

AUSTRALIAN TV — THE LAST BASTION

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Ladies and gentlemen, as members of the media and broadcasting fraternity and more broadly as Australians, each of us here today is part of an amazing Australian success story that's occurred at an extraordinary pace.

I want you to consider what our economy and society looked like just 25 years ago:

- Widespread protectionism.
- Government controlled interest rates.
- Centralized wage fixing.
- State-owned airlines and banks.
- Much narrower consumer choice.
- Far less contact with Asia and the rest of the world.
- A less educated, diverse and culturally sophisticated population.
- People like Joh Bjelke Peterson thought they could tell us what we could read, watch and say.
- Reconciliation with Indigenous Australians was still a dream.
- Just five television stations and a copper landline telephone network.
- And a per capita GDP of only, just over \$16,000 per year.

A good place to live nonetheless. But not as good as now.

It was all built up behind barriers and controls through cozy deals between politicians and business people. And for a while it gave us the sort of society the majority wanted.

But when it became clear that this economic and social model was holding Australia back, we changed it:

- The trade barriers came down.
- Finance and other sectors were deregulated.
- Labour was freed up.
- National Competition Policy slashed hidden domestic protectionism.
- More of us finished school and started going to university.
- Now the likes of Cate Blanchett suggest what we might want to read, watch and say — a significant improvement over Joh in my humble opinion.
- Reconciliation is very much on the agenda and has taken tangible form.
- And our per capita GDP is just over believe it or not, \$51,000 per annum.

We've freed ourselves of old and constricting habits, become more innovative and sophisticated, created millions of jobs, and as a result this is a far better nation.

But there's one part of our nation where we haven't freed ourselves. And where we're being held back.

It's a big oversight, because it's an industry that touches all 22 million of us and pushes along innovation and job creation in almost every other sector of the economy.

I'm talking about what is now the digital media, most notably television.

It's a strange anomaly indeed — so strange that it's almost comic. Television sits today like a protected island in an ocean of economic freedom — much like one of those side-stepped Pacific Islands 25 years after the end of World War Two, where the ragged, grey-bearded Japanese soldier still stands guard with his rusty bayonet, waiting for the Americans to land, because no one's told him his side has already lost the war.

Old television is the last decaying bastion of an historical era long since gone.

Its liberation should be easy — and it's time we liberated it.

My argument today is this: the Australian program of economic modernisation that began a quarter of a century ago and has benefited consumers and society so much, will not be complete until the last weakening bastion of protectionism — television — has been overcome.

And the stakes are high for Australians — because in the digital age a stronger, freer and more innovative television industry means a stronger, freer and more innovative nation.

The current regulatory system benefits no one

I think we're all pretty much in agreement now that the current regulatory framework for television benefits almost no one other than the terrestrial broadcasters — commercial and government supported alike.

They enjoy protections unfound anywhere else in the economy, including a prohibition on the entry of a new broadcast television network, gifted digital spectrum and the protection of the longest anti-siphoning list in the world, which gives the old television networks preferred access to over 1300 events in a non-Olympic year.

But changing technology and consumer preferences are transforming the entire communications scene.

Today almost 6 million households choose to take fixed broadband and 8 million Australians choose to watch a subscription television service. That's a critical mass of consumer choice in anyone's language. And it represents a trend that is almost certain to continue in favour of competing service delivery mediums.

Take revenue forecasts. PWC has forecast that over the 2011–2013 period the compound annual growth in advertising revenue for the old networks will be 2.3 per cent while for magazines, the internet and subscription television it will be 4.2 per cent, 12.2 per cent and 7.5 per cent respectively.

This trend is no conspiracy against the old TV networks. It's simply the marketplace at work. And the answer must not be to offer the networks ever increasing and always renewed amounts of protectionism.

There are two major reasons for this.

The first reason is that such protection is economically damaging.

The detrimental economic and consumer effects of giving in to increasing protectionist demands are widely acknowledged by all serious economists and independent commentators equally. Such protection reduces productive and allocative efficiency as well as innovation.

As the Productivity Commission pointed out in its Broadcasting Inquiry report: failure to dismantle the protections of the old networks would mean that the

Australian media and communications industries will not realise their potential. They will continue to be distorted and stunted by regulatory impediments, with adverse implication for the community and the economy generally.

Protecting the old networks means restricted choice, less production and fewer jobs in the high-skilled, highly-paid and high-value-added cultural industries.

The Productivity Commission is right, and personally I believe everyone knows it.

It's just that not everyone will admit it — because they have a vested interest in denying reality.

The second reason is that consumers neither need nor want protection.

They no longer accept that the old networks should have control over their viewing times. Numerous research studies aside, the consistent uptake of subscription TV, the continuing strong sales of DVDs and the growth of downloading of television programs from the internet prove that.

The only real question is: How long can this state of affairs be allowed to continue? How long can the legislators keep trying our patience?

We can't live in the future and the past simultaneously

The answer must be *not for very much longer* because the digital economy has driven profound changes in consumer behavior and the expectations of our citizens.

In the past we had the choice of watching shows on one of five television channels, making phone calls over fixed phones supplied by Telecom and typing old-fashioned letters using a Macintosh computer with a little grey and white screen or on systems from Wang — a company that doesn't exist any longer.

Digital media has blown all this away. When it comes to their media, people want to be able to watch what they want, when they want, and increasingly over a device of their choice. They want to watch shows on their television, personal computers or mobile phones at a time that suits them. They want control of their viewing. They want personalisation.

And all of these consumer trends are about to be 'turbo-charged' by another big transformative event — the Rudd Government's proposed introduction of a \$43 billion National Broadband Network.

Think for a moment about what that change is potentially going to mean for all television companies. Namely, a huge range of new internet protocol television services and a whole new delivery medium and methodology for the industry.

What is already big is going to be bigger. It will mean more choice for consumers, increasing fragmentation of audiences, and greater challenges and opportunities for media companies, government and regulators alike.

Being a television executive, let me explain its effects to you by way of reference to one of FOXTEL's owned and operated channels' programs. Not *Star Wars* — the universal language of nerds everywhere — but something even nerdier which runs on our History Channel, *The Railway Story*.

Those of you who watch the documentary — and there are a surprising number who do without admitting it — will know that in Britain railway networks actually preceded the invention of the steam-powered locomotive. They weren't as extensive, were slow and were hauled by horses. The locomotive rapidly sent them to historical oblivion. With the coming of steam, the network of tracks multiplied by the thousands and changed the face of the world forever. They got the regulations right — which is to say, they kept them minimal.

Now imagine an alternative scenario for the birth of railways. Having constructed a new network, the protectionists came along and said: ‘Look, what about the companies that run the horse-drawn train industry? They’ve been around for centuries. They may not be as profitable as they used to be, but they have employee jobs and shareholders to protect; they know how the old system works; and they are slower, quieter and less dangerous. We should give them preferential use of the network and keep the steam locomotives on a few branch lines only, preferably somewhere like northern Wales. It’s the best outcome for the majority.’

The result would have been predictable: there would have been no industrial revolution.

If this sounds familiar, it’s because exactly the same type of thinking dominates the regulation of television today.

Preventing new operators from using new technologies limits their expansion and in the long run stunts the economy.

It’s the sort of thing that happens when the object of regulation is protecting the interests of existing operators, rather than the interests of consumers. It holds revolutions back.

It has significantly held back the expansion of subscription and digital television here for decades. And it may end up preventing the digital revolution from being a total success.

Visitors to Australia from Europe, the United States or Japan over the last decade would have been astonished by the comparative lack of television choice available to Australian consumers.

Take, for instance, the recent boasts of Freeview — the partnership between the ABC, SBS and the commercial networks — which recently spent the equivalent of \$50 million of airtime telling consumers they will get 15 new digital free-to-air channels, when in fact 12 already existed.

Our consumers have been denied channels and our young creative people have been denied good jobs for too long. The evolution is moving so slowly it’s being pulled by a cart horse.

Now to prove that I’m not just trying to give a free plug to my own platform’s programming, let me explain the nature of the current regulatory system in another way, using a program on a competing network.

Some of you may like the police series *Ashes to Ashes*, which is on ABC 1. It’s one of those ‘fish out of water’ concept shows, in which someone is sent back in time supposedly to show how much the world has changed but succeeds only in demonstrating that we haven’t really changed at all — much like that old Michael J Fox movie *Back to the Future*.

In the case of *Ashes to Ashes*, a young female police Detective Inspector with a passion for modern policing methods, is shot in the head, and during the resulting trauma is propelled back in time to a criminal investigations division of the London Police in 1982, from which she has to try to escape. In the process she gets to see what British society was like before Margaret Thatcher and Tony Blair modernized it.

I have to tell you it’s such a good programming idea that I’m considering commissioning a version of my own. Except in my version, a young female television executive with a passion for modern digital broadcasting methods will get shot in the head and transported back — not to a police station — but to a terrestrial television network in 1982. She will get to see what TV looked like before Margaret Thatcher and Tony Blair modernized it.

Now all these programs have a riveting and unexpected conclusion. And at the risk of spoiling it for you, I’m going to give the ending away. In my series, at the end of the last episode the young TV executive emerges from her bullet-induced coma to find she isn’t in London in 1982 but has simply been transferred to Australia in 2009!

A world of protection and regulation for the old networks.

Both my stories have a serious point: you can't change the delivery system and not change the regulatory framework; you can't adopt a medium that is all about consumer power but keep the consumer powerless; you're either in the analogue world or the digital world, the past or the present — you can't be in both.

Protection from what — success?

The inescapable truth is that, sadly for Australian consumers, our terrestrial TV operators are participants but not leaders in the digital economy. Any future policy must not be built on the premise of their leadership. It must be built around the needs of the consumer.

The question here is: what do the defenders of the current regulatory systems think they're protecting Australians from? Success? Challenge? The New?

Because when it comes to meeting the needs of the consumers, the subscription sector has the runs on the board.

This isn't another idle digital TV boast, like those of Freeview, because FOXTEL has bolted into the lead in Australian television innovation in just a short space of time.

We started with just 20 cable channels in October 1995; increased that to more than 40 channels with satellite in 1999; extended it to over 100 digital channels in 2004; and now with FOXTEL Next Generation, which started last Sunday, we offer around 200 channels, including 15 High Definition channels, interactive services and consumer control through our **iQ2** personal digital recorder and FOXTEL Download to your PC. We deliver television to your phone and your aircraft. And we employ or contract 3,800 people, making us a major job creator in an expanding industry that provides good livelihoods to many thousands more.

That's a more than ten-fold increase in our channel offerings, a major improvement in viewing quality and a revolution in consumer power.

We call it the 3-Cs: Control, Choice and Convenience, all in the service of Content and the Consumer

And this innovation is continuing at high speed, as we add a new interactive application to our viewing platform roughly every two weeks, including from last Sunday the creation of SKY NEWS Local — a 24-hour news service in the mainland state capitals.

Choice and control is the key.

Without us, Australians would likely have 5 stations to watch, plus the odd community station because without competitive pressure from FOXTEL the old networks would not have expanded their channel offering. With us, Australians have the choice of around 200 as well as the old networks and their new services

But it goes further than that, because digital applications, like our **iQ2** box and increasingly the personal computer and the mobile phone, give every Australian the power to create their own station so that they can watch what they want, when they want, where they want.

As I have said the NBN as well as developments in digital compression and mobility will continue to drive this consumer empowerment. For our part we are agnostic as to which distribution platform our customers select to get FOXTEL.

This is why we launched FOXTEL Download on 1 October. FOXTEL Download allows you to download shows from over 38 channels, without any additional charge. This is also why all the **iQs** that we have deployed since October last year have a broadband tuner in the back of the box.

We intend to 'light this up' for customers next year. We will use broadband to offer consumers more programming through simple and intuitive navigation tools, all seamlessly integrated into our current offering of linear channels, on-demand, FOXTEL Download and FOXTEL By Mobile.

Broadband meets broadcast through our superb iQ boxes.

What this all means is that in the future there potentially won't be 15 stations or even 200, but an individual station for each and every one of our 22 million fellow citizens available on their televisions, PCs, and mobile devices.

It's because we provide this choice that FOXTEL is now a major success story in Australian television. Today we are connected to over 1.6 million homes containing some 6 million television viewers on cable and satellite through retail and wholesale distribution.

And we've done it without a single dollar or protective regulation from government.

Like I said, what do the legislators think they're protecting people from?

It's not from a lack of media diversity, because subscription television stations like FOXTEL are now THE major platform for media diversity in Australia.

FOXTEL, for instance, now offers 10 news channels, including BBC World News, Bloomberg, CNBC, CNN and FOX News.

Our news channel line up is led locally by SKY NEWS, SKY NEWS BUSINESS CHANNEL and the host of interactive offerings they provide.

And then there is our not-for-profit A-PAC public affairs channel which we together with Austar launched earlier this year. We are also willing to make this channel available to all Australians over broadcasting spectrum once this becomes available. The channel can be seen in full over the SKY NEWS/A-PAC website at no cost to all Australians.

How much more democratic can we be than broadcasting the Question Time and major deliberations and press conferences of every parliament and government in the country and providing a platform to writers, thinkers, commentators and controversialists of every point of view on the biggest and smallest issues of the day?

This content mightn't have huge ratings but its very existence guarantees freedom of speech.

And they can't be protecting us from a lack of culturally significant content either.

FOXTEL has numerous documentary channels, another new ad-free children's channel just like the ABC is introducing, and, on Ovation, more operas, plays, ballets and orchestras than you can poke a conductor's baton at.

We cater for all sorts of entertainment tastes, but 'dumbed down' we certainly are not.

And by the way, if there is public money for worthwhile new Australian content in these important areas, we're more than happy to commission new programs on a contestable basis with the ABC and others. The ABC traditionally does great quality content work and we're confident we can more than match them.

And let us remember that while the ABC is a much loved institution and at its best a good broadcaster, Aunty is not Athena, the Greek Goddess of wisdom. The ABC does not have a monopoly on wisdom or commitment to Australian content.

In fact in recent years the ABC's broadcasting of local drama has been patchy. So the Government has allocated the ABC an additional \$137 million to produce a kids channel and more local drama and I wish them well in this important task.

But unlimited bandwidth, the profusion of new distribution platforms and new channels increasingly call into question one of the traditional rationales for funding the ABC — namely that the market has failed to provide key programming.

Whether it is SKY NEWS' detailed political analysis, A-PAC's extensive public affairs coverage, the huge amount of local drama, documentary, children's' and music programming that FOXTEL offers its customers or multiple internet sites, the market is increasingly providing high quality programming which was once seen as the exclusive preserve of the ABC, at no cost to the taxpayer, directly to the people who want to watch it.

I'm not saying there should be no public funding of broadcasting — of course there should. What I am saying is that in the digital age we need to be careful to ensure that public broadcasters like the ABC don't merely replicate what the private sector is now doing or inadvertently crowd out market driven creativity and innovation.

The ABC's programming was once both unique and special — today it remains special but it is no longer unique.

Moreover the ABC, in our view, should not be seen as the default provider of all publicly funded content. We need to look at new models — such as making some public funding open to contestability. Because no one is suggesting an end to public broadcasting or free-to-air commercial broadcasting, we're happy to compete against it.

Even when it comes to the contentious issue of reforming the anti-siphoning regime for sport, we're not asking for an end to showing significant sporting events on free-to-air channels. What is on old television today stays on the anti-siphoning list under our reform proposal.

The anti-siphoning list is a list of over 1300 sporting events in a non-Olympic year which are reserved first for the old television networks. Traditionally they have not broadcast up to 75 per cent of events on the list — either live or on delay or even in excerpted form.

If this is meant to protect consumers, it's obviously not doing a very good job of it.

As the ACCC says, the anti-siphoning regime is seriously deficient because it:

- 'reduces competition between the subscription television sector and the free to air broadcasters'
- 'potentially reduces the amount of premium (sporting) content that is made available to the Australian public'
- 'imposes costs on ... sporting bodies by reducing demand for their content' and reducing revenue for their codes; and
- 'Is more burdensome than it needs to be to achieve (its) objective' of keeping sports of national importance on old television.

The ACCC's remedy is the right one — to 'substantially shorten the length of the list' and enshrine the 'use it or lose it' principle in legislation. Under this approach events not broadcast by the old networks would come off the list and sports lovers would be better able to see them.

This would benefit consumers obviously.

But it would also benefit the community as a whole by strengthening an important part of our nation's social capital — our community sporting clubs.

Our local AFL and soccer clubs should have better clubrooms, accessible membership fees and more junior coaching. The free-to-air shouldn't be allowed to deny them this by restricting competition for broadcasting rights. When the Premier Media Group got the rights to broadcast elite Australian soccer, money flowed to the clubs and the healthy state of the code has flowed through to the successes of the Socceroos.

Everyone but the free-to-air networks agree: it's time to end the rort and shorten the list.

So let's get moving on a new regulatory regime

So, with the future fast bearing down upon us, let's get the new regulatory system sorted out — and sorted out fast.

The market will eventually take care of the future, with appropriate checks for the public interest, but we have to start thinking through the possible implications now.

Let me start with television before moving on to the bigger picture.

The Australian Government to its great credit has recognised that the coming of the National Broadband Network and other innovations will have significant implications for media regulation.

And it has proposed a review of the Broadcasting Services Act in 2011.

That's too late. Change is affecting us now and that review should be brought forward and initiated as soon as possible.

And the best way to ensure it improves competition rather than excludes competition is to give the review to the Productivity Commission — the most disciplined, authoritative and independent economic agency in the country.

It is crucial to get the principles and approach right for any such review. It must break from past approaches to media reform. We have to end the 'inward looking, anti competitive and restrictive' approach described by the Productivity Commission and instead put the consumer at the centre of media regulation and outlook.

The purpose of any new rules should not be to protect some media companies or help others. The purpose should be to bring about the best quality innovation, most personal services and widest choice possible for Australian consumers.

In the past we didn't protect the stage coach from the train, propeller aircraft from jets, CB radio from the internet, or VHS from the DVD. So it's time we stopped protecting the old television networks from subscription and other forms of digitally-based competition.

In today's world, when delivery systems are converging rapidly, our watchwords must be choice, competition, flexible responsiveness and efficiency, not protecting incumbency.

Clearly this is substantial and complex territory; but we believe there are some key things that should happen.

First, a new regime needs to be rigorously technology and provider neutral. This is because the environment will be populated by ubiquitous digital technologies including internet protocols whether they are delivered via wire line or wireless technologies.

Second, we must ensure that the digital dividend is not lost. As a first move in that direction, the government must realise the digital dividend by auctioning off the analogue broadcasting spectrum, which is to be returned in 2013, as soon as possible. That's right — before the switch-off, as the Americans did. The US Government raised almost US \$20 billion and has re-allocated the analogue spectrum for the next generation of mobile services and the products and jobs of the future.

Third, we also need to be clear about what consumer services may be encouraged or emerge with redeployed spectrum and the impact of any hold-back on investment, jobs, innovation, growth and continuing media transformation. Mobility products and wireless technologies are going to become increasingly important and must be central elements.

Fourth, the Government should remove the prohibition on a fourth terrestrial network prior to the digital switch off. It should issue licenses to new players to provide new networks either terrestrially

or via satellite to drive digital television take up. If a company like FOXTEL or anyone else can make a business case work for a fourth free-to-air network, where is the harm to the public? There have been media reports that this may be off the table — but no official decision announced by the Government.

Fifth, when it comes to content, regulators must resist what can be a natural bias to ‘regulatory solutions’ to perceived problems like exclusive content agreements.

In the past the competition regulator has argued that control over the local loop may enable certain companies to leverage their power in this area to acquire exclusive content in a way that is detrimental to competition. To the extent that this was ever a problem, it has been well and truly dealt with by the Government’s bold roll out of a wholesale only NBN network.

With multiple distribution platforms including the NBN, countless content providers, fragmenting audiences and fierce competition between all players in the television entertainment market, it is much better to leave content rights owners to decide how best to distribute their content rather than impose the dead hand of regulation pre-emptively to address perceived problems that have not even arisen in any public commentary or analysis.

Sure content providers can make mistakes. But they will fix them. And they will do this *much* faster than the regulators whenever they make mistakes.

Sixth, we do need to look beyond Australian content quotas in ensuring Australians get to see a rich diversity of Australian stories. We need to look at new ways of securing and financing Australian content including using some of the digital dividend from the switchover to fund Australian content. And whilst we are renovating that approach we should look to making more public funding of Australian content contestable so that we are getting approaches that excel in creative, entertaining and informative ways and at lower cost to the taxpayer. Only competition will make that happen.

Conclusion

Let’s be honest about the future of television and the wider media in Australia and admit that it’s an extremely political issue.

For a long, long time the nature of the industry and the culture of our politics acted to the detriment of consumers.

Like the economy as a whole, this may have been necessary once, to give the television industry a base upon which to grow — although you will get a good argument from many that it should never, ever have been the case.

Whatever the case, the days when the cozy deals between governments and broadcasting executives could be justified are long gone. Such deals now impose serious constraints on the sector’s expansion. And in a modern and proudly competitive nation, they are an embarrassing anachronism that no one will defend openly without resorting to euphemisms and weasel words.

And as consumers enjoy a widening choice of media sources, the power of the deal-makers to impose their decisions on the Australian people is weakening steadily.

The dispersal of their audiences is taking away their clout in Canberra. Each player’s power is being watered down.

Running television and media companies generally is becoming less about playing power, and more about ... well ... running television and media companies.

I for one have no desire to become a digital version of Randolph Hearst. I’m not interested in wielding political power. I just want to run a sustainably profitable modern media enterprise with television at its heart — an enterprise I, our workforce and our owners can be proud of because it is

an enterprise devoted to consumers and is energetically embraced by them. We don't want to be propped up; we'll chance our fortune in the marketplace.

In the digital media world the people are now calling the shots as consumers.

It's about time politicians recognised this and realised that they should stop being afraid of the consequences of making decisions that are in the interest of the consumers.

They should create a television and media environment that puts consumers first. The consumers as voters will reward them handsomely.