

## NEW PLATFORMS, BUT SAME OLD MEDIA MIND: WHY *MEDIA WATCH* WON'T SOON BE OUT OF A JOB

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*Media Watch*, ABC TV

First, a little personal anecdote. Two or three times a week, for around nine months in the year, I swim at Wylies Baths, the beautiful rock pool in South Coogee. One of the blokes who looks after the pool, who I've known to say hullo to for years, let's call him Hughie, has never shown the slightest sign that he knows what I do for a living, or cares.

The other day I was collecting a new season ticket. Hughie was there, but there was a new bloke handing out the tickets. Five minutes after I collected mine I went back to the office for some change, and the new feller says 'We were just talking about your TV show.' 'Oh yes,' I said. 'Yerse,' says the new feller. 'I'm a big fan. Never miss it. Not like Hughie here. He can't stand yer.'

One of the hazards of being a television host is that you can easily get the impression that everyone thinks you're terrific; because the people who do will happily tell you so, and the people who don't are much too polite to say a word. Except, of course, online, where there are no such inhibitions.

So I fully accept that some of you will like *Media Watch* and me — and it's hard to like the show if you can't stand the presenter; some will find it, and me, intensely irritating; and some won't care either way because 'I never watch TV'.

But one thing, I reckon, is undeniable. The possibility of appearing on *Media Watch* is one of the very few sanctions for encouraging good journalistic behaviour, and punishing bad, in Australia. And arguably, it's the most effective, because it's swift, it's very public, and it can be quite damaging for a journalist's reputation and career.

The other sanctions — what you might call the formal sanctions — for the breach of the various codes of conduct to which every mainstream, 'old media' journalist in this country is bound, depend on regulation or self-regulation. And I thought, since it's very much in the news, that I'd talk a bit this morning about regulation: whether we need it, who should exercise it, and how it can be made more effective — especially in the new online environment in which all the old business models, and regulatory structures, are breaking down.

Let me emphasise that I'm not going to concern myself with most of the regulatory issues that the Convergence Review is worrying about: licensing areas for television and radio; licence fees; spectrum allocation; amounts of advertising permissible on free-to-air and subscription; children's quotas, Australian production quotas; sporting rights, anti-siphoning lists; access to the NBN; and so on and so forth.

I'm concerned principally with the matters that the second Media Inquiry, being conducted by Ray Finkelstein QC and Professor Matthew Ricketson, is concerning itself with — especially two of its terms of reference:<sup>1</sup>

- a) The effectiveness of the current media codes of practice in Australia, particularly in light of technological change that is leading to the migration of print media to digital and online platforms;

and:

- c) Ways of substantially strengthening the independence and effectiveness of the Australian Press Council, including in relation to on-line publications, and with particular reference to the handling of complaints

In other words, I'm concerned with the sort of regulation which attempts to ensure a modicum of accuracy, fairness, and respect for individual privacy in the output of the mainstream media. The kind of thing, in fact, with which *Media Watch* concerns itself week by week — at least during the 40 weeks per year that it's on air.

A couple of weeks ago we got stuck into a particular segment on Seven's *Today Tonight*.<sup>2</sup> It purported to be an 'investigation' into what it called the 'welcome mat' laid down by the Australian government for refugees — judging by the pictures we were shown, and the content of the program, though it was never really spelled out, that meant unauthorised maritime arrivals, or boat people, not the people, ten times more numerous, who are accepted every year by Australia on refugee or humanitarian visas.

As I said in a subsequent column on the ABC's opinion and analysis website,<sup>3</sup> *The Drum*, in my four years in the chair at *Media Watch* I have never come across a more mendacious, deceptive or inflammatory piece of journalism. People were filmed and recorded without their permission — people whose families might well be endangered in the countries from which they had fled. Their words were distorted. Their welfare benefits were grossly exaggerated. Old footage of temporary detention centres that no longer exist were presented as though they were contemporary; the language used, and the facts presented — many of them wrong or exaggerated — were carefully designed to confirm in the minds of viewers prejudices and beliefs about refugees and boat people that are flat-out wrong.

The day after *Media Watch* went to air, and more than two weeks after the original report, *Today Tonight* host Matt White read out what the program called a 'clarification'. It corrected the more egregious factual errors that *Media Watch* had identified. It didn't apologise, or explain why the mistakes had been made.

It was following that clarification that I wrote the column for *The Drum*. I pointed out that the 'clarification', for all its shortcomings, was probably enough, under the terms of clause 4.3.11 of the Commercial Television Industry Code of Practice,<sup>4</sup> to head off an inquiry by the Australian Communications and Media Authority into complaints that Seven had breached the code's requirement for accuracy. (An aside: in deference to the many people from that organisation that are here today, I'll make an exception and call it 'the A.C.M.A.', not Ackma, which it apparently hates.)

And then I wrote this:

What this goes to show, to my mind, is not that media regulation should be tougher — although that's the conclusion many of our viewers will inevitably come to ...

On the contrary, to my mind this episode shows that the attempt to regulate such matters is essentially fruitless.

Journalists have to be shamed, by *Media Watch*, by their readers and viewers, by their colleagues, and above all by their bosses, to behave professionally. There is no other way.<sup>5</sup>

Now that article featured for a day or so on the top ten most popular articles list on the whole ABC website — something that rarely happens with a piece on *The Drum*. It attracted more than 350 comments — five times the number my pieces usually attract. And I was right. The majority of commentators didn't agree with me. They wanted tougher regulation of the media. Here are a few:

There will never be sufficient will in corporate media boardrooms to shame programs like TT into a semblance of integrity, honesty and fair news reporting. Our government, representing the people, needs to create disincentives under law, else this demagoguery and propaganda in the guise of news will simply continue, likely even get worse.

The only thing that can work is strong and forceful regulation — I cannot see any reasonable alternative.

An independent body is needed to investigate examples of corrupt and vindictive journalism. This body must have powers to impose real penalties including revocation of licences.

And this one — perhaps my favourite:

Deliberate propagation of lies by the media should be punished by jail terms and huge fines. ‘Fool me once, shame on you; fool me twice, shame on me’ ... and go to jail you slimy bastards.

I tell you what, that might work!

But the point, of course, is this. Unlike the print media, broadcasters like Seven are already subject to a regulator, funded by but independent of the government, which has the power to ensure that their Codes of Conduct — all of which include a requirement that factual information should be accurate and that viewpoints be fairly represented — are applied. In theory, the ACMA can apply penalties up to and including the withdrawal of the licence to broadcast.

And yet in practice, Stephen Conroy’s description of the Australian Press Council — that it’s a toothless tiger — could be applied with equal force to the ACMA.

As I said, one of the requirements of most of the Codes that the ACMA oversees — including the Commercial Radio Australia Codes of Practice — includes a requirement that various viewpoints on matters of controversy be aired. In fact in that particular Code, it’s clause 2.3 (b), and it’s phrased like this:

In the preparation and presentation of current affairs programs a licensee must ensure that reasonable efforts are made or reasonable opportunities are given to present significant viewpoints when dealing with controversial issues of public importance, either within the same program or similar programs, while the issue has immediate relevance to the community.<sup>6</sup>

Some months ago, *Media Watch* pointed out<sup>7</sup> that in their coverage of the issue of climate change science — undeniably a controversial issue of public importance — that provision was being systematically flouted by five or six of the country’s leading talkback hosts. Presenters like Alan Jones and Chris Smith on 2GB, Jason Morrison and Michael Smith on 2UE, Gary Hardgrave on Brisbane’s 4BC, and Howard Sattler on Perth’s 6PR were continually giving substantial airtime to climate change sceptics such as Bob Carter and Ian Plimer, but literally none to scientists who represent by far the majority scientific view on the issue, and on whose assessment the government’s policy is based. (Since that program, Alan Jones has interviewed Melbourne University’s David Karoly — though Mr Jones did more talking than Dr Karoly.)<sup>8</sup>

As a result of our program, the organisation GetUp (and probably others too) made a formal complaint to the ACMA, which announced it would inquire into the matter. The *Media Watch* program went to air at the end of March. No one’s heard a dicky bird from the ACMA on the issue since. No doubt it will report, some time next year. But even if it does find some or all of those broadcasters in breach — and I’ll be rather surprised if it does — it will have sat on its hands for years doing nothing, because no listener had made a formal complaint. The fact is, as an enforcer of fairness and accuracy in the media, the ACMA is slow and ineffective.

There are a lot of good reasons for that. For a start, as a state regulator it is constrained to behave in a highly legalistic manner. Precisely because the sanctions at its disposal are potentially severe, it must afford broadcasters every opportunity to make their case.

In addition, like most regulators, it depends for much of the time on the willing co-operation of broadcasters. It doesn’t want to alienate them. It doesn’t like getting into fights. Unless the matter is very high-profile, as the Cash for Comment matter was a decade and more ago, it’s far easier to keep the judgments tempered and the sanctions unexceptional.

And yet the Minister for Communications apparently thinks that the ACMA is doing a much better job in ensuring that Australian audiences get tolerably fair and accurate journalism from its broadcasters than the Australian Press Council is doing for the print media.

At least, he indicated at the press conference in which he announced the new Finkelstein/Ricketson inquiry that, as one solution to the toothlessness of the Australian Press Council, he'd be happy to consider a recommendation that the print media, currently self-regulated, and the online media, currently not regulated by anyone at all, would all come under a single, statutory regulator like the ACMA.

And, in case you think that was just one politician going off the rails, here's a question posed in the issues paper published by the Finkelstein inquiry not long ago:

As an alternative to strengthening the effectiveness of the Australian Press Council, would it be preferable to establish a statutory body to take over its functions?<sup>9</sup>

Now, as I've said in print a couple of times already, in my view this is a mind-boggling question for a serious inquiry to be asking. It seems to be blithely ignoring some fundamental principles.

The first is that the press is supposed to be free in this country. It's a freedom, like the supremacy of the Parliament over the Monarchy, or the right not to be imprisoned without trial, that's been won by the struggle and strife of our ancestors over many centuries. It should not be lightly thrown away. And setting up a statutory regulator with the power to tell the press what it can or can't print, presumably with the power to levy fines or impose other sanctions on miscreants, is to throw away that fundamental liberty.

The ACMA administers the Codes of Practice of broadcasters only as part of the broader bargain between the government, which administers the radio wave spectrum on behalf of the public, and the lucky few organisations, public or private, that were licensed to use them to communicate with mass audiences. Without spectrum scarcity, there would be no need to license; and without the need to license, there could be no state regulation. Because the ACMA regulates licensees, and no one else.

But, at least since the seventeenth century in England, the printing presses have not been licensed. Anyone can set up a newspaper. And within the constraints of the law — defamation law, the *Racial Discrimination Act*, the laws of contempt and so on — anyone can print what they please. That's what freedom of the press means.

It's true that various conventions have grown up around the so-called profession of journalism. Material that purports to be factual should be true, not mendacious; opinion and news should be kept separate; privacy should be respected, unless there is an over-riding public interest in disclosing private matters; and so forth.

And over the centuries capitalism has waved its magic wand over this business like most others. The result: a concentration of the industry into fewer and fewer corporate hands, with a commensurate increase in power and influence, for the survivors, over the body politic. The more media power became concentrated, the more the public wanted some independent umpire to which it could complain if the power was used unfairly. And so the big newspaper companies set up and paid for the Australian Press Council — as an independent adjudicator, as they saw it; as a powerless fig-leaf, as its critics maintained.

It's possible that the pressure to strengthen the Press Council's powers has arisen because the remorseless squeezing of newspaper's profits, the falling-apart of its business model, brought about by the advent of the internet has resulted in more strident, more opinionated, more inaccurate journalism than ever before. I'm not personally convinced of that.

I think it stems from the fact that this present government is uniquely unpopular, and has been attacked with unusual ferocity by at least some, if not all, the major newspapers of the group which owns around 70% of Australia's print media (yes, I know that figure is controversial, but it will do as an approximation).

News Ltd editors will tell you that they are merely reflecting the views of their readership, and acting on their behalf in holding the government to account. The government believes rather than its unpopularity derives, in no small measure, from the way its policies have been systematically misrepresented to the public by newspapers — and by News Ltd in particular — and that that misrepresentation arises from a policy, imposed from above by the foreign owner of that corporation, to dislodge it from power as soon as possible. The government sees this as an illegitimate use of a near-monopoly power, and feels that it has the right to do something about it.

Well, I have some sympathy for the government's frustration. *Media Watch* has taken the *Daily Telegraph*, for example, to task for its blatantly one-sided coverage of issues like the carbon price and mandatory pre-commitment on poker machines.<sup>10</sup>

But every previous government has accepted that such unfairness is part of the price we pay for a free press. None has attempted to set up a regulator over the print media, to turn the clock back two or three hundred years.

The other excuse that's made for reviewing the regulatory arrangements, of course, is that the print media, like the broadcast media, is changing. Everything is converging online. The traditional distinctions between radio, television, print are becoming meaningless. It's all just a stream of zeroes and ones, bounced off satellites, carried on radio waves or microwaves, or along telephone lines, or through coaxial cables, or soon, along a fibre-optic superhighway. The ABC is publishing hundreds of thousands of words of text every day. The newspapers are carrying audio and video on their websites. And all of it is being accessed indiscriminately through social media and mobile devices and on and on.

In this environment, doesn't it make sense to have a statutory regulator to oversee all journalism, whether it's broadcast or printed or on the net, whether it's audio or audio-visual or text?

To which I can only say, of course it doesn't. It makes absolutely no sense at all.

The spectrum scarcity that made necessary, and excused, the statutory regulation of broadcasting is giving way to plenty, indeed to surplus: there are so many voices out there, yammering away at us, that most of us can barely hear ourselves think.

And in this era of communications plenty, we should be accepting that regulation — as opposed to self-regulation — is not only undesirable, it's downright impossible.

Here's a simple question: who is the proposed regulator going to regulate?

The mainstream media, you say? I see. And supposing a mainstream player doesn't want to be regulated by the state?

Oh well, we'll insist that they are. We'll issue licences, and if they don't accept regulation, they'll lose their licence to publish on the web.

Hullo? You can't stop them, for one. And there's no way of drawing a line between publishers that should submit to regulation, and those that don't have to. Newspaper websites: yes; the SBS and ABC and Yahoo News: yes; Crikey: probably; Grog's Gamut's blog, and Kangaroo Court, and Possum Politics, and Mama Mia, and thousands of others? Every mad website devoted to demonstrating that the Mossad planned 9/11, and that global warming is a Jewish-Communist conspiracy? Do they need a licence? Where do you stop?

The only way this can work is that people who want the respectability bestowed by self-regulation can gain it by voluntarily agreeing to become subject to a regulator's rulings. There is simply no other sensible way. And that means an adaptation of the Australian Press Council, not an extension of the ACMA.

The Press Council's Julian Disney has floated a lot of new ideas: that only journalists employed by or working for news outlets that are members of the Press Council can qualify for the protection of

shield laws; that to boost its derisory funding it should be able to accept up to 30% of its budget from the government; and so on.<sup>11</sup>

These are properly matters for the new inquiry to ponder, and having pondered, to make recommendations about. But it should not, in my view, even be contemplating statutory regulation.

Indeed, it seems to me that in the new internet age, the Codes of Practice that currently guide, at least in theory, the news and current affairs output of TV and radio should be rolled into the Press Council's code, and all journalism should be self-regulated by the same, voluntary body.

Of course, my view may not prevail. If it doesn't, it will be because the Australian media has behaved so badly; has blatantly distorted facts, and allowed its agenda to dictate its news values, and invaded its readers' privacy, to such an extent that the consumer has cried 'enough!'. And in that case, the media will have no one to blame but itself — or more likely, each other.

But all those who are calling for tougher regulation, for journos to be flogged and hung and drawn and quartered, should reflect: do they really want a world where a bunch of public servants decide what's fair, and what's accurate, and what's not?

Whatever the evils of the free press — and they are many, thank goodness, or I'd be out of a job — they do not, in my view, justify a resort to state regulation. Those of us who've worked all our lives in the broadcast media can tell you: we've been there, we've tried that. It doesn't make things better.

The ABC is the most-regulated major producer of journalism in the land. For most of my time there, people who complain that we've breached our Editorial Policies had five — yes, five — levels of appeal.

You could complain to the program itself. If you weren't satisfied with the response, you could insist on an investigation by the ABC's Audience and Consumer Affairs department. If dissatisfied, you could appeal to a senior ABC person whose title was the Complaints Review Executive. If you didn't like his or her judgment, you could appeal to the ABC's Independent Complaints Review Panel, a collection of worthies, some with a media background, some with legal credentials, who were paid a small sum by the ABC to investigate and rule on the complaints that came their way.

It was a body that was deeply unpopular with the ABC's journalists, because they felt it often denied them a fair hearing, and applied unrealistic standards. It was universally known as I-CRAP. And if your complaint got rejected by I-CRAP, you could still appeal to the statutory broadcasting regulator, universally known, I'm afraid, as Ackma.

Those of you with long memories may recall that during the invasion and occupation of Iraq, John Howard's Minister for Communications, Richard Alston, formally complained about 68 separate incidents of biased coverage by the ABC's AM program, which worked their way through those layers.

The Complaints Review Executive upheld 2; the I-CRAP, another 15; the ABA, as it then was, 7 more. The process took more than two years. It deeply soured relationships between the ABC and the government. The ABA's rulings were roundly criticised by my predecessor at *Media Watch*, David Marr, who said they clearly hadn't a clue how journalists worked, especially in war zones.

The upshot of the whole affair is that the ABC might have become more cautious in its coverage, not out of respect for the validity of the regulator's findings, but from a desire to avoid the sheer hassle involved in dealing with more governmental complaints. That outcome may have been one that Senator Alston considered desirable. Whether it served the public interest is far more debatable.

Interestingly, in the past few months the ABC has started using a new complaints procedure. Programs have been given more power to deal with complainants directly, encourage them to use websites to voice their feelings etc. Serious complaints are dealt with, once, by Audience and

Consumer Affairs. If the complainant doesn't like the result, he or she can go to the ACMA. That's it. No CRE. No ICRP.<sup>12</sup>

And the amazing thing is that, so far as I'm aware, no one — not the government, not the opposition, not even individuals who've previously expressed themselves deeply unimpressed by the ABC's complaints procedures, like former ABC Board Member Janet Albrechtsen and the Sydney Institute's Gerard Henderson, has raised a whisper of protest. The ABC must be wishing it had done it before.

Of course that's partly because we have a government that is far more concerned about perceived bias at News Ltd than at the ABC. If and when the Coalition gets back onto the government benches, it is of course conceivable that that will change.

But I'd still maintain that the most effective sanction, for journalists, is being found to have got it wrong by their own organisation. The benefit of self-regulation is that at its best it is respected by those who are regulated. Ask John Laws or Alan Jones if they respect the ABA. And heaven help a state regulator that attempts to enforce rulings on the print media.

Rupert Murdoch's News Ltd is certainly a powerful force in this country. Murdoch has strong ideological views of his own; but to the extent that he determines what line his newspapers take — and that's a matter for endless debate — it seems to me that he uses his power, everywhere in the world that he wields it, primarily to back winners. With or without the global Chairman's blessing, as the government's polling has declined, News Ltd's attacks on it have increased in ferocity. Conversely, if Julia Gillard were popular in Western Sydney, as Kevin Rudd was for his first two years in government, you would not be seeing the *Telegraph* and its columnists, day after day, trashing her policies and mocking her person. Politics is tough.

At *Media Watch* we'll continue to do our bit to hold the newspapers to account; I would love to see a tougher and better-funded Press Council doing the same.

But if the Gillard government thinks that the ACMA, or something like it, would help bring the *Daily Telegraph* to heel, I have to tell 'em they're dreaming. As for any attempt to regulate and control the oceans of information, reportage, opinion, fantasy, bile, conspiracy, rumour, speculation, gossip and satire that flows through the global internet, it would be, quite simply, futile.

Thank you very much.

*Note:* In the question session after this keynote address to the CPRF 2011 my attention was drawn to the submission by Dr Johan Lidberg of Monash University to the Finkelstein/Ricketson inquiry. He outlines there the successful Norwegian Press Complaints Committee (PFU), a non-statutory body that adjudicates on complaints about all news media in Norway, print, online, TV and radio, whether or not they are contributing members of the system. (See [http://www.dbcde.gov.au/\\_data/assets/pdf\\_file/0013/142240/Dr-Johan-Lidberg.pdf](http://www.dbcde.gov.au/_data/assets/pdf_file/0013/142240/Dr-Johan-Lidberg.pdf).)

I agree with Dr Lidberg that the PFU offers an excellent model for a strengthened media complaints system in Australia.

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<sup>1</sup> Independent Media Inquiry Terms of Reference

[http://www.dbcde.gov.au/digital\\_economy/independent\\_media\\_inquiry](http://www.dbcde.gov.au/digital_economy/independent_media_inquiry).

<sup>2</sup> ABC *Media Watch* Episode 37, 24 October 2011, 'TT's false facts fuel fear'

<http://www.abc.net.au/mediawatch/transcripts/s3346987.htm>.

<sup>3</sup> 'Today Tonight: Refugees from Journalistic Decency', The Drum, ABC website 27 Oct 2011

<http://www.abc.net.au/news/2011-10-27/holmes-shaming-today-tonight/3603986>.

<sup>4</sup> Australian Television Industry Code of Practice

[http://www.acma.gov.au/webwr/aba/contentreg/codes/television/documents/2010-commercial\\_tv\\_industry\\_code\\_of\\_practice.pdf](http://www.acma.gov.au/webwr/aba/contentreg/codes/television/documents/2010-commercial_tv_industry_code_of_practice.pdf).

- <sup>5</sup> 'Today Tonight: Refugees from Journalistic Decency', The Drum, ABC website 27 Oct 2011 <http://www.abc.net.au/news/2011-10-27/holmes-shaming-today-tonight/3603986>.
- <sup>6</sup> Commercial Radio Australia Codes of Practice and Guidelines, Code 2.3 (b) <http://www.commercialradio.com.au/files/uploaded/file/Commercial%20Radio%20Codes%20&%20Guidelines%20%205%20September%202011.pdf>.
- <sup>7</sup> ABC *Media Watch* Episode 7, 21 March 2011, 'Balancing a Hot Debate' <http://www.abc.net.au/mediawatch/transcripts/s3169309.htm>.
- <sup>8</sup> ABC *Media Watch* Episode 16, 30 May 2011, 'Lessons in Hyperbolic Gestures' <http://www.abc.net.au/mediawatch/transcripts/s3230989.htm>.
- <sup>9</sup> For Independent Media Inquiry Issues Paper and Submissions go to [http://www.dbcde.gov.au/digital\\_economy/independent\\_media\\_inquiry/consultation](http://www.dbcde.gov.au/digital_economy/independent_media_inquiry/consultation).
- <sup>10</sup> ABC *Media Watch* Episode 23, 18 Jul 2011 <http://www.abc.net.au/mediawatch/transcripts/s3272258.htm> and Episode 32, 19 Sept 2011 <http://www.abc.net.au/mediawatch/transcripts/s3321170.htm>.
- <sup>11</sup> See Australian Press Council submission to Independent Media Inquiry, note 9 above.
- <sup>12</sup> ABC Complaints Procedure [http://www.abc.net.au/contact/complaints\\_process.htm](http://www.abc.net.au/contact/complaints_process.htm).