



Media rules prohibit dissent

Under the proposed media reform legislation, review of decisions will not be available.



John Abbot



and Jennifer Marohasy

Modern history suggests that democracy aligns, and progresses, with the expansion of civil liberties, including access by ordinary citizens to government information.

But the new media reform bills tabled in federal Parliament last week appear unashamedly about the introduction of an additional layer of bureaucracy unaccountable to the public or the judiciary.

To address the potential problem of a concentration of media control, the government appears determined to concentrate the power of oversight into the hands of a single political appointee – the public interest media advocate (PIMA) – entrusted to be wise enough to act in the public interest.

The PIMA will administer public interest tests in the merger or takeovers of media interests. But unlike other areas of government where there is a public interest test, such as the application of freedom of information laws, the decisions of the PIMA will not be subject to judicial review or appeal through the courts.

It may even be unique in this respect.

Under the constitution, the doctrine of the separation of powers divides the institutions of government into three branches: legislative, executive and judicial.

The legislature makes the laws, the executive put the laws into operation, and the judiciary interprets the laws.

This doctrine is often assumed to be one of the cornerstones of fair government. It

enables an entity separate from the executive to review a government decision such as that resulting from the implementation of a public interest test.

But this is possible only if the specific legislation embodying a public interest test has incorporated this safeguard for an appeal through the courts.

This is the case, for example under freedom of information legislation, FOI. In contrast, under the proposed media reform legislation, review of decisions will not be available.

The explanatory memorandum says these processes would be costly and time consuming to review, but we consider such an argument entirely unpersuasive.

The new public interest test will be considered in addition to the existing Australian Competition and Consumer Commission's substantial lessening of competition test, the Australian Communication and Media Authority's existing media diversity tests and where necessary, the Foreign Investment Review Board's national interest test.

The idea of applying a public interest test to determine the acceptability of any proposed further concentrations in media control or ownership may be appealing to some who may view this as an extra safeguard.

However, let's consider how well a public interest test may operate in practice with reference to FOI.

Under FOI, a public interest test is applied, in some circumstances, by

government agencies and departments to determine public access rights to documents.

This test requires the government department to state relevant factors, both for and against disclosure.

This should be, in theory, followed by a balancing of these factors, each objectively examined and given an appropriate weighting, leading to an impartial decision on whether the public interest is better served by disclosure or by non-disclosure.

When we applied in 2010 to the Department of Climate Change and Energy Efficiency (DCCEE) for disclosure of documents relating to expenditure on certain science programs it administered, our request was initially refused.

Following a protracted appeal process through the Information Commissioner that included scrutiny of the manner of application of the public interest test, the original decision was reversed and the documents eventually were fully disclosed.

Had this review failed, it would have been possible for us to appeal against the decision through the Administrative Appeals Tribunal, the Federal Court and the High Court.

No such appeal will be possible when the PIMA hands down his or her decisions.

John Abbot is a professorial research fellow at Central Queensland University and a solicitor. Jennifer Marohasy is a writer and researcher.

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