



Submission by Free TV Australia Limited

submission to

Australian Government Productivity
Commission

Annual Review of Regulatory Burdens on
Business:
*Social and Economic Infrastructure
Services*

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TABLE OF CONTENTS

1	EXECUTIVE SUMMARY	2
2	INTRODUCTION	3
3	REGULATORY BURDENS OUT OF STEP WITH MEDIA LANDSCAPE	5
3.1	Changing media landscape	5
3.2	Regulatory Obligations and Financial Impact	5
4	ACMA'S REGULATORY POWERS	9
4.1	Background	9
4.2	ACMA's Guidelines	9
5	THE CO REGULATORY SYSTEM UNDER THE BSA	10
5.1	Review of the Commercial Television Industry Code of Practice	11
5.2	Investigations under the Co regulatory system	13
5.3	Code Complaints Process	13
6	CONSULTATION PROCESSES	14
6.1	ACMA Consultation on its draft Five Year Spectrum Outlook	14

1 Executive Summary

- Commercial free to air television is the most heavily regulated media platform in Australia.
- The current suite of regulations were put in place at a time when there were few other platforms available for the viewing public
- Advancements in technology have resulted in increased penetration of a wide range of new platforms which are constantly emerging.
- These new platforms are not subject to the same heavy handed regulation as commercial free to air broadcasters
- Going forward attention should be paid to moving toward even handed regulation across all platforms.
- Commercial free to air broadcasters are also seeing a shift in approach to regulatory matters by the Australian Communications and Media Authority (ACMA)
- Broadcasters have concerns regarding the effectiveness of some consultation and review processes where detailed submissions do not appear to be acknowledged and addressed.
- Legislative restrictions on the use of ACMA's enforcement powers should be introduced to ensure certainty for broadcasters.
- The current review of the Commercial Television Industry Code of Practice has seen a move away from the co regulatory model which underpins the Broadcasting Services Act.
- Broadcasters are experiencing a more interventionist and legalistic approach to investigations; this approach is not being seen in the regulation of other platforms

2 Introduction

Free TV Australia is the peak industry body representing all commercial television stations licensed to broadcast throughout Australian under the *Broadcasting Services Act 1992* (BSA).

Free TV Australia welcomes the opportunity to provide this submission to the Productivity Commission's Review of Regulatory Burdens on Business: *Social and Economic Infrastructure Services*.

Commercial free to air television is among the most intensively regulated of all Australian industries. Regulation of the "content and conduct of broadcast media are more stringently regulated than print or online publications"¹.

Free TV is not opposed to regulation provided it is balanced and it achieves stated social, cultural and economic outcomes.

Free TV members recognise the objectives and policy principles sitting behind some of this regulation.

However much of the existing suite of regulation came into place at a time when there were far fewer screen time activities available to the Australian public. This is no longer the case.

New platforms are not subject to the same heavy handed regulation as commercial free to air broadcasters. Going forward attention should be paid to moving toward even handed regulation across all platforms.

The BSA is the primary piece of legislation for regulating Australia's commercial free to air broadcasters. It provides that the Australian Communications and Media Authority (ACMA) regulate the commercial free to air broadcasters in accordance with the objectives and principles of the BSA.

The breadth and depth of the regulation under the BSA is very comprehensive and provides for the regulation of the number of commercial free to air broadcasters, the technology employed by broadcasters, access to broadcasting platforms, company ownership and structure and program content (including advertising).

The BSA heralded a change in broadcasting regulation and a move away from the more prescriptive approach under the Australian broadcasting Tribunal, toward a co-regulatory model.

The approach implies that the industry "develops and administers its own arrangements, while the Government provides legislative backing for enforcement"²

Broadcasters are concerned at an apparent shift away from the co regulatory principles underlying the BSA. Broadcasters have seen in recent times a re-emergence of a more interventionist approach, particularly in the area of the review of the Commercial Television Industry Code of Practice (Code) and to investigations under the Code.

¹ Productivity Commission Inquiry Report no. 11, 3 March 2000 "Broadcasting" page 447

² Productivity Commission Inquiry Report no. 11, 3 March 2000 "Broadcasting" page 451

This submission addresses the following topics:

Section 3 describes the wide array of screen time choices available to Australians today and provides an overview of the extensive range of regulations which apply exclusively to commercial free to air television.

Section 4 argues that the enforcement actions available to ACMA should be subject to legislative restriction to provide more certainty as to when those enforcement actions can be exercised.

Section 5 describes the increasingly interventionist approach of the regulator in relation to the Commercial Television Industry Code of Practice.

Section 6 examines concerns regarding the effectiveness of some ACMA consultation processes.

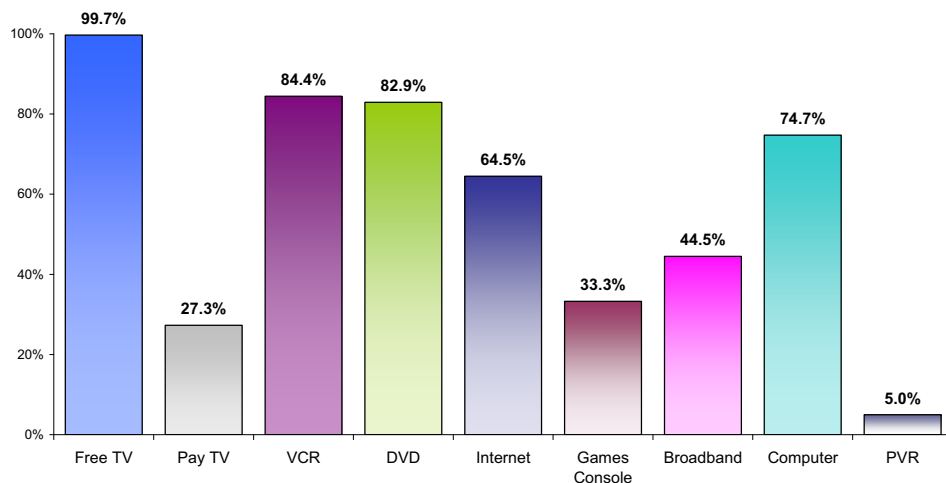
3 Regulatory Burdens out of step with media landscape

Commercial free to air television is the most heavily regulated of all media in Australia. Many of the regulatory burdens were put in place at a time when there were far fewer media platforms available to Australians.

3.1 Changing media landscape

In 2008, a range of entertainment and information technologies competes for viewers' attention. As well as the traditional media of free-to-air television, radio, newspapers and magazines, consumers now have access to the Internet, pay TV, DVDs, computer games, digital media players and mobile phones. Australians continue to be early adopters of many of these new technologies.

Household Penetration of Technology³



Notwithstanding the wide range of screen time activities which Australians are now availing themselves of, commercial free to air television remains the most heavily regulated platform.

Other platforms are not subject to the same degree of financial or regulatory burden as commercial free to air television.

3.2 Regulatory Obligations and Financial Impact

Many of the regulatory obligations described in this section do not apply to other media platforms. The greater regulatory burden on commercial free to air television is substantial and puts at risk broadcasters ability to continue to provide quality programming free of charge for all Australians.

These obligations represent significant costs in a market where revenue conditions have changed dramatically.

³ Free TV and PVR penetration is a Free TV estimate; pay TV figure sourced OzTAM universal estimate 31 December 2006 (5 cap cities); VCR, DVD, games consoles and computer penetration figures sourced OzTAM Establishment Survey Q3 2006; Internet and Broadband figures sourced from ABS 2006 Census Cat. No. 2068.0

(1) Licence Fees

The greatest financial burden on commercial free to broadcasters which does not apply to other media like subscription television is the annual licence fees they are required to pay. Commercial television licensees are required to pay annual licence fees of up to 9% of gross earnings.⁴ In 2006/07 this amounted to over \$270 million in licence fees which were collected by ACMA and put into the Government's consolidated revenue.⁵

(2) Advertising Regulation

Scheduling and content of advertising is highly regulated by a myriad of Commonwealth and State legislation.

Much of the regulation, such as restrictions on advertising to children, and advertising of alcohol are unique to commercial free to air television.

Other media are not restricted in this way.

(3) Content regulation – the Commercial Television Industry Code of Practice

The Commercial Television Industry Code of Practice contains far more restrictive regulation than other broadcasting codes.

For example commercial free to air broadcasters are subject to a comprehensive Code of Practice with stringent classification and scheduling restrictions.

These time zone restrictions also apply to advertising (non program matter).

There are also limits on the amount and timing of non program matter and other placement restrictions for certain advertisements.

Subscription television is not subject to scheduling restrictions. For example, unedited MA movies that have legal entry restrictions in cinemas can be shown at any time of day, including weekends.

(4) Australian Content

In addition to heavy annual license fees, the commercial free to air broadcasters are required to provide minimum hours of Australian and children's content.

The Australian Content Standard 2005 requires all commercial free to air television licensees to broadcast an annual minimum transmission quote of 55 per cent Australian programming between 6am and midnight. In addition there are specific minimum annual sub-quotas for Australian (adult) drama, documentary and children's programming.

This requirement translates into over 500 hours of first-run Australian drama each year from commercial free to air broadcasters. In 2007 all broadcasters exceeded the 55% quota. In 2006/07 commercial television broadcasters spent \$790 million on Australian programming, including **\$96 million** on Australian drama.⁶ This was the largest contribution to the Australian film and television industry in 2006/07.⁷

In contrast, subscription television spent **\$26.4 million** on Australian drama.⁸

⁴ Section 6 *Television Licence Fees Act 1964*

⁵ ACMA Broadcasting Financial Results 2006/07

⁶ ACMA Broadcasting Financial Results 2006/07

⁷ 2006/07 Australian Film Commission National Production Survey

⁸ ACMA compliance results

(5) Children's programming

The Children's Television Standards (CTS) impose minimum programming requirements for Preschool (P) and children's (C) programming. These requirements do not apply to subscription television.

The CTS imposes additional regulatory requirements on broadcasters in relation to the assessment and scheduling of these programs along with strict rules around the scheduling and content of advertisements in C programs and on either side of P programs.

Subscription television can broadcast programs for children without the requirement to comply with these requirements.

In 2006/07 commercial broadcasters spent over **\$24 million** on children's programming.⁹

The CTS is currently under review by ACMA and a new standard is due for release in June 2009. The draft CTS released by ACMA following the public consultation phase of the review retained many of the restrictions which Free TV had argued were no longer relevant. It is likely that many of these restrictions, which include the requirement to have all C and P programs pre assessed, will remain.

Free TV has actively participated in the review and has presented detailed and comprehensive data on children's viewing patterns in the changing media landscape. This data supports the proposition that the way children are watching television has changed considerably since the CTS were first introduced in 1984.

While the current review of the CTS was welcomed by Free TV, some aspects of the CTS impose a higher regulatory burden than is necessary to ensure adequate programming for children.

For example, the CTS pre-assessment process imposes an administrative burden on broadcasters. Currently a new classification application must be submitted for any subsequent series in a program. Applicants are requested to provide details of any changes from the original series of the program so ACMA can assess these new elements against the classification criteria. However, applicants are still required to complete the detailed application in its entirety in the same way as if the program was an original new series. This includes long running program that have been broadcast for over a decade.

In the future, changes in technology and patterns of media consumption may raise broader questions about the best way to meet the objective of the CTS, which is to ensure a core amount of quality Australian children's programming appears on Australian screens.

(6) Local news and Information

Regional commercial television licensees in Eastern States are subject to licence conditions requiring minimum levels of "material of local significance" (local news and information).¹⁰ Regional licensees have consistently met and exceeded these quotas.

These quotas do not apply to subscription television.

⁹ ACMA Broadcasting Financial results 2006/07

¹⁰ Section 43A of the BSA and the *Broadcasting Services (Additional Television Licence Condition) Notice 8 November 2007*

(7) Captioning

Commercial free to air broadcasters are required to provide closed captioning for all prime time programming (6.00pm – 10.30pm) and for all news and current affairs programs outside these times.¹¹

In addition, broadcasters have agreed to caption over 70% of all programming broadcast between 6am and midnight. This obligation will increase to 85% in 2011.

Captioning requirements for free to air commercial television have been set through the BSA. However, due to a lack of regulatory certainty, Broadcasters have engaged in dual processes for captioning under the BSA and the Disability Discrimination Act 1992 administered by the Human Rights and Equal Opportunity Commission (HREOC).

Given the financial and operational implications of captioning requirements, this uncertainty has been a significant concern for broadcasters. Free TV considers there should be a single set of regulatory arrangements that provides certainty.

(8) Other obligations and commitments

Broadcasters are required to contribute to the provision of an adequate and comprehensive range of broadcasting services in their licence areas.¹²

The rollout of digital television including the requirement for an analogue/digital simulcast period and minimum quotas for high definition programming has been a heavy financial and regulatory burden for broadcasters. Broadcasters have committed significant resources (up to \$1 billion) on the conversion to digital.

Broadcasters are also required to show 1040 hours of native HD content per year and to report their compliance to ACMA on an annual basis.

Broadcasters have consistently met or exceeded the HD quota.

Given the significant amount of HD programming broadcast, history of continual over delivery compliance by networks, and the increase in the use of HD equipment by broadcasters, the requirement to report on an annual basis is no longer necessary.

The reporting requirement is highly time consuming and resource intensive and provides no benefit to viewers. What is important is that broadcasters continue to provide at least 1040 hours of native HD content per year.

With more and more programs being provided in HD, the networks will continue to comply with the HD quota (all networks recently reported that they have exceeded the quota threefold).

The requirement to report compliance with the HD quota should be removed.

Removing the reporting requirement for the compliance with the HD quota is consistent with the prior decision of the Minister for Broadband, Communications and the Digital Economy to remove the requirement for broadcasters to report compliance with the antisiphoning provisions in the BSA.

The reporting requirements were complex, took many days and resources to complete, and often sought information in a form that did not exist, meaning that

¹¹ Section 38 Schedule 4 to the BSA

¹² Clause 7(2)(a) of Schedule 2 to the BSA

the reports derived from the data were incomplete or not meaningful. The reports were of questionable value to policymakers.

Broadcasters support that decision of the Minister. Broadcasters have continued to comply with the antisiphoning provisions in the BSA notwithstanding that they no longer provide these reports to ACMA.

The same rationale applies to reporting HD quotas. The requirement to report is an unnecessary regulatory burden which provides no benefit to viewers.

4 ACMA's Regulatory Powers

4.1 Background

The enforcement actions available to ACMA should be reviewed to provide more detail as to when those enforcement actions can be exercised.

In the 2005 Review of Proposed Reforms of the Broadcasting Regulatory Powers of the Australian Communications and Media Authority (ACMA), Free TV argued against any approach on regulatory powers which ran counter to the co regulatory principles in the BSA.

Free TV argued that the introduction of stronger, unrestrained and ill defined enforcement powers would change the cost-effective and efficient nature of co regulation and would lead to a more interventionist approach that characterised the pre-1992 regulatory system.

In 2006, the Communications Legislation Amendment (Enforcement Powers) Act 2006 (Cth) Act was passed. Shortly afterwards, ACMA issued Guidelines relating to ACMA's enforcement powers under the BSA (the Draft Guidelines).

Broadcasters are seeing an increasingly legalistic approach to investigations under the BSA. Often the approach is one which places greater weight on legalistic interpretations which have no resultant public benefit. Broadcasters would like to see an increased emphasis on practical solutions.

4.2 ACMA's Guidelines

Free TV understood that the purpose of the Draft Guidelines was to expand on the provisions of the BSA (both existing and amended) in order to provide certainty and clarity about the way ACMA was to apply its new powers. Free TV argued that, while appreciating the need for some flexibility, the Draft Guidelines largely reiterated the enforcement provisions in the BSA.

This was an unsatisfactory result at the time and in the intervening years, commercial free to air broadcasters have been subjected to a more interventionist and hardline approach by ACMA as a result.

The ACMA Guidelines were published in early 2007.

(1) Unfettered discretion

Of primary concern to Broadcasters is paragraph 1.3 of the Guidelines which provides that:

"These guidelines are not prescriptive or limiting. ACMA retains the discretion to impose or seek the sanctions it considers appropriate in light of the particular circumstances of each case."

It is the exercise of this unfettered and apparently unlimited discretion which is of great concern to broadcasters.

Broadcasters expressed the view in their 2007 Submission that the BSA amendments required ACMA to develop guidelines in relation to the use of some of its powers. In Free TV's view the guidelines are a legislative instrument that ACMA abides by. Free TV sought to have such a statement or commitment included in the Guidelines. Such a statement is necessary to provide greater certainty as to the circumstances in which the Guidelines will be applied.

(2) Factors to take into account when assessing the seriousness of the breach

Free TV proposed a list of factors which are to be taken into account when assessing the seriousness of the breach. For example:

- Was the breach wilful or reckless, or merely incidental?
- Was this a first time breach, or a repeated breach of the same provision?
- Was the breach an isolated incident, or part of a systemic series of breaches?
- Was the licensee in a position to avoid the breach?
- To what extent should the licensee reasonably have known that the action was likely to be a breach? For example, had ACMA previously made findings on the same provision or issued guidance as to the provision's interpretation?
- What was the impact and magnitude of the breach?

It is Free TV's experience that ACMA has generally not followed its own Guidelines when assessing the seriousness of a breach. Further that ACMA has used its unfettered discretionary power to impose maximum penalties in circumstances not warranted by the relevant breach.

(3) Legislative Amendments is required

In the two years since the Guidelines were put in place, Broadcasters have been unable to assess with certainty the results of investigations or the enforcement action which may be taken as a result of a breach finding.

Free TV is firmly of the view that legislative amendment is required to ensure there are adequate parameters around the exercise of ACMA's powers in relation to enforcement.

5 The Co regulatory system under the BSA

The BSA provides for a mix of direct legislative controls and co regulatory mechanisms. Under the BSA, ACMA can develop standards governing Australian content and children's television. Industry developed codes of practice provide for the regulation of other areas.

The development and consultation process for standards and codes differ in the sense that the development of standards is directed by ACMA, with public consultation, whereas codes are developed by industry.

Both processes however require close consultation and discussion between regulator and industry; a high level of consultation underpins the co-regulatory principles enunciated in the BSA.

5.1 Review of the Commercial Television Industry Code of Practice

Free TV has been in discussion with ACMA since June 2008 in relation to the review of the Commercial Television Industry Code of Practice (Code).

Free TV is also seeking a less restrictive regulatory regime for content on broadcasters' multi channels.

Section 123 of the BSA provides that codes of practice be developed by an *industry group* representing the relevant section of the industry.

In the case of the commercial free to air broadcasters, Free TV is the relevant industry group.

The BSA also provides that Free TV develop codes of practice in consultation with ACMA (section 123(1)) and take into account any relevant research conducted by ACMA.

ACMA must register a code if it is satisfied that:

- the code provides appropriate community safeguards for the matters covered by the code;
- the code is endorsed by a majority of the broadcasters within the relevant section of the industry; and
- the public has been given adequate opportunity to comment on the code

The BSA's co regulatory principles clearly provide that industry groups have responsibility for developing codes of practice. In practice, Free TV has consulted in detail with ACMA prior to releasing codes for public consultation.

While Free TV welcomes ACMA's input in this process, it is concerned that Free TV's role in administering the Code (as envisaged by the BSA) is being diminished.

Despite discussions over at least the past 12 months on a draft Code, the Code is yet to be released for public consultation.

Free TV is concerned that the Code review process is not operating as intended.

(1) Proposed amendments to the Code

Free TV is seeking amendments to the Code and has been in discussion with ACMA for over a year on those amendments. Free TV is confident that the Code will continue to provide appropriate community safeguards notwithstanding the amendments.

Some of the amendments are, in part, in response to concerns raised by the public or through the course of various reviews (for example, the Review of Reality TV conducted by ACMA in 2007).

Other amendments are to provide clarity for broadcasters and viewers (for example in relation to complaints handling).

For over half of the amendments ACMA has indicated that either further amendment is required, or Free TV should revert to the original code wording, **prior** to submitting the code for public comment.

Free TV is firmly of the view that the BSA envisages that Free TV develops codes of practice in consultation with ACMA and that ACMA's involvement should not extend to prescribing when the Code can and can't be released for public consultation.

Consistent with prior reviews of the Code, Free TV will allow a 6 week period of consultation which will allow the public adequate time to provide comments on the proposed amendments.

In the last Code review in 2003, Free TV extended the consultation period. Over 1300 submissions were received from the public as a result of that consultation period.

Free TV's view is that submissions from the public, through an adequate public consultation period, provide an indication to ACMA of whether the Code will meet appropriate community safeguards.

This is consistent with the principles underlying the BSA.

(2) Multi channel Content

Free TV first submitted a separate Code for Multi-channels to ACMA for consideration on 7 March 2008. In the separate Code for Multi-channels, Free TV proposed a different time zone regime to allow networks flexibility in programming to attract viewers and advertisers onto the new channels.

Following extensive discussions with ACMA Free TV revised its approach and has provided a Multi-Channel Appendix on 30 January 2009 for ACMA's consideration.

The revised Appendix contains a regulatory regime which is far more restrictive than that which applies for subscription television, notwithstanding similar penetration rates for digital and subscription television and the availability of parental locks for digital television.

The Multi Channel Appendix Free TV intends to release had been prepared in consultation with ACMA; the move from a separate Code to an Appendix and the tighter restrictions in the revised Appendix were in response to concerns raised by ACMA. Free TV is of the view that the Multi Channel Appendix provides appropriate community safeguards and has outlined its reasons in the Explanatory Note provided to ACMA.

Free TV has stressed to ACMA that it is urgent that the Multi-Channel Appendix be released for public comment as soon as possible. Networks have started to broadcast on multi channels and need regulatory certainty so they can finalise their business models. Unlike broadcasters' main channels, multi-channels do not have an established business model and may evolve quickly. This will require nimble and flexible regulation that can respond to dynamic market conditions.

ACMA has requested that the Multi-Channel Appendix be released with the Code. As discussed below, Free TV has had numerous discussions with ACMA in relation to the Code, and it is likely that its release for public comment will be delayed. Based on prior experience, it is likely to be some months before the main Code review can be finalised. Broadcasters would be concerned if this delayed the adoption of the Multi-Channel Appendix for the same period of time as this would provide an unacceptable level of uncertainty for broadcasters as they launch these new services. The issues raised in the Multi-Channel Appendix are discrete from the main Code and do not necessarily need to be considered simultaneously with the main Code review.

It is unclear to Free TV why the release of the Multi Channel Appendix at this time is not permitted by the Broadcasting Service Act (BSA).

5.2 Investigations under the Co regulatory system

Free TV members have noticed a marked difference in ACMA's approach to investigations in recent times.

A more legalistic and interventionist approach is being seen along with a departure from the prior decisions of the regulator.

(1) Legalistic approach under the Code

The Code is an integral part of the co regulatory system implemented by the amendments to the BSA in 1992. It is the result of a consultative process between Free TV and ACMA; as such it has not been drafted as a legislative instrument.

In recent times broadcasters have seen an increasingly legalistic approach adopted by ACMA in its investigations of news and current affairs complaints.

Broadcasters have been advised that under the current wording in the Code, broadcasters will see a continuation of the strict literal and legalistic interpretation currently being taken by ACMA.

One network was recently breached by ACMA for using the phrase "operating profit" rather than "profit". This breach finding was the result of an overly legalistic interpretation and dictionary based analysis and the selective use of dictionary definitions.

Another network had a similar experience, where the meaning of "hiding" used in the story was subjected to a dictionary analysis by ACMA without regard to the context of the story or the impression created in the mind of the ordinary reasonable viewer.

5.3 Code Complaints Process

The co regulatory system under the BSA requires complaints about breaches of the Code to be made in writing to the broadcaster concerned.¹³

The complaints process under the Code provides that a Code complaint is one that is made in writing to the broadcaster. If the complaint is made to the broadcaster more than 30 days after the broadcast, licensee does not need to comply with the Code when responding.

Broadcasters must respond to written complaints made within 30 days of broadcast. Such a response must be provided within 30 days after receipt of the complaint and must inform the complainant that they may refer the matter to ACMA if not satisfied with the response.

Complainants may approach ACMA if they are not satisfied with the broadcaster's response.¹⁴

Broadcasters must respond to a request by ACMA for a response within 30 working days of receipt of the request.

(1) Broadcasters obligations regarding viewer feedback

Broadcasters welcome feedback from viewers on a whole range of material broadcast. Not all viewer feedback relates to matters covered by the Code. In

¹³ Productivity Commission Inquiry Report no. 11, 3 March 2000 "Broadcasting" page 468

¹⁴ Productivity Commission Inquiry Report no. 11, 3 March 2000 "Broadcasting" page 468

some situations, a viewer may simply wish to provide their view or opinion to the broadcaster. If a viewer calls in with a complaint and it is **about material covered by the Code** and the viewer wishes to pursue the matter further, the broadcaster must advise the caller about the Code complaints process. Not all calls will be about material covered by the Code.

Broadcasters have found that ACMA is taking a wide view of what constitutes material covered by the Code. In a recent investigation, ACMA found that if a complainant contacts a licensee requesting to speak with a senior member of the production team, it would be reasonable to assume, unless the complainant explicitly states that their intention is *not* to complain, that their intention is to complain to pursue their complaint.

This has resulted in the only logical course of action now being to require networks' switch operators to inquire of each caller whether they wish to make a complaint about a matter covered by the Code.

6 Consultation Processes

Since the move to a co regulatory system in 1992, Free TV (and its predecessors FACTS and CTVA) has participated in and provided submissions on a wide variety of issues and to a number of different regulators.

Examples include submissions on copyright issues, spectrum licensing issues, spectrum planning issues, advertising regulation (submissions at both a state and commonwealth level), free speech issues and various content issues.

These submissions have been provided to a number of relevant commonwealth bodies, predominantly ACMA (and the ABA and ACA before it), the DBCDE (and DCITA before it) and various Senate and House of Representative Committees.

Free TV Australia welcomes this level of engagement with Government on key policy issues which impact its business. For the most part, Free TV acknowledges the value of the process and outcomes (although we do not always agree with the outcomes).

However, there are concerns that for some public consultations, the resulting outcomes do not appear to acknowledge or address details submissions and discussions provided.

By this we mean, that the consultation process appears to have predetermined outcomes which are published in complete disregard of the submissions made by stakeholders.

A recent example is provided below.

6.1 ACMA Consultation on its draft Five Year Spectrum Outlook.

In 2008, ACMA consulted on its draft Five Year Spectrum Outlook. Chapter 5.9 of the draft Outlook contained ACMA's analysis of demand for spectrum for 'wireless access services' (WAS).

This is an issue of direct interest to all free to air television broadcasters. Free to air television broadcasters are currently licensed to use the 2500-2690MHz (2.5GHz ENG band) to produce program material outside the studio, including live news, current affairs, sport and other events (often referred to as ENG, OB and EFP uses).

The band was previously identified by ACMA in its Spectrum Planning Discussion Paper SPP 1.06 Strategies for Wireless Access Services as a candidate band for possible allocation to WAS in Australia.

Free TV's submission to that paper (and to the subsequent SPP10/06 Strategies for Wireless Access Services – Spectrum Options), raised a number of issues of serious concern to its members regarding the possibility of relocation of broadcasters in favour of allocation of the 2.5 GHz band to WAS. Of critical concern was that no suitable alternative spectrum has been identified that can meet the existing requirements that support broadcasting uses.

Free TV also expressed serious concerns regarding the adequacy of the demand analysis undertaken by ACMA to inform its assessment of WAS spectrum needs. The consideration of WAS spectrum demand in the draft Outlook represents an opportunity for ACMA to demonstrate that it has responded to these concerns.

From the information provided in the draft Outlook, it is not clear that ACMA had responded to these concerns.

Free TV is very concerned that the important matters raised in its submission were not adequately considered by ACMA. Whilst chapter 5.9.2 provides a discussion of issues affecting WAS spectrum demand, this discussion is general in nature and does not reference any detailed market research or technical analysis.

Decisions to change the existing use of spectrum in response to increased demand result in major financial implications for the existing spectrum users, and the potential loss of capacity and quality of an existing service.

Thus it is vitally important that ACMA adopt a thorough, transparent and accountable approach to spectrum demand analysis. The draft Outlook would benefit from greater clarity as regards ACMA's proposed methodology for demand analysis.