# Collins on Broadcasting

**An edited extract of Senator Bob Collins' first public address since the passage of the Broadcasting Services Act**

If you had little more than a passing interest in the debate you could be forgiven for thinking the Broadcasting Services Bill is all about pay television and sinister attempts by bureaucrats to hoodwink politicians into establishing a star chamber to terrify mild mannered journalists.

I can assure anyone who continues to labour under this misapprehension that it is not. I shall attempt to put some of those fears to rest by putting this legislation into its political and historical context.

When the Federal Labor Government came into office in 1983 it inherited the *Broadcasting and Television Act* 1942. The Act was, of course, introduced by the Curtin Labor Government. Australia was at war, radio was still a fledgling industry. It would be 14 years before the launch of Australia's first regular television service, TCN9 in Sydney. Its introduction was timed to coincide with the Olympic Games in Melbourne in 1956.

## Historical parallels

The comparison between the introduction of commercial television in Australia and the frustrations being experienced by the Federal Government now in attempting to introduce a pay television industry are uncanny. British and American experiments in television transmission were followed with considerable interest in Australia from the 1920's. The British Broadcasting Commission was launched in 1936 and the first commercial networks in America began three years later but it was not until the mid 1950's that Australians first obtained access to commercial television. Preliminary discussions began in earnest in Australia under the Curtin Government in 1942. A parliamentary standing committee at the time recommended tenders be called for television transmitters and receivers and transmission be controlled by a national authority. The Chifley Labor Government established the Australian Broadcasting Control Board in 1948.

It recommended television stations be established in the six state capital cities. Prime Minister Chifley announced the Government would introduce a national television service as quickly as possible. After the defeat of the Chifley Government in 1949 all progress on giving Australians access to the television, which had now been enjoyed by the British and American populations for more than a decade, was dashed. The new Prime Minister Robert Menzies shelved all proposals to introduce television. Public demand, however, was such that the Government eventually had to appoint a Royal Commission in 1953 to inquire into the question. It reported the following year and recommended a gradual introduction amid intense debate about excluding metropolitan newspaper proprietors from seeking licences for fear of creating a media monopoly. Australia's first regular commercial television service was eventually launched in Sydney on Sunday, September 16, 1956 — 30 years after debate began. It was not until 1971 that the northern most capital, Darwin gained its first commercial transmission.

As I said earlier the comparisons with pay television are uncanny. Despite the Government's enthusiasm Australians are still waiting to access pay television — a service which has been enjoyed by Britons and Americans for many years.

## Ad hoc amendments

There had been a score of substantial amendments to the old Act since 1983 in an attempt to bring the legislation to grips with a rapidly growing industry. However, it was felt further ad hoc amendments would only add to its complexity. It was clear we needed legislation capable of allowing the broadcasting industry to grow into the next century. In my view this legislation contains all the ingredients to let it do just that. We now have an entirely new framework which allows the industry to respond to the modern market place and the opportunities created by new technology. Both the industry and audience will be winners. The aim is sensible competition and structural adjustment with consistent yet flexible guidelines. In my view this legislation will give the industry a sense of confidence and predictability. And this has been reflected in wide spread support within the industry for the major elements of these reforms. The Act also provides for proper commercial and public accountability. It is also written in plain English, which has to be one of its best features.

## ABA powers

The new Australian Broadcasting Authority (ABA) has also been given wide-ranging information gathering powers. The purpose is obvious. The ABA must have teeth if it is to obtain the necessary information to uncover major breaches of the Act. However, the Government will expect the Authority to act in a prudent and reasonable manner when using these powers.

I mentioned earlier the concerns expressed that these powers posed a threat to investigative journalists and their sources. This concern is misplaced. The government has already acted in response to concerns expressed by journalists and their advocates about the search and seizure provisions contained in clause 198 of the Bill.

## Journalists' sources

The legal protection of journalist sources, however, is a totally different issue and public debate on this issue has not been helped by some of the media coverage on the passage of the Bill.

By way of example I will cite one recent feature article in the *Adelaide Advertiser*.

It was headlined: "MUZZLE ON THE WATCHDOGS". The first few paragraphs are as follows:

> *"In a dark, locked room, sinister and faceless bureaucrats grab a journalist's hair. They jerk the head back and shine a bright light in the face."*
>
> *Quote: "We have ways of making you talk" unquote, they sneer over their embarrassment at the journalist's published revelations.*
>
> *Quote: "For the last time — who gave you that story?" Unquote.*

The author of the article goes on to say that this alarmist scenario, while of course exaggerated, is the imaginative extreme to which public servants could take powers contained in this legislation. I agree with the author. This is alarmist. But I do not consider it to be the "imaginative extreme". In fact, it is pure fantasy.

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I assure you, the ABA will not have the power to drag journalists kicking and screaming into star chambers and compel them to divulge confidential sources on pain of 12 months imprisonment.

There will be no jackboots issued with the keys to ABA offices. The investigatory powers of the ABA are, essentially, the same as those of the Australian Broadcasting Tribunal (ABT) under the *Broadcasting Act* 1942. The ABT had the same powers to examine in private, on oath, and to seek the production of documents.

The *Broadcasting Services Act* is not the place to consider the wider legal question of journalist sources. It is a complex legal policy question. My personal view is that there should be some form of protection and there are many options which can be considered. I have been discussing these with my colleague the Attorney General, Michael Duffy. This matter is under active consideration.

## Public access and accountability

There have been suggestions in a number of trade journals in recent weeks that the new Bill contains few provisions for public involvement in the work of the new authority. This is rubbish. Public input will be important to the planning of services. The input could not be more fundamental. This means the ABA will only make planning decisions following extensive public consultation. This obviously ensures the regulator is publicly accountable. In addition it will publish:

- the results of hearings;
- changes to licence conditions;
- licence allocations and renewals;
- variations to categories of services;
- planning decisions;
- alterations to program standards; and
- opinions on service categories or control.

The ABA must also maintain many registers for public information including people in control of broadcasters and newspapers, and codes of practice. It will also be required to submit an annual report to Parliament. The codes of practice must take into account community attitudes such as the portrayal of physical violence, sexual conduct and nudity, and material likely to incite or perpetuate hatred on the basis of ethnicity, gender, sexual preference or disability. These codes will not be developed in a vacuum.

## Continuation of licensing arrangements

The ABA will come into being on October 1 as planned. I will shortly be announcing the Authority members. I have been advised that there is some concern over licensing arrangements between now and the first of October.

I have decided that it would be wrong to seek any new grants of commercial licences because the arrangements are so different under the old and new Acts. However, as the selection process for allocating community licences is much the same as the current public licence allocation process, I have no trouble continuing that program.

This means that we will be proceeding with the established program where the use of an additional frequency will not unduly restrict the planning processes required by the Act.

## AM/FM conversion

Applications for AM/FM conversion received after July 14 will not be considered. This does not, of course, apply to those conversions covered by the transitional arrangements. The fact is that there are already more conversion applications in the pipeline than could possibly be dealt with by 1 October. So there had to be a cut-off date. We are working flat out to finalise as many conversions of commercial radio licences as possible over the next few weeks.

Some proposals for new frequency assignments to allow licensees to better serve their licence areas will need to be put on the back burner until the ABA's planning processes are well under way.

But overall, the radio industry does very well out of this Act. Licence holders will be allowed to hold both an FM and AM licence in the same market, instead of only one. And there are no limits on foreign ownership for them, so they can find foreign capital if they want to. I am sure that the ABA will have many existing players banging on its door to argue for high priority to their claims for a second licence. Planning is obviously one of the keys to the new regime.

Soon after 1 October, the ABA should be able to identify priorities for the planning of frequency allocation and licence areas, and the arrangements for public consultation.

## Commercial advantages

I am pleased to see the *Broadcasting Services Act* 1992 is already having an impact. I have noticed that one broadcaster has moved quickly to take advantage of the two-to-a-market rule in the Sydney radio market. There are many commercial advantages to be taken up, and I am sure that other players will soon follow suit. This new regime is essentially what the industry wanted.

It is flexible because it allows the use of new technologies, yet it is predictable which is important when people are making business decisions. As for the public, viewers and listeners must be winners through greater diversity and choice of services and programs.

*This is an edited extract of an address given by Senator Bob Collins at a Blake Dawson Waldron seminar on 29 July 1992.*

# CAMLA COCKTAIL PARTY

CAMLA will hold its first Christmas Cocktail Party at 5.30pm on Tuesday 1, December 1992.

Paul Styles, the noted Media Consultant to KPMG Peat Marwick London, will deliver an address.

The venue and other details will be provided to members in the near future.

Please mark your diary.