. The Minister will have the power to direct the Authority on the appropriate level of regulation required, and following a recommendation from the Authority, will set terms, conditions and standards.
- Funding — as is currently the case, the minister will retain control over the funding of the Authority. However, as many of its functions will become discretionary, such as licence transactions, the Minister will effectively exercise control over the level of scrutiny of the industry.

The AUSTEL model

No doubt the government will point to AUSTEL as a workable model for the new broadcasting regulator. This overlooks the very different tasks involved in regulating telecommunications and broadcasting. AUSTEL is essentially an industry umpire and advisor body to the Minister, whose prime role is to make sure that everyone, and Telecom in particular, plays fairly. While AUSTEL arguably has a public interest role it has done little to fulfil it. Its consumer protection functions remain embryonic. More fundamentally, AUSTEL has no direct responsibility for granting major licences or any role in content regulation both of which are central to the regulation of broadcasting.

These differences appear to have been overlooked in the rush to come up with some structure which is 'less legalistic'. Public process has become confused with the legitimate goal of keeping a process free of unnecessary legalism.

An independent regulator does not prevent the pressure being applied by powerful interests within the media asking Government to change legislation which affects them. Mr Skase's very public attempts to extend the 60 per cent audience reach rule to 75 per cent are an example of that. However, the parliamentary process does provide some check and balance on media owners.

However, it is an entirely different matter to allow ministers to deal administratively with broadcasting matters. Whether real or imagined, such processes will inevitably expose the minister to charges that he or she has done a deal with the media proprietors. Apart from the political damage this can cause, it goes to the very heart of our faith in the political system.

There are also risks in having the regulator's decision subject to approval or veto by the parliament or the Cabinet. If the regulator is reduced to an advisory role only, the insulation of independence is lost and the value of having an independent regulator rendered redundant. It simply means that those concerned with the outcome of any decision will focus their lobbying activities in Canberra where the real power resides.

If the Government wants to get a taste for what this will mean in broadcasting, it need look no further than its experience with the Fairfax sale. The question they must ask is, do they want to go through the next decade besieged by slick talking lobbyists while the cries of 'deals for mates' ring in their ears?

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