BOOKS NOTED

Broadcasting Law and Policy in Australia by Mark Armstrong (Butterworths, 1982) pp. i-xxvii, 1-291, Price $29.50 (hardback). ISBN 0 409 30910 9.

> 'Is there such a branch of the law, so distinct and so integrated, as to merit characterisation as "the law of the media"?'
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> 'Current Topics' (1981) 55, *Australian Law Journal* 718.

Certainly the appearance of Mark Armstrong's book *Broadcasting Law and Policy in Australia* testifies that a separate and integrated 'Law of the Media' is indeed emerging. True it is that the Law of the Media is a hotch-potch of various branches of common and statutory law. But this could be said of other emergent areas of law such as Natural Resources or Mining Law, Social Security Law or Drugs Law. This fact does not make it any less desirable to study and analyse these areas of law. Indeed it heightens the need for a collection and digest of the various strands of law for the benefit of students and practitioners who must otherwise consult a multitude of references. While the book is confined to broadcasting, no such study could avoid constant reference to the print media, the owners of which also predominate the ownership of broadcasting outlets. The work is thus a comprehensive and pioneering study of the law of the media in this country.

It includes chapters on the regulating of programming content, planning and technical issues, licensing of broadcasters, the Australian Broadcasting Commission and the Special Broadcasting Service, and the ownership and control provisions of the Broadcasting and Television Act 1942 (Cth). All are fertile ground for legal analysis and have been well cultivated here.

It is unfortunate that the chapter on programming standards could not include reference to the Tribunal's recent decision in the 4ZZZ-FM licence renewal application.[1] This decision is the Tribunal's first major attempt to define obscenity and offensiveness in a practical sense as a guide for broadcasters. It is certain to become a standard point of reference in this troublesome area.

Similar considerations apply to the Morling decision in the Administrative Appeals Tribunal on the News Corporation takeover of ATV-10 television in Melbourne.[2] There is likewise scant mention of the proposed domestic satellite, which will revolutionize national broadcasting,[3] and little mention of cable television or radiated subscriber television (RSTV).[4]

More than anything these omissions demonstrate the difficulty of publication in such a rapidly changing area as media law — a neat example of the obsolescence of one branch of the media. Should a market develop for it then this material would be apt for a loose-leaf service — a neat example of the adaptation of that branch of the media!

[1] *Re Creative Broadcasters Ltd, Application for Licence Renewal, Public Broadcasting Station 4ZZZ-FM in Brisbane* unreported decision of the Australian Broadcasting Tribunal, 12th January, 1982.

[2] *Re Control Investments Pty Ltd and Others v. Australian Broadcasting Tribunal (No. 3)* 4 A.L.D. 1.

[3] However, see Armstrong M., *Broadcasting Law and Policy in Australia* (1982) para. 323.

[4] However, see *ibid.* chapter 12 'Rebroadcasting Stations'.

In addition to analysis of the law the book contains generous discussion of policy. It reveals the paucity of vision of policy-makers and details their frequent and astonishing capitulations to powerful media interests. It is apparent that the ownership and control provisions are directed not to dispersing media ownership but to protecting the entrenched position of the oligopolists. In this context Armstrong introduces an interesting argument based on s. 92 of the Constitution that parts at least of the licensing provisions may be challenged so as to open up a more diverse and competitive media market.[5]

Indeed there are many areas of media law open to such speculation. Certain of the powers of the Tribunal may be invalid under the *Boilermakers* doctrine[6] and its power to order when religious programmes shall be broadcast may offend against s. 116 of the Constitution.[7] The Broadcasting and Television Act 1942 (Cth) vests powers in the Tribunal, the Minister and the Governor-General to direct and prohibit broadcasting in ways that can only be described as totalitarian.[8] These are powers that have been used in the past but may not accord with Australia's newly recognized obligations to the international community to respect freedom of speech.[9]

These and other potential controversies merely await the lawyer's readiness. This book will be invaluable in that preparation. It is only unfortunate that the book has been so poorly produced and edited. Cheap paper, long paragraphs, citation and asides contained in the text instead of footnotes and an inappropriate type-face all conspire to make an otherwise lucid text almost unreadable.

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Some Aspects of Aid to the Civil Power in Australia by B. D. Beddie and S. Moss, Occasional Monograph No. 2 Department of Government Faculty of Studies (University of New South Wales, Canberra, 1982) ISBN 0 9593254 0 9.

This short monograph provides a detailed history of the various occasions, since federation, when State governments have called upon the Commonwealth to provide military aid in the maintenance of civil order. Whilst this is the primary focus of the monograph, it also includes an historical account of those instances when the Commonwealth has acted on its own initiative in preventing actual or potential civil unrest. These infrequent episodes in Australia's history almost exclusively relate to events of serious industrial conflict. The monograph explores the legal, political and industrial circumstances surrounding these incidents, and the intricate interrelationships between these various factors. Its coverage is thorough and illuminating, and certainly deserves close attention by anyone interested in doing research in this field. It is clearly a valuable contribution to a much neglected area of study.

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[5] *Ibid.* paras 119-20; see also O'Brien B., 'Inchoate Rights to Interstate Communications under S. 92' (1981) 13 *M.U.L.R.* 198 as to how S. 92 may be used as an instrument of liberalization and freedom of communication.

[6] Armstrong, *op. cit.* para 835; see *Attorney-General of the Commonwealth v. R.* (1957) 95 C.L.R. 529.

[7] Armstrong, para. 530; but *cf. Attorney-General (Victoria) ex rel. Black v. The Commonwealth* (1981) 33 A.L.R. 321 (*The 'Dogs' Case*).

[8] Armstrong, *op. cit.* chapter 4 'Programmes: General Rules' especially paras. 417, 418 and 419; and chapter 5 'Programmes: Special Rules' especially paras. 522-6.

[9] *Koowarta v. Bjelke-Petersen and Others* (1982) 39 A.L.R. 417; Human Rights Commission Act 1981 (Cth), implementing the International Covenant on Civil and Political Rights 1966.

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