



## Rear Window

Edited by Joe Aston

rearwindow@afr.com.au

Meeting with Julia...

Feeling privileged?...

Depends, is she still contagious?...



## Cameron, Gail make it on list

And **Paul Keating** thought the Senate was unrepresentative swill. The meeting between **Julia Gillard**, state premiers and senior business leaders yesterday was far more interesting for its contentious invite list than for any material achievements or revelations.

First the banks. **Cameron Clyne** may have broken up with his competitors but certainly not with the ALP – he's close to **Wayne Swan** and employed **George Wright** until he left NAB last year to become Labor's national secretary. Tick. Westpac's **Gail "Cleopatra" Kelly** – who gets along well with Finance Minister **Penny Wong** – also got a guernsey. But Which bank was *persona non grata*? Just the nation's biggest, CBA.

Long-time Labor man and PacBrands chairman **James McKenzie** scored an invite but that was the extent of the (non-supermarket) retail contingent. Where was **DJs**? Or **Myer**? Even **Westfield**?

And Google's Aussie chief **Nick Leeder** has

come a long way since leaving his mid-level News Ltd post a few months ago – he pipped all of the mainstream media bosses for a seat at the table. Unless you count **David Thodey**. He's certainly turned things around for Telstra in Canberra – could you imagine **Sol Trujillo** being on the list?

One only assumes the odd-bod selection was a **Bruce Wolpe** special. He's now the PM's adviser on "business liaison" but funnily enough Wolpe never had much time for business liaison during his time in business – as a Fairfax executive his principal activities were as **Barack Obama's** spokesman on Sky News Australia. Rear Window wonders how many votes he rustled up.

The newest addition to COAG, Queensland Premier **Campbell Newman**, raised a few eyebrows when he rolled into the meeting an hour late. He put his tardiness down to "shaping his new Cabinet".

Is that some kind of euphemism?

## BOF dines upmarket

A Last Supper of sorts before the COAG love-in today? NSW Premier **Barry O'Farrell** became the latest VIP to drop in for dinner at Sydney's newest restaurant sensation, **Matt Moran's** Chiswick in Woollahra, on Wednesday night.

BOF's fellow COAGer and Origin Energy chief executive, **Grant King**, was also in the house, and looked about to interrupt BOF's meal before he thought the better of it.

Seven Network's new recruit **Kerri-Anne Kennerley** was there too, although that's no surprise given her house adjoins the place – thankfully she left via the front door rather than over the back fence.

On Rear Window's few visits so far, we've seen the likes of News Ltd chief **Kim Williams** with his wife **Catherine Dovey**, Seven Network First Lady **Skye Leckie** and the planning-to-be-penniless Calburn chief, **Simon Mordant**.

## DJs sinks below Myer

Herewith, another milestone in the inexorable decline of the once-great department retailer David Jones.

After the bell on Wednesday, for the first time since its formerly downmarket arch-nemesis Myer returned to the ASX after its dance with private equity pirates TPG, the DJ's share price sank below its principal competitor's.

Yesterday only deepened the pain for DJs – at the close of trading Myer was priced at \$2.32 with a market cap of \$1.35 billion compared to David Jones trading at \$2.26 and a market cap of \$1.19 billion. DJ's stock has slid 4 per cent this year while Myer's is up 20 per cent.

**Paul Zahra's** new slogan "Was. Is. Always" is starting to look a little silly. Maybe he should bold the first word and lose the second two?

## Coming up smiling

Ten Network's new chief executive, **James Warburton**, reported his first results yesterday.

And while the news was bad – a 40 per cent drop against last year's first half – he certainly wasn't pointing any fingers at his predecessor, chairman and largest shareholder **Lachlan Murdoch** (who was sitting incognito at the back of the room), lavishing him with praise for reducing the company's cost base and "refocusing the news strategy". No mention of the **George Negus** experiment, obviously.

The announcement was held in a studio where the *Breakfast* and *Ready, Steady, Cook*

programs are filmed. With Warburton's matinee idol smile, and the average CEO tenure being 3.8 years, could his career yet segue in front of the camera? We'll call it a reverse **Eddie McGuire**.

## Getting rich at Austar

With **James Warburton** calling Ten's turnaround a two-year project, he might be waiting some time for a big fat bonus. Luckily for him, his better half is doing her bit for the family finances.

**Nikki Warburton**, Austar's group director of product, sales and marketing, will soon land a healthy payout for her shares now the merger with Foxtel has finally been approved by the Australian Competition and Consumer Corporation's chief **Rod Sims**.

She's got nearly 4 million shares worth a cool \$6 million at the \$1.52 takeover price. Corporate development chief **Deanne Weir** holds 7.3 million, giving her an even bigger stake than CEO **John Porter**, whose 6.36 million shares – held indirectly – are worth nearly \$10 million.

All up the highest paid execs and directors are splitting \$45 million on nearly 30 million shares for the biggest successful takeover since Foster's was bought out by SABMiller last year.

And that's before you even factor in severance payments worth up to two years' remuneration written into their contracts.

## Latham blasts the Oz

Labor's shy and retiring former federal leader (and *Fin Review* columnist), **Mark Latham**, has unloaded on *The Australian* newspaper in a column in *Spectator Australia*, released today.

Rear Window doesn't mind a bit of argy-bargy but even we flinched a little at the decibels.

"*The Australian* ... spends an inordinate amount of time and space highlighting the mistakes of its media rivals," he writes. "This once great national institution has become as embarrassing as a Labor caucus convention in Queensland ... With some of the stories it publishes, one needs to look at them a dozen times to clear away the sense of absurdity."

Latham accuses the newspaper of having a "serious cultural problem: inattention to detail and sloppy research". He reserves special attention for the paper's opinion writers **George Megalogenis** and **Graham Richardson**, whom he accuses of using incorrect statistics from Wikipedia as the basis for their political analysis and calls the *Strewnth* column by **James Jeffrey** "the work of a simpleton". Here's hoping he doesn't read Rear Window.

# The questions

Allegations of pay TV piracy have been met with sound and fury, but fail to address the issues raised, writes **Neil Chenoweth**.

Two and a half weeks ago *The Australian Financial Review* and the BBC *Panorama* program reported on a secretive arm of News Corporation.

Operational Security, a group composed of former police and intelligence officers and hackers employed by technology company NDS Limited, was reported to have promoted piracy of News Corp's pay TV rivals in undercover operations across the world, including Australia.

*Panorama* had filmed former NDS hackers confirming that software coding keys for pay TV rivals had been provided to piracy websites, including The House of Ill Compute, covertly run by NDS.

Days later, News Corp chairman Rupert Murdoch used his Twitter account to call the reports "lies and libels" and said News was preparing to "hit back hard".

It was the signal for a torrent of outraged responses by News Limited's national daily newspaper, *The Australian*.

Central to the responses was the allegation that the *AFR*'s reports were motivated by commercial rivalry. They said there was not a shred of evidence, while at the same time NDS's lawyers have been demanding that the 14,000 NDS emails which underwrite the reports (some of which have been posted online at afr.com) be hidden from view.

Two weeks later, the core issues raised by the *AFR* have not been addressed; the questions go unanswered. The *AFR* has been putting them to NDS, and later News Corp, since last August. They have declined to answer. One of NDS's few responses was a two-line email which began, "We are surprised by the tone of your questions."

The central thesis of the *AFR* articles was that Operational Security moved in a secret world where its operatives were never called to account, never needed to explain. And today there is still no accounting.

Instead NDS executive chairman Abe Peled has made public comments, claiming that the allegations have been "tested to destruction" in US courts, where NDS was "vindicated" in a 2008 trial in which its accuser, satellite broadcaster EchoStar, was forced to pay \$19 million "damages".

But NDS was not vindicated and it did not receive damages. A California jury found against NDS on three of six charges, and the judge ordered a permanent injunction against NDS in a fourth.

NDS succeeded in persuading the jury not to award damages. The trial judge awarded \$5 million legal costs against NDS, but the Appeals Court reversed this and instead ordered EchoStar pay NDS \$18.9 million in legal costs.

The fact remains that five of the largest satellite broadcasters – EchoStar and DirecTV in the US, Canal Plus and Sogecable in Europe, and MEASAT in Malaysia – were so convinced that NDS

had promoted piracy that they separately lodged lawsuits against the News subsidiary. On each occasion they claimed NDS's actions cost them upwards of \$1 billion.

Two of the lawsuits died of attrition, the other two ended when News bought the company, or parts of it.

Was all of this just the work of jealous competitors, as NDS has always claimed?

Pay TV piracy has become deeply embedded in Australia. The real question that News has not addressed is: what was Operational Security's role in kickstarting that pirate culture?

Why did OpSec's Avigail Gutman protect a Sydney hacker from 1999 through to 2000, providing him with piracy materials in her anxiety to ensure he developed a hack for the security smartcards of NDS's rival, Irdeto, used by Austar and Foxtel?

That might not have been illegal at the time, but why did she then ask her colleague Ray Adams to obtain confidential telephone records of the same hacker, which, as she told Adams, was against the law?

And why did NDS use its own pirate website, The House of Ill Compute, to

**There is [an] element of convenience in pirates focusing on your competitors rather than yourself.**

Michael Speck, piracy expert

publish keys to unlock security smartcards for OnDigital, Austar and other rival broadcasters?

And then there is the \$40,000 paid out through the budget item OpSec had for "payments to police informants". Who got the money, and what was it for?

These are simple questions.

News Ltd has had two responses.

The first approach was to ask those who were not there.

News Ltd chief Kim Williams said: "I saw no evidence" in his years at Foxtel. But he arrived two years after the events in question.

Geoff Cousins "never heard anything remotely like the allegations", when he ran Optus Vision. But, as he said, he had left two years before the events.

Former Telstra chief Ziggy Switkowski was wheeled in ("It never occurred as far as I was concerned"). Days before he had told the *AFR* that, given the relationship with News at the time, "frankly, not too much would have surprised us".

News Ltd's second tack has been to answer the wrong question. It first suggested the *AFR* alleged that Foxtel was privy to OpSec's moves, and second that this was a grand plan

# Trouble on the tables

Michaela Whitbourn

On a wet night in October last year, The Star was born. Echo Entertainment Group, the owner of the casino formerly known as Star City in Sydney's Pyrmont, had spent nearly \$1 billion trying to rid the sprawling gambling den of its reputation as an "RSL club on steroids".

A star-studded launch party drew a crowd of 800 VIPs – including Stevie Wonder, Elle Macpherson, Leonardo DiCaprio, and Russell Crowe – to the harbour city's only casino.

The revamp came not a moment too soon.

The 16-year-old Star City was down-at-heel, even grubby. Daily visitors had dropped by a third over the previous decade to 24,000 – about half as many as were drawn to James Packer's Crown Casino in Melbourne.

The Star, renamed about six weeks earlier, now boasted a glassy new facade and a brassy

new image. It was "fast, fresh and fun", in the words of the casino's managing director Sid Vaikunta, who was recruited in 2009 by his friend Larry Mullin, the newly installed chief executive of Echo Entertainment and a former president of Borgata Casino in Atlantic City. But trouble was already brewing.

In 2010, Vaikunta was the subject of at least two internal investigations into claims of illicit drug use, as well as allegations he had been so drunk on one occasion he had to be carried from the casino. None of the claims was substantiated, but rumours of drug use persisted.

Then, in the weeks before its lavish relaunch, negative stories about The Star started appearing in Sydney newspapers, coinciding with a five-yearly licence review of the casino by the Independent Liquor and Gaming Authority.

Casino management suspected the source of