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The Finkelstein inquiry: you wouldn't read about it

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The most recent and persuasive case study showing why there is an urgent need to reform regulation of the news media has been provided by the news media itself.

And it's been provided in the way they have reported on the Independent Media Inquiry.

What they have done is to under-report a lot of what was presented to the Independent Media Inquiry late last year, and to either misreport the inquiry's findings or to ignore large parts of the report altogether.

Anyone who relied on the mainstream news media for their knowledge of the media inquiry's report could be forgiven for thinking that we had recommended the Federal Government take a leaf out of Alan Jones's book and stuff freedom of the press into a sack and dump it out at sea.

What I would like to do is to clear away the thickets of misinformation and walk you through some of the material that was actually presented to the inquiry and show you how Mr Ray Finkelstein QC and I, and those hired to assist us, reached the conclusions we did and arrived at the recommendations we made. I would also like to touch on some of the material in the report that has not been discussed at all in the mainstream news media.

I'm going to use the phrase mainstream news media because I will be focussing on the metropolitan daily newspapers, their websites and on radio and television. Smaller independent news websites such as Crikey and New Matilda and some individual blogs covered the inquiry in detail and with a good deal of care.

I'm happy to acknowledge that at 468 pages the inquiry's report could double as a door-stopper and that befitting a report to government it is nobody's idea of a racy read.

The inquiry received around 10,600 submissions, the vast majority of which were facilitated by advocacy groups Avaaz and NewsStand through the use of online forms. It is worth noting, though, that 762 of these submissions expressed dissatisfaction with the performance of the news media and only four expressed satisfaction. In addition, while the terms of reference did not specifically ask the inquiry to consider the issue of concentration of media ownership, 444 submissions expressed concern about its effect and 115 submissions called for a fit and proper person test to be part of media ownership arrangements (Report, p 349-51).

Alongside these the inquiry received a further 132 written submissions. It also heard from 41 people and organisations over eight days of public hearings in three cities.

Here are three things that were either under-reported during the inquiry or not reported at all.

On the very first day of public hearings, in Melbourne on November 8, Mr Finkelstein categorically ruled out any return to a licensing regime for the print media when the idea was floated by Stephen Mayne, the journalist and shareholder activist. He said that licensing meant the government decreeing who is able to publish news, which, he said, "is as close as going back to the Dark Ages as you could find" as it represents "probably as extreme an encroachment on news dissemination as you could get" (Transcript, 8 November, p 99-100). This is relevant in the light of the dire extrapolations made about the inquiry report's recommendations.

Dennis Pearce was chair of the Press Council between 1998 and 2000 and apart from being an emeritus professor of law at ANU he has also been Commonwealth ombudsman. In his presentation he described as "disgraceful" a decision by *The Australian* to refuse to publish an adjudication by the council about a complaint and in fact to withdraw from the council for

several months (Transcript, 9 November, p 191).

Mr Greg Hywood, the chief executive of Fairfax Media, was unable to explain why news media companies could satisfactorily put in place Chinese walls between their editorial and their advertising departments to ensure that governments, which are major advertisers with newspapers, could not influence editorial policy, but that a regulatory body with even partial government funding would be inevitably and irretrievably compromised.

On the first arrangement he said,

Yes, certainly the government is a major client of Fairfax... So it is absolutely core to our business model that we separate editorial from commercial. We have done that and we will continue to do that.

On the second arrangement he said,

The government funding a body like that [the Press Council] would have the right to make judgements about what we do and we just don't see that as acceptable. (Transcript, 16 November, pp 95-96)

The report was delivered to the Communications minister, Senator Stephen Conroy, on Tuesday 28 February and released on Friday 2 March.

Here is a selection of the mis-reporting or overreaction to the inquiry's report.

First, in the Herald Sun on Saturday March 3 (page 2), the headline read: "High price to pay: Inquiry wants taxpayer-funded watchdog to monitor your news". In a breakout box headlined "What they said" Mr Finkelstein was quoted as follows:

Many of the criticisms (of the media) are self-interested or expedient; much of the public cynicism is misdirected.

This quotation is from paragraph 10 of the executive summary. The preceding sentence reads: *These proposals are made at a time when polls consistently reveal low levels of trust in the media, when there is declining newspaper circulation, and when there are frequent controversies about media performance.*

The succeeding sentence after the newspaper's breakout quote reads:

Yet a news media visibly living up to its own standards and enforcing its own high ideals is likely to increase rather than undermine public confidence and acceptance.

This kind of blatant cherry-picking of quotes is a pretty good way of undermining public confidence and trust in the media.

Second, in a [panel discussion](#) on ABC radio's The World Today on Friday March 9, Ashley Hall finished by asking Bob Cronin, group editor-in-chief of West Australian Newspapers, about a comment he had made that the inquiry's recommendations represented "the most outrageous assault on our democracy in the history of the media". Hall said,

But the notions he's espousing of independence, balance, speedy corrections and apologies are already part of the various voluntary codes that cover journalism and media. What's the difference, if it's enforceable and paid for by the Government?

To which Mr Cronin replied,

The key difference is under Mr Finkelstein's proposals editors could be jailed for refusing to publish statements demanded by the Government-appointed regulator that the editor believed were completely untrue. Now I mean that sort of thing was common when Joe Stalin was running the Soviet Union and it is probably still very common in North Korea but I wouldn't ever want to see a situation here where editors were jailed for standing up for their beliefs.

It appears to have escaped Mr Cronin's attention that under the government-appointed regulator for the broadcast media in Australia, not only has no major radio or television station ever had its license taken away, but those who are routinely complained about, such as Alan Jones or John Laws or Kyle Sandilands, have suffered not much more than a slap on the wrist

with a damp tissue.

Finally, John Henningham these days runs a small private educational outlet in Brisbane called J-school but two decades ago he became the first professor of journalism in Australia. His contribution to the public discourse was to liken the proposed News Media Council to the Reich Press Chamber that existed in Adolf Hitler's Nazi Germany.

In an article published in The Weekend Australian on March 17, Henningham writes that the Reich Press Chamber set up in 1933 by Hitler and his propaganda minister, Josef Goebbels, was: *The beginning of a whole new relationship between authoritarian governments and the press – not simply censoring information or jailing editors – but actively using the press as an instrument of propaganda: print this, or else.*

I don't intend to dignify this offensive comparison with a response other than to say that whatever the Reich Press Chamber may have done after Hitler seized power, what happened beforehand is more instructive, according to Ron Rosenbaum's book Explaining Hitler. Hitler and his SA Brownshirts murdered a number of their political opponents in the 1920s and early 1930s, each of which was reported in the Munich Post. The Brownshirts destroyed the newspaper's office twice and as soon as Hitler came to power they came and dragged its journalists away to prison. The problem was not media regulation; the problem was Hitler's criminality.

I cite Henningham's remarks as perhaps the most extreme example of the hostile coverage of the inquiry's report. It is not surprising, though, that it appeared in The Australian which in the three weeks after the report's release published not one but three editorials criticising it and at least 12 negative opinion pieces. In the same period the newspaper published one opinion piece that was reasonably balanced and two that approved of the report's recommendations.

Let us look at what is actually recommended and the reasons for it.

It is relatively common ground, even among some commentators in the press, that the regulation of the news media in Australia is inconsistent, fragmented and ineffective.

There is one body for regulating news and current affairs on radio and television and another for regulating newspapers and, to an extent magazines and online. Is there any good reason for this? Not really. Or, if there were sound historical reasons for the print media to campaign against the strictures of being licensed by the government, the prospect of a government licensing the press has been a dead issue for many, many years.

Regulation was imposed on radio and then television at least partly because the airwaves were a public resource and a scarce one at that. But that was not the only or perhaps even the primary reason broadcast media were regulated. The Broadcasting Services Act of 1992, which remains the act in force, expressly says a reason for regulating broadcast media, especially television, is because of its power to influence society.

The broadcast media has been regulated for decades by a succession of government created and funded bodies – the Australian Broadcasting Control Board, the Australian Broadcasting Tribunal and, most recently, the Australian Communications and Media Authority – and whatever grumbles and complaints those in the industry might have had they have not generally extended to denying these bodies the right to exist.

Newspapers are regulated by the Australian Press Council and have been since 1976.

Three of its past chairmen as well as the current chair gave written and verbal presentations to the inquiry and all but one said that despite their best efforts the council does not work satisfactorily.

The key problems are:

The industry can come and go from the council as it pleases without suffering any penalty. The council relies on the industry for its funding and there is evidence the industry has used that or the threat of reducing funding to control the council. The current chair of the Press Council told

the inquiry he needed double the level of funding to fulfil the council's charter properly. The requirement that Press Council adjudications be published prominently in newspapers is honoured in the breach. Most adjudications are published but they're buried; a few are not published at all. Rarely are the adjudications written in the clear, far less the vigorous prose, that characterises good journalism and almost all are topped by a vanilla plain headline along the lines of "Press Council ruling". It seems safe to observe that no sub-editor has ever entered, let alone won, a Walkley award for their wittiest complaint adjudication headline.

While most Press Council chairs lamented the problems they faced, all three of the major print media companies – News Limited, Fairfax Media and West Australian Newspapers – flatly said there was little if anything to worry about. Funding was adequate and it wasn't a problem that companies could withdraw if they wanted to.

Their attitude towards the reforms the current council chair Professor Julian Disney has been advocating ranged from bland indifference to outright hostility.

At the same time the inquiry analysed public views about the news media – its trustworthiness, its influence, ethics, intrusiveness, responsiveness to complaints and so on. The inquiry did a good deal more than pluck out the annual Roy Morgan survey of attitudes towards various professions. It examined 21 separate surveys taken over 45 years between 1966 and 2011.

These polls revealed deep-seated and strongly held concerns about the performance of the news media in this country.

Even more alarming was the way this material was blithely dismissed by various commentators in the media, either as, first, views based on ignorance (even though Dr Denis Muller, on behalf of the inquiry, had sifted out polls whose method was questionable or which asked for opinions about which ordinary people could not be expected to know much), second, as what everyone knows people think about the media (as if that somehow erased its validity) and, third, as clearly the product of a media studies wank. I am not making this up. Mark Day, The Australian's media writer, described the inquiry's report as an "academic wank" in the opening paragraph of a feature piece he wrote on May 1 about the Convergence Review Committee's report.

Instead, the newspaper media companies told the inquiry the most reliable barometer of their performance was their readers. If a newspaper was printing rubbish, people would stop reading it. As simple as that.

If it was really this simple we would conclude newspapers are printing a lot more rubbish now as overall circulation per head of population has been steadily declining for decades now. There is actually a myriad of reasons why sales of newspapers rise and fall, of why individual readers start the newspaper reading habit and why they stop it, of why they read particular sections of newspapers to the exclusion of others and so on.

And notice I have been talking here about newspapers. The rise of online media throws up a whole range of other variables.

All these are good reasons why individual readers' decisions about whether to stop buying a newspaper don't carry a lot of weight. But there is another, compelling reason, and it was contributed by Dr Franco Papandrea, who brought to the inquiry expertise in the economics of the media which he has published in, among other places, the journal of the free market think tank the Institute of Public Affairs.

Chapter three of the inquiry's report shows the sources of revenue for newspaper companies. Circulation, that is, revenue earned from the sale of newspapers to readers, accounts in most cases for significantly less than half of total revenue. The great bulk comes from advertising, whether classified or display.

The point is this: keeping advertisers happy is more important to newspaper executives than keeping readers happy. It has to be or they go out of business. This doesn't mean good editors

and good journalists are indifferent to their readers, but when you hear newspaper executives mouthing the mantra that you don't need to worry too much about media regulation because it is their readers who provide true accountability, you are being fed a line that is similar to the tobacco industry's decades-long denial of the damaging effects of second hand smoking. To sum up the picture confronting the inquiry, the Press Council is deeply concerned it cannot do its job properly, and everyday customers of the media have a host of concerns about it, but the news media industry thinks things are ticking over nicely and we should all be focussing our gaze not on them but on every other organisation in society.

Where the news media may be content with pointing to others' failings, Mr Finkelstein and I were charged with not only analysing the problem but offering solutions.

The report recommends that where complaints about media practice are upheld the news media outlet will need to publish an apology, a correction or a retraction. A successful complainant will have a legally enforceable right of reply. I am not quite sure how this suppresses freedom of speech. Isn't its main effect to add to the amount of speech in society? The news media outlet may chafe against being made to publish a reply but remember that they had the first word in the matter and that if there is no adequate means for ordinary people to have their complaints taken seriously then the news media can behave pretty much as a law unto themselves.

As Professor Rod Tiffen, a political scientist who also worked on the inquiry, wrote in an opinion piece in The Financial Review on March 20,

Some publishers have said it is unreasonable that they should have to publish adjudications they consider to be wrong. But they already commit to do this under the Press Council. This objection is an assertion of their right to exercise censorship, to restrict, not increase, information available to the public.

They are arguing for their right to withhold from readers the news that their paper has been criticised.

That sounds like a long way from Stalinist Russia to me.

This is an edited extract of a speech given at the [Centre for Advanced Journalism](#), Melbourne University on May 17, 2012.

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