Office of
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6 December 1999

Professor Richard Snape
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[Dear Professor Snape]

ABA Response to the Productivity Commission's Draft Report – *Broadcasting*

The Australian Broadcasting Authority (ABA) congratulates the Productivity Commission on the completion of the Draft Report, *Broadcasting*. Among other things, it spans the history of broadcasting and looks to a future of the media industry that is based not only on competition principles, but also focusing on converged modes of delivery.

The ABA welcomes the draft recommendations that envisage a role for the ABA in that future environment. As *amicus curiae* in this Inquiry, the ABA continues to place its knowledge and expertise at the Productivity Commission's disposal, particularly in any assistance we might be able to provide in scoping issues relating to those draft recommendations.

I am pleased to provide the ABA's response to the Productivity Commission's Draft Report and I look forward to appearing at the public hearing in Sydney at 9am on Tuesday 7 December 1999. If, following that appearance, there are matters that the Productivity Commission wishes to pursue in finalising its report, the ABA would be happy to assist.

Yours sincerely

[David Flint]

Response by the Australian Broadcasting Authority to the Productivity Commission's Draft Report on its Inquiry into the *Broadcasting Services Act 1992*

In response to the Productivity Commission's draft report on its inquiry into the *Broadcasting Services Act 1992*, the Australian Broadcasting Authority wishes to comment on the following matters. More specific comments on particular chapters have been provided where relevant, but other changes to wording or figures have been put in Attachment 1.

It may be too early to contribute significantly to discussion of some of the issues raised in the draft report at the hearings in early December. However, the ABA looks forward to participating in due course in shaping future regulatory policy. Defining the public interest in terms of the social, cultural and economic outcomes desired by and for the community should be the starting point for the re-examination of policy settings for the converged environment. Consideration of how these objectives might be achieved should then proceed, based on a realistic assessment of the relative influence exercised by established and new service providers and on an understanding of the manner in which Australians are adapting to new technological conditions.

On several of the matters where comment is sought, the ABA would, in its role of *amicus curiae*, like to put its expertise at the disposal of the Productivity Commission to develop ideas and clarify issues that have been raised in the draft report. For example, there are many sections where the word `bandwidth' is used when it would be more accurate for the term `data rate' to be used. In addition, in relation to the issue of `spectrum clearing', the ABA could, in conjunction with DOCITA and the ACA, assist the Productivity Commission to formulate practical options for consideration. The ABA is currently undertaking further analysis of spectrum clearing opportunities and will provide further advice on this issue as soon as practicable.

Chapter 4 Broadcasting licences and spectrum allocation

As a general comment about this chapter, but especially draft recommendation 4.1, the report will come too late to change analog planning outcomes substantially. By the time legislation could be enacted to amend Part 3 of the BSA, it is likely the ABA will have completed analog planning for almost all spectrum in Australia, including the major metropolitan radio markets. While licence area plans for television spectrum are not complete in large areas of Australia, this spectrum too will largely have been planned pursuant to the ABA's digital conversion schemes. A related comment is that there is need with some of the recommendations to consider transitional arrangements as well as issues of detail before an attractive proposal could be crafted.

Page 66. ***Improving the efficient use of broadcasting spectrum***
Second paragraph

> This discourages more efficient use of the spectrum. It is likely that some broadcasters … have been allocated more spectrum than they would have taken …

For radio (and analog TV), the spectrum made available is planned to allow for an adequate level of service to the whole licence area in order 'to promote the availability to audiences throughout Australia of a diverse range of radio and television services' (s.3(a) of the BSA). Some broadcasters may be reluctant to serve less populated areas of their licence area if the marginal costs for doing so are considered too high. The suggestion of creating incentives for more efficient use of spectrum may have merit, but there is a need to confront public and parliamentary expectations created by decades of regulation of free-to-air broadcasting. Would broadcasters who choose to make use of less spectrum to provide a service (Box 4.3 relates) be responsible for ensuring that affected viewers obtained free access to cable systems?

Page 66. ***Driving digital conversion***
First paragraph

> … given that digital requires much less spectrum to provide an equivalent service.

This statement (or similar) appears many times in the draft report and correct insofar as the DVB standard enables single frequency networks, meaning a service may require a single 7 MHz channel rather than separate additional channels for each translator. However, the DVB standard still uses 7 MHz (or alternatively 6 MHz or 8 MHz in other countries) to deliver TV pictures and audio to the viewer. It cannot do it say, in 2 MHz as mentioned in several places in the draft report. It would be more correct to say that the needed 7 MHz of spectrum can support a number of TV programs (say up to four). However, 7 MHz of bandwidth would be needed even if there was only one digital program (instead of four) being transmitted.

Page 67. Box 4.3. Planning free-to-air television services
Fourth paragraph

> Improved technology means that there are now other solutions to these problems.

The claim made here is that in analog TV planning, one can now utilise the vacant (buffer) channels because analog TV receivers that are 10 years old or less would be selective enough to be able to manage adjacent channel transmission. This is not the case. The ABA keeps abreast of advancements in broadcasting technology and equipment through participation in international fora such as the International Telecommunications Union (ITU), and through contact with other administrations, foreign broadcasters and peak bodies. There have been no developments that would permit interference-free use of adjacent channels by analog television services.

Indeed, during a conversation recently with the RAI, the Italian public broadcaster, an officer of the ABA learnt that due to a severe shortage of TV channels in Italy, they have allowed adjacent channel transmission of analog TV services - in some cases, as a last resort. This has unfortunately resulted in with severe interference to reception.

In any case, the issue of whether analog services could at some future data utilise taboo channels is increasingly irrelevant insofar as digital DVB services are designed to exploit these channels and will in fact fully utilise them in each area except in VHF bands I and II, except where adjacent channel interference precludes their use.

Page 68. ***Improving regulatory efficiency***
Second paragraph

> (An alternative approach would be to let service providers decide what quality of service they wish to provide.)

The previous remarks about public and parliamentary expectations apply here. The market alone is likely to fail to ensure that services are distributed equitably. The separation of service and spectrum licensing, combined with freer competition, may result in a greater number of services in more populated markets at the expense of adequate services for neighbouring areas with smaller populations. One such phenomenon, `cream skimming', may result in existing wide coverage services facing intense competition in one or more of their key markets, with a resulting degradation of service quality in the hinterlands. Such outcomes may result in public pressure to re-regulate or subsidise, especially in light of existing Government initiatives to extend coverage such as the `black spots TV fund'.

Page 69. First paragraph

> If the spectrum licence were separated from the licence to broadcast, licensees could lose their licence to broadcast, but retain an asset in the licence to use spectrum.

This approach could raise enforcement issues. If a licensee were to lose its licence to broadcast, but retained the right to use the spectrum, there would be a loss of service to audiences without the option of making the spectrum available to another service provider.

Page 70. Draft recommendation 4.1

> *Broadcasting licences should be separated into licences granting access to spectrum, and content-related broadcast licences granting permission to broadcast.*

From an analog planning perspective, the recommended change will be too late for it to have an impact. Spectrum has been planned and the linkage with the allocation of the broadcasting licence to the spectrum licence have set the scene for future developments in this area.

Page 73. *Licence periods and transferability*

Although it is within the ABA's power to make spectrum available for periods longer than the existing 5 years (say 10 years), the duration is currently tied to licensing periods. Section 45 of the Broadcasting Services Act and section 103 of the Radiocommunications Act both specify the duration of licences covered by the respective Acts as not exceeding 5 years.

Section 34 of the BSA provides that the ABA may decide that part of the radiofrequency spectrum concerned is available for a period specified by the ABA for open narrowcasting services. It is designed to permit utilisation of the spectrum even where that spectrum is only temporarily available. Nothwithstanding the inconsistency between narrowcasting and other tenure arrangements, there may be cases where it is desirable to limit tenure and allow for a review of the utilisation of the spectrum. By making the spectrum available say, for 5 years, the capacity to revisit a licence area plan with some level of flexibility is an option.

Page 74. *Apparatus licences*

The option for broadcasters to make commercial decisions about the number of apparatus licences they hold may well result in a loss of services in less populated areas if the marginal costs for doing so are considered too high. The cost for greater efficiency in use of the spectrum may be a loss of equity and inadequate service levels for regional and remote areas.

Page 75. Draft recommendation 4.3

> *Licence fees for existing commercial radio and television broadcasters should be converted to fees that reflect the value of spectrum held.*

Page 76.

> *The Commission invites further comment on the most appropriate method of converting licence fees for existing commercial radio and television broadcasters to fees that reflect the value of the spectrum held.*

Policies relating to licence fees would be for the Department and the Government to decide. However, the ABA notes that there might be merit in exploring other options for obtaining market value for use of spectrum. In some countries, there have been discussions about the feasibility of taxing use of spectrum by levying a `bit rate', although none have adopted it. A bit rate would be calculated on the data capacity of a channel that is used by a licensee. As discussed later in responding to matters raised in Chapter 6, data capacity is measurable in Mbps.

The ABA notes that such an option would tax spectrum used rather than spectrum allocated or held by a licensee. However, such a system would not sit comfortably with a self-regulatory model where licensees declare their gross earnings and calculate their licence fees according to set formulas. It would require an assessment of spectrum used by each licensee and the application of a bit rate/s to the amount of spectrum used to determine the amount of licence fee payable. In the final analysis, there could well be a discrepancy between the total amount collected and the cost to the ABA of administering licences. However, the niceties could be worked out in any exploration of how such a system could operate along with other options.

Page 79. Draft recommendation 4.4

> *The planning criteria for the broadcasting services bands, currently found in s.23 of the BSA, should, for commercial broadcasting, be restricted to those relevant to the technical planning of the spectrum.*

The planning timetable was initially drawn up in the expectation that the intentions of the drafters were reflected in the legislation. The ABA received legal advice after the timetable was prepared which resulted in an expansion of the ABA's role and a considerable increase in the complexity of the planning process, rendering the original timetable far too optimistic.

Initially, delays resulted from the expansion of the ABA's role to include determining the category of services and the ABA's increasing involvement in considering matters related to the viability or sustainability of existing and aspirant broadcasters. Neither of these developments seems to have been intended when the Act was drafted, but both have added considerably to the size and duration of the planning task.

The ABA has raised the issue of a review of the operation of Part 3 of the Act, in particular, the actual effect of s.23 and its intended policy, in its s.158(n) reports to the Minister in both 1995 and 1996.

The ABA introduced a more streamlined approach to licence area planning throughout 1995 – 99 which has resulted to date in the finalisation of all licence area plans in the Planning Priority Groups 1, 2 and 3. Licence area plans for the metropolitan radio markets (Group 4) are currently being developed and due to be completed before the end of 2000. Consultations for the final Priority Group (Group 5) licence area plans are due to commence in the first half of 2000 for completion by mid 2001.

It is important to note that by the time a change to the legislation is enacted to facilitate the amendments to s.23 of the Act (as proposed in the draft report), the planning process will be substantially completed and the allocation process well under way.

Page 81. Draft recommendation 4.6

> *Simplified processes for reserving sufficient spectrum for national, community and Indigenous broadcasters should be adopted. All unreserved broadcasting spectrum should be made available for commercial broadcasting uses.*

Although this recommendation would, on the face of it, provide for a more simplified planning process, there is an issue of timing and the requirement to change the legislation. It would be difficult to introduce in relation to analog planning which is close to completion.

Page 85. Draft recommendation 4.7

> *Responsibility for planning and licensing the broadcasting services bands of the spectrum should be transferred to the ACA and managed under the provisions of the Radiocommunications Act.*

The change to the administrative arrangements that is proposed would, at this stage of the analog and digital planning processes, potentially lead to further delays in the finalisation of existing licence area planning and digital channel planning, particularly when coupled with proposed changes to the legislation and licensing arrangements.

Earlier comments regarding timing against draft recommendation 4.4 refer.

Page 86. Draft recommendation 4.8

> *The ABA should retain responsibility for issuing licences to broadcasters.*

The ABA agrees with this recommendation, but believes that any proposal to sever the link between broadcasting and apparatus licences should be further developed. The cumulative effect of the draft recommendations could see:

- Ministerial responsibility for decisions on numbers of national and community services in areas;
- ACA responsibility for spectrum planning; and
- ABA responsibility for licensing.

In practice, the three kinds of decisions are related and may benefit from a degree of `iteration'. For example, information on reservations is needed to permit spectrum planning, but final decisions on reservations may be affected by local spectrum capacity constraints/opportunities. Similarly, licensing procedures may throw up important information about demand that was not available to earlier decision-makers. If responsibility for these processes (currently concentrated in the ABA) were to be broken up, it is desirable that at least some of these linkages be preserved.

Chapter 5 Australia's diverse broadcasting services

Page 95. Issues in community broadcasting
First paragraph

> The Commission's recommendations in relation to the planning and allocation of licences (see Chapter 4) would speed up the licence area planning process.

This is unlikely to be the case as the planning process and associated licensing would be close to completion before the necessary legislative amendments could be enacted. Moreover, in the event the necessary amendments are passed, the development and implementation of new administrative processes would probably result in some delay.

Page 95. *Selecting community broadcasters*
Quote

> … we have them coming on and going off … for three months at a time …

This quote of what the ABA said during the first hearings may refer to a specific example, but the amount of time each aspirant broadcaster has on air is a factor of the number of aspirants by the number of channels. In many cases, aspirants broadcast continuously for successive 12-month temporary licences. In metropolitan areas, however, there are generally more aspirants than there are available channels and aspirants may therefore be limited to 6-8 weeks in a 12-month period.

Page 96. Third paragraph

The ABA's current allocation process for permanent licences involves a period for public submissions in cases where there are more applicants than there are available licences. In several difficult cases e.g. in cases where the relative merits of applicants appear to be closely matched, the ABA has visited the community and met with the applicants and representatives of local government to assist in its decision making. In some cases, the ABA has also held public hearings to ensure a thorough and transparent process.

Page 99. Draft recommendation 5.1

> *The digital transmission of the community television signal should be allocated by tender, financed by government subsidy, to a television multiplex licensee in each relevant licence area.*

In its Sixth Channel Inquiry, the ABA proposed a model where community television broadcasters would in effect become content providers. This sits well with the proposal on page XLIII in the Overview, where it would then become a community service obligation on the channel of a multiplexed spectrum licensee. In its submission to the ACA's datacasting review, the ABA also indicated that some sort of rebate could be provided to datacasting licensees that carry a community television service on their channel.

Page 104. Draft recommendation 5.2

> *A new licence category for Indigenous broadcasters should be created, with appropriate conditions relating to advertising.*

The creation of such a category would raise several issues:

- its impact on the overall mix of services within a market, especially where there is limited available spectrum;
- whether the 'demand' for such a service would be required to be shown in the LAP process; and
- whether Indigenous groups would be required to compete for spectrum as they do now in community licence allocation processes.

Chapter 6 The road to digital television

As a general comment, there seems to be some misunderstanding in use of the word `bandwidth' in this chapter and elsewhere in the draft report. It should be used to refer to the amount of spectrum that could be measured in units of MHz. The term that should be used to refer to a parameter that could be measured in Mbps is `data rate'. There is an indirect relation to the data rate of a service and the bandwidth required to transmit that service. Generally speaking, the word `bandwidth' is used loosely in the press to refer to the transmission data rate, particularly in relation to the Internet.

Page 112. Box 6.1. The alphabet soup of digital broadcasting

Dolby AC-3
It should be noted that Dolby AC-3 is one of two multi-channel audio systems specified by DVB for digital television systems using DVB standards. The other is MPEG 1 Layer 2 audio. It may be unwarranted to claim that the inclusion of Dolby AC-3 will increase the cost of Australian equipment. Dolby AC-3, along with MPEG 1 Layer 2 audio, is already a standard feature of Digital Video Disc equipment and it has been adopted by other users of DVB standards.

SDTV
The claim in the last sentence that bandwidth constraints preclude high definition multi-channelling is only partly correct. A broadcaster may simultaneously transmit one HDTV program at the lowest level of HDTV and potentially transmit up to two independent SDTV programs or datacasting material. Decisions on the mix of programming that can be achieved will depend on a broadcaster's (or datacaster's) choice of the level of HDTV and the data rate they assign to each HDTV and SDTV program. For instance, in Germany, Deutsche Telekom transmits 6 SDTV programs in their 8 MHz channel while in the UK, the BBC chooses to transmit only 4 programs within an 8 MHz channel. The choice depends on the desired picture quality, and hence the required data rate per program.

Earlier in the draft report on page xxx in the Overview section, the statement in the box that HDTV forecloses other options is therefore misleading. There are a number of HDTV formats, with some formats using only about half of a digital television channel, leaving capacity for SDTV programs in a multi-program environment and/or datacasting. Only at the highest level of HDTV would other options be excluded for lack of capacity.

Page 113. Third paragraph
Last sentence

> Only 2 MHz is necessary to achieve a similar or better result with standard definition digital transmission over a single frequency network, and up to 7 MHz in the case of a high definition digital signal.

There is no digital television transmission standard that allows the transmission of a signal in 2 MHz of spectrum. 7 MHz is required to deliver TV pictures and audio to the viewer. A 7 MHz channel would have a total data capacity of around 19.3 Mbps. This capacity could be used for a single HDTV program at the highest format level. Alternatively, it can be divided (multiplexed) into one lower level HDTV (about 12 Mbps) and some SDTV and/or datacasting, for multi-program (up to four SDTV programs at 5 Mbps per program) or for datacasting. So the issue is how the data capacity within a channel is to be divided up for HDTV, multiple SDTV, datacasting programs, or a mixture of these formats.

The claim that 'Only 2 MHz is necessary for the transmission of a standard television signal' is made again later in the draft report e.g. in the first paragraph on page 120 and needs to be corrected.

Page 113. Last paragraph

So far, Australia is the only country to mandate transmission of HDTV using the DVB-T standard. However, Singapore has made provision for HDTV in their DVB decision, and there are strong indications that China will also make provision for HDTV in their digital television system. In the case of China, the Administration of Broadcasting and Science, and the Administration of Science and Technology, are reported to be strongly in favour of DVB-T (together with DVB-C and DVB-S). The development of Chinese DVB-T receivers is based on including HDTV decoding capability to provide full flexibility for broadcasters to adopt HDTV as well as SDTV when they are ready, and not be stuck with legacy SDTV receivers which cannot decode HDTV. Although other countries have not mandated HDTV, they are clearly planning to use DVB for HDTV.

Page 114. Box 6.2. Equipment for receiving digital transmissions
Second dot-point

> Suitable high definition displays will be 90 centimetres or larger.

Not all receiver manufacturers want to start at 90 cm HDTV displays. This also seems to be the inference in other parts of the draft report e.g. in the second paragraph at page 123. Some receiver manufacturers propose to start at 70 cm wide-screen displays, and this should be reflected in the draft report.

Additionally, the size of the display needed is dependent on the viewing distance. With the convergence of a range of technologies, it should be borne in mind that digital television will also be receivable on personal computers (PCs) and other personal products. DVB-T receivers will be available as cards for PC expansion slots. Most PC monitors are capable of displaying sufficient resolution for high definition pictures to be viewed at typical PC viewing distances.

Page 115. *Multi-channelling*

There is an assumption that HDTV will require the total data capacity of a television channel. The lowest level of HDTV may require less than 12 Mbps of data (out of a total channel data capacity of 19.3 Mbps). Therefore, should a broadcaster choose to transmit one HDTV program using only 12 Mbps, that broadcaster may transmit at least one additional SDTV program (and potentially up to two SDTV programs) or data within the data capacity of a 7 MHz channel. If a broadcaster chooses to transmit the highest level of HDTV, this may then preclude the option to broadcast additional material.

Page 116. 6.2. Australia's digital television plan

The digital planning process is a legislative requirement that is so far on track and providing a framework for the introduction of digital services.

The RIS for the Digital Conversion Act was prepared when knowledge of costs and other factors was still very basic and there were no reliable estimates. However, the Office of Regulation Review indicated at the time that it provided adequate information.

Additional cost/benefit analysis has been attempted in recently completed RISs for the conversion schemes and the Digital Channel Plans (DCPs). The DCP process has considerably increased regulatory and spectrum certainty for broadcasters. The release of the ABA's Planning Handbook and General Approach to Planning for Digital Terrestrial Television Broadcasting has reduced uncertainty regarding the digital conversion process for both the broadcasting market and the public.

Page 118. 6.3. Consequences of mandating high definition transmission

The opening paragraph makes a series of unsupported assertions and this makes it difficult to provide a balanced argument on the pros and cons of HDTV. The approach does not encourage debate about the advantages or disadvantages of having HDTV. It is possible to make quite the reverse arguments for HDTV, extolling its leverage potential, the likely minimal cost differential in set-top boxes and its facilitation of new programming and services within an increasingly convergent media environment. If anything, these would contribute to opening up the use of BSB to achieve greater diversity and competition in the post-simulcast period.

Page 119. Table 6.1 Comparing standard and high definition formats

Footnote **b** – Note that Dolby AC-3 is not a requirement of HDTV. It is a requirement of the free-to-air broadcasters for digital television. In practice, it may be that Dolby AC-3 will be transmitted only with HDTV, but this is a choice for broadcasters.

Footnote **c** – HDTV does not preclude simultaneous transmission of interactive services. This depends on the data rate for the HDTV format that is being transmitted. If a broadcaster is using HDTV at 12 Mbps (out of a total data capacity of 19.3 Mbps), there would still be more than 7 Mbps data rate left for other services, including SDTV, interactive services, datacasting etc.

Page 119. Paragraph below Table 6.1
Last sentence

> … because less error correction occurs in high definition transmissions.

This concept is flawed. For the purpose of the ABA's planning, modulation parameters for a 7 MHz channel have been chosen to deliver 19.3 Mbps to the home. This amount could be used say, for one HDTV program or say, for four SDTV programs. The error correction is the same in both cases (FEC 2/3). Although broadcasters will have flexibility in relation to their actual transmission parameters, it is unlikely that broadcasters or datacasters will choose an alternative modulation scheme to make their signal more robust as this would reduce the available data rate.

Page 121. First dot point

- *First, Australia is the only country to mandate high definition transmissions.*

As mentioned earlier, while Australia is the only country that has mandated HDTV, Singapore and China have left open the option for HDTV in a DVB system. Also, pay TV operators in North America are adopting DVB standards with HDTV and Dolby sound.

Page 121. Second dot point

- *Second, Australia is the only country currently planning DVB high definition transmissions.*

Until recently, Australia was the only country to mandate high definition with DVB-T. High definition transmission via DVB is planned for Singapore and recent reports indicate that China has chosen the DVB-T standard and will mandate high definition reception capability in their receivers.

Page 121. Third dot point

> *Third, Australia is the only country currently to specify two audio standards for digital television.* The Government has not specified a 'pure' implementation of DVB.

These statements are misleading. Singapore also proposes to use both Dolby AC-3 and MPEG sound. Dolby AC-3, which is by far the dominant standard in terms of available software, is a part of the DVB standard.

DVB recommends in their standards that, in a market where all receivers will not have Dolby features, the broadcasters should simulcast MPEG 1 Layer 2 audio. However, where all receivers are to be fitted with Dolby, broadcasters may choose the audio system they wish to transmit. DVDs throughout the world have dual audio decoding chips fitted as a standard feature, decoding both MPEG 1 Layer 2 and Dolby AC-3. This dual decoding capability has become the *de facto* audio standard for DVDs throughout the world and is now flowing into DVB receivers.

Page 122. Standard and high definition: overseas experience

The discussion on overseas experience could be enhanced by adding that in the UK, while the retail price of SDTV set-top boxes is £199, they are supplied to consumers by the service providers at a subsidised rate when they take a contract subscription with the service provider. At their digital television demonstration in Sydney on 12 October 1999, Philips said that their standard definition set-top box (not capable of decoding HDTV signals), which sells in the UK for £199, would retail in Australia for about A$1,000 (see *The Australian*, 13 October 1999). The proposed price for the Australian set-top box that will decode HDTV signals, announced by Sony (*The Age*, 7 October 1999), is A$999.

Page 123. Costs for consumers

It should be clarified in the draft report in quoting information from submissions regarding the cost of consumer equipment whether it is at today's cost or a price in the future. Prices for consumer electronics tend to fall over time. So it is not a true comparison if the cost of a receiver today is compared to the price of a receiver in 2002 or 2006. Additionally, volume is an important consideration. The cost of standard definition set-top boxes in Europe is low due to high production volumes. As production volumes of set-top boxes with high definition capability are currently much lower, it is not valid to compare their prices with those for set-top boxes that do not have high definition capability which tend to have much higher production volumes.

Once the digital television receiver standard is agreed by industry through the Standards Australia consensus making process, expected to be concluded by the end of 1999, manufacturers will know what to produce. They will also be able to give more accurate cost estimates and hence retail prices for their products.

Public scrutiny of the development of digital television policy and appropriate standards has heightened the awareness of all parties to the discussions. The need for affordability is recognised by manufacturers as a key factor in their business plans. Competition between manufacturers will be an important factor in setting retail prices for set-top boxes and digital television receivers at levels which are not a barrier to the introduction of digital television in Australia. Manufacturers currently not in the Australian market may see advantages in entering it as an adjunct to DVB implementation plans in their own country, as may occur in China and Singapore etc.

The cost of large displays should be removed from the equation. A relevant comparison might be the price difference between two integrated 34 cm DTV sets. One that can decode and display only SDTV and another that can decode both SDTV and HDTV and down covert it for SDTV display. The difference in the price of these two sets during the later stages of the simulcast period could be critical to the take up of digital television and the practicality of proceeding with the closure of analog services.

There is evidence to show that the costs in Australian DVB receivers and set-top boxes with HDTV decoding capability will reduce quickly once receivers are manufactured and being sold. The Australian manufacturers, through their peak bodies, have estimated the incremental cost to be as low as A$50 per receiver at the retail outlet. Other manufacturers from Asia (not currently selling products in Australia) are now showing interest and have discussed prices which indicate that set-top boxes with HDTV decoding capability could retail at around A$500, with their cheapest 70 cm wide-screen HDTV displays costing less than A$3000 (note, these displays are expected to require a set-top box as their tuner/decoder).

Page 128. Third paragraph

The `freedom' to choose to transmit in HDTV only is no freedom at all, if a large population of SDTV-only receivers exists that would go blank. In such a market, a broadcaster choosing to use HDTV would need to simulcast in SDTV. While possible at lower levels of HDTV, this is likely to preclude migration to the highest quality of HDTV.

Page 137. Draft recommendation 6.3
Second dot point

- *announce that spectrum used for analog simulcasting will be reallocated by auction or other market process two years prior to the termination date, with vacant possession on that date. At the same time, steps should be put in train to complete the conversion process using contract spectrum cleaners if necessary.*

`Spectrum clearing' and what it might mean in a broadcasting services bands context is an important issue and should be explored further. The ABA will be making a late submission on certain aspects of channel clearing.

Chapter 8 Ownership and control

As a general comment, public debate in Australia about ownership and control regulation of the media has been marked by a tendency to focus on short-term outcomes (i.e. 'who wins and who loses') and a consequent high level of politicisation of the debate. There are two dangers in this.

The first is that debate about the policy rationale for having these rules in the first place may be lost in the general noise. In the past, indeed, there have been major changes to the rules accompanied by little policy analysis of what they are intended to achieve. The 1992 passage of the Broadcasting Services Act is a case in point. Examination of the Explanatory Memorandum and other descriptive material about the changes enacted in that legislation, such as the Department's booklet, *A New Approach to Regulation – Broadcasting Reform*, reveal little information about the policy reasons for the changes to the rules. There is an important debate to be had about the desirability of rules that seek to restrict the power of the most influential of the media to influence public opinion and debate and rules that seek to ensure a diversity of voices and sources of news. If such rules are held to be desirable, there are equally important debates to be had about the form those rules might take.

The second danger is that a review of the regulations may not be undertaken, even where massive industry changes make this desirable. For example, the logic of convergence may dictate alliances or even mergers between previously unrelated industries. Recent years have seen new alliances between telecommunications carriers and entertainment providers, but of greater relevance to the present law is that newspaper publishers and electronic media outlets are increasingly competing for the same business online. Rules drafted pre-convergence may inadvertently hinder Australian businesses in responding to new competitors at home and abroad. Also, convergence is simultaneously changing the diversity of voice 'equation' by opening up new and influential sources of information – the rapid development of the world wide web being a case in point.

As the regulator, the ABA can only interpret and enforce the laws that are there – it has little overriding public interest discretion to take account of these kinds of changes in its decision-making. However, it has an obvious interest in a well-informed public debate of the issues surrounding the control rules. There may also be situations where ABA research could help answer questions that might shed light on underlying policy issues.

The ABA's specific comments on the draft report follow.

Three draft recommendations have been made in relation to ownership and control, and specific comments have been sought on views expressed in the draft on the foreign ownership rules (at p. 170), cross media options (at p. 186), effects of the audience reach rule (at p. 190), and limits on the number of licences (at p. 191). These four areas are addressed below.

Page 170.

> *In this context, the Commission seeks comment on the desirability of removing all media specific restrictions on foreign investment.*

Page 172. Draft recommendation 8.1

> *That foreign investment in broadcasting should be covered by Australia's general foreign investment policy. All restrictions on foreign investment, ownership and control in the BSA should be repealed.*

One of the primary objectives of the ownership and control provisions of the BSA is to ensure that Australians have effective control of the more influential broadcasting services, the most influential being commercial television. This objective relates directly to the rules regarding foreign ownership.

The ABA's earlier submission to the Productivity Commission recalled that there has been a long history behind the restrictions of foreign ownership of broadcasting in Australia. One argument that has been advanced in support of the rules is that free-to-air television, being the most influential medium, is open to forms of cultural dominance and its likely effects. If this is accepted, then the restrictions are necessary:

- to minimise the potential of cultural dominance by foreign interests; and
- to safeguard and support Australian cultural industries.

According to this argument, Australian ownership is more likely to facilitate a significant level of Australian expertise in broadcasting. This view assumes that Australian owners are more likely to employ Australian staff and contribute to:

- employment opportunities;
- more scope for representation of Australian views;
- a local creative infrastructure; and hence
- scope for an industry base capable of exporting Australian productions.

The ABA notes that the direction and objectives of Australian Foreign Investment Policy may not accord with the objectives of the BSA. While the desirability or undesirability of removing the foreign ownership rules from the BSA is clearly a policy decision for Government and the Parliament, the ABA believes the draft report would provide a more balanced account if information could also be given on the directions and objectives of Australian Foreign Investment Policy in relation to the industry.

Page 182.

> *To the extent that it remains a crucial aspect of Australian broadcasting policy, the measurement of influence needs further research.*

The ABA is currently in the process of scoping a research project that will examine selected parts of the media with the intention that the results will, among other things, contribute to and inform any policy review of cross-media ownership and any future assessments of the notion of influence.

Page 186.

> *A media-specific public interest test would be crucial to the success and practicality of this option. The test criteria should be legislated. The Productivity Commission seeks comment on the elements of a media-specific public interest test.*

The ACCC, as well as the ABA, are involved in the regulation of the structure of Australian media markets. The ACCC does this from a competition perspective. The ABA's role is different. The ABA's role in administering the ownership and control rules is derived from specific policy objectives with respect to diversity, content, control and public interest considerations. Such considerations, specific to the Broadcasting Services Act, are not policy considerations taken into account in the ACCC's current application of the public interest/benefit test, the 'authorisation' provision, under s.50 of the Trade Practices Act.

The primary concern of the ABA in relation to the implementation of a public interest test under the TPA is that the current application of this test is narrowly interpreted and based almost exclusively upon economic and competition considerations. This ignores the policy principles which underpin the ownership and control rules of the BSA (i.e. diversity of views, diversity of content and public interest etc).

Given the existing interpretation of the public interest test under the TPA, it is unlikely that any public interest test so interpreted would be in alignment with the broader public policy considerations which form the basis of the objectives underpinning the BSA. While a public interest test will yield certain advantages for the industry, the following issues will need to be resolved:

- Will a public consultation process be incorporated into the public interest test?
- To what media will this public interest test apply - TV, radio, ISPs, pay TV, newspapers etc?
- What acquisitions will trigger the application of the test?
- What of market thresholds or of parties varying market power?
- How will the 'market' be defined under the test? What will be the 'market share' across such a broad range of media types?

In the Overview (page XLI), the draft report states that 'the Trade Practices Act is ill-equipped to cope with cross media mergers' (in the `market for ideas'). However, it then goes on to state (at page XLII) that `The Trade Practices Act should also be amended to include a media specific public interest test which would apply to all proposed acquisitions or mergers in designated media industries'. There seems to be an inherent tension in these two statements, particularly when they are examined in the context of converging media and whether diversity is in terms of the market for ideas or the market for media industries. This tension becomes clearer later on in the draft report when a recommendation is made for an objective for public interest in freedom of expression. Public interest could relate to ethical issues and covered by codes of practice, or it could relate to mergers and acquisitions and covered by competition principles.

For these reasons, in addition to the discussion in the draft report regarding the public interest test coming under the TPA, it would be useful if it could also explore the option for any public interest considerations to be part of the BSA. In such an option, the social/cultural objectives would be covered by the BSA and economic/competition objectives would be covered by the TPA.

Page 190.

> *The Commission seeks further evidence on the effects of this (audience reach) rule on local programming and network efficiency.*

The population reach limits, like the `two licence limit' that preceded them, have always suffered from the problem that whoever controls the Sydney and Melbourne licences in a network is effectively able to dictate the greater part of the program content of the entire network. So strong is this *de facto* network control of programming decisions that the control test in the legislation has a let-out to address it (see, for example, clause 2(2) of Schedule 1 of the BSA).

Notwithstanding this, there is a view that the control limits (by creating autonomous regional networks) tend to encourage greater commitment to local (in the sense of regional) programming. Under this argument, the potential negative effects of the relaxation or removal of the reach rule upon the objectives of maintaining and promoting continued plurality and diversity of content and programming in regional areas may include:

- taking away incentives for regional operators from running viable competing television stations;
- ensuring the continued subjugation of the regional operators to the 'take-it-or-pay' basis of acquiring programming streams;
- taking away incentives for the 'stronger' regional operators from financing and broadcasting local content;
- ensuring the continuation of concentrated network dominance of television in regional markets;
- eroding local programming content and diversity of content and opinion; and

- discouraging local production activities and investment in infrastructure and minimise employment opportunities.

The ABA further notes that the presence or absence of local news and other programming is already an issue outside of Sydney and Melbourne.

In the draft report, it is stated that ‘Limiting audience reach to less than the whole population may have only a relatively minor effect on network efficiency. Without other considerations, this would suggest a case for removing the audience reach rule’. As previously stated, ‘network efficiency’ is not the primary objective of the BSA.

The ABA notes the statement in the draft report that `the gains from its removal may not be great’ (at page 190). The ABA believes it would add balance to this area of the report if the Commission could consider the above argument i.e. that population reach limits may foster and promote plurality and diversity in content and programming in regional areas.

Finally, the ABA notes that the introduction of digital television and multi-channelling in those areas may presently provide other opportunities to address regional sensitivities. Indeed, a case may exist that the public benefit of maintaining the audience reach rule outweighs the economic rationales for its relaxation or removal, but only in an analog environment.

Page 191.

> *The Commission is therefore recommending the repeal of the two station rule for radio, and seeks further comment on the need for the one station rule for television.*

Page 191. Draft recommendation 8.3

> *Section 54 of the BSA, which restricts a person from controlling more than two commercial radio broadcasting licences in the same licence area, should be repealed.*

As a general comment, the draft report needs to distinguish clearly between the limit on the number of commercial television licences in a licence area and the limit on the number of commercial television licences that can be allocated in a licence area. The BSA contains provision in s.53(2) to limit control to not more than one commercial television licence in a licence area while s.28 limits the allocation to three commercial television licences per licence area (currently extended till 31 December 2006). It would be preferable to refer to the s.53(2) rule as ‘the rule limiting the control of more than one television licence in the same licence area by a person’. The s.28 rule is generally known as `the three-to-a-market rule’.

The ABA queries the attitude of the Commission towards ‘the rule limiting the control of more than one television licence in the same licence area by a person’ in the event the Government does not wish to remove the moratorium in s.28. Removal of the one station rule without removal of the rule in s.28 would be likely to lead to a reduction in the diversity of opinion and content in what is already a highly concentrated gateway into the ‘market of ideas’.

Chapter 9 Content regulation, consumers and competition

This chapter comprises a wide ranging discussion of the social, cultural and economic dimensions of existing broadcasting content regulation, with some consideration of the appropriateness of this system in a digital environment. In commenting on this chapter, the ABA has focused on the draft recommendations concerning the regulation of Australian content and children's programs on commercial television.

The ABA has not commented on the areas of public policy that deal with the regulation of Australian content on pay TV and the 'anti-siphoning' provisions of the BSA. These are properly issues for Government, with the ABA providing advice as directed by the Minister.

The ABA has not considered it appropriate at this time to comment in depth on the policy issues raised for content regulation by digital convergence. As noted in the draft report, the legislative regime for digital television conversion in the main continues existing content regulation arrangements for some years. Regulatory policy for datacasting services is one of the framework issues being considered by Government in its current review of datacasting services. Establishment of the parameters for these services must precede detailed consideration of an appropriate regulatory regime.

It would not be appropriate for the ABA to speculate on possible modification to content regulation relating to programming requirements in a multi-channel environment. However, the ABA would make the general point that as long as commercial television wields significant power and influence in the Australian community as the pre-eminent source of information and entertainment, it would be premature to remove regulations which deliver tangible social and cultural benefits.

As outlined in response to draft recommendation 9.4, the ABA will be continuing its regular processes of policy review in relation to Australian content and children's programs on commercial television. This includes scheduled reviews of aspects of the Children's Television Standards in 2000 and the Australian Content Standard in 2001. The latter will be preceded by a study of local content issues in partnership with the Key Centre for Cultural and Media Policy in 2000. There will be opportunity within these reviews for a preliminary analysis of the impact of digital technology on the production and distribution of programs. These reviews will also be informed by the outcomes of the various mandated reviews being conducted under the terms of the digital conversion legislation.

One of these reviews, to be commenced shortly, will be whether any amendments to Commonwealth laws are required to deal with the convergence of broadcasting and other services. Clearly, the future environment of fully converged media services will require a re-examination of content regulation as part of the rethinking of broadcasting and communications policy, and the forthcoming review will initiate this process at Government level.

The ABA observes that at this time, there is a considerable 'blue sky' element involved in foreseeing communications services of the future which might not materialise as envisaged. While general forecasts may have some validity, it might be premature to speculate about some of the more detailed policies as currently encapsulated in program standards.

Page 231. Industry assistance issues for children's program regulation

The draft report calls for further evidence on whether the *local* content requirements (in contrast to the CTS 2 criteria requirements) affect the programming decisions of broadcasters. In particular, comment is sought on the view that if there are few foreign programs which satisfy the CTS 2 criteria requirements, broadcasters have no choice but to seek locally made C programs to fulfil their quota requirements.

The ABA considers there is the potential for a significant number of foreign programs to satisfy the CTS 2 criteria. The international growth of specialised children's channels in overseas markets such as the UK and USA, and the 3-hour per week requirement for children's educational programming in the USA, indicate a potentially large pool of children's programs from which commercial broadcasters could source quality programs.

The ABA acknowledges there is a shortage of high quality children's drama (particularly live action) in the international marketplace, and this has facilitated the success of Australian children's drama overseas. However, the ABA considers it would be feasible for a broadcaster to source at least part, if not up to 32 hours per year, of quality children's drama overseas. It would also be particularly attractive to a broadcaster because of the significant cost savings of acquiring an overseas program, rather than acquiring a first release Australian drama at a minimum licence fee of $45,000 per half hour.

It should also be noted that the commercial broadcasters rarely exceed the quota requirements for local C and P programs, and have only increased levels of Australian children's drama in line with increases in the quota. For example, between 1979-83 (prior to the introduction of an Australian children's drama quota requirement), only 16.2 per cent of C classified drama programs were Australian, while 83.8 per cent were foreign. With successive quota increases, the level of Australian drama increased relative to imported drama, rising to 68.6 per cent between 1996-99. The two tables below outline this trend:

First-release Australian children's drama requirement

Time period	**Annual broadcast requirement**
1979-83	None
1984-89	8 hours
1990-95	16 hours
1996-99	24, 28 and 32 hours progressively

Profile of C drama programs by origin

1979-83		1984-89		1990-95		1996-99	
Aust %	Foreign %	Aust %	Foreign %	Aust %	Foreign %	Aust %	Foreign %
16.2	83.8	43.5	56.5	62.1	37.9	68.6	31.4

Page 235. Draft recommendation 9.1

> *The targeting of the 'creative elements' test for Australian programs should be improved by removing criteria that require non-creative cast, crew and production processes to be Australian.*

The criteria which define an Australian program are set out in clause 7 of the *Broadcasting Services (Australian Content) Standard 1999*. They were developed after extensive public consultation and have been subject to public review on two occasions. The creative elements test aims to ensure programs that are produced and qualify as 'Australian' under the standard are the outcome of collaborative Australian creative expression. It is not to ensure labour inputs within a context of industry assistance. While it is self-evident that Australian creative expression in films and television programs cannot occur without a viable and efficient local production industry, this is neither the starting nor the end point for Australian content and children's television regulation.

The ABA considers that the roles specified in the standard capture the nature of the relevant creative processes, ensuring that as far as possible, key functions are controlled by Australians, but allowing for participation of foreign elements. Hence, additional criteria for animation were recently included in the standard, targeting those who design or supervise the animation process.

Actors playing major supporting cast roles are included in the test for 'an Australian program' because, together with leading actors, they make a significant creative contribution to a television production. Similarly, the ABA would not categorise post-production as a non-creative function. Requiring local post-production in the creative elements test is perhaps one of the most effective ways of ensuring that a film or television program is produced under Australian creative control and is a genuinely Australian cultural product. To illustrate the point, US programs produced off-shore, especially long-running series such as *Xena The Warrior Princess* which is made in New Zealand, are usually post-produced in the US. This attests to the importance that post-production plays in the creative control of the filmmaking process. A further point to note is that these long-running productions, which are clearly recognised as US off-shore productions, may meet all but the post-production criterion of the creative elements test that, by necessity, must include a degree of flexibility to allow some foreign elements. Without the post-production requirement, such programs could count for quota.

Contrary to the implication of draft recommendation 9.1, the standard does not require Australian technical crews, nor does it place any limits on the location of filming.

Page 236. Draft recommendation 9.2

> *The existing quotas for children's programs on commercial television should be maintained, but the requirement that all of the P program sub-quota must be filled with Australian programs should be reconsidered.*

The ABA would take seriously any recommendation by the Commission to review parts of the standards at an appropriate time. In light of this, the comments provided below are offered as preliminary observations.

The preschool years are critical to children's cognitive and social development. It is essential that preschoolers have available to them some programs developed with the needs of Australian preschoolers in mind, in particular, in relation to language and Australian educational principles.

The P requirement is designed to ensure a minimum amount of Australian programs for the Australian preschool audience. The standards require each commercial licensee to broadcast annually 130 hours each of Australian P and C programs. The 130 hours of P programs, however, represent a relatively small requirement of half an hour each weekday and is an amount equal to only half the total 260 hours of C programs required for primary school age children under the standards.

The quota does not preclude commercial broadcasters from broadcasting imported preschool programs as G classified programs which, unlike P programs, may include advertisements. For example, the Nine Network is currently broadcasting the US preschool G program, *Blues Clues*, immediately after the broadcast of their Australian P classified program on weekday mornings. The US program *Barney* is another example of a preschool G program that was broadcast on commercial television in addition to P quota.

In setting the Australian P quota, the ABA was aware of the role the ABC plays in providing children's preschool programs that meet social and cultural objectives. The ABC provides Australian and foreign produced children's programs and its scheduling practices contribute to a diversity of programming being made available to Australian children across free-to-air services over a range of broadcast times. The ABC's first option arrangement with the BBC means that programs such as *Teletubbies* are broadcast by the national broadcaster and may not be available to commercial television in Australia. In addition to producing an Australian version of *Playschool*, the ABC has also for many years broadcast *Sesame Street* from the Children's Television Workshop in the USA. Although these programs would appear likely to meet the criteria in the standards, they have not been classified C or P (as mistakenly indicated on page 225).

Page 236. Draft recommendation 9.3

The Australian content regulations for commercial television should be simplified and better targeted to their social and cultural objectives by removing:

- *the overall quota for Australian content of 55 per cent; and*
- *the Australian production quota of 80 per cent for advertising.*

Overall transmission quota

The ABA welcomes draft recommendation 9.1 that existing quotas for Australian first release drama and documentaries should be maintained. There is continuing broad consensus that the sub-quota genres of Australian drama, documentaries and children's programs are especially vulnerable to displacement on the basis of secondary market pricing and market failure.

When evaluating the likely impact of including New Zealand programs in Australian content quotas, the ABA put the view that there 'is less potential for displacement by imported product of the Australian programs which make up the balance of the transmission quota, such as news and current affairs, sport, infotainment and light entertainment'[1] .

It is debateable, however, whether removal of the overall Australian quota would result in regulation that is better targeted to cultural objectives. The purpose of the 55 per cent transmission quota for Australian programming is to ensure that free-to-air commercial television is **predominantly** Australian. In this regard, the overall quota accords with international models, with a survey of different regulatory schemes finding that 'invariably, over 50 per cent of the air time is reserved for domestic programming'[2].

The ABA's analysis of 1998 network programming profiles indicates that only the Nine Network transmits significantly in excess of the 55 per cent transmission quota between 6 am and midnight, achieving levels in the mid 60s. Half of these programs are news and current affairs and sport. Seven and Ten achieve an average of 57 per cent and 56 per cent Australian programs respectively. Without the overall transmission requirement, the pressure on networks to reduce costs, including program costs, means current levels of Australian programs are not guaranteed[3].

While first release Australian drama, children's programs and documentaries have particular cultural significance, together they comprise a very small percentage of programs broadcast. For example, in Sydney, in 1998, these

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[1] *Review of the Australian Content Standard Discussion Paper,* Australian Broadcasting Authority, July 1998, p.24.

[2] Franco Papandrea, *Cultural Regulation of Australian Television Programs* Occasional Paper 114, 1997, BTCE, Appendix II, p.233.

[3] Australian content and children's television programs on commercial television in 1998, Trends and Issues No. 6, August 1999, Australian Broadcasting Authority, pp.9-11.

programs represented between 5.2 per cent of all programs broadcast on Nine to 6.2 per cent of programs on Seven[4].
It is the totality of Australian programs which gives commercial television its Australian stamp and which informs and involves audiences on a daily basis. Programs may be about contemporary Australian characters and lifestyle, considered in a serious or irreverent fashion, involving people in public life or the person in the street. Together with news and sports programming, and the story telling in higher budget drama or documentaries, the range of local programs on commercial television validates the Australian experience and contributes to the development of national identity.

The overall mix of local programs, including infotainment and light entertainment, also contributes to diversity and innovation in local programming. For example, in 1998, Australian light entertainment programs comprised between 11 and 23 per cent of programs broadcast between 5 pm and 12 midnight. While some may be competitively priced against similar imported programs, they may not be as cost effective for networks as high budget foreign programs. Foreign drama bought at secondary market prices continues to be the largest single program category in prime time on all networks, and the largest single program category overall for Seven and Nine[5].

In concluding, however, the ABA would consider carefully any recommendation, and the reasoning underlying it, once the Commission has completed its processes.

Australian content in advertising standard

The Australian Content in Advertising Standard (TPS23) came into effect on 1 January 1992, following an extensive public inquiry which was part of the former Australian Broadcasting Tribunal's Australian Content on Commercial Television Inquiry. The standard was carried over to the ABA, which has continued its annual monitoring of compliance and reporting on levels of foreign advertising broadcast.

Network compliance results since the implementation of the standard are presented in the table below. The levels of foreign commercials have increased over time, but are still substantially below the allowed 20 per cent.

[4] Ibid., pp.9-11.
[5] Ibid., pp.9-11.

AMOUNT OF FOREIGN ADVERTISING

Station	1992	1993	1994	1995	1996	1997	1998
	%	%	%	%	%	%	%
Seven Network							
ATN	5.6	9.1	9.9	10.0	10.5	12.6	12.7
HSV	6.3	9.2	10.5	9.7	10.1	12.4	12.3
BTQ	5.8	9.3	10.0	10.3	10.1	11.5	11.3
SAS	5.2	9.0	9.3	9.7	9.8	10.6	10.2
TVW	4.7	7.4	8.6	9.3	8.8	9.8	9.4
Average	*5.5*	*8.8*	*9.6*	*9.8*	*9.9*	*11.4*	***11.2***
Nine Network							
TCN	4.4	6.1	5.5	6.8	7.7	7.5	7.6
GTV	5.5	5.3	5.2	6.5	7.6	7.7	6.8
QTQ	4.3	5.2	5.2	6.0	7.7	7.4	6.5
Average	*4.7*	*5.5*	*5.3*	*6.4*	*7.7*	*7.5*	***7.0***
Ten Network							
TEN	7.9	10.0	10.2	8.7	10.7	11.2	12.22
ATV	8.8	9.8	9.7	8.9	11.0	11.4	12.30
TVQ	7.7	10.1	9.4	8.2	9.6	8.2	10.25
ADS					11.1	9.8	11.19
NEW						8.4	9.24
Average	*8.1*	*9.9*	*9.7*	*8.6*	*10.6*	*9.8*	***11.0***

Due to computer software development, 1992 figures for Nine and Ten do not cover the full year. Figures for Nine begin from 8 March 1992 and Ten from 3 May 1992.

Ten reported that figures for NEW from 5 January - 23 February 1997 were corrupt, and those figures have not been included in calculating NEW's average for 1997.

It would appear that the needs of advertisers to broadcast foreign commercials are accommodated in the current arrangements. Since the introduction of the standard, there have been no approaches to the ABA by advertisers or their agencies on this issue. There has been continuing concern expressed by the commercial production industry about the impact of the regulation and possible accuracy of the reporting system for Australian and foreign commercials. The view is often put to the ABA that involvement in advertising is important for the refinement of the film-making skills of those involved, and that advertising too should have an Australian identity. In response to these concerns, the ABA has arranged with CAD to undertake an audit of a sample of new Australian commercials classified in 1998. The results of this audit should provide the ABA and interested parties with a better understanding of the manner in which the current system operates, in particular, the criteria for an Australian commercial.

The Communication and Media Policy Institute submission quoted in the draft report asserts that the compliance administration costs to the ABA and broadcasters are 'substantial'. This is not the case for the ABA. Compliance administration costs fall on the advertisers and their agencies, Commercials Advice Pty Limited (CAD) and broadcasters. In submitting advertisements to CAD for classification, agencies answer questions about compliance with the standard and they are required to declare that the information they supply to CAD is correct. Based on the CAD classification, licensees' existing systems for scheduling commercials record the number of foreign commercials broadcast. This information is supplied once a year to the ABA.

Page 238. Draft recommendation 9.4

> *For the Australian and children's content quotas which remain in place, the ABA should conduct regular and public evaluations against the social and cultural objectives of the content requirements.*

The ABA has demonstrated a commitment to conducting public evaluations of program content standards against the social and cultural objectives of the BSA.

The history of Australian content and children's television regulation set out in Tables H.1 and H.2 demonstrates that these areas have been subject to regular evaluation, leading to an evolutionary development of content rules. The changes set out in these tables have, in the main, resulted from public processes of evaluation conducted as inquiries, investigations or reviews. The numerous reviews of regulation in these two areas conducted by the ABA, and the ABT before it, have all been public consultative processes, and existing and proposed rules were assessed against their social and cultural objectives.

The ABA has conducted two public reviews of Australian content regulation, including the requirements relating to children's television, and it has scheduled the next Australian content review for 2001. In preparation for this next evaluation, in 2000, the ABA will conduct a major study of the wider cultural and industry impact of the rules for Australian content on commercial television. This study will be in partnership with the Key Centre for Cultural and Media Policy and supported by a grant from the Australian Research Council.

The ABA intends to undertake a public review of the Children's Television Standards (CTS) in 2000. The review will seek to evaluate whether the CTS continue to meet their social and cultural objectives and how they can be improved to better achieve policy outcomes.

This year, the ABA undertook a joint research project with the Australian Children's Television Foundation and the Australian Film Finance Corporation, analysing 20 years of C classified children's programs. The objectives of the research are to document and identify trends in the category, style and origin of programs granted classification and to examine how the scheduling and ratings of these programs have changed over time. The research also documents the current production environment for children's television in Australia, with a focus on how children's programs, particularly drama, are financed.

Findings on these issues aim to provide not only a more thorough evaluation of the impact of regulatory requirements, but also a better understanding of appropriate responses to the challenge of maintaining quality Australian children's programs on commercial television. Initial findings of the project have been made public and the report will be published in late 1999/early 2000.

In July 1999, the ABA held a children's television policy forum to explore with key stakeholders how the standards are operating, how they can be improved and what key issues will need to be addressed by the ABA and industry. This forum exposed a number of issues which will be considered in the forthcoming public review of the CTS.

The ABA also conducts regular qualitative research with children and young people about the media to support its legislative role. During the 1990s, ABA research has focused on understanding the child's point of view, identifying how young people spend their leisure time and understanding the interactions between young people and adults with regard to media use.

Research publications, some of which have been provided to the Productivity Commission, include '*Cool or gross': children's attitudes to violence, kissing and swearing on television* (1994); *Kids talk TV 'super wickid' or 'dum': what children like and don't like to watch* (1996); *Families and electronic entertainment* (1996); *Youth and music in Australia* (1997 and 1998); and *Infants and television* (1998). In particular, the *Kids Talk TV* research sought children's views on both C and non-C classified programs.

The ABA is an industry partner in a study into Cultural Diversity and Children's Television Industry Development being conducted by Ms Wendy Keys of Griffith University. The research is part of a doctoral program through the Key Centre for Cultural and Media Policy.

Currently, the ABA is conducting a joint research project with the University of Western Sydney called *Young People on Media Harm*. It is expected the report on this study will be available in early 2000. It focuses on how young people aged 10-15 years move from parental to self-regulation on their use of television and the Internet. It also compares their views against their parents concerns about the impact of the media on them.

Chapter 10 Codes of practice and compliance

The following comments on Chapter 10 also apply to the summary of recommendations set out in the Overview section.

This chapter is entitled *Codes of practice and compliance*. As there are a number of content-related issues which are actually licence conditions, it would be more accurate for the title to reflect this e.g. *Codes of practice, licence conditions and compliance.*

Page 242. Draft recommendation 10.1

> *A further objective `to promote the public interest in freedom of expression' should be added to the objectives in s.3 of the Broadcasting Services Act.*

It is not clear how the current objectives of the Act and their realisation in the various codes of practice do not already have this effect, or how the proposed objective could practically be realised in the codes. Perhaps the final report could explain what would be seen as public interest in terms of the BSA and specify what might be encompassed by freedom of expression. This would also help to draw the distinction with public interest as it applies under the TPA (see discussion under ownership and control).

Page 244. Third paragraph

This paragraph notes that 'program standards and codes relate to all kinds of broadcast advertising'. It would be more accurate to say that `program standards and codes *may* relate …'. Program standards currently exist in relation to Australian content on commercial television as discussed in Chapter 9. The Australian Content Standard deals with program material, that is, programs as defined in the standard (dramas, documentaries etc) rather than the general definition in the Act. A discrete standard exists in relation to the level of foreign advertising that is permitted on commercial television. The Children's Television Standards have specific requirements in relation to advertising directed to children.

The requirements of the various codes may or may not apply to advertising depending on the issue. For example, the classification requirements in the Commercial Television Industry Code apply to advertisements, but the sections relating to program promotions and news and current affairs do not.

Page 246. Last paragraph

In addition to the ABA's supervision of codes of practice, it also plays an active consultative role in the development of the various codes and will register codes only if it is satisfied that they provide appropriate community safeguards, are endorsed by a majority of providers of services in that section of the industry, and members of the public have been given an adequate opportunity to comment on them.

The ABA also invests considerable effort in providing information to the public about the codes and the complaints process. The ABA maintains an 1800 number, listed in a prominent position in every edition of the White Pages in Australia. Staff provide information to callers about the complaints process and supply copies of the codes to those who wish to receive them. The ABA produces a range of brochures summarising the regulatory framework and complaints process which are widely distributed.

Page 248. Industry consultation

It is correct to say that Indigenous broadcasters are currently bound by the Community Broadcasting Code of Practice. The ABA responded to the special needs of the Indigenous sector in the registration of the current Code. In particular, it should be noted that NIMAA representatives were closely involved in the development of the Code. The ABA facilitated a number of the relevant discussions and attended meetings in Darwin and elsewhere with Aboriginal media groups and NIMAA where the draft code was discussed and endorsement was finally given. As part of the process, NIMAA developed a 'plain English' version of the draft code for distribution to communities prior to registration, seeking their comment on the proposals.

Page 249. Community consultation

This section of the draft report relies primarily on the example of the review of the Commercial Television Industry Code of Practice. It should be noted that, in addition to advertising the review of the Code, and issuing a general invitation for comment on three separate occasions, FACTS sent copies of the draft revised codes to all those on its mailing list (numbering 228 individuals and organisations), including Federal and State parliamentarians, and interest groups which had expressed interest in the Code in the past.

FACTS also utilised both press and TV to advertise the availability of the Code for public comment.

Page 252. Draft recommendation 10.2

> *The mechanisms for consultation on the development of codes of practice should be amended so that:*
> - *a requirement for general support from within the relevant section of the industry replace the requirement that a majority of broadcasters within the relevant section of broadcasting endorse a proposed code of practice; and*
> - *the ABA develop guidelines on how it will assess whether a code has `general support from within the relevant section of the industry'; and*
> - *the ABA develop guidelines on `adequate opportunity to comment' to support community consultation on a proposed code of practice. These guidelines should provide for:*
>   - *on-air broadcasts at peak or other appropriate audience times announcing that a code is under development or review and inviting comment;*
>   - *public hearings; and*
>   - *minimum periods for consultation.*

A ‘general support’ test would be very difficult to define and to administer and would leave the ABA vulnerable to legal challenge. ‘General support’ may, in fact, be impossible to achieve in some sectors. Codes are intended to be developed by industry groups accepted as representing each section of the broadcasting industry. Majority endorsement by the members of each section is quantifiable. It remains the preferred approach, even in those sections of the broadcasting industry where membership is diverse or difficult to establish. Any change to this approach would mean a shift in the self-regulation paradigm which would not necessarily result in greater codes compliance but would certainly be more resource intensive for the ABA. Alternatively, in light of the problems of proof that arise in industry sectors where membership is difficult to establish, it may be appropriate to develop an alternative test, but only in relation to those sectors.

In relation to the proposal that the ABA drafts guidelines on ‘adequate opportunity to comment’, the ABA notes that responsibility for seeking comment from the public on the terms of a draft code actually lies with the representative industry body. Therefore, whether or not ‘informal public hearings’ are an appropriate vehicle for obtaining public comment would need to be measured against questions of cost and the capacity of an industry group to undertake such a process. This is consistent with the regulatory policy in paragraph 4(2)(a) of the BSA.

Pages 260 – 261. Draft recommendation 10.3 (encompassing comments for pages 252 – 259 below)

The co-regulatory scheme should be amended so that:

- *all codes of practice include the requirement for community service type announcements about the complaints mechanism, to be broadcast at peak or other appropriate audience times;*
- *the ABA undertake ongoing monitoring of community awareness of complaints mechanisms;*
- *licensees be required to accept e-mailed complaints as well as written and faxed complaints;*
- *each licensee be required to institute a telephone complaints system which would advise complainants of their rights and on which complainants may record telephone complaints. A summary of these complaints, along with a summary of written complaints and action by the licensee, should be provided to the ABA;*
- *licensees found to be in breach of a relevant code of practice be required to broadcast on-air announcement of the breach finding and subsequent action during the relevant program or time slot;*
- *the ABA be given the power to issue directions for action to broadcasters found in breach of a relevant code of practice; and*
- *the BSA be amended to provide that relevant codes of practice (once registered by the ABA) automatically become conditions of broadcasters’ licences, and the ABA be given the power to impose penalties for all breaches of codes of practice.*

The ABA believes considerable further work is needed before the scheme in 10.3 is in a form that could be implemented.

The present regulatory scheme has several distinctive features. Relevantly, these are:

- Codes of practice do not have the force of conditions – in effect, one of the sanctions in the law is that the ABA can decide to make them into mandatory conditions;

- The ABA is not required to investigate complaints about codes or program matters unless the complainant has first complained to the licensee; and

- Once this precondition has been satisfied, the ABA is compelled to investigate a complaint (except in very limited circumstances) and must report to the complainant on the results.

These features in turn have certain implications about roles and resources for the ABA and the industry. Out of many thousands of complaints, only a relatively small number ever reach the ABA. These, however, must all be investigated, even if the number rises sharply, as has occurred during the present commercial radio inquiry.

In moving to the Commission's suggested model, a number of initial issues would need to be resolved. For example, what incentives would remain for complainants to make their complaints directly to broadcasters? Conversely, what discretion would the ABA have to refuse to investigate a particular complaint, especially if the chages result in a considerable increase in direct complaints? Assuming these questions are answered, what resource implications would it have for the ABA?

These issues may benefit from further discussion. The ABA is of course happy for Commission staff to canvass these issues further with its own staff.

Page 253. Third paragraph

The draft report categorises complaints into two types. However, the Act does not distinguish complaints in this way. Complaints are made either directly to the ABA (compliance with conditions and provisions of the Act) or to the broadcasters themselves (compliance with codes of practice). Section 123 of the Act articulates a number of issues that may be included in a code, including the requirement for news and current affairs programs to be accurate and fair, but no one issue is accorded greater importance than another.

Page 254. Box 10.5. Commercial television code of practice – complaints procedures

In relation to the first point, it should be noted that FACTS operates a hotline (phone number 1300 134 848) which the public can use to access detailed information about the Code of Practice and the complaints process. This also provides contact information for the television licensees in a viewer's area. This phone number features in the FACTS on-air advertising campaign.

Page 255. First paragraph

The text should also mention that each licensee is obliged to broadcast 360 spots per year 'across all viewing zones. This information must also be close-captioned'. The intention is to capture all viewing audiences, not simply those in prime time.

The recently revised Commercial Radio Codes of Practice now includes the following requirement:

> Each licensee must on at least one occasion in each week during the period that the Codes are in force broadcast on each commercial radio service operated by it an announcement publicising the existence of the Code(s) and a general description of the nature and effect of their operation. Such announcements must be broadcast at different times and in different programs from week to week.

Page 255. ***First point of contact for complaints***

Again, it should be made clear that complainants may refer their complaints to the ABA if they are not satisfied with a licensee's response or if they do not receive a response within 60 days.

Page 256. ***Required specificity of complaints***

The current practice is for a formal complaint about compliance with a code of practice to be a written complaint. This is true for commercial radio and commercial television, the ABC and SBS. Subscription broadcasting television and the various narrowcasting services will require that a complaint be put in writing if it is complex. In addition, the Commercial Television Code makes provision for those who are unable to lodge a written complaint.

The codes provide information about how licensees will deal with telephone calls. This includes an obligation to provide a caller with information about the formal codes complaint process. Requiring complainants to adequately identify the material that is the subject of their complaint greatly assists in the resolution of those complaints.

The suggestions in relation to a telephone-based complaints facility are noted. However, establishing such a system on a licensee-by-licensee basis carries resource implications for each section of the industry and this may be out of step with the regulatory policy at section 4 of the Act. In addition, it is not necessarily any more accessible to sections of the population, for example, people of non-English speaking backgrounds, the deaf and hearing impaired.

In regard to the issue of stereotyping, as well as the code provisions referred to in the draft report, each of the codes sets out a proscription on the broadcast of material likely to incite or perpetuate hatred against or vilify any person on various grounds, including age, sex, race and so on. This requirement acts as a safety net against the more negative material.

The Commercial Radio Codes also have Guidelines and Explanatory Notes on the Portrayal of Indigenous Australians on Commercial Radio and on the Portrayal of Women on Commercial Radio.

Page 257. *Delays*

While 60 days is the limit specified in the Act for referral to the ABA if no response is received, some of the codes provide for a shorter response time (30 – 45 days). It is the ABA's experience that in most cases, licensees respond within the code timeframes.

The ABA has discussed with FACTS its views on the value of prompt apologies and corrections being made.

Page 258. *Accountability and transparency*
Last paragraph

The ABA also places copies of investigation reports on its website, issues news releases in a number of cases, provides hard copies of reports, and publishes summaries of breach investigation findings in the ABA's monthly journal, *Update*.

The ABA has expressed its strong commitment to ensuring that broadcasters issue on-air apologies and corrections more frequently than previously. This continues to be a subject of discussion at regular meetings between the ABA and FACTS.

Page 259. *Remedies*

The first paragraph of this section should read:

> If the ABA finds a broadcaster has breached the Act or a licence condition imposed by the Act (such as those listed in Schedule 2), it may issue a notice requiring the broadcaster to comply with the condition, move to suspend or cancel the licence, or refer the matter to the Director of Public Prosecutions.

The last few sentences in the second paragraph are incorrect. In the case of any breach of a licence condition, the ABA may issue a notice requiring compliance with the condition, it may refer the matter to the DPP, or it may decide to suspend or cancel the licence. For first time breaches of a code, the aim thus far has been to prevent further occurrences rather than punish immediately, that is, to establish mechanisms to ensure future compliance within the context of a co-regulatory framework.

It is not clear from the draft report whether or not a separate range of sanctions would apply to breaches of codes should they become conditions of licence in the way proposed. The Act already sets out a range of penalties for a breach of licence conditions (outlined above). These would perhaps be too severe penalties for breaches of what are currently code provisions. In addition, as the Act currently stands, complaints about compliance with a condition of licence may be referred directly to the ABA rather than to the broadcaster concerned.

Pages 265 – 266. Draft recommendation 10.4

> *The ABA should develop standards dealing with fair and accurate coverage and ethical news gathering and reporting practices. These standards should provide that:*
>
> - *such complaints may be made to either the ABA or the licensee in the first instance;*
> - *licensees must inform the ABA of such complaints and their proposed action as soon as possible;*
> - *the ABA must actively monitor the actions of the licensee in response to the complaint; and*
> - *the ABA may exercise its powers to direct licensees to take certain actions (including broadcasting retractions and corrections) in response to complaints about fair and accurate coverage.*

This draft recommendation proposes a more interventionist role for the ABA in terms of these programs than that provided in the Act. Currently, the ABA may determine program standards where there is convincing evidence that a code of practice has failed or where no code is developed. In itself, this is a form of sanction.

It has been suggested that complaints should be dealt with in a fair and transparent complaints process. It is not clear what changes the draft report envisages to current ABA practice or what effect these changes would have on response times. Providing complainants with the option of complaining either to the licensee or to the ABA would be confusing, and in any case, complaints about compliance with standards (conditions of licence) are at present intended to be made to the ABA in the first instance. It is also not clear what is intended by the suggestion that the ABA 'actively monitor the actions of the licensee in response to the complaint'. An elaboration of these matters in the draft report would be helpful so that their intention could at least be made clear.

Under the Act, assessment of a licensee's compliance is based primarily on the material that is broadcast rather than on how the material is obtained. Compliance with a code is the responsibility of the licensee rather than the program maker or the individual journalist. Expanding the ABA's remit to require consideration of reporting practices and the news gathering process would carry significant resource implications.

Page 266. ***Investigations and hearings***
Third paragraph

The statement that 'All other investigations resulted from unresolved complaints to licensees' is incorrect. In fact, the figure includes other complaints made directly to the ABA about compliance with conditions of licence or provisions of the Act. Table 10.1 (at page 267) summarises this information.

Page 268. First paragraph

In addition to annual attitudinal surveys, the ABA also monitors the commercial television industry's compliance with its Code through the conduct of investigations. The ABA meets on a regular basis with FACTS and other industry bodies to discuss codes issues.

Page 272. Draft recommendation 10.5

> *The regulatory scheme for controlling access to online content should be reviewed after two years of operation. Such a review should encompass:*
>
> - *the scheme's success in regulating access to objectionable material;*
> - *the scheme's effect on Internet service providers, Internet content hosts and online commerce;*
> - *the scheme's effect on freedom of expression and access to educational, artistic and political material; and*
> - *the scheme's compliance and administrative costs.*

Overview of scheme

The co-regulatory scheme established by the *Broadcasting Services Amendment (Online Services) Act 1999,* which amended the BSA, addresses risks associated with illegal Internet content and with Internet content that is unsuitable for children. The scheme is based on the development of codes of practice by industry and the operation of a complaints hotline by the ABA.

The ABA is implementing the co-regulatory scheme in partnership with industry and the community. In performing its role, the ABA is guided by the principles laid down in the legislation of minimising the financial and administrative burdens on industry and encouraging the supply of Internet carriage services at performance standards that meet community needs.

The scheme applies only to the activities of Internet service providers (ISPs) and Internet content hosts (ICHs). The States and Territories are developing uniform legislation that will complement Commonwealth legislation and cover the activities of users and content creators.

The scheme is complaints-based - it establishes a framework in which people who are concerned about particular Internet content can make a complaint and have that complaint investigated. The ABA will operate a complaints hotline from 1 January 2000 and will commence investigating complaints from that date. The ABA is not required to proactively search for and deal with all Internet content that may be prohibited.

The legislation defines prohibited content as material that has been classified 'RC' (Refused Classification i.e. material that is illegal in any medium) or 'X' (i.e. sexually explicit material) by the National Classification Board. Content hosted in Australia that has been classified 'R' (i.e. material considered unsuitable for people under 18 years of age because of violence, language, sexual content, adult themes or for some other reason), but which does not have an adult verification mechanism to restrict access, will also be prohibited.

Action to be taken in relation to prohibited content that is subject to complaint differs, depending on whether the content is hosted in Australia or overseas. If it is hosted in Australia, the ABA is required to issue take-down notices to the content host. If it is hosted overseas, the ABA will notify ISPs who are to take action in accordance with their codes of practice. If it is hosted overseas and is also sufficiently serious (e.g. illegal material such as child pornography), the ABA will refer the material to the appropriate law enforcement agency.

ABA decisions under the regulatory scheme are subject to judicial review processes e.g. Administrative Appeals Tribunal review.

Codes of practice are being developed by industry to govern the activities of ISPs and ICHs. Industry is required to consult with the community in the development of these codes. The ABA will register the codes if it is satisfied that industry has undertaken appropriate community consultation and that the codes contain appropriate community safeguards.

The scheme requires the development of three codes of practice: one for ICHs and two for ISPs. The Act lists a number of issues that these codes are to deal with.

One of the codes for ISPs is to deal with the same set of issues as the ICH code (child protection issues, customer advice, information regarding the making of complaints etc). The other is to deal with procedures for the blocking of overseas-hosted content subject to complaint and determined to be prohibited, together with a designated notification scheme that the ABA would use to notify ISPs of such content.

If codes of practice are not developed and in place by 1 January 2000, or if they fail, the ABA is required to determine an industry standard to operate in their place. Before determining an industry standard, the ABA is required to undertake public consultation.

The ABA has a range of other functions in addition to its complaints handling role and the registration and monitoring of industry codes of practice. These include community education, research and international liaison. The ABA sees these as critical to the overall success of the regulatory regime and is pursuing initiatives in relation to each function.

The scheme also involves the establishment of a community advisory body that will, among other things, monitor material and advise the public about options such as filtering software that are available to address concerns about online content.

Review of the scheme

The operation of the co-regulatory scheme for Internet content is of significant public interest. The *Broadcasting Services Amendment (Online Services) Bill 1999* was amended to included provisions for a review of the operation of the scheme *before* 1 January 2003.

Clause 95 of Schedule 5 of the BSA states:

> (1) Before 1 January 2003, the Minister must cause to be conducted a review of the operation of this Schedule.
>
> (2) The following matters are to be taken into account in conducting a review under subclause (1):
>
> (a) the general development of Internet content filtering technologies;
> (b) whether Internet content filtering technologies have developed to a point where it is practicable to use those technologies to prevent end-users from accessing R-rated information hosted outside Australia that is not subject to a restricted access system;
> (c) any other relevant matters.
>
> (3) The Minister must cause to be prepared a report of a review under subclause (1).
>
> (4) The Minister must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.
>
> (5) The Parliament acknowledges the Government's policy intention that, in the event that Internet content filtering technologies develop to a point where it is practicable to use those technologies to prevent end-users from accessing R-rated information hosted outside Australia that is not subject to a restricted access system, legislation will be introduced into the Parliament to:
>
> (a) extend subclause 10(1) to Internet content hosted outside Australia; and
> (b) repeal subclause 10(2).

It may be possible that the areas for review contained in the Productivity Commission's recommendation can be accommodated under paragraph 95(1)(c) of Schedule 5 of the BSA.

Furthermore, pursuant to section 158(n) of the BSA, one of the general functions of the ABA is to monitor, and report to the Minister on, the operation of the BSA.

ABA annual report

In accordance with the requirements of section 9 of the *Commonwealth Authorities and Companies Act 1997*, the ABA is required to report on its operations to the Minister each financial year.

The ABA's Corporate Plan 1999-2000 is likely to include an objective that directly addresses the implementation of the co-regulatory scheme for Internet content. Accordingly, an assessment of the ABA's implementation of the scheme will be reported in the ABA's forthcoming Annual Reports.

Senate motion

The ABA notes that on 30 September 1999, the Senate passed the following motion (by Senator Bishop, and on behalf of Senator Stott Despoja):

> That the Senate
>
> (a) notes the range of recent criticism and developments surrounding the Government's *Broadcasting Services Amendment (Online Services) Act 1999* (the Act);
>
> (b) recognises that:
>
> (i) the Act will not achieve the Government's stated objectives,
> (ii) the Act will impact adversely on the emergent Australian e-commerce and Internet industries, which are strong employers of young Australians,
> (iii) the Act will discourage investment in information technology projects in Australia and will force Australian business offshore, and
> (iv) the most appropriate arrangement for the regulation of Internet content is the education of users, including parents and teachers, about appropriate use of the Internet, the empowerment of end-users, and the application of appropriate end-user filtering devices where required; and
>
> (c) calls on the Government:
>
> (i) to immediately address the concerns raised by industry and the community about the unworkability of the Government's approach, and the Act in general,
> (ii) to urgently revisit aspects of the Act, prior to its commencement on 1 January 2000, and
> (iii) to table a report on the effectiveness and consequences of the Act in the Senate at 6-month intervals from the date of implementation of the regulatory regime.

The ABA understands that the Minister has yet to respond to this motion of the Senate.

Attachment 1

Specific changes to wording or figures in the draft report

Overview

Page XXVI
Boxed information

1st dot point should read:

- Currently, there are 48 …, 36 of which are organised …

4th dot point should read:

- Currently, there are 220 …

8th dot point should read:

- As at 30 June 1998, commercial television …

Chapter 2 The structure of Australian broadcasting

Page 24. Figure 2.9

Adjust the graph for commercial radio as the corresponding figure for 1999 should be 215 (operational) and not 220 (licensed).

Page 39. Table 2.4

Footnote **c** should read:

For 215 commercial radio stations that were operational at 30 June 1998.

Page 43. Figure 2.13

Footnote **c** should read:

For 215 commercial radio stations that were operational at 30 June 1998.

Chapter 4 Broadcasting licences and spectrum allocation

Page 71. Table 4.3

The highlights represent changes:

	Television			Radio			Total		
	Metro	Reg.	Total	Metro	Reg.	Total	Metro	Reg.	Total
NSW/ ACT	59.8	13.5	73.3	4.2	**0.7**	**4.9**	64.0	**14.2**	78.2
Vic	50.7	2.7	53.4	2.9	0.2	3.1	53.6	2.9	56.5
Qld	26.5	7.9	34.4	1.4	0.5	1.9	27.9	8.4	36.3
SA	12.5	0.7	13.2	1.0	0.0	1.0	13.5	0.7	14.2
WA/Tas/ NT	na	na	20.2	**na**	**na**	1.2	na	na	21.4
Australia	149.5	**24.8**	**194.5**	**9.5**	**1.4**	12.1	**159.0**	26.2	**206.6**

Chapter 6 The road to digital television

Page 134. First dot point

- a reduction in the efficiency with which the radiofrequency spectrum is managed;

It would be more appropriate for this statement to read – a reduction in the efficiency with which the radiofrequency spectrum is utilised.

Chapter 7 Regulatory restriction on entry into broadcasting

Page 148. Table 7.2

Footnote **b** should read:

For 215 commercial radio stations that were operational at 30 June 1998.

Chapter 9 Content regulation, consumers and competition

Page 209

Since 1 March 1999, programs with a Division 10 BA certificate no longer automatically qualify for Australian content quota.

Page 212

In 1999, at least 15 (not 10) hours of first release documentaries are required.

Licensees must broadcast at least 260 hours of C programs each year, of which at least 130 hours are first release Australian C programs.

Sport broadcast between midnight and 2am must be live sport rather than first release to count towards quota.

It is not correct to state that the standard assumes serials are 'of lower benefit' than 'higher benefit' telemovies and mini series. The standard's scoring system is based on the need to encourage a diversity of drama formats. It is not a rule based on any notions of their relative benefit. The drama sub-quota's format factors (rather than 'points scale') ensure that there is no disincentive for including more expensive one-off drama and high budget drama formats in the mix of programs a licensee chooses to broadcast to meet its Australian content obligations.

Page 213

The draft report refers to 'a minimum price (licence fee) of $45,000 per half hour of programming for all first release Australian children's programs'. This should read for Australian children's drama programs only. There is no minimum price requirement for first release C or P programs.

The draft report also refers to advertisements broadcast during C periods. Advertisements broadcast during C periods must have a G classification and meet CTS 10 and 17-23. These are additional requirements for advertisements broadcast during C periods, not part of the requirements for G classification as indicated.

The additional requirements contained within the CTS proscribe unsuitable material, undue pressure to purchase, unclear presentation of a product or service and promotions or endorsements by program characters. There are also restrictions on advertising time, the repetition of advertisements, and the way in which disclaimers, premium offers and competitions can be presented.

Page 217

The information in paragraph 2 is incorrect. In 1997, the Seven Network had a shortfall in both the first release Australian C drama requirement and the repeat C drama requirement. The ABA accepted that the shortfalls occurred due to an administrative error.

To compensate for the shortfall in first release Australian C drama programming, the Seven Network undertook to make up the shortfall by broadcasting an extra 30 minutes first release Australian C drama in 1998 and to commission two additional 30 minute first release C drama programs for broadcast in 1999. The ABA was satisfied with Seven's undertakings.

To compensate for the shortfall in repeat C drama programs, the Seven Network scheduled extra repeat C drama programs as compensation. [Source: ABA Annual Report 1997-98, p.137]

Chapter 10 Codes of practice and compliance

Page 245. Box 10.1. Regulating advertising

The first paragraph indicates incorrectly that the Children's Television Standards apply to community broadcasters.

In the second paragraph, while there are no specific limits on the amount of advertising subscription services may carry, it is a condition of licence that subscription fees will continue to be the predominant source of revenue for those stations.

In the fourth paragraph, Code provision 3.2 of the Commercial Radio Code provides a limit on the amount of advertising per hour on solus commercial radio stations.

The final paragraph describes the situation relating to complaints about advertising on commercial television rather than broadcasting services as a whole.

Page 251. Box 10.4. Mechanisms for incorporating community standards in broadcasting

This is intended to summarise how community standards/attitudes are included in the codes of practice. The second last paragraph refers to a 'uniform system of classification across film, video and television'. This is not quite accurate. The national broadcasters, narrowcasting television services and subscription television broadcasters have adopted the OFLC classification guidelines in their entirety. However, the classification system in the Commercial Television Industry Code is based only on that administered by the OFLC, modified to meet the legislative expectations of s.123(3A) of the BSA, and to encapsulate industry practice to ensure consistency in application across the commercial television industry.

Page 252. Last paragraph

It is incorrect to say that broadcasters `must notify the ABA' if a complaint has not been resolved. Complainants may approach the ABA if they are dissatisfied with a licensee's response, or if they do not receive a response within 60 days, or if they have complaints about possible breaches of the formal program standards or other conditions of licence.

Page 262. Box 10.6. Commercial television code of practice: news and current affairs programs

There should also be some reference to the news and current affairs requirements in the Commercial Radio Code, and the ABC and SBS Codes.

Appendices. H. Historical development of television content regulation in Australia

Page H.1. Table H.1

Corrections are underlined.

1956 – the last sentence should read: This requirement remains until the determination of the *Australian Content Standard* by the ABA in December 1995, having been carried over as a standard under the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992*.

1990 – The Australian Broadcasting Tribunal concludes public inquiry. [The ABT inquiry first began in the early 1980s and resumed in January 1986, following amendment to the Act to reinstate the ABT's standards making powers]….A points system for first release drama and 'diversity' programs (six diversity categories, including social documentary and variety) is introduced. The score for drama programs is based on program duration,…

1996 - … A new points system for drama is introduced. The 'Australian factor' for drama is replaced with a definition of 'Australian produced' that applies to all types of programs.

1999 – The Australian Broadcasting Authority determines *Broadcasting Services (Australian Content) Standard 1999,* which allows New Zealand programs to count towards all quotas.

Page H.2. Table H.2

Corrections are underlined for 1992, 1996, 1997 and 1999. Suggested amendments are underlined for 1967 and 1978.

1967 – An incentive system is established. One hour of children's programming is counted as two hours in the Australian program quota system.

1978 – A Children's Program Committee replaces the Children's Television Advisory Committee to advise on the formulation of standards for children's programs and program classifications.

1992 – Children's Program Committee is disbanded. Programs to be assessed by ABA staff and specialist independent consultants [rather than the Australian Broadcasting Authority is to assess C and P classifications].

1995 - delete

1996- The first release children's drama quota increases to 24 hours. The Australian Broadcasting Authority introduces requirements for 8 hours of repeat Australian children's drama and for 100 per cent Australian quota for P programs. (This should be included here, rather than 1995 when it was announced only, together with the other 1996 amendments for Australian children's drama and repeat drama.)

1997 – The first release children's drama quota increases to 28 hours.

1999 – The Australian Broadcasting Authority determines the *Children's Television Standards (Variation) No. 1 1999,* which allows New Zealand programs to count towards all children's program quotas.