The Australian government’s Convergence Review: Final Report, released in April 2012, is analysed as a case study of public policy process about media and telecommunications. Several key perspectives are addressed—the accuracy of the mass media coverage of the report before and after its release, the effectiveness of public participation in the creation of the findings by the committee, how the government framed the enquiry in advance, and how it responded when the report was released. This paper cites examples of grossly inaccurate press reporting. The contrast of this government’s approach to making policy in 2012 is contrasted with what has come to be regarded as a seminal public policy report for telecommunications in the mid 1980s. At this stage it is too early to judge whether the government might implement the long term key recommendations, or opt for short term pragmatic decisions. The Convergence Review presents a fascinating story of the complex interactions between government, policy makers, media, industry stakeholders and the public at large.

**INTRODUCTION**

The processes which underpin the creation and implementation of media and telecommunications public policy have been subjected to scant research in Australia. Over twenty-five years ago in a chapter titled ‘Politics Not Policies’ in the Penguin book, The Electronic Estate, I wrote about the complexities of the forces at work related to the formulation of public policy:

(First) …. A small elite group… holds the balance of power in the decision making process… the mass media are structured in such a way that relatively few people have access and that the accepted conventions of presentation restrict discussion and exploration of complex subjects…(Second) decisions are made in forums which are essentially private and closed and within institutions able to wrap themselves in secrecy (and) … in the context of technological change and the future, the political system as a whole has the effect of inhibiting curiosity and limiting public awareness. (Third)… Ad hoc decision making is the inevitable consequence of an essentially irrational political process, from which clear comprehensive statements fail to emerge as blueprints for action. The response to technological choices by governments in Australian communications policy has essentially been either a series of short term pragmatic decisions or the shelving of decisions in complex policy areas (Barr 1985).

This article re-visits the three assertions made at the time, and tracks how they stand up today in an examination of the 2012 Convergence Review.
AGENDA SETTING BY THE MEDIA ELITE

The notion of the ‘agenda setting function of the media’ was in vogue in 1985, especially in the context of press reportage - as it was evident again in the reporting of the Convergence review in 2012. Some highly misleading coverage occurred before the release of the Final Report about its major findings and recommendations made in two of Australia’s major daily newspapers. On April 26, two days prior to its release, an ‘exclusive’ by Mark Day was the front page feature in *The Australian*:

A new regulatory body, funded by government and with powers to impose fines and sanctions on news outlets, is a key proposal of the long-awaited Convergence Review of the media sector…. It is believed the review panel recommends the creation of a referral panel, headed by a retired judge, that would have the power to administer fines or sanctions on news outlets for grave or consistent breaches of standards applied by the Australian Press Council (Day 2012a).

And just hours before the report was publicly released, *The Age* editorial headed ‘Beware the state that reins in free media’ copycatted the assertion that ‘a “super regulator”, headed by a retired judge, be given the power to impose fines and sanctions on news media. This cobbled-together "solution" invites multiple criticisms… A state –appointed and funded regulator throws the door open to political influences’ (*The Age* 2012).

After the report was released it became clear that none of these predictions were accurate. The Review actually recommended two separate regulatory bodies for the converged environment. First it advocated that ‘a new communications statutory regulator be established to replace the existing Australian Communications and Media Authority, which ‘should operate at arms length from government direction.’ Second the Review recommended ‘that content services enterprises be required to be members of an industry-led body established to develop and enforce a media code aimed at promoting news standards, adjudicating on complaints and providing timely remedies (Convergence Review 2012: xii- xiv).

There was no reference in the entire report to a ‘retired judge… with the powers to impose fines and sanctions on news media.’ Regular columnist, and a former editor- in-chief of *The Australian*, Mark Day, responded to criticism a few days later:

I was told what I was told. I felt confident that the information was on the money. As it turned out, some of it wasn't, but that sort of thing happens when you do speculative journalism like this… Well, journos have been doing it since I was a cub. You're trying to get a jump on the story. (*Media Watch* 2012)

Within hours of its release, the report was widely castigated in multiple media reports and one could only wonder how much of the report itself had been closely read by its critics, or how thorough their advisory briefings may have been.

Most of the space given to the first day’s coverage was devoted to attacks on alleged proposals for new and excessive regulation. The most blistering and overarching attack came from News Limited chief executive, Kim Williams who made four assertions:

The report recommends more heavy handed regulation contrary to its remit. Second, it proposes new regulations which are imprecisely defined and left to the discretion of the proposed regulator. Third, it recommends increasing regulation on traditional media companies with additional ownership rules, additional content competition rules and additional press complaints rules. Fourth, it bizarrely excluded from regulation some powerful companies who compete against traditional media companies today (Canning and Davidson 2012).
Williams’s successor at Foxtel, chief executive, Richard Freudenstein added a fifth:

Foxtel is concerned that overall the review recommends needless new regulation that will stifle competition and innovation and does not recognise market reality… In particular a new public interest test would be broad and subjective, and by the review’s own admission may increase regulatory burden (Holdgate 2010).

The assertion of increased regulation was also taken up by Telstra spokesperson, Karina Keisler:

The review was a missed opportunity to modernise Australia’s communications and media regulation. At a time when there’s less need clearly for regulation the report recommends the imposition of more regulation on more organisations in the digital economy. Telstra believes that many of the committee’s objectives can be achieved without the heavy imposition of more regulation on an already heavily regulated sector (Smith 2012).

There had been an awareness by the members of the Review Committee, based upon submissions to the Interim Report, that any form of regulation they might recommend would be highly contentious in media establishment circles. Their report stated:

The regulator should operate at arm’s length from government direction except in a limited number of specified matters (and) ministerial control over the regulator generally should be exercised through legislative instruments disallowable by either House of Parliament, to allow for greater parliamentary scrutiny. (Convergence Review 2012: 44)

The Chair of the Convergence Review Committee, Glen Boreham later expressed his frustration with the media reporting about issues related to regulation contained in the final report:

Having waded through the pages of existing regulation over the past year I can assure you that in no reasonable interpretation would our recommendations mean more regulation. Our recommendations will result in less regulation that is better targeted and delivered by a smaller, streamlined regulator - quite the opposite of the ‘super regulator’ conjured up by one reporter, apparently to be headed by ‘a retired judge’ with ‘the power to impose fines’.

A quick checklist of some of the regulation we recommended removing includes: abolishing content licences and a raft of attached regulation, removing ineffective local content regulations concerning changes in control, such as trigger events in radio; removal of reporting a raft of reporting compliance in local media; sharpening media ownership rules to reflect influential content players beyond TV, radio and newspapers; removing much ownership regulation that is no longer effective because of converging media; and recommending light touch regulation for all smaller players, whatever their platform of delivery (Boreham 2012: 1).

The final report also pointed out that ‘the close relationship between media and politics’ had led many countries to establish a media regulator that is largely independent from government control. The communications regulator in the United Kingdom, Ofcom, was:

an entity independent of government … in staffing and financing and in authority and ( where) … brave decisions could be made independently of the political cycle in much the same way they are made in financial services. Accordingly, careful consideration needs to be given to any circumstances in which the regulator may be subject to government direction in the performance of its functions. (Convergence Review 2012: 42- 43)
Unsurprisingly the commercial television stakeholders chose to stick to their vested interests. Within hours of the release of the final report Free TV chief executive Julie Flynn’s expressed her disappointment with the proposed changes to the local content rules for her member organisations:

> We are facing unprecedented challenges and it is difficult to understand how anyone can believe we can sustain increased obligations… We’ve got programming costs going up, revenue going down. And now we’re being told that we have to pay more (Crowe and Bodey 2012).

Similarly Ten Network Holdings chief executive, James Warburton, complained:

> The higher content quotas for documentaries and children’s programs, for example, are yet another regulation that only applies to the free-to-air television industry…. It is simply unfair to continue to squeeze free-to-air broadcasters while some of our competitors are allowed to operate without contributing to local production without excessive regulation (Davidson 2012).

And the Head of Broadcasting Policy at Ten Network similarly pleaded:

> The argument that an increase in the content obligations is justified given the rebate on free-to-air licence fees ignores the fact that free-to-air broadcasting is undergoing permanent structural change…. Even with the current 50% licence fee rebate, Australian broadcasters pay far more than their international counterparts. Adding more content obligations is not reasonable or sustainable (Herd 2012).

For members of the telecommunications industry the use here of ‘structural change’ gives new meaning to the term ‘protectionism.’

**DECISIONS MADE IN PRIVATE FORUMS**

Assertion two above was that:

> ... decisions are made in forums which are essentially private and closed (and) ... in the context of technological change and the future, the political system as a whole has the effect of inhibiting curiosity and limiting public awareness.

One of the most unusual features of the Convergence Review is that the core concept of ‘convergence’ is nowhere explained to its readers. Somewhat oddly the term ‘convergence’ does not appear in the glossary of terms, either in the Interim Report (p 22), or the Final Report (pp 174-176). One wonders how many people in the industry could offer their own pithy definition of the term. In a document which correctly acknowledges an increase in the number of media outlets, platforms, and services, some readers might feel that a more appropriate term to describe the complexity of issues canvassed might be ‘divergence.’

But speaking in a conference forum during the course of this review committee chairperson Glen Boreham offered his own sense of the meaning of this elusive term. He suggested at the Communications Policy and Research Forum (CPRF) in Sydney in November 2011, in an unpublished speech, that one might think about convergence in this way. Twenty or so years ago the television set generally was housed in the lounge room, the computer in the study, and the radio in the kitchen or elsewhere. So modes of communications were generally separated, and the content was delivered through separate ‘silos’. But today, Boreham suggested, so much content has come together, or is converged on one platform, notably with an iPhone which can bring together voice, email, Internet searching, and some video content. Hence new and complex public policy issues arise out of radical changes in modes of convergent media and telecommunications delivery. For this author though there was a missed opportunity for a
fuller picture similar to this useful explanation to be fleshed out for ordinary mortals in the final report.

The Convergence Review was announced in December 2010 together with draft terms of reference, and its three person committee came together in April 2011. Its initial consultation process, which led to the release of an Interim Report in December 2011, followed on from its seven discussion papers, from consultations with industry stakeholders, and also from taking counsel of public meetings held in metropolitan and regional locations. Over 250 submissions were received by the Review, most of which were publicly available on the departmental website. We do not know how much networking by members of the community occurred as a result of so much documentation being available, but it surely is a commendable improvement on historical practices.

The practice of providing an interim report for public examination was a substantial improvement on prior comparable public consultation practices for major reports in communications. Some significant attempts were made to heed valid criticism of particular positions taken in the Interim report, notably early proposals for new forms of web based content accountability.

In the preparation of the Final Report the committee explained:

Throughout 2011 the Review conducted a comprehensive consultation process to inform its findings and provide all Australians with the chance to have their say. During this process, the Review held public forums in metropolitan and regional locations across Australia, met with industry representatives, and analysed more than 340 detailed submissions and over 28,000 comments. The Review was also asked to take into account the findings of the report of the recent Independent Inquiry into the Media and Media Regulation in its deliberations. In addition, it has also taken into account the recommendations of the Australian Law Reform Commission’s review of the National Classification Scheme (Convergence Review 2012).

Regarding the vexed issue of the appropriate role for government regulation it can be seen that the committee faced two competing and irreconcilable camps- industry members who generally opposed any regulation except where their interests might benefit, as opposed to a big group of non-industry based constituents who identified the need for particular regulation to be retained or strengthened. The committee was never going to be able to ‘win’ on this key issue.

The Review’s agenda of major issues clearly emerged from the open and strong public consultation process as the committee explained:

Three clear areas emerged from the Review’s work where continued government intervention is clearly justified: Australians want diversity in media ownership and control, they expect content standards and they want Australian content. Any new policy framework should reflect these key expectations (Convergence Review 2012).

The Final Report also took into account wider dimensions of public participation than had been usual practice in recommending that the regulator ‘would be the successor to the ACMA for the range of regulatory functions that continue following the abolition of the broadcasting licensing regime.’

The role of the regulator, it was suggested, should not be limited to direct regulation, but should also:

- promote the development of the sector,
- engage with industry in developing solutions to problems,
- report on the state of the market and report on the performance of market participants,
protect users, including supervising complaints processes,
inform users through education programs, and
provide advice and propose initiatives to government.

However, parts of the proposed public consultation process remained vague, especially how the burgeoning number of consumer complaints might be best handled. This has long been a vexed policy issue and we might look back at a major review of Australian telecommunications policy back in 1988 where one of the key objectives was stated as to ‘ensure the highest possible levels of accountability and responsiveness to customer and community needs on the part of the telecommunications enterprises’ (Evans 1988).

This review committee made similarly generalised remarks that ‘the regulator should be required to develop efficient and effective procedures for dealing with complaints from the public… (and) should also have the ability to exercise discretion on how to most effectively deal with complaints.’ It also added:

The Review believes that many of the changes recommended in this report will streamline the regulator and increase the efficiency of the regulator’s operations. In particular, the abolition of the broadcasting licensing regime and the removal in duplication of classification functions should have an impact on the resource requirements of the regulator (Convergence Review 2012).

A LACK OF BLUEPRINTS FOR ACTION

Assertion three above was that:

Ad hoc decision making is the inevitable consequence of an essentially irrational political process, from which clear comprehensive statements fail to emerge as blueprints for action.

It may be useful to contrast the policy approach undertaken with this review about the complexities related to convergence with a previous public policy report recalled by some as seminal good practice. In May 1988, Senator Gareth Evans, then Minister for Transport and Communications, tabled Australian Telecommunications Services: A New Framework, which advocated a gradual shift towards de-regulation of the Australian telecommunications market. It was one of the few times in Australian telecommunications policy history that a government outlined its overall objectives for the industry before seeking public and industry input. Labor was flagging the winds of change, though by international standards at the time this was incremental in terms of policy change and was politically cautious.

However, looking back one of the most innovative aspect of the Evans policy document was the proposal by the government of the day to establish a new telecommunications regulatory authority, to be called Austel. There had long been complaints that in Australian telecommunications, Telecom had been principal player, umpire and arbitrator, and many advocates proposed the need for an independent regulator. So the government took a somewhat bold position at that time – to create an Austel as a single specialised telecommunications regulatory agency, independent of the carriers, and answerable to the government through the Minister of Communications. Notice the contrast with the Convergence Review in that the Gillard government did not commit its position on a regulatory position in advance, nor offer any possible options.

At the time of receiving the Final Convergence Review Report the Minister for Broadband, Communications and the Digital Economy, Senator Stephen Conroy, opted for a highly cautionary media strategy at the time of receiving the report. He embargoed it for one month ostensibly to consider its findings. A media release of 30 April, stated:
The Minister for Broadband, Communications and the Digital Economy, Senator Stephen Conroy, has received the final report of the Convergence Review officially marking the end of this landmark review of Australia's media and communications regulation... At a time of significant structural change brought about by digital switchover, the advent of new technologies and the rollout of the National Broadband Network, the work of the Convergence Review will be of particular importance in positioning Australia's communications and media sector to meet the digital future, Senator Conroy said. The Government will consider the findings of the Review ahead of releasing it publicly by late April. The Government will formally respond to the Review later in the year and will seek to begin delivering reforms during the course of 2012 (DBCDE 2012).

The Minister offered little public comment during the pre-release period but he was interviewed on Channel Nine’s, Today programme on 26 April, 2012, which was subsequently reported on Media Watch in a remarkably well researched critique of the media coverage of the Convergence Review:

Georgie Gardner: Let's move on. The Australian reports this morning that the Convergence Media Review will recommend a new regulatory body with powers to impose fines and sanctions on news outlets. Is that something you'd support?

Stephen Conroy: Well we received that recommendation in the report a few weeks ago, we're still considering it, we'll be releasing the full report at the end of the month, and then there'll be, I'm sure, a very robust community debate (Media Watch 2012).

The Minister may have come to regret making this appearance given that he did not rebut the incorrect assertion about the alleged and highly contentious powers of the new regulatory body ‘to impose fines and sanctions on news outlets.’ Given the sensitivity here it was unfortunate that his advisers did not warn him in advance so he could reject the assertion on the spot.

More misconceptions about the Convergence Review were perpetuated by the Shadow Minister for Communications, Malcolm Turnbull, who got more media coverage than his government counterpart. He offered, in part, the extraordinarily unfounded claim that:

On content, the Review’s fundamental premise appears to be a firm conviction that it (and by implication the Government) knows better than existing media outlets, the marketplace or consumers what material should be delivered to Australians (Turnbull 2012).

Following this initial release period the Minister left the explanation and advocacy for the report essentially to the Review Committee. Chair Glen Boreham did a prime time interview with Fran Kelly on RN’s Breakfast program on 2 May 2012, and he followed up with the detailed article in The Australian previously quoted here. It is not an uncommon strategy for a Minister of Communications to leave the brunt of the ‘selling’ of a major report in communications prepared by an independent panel to the report’s authors.

In the late 1980s advocacy of the Australian Broadcasting Tribunal’s five volume report into the introduction of cable and subscription television services in Australia was deputed to chairman David Jones in a five week media blitz. The then Minister of Communications, Michael Duffy, probably did so at the time because he was aware of reservations held by his Cabinet colleagues advocating the opposite to the Jones report, especially by Labor’s influential Leader in the Senate, John Button. Button had strongly urged the government not to introduce subscription television because ‘it belonged to the silk department’. However in 2012 one might have expected an intricate report about convergence to be not as problematic for Conroy as the ABT’s one was for Duffy.
At the time of writing it is too soon to judge the likely effectiveness of the outcome of the Convergence Review report. Minister Conroy could already be judged to be one of the most successful reforming Ministers of Communications in the history of the Commonwealth of Australia. He has implemented legislation and got in principle agreement by Telstra to its structural separation, implemented the vision of the national broadband network and garnered the future co-operation of Telstra with NBN Co. But there can be a major disjunction between the attributes of a Minister and public perception of his or her worth.

CONCLUSIONS

To a long time observer of the media coverage of major communications policy the old maxim of ‘more information, more channels but less understanding’ appears even further apposite in our new communications world. The media coverage of the Convergence Review showed that the notion of ‘agenda setting’ is alive and well. As documented above, major media coverage centred on highly selective commentary around the most vital issues to their self interest. Despite the attention given to the complexity of issues about promoting Australian content in the future, newspaper coverage centred on the protection of vested interest for the commercial television industry. There can be many debates about the merits of particular recommendations in the Convergence Review’s Final Report but is difficult to assert an overall lack of rigour in the investigation process. Clearly too the public consultative processes would have been more effective had the enquiry committee members been given more time to test their proposed recommendations.

Paradoxically while *The Australian* offered misleading coverage before the report was released, its block extracts from the report document published on May 2, the day after the release of the report, were the most helpful of all press coverage to readers who wanted a basic factual summary.

We are sometimes told that we have entered an era of ‘rich media’ with ‘24/7 coverage’. This view is promulgated by advertising guru, Harold Mitchell, who offered his reflections about the reporting of the government’s budget the week after the release of the Convergence Review Final Report:

Budget week is leak week but this week I am in London... The Budget is our economic news of the week and it’s important to I comment, but my dilemma is that I wrote the column before it. Not to worry, it had all been leaked or announced anyway. That, of course, is the modern media miracle: there is nowhere to hide. Nor should there be (Mitchell 2012).

If the media coverage of the Convergence Review is an exemplar of our ‘modern media miracle’ it may actually be best if everyone goes off to hide.

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