



The ABA is assisting the Productivity Commission in its review of the Broadcasting Services Act. The ABA has adopted a 'friend of the court' role, and in this capacity will provide the Productivity Commission with information to assist it in achieving its objectives. It is in this spirit that the ABA made a submission to the review—the summary follows.

ABA submission to the Productivity Commission review

The ABA's submission to the Productivity Commission is to assist it in its review of the Broadcasting Services Act. It provides the rationale for various legislative provisions and a commentary on whether they have been successful in achieving their purpose. The submission is in 10 parts:

1 The planning process

A discussion of the planning process and explanation of how licences are allocated.

The original estimate for the time to complete the planning process was overly ambitious. The delay was managed by introducing additional services in solus markets ahead of planning for those licence areas, and by creating a new category of licence for temporary community services.

The ABA explains how Government's decisions on the introduction of digital television have resulted in a substantial diversion of resources away from analog planning to implementing that scheme.

2 The ABA and the ACA

The submission draws out the distinction between the regulation of content under the Broadcasting Services Act and of carriage under the Radiocommunications Act.

A network of regulators, reflected in cross-appointments, facilitates a coordinated approach to their respective functions.

3 Decision-making: transparency and accountability

In keeping with a co-regulatory approach decisions are made in consultation with all interested parties. The low number of appeals against ABA decisions is evidence of the benefits that accrue from such an approach, reflecting a less litigious environment than administered by the Australian Broadcasting Tribunal.

4 Licensing services

The rationale for licence fees is that there is a need to tax commercial broadcasting services which use a scarce public resource but have the benefit of operating in closed markets created by legislative restrictions. Licence fees, together with the price paid at auction for a commercial broadcasting licence, are seen to provide some measure of return to the Commonwealth.

5 Ownership and control

Ownership and control rules:

- encourage diversity in the control of the more influential broadcasting services; and
- ensure that Australians have effective control of the more

influential broadcasting services.

The concept of 'control', and the restrictions, including those relating to cross-media and foreign ownership, are included. There is an assessment of the effectiveness of the rules in meeting their objectives.

6 The ABA and FIRB

The submission explains the role of the ABA and the Foreign Investment Review Board in dealing with applications relating to foreign interest in the media.

7 The ABA and the ACCC

There is close liaison between the two agencies over the application of their respective legislation to mergers and acquisitions in the media. The network of regulators, reflected in cross-appointments, facilitates a coordinated approach to their respective functions.

8 Codes of practice

Codes of practice reflect a less interventionist regulatory scheme than had been the case under the *Broadcasting Act 1942*. The co-regulatory model means the ABA has a supervisory role in relation to the development of codes of practice. This process is carried out by the relevant industry association in consultation

with its members and services in that sector of the industry, the community and any other interested parties. The ABA shares its research with industry groups responsible for codes of practice.

9 Content regulation

All commercial television broadcasting licensees must comply with Australian content and children's standards.

10 International obligations

The ABA is required to carry out its functions in a manner that is consistent with Australia's obligations under any convention of which Australia is a party or any agreement between Australia and a foreign country. If this does not happen, the consequences are spelt out in the example of Australia's obligations under the Trade in Services Protocol to the Australia-New Zealand Closer Economic Relations Trade Agreement. In that case, the High Court of Australia found that the previous Australian content standard was unlawfully made. This part also gives the purpose of some agreements, and briefly explains how their provisions relate to the ABA's functions.

The full text of the ABA's submission is on the ABA web site <www.aba.gov.au>