

relevant one. It did not need to consider the exact time when that intention manifested itself and Council's pole became a facility, suffice to say that it certainly was a facility at the time that H3GA served its Notice on the Council.

It having been determined that the light pole in Oatley Park was a facility for the purpose of the maintenance power, the Court then found that H3GA may remove and replace the original facility, in this case the pole, presumably because of the clear wording of clause 7 of Schedule 3 in this regard.

As to the effect of Council's removal of the pole before the maintenance activity was undertaken, the Court agreed with H3GA's interpretation that Council had simply undertaken the first of the two tasks that H3GA would otherwise undertake i.e. the removal of the pole. It was then possible for H3GA to erect the replacement pole (provided it was the same height, same apparent volume and in the original location as the old one) and still remain within the scope of the maintenance powers and not the installation powers.

Finally, while not a key part of the decision, the Court did put to rest an argument frequently raised by Councils when opposing use of their infrastructure for telecommunications facilities. Councils

often raise the argument that the carrier's interpretation of their maintenance and installations powers cannot be correct as the carriers, in the Council's view, assume ownership of what to that point had been a piece of Council's infrastructure. The Court found however that clause 47 of Schedule 3 of the Act provided that the pole remained in the ownership of Council notwithstanding that it is swapped out by the carrier. The Council continues to own it and is able to use that infrastructure, subject always of course to section 85ZJ of the *Crimes Act* (Cth) which places limitations on the Council's ability to interfere with certain infrastructure of telecommunications carrier placed on the top of the pole.

Ground 4

In relation to whether the mount and the antennas on the top of the new pole were low impact installations, the Court saw no reason to depart from the approach taken in the *Onkaparinga* case, noting that the literal approach to the Determination produced a result that is unlikely to be the intention of the drafters of the Determination. As a result, the Court confirmed that when installing antennas and mounts that have a vertical protrusion from the structure, the mount can extend from the top of the structure to the base of

the antenna up to 3 metres and then the antenna can rise up to 2.8 metres on top of that.

CONCLUSION

This decision of the Court is of significant importance to carriers. It may put to bed the long standing concern of Councils as to the extent of carrier's maintenance powers, re-enforcing the apparent intention of the legislature to encourage the co-location of telecommunications infrastructure on existing structures to prevent the proliferation of new towers and poles (the installation of such towers and poles still, of course, being permitted provided local government approvals are obtained).

At the time of writing, Hurstville City Council has commenced an appeal in the Court of Appeal of the Supreme Court of New South Wales which was heard in late May 2003. The appeal focussed on the "for use" arguments. A decision is pending.

The views expressed in this article are those of the author and not necessarily those of the firm or its client.

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Turning off the Television by Jock Given

A review by John Corker.

This book makes an important contribution to modern communications policy history and thinking. It does this in a well researched and entertaining way.

Primarily it is the story of how Australia has made its policy decisions to move from analogue to digital transmission of television. But it is more than that. Whilst at times the detail is painstaking in its completeness and accuracy this is what will make it a valuable reference book for many years to come.

It provides a crisp account of the rise and fall of the dotcom sector, the introduction and development of Television and Radio in Australia, the US and the UK, a fascinating story about the introduction of FM radio, an explanation of why broadcasting became something special.

a blow by blow account of the digital TV and datacasting policy and legislative decisions of the 1998 and 2000, the future of digital radio and plenty of useful views and insights for policy makers as to where the future might go and what the issues are.

It is action packed. Issues range broadly from appropriate market structures to localism in radio and TV and adequate support for Australian cultural practices and expression.

The title of the book refers to one of the key underlying assumptions made in arriving at the current digital broadcasting policy settings; that there will be a time where all analogue TVs will be turned off and the analogue spectrum returned to government for sale.

Given's conclusion on this issue is that:

"the introduction of digital broadcasting and the possible shut down of analogue broadcasting provide a fantasy moment for a range of analogue clear-fellers ... no-one is certain whether broadcasting's digital future is going to be a bonfire or a campfire, a revolution or an evolution ... but by the time anyone is certain, long before analogue broadcasting is turned off, there'll be another set of technologies itching to get turned on - faster or fatter or stranger than those that gripped fin de siecle [end of century] media policy".

What I like most about this book is its entertaining cartoons, quotes and quips. It is this that puts the serious tale of the evolution of digital terrestrial television in Australia in a context that allows the

reader to see the funny side and the sad side of what Given describes as "a nightmare of deals, small and large, which future observers - not a decade off, but tomorrow, next month, next year - would look at and wonder, simply, 'What were they thinking?'"

Here are some classic "Jockisms":

"Bronzed ANZACS whose heroism was supposed to have been made uniquely Australian through their drinking, smoking, gambling ways, might have found it hard to believe that by 2001, the country would outlaw both tobacco advertising (where Paul Hogan got his start) and interactive gambling services. Of the Aussie trifecta, only drinking seemed to have survived unscathed, although even that, before driving, made you a 'Bloody Idiot'."

"The people who run broadcasting may be powerful, but those who watch and listen to it will have at least as big a say in what happens to it."

and on the vast amounts paid for spectrum at auction:

"Governments in the 1990s became addicted to revenues from the sale of radiofrequency spectrum.... How much easier to sell off a bit of the ether than to raise taxes or cut spending."

"Generally governments should not be concerned about the fate of individual companies who choose to 'over-bid' for assets - there is usually some bottom-feeder around to acquire them at a more realistic price. But the fate of an entire industry with a central role in society and the economy may deserve more attention."

and as to the future of broadcasting:

"The choices to allocate spectrum and in some cases government money to fund the transition to digital TV and radio gave broadcasters a chance to stay special. But it was only a chance. The question was -and still is - what to do with it."

"The pockets of its audience are the main places TV broadcasters are likely to find new money to fund broadcasting and related electronic media services."

"What would be required to substantially reshape TV viewing or 'using' choices in Australia is a substantial new revenue stream, or significantly higher or affordable bandwidth, or a different and disruptive face in the free-to-air industry."

"It would take brave operator to try its luck with a single new free-to-air franchise in a TV market rapidly consolidating around the Foxtel partners."

and on the future of the cross-media rules:

"A first structural response might be for government to shape, and media proprietors to make a new election along the lines of the Princes of Print, Queens of the Screen, Rajahs of radio choice imposed by the cross-media laws. The choice would be to become 'Kings of Cable and Satellite' or 'Titans of Terrestrial'."

and some gems from others such as:

from Senator Bob Brown in relation to the Government's last minute decision to restrict what the national broadcasters could use their multi channels for: *"Kerry Packer could not have written this amendment better himself ...I do not know what the Labor Party was given for lunch and I do not know what the government got for lunch either. But it certainly made a manifest difference to the direction this committee is going in after lunch."*

Given brings unique knowledge and experience to this text. His years as Director of the Communications Law Centre and his knowledge and history about the policy of how Australian film and television programs are nurtured and produced (from his time at the Australian Film Commission) is brought to bear on his analysis of key issues.

For example his crisp analysis of the Big Brother phenomenon demonstrates a deep understanding of the role that content plays in the digital revolution, how commercial television works and its dependence on advertising revenue.

"Big Brother ... showed how some aspects of TV broadcasting were enduring while others were declining. New revenue streams are becoming important for TV program-makers

and broadcasters, and new skills are being required to produce TV programs and their associated content and activities. However this has not condemned the social and cultural experiences and business models of free-to-air TV to overnight irrelevance."

"Big Brother would provide more television than anyone had ever dreamt of-although most of it would never make it to 'television'."

This is a valuable reference book on many layers. For example it provides the only account of the evolution of digital radio policy in this country. From an announcement by the Minister now five years ago that digital radio was just around the corner, we are still waiting for something to happen. There are very few publicly available documents explaining why this is so but now we have an account which tells this history.

The book concludes that :

"As revolutions go, broadcasting's digital transformation may be a little slower and a little less socially and economically special than promised, but its today's revolution, the media tussle of this hour. We need to make everything we can of it, while carefully preparing the ground for the next one."

This book is essential reading for all communications and media policy students but also deserves to be read widely by those who make and implement communications and media policy decisions be they politicians, bureaucrats, lawyers, broadcasters, film and TV program makers, other content producers, spectrum users, carriers, internet service providers etc. In fact anyone who wants to follow the curious path of policy decisions that now underpin Australia's transition to digital broadcasting will find some answers here.

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