NEWS

REGULATION OF PRINT HANDICAPPED STATIONS

The Government in October announced that radio for the print handicapped stations would in future be licensed under the Broadcasting Act, as special interest public radio station. There are four radio for the print handicapped stations operating in Australia, these being in Sydney, Melbourne, Hobart and Brisbane, whilst the fifth is temporarily off the air. The inclusion of the radio for the print handicapped stations on the broadcasting band will eliminate any need for modification of receivers to pick up their signals. When the new licensing arrangements come into effect holders of existing radio for the print handicapped licences will have to compete with other applicants for special interest (radio for the print handicapped) licences.

REMOTE TELEVISION COMMENCES

Golden West Satellite Communications, the RCTS licensee for the Western Zone, commenced broadcasting on 18 October, 1986. The satellite up-link facility is located at Bunbury, and is received by rebroadcasting facilities at Broome, Dampier, Derby, Carnarvon, Exmouth, Karratha, Kununurra, Port Hedland, Moora, Pannawonica, Roebourne and Wyndham.

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THE NEW INQUIRY - A PRACTICAL PERSPECTIVE

On 15 May, 1986 the Broadcasting (Inquiries) Regulations came into effect.

The Regulations were heralded as the means by which Inquiries could be expedited, costs minimised and delays averted. Whilst streamlined inquiries regulations had, for some time, been seen as desirable, the Tribunal's experience with the Inquiry into a third commercial licence for Perth was the catalyst for the promulgation of the new Inquiry Regulations although the Administrative Review Council had recommended changes to the Inquiry process several years ago.

The aim of this Article is to provide a commentary on how the new regulations have been put into practice and how they were applied in the first licence grant inquiry to be held under them - the Newcastle FM Licence grant. In addition, it is intended to provide some suggestions as to how the procedures can be improved and streamlined in the light of the procedures adopted.

The Newcastle Inquiry

After a false start when invitations for licence applications were withdrawn, applications were required to be lodged by 22 July, 1986.

After some preliminary meetings with the parties, on 12 September, 1986 the Tribunal met with all the parties and submitters to the Inquiry.

Initially the new inquiry procedures were explained:

> "Miss O'Connor explained that the new inquiry procedures are a vehicle to move the Tribunal into an administrative rather than a curial mode. The new procedures have more scope for co-operation between the Tribunal and parties and between parties themselves. A feature of the new procedures is the conference mode, designed to encourage discussion and identify major issues. Most issues will be approached in a

non-adversarial manner and conflict will hopefully be confined to a limited number of issues which, in the end, are irreconcilable and may need to be aired during a public hearing" (ABT report of public conference - 12.9.86).

During the conference the Tribunal made the point that the new inquiry procedures emphasised documentation and that hearings would focus on the "funnelling" of information the parties had provided as a result of the "pre-hearing procedures"; under the new procedures a public hearing is not automatic. Thus the inquiry emphasis has fundamentally changed from the presentation of an application at an oral hearing to the preparation of documentation, its filing and exchange, prior to a hearing (if any).

On the subject of cross-examination, the Tribunal said that because inquiries are not strictly adversarial "cross-examination is often not appropriate or of assistance to the Tribunal ... It has been the experience of the Tribunal that challenges to the qualifications, expertise or credibility of a witness who has given evidence in areas such as economics or market research are unlikely to be helpful to the Tribunal. The Tribunal will use its own expertise to give appropriate weight to the material produced to such experts. Parties who wish to challenge qualifications, expertise or credibility of experts should therefore seek leave of the Tribual first".

The conceptual structure given to the Newcastle inquiry by the Tribunal involved four steps:-

1. The funnelling stage - the stage where the parties determine the issues.

2. The Specifics Stage - where the parties file and serve documents to be relied on.

3. The Cross-Examination in Writing Stage - where the parties respond to the cases developed by the other parties.

4. The Hearing Stage - where all the facts and issues are before the Tribunal and any hearing is to tidy up loose ends.

The conceptual scheme was implemented by directions involving a fairly tight time schedule, the relevant stages being:

1. Parties provide lists of documents sought from other parties and the Tribunal.

2. Parties provide requested documents.

3. Parties provide documents upon which they will rely.

4. Parties provide statements of evidence and other material in support of their cases.

5. Conference to assess the conduct of the inquiry to date.

6. Parties to provide evidence and submissions in reply to the causes of the other parties.

7. Tribunal interviews the Boards of Directors of the parties and to hear closing submissions (unless evidence is to be heard orally).

8. (If required) oral hearing.

In practice the tight timetable worked well - after all it was in all applicants' interests to hasten the licence grant.

However, some criticism can be levelled at the process.

First, there is no reason why applicants should not, when first filing their applications, file with them statements of evidence in support of their applications. Such statements should include evidence from the directors an major shareholders of the applicant companies together with evidence as to market research, technical planning and financial assumptions and predictions. This would require the redesign of the application form to accommodate the presentation of such supporting material. Similar-

ly, there is no reason why applicants could not lodge with their applications the documents upon which they propose to rely.

Such a procedure would augment the determination of the relevant issues at the Inquiry because, from an early stage, each of the licence applicants would be in a position to assess the cases being presented by other applicants rather than having to wait until some time later to ascertain the issues.

Secondly, the opportunities for applicants to obtain documents from other parties should be circumscribed, at least in terms of parties being entitled to request and receive documents from other applicants as of right.

My experience with the new procedures was that the "requesting documents" stage could be used oppressively or as a fishing expedition by applicants. So far as I could discern, the documents obtained from applicants served little, if any, significance in terms of the substantive cases ultimately presented by each of the applicants.

A more efficient procedure, given that the Tribunal might find it of some relevance to have access to documents such as the minutes of Board Meetings of applicant companies or other internal memoranda and reports, would be for the Tribunal to request them to be filed at the same time that applications are filed, or alternatively, that they should be filed shortly after the application and supporting material is filed. In any event, applicants seeking documents from their competitors should be required to submit the reasons why they require the documents the subject of their request.

Thus structured, the documentary phase of a licence inquiry could be reduced to:

1. Applications lodged together with:

    (a) Statements of Evidence in support of application.

    (b) Documents upon which the applicant relies.

2. Conference to discuss inquiry and to determine whether parties are to be entitled to other documents from applicants.

3. Parties to provide evidence and submissions in response to the cases put by other applicants.

4. Interviews with applicants' Boards and closing submissions.

5. Oral hearing (if any).

One of the most interesting innovations used by the Tribunal was its interviews with each of the Boards.

The interviews took the form of the members of the Tribunal directing questions to each of the Boards in a public hearing. The Tribunal was able to question the Board members on issues that they considered to be of significance. The interviews took place without the active participation of legal representatives.

As a result, the Tribunal was able to avoid hearing lengthy cross-examination of witnesses. The interviews lasted about 3-4 hours in each case and were an unqualified success.

The Tribunal left open the opportunity for the parties to request an oral hearing at which cross-examination would take place on certain issues after the requesting party had established the need for cross-examination. Ultimately, none of the parties considered it necessary to make such a request.

The result of the new inquiry procedure speaks for itself: the Newcastle inquiry was finished in about 4½ months. A decision is to be handed down in late February. However it is too early to determine whether the new procedures have led to significant savings in costs for licence applicants. Certainly barristers fees are likely to decline as there is no necessity for their use otherwise than in the context of an oral hearing. The costs of an inquiry are brought forward by the new procedures. They are incurred in the preparation and documentary phase rather than at a hearing. The result is the defoliation of forests rather than the launch of hot air balloons.

David Watts