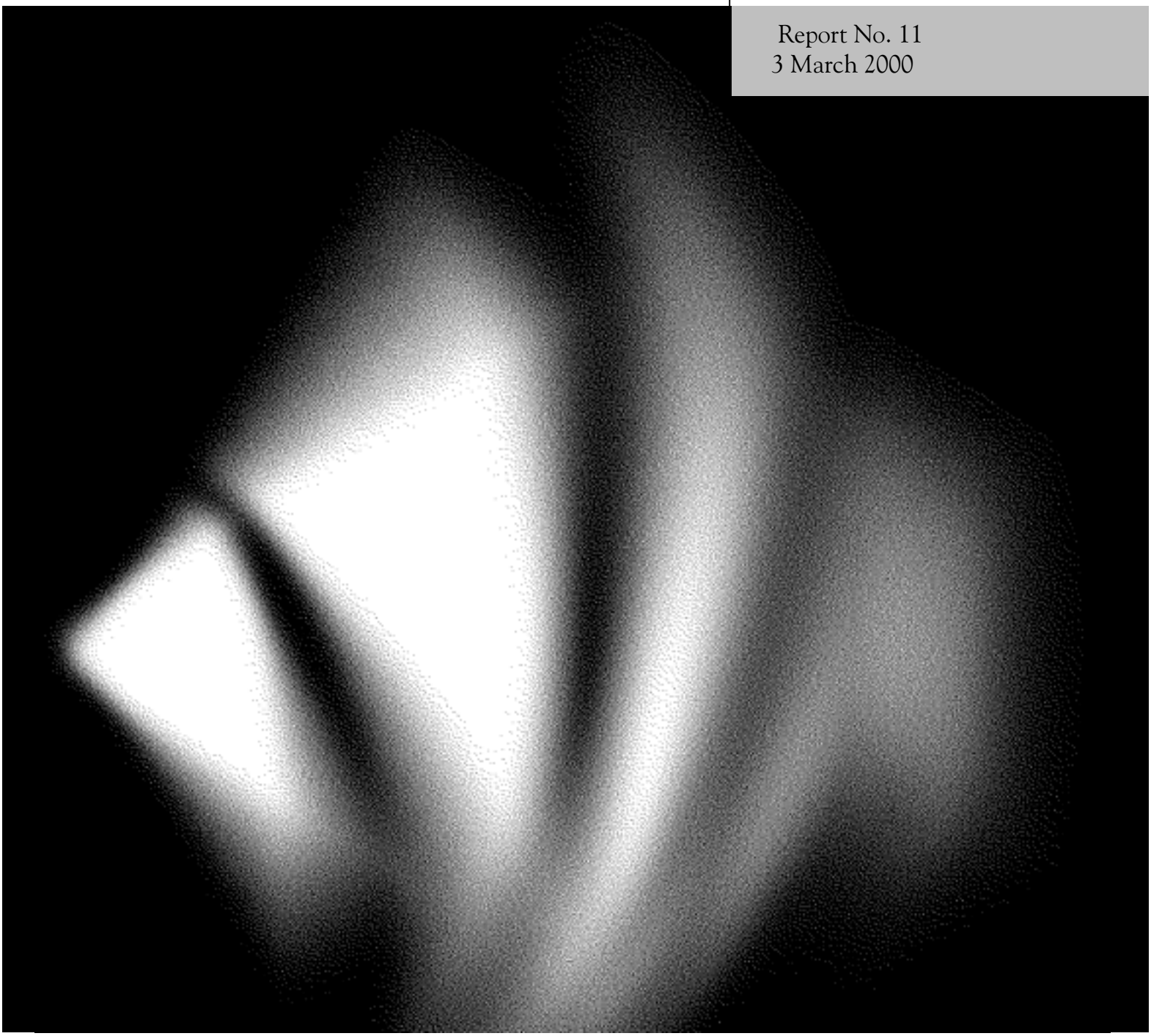
PRODUCTIVITY COMMISSION

Broadcasting

Inquiry Report

Report No. 11
3 March 2000



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The Productivity Commission

The Productivity Commission, an independent Commonwealth agency, is the Government's principal review and advisory body on microeconomic policy and regulation. It conducts public inquiries and research into a broad range of economic and social issues affecting the welfare of Australians.

The Commission's independence is underpinned by an Act of Parliament. Its processes and outputs are open to public scrutiny and are driven by concern for the wellbeing of the community as a whole.

Information on the Productivity Commission, its publications and its current work program can be found on the World Wide Web at www.pc.gov.au or by contacting Media and Publications on (03) 9653 2244.

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PRODUCTIVITY COMMISSION

3 March 2000

The Honourable Peter Costello MP
Treasurer
Parliament House
CANBERRA ACT 2600

Dear Treasurer

In accordance with Section 11 of the *Productivity Commission Act 1998*, we have pleasure in submitting to you the Commission's final report on Broadcasting.

Yours sincerely

R. M. Snape

Stuart Simson

Professor Richard Snape
Presiding Commissioner

Stuart Simson
Associate Commissioner

Terms of reference

I, PETER COSTELLO, Treasurer, under Parts 2 and 3 of the *Productivity Commission Act 1998* and in accordance with the Commonwealth Government's Legislation Review Schedule, hereby refer the *Broadcasting Services Act 1992, Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992, Radio Licence Fees Act 1964* and the *Television Licence Fees Act 1964* ('the legislation') to the Productivity Commission for inquiry and report within twelve months of receiving this reference. The Commission is to hold hearings for the purpose of the Inquiry.

Background

2. The *Broadcasting Services Act 1992* and the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992* govern a diverse range of radio and television services for entertainment, educational and information purposes. The Acts seek to provide a regulatory environment that varies according to the degree of influence of certain services upon society and which facilitates the development of an efficient and competitive market that is responsive to audience needs and technological developments. The Acts also seek to protect certain social and cultural values, including promoting a sense of Australian identity, character and cultural diversity; encouraging plurality of opinion and fair and accurate coverage of matters of national and local significance; respecting community standards concerning programme material; and protecting children from programme material that may be harmful to them.

3. The *Radio Licence Fees Act 1964* and the *Television Licence Fees Act 1964* seek to recover some of the value inherent in commercial broadcasting licences from commercial broadcasters and provide a return to the public for their use of scarce radiofrequency spectrum. Fees are based on the advertising revenues of commercial broadcasters.

Scope of the Inquiry

4. The Commission is to advise on practical courses of action to improve competition, efficiency and the interests of consumers in broadcasting services. In doing so, the Commission should focus particular attention on balancing the social, cultural and economic dimensions of the public interest and have due regard to the phenomenon of technological convergence to the extent that it may impact upon broadcasting markets.

5. In making assessments in relation to the matters in (4), the Commission is to have regard to the Commonwealth's analytical requirements for regulation assessment, including those set out in the Competition Principles Agreement, which specifies that any legislation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs and if the objectives can be met only through restricting competition. The report of the Commission should:

(a) identify the nature and magnitude of the social and economic problems that the legislation seeks to address;
(b) clarify the objectives of the legislation;
(c) identify whether and to what extent the legislation restricts competition;
(d) identify relevant alternatives to the legislation, including non-legislative approaches;
(e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the legislation and alternatives identified in (d);
(f) identify the different groups likely to be affected by the legislation and alternatives;
(g) list the individuals and groups consulted during the review and outline their views, or reasons why consultation was inappropriate;
(h) determine a preferred option for regulation, if any, in light of objectives set out in (4);
(i) examine mechanisms for increasing the overall efficiency of the legislation and, where it differs, the preferred option.

6. In undertaking the review, the Commission is to advertise nationally, consult with key interest groups and affected parties, and release a draft report. The Government will release and respond to the final report produced by the Commission within six months from the date it is received.

PETER COSTELLO
(Reference received on 5 March 1999)

Disclosure of interests

The *Productivity Commission Act 1998* specifies that where a Commissioner has or acquires an interest, pecuniary or otherwise, that could conflict with the proper performance of his functions during an inquiry he must disclose the interest.

Stuart Simson has advised the Chairman of the Commission that he holds or has interests in shares in the following companies:

- John Fairfax Holdings;
- West Australian newspaper;
- Telstra;
- Cable and Wireless Optus; and
- News Corporation

Mr Simson is a director of Simson Media Pty Ltd which is a shareholder in, and manager of Artsim Pty Ltd, a business that develops new media content and products. The other shareholders of Artsim are Artist Services Pty Ltd and Macquarie Bank Limited. Artsim:

- publishes a website that has received funding support from Telstra Multimedia and Telstra has an option to purchase equity in this website;
- produces programming for a daily business television program shown on Sky News. The Australian newspaper provides some office facilities and funding to help produce the program and receives promotional support. Sky News provides facilities to assist with the production of the program;
- is a shareholder in, and manager of Sportsview.com.au Pty Ltd which publishes websites for AFL clubs;
- has an agreement to supply content to AAP Information Services; and
- has an interest with Ericsson Australia in a business that manages multimedia content.

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Abbreviations

AANA	Australian Association of National Advertisers
ABA	Australian Broadcasting Authority
ABC	Australian Broadcasting Corporation
ABS	Australian Bureau of Statistics
ABT	Australian Broadcasting Tribunal
ACA	Australian Communications Authority
ACCC	Australian Competition and Consumer Commission
ACCTP	Advisory Committee on Children's Television Programs
AFC	Australian Film Commission
AFL	Australian Football League
ANZSIC	Australian and New Zealand Standard Industrial Classification
ASTRA	Australian Subscription Television and Radio Association
ATSC	Advanced Television Standards Committee
ATSIC	Aboriginal and Torres Strait Islander Commission
BDA	BDA Marketing Planning
BRACS	Broadcasting for Remote Aboriginal Communities Scheme
BSA	*Broadcasting Services Act 1992*
BTCE	Bureau of Transport and Communications Economics
CAAMA	Central Australian Aboriginal Media Association
CBAA	Community Broadcasting Association of Australia
CEASA	Commercial Economic Advisory Service of Australia
CLC	Communications Law Centre
CTF	Canadian Television Fund
CTS	Children's Television Standard

DCITA	Department of Communications, Information Technology and the Arts
DETYA	Department of Education, Training and Youth Affairs
DFAT	Department of Foreign Affairs and Trade
DIMA	Department of Immigration and Multicultural Affairs
DRB	Digital radio broadcasting
DTH	Direct to home
DTTB	Digital terrestrial television broadcasting
DTV	Digital television
DVB	Digital video broadcasting
EBIT	Earnings before interest and tax
EU	European Union
FACTS	Federation of Australian Commercial Television Stations
FARB	Federation of Australian Radio Broadcasters
FCC	Federal Communications Commission
FFC	Film Finance Corporation
FIRB	Foreign Investment Review Board
FTA	Free to air
GATS	General Agreement on Trade in Services
GHz	gigahertz
HDTV	High definition television
HFC	Hybrid fibre-coaxial
ICH	Internet content host
ISP	Internet service provider
kHz	Kilohertz
LF	Low frequency
LPON	Low power open narrowcasting
MDS	Multi–point distribution system
MEAA	Media Entertainment and Arts Alliance
MFN	Multi-frequency network
MHz	Megahertz

MPEG	Motion Picture Expert Group
NESB	Non–English speaking background
NIMAA	National Indigenous Media Association of Australia
NRL	National Rugby League
OECD	Organisation for Economic Co-operation and Development
OFLC	Office of Film and Literature Classification
PBL	Publishing and Broadcasting Limited
PC	Productivity Commission
RCA	*Radiocommunications Act 1992*
RMR	Roy Morgan Research
SBS	Special Broadcasting Service
SDTV	Standard Definition Television
SFN	Single frequency network
SPAA	Screen Producers Association of Australia
STB	Set-top box
sub.	Submission
TARBS	Television and Radio Broadcasting Services Australia
TPA	*Trade Practices Act 1974*
trans.	Transcript
UHF	Ultra high frequency
UNESCO	United Nations Educational, Scientific and Cultural Organization
VHF	Very high frequency
WAAMA	Western Australian Aboriginal Media Association

Glossary

ABC	Australian Broadcasting Corporation. A national (public) radio and television broadcaster set up under its own Act.
analog transmission	A method of broadcasting based on wave patterns
apparatus licence	Grants a right to use spectrum. It is relatively prescriptive, restricting use of spectrum to a particular type of equipment (or apparatus) using a particular frequency in a particular region.
bandwidth	The difference between the lowest and highest frequencies being used. The range of frequencies occupied by a signal, or passed by a channel. More generally, the information carrying capacity of a band or service.
BRACS	Broadcasting for Remote Aboriginal Communities Scheme. The scheme is designed to deliver radio and television services to remote communities.
broadcasting licence categories	Categories specified under the *Broadcasting Services Act 1992* (BSA): • national television and radio; • commercial television and radio; • community television and radio; • subscription television; • subscription broadcasting and narrowcasting (which includes subscription radio); and • datacasting
broadcasting services bands	Part of the radiofrequency spectrum reserved for primary use by broadcasting services. The Australian Broadcasting Authority manages these bands while the Australian Communications Authority manages the rest of the spectrum

common property resources	Resources such as the radiofrequency spectrum that are 'nonexcludable' (that is, it is difficult to control access to the resource), and 'rivalrous' (that is, use of the resource by one person affects the use of the resource by another). In the absence of property rights there is no incentive for users to manage the resource efficiently.
communications satellite	An earth orbiting spacecraft which provides communication over long distances by reflecting or relaying radiofrequency signals from earth
convergence	The blurring of boundaries between types of service and their means of delivery, and between types of data such as text, audio and video
co-regulation	The situation where industry develops and administers its own arrangements, while the government provides legislative backing for enforcement. Broadcasting codes of practice are regarded as being part of a co-regulatory scheme.
datacasting	A range of new interactive services made possible by digital television, including access to the World Wide Web, video on demand and games
digital transmission	Transmission of data in encoded binary form as zeroes and ones. Digital signals are less prone to distortion and interference than are analog signals; they are easily encrypted and compressed; and they require less bandwidth.
downloading	Retrieval over a network of any data, text, software, music, graphic or other multimedia application
effective radiated power	The measured power of a signal radiating from a transmitter antenna
fibre optics	The transmission of light through fibres or thin rods of glass. Signals are digitally coded into pulses of light and transmitted over great distances by slender glass fibres.
free to air	Radio and television broadcasts that are intended to be received by viewers free of charge at the point of consumption

hertz	The measure of radiofrequency
high definition television	A generic term that may refer to analog or digital television in a variety of resolution and scanning formats
hybrid fibre cable (HFC)	A combination of fibre optic and copper coaxial cables to deliver large amounts of data
Internet content host (ICH)	A provider of facilities, usually for a fee, across which content can be accessed and posted by other people
Internet service provider (ISP)	A computer system that provides the Internet connection, usually for a fee. ISPs accessed by modem and telephone line are often called dial-up services. Most ISPs have a network of servers (mail, news and the World Wide Web), routers and modems attached to a permanent, high speed Internet backbone connection.
LPON	Low power open narrowcast transmitter licences. The Australian Broadcasting Authority originally issued these licences from (1992), but the Australian Communications Authority has issued them since 1996.
microwave	A form of wireless transmissions at very high frequency that can be used for providing telecommunications links and television services. It requires line of sight.
multichannelling	The transmission of more than one stream of programming over a television channel. The ABC may broadcast three programs at the same time, for example.
multimedia	Multimedia applications allow the combination of a group of distinct capabilities to be integrated into the one operating system, for example including text with sounds, video or music. Bandwidth and multimedia operating systems allow video conferencing, Internet telephony and streaming video over the Internet.
multiplex	A group of programs or data services transmitted as a single digital signal

multi-point distribution system (MDS)	A radio communications system providing point-to-multipoint line-of-sight transmission using microwave transmission. It operates on the frequencies 2.0–2.4 gigahertz
narrowcasting	Specialised radio and television transmissions intended for a specifically defined group
online	The term used to describe a terminal connected over an active link of any kind — for example the real time use of a remote computer facility over a telephone line or by digital links. It is sometimes used more narrowly as a synonym for the Internet.
pay per view (PPV)	A system of paying to view individual programs
radiofrequency spectrum	The spectrum over which wireless communication is possible (from 30 kilohertz to 3000 gigahertz)
SBS	Special Broadcasting Service. A national (public) radio and television broadcaster.
search engine	A type of software that creates indexes of databases or Internet sites based on file titles, key words or the full text of files
set-top box	A combined receiver and decoder which processes digital transmissions and connects to television displays, VCRs and other devices. A set-top box may also convert digital transmissions to analog for display on an analog television set.
spectrum	Bandwidth expressed in terms of the frequencies the system can carry
spectrum licence	Grants a right to use a precisely defined piece of spectrum for any purpose, using any type of apparatus, subject to only broad technical requirements designed to minimise interference with other spectrum users

standard definition television	A generic term to distinguish 'standard' and 'high' definition formats. Standard definition digital offers a video resolution similar to Australia's PAL analog system, although the aspect ratio may be 16:9. In a 7 megahertz channel or multiplex carrier, 'multichannelling' of up to four separate standard definition programs is possible. Bandwidth constraints all but preclude high definition multichannelling.
subscription television	Television services usually delivered by HFC and satellite, and supplied on payment of subscription fees
terrestrial television	Television broadcasting from land based transmitters to conventional television aerials within the line of sight
World Wide Web	Internet client server hypertext distributed information retrieval system which originated from the CERN high energy physics laboratories in Geneva, Switzerland. An extensive user community has developed on the Web since its public introduction in 1991.

PART I

EXECUTIVE SUMMARIES

Key messages

The digital revolution promises consumers new and better broadcasting services throughout Australia. Broadcasting, telecommunications and the Internet are converging rapidly, not only in terms of technology and services, but also in company structures.

If policies are to be effective in an environment of continuing uncertainty, regulatory distinctions between media, services or delivery platforms should be avoided.

Competition in Australian media may be increased or threatened by digital broadcasting and convergent technology. Broadcasting policy must be reformed quickly to deal with the new competitive dynamics.

As an initial step, fundamental reform is needed to make better use of the broadcasting spectrum (the 'airwaves'). The spectrum should be priced and allocated as a scarce resource:

- better planning should increase the amount of spectrum available for use;
- access to spectrum should be separated from broadcasting licences. Broadcasters should be able to provide their services using whichever platform (over the air, cable or satellite) is most efficient; and
- pricing spectrum would encourage broadcasters to use it more efficiently. Broadcasting licence fees should be replaced by spectrum access fees.

Rapid and certain conversion to digital television is the key to unlocking the spectrum. It will create opportunities for new players and new services. Innovation should be embraced by:

- setting a firm and final date of 1 January 2009 for national analog switch-off;
- providing for early digital conversion and release of spectrum when available; and
- relaxing restrictions on digital services (datacasting and multichannelling) and picture formats. High definition transmission should not be mandated.

Without substantial changes, the digital conversion plan is at serious risk of failure.

Important social and cultural objectives of broadcasting policy include ensuring diversity of sources of information and opinion, adequate levels of Australian content and appropriate program standards. Freedom of expression is also important and should be added to the objectives of the *Broadcasting Services Act 1992*.

Diversity of sources of information and opinion is most likely to be served by diversity in ownership of media companies, and by competition.

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Anticompetitive legislation should be removed, including restrictions on the entry of new television stations, foreign investment, pay television advertising and sports broadcasting, and Australian quotas for advertisements.

The *Trade Practices Act 1974* is unable to deal effectively with cross-media mergers and mergers between 'old' and 'new' media which could affect concentration and diversity in the 'market for ideas'. A media-specific public interest test should be added to the Act immediately.

The cross-media rules prevent mergers among 'old' media companies, and will impose increasingly severe constraints on them. The rules' effectiveness will decline as convergence proceeds. The cross-media rules should be removed once a more competitive media environment is established, that is, when:

- the media-specific public interest test is in place;
- foreign investment is permitted under normal guidelines;
- the ban on entry of new television stations is removed; and
- a significant amount of spectrum is available for new entry.

Australian drama, documentaries and children's programs contribute to Australians' social and cultural identity. But the current quotas are designed for analog television and will not work in the digital age. A new convergent audiovisual policy to address social and cultural objectives should be introduced following a public inquiry.

Broadcasting of sporting events is dear to the hearts of Australians. Sports coverage will be improved if major sporting events of national significance are made available to any form of broadcasting without exclusion of other forms, and if new media are not restricted from showing sport.

Regional consumers and broadcasters would be disadvantaged by policies that deepen the digital divide between country and city. They should not suffer from regulatory restrictions on the types or amounts of services they receive.

Broadcasting is important for Indigenous communities, providing a primary level of service in remote areas and in local languages. Its social and cultural significance should be recognised by the creation of a new category of Indigenous broadcasting licence. Spectrum should be reserved for this purpose, where appropriate. The Government should examine the need for and feasibility of an Indigenous broadcasting service.

Finally, the administration of broadcasting policy should be more accountable and transparent. Ethical broadcasting practices should be encouraged and enforced.

Reforms are required to ensure broadcasters' compliance with licence conditions and codes of practice. Regulatory processes should be streamlined, and the timeliness and certainty of decision making should be improved.

Overview

Convergent digital technology promises a broadcasting revolution …

With advances in digital technology, broadcasting, telecommunications and the Internet are converging rapidly. They are being fundamentally redefined in terms of what they are, who provides services, and how they are produced and delivered. Broadcasting is becoming more interactive; it is not what it was when the Broadcasting Services Act was introduced in 1992.

… for consumers and producers.

This revolution offers consumers and producers of broadcasting services enormous opportunities. The revolution will affect the way we work and the way we live.

Major national, social, cultural and economic issues are at stake.

But the digital revolution carries with it threats as well as promises. Without new entry, the digital environment could bring increased concentration through converging ownership. Current policies aimed at Australian social and cultural objectives could become obsolete.

Continuing change is the only certainty.

It is not possible to predict and describe the direction which the digital revolution will take. The directions and speed of convergence are unclear, but the inevitability of continuing change in the media and telecommunications industries is certain.

Current broadcasting policy is outdated.

Broadcasting policy evolved in an analog era of distinct media that could be regulated separately. Broadcasting policy has been, and continues to be, characterised by highly prescriptive regulation. Such an approach was taken to the introduction of subscription television. More recent legislation on the introduction of digital television mandates specific television formats and services.

Past compromises are no longer relevant.

This approach reflects a history of political, technical, industrial, economic and social compromises. This legacy of *quid pro quos* has created a policy framework that is inward looking, anti-competitive and restrictive. As boundaries

between media dissolve and the old concept of broadcasting becomes obsolete, this regulatory framework is eroding and being circumvented.

Policy must change to embrace the future.

The historical approach is not the way to embrace the future. The current technological revolution provides an opportunity to look forward, through the digital conversion process and beyond, in developing broadcasting policy.

Technological change has ramifications for many specific areas of media regulation — access to spectrum, the definition of digital television services, ownership and control, and content regulation. With the increasing pace of technological change in media and communications, the means for achieving the community's policy objectives must also change.

Convergence in technology and industry requires policy convergence.

If we fail to grasp these opportunities to develop a convergent policy framework, Australian media and communications industries will not realise their potential. They will continue to be distorted and stunted by regulatory impediments, with adverse implications for the community and the economy generally.

With the benefit of over 300 submissions and many days of public hearings, the Commission has asked what needs to be done to embrace the communications revolution and allow the best possible broadcasting system to evolve in this new environment. Because broadcasting services touch our lives in so many ways, Government decisions taken now have the potential to offer, or to deny, great advantage to Australians, now and in the future.

Technological uncertainty requires policies that are neutral between technologies.

In such an environment, regulation must be flexible enough to deal with uncertainty and change. It should not advantage some technologies or media producers at the expense of others.

Media consumption

Media plays a big part in Australian life.

Australians devote about half their leisure time, on average, to media — listening to radio, watching television, reading newspapers and magazines, using the Internet, or going to the cinema. The average Australian watches 20 hours of television per week. Broadcasting is mostly used for entertainment and relaxation, but it is also the major source of news for a significant proportion of the population.

Australians love radio and television

Australians spend about half of their leisure time using media, including radio, television, newspapers and magazines, cinema and the Internet.

Australians watch television on average for 20 hours per week, mostly for relaxation and entertainment in the evenings and on weekends.

Australians listen to radio on average for 16 hours per week, mostly for news at breakfast time, or all day while at home or work.

But media consumption patterns vary significantly with sex, age, socioeconomic status and location:

- a fifth of the population are low level users of any form of media;
- over half are medium level users, who tend to favour one particular media (for example, heavy newspaper readers or all-day radio listeners);
- about 12 per cent watch commercial television almost exclusively;
- about 11 per cent are heavy media consumers; and
- less than one quarter of Australians use the Internet at least once a week.

Ninety-nine per cent of Australian homes have at least one television set, and 80 per cent have a video casette recorder.

Over 15 000 volunteers participate in community broadcasting.

Policy principles

Broadcasting policy targets social, cultural and diversity objectives …

Governments have long sought to harness the power of broadcasting to achieve social, cultural and educational objectives, and to minimise its scope to do harm, particularly to children. A mixture of national, commercial and community free to air radio and television, supplemented by subscription television and narrowcasting for special interest

groups, provides structural diversity. But the small number of stations has limited diversity in programming and in sources of information and opinion, particularly on commercial television.

… and seeks to limit concentration in the media, …

Since 1935, Commonwealth Governments have sought to limit the spread of the major media proprietors' influence. The *Broadcasting Services Act 1992* (BSA) provides the framework for regulating Australian broadcasting (the ABC and SBS are established under their own Acts). The BSA restricts foreign and cross-media ownership and control, as well as the audience reach, of Australian broadcasting enterprises.

… but the BSA does not embody competition policy principles.

At the same time, it has limited the number of commercial free to air television stations in any area to a maximum of three, and imposes planning conditions that restrict the scope for new radio stations. The Act predates the development of National Competition Policy, and is out of step with competition policy settings.

Consistent with the terms of reference and its Act, the Commission considers that certain basic principles should underpin the development of the Australian media industry in the future. Australia's broadcasting policy should:

Principles for media policy.

- promote the interests of consumers;
- reflect the community's social and cultural objectives;
- encourage diversity of major sources of information and opinion in the market for ideas;
- promote efficient resource allocation in broadcasting, related industries and the Australian economy as a whole;
- ensure Australia makes the best possible use of its radiofrequency spectrum, and the community receives a fair return from the use of the spectrum;
- provide for equitable access to broadcasting services for Australian consumers, including those with special needs, in regional areas and on low incomes;
- encourage innovation in the provision of broadcasting services; and

- promote efficient, effective and transparent public administration in broadcasting.

To achieve these aims in the face of uncertainty and change, it is important to minimise the technological specificity of regulation. Regulation should be targeted to achieve objectives rather than to balance *quid pro quos* among producers. Those regulations that do not contribute should be removed. Policies will also generally work better if they are set up so market forces and competition aid their achievement.

The switch to digital television

Digital television promises to free spectrum, drive innovation and improve quality for consumers.

The switch to digital television is the most fundamental change in broadcasting since the introduction of television itself. Digital television can improve reception, enhance sound and picture quality, and provide more channels and new interactive services. But the greatest benefit is that spectrum can be freed to facilitate the introduction of new players and services.

Australia's broadcasting policy is at a crossroads.

With the decision to convert to digital television, Australia could be on track to a new era in broadcasting. The policy decisions taken now will shape the Australian broadcasting and communications industries for years to come.

Australia's current digital television policy

Each existing station receives an extra channel for digital conversion …

Under the 1998 digital conversion legislation, each of Australia's free to air stations in each licence area was lent without charge an extra channel to convert from analog to digital television transmission.

… and new commercial television stations are prohibited until 2007.

To facilitate the commercial stations' conversion, they are to be insulated from new competition. Entry of new commercial broadcasters has been banned until the end of 2006, and the scope of digital services has been constrained. To ensure there would be some new digital services without breaching the ban on entry of new commercial broadcasters, the Government created a regulatory artifice — datacasting —

and constrained its development. To protect subscription television operators, it also prohibited multichannelling by commercial stations, subject to review by the end of 2005.

Australia will convert to digital television over eight years.

The conversion process is to be staged, with capital cities starting on 1 January 2001 and regional stations starting three years later. Analog simulcasting is to be maintained for a minimum of eight years in each licence area. Australian satellite services have already been converted to standard definition digital transmission.

Up to four simultaneous programs could be broadcast over each channel …

The digital signals of all three commercial networks could have been carried in standard definition on a single channel, providing spectrum for several new players at an early stage. However, the Government made a full (seven megahertz) channel available without additional charge to each of the five free to air networks (including the ABC and SBS). This limited the spectrum available for new entrants wishing to provide new digital services.

… providing flexibility for broadcasters in the future.

In the long term, the full seven megahertz channel will provide broadcasters with the flexibility to offer a comprehensive range of services and to deal with the uncertainty inherent in adopting this new technology.

Thus, as in the past, Australian broadcasters have been given as much spectrum as they 'need' to provide 'an adequate and comprehensive service'.

New entrants are disadvantaged.

This method of spectrum allocation sharply contrasts with the requirement for other users of spectrum (mobile phone networks for example) to buy it at auction. In the allocation of spectrum for digital television, new media wished to compete with the old media, but were not allowed.

This privileged access to spectrum, coupled with the bar on new entry, has given the incumbent commercial broadcasters a significant competitive advantage over new media players.

Costs and benefits of the switch to digital

Although the public benefits of digital television are likely to be substantial in the long term, the costs of conversion for the community as a whole have not been taken into account adequately in the current framework.

The Commission is concerned with ensuring digital television policy does not impose unnecessary costs or compromise the benefits of digital conversion. To reduce the costs of digital conversion, analog services should be switched off as early as possible. The mandating of high definition production and transmission should be removed. To enhance the public benefit of digital television, regulatory restrictions on new services for consumers, such as datacasting and multichannelling, should be cut back.

Facilitating the conversion process

The switch to digital will make more spectrum available for new broadcasters.

Radiofrequency spectrum is limited and scarce relative to demand. But as far as spectrum is concerned, analog television is voracious: it takes almost all of the 55 channels available to transmit the signals from Australia's five existing networks. Digital broadcasting technology promises many more services and much more efficient use of spectrum. In each licence area throughout Australia, potentially all of the 55 channels could be used for different services, and each channel could provide up to four programs simultaneously.

But full development of digital transmission requires an end to analog broadcasting.

Once analog transmission ends, many new services will be possible. But until then, spectrum cannot be made available on a significant scale for the large number of aspiring service providers.

The current policy framework does not address the key issues:

- who will drive the conversion?
- how will analog switch-off happen?
- when will the analog switch-off happen?

Incentives to change to digital transmission vary among existing and aspiring broadcasters.

New players will drive the digital conversion. Existing television broadcasters now occupy most of the spectrum, and have little incentive to relinquish it to new competitors. Some incumbent broadcasters may prefer a protracted conversion process which would prolong their current advantage.

Freeing spectrum will promote competition and benefit consumers.

The interests of aspiring new digital service providers lie in quick consumer take-up of digital technology and a prompt switch-off of analog services. Only then will significant amounts of spectrum be available.

Spectrum management reforms will encourage more efficient spectrum use and quicker conversion.

New entrants could increase the potential for greater diversity of views and opinions in the 'market for ideas' as well as provide consumers with a much wider range of services than is available currently. Greater contestability and competition would also encourage greater efficiency in the broadcasting industry and in supplier and user industries such as program production and advertising.

A firm switch-off timetable is important.

Successful conversion requires a certain and credible time-table for analog switch-off, but there is no certainty in the current legislation, which provides for only a *minimum* simulcasting period. The Government should announce in 2000 a program for spectrum sales and a firm date (1 January 2009) for analog switch-off. Switch-offs before 2009 should be allowed in areas where a sufficient number of households have converted to digital (recommendation 7.1).

The current timetable will delay digital benefits to regional consumers …

The current conversion scheme envisages that regional Australia will start and finish digital conversion up to three years after metropolitan areas. While delaying the start will allow regional broadcasters to take advantage of cheaper equipment, delaying the finish will also delay the release of spectrum for new digital services. Services such as datacasting and broadband access to the Internet could be particularly valuable in regional areas where cable networks are not feasible and the costs of accessing the Internet using telephone lines are high.

The main satellite-based regional subscription television service is already digital, and is offering access to high speed Internet and telecommunications services. The protracted

timetable for regional digital conversion disadvantages regional free to air broadcasters and their consumers relative to subscription services and their consumers.

A long gap between analog switch-off in city and country Australia will deepen the digital divide between the services available in urban and rural areas. A goal of Australian broadcasting policy has been the provision of services to regional Australia that are comparable to those in the cities.

… and deepen the digital divide between country and city.

A further problem will arise where regional areas are adjacent to the cities, where interference from the continuation of regional analog broadcasting will constrain the release of spectrum in metropolitan areas.

It will also delay release of spectrum in the cities.

The analog switch-off dates for regional and metropolitan areas should therefore be aligned.

The same final analog switch-off date should be set everywhere.

Further changes are necessary to enable the analog switch-off to occur. The Commission is proposing general reform of spectrum management and licence fees (see below) that will expedite the digital television conversion process. It involves charging for the spectrum used for analog television broadcasting. This will encourage digital conversion, because existing broadcasters will have an incentive to hand back spectrum.

Once the spectrum is returned, the spectrum manager will be able to reconfigure and progressively reallocate it to new digital services. At an early stage in the simulcast period, the spectrum manager should also identify those analog channels that could be cleared relatively cheaply and made available for higher valued use (recommendation 7.2).

As spectrum is handed back, it should be sold for new uses.

The remaining spectrum used for analog broadcasting should be replanned and sold two years before the conclusion of the simulcast period. This will reveal the opportunity cost of continued analog use of this spectrum. The new spectrum owners will have a clear incentive to encourage the conversion process.

A program for replanning and selling the last remaining analog spectrum should be announced.

Assistance to low income consumers may be necessary.

To ensure switch-off occurs by 1 January 2009, the Government may also need to consider policy options for assisting low income Australians to continue to receive their existing services (that is, those that have been received as analog free to air broadcasts). Such measures may be necessary to achieve a final analog switch-off in some areas, especially in regions where the value of spectrum may not be sufficiently high to induce market-based spectrum clearance. Such measures could be taken by the industry or by the Government, or both, and should be neutral as to the best means of providing these services (recommendation 7.3).

A new regulatory framework for digital television

Competition is required to make the most of new technology.

Providing a more competitive, less restrictive framework is also necessary if Australia is to make a successful transition to digital television. The benefits of digital television can be enhanced if restrictions on datacasting content are relaxed, while the cost of conversion will be reduced if high definition transmission and production are no longer mandatory.

Relaxing restrictions on digital content: datacasting

The Government's current policy proscribes certain services and restricts content in an attempt to prevent new 'datacasters' from becoming 'broadcasters'. This policy stifles competition and innovation and is at odds with major tenets of mainstream broadcasting policy.

Datacasting restrictions conflict with social and cultural policy …

Television broadcasters are required, for example, to show a quota of Australian programming (particularly drama, documentaries and children's programs) because the market, left to itself, may not provide enough of this type of programming. Yet the current digital television policy prohibits datacasters from showing such material.

… and thwart low cost regional sports coverage.

Similarly, broadcasting law promotes free to air broadcasting of major sporting events, but the digital policy prohibits datacasting of sport. Datacasting could provide a low cost method of broadcasting regional and minor sporting events

that now receive no coverage by the networks or subscription television.

Regulatory restrictions on datacasting, multichannelling, and interactive services will be costly to Australian consumers and businesses alike. They will delay consumer adoption of digital technology and deprive business of opportunities to develop new products and services for the world as well as Australian markets. They could have a particularly severe effect on regional consumers who have limited access to other broadband digital platforms.

Restrictions on digital services are costly to consumers, particularly in regional Australia.

Regulating picture formats: the high definition quota

The focus of the 1998 digital television legislation is on 'home cinema' quality high definition pictures. Unlike any other country, Australia mandated high definition television, in effect creating a unique standard for digital television.

The 1998 legislation mandated high definition transmissions.

In December 1999, the Government announced a modification of this policy. To make conversion to digital television more affordable, stations will be required to carry a standard definition signal at all times. They will also be required to carry at least 20 hours per week of programming produced and broadcast in high definition. The mandatory simulcasting of standard and high definition will leave broadcasters with little spectrum for new digital services.

A 'must carry' rule for standard definition is now also Government policy.

The Commission considers that to encourage consumer take-up of digital television, it is critical that standard definition be the basic format for digital television in Australia.

High definition television is expensive — A$8000 or more for a set large enough to distinguish high definition from standard definition pictures at normal viewing distances. Few Australians buy such large televisions. Large wide screen standard definition digital sets cost about A$3000 but are also available (and cheaper) in the smaller sizes most Australian consumers purchase.

Australia has mandated a unique, high cost system.

Initially, most people will convert to digital television by buying a set-top box which displays the digital signal on an existing analog television set. Each set will require a box.

High definition boxes are likely to cost significantly more than standard definition boxes.

Standard definition is popular overseas.

Since the 1998 legislation, much has happened in the world of digital television. Experience in the United States shows that consumers are not attracted to large, expensive, high definition digital televisions. The United Kingdom has not provided for high definition transmission but has specified standard definition with multichannelling and interactive digital services. This has made the switch-over to digital affordable. Consumer take-up has been rapid enough for British authorities to consider bringing forward the date for switching off analog transmission.

Australian consumers may value high definition less than multichannelling and interactivity.

More consumers are likely to be attracted to multichannelling and interactive services than to the picture quality of high definition. The sets required to obtain the full benefit of high definition are so large and costly that surveys suggest only 5 per cent of the population would be likely to purchase high definition equipment.

There is no public interest reason to mandate high definition.

The Government should mandate Australian television broadcasts in high definition format only if there are significant public (as opposed to private) interest reasons for doing so. The Commission evaluated the reasons advanced for high definition, and is not convinced that there are any that would justify such a policy, given that each broadcaster has the spectrum available to offer whatever services it wishes.

The market will provide high definition if consumers want it.

Australian television broadcasters could still offer high definition television as a premium service if it were not mandated and if they had a business case for doing so. If consumers are attracted to such a service, broadcasters will have an incentive to provide it without compulsion.

A high definition broadcasting quota will increase program production costs.

Mandating a quota of programming in high definition will increase program costs substantially. If Australian programs switch to high definition format, they will become more expensive. Programs will have to be produced using more costly sets, equipment and processes, such as 35 millimetre film, rather than the cheaper video equipment and processes used for standard definition.

These higher costs will reduce the international competitiveness of local production. Australia's traditional export markets are converting to standard definition digital and are unlikely to be prepared to pay a premium for high definition.

Yet if Australian program makers do not switch to high definition, the quota of 20 hours per week of high definition programs will be met by more imports, movies and reruns of old programs filmed in 35 millimetre. Australian content could fall towards the specified minimum.

High definition equipment is expensive for broadcasters.

As long as there is a mandated high definition minimum quota, broadcasters must invest in higher cost transmission equipment even if they do not intend to make any high definition programs themselves. The cost of high definition cameras, data processors and outside broadcast equipment is also very high.

Regional broadcasters will be hard hit.

Regional stations cannot support the extra capital costs of high definition equipment when their customers, having relatively low incomes, are even less likely than their city counterparts to purchase high definition receivers. The Commonwealth's high definition mandate will require the regional broadcasters to incur high costs for investments that they cannot expect to recoup from advertisers.

There are no benefits to the community to weigh against these high costs.

The Commission is satisfied that there are significant costs in mandating high definition, and that any benefits of high definition would be supplied by the market without government intervention.

Without more liberal regulation of digital services, consumer resistance will delay the end of analog and the release of valuable spectrum.

Without change to the framework for digital television, the conversion plan is at serious risk of failure. As long as high definition remains the focus, and multichannelling and datacasting are restricted, Australian consumers are unlikely to convert in significant numbers. If there were fewer restrictions on digital services, subscription television and the free to air broadcasters would also have incentives to speed up conversion. There is little point in having digital services that few viewers can receive.

Until the digital conversion process gains momentum, simulcasting will have to continue and the large amount of

spectrum required for analog broadcasting cannot be made available for other uses. This will defeat the objective of digital conversion for consumers and producers alike.

The Commission recommends less restriction.

The Commission recommends that Australia's digital television conversion scheme be modified immediately to:

- permit, but no longer mandate, high definition transmission; and
- minimise regulatory restraints on new digital services, including datacasting, multichannelling and 'enhanced services' (recommendation 7.4).

If existing television broadcasters are to be allowed to multichannel, restrictions on subscription television should also be eased (see below) (recommendations 8.8 and 12.1).

Digital radio

When digital radio is ready, it should augment, not replace, AM and FM.

Digital radio is under development, and the United Kingdom is in the early stage of implementation. In the Commission's view, the costs to consumers of converting existing AM and FM radio to digital would be substantial, but the benefits in terms of freed spectrum appear to be relatively minor.

Digital radio should be allowed to augment, rather than replace, existing radio. A conversion scheme involving allocation of new spectrum to existing stations, like that used for television, should not be contemplated (recommendation 7.5).

Improved management of spectrum

Increasing efficiency in management of broadcasting spectrum is the first step to allowing new entrants …

The Australian broadcasting services bands of the spectrum have not been managed to extract the greatest value from use of the spectrum. The number of stations has been fixed and spectrum assigned without reference to the market place.

This approach provided a high technical quality of service in the past when transmission and receiving equipment was less precise than it is today, at the cost of limiting the number of

broadcasters. This has been reinforced by regulatory restrictions on entry into broadcasting, both directly in the case of television (BSA, s. 28) and indirectly through non-technical planning criteria (BSA, s. 23 [a–c]).

While some technical regulation and pursuit of social and cultural objectives will continue to be required, broadcasting need not remain one of the most regulated and litigious industries. Innovation, flexibility and adaptability to change are likely to improve in this industry if it is more exposed to competition.

… and reducing the need for intensive regulation.

More efficient spectrum use

The Commission is proposing reforms to provide for more efficient use and allocation of broadcasting spectrum and for the development of a spectrum market (recommendations 6.1 and 6.11).

Splitting rights to spectrum access from the broadcasting licence can improve the efficiency of spectrum use.

The main elements of the proposals are that spectrum access rights be split from current broadcasting licences, and that broadcasting licence fees be converted to spectrum access fees, because spectrum is a scarce resource. Pricing and enabling spectrum to be transferred independently of broadcast licences should help to improve the efficiency with which spectrum is used (recommendation 6.7).

The Commission is also recommending the simplification of spectrum planning and management arrangements, to expedite the release and allocation of spectrum. Spectrum not required for national, Indigenous or community purposes should be made available to the market for commercial use, without the spectrum manager having to assess market needs or the viability of new or existing stations (recommendations 6.6, 6.9 and 6.10).

Planning reforms could hasten the release of spectrum for new broadcasters.

Spectrum prices to reflect its value

Pricing reforms could also improve efficiency of spectrum use …

It is important for efficient spectrum use that it be properly priced. It is also important for the community to receive a fair return from the use of a scarce community resource. Broadcasting spectrum (unlike the rest of the radiofrequency spectrum) is not priced explicitly, and the current management regime offers no incentive for broadcasters to use it efficiently.

… for both new licensees and old.

The Commission proposes that broadcasting spectrum should be priced and allocated for new users in the same way as other valuable spectrum managed by the Australian Communications Authority. New broadcasters would buy their spectrum through a competitive sale process, such as an auction, but should also pay ongoing licence fees (recommendation 6.2).

Commercial broadcasters' licence fees are calculated as a percentage of revenue and bear no relation to spectrum use. Pricing of spectrum would provide an incentive to existing television broadcasters to hand back analog spectrum and expedite digital conversion. Broadcasters could use alternative delivery mechanisms for marginal areas.

The Commission recommends that incumbent broadcasters' licence fees should be converted to spectrum fees on an initial revenue neutral basis (recommendation 6.3).

Concentration and ownership

Concentration in media markets

Concentration in media markets remains a central focus of broadcasting policy …

Concentration in media markets is a significant economic, social and cultural issue in Australia and many other countries. Australia's traditional media industries are owned or controlled by relatively few players, and substantial barriers to entry — both economic and regulatory — discourage or prohibit new entrants. This has implications for competition and diversity.

Concentration in media, as in other industries, may provide incumbents with market power. This may allow them to raise prices above competitive levels (for example, for cover prices, advertising rates or subscription services), or to be less sensitive to consumer demands. Ownership of facilities with natural monopoly characteristics may also give incumbents power over related markets, while concentrated ownership of program material may yield market power in broadcasting.

… because market power has adverse economic effects …

Concentration may also limit the range of ideas and information available to the community. The inherent power of the media to influence community attitudes and beliefs has prompted most countries to apply special rules to the ownership or control of media businesses. Australia is no exception.

… and the potential to influence ideas and attitudes.

Regulatory barriers to entry

Achieving a more competitive and contestable broadcasting industry requires not just that spectrum be made available, but that new players be able to obtain it to provide services. The BSA prohibits any new television stations until at least the end of 2006 (s. 28). The non-technical planning criteria (s. 23 [a–c]) also act as a *de facto* barrier to entry by blocking access to spectrum for radio and other services.

Even when spectrum becomes available, the BSA limits the entry of new operators …

The Commission finds that these provisions restrict competition. Under the guidelines for the National Competition Principles Agreement, such regulations should be retained only if the benefits exceed the costs and there is no other way of achieving the objective. In this case, the Commission cannot see a justification for retaining these restrictions (recommendations 6.8, 9.1 and 9.2).

… and restricts competition for little if any community benefit.

The industry has long justified restricted entry on the grounds that it is necessary to enable it to meet the higher costs of local content programming required for cultural policy purposes. The Commission is not satisfied that such compensation is justified; many industries incur higher costs in meeting government policy objectives, from health (pharmaceuticals) to environmental standards. Further, these

Most industries incur regulatory costs. Such costs do not justify restricted entry.

higher program costs are tiny compared with the value of restricted entry, as indicated by the value of broadcasting licences.

Broadcasters are receiving extra spectrum to aid digital conversion.

Another argument advanced for the entry restrictions is to compensate for the costs of compulsory digital conversion. However, the broadcasters have been lent spectrum without additional charge for this purpose, have been protected by restrictions on datacasting, and stand to benefit from new digital business opportunities (see below). Moreover, if high definition digital is not mandated, these costs will be significantly lower.

This restriction on competition imposes significant costs on the community.

Consumers who are denied a wider range of services, potential broadcasters who are denied an opportunity to pursue new business opportunities, and associated industries (such as program production) that must contend with the market power of the small number of broadcasters, all bear costs from these restrictions.

Digital conversion provides time for the industry to adjust.

Competition from new entrants may cause the value of existing television licences to fall. However, digital conversion provides a lengthy adjustment period, given the time required for digital services to commence and for consumers to convert. Further, the liberalised conversion scheme proposed by the Commission would also provide significant new business opportunities for existing broadcasters.

Ownership and control

Ownership and control restrictions have been part of Australian broadcasting policy for generations.

Many Australians feel strongly about the ownership and control of media assets. Ownership and control restrictions on broadcasting media are a continuing thread in Australia's broadcasting history. These restrictions reflect the significant degree of influence that broadcasting services can have on community attitudes and opinions. The BSA contains provisions that affect cross-ownership and control of television, radio and newspapers, the foreign ownership and control of television licences, and the audience reach of commercial free to air television.

Foreign ownership and control

Concerns about foreign ownership and control of Australian media are based on the belief that foreign proprietors may be less sympathetic than Australians to Australian cultural or political values or to local content. But foreign, like domestic, media proprietors must provide programming that appeals to Australian audiences. Concerns about local content are better addressed through more specific measures (see below). Most inquiry participants supported the relaxation of the foreign ownership rules as a means of encouraging new players to enter the industry.

The foreign investment rules for broadcasting are obsolete.

Cultural policy objectives should be addressed directly.

The Commission recommends that foreign investment in broadcasting be handled in the normal way under Australia's foreign investment policy, and that restrictions on foreign investment, ownership and control in the BSA be repealed (recommendations 10.1 and 10.2).

Foreign investment in broadcasting should be handled through general foreign investment policy.

Cross-media ownership and control

The cross-media rules prevent mergers between companies in the traditional media businesses of newspapers and free to air commercial radio and television. While they are simple and certain in their application, their effectiveness in controlling media concentration is diminishing as convergence in technology and company ownership gathers pace. They constrain the growth and development of old media companies, but do nothing about the new.

The cross-media rules are being eroded by convergence and the growth of new media.

At the heart of the debate is whether concentration of media assets within and across media boundaries will reduce the diversity of sources of information and opinion. In a concentrated media market, a related issue is the extent to which the nonmedia business interests of the key media proprietors could compromise the editorial integrity and coverage of their media businesses.

Access to a diverse range of views and sources of information is the key policy issue.

The Commission concludes that diversity of opinion and information is more likely to be encouraged by greater rather than less diversity in the ownership and control of the main media.

Diversity of opinion is more likely with diversity in ownership.

Cross-media rules do not apply to significant media sources which can provide diverse content and services to consumers.

The cross-media rules do not apply to some traditional media (such as magazines and cinema) or to new media (such as the Internet and subscription television). Cable and satellite services make it possible to deliver a great deal of diversity in commercial programming to Australian households, and new digital services, including datacasting and multichannelling, could significantly enhance the ability of 'over the air' broadcasters to deliver multiple services. Internet broadcasting may provide even more program options. These are all sources of information and ideas.

But new media mergers could reduce competition and increase concentration.

However, it is not sufficient to have multiple voices if those voices are not accessible, or if they are effectively controlled by main media interests. The traditional media businesses in Australia are concentrated, and could become more so if the cross-media rules are relaxed and no other compensating measures, such as freeing entry, are taken.

The Trade Practices Act can deal with mergers in narrow markets …

The *Trade Practices Act 1974* provides the means to prohibit mergers or acquisitions that would substantially lessen competition. It should be adequate to deal with mergers among radio or television stations within licence areas. Where general legislation is sufficient to cover a situation, there is no need for special industry specific legislation (recommendation 10.6).

… so BSA controls on the number of stations that can be owned are redundant.

The Commission therefore recommends the repeal of ss. 53(2) and 54 of the BSA which prohibit a person from controlling more than one commercial television or two commercial radio broadcasting licences in the same licence area (recommendation 10.4). However, the Commission considers that the Trade Practices Act is ill equipped to cope with cross-media mergers.

But the Trade Practices Act is not equipped to deal with mergers in the 'market for ideas'.

Australia could try to extend the cross-media rules to other media, but such an approach would become increasingly difficult to implement in a convergent world. The Australian community will be better served by policies that encourage contestability and entry. Given that ownership structures are changing rapidly, the Commission recommends that a media-specific public interest test be inserted into the Trade Practices Act immediately (recommendation 10.3).

A media-specific public interest test in the Trade Practices Act is required immediately.

Reform of cross-media rules

Cross-media rules should be replaced, but only after …

Eventually, the cross-media rules should be replaced with a more flexible approach suited to the new, emerging media environment. However, removing the cross-media rules while regulatory barriers to entry to television and radio are still in place would be counterproductive. Repealing these regulatory barriers would enhance the prospects for new players to emerge, but only if entrants have access to spectrum.

… the BSA's regulatory restrictions on entry are removed …

The relaxation of the foreign investment restrictions applying to television is also an important pre-condition for the removal of the cross-media rules. This will enhance the pool of possible owners with media expertise.

… spectrum is made available for new entrants …

Once the new media-specific public interest test is in place and new entry has established a more competitive atmosphere for Australian media, the cross-media rules should be repealed.

… foreign investment restrictions are removed, and …

… a new public interest test for media mergers is legislated.

The Commission recommends that the cross-media rules be removed (recommendation 10.4), but only after the following conditions have been met:

- the removal of regulatory barriers to entry in broadcasting, together with the availability of spectrum for new broadcasters; and
- the abolition of BSA restrictions on foreign investment, ownership and control; and
- the amendment to the Trade Practices Act to provide for a media-specific public interest test to apply to mergers and acquisitions.

Social and cultural objectives

Broadcasting plays a significant role in Australia's cultural and social life — one that has long been recognised in broadcasting policy. The Commission has taken these objectives (as specified in the Act, in statements of

Government policy and in the inquiry terms of reference) as given.

Structural diversity

One way of promoting the vitality of Australian broadcasting is to preserve and develop a mixed broadcasting system. The BSA created a more flexible approach to licences to help accommodate the different needs of various groups in the community, and to facilitate the emergence of new services.

Achieving social and cultural objectives requires diversity in broadcasting types and formats.

In Australia, national (public) broadcasters, community broadcasters, narrowcasters, subscription services and free to air commercial broadcasters now operate side by side. The Commission assumes that this structure will continue.

National and community broadcasters

Digital broadcasting presents challenges and opportunities for national broadcasters …

National broadcasters, like their commercial counterparts, should not be constrained by unnecessary regulatory restrictions on digital television. They should be encouraged and resourced to participate in new media opportunities as they arise.

In a convergent environment, the national broadcasters may be required to play an even more significant role in promoting the social and cultural objectives set for broadcasting.

The community sector faces a substantial challenge in funding digital conversion. However, community media may also benefit from the more efficient use of spectrum made possible by digital transmission, and by the scope for innovation opened up by digital transmission.

With the separation of licences for spectrum and broadcasting, community television broadcasters could become content providers for a standard definition channel of a digital television station. The transmission of this channel could be treated like a community service obligation, financed by Government subsidy (recommendation 8.4).

… and community broadcasters.

Australian broadcasting and television production industries

The broadcasting industry is made up of:

- 48 commercial television station licences, organised into three networks — the Seven, Nine and Ten networks.
- two national public broadcasters — the Australian Broadcasting Corporation (ABC) and the Special Broadcasting Service (SBS). The ABC provides one national television service, four national radio networks and a number of stand-alone metropolitan and regional stations. The SBS provides multilingual and multicultural television in most areas, and radio services in the major cities and some regional areas;
- three major subscription television operators (Foxtel, Optus and Austar), with no more than two major subscription television operators in any one area;
- 220 commercial radio licences on the AM and FM bands. Austereo and the Australian Radio Network have the largest potential audiences, with most of their licences in the metropolitan areas;
- 228 community radio broadcasting licences, including 80 Broadcasting for Remote Aboriginal Communities Scheme (BRACS) licences. BRACS broadcasts both radio and television to remote indigenous communities from low powered sites which receive their signal by satellite;
- six community television stations, broadcasting on channel 31 in Sydney, Melbourne, Brisbane, Perth, Adelaide and Lismore;
- 126 AM and FM radio open narrowcast licences, catering for ethnic or other minority interests and providing education services or tourist radio services;
- television program production valued at $1140 million in 1996-97;
- advertisement production valued at $234 million in 1996-97;
- television program exports of around $100 million (royalties) in 1997-98;
- commercial television and radio licences valued at over $3 billion and $800 million respectively in 1997-98; and
- employment of 45 000 people in June 1999. About half are employed in broadcasting and half are employed in film and video, production, distribution and exhibition. Employment increased during the 1980s and 1990s.

Indigenous broadcasting

Indigenous broadcasting has a unique and important social and cultural role …

Indigenous radio and television help to sustain language and culture; they provide a vital channel of news and information for Indigenous people; and they have the potential to provide a means for better communication between Indigenous and other Australians.

… and requires a special Indigenous broadcasting licence.

Indigenous radio and television services are not well served by the community broadcasting licence arrangements which are currently used to regulate the sector. The objectives and management of Indigenous media are very different from those of community broadcasters.

The Government should examine the case for an Indigenous Broadcasting Service.

The Commission recommends a new licence category for Indigenous broadcasters (recommendation 8.5). Where appropriate, spectrum should be reserved for this purpose (recommendation 8.6). Given the social and cultural significance of Indigenous broadcasting, the Commission recommends that the Government should examine the need for, and feasibility of, an Indigenous broadcasting service (recommendation 8.7).

Australian content

Broadcasting should reflect the community's sense of identity, character and diversity.

Achieving the social and cultural objectives of broadcasting requires a diversity of program content, including Australian adult and children's programs. Minimum quotas for Australian produced adult and children's programs have long been a feature of Australian broadcasting.

Australian broadcasting quotas for commercial television programs will be ineffective in the future broadcasting environment.

The sub-quotas for drama, documentaries and children's programs are clearly targeted at areas that are likely to be underprovided if the market is left to itself. The effectiveness of the other quotas in supporting the cultural objectives is less clear. Little research on, or systematic evaluation of these programs has been undertaken. This should be rectified.

The quota system was designed for analog television, and will not be readily adaptable to the digital, convergent environment. As convergence proceeds, quotas will be less

and less effective. If Australia's social and cultural objectives are to be achieved in the digital era, new approaches should be found.

An independent public inquiry into audiovisual policy should devise a new approach.

To provide a basis for better audiovisual policy in the future, the Commission recommends an independent public inquiry to be completed by 2004 (recommendation 11.4). Appropriate policies for the pursuit of social and cultural objectives in the future converged media environment should be addressed.

The Commission has concluded that the current Australian program quotas for free to air television should be retained until a new comprehensive policy is implemented (recommendation 11.4).

But Australian advertising and subscription television drama quotas should be removed immediately.

However, the 80 per cent Australian content quota for advertising is not targeted to social and cultural objectives and is redundant (recommendation 11.1). Further, the drama expenditure quota for subscription television is neither targeted to objectives nor effective. Both quotas should be removed immediately (recommendations 11.2 and 11.4).

Sport

Australians love sports broadcasts.

Sport is integral to Australian culture. As Roy and HG might say, 'too much sport is barely enough'.

The anti-siphoning list has adverse as well as beneficial effects.

The 'anti-siphoning' rules of the BSA aim to ensure free to air coverage of major sporting events and prevent their migration to pay television. Their success has been mixed because they do not ensure either the free to air or subscription operators broadcast listed events.

There is some evidence that the anti-siphoning rules can have perverse effects, reducing rather than increasing total consumer access to broadcast sport. They harm sporting organisations and impose a significant competitive disadvantage on subscription broadcasters. Further, the provisions will become less effective as the boundaries between media break down and convergence proceeds.

The anti-siphoning regime requires reform — a shorter list of events of real significance, non-exclusive rights and administrative changes.

The benefits of the current anti-siphoning provisions can be achieved with a much less anti-competitive regime. New provisions should be adopted with a narrower list that includes only sporting events of major national significance. For these listed events, no one form of broadcasting (for example, free to air or subscription television or datacasting) should be able to obtain rights that exclude other forms.

The ABA, not the Minister, should be responsible for applying the criteria and administering the list (recommendations 12.1, 12.2 and 12.3). Sports broadcasting should be included in the recommended audiovisual policy inquiry.

Towards more efficient and effective regulation

Broadcasting policy has been based on perceptions rather than hard information.

The content and conduct of the broadcast media are stringently regulated in response to the degree of influence that they are perceived to exercise in the community's political, commercial, cultural and social life. Yet neither the basis of this influence nor the effectiveness of the regulatory measures used have been subject to proper analysis.

Research and evaluation are needed for better policy design.

Knowledge about influence and the effectiveness of broadcasting policy measures in all these dimensions should be developed to provide a basis for more effective policy making in the future (recommendation. 8.9). The Commission also recommends systematic evaluation of all policy mechanisms (recommendations 8.2, 11.3 and 13.1).

Freedom of expression

The desire to manage the influence of broadcasting should be considered in the context of the wider public interest in freedom of expression. The Commission recommends that an objective relating to the importance of freedom of expression in broadcasting be added to the objectives of the BSA (recommendation 13.2).

Codes of practice and co-regulation should be more effective.

Broadcasting 'co-regulation' means that industry develops and administers its own codes of practice, with the Government providing legislative backing for enforcement. An effective co-regulatory system is the only practical way of regulating broadcasting influence in a digital world; as the

number of services proliferate, the ability of any regulator to monitor the content of each service diminishes.

Complaints procedures should be improved, …

Some inquiry participants argued that the current co-regulatory system is not achieving its objectives. The Commission recommends changes to the way in which codes of practice are developed and administered (recommendation 13.3). In particular, there should be improved mechanisms for industry and public consultation, and improvements to the complaints system, especially in relation to fair and accurate coverage and ethical practices in broadcasting (recommendation 13.5).

… better consultation processes and ethical standards …

… and improved compliance measures.

With the recommended transfer of spectrum planning and allocation functions to the Australian Communications Authority, the ABA will be able to focus more on content and the behaviour of broadcasters. This will also provide it with the opportunity to be more active in promoting ethical behaviour by broadcasters (recommendation 13.4) and ensuring compliance with standards and codes of practice (recommendation 13.6). To this end the Commission also recommends improved compliance powers for the ABA (recommendation 13.7).

Recent amendments to the BSA established a regulatory regime designed to deal with complaints about online (Internet) content. The Commission recommends that the regulatory scheme for controlling access to online content be reviewed after one year of operation (recommendation 13.8).

A thorough revision of the BSA will be required to move it into the digital age.

Despite the intentions of those who drafted the BSA, it still bears the legacy of past regulatory practices. Much technologically specific regulation remains in broadcasting policy.

Convergence presents a challenge for broadcasting policy. While technological change is a feature of the media industries, the current profound shifts in technology and the emergence of new media markets have created considerable uncertainty.

Policy must look to the future, not the past.

New technologies entail both threats and opportunities. Although the direction and speed of convergence are unclear, continuing change in the media and tele-communications industries is certain. Broadcasting policy cannot remain anchored in the past; it must embrace the future. Without a liberal regulatory regime, Australia will not enjoy the fruits that technological change is now making possible.

Summary of recommendations

Chapter 6 Managing broadcasting spectrum

RECOMMENDATION 6.1

Licences granting access to spectrum should be separated from content related licences that grant permission to broadcast.

RECOMMENDATION 6.2

Spectrum for new broadcasters should be sold competitively, subject to ongoing licence fees. The level of ongoing fees should be adjusted to reflect significant changes in the value of spectrum.

RECOMMENDATION 6.3

Licence fees for existing commercial radio and television broadcasters should be converted to fees that reflect the opportunity cost of spectrum used.

Revenue based licence fees for each service type (television, FM radio and AM radio) in each licence area should be converted to spectrum-based licence fees. These fees should be revenue neutral in the first year and set thereafter on a basis similar to the fees for other spectrum.

RECOMMENDATION 6.4

During the digital television conversion period, existing television broadcasters should be levied additional fees on any of the spectrum used for digital services other than digital simulcast of the analog program, consistent with those paid by other digital broadcasters.

RECOMMENDATION 6.5

If a government wishes to ensure community access to commercial digital broadcasting services in areas where they are not commercially viable, this should be achieved through explicit subsidy arrangements allocated through the tender of a community service obligation that does not specify the means of delivery.

RECOMMENDATION 6.6

The ABA, in consultation with the broadcasting industry and the public, should develop a series of templates for licence areas with different characteristics, setting out the number of national, community and Indigenous services for which spectrum should be reserved. All unreserved broadcasting spectrum should be made available for commercial broadcasting.

RECOMMENDATION 6.7

The value of broadcasting services bands spectrum reserved for non-commercial broadcasting services should be estimated and reported publicly.

RECOMMENDATION 6.8

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.

RECOMMENDATION 6.9

The ABA should retain responsibility for issuing licences to broadcast, and for determining the number of non-commercial broadcasting licences in an area. It should also retain responsibility for regulating content, enforcing codes of practice and monitoring ownership.

RECOMMENDATION 6.10

Responsibility for planning and licensing the broadcasting services bands of the spectrum should be transferred to the Australian Communications Authority and managed under the provisions of the Radiocommunications Act.

RECOMMENDATION 6.11

Spectrum used for commercial narrowcasting should be made available using the same processes and on the same terms (including renewability) as those for spectrum for commercial broadcasters.

Chapter 7 From analog to digital

RECOMMENDATION 7.1

Prior to the commencement of digital terrestrial television in 2001, the digital television conversion plan should be modified.

- ***The Government should set a firm and final date of 1 January 2009 for the end of the simulcast period. The final date should apply to metropolitan and regional areas.***
- ***Necessary amendments should be made to provide for shorter simulcasting periods, enabling the switch-off of analog services earlier than 2009 in areas where that proves feasible.***
- ***The Government should formulate and publish specific criteria suitable for approving the early switch-off of analog services.***

RECOMMENDATION 7.2

The digital television conversion plan should be further modified.

- ***Prior to the sale of any spectrum in the broadcasting services bands in 2000, the Government should announce its intention to release and sell any spectrum which becomes available for digital broadcasting during the conversion period.***
- ***Within two years of the commencement of digital broadcasting in a licence area, unassigned channels should be identified and sold for new digital broadcasting services.***
- ***Within two years of the commencement of digital broadcasting in a licence area, channels suitable for low cost spectrum clearance should be identified. The channels should be sold for new digital broadcasting services, subject to clearance of the spectrum by the purchaser.***
- ***Two years prior to the termination of the simulcast period, the spectrum manager should plan and sell for new digital services all remaining spectrum used for analog television broadcasting, with possession after analog switch-off.***

RECOMMENDATION 7.3

As the digital switch-over proceeds, the Government should design appropriate policies to ensure switch-off of analog services on 1 January 2009 in areas of slow take-up.

RECOMMENDATION 7.4

A new regulatory framework will facilitate consumers' adoption of digital television.

- ***High definition transmission should be permitted but no longer mandated.***
- ***Datacasting services should be defined as digital broadcasting services.***
- ***Multichannelling and the provision of interactive services by commercial and national broadcasters should be permitted. The proposed reviews of multichannelling and subscription broadcasting by free to air services should be cancelled.***

RECOMMENDATION 7.5

Digital radio policy should be modified.

- ***Analog radio broadcasting licences should not be converted without charge to digital licences.***
- ***Spectrum for new commercial digital radio services should be sold by a competitive process.***
- ***Existing commercial radio broadcasters should not be constrained from participating in the new medium.***

Chapter 8 Structural diversity in Australian broadcasting

RECOMMENDATION 8.1

The ABA should conduct regular research on the demand for community radio and television programming.

RECOMMENDATION 8.2

The ABA should conduct evaluations of existing community licensees before renewal every five years to assess whether licensees are meeting the objectives of the licence. The licence should be offered for reallocation if a licensee has not succeeded in meeting its objectives.

RECOMMENDATION 8.3

The ABA should review the allocation of each community broadcasting licence every 10 years.

RECOMMENDATION 8.4

If demand exists for non-profit television services in a licence area, a standard definition channel should be made available by the digital broadcaster that tenders for the lowest Government subsidy to do so. The tender should be let prior to the switch-off of analog television.

RECOMMENDATION 8.5

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

RECOMMENDATION 8.6

Spectrum should be reserved for Indigenous broadcasters to provide a primary service for Indigenous communities, where appropriate.

RECOMMENDATION 8.7

The Government should examine the need for, and feasibility of, establishing an Indigenous broadcasting service, including:

- ***who should provide the service;***
- ***how the service should be provided;***
- ***the additional government resources required; and***
- ***a timetable for implementation.***

RECOMMENDATION 8.8

The restrictions on advertising and sponsorship on subscription television services should be removed.

RECOMMENDATION 8.9

Subscription television channel providers should be licensed separately from the subscription television carrier.

RECOMMENDATION 8.10

Education providers and government agencies should share access with community groups to a standard definition digital television channel which could be made available in each licence area where there is sufficient demand.

Chapter 9 Concentration, diversity and regulatory barriers to entry in Australian media

RECOMMENDATION 9.1

When the non-technical criteria in s. 23 are removed, spectrum plans should be reviewed to make any unallocated spectrum available for sale.

RECOMMENDATION 9.2

Section 28 of the BSA, which prevents any new commercial television licences being allocated before 31 December 2006, should be repealed immediately.

Chapter 10 Ownership and control

RECOMMENDATION 10.1

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.

RECOMMENDATION 10.2

If recommendation 10.1 is not adopted, the BSA should be amended immediately to remove restrictions on investment by foreign managed, but Australian sourced, funds in Australian commercial television businesses.

RECOMMENDATION 10.3

The Trade Practices Act 1974 should be amended immediately to include a media-specific public interest test which would apply to all proposed media mergers. The test would be administered by the Australian Competition and Consumer Commission, and require that the commission seek ABA input on social, cultural and political dimensions of the public interest.

RECOMMENDATION 10.4

After the following conditions have been met:

- ***removal of regulatory barriers to entry in broadcasting (s. 28 and the s. 23 non-technical criteria), together with the availability of spectrum for new broadcasters;***
- ***repeal of BSA restrictions on foreign investment, ownership and control; and***
- ***amendment to the Trade Practices Act 1974 to provide for a media-specific public interest test to apply to mergers and acquisitions;***

the cross-media rules should be removed.

RECOMMENDATION 10.5

The retention of the audience reach rule should be reviewed in the light of developments in new digital broadcasting and information services.

RECOMMENDATION 10.6

As the normal competition provisions of the Trade Practices Act 1974 would apply to mergers of commercial broadcasting licences within a licence area, ss. 54 and 53(2) of the BSA should be repealed.

Chapter 11 Australian content regulation

RECOMMENDATION 11.1

The Australian content quota of 80 per cent for advertisements on all commercial television stations should be removed immediately.

RECOMMENDATION 11.2

The Australian production expenditure quota of 10 per cent for subscription adult and children's drama channels should be removed immediately.

RECOMMENDATION 11.3

For all current and future policies and regulations aimed at achieving the social and cultural objectives of broadcasting, the ABA should conduct regular, public evaluations against the stated policy objectives.

RECOMMENDATION 11.4

To ensure that the social and cultural objectives of broadcasting continue to be addressed in the future digital media environment, the Government should:

- ***commission an independent, public inquiry into Australian audiovisual industry and cultural policy, to be completed by 2004; and***
- ***following this review, but prior to the final switch-off of analog services, implement a new framework of audiovisual industry and cultural policy.***

Until this new policy is implemented, the following quotas for free to air commercial broadcasters should be retained in their current form and at their current levels:

- ***the overall transmission quota of 55 per cent for Australian programming;***
- ***the Australian first release drama quota;***
- ***the Australian first release documentary quota; and***
- ***all quotas for children's 'C' and preschool 'P' programs.***

Chapter 12 Broadcasting of sport

RECOMMENDATION 12.1

Broadcasters in one form of broadcasting should not be allowed to acquire the broadcast rights of sporting events of major national significance to the exclusion of those in other forms of broadcasting.

RECOMMENDATION 12.2

Criteria for a new and much shorter anti-siphoning list should include:

- ***demonstrated national significance, such as Australian involvement;***
- ***events that have been consistently broadcast by free to air television stations in the past five years; and***
- ***events that have received a high level of viewing by Australian audiences, as determined by ratings.***

RECOMMENDATION 12.3

Responsibility for administration of the anti-siphoning provisions should be transferred from the Minister to the ABA, and procedures should be streamlined to reduce the time taken for decisions and to improve their certainty and transparency.

Chapter 13 Codes, conditions and compliance

RECOMMENDATION 13.1

The ABA should undertake or commission research into the influence of the various forms of media on Australian society.

RECOMMENDATION 13.2

A further objective 'to promote freedom of expression' should be added to the objectives in s. 3 of the BSA.

RECOMMENDATION 13.3

Schedule 2 of the BSA should be amended to impose the following conditions on broadcasters' licences.

Broadcasters must take reasonable steps to:

- ***prevent the broadcasting of programs that, in accordance with community standards, are not suitable for their section of the industry to broadcast;***
- ***ensure the protection of children from exposure to potentially harmful program material; and***
- ***provide methods for handling complaints.***

Compliance with a relevant, registered code of practice covering these matters would be deemed to be evidence of having taken 'reasonable steps'. However, compliance with a code need not be the only means of satisfying these requirements.

RECOMMENDATION 13.4

The ABA should actively promote ethical practices in broadcasting. It should develop standards dealing with fair and accurate coverage and ethical news gathering and reporting practices. Among other provisions, 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 practicable;***
- ***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.***

RECOMMENDATION 13.5

The mechanisms for consultation on the development of codes of practice should be amended such that:

- ***a requirement for general support from within the relevant section of the industry replaces the requirement that a majority of broadcasters within the relevant section of broadcasting endorse a proposed code of practice;***
- ***the ABA, in consultation with industry, develops guidelines on how it will assess whether a code has 'general support from within the relevant section of the industry'; and***
- ***the ABA, in consultation with industry and the community, develops guidelines on 'adequate opportunity to comment' to support community consultation on a proposed code of practice.***

RECOMMENDATION 13.6

The co-regulatory scheme should be amended such that:

- ***all codes of practice include the requirement for community service announcements about the complaints mechanism, to be broadcast at peak or other appropriate audience times;***
- ***the ABA undertakes ongoing monitoring of community awareness of complaints mechanisms;***
- ***licensees are required to accept e-mailed complaints as well as written and faxed complaints; and***
- ***each industry group covered by a code of practice is required to institute a telephone complaints system which would advise complainants of their rights and on which complainants may record telephone complaints. These complaints should be forwarded promptly to the relevant broadcaster, and a summary of these complaints should be provided to the ABA.***

RECOMMENDATION 13.7

The co-regulatory scheme should be amended such that, in addition to existing sanctions:

- ***licensees found to be in breach of a relevant licence condition are required to broadcast an on-air announcement of the breach finding and subsequent action during the relevant program or time slot; and***

- ***the ABA is given the power to issue directions for action to broadcasters found in breach of a relevant licence condition.***

RECOMMENDATION 13.8

The regulatory scheme for controlling access to online content, including the legislative requirements on Internet content hosts and Internet service providers, the associated codes of practice, and the NetAlert initiative, associated hotline and community education campaigns, should be reviewed after one year of operation. The 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.***

PART II

THE NEED FOR CHANGE

1 Reviewing broadcasting regulation

In the past, broadcasting was 'over the air' radio and television. This concept is obsolete. Technological innovation and convergence mean that similar services can be delivered on a variety of platforms. New services are deliverable through new media, but also via traditional appliances such as television sets. And old services can be delivered on new media. The boundaries between media, as we have known them, and electronic commerce and telecommunications, are becoming increasingly blurred. Thus, broadcasting is not what it was when the Broadcasting Services Act was introduced in 1992. In five years time it will be different again.

The convergence of technologies, rapid innovation and globalisation provide a challenging and uncertain environment for the economic, social and cultural regulation of broadcasting and related services. A fundamental issue for this inquiry is the adequacy of the current legislative framework to cope with existing, anticipated and unanticipated developments in broadcasting.

1.1 Regulating broadcasting

Broadcasting is in a state of flux. Digitisation and technological convergence are breaking down distinctions between print, telecommunications, broadcasting and computing. Convergence challenges both the concept of broadcasting and the assumptions on which broadcasting and broadcasting policy have developed.

The only certainty is the inevitability of change as technology, products and markets rapidly evolve in new and often unexpected ways. This uncertainty affects industry, consumers and government alike. Companies are jockeying for position in new technology and new media as well as in the old as they hedge their bets on which new products will win consumer support. Government policy too must adapt to the changing environment. This inquiry is part of this process.

The *Broadcasting Services Act 1992* (BSA) is the primary vehicle for regulating Australia's complex mix of national (public), commercial and community broadcasting services. Through the BSA, the Commonwealth Government regulates the number of stations, station types, the technology employed, access to broadcasting platforms (radiofrequency spectrum, cable, satellites), company

ownership and structure, program content, and even sources of revenue in some cases.

An important function of this review is to examine the relevance of Australian broadcasting policy and legislation. This examination comes at a critical juncture in the development of media in this country, because technological convergence is becoming an increasingly important influence on broadcasting. Current legislation may no longer meet policy objectives; past policy objectives may no longer fit within the broader objectives of the Commonwealth Government and Parliament; and traditional policy tools may no longer be practicable. These issues arise because conventional broadcasting companies are regulated by the BSA, while enterprises in convergent sectors (such as telecommunications and the Internet) are outside the BSA's regulatory framework. Governments will not be able to maintain regulatory barriers around broadcasting services as other means of providing these services spread. Attempting to do so would merely drive innovation from regulated services to less regulated platforms such as cable, satellite and the Internet.

Further, aspects of the BSA may not align with Australia's wider contemporary policy framework. The BSA represented a conscious attempt to implement good regulatory practice, and was a major step towards a more market based, less interventionist approach to broadcasting regulation. However, the timing of the Act (enacted in 1992) meant that it predated many reforms in competition principles that have informed more recent regulatory practice, and restrictions on competition are inherent in elements of the BSA. This is a particular issue in this inquiry, which stems from the Competition Principles Agreement of 1995.

The current technological revolution in broadcasting means that it is no longer necessary or fruitful to be bound by the constraints and issues of the past. It provides an opportunity to look forward, through the digital conversion process and beyond, in developing broadcasting policy for the future. It provides an opportunity to break free of the legacy of the compromises that have characterised broadcasting policy for decades.

1.2 This inquiry

This is the first comprehensive, independent, public inquiry into broadcasting in Australia's history. There have been a number of inquiries, including Royal Commissions and parliamentary inquiries, into various aspects of the media, but this is the first opportunity for the Australian community to participate in a full public inquiry into broadcasting as a whole. Many individuals and organisations welcomed

this opportunity, and the Commission received 305 submissions. The public inquiry processes are outlined in appendix A.

The inquiry stems from the Commonwealth Government's commitment — under the Competition Principles Agreement — to review legislation that restricts competition. In April 1995, Commonwealth, State and Territory governments agreed to broaden the scope of competition policy to cover previously exempt sectors of the economy. Traditionally, promoting competition has not been a significant goal of broadcasting policy; in meeting its terms of reference, this inquiry must add a competition perspective to the other objectives of broadcasting policy.

Specifically under review are the BSA (as amended, including the 1998 digital conversion amendments), the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992*, the *Radio Licence Fees Act 1964* (as amended) and the *Television Licence Fee Act 1964* (as amended).

The national broadcasters — the Australian Broadcasting Corporation (ABC) and the Special Broadcasting Service (SBS) — are important elements of Australian broadcasting and make significant contributions to the social and cultural objectives of government. Although the inquiry does not specifically cover the legislation creating the national public broadcasters, many aspects of commercial and community broadcasting cannot be considered in isolation from the services they provide.

Some aspects of the BSA affect the ABC and SBS — including spectrum allocation and planning by the Australian Broadcasting Authority (ABA), the digital television conversion program and complaints handling — but the national broadcasters have their own separate regulatory framework. Further, their place in Australian broadcasting policy is not an issue in this inquiry, for which the Commission has assumed the ABC and SBS will have continuing significant roles in Australian broadcasting.

The terms of reference direct the Commission to undertake the following, among other tasks:

- report on practical courses of action to improve competition, efficiency and the interests of consumers in broadcasting services;
- focus particular attention on balancing the social, cultural and economic dimensions of the public interest;
- account for technological change in broadcasting services, particularly the phenomenon of convergence;

- clarify the objectives of existing legislation;
- identify social and economic problems that should be addressed, and in light of these, examine possible alternatives and/or improvements to legislation; and
- quantify, as far as reasonably practical, the benefits, costs and overall effects of the existing regulation and any alternatives proposed, for the broader economy, the broadcasting services industry and different groups likely to be affected.

1.3 The Commission's approach

In undertaking this inquiry, the Commission is bound by its Act to account for policy guidelines (box 1.1). The Commission must look at what is best for the community as a whole, not just for particular industries or groups. The Commission must consider how the regulatory framework affects the economic performance of the broadcasting industry, and its ultimate effects on the living standards of all Australians. But it is also charged with balancing the social, cultural and economic dimensions of the public interest, including adjustment processes.

The Commission does not seek to impose any social or cultural values of its own. Rather, it seeks to identify the social and cultural objectives of the Parliament and the Government, as they are reflected in policy and legislation. It supplements this information through the public inquiry process. Once objectives have been clarified, the Commission then seeks to evaluate the extent to which regulation has achieved these objectives, and at what cost.

The terms of reference ask the Commission to quantify, as far as reasonably practical, the benefits, costs and overall effects of the regulations and proposed alternatives. The Commission has attempted to quantify these where possible, but has been handicapped by the qualitative nature of many aspects of broadcasting (particularly the value of many of the cultural and social objectives of broadcasting). Even those most closely involved in funding and pursuing these objectives had difficulty responding to Commission requests to define the nature of their benefits and their overall effects. The Commission has also been restricted by the lack of data on other, more quantitative aspects of broadcasting.

Data for the broadcasting and media industries are surprisingly poor given the significance of these industries. Australian Bureau of Statistics (ABS) data coverage is limited for production and especially consumption of broadcasting and other media services. Other data sources used by the Commission include government agencies (such as the Australian Film Commission and the ABA), private organisations that collect data for commercial purposes (such as Roy Morgan Research and the Commercial Economic Advisory Service of Australia), and

secondary sources. These data are collected and defined differently from (and not always consistently with) ABS data.

The terms of reference also direct the Commission to have regard for the Competition Principles Agreement principles, which provide that any legislation that restricts competition should not be retained unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

Box 1.1 **Productivity Commission policy guidelines**

The Commission must have regard for the need:

(a) to improve the overall economic performance of the economy through higher productivity in the public and private sectors in order to achieve higher living standards for all members of the Australian community; and

(b) to reduce regulation of industry (including regulation by the States, Territories and local government) where this is consistent with the social and economic goals of the Commonwealth Government; and

(c) to encourage the development and growth of Australian industries that are efficient in their use of resources, enterprising, innovative and internationally competitive; and

(d) to facilitate adjustment to structural changes in the economy and the avoidance of social and economic hardships arising from those changes; and

(e) to recognise the interests of industries, employees, consumers and the community, likely to be affected by measures proposed by the Commission; and

(f) to increase employment, including in regional areas; and

(g) to promote regional development; and

(h) to recognise the progress made by Australia's trading partners in reducing both tariff and non-tariff barriers; and

(i) to ensure that industry develops in a way that is ecologically sustainable; and

(j) for Australia to meet its international obligations and commitments.

Source: Productivity Commission Act 1998, s. 8.

These principles have much in common with the Commonwealth's analytical requirements for regulation assessment, which the terms of reference also require the Commission to follow. Regulation (including primary and subordinate instruments such as licences, plans and standards, and codes of practice) should be not only effective, but also the most efficient means of achieving policy objectives

(ORR 1998, p. A1). Thus the broadcasting licensing system and codes of practice require close attention.

1.4 Objectives of Australian broadcasting regulation

Australian broadcasting regulation has developed over the years for technical, social, cultural, economic and administrative reasons. But there is no clear correspondence between the objectives and the regulatory instruments used to pursue them. If broadcasting policy is to move forward, it is important to clarify the regulatory objectives, determine where change is required, and develop policy options for the future.

Regulating for technical objectives

The radiofrequency spectrum[1] is a natural resource that can be used for a range of radiocommunications purposes. Spectrum is finite, and for it to be used efficiently, it must be allocated; further, technical standards must be agreed for its use. Without such technical regulation or cooperation, congestion and interference would be likely to prevent clear transmissions.

Governments around the world regulate the technical use of spectrum. The Australian Communications Authority undertakes this function under the *Radiocommunications Act 1992*. The objectives of the Radiocommunications Act (box 1.2) relate the technical management of the radiofrequency spectrum to the achievement of broad community objectives.

However, Australian governments have gone well beyond the minimum necessary level of technical regulation of broadcasting spectrum. Regulations have tended to prescribe and proscribe the service types to be made available for consumers and the technologies to be used by those licensed to use spectrum. The BSA delegates technical regulation of the part of the spectrum designated as 'broadcast services bands' to the ABA.

This history of prescribing new broadcasting technologies extends back to the earliest introduction of radio. The first regulations for radio broadcasting (in 1923) provided for only 'sealed sets' — which were permanently tuned to a single station (such that a separate set was required for each broadcasting channel) — and

[1] The electromagnetic spectrum stretches from very short wavelength gamma rays through x-rays, ultraviolet, visible light and infra-red waves, to long wavelength radio waves. The radiofrequency spectrum is that part of the total electromagnetic spectrum that allows wireless communication.

required listeners to subscribe to stations. These regulations quickly proved to be unmanageable and were amended in 1924.

More recently, radio broadcasting was prevented from using FM technology despite it having been in widespread use overseas for many years. Although initially trialed as early as 1947, FM services were prohibited by legislation in 1956 and were not introduced until 1974 following a Royal Commission. Similarly, subscription television services were available in the United States in 1948 but were not introduced in Australia until much later. An Australian Broadcasting Tribunal inquiry in 1980 recommended introducing subscription services as soon as practical; however, a moratorium was placed on subscription television services until 1992, and they did not commence until 1995.

Most recently, a prescriptive and proscriptive approach has been applied to the introduction of digital television. The Commonwealth Government has stated that high definition and standard definition television are to be mandated, and restrictions are being imposed on the services that may be provided during the period of the conversion from analog to digital services.

Box 1.2 **Objectives of the Radiocommunications Act**

The object of this Act is to provide for management of the radiofrequency spectrum in order to:

(a) maximise, by ensuring the efficient allocation and use of the spectrum, the overall public benefit derived from using the radiofrequency spectrum;

(b) make adequate provision of the spectrum for use by public or community services;

(c) provide a responsive and flexible approach to meeting the needs of users of the spectrum;

(d) encourage the use of efficient radiocommunication technologies so that a wide range of services of an adequate quality can be provided;

(e) provide an efficient, equitable and transparent system of charging for the use of spectrum, taking account of the value of both commercial and noncommercial use of spectrum;

(f) support the communications policy objectives of the Commonwealth Government;

(g) provide a regulatory environment that maximises opportunities for the Australian communications industry in domestic and international markets; and

(h) promote Australia's interests concerning international agreements, treaties and conventions relating to radiocommunications or the radiofrequency spectrum.

Source: Radiocommunications Act 1992, s. 3.

The advent of digital technology opens up new technical possibilities for use of the spectrum and the promise of new types of service. Technological convergence of broadcasting, telecommunications and the Internet is occurring at a rapid rate, but their ultimate forms are not yet clear. This uncertainty creates particular challenges for successful technical regulation. Mandating technical standards that turn out to be inappropriate could have serious effects on the development of Australian media and on both consumers and producers. While the BSA was originally designed to be technologically neutral, it is now a mix of technological neutrality and technological specificity.

Technical regulations do not have only technical effects. They also can have economic and social effects, but their technical nature means these effects are often not readily apparent. They can constrain competition in broadcasting industries and restrict the availability of new products. The regulations influence the number of broadcasters of various kinds, their audience reach, the specifications and cost of transmitting and receiving apparatus, and therefore the access of people and communities to broadcasting services. Thus technical regulations affect not only the technical efficiency of broadcasting, but also the economic efficiency with which the community's resources are used.

Balancing social, cultural and economic objectives

Broadcasting is a powerful medium for informing, persuading, entertaining and influencing people's behaviour and attitudes. Governments pursue social and cultural policies through broadcasting regulation. Australian content regulations have been introduced to promote Australian music, drama, documentaries and children's programming. Regulations also apply to political broadcasting, the promotion of fair and accurate reporting, and some areas of advertising. Regulation also aims to reduce the negative aspects of broadcasting — that is, the power to cause harm by negatively influencing behaviour, attitudes and values. Standards have been developed to protect the community, particularly children, from inappropriate content. The ABA sets some of these standards, but most are developed through co-regulatory codes of practice.

Economic objectives are another important element of broadcasting policy (box 1.3). The government aims to encourage the development of a broadcasting industry that is efficient, competitive and responsive to audience needs.

Sometimes all these objectives can be achieved together; at other times, tradeoffs must be made. But in a trade off of one objective against another, the deal must be worthwhile from a national perspective — that is, the gain on one side must at least

balance the loss on the other. The terms of reference require the Commission to balance the social, cultural and economic dimensions of the public interest.

Australian broadcasting policy is the result of such tradeoffs over the years. The outcome is a complex set of broadcasting policy *quid pro quos*, whereby various regulatory arrangements compensate broadcasters for meeting policy objectives. Many of these arrangements are anti-competitive. The resulting regulatory framework lacks transparency. Mapping the benefits and costs of the *quid pro quos* is an important task for this inquiry.

Box 1.3 **Objectives of the Broadcasting Services Act**

The objects of this Act are:

(a) to promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information; and

(b) to provide a regulatory environment that will facilitate the development of a broadcasting industry in Australia that is efficient, competitive and responsive to audience needs; and

(c) to encourage diversity in control of the more influential broadcasting services; and

(d) to ensure that Australians have effective control of the more influential broadcasting services; and

(e) to promote the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity; and

(f) to promote the provision of high quality and innovative programming by providers of broadcasting services; and

(g) to encourage providers of commercial and community broadcasting services to be responsive to the need for a fair and accurate coverage of matters of public interest and for an appropriate coverage of matters of local significance; and

(h) to encourage providers of broadcasting services to respect community standards in the provision of program material; and

(i) to encourage the provision of means for addressing complaints about broadcasting services; and

(j) to ensure that providers of broadcasting services place a high priority on the protection of children from exposure to program material which may be harmful to them; and

(k) to provide a means for addressing complaints about certain Internet content; and

(l) to restrict access to certain Internet content that is likely to cause offence to a reasonable adult; and

(m) to protect children from exposure to Internet content that is unsuitable for children.

Source: Broadcasting Services Act 1992, s. 3.

One apparent tradeoff in Australian broadcasting policy is between having an open, competitive industry and promoting Australian content on commercial television. Governments have long justified regulatory restrictions on the entry of new broadcasters as a means of providing commercial broadcasters with the higher revenues allegedly necessary to support higher cost local programming.

However, restricted entry has led to high concentration in radio and television markets. Australian governments have viewed excessive media concentration and influence as a threat to diversity of views, and as a danger to democracy. Governments therefore have sought to promote diversity and Australian values by regulating the ownership and control of broadcasting licences. Currently, these policies are specified in the BSA and administered by the ABA.

Ensuring access to broadcasting services

Ensuring Australians have access to a range of broadcasting services is a fundamental objective of Australia's broadcasting policy (BSA, s. 3[a]). Broadcasting services fulfil key functions in modern societies, such as providing information, contributing to democracy, educating, promoting cultural values and providing entertainment.

To ensure audiences have access to the many benefits of broadcasting services, the Government intends that licensees will provide a service to substantially their entire licence area. ABA planning processes and the provisions of the BSA facilitate this intention.

The common interpretation of the ABA is that broadcast licensees should provide their services throughout their entire licence areas. The Federation of Australian Commercial Television Stations for example, states:

> Parliament and the ABA have continued to press licensees to provide universal coverage within their service areas [and viewers] have a strong expectation of service, even if it is not mandated. (sub. DR231, p. 1)

This level of coverage is expected to continue after the introduction of digital transmission. The Commercial Television Digital Conversion Scheme requires transmission in digital mode to achieve, as soon as is practical, the same level of coverage and reception quality as is achieved by transmission of the service in analog mode (BSA, sch. 4, s. 6 [3f]). However, the different transmission and reception characteristics of digital technology, which could result in altered service area boundaries, may complicate this achievement.

In addition to ensuring services are available to audiences within licence areas, broadcasting policy has attempted to provide access to a similar number of services across licence areas throughout Australia. It has done so through the national broadcasters, planning assumptions for commercial services and regional equalisation policies.

1.5 Australia's broadcasting regulators

Broadcasting is one of Australia's most intensively regulated industries, involving a number of regulatory institutions — for example, the Minister and Department of Communications, Information Technology and the Arts, the ABA, the Australian Communications Authority and the Australian Competition and Consumer Commission, all of which are statutory organisations with specific broadcasting regulation roles. In addition, the Office of Film and Literature Classification has a role in online content regulation through classifying Australian hosted Internet sites; codes of practice also reflect these classifications. Several other organisations that play a role but are not directly involved in regulation include the Australian Film Finance Corporation, the Australian Film Commission and various State government bodies.

The ABA, created by the BSA, is the key regulatory authority. It has an annual budget of approximately $13 million and employs about 150 people (ABA 1998a). It is required to undertake a large range of functions, including planning the broadcasting services bands, licensing broadcasting services, collecting licence fees, helping industry to develop codes of practice, monitoring compliance, dealing with complaints and conducting research. Compared with its predecessor (the Australian Broadcasting Tribunal), the ABA has a broader charter in planning (which was transferred from the Department of Transport and Communications) and works to the Minister more directly (Armstrong 1999, pp. 5042–3). The department has become more focused on policy issues (for example, digital conversion), with implementation now the province of the ABA (and others).

The Australian Communications Authority is involved both directly and indirectly. As Australia's spectrum manager, it delegates management of the broadcasting services bands to the ABA. However, it is involved indirectly in the sense that the ABA must advise it on spectrum planning and designation issues. The Australian Communications Authority is more directly involved in managing and licensing broadcasters' use of spectrum outside the broadcasting services bands (see chapter 6).

The Australian Competition and Consumer Commission is also involved. The ABA is required to consult with it over licence ownership and control issues which may breach the *Trade Practices Act 1974*. It may also act separately from the ABA if it believes the Trade Practices Act has been breached. To promote consistency of decision making, the two authorities (the ABA and the Australian Communications Authority) and the Australian Competition and Consumer Commission have overlapping membership.

The Foreign Investment Review Board administers the *Foreign Acquisitions and Takeovers Act 1975* (FATA). It can examine proposals by foreign persons who wish to acquire a controlling interest in an Australian company (including radio, television, subscription broadcasting and newspaper companies). The definitions of 'foreign person' and 'control' vary between the BSA and the FATA, so the Foreign Investment Review Board sends the ABA all applications that relate to the media and that may breach the BSA. The ABA assesses applications in relation to the foreign ownership restrictions under the BSA, then advises whether the proposed acquisitions would breach the Act. The Foreign Investment Review Board then considers this advice when recommending whether to approve an acquisition.

1.6 Broadcasting policy principles

Broadcasting cannot be considered in isolation from the general thrust of contemporary Australian policy. Broadcasting policy objectives must reflect the social, cultural and economic interests of the whole community. The Competition Principles Agreement requires policy instruments to be justified and clearly related to effective and efficient achievement of the objectives. Further, they should conform to the general precepts of good public policy — that is, easy to understand, transparent and equitable in its operation. Finally, regulation should restrict competition only when the benefits outweigh the costs and if there is no reasonable alternative.

This approach recognises that regulation is not costless. It imposes costs on industry (in compliance), the government (in enforcement) and often consumers (in reduced innovation, fewer services and higher prices). To minimise the cost of regulation, it is important to target regulations clearly to achieving objectives, and to remove those that do not contribute. Regulation should also be as technologically neutral as possible, to avoid creating unnecessary regulatory distinctions between similar services that are delivered differently. Such distinctions can impose costs on the community by preventing or delaying the introduction of the most efficient and effective technologies. Policies will also generally work better if competition can

aid their achievement, by ensuring they create incentives that are aligned with the regulatory objectives.

The Commission considers that certain basic principles should underpin the development of a competitive Australian media industry in the future. Australia's broadcasting policy should promote the interests of consumers and the broad Australian community by:

- promoting the community's social and cultural objectives in broadcast programming;
- securing diversity of major sources of information and opinion in the market for ideas;
- promoting efficient resource allocation in broadcasting and related industries and for the Australian economy as a whole;
- ensuring Australia makes the best possible use of its radiofrequency spectrum resources, and the community receives a fair return from the use of the spectrum;
- providing for equitable access of Australian consumers to broadcasting services;
- encouraging innovation in the provision of broadcasting services; and
- promoting efficient, effective and transparent public administration in broadcasting.

This report applies these general principles to different aspects of Australian broadcasting regulation. Part I examines current arrangements and establishes the need for change in Australian broadcasting policy. Part II analyses the structure of Australian broadcasting, including both the demand for broadcasting services by consumers and advertisers, and the supply of broadcasting services by Australia's broadcasting and audiovisual production industries. Part III addresses the management of Australia's broadcasting spectrum, the conversion to digital broadcasting, and structural diversity in Australian broadcasting. Part IV examines concentration and market power in Australian broadcasting, including ownership and control issues. Part V is concerned with program content, codes of practice and regulatory compliance by broadcasters.

Many aspects of broadcasting regulation are interrelated and many of the Commission's recommendations should be addressed as elements of a package, rather than as stand-alone reforms.

2 The structure of Australian broadcasting

The Australian broadcasting industry provides a wide range of services which are highly valued by the community. The breadth and depth of involvement in this and other inquiries concerning broadcasting services is testimony to that. Broadcasting services are more or less universal, with free to air services available to anyone with a suitable receiver, and they are consumed by most people every day.

This chapter provides an overview of the structure of the broadcasting industry in Australia as it stands. It discusses, first, the consumption of media services by the Australian public; second, the various sectors of the broadcasting industry and their key players; and third, its financing arrangements and profitability. Chapter 3 provides an overview of technological convergence in the broadcasting sector.

2.1 Consumption of media services

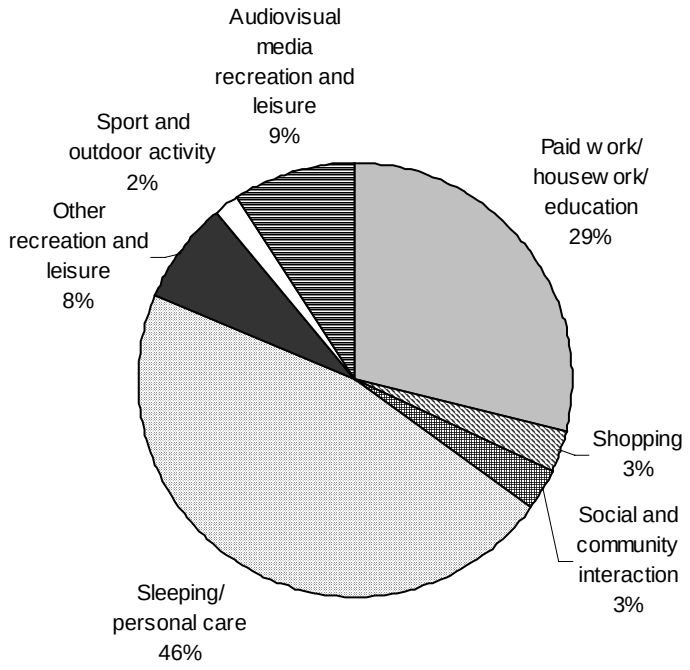
Australians are enthusiastic consumers of media, especially television. In 1996, 99 per cent of Australian households owned at least one television set (60 per cent owned two or more) and 79 per cent owned a video cassette recorder (ABS cat. no. 4172, 1997). According to Australian Bureau of Statistics (ABS) data, the average person in 1997 spent around half of their recreation and leisure time using some form of audio visual media, including television, radio, newspapers, magazines, cinema and the Internet (ABS cat. no. 4153.0, 1998). This was considerably more than the average time spent pursuing active leisure (primarily sport and outdoor activity, which made up 2 per cent of the average day), socialising (3 per cent) or shopping (3 per cent) (figure 2.1).[1]

Ratings data show commercial television is the most popular type of media service in Australia. In a survey by Roy Morgan Research (1999), 94.5 per cent of Australians had watched commercial television in the previous seven days.

[1] These ABS data do not include media consumed for work or study purposes, or in the background to another main activity (for example, listening to the radio while eating). ABS data on broadcasting consumption are defined differently from (and not always consistently with) survey data that Roy Morgan Research and AC Nielsen collect for commercial purposes.

Newspapers were the next most popular media (with 85.5 per cent of people surveyed having read one in the previous seven days), followed by commercial radio (with 72.4 per cent having listened to it in the previous seven days). Around one quarter of those surveyed had used the Internet in the previous seven days.

Figure 2.1 **Main activities in an average day – all Australians, 1997**



Data source: ABS (1998b).

According to this ratings survey, Australians spent an average of over 20 hours per week watching commercial television, 16 hours listening to commercial radio and four hours reading newspapers (although not necessarily as a 'main activity' or only activity for all of that time). Internet users averaged over three hours per week (Roy Morgan Research 1999).

Use of media

People use these media services for widely varying reasons. Most media consumption is a leisure activity and takes place within the home. People also use media at work or for study purposes.

In general, people use print media and the Internet to obtain information and knowledge. Radio, television and cinema are used more for entertainment, escapism

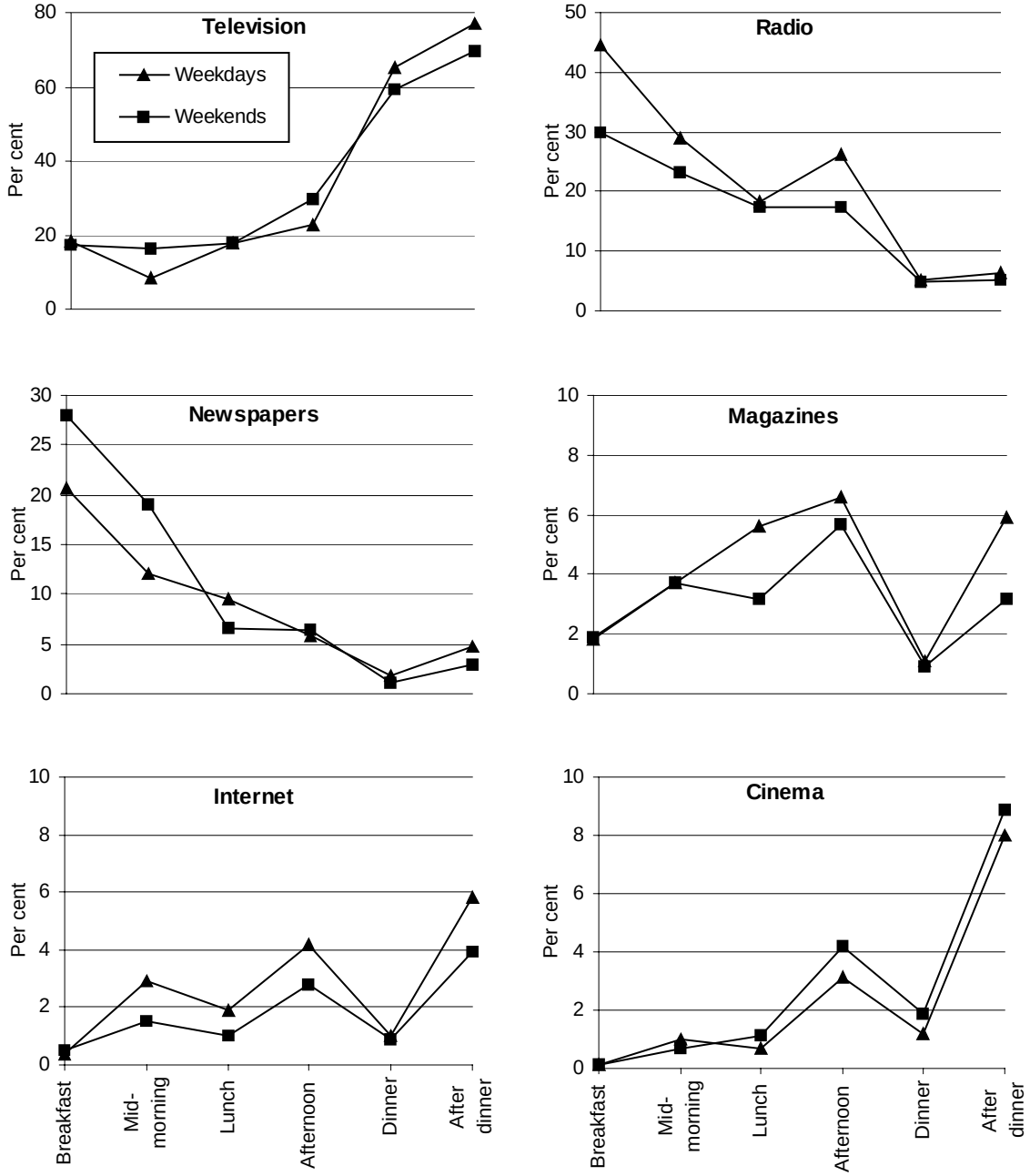
and relaxation. Some types of radio and television programming also provide information and knowledge, including news, current affairs and documentaries (BDA Marketing Planning 1999, p. 11).

People use the various types of media at different times of the day and the week for different purposes. Sometimes media forms are substitutes for each other; at other times they are complementary. Media consumers generally prefer news and information in the morning and entertainment in the evening and on weekends (figures 2.2 and 2.3).

At breakfast time, when most people prefer news and information, radio is the most popular form of media (with close to half of the population aged 14 years and over listening to radio programs). Newspaper reading is also popular early in the morning. Throughout the day, radio audiences decline and television viewers increase, as people's preferences move from news to entertainment. About 77 per cent of the adult population watches television in the evening on week days (figure 2.2).

Among the newer media, subscription television is less popular than free to air television at all times of the day. Internet use varies throughout the day, with peaks at mid-morning and afternoon (which may indicate business use) and another peak after dinner (which is presumably for leisure rather than business purposes).

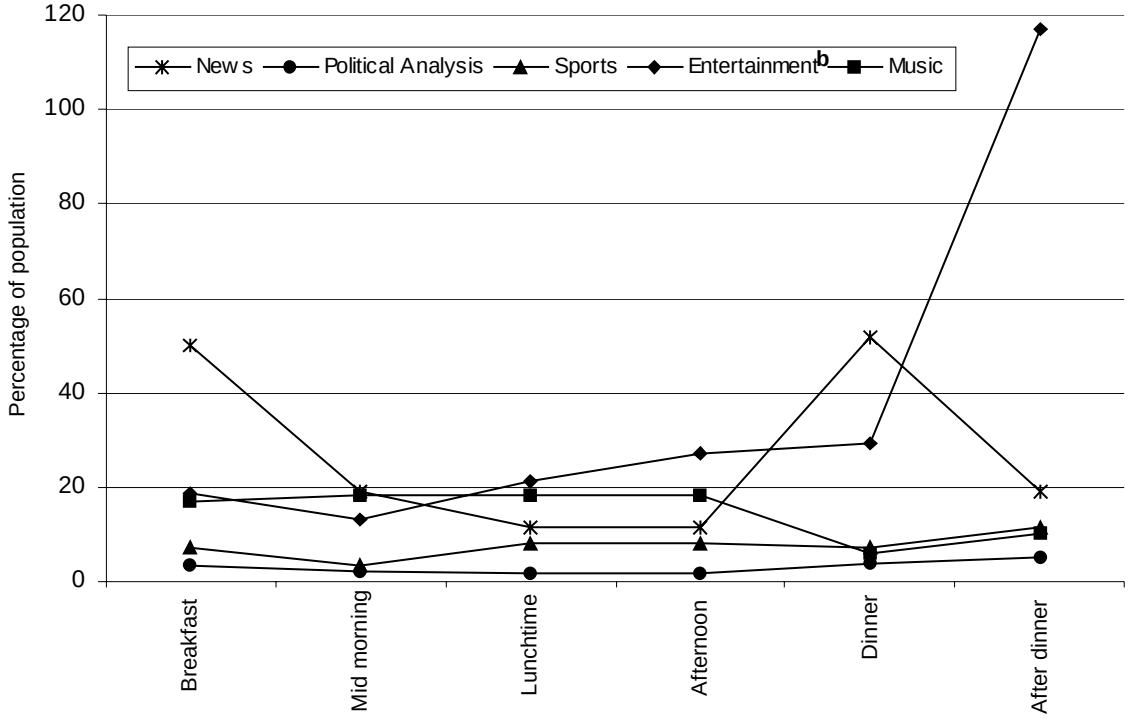
Figure 2.2 **Percentage of people using media throughout the day, by media type, 12 months to June 1999[a]**



a Population aged 14 years and over.

Data source: Roy Morgan Research, Single Source database (accessed September 1999).

Figure 2.3 **Media content preferences of people on week days, by time of day, 12 months to March 1999[a]**



a Population aged 14 years and over. Totals can be greater than 100 per cent because people can prefer more than one type of media content for each time period. **b** Entertainment consists of the Roy Morgan Research categories of 'something funny', 'around the home advice', 'drama', 'action adventure' and 'romance'.

Data source: Roy Morgan Research, Single Source database (accessed September 1999).

Media consumption habits

Media consumption habits and preferences vary significantly across the Australian population. The results of marketing research commissioned from Brian Dermott Associates for this inquiry identified nine distinct groups of adult media consumers (box 2.1 and figure 2.4). Media consumption — especially consumption of new media — generally increases with socioeconomic status (based on income, occupation and education levels).

At the top of the media consumption scale is a small proportion (2 per cent) of mostly younger people who have a strong interest in all types of media, especially new media technologies. Another 9 per cent of people from a range of backgrounds also use a wide variety of old and new media, often for professional and personal development purposes.

The majority of the population (around 57 per cent) are middle level media users who have a distinct preference for a single type of media — Internet *or* newspapers *or* magazines and cinema *or* radio *or* television. The people who watch most commercial television are among the lowest consumers of new forms of media (such as the Internet) or of media requiring payment (such as newspapers, subscription television and cinema). They are predominantly from the lower socioeconomic sections of the community, including unemployed and retired people, who rely on free to air commercial television as a main leisure activity. Similarly, the heaviest consumers of commercial radio tend to be low consumers of other media.

Around 13 per cent of people use a range of media to fill in time, but prefer lower cost media such as television, radio and newspapers over cinema, subscription television or the Internet. Around 19 per cent of all Australians have a low level of involvement in any type of media; they are mainly older people or families of middle to low socioeconomic status in both urban and rural locations.

These differences in media consumption are important in considering the interests and capacity of different groups in the community to pay for new services such as digital television (see chapter 7). They are also of interest in considering issues of 'influence' in cross-media ownership regulation (see chapter 10).

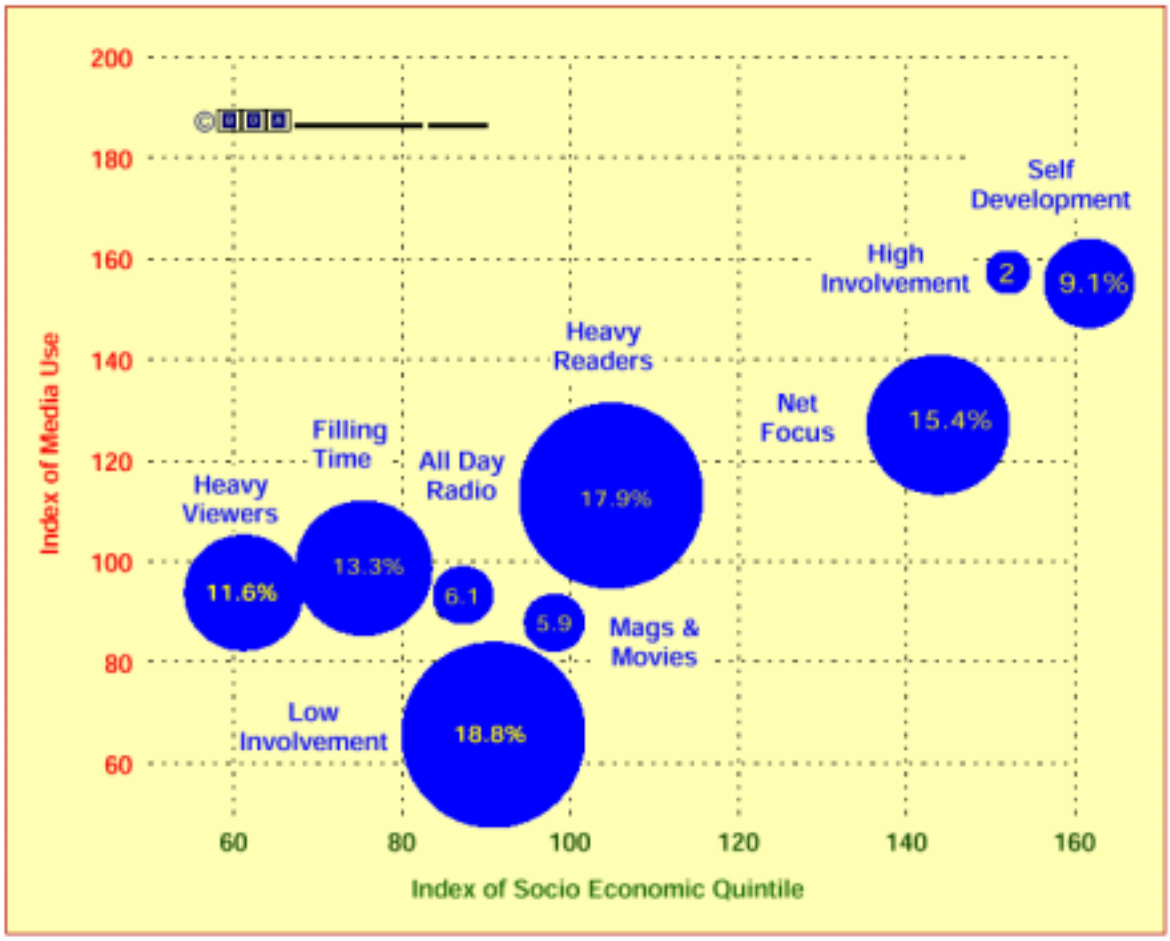
Box 2.1 **Media consumption typology**

This typology identifies nine media consumer types for Australians aged over 14 years.

- *High involvement* (2.0 per cent). These people are the true 'media addicts', with a wide interest in all media types, especially the Internet. They are young, urban and mostly male. They have high disposable incomes and include many students.
- *Self development* (9.1 per cent). These people are heavy users of newspapers, the Internet, ABC radio and cinema. They are mainly urban professionals on middle to high incomes.
- *Net focus* (15.4 per cent). These people account for half of all Internet use but have a low interest in other media except cinema. They are mainly students, professionals and skilled workers on middle to high incomes in urban areas.
- *Heavy readers* (17.9 per cent). These people read a large number of newspapers and magazines but are light users of most other media. They include older workers and retirees across all income brackets, in both urban and rural locations.
- *Magazines and movies* (5.9 per cent). These people are heavy users of magazines, cinema and subscription television, but have a low interest in the Internet, newspapers, commercial television and radio. This group is composed of mainly younger women, across all income levels and urban and rural locations.
- *All day radio* (6.1 per cent). These people listen to commercial radio all day at home or at work but are light users of other media, including ABC radio. They include blue and white collar workers and people on home duties with middle to low incomes and in urban and rural locations.
- *Heavy television viewers* (11.6 per cent). These people spend a lot of time watching commercial television but are light users of all other media. They are mainly retired or unemployed with low incomes, in urban and especially rural locations.
- *Filling in time* (13.3 per cent). These people are medium to heavy consumers of newspapers, commercial television and commercial radio but rarely use the Internet, cinema and ABC radio. They are mainly retired or unemployed people, on lower incomes (with some affluent retired people), in urban and especially rural locations.
- *Low involvement* (18.8 per cent). This group has below average use of all media types, but tends to favour slightly ABC television and radio. It comprises mainly families and retirees with middle to lower incomes, in both urban and rural areas.

Source: BDA Marketing Planning (2000), derived from Roy Morgan Research, Single Source database (accessed February 2000). This typology is only one interpretation of the data. Details are available from the Commission.

Figure 2.4 **Media typology framework** [a, b, c]



[a] Population aged 14 years and over. [b] Socioeconomic quintiles and media use rates have been converted to indexes (100 is the average). Socioeconomic quintiles are constructed by Roy Morgan Research from survey respondents' levels of education, income and occupation. Total responses are then aggregated and ranked into quintiles (five groups of 20 per cent each). [c] The typology is both mutually exclusive and fully inclusive.

Data source: BDA Marketing Planning (2000), derived from Roy Morgan Research, Single Source database (accessed February 2000).

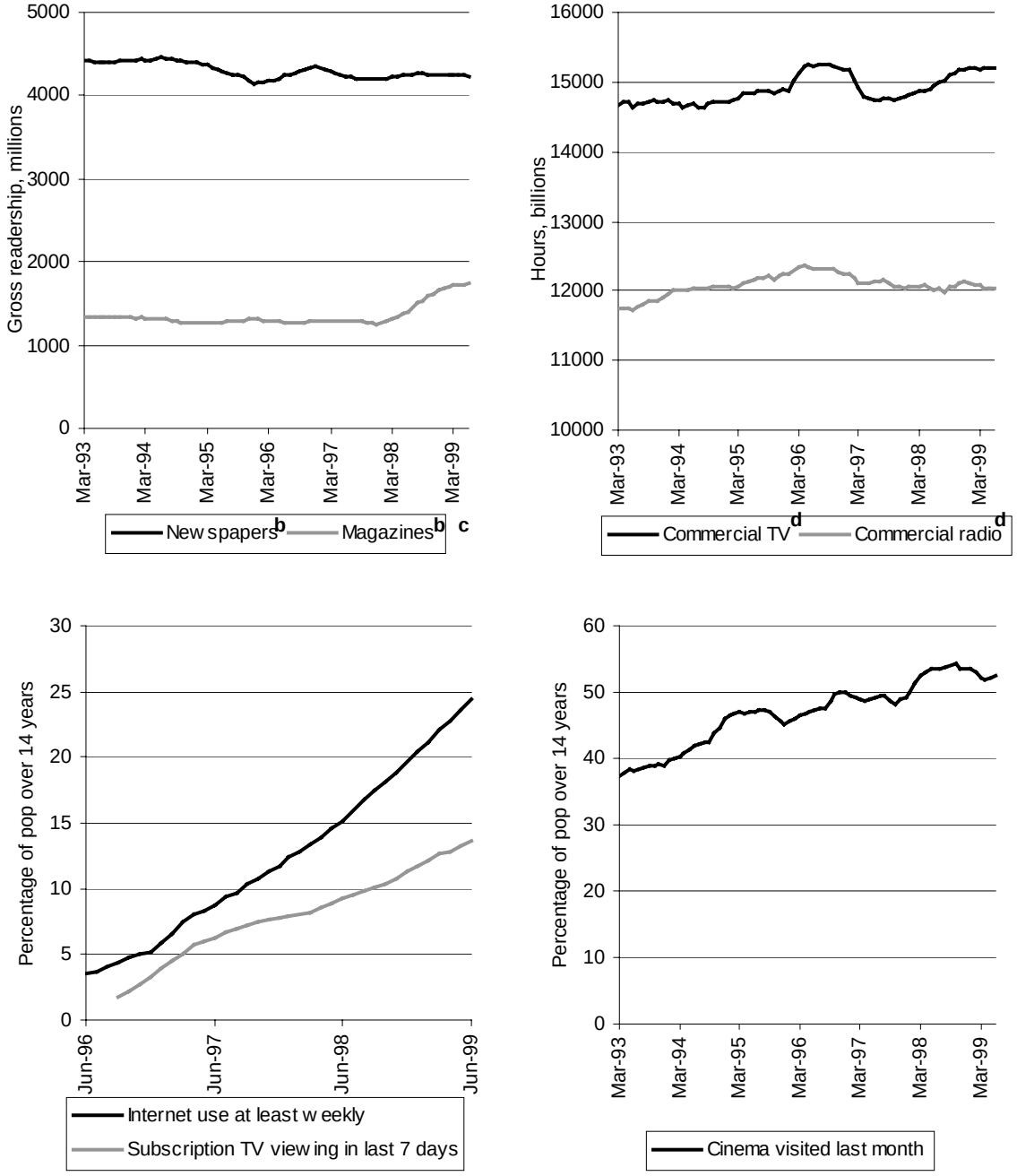
Trends in media consumption

The total consumption of newspapers, television and radio did not change greatly during the 1990s. In contrast, use of the Internet and subscription television grew strongly (figure 2.5). Growth in the popularity of cinema was also evident.

The Internet is used for many purposes (figure 2.6). It may be a substitute for other media or communication products; for example, over 80 per cent of people who use the Internet at least once a week use it for e-mail, which is largely a substitute for the telephone and the post. The Internet is also used to obtain general information from Web sites, for entertainment, browsing for information and personal searches.

Figure 2.5 **Gross media consumption measures[a]**

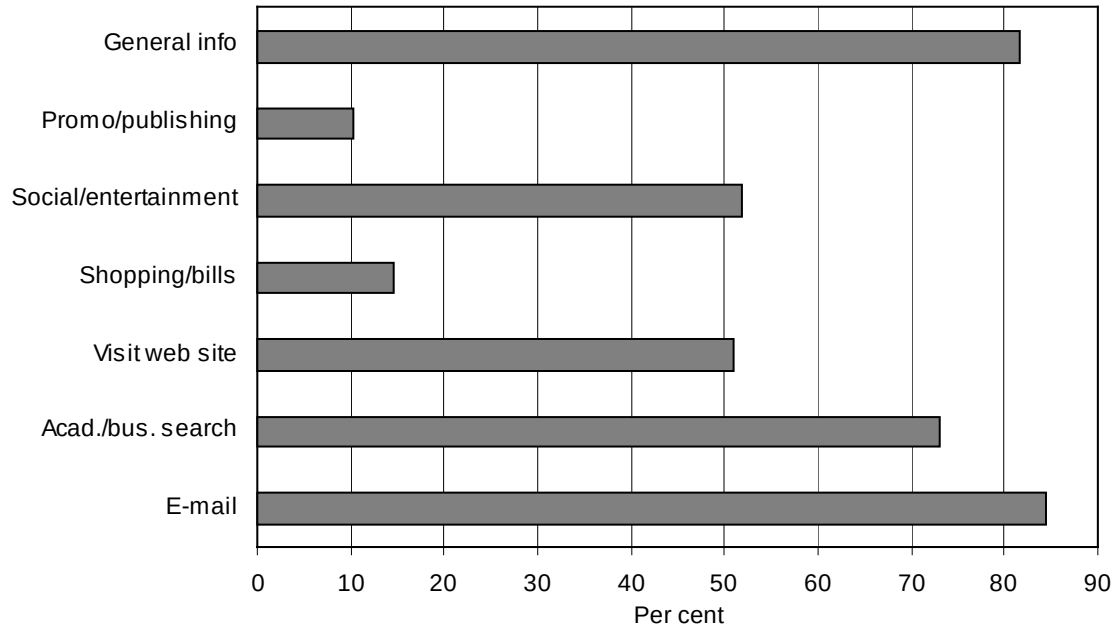
Twelve month moving average



a Population aged 14 years and over. **b** Gross readership is the number of instances of people reading each issue of a newspaper or magazine. **c** A number of magazine titles were added to the Roy Morgan survey in 1998. **d** BDA Marketing Planning derived hours of commercial television watched and radio listened to from the Roy Morgan Research Single Source database, using the categories of heavy (over four hours), medium (between two and three hours) and light (less than two hours) commercial television watching and radio listening. It was assumed that heavy users consumed six hours, medium users consumed 2.5 hours and light users consumed 1.5 hours for both commercial television and radio.

Data source: BDA Marketing Planning (1999), derived from Roy Morgan Research, Single Source database (accessed September 1999).

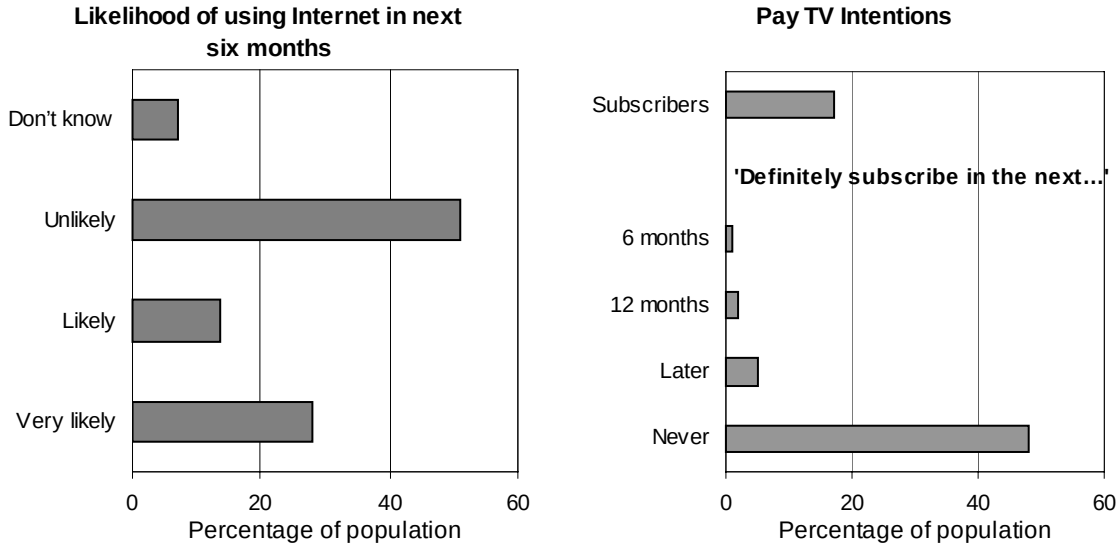
Figure 2.6 **Purposes of the Internet for regular users, 12 months to June 1999[a]**



a Population aged 14 years and over. Regular users are those who use the Internet at least once per week.

Data source: Roy Morgan Research, Single Source database (accessed September 1999).

Figure 2.7 **Intention to use new media, 12 months to June 1999[a]**



a Population aged 14 years and over.

Data source: Roy Morgan Research, Single Source database (accessed September 1999).

The take-up rates of the Internet and subscription television have been relatively rapid but the penetration levels are unlikely to reach those of free to air television or radio in the foreseeable future. Some 42 per cent of the population are estimated to be likely or very likely to use the Internet in the next six months, but 90 per cent of these people already have access to the Internet at work or home. Over 50 per cent thought it unlikely they would ever use the Internet (figure 2.7).

According to survey data, the penetration of subscription television was about 17 per cent in June 1999 (Roy Morgan Research 1999). Only 8 per cent of those surveyed thought they would definitely take up a subscription in the future; some 48 per cent said they would never subscribe.

Media consumption by children and young people

Children watch less television than adults on average — that is, 2.5 hours per day compared with 3.5 hours per day (AFC 1998, p. 209). Most children's viewing occurs directly before and after school. Total television viewing by children, like that by adults, was fairly stable during the 1990s, although there was a drift from free to air to subscription television: as with adults, a small but growing proportion of children were watching subscription television rather than free to air television (table 2.1). There was a small decline in the group aged 5–12 years who watches television at all, with the decline in free to air viewing exceeding the increase in subscription viewing.

Table 2.1 **Average proportion of children and all people viewing television, 6 am to midnight[a]**

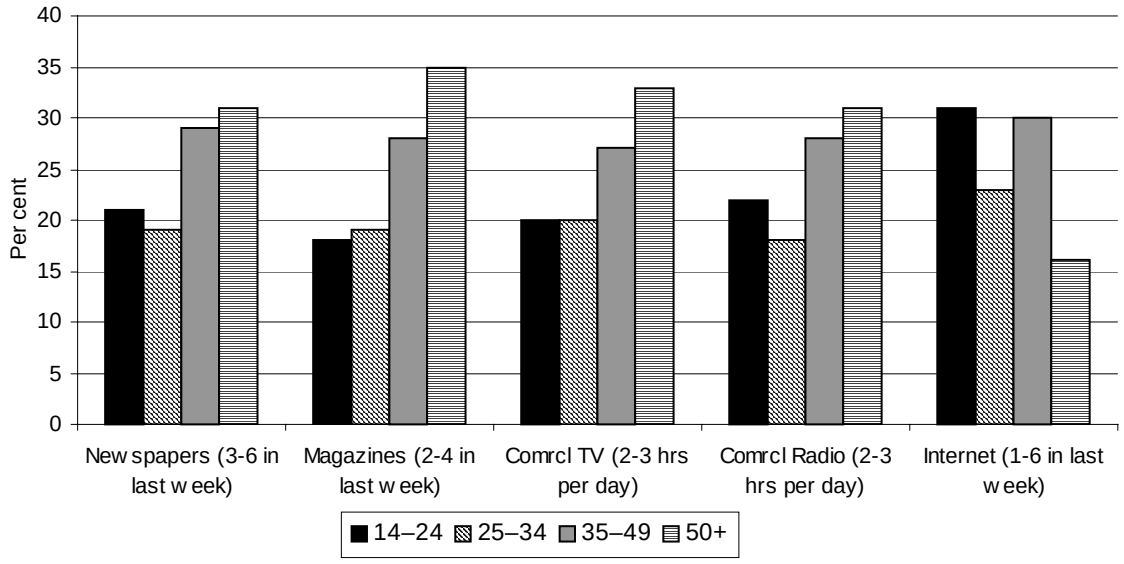
	Subscription television[b]			*Free to air television*			*All television*		
	Age 0-4 %	*Age 5-12 %*	*Whole pop. %*	*Age 0-4 %*	*Age 5-12 %*	*Whole pop. %*	*Age 0-4 %*	*Age 5-12 %*	*Whole pop. %*
1991	0.1	0.1	0.1	15.7	14.3	17.0	15.8	14.4	17.1
1992	0.1	0.2	0.2	14.7	13.7	17.1	14.8	13.9	17.3
1993	0.1	0.2	0.2	14.8	13.9	16.8	14.9	14.1	17.0
1994	0.3	0.5	0.4	14.5	14.0	16.7	14.8	14.5	17.1
1995	0.4	0.5	0.5	15.0	13.6	16.5	15.4	14.1	17.0
1996	0.6	0.8	0.7	13.9	13.0	16.3	14.5	13.8	17.0
1997	1.3	1.5	1.3	13.5	12.1	15.8	14.8	13.6	17.1
1998	1.4	1.9	1.5	13.9	11.5	15.6	15.3	13.4	17.1
1999	1.5	2.0	1.7	13.5	11.5	15.4	15.0	13.5	17.1

a Average percentage of the population who are watching television at any given time, 6 am to midnight. Most of this viewing is concentrated in peak times — after school for children and week day evenings for adults. **b** Includes spill in viewing which is the viewing of television from a regional transmitter in a metropolitan area, and vice versa.

Source: ABC (1999b).

Media consumption habits vary across different age groups. Younger people are heavy users of the Internet but light users of most of the traditional media when compared with older people. For a variety of reasons, consumption of the traditional media increases as people get older; for example, many people aged over 50 are retired and have more time to spend consuming media, yet this age group has the lowest use of the Internet (figure 2.8). What this heralds for the future is uncertain, but one possibility is that there could be a fundamental shift in the total population's consumption of media as young people age, with a growing importance of new media such as the Internet and a declining importance of traditional media such as newspapers and commercial television.

Figure 2.8 **Percentage of people using media, by age, 12 months to March 1999**



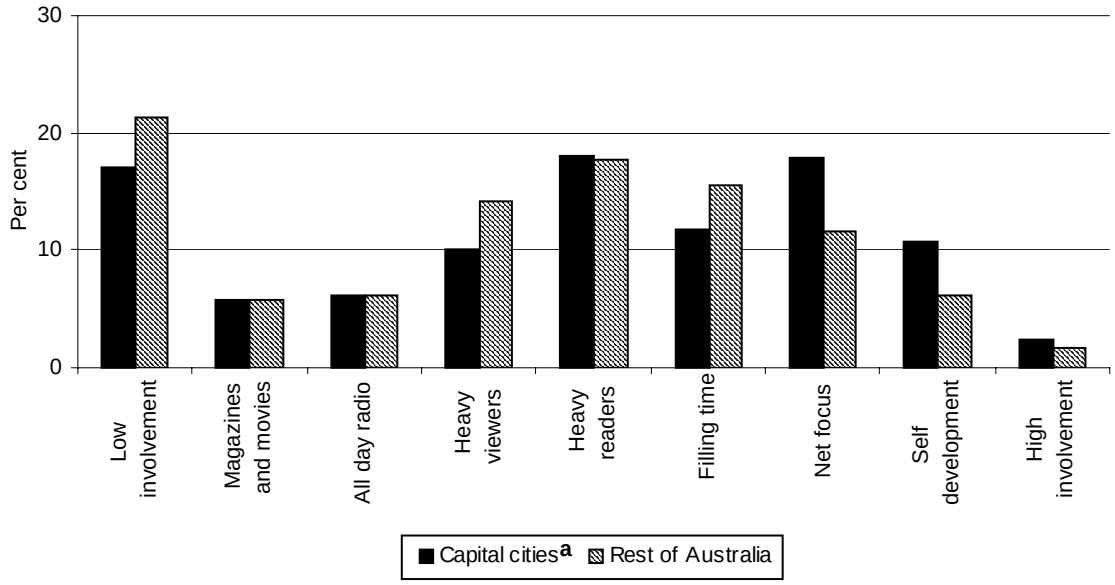
Data source: Roy Morgan Research, Single Source database (accessed February 2000).

Consumption of media in regional areas and capital cities

Differences in media consumption patterns are apparent across geographic regions with differing demographic characteristics, access to technology and leisure activity options. As a general observation, media use tends to be greater in larger cities and in colder parts of Australia. (People in warmer areas or in the country may prefer active outdoor pursuits to passive media consumption.)

Differences in the demographic profiles and leisure activity preferences of people in capital cities compared with the 'rest of Australia', for example, are reflected in their media consumption profiles (figure 2.9).

Figure 2.9 **Percentage of population in each media typology profile**



a Excludes Hobart and Darwin, which are included in 'Rest of Australia'.

Data source: BDA Marketing Planning (1999), derived from Roy Morgan Research, Single Source database (accessed February 2000).

There is a higher proportion of 'low involvement' media users in regional areas, possibly reflecting the older age distribution and lower income levels in those areas. But despite having a higher proportion of low involvement users, regional areas also have a higher proportion of 'heavy viewers' than city areas, possibly because a number of heavy viewers are low income earners and because the lower population densities and geographic isolation in regional areas make access to a wide range of entertainment choices difficult. A higher proportion of people in regional areas than in capital cities use media for filling in time, possibly because there are fewer entertainment choices in these areas than in the capital cities.

There is a lower proportion of 'net focused' users in the 'rest of Australia' than in the capital cities, possibly reflecting the smaller proportion of younger people in these areas (younger people being typically heavier users of the Internet than older people) and the fact that a number of rural people have problems with Internet access (PC 1999).

Regional people also use media less for 'self development' than do their capital city counterparts. People who use media for 'self development' are typically young and highly educated and the proportion of people without any post-school qualifications is higher in rural areas than in city areas (PC 1999).

Regional areas have a lower proportion of 'high involvement' media users than the city. This group is characterised by young, high income people who are less likely to live in regional areas. It also comprises heavy users of the Internet, which is typically more difficult to access from some regional areas.

2.2 Sectors of the broadcasting industry

Broadcasting technologies and services have undergone tremendous change over three quarters of a century. Regular AM radio broadcasts first occurred in Australia in 1923, followed by black and white television in 1956, FM radio in 1974, colour television in 1975 and subscription television services in 1995. Digital television broadcasting, with scope for high definition television, enhanced programming, multichannelling and datacasting services, is to commence in 2001. Digital radio will also be introduced, although the timing is uncertain.

In other ways, things have changed little. Australia's major media companies dominate the production of media services, including new services. Some fundamentals of the market have also changed little: entry remains restricted and governments intervene in virtually every aspect of broadcasting, from technology to business organisations and even revenue.

Today, Australia has an extensive broadcasting industry. There are three free to air commercial television networks, complemented by two national broadcasters (the Australian Broadcasting Corporation, ABC, and Special Broadcasting Service, SBS),[2] a community television station in some areas, and three main subscription television providers. Radio exhibits a similar pattern, with national and commercial stations in most areas, together with community and narrowcast stations (box 2.2).

The *Broadcasting Services Act 1992* (BSA) has helped to promote this diversity of services. It created a more flexible approach to licences to help accommodate the different needs of various groups in the community and to facilitate the emergence of new services. Allowing subscription television was a major breakthrough, and the introduction of narrowcast licences, with their potential to target small audience groups, has encouraged innovation.

[2] The term national broadcaster embraces all the broadcasting activities of the ABC and SBS, including 'local' broadcasting by the ABC.

Box 2.2 Broadcasting licence categories

National broadcasting services

The ABC operates one television network and four national radio networks, as well as a range of metropolitan and regional radio stations. SBS operates one national television network and a range of radio networks.

Commercial broadcasting services

These services encompass television and radio services that are operated for profit and funded by advertising. They are freely available to the public.

Community broadcasting services

Nonprofit community radio and television services are provided to the public for free for community purposes.

Subscription broadcasting services

Programs of wide appeal are provided to viewers for a subscription (to individual or multiple channels) or program based fee.

Subscription narrowcasting services

These services are directed at special interest groups, and often are provided in limited locations, for a limited period or to cover a special event. Reception is available to subscribers or through program based fees. State government education television networks are classed as narrowcasters.

Open narrowcasting services

These services are similar to subscription narrowcasting services, except they are provided free of direct charges to those with appropriate reception equipment.

Datacasting

Datacasting services will deliver information in any form, including data, text, speech and images, subject to restrictions announced by the Commonwealth Government in December 1999.

Broadcasting for Remote Aboriginal Communities Scheme (BRACS)

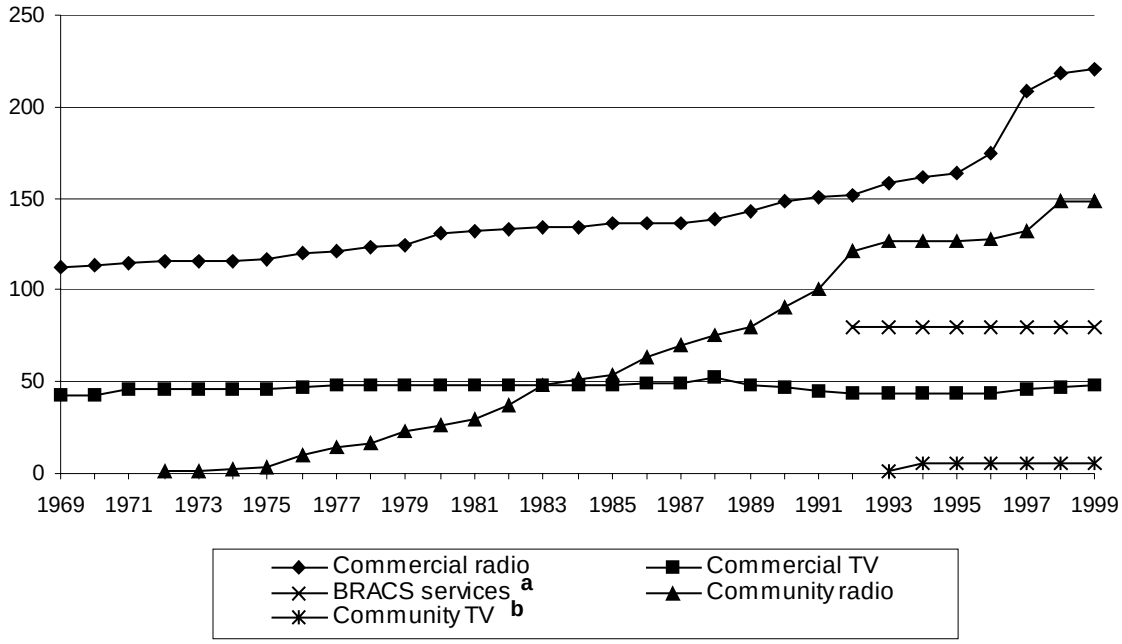
BRACS services broadcast both radio and television to remote Indigenous communities from low powered sites situated in or near these communities. The BRACS sites receive their signal by satellite. Indigenous communities are also able to make their own programs and feed them into the BRACS network.

Sources: ATSIC (1999a); DTC (1993); *Television Broadcasting Services (Digital Conversion) Act 1998* (Explanatory memorandum).

Free to air commercial television

The BSA has limited the number of commercial television licences in any area to a maximum of three. All mainland capital cities have three commercial television services, as do several regional areas in the eastern States. Hobart and some regional areas have two commercial channels, and there are four 'solus' markets with only one commercial service (Broken Hill, Mount Gambier, Riverland and Spencer Gulf).

Figure 2.10 **Number of broadcasting services operating**



a The Australian Broadcasting Authority (ABA) classifies BRACS services as both community radio and community television because each BRACS site broadcasts both signals, which have been separately identified. **b** This category comprises the Channel 31 television stations in the five major capital cities and Lismore. The ABA classifies these services as open narrowcast television services. (Narrowcast licence data are based on when licences were issued rather than when services began operating.)

Data source: Productivity Commission estimates based on ABA (1999e).

Historically, the number and coverage of commercial television services have changed (figure 2.10). There were 43 licences in 1969; then with the issue of new licences (including a third commercial licence in Perth), the number of licences peaked at 52 in 1988. The number had fallen to 44 by 1992, partly as a result of the aggregation of licence areas between 1989 and 1994 (when many solus markets were combined to form larger markets with two or three licences) (box 2.3).

Box 2.3 **Television aggregation and consumer choice**

Aggregation involved combining a number of existing markets served by a single operator (known as solus markets) into larger markets with up to three television licences in each. Each operator in an aggregated market is required to broadcast to the entire market.

The Government provided subsidies (in the form of a rebate on licence fees payable by regional broadcasters) to help regional broadcasters extend the coverage of their signal into the aggregated broadcast area. These rebates continue for some regional broadcasters.

Aggregation increased regional consumers' access to commercial television and provided greater choice for viewers in those markets. Although consumer choice was increased, aggregation reduced the number of stations in many regional areas by allowing some operators in the newly aggregated markets to rationalise the number of stations from which they broadcast.

Aggregation occurred between 1989 and 1994. There are now aggregated markets with three licences in regional Queensland, northern New South Wales, southern New South Wales/Australian Capital Territory and regional Victoria. There is a two licence aggregated market in Tasmania.

Aggregation and affiliation agreements between the three major capital city networks and the regional networks have meant that consumers in many regional markets have much the same choice of commercial television channels and programming that consumers have in the five major capital cities.

Source: BTCE (1996).

The number of licences subsequently increased to 48 with the introduction of two multi-station regional services in Victoria and one service in each of Western Australia and the Northern Territory. The number of commercial free to air television licences is scheduled to be reviewed before 2005 — four years after the introduction of digital television in the major capital cities of Australia — and there is a moratorium on the introduction of new licences until at least 2007.

Most commercial television stations are owned by one of the larger metropolitan or regional networks (table 2.2). The Seven, Nine and Ten networks broadcast predominantly in the major capital cities, while the other networks focus on regional areas and smaller capitals. The regional networks are each affiliated with one of the capital city networks, and broadcast virtually the same programs. WIN television is affiliated with the Nine Network, as is Prime with the Seven Network, and Southern Cross with the Ten Network. The one Indigenous commercial television broadcaster, Imparja, broadcasts out of Alice Springs and is affiliated with the Nine Network.

Table 2.2 **Commercial free to air television networks, at December 1999**

Group	*Stations*	*Potential audience (% of national population)*
Seven Network	Sydney, Melbourne, Brisbane, Perth, Adelaide and regional Queensland	72.1
Network Ten	Sydney, Melbourne, Brisbane, Perth and Adelaide	64.9
Nine Network[a]	Sydney, Melbourne, Brisbane and Darwin/regional Northern Territory	51.5
TWT Holdings (WIN television)	Canberra/regional New South Wales, Hobart/regional Tasmania, two regional New South Wales, two regional Victoria, one regional Queensland and one remote	25.6
Prime Network	Canberra/regional New South Wales, one regional New South Wales, two regional Victoria, three regional Western Australia and one remote	25.1
Southern Cross	Adelaide, Canberra/regional New South Wales, Hobart/regional Tasmania, regional Victoria and one remote	21.5

a The Nine Network has affiliate stations in Perth (controlled by Sunraysia Television) and Adelaide (controlled by Southern Cross Broadcasting).

Source: Communications Law Centre (2000).

National broadcasters

Australia has two national broadcasters, the ABC and SBS, which provide television and radio services. The Australian Broadcasting Commission (which became the Australian Broadcasting Corporation in 1983) was established in 1932 and began broadcasting television in 1956.

The ABC provides a television service across Australia with similar programming (except news and some current affairs) for all stations. It also operates four national radio networks (Triple J, Radio National, the Parliamentary and News Network, and Classic FM) and a number of stand-alone metropolitan and regional stations. SBS provides multiligual and multicultural television and radio services. It commenced radio services in 1978 and television in 1980. SBS television is broadcast through a national network from Sydney, while radio is broadcast from stations in Sydney and Melbourne (see chapter 8).

Subscription television

Subscription television began in Australia in 1995. The first operator was Australis shortly followed by Austar, Optus Television and Foxtel. Initially subscriptions rose

quickly to the point where an estimated 11 per cent of households were subscribing in August 1998 (ABS 1998, cited in AFC 1998, p. 177). Subscription numbers are still growing strongly, with net additions of more than 150 000 subscribers in each of the past two years to December. There was growth in subscribers of 29 per cent in the year to December 1999 when there were 1 160 000 subscribers. The Australian Subscription Television and Radio Association claims the penetration rate is high by world standards:

> After three and a half years the penetration rate in Australia for subscription television is about 14 per cent. By world standards, this is a rapid take-up rate. In the UK after four years, the penetration rate was 4 per cent and in New Zealand it was 10 per cent. (sub. 80, p. 9)

With the failure of Australis in 1998, only three major providers of subscription television operate in Australia (Foxtel, Optus and Austar), although a number of smaller services also operate or are in the planning stages. There are no more than two major subscription television operators in any one area. Foxtel has the largest subscriber base, serving the five major capitals and the Gold Coast. It has been steadily increasing its market share since the start of subscription television and now accounts for around 50 per cent of the market (table 2.3). Austar serves Hobart and regional areas (excluding Western Australia) and has overtaken Optus in terms of subscriptions. Optus serves Sydney, Melbourne and Brisbane.

Table 2.3 **Subscription television customers**

Operator	*Dec 1995*	*Dec 1996*	*Dec 1997*	*Dec 1998*	*Dec 1999*
	'000	'000	'000	'000	'000
Foxtel	2	130	270	410	570
Optus Television	1	150	175	200	220
Australis Media	62	100	90	na	na
Austar	0	110	200	290	370[a]
East Coast Television	0	10	12	na	na
Total	65	500	747	900	1 160

a At end of November 1999.

Sources: Australian Pay TV News (1996, 1997, 1998 and 1999) cited in AFC (1999, p. 177); Digital Broadcast Australia (1999), Digital Broadcast Australia (2000).

Three different platforms are used to deliver subscription television in Australia: terrestrial delivery via multi-point distribution system (MDS and sometimes also referred to as microwave distribution systems), direct to home (DTH) via satellite, and delivery over Telstra's and Optus' broadband cable networks. Most subscribers receive their service by the latter system. (Telstra is a 50 per cent shareholder in Foxtel.) Foxtel also supplies satellite based services to complement its cable network, and Austar uses a mix of all three technologies.

The Commonwealth Government has announced that some regional MDS apparatus licences be converted into general purpose spectrum licences which will facilitate high speed Internet and telephony services (Alston 2000).

Among the smaller players, Television and Radio Broadcasting Services Australia supplies some ethnic services. It is attempting to access Foxtel's cable network. Neighbourhood Cable is rolling out a cable network in Mildura, and the company has plans for networks in other regional centres. There are two other planned cable rollouts: Australian Capital Territory Electricity and Water has recently completed a successful trial in Canberra, and is establishing a cable system in Canberra while NorthPower is considering a cable network in northern New South Wales. TPG Internet announced in November 1999 that it was planning to establish a subscription television and Internet service across Australia using a satellite.

A number of the operators are intending to market additional services, including Internet access, pay per view, and telephony. The subscription television market place is therefore converging in terms of services offered.

Commercial radio

Commercial radio services have a long history. The first regular radio broadcasting services were established in Sydney in 1923 and in Melbourne in 1924. When FM radio was introduced in 1974, there were 116 commercial radio licences. The number of AM and FM stations steadily increased after 1974, and 220 commercial licences now operate on the AM and FM bands. In the late 1980s a number of AM services were converted to FM services, and commercial FM stations were allocated by auction in metropolitan areas.

Most areas in Australia receive at least one commercial radio station and usually more, depending on the size of the population. Many of these stations are part of larger radio networks. The Austereo Network and the Australian Radio Network are the two largest networks, each with a potential audience of over half of the population. Both operate predominantly in the major capital cities (table 2.4).

Table 2.4 **Five largest radio networks, by potential audience, December 1999**

Network group	*Metropolitan stations*	*Regional stations*	*Potential audience*
	No. of licences	No. of licences	% of national population
Austereo	10	3	62.5
Australian Radio Network	8	4	52.6
Broadcast Operations	1	30	27.4
Broadcasting Investment Holdings	2	0	27.2
Southern Cross Broadcasting	5	0	24.7

Source: Communications Law Centre (2000).

Community and narrowcast licence holders

Community broadcasting is a vibrant part of the Australian radio industry, and a relatively new presence in television. The first community radio station began in Australia in 1972 and the first community FM station was licensed in 1974. The first Indigenous community radio station was licensed in 1985.

The number of community radio licences has steadily grown to 228, of which 80 are Broadcasting for Remote Aboriginal Communities Scheme (BRACS) licences (figure 2.10). BRACS licences allow the broadcast of both radio and television. Licensees operate from low powered sites which receive their signal by satellite. Aboriginal communities are also able to make their own programs and feed them into the BRACS network. In addition to BRACS licences, there are more than 20 Indigenous community radio licences.

Apart from the BRACS licences, there are few community television licences. Only six community television stations broadcast on Channel 31 in Sydney, Melbourne, Brisbane, Perth, Adelaide and Lismore.[3]

There are also numerous low powered, special interest, narrowcast radio stations. In December 1999 there were 144 AM and FM open narrowcast licences. Some stations cater for ethnic or other minority interests; others provide education services, tourist radio services or experimental formats. In some cases, groups of contiguous licences have been assembled to provide services similar to commercial radio services operating in the same area. Community broadcasting, Indigenous broadcasting and narrowcasting are considered in chapter 8.

[3] These television stations are classed as open television narrowcasters that provide services catering for community groups' entertainment and information interests.

Australian media businesses

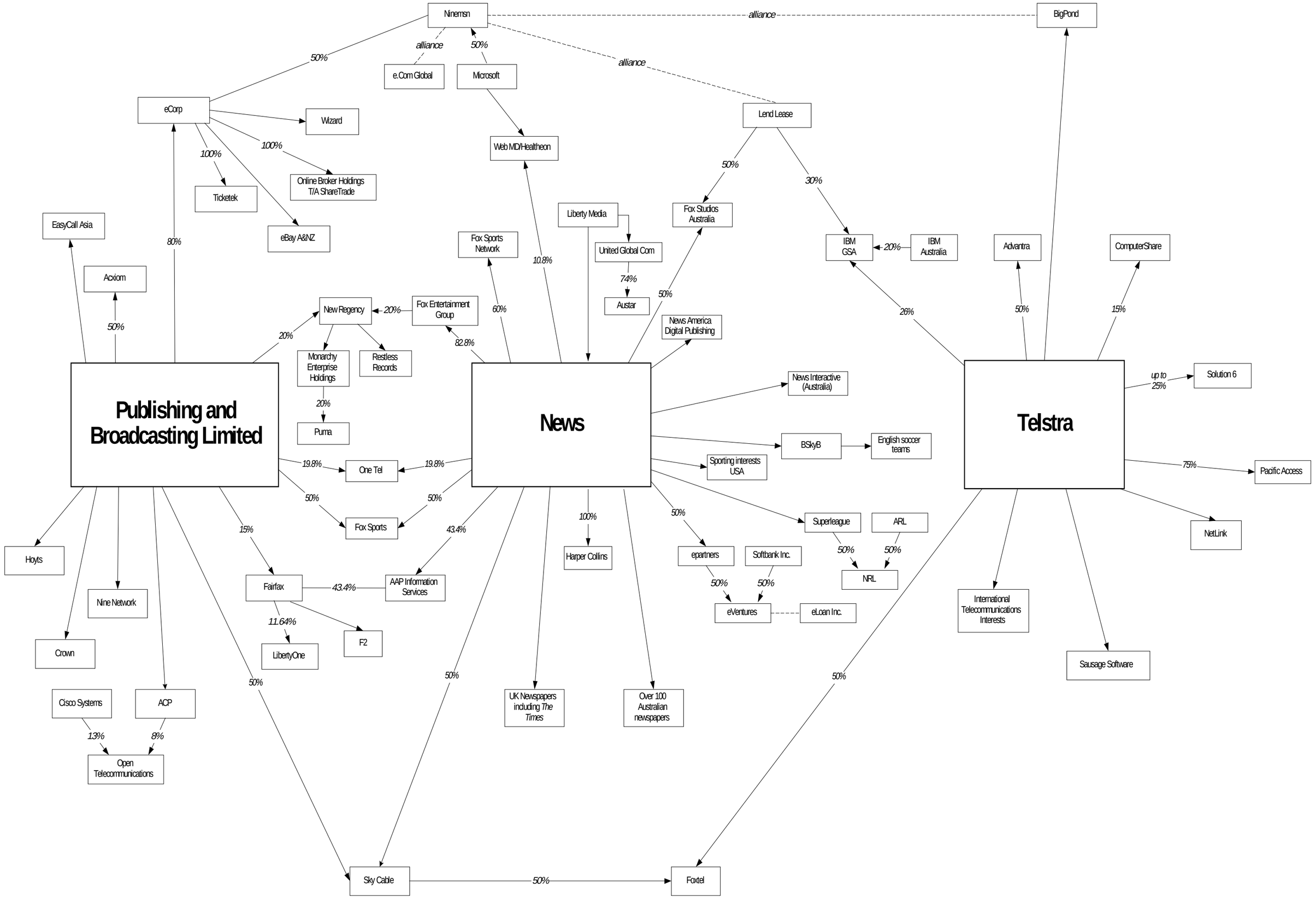
Although the Australian media industry is widely perceived as highly concentrated, it actually consists of a large number of companies. However, relatively few firms have a substantial presence. The traditional broadcasting networks are household names, but new players such as the telecommunication companies and Internet providers are increasingly coming on the scene. A range of regulators oversees these firms, with the Australian Broadcasting Authority (ABA), created by the BSA, playing a central role.

Australian media businesses are in a state of flux. The combined effects of technological convergence and globalisation are redefining their marketplace and their links with other businesses both in Australia and overseas. The old media businesses — such as newspapers, free to air television and radio — have been contrasted with the new media, which is characterised by convergent, online and interactive broadcasting-like services. Rapid technological change is cutting across traditional industry structures, and new market opportunities are emerging almost daily. The distinctions between old and new are breaking down as the more traditional media firms heavily invest in new media businesses and vice versa. In particular, the blurring of the boundaries between telecommunications and broadcasting technologies has led major new players to enter the competitive arena. Convergence is discussed in more detail in chapter 3.

Within the constraints of the ownership and control provisions of the BSA and other legislation such as the *Trade Practices Act 1974*, many enterprises have integrated vertically and horizontally in the media sector, and some have substantial nonmedia interests. Some telecommunications companies now also have media interests (tables 2.5 and 2.6). (Traditional media owners such as television and newspaper proprietors are covered in this chapter, while the move by traditional media companies into new media along with other new media organisations is covered in chapter 3).

Complex interrelationships are developing among many major media players to the extent that competitors in one market are often partners in another. This is illustrated by the relationships among Telstra, Publishing and Broadcasting Limited (PBL) and News Corporation Limited (News Corporation), whose core Australian businesses in the past have been telecommunications, television and magazines, and newspapers respectively. While coming from different backgrounds, these three organisations are now partners in the supply of subscription television services (Foxtel), but competitors in other markets such as telecommunications (News Corporation and PBL have interests in One.Tel) and Internet services (each having major portals) (figure 2.11).

Figure 2.11 **Linkages between News, Publishing and Broadcasting Limited and Telstra**



Source: Wattle Park Partners Pty Ltd (sub. DR299) and Productivity Commission estimates.

News Corporation is now one of the world's major media companies, with newspaper, film studio, free to air and subscription television businesses in different countries. Its Australian media interests include newspapers, subscription television, content production and online enterprises. It is the largest newspaper publisher in Australia, with a combined share of almost 68 per cent of the circulation of all capital city and national daily newspapers. It no longer has any commercial free to air television or radio interests in Australia, but has expressed its desire to re-enter free to air television. News Corporation is a partner with PBL and Telstra in the subscription television operator Foxtel, and in recent years has expanded its reach into new media services (see chapter 3).

News Corporation also has a number of nonmedia interests, with shareholdings in Ansett Australia, the National Rugby League and Mushroom Records. Both News Corporation and PBL have substantial interests in the telecommunications carrier One.Tel (table 2.6).

PBL has both free to air and subscription television interests. Through Australian Consolidated Press, it also has more than 70 magazine titles (PBL, sub. 52) and over 40 per cent of the top magazines by circulation (of which some are linked to programs broadcast on the Nine Network). Indirectly, it also has a large shareholding in John Fairfax Holdings Limited (Fairfax) (table 2.5). PBL has substantial interests in new media services including ninemsn (see chapter 3), and significant nonmedia interests, including Crown Casino in Melbourne and equity in the telecommunications company One.Tel (table 2.6).

Table 2.5 **Traditional media interests of selected media companies operating in Australia, 31 December 1999**

Company	*Free to air television*	*Subscription television*	*Radio*	*Print media*	*Other media interests*
News Corporation Limited		25% of Foxtel 33% of Aust subscription news provider Skynews		News Limited, publisher of the following: NATIONALS: *The Australian* CAPITALS: *Daily Telegraph*, the *Herald-Sun*, the *Weekly Times*, the *Courier Mail* (42%), the *Mercury*, the *Advertiser*, the *NT News.* 49.7% of Independent Newspapers Limited, publisher of: REGIONAL: *Cairns Post* (42%), *Townsville Bulletin* (42%) *Gold Coast Bulletin* (42%) and other regional papers in Geelong, Horsham, and Bendigo. Also suburban and community papers.	50% Fox Studios Holdings in Australia Associated Press Information Services (AAP)
Publishing and Broadcasting Limited	Nine Network Australia Pty Ltd: three metropolitan stations and one regional station; affiliate stations in Adelaide and Perth	25% of Foxtel 33% of Aust subscription news provider Skynews 50% of sport cable service Foxsports		Australian Consolidated Press Ltd publishes 51 magazines, including *Women's Weekly*, *Woman's Day*, *Bulletin.* 50% of IPC ACP Australia Ltd., publisher of 3 magazines in Australia, 30% stake in FXF Trust, a 14.9% shareholder of John Fairfax Holdings Limited.	11.45% of Television and Media Services
John Fairfax Holdings Limited				NATIONALS: *Australian Financial Review*, CAPITALS: The *Sydney Morning Herald*, the *Age* REGIONALS*:* The *Newcastle Herald*, the *Illawarra Mercury*, the *Warrnambool Standard* (also community and suburban papers) MAGAZINES: BRW, *Personal Investor*, *Shares*	Australia Associated Press (AAP) Information Services (43.4%)

(continued on next page)

Table 2.5 (continued)

Company	*Free to air television*	*Subscription television*	*Radio*	*Print media*	*Other media interests*
Seven Network Limited	Five metropolitan stations and one regional station. ATVI – external satellite broadcast free to air channel to 34 countries throughout Asia	33% of subscription Aust. news provider Skynews Provides C7 for Austar and Optus (sports channels and a weekend channel)			
Ten Group Pty Limited	Ten Network Pty. Ltd five metropolitan stations 14.6% Southern Cross Broadcasting Ltd 14.9% Telecasters Australia Ltd		14.6% Southern Cross Broadcasting Ltd		Television and Media Services 10.8% (television production)
WIN Television Pty Limited	Ten regional stations				
Prime Television Limited	Eight regional stations				Crawford Productions (television production)
Southern Cross Broadcasting Limited	One metropolitan station and four regional stations		Five metropolitan stations		Tricom Group (audiotext service)
Telecasters Australia Limited	Five regional stations				

(continued on next page)

Table 2.5 (continued)

Company	*Free to air television*	*Subscription television*	*Radio*	*Print media*	*Other media interests*
Austar United Communications Limited		Austar Entertainment, Hobart, Darwin, regional and rural Australia. 50% XYZ Entertainment, (50% Foxtel): provides five pay TV channels. 33.3% Content Co. Pty Limited pay TV provider 50% Weather 21 — 24 hour weather channel.			
Telstra Corporation Limited		50% Foxtel			
Cable and Wireless Optus Limited		Optus Television: five movie channels, nine foreign language channels Movie Network. 33% Content Co Pty Limited: pay TV provider.			
Australian Radio Network Pty Limited			Eight metropolitan and three regional stations[a]		
Austereo Pty Limited			Eleven metropolitan and three regional stations[a]		

(continued on next page)

Table 2.5 (continued)

Company	*Free to air television*	*Subscription television*	*Radio*	*Print media*	*Other media interests*
Rural Press Limited			50.1% ownership of Star Broadcasting Network Pty. Ltd., operator of six regional stations	The *Canberra Times*, 155 regional publications (including the *Launceston Examiner*) Fifteen national and sixteen state agricultural publications.	
West Australian Newspapers Holdings Limited				The *West Australian*, seventeen regional newspapers, the *Australian Financial Review* (WA Edition), fifteen Community newspapers.	8.25% AAP Information Services
PMP Communications Limited				Fourteen magazine titles (including *New Idea*, *That's Life*, *TV Week*) Retail catalogue, directory. PCP (Pacific Client Publishing): 48 titles for corporate market.	
APN News and Media		Pan TV: joint venture with SBS and Australian Capital Equity (ACE). World Movies channel	50 % Australian Radio Network Pty Limited	Thirteen regional daily, five suburban, more than 50 non-daily regional newspapers. APN Business Publishing APN Educational Media (Campus Review, Nursing Review)	

a The Australian Radio Network and the Austereo Network own 50 per cent of 2ROC-FM.

Sources: Productivity Commission estimates based on company documents and websites.

The two major telecommunications companies, Telstra and Cable and Wireless Optus (Optus), have also emerged as major players in the Australian media industry, with substantial interests in subscription television and online services. Telstra owns half of Foxtel (the largest subscription television operator in Australia) and a hybrid fibre-coaxial network; Optus also operates a subscription television service (table 2.5). Telstra is developing Internet broadcasting and e-commerce opportunities; Optus is an integrated supplier of online services, telephony and subscription television.

Fairfax publishes the *Sydney Morning Herald*, the *Age* and the *Australian Financial Review;* together these papers account for 21 per cent of capital city and national daily circulation. Fairfax also controls a number of regional and community newspapers too, and some magazines. It is investing in various new Internet services which are controlled through its new subsidiary f2 (see chapter 3).

Compared with PBL, Network Ten and the Seven Network focus more on television media interests. Both have wholly owned stations in the major capital cities, with the Seven Network also owning a station in regional Queensland. The Seven Network also has substantial nonmedia interests, including equity in the Colonial Stadium in Melbourne. In radio, Austereo and the Australian Radio Network are the two largest networks in terms of listening audience, and both broadcast predominantly in the metropolitan areas. Austereo controls or operates 12 commercial radio licences in Australia. It also has a joint venture with the Australian Radio Network in two commercial radio licences in Canberra. The Australian Radio Network has 11 stations (table 2.5).

A number of regional companies operate in more than one media: Southern Cross Broadcasting has both television and radio stations; Australian Provincial Newspapers owns regional and suburban newspapers, and has a stake in the Australian Radio Network; and Rural Press owns the *Canberra Times*, a number of regional radio stations, and regional and agricultural newspapers (table 2.5).

Table 2.6 Nonmedia equity links of selected media companies operating in Australia, 31 December 1999

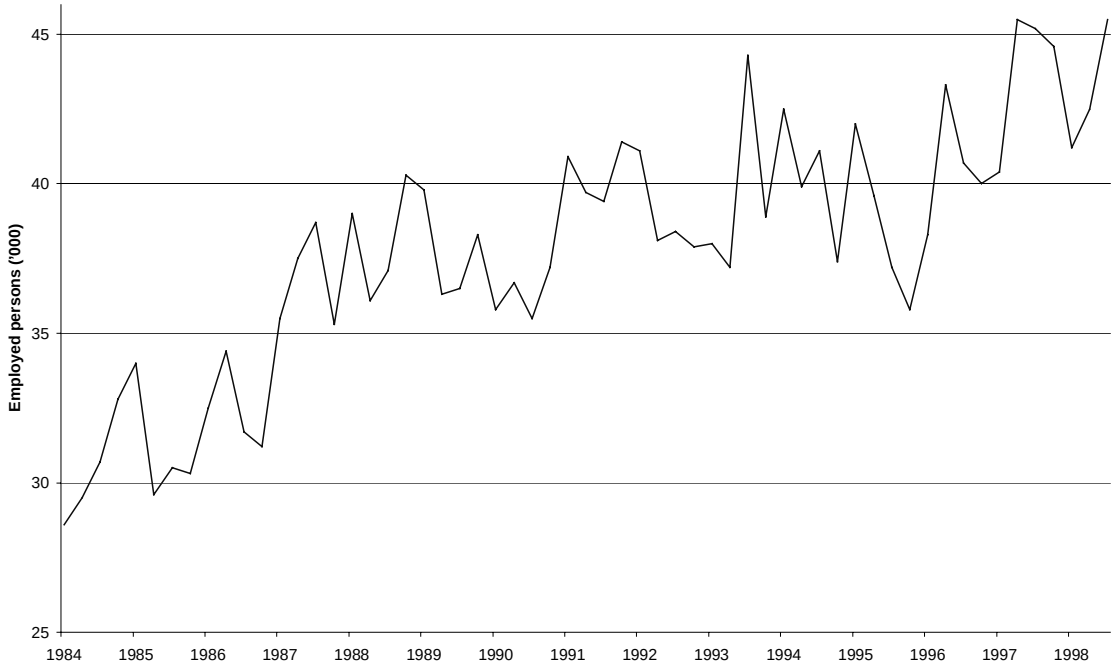
Company	*Nonmedia interests*
News Corp Limited	50% Ansett Holdings Limited; 24.5% Ansett International
	50% NewsPoll
	50% National Rugby League; 40% Brisbane Broncos
	18.68% One.Tel
	44.74% AAP Communications which hold 17.3% in AAPT
	Festival Records
	100% Mushroom Records
Publishing and Broadcasting Limited	Crown Limited, owner of Crown Casino
	50% Acxiom (a marketing database in which the partner is Acxiom Corp. of the United States)
	40% Village Nine Leisure (a provider of entertainment venues in cinemas in which Village Roadshow and Westfield Holdings are partners)
	73% Perisher Blue Resort in New South Wales
	80% automated ticketing company Ticketek
	32% EasyCall Asia (a paging service)
	18.68% interest in telecommunications company One.Tel
	Significant holdings in meat, pastoral and other agricultural businesses
	Interests in funds management groups Challenger International and MTM Funds Management
	Consolidated Press Holdings which is owner of 37.5% PBL, 78% of cinema group Hoyts and 20.1% of cinema advertising company Media Entertainment Group
John Fairfax Holdings Limited	44.7% AAP Communications, which holds 17.3% in AAPT
Seven Network Limited	49.99% Ticketmaster 7 Pty Limited.
	Partner in Colonial Stadium
	17% in Convex Queensland Pty Limited (manager of the Brisbane Convention and Exhibition Centre)
	Seven Entertainment Limited (a wholly owned subsidiary of the Seven Network Limited which owns the Perth Entertainment Centre and the ticketing business Red Tickets)
Prime Television Limited	75% Seven Affiliate Sales Pty Limited
Telstra Corp. Limited	Full range of telephony services, including local, mobile and long distance; reward programs including Telstra Visa Card and Telstra Qantas Visa Card
Cable and Wireless Optus Limited	Full range of telephony services, including local, mobile and long distance
Austereo Pty Limited	50% venture in the Simon Richards Group (a database and direct marketing and telemarketing agency, in which the partner is the Simon Richards Group)
West Australian Newspapers Holdings Limited	8.27% AAPIS, which holds 17.32% of AAPT
PMP Communications Limited	PMI Pacific Mirror Image (manufacturer of CDs and DVDs)
APN News and Media Limited	Outdoor Advertising:
	Busbank Advertising Group Pty Limited (transit advertising)
	50% Adshel Street Furniture Pty Limited (street Furniture advertising)
	Australian Posters Group Pty Limited (posters and taxis)
	52% Cody Outdoor Advertising Pty Limited (supersites)

Sources: Productivity Commission estimates based on company documents and websites.

Broadcasting employment

Broadcasting is a small but relatively skilled industry. Motion picture, television and radio services accounted for around 0.5 per cent of total Australian employment (or 45 000 people) in June 1999. About half of this total were employed in broadcasting and half in film and video production, distribution and exhibition. Employment in these industries fluctuated during the 1980s and 1990s but the long term trend has been upward (figure 2.12).

Figure 2.12 **Employment in motion picture, radio and television services[a], December 1984 to June 1999**



a ANZSIC classification no. 91, quarterly data.

Data source: ABS Labour Statistics on dX-Online database (accessed September 1999).

In June 1997, around 6700 people were employed in commercial television broadcasting, along with 4300 in commercial radio, 5000 in national broadcasting (television and radio), 2000 in subscription television and 11 000 in film, television and video production (ABS 1998a, 1998c, 1998d, and 1998e). Community radio and television broadcasters operate with mainly volunteer workers, so employed only 500 and 30 people respectively in 1997. The community broadcasting sector has more than 15 000 volunteers (Community Broadcasting Association of Australia, sub. 73, p. 4).

In 1996, 30 per cent of people employed in television services had a diploma, degree or higher (as did 36 per cent of those in film and video production) (ABS Census 1996, cited in AFC 1998, p. 25). This compares with 21.6 per cent of the total population with these levels of qualifications in 1996 (ABS 1999c).

2.3 Financial structure of broadcasting services

The nature of broadcasting services means their provision in Australia is financed in a number of different ways. These differences have important policy implications.

Public good nature of broadcasting

Free to air broadcasting has many of the characteristics of a public good.[4] Once content has been created and broadcast, additional consumers can consume the service at little or no additional cost. A consumer need only obtain a radio or television receiver to consume broadcasting signals free of charge and without any detriment to consumption by others.

If consumers are able to use such services without having to pay directly, private suppliers would normally have no incentive to enter the market. The provision of national defence is an example: most members of society benefit from its provision, and cannot be excluded from consuming it, but individual persons or private interest organisations have no incentive to supply it.

Four mechanisms are used to overcome this public good problem in broadcasting. National broadcasters (the ABC and SBS) financed by government revenue supply free to air broadcasting services; commercial broadcasters finance themselves by selling advertising time; and direct donations (including government grants) support special interest or community broadcasting. In addition, broadcasting signals are provided on a conditional access basis (subscription) to exclude nonpaying customers.

With free to air broadcasting, consumers are unable to indicate directly their preferences for programming content (Brown and Cave 1992). National and community free to air broadcasters must balance many demands when choosing programming on behalf of the public. Focus groups and other consultative mechanisms can assist in addressing these issues.

[4] Public goods are those goods or services for which: (a) the provision for one person means provision is available for all people at no additional cost; (b) consumption or use by one person does not deprive others of any of the benefits; and (c) it is not feasible to exclude people from the benefits of provision.

Commercial free to air broadcasting financed by the sale of advertising and sponsorship has another set of issues. These broadcasters have a commercial relationship with advertisers more than a relationship with viewers. Indeed, it is often said that free to air broadcasting is a means of delivering audiences to advertisers. Broadcasters respond to consumer preferences indirectly through the preferences of advertisers, which in turn are related to measures of audience size and composition (Brown and Cave 1992, p. 380). In such cases, and assuming similar program costs, commercial free to air television programmers may broadcast programs that large audiences marginally prefer rather than those that somewhat smaller audiences strongly prefer. This can occur even when total welfare may be greater from broadcasting the latter. This issue is discussed in more detail in chapter 4.

Community broadcasting is supported by some sponsor revenue, government subsidy, consumer 'subscriptions' or donations and volunteer labour. This model relies on the goodwill of listeners or viewers who highly value the services community broadcasting can supply; however, being a free to air service, such broadcasting is susceptible to free riding by nonpaying customers.

Charging for broadcast services allows a means for consumers to express preferences directly, but there may still be economic efficiency costs, depending on how charges are levied. Where the marginal cost of supplying an extra viewer is virtually zero, any charge for viewing (such as 'pay per view') will not be economically efficient in the sense that the price will exceed the marginal cost of provision. The alternative — paying a monthly fee and having no viewing fee, in the way most subscription television services are provided — is generally a more efficient pricing system. Broadband subscription services such as those offered by Foxtel, Optus Television and Austar have greatly increased programming diversity, and have created the potential to cater for small interest groups in a manner not possible on commercial free to air television.

The growth in subscription television, along with the introduction of digital television with its potential for more channels, is likely to give consumers much greater discretion over what they watch and when they watch it. As Noam (1991, p. 29) observed, new distribution media which make it possible to increase the quantity of programs being offered at any time, and which charge viewers directly, are: 'turning the public good back into a private good, similar to theatre, film, magazines and books'. To the extent that broadcasting services take on more of the characteristics of normal private goods, the public goods 'problem' becomes less of an issue; however, access and equity issues then arise. A television industry, for example, based on subscription services alone may offer greater choice to subscribers, but at a significant cost to lower income consumers.

None of the models for financing broadcasting is perfect; each has different implications for efficiency and equity. However, if properly managed and regulated, the different sectors can complement each other to provide diversity in programming and opinion (see chapters 9 and 11).

Advertiser supported free to air broadcasting

Free to air commercial radio and television broadcasters receive most of their revenue from advertising. The advertising share of revenue for television and radio is typically around 90 per cent and 95 per cent respectively (which was around $2.4 billion for television and $560 million for radio in 1998). Commercial stations compete with each other in providing audiences to advertisers.

For commercial free to air broadcasters, the ratings system measures audience size for different programs and stations. Other factors being the same, stations can charge more for advertising slots in higher rating programs. As more detailed survey information becomes available, the free to air commercial stations are able more accurately to target particular consumer groups that draw advertisers. (Advertising markets are discussed in chapter 4.)

Subscription services

Subscription television operators earn most of their revenue from connection fees and monthly subscription charges. Typically there is a basic package (which includes most channels, including the free to air channels) and additional charges for extra channels. Subscription rates for the basic packages vary according to supplier, the delivery platform used, and the number of channels included. Both Optus Television and Foxtel offer 23 channels plus five free to air channels in their basic packages. Foxtel is slightly cheaper (at $34.95 for their basic package) than Optus (at $37.95) Both operators add other channels for an additional monthly fee. Optus, for example, can add 'World Movies' for an additional $6.95 per month.

Subscription television may also (since 1997) run advertisements as long as the advertising revenue does not exceed subscription revenue (see chapter 4). There is little public information on the revenues of the subscription television operators. Optus revenues from 'Premium Television' were $7.0 million in 1995-96, $77.8 million in 1996-97 and $109.4 million in 1997-98 (Cable and Wireless Optus 1999a). In 1998-99 revenues from 'Premium Television' were $108.1 million (Cable and Wireless Optus 1999b).

National broadcasters

The two national broadcasters are funded in different ways. The ABC mostly depends on government appropriations, although it also receives income from program sales and merchandise sold through its retail outlets. SBS, while also primarily dependent on government appropriations, is permitted to raise revenue through limited advertising.

The ABC received $583.6 million from the Commonwealth Government in 1998-99, or 80 per cent of its total revenues (ABC 1999c). SBS received $92.8 million, or 75 per cent of its revenues. Advertising and sponsorship accounted for a further 16 per cent (SBS 1999b).

Community broadcasters

Community broadcasters are funded by a combination of donations, sponsorship, government grants and listeners' subscriptions. The Community Broadcasting Association of Australia states that licensed community broadcasting stations (radio and television) have a combined annual gross income of around $25 million per year (sub. 73, p. 8). In 1998-99, community broadcasting received $4 million in direct grants from the Commonwealth Government. In addition, the Department of Immigration and Multicultural Affairs provides grants for multilingual and multicultural community broadcasting, while the Aboriginal and Torres Strait Islander Commission provides support to Indigenous broadcasting.

In addition, the Government provided $1.5 million between 1996 and 1999 for the development of a computer network to allow community broadcasters to access the Internet and to develop a database of information about the community radio and television sector for their own use. A further $1.5 million has been allocated for the establishment of an Australian music channel for satellite and online distribution of Australian music to community stations (CBAA, sub. 73, p. 9).

2.4 Profitability of broadcasting

Commercial broadcasting is generally a profitable business, particularly free to air television. In aggregate, commercial free to air television has earned greater revenue and profits than those of commercial free to air radio, but the profit of each sector is roughly of equal proportion to revenue or assets (table 2.7).

Table 2.7 **Commercial broadcasting profitability, 1997-98[a]**

Commercial free to air broadcasters	*Earnings before interest and tax*	*Revenue*	*EBIT/revenue*	*Total assets[b]*	*EBIT/assets*
	$m	$m	%	$m	%
Television	606.9	2755.8	22.0	7593.3	8.0
Radio[c]	116.2	595.8	19.5	1333.5	8.7
Total	723.1	3351.6	21.6	8926.8	8.1

a Asset values at 30 June 1998. EBIT, asset and revenue figures are from the ABA's *Broadcasting Financial Results* (BFR). For the purposes of the BFR, the ABA does not stipulate accounting standards to licensees, so there may be differences in accounting practices between licensees and for particular licensees over time. **b** Total assets include the value of television licences. **c** Of the 221 commercial radio stations that were operational at 30 June 1998, 215 stations provided financial information to the ABA.

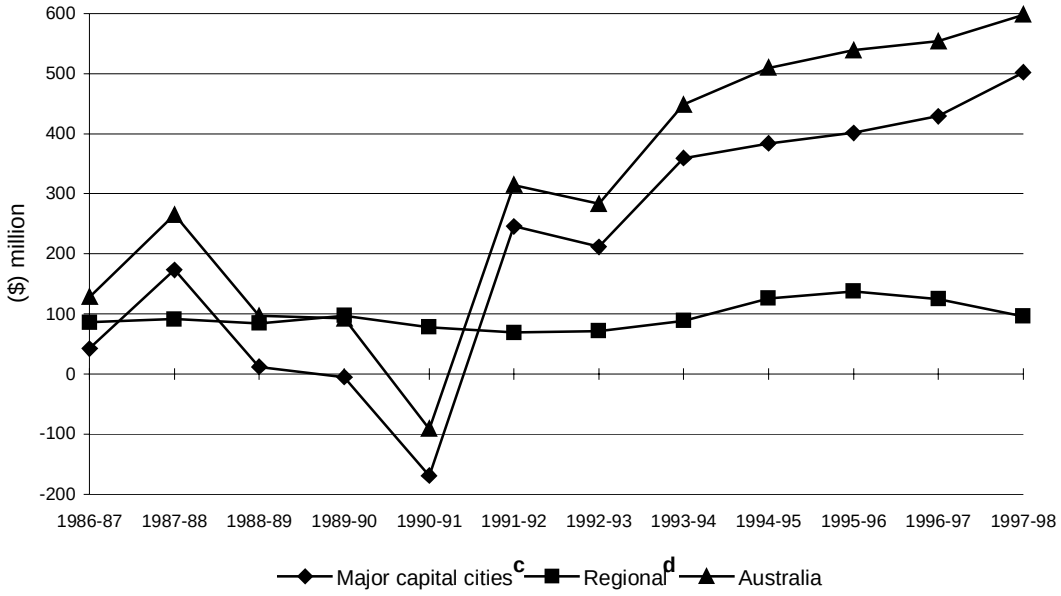
Sources: Productivity Commission estimates based on ABA (1999b).

Profitability of both sectors is somewhat cyclical. The spate of investments in television in the late 1980s by some excessively optimistic entrepreneurs particularly affected the profitability and valuation of those businesses at that time.

Commercial free to air television

Profits in commercial free to air television in aggregate were higher in 1997-98 than at any other time since 1986-87 (figure 2.13), and the major capital city stations accounted for around 84 per cent of total profits. Profits of the regional broadcasters have been more stable (although substantially lower in recent times) than those of the major capital city stations. During the past decade, losses (before interest and tax) occurred only in 1990-91, largely as a result of a decline in advertising revenues during the recession.

Figure 2.13 **Earnings before interest and tax of regional and capital city commercial television stations (in 1997-98 dollars)[a, b]**



a Data are from the ABA's *Broadcasting Financial Results* (BFR). For the purposes of the BFR, the ABA does not stipulate accounting standards to licensees, so there may be differences in accounting practices among licensees and for particular licensees over time. **b** Actual dollars converted to constant 1997-98 dollars using an implicit price deflator based on nonfarm gross domestic product. **c** Sydney, Melbourne, Brisbane, Perth and Adelaide. **d** Areas that are not major capital cities.

Data sources: Productivity Commission estimates based on ABA (1999b) and ABS (1999b).

ABA data suggest that Network Ten had the highest rate of profit of the major networks in 1997-98. The Nine Network had the highest revenues and costs of the networks, but was not as profitable as Network Ten, with its lower revenue and expenditure. The Seven Network was the least profitable of the networks in absolute terms (table 2.8).[5] However, return on assets depends on the licence valuations, and it is noted that some substantial revaluations have been made in recent times.[6] The free to air networks continue to be profitable, with the Ten Group experiencing a 3.6 per cent growth in Earnings Before Interest and Tax (EBIT) for the year ended 31 August 1999 and the Seven Network more than doubling its profit after tax for the year ended 26 June 1999. PBL's EBIT derived from television remained stable in dollar terms for the year ended 30 June 1999.

[5] For confidentiality reasons the ABA includes some affiliated stations with the stations of each of the three major networks to derive the financial results. To this end, each network consists of five capital city stations and five stations from multi-station regional markets.

[6] Network Ten, for instance, recorded the value of its television licences at 31 August 1999 as $1.078 billion, which was substantially greater than the $436 million value recorded by the ABA for 30 June 1998. The ABA licence value was for the five Network Ten stations, along with five affiliated stations in multi-station regional markets.

Table 2.8 **Capital city and affiliated commercial television networks financial aggregates, 1997-98[a, b]**

	Earnings before interest and tax	*Revenue*	*EBIT/ revenue*	*Total assets*[c]	*EBIT/ assets*
	$m	$m	%	$m	%
Seven Network	192.2	916.3	21.0	2430.2	7.9
Nine Network	228.8	1090.9	21.0	3886.3	5.9
Network Ten	202.1	658.4	30.7	889.4	22.7
Total	623.1	2665.6	23.4	7206.0	8.6

a Asset values at 30 June 1998. EBIT, asset and revenue figures are from the ABA's *Broadcasting Financial Results* (BFR). For the purposes of the BFR, the ABA does not stipulate accounting standards to licensees, so there may be differences in accounting practices among licensees and for particular licensees over time. **b** For confidentiality reasons the ABA includes some affiliated stations with the stations of each of the three major networks to derive the financial results. To this end, each network consists of five capital city stations and five stations from multi-station regional markets. **c** Includes the value of television licences.

Sources: Productivity Commission estimates based on ABA (1999b).

While Network Ten's return on assets is high, the industry average does not appear to be particularly high relative to returns elsewhere in the economy. The return on assets for the industry was 8.6 per cent in 1997-98, when the 10 year bond rate was 5.6 per cent for example. However, as noted above, rates of return are sensitive to the valuation of licences. The valuation of broadcasting licences, under Australian accounting standards, should reflect the expected value of future profits. The total valuation of television licences was over $3 billion at 30 June 1998; the total valuation of radio licences was $794 million (ABA 1999b).

By redefining the return on assets to exclude licence values from the denominator and licence fees from the numerator, the Bureau of Transport and Communications Economics (BTCE 1996, p. 78) observed licence adjusted rates of returns for capital city broadcasters and regional broadcasters of 31.0 per cent and 15.3 per cent respectively in 1994-95. The Commission has updated this analysis, and observes that licence adjusted rates of return of the metropolitan and regional stations have largely been maintained (table 2.9). The strong downturn in 1997-98 was attributable to a substantial increase in the companies' valuations of tangible assets, not to a reduction in profits.

The high licence adjusted rates of return provides *prima facie* evidence of economic rents or above normal profits in the television industry in recent years, at least in so far as metropolitan licences are concerned. However, the relatively low overall unadjusted rate of return of 8.6 per cent in 1997-98 (table 2.8) suggests these rents have been largely capitalised into licence values; that is, the value of the licences has been increased to account for the present value of the expected future profits. Chapter 9 provides a discussion of the effects of regulated barriers to entry in commercial broadcasting.

Table 2.9 **Licence adjusted rates of return of commercial free to air television stations (excluding television licence values and fees) and the 10 year bond rate[a]**

Year	*Major capital cities*[b]	*All regional*[c]	*10 year bond rate*[d]
	%	%	%
1986-87	8.6	28.0	12.8
1987-88	14.7	31.6	12.0
1988-89	8.4	33.2	13.5
1989-90	9.3	37.8	13.4
1990-91	2.1	14.5	11.2
1991-92	27.5	12.1	8.9
1992-93	24.6	12.4	7.4
1993-94	30.8	14.3	9.7
1994-95	31.0	15.3	9.2
1995-96	34.2	16.1	8.9
1996-97	30.0	14.5	7.1
1997-98	20.2	10.2	5.6

a Ten year bond rates and asset values used in calculating returns are at 30 June. The rates of return are calculated as earnings before interest and tax (EBIT) before licence fees are paid to the Government, divided by total assets less licence values. The rates of return are derived using EBIT, licence fee, asset and licence value data from the ABA's *Broadcasting Financial Results* (BFR). For the purposes of the BFR, the ABA does not stipulate accounting standards to licensees, so there may be differences in accounting practices among licensees and for particular licensees over time. **b** Sydney, Melbourne, Brisbane, Perth and Adelaide. **c** All areas that are not the major capital cities. **d** The 10 year bond rate is sometimes used as an indicator of the rate of return on a relatively risk free alternative investment. In economic terms, it is a measure of the 'opportunity cost' of investing capital.

Sources: Productivity Commission estimates based on ABA (1999b), ABS (1999a) and BTCE (1996).

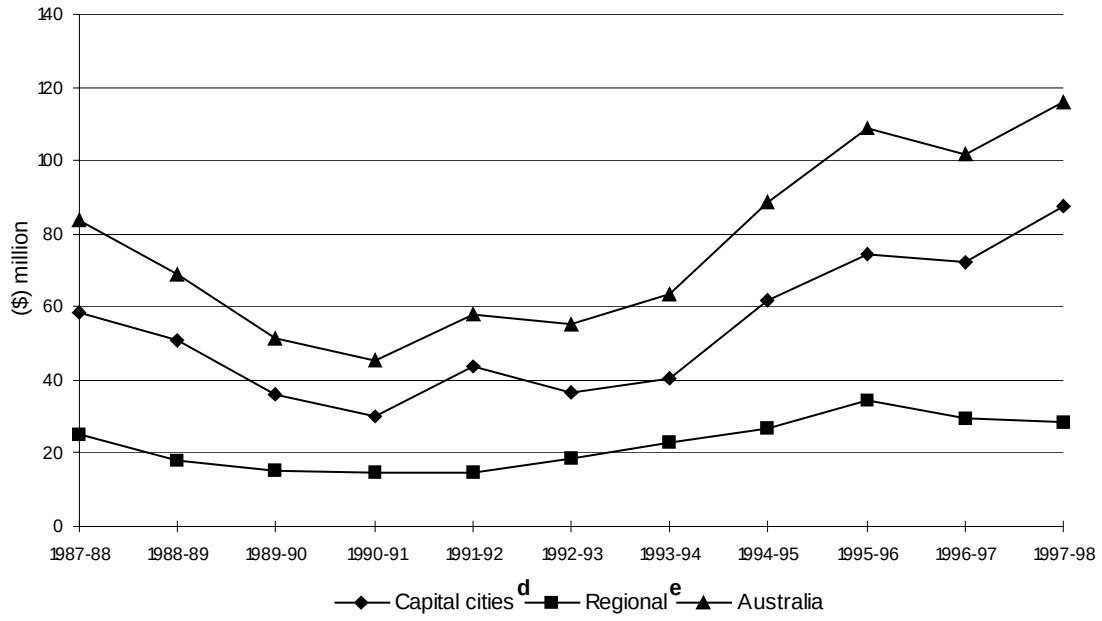
The licence adjusted rates of return also reveal a marked switch in the profitability of the capital city broadcasters relative to that of the regional broadcasters around 1990. The capital city broadcasters became more profitable after this point, with falling returns for the regional broadcasters. This switch is partly attributable to the introduction of competition in regional markets and the change in the market power of the two groups. Before the aggregation of licence areas, most regional operators were local monopolists; with the introduction of equalisation and the growth in the number of regional operators, the balance of power shifted to networks based on major capital city stations.

Commercial radio broadcasters

Profits of commercial free to air radio (before interest and tax) are currently higher in real terms than at any other time since 1987-88, with total industry profits now about double those of 1987-88. As with commercial free to air television, profits have recovered substantially since the recession of the early 1990s (figure 2.14). However, they vary widely across radio stations. Profits are highest for the

metropolitan stations, and of these, the FM station profits are higher than those for the AM stations (ABA 1999b). Profits also vary widely within these groups.

Figure 2.14 **Earnings before interest and tax of regional and capital city commercial radio stations (in 1997-98 dollars)[a, b, c]**



a Data are from the ABA's *Broadcasting Financial Results* (BFR). For the purposes of the BFR, the ABA does not stipulate accounting standards to licensees, so there may be differences in accounting practices between licensees and for particular licensees over time. **b** Actual dollars were converted to constant 1997-98 dollars using an implicit price deflator based on nonfarm gross domestic product. **c** Of the 221 commercial radio stations operational at 30 June 1998, 215 stations provided financial information to the ABA. **d** Sydney, Melbourne, Brisbane, Perth, Adelaide, Hobart and Darwin. **e** All areas that are not the capital cities.

Data sources: Productivity Commission estimates based on ABA (1999b) and ABS (1999b).

Again, these results are sensitive to the valuation of licences. When licence fees and the value of the licences are excluded from the analysis, the returns in the free to air commercial radio sector are much higher; for example, the unadjusted rate of return on assets was 8.7 per cent in 1997-98 (table 2.7), but 23.7 per cent when adjusted for licence values and fees (table 2.10). The high adjusted rates of return in recent times provide *prima facie* evidence of above normal profits and appear to relate to the strong upswing in the business cycle over the 1990s, and the almost static number of metropolitan radio licences in recent years.

Table 2.10 **Adjusted rates of return of commercial radio stations (excluding radio licence values and fees) and the 10-year bond rate, Australia[a]**

Year	*Rate of return*	*10-year bond rate* [b]
	%	%
1987-88	4.1	12.0
1988-89	3.6	13.5
1989-90	2.9	13.4
1990-91	6.1	11.2
1991-92	10.0	8.9
1992-93	13.2	7.4
1993-94	18.7	9.7
1994-95	22.3	9.2
1995-96	24.0	8.9
1996-97	23.0	7.1
1997-98	23.7	5.6

a Ten year bond rates and asset values used in calculating returns are at 30 June. The rates of return are calculated as earnings before interest and tax (EBIT) before licence fees are paid to the Government, divided by total assets less licence values. The rates of return are derived using EBIT, licence fee, asset and licence value data from the ABA's *Broadcasting Financial Results* (BFR). For the purposes of the BFR, the ABA does not stipulate accounting standards to licensees, so there may be differences in accounting practices between licensees and for particular licensees over time. **b** The 10 year bond rate is sometimes used as an indicator of the rate of return on a relatively risk free alternative investment. In economic terms, it is an indicator of 'opportunity cost' of investing capital.

Sources: Productivity Commission estimates based on ABA (1999b), ABS (1999a) and BTCE (1996).

Subscription television

No subscription television operator has yet made a profit in Australia. Foxtel had accumulated losses of $512 million at 30 June 1998 and Optus Television had accumulated losses of $1142 million (Veljanovski 1999). Foxtel made a $111 million loss before tax in 1998-99 and losses of $41 million for the first half of 1999-2000 (News Corporation 2000). Austar is also yet to make a profit, and had accumulated losses (before interest and tax) of $399 million over 1996–98. For the three months ended 31 March 1999, it had further losses of $46 million (Austar United Communications 1999).

However, subscription television is still a maturing business in Australia. The very high costs of rolling out the infrastructure and connecting customers were always going to ensure losses in the early years. As subscriber numbers and the range of services offered (such as Internet access) increase, the industry is generally expecting to start trading profitably in the near future (Paul Budde Communications Pty Ltd, sub. 125, p. 9).

2.5 Conclusions

People use media for a variety of reasons, including entertainment, work and study. The total consumption of newspapers, television and radio has not changed greatly in the past few years but use of the Internet has increased (particularly among young people) and subscription television viewing has risen since its introduction.

A number of organisations in Australia supply media services. The largest are News and PBL, but there are smaller players such as Fairfax and the Seven and Ten networks. News Corporation and Fairfax dominate newspaper publishing, while PBL and the Seven and Ten networks dominate commercial television. Foxtel, Optus and Austar are the three major subscription television operators. The large commercial radio networks include Austereo and the Australian Radio Network.

Many media organisations are integrated horizontally and vertically in complex interrelationships. They are competitors in some markets and partners in others. Many of these organisations are evolving from being traditional media organisations, to also having substantial new media interests. Chapter 3 provides a discussion of new media and convergence.

3 Convergence

The term ‘convergence’ is used in many different ways in broadcasting policy discussion. It denotes a general phenomenon — that is, the ongoing effects of digital technology in media and communications — which, at least in part, must remain speculative. It is not surprising that the meaning of convergence, beyond generalities, varies according to the perspective of those who use it. People working in the media industries frequently use the term to describe the rapid changes they are experiencing.

The inquiry’s terms of reference require the Commission to have ‘due regard to the phenomenon of technological convergence to the extent that it may impact upon broadcasting markets’.

3.1 The nature of convergence

The number of submissions the Commission has received from firms outside broadcasting, but within the wider field of communications, is evidence of the strong sense of proliferating links within the communications sector. The inquiry has received submissions from telecommunications companies, print media organisations, Internet service providers, and information publishers and suppliers, among many others. AAP Information Services noted:

> It is testimony to the speed of convergence that for all of its previous 64 years of operations, AAP, as a source of textual material, would have regarded the outcome of an inquiry into the broadcasting industry as academic, peripheral at the very best.
>
> That fact that it is making a submission at all illustrates the all-pervasive nature of the new media and the realisation that the traditional boundaries that circumscribed the roles of traditional stakeholders in the news media no longer exist. (sub. 36, p. 3)

There is also a contrary, less widespread view that convergence may be more symbolic than real, that there is a myth of convergence. Stewart A. Fist, a writer and journalist specialising in communications and information technology, argued that:

> We seem to be endowing the terms ‘digital’, ‘convergence’ and ‘diversity’ with some mystical significance. No one ever defines what these words really mean. Instead, they just treat them with special reverence as if they are saying something highly significant about supposed changes in the way the world operates. (sub. 85, p. 1)

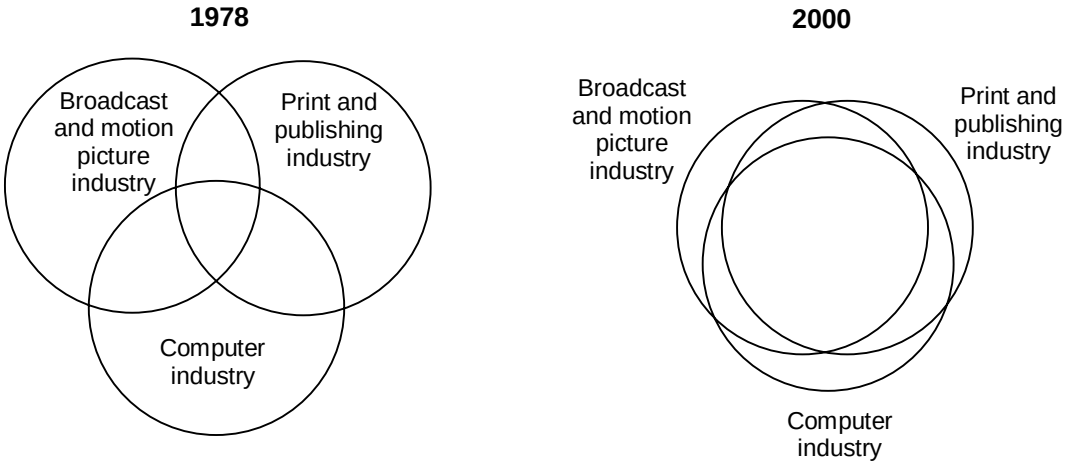
It is therefore important to consider what is meant by this term before exploring its relevance for the present inquiry. A recent government policy paper in the United Kingdom observes that the term is often used to refer to a blurring of previously clear technical boundaries between types of service operation and their means of delivery, and between types of data such as text, audio and video (Department for Culture, Media and Sport and Department of Trade and Industry, 1998).

This use of the word has a recent history. Brand (1988) popularised the notion in a book exploring the implications of computer-based communications research at the Massachusetts Institute of Technology. Brand described Media Laboratory Director Nicholas Negroponte's 'vision' of convergence in the following terms:

> … all communication technologies are suffering a joint metamorphosis, which can only be understood properly if treated as a single subject, and only advanced properly if treated as a single craft. (p. 11)

Figure 3.1 illustrates Negroponte's 'vision'.

Figure 3.1 **Convergence: the Media Laboratory's 'vision'**



Source: Brand (1988).

Different views of convergence

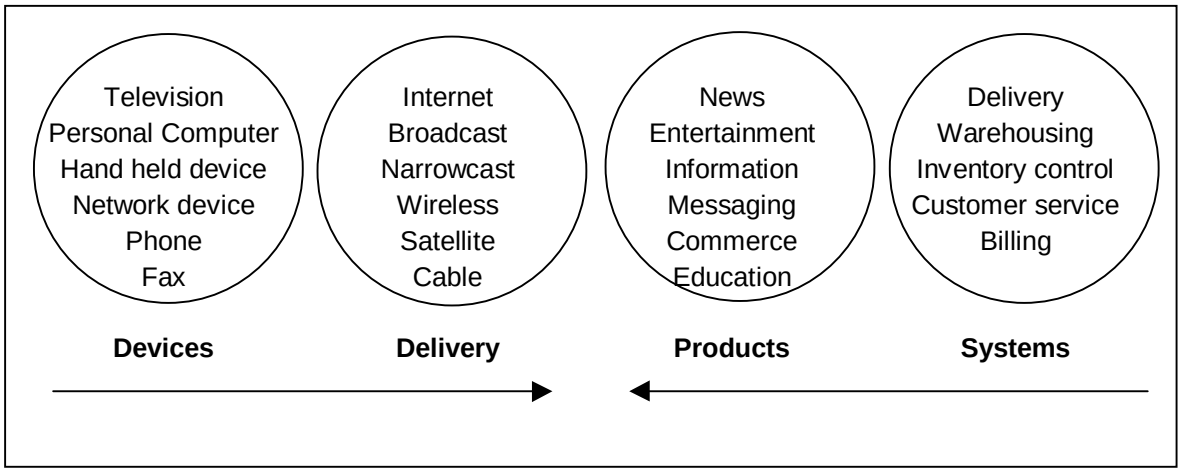
Some firms see convergence in the context of new media forms or services. Ozemail, for instance, describes datacasting as 'a truly convergent service sitting astride both the broadcasting and telecommunications industries' (sub. 42, p. 7). For other industry players, convergence appears to denote primarily the digitisation of media content and delivery. John Fairfax Holdings Ltd proposed that:

> ‘Convergence’ means that all communications are or can be digital. Hence, the common platform for all communications — broadcast, narrowcast, telephone, cable, Internet, satellite and microwave — is digital, and not analog. (sub. 8, p. 1)

Publishing and Broadcasting Limited’s (PBL) submission, by contrast, is concerned with convergence at a corporate level, noting the emergence of ‘huge transnational companies who have become active participants in global media businesses’ (sub. 52, p. 14). These companies include software developers, Internet service providers and telecommunications firms as well as traditional media firms.

News Corporation addresses the meaning of convergence more broadly: ‘[convergence] covers the entire spectrum of commercial activity associated with the telecoms, media, IT and the information economy’ (sub. 51, p. 4). Like Brand, News Corporation represents convergence in diagrammatic form, but postulates a merging of four circles instead of three (figure 3.2): devices (such as the personal computer, television, telephone and fax); delivery platforms (including the Internet, broadcasting and satellite); products (news, entertainment, education and so on); and commercial systems (delivery, customer service and billing).

Figure 3.2 **Convergence: News Corporation’s view**



Source: News Corporation (sub. 51, p. 4).

Telstra Corporation (Telstra) adopts another perspective, concentrating on the transformation of markets:

> … convergence occurs when developments in two previously independent industries lead to each developing similar and hence competing product ranges. This implies a significant broadening of the converging markets. In place of, or in addition to, multiple industries, a new arena emerges in which participants of the previously separate industries compete. (sub. 95, p. 10)

These differences of perspective and emphasis reflect the different challenges facing new and old players in media industries. Table 2.1 sets out some of the

convergent technology interests of Australian media and telecommunications businesses.

Table 3.1 **Major converging media and telecommunications enterprises, 31 December 1999**

Company	*New media interests*
News Corporation	Media and entertainment Web sites; online shopping; interactive multimedia; interactive and conditional access television systems
Publishing and Broadcasting Limited	Media and entertainment Web sites; databases; online classifieds, financial services, auctions, shopping and city guides
John Fairfax Holdings	Media Web sites; online directories, auctions, classifieds and city guides
Seven Network	Media and entertainment Web sites, online radio, music, and ticketing services
The Ten Group	Media and entertainment Web site
Austar United Communications	Interactive television services; Internet access
Telstra Corporation	Internet access, ISP services; cable, copper and cellular networks; online directories, search engines, Web content and software development, financial services
Cable and Wireless Optus	Internet access, ISP services; cable and cellular networks; online information services, Web content development, electronic commerce development
Austereo	Online radio
Rural Press	Media and entertainment Websites, online radio
PMP Communications	Online classified services; Web and CD-ROM content development
APN News and Media	Media and entertainment Web sites, online radio, classifieds, directories

Sources: Public documentation.

Table 3.1 illustrates the extensive Internet related activities of established media and telecommunications players. It points to the growth of classified, directory and home shopping services alongside news and entertainment content; the emergence of Internet radio; and the key roles of Australia's major telecommunications firms.

Several persistent themes emerge from the submissions made to the Commission.

- *Convergence is driven by technology.* Digital information technologies, especially in the field of networking, are seen as the key engines of convergence in communications industries. Changes at corporate, industry and policy levels are explained in terms of the need to respond to new technologies.
- *Convergence is a powerful force for change.* Many inquiry participants see convergence as a potent, determining factor in shaping tomorrow's media. Technological change is often presented as a *fait accompli* for industry players, consumers and policy makers alike.
- *Convergence is prospective and unpredictable.* Convergence is a word usually used to describe *future* developments in communications. Telstra's submission highlights the uncertainty created by convergent change. Andersen Consulting (1998) presents an ambivalent view about the possible outcomes of convergence, identifying instead possible scenarios and recommending that firms prepare for a range of possible changes. The report also concludes that the progress of convergence in the 1990s has been slower than industry expectations.
- *Convergence is global.* Convergence is seen as a globalising force, taking media and communications beyond the jurisdiction of national governments. International satellite and especially telecommunications networks cannot be regulated in the ways applied to over the air broadcasters.

The limits of convergence

These aspects of convergence illustrate tensions in the concept. Convergence is presented both as a technological *force majeure*, and as something that has not yet occurred but is imminent. Further, although it is presented as inevitable, the prospect of convergence is said to heighten uncertainty.

It is then difficult to assess the weight to give to convergence in drawing conclusions about the future of broadcasting. The Commission received numerous submissions arguing for regulatory changes that are said to follow from convergence. The ostensible inevitability of convergence has been advanced as a rationale for a range of new policy directions. It has also been suggested that convergence will deliver many of the benefits that existing broadcasting policies seek through regulation. However, many of these views appear to be based on assumptions and anecdotal evidence rather than close analysis. They frequently emphasise the technological feasibility of innovative services without exploring the full range of business, market and cultural factors that determine the success or failure of new communications technologies.

The OECD (1999a, p. 113) notes that 'different network platforms are becoming increasingly substitutable from the technical perspective as they attain the ability to carry essentially the same services'. Inquiry participants have made similar statements, and have proceeded to identify desirable concomitant policy changes. Unfortunately, such statements often beg more questions than they answer. Which network platforms are being compared? What do the qualifiers 'increasingly' and 'essentially' mean? Cable networks and satellites, for example, can and do deliver content equivalent to that transmitted over the air. Video 'webcasting' over the dial-up Internet cannot currently deliver services that can be considered in all respects substitutable for traditional broadcast media, either technically or in the eyes of consumers. It is not known when such a technology may do so, although Telstra has recently announced extended trials of a service that may provide this capacity.

Another problem with the emphasis on the substitutability of platforms is that it highlights only one aspect of the effects of digitisation. Less speculative consequences of the new technologies may become obscured — notably, the more efficient use of the spectrum which digital compression makes possible. 'Spectrum scarcity' was for a long time part of the stock in trade of broadcasting policy. It appears likely to be a much diminished issue in the new environment. For equivalent services, digital transmission requires far less spectrum than analog does, and the uses of wired networks are likely to expand with the availability of cable modems and the adoption of new broadband technologies.

3.2 Convergence: a closer look

A closer look at convergence requires distinguishing between where convergence is and is not occurring. Four layers of *potential* convergence are:

- *convergence in media products and markets* — the emergence of hybrid kinds of media, such as e-mail, online newspapers and magazines, streamed video and audio, and datacasting. New markets, such as those for online services, have developed rapidly in the past decade;
- *convergence in media platforms* — the idea that traditionally different communications systems will share at a more or less fundamental level a common technological environment or language of transmission, such as the protocol suites which form the basis of the Internet;
- *convergence in corporate structures* — the proliferation of alliances, joint ventures, acquisitions and mergers between corporations originating from traditionally distinct industry sectors. AOL's proposed takeover of TimeWarner is a prominent recent instance. Examples in Australia include the subscription television service Foxtel, which brings together the resources of Telstra, PBL

and News Corporation; and the ninemsn Web site, operated by the Nine Network (owned by Publishing and Broadcasting Limited) and Microsoft. Figures 3.3, 3.4 and 3.5 in this chapter and 2.11 in chapter 2 illustrate the diverse and intersecting interests of News Corporation, PBL, and Telstra; and

- *convergence in media regulation and policy* — the adaptation of laws, regulations, policies and bureaucratic structures to changing industries and new media services. The Commonwealth Department of Communications, Information Technology and the Arts has progressively encompassed much of what would constitute a future converged information sector, from intellectual property to cultural policy, media policy, telecommunications and the information economy. The Australian Broadcasting Authority's new responsibilities for regulating the content of online services represents a further example of regulatory convergence.

These different layers of convergence are all significant for the future of Australia's broadcasting system. They will define the future shape of broadcasting, with direct consequences for the degree of diversity and concentration in the industry (see chapter 2). While more detailed analysis appears elsewhere in this report, general comments on each of them are presented in this chapter.

Convergence and broadcasting markets

Inquiry participants expressed a range of views about the degree to which different media products compete. A newspaper is not a television or radio station, but all these services are means of public communication. In a broad sense, all media forms compete in a market for information, entertainment and ideas, but each offers a distinct service. However, technological change may blur such distinctions, and in a hypothetical fully converged media system, all media services would be in competition.

New media are now providing interesting challenges and opportunities for the 'old media'. The two compete directly in some ways — in classified advertising, for example. In other ways new media are extending market boundaries. Although subscription television is arguably a different service from free to air television (given connection and subscription fees, many more channels, and greater specialisation of channels), viewers who subscribe can choose between free to air and subscription services without additional cost. The offerings are reasonably close substitutes. Similarly, emerging interactive services offered through digital terrestrial television may become substitutes for some free to air and subscription television services — in news or movies, for example. In the case of the satellite

television operator Austar, Internet and telephony services are planned for sale alongside subscription television.

While Internet services, protocols and payment systems are evolving rapidly, it is not clear how they will interact with the more established media. Many existing media interests are making substantial investments in the Internet. Some appear to be hedging in case the Internet emerges as a serious competitor for existing media, while others are working on integrating it into their business in a more complementary way.

Convergence and media platforms

The recent history of broadcasting in Australia has seen the introduction and emergence of important new ways of delivering media services. Satellite transmission provides television in regional and remote Australia. Hybrid fibre and coaxial cable networks now offer subscription television services in many metropolitan areas. (The growth of subscription television is discussed in chapter 2.) Cable networks also provide high speed Internet access for a small number of users.

The telephone network has been rapidly adopted as a convenient and cheap way of connecting households to the global Internet. One quarter of Australians aged over 14 now use the Internet at least weekly. However, only some of the Internet's many uses are media related. Regular Internet users (those who use it more than once per week) reported using the Internet for e-mail (over 80 per cent of regular users), general information (over 80 per cent) and business or study searches (over 70 per cent). Around 50 per cent of regular users reported also using the Internet for social or entertainment purposes (Roy Morgan Research 1999).

The introduction of digital terrestrial transmission of television from 2001 will inaugurate an important new media platform. Digital transmission may be used for not only traditional programming but also new interactive services, including information and commercial services not unlike those now delivered over the dial-up Internet. The key advantage of digital television over the dial-up Internet is the far greater bandwidth available to terrestrial television transmission. However, the technology to provide high speed access to the Internet over the copper wire telephone network is advancing rapidly. At the same time, other delivery systems are emerging, such as the Wireless Application Protocol (WAP) for delivering information to handheld devices.

With the right policy framework, the emergence of new delivery platforms creates opportunities for new and established players in Australia's media industries. Greater competition and consumer choice may follow. However, although these

developments have added new services to the mix, they are not in themselves convergent. Television and the Internet may share the same cable, but there is no inevitability about the market success of interactive television or broadcast quality Internet video. Telstra said:

> Telstra in all honesty doesn't know what the main game is. We don't know whether it's a PC [personal computer], a TV [television], what technology, what type of services, very interactive, lazy interactive, not interactive at all. We're trying the lot, in a way, and seeing what customers like. (trans., p. 653)

Owen (1999, p. 18) points out that convergence is one future for the media, but there are many others. Television and the Internet may pursue distinct paths.

Different media delivery platforms usually have distinctive strengths and weaknesses, in terms of both technology and the nature of their markets. These strengths and weaknesses in turn influence the practical application of different media platforms. Just as different parts of the radiofrequency spectrum are suited to different uses, the various network architectures of satellites, cables and over the air transmission are often more suited to some services than others.

Convergence and corporate structures

Australian media organisations have vigorously responded to the emergence of new platforms and media services (table 3.1). They have created their own new media and electronic commerce operations: PBL has ecorp and ninemsn; Fairfax has f2; and the Seven Network has i7.

The ABC has developed ABC Online, and is now developing interactive services designed to take advantage of digital television. It has also moved towards a 'one ABC' structure, where content sourced from one platform — radio, television or online — is used and adapted for others.

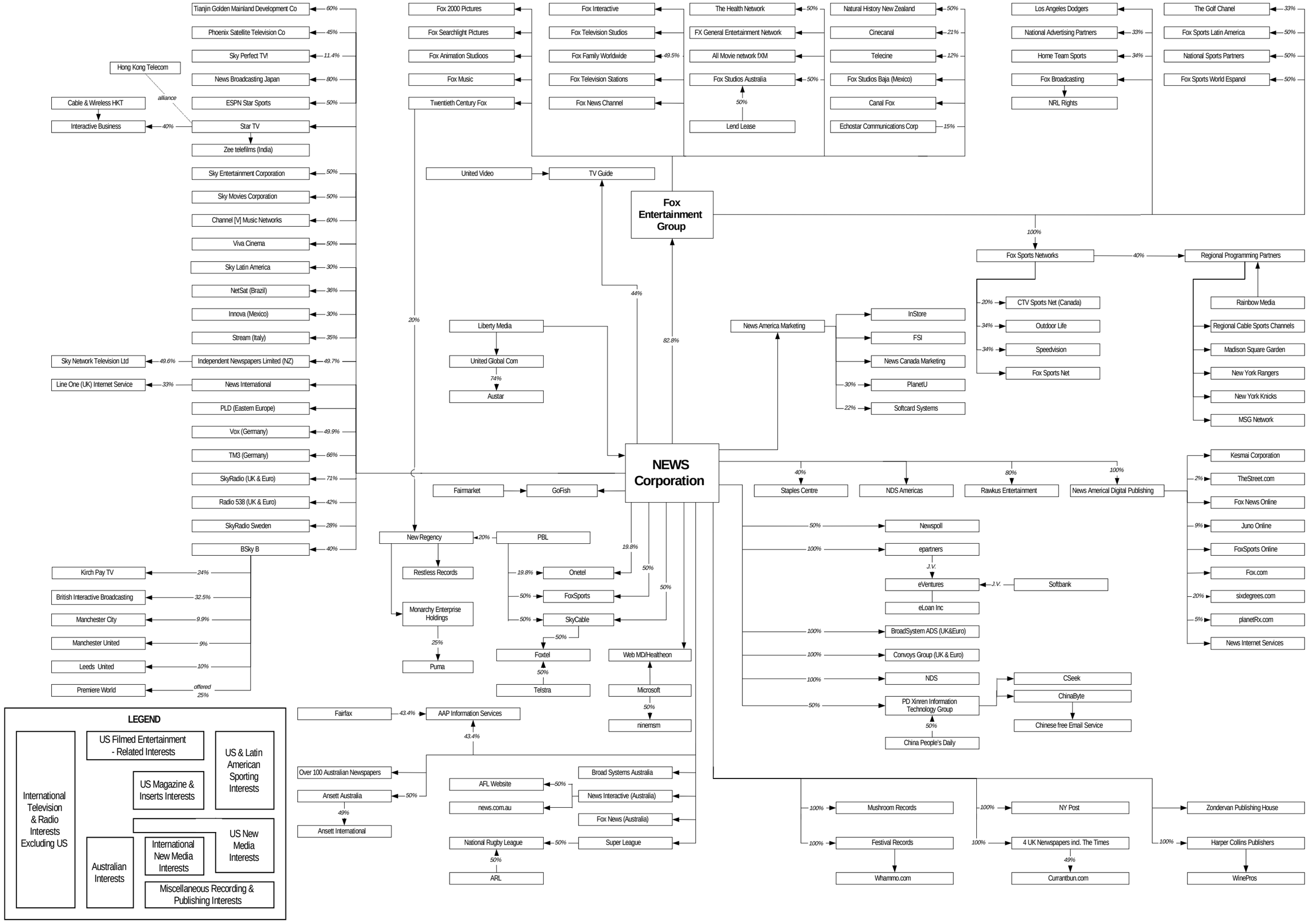
News Corporation is the largest and most internationalised of the media businesses in Australia. Figure 3.3 maps News Corporation' extensive interests in new media, in the United States and elsewhere, as well as in an array of film, television, magazine, newspaper, book publishing, radio, and sporting interests around the world. News Corporation also owns NDS, a leading United Kingdom based developer of interactive and conditional access broadcasting systems.

PBL (figure 3.4) has notable interests in electronic commerce, telecommunications and databases, in addition to the media businesses ninemsn and Foxtel. The firm recently acquired significant holdings in online auction and share trading sites, the

telecommunications firm OneTel, the information service Acxiom, and the ticket sales business Ticketek.

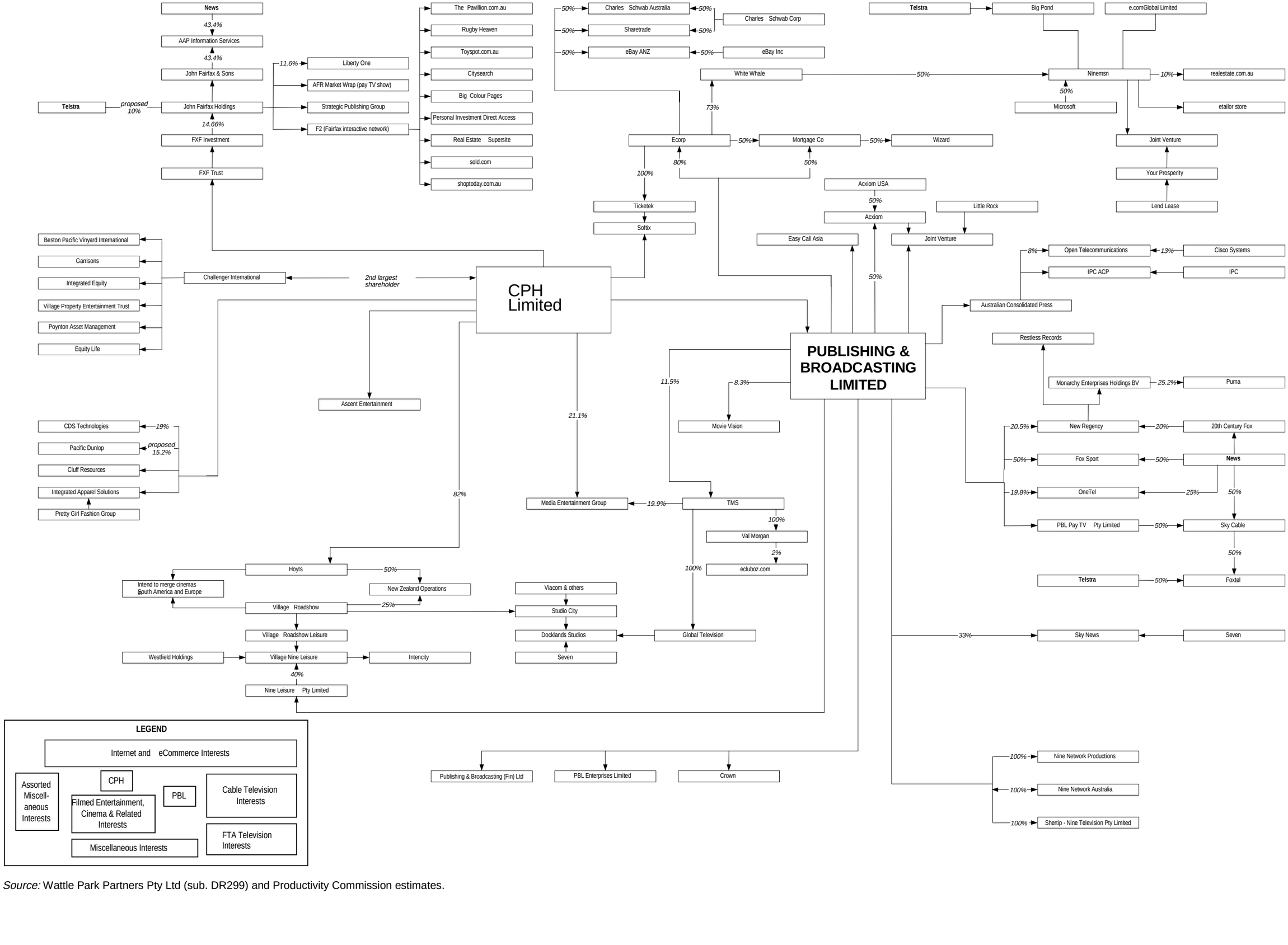
Firms from outside the media are also moving into media-related activities. Telstra, one of Australia's largest Internet service providers through its Big Pond brand, has a 50 per cent interest in Foxtel (figure 3.5). Telstra also operates four popular Web directories, and has significant interests in Lawpoint, an online legal information database; Sausage Software, a developer of Internet and electronic commerce tools; and the accountancy software firm Solution 6.

Figure 3.3 **News Corporation**



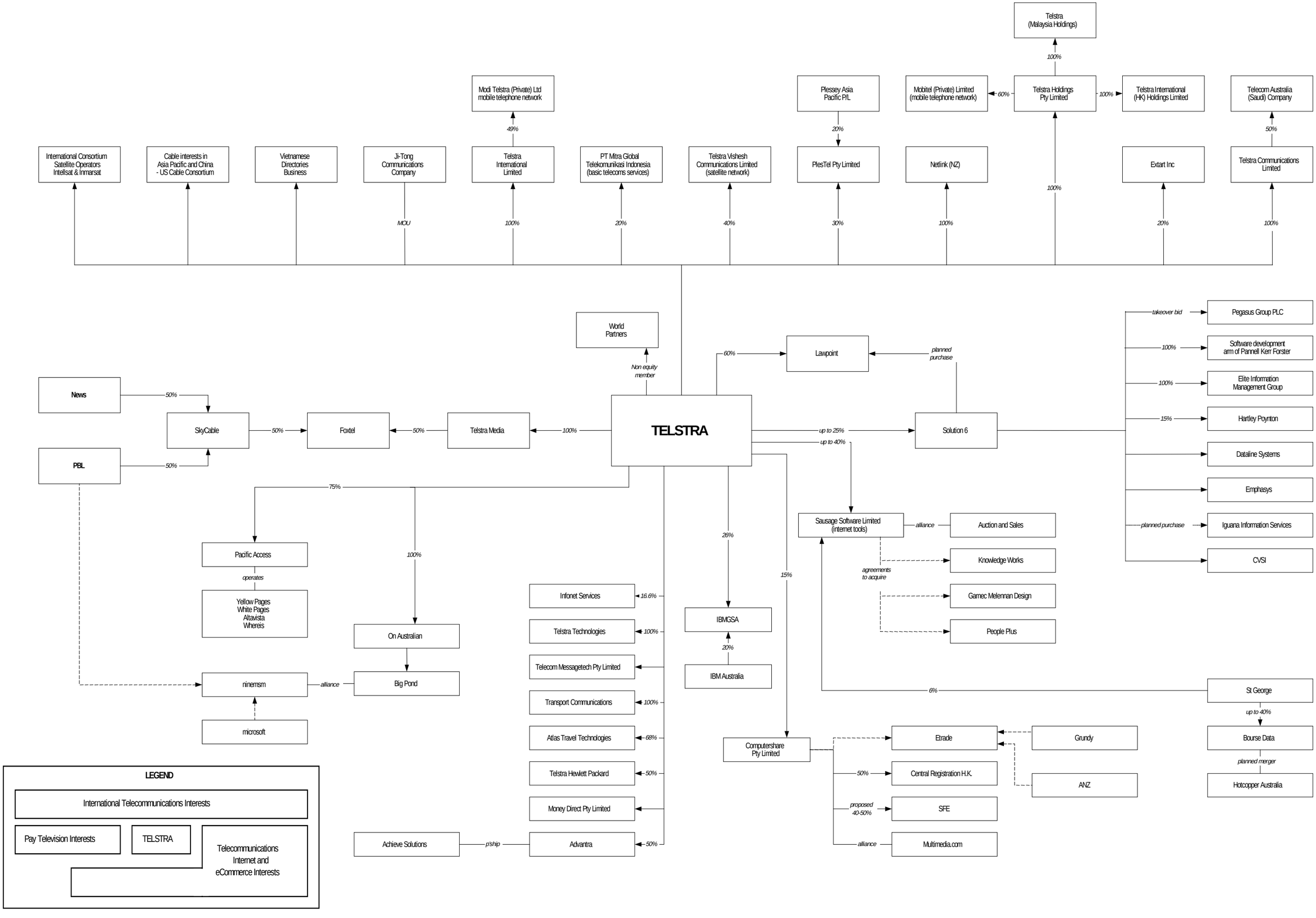
Source: Wattle Park Partners Pty Ltd (sub. DR299) and Productivity Commission estimates.

Figure 3.4 **Publishing and Broadcasting Limited**



Source: Wattle Park Partners Pty Ltd (sub. DR299) and Productivity Commission estimates.

Figure 3.5 **Telstra Corporation**



Source: Wattle Park Partners Pty Ltd (sub. DR299) and Productivity Commission estimates.

Cable and Wireless Optus is a subscription television provider and also offers a broadband Internet service. Internet and online service providers Ozemail has signalled its interest in interactive broadcast programming. NTL, a transmission, cable and Internet company with substantial interests in the United Kingdom as well as Australia, has declared an interest in spectrum management.

These developments have brought substantial global companies into the Australian media scene:

- Microsoft is PBL's partner in ninemsn;
- Amazon and f2 have formed a joint venture for electronic retailing;
- the US broadcaster NBC is a partner in the Seven Network's i7;
- the US cable firm @Home is working with Cable and Wireless Optus;
- the US telecommunications firm MCI WorldCom has acquired Ozemail; and
- AOL has developed its Australian business in partnership with Bertelsmann, a European media, music and publishing firm.

The emergence of new entities illustrates how convergence can become a process of corporate division and proliferation. Equity markets increasingly distinguish between the traditional content and commercial activities of broadcasters and the new media activities of these enterprises, and these markets are now major drivers of investment in new media.

Changes in corporate structure from these realignments are important for this inquiry, because current broadcasting regulation restricts the cross-media interests of broadcasters. These rules apply to television, radio and print media, but do not extend to the Internet, subscription television or telecommunications. Ownership and control issues are discussed in chapter 10.

Convergence and regulation

Changes in communications technology may require policy responses. Governments have explored the implications of convergence at length in reports and inquiries during the past decade. The former Bureau of Transport and Communications Economics published a series of studies in the early 1990s as part of its Communications Futures Project; the Broadband Services Expert Group released the widely cited *Networking Australia's Future* in 1994; and the National Office of Information Economy released *Strategic Framework for the Information Economy* in 1999.

At the level of administrative arrangements, the Commonwealth Government has brought together in the Department of Communications, Information Technology and the Arts many of its key functions in the media, telecommunications and information technology fields. The Australian Broadcasting Authority has also been given new responsibilities for regulating online content.

3.3 Towards policy convergence

Partial, institutional convergence is not the same as convergence in law, regulation or policy. Separate Acts continue to govern telecommunications, radiocommunications and broadcasting, and different regulatory principles and instruments operate in these closely related fields. The reviews of these Acts under the Competition Principles Agreement have been conducted independently. Different agencies continue to play closely related roles: the Australian Competition and Consumer Commission regulates telecommunications markets, while the Australian Broadcasting Authority has responsibility for regulating the control of media organisations; and spectrum planning and licensing responsibilities are divided between the Australian Broadcasting Authority and the Australian Communication Authority.

The pace of technological change in media and communications may increase in the near future. For example, the consequences for broadcasting policy of cheap, ubiquitous, international broadband networks would be far reaching. New measures would be required to achieve the Government's basic objectives.

In these circumstances, many of the regulatory arrangements relied upon by broadcasting policy would cease to be effective. Policy creating stringent, platform specific content restrictions would be left behind by services using less regulated media platforms. Substantial elements of current broadcasting regulation are vulnerable to change of this sort, including the datacasting rules (see chapter 7), the Australian content rules (see chapter 11), and the antisiphoning rules (see chapter 12). Ownership and control provisions would also require rapid adaptation (see chapter 10), as media services outside print, radio and free to air terrestrial broadcasting become more influential.

Convergence presents a challenge for broadcasting policy. Technological change is a feature of the media industries, but shifts in technology and the emergence of new media markets have created new uncertainties. Nevertheless, as a recent United Kingdom report suggests, there is a false choice in the notion that government must decide between a wholly new policy framework to accommodate change, or the

regulatory *status quo* because sufficient change has not yet occurred (Department of Culture, Media and Sport and Department of Trade and Industry, 1998).

The directions and speed of convergence are unclear, but the fact of continuing change in the media and telecommunications industries is certain. Unlike telecommunications, broadcasting policy has been, and continues to be, characterised by highly prescriptive regulation. The introduction of subscription television involved such an approach; more recently, legislation concerning the introduction of digital television attempts to mandate specific television formats and services (see chapter 7).

The main lesson to be drawn from the present uncertainty is the need for regulation that remains as far as possible technologically and competitively neutral, even if complete technological neutrality is not possible. All governments regulate the use of the spectrum, for instance: without the selection of technical standards for transmission and reception, congestion and interference would prevent effective broadcasting. But setting transmission standards is not the same as seeking to advance some services at the expense of others. Social and cultural regulation then needs to be designed around achieving the Government's broad policy objectives, rather than through the imposition of a myriad of platform or industry specific obligations and privileges.

Technological change has ramifications for many specific areas of media regulation — access to spectrum, the definition of digital television services, ownership and control, and content regulation. Later chapters examine the challenges of technological change in these areas in more detail, and set out the Commission's framework for convergent broadcasting policy.

PART III

AUSTRALIAN BROADCASTING INDUSTRIES

4 Advertising's role in broadcasting

Advertising's role in broadcasting will undergo major change with the introduction of digital technology and increasing convergence of different forms of media. The digital era and convergence are creating new opportunities and avenues for advertising in broadcasting and the media more generally. Broadcasters and other media operators need to adapt to these changes as they seek new ways to attract an audience and deliver the advertiser's message. This will change the marketing strategies of businesses and approaches to media advertising. It is important that the policy framework does not inhibit innovation in the advertising market and the benefits that would flow to consumers and the wider community. This chapter identifies some of the emerging shifts and their implications.

Advertising plays an important role in broadcasting, primarily through its role as the major source of revenue for most commercial media (except for subscription television). Much of the behaviour of commercial media operators can be explained by their need to attract advertising revenue. The audiences they target, the content they provide and the price they are prepared to pay for this content are derived from this need.

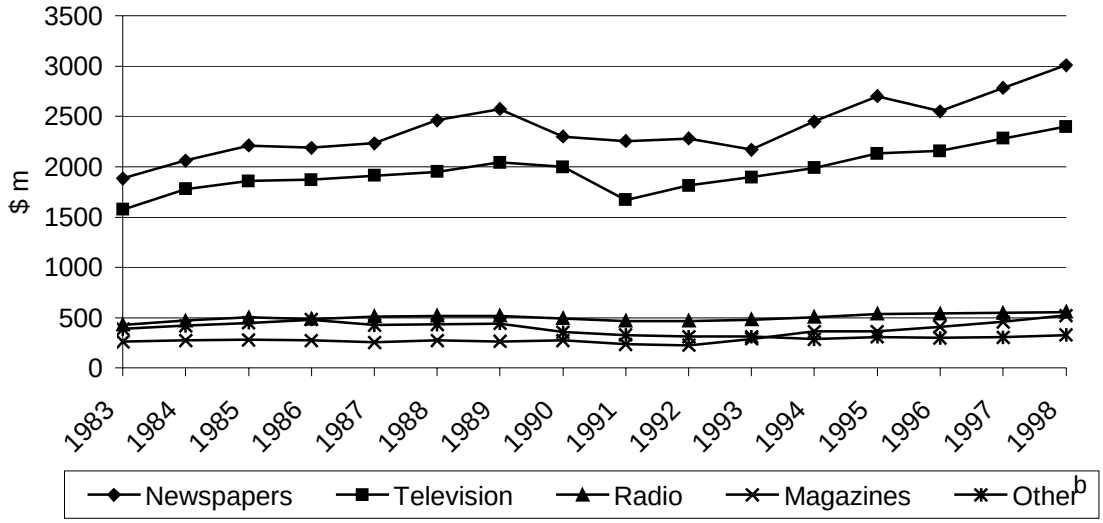
The technology adopted by commercial broadcasters is also influenced by the need to attract advertising revenue. Advertising revenue will play a crucial role in funding digital conversion for commercial broadcasters. New services such as multichannelling — whereby more than one discrete stream of programming is transmitted over a single television channel or carrier — and interactivity are likely to offer benefits to advertisers and make broadcasting a more attractive medium to advertisers.

Regulations influence the role of advertising in broadcasting, both directly and indirectly through more general regulations on broadcasting. Regulations that restrict the amount of advertising space available on a particular medium are likely to affect the price of, and revenue raised from, advertising on that medium. Similarly, regulations that limit the use of new technology, such as limits on multichannelling, datacasting and 'enhanced services' (see chapter 7), reduce the opportunities to use these new technologies to attract advertising revenue.

4.1 Expenditure on advertising in Australia

Advertising expenditure in the main media (free to air television, newspapers, magazines, radio, cinema and outdoor signage) was nearly $8 billion in 1998, with newspapers and television dominating this expenditure. Newspapers attracted nearly 40 per cent of advertising expenditure in the main media in 1998, while television attracted 30 per cent. By comparison, radio attracted just 7 per cent (CEASA 1999a.). This expenditure has grown consistently over several decades, although it tends to rise and fall with growth in national income. This can be seen with the recession in the early 1990s, when advertising expenditure declined in some years (figure 4.1). However, since this recession, advertising expenditure in main media has grown strongly (table 4.1).

Figure 4.1 **Advertising expenditure in main media in Australia (in 1997–98 dollars)[a]**



a Actual dollars were converted to 1997-98 dollars using an implicit price deflator based on final consumption expenditure. **b** Billboards, cinema and posters on the sides of moving vehicles.

Data source: Productivity Commission estimates based on CEASA (1999a) and ABS (1999b).

Moreover, strong growth in advertising expenditure is expected to continue. Major media operators have estimated that the average growth in advertising revenue will be nearly 6 per cent in 2000, while senior advertising executives suggest that the increase will be more than 9 per cent (AIS Media 2000).

Table 4.1 **Growth in advertising expenditure in main media[a]**

	Newspapers	*Magazines*	*Television*	*Radio*	*Other*[b]	*Total*
	%	%	%	%	%	%
Growth since the recession (1992–98)	4.7	15.1	4.8	2.9	0.7	7.4
Growth from before the recession (1989–98)	1.8	7.9	1.8	0.8	–3.3	3.2
Historic level of growth (1970–98)	3.6	4.8	4.8	2.2	0.1	3.8

[a] Real annual compound growth measured in 1997-98 dollars. Actual dollars were converted to 1997-98 dollars using an implicit price deflator based on final consumption expenditure. [b] Billboards, cinema and posters on the sides of moving vehicles.

Data source: Productivity Commission estimates based on CEASA (1999a) and ABS (1999b).

The main media competes with other forms of advertising — such as direct marketing, promotions and sponsorship of sport — for advertising revenue. This so-called 'below the line' advertising — some $13 billion in 1997 — now accounts for substantially more expenditure than that directed to the main media — $7.5 billion in 1997 — and is increasing (CEASA 1999a).

Strong growth in advertising expenditure over the last decade is significant in a wider policy context. Some participants have claimed that there is a fixed 'pool' or 'pie' of revenue available from advertising, and have used this to argue for the retention of barriers to entry (see chapter 9). While the amount of advertising expenditure at any time is finite, over time the 'pie' has clearly been growing. This growth is likely to continue as advertisers seek new ways to reach their customers. Different forms of media and different media operators will gain a share of this expenditure depending on how effective they are in reaching the target audiences of advertisers. As the Australian Association of National Advertisers states:

> I don't believe at all that the pie is fixed … [L]ook at [the] increase in our … marketing budgets … We're all increasing year after year as we find, hopefully, new effective ways to reach consumers. … [T]he proposition that the advertising pie is finite is far too simplistic and it assumes that the market in which advertisers compete is static, that there will be no new goods or services. … [T]he marketing pie will continue to grow, irrespective of what the networks might think about their piece of it. The question is how competitive is that piece of the pie versus other pies in the marketing dollar. That is the fundamental issue. (trans., pp. 1123–4)

Capital cities and regional advertising markets

Capital city and regional markets tend to display different characteristics. Capital cities dominate the advertising revenue for both television and radio

(tables 4.2 and 4.3). This is not surprising given that around 60 per cent of Australia's population live in capital cities and their average incomes are generally higher than those in regional areas (see chapter 2). In terms of the growth in advertising revenue, differences are more apparent in radio than in television. For commercial television broadcasters, the growth in advertising revenue in the five mainland capital cities from 1993-94 to 1997-98 was similar to the growth in the regional areas. The major difference was with solus television broadcasters (broadcasters who are the only television broadcasters in a licence area), whose advertising revenue grew by less than 1 per cent a year (table 4.2).

Table 4.2 **Commercial television advertising revenue (in 1997-98 dollars)[a,b]**

	1993-94	*1994-95*	*1995-96*	*1996-97*	*1997-98*	*Growth rate*[c]
	$m	$m	$m	$m	$m	%
Mainland capital cities	**1 633**	**1 749**	**1 782**	**1 890**	**1 991**	**5.1**
Sydney	575	624	617	662	702	5.1
Melbourne	490	519	539	571	596	5.0
Brisbane	248	267	276	288	315	6.2
Perth	170	185	194	207	216	6.1
Adelaide	150	155	156	160	162	1.9
Regional total	**443**	**496**	**506**	**518**	**549**	**5.5**
NSW regional	193	215	216	218	233	4.9
Victoria regional	72	80	83	84	87	4.7
Queensland regional	95	106	109	115	124	7.0
WA regional	22	26	27	29	31	8.8
SA regional	14	16	16	17	17	6.6
Tas and NT regional	48	52	54	55	57	4.4
Multi-station regional total	380	423	430	439	485	6.3
Solus regional total	63	73	75	80	64	0.5
Australia	**2076**	**2245**	**2288**	**2408**	**2540**	**5.2**

[a] Advertising revenue is the gross revenue from sale of advertising airtime. [b] Actual dollars were converted to 1997-98 dollars using an implicit price deflator based on final consumption expenditure. [c] Real annual compound growth from 1993-94 to 1997-98 measured in 1997-98 dollars.

Sources: ABA (1999b) and ABS (1999b).

For commercial radio broadcasters there have been significant differences in the growth of advertising revenue between capital city and regional broadcasters and between FM and AM broadcasters. For example, between 1993-94 and 1997-98:

- advertising revenue in capital cities grew more than three times as fast as in regional areas;

- advertising revenue for FM broadcasters grew over seven times as fast as for AM broadcasters;
- the growth in advertising revenue for AM broadcasters was less than 1 per cent a year;
- for FM broadcasters, advertising revenue for regional stations grew around one and a half times as fast as in capital cites; and
- for AM broadcasters, advertising revenue grew for capital city stations, but declined for regional stations (table 4.3).

Table 4.3 **Commercial radio advertising revenue (in 1997–98 dollars)[a,b]**

	1993-94	*1994-95*	*1995-96*	*1996-97*	*1997-98*	*Growth rate* [c]
	$m	$m	$m	$m	$m	%
Capital city FM	201	220	228	233	254	6.1
Regional FM	55	63	67	68	82	10.4
FM total	**256**	**283**	**296**	**301**	**336**	**7.1**
Capital city AM	96	106	111	112	118	5.3
Regional AM	110	110	112	106	94	-3.8
AM total	**206**	**216**	**223**	**218**	**213**	**0.8**
Capital city total	297	326	340	345	372	5.8
Regional total	165	172	179	174	176	1.6
Total	**462**	**498**	**519**	**519**	**549**	**4.4**

[a] Advertising revenue is the gross revenue from sale of advertising airtime. [b] Actual dollars were converted to 1997-98 dollars using an implicit price deflator based on final consumption expenditure. [c] Real annual compound growth from 1993-94 to 1997-98 measured in 1997-98 dollars.

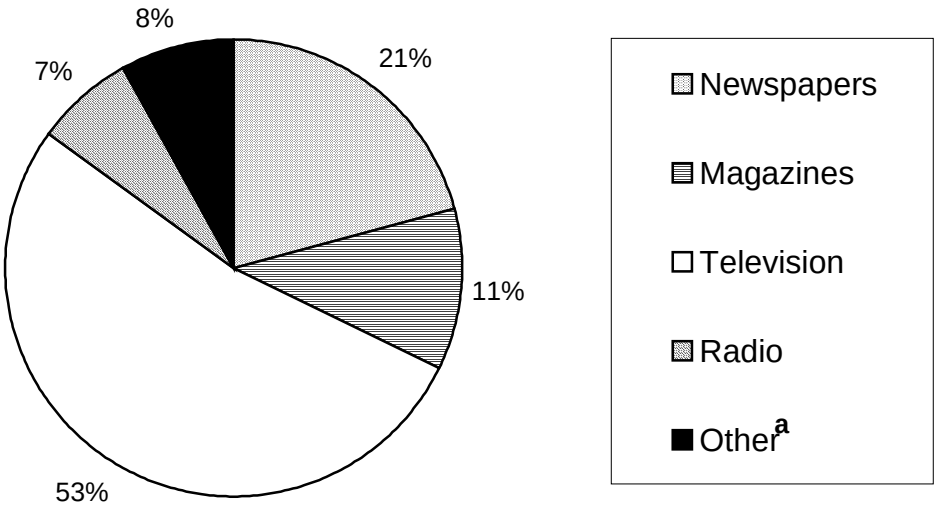
Sources: ABA (1999b) and ABS (1999b).

National and non-national advertising markets

Advertising is often classified as being national or non-national. National advertising generally sells products or services that are available throughout Australia. Other advertising is referred to as non-national and generally has a more local focus. Advertising for brands of motor vehicles, for example, is likely to be national, whereas advertising for a local car dealer is likely to be non-national.

Across the main media, national and non-national advertising expenditures are roughly equal, although the composition is different. Television dominates national advertising expenditure (figure 4.2), whereas newspapers dominate non-national advertising expenditure (figure 4.3).

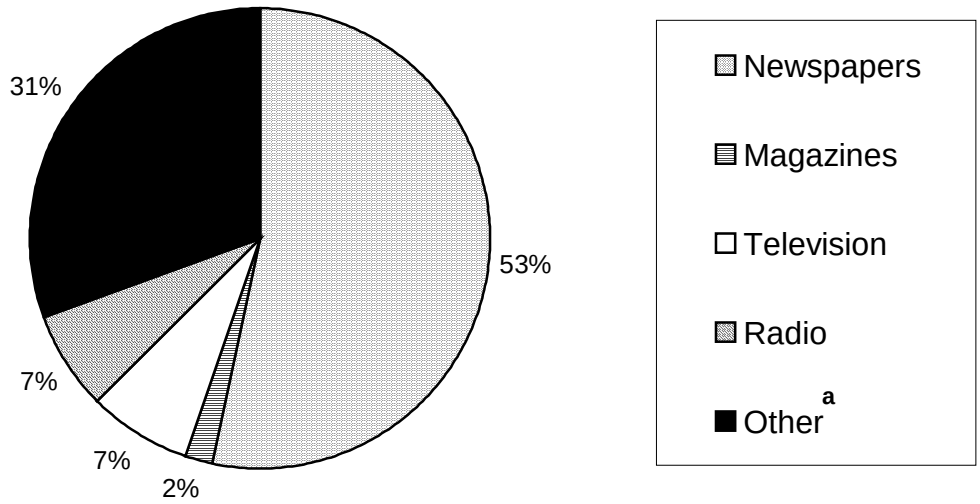
Figure 4.2 **Components of national advertising expenditure, 1998**



a Other includes business and rural publications, classified directories, billboards, cinema, and posters on the sides of moving vehicles.

Data source: Productivity Commission estimates based on CEASA (1999a).

Figure 4.3 **Components of non-national advertising expenditure, 1998**



a Other includes business and rural publications, classified directories, billboards, cinema, and posters on the sides of moving vehicles.

Data source: Productivity Commission estimates based on CEASA (1999a).

4.2 The economics of Australia's advertising market

Commercial media in Australia operate in three interrelated markets — the market for providing information and entertainment, the advertising market, and the content

production market. In the information and entertainment market, commercial media operators provide content to their audience in exchange for their time and attention. Commercial media operators compete with each other and with other sources of information and entertainment for audiences.

In the advertising market, commercial media operators supply advertisers with access to audiences in exchange for payment. The amount an advertiser is willing to pay for access to this audience depends on the expected size of the audience, the demographic composition and interests of the audience, the price of advertising on alternative media, and the expected effectiveness of the advertising. To some extent, the various forms of media compete with each other for advertising revenue, but their different characteristics make them more or less attractive to particular advertisers.

In the content production market, commercial media operators use content to gain an audience. Different content attracts different audiences, in terms of size, demographic composition and interests. As a business, commercial media operators need to find the mix of content that will attract the right audience for their advertisers. As commercial media operators use content to attract an audience for advertisers, the amount they are willing to pay for content depends on the amount the advertisers are prepared to pay to reach the audiences they believe it will provide (BTCE 1996).

Successful advertising is about conveying an effective message about a product or service to a particular group in a cost effective manner. Media operators need to find ways of attracting the right audience mix, at an appropriate cost, to give advertisers access to the particular groups they are seeking for a price they are willing to pay. Generally there will not be a perfect match between the groups the advertisers wish to target and the audience individual media operators can provide. Much of the economics of the advertising market can be explained in terms of the advertisers seeking to find more cost effective ways of reaching particular target groups and media operators seeking to find more cost effective ways of attracting audiences that contain the groups that advertisers wish to reach.

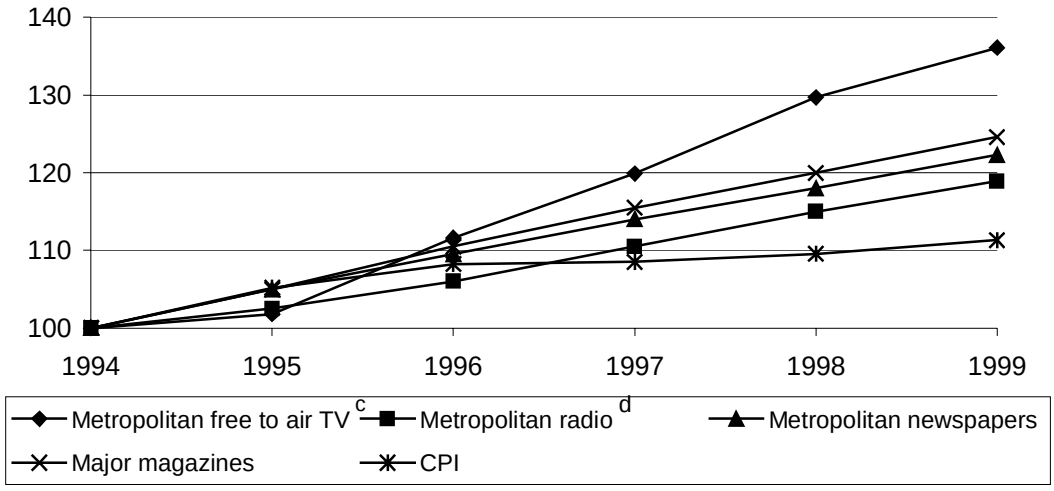
Regulatory restrictions strongly influence outcomes in the advertising market. Governments regulate to control the accuracy of advertising, the amount of advertising that can be broadcast, and its local content (see chapters 5 and 11). In addition, regulations not directly aimed at advertising can significantly affect it; for example, regulation that restricts the entry into commercial television and radio can influence the competitiveness of these markets, which can influence advertising (see chapter 9).

Advertising prices

Advertising rates are largely set by negotiation between media operators and advertisers. These negotiations are usually based on so-called 'carded' rates that media operators offer. The final rates paid by the advertisers incorporate incentives and discounts offered by media operators. Since 1995, the carded advertising rates for metropolitan television, radio and newspapers, and major magazines have increased faster than the rise in the general level of prices. Metropolitan television had the most substantial increase in advertising rates from 1995 to 1999 (figure 4.4). Metropolitan television and radio account for around 80 per cent and 70 per cent respectively of the advertising expenditure on commercial television and radio (table 4.2).

Figure 4.4 **Trends in carded advertising rates and the consumer price index[a,b]**

Index 1994 = 100



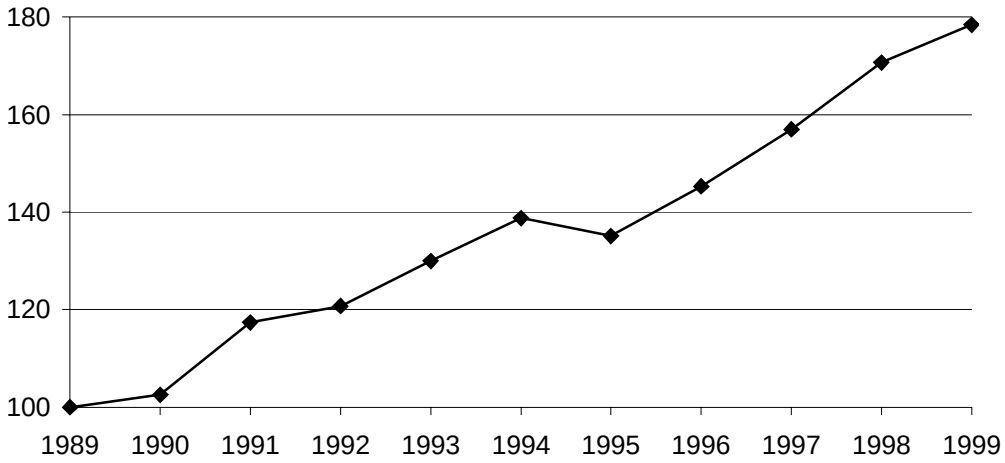
a Carded advertising rates before incentives, discounts and negotiation. **b** Consumer price index based on weighted average of eight capital cities for all groups. **c** The metropolitan free to air television rates reflect a weighted average across the three major commercial networks of the carded base rate offered to major media buyers for peak night. **d** The metropolitan radio rate is based on breakfast unit session costs across all commercial stations

Data source: Productivity Commission estimates based on unpublished AIS Media data and ABS (1999b).

The trend in the rates paid for television advertisements has reflected the trend in the carded rates (figure 4.5). From 1989 to 1999 the real price of television advertisements increased at a compound rate of 6 per cent a year. Advertising rates are affected by the negotiating power of the parties involved. Much advertising business is placed through advertising agencies rather than directly with media operators. Since the deregulation of the advertising industry in 1997, advertisers are

no longer obliged to use an accredited agency to buy advertising space or to create their advertisements. This has resulted in a trend towards greater specialisation within agencies and an unbundling of the services offered. Not all advertisers use advertising agencies; Coles Myer and Harvey Norman, for example, deal directly with media operators.

Figure 4.5 **Trend in real free to air television advertising rates[a]**
Index 1989 = 100



a Average advertising rates based on actual negotiated rates for a 30 second commercial shown between 6.00 pm and 10.30 pm.

Data source: Productivity Commission estimates based on unpublished AIS Media data and ABS (1999b).

Many advertising agencies, particularly those involved in buying advertising space for their clients, have formed alliances or buying groups. The need to form these alliances appears to be partly driven by the concentration of ownership of media in Australia, particularly in broadcasting (see chapter 2). The concentration, ownership and control of broadcasting in Australia are discussed in chapters 9 and 10. Forming these alliances increases the bargaining power of the individual agencies with respect to the media operators and acts as a countervailing influence to the market power of the media operators.

Demand for advertising space by advertisers

Advertisers' demand for advertising space in the media depends on a number of factors, including:

- the expected size of the audience;
- the likely demographic composition and interests of the audience;

- the expected effectiveness of the advertising; and
- the price and relative effectiveness of alternative forms of advertising.

Advertisers consider the expected size and likely demographic composition and interests of the audience that the media operator can attract. Some media operators, such as the major commercial television and radio stations and the major daily newspapers, attempt to attract a large audience, which will include many groups sought by the advertisers. This approach allows advertisers to reach mass audiences, but it is difficult for them to target specific groups. Other media operators, such as magazine publishers, attempt to target their audience and provide a product that will appeal to particular groups. Advertisers may need to advertise in more than one publication to target different groups.

Successful advertising requires more than just conveying a message about a product or service to a particular audience. The message must also be effective in the sense of inducing the receivers of the message to buy the product or service being advertised. Different media can be more or less effective in achieving this outcome. Readers may perceive products and services advertised only in specialist magazines for example, as being better than similar products and services advertised only in more general publications. Similarly, the growing importance of interactive media, such as e-commerce and electronic shopping via the Internet, is being driven partly by the effectiveness of this medium in delivering a message about the products and services and in providing the consumer with the convenience of shopping at home.

Supply of advertising space by media operators

Media operators' supply of advertising space will depend on a number of factors, including:

- audience response to advertisements;
- the degree of targeting possible; and
- regulations.

Commercial media operators have an incentive to target the particular groups that advertisers wish to reach. However, they have to seek a balance between the cost and revenue generated from targeting smaller niche audiences and those generated from attracting large, more diffuse audiences.

Advertisements can be entertaining and informative, and to the extent that the audience finds them enjoyable, they can attract their own audience. However, many people find advertising distracting and annoying, and excessive advertising will reduce the audience. Media operators need to balance the revenue gains from

increasing the amount of advertising space they offer against the loss of revenue from a diminishing audience. In this way, even in the absence of regulations, market processes limit the amount of advertising by commercial broadcasters.

Government regulations also influence the supply of advertising space available in the media. The impact of government regulation on the amount of advertising time available from commercial, subscription and community broadcasters is of particular interest to this inquiry. Government regulations influence this in two ways — limits on the number of media operators licensed to broadcast and limits on the amount of broadcast time allocated to advertisements. When these limits are binding — that is, when the amount of advertising time permitted is less than the amount of advertising time that would have been available in the absence of these limits — they have an influence on the price of, and revenue from, advertising.

In television, the Australian Broadcasting Authority (ABA) is not permitted to allocate any new commercial television licences until at least 31 December 2006, and in radio, planning processes appear to have restricted the number of broadcasting licences in many areas (see chapter 9). Limits on the time broadcasters can broadcast advertisements are outlined in box 4.1.

Free to air television

The regulatory control on advertising time permitted on free to air commercial television broadcasters appears to be binding. In 1987 the then Australian Broadcasting Tribunal repealed those sections of its Television Advertising Conditions relating to the length, number and placement of advertisements. Subsequently, the amount of nonprogram material on free to air commercial television broadcasters substantially increased, prompting the Australian Broadcasting Tribunal to re-impose restrictions (BTCE 1996). These restrictions have been maintained with co-regulation.

Binding limits on either the number of broadcasters or the amount of time they can broadcast advertisements reduces the amount of advertising time available to a level below that which could be supplied without such constraints. This is likely to result in an increase in the price of broadcast advertising, an increase in the amount of advertising on alternative forms of media, or (most likely) some combination of the two.

Box 4.1 **Limits on advertising**

The regulatory controls on subscription television and community broadcasters are contained in the *Broadcasting Services Act 1992*, whereas those on the commercial free to air television and radio broadcasters are contained in industry codes of practice. These codes are developed by the industry and registered by the ABA under 'co-regulation'. Broadcasters are expected to comply with the registered codes, and the ABA has various enforcement powers (see chapter 13).

Free to air television

The Federation of Australian Commercial Television Stations' Code of Practice restricts the amount of paid advertisements that may be broadcast in any period:

- a channel may schedule *on* average 13 minutes per hour of nonprogram material between 6.00 pm and midnight and15 minutes per hour of nonprogram material at all other times (except during C [children's] and P [preschool] periods); and
- a channel may schedule a maximum of 15 minutes of nonprogram material in any specific hour, but no more than 14 minutes in any four hours, between 6.00 pm and midnight. At other times (except during C [children's] and P [preschool] periods), the hourly maximum is 16 minutes.

Commercial radio

The Federation of Australian Radio Broadcasters' Code of Practice restricts advertising to 18 minutes per hour in areas served by a single commercial radio station. In areas with two or more commercial radio stations, there is no limit on the amount of advertising that may be transmitted.

Subscription television

For subscription television, advertising was prohibited until 1 July 1997. After this date, the legislation stipulated that subscription fees must be the predominant source of revenue for these services; that is, the revenue raised by advertising must be less than the revenue raised by subscriptions.

Community radio and television

Community broadcasters cannot broadcast advertisements, but they can broadcast sponsorship announcements for not more than 4 minutes in any hour of broadcasting. The Community Broadcasting Association of Australia indicated that the government is intending to increase this to 5 minutes (sub. 73, p.10).

Source: Armstrong (1999).

The growth in advertising expenditure on metropolitan free to air television from 1994 to 1998 equalled the growth in the broadcasters' advertising rates. As the amount of advertising time cannot increase, any growth in demand for advertising time is being translated fully into higher advertising rates. This compares with other forms of media, which do not have the same binding limits on the amount of

advertising, where growth in advertising expenditure exceeded growth in advertising rates over the period — that is, both quantity and price increased (table 4.4).

Table 4.4 **Growth in advertising expenditure and rates in various media, 1994 to 1998 (in 1997-98 dollars)[a]**

	Growth in advertising expenditure	*Growth in advertising rates*
	%	%
Metropolitan free to air television	4.7	4.7
Metropolitan radio	4.1	1.3
Metropolitan newspapers	3.5	2.0
Major magazines	9.7	2.5

a Real annual compound growth from 199 to 1998 measured in constant 1996-97 dollars. Actual dollars were converted to constant dollars using an implicit price deflator based on final consumption expenditure.

Source: Productivity Commission estimates based on CEASA (1999a), ABS (1999b) and unpublished AIS Media data.

If either or both of the limits on advertising were relaxed, the supply of advertising time would be likely to increase (up to market imposed limits) and advertising rates would be likely to fall. The overall effect on advertising revenue would depend on the relative movement of the increase in the amount of advertising time available and the decrease in the price for each minute of advertising time (price elasticity).

A number of studies, both in Australia and in the United Kingdom, have attempted to measure the effect on advertising revenue of an increase in the amount of advertising time available on free to air television. The implied price elasticity of demand for television advertising in Sydney, Perth and Canberra from 1986 to 1994 was found to be greater than one (BTCE 1996) (although the study did not rule out the possibility that it may be less than one). Hendry (1992) concluded that the long run price elasticity of demand for advertising time on UK television was greater than one. A value greater than one implies that an *increase* in the amount of advertising time available would lead to an *increase* in advertising revenue (other things being constant). These studies may have limited relevance in the new convergent media environment.

Lowering advertising rates for commercial free to air television broadcasting may have implications for competition policy more broadly. Commercial free to air television is generally an important component of any advertising campaign to launch new products. If these advertising rates are maintained at a high level by the regulations, it is likely to make it more expensive to launch new products to compete with existing products. As the Australian Association of National Advertisers stated:

> [I]n broad competition terms it could be argued that the very high costs associated with the production of advertising and the purchase of advertising as a commodity could restrict or could be a barrier to the introduction of new goods and services in broad terms. … [T]here could be new competitors … that have more niche products or more targeted products that may currently be excluded from entry because of the high costs [of advertising]. (trans., p. 1125)

Subscription television

In contrast to free to air television, the limit imposed on subscription television — that is, advertising revenue must not exceed subscription revenue — is not binding. There is little public information on the subscription and advertising revenues of the subscription television operators. Budde (sub. 125, p. 10) estimates that with about one million subscribers in 1998, subscription revenue for the industry would have been about $450 million in that year. The Seven Network stated that:

> … Pay TV has … attracted $25 million in advertising revenue. … Pay TV's share of the total television advertising is 1 per cent, and some media experts in the industry have predicted that this share will rise to 7 per cent over time. (sub. 151, Att. B, p. 15)

This suggests that even if advertising revenue increases sevenfold over time to reach around $175 million (as the Seven Network suggests it could), and if the number of subscribers and subscription revenue remains static, the regulatory limitation on revenue raising through advertising would *not* be binding.

Radio

Limits on the amount of advertising time permitted on commercial radio apply to only those licence areas served by a single commercial radio station. Most licence areas in Australia have two or more commercial radio stations, so the impact of these limits on the price of, and revenue from, advertising is negligible.

The limits on advertising and sponsorship on community radio (and television) effectively prevent these broadcasters from competing to any significant extent with the commercial broadcasters for advertising expenditure. The implication of this restriction for indigenous broadcasters in remote areas is discussed in chapter 8.

4.3 Role of advertising in Australia's evolving media

Australia's media are evolving rapidly and the role of advertising in broadcasting is also changing. The introduction of digital transmission technology, the increasing

role of new media and greater 'fragmentation' of audiences are driving many of these changes.

Impact of digital television

The Government's digital conversion plan for television mandates simulcasting of analog and digital signals until at least the end of 2008 for capital cities. Also, within two years of the start of digital broadcasting, commercial broadcasters will have to show at least 20 hours per week of material produced in high definition digital format. Further, additional services such as datacasting, multichannelling and 'incidental and directly linked' programming will be limited. As noted above, these regulations will also affect advertising.

Advertisers could be attracted to the improved sound and image qualities of digital television, which are likely to make their advertisements more effective. This could justify the higher cost of digital production. As Balnaves and Varan (1999) note:

> Advertisers, at least on premium accounts, have demonstrated that they are willing to pay to insure that their product reflects high production values. This is not only a result of their need to display the product and brand as clearly as possible, but is supported by strategic research demonstrating that high production values result in higher recall and purchase intent … Hence there is a strategic justification for higher production value despite marginal additional cost.

However, until enough viewers have digital television, its appeal to advertisers will be limited. Advertisers could benefit from a faster digital conversion.

Digital transmission of television will allow television broadcasters to multichannel, enabling broadcasters to target their audiences more effectively. As the Australian Association of National Advertisers stated, multichannelling:

> … will enable you, by programming and selection of ads, to reach your consumers in a more targeted manner. When you look now, there is still enormous wastage in sending out an ad here which may appeal to 18 to 24-year-old males, when you're hitting males 18-plus, so there's no question that a multichannelling idea like that would enable us to be more specific to our target.
>
> … It will enable us to have more choice to decide where we spend that money and I think we would see growth in broadcasting in total because it still remains the most effective way to reach consumers, both from overall broadcasting and particularly the TV media. It would be our preferred stance of advertising.
>
> … It is a problem with mainstream TV that it is only three channels, only three options, you have in any particular timeslot. (trans., pp. 1122-5)

Digital transmission will also allow new interactive services, for example:

- a series of discrete 'programs' or 'pages' that contain additional information about the items being advertised, such as technical specifications, different makes and models available, backup services or the location of retail outlets. Viewers would be able to select and move around this material if they wish to find out more about the product being advertised. If this interactivity increases the likelihood that a viewer will make a purchase, the digital service will be more attractive to advertisers; and
- a 'back channel' to the broadcaster (via a modem connection) which provides more interactivity. This allows new opportunities to integrate advertising content within traditional program content. Bill Gates illustrates this as follows:

  > You're watching Seinfeld on TV, and you like the jacket he's wearing. You click on it with your remote control. The show pauses and a Windows-style drop-down menu appears at the top of the screen, asking if you want to buy it. You click on 'yes'. The next menu offers you a choice of colors; you click on black. Another menu lists your credit cards, asking which one you'll use for this purchase. Click on MasterCard or whatever. Which address should the jacket go to — your office or your home or your cabin? Click on an address and you're done — the menus disappear and Seinfeld picks up where it left off. (Cited in Balnaves and Varan 1999)

Digital television is seen by many as mirroring the commercial opportunities of the Internet. It also holds the promise of allowing customers to respond to advertisements directly, increasing the productivity of advertising.

New and old media

New media, such as the Internet, digital services and subscription television, present both challenges and opportunities for the old media. New media are competing with old media for advertising expenditure. As the market penetration of subscription television increases, it will place increasing pressure on the advertising revenue of the free to air television broadcasters. Digital television, multichannelling, datacasting and Internet based services are likely to have an ongoing impact on the advertising revenue of the old media as these services continue to develop (see chapter 7).

Yet despite these innovations, free to air television is likely to continue as a major means of advertising in the foreseeable future. In 1996, 99 per cent of Australian homes had at least one television set (see chapter 2). Subscription television is making substantial inroads but its penetration is still relatively small. According to the Australian Association of National Advertisers, this means free to air television will remain the most cost efficient way of reaching a mass audience (trans., p. 1129).

New media are also providing a new source of advertising revenue for old media. New media need to build a customer base to attract advertisers. Many new media operators have realised that the most effective approach is to advertise in the old media. Internet service providers spent nearly $31 million on advertising in the main media in 1999, and companies advertising their online services spent an additional $22 million. Over 70 per cent of this expenditure went to metropolitan television and newspapers.[1] This 1999 expenditure was double the 1998 level.

Convergence is breaking down the distinction between old and new media, because many media companies today are a combination of both the old and new (see chapter 2). Convergence is being driven by many factors (see chapter 3), including advertising. This can be seen in the case of classified advertisements. They are a substantial component of advertising expenditure in the old media, having accounted for around 30 per cent of total advertising expenditure in main media in 1998. Nearly 60 per cent of the total expenditure on classified advertisements was in newspapers with such advertisements providing newspapers with nearly 50 per cent of their total advertising revenue in 1998.[2] Many newspapers have now gone online with their classified advertisements to protect their market share from new Internet based operators. Going online has the added attraction of allowing the newspapers to offer interactive services.

Media companies that are a combination of old and new media may have an advantage in the advertising market. Some media companies, with a range of interests across old and new media, are proposing to offer advertisers a single multimedia deal. Other media companies are responding by forming alliances to offer similar deals to advertisers (A*ustralian*, 20 January 2000, 'Media', p. 9). Such deals could be attractive to advertisers if they provide economies of scope. However, they may also be used to induce advertisers to use new infant media which have not yet established a commercially viable customer base for advertisers, and which advertisers would otherwise not use.

As a further sign of convergence, a number of media companies have bought into an online advertising buying division of a major media buyer (*Age*, 25 January 2000, p. 3). The reaction of advertisers and regulators is likely to determine the extent to which deals of this nature occur in the future. Advertisers may be wary of an advertising agency that is part owned by media companies and regulators may be concerned about the implications for concentration, ownership and market power in advertising and broadcasting.

[1] Productivity Commission estimates based on unpublished data from AIS Media.

[2] Productivity Commission estimates based on CEASA (1999a).

‘Fragmentation’

Commercial free to air broadcasters often use the term ‘fragmentation’ to describe the process of product differentiation and diversification — a process that is common in other industries. Fragmentation simply refers to the process of dividing the audience of media operators into smaller subgroups. It is a normal outcome of the operation of markets, driven by the desire of advertisers to reach specific groups. This process is likely to accelerate with the development of new media that provide new platforms for advertising.

The use of product diversification and differentiation to generate greater revenue is typical behaviour of firms in all mature markets in which it is feasible, from soap powder to motor vehicles to wine and even milk. The magazine publishing industry, for example, has pursued this approach, resulting in a dramatic increase in the number of new titles in the 1990s. This has resulted in a highly competitive industry, but the proliferation of titles allows advertisers to target their message to quite specific groups, increasing the effectiveness of their advertising. The success of this approach can be seen in the higher growth in advertising expenditure in this industry, compared with the other forms of main media, which has been achieved with only moderate increases in their advertising rates (tables 4.1 and 4.4).

Multichannelling would provide such a platform for commercial television broadcasters. An increase in the number of services offered by each broadcaster (multichannelling) could allow broadcasters to target more effectively those groups that advertisers wish to reach. This already occurs to a limited extent in the radio industry, where a person may control two stations in the same licence area (see chapter 9).

Advertisers see this process as an important means of effectively targeting their message. As the Australian Association of National Advertisers states:

> [A]dvertisers will increasingly get more sophisticated in their targeting. In its crudest sense advertisers try to reach a particular audience and each product or service differs in relation to the sort of audience that they’re seeking to reach. … if that audience becomes fragmented … then that will enable advertisers to be more focused in how they find that audience. (trans., p. 1129)

Several inquiry participants expressed concern about the impact of fragmentation of the advertising market. The Federation of Australian Commercial Television Stations argued that a fourth commercial free to air television service would increase the available air time for television advertising in Australian markets without necessarily increasing demand for television advertising by a similar amount. The federation stated that ‘the resulting fragmentation of the audience

would, inevitably, increase the difficulty and cost to advertisers of reaching mass audiences' (sub. 150, p 7).

The threat of fragmentation of advertising expenditure may be greater for free to air commercial broadcasters than many other forms of the media. Free to air commercial broadcasters seek to attract a large broad audience. As other forms of media become more effective at targeting specific groups that advertisers wish to reach, free to air 'mass' broadcasting could become relatively less effective. This trend may strengthen with the increasing convergence of broadcasting and other forms of communications, such as the delivery of television services over the Internet. Fragmentation will continue to occur regardless of the number of free to air commercial broadcasting services. But allowing commercial free to air television broadcasters to multichannel (as recommended by this report) will allow them to target audiences better, and to draw some benefit from this fragmentation. The impact of fragmentation on the advertising revenue of free to air television broadcasters is discussed further in chapter 9.

4.4 Conclusion

Commercial broadcasting is closely linked to advertising. The fundamental changes occurring in broadcasting will influence advertising, and vice versa.

The advertising industry, like broadcasting, is undergoing major structural change. The growth of new media and the increasing convergence of old and new media are significantly affecting corporate structures of media operators and advertising agencies. If given the opportunity to do so, new services such as digital quality sound and images, multichannelling, increased interactivity and datacasting could transform the nature of advertising and the ability of broadcasters and advertisers to target particular audiences.

Allowing new commercial broadcasters or relaxing the time limits on advertising is likely to reduce advertising rates on free to air television. But expenditure on advertising has grown strongly for many decades and is likely to continue to do so, as advertisers seek new ways of reaching their customers.

While the revenue from the advertising 'pie' or 'pool' is growing strongly, the pattern of advertising expenditure is likely to change. Free to air television is likely to remain the dominant broadcasting medium for advertising expenditure for some time, although new media (particularly subscription, digital and Web television) are likely to make inroads in the longer term. Allowing free to air commercial broadcasters to multichannel would allow them to diversify their services, which would help them to meet this competition.

5 Australia's audiovisual production industry

The audiovisual production industry incorporates advertisements, films, television programs and, increasingly, new media and multimedia productions. Compared with many major developed countries, the Australian industry has relatively low production costs. It has established domestic and international markets for Australian productions.

The industry faces many challenges in the current environment. These include the transition to digital television broadcasting in Australia, changing sources of finance and investment, and increasing international vertical integration of audiovisual production, distribution and broadcasting. The Australian industry receives substantial assistance from Commonwealth and State government agencies, as well as from Australian broadcasting content regulation (see chapter 11). To develop appropriate and effective broadcasting and audiovisual industry and cultural policy for the future, more needs to be known about the economic structure, finances, incentives and markets of this important industry.

5.1 Types of audiovisual production

The audiovisual production industry produces advertisements, films and television programs. Each of these comprises distinct stages of production — pre-production (development), filming and post-production (mainly editing) — which the same or different companies can conduct. Audiovisual production has important links to other industries such as audio production (music and radio), performing arts and tourism. Most audiovisual material is produced commercially, but educational institutions, community groups and individuals also make films and other creative and educational pieces. Total audiovisual production activity was valued at around $1.6 billion in 1996-97 (AFC 1998, p. 58).

Film and television program production

Australia has a long history of film production, including one of the world's earliest feature films, 'Ned Kelly' (Gonski 1997). Television program production

commenced with the first Australian television broadcasts in 1956. Initially, almost all Australian produced television programs were produced in-house by the broadcasters, with an independent production sector soon emerging (for example, Crawford Productions).

The many different types of film and television program include feature films, short films, telemovies, one-offs, series and serials. The subject matter or genre can be equally varied and can include drama, situation comedy, stand-up comedy, news, current affairs, sport, music, arts, variety, game shows, lifestyle, health, education, cooking, travel and 'infotainment'. The mix of programs made and broadcast changes continually according to program popularity among audiences and advertisers; for example, live variety programs and western dramas appear to have declined in popularity over the years, while news and current affairs appear to be a more constant preference.

Films and television programs are made in Australia by:

- television stations, which produce programs in-house, including mainly news, current affairs and sport programs but also some other television programs;
- Australian production companies, including Australian owned companies (such as Crawford, Southern Star, Beckers, and Beyond Simpson Le Mesurier) as well as subsidiaries of international companies (such as Grundy and Granada-Artist Services). These companies produce a wide range of material, including drama, comedy, action, lifestyle and children's programs;
- co-production teams, which are projects between Australian and foreign partners who share creative control and finance;
- foreign production companies, which are based overseas but produce films and programs in Australia for Australian and/or international markets;
- educational institutions, which make educational programs for in-house use, open university broadcasts and related purposes;
- community groups, which may make programs for their own use or wider distribution (for example, for community television stations); and
- semi-professional and amateur individuals, who produce audiovisual material for their own use or for wider distribution.

Radio programs and music production

Audio production, such as music and radio programs, are very different from audiovisual production. Much of the content of radio, other than music and advertising, is broadcast live from the station's studio. Some radio programs are

pre-recorded in-house or independently and may be syndicated to radio networks and individual stations. Few elements of commercial radio programming are imported, other than music and some sport. Australian radio now has little radio drama or documentary programming except by the Australian Broadcasting Corporation (ABC).

Music for broadcasting is distributed differently from television programs. Pieces of music are not sold exclusively to one radio station, and they may be repeated many times at a low cost per play (the cost of purchase and royalties where applicable). Consumers can easily purchase most popular music to play at home, and musicians allow radio stations to play their songs to encourage these purchases. Radio broadcasts of music (and television broadcasts of music video clips) function partly as advertisements for the music 'product' and partly as programming. The advertising function may not be as important where broadcasters play rare, old or niche music.

Total royalty payments for music played by each commercial radio station are capped at a maximum of 1 per cent of each broadcaster's gross revenue. Royalty payments for the Special Broadcasting Service (SBS) and ABC radio stations are capped at half a cent per head of Australia's population. The Australian Record Industry Association argues that these limits provide an indirect subsidy to broadcasters and advertisers, and:

> … create distortions regarding what is played and the amount of new Australian material that can be produced. The cappings, of course, also have cost recording artists and record labels millions of dollars in foregone fees over the last 30 years. (ARIA, sub. DR259, p. 1)

Research commissioned by the Australian Record Industry Association and the Phonographic Performance Company of Australia estimates that this royalty payment cap costs $12.9 million annually in lost revenue from radio stations for the recorded music industry (ARIA, sub. DR259, attachment).

Advertisement production

Television advertisements are produced mainly for free to air television, but they are also shown on subscription television, SBS, in-house services such as in aeroplanes, shopping centres, cinemas and increasingly the Internet. Radio stations also play recorded advertisements and promotional material. Both radio and television advertisements are usually made specifically for international, national or regional markets (see chapter 4).

Like programs, Australian advertisements for radio, television and other media may be produced in-house by the broadcaster or independently by Australian or foreign agencies. In-house television advertising production is generally limited to station promotional material and advertisements for forthcoming programs and related services. Advertising agencies usually develop television advertisements for goods and services, with production companies and personnel who also work on films and television programs often undertaking the actual production. Radio advertisements may be made by agencies or in-house by the radio station and are much cheaper to produce than television advertisements.

5.2 World market for audiovisual programs

The Australian film and television industry is a small but active player in the world market for audiovisual productions. The international distribution system for film and television programs has some unique characteristics, of which some have anti-competitive implications.

Licence fees

Films and television programs are not often bought and sold outright in the same way that most other goods are traded. Instead, they are traded as intellectual property, with the original creators normally retaining ownership of copyright (although this may be traded too). Generally, broadcasters, cinema operators or others purchase the right to broadcast a particular film or program for one or more times or for a set period of time, and they pay a licence fee for these rights. These rights are exclusive to each market or country, but may be sold into many countries simultaneously.

Alternatively, broadcasters can purchase equity in a program, which gives them a share of any licence fees paid by other broadcasters who wish to show the program (for example, if the program rights are later sold to a broadcaster operating in another country or on a subscription basis). Some inquiry participants said this form of purchase (or joint financing) by broadcasters is increasing both internationally and in Australia (AFC, FFC and Film Australia, sub. 107, p. 23). Additional revenue may also be generated for the copyright holders from sales of licensing rights for videos, soundtracks and related merchandising (for example, toys and clothing).

Structural characteristics of the world market

Certain features of the international market for films and television programs may affect program pricing and availability, and may have anti-competitive implications, particularly for smaller world players such as Australia. These features include:

- pricing to market (price discrimination), where the initial cost of production is expected to be largely recovered in the home market, and where the price (or licence fee) subsequently charged to international purchasers bears little relationship to actual production costs (although it would be expected to at least equal the marginal cost of distribution);
- discriminatory pricing by program producers and distributors according to type of broadcaster. Public broadcasters, for example, may pay lower licence fees than commercial broadcasters pay (SBS, sub. 96; Noam 1991);
- bundling of existing programs by international distributors, where less popular programs are bundled with sought after programs, at an effective marginal cost of zero for the purchaser (AFC and FFC 1999, p. 22);
- output deals, where a broadcaster must agree to purchase all or some of the future output of a distributor or producer for a minimum period rather than purchasing programs individually as they are released. The extent of this practice may be decreasing (Seven Network, sub. 151, p. 22);
- restrictive trade practices in international program distribution. US exporters are exempt from US anti-trust laws under the *Webb-Pomerene Act*. Similar exemptions exist in other countries, so export distributors can engage in collusion and other restrictive practices such as full line forcing; and
- international buying cartels, most notably among European public broadcasters through the European Broadcasting Union (Noam 1991).

Regulation also restricts the international market for television programs. Many countries (including Australia) impose national content quotas on their broadcasters (box 5.1 and appendix F). The UNESCO Florence Agreement of 1956 precludes signatories from imposing tariffs on cultural material such as film and television programs, but allows content quotas (Australia remains bound by this arrangement). The General Agreement on Trade in Services (GATS) as currently applied does not constrain the use of content quotas or subsidies for audiovisual services.

Box 5.1 **Examples of local content regulation in other countries**

Canada has a broadcasting market comparable in size to that of Australia. Canadian free to air television channels must broadcast Canadian programs (in English or French) for at least 60 per cent of broadcasting time. Canadian subscription television must show Canadian content for 16–100 per cent of air time, depending on the type of service provided. Canadian radio must air Canadian material for 35 per cent of popular music and 35 per cent of overall content. Production subsidies and tax incentives are also available for local production (appendix F).

For member countries of the **European Union** (including the United Kingdom, one of Australia's larger television program markets), the 'Television without Frontiers' directive requires broadcasters to reserve a majority of transmission time for European programs and at least 10 per cent of transmission time or program expenditure for European programs produced independently. Quota time calculations exclude news, sports, game shows, advertisements, teletext services and teleshopping. In addition, many non-English speaking European countries require a minimum amount of broadcasting to be conducted in their national language. This requirement is common to many non-English speaking countries worldwide (appendix F).

A small number of nations such as **Japan**, the **United States** and **Mexico** do not have any local content regulations. These countries have large national markets and have built up a strong audience preference for local programs (bolstered in Japan by substantial language barriers to imported programs).

Unusual among smaller countries, **New Zealand** has no local content quotas for free to air, subscription or radio licensees. Instead, the New Zealand Broadcasting Commission (NZ On Air) promotes local content. NZ On Air allocates funds to produce (but not necessarily broadcast) 'at risk' program categories, such as local drama and documentaries, and to promote Maori language and culture. Funding is raised from an annual levy on television set owners (to be replaced by general revenue from 1 July 2000).

Sources: Cultural Industries Sectoral Advisory Group on International Trade (1999); ITC (1998); NZ On Air (1999a); OECD (1999b); Papandrea (1996).

Internationally, the use of national broadcasting quotas may be increasing:

> It's tough and it's difficult but the whole world is moving towards more stringent local content regulations. (News Limited, trans., p. 440)

Some countries such as the United States and Japan do not regulate television programs in this way, but appear to have strong viewer resistance to imported television programs and generally do not purchase large amounts of imported television programming.

Given these cultural and regulatory limitations on the potential demand from foreign purchasers, it has been claimed that each national market regardless of size, must essentially be able to fund its own first release films and television programs:

> There is a limited amount of market … the local country has to pay the majority of the cost of the local content. (SPAA, trans., p. 111)

Cultural characteristics of the world market

National differences such as language, cultural values and entertainment preferences segment the international market for films and television programs, as is the case for other products that have social or cultural characteristics.

In his analysis of the European television market, Noam (1991) argues that programs can be made to appeal to either a domestic or international market, but not to both. This market situation may be the case in Europe, where language (and cultural) differences contribute to strong market segmentation. However, it appears to be less applicable to the international market for films and programs from English-speaking Australia. Arguably, many of Australia's most successful film and television exports have been based on Australian stereotypes or unique imagery. The ten most successful Australian films in the United States between 1981 and 1997 included *Crocodile Dundee*, *Crocodile Dundee II*, *Mad Max: Beyond Thunderdome*, *Shine*, *Mad Max II* and *The Man from Snowy River* (AFC 1998, p. 232) — all films that display a strong 'Australian' identity. This also appears to apply to the export of Australian television programs:

> Something that appeals to international markets has been that product which has a very particular cultural specificity. Shows like 'Neighbours', like 'Water Rats' which are selling very well around the world in many successful international markets, haven't needed to compromise in terms of their specificity to Australian culture, because what makes them attractive to international audiences is that they have a particular Australian character to them. (SPAA, trans., p. 1278)

Neither does language appear to have been a significant barrier to the export and release of Australian productions overseas. In 1996 and 1997, of the 45 Australian feature films released in Australia, 11 were released in Italy, Japan and Spain, and seven were released in France and Sweden, compared with 16 releases in the United States and seven in the United Kingdom (AFC 1998, p. 110).

Structural change in world markets

Vertically integrated, international production conglomerates arose in the 1990s. The largest of these (the 'Big Seven') are Time Warner-EMI, Walt Disney, Sony,

Seagram, Bertelsmann, Viacom and News Corp (AFC and FFC 1999, p. 20). The recently announced merger between AOL and Time Warner-EMI (forming the world's largest media corporation) incorporates audiovisual production, content and distribution platforms in new media, in addition to traditional media interests (see chapter 10).

Greater vertical integration of the industry is significant for the Australian market, because multinational conglomerates such as the 'Big Seven' now incorporate some of the international distributors that previously invested in and distributed Australian features. This may change the future investment and marketing behaviour in relation to Australian films and television programs (AFC and FFC 1999, p. 34). Some inquiry participants claimed that the dominance of integrated, multinational firms in film and television production, distribution and broadcasting reduces demand for independent productions and makes it more difficult for Australian specialist distributors to compete internationally (AFC and FFC 1999, p. 35).

5.3 Australian audiovisual market

Film and television program rights are currently purchased in Australia for viewing in cinemas, on video, on free to air television and on subscription television. Newer platforms for viewing program material, such as the Internet, are also emerging and may eventually also need to purchase broadcasting or screening rights. However, by international standards, the Australian market is small.

While the Australian film and television production industry has been well documented from a social and cultural perspective, little economic research has been undertaken. Little has been published about how it operates as an industry (in terms of economic incentives, sources of value added or demand factors), or about the particular complexities and peculiarities of domestic and international markets. The Commission has used the latest data available. However, in many instances the data have been unsatisfactory, due to infrequent collection by the Australian Bureau of Statistics (ABS) and rapid changes in the industry. Information relating to investment and profitability for the whole industry is not available. Data that are available from industry sources are often inconsistent with ABS data. Given the value of the industry and the various forms of assistance it receives, the statistical information is inadequate.

Characteristics of the Australian market

Demand for audiovisual production in Australia is shaped to a greater or lesser degree by regulatory requirements. In particular, the regulatory restrictions on the number of free to air broadcasters in each region of Australia limits the number of potential purchasers of programs to no more than three commercial and two national free to air broadcasters. This has created a protected oligopsony in Australia's market for film and television program rights, although some limited outside competition is slowly emerging from subscription television and other services which compete to purchase broadcasting rights to some television programs, most notably sports programs (see chapter 12). This limited market directly affects the prices (licence fees) that program producers are able to negotiate, and may create situations with potential for at least tacit collusion (see chapters 9 and 12).

Regulations also require each free to air commercial television station to broadcast at least a minimum amount of Australian made programs and advertisements. Similarly, drama subscription channels must spend 10 per cent of their programming expenditure on Australian film and television production (see chapter 11). These regulations act to increase demand for Australian programs from Australian broadcasters, above the level that otherwise may occur.

Program costs (in the form of licence fees for films and television programs or direct production costs for in-house programs) are a large expense for television broadcasters. Australia's 47 free to air commercial broadcasters, organised into three networks, each with regional subsidiaries (see chapter 2), spent $801 million on producing or purchasing programs in 1997-98 (table 5.1). The largest programming expense was for Australian news, current affairs and sport (40 per cent of total program costs), which broadcasters primarily produce in-house (table 5.5). Australian television broadcasters spent around 70 per cent of their total programming budget on Australian programs.

Table 5.1 **Commercial television broadcaster's program costs, 1997-98**

Type of programming	*Cost to broadcasters*	*Total cost*
	$m	%
Australian news, current affairs, sport	315	40
Imported drama	217	27
Australian light entertainment	127	16
Australian drama	82	10
Australian children's programming	23	3
Australian documentaries	6	<1
Other	31	<4
Total	**801**	**100**

Source: ABA (1999f).

The production of films and television programs can be financed in a number of ways. Direct production by a television station (in-house production) or independent production by an Australian, foreign or mixed production company (co-productions). These financing arrangements often correspond to the markets for which the program is destined — Australian only, foreign only or a mix of Australian and international markets.

The Australian Film Commission (which compiles these data) notes that it is becoming increasingly difficult to classify the sources of finance for a film or television production as being wholly Australian or foreign. This difficulty is said to reflect the increasing complexity of production financing and the increasing incidence of collaboration, partnerships and mergers between Australian and foreign production companies; for example, around 20 per cent of finance for Australian independent television drama production came from foreign investment sources in 1998-99 (table 5.2). A significant proportion of investment for these programs also comes from Australian government agencies (section 5.5).

Table 5.2 **Sources of investment for Australian independent television drama production**

	Australian government [a]		*Australian private* [b]		*Foreign investment*	
	Contribution	*Proportion of budget*	*Contribution*	*Proportion of budget*	*Contribution*	*Proportion of budget*
	$m	%	$m	%	$m	%
1995-96	67.2	36	93.6	49	29.9	15
1996-97	38.5	20	119.0	62	33.7	18
1997-98	57.0	26	110.8	50	51.0	24
1998-99	34.5	22	92.4	58	32.5	20

[a] Includes State and Commonwealth agencies, the ABC and SBS. [b] Includes Australian based film and television producers, distributors, broadcasters and other private investors.

Source: AFC and FFC (1999).

Audiovisual production trends

Changes in the status of some producers may partly explain the fluctuations in the value of independent production expenditure between 1995-96 and 1998-99 (table 5.3). Among Australian production companies, Artist Services was purchased by Granada (a British television group) in 1999, and Grundy was acquired by Pearson (another British group) in 1995. Village Roadshow recently sold 50 per cent of its holdings in Yoram Gross, an Australian animation house, to EM.TV (a German distribution company) (AFC and FFC 1999, p. 16). These companies are now Australian subsidiaries of foreign owned companies. Following the sale of these production houses, the Australian Film Commission may classify their output as 'foreign', even though they may employ many of the same staff from when they were Australian companies. This classification system is not consistent with ABS standard definitions of 'Australian' and 'foreign' companies for data collection purposes.

Table 5.3 **Independent drama and film production[a]**

	Australian independent [b]		*Co-production independent* [c]		*Foreign independent* [d]		*Total independent*	
	$m	hrs	$m	hrs	$m	hrs	$m	hrs
Total television drama[e]								
1995-96	191	611	16	13	50	20	257	644
1996-97	191	549	45	25	76	44	312	618
1997-98	219	650	37	42	50	30	306	722
1998-99	159	503	125	72	102	44	386	619
Feature films								
1995-96	89	–	na	–	132	–	221	–
1996-97	115	–	15	–	68	–	198	–
1997-98	163	–	3	–	80	–	246	–
1998-99	119	–	na	–	173	–	291	–

a Not comparable with data in table 5.5. **b** Programs made under Australian creative control, including Australian project origination and development, but not necessarily wholly financed by Australians. **c** Programs made under the official co-production program (by agreement between Australian and foreign government agencies) or programs for which Australian and foreign personnel share creative control. **d** Programs conceived, developed and produced by non-Australians which have been substantially filmed in Australia. **e** Independent drama includes serials, series, mini-series and drama. **na** Not available. **–** Not applicable.

Source: AFC and FFC (1999); AFC (1999) (not comparable with data in table 5.5).

Total feature film production tends to fluctuate significantly from year to year (table 5.3) because the data are often dominated by a small number of high budget films, which can be financed from either Australia or overseas. Co-productions of television drama increased significantly in 1998-99, particularly for series and serials. The 1998-99 Australian/Canadian co-production 'Beastmaster', for example, consisted of over 20 hours of serial episodes, to be shown on both US and

Australian television. Industry participants reported that co-productions are a new development in Australian television program production, and they are expected to continue in the short term at least (SPAA, trans., p. 1297).

The increase in foreign productions and co-productions may also be due to the establishment of major international studio facilities in Queensland (Warner Roadshow) and Sydney (Fox Studios) (AFC and FFC 1999, p.16). While most industry participants welcome increased production activity from any source, others have concerns about the impact of increased co-productions and foreign productions on Australian cultural content (see chapter 11) and on specific sectors of the industry. The post-production sector of film and television, for example, may not always benefit from increases in foreign filming:

> Offshore production here and co-production … [have] expanded in the last number of years … that is providing employment for crew, for technicians; it's providing employment for performers. What we are not seeing is a huge benefit in terms of use of post-production facilities. That's because at the present time offshore production comes here to use the locations and the physical infrastructure and the crew, and then takes post-production back home. Whether it be to America or Europe, so that the benefits of offshore production and the contribution to critical mass are appearing at the moment in one sector of the industry rather than the total industry. (SPAA, trans., pp. 1267–68)

The Media Entertainment and Arts Alliance claims the advertising industry has not experienced constant growth across all stages of production. The quantity of advertising footage processed in Australia increased in the 1990s (table 5.4.), but the alliance states that this was a result of foreign companies filming in Australia for location reasons rather than an increase in production by Australian companies. Advertising post-production activity has thus declined, leading to a significant downturn in employment in advertising post-production for sound and picture editors, composers, musicians and other post-production specialists (MEAA, sub. DR219, p. 14).

Table 5.4 **Television advertising footage processed in Australia by Atlab[a]**

	16mm	*35mm*
	'000	'000
1996-97	839	3 800
1997-98	888	3 900
1998-99	923	4 100

a Atlab Australia is a film processing company (advertising, television, features) with offices in New South Wales, Queensland and Victoria (Cinevex).

Source: MEAA, sub. DR218, p. 14

The total value of television program and advertisement production increased by about 6 per cent between 1993-94 and 1996-97 (table 5.5). Within this total

increase, the value of in-house television production decreased and the value of independent television production increased in all program categories (especially drama and comedy), indicating a trend toward greater outsourcing of program production by television stations in the 1990s. Both in-house and independent advertising increased.

Table 5.5 **Value of Australian television program and advertisement production**

Type of production	*1993-94*[a]			*1996-97*		
	Television stations	*Indepen-dent*	*Total*	*Television stations*	*Indepen-dent*	*Total*
	$m	$m	$m	$m	$m	$m
Television programs						
Drama and comedy	131.0	95.5	226.5	42.2	323.5	365.7
News and current affairs	350.8	2.8	353.6	269.7	8.2	277.8
Documentaries	24.2	26.2	50.5	8.9	44.4	53.3
Sport	171.6	4.6	176.2	131.8	70.3	202.1
Light entertainment /game shows / infotainment	120.9	40.6	210.2[b]	93.3	42.9	136.2
Other	na	na	55.9	17.0	43.3	60.3
Productions for children	30.0	25.4	55.4	10.5	34.5	45.0
Total television programs	*909.7*	*218.7*	*1128.4*	*573.3*	*567.1*	*1140.4*
Advertisements	26.2	141.7	167.9	37.0	197.0	234.0
Total production	**935.9**	**360.4**	**1296.4**	**610.3**	**764.1**	**1374.4**

[a] Actual dollars converted to constant 1996-97 dollars using an implicit price deflator based on non-farm GDP.
[b] Includes $46.3 million spent on game shows which is not included in previous two columns for 1993-94.

Sources: ABS (1998a); AFC (1998, pp. 65–69).

Subscription television contributed to the rise of certain types of television production in the 1990s. The total amount of sports programming (including subscription and free to air television) broadcast, for example, increased from 8000 hours in 1993-94 to 27 000 hours in 1996-97 (AFC 1998 p. 66). A large proportion of this increase in sport consisted of Australian material, and almost all was purchased by the subscription channels rather than produced by them directly. Australian independent production of sport increased in value from $4.6 million in 1993-94 to $70.3 million in 1996-97 (table 5.5).

This trend to outsource program production has continued since 1997 (AFC and FFC, sub. DR215, p. 10). Commercial networks continued in 1999 to outsource programs previously made in-house: the Nine and Ten networks outsourced previously in-house production facilities to Television Media Services, while Channel Seven negotiated an increased amount of content production with Artists Services and its new owner, Granada (AFC and FFC, sub. DR215, p. 10).

Within Australia, film and television production expenditure is concentrated in New South Wales, Victoria and Queensland (table 5.6). However, it fluctuates from year to year, depending on the location of big budget productions; for example, production expenditure was greater in New South Wales relative to the other states as a result of the filming of big budget features in 1997-98 (*Babe: Pig in the City*) and 1998-99 *(Mission Impossible II* and *Farscape*). The increase in Victorian expenditure as a proportion of total expenditure in 1998-99 was influenced by the production of high budget foreign television dramas (*Noah's Ark*), in addition to local television production such as *Stingers*. The opening of major studio facilities in Queensland (Warner Roadshow) and New South Wales (Fox Studios) is also reflected in those States' proportion of production activity.

Table 5.6 **Location of total production expenditure by State**

	New South Wales	*Victoria*	*Queensland*	*South Australia*	*West Australia*	*Tasmania/ Northern Territory*
	%	%	%	%	%	%
1995-96	29	29	35	1	5	<1
1996-97	40	30	26	3	<1	1
1997-98	58	21	16	1	4	<1
1998-99	49	28	19	4	<1	0

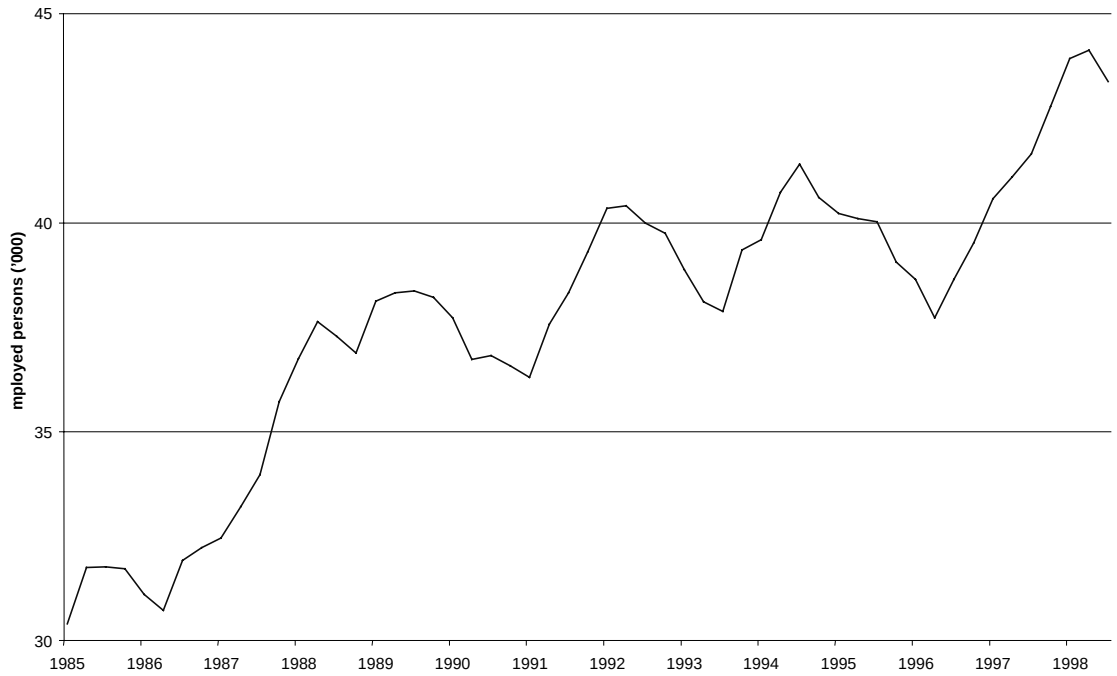
Source: AFC (1999).

Employment and incomes

Film, television and advertising production comprises a small but relatively highly skilled industry. Specialist occupations include directors, producers, scriptwriters, set and costume designers, editors, composers, animators and photographers. Some specialists, such as actors, musicians and designers are also able to work in live theatre and other performing arts. Occupations that easily cross over into other industries include caterers, electricians and carpenters. Most of these positions require technical or other training. Over one third of people employed in film and video production in 1996 had a diploma, degree or higher qualification, compared with one quarter of employees across all industries (ABS 1996; AFC 1998, p. 25).

For the motion picture, radio and television services industry as a whole, employment fluctuated during the 1980s and 1990s, but the long term trend has been upward (figure 5.1). The film and television production sector of the broadcasting industry employed about 9000 people in 1996-97 — up 57 per cent from 6000 in 1993-94 (AFC 1998, p. 62). Part time employment comprised 41 per cent of the total employed (ABS 1996; AFC 1998, p. 25).

Figure 5.1 **Employment in motion picture, radio and television services, September 1985 to June 1999[a]**



a ANZSIC classification no. 91. Includes distribution and broadcasting services as well as film, television and radio production. Quarterly data, four quarter moving average.

Data source: ABS Labour Statistics on dX-Online database (accessed September 1999).

Employment, particularly in the independent production sector of film and television production, tends to be project based rather than permanent, and sometimes includes periods of unemployment or employment in other industries. There is also considerable movement of personnel between the film, television and advertising sectors of the production industry, which require similar technical and creative skills:

> There is significant cross over of production personnel between most genres except news, current affairs and sport. While some individuals may specialise in a particular area, the broad pool of performers, directors, writers and technician staff regularly work across film, television and commercials. (AFC and FFC, sub. DR215, p. 8)

Indeed, the Australian Film Commission and Australian Film Finance Corporation estimated that 70 per cent of technical staff move regularly between commercials and film and television projects, with most people preferring to work in film or television rather than advertising when work is available (AFC and FFC, sub. DR215, p. 31). The Australian Association of National Advertisers said this preference has led to some advertising production being moved offshore in response to the lack of availability of skilled personnel (AANA, trans., p. 1120).

Incomes in film and television production can vary widely among individuals. However, ABS data show they are comparable, on average, to incomes in the wider community. Average weekly earnings for employees in film and video production (ANZSIC 9111) were $732 in 1996. Average weekly earnings for cultural and recreational services (includes film and video production) were $784 in 1998, compared with $782 across all industries (ABS 1999d). The Australian Film Commission and Australian Film Finance Corporation estimate that the average annual income range for employees in film and television production is between $14 000 and $30 000 per year (AFC and FFC, sub. DR215, p. 12). The Screen Producers Association of Australia and the Media Entertainment Arts Alliance stated that real wages and salaries for many positions in film and television production increased during the 1990s, except for screenwriters, whose incomes remained static (MEAA, sub. DR272, attachment 2).

Trends in Australian trade in television programs

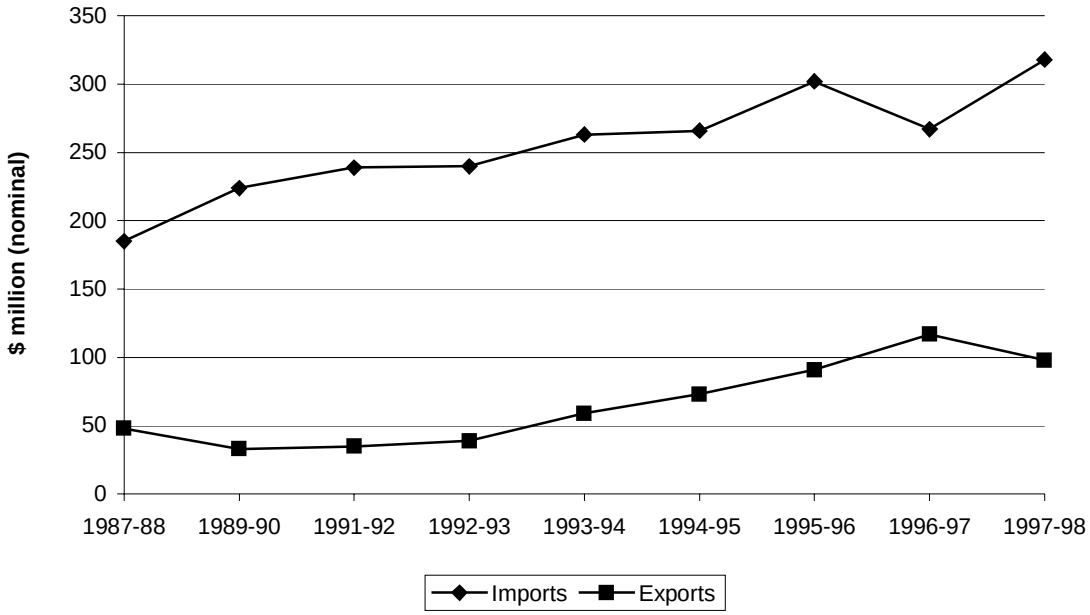
Australian television program exports and imports (that is, the value of international sales of screening and broadcasting rights in $A) both increased during the 1990s (figure 5.2).

Exports

Export markets for Australian television programs vary over time. Regular sales of broadcasting rights for adult drama series and serials are made to the United Kingdom, South Africa and parts of Europe. Australian children's programs have been particularly successful as exports. They appear to be well regarded, and there is considered to be a dearth of quality (educational and drama) children's programs available internationally (ACTF, sub. 102, p. 10). An example of recent success is the new children's series *Round the Twist 3*, which has been pre-sold to the BBC, Nikelodeon UK and the Disney European channels (ACTF, nd).

The Australian Film Commission notes that the downturn in Australian television program exports in 1997-98 was attributable to consolidation among European broadcasters, competition from US studios offering long term output deals, increased emphasis on local production in many countries, and decreased demand from cable and satellite broadcasters (AFC, sub. 146, p. 2).

Figure 5.2 **Australian trade in television programs (royalty payments)[a]**



a Nominal value of royalty payments in $A.

Data sources: ABS data cited in AFC (1998, p. 198); AFC (sub. 146).

Europe is still the main export market for Australian television programs, but export growth is slowing after a strong increase in the 1990s. This slowing appears to partly reflect the launch of digital broadcasting services and the availability of pay television services overseas. Networks are now establishing their own archives, and have signed long term output contracts with major production studios. The Australian Film Commission states that export growth in the United Kingdom market is slowing in response to increased competition from local and international production, causing a decrease in pre-sales of Australian features to Channel 4 and the BBC (AFC and FFC 1999, p. 35).

On the other hand, the Australian Film Commission and Film Australia believe new services and technology in the European Broadcasting Union will lead to an increase in the demand for secondary rights to programming in the future (AFC and FFC, sub. 144, p. 20). The Australian Children's Television Foundation notes that it received offers from GNTV, a new niche children's subscription channel in the United Kingdom, for episodes of *Lift Off* which had already been screened eight times on Channel 4 (ACTF, trans., p. 1497).

Imports

The main source countries for imported television programs are the United States and the United Kingdom. For the important program category of adult drama (including comedy), Australian program producers generally regard US programs as their main competition both domestically and internationally. US programs are more costly to produce, but these costs can be recouped through sales in the much larger US market. Foreign sales of US programs are then priced on the basis of what the market will bear. Some inquiry participants claim that Australia is a relatively high priced market, paying more for US programs than many other countries pay.

The proposed mandating of high definition digital television may also have implications for Australia's imports of television programs. Countries that broadcast in standard definition (such as the United Kingdom and Europe) are unlikely to produce programs in high definition transmission to supply the small Australian market. This may reduce the number of countries supplying imported programming and thus may reduce the diversity of television programs suitable for Australian broadcasting (see chapter 11).

Australian trade in advertisements

The proportion of imported advertisements broadcast on the commercial television networks fluctuated between 1992 and 1999, but appears to have now plateaued at around 10 per cent (see chapter 11). Some international companies now use imported commercials, including Visa, Phillips, Reebok, IBM and Gillette (AFC and FFC, sub. 215, p. 28), although some (such as McDonalds and Coca-Cola) still prefer to use Australian produced advertisements (see chapter 11). The Commission found no data are available as to the proportion of Australian advertisement exports.

Cunningham (1992) found that the Australian advertising production industry was sophisticated and flexible, with the ability to create advertisements for both local and international markets. Equally, advertisements with an Australian 'look' for an Australian audience could be created by both Australian owned and international agencies:

> In general it is accurate to say that the advertising industry has been dominated by transnational advertising agencies … the re-emergence of successful locally owned agencies … in the 1970s and 1980s correlates closely with the moment of cultural significance in television advertising. …There is ample evidence of transnational advertising agencies engaging successfully with nationalist concerns —– from the Australian Mining Industries Council 'It's the backbone of the country' campaign of the 1970s run by D'Arcy McManus-Masius, to the McCann Erikson 'It's Time' campaign for the ALP in 1972. (Cunningham 1992)

5.4 International competitiveness

Evidence submitted to this inquiry indicates that the Australian film and television production industry is internationally competitive in terms of production costs (AFC, FFC and Film Australia, sub. 107, pp. 12–14; SPAA, sub. 47, p. 16). International investment in permanent production facilities and in film and television production in Australia — totalling $108 million in 1997 — are indicative of the industry's relative efficiency (AFC, sub. 146, p. 2).

Advertisement production costs

The Australian Film Commission and the Australian Film Finance Corporation estimate that most television commercials in Australia currently cost between $150 000 and $400 000 to produce (excluding broadcast fees) (AFC and FFC, sub. DR215, p. 28). The Australian Screen Directors Association estimates that the cost of advertisement production in Australia is 20–30 per cent lower than in Europe and North America reflecting cheaper location fees, equipment and skilled labour; for example, the Australian Screen Directors Association claim an Australian director of photography would earn A$2000–2500 daily on a national advertisement, compared with the equivalent of A$2500–3000 in the United Kingdom and US$10 000–15 000 in the United States (ASDA, trans., pp. 1322–23).

The Australian Film Commission and Australian Film Finance Corporation claim that Australian production of high budget commercials ($1 million plus) fell during the 1990s and 'reversioning' of foreign commercials (adding new audio or editing visuals) to suit the local market increased (at a cost of between $30 000 to $40 000 per advertisement) (AFC and FFC, sub. DR215, p. 28). Some industry participants attributed this trend to regulatory changes for advertising, which have allowed up to 20 per cent of advertising time on television to be filled with imported advertisements since 1992. However, less than 10 per cent of all advertising time on commercial television was foreign in 1999. All advertisements surveyed by the Australian Broadcasting Authority that were classified as Australian were found to be wholly pre-produced, filmed and post-produced in Australia or New Zealand (see chapter 11) (ABA, sub. DR300, p. 3).

Television program production costs

Average costs of production for Australian television programs vary significantly according to the type or genre of program (table 5.7). Gameshows, lifestyle and infotainment programs are said to be cheaper to produce than documentaries, drama, news and current affairs, and children's programs. In all formats, long

running series and serials cost less to produce per hour than mini-series or one-off specials.

Table 5.7 **Examples of Australian television program production costs**

Program type	*Example*	*Program production costs*
		A$'000/hour
Light entertainment/magazine		75–120
Drama series	Neighbours, Home and Away	100–120
Action drama series	Water Rats, Blue Heelers	300–500
Children's drama	Round the Twist	660–840
Documentary		<500

Sources: AFC, FFC and Film Australia (sub. 107, p. 12; sub. DR215, p. 24).

Local drama production is one of the more costly formats to produce, but Australian production costs are relatively lower than those in other countries. The costs of producing drama in the United States, for example, are much higher than in Australia; the popular series 'Friends' costs US$3.75 million to produce per hour. For many high cost American productions, a large proportion of the total cost relates to the cast (AFC, FFC and Film Australia, sub. 107, p. 11).

The high production costs of children's drama relative to those of other types of programming may be due to a range of factors, such as more stringent standards, greater scriptwriting and development time, or the high costs of animation. The production costs of documentaries vary greatly, depending on the location, technology and format. As with drama, documentary series are cheaper to produce per hour than one-off programs; in 1997-98, 90 per cent of Australian documentaries were produced for less than $500 000 per hour, compared with typical production costs of between A$500 000 and over A$1 million for foreign documentaries (AFC and FFC 1999, p. 52).

Television program licence fees

Australian production costs appear to be internationally competitive and are generally lower than those for imported programs of the same genre. However, production costs are not directly related to licence fees. Reflecting international and local market factors, the licence fees for Australian programs are often higher than those for similar imported programs, even though the imported program costs more to produce (table 5.8).

Licence fees for new US drama are around $50 000 per hour, compared with $200 000 to $300 000 for new Australian drama, although some inquiry participants

said US program licence fees are increasing (Seven Network, sub. 151; AFC, sub. 146). Licence fees for telemovies and mini-series are higher than those for other types of drama programming (table 5.8). This may have contributed to the decline in their production relative to production levels of other types of drama, although other factors such as changes in the tastes and preferences of audiences and advertisers are also relevant.

Table 5.8 **Examples of Australian television broadcasting licence fees**

Program type	*Australian program licence fees*	*Imported program licence fees*
	A$'000/hour	US$'000/hour
Series drama	200–300	11–50
Serial drama	50–125	
Action drama series	500	
Telemovies/mini-series	250–300	
Children's drama	80–110	20–5
Documentaries	30–40	5–20

Sources: AFC, FFC and Film Australia (sub. 107, pp. 13, 14; sub. DR215, p. 15); AFC (1999).

The Screen Producers Association of Australia argues that strong goodwill for imported programs that have gained prior success in their home markets is a further difficulty for first release Australian programs trying to compete against imported programs. If Australian audiences know a program has been popular overseas (through advertising and promotion of the program), they will watch it from the first episode. However, new Australian programs can take longer to develop a regular audience; for example, 'Neighbours', was screened for several years before becoming popular with viewers and advertisers. This means the investment risk to the broadcaster is relatively greater for a new Australian program than for an established imported program (SPAA, trans., pp. 115–18).

Australian local licence fees (from Australian television broadcasters) represent a smaller proportion of the program costs of film and television program creators than in the United Kingdom or United States. The AFC and Australian Film Finance Corporation estimate that average broadcast licence fees in the United States cover 70 per cent of US program production costs. In the United Kingdom, domestic broadcast licence fees cover 70–80 per cent of program production costs. Thus 20–30 per cent of program production costs remain to be recouped in international markets (AFC and FFC 1999, p. 42).

For the Australian market, the AFC estimate that local licence fees account for between 20 to 50 per cent of Australian program costs, depending on the format (AFC and FFC 1999, p. 42). This larger gap between program production costs and domestic licence fees means Australian program producers must recoup a larger

share of production costs from other sources (such as the international market or government subsidies) than their overseas competitors. Therefore, if creators are unable to secure international sales for Australian programs, the continued viability of those film and television projects in the domestic market becomes less likely. Examples of Australian programs that rated highly on Australian television but were discontinued as a result of difficulties with securing international sales include 'Good Guys, Bad Guys', 'State Coroner' and 'Wildside' (AFC, FFC and Film Australia, sub. 107, p. 18).

Digital television production costs

Some inquiry participants stated that production costs increased during the 1990s. These cost increases were said to be due to technology changes and market changes, among other factors. Convergence and digital technology will have major effects on the production of audiovisual content and advertisements. New technologies, which are creating new possibilities for media products and delivery platforms, are driving much of this change (see chapters 1, 3 and 7).

Conversion to digital television (see chapter 7) can be expected to increase production costs for television programs and advertising. In the United States, production equipment manufacturers, keen to have digital technologies adopted, have been providing networks and production companies with free or subsidised digital cameras and other equipment. Australian producers are unlikely to receive these benefits, despite the higher costs associated with digital equipment and the additional requirements of high technical and visual quality. These higher costs include the cost of sets, design and editing, which must be of a similar standard to feature films.

This increase in production costs will be larger for high definition television transmission than for standard digital formats. The proposed regulations will require high definition programs to be shot on 35mm or high definition video rather than 16mm film or standard video resolution (AFC and FFC, sub. DR215, p. 44). In addition, the December 1999 Commonwealth Government policy proposes to preclude broadcasters from 'up-converting' existing programming to meet the high definition transmission quota. Standard definition digital transmission can use the cheaper film types.

The higher costs associated with the mandated high definition digital transmission have implications for the diversity of television programs which are produced. Only programs with high production values (of a standard similar to feature film) will be produced in high definition format, in preference to serials, game shows and other magazine/lifestyle programs, which are generally filmed on video, and may not be

able to be upgraded. Also, the broadcast of live sports programs will be affected (see chapters 11 and 12).

Australia's traditional export markets, the United Kingdom and Europe, have adopted standard definition in preference to high definition digital transmission. These markets will not be prepared to pay an additional premium for programs produced to meet the high definition standard. In the United States, where high definition broadcasting is available, there is little demand for programming in this format, with broadcasters providing multichannel and interactive services rather than high definition programs (see chapter 7). This increase in relative costs, without additional returns on the export markets, will make it more difficult for the Australian audiovisual production sector to generate profits.

5.5 Australian government assistance to film and television production

Financial assistance for Australian film and television production is available from a range of Commonwealth and State government agencies. The industry has long received significant government support for feature films and selected types of television program. In the 1970s the primary source of assistance was through direct subsidies and grants; in the 1980s this approach was replaced with the tax incentive schemes 10A and 10BA; and in the 1990s, the Australian Film Finance Corporation and other specialist agencies became the major source of government funding (AFC 1998, p. 75).

Commonwealth government assistance

The principal Commonwealth funding agency is currently the Australian Film Finance Corporation (established 1988), with an annual budget of around $48 million (table 5.9). In 1997-98 more than half of this amount ($27.1 million) was spent on television program production, including telemovies, drama series and mini-series (but not serials), documentaries and six children's television drama programs (which received $16.6 million in funds). The other half of Australian Film Finance Corporation funding goes to producing (mostly feature) films, of which many are eventually screened on Australian free to air and subscription television.

Table 5.9 **Commonwealth Government funding to film and television production**

	1989-90	*1991-92*	*1993-94*	*1995-96*	*1997-98*	*1999-2000*[a]
	$m	$m	$m	$m	$m	$m
Australian Film Commission	16.1	16.6	17.9	20.5	15.5	16.5
Australian Film Finance Corporation	54.8	68.0	57.0	50.0	48.0	48.0
Australian Children's Television Foundation	0.6	1.2	2.0	2.3	2.3	2.3
Commercial Television Production Fund	–	–	–	20.0	14.2	–
Film Australia Limited	5.9	6.8	6.5	6.6	6.5	6.7
SBS Independent	–	–	–	4.3	4.2	4.6
Total[b]	**95.0**	**111.1**	**103.0**	**129.2**	**114.9**	**113.6**

[a] 1999-2000 funding amounts include an adjustment for depreciation of capital assets ('capital user charge'), introduced as part of the implementation of accrual budgeting in the Federal Budget 1999-2000. [b] Totals include budget allocations for the National Film and Sound Archive and the Australian Film Television and Radio School (non-production agencies). **–** Not applicable.

Sources: AFC (1998, p. 20); Commonwealth of Australia (1999).

Eligibility requirements for Australian Film Finance Corporation funding include securing at least 50 per cent private investment (it invests up to 50 per cent of budget only); minimum Australian pre-sales of at least $55 000 per half hour; pre-sales in a major overseas market; and no more than 26 hours of programming in total. Given that funding from the Australian Film Finance Corporation is often conditional on securing pre-sales in international markets, program creators are under additional pressures to secure international sales.

The Australian Film Commission does not directly finance film and television production, but instead assists in the development and promotion of programs (including productions unlikely to meet the pre-sale requirements of the Australian Film Finance Corporation). Other Commonwealth agencies also produce or contribute to some television productions. Film Australia is a Commonwealth owned production and distribution company that specialises in Australian documentary and educational programs, the Australian Children's Television Foundation specialises in children's programs and SBS Independent commissions a small number of Australian productions for broadcasting on SBS.

The Commercial Television Production Fund operated from 1994 to 1997. Its objectives were 'to increase the amount, diversity and quality of Australian television drama, documentaries and children's programs' (AFC 1998, p. 21). During its three year life, the fund invested $53 million in 37 television productions

which cost a total of $72 million to produce and comprised 80 hours of new programming (AFC 1998, p. 21). Programs made with its support did not qualify for inclusion in the broadcasting quotas (see chapter 11). This limitation appears to have been aimed at encouraging Australian programming additional to the quotas (and at minimising perceptions of 'double dipping') (FACTS, sub. 49, p. 15). In 1998, 16.5 hours of programs funded by the Commercial Television Production Fund were broadcast, including series and documentaries (ABA 1999f, p. 6).

The pilot for a new Commonwealth program, the Film Licensed Investment Company scheme, commenced in April 1999. Licences were awarded to two Australian companies, Content Capital and Macquarie Film Corporation, for each to raise capital under concessional conditions of up to $20 million in total for investment in qualifying Australian films. Projects developed or produced by broadcasters are ineligible. This pilot program has not yet been completed and its outcomes not yet evaluated.

Tax incentives for film and television production

Assistance to the film and television industry in the form of tax incentives began in 1981, through division 10B and 10BA of the *Income Tax Assessment Act 1936*. These schemes aim to increase the level of private investment in Australian projects, and are subject to Australian ownership, control and characteristics criteria. Although these tax concessions are still available, they have been largely superceded by the Australian Film Finance Corporation and Film Licensed Investment Companies as preferred assistance agencies for the industry.

Division 10BA is an accelerated tax concession intended to encourage investment in high quality, high risk film products. It applies to television mini-series, drama, documentaries or feature films made completely in Australia and with Australian creative control. When first introduced, 10BA allowed film investors to claim a 150 per cent tax deduction on their investment; this deduction was reduced in stages to 100 per cent in 1988. Until 1988, 10BA also allowed a 50 per cent reduction in tax payable on income earned from the project. The eligibility restrictions are stricter than those that apply to the creative elements test for the Australian content quota (see chapter 11).

The 1980s were the heyday of division 10BA projects. Between 1980 and 1988, 10BA tax concessions assisted 92 per cent of eligible Australian film and television projects, amounting to 896 projects with production budgets totalling $959.73 million (AFC 1988, p. 87). These projects included popular television mini-series such as 'The Dismissal' and 'Bodyline' (AFC, trans., p. 1003). By contrast, between 1988-89 and 1996-97, only 186 projects received 10BA tax concessions.

These had combined production budgets totalling $421.18 million and accounted for 36 per cent of eligible production projects.

Eligibility criteria for division 10B tax concessions are less restrictive than those for 10BA. They can be applied to mini-series, series, short drama, multimedia, promotional, variety, educational and training productions. They allow a 100 per cent deduction to investors over two financial years, beginning in the year in which the film first derives income. The 'Australian characteristics' criteria for both 10BA and 10B are more comprehensive than those that apply to Australian films and television programs for the commercial television quotas (see chapter 11). They include creative control, subject matter, location of filming, copyright ownership, source of funds and production expenditure.

Perceived abuse of these tax concession schemes prompted their partial replacement by the pilot Film Licensed Investment Company scheme. Some films funded by 10B and 10BA were never released, while other projects submitted inflated budgets to claim greater deductions. The Australian Taxation Office investigated 10 films whose claimed deductions were greater than actual expenditure (DCITA, 1998c).

State government assistance

Financial assistance is also available from a number of State government film agencies for various purposes, including script development, pre-production and production.

- The Film and Television Office of New South Wales provides investment loans and funding to films, drama, documentaries, children's programming, shorts, cultural and multimedia projects. It invested $1.9 million in productions in 1997-98.
- Cinemedia of Victoria provides equity investments and advances to drama, documentaries, children's programming, shorts, cultural and multimedia projects. It also has an agreement with the ABC to fund comedy projects.
- The Pacific Film and Television Commission of Queensland provides loans and grants to drama, documentaries, children's programming, cultural and multimedia projects.
- The South Australian Film Corporation (the first State film agency, established in 1972) provides loans and equity investments to films, drama, documentaries, shorts, children's programming, cultural and multimedia projects.
- ScreenWest of Western Australia provides loans and funding to film, drama, documentaries, animation and multimedia projects.

- Arts Tasmania provides assistance in the form of low interest loans. The Tasmanian Government is in the process of developing a formal film, television and multimedia office similar in format to those in the other states.

State governments also assist with indirect assistance and tax concessions.

- Queensland offers salary rebates for cast and crew of 8–10 per cent of the weekly wage (depending on the value of the production) and a payroll tax rebate for projects with a minimum expenditure of A$3.5million.
- South Australia offers a payroll tax exemption of 6 per cent for feature films.
- Victoria offers an attachment program, which pays $400 per week to film makers who 'attach' themselves to a company or individual for up to 12 weeks.

All States offer nonfinancial assistance to film and television program production, such as advice and assistance in finding, securing and organising suitable locations for filming, or closing off and securing streets and public areas at no charge while filming proceeds.

Government reviews

There have been many policy reviews and studies of the Australian film and television production industry. However, they have often had a short term focus and have concentrated on the cultural and artistic qualities of the industry, rather than on its economic structure, incentives and markets.

The Gonski review (1997) of Commonwealth assistance to the film industry made a series of findings and recommendations on government assistance (box 5.2). A particular concern was the effectiveness of the 10BA and 10B tax concessions schemes because 'a number of films are never released while others appear to have inflated budgets' (AFC 1988, p. 87). The review recommended replacing both schemes with Film Licensed Investment Companies. These companies were introduced as recommended, but both tax concession schemes continue to operate.

Box 5.2 **The Gonski review**

The Gonski review of all Commonwealth Government assistance to the film industry made the following recommendations:

- maintaining direct funding support to the industry until 2001, then reviewing;
- replacing tax concession schemes 10B and 10BA with Film Licensed Investment Companies as a means to encourage private investment;
- outsourcing the Australian Film Commission's distribution and marketing functions, but retaining its role in script and professional development;
- having Film Australia become a project commissioning body, co-located with the Australian Film Finance Corporation;
- ensuring the Media Entertainment Arts Alliance has no role in approving the importation of overseas artists for offshore productions; and
- appointing an independent research consultant to assess the opportunities for increasing efficiency in corporate service areas of government film agencies.

Sources: AFC (1998); Gonski (1997).

What are the effects of this assistance to audiovisual production? Production subsidies that are not tied to broadcasting or pre-sales requirements may not result in films and programs being shown to an audience. They may therefore fail to deliver the potential social and cultural benefits of Australian programming to the Australian community (see chapter 11). The Film Finance Corporation and other government production subsidies are contingent on local and international pre-sales agreements and thus the risk of non release or non broadcast is low.

The effectiveness and efficiency (including administrative efficiency) of subsidies largely depends on the manner in which they are targeted and on their operating procedures. When administered well, they can target programs to fulfil community objectives or perceived market gaps. Incorrectly targeted subsidies may promote films and programs that audiences do not demand, that the market would have provided anyway, or that would have been better provided through other means, such as a national broadcaster or subscription service.

PART IV

OPENING UP THE SPECTRUM

6 Managing Australia's broadcasting spectrum

Traditionally, broadcasting services in Australia have been delivered using the radiofrequency spectrum. Changes in technology mean that broadcasting services may now be delivered via different means, such as broadband cable, but spectrum remains the dominant delivery platform for these services.

The radiofrequency spectrum is a scarce public resource. It is important that Australia makes the best possible use of it and that the community gets a fair return. This chapter considers measures to encourage the efficient use of spectrum and to improve spectrum planning and allocation. It also proposes measures to promote efficient, effective and transparent public administration of broadcasting.

6.1 The role of broadcasting licences

Currently, broadcasting licence entitles a broadcaster to obtain access to spectrum in the form of apparatus licences. That is, the licence that provides the right to broadcast content and regulates the behaviour of the broadcaster cannot be separated from the licence that grants access to the spectrum.

The *Broadcasting Services Act 1992* (BSA) specifies the following licence categories:

- national television and radio;
- commercial television and radio;
- community television and radio;
- subscription broadcasting;
- subscription narrowcasting; and
- open narrowcasting.

A further licence category of 'datacasting' was added to the BSA in 1998, while another category, 'international broadcasting' is currently before Parliament.

The characteristics of the various types of broadcasting services are summarised in table 6.1. All of these services can be provided using broadcasting spectrum, although some (such as subscription broadcasting) are not currently provided that way. The BSA also allows the Australian Broadcasting Authority (ABA) to issue broadcasting licences to operators that use different delivery platforms (such as cable or satellite).

Broadcasting licences provide the framework for managing the broadcasting spectrum, as well as granting the right to become a broadcaster, with its associated content and ownership restrictions. The licensing system determines a range of connected issues related to broadcasting spectrum:

- who should be granted the right to use a particular part of the spectrum?
- what technical restrictions should be placed on the use of the spectrum?
- what services should be permitted on that part of the spectrum?
- what fees should be levied for using the spectrum?
- what behavioural requirements/modifications should be applied to those using the spectrum?
- what happens when regulatory conditions are not met?

Broadcasting licences have become highly complex regulatory instruments that provide the framework for virtually all the regulatory measures of the BSA. Given that licences are such a powerful, convenient and flexible regulatory device, it is possible to keep adding regulatory conditions. A single instrument can be used for so many purposes that it may be difficult to determine the regulatory ends being pursued; in this way, licences can become a vehicle for regulation creep, with significant but hidden unintended or even contradictory effects. It is a general principle that regulatory instruments (such as licences) should be targeted to particular objectives. They can become less efficient at achieving their objectives where they attempt to target too many. The system can also lose transparency, as means and ends become blurred.

The current licensing system has not encouraged the efficient use of broadcasting spectrum. The system tries to regulate broadcasters' behaviour and manage spectrum simultaneously. Benefits (such as privileged access to spectrum and limits on competition) are set against obligations (such as Australian content requirements) through a series of *quid pro quos*, rather than through direct pursuit of each objective. The true costs and benefits of these *quid pro quos*, especially their effects on the community, are difficult to identify. One of the major effects has been on spectrum use. More spectrum than necessary has been allocated to deliver

particular services, and there has been little scope for reallocating spectrum from less to more valuable uses.

The combined broadcasting and spectrum licence also creates anomalous penalties for broadcasters using spectrum, who would lose their access to spectrum if their licence to broadcast is revoked.

6.2 Managing broadcasting spectrum

The spectrum comprises the range of electromagnetic waves that allow wireless communication. This ability to facilitate communication makes the spectrum a valuable resource — a value affected by the following characteristics:

- it is not homogeneous — that is, some frequencies are more suited to some uses than others, and the technical characteristics for each use vary;
- it is finite — that is, the possibility of interference (caused by other users' signals) means that the spectrum cannot sustain an unlimited number of services at any point in time; and
- it is non-depletable — that is, while use at any time is limited, using the spectrum today does not prevent future use (BTCE 1990).

The spectrum can be characterised as a common property resource (similar to a fishery or a forest).[1] The benefits of using a common property resource are available to anyone, but no-one is responsible for determining how much of the resource each person can use or how it should be used. This creates incentives for individuals to overuse the finite resource. The inefficient use of common property resources is often described as the 'tragedy of the commons' and arises from the absence of property rights setting out appropriate rules, benefits and duties for individuals using the resource. Spectrum is 'overused' when two operators trying to use the same piece of spectrum interfere with each other's signals.

[1] Common property resources are non-excludable (it is difficult to control access to the resource) and rivalrous (use of the resource by one person affects the use of the resource by another).

Table 6.1 **Main broadcasting services and conditions of operation**

Broadcasting service	*Ownership restriction*	*Content restriction*	*Competitive allocation used*	*Main delivery platform*	*How access is obtained*	*Fees*	*Licence length*	*Licence renewal*
Commercial television broadcasting	Foreign ownership/ cross media	Heavy	For licences issued after 1992	BSB[a]	Apparatus licence part of broadcasting licence	Licence fees; apparatus licence fees	5 years	automatic
National television	Government owned	Heavy	..	BSB	Spectrum reserved under BSA	..	..	..
Community television broadcasting	Non-profit	Medium	..	BSB[a]	Apparatus licence part of broadcasting licence	Apparatus licence fees	5 years	automatic
Commercial radio broadcasting	Cross media restrictions	Medium	For licences issued after 1992	BSB[b]	Apparatus licence part of broadcasting licence	Licence fees; apparatus licence fees	5 years	automatic
National radio	Government owned	Heavy	..	BSB	Spectrum reserved under BSA	..	..	..
Community radio								
— BRACS	Indigenous nonprofit	Medium	..	BSB	Apparatus licence part of broadcasting licence	Apparatus licence fees	5 years	automatic
— Other	Nonprofit	Medium	..	BSB[c]	Apparatus licence part of broadcasting licence	Apparatus licence fees	5 years	automatic
Commercial subscription television	Foreign ownership	Medium	First two satellite licences/ purchase of apparatus licence[d]	HFC cable/ satellite/ MDS apparatus licence	Lease/ownership infrastructure; apparatus licence	Apparatus licence fees; lease costs for satellite/cable access	perpetual[e]	..

(Continued next page)

Table 6.1 (continued)

Broadcasting service	*Ownership restriction*	*Content restriction*	*Competitive allocation used*	*Main delivery platform*	*How access is obtained*	*Fees*	*Licence length*	*Licence renewal*
Narrowcasting[f]								
— Open television	..	Light	..	BSB	Separate apparatus licence	Apparatus fees	5 years	Non-renewable[g]
— Open radio	..	Light	To purchase apparatus licence	BSB	Separate apparatus licence	Apparatus fees	5 years	Non-renewable[g]
— Closed	..	Light	..	BSB	Separate apparatus licence	Apparatus fees	5 years	Non-renewable[g]
Internet	..	Light	..	Copper wire/HFC cable	Lease/ownership infrastructure; apparatus licence	..	..	..
Datacasting[h]	..	Heavy	To purchase datacasting licence	BSB	Apparatus licence part of broadcasting licence	To be determined by ACA	To be determined by ACA	To be determined by ACA

a Under the BSA, commercial and community television broadcasting services may be delivered using any platform. However, historically services have been provided using the broadcasting services bands of the spectrum, and no commercial or community television broadcasting services have been provided using a different delivery platform. **b** Under the BSA, commercial radio broadcasting services may be delivered using any platform, although historically services have been provided using spectrum in the broadcasting services bands. Currently six commercial radio broadcasting licences on issue are not broadcasting services bands licences. However, no services are being aired using these licences. **c** Under the BSA, community radio broadcasting services may be delivered using any platform. However, historically services have been provided using the broadcasting services bands of the spectrum, and no community radio broadcasting services have been provided using a different delivery platform. **d** The first two subscription television licences were auctioned. These licences granted permission to broadcast and access to the satellite. All other subscription broadcast licences are issued over the counter by the ABA on application and payment of an application fee. Some of these services are provided using multi-point distribution service apparatus licences which were issued at auction. **e** All subscription television licences are perpetual. However, the apparatus licences used to deliver those services are for five years. **f** Narrowcasters do not need a broadcasting licence as such. The BSA permits these services to be offered but individual operators are not licensed. However, narrowcasters do need an apparatus licence from either the ABA or the ACA. Some of these apparatus licences have been issued at auction. **g** No restriction on re-application (but not automatically renewable). **h** Based on announced government policy (chapter 7).

BSB — Broadcast services bands. HFC — Hybrid fibre cable. MDS — Multi-point distribution system. BRACS — Broadcasting for Remote Aboriginal Communities Scheme. ACA — Australian Communications Authority. ABA — Australian Broadcasting Authority. **..** Not applicable.

Sources: ABA (sub. 45); ACA (sub. 28).

Licensing access to the radiofrequency spectrum

The approach taken in Australia (as in other countries) to deal with the common property resource problem of the spectrum is for the national government to coordinate spectrum use, in accordance with international conventions and standards (box 6.1). Operators are issued licences which give them the authority to use parts of the spectrum and specify technical details for use.

Box 6.1 Spectrum allocation

Under international agreement, the radiofrequency spectrum is divided into eight frequency bands. Each band is ten times the size (in hertz, the measure of frequency) of the preceding band.

Broad radiofrequency spectrum bands

Frequency band	*Frequency range*[a]
Very low frequency (VLF)	3–30 kHz
Low frequency (LF)	30–300 kHz
Medium frequency (MF)	300–3000 kHz
High frequency (HF)	3–30 MHz
Very high frequency (VHF)	30–300 MHz
Ultra high frequency (UHF)	300–3000 MHz
Super high frequency (SHF)	3–30 GHz
Extra high frequency (EHF)	30–300 GHz

[a] kHz — kilohertz (or 10^3 Hz); MHz — megahertz (or 10^6 Hz); GHz — gigahertz (or 10^9 Hz).

Source: ACA (1999a).

The lower parts of the spectrum (VLF, LF and the lower part of MF) carry ground waves which follow the earth's surface. Ground waves are most effective for subsurface and 'over the horizon' communication, such as communications with submarines and ships. The upper part of the MF band, the HF band and the lower part of the VHF band carry sky waves which are suitable for communication over long distances (particularly communications with aircraft) and for wide coverage radio broadcasting. The remaining bands carry electromagnetic waves as space waves. These bands are used for mobile communication, television and radio broadcasting, communication between fixed points, and communication with and via satellite.

Source: BTCE (1990).

The Australian Communications Authority (ACA) has overall responsibility for planning and licensing the radiofrequency spectrum. However, under the *Radiocommunications Act 1992*, part of that responsibility is delegated to the ABA,

which plans and licenses that part of the spectrum designated as the broadcasting services bands (table 6.2). Most broadcasters are issued apparatus licences which grant them access to the spectrum (the traditional means of transmitting broadcasting signals) when they receive their broadcasting licence.[2]

Table 6.2 **Broadcasting services bands**

Band	*Use*
526.5–1606.5 kHz (inclusive)	MF-AM radio
45–52 MHz (inclusive)	VHF television band I (channel 0)
56–70 MHz (inclusive)	VHF television band I (channels 1 and 2)
85–108 MHz (inclusive)	The VHF-FM radio band in 87.5–108MHz. The assignment covers 85–108 MHz to cater for existing VHF television band II (channels 3, 4 and 5)
137–144 MHz (inclusive)	VHF television band III (channel 5)
174–230 MHz (inclusive)	VHF television band III (channels 6, 7, 8, 9, 9A, 10, 11 and 12)
520–820 MHz (inclusive)	UHF television bands IV and V (channels 28–69)

Source: ACA (1999a).

Licences to use spectrum specify technical details for use of that spectrum, such as:

- bandwidth — the range of frequencies occupied by a signal or carried by a channel. It determines the information carrying capacity of a band or service;
- effective radiated power — the measured power of a signal radiating from a transmitter antenna; and
- radiation pattern — the controlled direction and diffusion of a broadcast signal.

The degree of specification can vary depending on the type of licence (box 6.2).

Encouraging efficient use of spectrum

The common property resource characteristics of spectrum provide the rationale for government intervention in technical spectrum management. But, in the past, governments and regulators have used the ability to license broadcasters to pursue non-technical objectives at the same time. They have artificially restricted the types of services and number of broadcasters, and licences have been used to impose arbitrary distinctions between technologies and categories of broadcaster.

[2] Current narrowcasting and subscription television licences do not include access to spectrum. The ABA can issue licences to commercial and community free to air broadcasters who do not intend to use the spectrum to deliver services. Only six such licences have been issued, and none is being used (ABA, sub. 45, p. 31).

Broadcasting licences, most of which carry the entitlement to sufficient spectrum to provide 'adequate and comprehensive' services, are used to regulate the number of broadcasters, their behaviour and the content of broadcasts.

Box 6.2 Types of licences to use spectrum

Apparatus licences

The vast majority of licences to use spectrum are 'apparatus licences'. These licences are very prescriptive — they restrict use of spectrum to a particular type of equipment (or apparatus) using a particular frequency in a particular region. The spectrum cannot be used for any other purpose. Apparatus licences do not precisely identify the amount of spectrum a licensee may use; a central planner attaches technical conditions to each licence that ensure licensees do not interfere with other spectrum users.

Spectrum licences

Spectrum licences give licensees the right to use a precisely defined piece of spectrum for any purpose, using any type of apparatus, subject only to broad technical requirements designed to minimise interference with other spectrum users. Spectrum licences are a relatively new innovation in spectrum management (both in Australia and internationally). Although the ACA is at the forefront of this innovation, spectrum licences account for a very small proportion of the licensed radiofrequency spectrum in Australia. There are no spectrum licences in the broadcasting services bands.

Source: ACA (sub. 28).

This is evident in differing planning processes used by the ABA for the broadcasting services bands and the ACA for the rest of the radiofrequency spectrum. In principle the two organisations have quite similar approaches (a staged process of priority setting, broad spectrum plans and more detailed area plans) but appear to operate quite differently. The ACA, under the Radiocommunications Act, has sought to encourage the most efficient use of spectrum by giving market forces the greatest possible role in the allocation of spectrum, while the ABA has been restricted by its interpretation of the planning requirements of the BSA. The ABA's objective of managing the spectrum efficiently (s. 23) has been compromised by competing objectives; for example, the ABA's interpretation of the Act has also led it to consider the viability of existing broadcasters when planning the broadcasting services bands.

Broadcasting licences are transferable, but for commercial television and radio, access to the spectrum cannot be transferred separately from the licence to broadcast. In addition, prices play no role in spectrum use — that is, the licence fees paid by broadcasters are not related to the amount of spectrum used (or the amount of spectrum they deny to other uses), but are based on gross revenue. These aspects

of the spectrum management and licensing arrangements provide little incentive for broadcasters to use spectrum as efficiently as it could be (box 6.3). As well as affecting the current use of the broadcasting services bands, these aspects of the licensing arrangements affect Australia's chance of taking advantage of many opportunities presented by the digital revolution. Current arrangements do not encourage an expeditious conversion to digital broadcasting (see chapter 7).

Box 6.3 **Planning free to air television services**

Planning for free to air television services was based on the assumption (made before the introduction of the BSA in 1992) that there would be a maximum of six free to air television operators in each widely defined licence area. Each potential service was allotted 7 megahertz to transmit its main signal using high powered equipment.

The first television sets used in Australia were highly susceptible to the interference caused when adjacent channels were used to send different signals. There were only going to be six channels, so this problem was solved by leaving every second channel vacant. Large blocks of spectrum have been left unused.

Further, local geography means some consumers have problems receiving a clear signal (for example, people living in parts of Sydney). Planners have solved this problem by using supplementary transmitters, each using a separate frequency. As a result, Sydney uses 18 frequencies to provide five channels of television programming, plus buffer channels between each of these. The assumption of only six services meant that other, more spectrum efficient solutions were not considered.

Improved technology means there are now other solutions to these problems. Modern television sets (those manufactured in the past 10 years) are capable of preventing adjacent channel interference, for example. Similarly, affordable but sophisticated antennae or a cable system could be used to solve problems experienced by consumers who do not receive a clear signal. However, these improvements in technology do not appear to have been reflected in the ABA's planning process.

Sources: Albon and Papandrea (1998); Stewart Fist (sub. 18)

6.3 Licence fees

The BSA required the ABA to develop a price based system for allocating commercial television or radio broadcasting licences that used the broadcasting services bands. New commercial radio and television licences are allocated to the highest bidder at an auction.[3] In addition, annual licence fees are imposed on

[3] Television licences have been auctioned under the BSA in the past. However, amendments made to the BSA in 1998 prohibit the allocation of any new commercial television broadcasting licences before 2007.

holders of commercial television and radio licences. The *Radio Licence Fees Act 1964* and the *Television Licences Fees Act 1964*, which are under reference in this inquiry, specify the formulas for calculating the licence fees for commercial broadcasters. Commercial broadcasters pay a percentage of their gross earnings from the broadcast of 'advertisements or other matter'. The percentage each licensee pays varies according to a sliding scale determined by formulas set out in these Acts — 0.5–9 per cent for television licensees and 0.25–3.25 per cent for radio licensees (see appendix B).

These two-part pricing arrangements are a legacy of broadcasting history. The BSA required the ABA to develop a price based system for allocating commercial broadcasting licences. When the BSA was enacted, changes (such as selling all broadcast licences) were contemplated, but several problems arose. First, given the small number of likely bidders, there could have been difficulties in ensuring an effective competitive market, (although more sophisticated auction tools have since been developed). Second, there were concerns that existing broadcasters may not 'win' their licences back, affecting continuity of service. Third, the uncertainty surrounding the future profits of the broadcasting industry appeared to lead the government to prefer to retain licence fees, as a way of participating in the future profits of broadcasters. The ABA stated:

> Given the difficulties in predicting the financial performance of the industry, there seemed to be a view at the time that prices achieved at price-based allocations would not represent fair value for use of the spectrum and hence some mechanism such as licence fees should continue to be used to achieve some measure of return to Government. (sub. 45, p. 11)

The Commonwealth Government collected approximately $211 million in licence fees from commercial broadcasters in 1998-99 (table 6.3). Television broadcasters contributed 94 per cent. The largest proportion of total licence fees came from commercial broadcasters in metropolitan areas, who contributed 75 per cent of the total. Similarly, television broadcasters in metropolitan areas accounted for 75 per cent of all licence fees paid by television broadcasters, while metropolitan radio broadcasters accounted for 79 per cent of radio licence fees.

Licence fees have tended to rise faster than the rate of growth of the economy generally, but have also been quite volatile, rising and falling with the growth of the economy. Although licence fees grew at a real compound annual growth rate of 8.6 per cent over the twenty years from 1978-79, they fell by 13 per cent (in real terms) between 1990-91 and 1991-92 and a further 12 per cent between 1991-92 and 1992-93.

Table 6.3 **Commercial television and radio licence fees, 1998-99 ($ million)**

	Television			*Radio*[a]			*Total*		
	Metro	*Regional*	*Total*	*Metro*	*Regional*	*Total*	*Metro*	*Regional*	*Total*
NSW/ACT	59.0	16.6	75.6	4.6	0.7	5.3	63.5	17.3	80.9
Vic	50.4	4.4	54.8	3.0	0.2	3.2	53.3	4.6	58.0
Qld	26.7	8.9	35.5	1.5	0.5	2.0	28.1	9.4	37.5
SA	11.9	0.7	12.5	1.0	0.0	1.0	12.9	0.7	13.6
WA/Tas/NT	na	na	19.9	na	na	1.2	na	na	21.2
Australia[b]	147.9	30.6	198.4	10.0	1.5	12.7	157.9	32.0	211.1

a Data for radio are preliminary. **b** Metropolitan and regional totals for Australia do not include fees collected in Western Australia, Tasmania and the Northern Territory**. na** Not available.

Source: ABA (2000, unpublished data).

The objectives of the licence fee legislation are not clear — that is, they are not contained in the relevant Acts. According to the ABA, the licence fees are 'a tax for use of a scarce public resource and for the benefits of operating in closed markets created by legislative restrictions' (ABA, sub. 45, p. 11). Similarly, the Federation of Australian Commercial Television Stations argued that licence fees:

> … evolved as an explicit 'super tax' on what was perceived as a particularly profitable industry in an era of spectrum scarcity. The television industry was taxed as a *quid pro quo* for the limited regulatory protection it received. (sub. 49, p. 40)

The licence fee legislation appears to have two aims: first, to provide a return to the public for commercial broadcasters' use of scarce radiofrequency spectrum; and second, to tax the high potential profits created by scarcity of spectrum (and by restrictions on entry).

Licence fees currently are not related to the amount of spectrum held by commercial broadcasters. The ABA states that licence fees 'bear no relation to the economic value for the use of spectrum' (sub. 45, p. 11).

Because licence fees are not directly related to the amount of spectrum used, they do not reflect the opportunity cost to the community of broadcasters holding spectrum, nor do they provide any incentive for operators to pursue more efficient ways of delivering their services. As licence fees are based on revenues, different commercial broadcasters pay different amounts for the same access to spectrum in the same licence area (that is, for an equivalent resource).

The terms of reference require clarification of the objectives of the licence fee Acts. The Commission considers that licence fees should not be regarded as a 'supertax' on revenue or profits. Rather, they should be viewed as an attempt to provide a return to the community for providing commercial access to a scarce public

resource, and in so doing, should be levied in a manner which will encourage the efficient use of spectrum (see below).

The Commission finds that the objective of broadcasting licence fees legislation should be to charge for use of broadcasting spectrum. The licence fees should be reformulated for this purpose.

6.4 Spectrum access

Licences granting access to spectrum are issued automatically to most broadcasters.[4] Linking the broadcasting licence with the licence granting access to the spectrum has meant the spectrum used for broadcasting has not been managed as efficiently as possible. If licences providing access to spectrum (currently 'Apparatus licences') were formally separated from licences to provide broadcasting services ('Broadcasting licences'), spectrum could be priced to reflect its value, and licences to use spectrum could be made transferable.

The benefits of formally separating the licences in this way include:

- creating the preconditions for more efficient use of spectrum;
- allowing the development of digital television;
- improving planning and regulatory efficiency;
- allowing for technological convergence; and
- creating consistency with other spectrum management.

Improving spectrum use

The current spectrum allocation framework has probably provided some broadcasters (particularly television broadcasters under the analog broadcasting system — box 6.3) with more spectrum than they would have taken if they had been required to purchase it. Broadcasting industry associations, including the Federation of Australian Commercial Television Stations (sub. DR231), the Federation of Australian Radio Broadcasters (sub. DR266) and the Australian Association of Independent Regional Radio Broadcasters (sub. DR230), stated that they were unaware of any broadcasters being allocated more spectrum than they required. (Inquiry participants' views are discussed below in more detail.) However, what they 'require' has never been tested in a market in which broadcasters paid for the amount of spectrum they used.

[4] The ACA issues apparatus licences to broadcasters, as directed by the ABA.

Harnessing market forces for the allocation of spectrum for *commercial* broadcasting could improve the efficiency with which spectrum is used in Australia. Splitting the current broadcasting licence into a licence to broadcast and a separate licence to use spectrum would create the preconditions for more efficient use of spectrum. Making the licence to use spectrum divisible and transferable would give broadcasters an incentive to review the amount of spectrum they hold and encourage more efficient use of it. This could involve either handing spectrum back to the spectrum manager for reconfiguration and reallocation, or trading spectrum on a secondary market.

Allowing the development of digital television

Australia will soon begin converting from analog to digital television, freeing a substantial amount of spectrum in the process (see chapter 7). During the switch-over period, areas will be gradually converted to digital allowing analog broadcasting to be switched off and enabling this spectrum to be handed back to the spectrum manager for reconfiguration and sale for new services. Splitting the spectrum access licence from the broadcasting licence will facilitate this process.

It will also permit separation of content provision from carriage of the signal. Australian television receivers are designed to receive signals in 7 megahertz blocks. Analog broadcasting uses this entire 7 megahertz to provide a single television signal; digital technology allows more than one service to be provided using 7 megahertz (see chapter 7). Splitting licences to use broadcasting spectrum from licences to provide broadcasting services would facilitate the development of digital multiplex operators, which are able to provide access to broadcast spectrum for multiple content providers (similar to a cable operator providing carrier services for multiple channels). Additional broadcasters could use the multiplex to transmit their content, rather than a single licensee transmitting only its own content. Such developments could promote the take-up of digital television and encourage greater competition in the provision of digital services.

Improving planning and regulatory efficiency

The ABA has been criticised for allowing excessive concerns about program quality to limit the spectrum made available in licence area plans (Papandrea in IPA, sub. 242, att. p. 9). In the Commission's view, concerns about the nature of content are better addressed more directly (see chapters 11–13). Splitting access to the valuable spectrum resource from the broadcasting licence would encourage the clearer targetting of regulatory instruments to objectives. As explained in

section 6.1, the broadcasting licence currently is a single instrument used for a wide variety of purposes.

For example, the current regulatory system provides for a range of sanctions, including cancellation of a licence. If broadcasters using spectrum commit serious breaches, they can lose their licences to use spectrum as well as their licence to broadcast. If the spectrum licence was separated from the licence to broadcast, licensees may lose their licence to broadcast but retain an asset in the licence to use spectrum. A simple analogy is a driver's licence; breaching the road rules may lead to loss of licence, but does not lead to loss of the driver's car. Splitting access to spectrum from the broadcasting licence could make the broadcasting licence a more effective measure for regulating broadcaster behaviour.

Allowing for technological convergence

Separating the licences would also overcome one anomaly of the current arrangements that is becoming more significant as technological convergence progresses. Alternative means of delivering broadcasting services that do not use spectrum in the broadcasting services bands (for example, the Internet and spectrum outside the broadcasting services bands) will become increasingly important; the BSA already gives the ABA authority to issue commercial broadcasting licences that do not include access to spectrum (s. 40 licences).

However, under existing arrangements, s. 40 licensees are still liable to pay licence fees, even though these fees amount, in large part, to fees for use of spectrum. Therefore, s. 40 licensees must pay licence fees for spectrum they are not using, and they must also pay for whatever delivery mechanism they use. A commercial broadcaster using spectrum outside the broadcasting services bands, for example, must in effect pay for access to that spectrum and must pay the fees under the licence fee legislation. Separating the licence to broadcast from the licence to use spectrum would create the preconditions for more efficient pricing of spectrum (see section 6.5).

Creating consistency with other spectrum management

Separating licences to broadcast from licences to use spectrum would mean spectrum in the broadcasting services bands would be managed in the same way as much of the rest of the spectrum. Broadcasters are already familiar with the apparatus licensing arrangements used by the ACA to manage most of the spectrum. They already have apparatus licences for all of their broadcasting transmitters. They also use large amounts of spectrum outside the broadcasting services bands, for

which apparatus licences are required, for example, to transmit television pictures or radio signals to a studio from an outside broadcast such as a sporting event. They also have licences for fixed point-to-point services, satellite links and land mobile systems.

It would therefore appear to be a simple matter to separate spectrum access, as provided by apparatus licences, from broadcasting licences.

Participants' comments

A number of inquiry participants supported the notion of separating the spectrum access licence from the broadcast licence, for example:

> The new arrangements proposed by the Productivity Commission are in fact a refinement of the 1992 arrangements … The appeal of this proposal is twofold. It is entirely likely that a market in broadcasting spectrum will work well for a range of commercial users. It will also rebalance the distribution of administrative and regulatory tasks and costs of spectrum management amongst spectrum stakeholders in a way that optimises technical innovation, efficiency gains and economic returns to government. (Christina Spurgeon, sub. DR256, pp. 2–3)

> The broadcasting spectrum should not be managed differently to the rest of the radiofrequency spectrum. … Licences to conduct a broadcasting business should be separated from spectrum property rights and should be issued separately. (Papandrea in IPA, sub. DR242, att. p. 18)

> The Commission's interim report, in its discussion of bifurcation of broadcasting licences into a transmission licence and a content licence, addresses a key concern in our submission … the application of competition policy principles to digital access. (John Fairfax Holdings Ltd, sub. DR182, p. 3)

> … the decision to separate broadcast licence into a licence granting access to spectrum and a licence granting the right to broadcast is a sensible decision. (ASTRA, sub. DR255, p. 8)

Similarly, the Australian Federation of Film and Television Associations (sub. DR205), the Australian Vice-Chancellors' Committee (sub. DR257), the Education Network Australia Reference Committee (sub. DR270, and the Australian Key Centre for Cultural and Media Policy (sub. DR254) supported the recommendation.

Some participants raised concerns about this approach. The Federation of Australian Commercial Television Stations (sub. DR231) was concerned that splitting the licences could affect the continuity of services if the spectrum holder becomes bankrupt. In the Commission's view this would be less likely than under current arrangements, because the access to spectrum would be an asset, independent of the broadcasting business, which could be sold or leased.

The Federation of Australian Radio Broadcasters (sub. DR266) raised three main objections to separating spectrum access from broadcasting licences. First, the federation argued that the Commission's efficiency arguments applied to television, and were not relevant to radio spectrum use. However, for the broadcasting sector as a whole, the Commission found evidence to suggest the ABA was very conservative in planning the broadcasting services bands, including radio as well as television. Concerns about the viability of operators have limited the number of licences issued, leaving room for higher powered transmitters as well as more apparatus licences than may have been used in both sectors if broadcasters had been required to purchase spectrum. While the resulting inefficiencies in spectrum management and use are much more severe for television, they also apply to radio. In the Commission's view, any changes to the licensing arrangements should be applied to the broadcasting sector as a whole.

Second, the federation argued that changes to licensing arrangements will not drive digital conversion. But evidence from the United Kingdom suggests broadcasters can influence consumer takeup of digital services through programming choices and/or more direct means such as subsidising the cost of receivers (the approach taken by ONdigital). Owners of spectrum property rights have an incentive to encourage conversion if it lowers the amount of spectrum they use and therefore the amount they are required to pay (see chapter 7).

Third, the federation argued that the Commission's proposal may affect a commercial licensee's security of tenure. The Commission is not proposing any change to the term or renewability of commercial broadcasting licences — they would continue to be valid for five years and be renewable. There would be no need for the conditions of the spectrum access licence to be changed.

Conclusion

Therefore, the Commission reaffirms the conclusion it reached in the draft report — that splitting broadcasting licences into licences granting access to spectrum and licences granting permission to broadcast would provide opportunities to improve significantly the efficiency of use of broadcasting spectrum. In particular, the split would create the preconditions necessary for more appropriate pricing of spectrum, which in turn would create incentives for more efficient use of spectrum. It would help drive the digital conversion process, freeing up spectrum for more and different services. It would facilitate the development of digital broadcasting multiplex operators that can provide a delivery mechanism for multiple services. In addition, it could improve regulatory efficiency, which is increasingly important as technological convergence increases the number of ways in which broadcasting services can be delivered. This is a new approach to managing broadcasting

spectrum, but consistent with how most of the spectrum outside the broadcasting services bands is managed.

RECOMMENDATION 6.1

Licences granting access to spectrum should be separated from content related licences that grant permission to broadcast.

6.5 Pricing broadcasting spectrum

The above discussion indicates that the broadcasting services bands are not being used as efficiently as possible. Commercial broadcasters receive as much spectrum as they 'need' to broadcast an 'adequate' signal throughout a licence area (box 6.3). Licences to use spectrum are linked to broadcasting licences, and cannot be traded separately. Further, licence fees are not directly related to spectrum use. As a result, operators have little incentive to pursue more efficient ways of delivering their services, and spectrum is scarcer than it need be (even in the analog world). This undermines the requirement in s. 23 of the BSA to promote the economic and efficient use of the spectrum, and limits the scope for new entrants and greater diversity in broadcasting.

The imminent change to digital transmission provides a timely opportunity to review both the spectrum allocation framework and the way in which commercial broadcasters pay for spectrum. Separating access to spectrum from licences for broadcasting can encourage more efficient use of broadcasting spectrum if licences for spectrum are transferable ('excess' spectrum can be sold on the secondary market) and if the price of access to spectrum reflects the opportunity cost of spectrum use, which incorporates the value of both the spectrum actually used and the value of the spectrum denied to other users.[5]

Several participants, such as the Australian Subscription Television and Radio Association (sub. DR255), the Education Network Australia Reference Committee (sub. DR270) and the Australian Vice-Chancellors' Committee (sub. DR257), supported linking payments for spectrum use to the value of spectrum. Papandrea stated that payments for spectrum:

[5] A licence to use a particular frequency in a particular area prevents the same frequency being used in adjoining areas. For example, the frequency used to provide a service to a small part of Wollongong cannot be used to provide services to adjoining areas, including the entire Sydney area. The true cost of the Wollongong licence is the value of the spectrum used to service Wollongong plus the value of the spectrum which cannot be used to provide services in Sydney and elsewhere. This may be ameliorated in a digital environment.

> … should reflect the amount of spectrum used and the scarcity of the spectrum in a particular locality. (in IPA, sub. DR242, att. p. 18)

Pricing spectrum for new entrants

Access to spectrum can be priced through an upfront sale, ongoing licence fees or a combination of both (a 'two-part' pricing mechanism). Under current arrangements, charges for new commercial broadcasters comprise an upfront payment (through the sale of the combined broadcasting licence and access to spectrum) and ongoing licence fees (based on revenue). Incumbent broadcasters pay only the ongoing licence fee.

A price-based allocation mechanism would provide a current valuation of the spectrum being licensed at the time of allocation and, generally, can be an efficient means of providing access. A sufficiently robust secondary market would ensure spectrum was used efficiently over time (as circumstances changed, spectrum would be traded until it reached its most productive use).

In practice there are concerns about how readily spectrum can be traded. First, the stinted nature of the property right for spectrum may limit the prospects for a secondary market. Licences to use spectrum are currently in the form of prescriptive apparatus licences, which the spectrum manager must reconfigure before they can be applied to a new use (section 6.7). It is possible, once the licence to access spectrum is separated from the broadcasting licence, that the secondary market (in conjunction with the spectrum planner) could drive the reconfiguring process (in much the same way that land can be used for different purposes and even rezoned). However, no such secondary market currently exists.

Second, until the digital conversion process releases significant amounts of spectrum for sale to new broadcasters, there may be insufficient players in the broadcasting industry to create a competitive market. Collusion could be a problem in the sale of licences to use spectrum. However, improvements in price-based allocation mechanisms have helped address this problem.

Another charging option is the use of ongoing licence fees related to the value of spectrum used rather than to advertising revenues. This may aid efficient use of spectrum where a secondary market may not operate effectively. Further, ongoing charges share between the government (on behalf of the community) and licensees the risk of changes in the value of spectrum. That is, the government may reduce licence fees if the value of spectrum falls, or increase fees if the value of spectrum increases. Where the secondary market does not operate effectively, such

adjustments in fees may also aid the efficient use of spectrum by encouraging the hand back of spectrum, the relative value of which is falling in a particular use.

Ongoing licence fees do not provide a means of allocating spectrum in the first instance. A price based allocative mechanism can be combined with ongoing fees (a 'two-part' pricing system). In a well-functioning competitive market, the expected return to government under a two-part regime would be similar to that from a single upfront payment (in net present value terms). The price that licensees would be willing to pay upfront would account for the estimated value of ongoing licence fees and the risk of future changes to licence fees. That is, the higher the ongoing fees, the lower the price they would be willing to pay initially.

In the current environment of incomplete information shared unequally between market participants and with no secondary market, the Commission considers that a combined upfront payment and ongoing fees is preferable to a single upfront payment for spectrum. The upfront component ensures that the Government receives some immediate payment for spectrum. An upfront payment that captures a large portion of the expected value means that the licensee bears most of the risk of a reduction in the value of spectrum. Furthermore, a large upfront sales price means the setting of charges is less likely to be caught up in political processes.

While doubts remain about the strength of the market for spectrum, a competitive sales process should be used to determine the initial payment and the spectrum manager should continue to set an ongoing fee. This could be adjusted from time to time to reflect changes in the value of spectrum.[6] The ongoing fee would provide an incentive for efficient spectrum use in the absence of a secondary market. If a secondary market develops, the case for ongoing spectrum-related fees would be reduced. Further review of fees would then be warranted.

RECOMMENDATION 6.2

Spectrum for new broadcasters should be sold competitively, subject to ongoing licence fees. The level of ongoing fees should be adjusted to reflect significant changes in the value of spectrum.

6 The ACA regularly adjusts licence fees for non-broadcasting spectrum, taking account of changes in demand for spectrum in particular bands and geographic locations, perceived anomalies in the current system, and market information on prices. Licence fees are also adjusted to account for changes in the consumer price index and the ACA's costs of managing the spectrum. These adjustments sometimes result in changes in the relative values of different parts of the spectrum (ACA, pers. comm., 28 February 2000).

Pricing spectrum for existing broadcasters

It is relatively easy to develop a pricing mechanism for new entrants into broadcasting that ensures the combined effect of upfront payment and licence fees reflects the value of the spectrum. It is more difficult to apply these principles to existing broadcasters, without requiring them to compete in a spectrum market for their existing spectrum. The Commission does not consider that this is a reasonable option. The Commission therefore considers that it is important to find a method of converting their licence fees to spectrum fees.

Valuing the spectrum

Converting the current revenue based licence fee arrangements to fees reflecting the value of the spectrum requires a current valuation of broadcasting spectrum. For reasons identified above, it is difficult for the spectrum manager to set a fee which reflects the market value of spectrum accurately. A proxy of some sort must be used. Some inquiry participants suggested the auction results for new datacasting licences could provide the basis for valuing television spectrum. However, there are several disadvantages with this approach. First, the spectrum being sold is for digital datacasting, not analog broadcasting. As currently planned, the restrictions to be placed on datacasters may reduce the price that aspirant datacasters are willing to pay for this spectrum. It is likely that this spectrum would be valued more highly if it were being sold for commercial television. Second, the limited amount likely to be available initially may distort the price.

An alternative approach is to look at the value of spectrum for other uses. The broadcasting services bands could be used to provide services such as mobile telephony. Operators of mobile telephone systems currently use spectrum outside the broadcasting services bands, for which they pay $824 000 each year for each 1 megahertz of spectrum. Basing calculation on the value of mobile phone spectrum, the value of spectrum currently allocated to commercial broadcasters (television and radio) for analog transmission (that is, excluding the national and community broadcasters) would be about $200 million per year.

Even though licence fees were not calculated on the basis of the value of the spectrum, current broadcasting licence fees are approximately $211 million per year. These fees reflect the scarcity of spectrum, the benefits of the regulatory restrictions on competition that broadcasters receive, and broadcasters' abilities to exploit these benefits. If broadcasting spectrum is regarded as being at least as valuable as spectrum used for mobile telephony, this implies that commercial broadcasters are paying close to the *minimum* value of the spectrum they hold.

Television broadcasters value their broadcasting licences at well over $3 billion (see chapter 2), which implies that current licence fees do not extract the full value inherent in having a television broadcasting licence. However, the broadcasters' valuations reflect access to the spectrum, the benefits of regulatory protection from competition and the values of their 'brand' (see chapter 9).

In the absence of a market valuation for spectrum used for analog broadcasting, the annual licence fees currently paid by broadcasters are essentially arbitrary. While it is difficult to estimate the value of broadcasting spectrum, the Commission is confident that the current licence fees do not over-value it. It considers that licence fees for analog spectrum should be converted to spectrum-related fees on a revenue neutral basis initially. That is, aggregate licence fees in the first year that are directly linked to spectrum should be equal to the licence fees that would have been paid under existing arrangements. The spectrum manager could then revise licence fees in subsequent years.

Conversion mechanisms

Licence fees can be converted on a revenue neutral basis in a number of ways:

- by licensee — that is, each licensee's fees would be converted to fees related to spectrum;
- by service category (television, FM radio and AM radio) — that is, each category's aggregate fees would be converted to fees related to spectrum then allocated among licensees according to spectrum use; or
- by service category and by licence area — that is, for each licence area, each category's aggregate fees would be converted to fees related to spectrum and allocated among licensees according to spectrum use.

The Commission considers that the most equitable and efficient means of conversion is to average fees by service category and by licence area (the ABA collects data on fees by licensee and by licence area). The fees paid by AM radio broadcasters in a licence area, for example, would be aggregated then averaged across the spectrum they used (as represented by their apparatus licences). Thus, if there were three licensees, each using the same amount of spectrum, each would pay one third of the total licence fees. Similar exercises would be undertaken separately for FM radio broadcasters and television broadcasters.[7]

[7] This would be a more complex exercise for broadcasters using a mix of high powered and low powered transmitters.

Conversions by licence area account for the differences in the value of spectrum depending on geographic location and population density. Spectrum used in metropolitan areas, for example, would be expected to be more valuable than that used in nonmetropolitan areas. Similarly, each service type has been allocated to particular bands of the spectrum which have different characteristics. The values of these different parts of the spectrum will therefore be different.

The Commission recognises some disadvantages to this approach. Restricting the use of specific bands to particular types of broadcasting (in line with international conventions) may have affected the relative values; for example, it is possible to use parts of the FM radio bands to deliver television services. This implies, at least for this part of the spectrum, that the valuation should be the same (for spectrum in the same geographic area). The planning restriction, which limits that part of the band to FM services, decreases its value. Similarly, restricting entry (particularly for television) has meant higher revenues and therefore higher licence fees. When these are converted on a revenue neutral basis, by service type, then the spectrum used for television broadcasting will be much more valuable than that used for FM and AM radio broadcasting. Without such restrictions, competing demands for spectrum may have resulted in other valuations.

However, despite these problems, the Commission considers that the necessarily arbitrary nature of these valuations is no worse than the current system, but has equity and efficiency benefits. It charges the same price for using the same resource to deliver the same service, and links fees to spectrum use.

Under this approach, licensees in the same licence area using the same amounts of spectrum would pay the same amount in licence fees. The existing system discriminates between broadcasters using the same resource, according to their revenue. Removing this discrimination means the amount paid will rise for some broadcasters and fall for others. This will provide an incentive to direct commercial spectrum toward its most profitable use. However, it may cause some adjustment costs in the short term, particularly for AM radio licensees, where the amounts paid in licence fees vary considerably among licensees in the same licence areas. These adjustment costs could be eased by phasing the change to an average fee over time.

RECOMMENDATION 6.3

Licence fees for existing commercial radio and television broadcasters should be converted to fees that reflect the opportunity cost of spectrum used.

Revenue based licence fees for each service type (television, FM radio and AM radio) in each licence area should be converted to spectrum-based licence fees.

These fees should be revenue neutral in the first year and set thereafter on a basis similar to the fees for other spectrum.

Fees for 'lent' spectrum

Existing television broadcasters have been lent spectrum for the simulcast period. They are not required to pay additional fees for spectrum used to simulcast their analog signal in digital form. However, the Government's conversion plan imposes fees if broadcasters use the lent spectrum for datacasting. These fees are to be consistent with those paid by new datacasters. (Under the *Datacasting Charge (Imposition) Act 1998* [s. 7], charges for datacasters will be determined by the ACA as part of the price-based allocation of datacasting licences.) As the range of digital services (such as multichannelling and enhanced programming) develops (see chapter 7) a similar principle should apply.

RECOMMENDATION 6.4

During the digital television conversion period, existing television broadcasters should be levied additional fees on any of the spectrum used for digital services other than digital simulcast of the analog program, consistent with those paid by other digital broadcasters.

At the end of the simulcast period, when the spectrum used for analog transmission is handed back to the regulator, existing broadcasters will pay the same ongoing fees as other digital broadcasters.

Consumer access to free to air broadcasting

As discussed earlier, the use of the terms 'adequate and comprehensive' in the BSA implies that consumers should receive a comprehensive free to air broadcasting service. ABA planning policy assumes communities of 200 or more people should receive broadcasting services (ABA 1998c). Under the existing planning and licensing arrangements, regulators achieve this objective by issuing broadcasters with sufficient spectrum (via multiple apparatus licences) to reach the entire licence area. However, in some areas, it may be more economically efficient to provide services using a variety of delivery mechanisms, such as cable or satellite, not just terrestrial broadcasting.

Adopting the Commission's recommendations on splitting carriage and content licences and on pricing spectrum according to its value may affect the way in which services are delivered. Under this new approach, commercial broadcasters could choose the amount of spectrum — that is, the number and characteristics (such as

power) of the apparatus licences they wish to purchase. Where the cost of purchasing an additional apparatus licence exceeds the revenue obtained from servicing the area covered by that licence, licensees may choose not to provide their service to that part of their licence area. The Tasmanian Government raised the possibility of reduced coverage by television services as a result of the conversion to digital broadcasting, given that digital transmission has different characteristics from analog broadcasting, and will have a different pattern of reception. Some viewers currently receiving analog signals may not receive digital signals (sub. DR294, pp. 1–2).

The increasing range of technologies and services, the unknown price of spectrum, and the uncertain impact of digital conversion make it difficult to estimate the extent to which licensees may choose to not service part of their licence area. Given this uncertainty, it may not be sufficient to rely on the implied intention of Parliament and community expectations to ensure 'adequate and comprehensive' levels of service.

'Adequate and comprehensive' could be defined in a number of ways. The broadcasting system is made up of a range of different service types including national, commercial and community broadcasters, and soon datacasters. The question arises, which of these are essential to provide an 'adequate and comprehensive' level of service?

Previous policy has given most Australians a strong expectation that they will receive both national and (at least some) commercial services. However, the proliferation of new delivery platforms and new services means the era of a limited number of almost ubiquitous services is coming to an end. However, there could be a minimum basic level of service guaranteed by government (similar to the telecommunications Universal Service Obligation).

The Commission has assumed that most Australians will continue to receive broadcasting services from the national broadcasters (see below). The rapid proliferation in the range of services and delivery platforms driven by digital convergence is also likely to mean that few areas are not covered by some form of commercial service.

However, it is unlikely that all areas will receive an equal number of services, any more than they do now. If the Commonwealth Government were to decide that more commercial services should be provided to areas than would be supplied by the market, there are several ways to do it. In Australia in the past, the method adopted has been to make it a condition of a licence that certain coverage be provided. Attaching conditions to licences would perpetuate the notion of *quid pro quos* and introduce distortionary regulatory distinctions between technologies and

categories of broadcasters. In the past, this approach has also meant that parts of the spectrum have been used inefficiently to provide services a freely operating market would not have provided, while other parts of the broadcasting spectrum have not been used at all, because they did not cover an entire licence area.

Another approach is to establish a community service obligation[8] which would be supported by government subsidy. Such a community service obligation is more transparent than a licence condition. It is also likely to lead to more efficient outcomes as it would focus on delivery of the service to consumers rather than the delivery platform. The most efficient method of delivery and the most efficient providers would thereby be encouraged.

There is a precedent for the notion of government funded community service obligations in broadcasting. The Commonwealth Government pursued a policy of aggregation between 1989 and 1994, under which solus markets were 'aggregated' into larger markets with up to three television licences in each. The Government provided (and continues to provide) subsidies to regional broadcasters (in the form of a rebate on licence fees) to assist them to extend the coverage of their signal into aggregated licence areas (BTCE 1996).

If the Government does implement a community service obligation to ensure access to commercial broadcasting services, it should clearly define the nature of the service to be provided and then put the community service obligation to tender. The tender should not specify the technology to be used; those tendering to provide the service should be free to choose the most appropriate means of delivering that service, whether via terrestrial broadcasting, satellite, cable or other means.

RECOMMENDATION 6.5

If a government wishes to ensure community access to commercial digital broadcasting services in areas where they are not commercially viable, this should be achieved through explicit subsidy arrangements allocated through the tender of a community service obligation that does not specify the means of delivery.

8 A community service obligation describes the situation where a government decides, often for social policy reasons, that a service should be supplied even though to do so is not in the commercial interests of the service provider. The most transparent way of ensuring the service is provided is to subsidise the service provider or the recipient of the service.

6.6 Allocating broadcast spectrum

The ABA currently undertakes planning for the broadcasting services bands. Section 23 of the BSA sets out criteria (box 6.4) the ABA must account for in carrying out its planning functions.

Box 6.4 **Criteria guiding the ABA's planning functions**

The planning functions of the ABA are set out in part 3 of the BSA. Section 23 of the BSA states that the ABA, in performing functions under this part, is to promote the objects of this Act, including the economic and efficient use of the radiofrequency spectrum. The ABA is also to have regard to:

(a) demographics; and

(b) social and economic characteristics within the licence area within neighbouring licence areas and within Australia generally; and

(c) the number of existing broadcasting services and the demand for new broadcasting services within the licence area, within neighbouring licence areas and within Australia generally; and

(d) developments in technology; and

(e) technical restraints relating to the delivery or reception of broadcasting services; and

(f) the demand for radiofrequency spectrum for services other than broadcasting services; and

(g) such other matters as the ABA considers relevant.

The relevant economic and other non-technical criteria that have led the ABA to make market evaluations are 'the economic and efficient use of the radiofrequency spectrum' and criteria (a), (b) and (c).

Source: BSA, s. 23

Planning services in licence areas

The ABA's planning processes under the BSA have been criticised for long delays. The ABA initially estimated that the entire FM radio planning process would be completed by June 1996 (ABA, sub. 45, p. 4). This proved to be a significant underestimate; the first draft licence area plan for a capital city was released in August 1999. One reason for these delays is the requirement in the BSA that the ABA determine the number and nature of the services to be provided in each

licence area.[9] It is required to estimate the likely demand for services in each licence area, based on BSA planning criteria such as demographics, social and economic characteristics, and the demand for new services (s. 23).

The ABA plans for national, community and commercial services in each licence area on a case by case basis. This requires it to devote significant resources to determining the likely need or demand for various categories of service in each licence area, and has been a major reason for delays in the planning process.

An alternative approach would be to establish some basic assumptions about the appropriate configuration of non-commercial services for a typical licence area. If the Commission's recommendations regarding Indigenous broadcasting in chapter 8 are accepted, access to spectrum should also be provided for Indigenous broadcasters (where appropriate), in a similar manner to that for national and community broadcasters. A 'template' licence area plan based on such 'rules of thumb' could be developed, which would identify the number of non-commercial broadcasters to allow for in a typical licence area. If greater flexibility were required, the 'template' could provide for additional non-commercial services according to population size or particular population characteristics. The planning authority would need to plan the nature of services in individual licence areas only by exception — that is, only if there are exceptional circumstances in a licence area that justify diverging from the standard plan.

The ABA agreed that a 'template' may provide for a more simplified planning process, but that it would be difficult to introduce for analog planning which is close to completion (sub. DR226). The ABC stated that a simplified template may create a more complicated and lengthy planning process because licence areas vary so greatly, arguing that a series of templates may be more appropriate (sub. DR206).

The Commission supports simplification of the planning process, but agrees with the ABC that a series of templates for licence areas with different characteristics may be appropriate. However, notwithstanding the concerns expressed by the ABC and other participants, the Commission considers that once spectrum has been reserved for non-commercial purposes, all remaining spectrum should be sold for commercial broadcasting (see below).

[9] Although the Act makes provision for the reservation of capacity for national and community broadcasting by the Minister, in practice this power has been delegated to the ABA, which must allow for the national broadcasters (ABC and SBS) in its planning and determine the number and nature of community licensees.

RECOMMENDATION 6.6

The ABA, in consultation with the broadcasting industry and the public, should develop a series of templates for licence areas with different characteristics, setting out the number of national, community and Indigenous services for which spectrum should be reserved. All unreserved broadcasting spectrum should be made available for commercial broadcasting.

Reserving spectrum for non-commercial broadcasters

Non-commercial services, such as those provided by national and community broadcasters, play an important role in overcoming the economic problems associated with the public good nature of free to air broadcasting (see chapter 3) and in promoting the objectives of the BSA (see chapter 8). Non-commercial broadcasters currently could not compete if spectrum were allocated by the market alone.

There are two ways of ensuring that spectrum planning allows for national and community broadcasters:

- the acquisition of spectrum for these services could be funded as a form of community service obligation; or
- spectrum could be reserved in each licence area.

The Commonwealth Government could fund the national broadcasters and community organisations to purchase spectrum in competition with other users. This would have the advantage of making more transparent the opportunity cost of reserving spectrum for particular uses.

If the government wished to ensure that non-commercial services have access to broadcasting spectrum, and was willing to purchase the spectrum regardless of the cost, it may be simpler to require the spectrum planner to reserve sufficient spectrum for these services. This has been the approach adopted in the past. Although the Commission recognises the simplicity and certainty offered by reserving broadcasting services bands spectrum for non-commercial broadcasting uses, this approach lacks the transparency of direct funding of the Government's community service obligations. The opportunity cost of reserved spectrum (that is, the value of the spectrum if applied to another use) is not apparent to the community, the regulator or Parliament.

In the draft report, the Commission proposed, if the current approach to reserving spectrum is retained, that the spectrum manager should be required to estimate the value of spectrum reserved for national, community and indigenous broadcasters, and publicly report this information. Awareness of true costs is necessary for accountability and the effective assessment of socially beneficial investments.

The Community Broadcasting Association of Australia stated that enhanced transparency and accountability were laudable public policy objectives but that the Commission's proposal appeared impractical and ideologically driven (sub. DR214, p. 3). Radio station 3CR (sub. DR248) stated that economic considerations would bear too strongly on non-commercial stations and spectrum, while 3ZZZ (sub. DR251) stated that valuing the spectrum reserved for community broadcasting could reinforce a perception that it was a second class of broadcasting. This concern was also raised by Christina Spurgeon:

> … the main criticism of this strategy is that it is likely to have the extremely unproductive effect of promoting a perception in government and amongst commercial users of non-commercial spectrum users (government and non-government) as 'free loaders' on a market system. … It is perfectly reasonable for governments to expect that non-commercial users would be efficient with spectrum. It is quite another to establish market conditions for spectrum access that have the effect of undermining the social policy objective of sectoral diversity in broadcasting. (sub. DR256, p. 3)

By contrast, Papandrea stated the benefits of establishing the opportunity cost of spectrum used for non-commercial purposes:

> The amount of spectrum set aside for use by community broadcasters should be determined after extensive cost–benefit analysis to assess the benefits accruing to society from community broadcasting use against the opportunity cost of alternative use of the spectrum. The benefits accruing to society from spectrum already allocated to community use should be evaluated on a regular basis. (in IPA, sub. DR242, att., p. 18)

The ABC agreed that valuing the spectrum was appropriate, but expressed concerns about the basis of such a valuation — for example, should the valuation be based on what a commercial broadcaster would be willing to pay for the spectrum, or what someone else, such as a mobile phone operator or a datacaster, might pay? (trans., p. 1188)

The Commission considers that the value of the spectrum, in principle, should be based on its next best alternative use, whether it be broadcasting, datacasting or mobile telephony. It would be difficult to determine the purpose to which spectrum would be put without actually having the spectrum on the market. In the absence of such indicators, the valuation could instead be based on what current commercial

broadcasters are paying in licence fees, or in the future, what new broadcasters are willing to pay to gain access to the spectrum.

RECOMMENDATION 6.7

The value of broadcasting services bands spectrum reserved for non-commercial broadcasting services should be estimated and reported publicly.

Planning commercial services

While administrative processes may be needed to determine spectrum requirements for non-commercial broadcasting purposes, it is neither necessary nor efficient to apply them to commercial broadcasting. In most areas of the economy, decisions about the number of services that can be supported by a market are left to the market. The Commission is not convinced that commercial broadcasting is sufficiently different that government intervention is necessary to determine the number of commercial stations beyond that required by technical considerations. Those best able to attract audiences will succeed. The interests of consumers are likely to be better served by competition among broadcasters to serve them, than by a regulatory process that attempts to anticipate the market's 'needs'.

The non-technical planning criteria (s. 23[a], [b] and [c]) complicate what should be a technical planning function. The technical planning process accounts for how many services can be offered in an area without interference becoming a problem.

Once spectrum has been allocated for non-commercial use, all remaining broadcast spectrum could be made available for commercial broadcasting uses. This would remove the need for a regulator to make decisions about the likely need or demand for commercial services in each licence area. Such a scheme would also provide greater certainty to both existing and prospective broadcasters and reduce the incentives for litigation and lobbying during the planning process.

The ABC was concerned that selling all unreserved spectrum for commercial broadcasting services would preclude an expansion of national and community services in the future (sub. DR206). The Community Broadcasting Association of Australia (sub. DR214) and Christina Spurgeon (sub. DR256) also expressed this concern.

However, there is an opportunity cost involved in holding back spectrum because it may be needed for an alternative use in the future. If expanding national and/or community services becomes a Commonwealth Government priority in the future, the Government would have the option of buying back some of the spectrum that had been allocated to commercial users. Technological improvements and

associated reduction in the scarcity of spectrum may reduce some of the costs of reclaiming spectrum.

Several inquiry participants, such as DMG (sub. DR186), supported removing non-technical planning criteria. Cable and Wireless Optus supported removing 'appropriate mix' considerations for the following reason:

> Historically, the justification for this 'different treatment' of the [broadcasting services bands] rested on an assumption that the [broadcasting services bands] should be planned by reference to not only economic and technical considerations, but also to social considerations. In the current broadcasting environment, the social considerations which previously supported the planning of the [broadcasting services bands] by the ABA are no longer so pronounced. … It should no longer be a regulatory imperative for the regulator to ensure that an appropriate 'mix' of broadcasting services be made available in a licence area, given the increase in alternative sources of information. (sub. DR216, p. 4)

Releasing for commercial use all spectrum not reserved for non-commercial broadcasters also closely resembles the original intent of the BSA:

> … it would certainly return the legislation to the position that I think the Act's authors believed they had got us to in 1992 ... (ABA, trans., pp. 1101–2)

However, the ABA is concerned about the timing of changes to planning processes:

> The real difficulty we're raising here, I suppose, is that by the time that amendment goes through analog planning will be pretty well finished. (trans., p. 1102)

The ABA assumes that once the current planning process is complete, the broadcasting services bands will not be revisited. The Commission does not agree with this assessment. If the planning criteria are to be revised, planning decisions of the past decade may need to be revisited in the light of the new criteria (see chapter 9).

The ABA has stated that the planning function, as set out in the BSA is ambiguous, including how the criteria in s. 23 should be interpreted (Grainger 1997). It has been argued that this lack of direction has left the ABA exposed to pressure from vested interests. Lacking precise definition of its powers and intent on avoiding litigation, the ABA adopted a rather restrictive interpretation of its powers (Papandrea in IPA, sub. DR242). The Commission considers that removing some of the more ambiguous criteria from the BSA may prevent similar problems occurring in future technical planning of the spectrum used for broadcasting.

Further, with the enormous change that convergence is bringing to services, spectrum planning will be a continuing process. Technological improvements generally increase the number of services that can be accommodated using the spectrum. That is, planning the spectrum, including the broadcasting services bands,

is a dynamic process which is likely to allow for the expansion of all broadcasting services in the future. Improved planning processes will be particularly important for the allocation of spectrum for digital television and datacasting.

The Federation of Australian Radio Broadcasters disagreed with the removal of the non-technical criteria from the planning function. It argued that s. 23 [a], [b] and [c] relate to public interest considerations:

> If there is a continuing public interest in ensuring the continuity of locally produced and delivered mass communication services, such as commercial radio, then the need to have regard to the viability of those services is heightened. (sub. DR266, p. 9)

However, according to Papandrea (in IPA, sub. DR242), a clear intention of the BSA was that the commercial viability of existing or proposed services was not to be a major consideration in the allocation of licences, unlike the previous legislation. That is, the original intent of the legislation accords with the general principle that market forces will allocate resources and determine the appropriate level of services more efficiently than regulators attempting to second-guess the market (see chapter 9). An assessment of the planning process by lawyers Gilbert and Tobin (cited in Papandrea, in IPA, sub. DR242, att., p. 14) concluded that the ABA's considerations of some important factors may be unnecessarily restrictive and inconsistent with the initial intentions of the legislation in terms of the viability of existing services and efficient use of the spectrum.

The Commission considers that it is inappropriate for spectrum to be allocated to commercial users having regard to the 'viability' of incumbents. It is anticompetitive and is likely to restrict innovation and consumer choice.

RECOMMENDATION 6.8

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.

Some care may be needed to prevent any one entity from controlling a substantial proportion of broadcasting spectrum rights. Competition principles, such as those found in the *Trade Practices Act 1974*, should apply to ensure adequate diversity in the control of broadcasting spectrum. This may require some amendment to the BSA to make allocations of spectrum 'acquisitions of an asset of a body corporate' for the purposes of the Trade Practices Act. (Similar amendments (BSA s. 97(2)[a]) were made to ensure allocations of subscription television licences came within the ambit of the Trade Practices Act.)

6.7 Improving spectrum management

The broadcasting services bands of the spectrum have traditionally been managed separately from the rest of the spectrum. Is this appropriate in a convergent environment?

The broadcasting services bands are managed using apparatus licences (as are most parts of the spectrum) which restrict spectrum use to a certain type of equipment using a certain frequency in a certain region. Small amounts of spectrum have been 'dropped through' for other uses, such as medical telemetry for cardiac patients. However, the broadcasting services bands are used mostly for broadcasting and the apparatus licensing system limits the extent to which non-broadcasting users may occupy these bands.

Reserving bands of spectrum for particular uses, as with the broadcasting services bands, is widely accepted internationally (Hayne 1997). The advantages include:

- complying with international standards;
- minimising interference;
- assigning users quickly because it is easier to locate vacant frequencies; and
- encouraging possible cost savings to users through the creation of international equipment markets (BTCE 1990).

The Commission considers that at this stage, while apparatus licences provide the predominant means of spectrum access, it is appropriate to dedicate part of the spectrum to broadcasting services. Adequate provision should be made for unused parts of the broadcasting services bands to be made available for other uses.

It is possible that apparatus licences could be converted to spectrum licences in the future, for example, once the digital television conversion process is complete (see chapter 7). In principle, holders of spectrum licences would then be able to use their spectrum for any purpose, using any type of apparatus, subject only to broad technical requirements that minimise interference with other spectrum users. In practice, however, the technical requirements attached to spectrum licences are set with a particular use in mind (such as mobile telephony).

Because of the technical characteristics of this part of the spectrum and international conventions, broadcasting is likely to continue to be the dominant activity in the broadcasting services bands. Any future spectrum licences in these bands would be formulated with this in mind. However, the possibility of higher valued uses that could co-exist with broadcasting should not be excluded. As technology develops,

there may be a need to consider further multiple-use management of the broadcasting services bands.

Institutional arrangements

Reserving the broadcasting services bands primarily for broadcasting purposes does not necessarily imply that management of the broadcasting bands should be separated from management of the other bands of the radiofrequency spectrum, particularly if multiple-use management is likely to become more important in the future.

There are strong reasons to consider giving responsibility for planning the broadcasting services bands to the ACA, and allowing the ABA to focus on content and regulating the behaviour of broadcasters. These reasons include:

- achieving the Commonwealth Government's social and cultural objectives;
- taking advantage of ACA spectrum expertise;
- balancing community interests and specific interests; and
- reducing overlap between the functions of the ABA and ACA.

These reasons are considered in turn in the following sections.

Achieving the government's social and cultural objectives

Broadcasting licences provide a mechanism to regulate broadcasters and broadcasting activities in line with the Government's social and cultural objectives. The ABA is well suited to undertake the management of those aspects of broadcasting licences that relate to regulation of content and enforcement of codes of practice, and monitoring and control of ownership (see chapters 10, 11 and 13).

The Commission considers that the ABA should continue to be responsible for regulating broadcasters to ensure achievement of the BSA's social and cultural objectives for broadcasting. This role includes deciding the number of national and community broadcasting licences to be made available on behalf of the Minister, and allocating community broadcasting licences.

Licences to provide broadcasting services would become essentially administrative in nature. Papandrea (in IPA, sub. DR242) suggested using the licensing arrangements for subscription television as a model for other broadcasting licences.

> Licences to conduct a broadcasting business should be separated from spectrum property rights and should be issued separately. These licences should be concerned

only with the social obligations of broadcasters and should be freely available to anyone wishing to become a broadcaster using the current pay television model as a guide. (Papandrea, in IPA, sub. DR242, att. p. 18)

The fees for licences to provide broadcasting services should reflect their essentially administrative nature. Fees should be levied to cover the ABA's costs of administering the licence, in line with Commonwealth Department of Finance and Administration guidelines.

RECOMMENDATION 6.9

The ABA should retain responsibility for issuing licences to broadcast, and for determining the number of non-commercial broadcasting licences in an area. It should also retain responsibility for regulating content, enforcing codes of practice and monitoring ownership.

Using ACA expertise

Giving all spectrum planning responsibility to the ACA could improve the efficiency of the planning and licensing of the broadcasting services bands. The ACA is acknowledged as an expert and innovative spectrum manager, both domestically and internationally (for example, it is at the international forefront of spectrum licences and computerised spectrum auctioning techniques). Since 1992, the authority has implemented reforms that have increased the ability of its spectrum management regime to respond to market and technological change, for example:

- clearing and redesignating spectrum;
- providing greater contestability through auctions for licences;
- providing greater security of tenure for spectrum licensees; and
- reducing unnecessary regulatory action by rationalising the licensing system (DCITA 1998b).

Demand for spectrum in the broadcasting services bands is likely to continue to exceed the available supply, even in the digital age. However, for the reasons outlined above, the ABA/BSA approach to planning the broadcasting services bands does not ensure its efficient allocation.

The ACA, as a technical expert, is best placed to undertake this process. It has experience in multiple-use management of spectrum. Technological change means alternative uses for the broadcasting services bands may become more important. The digital revolution discussed in chapters 3 and 7 may require the broadcasting spectrum to be managed to facilitate flexible use. Internet providers,

telecommunications operators and aspirant datacasters have all expressed interest in using broadcasting services bands. Cable and Wireless Optus (sub. DR216) were concerned about restricting the broadcasting services bands to conventional broadcasting purposes only. They argued that non-broadcasting uses of the spectrum should not be precluded.

Balancing community interests and specific interests

Spectrum planning and licensing arrangements, of which broadcasting licences are a significant subset, have been the responsibility of various bodies over time. There has been a trend over time of moving planning and licensing decisions from direct political decision making to more independent regulatory authorities (box 6.5).

These changes appear to have been driven by the desire to ensure general community interests were given adequate weight in these decisions; for example, the BSA shifted the broadcasting planning function from the responsible Minister to the ABA. Armstrong noted that:

> … pressure from both sides was … often politically or electorally sensitive; and there were many allegations, whether or not based on fact, that priorities for particular services were affected by personal or political influence or electoral objectives. (1999, p. 5073)

Whatever body undertakes spectrum planning for broadcasting will be subject to these pressures. However, there is a greater probability of the general community interest being taken into account if the planning authority has a clear mandate to undertake a particular technical task across a number of areas. The same principles and processes can be applied in each area, reducing the likelihood of undue pressure influencing decision making in any particular area. The ACA, as the general spectrum manager, appears to be in the best position to ensure that general community interests, and competing demands for spectrum are each given adequate weight in managing the broadcasting services bands.

Box 6.5 **History of broadcasting spectrum management**

The first broadcasting licences were issued by the Commonwealth Government under the *Wireless Telegraphy Act 1905*. Until 1977, the responsible Minister decided how many services would be available and the conditions attached to each licence. The power to issue licences was transferred to the Australian Broadcasting Tribunal in 1977. The tribunal assigned licences following a public inquiry. However, the Minister retained the power to determine how many licences were issued; the tribunal merely determined who (apart from national broadcasters) received them. Access to the radiofrequency spectrum for commercial and not-for-profit broadcasters was included as part of the licensing process, irrespective of who made the decision. The Post Master General's Department (later the Department of Transport and Communications) determined the amount of spectrum each received.

New legislation introduced in 1992 (the *Radiocommunications Act 1992* and the BSA) changed the way in which spectrum was managed in Australia. An independent agency, the Spectrum Management Agency (later the ACA) was given overall responsibility for managing the spectrum under the Radiocommunications Act. The ACA prepares the Australian Spectrum Plan which specifies the general purposes for which each band of the spectrum may be used (such as defence, scientific and other purposes). The Radiocommunications Act (s. 31) also allows for the creation of the broadcasting services bands which are administered by the ABA. The broadcasting services bands largely comprise spectrum that broadcasters were already using when the BSA was introduced (that is, no additional bands were made available). However, additional services were made possible by freeing up spectrum in the broadcasting services bands previously used by non-broadcasters. Unused parts of the bands are being considered in digital planning.

Under the BSA, the planning function for broadcasting was shifted from the responsible Minister to the ABA. Price-based approaches to allocating access to spectrum were also introduced in the Radiocommunications Act and the BSA. According to the ABA, the first licences sold by the ABA under the BSA were subscription television licences. Between October 1992 and May 1999, 74 new commercial radio broadcasting licences and four commercial television broadcasting licences were allocated using price-based approaches (ABA, sub. 45, p. 29).

Source: Albon and Papandrea (1998).

Reducing overlap between the functions of the ABA and the ACA

There is a degree of overlap between the functions of the ABA and the ACA. The ABA is responsible for licensing all broadcasters, including broadcasters that do not use the broadcasting services bands. Broadcasters using a different delivery platform receive a content-related licence from the ABA, but are licensed by the ACA if they use spectrum outside the broadcasting services bands. In addition, broadcasters that are licensed by the ABA to use spectrum also have licences from

the ACA for use of non-broadcasting parts of the spectrum (for example, for microwave or satellite links).

A single spectrum manager would remove these overlaps. This should provide scope for improving the efficiency of spectrum management. The ACA, as the general radiofrequency manager, appears to be in a good position to take over the technical planning of the broadcasting services bands.

It is possible that combining the activities of the ABA and the ACA under one structure could generate some administrative efficiencies. However, the Commission considers that there are drawbacks from requiring one body to pursue multiple and sometimes conflicting objectives. Many of the spectrum planning and licensing problems discussed in this chapter result from the ABA attempting to use technical planning processes to achieve social and cultural objectives. The Commission considers that social and cultural objectives are better pursued independently, by an organisation separate from that which allocates spectrum.

Participants' views

Inquiry participants had a variety of views on the Commission's proposal in the draft report to shift responsibility for technical planning of the broadcasting services bands to the ACA. Cable and Wireless Optus supported the Commission's proposal, stating:

> … implementation of this recommendation would give the ACA complete responsibility for planning of the radiofrequency spectrum. … The benefits of this approach would be to clearly delineate the responsibilities of each regulatory agency and reduce the existing levels of 'overlap'. (sub. DR216, pp. 4–5)

Similarly, Papandrea stated:

> The broadcasting spectrum should not be managed differently to the rest of the radiofrequency spectrum. It is a scarce resource that should be utilised to the fullest extent possible and applied to the most valuable uses as determined by the market and not by regulators attempting to outguess the market. … The ACA has extensive expertise in spectrum management and should be given responsibility to manage the broadcasting spectrum in the same manner it manages the rest of the radiofrequency spectrum. (in IPA, sub. DR242, att. p. 18)

By contrast, the NSW Government did not agree with the Commission's proposal:

> … the NSW Government has concerns about the manner in which the ACA undertakes its spectrum management role. To date, the ACA has focused on the commercial auctioning of radio spectrum as the sole determinant for the value to be derived from spectrum access. … A process … is preferred where social requirements compete equally with price until the social requirements are met. (sub. DR193, p. 2)

Similarly, the ABC stated broadcast services planning:

> …currently requires to take into account a number of public interest issues, such as diversity of services which are currently not addressed in the market planning approach of the Radiocommunications Act. (sub. DR206, p. 4).

The Commission considers that the social and cultural objectives of broadcasting should be pursued independently of the technical planning of the broadcasting services bands. The Commission recommends that the ABA retain responsibility for determining the number of national, community and Indigenous services for which spectrum should be reserved. The ABA should also continue to address content issues (see chapters 11 and 13). However, in the Commission's view, there would be significant advantages from giving the ACA responsibility for the technical planning of the broadcasting services bands, and for issuing licences that grant access to the spectrum. The ACA should manage broadcast spectrum in a manner similar to other radiofrequency spectrum, under the provisions of the Radiocommunications Act.

RECOMMENDATION 6.10

Responsibility for planning and licensing the broadcasting services bands of the spectrum should be transferred to the Australian Communications Authority and managed under the provisions of the Radiocommunications Act.

Apparatus licences and Spectrum licences

The Commission recommends (above) that licences to broadcast and licences to use spectrum be separated, and that charges for use of spectrum reflect the value of the spectrum held. To implement these recommendations, the spectrum held by each licensee must be defined.

The precision with which spectrum can be defined is affected by the type of licence that has been issued. At present, all licences to use broadcasting spectrum are 'apparatus licences' which are attached to the licence to broadcast. (That is, a licensee can only sell the entire broadcasting licence along with its total access to spectrum, which generally includes a number of individual apparatus licences.) Apparatus licences are very prescriptive; they restrict use of spectrum to a particular type of equipment (or apparatus) using a particular frequency in a particular region. The spectrum cannot be used for any other purpose. Apparatus licences do not precisely identify the amount of spectrum that a licensee may use — a planner attaches technical conditions to each licence that ensure licensees do not interfere with other spectrum users.

By contrast, spectrum licences — a relatively new innovation both in Australia and internationally — are more flexible. A spectrum licence clearly defines a 'block' of spectrum within which the holder of the licence may operate any device, so long as it complies with the general technical framework imposed to minimise interference. Spectrum licences are tradeable on a secondary market, although major changes in technology may need central coordination of changes to the broad technical requirements.

Apparatus licences

The main advantage of apparatus licences for broadcasting is that the broadcasting services bands are already managed using this licensing system. Therefore, retaining apparatus licences under a regime in which access to spectrum is split from the licence to broadcast would reduce the disruption to the way in which existing broadcasters operate. Rather than having apparatus licences attached to their licence to broadcast, a broadcaster would have a number of individual apparatus licences. These individual licences would be transferable, so broadcasters could make commercial decisions about the services they supplied and about whether to continue their current use of the spectrum. Broadcasters may find it more efficient to hold fewer or smaller apparatus licences (covering less spectrum) and to use other methods (such as cable or low powered transmitters) for problems such as shadow infill.

The main disadvantage with apparatus licences is the lack of precise definitions of the spectrum they occupy. This means the spectrum manager is required to determine how many apparatus licences are available and the technical restrictions on each.

The prescriptive nature of apparatus licences could also limit the scope for a secondary market. Because apparatus licences specify the use of a particular piece of spectrum, improving the efficiency of spectrum management may require broadcasters to return excess spectrum to the central planner. (That is, the planning authority may need to reformulate the apparatus licence before it can be used for another purpose.)

Spectrum licences

The main advantages of spectrum licences are that they provide a clear definition of the amount of spectrum covered by each licence, and they afford a degree of flexibility in spectrum use. In principle, this approach could be applied to the broadcasting services bands. However, pre-conditions for spectrum licences are the division of spectrum into tradeable 'lots' and the clear statement of the property

rights in the spectrum. Because broadcasting spectrum has been allocated in the form of apparatus licences, it is not presently possible to define precisely enough the amount of spectrum being used by each existing broadcaster so as to issue a spectrum licence. And because spectrum being used cannot easily be defined, it is also difficult to establish what spectrum is available for other uses.

Converting apparatus licences to spectrum licences

It is possible, as technology increases the range of potential uses of spectrum in the broadcasting services bands, that licence holders may wish to convert their spectrum access rights from Apparatus to Spectrum Licences.

In principle, converting apparatus licences to spectrum licences may be the best option for improving the efficiency of the spectrum, especially within a multiple-use framework. However, the Commission understands that the conversion process could be lengthy and complex, because it involves 'mapping' the spectrum each apparatus licence uses (and the spectrum it prevents others from using in buffer zones, for example). Mapping would also identify the amount of unused spectrum available in the broadcasting services bands.

This view was expressed by a number of inquiry participants, such as the Federation of Australian Commercial Television Stations:

> At a practical level, the process of converting existing Radiocommunications Act licences that are moulded to licence areas into tradeable spectrum lots would be extremely difficult. (sub. DR231, p. 3)

However, licence conversion is occurring outside the broadcasting bands. It has been reported that Austar United has sought to have a number of regional multi-point distribution system apparatus licences, originally granted for pay television broadcasts, converted into spectrum licences (Alston 2000). This conversion could increase the value of the licences significantly, for the spectrum could be used to provide services such as high speed Internet access and telephony. If the Commission's recommendations are adopted, and broadcasting spectrum becomes tradeable, market forces could create greater incentives for similar conversions in the broadcasting services bands.

The Radiocommunications Act allows for 'reallocation' or 'conversion' of apparatus licences to spectrum licences. 'Reallocation' occurs when expired apparatus licences are handed back to the ACA and then resold as spectrum licences. 'Conversion' occurs when apparatus licences are reconfigured as spectrum licences but there is no change in ownership. The conversion process attracts a conditional spectrum access charge.

The Commission considers that the benefits associated with compulsory conversion of apparatus licences into spectrum licences, in the short term, may be outweighed by the costs. Many of the benefits of the Commission's recommendations relating to spectrum planning and management could be realised within the existing apparatus licence framework. However, the Commission's recommendations may generate greater market pressures toward conversion, and there may be increased scope for conversion at the end of the simulcast period, when large numbers of apparatus licences will be handed back to the regulator.

6.8 Improving spectrum licensing

The licence period, renewability and transferability may all affect the value of a licence granting access to the spectrum. Options for licence periods include fixed term licences, renewable licences and perpetual licences (box 6.6). Currently, commercial broadcasting licences (with their attached rights to spectrum) are issued for a fixed period of five years. They are renewable and traded with the presumption that they will be renewed. Narrowcasters' licences, on the other hand, cannot be renewed (and require reapplication on expiration). Although they can be traded, their limited renewability limits their marketability.

Box 6.6 **Options for licence periods**

Fixed term licences: These allow the Government the flexibility to change spectrum allocations in line with changes in technology, consumer preferences, etc. The shorter the licence period, the more flexibility is afforded to the Government. However, fixed terms may reduce incentives to invest.

Renewable licences: With automatic renewal, the licence is much like a perpetual licence although it is in principle possible for the spectrum manager to reclaim spectrum at the end of the licence period.

Perpetual licences: These provide certainty for investors (particularly those licences that require a long revenue stream) at the expense of some loss of flexibility for the Government in managing the spectrum. Changes in spectrum planning or international obligations could require compulsory resumption of licences (the Government would have to buy them back).

Source: DCITA (1998b).

The period of a licence is not of major importance if there is a presumption of automatic, or nearly automatic renewal, and if they are transferable. However, the period of a licence is important if renewal is not allowed or is conditional, as in the case of narrowcasters. Several participants, including Really Really Big Productions

and 3UZ, argue that the current five year period for narrowcast licences with no right of renewal is too short and provides an unsatisfactory and risky framework for broadcasters and audiences. Similarly, the Australian Racing Radio Association, stated:

> Why establish what is, in some cases, an expensive capital structure when in five years the ability to use the asset could be easily lost? (sub. 13, p. 5)

The Commission considers that the efficiency of potential secondary markets in spectrum would be enhanced if licences to use spectrum were renewable and transferable. However, because new spectrum for digital television was provided to existing broadcasters without an additional licence fee, these broadcasters should still be required to hand back the spectrum used for analog broadcasting after the digital conversion process is complete. This spectrum could then be reallocated.

The Commission recommends that all spectrum not reserved for national, community and Indigenous broadcasters should be made available for commercial broadcasting uses. Under this recommendation, spectrum currently regarded as 'narrowcasting' would be made available using the same processes and on the same terms (including renewability) as those for spectrum for commercial broadcasters.

RECOMMENDATION 6.11

Spectrum used for commercial narrowcasting should be made available using the same processes and on the same terms (including renewability) as those for spectrum for commercial broadcasters.

6.9 Conclusion

Under current arrangements, the broadcasting service bands are not managed as efficiently as they could be. The licensing system tries to regulate broadcasters' behaviour and manage spectrum simultaneously, through a series of *quid pro quos* that provide little incentive for broadcasters to use spectrum efficiently. This limits the number of services available to consumers.

The Commission considers that the interests of the community are best served by encouraging the efficient use of spectrum. To improve the management of the broadcasting services bands, the Commission is recommending that responsibility for their planning and licensing be transferred to the ACA, and the planning criteria be restricted to those relevant to the technical planning of the spectrum. Other, non-technical objectives should be pursued separately by the ABA, such as determining the number of national, community and Indigenous broadcasting licences, regulating content, enforcing codes of practice and monitoring ownership.

The Commission is also recommending that broadcasting licences be separated into licences granting access to spectrum and content-related licences granting permission to broadcast, and that revenue based licence fees be converted to fees that reflect the value of spectrum used. Together these recommendations create incentives for more efficient use of spectrum by broadcasters.

7 From analog to digital

The commencement of digital television transmissions in 2001 will begin a new era in Australian broadcasting. Digital broadcasting offers consumers improved reception and new services. The focus of this chapter, however, is not the commencement of digital services, but the switch from analog to digital broadcasting, especially digital television. The transition to digital television broadcasting is particularly significant because it has the potential to free large amounts of spectrum currently allocated to analog channels, providing scope for new players, more competition, and additional services.

The introduction of new digital services in 2001 should be a major achievement for the television industry and the planning process. It also offers an important opportunity. Without a successful switch-over of viewers to digital and a subsequent switch-off of the analog system, the key benefits of digital television will not be realised. While a great deal of media attention has been given to the details of the new digital services, the Commission's main focus is on facilitating the conversion to digital broadcasting in the medium term, rather than the augmentation of analog services with digital equivalents.

This chapter is primarily concerned with digital television. It explains what digital television transmission offers (see section 7.1), the nature of Australia's legislated conversion plan (see section 7.2), and likely consequences of current policy for consumers and for broadcasting and related industries. Since the passage of the initial legislation in 1998, other countries have begun digital television broadcasting, and consumer equipment has become available. New information suggests that aspects of the 1998 plan may curtail the consumer benefits of digital television and increase costs for broadcasters. The Government addressed some of these issues in its December 1999 decisions on the format and regulation of new digital television services. Further modifications and additions to the existing conversion scheme are recommended in this chapter to create a more dynamic, diverse and competitive broadcasting system (see sections 7.3 and 7.4).

The Commission is concerned with some crucial elements that are not currently present in digital television policy:

- who will drive the digital switch-over?
- when will the analog switch-off occur?
- how can the switch-off happen?

This approach provides the opportunity to shift decision making towards the interests of viewers, and away from the juggling of favours and obligations among broadcasters which has occupied media policy in the past.

Finally, the chapter turns to the question of digital radio broadcasting, applying the lessons of the digital television issue to the more slowly emerging medium (see section 7.5).

7.1 What is digital television?

A good deal of technical obscurity surrounds digital broadcasting. This section provides a brief description of the services that digital television offers, the differences between various picture formats, and the equipment consumers will need in order to receive digital television transmissions.

Some terms encountered in the field are explained in box 7.1. It is important to note that 'digital broadcasting' in this context denotes the *transmission and reception* of digital signals. It does not refer to digital recording or editing equipment used in the production of broadcast programs.[1]

Digital broadcasting is not specific to any particular system of delivery: it can be provided by cable, terrestrial (over the air) broadcasts, or direct satellite-to-home transmission. The 1998 amendments to the *Broadcasting Services Act 1992* (BSA) concern the terrestrial transmission of digital television broadcasting. Australian satellite television broadcasting has already converted to standard definition digital transmission, and Australia's cable television networks are also likely to convert to digital transmission in the future.

[1] While digital technology is widely used in television production and display, terrestrial broadcasts at present are analog, or continuously variable, signals. Digital transmission involves broadcasting discretely stepped, quantised signals. These digital signals are received and decoded by suitable receivers which then convert the signals into sounds and, in the case of television, images.

Box 7.1 **The alphabet soup of digital television**

ATSC: the US digital television standard, as specified by the Advanced Television Standards Committee.

Dolby AC-3: a proprietary digital surround sound system. It is specified for digital television in the United States, and will be used in addition to MPEG 2 for Australian digital transmission.

DVB: digital video broadcasting. The term encompasses a number of European digital television standards, including DVB-T for terrestrial transmission and DVB-S for satellite transmission. DVB-T and DVB-S have been adopted in Australia and many other countries.

DTTB: digital terrestrial television broadcasting.

HDTV: high definition television. This generic term may refer to analog or digital television in a variety of video resolution and scanning formats.

MPEG: Moving Picture Experts Group. This International Standards Organisation group has specified a set of open compression standards for digital audio and video. MPEG 2 is part of the DVB standard adopted for digital transmission in Australia.

SFN: A single frequency, or one channel, network, in comparison with multi-frequency networks (MFNs), which allocate extra channels to a television station for shadow in-fill. Digital transmission facilitates single frequency networks.

SDTV: standard definition television. This generic term distinguishes 'standard' from 'high' definition picture formats. Standard definition digital offers a video resolution similar to Australia's PAL analog system, although the aspect ratio may be 16:9, a wider image than the traditional 4:3 format.

STB: set-top box: a receiver and decoder which processes digital transmissions and connects to television displays, VCRs and other devices. A set-top box may also convert digital transmissions to analog for display on an analog television set.

Digital transmission offers key advantages over analog. The technology allows better reception, and facilitates the compression of the broadcast signal. The consequences of these features are far reaching for consumers. Improved sound and image reception, including the elimination of ghosting and interference, is one likely result. More importantly, digital transmission has the potential to free substantial portions of the broadcasting spectrum. This is possible because the digital signal is compressed, and because the spectrum now used for buffers between analog signals and for shadow infill is either not required or greatly reduced.

Compared with digital transmission, analog television broadcasting has a voracious appetite for spectrum. Australian analog channels are broadcast over 7 megahertz channels, usually separated by unused 7 megahertz buffer channels. Analog transmissions also use local translator channels for 'shadow' areas. The hillier the

terrain, the more local translators may be required: for example, the greater Sydney area requires five channels and additional buffer channels for each station. Almost all of the 55 channels available are used to transmit the signals of five networks. With digital transmission over single frequency networks, a far more efficient use of the spectrum is possible. Potentially, only five channels would be necessary to achieve similar coverage to analog; the remaining channels could all be used for different services. Buffer channels and translator channels would not be required. At the Commission's draft report hearings, NTL stated that single frequency networks appeared feasible in the Sydney area (trans., pp. 1032–4).

The spectrum saved through digital transmission can be used for many purposes. Interactive services can be offered; a number of separate programs can be provided in the spectrum currently occupied by one; additional material can be linked to a program; and higher definition audio and video can be broadcast.

Digital television services

Australian digital television is based on the European DVB set of technical standards. Given the uncertainty surrounding the future of digital media, it is important that DVB is flexible enough to accommodate new technological developments and emerging applications. While the DVB system is able to deliver a digital version of conventional television in a range of picture formats (see below), it also has the technical potential to deliver new services, including multichannelling, high speed Internet access, and broadcast services for small, mobile devices. Some of the new services offered by digital television are described below.

Multichannelling

Multichannelling is the transmission of more than one discrete stream of programming over a single television channel or carrier. The compression techniques employed for digital transmission enable a broadcaster to transmit three or more standard definition signals, or one high definition signal and a standard definition signal, in the spectrum currently devoted to one analog channel (see figure 7.1). The ABC, for example, could broadcast three or four different programs at the same time: a news channel, a children's channel, and an educational channel might be offered alongside a traditional, 'primary' channel. The number of channels offered can be changed at any time, providing a new degree of programming flexibility for broadcasters. But because high definition transmission requires more bandwidth than standard definition, high definition transmission all but precludes multichannelling under current technology.

Interactive services; 'datacasting'

Digital transmission also makes possible many new interactive services. Some but not all of these services may be permitted by the 1998 legislation and the Government's December 1999 policy statement. Several kinds of interactive services are possible.

- A series of discrete 'programs' or 'pages' can be transmitted — for example, a number of World Wide Web sites, or a catalogue of products for sale. Without needing to communicate with a broadcaster's computer, the viewer is able to select and move around this 'carousel' of material.
- A more interactive system is made possible by a 'back channel' or 'return path', which is typically a modem connection to the telephone network. Digital television sets and set-top boxes available in Europe and the United States often include a modem. If the modem is to be used, the digital television or set-top box must be located with access to a telephone point. The return path enables the viewer to send information back to the broadcaster. The viewer could, for example, request a particular program, send messages, play broadcast games, place bets on a sporting event, or make electronic purchases in response to advertising.

Enhanced programming

Broadcasters may also transmit content linked to a program. A viewer may choose to see some additional or alternative content relating to a broadcast program. This content may be of several kinds: during a telecast of a sporting event, for example, it could comprise additional information concerning a player, or it could include a choice of camera angles. Sport programs with additional interactive content of this sort are reported to be particularly popular in the United Kingdom. Bandwidth constraints may preclude extensive use of enhanced programming in high definition. A sporting event broadcast in standard definition will offer greater scope for enhanced programming than one broadcast in high definition. There would be little scope for enhanced programming when a standard definition and a high definition signal are being broadcast simultaneously.

Simulcasting

Simulcasting refers to the simultaneous broadcast of a program in more than one transmission format. The Government's December 1999 policy statement would require simulcasting of high definition and standard definition signals whenever high definition programs are broadcast.

The 1998 digital conversion legislation stipulates the simulcasting of digital and analog signals. This means that consumers with analog equipment will continue to receive analog broadcast transmissions for the duration of the analog simulcasting period. They will be unable to receive signals transmitted in digital format, and when simulcasting finishes they will be unable to receive anything, unless they have a set-top box to convert digital signals to analog.

Picture formats for digital television

Digital broadcasting allows for many different television picture formats, often broadly characterised as high definition or standard definition. These terms denote various video resolutions and methods for displaying them. Technically these terms do not refer to the quality or otherwise of the displayed image, although a high definition picture displayed on a suitable screen will generally produce a 'sharper' image than standard definition digital. Video resolution in this context refers to the quantity of video information that may be displayed on a screen, for example the number of lines or pixels.

A standard definition digital television picture in Australia will have 576 horizontal lines of 720 pixels, using interlaced scanning.[2] The general term high definition simply denotes a picture format with a higher video resolution than standard, or a better scanning mode. A few different high definition picture formats are commonly used. These are generally referred to by the number of lines of pixels they provide, and the scanning method they employ. Thus '1080i' refers to a picture of 1080 horizontal lines with interlaced scanning, '720p' is 720 lines with progressive scanning, and '576p' is 576 lines with progressive scanning.

High definition does not mean 'better reception' than standard definition, nor does it denote interactivity. These are features of digital television in general. Better reception is independent of video resolution.[3]

[2] Two scanning methods are used: 'progressive' scanning draws a whole screen, line by line, every time the screen is refreshed, while 'interlaced' scanning (the traditional method for broadcast television) draws half a screen, or every second line, every time the screen is refreshed. Although (other things being equal) progressive scanning requires a data transmission rate twice that of interlaced scanning, it produces a superior picture and has other advantages. Computer displays typically use progressive scanning.

[3] However, a John Fairfax Holdings (Fairfax) submission to the Department of Communications, Information Technology and the Arts' review of high definition standards claimed that high definition reception may be of lower quality than standard definition in marginal reception areas, because less error correction occurs in high definition transmissions.

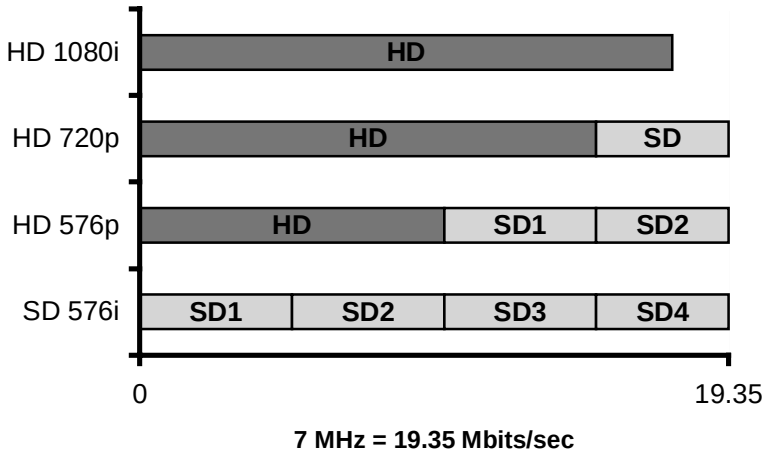
The capacity of a broadcaster to offer interactive or additional services is reduced by broadcasting in high definition, given the greater bandwidth requirements of high definition compared with standard definition. This is a key difference between the two formats: a trade-off between allocating all or most of a channel's 7 megahertz of bandwidth to a high definition program, or to an array of standard definition programs. Compared with standard definition, high definition formats provide greater video resolution and additional audio information. However, substantially greater spectrum is required to transmit this additional video and audio information, and this spectrum cannot then be used for additional programs, linked programming material, interactive material or any other purpose.

The free to air channels have each been allocated a 7 megahertz channel on the basis that this amount of spectrum will be necessary for high definition transmissions. With current compression methods, this 7 megahertz channel enables the broadcaster to transmit about 19 megabits of data per second. The transmission of a standard definition signal requires between four and six megabits per second. It is therefore possible to transmit three or four standard definition programs over the one 7 megahertz channel.

Data rates for high definition will depend on the particular high definition format chosen and the nature of the material broadcast. Some kinds of content, such as the rapidly changing pictures of 'fast sport', require a higher data rate than others. The most important variable in this respect is the picture format chosen by the broadcaster (see figure 7.1). The 1080i high definition format requires almost all of the 19 megabits per second provided by the 7 megahertz channel. But a 720p high definition program requires only around 12–14 megabits per second, leaving enough room for an additional standard definition program. A 576p high definition program would leave enough room for two additional standard definition programs. If 576i standard definition is the only picture format transmitted, 7 megahertz provides enough bandwidth for four separate program streams (NTL, sub. DR267).

The lower bandwidth requirements of standard definition transmissions provide more flexibility for broadcasters in offering enhanced programming, datacasting or multichannelling. A standard definition telecast of the Tour de France bicycle race, for example, may offer the viewer the choice of several points of view from different parts of the route; the bandwidth requirements of a high definition telecast of the same event would constrain that choice. As figure 7.1 shows, there is always a trade-off between allocating bandwidth to a single high definition program or to several program streams.

Figure 7.1 **Picture formats in a 7 megahertz channel**



Data source: NTL (sub. DR267.)

High definition broadcasts may be distinguished in another respect. Some broadcast material has a high definition 'origin'; that is, it may have been originally produced with high definition digital recording and editing equipment, or it may have been originally captured on film and then converted to a digital form. Other material may have originated in standard definition digital or analog production, which has been 'upconverted' to high definition. The quality of upconverted material cannot rise far above its origins, and will not match that created in a high definition format.

Consumer equipment for receiving digital television

To receive digital transmissions, a viewer will use either an integrated television set, which both receives and displays a signal, or a separate receiver (a set-top box) and screen. Either selection will perform the following tasks.

- *Receiving and decoding the signal.* Only equipment specifically designed for the purpose can receive and decode digital signals. Analog television receivers and VCRs are unable to perform these tasks. The receiver and decoder must also be equipped to process the specific digital transmission format that has been broadcast. Decoders designed only for standard definition will be unable to process high definition transmissions. High definition decoders — which are likely to offer the capacity to decode all high definition picture formats — will require additional memory and greater processing power than standard definition models.

- *Displaying the signal.* Once decoded, the video signal must be displayed on a screen capable of showing the picture format decoded.
  - High definition video can be seen only on displays designed for that format. Suitable displays for high definition are large: 90 centimetres or greater for enjoyment of the highest resolution pictures at usual viewing distances.
  - A standard definition screen can display a high definition transmission only if the signal has been 'down converted' to standard definition by a decoder; otherwise the screen will go blank.
  - An analog television set can display a digital transmission only if it has been converted to a suitable analog format. If the transmitted signal is in 16:9 aspect ratio, a conventional 4:3 screen will 'letterbox' the video image.

Digital television equipment may also provide other features.

- *Back channel or return path communication.* The back channel — usually provided through a modem connected to a telephone line — enables genuinely interactive services.
- *Conditional access.* Although unnecessary for receiving free to air programs, conditional access systems are used for pay services and are likely to be used for interactive services. Suitable conditional access systems in digital reception equipment can ensure interoperability with other services.
- *Local storage.* A hard disk built into a set-top box or digital television may be used to store video or other information for later viewing, or for datacasting applications.
- *Connections with other equipment.* Connections for household audio, video and computer equipment will enable consumers to make more use of the new services offered by digital broadcasting.

7.2 The current policy framework

The *Television Broadcasting Services (Digital Conversion) Act 1998* governs digital television broadcasting in Australia. As well as providing a plan for introducing digital television, the 1998 legislation specified a range of issues for review. The Minister for Communications, Information Technology and the Arts released a policy statement on some of those matters on 21 December 1999. Necessary legislative amendments are yet to be enacted.

Two months before the Minister's statement, the Commission's Draft Report on Broadcasting was released for public comment. The Commission made several draft recommendations for modifications to the 1998 legislation.

The 1998 legislation

The 1998 legislation provided for the introduction of digital services resembling those offered by the current analog system in many respects. The Commonwealth Government's 1998 Regulation Impact Statement concerning the legislation sets out the following objectives of the conversion plan:

- to improve the technical quality of the Australian television system in line with international technology advances;
- to allow a smooth transition to digital broadcasting with minimal disruption to consumers;
- to increase viewer choice and diversity of product;
- to seek competitive neutrality between commercial and national broadcasters, the subscription television sector and other communication services;
- to provide an appropriate return to the Commonwealth for the use of television spectrum;
- to achieve spectrum efficiency gains to ensure new services;
- to take into account the rapidly changing commercial and technological environment;
- to protect the interests of regional consumers; and
- to retain free to air analog broadcasts for a period ensuring the interests of consumers.

The legislated scheme stipulated:

- a single technical standard for terrestrial digital television, implying that all free to air digital broadcasts would be receivable on the same equipment;
- the commencement of digital transmission on 1 January 2001 in capital cities, and then in regional areas. All areas are to have digital broadcasting by 1 January 2004;
- the loan of spectrum without additional charge to existing broadcasters to allow the required simulcasting of analog and digital transmissions for eight years or longer in each licence area. This period can be extended by regulation in each area;
- mandatory high definition transmissions for some portion of transmission time to be determined — effectively a high definition minimum quota;
- the possibility of multichannelling by the national broadcasters, but not the commercial broadcasters, subject to review;

- additional ‘datacasting’ services, to be provided by new entrants and incumbent broadcasters. Datacasting was defined in the Act as an information service other than a broadcasting service. The details of this definition were left to subsequent review and legislation; and
- additional ‘incidental and directly linked’ programming. Again, the scope of this category of service was not defined in the legislation.

While the 1998 conversion plan allowed for some additional services, it also constrained the expansion and diversification of the broadcasting system in important ways.

- No new commercial television licences were to be allocated in any licence area before 31 December 2006.
- Multichannel services (other than those the national broadcasters may provide) and the provision of subscription broadcasting services by the current free to air broadcasters were prohibited.
- Prohibitions on both multichannelling and subscription broadcasting by free to air services were to be reviewed by the end of 2005.
- The switch-off date for analog transmission was subject to extensions, creating uncertainty for consumers, broadcasters and others. However, there is no provision in the legislation for shortening the analog simulcast period.
- Spectrum was lent for simulcasting, precluding its use for other purposes. The longer simulcasting continues, the longer this preclusion exists. It is important to note that the spectrum retained for analog transmissions is much greater than the 7 megahertz allocated for digital transmissions. This spectrum will be tied up, and entry to broadcasting will be constrained, as long as analog transmission continues.

The Commission’s October 1999 draft recommendations

In October 1999 the Commission’s Draft Report on Broadcasting proposed modifications to the 1998 legislation.

The Commission’s inquiry brought to light new information suggesting that Australian high definition television receivers were likely to be substantially more expensive than had been estimated in 1998. The Commission was therefore concerned that the regulatory combination of mandated high definition transmissions and tight restrictions on new interactive services would increase the costs of digital television while at the same time reducing consumer benefits. In the event of a slow consumer take-up, simulcasting would have to be extended; the

conversion process would be delayed, and the opportunity to introduce new players and new services would be lost. The stated objectives of digital conversion would be compromised.

The Draft Report therefore recommended that the digital television plan be modified to:

- facilitate consumers' adoption of readily available and affordable standard definition equipment;
- permit but no longer mandate high definition transmission;
- no longer mandate additional audio standards;
- minimise regulatory restraints on new digital services;
- define datacasting liberally; and
- permit free to air multichannelling, datacasting and other new digital services by commercial and national broadcasters.

The Commission also made draft recommendations designed to expedite the conversion process. The Draft Report proposed more certain switch-off dates for the analog system and the sale of spectrum used for analog simulcasting.

The Minister's December 1999 statement

On 21 December 1999 the Minister for Communications, Information Technology and the Arts announced Government decisions on some of the matters reviewed in 1999. The Minister restated the objectives of the Government's digital television policy:

> The Government has several objectives. First, we want the conversion from analog to digital television to involve the minimum possible disruption to viewers. Second, we want the take up of digital television to be as rapid as possible. This will allow the analog network to be shut down on schedule in 2008. Once the analog network is shut down, the spectrum which is presently used for analog services can be released for new services. The Government's third objective is to give people a range of options when it comes to buying receiving equipment, including the option of buying low cost basic equipment. Finally, we want to see digital television deliver the many benefits which it promises, such as:
>
> - new and improved services on television;
> - different picture display formats (HDTV, SDTV);
> - new information services (known as 'datacasting');
> - enhanced programming (eg multiple views);

- improved services to regional Australia; and
- improved captioning services for the deaf and hard of hearing (Alston 1999, p. 11).

The Minister's statement was principally concerned with two issues: rules for picture formats, and restrictions on datacasting and enhanced services.

- The high definition transmission quota will be set at 20 hours per week of material produced in high definition. The ABC and commercial broadcasters are to meet the quota within two years of the start of digital broadcasting in an area. SBS will be permitted to include in its quota material produced in standard definition and converted to high definition.
- Programs broadcast in high definition must be simulcast in standard definition, in addition to the analog simulcast.
- A new definition of datacasting services will be introduced, setting out a range of restrictions on datacasting services.
- Enhanced services must be directly linked to and contemporaneous with the main simulcast program. Enhanced services cannot be a means of providing multichannelling, although multichannelling will be permitted where there are overlaps in program schedules.

The proposed rules relating to picture formats and datacasting services are considered in more detail in section 7.4.

7.3 From analog to digital television

Current policy has serious ramifications for the public interest in efficiency and competition. Although it appears likely that the public benefits of releasing spectrum from analog broadcasting will be substantial in the long term, the costs of conversion for the community as a whole have not been taken into account in the current framework. No overall assessment of these costs was undertaken in the Regulatory Impact Statement prepared for the 1998 legislation.

The Commission is concerned to ensure that digital television policy does not unnecessarily increase these costs or compromise the benefits of digital conversion. In this section and section 7.4, recommendations are made to reduce the costs of conversion by shortening the simulcasting period and by removing high definition transmission quotas. Recommendations are also made in section 7.4 to increase the public benefit in digital television by liberalising regulatory restrictions on datacasting.

Given the Government's 1998 decision to proceed with digital television, the main policy issue is the conversion process. The loan without charge to existing broadcasters of the 7 megahertz channel for digital transmission is of less significance for efficiency, competition and new services than is future retention of the substantially greater spectrum now reserved for analog services. If the conversion process is rapid, substantial parts of the broadcasting bands can be freed for use by new services. But there is a risk that the conversion process may be prolonged. Although the current legislation sets a simulcasting period of eight years, it also provides for the extension of this period; eight years is a minimum. The real duration of the simulcast period is essentially open ended. If consumers' adoption of digital receivers is slow because equipment prices are high and new services are excessively regulated, the simulcasting period is likely to be extended.

Any extension of simulcasting would continue to limit the spectrum available for new broadcasters or other users of the broadcasting services bands. The Government has justified the restrictive nature of the legislation on several grounds, including the need for a smooth transition to digital transmission and the objective of maximising viewer choice and diversity. However, the restrictions on competition and the efficient use of the spectrum inherent in the legislation may prevent the achievement of these objectives. An extended simulcasting period would also mean the failure of the conversion process to meet another of its objectives, which is to 'achieve spectrum gains to enable new services to be introduced'.

Unless analog television broadcasting is concluded, the current legislation will fail to achieve its key objectives. However, the 1998 legislation makes no provision for completing the conversion process. The ABA noted that 'prior development of comprehensive strategies for managing analog switch-off is likely to be a prerequisite if the simulcasting period is not to extend beyond the statutory minimum period' (sub DR 298, p. 2).

A range of modifications to the 1998 legislation and the December 1999 policy will be necessary to ensure an expeditious and efficient switch-over. The Commission makes a series of recommendations to this end, building on its proposed reforms to broadcast licensing in chapter 6, and foreshadowing the recommendations for a less prescriptive content and format regime in section 7.4. The basic questions concern:

- who will drive the switch-over from analog to digital?
- when the analog switch-off will occur?
- how the digital switch-over can occur?

None of these questions is addressed in the current policy framework.

The 'who' question: spectrum-conscious new players

Incumbent broadcasters have an incentive to continue analog simulcasting, despite its costs. Holding analog spectrum precludes the entry of new competitors. The current licensing system gives broadcasters little reason to reduce their use of the spectrum, or to seek alternative delivery mechanisms (see chapter 6), because their fees are related to earnings rather than their use of spectrum.

The Commission's recommendation in chapter 6 to separate licences for the content and carriage of broadcast services would, if implemented, change the situation. It would create a specific group of players, some old, some new, consisting of the enterprises licensed to use the spectrum for broadcasting services. These spectrum rights holders would be diverse in character and corporate interest: some are likely to be existing broadcasters; some may be datacasters; some may be operators of transmission networks; and some may have purchased rights to the spectrum that may be exercised once analog transmissions cease (see the discussion below).

The *old* players in this group would be the incumbent broadcasters, whose spectrum access would be separated from their broadcasting (or content related) licences through the arrangements discussed in chapter 6. The old players will acquire a new interest in using spectrum efficiently, because for the first time they will be paying for the amount of spectrum they hold. However, they will also have an interest in keeping new competitors out, and one way of achieving that will be through the extension of analog simulcasting.

The *new* players in this group will be in a different position; they will have a direct and immediate interest in achieving more efficient use of the spectrum, and in encouraging consumer uptake of digital technology. They will be 'spectrum conscious' in a way incumbent broadcasters need not be. The corporate interests of this group of new, spectrum conscious players coincide with the public interest in hastening the switch-off of analog television broadcasting.

The 'when' question: timing the switch to digital

The duration of the simulcasting period is open to extension, area by area, in the current scheme. In effect the statutory eight years is a minimum period; if the policy remains unchanged, it appears highly likely that the analog simulcasting period will be extended until digital equipment has been very widely adopted. Combined with other measures to expedite the digital conversion, a definite and credible switch-over date would have the benefit of clearly informing broadcasters, manufacturers, retailers and consumers that the conversion process will be completed. The Federation of Australian Commercial Television Stations noted that 'the

commercial television industry wants the transition to be as rapid as practicable, on cost and practicality grounds' (sub. 150, p. 12). The public interest in improving competition and efficiency is also best served by certainty in the conversion process.

Setting a limit to analog simulcasting

The Commonwealth Government's legislated scheme sets 1 January 2009 as the intended switch-off date for capital cities. This may be a suitable date for a switch-off. While in other respects the Commission is favouring 'technological neutrality', the necessity of clearing spectrum for other purposes, and providing incentives for this to be done, requires that the switch-over of analog to digital television be mandated and facilitated. (Because analog radio is not so demanding of spectrum, the same imperative may not apply to digital radio.)

If a firm and final switch-off date were set, the spectrum currently used for analog simulcasting would acquire a value clearly related to its alternative uses. Market forces will then be able to begin to play their role in driving the migration to digital television. The final switch-off date would set the maximum duration of analog simulcasting, rather than the minimum.

Aligning the switch-off in city and country

Under the 1998 legislation, digital television is scheduled to commence in regional Australia up to three years after metropolitan areas. The simulcast period is scheduled to end in regional areas up to three years later than in the cities. Providing a flexible start date for regional broadcasters allows them to take advantage of cheaper equipment, and gives them more time to plan the new services. However, delaying the end of regional simulcasting will also delay the release of spectrum for new digital services. It may cause particular complications for the allocation of spectrum for new digital services in adjacent metropolitan areas (see ABA, sub. DR298).

Over the air digital services may be particularly valuable in regional areas where cable networks do not exist. The main regional subscription television provider is a satellite-based digital service, with plans to offer access to high speed Internet access and new commercial services. Digital terrestrial television will allow the free to air broadcasters to compete with satellite services, but the protracted timetable for digital conversion puts them at a competitive disadvantage. It will also increase the cost of analog and digital simulcasting, which is already a concern for regional broadcasters.

A broader issue concerns the consequences of a long gap between digital switch-overs in city and country Australia, especially if such a hiatus deepens the 'digital divide' between services available in urban and rural areas. A longstanding goal of Australian broadcasting policy has been the provision of services to regional areas which are comparable to those in the cities.

The benefits of delaying the end of analog in regional areas are not clear, while the costs appear to be significant. The Commission therefore recommends that the finish date for analog broadcasting in regions be aligned with that for the capital cities. This would shorten the period in which regional conversion must be completed, reducing regional broadcasters' simulcasting costs and increasing their commercial opportunities in new media, provided that they are allowed to multichannel and offer innovative new services.

The 'how' question: making the switch-over happen

Additional measures are necessary to enable the digital switch-over to proceed. The main element here is allowing market mechanisms to operate, by reducing unnecessary regulation, developing criteria for approving early switch-overs, and ensuring analog spectrum is released as early as possible.

Removing regulatory impediments to digital take-up

Less prescriptive content and format rules for digital television (see section 7.4) would allow new entrants such as datacasters to make the most of the potential of new media, and would reduce costs for broadcasters and content producers. If high definition television were not mandated, but permitted, consumers would have a greater diversity of digital services. While the quality improvements of digital broadcasting would still be achieved, the costs for broadcasters and content producers would be reduced.

A less prescriptive approach along these lines would be likely to increase consumer take-up of digital television.

Law and policy for early switch-offs

The BSA should be amended to enable the simulcasting period to be shortened wherever and whenever possible. The 1998 legislation provides for the extension of the simulcast period, but there is no statutory mechanism for shortening the period.

The Commission sees the development of a market for spectrum as the likely primary driver for more rapid conversion. Nevertheless, the Government will have a role in ensuring analog switch-offs do not occur before a sufficient proportion of households are able to receive and view digital transmissions. In this case a sufficient proportion would be likely to be a very high percentage. Suitable policy criteria for approving a switch-off date earlier than 2009 should be formulated and published prior to the simulcast period by the Department of Communications, Information Technology and the Arts, in consultation with interested parties and consumer groups. These criteria will provide the industry with some certainty for investment. They may address such things as the availability to consumers of affordable digital television reception equipment and the minimum percentage of households within a licence area able to receive and view digital television, either over the air or through another digital platform.

During the switch-over period, the Government may also consider policy options for assisting low income Australians to continue to receive their existing services — those that have been received as analog free to air broadcasts. Measures of this sort may be necessary to achieve a final analog switch-off in some areas, especially in regional areas where the value of spectrum may not be sufficiently high to induce market-based spectrum clearance. Assistance may be provided by the broadcasting industry, which will benefit as a whole from ending analog transmission, or it may be provided directly by government. Any necessary mechanisms should be targetted at those most in need of assistance. Policy should aim only to allow reception of the digital equivalents of *existing* analog free to air services, and should be neutral as to the best technical means of providing those services.

Providing clear consumer information

Consumer information will play an important part in the success or failure of the conversion process. Measures such as the mandatory labelling of analog televisions and VCRs may provide a useful means of warning consumers of the conversion process. In particular, consumers should be made aware at an early stage that analog devices will need to be augmented by additional digital equipment in order to function beyond the switch-over. Information of this sort may be particularly useful in the consumer electronics market, which is characterised by the ubiquitous and sometimes confusing use of the word ‘digital’. In the United States, market researchers have argued for the use of common distinguishing symbols to designate equipment designed for receiving digital transmissions. Industry and government should agree on the use of such informative labelling in Australia.

Accurate public information will be of particular importance during and at the end of the conversion process. It is a matter of concern that the ‘frequently asked

questions about digital television broadcasting' section of the ABA's Web-site publishes at best incomplete consumer information on the probable prices of digital television receivers.[4]

Under the Commission's proposals, spectrum rights holders would have a strong interest in promoting digital switch-over. There may also be a need for consumer and industry information from the Government. The Department of Communications, Information Technology and the Arts should be responsible for coordinating government information concerning the switch-over and switch-off process.

The Australian Competition and Consumer Commission should monitor the advertisements and other marketing practices of television retailers throughout the conversion process.

Allowing the market to operate

The most important step in enabling a switch-over will be to allow market mechanisms to operate.

Spectrum-based licensing creates a new class of players with an economic interest in the efficient use of spectrum, and therefore in the conclusion of simulcasting. If and when the market value of the spectrum used for simulcasting exceeds the costs of conversion, this new class of licensees would have an incentive to clear the simulcast spectrum themselves. (It has been already noted that those spectrum rights holders who are also incumbent broadcasters may have an additional, conflicting interest in the continuation of simulcasting.) The ABA stated that 'spectrum clearing need not wait until the end of the statutory simulcasting period if the market for digital spectrum will sustain the costs of earlier clearance either in areas or Australia-wide' (sub. DR298, p. 2).

Licenses may plan such a spectrum clearance jointly, since in some cases all would stand to gain from the end of analog simulcasting. It may be profitable for a 'clearance contractor' to provide set-top boxes to all remaining analog households in a licence area. Analog transmissions could then be concluded, and the vacated spectrum could be allocated to new services. An ABA review of opportunities for

[4] In answer to the question 'What will consumers require?', the ABA says: 'It is difficult to predict how much sets will cost, and the price could fall rapidly once the market is established. Large widescreen digital sets capable of displaying high definition video will probably cost several thousand dollars, while conventionally sized sets are likely to approach the prices of current sets. The price of set top boxes will depend on their functionality, but will probably be a few hundred dollars.' See the discussion on pricing in section 7.4 below.

spectrum clearance in the Sydney area identified one channel where clearance would affect only 10 000 homes (sub. DR298, p. 3).

In a study commissioned by Fairfax (sub. DR182), AT Kearney considered the net revenue benefits of an early release of spectrum. Kearney estimated the value of the available spectrum if it were released ten years earlier than would otherwise happen, taking into account advertising revenues and subscriptions, value added services, and transactional revenue derived from information services and electronic commerce. The total revenue benefit was estimated at about $4.3 billion, set against the costs of digital conversion. These were considered to be about $3.7 billion, covering the provision and installation of set-top boxes for every household in Australia. Kearney assumed a basic standard definition set-top box for every existing television set and a low installation cost. The result was a net revenue benefit of around $600 million.

Clearly any real world conversion process would be much more complex than the Kearney model assumes. Further, the Kearney calculations were for net revenue, not net economic benefit. The point, however, stands: there are significant *potential* economic benefits in digital conversion. The social and cultural benefits of greater media diversity should also be taken into account, and these were not captured by the Kearney calculation.

Releasing spectrum rapidly

Considerable demand exists for spectrum in the broadcasting bands. The rapid release of spectrum for new digital applications and services will encourage diversity and innovation, and will help drive consumer take-up of digital services. Prior to auctions of spectrum for datacasting in 2000, the Government should announce its intention to release and allocate any spectrum that becomes available for digital broadcasting through the conversion period.

Spectrum for new services should become available through the conversion process. As noted above, the 1998 legislation provides for datacasting by new players as well as existing free to air broadcasters. The ABA's channel plans for digital transmission identify certain 'not assigned' channels suitable for new digital services. Table 7.1 shows these channels in Australia's five largest cities. In the larger markets the number of these unassigned channels is small: only one in each of Sydney and Brisbane, and two in each of Melbourne and Adelaide. The plan may be modified as more research is undertaken on the characteristics of digital transmission. However, the allocation of one or two new digital channels as proposed in the ABA's channel plans is unlikely to provide substantial additional competition for the existing free to air networks under the Government's proposed

regulations for datacasting. Conversely, under the Commission's proposals for less restrictive rules on datacasting, two 7 megahertz channels would be sufficient for a wide range of new services.

Table 7.1 **ABA digital channel assignments: major capitals**

	ABC	*Seven Network*	*Nine Network*	*Network Ten*	*SBS*	*Channel 31*[a]	*Not assigned*[b]
Sydney	12	6	8	11	34	-	29
Melbourne	12	6	8	11	29	-	32, 35
Brisbane	12	6	8	11	36	-	38
Adelaide	12	6	8	11	30	-	33, 36
Perth	12	6	8	11	29	-	32, 35, 38

[a] Digital community television channels will be provided in spectrum allocated to datacasting services. [b] Not assigned channels may potentially be used for datacasting services.

Source: ABA Explanatory papers: digital terrestrial television broadcasting, July 1999–February 2000, Sydney p. 12, Melbourne p. 10, Brisbane p. 10, Adelaide p. 9, Perth p. 9.

Further spectrum may become available as more is learnt about digital transmission. The ABA's plans do not propose the allocation of additional digital channels for local area translators, assuming that single frequency networks are likely to suffice. Nevertheless, because the precise characteristics of digital transmissions in Australian cities are not yet known, the ABA did identify potential digital channels for local translators, commenting that if it were found that these channels were required, plans would be varied to include them. While not all of these channels may be suitable for high power transmission, they may provide valuable spectrum for new players, perhaps in combination with other delivery platforms. These channels should be sold for use by new services at an early stage in the simulcast period.

At the same time, channels identified by the planning agency as being suitable for early clearance at comparatively low cost — as the ABA has already done in a submission to the inquiry (sub. DR298) — could also be sold and allocated for use, subject to a clearance process.

The auction and allocation of all of the spectrum used for analog simulcasting before switch-off would also impose an opportunity cost on any inefficient use of spectrum for simulcasting. The United States has adopted this approach. US spectrum auctions are planned for 2002, four years earlier than the legislated switch-off. Licensees will have a clear incentive to expedite the conversion process. Spectrum freed in this way may be sufficient for many new services; the commencement of these services should not be delayed by regulation.

In Australia the analog spectrum should be sold two years before the end of analog simulcasting. The speed of technological change suggests a four year period, as in the United Sates, may be too long for the planning and accurate valuation of new services. A two year period would still allow some time for licensees to clear spectrum and seek an early switch-off of analog services where possible. Purchasers would be able to take possession of this spectrum after the switch-off of analog services.

Recommendations for an improved conversion process

An equitable and efficient migration to digital transmission requires a shift of emphasis. The focus of policy should change from augmenting analog broadcasting with digital to replacing analog with digital. Such a shift is more likely if the legislation provides:

- certainty and credibility in the conversion process;
- a role for market forces;
- enabling, rather than restrictive, regulation; and
- clear social and cultural policy objectives.

With clear policy signals and incentives, and less restrictive regulation, the industry is more likely to work together in driving the migration to digital.

Subscription service operators have an incentive to lead the way, in that they would be able to offer enhanced services by converting their own services to digital. Customers of satellite services have already converted to standard definition digital television. Subscription broadcasters would seek to secure and enhance their subscriber bases, before free to air operators are able to provide a full range of interactive multichannel services.

Successful bidders for spectrum currently used for analog would also have an incentive to band together to clear out spectrum by using ‘clearance contractors’. This would have to be done on a licence area basis. The likely first targets for such a strategy would be those areas served by local translators where the marginal benefits of analog simulcasting are least. Those areas where consumers’ capacity to pay for new services or equipment is greatest, and those that serve relatively small populations adjacent to major cities would also be candidates.

Market forces could lead to a comparatively rapid conversion of a high proportion of residents in such areas, so that licensee-financed conversions of ‘analog die hards’ could be accomplished relatively cheaply. This would allow licensees to use

their spectrum before 2009, enabling the entry of a significant number of new players.

A spectrum-based licensing system would also reduce the incentive for free to air broadcasters to hoard spectrum. In a liberalised regulatory environment, free to air broadcasters would also wish to hasten conversion, to reduce simulcasting costs and fully exploit the potential of new digital services. There is little point in multichannelling or creating new interactive services if only a few viewers can receive the signals.

RECOMMENDATION 7.1

Prior to the commencement of digital terrestrial television in 2001, the digital television conversion plan should be modified.

- ***The Government should set a firm and final date of 1 January 2009 for the end of the simulcast period. The final date should apply to metropolitan and regional areas.***
- ***Necessary amendments should be made to provide for shorter simulcasting periods, enabling the switch-off of analog services earlier than 2009 in areas where that proves feasible.***
- ***The Government should formulate and publish specific criteria suitable for approving the early switch-off of analog services.***

RECOMMENDATION 7.2

The digital television conversion plan should be further modified.

- ***Prior to the sale of any spectrum in the broadcasting services bands in 2000, the Government should announce its intention to release and sell any spectrum which becomes available for digital broadcasting during the conversion period.***
- ***Within two years of the commencement of digital broadcasting in a licence area, channels should be identified and sold for new digital broadcasting services.***
- ***Within two years of the commencement of digital broadcasting in a licence area, channels suitable for low cost spectrum clearance should be identified. The channels should be sold for new digital broadcasting services, subject to clearance of the spectrum by the purchaser.***
- ***Two years prior to the termination of the simulcast period, the spectrum manager should plan and sell for new digital services all remaining spectrum used for analog television broadcasting, with possession after analog switch-off.***

RECOMMENDATION 7.3

As the digital switch-over proceeds, the Government should design appropriate policies to ensure switch-off of analog services on 1 January 2009 in areas of slow take-up.

7.4 A new regulatory framework for digital television

Regulatory restrictions on the services provided by digital broadcasters have the potential to block the conversion process indefinitely. While the Government's objective of ensuring a 'smooth transition' to digital broadcasting is important, excessive regulation of the format or content of new digital services jeopardises the achievement of any sort of transition, deprives consumers of major benefits of digital television, and will also constrain the development of new services by Australian companies in this dynamic and fast growing industry. A liberal approach to regulating the new medium will be essential to a successful conversion process.

The Government's proposed regulations concern two key features of digital television. First, they have been designed to govern the format of the picture that broadcasters transmit, particularly the transmission of high definition programs. Second, they seek to regulate the content of the new services known as datacasting.

Regulation of picture formats

The regulation of picture formats has a substantial impact on the nature and cost of digital television equipment, and therefore on the whole conversion process.

Video resolution has become the key issue in this context. The Government's December 1999 policy statement proposes:

- a mandatory high definition transmission quota of 20 hours per week, after a two year phase-in period;
- a requirement that commercial television broadcasters and the ABC meet the high definition quota with programming *produced in* a high definition format;
- a requirement that SBS also meet the high definition quota, with the proviso that it may include material produced in standard definition and converted to high definition; and

- a requirement that a standard definition signal always be transmitted, in addition to the analog simulcast already stipulated in the 1998 legislation.

In the course of the inquiry, many participants suggested that the cost of high definition equipment will be significantly higher than was earlier understood, and that as a result consumer take-up of high definition equipment will be slow. The Minister indicated that there were several reasons for the Government's 'must carry' standard definition rule:

> The main reason to make broadcasters provide an SDTV signal at all times ('SDTV must carry') is that it means that consumers can buy SDTV equipment and know that they will always get a picture. If the Government had not made broadcasters do this, then at some times they would broadcast in HDTV only. A consumer with an SDTV set would not get any picture at these times; the set would go blank.
>
> The Government wants people to have the choice to buy SDTV equipment because it will be a lot cheaper than HDTV equipment, at least in the early years of digital television. HDTV television sets will be a lot more expensive than SDTV sets. HDTV set top boxes, too, will cost more than SDTV set top boxes. It would not be fair if digital television was so expensive that only rich people could afford it. The Government has decided on SDTV must-carry so that digital television will be as affordable as possible for ordinary Australians.
>
> Another reason for SDTV must carry is that the Government wants to encourage datacasters. Many potential datacasters say that their services are much more likely to be taken up if people can buy a cheaper SDTV set top box.
>
> Finally, SDTV must carry means that Australia is not going with HDTV exclusively. The Government feels that it would be unwise to do so. So far, only one country (the US) is providing HDTV, and very few consumers have so far purchased HDTV sets. By introducing HDTV together with SDTV must carry, the Government has chosen a better long term option for consumers while still allowing scope for HDTV to develop as it becomes more widespread. (Alston 1999, p. 11)

These comments by the Minister are supported by the weight of argument put to this inquiry. The issues are the relative costs of standard and high definition equipment; the impact of these costs on consumers and industry; and the effects of Australia's high definition approach, which no other country shares.

Costs of high and standard definition equipment

Most estimates indicate that television sets suitable for the display of high definition digital signals will cost at least $8000. This figure is considerably higher than the estimate of 'several thousand dollars' which was included in the Regulation Impact Statement on the 1998 legislation.

Most but not all of the information received by the Commission indicates large price differences between high and standard definition equipment. High definition television sets cost substantially more than standard definition sets.

The price of set-top boxes is also a critical issue. While few consumers may wish to purchase high definition television displays, everyone who wishes to receive digital television must acquire at least a set-top box capable of decoding digital transmissions. Once analog transmission ceases, analog television sets will be useless without a digital set-top box. The cost of decoders also has important consequences not only for consumers who will need to purchase these devices, but also for subscription broadcasters and datacasters who wish to supply interactive services.

Set-top boxes capable of processing and converting high definition signals will probably cost substantially more than those designed for only standard definition signals, although estimates of the price differences vary[5]. Current information indicates generally significant price differences between high definition decoders on the US market and the standard definition boxes selling in the United Kingdom. The Federation of Australian Commercial Television Stations states that the cost of high definition decoders is likely to fall considerably over time, as the cost of the necessary electronic components declines (sub. 150, p. 16), and Sony Australia has advanced a similar argument (sub. 174). International Dynamics disputes the point (sub. DR178).

According to Matsushita, the price of a high definition set-top box is likely to be twice that of a standard definition decoder (trans., pp. 954, 955). Philips Sound and Vision estimates that a set-top box capable of decoding high definition signals will cost 'at least' $1500, compared with an estimated $500 for a standard definition box (sub. 166, pp. 9, 11). The Seven Network supports the figure of around $500 for a standard definition box (trans, p. 1376); however, International Dynamics considers $1000 a 'more realistic' figure (sub DR303). Sony Australia stated that it was targeting a retail launch price of $999 for Australian high definition set-top boxes (sub. 174, p. 3).

As International Dynamics states, retail prices on overseas markets should be converted with care (sub. DR273). This caveat may apply especially to prices for

[5]However, the Federation of Australian Commercial Television Stations has provided advice from a Taiwanese manufacturer quoting a figure of US$240 free on board for a high definition-capable set-top box, for delivery in late 2000. Full specifications were not provided. If there were no difference in the cost of decoders for standard and high definition, there would be no need to mandate high definition: high definition decoders, which handle both standard and high definition signals, would be selected.

some US products, given that the US digital television system (ATSC) is different from that specified for Australia.

Prices are likely to fall over time for both standard and high definition equipment. However, Australian prices will reflect Australia's unique digital television policy as well as global market forces, and may not fall as far or as fast as in the rest of the world.

High definition equipment for production and post-production is substantially more expensive than standard definition equipment, raising costs for producers, advertisers and broadcasters at a time of increasing market pressures for the production industry. These higher costs are unlikely to be recovered in Australia's export markets (chapter 5). Australia's main audiovisual market, Europe, has adopted standard definition. There would be no premium in the European market for high definition content.

Consumer take-up of high definition

High definition television appears to be best understood as a premium service, rather than a medium with general appeal. Matsushita's submission to this inquiry notes that 'To fully enjoy the benefits of HDTV, the consumer will need to purchase a large screen and a surround sound system' (sub. 108, p. 46). This point is elaborated later in the Matsushita submission:

> To enjoy the benefits of HDTV screens will need to be at least 90cm diagonal. Of the 875 967 analog 4:3 receivers sold in Australia in 1997, 72 per cent had screen sizes of less than 61cm. There is little perceivable difference in the picture quality of a digital receiver with a screen size of less than 61cm, when compared to an equivalent sized analog receiver with good reception. (sub. 108, p. 50)

Stewart Fist observes that high definition television is not a general medium, but a particular application of television technology suited especially to 'home cinema'. Industry advocates of high definition television frequently describe it as offering 'cinema quality'. Mr Fist's point is that home cinema is different from most household uses of television. Whereas home cinemas tend to be set up in rooms dedicated to the purpose, with large screens and expensive audio systems, the ordinary household experience of television is unceremonious and technologically undemanding:

> Television is a casual medium; it's watched by the whole family at various distances in a lighted room and while they're eating their dinner. Home cinema is a separate room where you have a big projection system, surround sound, and you watch it in the dark. That is a high definition application. Television is not a high definition application. (trans., p. 332)

International Dynamics comments that 'a large proportion of TV owners don't even bother to get a good outdoor aerial. Better picture quality as a reason for changing TVs is also rare' (sub. DR280, p. 2).

In the absence of any available market research on consumer reactions to digital television, the Commission asked BDA Marketing Planning (BDA) to estimate the consumer appeal and likely adoption of the new technology, using Roy Morgan Research's Single Source Database of consumer preferences and BDA's typology of media users (see chapter 2).[6] BDA's study suggests that only 5 per cent of the population are likely to purchase high definition digital television sets. Other analysts also see high definition television as a niche market, accounting for under 5 per cent of sales and achieving a penetration rate of 1 per cent of households by 2005 (sub. 51, att. 6, p. 5; sub. 108, pp. 50–1). Matsushita's estimates for the consumer adoption of a range of digital television receivers are set out in table 7.2.

Table 7.2 **Matsushita's estimated penetration of digital television receivers by 2005**

	Digital TV	*Penetration*	*Homes*
	%	%	'000
Digital set-top box for analog set	60	15	1050
Low mid range SD television	12	3	210
High mid range SD television	24	6	420
HD television	4	1	70
Total digital	100	25	1750
Total analog		75	5250

Source: Digital Business Consulting, (sub. 108, att. 1, p. 51)

The Federation of Australian Commercial Television Stations suggests that Australians do have a 'taste' for large screens, and that they do adopt new electronic products quickly (sub. 150, p. 13). However, this is not an argument for *mandating* high definition. Australians have a greater 'taste' for small screens, given that 25 per cent of sets sold in 1997 were 28 centimetres or smaller. Moreover, if a high definition format is unsuitable for televisions of the size most consumers currently purchase, it will be all the more irrelevant for new mobile or portable devices of the kind already being developed in Europe.

6 Details of the BDA study are available on request from the Commission.

Implications of unique standard

There is particular concern that in mandating high definition transmission, Australia may in effect be adopting a unique international standard.

- Australia remains the only country to mandate high definition transmission. The United States, while also encouraging high definition television, has not mandated it.
- Australia is also the only country currently planning DVB high definition transmissions. Australia has chosen not to use the US ATSC system, which is currently being used for high definition broadcasting; instead, it has selected the European DVB standard. DVB has been far more widely adopted than ATSC internationally, and appears to have suffered fewer teething difficulties. But every DVB country to date, other than Australia, is using DVB for standard definition transmission.

In world terms, Australia is a tiny market for television equipment. Australian consumers are able to benefit from the economies of scale possible in much larger markets when the Australian product differs least from that produced for the larger market. Equipment will have to be designed and assembled specifically for Australia's small market. The Seven Network noted:

> Digital reception equipment, whether it be in a set-top box or integrated into the television receiver, must not be unique to Australia. A unique system would deny to Australia the economies of scale available in larger markets, delay availability of chipsets and customer equipment, deny us access to export markets should any local manufacturers emerge, drive up the cost to industry and consumers and thereby delay the rate of penetration of digital technology in the market. (sub. 151, p. 9).

International experience with digital television

Both the United Kingdom and the United States have introduced digital transmission since the passage of the Australian conversion legislation. The United States has emphasised but not mandated high definition transmission, whereas the UK system is standard definition only.

Adoption rates of the new technologies have diverged substantially. Prices of set-top boxes and digital televisions have fallen quickly in the United Kingdom, where competition has developed between two digital subscription television providers, ONdigital (a terrestrial service) and Sky (a satellite service). Since the end of May 1999, set-top boxes have been offered by both services free of charge to subscribers paying a minimum of £6.95 a month. (The boxes remain the property of the service provider, as is the case with most subscription services.) Because of the role of the subscription operators in driving the migration to digital, the retail

market for set-top boxes is less developed, although unsubsidised prices have fallen to around £400. International Dynamics, an importer of television receivers, states that 'over the counter' prices for set-top boxes are around £250 in the United Kingdom, including subsidies from manufacturers or broadcasters (sub. DR260, p. 4).

Given the unusual features of the UK market for set-top boxes, a more significant indicator is the price of integrated digital television sets (that is, television sets including a digital tuner and decoder, which perform the function of the set-top box). Prices for these sets — typically wide screen 68 centimetre models — now begin at under £700.

The *Times* reported in January 2000 that ONdigital had 552 000 subscribers, while BSkyB was expected to announce that it had 2.25 million digital subscribers. The UK Government recently reviewed the analog to digital switch-over process, and announced that switch-off in some areas may occur as early as 2006 (Department of Culture, Media and Sport, 1999).

In the United States, high definition television has encountered considerable consumer resistance. Prices are expected to fall, but they are still high. Although reports vary, and it is difficult to ascertain the number of sales to consumers rather than dealers, US sales of digital terrestrial receivers are a fraction of the UK figure, despite the much larger size of the US market.

Consumer uptake of terrestrial digital in the United States may have been slowed by technical difficulties not encountered by the European standard definition DVB system, and by the particular approach of the US authorities to planning the digital rollout (US digital satellite services have been more successful). The marketing emphasis on high definition may also have hindered uptake. The Seven Network notes that the US regulations permit broadcasters to provide either high definition or standard definition combined with multichannels, and reports the opinion of the Office of Engineering and Technology at the Federal Communications Commission:

> … while it is still early days it appears that DTV consumer preference has been for the cheaper set-top box that enables SDTV and multichannelling rather than the more expensive HDTV system. (sub. 151, p. 9)

Recent market research suggests the issue of screen size may also be a significant barrier to high definition adoption in the United States. As already noted, the full benefits of high definition transmission are only apparent on a screen 90 centimetres or larger. According to Forrester Research (1999), North American consumers would prefer to buy smaller (68 centimetre) rather than larger digital televisions. The smallest high definition digital set available at the time of the Forrester survey

was a 86 centimetre model; smaller screens have since been introduced into the US market.

Set-top boxes and interoperability

Set-top boxes are used not only for digital television receivers and decoders, but also for subscription television and new media services. Subscription broadcasters now provide customers with 'free' set-top boxes which receive and decode transmissions, control access and provide free to air channels. The box is in effect leased to the consumer, and the lease payments are a portion of the total subscription cost. In Australia at present, cable set-top boxes decode analog transmissions, while the satellite boxes decode standard definition digital signals for display on analog television sets. The cable boxes are likely to be converted for digital transmission at some stage. The current generation of satellite boxes will also need to adapt to digital displays as they gradually replace analog sets. The investment in set-top boxes is and will continue to be considerable for both consumers and subscription service operators.

What effect will digital conversion have on subscription broadcasters and their customers? Clearly additional decoding equipment will be necessary to process digital terrestrial transmissions, but both consumers and subscription service providers wish to avoid the 'pizza box effect' of requiring numerous set-top boxes with complicated connections. A single, interoperable box providing access to all free to air and subscription channels is the solution, as long as the cost of the box is not beyond the reach of the subscription broadcasters and ultimately their customers.

A requirement to decode high definition transmissions would add considerably to the cost of any interoperable device. And unless they have purchased high definition displays, customers of broadcasters who provide this equipment would receive no benefit from the additional expenditure. However, as long as the Government's December 1999 decision to require standard definition transmission at all times is implemented, the marketing of high definition boxes should no longer be necessary. High definition broadcasts could then be supplied as premium services with specialised equipment. However, if interoperable set-top boxes are to become a practical reality, at this stage it appears that they will need to be standard definition devices.

A better approach

The mandating of high definition television — if there were no standard definition simulcasting — would have serious implications for consumers. Free to air

television is an important information and entertainment medium for all sectors of society. It is heavily used by older and poorer Australians. BDA's typology of media users (see chapter 2) suggests that the most intensive users of television, the 'heavy viewers' and 'filling time' groups, are mainly retired or unemployed people with average or low incomes, living in urban and especially rural locations. These two groups comprise one quarter of the population; more of them live in rural Australia than average, and more of them are women (BDA 1999). High definition television is likely to have a slow uptake. A small number of Australians will enjoy its benefits.

The Government's proposed 'must carry' rule for standard definition ameliorates some undesirable consequences of the high definition policy. But serious problems remain:

- high definition transmission will constrain or preclude new and additional services for consumers;
- all broadcasters, including those in regional and rural Australia, will still bear the additional cost of high definition equipment; and
- content producers and advertisers will still bear the costs of high definition production.

All these factors impose costs on the broadcasting industry, consumers and the economy as a whole. The Commission has not been able to quantify these costs, but they are likely to be substantial.

The mandatory transmission of the high definition signal will use spectrum that could otherwise be used for enhanced programming or new datacasting services. Under the liberalised regulatory framework recommended in this chapter, this spectrum could be used for multichannelling, should broadcasters wish to do so. In the event that substantial consumer demand for high definition did emerge, broadcasters would be able (but not compelled) to allocate bandwidth to that purpose.

As noted above, it appears likely that high definition will be a premium service for a small number of viewers. In this context, the mandatory 20 hour per week transmission of a high definition service involves a substantial policy risk. As well as increasing costs for broadcasters and producers, it may constrain the emergence of new services to the point where fewer consumers are interested in digital, and the conversion process is prolonged. This is especially likely if the number of new datacasting services is limited in the early stages of digital broadcasting. The high definition transmission quota may also have effects at cross-purposes to the

Australian content quotas, compromising the Government's cultural policy objectives (see chapter 11).

The Minister's December 1999 statement noted several reasons for mandating high definition transmission:

> The broadcasters are being loaned enough spectrum to transmit HDTV. The Government agreed with the FTA broadcasters that HDTV can offer a significantly better viewing experience, and will therefore be an important component of the digital television system. Also, if free to air broadcasters do not have the capacity to provide HDTV, they could be placed at a disadvantage if cable and satellite services start providing HDTV.
>
> As the broadcasters have been loaned enough spectrum to broadcast in HDTV — much more than they would need if they were to broadcast in SDTV — it is only fair that they should face a legal requirement to broadcast in HDTV (Alston 1999, p. 9).

The Minister points to the potential benefits of high definition services — 'a significantly better viewing experience' for consumers, and the capacity for broadcasters to compete with cable and satellite operators (although satellite services and subsidised reception equipment are currently standard definition). These benefits would also be present under a liberalised regulatory framework where high definition services were permitted but not mandated.

The issue then is the matter of 'fairness': the fact that broadcasters were lent, without additional charge, more spectrum than was required for a standard definition service. On the evidence of submissions made to this inquiry, perceptions of policy 'fairness', or the lack of it, continue to colour industry debate over digital conversion. In the draft report public hearings, The Australian Subscription Television and Radio Association said:

> We have said there should be a [reconsideration] of the handover of the 7 megahertz spectrum. Given that we consider that the provision of HDTV was one of the cornerstones of the reason for actually having 7 megahertz in the first place. … you could provide conversion by giving the broadcasters each 2 megahertz to provide a digital version of the analog signal.
>
> The rest could be crudely flogged off at market price to, we would think, gain a substantial windfall to the government and therefore the public, and that could be used among other things to fund the digital conversion for the national broadcasters, but those views were put during the debate, and the decision was made that they would be given the 7 megahertz of spectrum and they would be continued to be protected. That wouldn't be lifted until the end of 2006, so I suppose what we're saying here is while you're advocating that that ban be lifted, there is still no reconsideration of what they can do with the spectrum, and that leaves us open to the prospect of multichannelling. (trans., p. 1360.)

Ultimately, questions of policy equity must be assessed on a wider basis. Only if there are significant reasons why the public, as opposed to private, interest requires Australian television broadcasts in high definition format should it be mandated by government. The Commission evaluated the reasons advanced for high definition, and has not been convinced that any justify such a policy, given that each broadcaster has the spectrum available to offer whatever services it wishes.

The allocation to the free to air networks of 7 megahertz for digital broadcasting is of less consequence than the locking up of substantially greater amounts of spectrum for analog services. Spectrum allocation and the specification of high or standard definition picture formats should be recognised as separate policy issues: a problem in the first cannot be solved by regulating the second. A high definition transmission quota is in any case an unlikely instrument to achieve policy 'fairness'. The notion that the free to air networks should be made to transmit high definition because that was why they were lent 7 megahertz channels may be superficially attractive. The difficulty arises when such over-reaching regulation imposes costs on other sectors of the industry, and on the whole community.

Participants have emphasised how broadcasting policy is a structure built by *quid pro quos:* barriers to entry are balanced against programming obligations; free to air networks are prohibited from multichannelling to help subscription services which in turn are disadvantaged by restrictions on advertising and antisiphoning rules; free to air networks are required to broadcast in high definition because they have been lent the spectrum to do so; and so on and on.

It is not the time to add more *quid pro quo* bricks to the wall, but to take the opportunity to design a structure to serve Australians better. Greater competition, less regulation, spectrum licensing reforms, and the rapid release of spectrum are the best means of achieving this objective.

No longer mandating high definition television is the first step towards a more liberal conversion regime. Removing the mandate will enable broadcasters to realise more of the potential of digital television. Because of the structure of *quid pro quos*, this cannot be done in isolation. Some restrictions on subscription television also need to be removed (see chapter 8 on advertising restrictions and chapter 12 on antisiphoning rules).

Regulating digital content: datacasting and enhanced programming

One objective of the digital conversion plan was to 'encourage the use of television spectrum to provide a range of new information/data services' (Regulation Impact Statement, p. 6). The 1998 legislation provides for new datacasting services, which

are defined as information services other than broadcasting. These services may be provided by new entrants, and by existing broadcasters. The scheme prohibits multichannelling by commercial broadcasters, but permits multichannelling, subject to review, by the national broadcasters.

BDA's preliminary market study suggests that interactive services and multichannelling possess substantially more consumer appeal than high definition television, especially among those types of media users who watch the most television, the 'heavy users' and 'filling time' groups (see chapter 2). The regulation of these new services has the potential to constrain innovation in new convergent media, reduce consumer demand and slow the conversion process.

The provisions of the legislation have given rise to extensive debate over what may comprise datacasting within this framework. This problem, together with the closely related and equally vexed question of defining 'incidental and directly linked' programming, was the subject of review by the Department of Communications, Information Technology and the Arts in 1999. The department's Options Paper placed the question of defining datacasting in the context of the 1998 legislation. The 1998 legislation was seen as setting limits on the new services. Because the legislation prohibits multichannelling by commercial broadcasters, datacasting could not become a means of multichannelling. Given that the legislation also prohibits additional commercial broadcasting licences, datacasting could not become a means of commercial television broadcasting. Further, since free to air broadcasters are prohibited from transmitting other broadcasting services, datacasting must not become a means of offering such services through Internet radio, for example (DCITA 1999, p. 4).

Datacasting in Australia thus takes its shape from the overall regulatory structure of the 1998 legislation. But this does not provide certainty. The key related features of the legislative framework — namely the prohibitions on multichannelling and new commercial broadcasters — are themselves subject to future review and may be changed, so the regulatory limits of what constitutes datacasting may also change.

The department's 1999 Options Paper identified several possible ways of distinguishing between datacasting, enhanced services and broadcasting, based on alternative criteria: the 'look and feel' of the transmitted material; the degree to which the material is interactive and accessed on demand; and whether the service is subscription based or freely provided. The relations between datacasting, multichannelling and enhanced services must then also be determined. The definition of the latter category depends on the meaning given to the concept of 'directly linked' program material, although an additional option was to regulate the content of incidental services as well (for example, by restricting them to the provision of additional video such as alternative camera angles on a sporting event).

In his December 1999 statement, the Minister affirmed the general principle of the 1998 legislation that datacasters would not be permitted to provide traditional television programming. The Minister also provided additional detail on the scope of permitted datacasting services. The main points from the Minister's statement are included in box 7.2.

The December 1999 statement presents datacasting as comprising 'information' services. Examples mentioned include home shopping, electronic mail, education services and interactive games. Datacasters are to be restricted in several ways.

- *Most genres of programs* are prohibited, including drama, current affairs, children's programs, music programs and games shows. But self-contained 'short extracts' from these programs, up to 10 minutes, may be shown.
- The *duration and timing* of material is restricted in the area of news, sports news, financial market and business information and weather. Although datacasters will not be permitted to show 'traditional television programs' in these genres, they will be permitted to show a 10 minute 'headline bulletin' containing these items every 30 minutes.
- The *mode of presentation* is restricted in the case of individual items of news, sports news, financial market and business information or weather. Such items may be of any length, but must not be linked to other items, and must be selected by the viewer from a screen menu rather than 'hosted by a presenter'.

'Enhanced services' have been defined as material 'directly linked and contemporaneous' with a program. But multichannelling by all networks will be allowed where 'overlaps' occur in live programming.

Although the policy is intended to take into account the uncertainties of a rapidly changing media environment, the scheme places considerable and arbitrary limitations on the innovative, interactive and additional services made possible by the technology of digital transmission. The policy has the effect of precluding datacasters from offering potentially valuable services, such as access to the Internet, in anything beyond a highly restricted form. It appears also to create a number of anomalies. While free to air broadcasters are required to show children's programs for social and cultural reasons, datacasters are to be prohibited from doing so. While the Federation of Australian Commercial Television Stations claims that ABC Open Learning educational programs could be classified as datacasting (sub. DR302, p. 2), some of these programs are indistinguishable from documentaries, which are prohibited on datacasting services.

Box 7.2 **Ministerial statement: datacasting and enhanced services**

Datacasting

Datacasters will be able to provide a range of services, including information programs where the sole or dominant purpose is to provide information on products, services and activities; interactive home shopping, banking and bill paying; web pages; e-mail services; education services and interactive games.

While datacasters may not provide traditional television programs in the areas of news, sports news, financial market and business information and weather, they will be able to provide a ten minute headline bulletin comprising items in these categories in moving video form (with an updated version being permitted every thirty minutes, provided the previous version is withdrawn), and will be able to provide a moving video program of any length on an individual news, financial, market and business information or weather item, as long as the program is only available to a viewer selecting from a menu on the screen, is not hosted by a presenter and is not linked to another item.

Datacasters will be prevented from showing most genres of television programs, including drama, current affairs programs, sporting programs and events, music programs, infotainment and lifestyle programs, comedy programs, documentaries, reality television programs, children's programs, light entertainment and variety programs, compilation programs, quiz programs and game shows. They will, however, be able to show short extracts from such programs — for example, extracts from movies as part of a 'what's on in the city' type round-up.

Enhanced services

The Government will allow the free to air broadcasters to provide digital enhancements to their main simulcast programs, provided they are directly linked to, and contemporaneous, with the main program.

This could take the form of additional camera angles on a sports match, statistics about a player or additional information about a segment in a lifestyle or magazine program. Enhancements cannot amount to a separate multichannel program.

The Government will allow the broadcasters to multichannel when dealing with 'overlaps' — for example, to allow the end of a sporting match to be shown even if it runs over time and clashes with a news bulletin which commences at its scheduled time.

Source: Alston 1999, pp. 2–3.

Neither is there a clear basis for the 'special rules' for news programs: why should the datacasting rules be designed to encourage some kinds of content rather than others? Why, if it is believed that datacasting holds potential in the area of news, should datacasters be prohibited from showing current affairs?

The Minister has said that 'the Government does not want datacasters to be able to provide the same kinds of programs as we already get on television' (Alston 1999, p. 14). While the genre-based distinction between datacasting and broadcasting is intended to avoid narrow technical distinctions between television and datacasting, it seeks to set permanent boundaries around rapidly changing media. Television and its program genres change over time: 'reality' television, infotainment and interactive game shows, for instance, are recent innovations. Some program styles are likely to change more as digital services mature; some are already remarkably close to the category of an 'information service'. Home shopping — included in the list of things datacasters will be allowed to do — is a staple of some commercial television services.

There is a clear possibility that the current framework will create costly, complex and arbitrary restrictions on digital television which may not survive the review process planned before 2005. There is enough uncertainty in future technological developments without unnecessarily adding to them or constraining options. In this respect, the current framework appears to jeopardise a 'smooth transition' to digital broadcasting, a stated objective of the legislation.

The notion of 'datacasting' may be a useful device to allow new entrants to provide digital services without being caught up in the regulatory provisions of the BSA surrounding commercial television, such as the prohibition on entry of new commercial television stations or the cross-media rules. However, these new services cannot be readily distinguished from digital television (either free to air or subscription) without the risk of regulating them into insignificance. In a litigious industry, such concepts are likely to end up in court. The Commission's view is that restrictions of this sort on the content or format of datacasting are unlikely to be sustainable, although they may succeed in constraining innovation in content otherwise seen as culturally or socially desirable, such as drama and children's programs. Diversity is more likely to be achieved through significantly increasing the number of broadcast services than through arbitrary rules.

The Commission recommends a liberalised approach to digital television services, without recourse to prescriptive, artificial and inevitably short lived distinctions between datacasters and other digital broadcasters. Datacasting should be defined as digital broadcasting. This involves an acceptance that the digital media of the future, including datacasters and television stations, will have the capacity to offer broadly similar material over a range of distribution platforms.

Such an approach should not be construed as a surreptitious means of evading the prohibition on new commercial television licences. But irrespective of the issue of datacasting, the prohibition should be repealed as part of an overall reform of broadcasting law in the light of the competition principles (see chapter 9). Even if

the prohibition were retained, a liberal definition of datacasting along the lines proposed remains the best policy option.

In any case, it should be recalled that the new datacasters serving this infant medium are unlikely to provide significant competition to the existing free to air networks for many years, even without unduly restrictive content rules and high definition transmission quotas. The long time required for digital conversion provides a built-in period of phased industry adjustment to greater competition.

A relaxation of the prohibition on multichannelling necessarily follows from a liberalisation of datacasting. The Commission's view is that a charging regime should be applied to the use of spectrum by existing networks for these services (see chapter 6). This is because the broadcasters are to be provided with additional spectrum without additional charge by the Government, and to ensure competitive neutrality among the free to air networks, the new datacasters, and existing subscription broadcasters.

This recommendation needs to be understood in the context of the Commission's wider approach to reforming broadcasting regulation, including its recommendations on the rapid conversion to digital broadcasting in this chapter, and on the anti-siphoning rules (see chapter 12). Chapter 10 discusses the application of ownership and control provisions, and chapter 11 discusses content regulation. Like other broadcasters, datacasters should be subject to appropriate content standards and codes of practice (see chapter 13).

RECOMMENDATION 7.4

A new regulatory framework will facilitate consumers' adoption of digital television.

- ***High definition transmission should be permitted but no longer mandated.***
- ***Datacasting services should be defined as digital broadcasting services.***
- ***Multichannelling and the provision of interactive services by commercial and national broadcasters should be permitted. The proposed reviews of multichannelling and subscription broadcasting by free to air services should be cancelled.***

7.5 Towards digital radio

Digital radio broadcasting offers new services and some improvements over traditional analog radio, including ancillary text and images, improved audio quality

and ease of use, and the capacity for broadcasters to configure different program streams, in much the same way as a digital television multiplex. However, the emergence of digital terrestrial radio has been slower than digital television. While several systems have been devised and tested around the world, few countries have introduced digital terrestrial radio services or appear likely to do so in the near future. Appendix D provides more information on the technology of digital radio, the status of policy development for the new platform, and experience in other countries to date.

No policy or legal framework yet exists for the introduction of digital radio in Australia, although some preliminary decisions have been made. In 1998, the Minister announced that existing commercial, community and national radio services would be permitted to convert to digital, but would be required to transmit their programs in analog mode for a simulcasting period to ensure listeners are not disadvantaged. The Minister also announced that there would be opportunities for new digital commercial radio services, with the number and timing of new entrants to be determined as part of the planning process (DCITA 1998a).

Nevertheless, a series of problems appears to stand in the way of digital radio, and little further policy has emerged. The ABA stated that conversion to digital radio is not imminent, partly because there is no clear new market application for the spectrum occupied by analog services — a factor that will drive the conversion to digital television (trans., pp. 1110–12).

A number of participants raised other factors that are likely to contribute to the delay in the introduction of digital radio. According to Austereo, 'little substantive work of the kind now being done in relation to digital terrestrial television has been done in relation to [digital radio broadcasting]' (sub. 175, p. 6). There is a shortage of available spectrum for digital radio simulcasting. Unlike television, where sufficient spectrum is available to enable each station to simulcast in analog and digital, there is likely to be insufficient spectrum to enable all of the existing radio stations to simulcast. Radio 2ME (sub. DR227. p. 2) expressed concern that those stations forced to remain solely on the analog spectrum would lose access to listeners who purchased receivers that could receive only digital transmissions.

Several participants suggested the simulcast period would have to be much longer for radio than for television. McKerlie Consulting estimated a 20 year period of simulcasting, given the number of radios owned by an average household and the large number of car radios (trans., p. 1079). Another factor is that people use radio as a casual medium — like high definition television, greater audio quality may not have great consumer appeal.

The ABA noted 'there are question marks over the business case for Eureka [one of the digital radio systems] still, … and there are also issues of practicability and spectrum availability that must be worked through' (trans., p. 1112). The decision to use the L band has also been questioned. NTL commented that the use of the L band spectrum was unfortunate 'given the geographic spread', and noted the 'significantly greater number of transmitters and obviously the infrastructure cost' for the digital radio network in regional and rural Australia (trans., p. 1042).

Only the United Kingdom has begun digital radio broadcasting in a substantial way. After several years of transmissions, prices for consumer receivers remain high, and the range of equipment available is limited. Receivers appear to be designed for a small market of audio enthusiasts. Technical problems have also been reported in reproducing music from certain previously compressed sources (*New Scientist,* 12 February 2000, p.15). Over the same period, the alternative platform of Internet radio has grown quickly.

The experience of the digital television conversion legislation contains lessons for the approach adopted for digital radio. It is most important that the interests of consumers, and the nation as a whole, have a primary place in the Government's policy calculations. The public benefits of the new technology need to be weighed against its costs. In this case, a legislated conversion process for radio comparable to the television scheme appears to hold few benefits for consumers. The features of the new platform over analog radio do not appear great from a consumer point of view. Further, because analog radio services do not consume spectrum as voraciously as analog television, the benefits from any spectrum freed after a lengthy simulcast period appear minor.

When the technology of digital radio has developed to the point of practical deployment and affordable reception, digital radio services should be allowed to augment rather than replace analog radio services. Spectrum for these services should be allocated by the usual market process, subject to appropriate arrangements for the national or community broadcasters. A conversion scheme involving the allocation of spectrum without charge to existing analog stations should not be contemplated. This should not preclude the participation of national broadcasters in the new medium. Neither should analog commercial broadcasters be prevented from purchasing spectrum for digital radio broadcasting.

RECOMMENDATION 7.5

Digital radio policy should be modified.

- ***Analog radio broadcasting licences should not be converted without charge to digital licences.***

- ***Spectrum for new commercial digital radio services should be sold by a competitive process.***
- ***Existing commercial radio broadcasters should not be constrained from participating in the new medium.***

PART V

DIVERSITY, CONCENTRATION AND COMPETITION

8 Structural diversity in Australian broadcasting

The first objective of the *Broadcasting Services Act 1992* (BSA) is 'to promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information' (s. 3[a]). An influential report into the role of broadcasting in Australia (The Green Report) argued that a broadcasting system should serve the diverse interests of society:

> Insofar as Australian society is diverse, and encompasses a wide variety of interests, tastes and needs, so the broadcasting system should attempt to provide, within the framework of economic feasibility, a diversity of services to satisfy the requirements of special interest or minority groups as well as those of the mass audiences … The system must be structured in such a way that the mass interest does not erase the special or minority interest, and social issues are not ignored. (Postal and Telecommunications Department 1976, p. 38)

The BSA encourages diversity in a number of ways, such as ownership restrictions and cross-media rules (see chapter 10) and content regulation (see chapter 11). It also pursues diversity by making legislative provision for different types of broadcasting:

> The Act will encourage and facilitate the provision of both 'free to air' broadcasting services as well as subscription and 'niche' broadcasting services to allow a broad range of general and special interests and needs to be met. Diversity of a range of services is encouraged by … a licensing regime which is designed to accelerate the introduction of services and encourage the emergence of new 'niche' services. ('Explanatory memorandum', p. 9)

The 'structural diversity' of Australia's broadcasting services is the starting point of this chapter. It considers how well the government's objectives are being met, as well as specific issues concerning national broadcasters, community broadcasters, Indigenous broadcasting and narrowcasting services.

8.1 Structural diversity

A key feature of Australian broadcasting policy has been to promote diversity through the creation of different categories of broadcasting service. The BSA identifies the following generic categories: national broadcasting, commercial

broadcasting, community broadcasting, subscription broadcasting, subscription narrowcasting and open narrowcasting. A licence category of 'datacasting' was added to the BSA in 1998 (see chapter 7).

More recently, a Bill for an international broadcasting licence category was introduced to Parliament. This category will licence broadcasters to provide services for people outside Australia. An Australian organisation wishing to provide an international broadcasting service would apply to the Australian Broadcasting Authority (ABA) for a licence. If the applicant is judged to be suitable, the application is forwarded to the Minister for Foreign Affairs, who assesses whether the proposed service is likely to affect Australia's international affairs. If the Minister has no objection, the ABA may then allocate the licence (Broadcasting Services Amendment Bill [no. 4] 1999, 'Explanatory memorandum').

The licence categories are ordered within the BSA according to their perceived level of public influence, which is the major factor in determining how they are regulated. Licence categories, methods of funding and the ability of a service to influence the public are outlined in table 8.1. (More detailed information is presented in appendix B.)

Table 8.1 **Broadcasting licence categories[a]**

Funding	*Wide appeal*	*Narrow appeal*
Taxpayer funded	National services (ABC and SBS)	National services (ABC and SBS)
Advertiser supported	Commercial services	Open narrowcasting services
Non-profit	Community services	Open narrowcasting services
Subscriber supported	Subscription broadcasting services	Subscription narrowcasting services

a A licence category of 'datacasting' services was added to the BSA in 1998.

Source: DTC (1993, p. 5).

As with other regulations designed to encourage diversity, the aim of structural diversity under the BSA is to provide consumers with access to a range of different opinions and views. Concerns that a market-based approach will not operate efficiently to meet everyone's needs prompted Government intervention.

Many inquiry participants praised the current structural diversity of Australian broadcasting, and argued that it promotes the public interest. The Federation of Australian Commercial Television Stations described the Australian free to air television system as 'one of the most comprehensive in the world':

> There is no national television marketplace of comparable size and economic development which offers free to air services of such diversity, quality and local relevance as those available in this country. The Australian free to air system comprises a highly competitive commercial free to air broadcasting industry, two well-focused

and largely complementary national broadcasters, and a small community sector, in a unique hybrid commercial and public broadcasting system. (sub. 49, p. 10)

The Special Broadcasting Service (SBS) expressed similar sentiments:

> In world terms Australia has a small broadcasting marketplace, yet Australian audiences are currently extremely well served by the variety and quality available to them across Australian free to air television programming. This achievement has been based on the sectoral diversity of our free to air broadcasting, comprising:
>
> - a strong and independent public broadcasting sector, charged with implementing national broadcasting objectives;
> - a competitive commercial sector, with an emphasis on Australian programming; and
> - a distinctive community sector, with programming that is directly community driven. (sub. 96, p. 2)

However, some commentators have questioned these claims about the standard of Australian broadcasting services. Errol Simper has argued, for example, that Australian commercial free to air television 'lacks a sense of public duty, excellence, viewer-consideration and sensitivity' (*The Australian*, 20 January 2000, 'Media', p. 4).

Similarly, some inquiry participants questioned whether structural diversity has had positive effects on the Australian broadcasting system. Some participants argued, for example, that the diversity of licence types has limited the competition faced by commercial radio broadcasters:

> In the 70s we had the concept of community radio being allowed on the dial and rather than increase the competition for commercial broadcasters, what it did is in fact reduce the competition because it meant the spectrum was being taken up by a form of radio that basically didn't reach very many people. (Best FM, trans. p. 1689)

And:

> … there is a tendency to give far too much spectrum to these largely unlistened-to stations, at the expense of commercial stations and competition for the listening public. In other words, there is evidence that the spectrum allocation to community radio might be used as a mechanism to warehouse spectrum and make it more scarce. (IPA, trans., p. 1462)

Some participants have also argued that the restrictions imposed on some licence types have limited their ability to provide more diverse services:

> … the narrowcast spectrum in urban environments work on one watt. The power output is less than desirable. It doesn't reach our targeted audience. … So whilst the federal government can say, "Yes, we've opened up the diversity of the spectrum", the actual

> nuts and bolts, as in the signals, are not there. (Australia Trade and Shipping/Radio FM88 Springwood, trans., p. 1717)

And:

> We agree there is tremendous opportunity through datacasting to offer greater choice for fans and we are currently working through the options available to us. We do however re-state a key premise of the AFL namely, unnecessary restrictions on sports do inhibit the opportunity for sports to create revenue and in turn deliver better services to the sporting public. (NRL, sub. DR282, p. 1)

Current structural diversity policy is being overtaken by technological change in the broadcasting sector. The policy of structural diversity has been predicated on rationing scarce spectrum. Technological convergence and the development of a variety of delivery platforms could allow many more services to be offered in the future, with programming targeted to suit particular audiences (see chapters 4 and 11).

The Commission notes that the success or otherwise of structural diversity in achieving the government's cultural and social objectives is an important issue. Apart from Indigenous Broadcasting (see below) and the definition of datacasting (see chapter 7), the Commission does not recommend any changes to the licence categories. The Commission recommends a wide ranging review, as the conversion to digital progresses, of Australia's audiovisual industry to address how the Government's cultural and social objectives could best be met in the new convergent media environment (see chapter 11). This review should include an analysis of the structural diversity policy.

Each type of broadcasting will face new challenges, as will the requirements for broadcasting policy.

8.2 National broadcasters

The national broadcasters are important components of Australia's broadcasting system. As discussed in chapter 2, the national broadcasters are financed through Government revenue to overcome some of the public good aspects of free to air broadcasting. The Australian Broadcasting Corporation (ABC) notes that it:

> seeks to impress upon the Commission the important role it plays to advance the public interest in broadcasting in Australia and hence its complementarity with matters before the Commission. (sub. 78, p. 4)

The Commission's recommendations in this report are premised on the national broadcasters continuing to play a significant role in the new digital environment.

However, some inquiry participants have questioned the appropriateness of this assumption, stating that it is unrealistic in a convergent environment:

> … it seems curious for the Productivity Commission to assume the same, continuing role for the ABC and SBS as exists in the current analog broadcasting environment, especially in light of its proposals for the Australian audiovisual media marketplace, its acknowledgement of the impact of convergence, the combined total intervention of the national broadcasters into that marketplace and the size of Australia's financial commitment to its national broadcasters. (Australian Key Centre for Cultural and Media Policy, sub. DR254, p. 7)

National broadcasting services are established as a separate category of broadcasting under part 2 of the BSA, but their operations are governed by separate legislation. This legislation is outside the terms of reference for this inquiry. The Commission has made it clear that the ABC and SBS Acts and finances were not subject to inquiry, and most submissions have been based on this assumption. However, parts of the BSA apply to the ABC and SBS, particularly in relation to planning and licensing issues (see chapter 6), the conversion to digital television (see chapter 7) and complaints handling (see chapter 13).

Role of the national broadcasters

The roles of the national broadcasters differ from those of other broadcast service providers. According to the ABC (sub. 78, p. 6), they are driven by the principles of national public broadcasting, which seek to ensure universality of access and appeal and programs that cater for minority interests and contribute to a sense of national identity and community. The ABC distinguished itself from the commercial broadcasters:

> The ABC has a different role to the commercial sector, and helps ensure programming diversity is available to all Australians. While operating in the same market as the commercial industry it is motivated by different objectives, and its success is measured differently. The ABC is driven by a Charter, the commercial sector by the need to maximise audiences, revenue and return to shareholders. (sub. 86, p. 3)

The SBS also emphasised the important role of the national broadcasters:

> Through their national broadcasting obligations, SBS and the ABC have a vital role in providing a range and quality in programming that complements the programming of commercial television. By setting standards and taking risks with program genres and areas of interest the national broadcasters influence and enhance the broadcasting system as a whole. (sub. 96, p. 3)

Other inquiry participants also recognised the special role of the national broadcasters. Publishing and Broadcasting Limited (PBL) stated:

> The ABC, with its strong focus on Australian political life, its promotion of niche-appeal drama, and its reach to virtually all Australians, will continue to play an important part in providing diverse television programming to the Australian community.
>
> The SBS, which has made foreign language programs accessible in recent years to the English-speaking community, is also much in demand throughout Australia as a broadcaster with niche-appeal programming. Its importance to the NESB communities within Australia cannot be over-estimated. (PBL, sub. 52, p. 8)

A brief history of the national broadcasters is given in box 8.1. Both are primarily financed via Government appropriations (see chapter 3).

Box 8.1 **History of the national broadcasters**

The ABC

The Australian Broadcasting Corporation (ABC) began as the Australian Broadcasting Commission in 1932, operating 12 radio stations across the six states. Initial broadcasts were state based and relays between the states did not commence until 1936. Since its inception, the ABC has had a reputation as a news and information provider, particularly during the war years and later with the inauguration of an independent national news service in 1947. In 1956, the ABC made its first television broadcast in Sydney and was broadcasting to all states by July 1960. During the 1980s, the ABC began satellite transmission, became incorporated, and restructured its radio and television services into separate divisions. Currently the ABC network consists of four national radio services, one national television service, nine metropolitan and 39 regional radio stations.

SBS

SBS was established in 1978 under the *Broadcasting Act 1942* and was incorporated under the *Special Broadcasting Service Act 1991*. SBS radio is an expansive network of stations, broadcasting 650 hours of programming each week in 68 languages. SBS television began in 1980, transmitting in Sydney and Melbourne. SBS currently broadcasts television programs in 60 languages in all States.

Sources: SBS (1999a); ABC (1999a).

The ABC

The charter of the ABC is set out in s. 6 of the *Australian Broadcasting Corporation Act 1983* (box 8.2) which outlines specific public interest objectives designed to meet the programming needs of Australians. The functions of the ABC include the broadcasting of programs that inform, educate, entertain and reflect the cultural diversity of the Australian community.

Box 8.2 **The ABC charter**

The functions of the Corporation are:

(a) to provide within Australia innovative and comprehensive broadcasting services of a high standard as part of the Australian broadcasting system consisting of national, commercial and community sectors and, without limiting the generality of the foregoing, to provide:

  (i) broadcasting programs that contribute to a sense of national identity and inform and entertain, and reflect the cultural diversity of, the Australian community; and

  (ii) broadcasting programs of an educational nature;

(b) to transmit to countries outside Australia broadcasting programs of news, current affairs, entertainment and cultural enrichment that will:

  (i) encourage awareness of Australia and an international understanding of Australian attitudes on world affairs; and

  (ii) enable Australian citizens living or travelling outside Australia to obtain information about Australian affairs and Australian attitudes on world affairs; and

(c) to encourage and promote the musical, dramatic and other performing arts in Australia.

In the provision by the Corporation of its broadcasting services within Australia:

(a) the Corporation shall take account of:

  (i) the broadcasting services provided by the commercial and community sectors of the Australian broadcasting system;

  (ii) the standards from time to time determined by the Australian Broadcasting Authority in respect of broadcasting services;

  (iii) the responsibility of the Corporation as the provider of an independent national broadcasting service to provide a balance between broadcasting programs of wide appeal and specialised broadcasting programs;

  (iv) the multicultural character of the Australian community; and

  (v) in connection with the provision of broadcasting programs of an educational nature — the responsibilities of the States in relation to education; and

(b) the Corporation shall take all such measures, being measures consistent with the obligations of the Corporation under paragraph (a), as, in the opinion of the Board, will be conducive to the full development by the Corporation of suitable broadcasting programs.

Source: Australian Broadcasting Corporation Act, s. 6.

The ABC is also required to account for the multicultural character of the Australian community and the services provided by other broadcasters. In addition, s. 6(2)(iii) outlines the responsibility of the ABC to 'provide a balance between broadcasting

programs of wide appeal and specialised broadcasting programs'. The ABC noted it:

> … has made and continues to make a major contribution to an effective, responsive and appropriate broadcasting system in this country. [Our] national reach and comprehensiveness, programming diversity and innovation, and non-commercial character, enhance the range and nature of media services and the public sphere in Australia. (sub. 78, p. 4)

SBS

The SBS charter is set out in s. 6 of the Special Broadcasting Service Act (box 8.3). The charter identifies the principal function of the SBS as being 'to provide multilingual and multicultural radio and television services that inform, educate and entertain all Australians, and, in doing so, reflect Australia's multicultural society'.

Box 8.3 **SBS charter**

The principal function of SBS is to provide multilingual and multicultural radio and television services that inform, educate and entertain all Australians and, in doing so, reflect Australia's multicultural society. In fulfilling its principal function, SBS must:

(a) contribute to meeting the communications needs of Australia's multicultural society, including ethnic, Aboriginal and Torres Strait Islander communities; and

(b) increase awareness of the contribution of a diversity of cultures to the continuing development of Australian society; and

(c) promote understanding and acceptance of the cultural, linguistic and ethnic diversity of the Australian people; and

(d) contribute to the retention and continuing development of language and other cultural skills; and

(e) as far as practicable, inform, educate and entertain Australians in their preferred languages; and

(f) make use of Australia's diverse creative resources; and

(g) contribute to the overall diversity of Australian television and radio services, particularly taking into account the contribution of the Australian Broadcasting Corporation and the community broadcasting sector; and

(h) contribute to extending the range of Australian television and radio services, and reflect the changing nature of Australian society, by presenting many points of view and using innovative forms of expression.

Source: Special Broadcasting Services Act, (s. 6)

SBS must consider the needs of, and promote awareness and understanding of, Australia's ethnic, Aboriginal and Torres Strait Islander communities, and place emphasis on broadcasting in the native languages of these communities where practical. SBS believes it plays a major role in:

> … projecting and shaping multiculturalism in Australia. Through [our] radio services especially, broadcasting in 68 languages, SBS has sustained communities' links with their homeland cultures and has helped migrants settle here. Through [our] national television service, SBS has brought world cultures into the living rooms of the broad Australian community and has promoted tolerance through understanding. (sub. 96, p. 1)

National broadcasters in the digital age

The national broadcasters face particular challenges, and perhaps new responsibilities, in the digital age. The emergence of new media and the globalisation of media industries will require new approaches to the tasks of public broadcasting. SBS commented:

> In [the digital] environment national broadcasters will have a key role in ensuring that access and diversity remain central features of the broadcasting system. It is clearly in Australia's interests to ensure Australia's communications future does not create a widening of the gap between the information rich and the information poor, based on the ability of the citizen to pay. (sub. 96, p. 2)

In addition, with the convergence of digital platforms, it will become difficult and probably undesirable to create regulatory barriers to this convergence by specifying differing content and other criteria for different forms of digital communication. Applying strict content regulations to free to air television broadcasters, for example, may be undermined when consumers can receive television programs via the Internet which are not subject to the same regulations. Policy measures developed to promote social and cultural objectives in an analog environment may not be suited to a convergent digital environment. Some participants argued that the national broadcasters may have an increased role in implementing the Government's social and cultural objectives. This should be considered in the inquiry into audiovisual industry and cultural policy recommended in this report (see chapter 11, recommendation 11.4).

Some participants, such as the Screen Producers Association of Australia (sub. DR228) and the ABC (sub. DR206), have proposed that new sets of content requirements should be developed for new forms of media. This would perpetuate regulatory distinctions between different media. On the other hand, Vizard (1999) proposed that the ABC should become a safety net for Australian content; Vizard argued that it may not be possible for an Australian regulatory body to impose

content standards on a foreign broadcaster whose service is distributed via the Internet (see chapter 11).

The ABC has started to develop new services, taking advantage of the possibilities of digital television transmission. The ABC (1999d) has stated that it sees 'datacasting', or interactive services, as the most promising of the new possibilities. Its proposed interactive services are designed to make use of existing ABC radio, television and online content, and to extend the ABC's regional presence beyond radio to television. Viewers may be able to obtain access to material such as a news bulletin, a film review, a children's puzzle or an item of local news from information cached in a set-top box.

The ABC stated its intention, if permitted, to use the technology of digital transmission to broadcast a number of programs at the same time. Proposed 'multichannelling' services would include an educational program 'stream' and an information 'stream'. The digital services offered by the national broadcasters are subject to review, as part of the Commonwealth Government's planning process for digital conversion (see chapter 7).

The ABC argued that certain conditions must be met if the national broadcasters are to fulfil their responsibilities in the new environment (sub. 106, p. 7). National broadcasters require:

- access to technology (including new delivery platforms) to allow them the same opportunities to achieve economies of scale and scope as private providers;
- sufficient funding so services can be made available free of charge, limited scope for political pressure, and encouragement for innovation in services and service delivery; and
- statutory status (to limit the scope for political pressure), subject to the usual accountability requirements placed on all government funded organisations.

The national broadcasters, particularly the ABC, are important sources of content and they must be able to disseminate this information. The convergence between traditional broadcasters and new media operators presents the national broadcasters with the opportunity to deliver their content to the rest of the world via a range of platforms.

8.3 Community broadcasters

Role of community broadcasting

Community broadcasting was introduced in Australia in 1974 to provide general and special interest programs to a diverse set of audiences. The Commonwealth Government was concerned that mainstream commercial broadcasters were not catering to some sections of the community.

Apart from Indigenous broadcasters, there are currently 158 permanent community radio licensees, 137 temporary community radio licensees and eight community television licensees. There are also 100 permanent and 40 temporary Indigenous radio and television licensees which also fall under the category of community services. Indigenous broadcasting is discussed in section 8.4.

Community radio is varied in its programming and purposes. Some stations, such as the classical music stations delivered by the Music Broadcasting Society, cater to one group of listeners. Some, such as Radio Print Handicapped stations, provide a specific service. The more common approach is to provide an eclectic range of programs produced by numerous community groups.

Community television commenced following an investigation by the ABA (*Inquiry into the Future Use of the Sixth Television Channel*). The ABA concluded that a fourth commercial television broadcasting service would probably provide similar programming to that of the three existing commercial television networks. It argued that community television would provide more local programming, which would contribute to diversity and Australian cultural identity (ABA 1997).

Community broadcasters receive some direct Commonwealth funding, but rely on donations, subscriptions from listeners, sponsorship from local businesses and volunteers. Some community radio stations have performed successfully under these arrangements; however, other community broadcasters (particularly the community television broadcasters) have suffered from a chronic lack of funds. The success of community radio relative to that of community television reflects the lower costs of radio compared with those of television.

The major cost to the general community of community broadcasting is the opportunity cost of the spectrum they use. Community broadcasters receive ‘free’ access to scarce radiofrequency spectrum and thus exclude other potential broadcasters.

There is a dearth of audience analysis and empirical research into the community broadcasting sector. The ABA was unable to advise the Commission on the proportion of spectrum devoted to community broadcasting, or its approximate value (see chapter 6), so it is not possible to estimate the magnitude of the forgone benefits. The ABA advises that 6.3 per cent of broadcasting transmitter licences are for community radio, and fewer than 1 per cent are for community television services.

The audience for community broadcasting services makes up a correspondingly small proportion of the total broadcasting audience: for the period March 1998 to April 1999, 5.6 per cent of the population (aged 14 years and over) were estimated to listen to some community radio. Over the same period, 63.8 per cent of the population listened to commercial radio, while 32.4 per cent listened to the ABC and the SBS (Roy Morgan Research 1999).

The Commission recommends in chapter 6 that the planning authority estimate and report on the commercial value of the spectrum devoted to non-commercial services (community and national broadcasters). To complement this, the ABA could undertake research to define and measure the demand for community programming.

RECOMMENDATION 8.1

The ABA should conduct regular research on the demand for community radio and television programming.

The Commission considers that more detailed analysis is also required on the social benefits and costs of community broadcasting in the longer term. On the importance of looking at social as well as economic effects, Papandrea commented that the:

> … determination of what the most productive use of resources is takes economic efficiency as its starting point. Society, however, may wish to give up some of the economic benefits to pursue social goals that are valued more than the associated loss of economic efficiency. That is, there is a collective judgement that the social value of the outcome is worth more than the opportunity cost of not applying those resources to the most valuable alternative use. Such a judgement requires more than an appraisal of considered opinions. A sound and reliable judgement cannot be made without rigorous cost–benefit analysis of the alternative uses of the channels. (Papandrea cited in IPA, sub. DR242, att. p. 14)

But while there appeared to be little argument from participants that community broadcasting in general is beneficial, few believed that these benefits could be quantified in a meaningful way:

> While that benefit is not always quantifiable in financial terms, it is obvious to those supplying a voice in their local communities in the face of increasing monopolisation of the media by both nationally based and foreign services. (CBAA, sub. DR214, p. 3)

And:

> … the values we embody as a community radio station are not and cannot be understood in economic terms alone. … We believe that the history of community broadcasting and the public support for such a medium demonstrates very clearly that the community understands that value — not in dollar terms but as a necessary and integral part of a healthy and democratic civic society. (Community Radio 3CR, sub. DR248, p. 1)

The Commission accepts these concerns but considers that more research is required. This is particularly important given that the opportunity cost of awarding community broadcasting licences is the reduced opportunity for more competition and perhaps diversity in the commercial radio sector. The Commission considers that the role of community broadcasters should be considered in a wide ranging review of Australia's audiovisual industry and cultural policy (see chapter 11).

Selecting community broadcasters

Many more community groups and individuals wish to gain access to the radio spectrum than there are potential stations, at least in metropolitan areas. The ABA issues permanent community radio licences to broadcasters following a merit-based selection process. The BSA requires the ABA to have regard to the following criteria:

(a) the extent to which the proposed service would meet the existing and perceived future needs of the community within the licence area of the proposed licence; and

(b) the nature and diversity of the interests of that community; and

(c) the nature and diversity of other broadcasting services (including national broadcasting services) available within that licence area; and

(d) the capacity of the applicant to provide the proposed service; and

(e) the undesirability of one person being in a position to exercise control of more than one community broadcasting licence that is a broadcasting services bands licence in the same licence area; and

(f) the undesirability of the Commonwealth, a State or a Territory or a political party being in a position to exercise control of a community broadcasting licence. (s. 84 [2])

Several participants were concerned about the long delays with this merit-based selection process, especially aspirant broadcasters operating in metropolitan areas where they must share the available channels. The starting point for the process involves the ABA calling for public submissions. The ABA may also visit communities to meet applicants and local government representatives and/or conduct public hearings.

One aspirant broadcaster, Cadence FM, argued that licences should be allocated by the Community Broadcasting Association of Australia (CBAA) in conjunction with municipal councils, not the ABA. However, there was little support for this proposal from other inquiry participants, including the CBAA:

> The proposal put to the Commission by an aspirant group that the CBAA and local municipal councils jointly become licensing authorities for the sector is fraught with conflicts of interest for the CBAA as a representative body. It is not a practical option. (sub. DR214, p. 5)

Similarly, the Communications Law Centre stated that it was inappropriate to include the CBAA in the process of selecting applicants (sub. DR244). It also felt that there were insufficient grounds to change the current licensing arrangements. The CBAA stated that market-based approaches (such as an auction) were inappropriate, and that it was satisfied with the ABA's efforts to consult with stakeholders at the local level (sub. DR214). Radio station 3ZZZ stated that providing more resources for the ABA to complete its tasks may be more beneficial than changing the current licensing arrangements (sub. DR251).

While spectrum remains scarce relative to demand, some means is required for allocating licences for community broadcasters. The Commission does not find that there is sufficient evidence to warrant a change in the process for selecting community broadcasters. However, the role of community broadcasters will require re-examination as digital transmission is rolled out.

Regulating community broadcasters

Very little is known about the performance of community broadcasters. The ABA relies on self-regulation and a system of complaints to ensure community broadcasters comply with the conditions of their licences and the sector's code of practice.

However, there is no active process for monitoring whether community broadcasters provide the services they promised before receiving a licence. Nor is there a process for judging whether a potential new community broadcaster may be able to provide a better service (however measured) than that provided by existing community broadcasters. The ABA is not required to conduct investigations or hearings into the renewal of community broadcasting licences; licences are renewed automatically unless the authority is aware of special circumstances.

Some inquiry participants were concerned about the effects of this lack of accountability on community broadcasters:

> It [community broadcasting] doesn't always do what it should do and operates very badly and doesn't really address the criteria under the Broadcasting Services Act. … Under the Broadcasting Services Act it is believed that it should be able to provide the service at its licence renewal that it made available in its submission originally. 90 per cent of community radios do not attain the community interest sector that they originally were licensed under. (RKR Radio, trans., pp. 1600–1601)

And:

> [Gayndah] has one community radio station that is basically the only radio in town. … It's still not getting the audiences, even though it's the only show in town. (Best FM, trans., p. 1691)

Even with the freeing up of spectrum when analog television (and perhaps radio) is switched off, there are likely to always be more aspirant broadcasters than available spectrum. In this environment, it is important that the best use be made of the available frequencies. In the case of community radio broadcasting, this will involve evaluating, among other factors, whether licensees are delivering the services for which they were originally granted a licence. One participant, RKR Radio, suggested that an independent board be established to 'oversee the operations of community radio and make sure that it's open, transparent, fair and equitable in all dealings' (trans., p. 1603). The Commission considers that this approach may encourage more accountability within the community broadcasting sector, but that it would be costly.

An alternative approach could be to introduce more accountability and some contestability into the community broadcasting sector by having the ABA evaluate how well existing licensees are meeting their objectives. The ABA could conduct an evaluation of existing community licensees before renewing their licences. If licensees are not meeting their objectives, the licences would then be offered for reallocation to community groups.

RECOMMENDATION 8.2

The ABA should conduct evaluations of existing community licensees before renewal every five years to assess whether licensees are meeting the objectives of the licence. The licence should be offered for reallocation if a licensee has not succeeded in meeting its objectives.

This approach may encourage more accountability in individual community broadcasters, but does not address the problems of changing demands of the general community over time, and that potential entrants may be able to perform better than incumbents. The ABA should review the allocation of each licence on a regular basis (such as every 10 years) to ensure the services being offered are those that best fulfil the community's needs.

RECOMMENDATION 8.3

The ABA should review the allocation of each community broadcasting licence every 10 years.

Digital radio broadcasting has the potential advantages of improved sound quality and the ability to broadcast ancillary services (see appendix D). However, it is unlikely that all existing radio broadcasters will migrate to digital in the foreseeable future in the same way television broadcasters will; it is more likely that digital radio services will augment analog services. This suggests FM community radio services will continue to play an important role in encouraging diversity for some time to come.

Community television broadcasting in the digital age

Conversion to digital will affect community television broadcasters' transmission arrangements. Community television broadcasters currently manage their own transmission. However, in the digital environment multiplex carriers will carry multiple signals (see chapter 7). The digital conversion scheme for television proposes transmission of a community television signal using spectrum set aside for datacasting.

Digital television broadcasting presents the opportunity for an increase in the number of community television services, particularly to areas not served by community broadcasters. The Australian Communications Authority (ACA) has been investigating whether space should be made available for community television broadcasters in all licence areas. Currently, there are only six community television licensees.

The Commission considers that there may be benefits in providing for a non-profit standard definition channel in each licence area if the demand exists. The channel could be used to provide local programming, such as news and coverage of local events, which would be one means of addressing the decline in local programming in many non-metropolitan regions following the introduction of the Government's equalisation policy.[1] The channel could also be used by organisations such as education providers and government agencies, wishing to make their services more accessible to those living outside metropolitan areas (see section 8.6).

[1] The Government's equalisation policy was aimed at increasing the number of commercial television broadcasting services to a maximum of three in regions previously serviced by a single operator (see chapter 2).

Some participants expressed concerns with the Commonwealth Government's proposal of transmitting a community television service using spectrum set aside for datacasting. A community television service transmitted from a datacasting multiplex may not be viewed by many people. The Government's proposed format for datacasting places severe restrictions on the programming that datacasters can provide. These restrictions may limit the appeal of datacasting services to the wider viewing audience, and hence constrain the audience for community television:

> Already the CBAA has expressed our CTV members' misgivings about the incremental roll-out of datacasting and its far from universal coverage in its early years. We believe that carriage on a multiplex provided by a television service provider, maybe the SBS or the ABC, could prove to be a better solution. (CBAA, sub. DR214, p. 4)

And:

> The obligation to carry community television should rest with the commercial FTAs, and not with the new entrant datacasters. Community television belongs with other television services and not with datacasting services. (Cable and Wireless Optus, sub. DR216, p. 6)

Community television broadcasters currently do not have the financial resources required for digital conversion, given the high costs of equipment. However, while analog simulcasting continues, there is no need for community broadcasting to migrate to digital early in the transition period; it can wait a few years until equipment is cheaper. The first datacasting licences should not be encumbered with the requirement to carry a digital community television service that, due to its cost, may not exist for some years. Furthermore, early in the conversion period, the opportunity cost of the spectrum is likely to be particularly high.

Placing a restriction on a datacasting licence by requiring the licensee to broadcast the community television signal would also reduce the sale price of the licence. The revenue forgone by imposing this condition is a subsidy for community television, but is less transparent than an expenditure subsidy that is explicitly appropriated in the Budget.

A more efficient approach to transmitting community television services would be to allow all digital broadcasters (including the national broadcasters) to tender for the obligation to provide a non-profit standard definition channel, starting close to the switch-off of analog broadcasting. The Commission's recommendations in chapter 7 for a liberalised approach to digital television services would provide scope for any television licensee (not just a nominated datacaster) to forgo part of its own content to provide the channel. The job would be awarded to the broadcaster that tenders for the lowest subsidy.

A number of inquiry participants supported this approach, including the ABA and the CBAA:

> 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 [of the Productivity Commission's Draft Report], 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. (ABA, sub. DR226, p. 8)

And:

> The Commission's proposal that there be greater scope for multichannel television and that the community access carriage obligation be subject to tender, warrants consideration. (CBAA, sub. DR214, p. 4)

The Commission considers that the tender to provide a non-profit standard definition channel should be conducted at the same time as the last sale of spectrum used for analog broadcasting, which the Commission recommends to occur in 2006-07.

RECOMMENDATION 8.4

If demand exists for non-profit television services in a licence area, a standard definition channel should be made available by the digital broadcaster that tenders for the lowest Government subsidy to do so. The tender should be let prior to the switch-off of analog television.

8.4 Indigenous broadcasters

No broadcasting services were available in some rural and remote parts of Australia until the 1980s. During the 1990s, the Indigenous broadcasting sector emerged as a dynamic and innovative part of the Australian broadcasting system, providing radio and television services to over one hundred remote communities. The sector has its origins in low cost adaptations of video, videoconferencing and radio. Its current size and structure are described in chapter 2, and a profile has been prepared for the Commission by Dr Michael Meadows of the Australian Key Centre for Cultural and Media Policy at Griffith University (see appendix C).

Origins of the Indigenous media sector

The 1984 report, *Out of the Silent Land*, was the first Commonwealth attempt to address the lack of broadcasting services in rural and remote Indigenous

communities (Task Force on Aboriginal and Islander Broadcasting and Communications 1984). In 1987, based on the task force's recommendations, the then Department of Aboriginal Affairs developed a program to deliver radio and television services to remote communities — the Broadcasting for Remote Aboriginal Communities Scheme (BRACS).

The scheme aimed to give remote communities access to radio and television services delivered by satellite. Further, it enabled communities to control the retransmission of satellite signals, and to broadcast their own programs for local reception. The stations operated under 'limited licences' and were funded through the Aboriginal and Torres Strait Islander Commission (ATSIC).

Most limited licences were converted to community licences when the BSA was introduced. There are now over 100 permanently licensed Indigenous community television and radio stations and a further 40 Indigenous broadcasting groups aspiring for permanent community radio licences (NIMAA, sub. 164). These stations now comprise an extensive Indigenous broadcasting sector that produces and broadcasts a wide range of news, educational and entertainment programming.

Objectives and regulation of Indigenous media

The consultancy prepared for the Commission emphasised the primacy of funding issues for the future of Indigenous broadcasting (see appendix C). However, questions of appropriate funding to achieve various Government objectives are beyond the scope of this inquiry. Rather, the Commission has focused on possible changes to regulatory arrangements that would help Indigenous broadcasting to meet its objectives.

The primary objective of the Indigenous media sector is to provide a 'first level of service' for Indigenous people — that is, a media service for Indigenous communities specifically, often in the absence of any other broadcasting. Indigenous media seek to provide information and locally made programs which are in Indigenous languages and relevant to Indigenous communities. Such programs include news, children's programming, documentaries and sports coverage (box 8.4). Indigenous media aim to disseminate public service information to Indigenous communities on subjects such as law, health, housing and education.

However, Indigenous media do not provide services for only Indigenous people. In remote parts of the country, they are likely to offer the only media service available. In capital cities, Indigenous radio stations have the potential to serve both relatively large Indigenous populations and non-Indigenous audiences.

Box 8.4 **Examples of Indigenous broadcasters**

Warlpiri Media Association, Yuendumu, Western Desert

The Warlpiri Media Association was created in 1983. The local school provided equipment and training, and local video producers began broadcasting low power television in 1988. The association's purpose was to use video as an educational tool in maintaining and extending the community's traditions and culture; as a source of employment; and as a means of communicating effectively with government. By 1986 500 hours of programming had been made, depicting traditional ceremonies and skills, Dreamtime stories, oral histories, public meetings, adult education, sport, travel to other communities and sacred sites, art tapes of paintings, videotaped messages to other communities, and the activities of community organisations. The association also produced an award-winning children's series, *Manyu wana* (Have Fun). Yuendumu is also the base for the Tanami Network, a pioneering satellite videoconferencing system.

Ernabella (EVTV), north western South Australia

The first Aboriginal video program, documenting developments on nearby homelands, was produced at Ernabella in 1983. This led to requests from other homelands for similar programs, and the Ernabella Video Television Project (EVTV) was established in 1984. It aimed to produce, broadcast and sell videos. In 1985 the Pitjantjatjara Yankunytjatjara Media Association (PY Media) used $1000 worth of cheap transmission equipment to begin local broadcasting. They have used it to record the Dreaming lines; to encourage new interest in traditional dance, performance and singing; and to record community projects and sports events.

The Pitjantjatjara radio station, 5PY, is now based at Umuwa, 30 kilometres south of Ernabella. It serves a network of nine BRACS stations, and is being developed as a model for other regional BRACS networks.

4AAA Murri Country, Brisbane

Radio 4AAA, a community radio station operated by the Brisbane Indigenous Media Association, went to air in 1993. It is one of only two Indigenous radio stations in capital cities. 4AAA's main programming material is Aboriginal and country music, and news and information. The station aims to stimulate the growth of Aboriginal music, drama and story-telling. It also has a significant non-Indigenous audience. The station commissioned audience research from Roy Morgan Research in 1997: the survey found a weekly audience of 100 000, which is twice Brisbane's Indigenous population.

Sources: ATSIC (1999a, pp. 74–5; 1999b, pp. 48–51); Turner (1998, pp. 122–38, 182–98).

These aspects of Indigenous media reflect other social, cultural and economic objectives:

- to offer a 'cultural bridge' between Indigenous and non-Indigenous Australians. Despite limited research on the subject, audience studies suggest that some

Indigenous media services have significant non-Indigenous audiences, and may play an important cross-cultural role in furthering reconciliation; and

- to offer skilled work opportunities and the potential to reduce the economic dependence of Indigenous communities on governments, in remote and regional Australia and in urban centres.

The Indigenous media sector has a distinctive range of cultural and social tasks. The national broadcasters share these responsibilities to some degree, but their ability to meet the needs of Indigenous audiences has proved limited. The ABC's Indigenous Broadcasting Unit commissions, produces and broadcasts Indigenous material, but the ABC's broad charter ensures competing demands on its resources. SBS is hampered by a lack of regional infrastructure:

> … our difficulty insofar as Indigenous Australians are concerned is that for non-metropolitan regions we don't have the network to cater for their needs for the time being … we don't have the facilities, both transmitters and frequencies, to broadcast to them … (SBS, trans., pp. 353, 357)

It has been argued that the resources of the Indigenous media sector, along with regulatory impediments imposed by the policy framework in which it operates, restrict its capacity. A report on BRACS (Turner 1998) identified difficulties with the current arrangements, including inadequate training, wages and technical support. Meadows writes that 'the potential of the Indigenous media sector today can be accurately described as unrecognised and unrealised, largely as a result of *ad hoc* policymaking' (see appendix C).

The regulatory framework of the BSA appears to present obstacles for Indigenous broadcasters. In particular, it is argued that the community broadcasting classification is ill-suited for the purpose of regulating this sector, because the objectives of the Indigenous and community media sectors are different.

A significant proportion of Indigenous broadcasting services is motivated by the need to provide a basic level of service for a specific audience. As discussed above, Indigenous broadcasting is likely to offer the only available media service in remote parts of the country. By contrast, most community broadcasting aims to provide an additional service to mainstream media; that is, Indigenous broadcasters are often providing a *primary* service, while community broadcasters generally are providing an *alternative* service.

Including Indigenous broadcasting within the category of community broadcasting creates difficulties at many levels. It affects Indigenous media services' access to spectrum, their participation in the co-regulatory processes of the broadcasting industry, and their financing and staffing.

Licences are allocated to community broadcasters on the basis of merit, according to the ABA's application of criteria set out in the BSA (see section 8.1). In some cities and other regions, the classification of Indigenous services as community broadcasters means they compete for spectrum with aspiring community broadcasters, even though in some instances the aspirant Indigenous broadcaster is seeking to provide a primary service for a specific audience, rather than an additional service for those already served (to some extent) by the mainstream media (including SBS).

> The person who's living in the central desert and speaks Warlpiri rather than English has a need for a primary service which we all acknowledge and the government itself has acknowledged it. Now, that Warlpiri man comes down to Sydney. He doesn't have any less need for the primary services because English is still his third or fourth language. … The need is different than it was when he was living in the central desert, but it's still there, and you have to cater for it. (ATSIC, trans., p. 1630)

The ABA is then required to make difficult judgements between services seeking to achieve very different objectives.

Co-regulation is at the heart of broadcasting administration, and it relies on the representation and active participation of industry sectors in the regulatory process. Indigenous broadcasters are currently treated as part of the community broadcasting sector, which is represented by the Community Broadcasting Association of Australia. However, the interests of Indigenous broadcasters and those of the larger community broadcasting sector are likely to diverge, given the differences between the sectors. The community broadcasting Code of Practice emphasises matters relating to volunteers and sponsorship, but has little bearing on the management of Indigenous media services.

Community broadcasting is funded by subscriptions, donations, commercial sponsorship and government support. Tight time-based restrictions are imposed on on-air sponsorship; their main purpose is to retain the non-commercial nature of the service. In the case of Indigenous broadcasting, a more flexible approach may be warranted. Indigenous communities are among the poorest in Australia, and have limited ability to finance media services through their own resources. The scope for raising revenue from advertising may not be great, but there appears to be little reason to limit it by regulation. There is significant potential for developing new services; nearly one third of BRACS stations are only retransmitting satellite services, at least partly because the resources are not available to produce and broadcast local programming.

Community broadcasters rely on volunteers, of whom many have little training. They seek to extend access to the airwaves and encourage community participation in making programs and station management. The Indigenous media sector, by contrast, emphasises the development and training of professional broadcasters. The

National Indigenous Media Association of Australia (NIMAA) argues that a skilled labour force with the relevant technical, managerial and journalism skills is as important in developing successful Indigenous media as a labour force that has knowledge of Indigenous cultures and languages.

The Commission considers that the needs of Indigenous broadcasters and their communities would be better served by a regulatory framework that recognises the distinctive characteristics of Indigenous media and the Commonwealth's special concerns for Indigenous Australians. The Commission's general proposals to give effect to these principles in the draft report were favourably received in subsequent submissions and hearings.

A new licence category of Indigenous broadcasting should be introduced, with appropriate conditions for advertising. Further, in recognition of the special information and communication needs of Indigenous communities, spectrum should be reserved for Indigenous broadcasters where they provide a primary level of service to a specific audience.

RECOMMENDATION 8.5

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

RECOMMENDATION 8.6

Spectrum should be reserved for Indigenous broadcasters to provide a primary service for Indigenous communities, where appropriate.

Participants' comments

A number of inquiry participants, such as the Communications Law Centre (sub. DR244), the CBAA (sub. DR214), the Education Network Australia Reference Committee (sub. DR270) and the Australian Film Commission and Australian Film Finance Corporation (sub. DR215), supported the recommendations for creating a separate licence category for Indigenous broadcasters and reserving spectrum for this purpose.

Similarly, ATSIC and NIMAA supported the Commission's recommendations. However, these two organisations argued that while the Commission's recommendations were a step in the right direction, more action would be required if a widespread Indigenous broadcasting service were to become a reality.

ATSIC stated that establishing an Indigenous broadcasting service has been and continues to be a priority.

> It's been an extremely high priority of this board and the previous board, in part because broadcasting is recognised as being central to Aboriginal people. Housing programs are expensive and they're important, land rights is of central importance, but a lot of the commissioners, reflecting the needs of the Aboriginal community, say broadcasting language and culture are us. If we don't have that, we are nothing. (trans., p. 1642)

ATSIC has recognised that while a number of attempts have been made to address the broadcasting requirements for Australia's Indigenous population, they were often *ad hoc*, unplanned and unresponsive to the needs of Indigenous communities. It argued that any serious attempts to improve the broadcasting services provided for the Aboriginal population required legislative amendments (sub. 177):

> … the important thing is that the government acknowledges formally in legislation that there is a responsibility, because one of the problems ATSIC will always have is, while that's not explicit in the legislation there will be arguments with Treasury about priorities (trans., p. 1643).

Similarly, NIMAA has argued that the existing broadcasting legislation should be amended to provide a framework for a national Indigenous broadcasting service (trans., p. 1620).

Both organisations recommend the establishment of a national Indigenous broadcasting service (Indigenous Communications Australia). This service would:

- offer Indigenous people a primary electronic communication service; and
- inform the broader Australian community about its Indigenous people and their culture.

In submissions to the inquiry, NIMAA and ATSIC (sub. 164, sub. 177) impressed on the Commission their objective of a nationally available Indigenous broadcasting service. They argued that only through such a service could the functions of Indigenous broadcasting, as a primary service and promoter of cross-cultural understanding, be fully realised. A digital broadcasting environment may present new avenues by which national coverage could be achieved.

Establishing a national Indigenous radio network is the first priority, although television services are envisaged in the longer term. Substantial radio services already exist; radio services are more suitable than television for communication in Indigenous languages; remote communities already generate a high level of radio output; and radio transmission requires less capital and training (ATSIC, sub. DR281).

The Commission considers that some questions must be resolved before a national Indigenous broadcasting service is introduced; for example, who should provide the service? ATSIC presented the Commission with three options for provision of an Indigenous broadcasting service: an independent national Indigenous broadcaster; an Indigenous broadcast division within an existing national broadcaster; or a national Indigenous community broadcasting network (sub. DR202).

The first of these options involves establishing a statutory authority responsible for Indigenous broadcasting. This body would manage an extended radio broadcasting network that includes licence areas not already serviced by an Indigenous broadcaster. The authority would also be responsible for developing television services, which ATSIC suggested could be carried on one of the ABC or SBS digital multichannels. Another option could be to provide it as part of another multiplex operation, like a community television channel.

According to ATSIC, the advantages of this option include the sense among Indigenous peoples that they owned the authority, the authority's provision of a long term, professional structure for Indigenous employment and training, and the lack of dilution of Indigenous programming (ATSIC, sub. DR202, pp. 11–12). However, taxpayers would largely bear the costs of the authority, and there could be some duplication of infrastructure already available in the ABC and SBS (ATSIC, sub. DR202, p. 12).

The ABC told the Commission that it will continue discussions with Indigenous organisations about possible programming, training and development options in the digital environment (sub. DR206). However, the ABC indicated that it would not be able to carry an Indigenous television service:

> The ABC requires all the spectrum allocated to it to provide a package of digital services that meets anticipated audience needs and enables the ABC to leverage content across its networks to achieve appropriate audience reach, efficiency and effectiveness. The ABC has no capacity to provide a multiplex 'piggy-back' style arrangement to third parties. It plans to use the digital spectrum allocated and will absorb all the available spectrum. (ABC, sub. DR206, p. 4)

The second option involves extending the role of the ABC or SBS in broadcasting Indigenous services by creating a division within the relevant organisation devoted specifically to Indigenous broadcasting. This option would avoid duplication of infrastructure; there would be a long term professional employment and training structure for Indigenous broadcasters; and Indigenous services would be perceived as a legitimate extension of existing special services (ATSIC, sub. DR202, p. 12).

ATSIC and NIMAA both expressed concern that this option may result in a lack of 'ownership' by Indigenous peoples:

> I think one of the disadvantages of that particular suggestion would be not only a perception on the dilution of ownership and control by an indigenous broadcaster but perhaps the perception too — we're lumped in again with someone else. (ATSIC, trans., p. 1647)

However, NIMAA did acknowledge that having adequate Indigenous representation on the board may overcome problems with dilution of ownership (NIMAA, trans., p. 1648).

The third option involves creating a community 'network' licence. The major benefits of this option would be similar to those of the first option, in that Indigenous broadcasters would have 'ownership' of the service, and that Indigenous programming would not be diluted. The main disadvantage is that Indigenous broadcasters would continue to be bound by the constraints of operating under community broadcasting licences (ATSIC, sub. DR202, p. 13), although the Commission's recommendation for a separate licence category for Indigenous broadcasting would overcome this.

Another issue is how services would be delivered. This is especially important in light of the fundamental changes likely to occur in Australia's broadcasting system as digital broadcasting technology is introduced. A recent review of Indigenous media, *Digital Dreaming* (ATSIC 1999b), noted the challenges of maintaining an Indigenous broadcasting sector in a digital age.

The problems created by the conversion to digital satellite transmission for television highlight the need for coordination and consultation. The Western Australian Department of Commerce and Trade told the Commission that the 1998-99 conversion of satellite broadcasting from analog to digital transmission 'did not result in an automatic better grade of service but a degraded one' (sub. 115, p. 2). Similarly, the satellite conversion proceeded without consultation with affected communities, and services were disrupted for some communities.

Digital Dreaming (ATSIC 1999b) also comments on the possibilities that digital broadcasting may provide for Indigenous media, such as developing local and networked interactive services (see chapter 7). Although equipment and training costs are likely to be high in the early stages of digital broadcasting, and ongoing funding is a critical problem for the sector, such services would represent an evolution of the innovative techniques developed by Indigenous broadcasters (box 8.4).

Other issues that would need to be addressed include the level of government funding required and the timing of introduction of the service. The Commission agrees that a more consistent approach is required to address the broadcasting needs

of Australia's Indigenous population, but that more research is required on how such a service would be implemented.

RECOMMENDATION 8.7

The Government should examine the need for, and feasibility of, establishing an Indigenous broadcasting service, including:

- ***who should provide the service;***
- ***how the service should be provided;***
- ***the additional government resources required; and***
- ***a timetable for implementation.***

8.5 Subscription television broadcasters

Subscription television broadcasting is a relatively new sector of the Australian broadcasting system. Australia's first subscription television broadcasting services began operating in 1995 (Veljanovski 1999). The distinctive feature of subscription television broadcasting is the direct contractual relationship between the service provider and the subscriber. Subscribers pay to receive a range of 'niche' or specialised programming channels. In Australia, they can also receive the free to air channels through the subscription platform.

The major benefit of subscription television broadcasting is that it offers more choice and variety. (It may also offer better reception for the free to air channels.) It has a greater capacity to carry channels, so removes the distribution bottleneck that occurs with traditional analog free to air commercial broadcasting. Subscription television broadcasting is also transforming television from a mass medium to one that caters to the diversity of viewers' interests and tastes (Veljanovski 1999). Subscription television operators are able to offer a large number of channels and to package programs into channels that cater for specific tastes and interests.

According to the Australian Subscription Television and Radio Association:

> … the subscription broadcasting industry has not only offered a diversity of programs but more importantly has offered those programs to sections of the community which would otherwise have lacked the ability to exercise a level of consumer choice in their viewing and listening.
>
> In particular, subscription broadcasting … has offered consumers in regional and remote areas greater choice in viewing while it has also effectively offered particular ethnic communities within Australia a more extensive range of viewing and listening than would otherwise have been available to them. (sub. DR255, pp. 10–11)

The increase in diversity and different formatting of channels is related to the funding of subscription television services. The direct contractual link between viewers (subscribers) and broadcasters provides an incentive for the operators to cater for the diversity of viewers' tastes and preferences. This contrasts with commercial free to air broadcasters, whose primary commercial goal is to provide mass audiences to advertisers.

By contrast, subscription broadcasters are able to respond to the preferences of minority audiences; the specialised children's and documentary channels are among the most successful channels. In this way, subscription services improve the diversity of programming available to Australian audiences. They offer a mechanism with which audiences are able to pay to express their preference for minority programming (see chapters 2 and 11).

Evidence from the environment in the US suggests the bulk of viewers remain with the four main generalist commercial networks, and viewing is then supplemented with specialist news, educational, music, sport, film and children's channels (Thomas 1999).

History of subscription television broadcasting in Australia

Amendments to the BSA paved the way for the introduction of subscription television broadcasting in Australia. Previous attempts to introduce subscription services were blocked by successive governments concerned about its effect on the viability of existing free to air services. According to Papandrea, the Commonwealth Government was aware of strong demand for subscription television services as early as 1973 (Papandrea cited in IPA, sub. DR242).

The Australian Broadcasting Tribunal recommended that subscription television be introduced 'as soon as practicable' in 1982, but the then government did not act on this recommendation. A four-year moratorium on subscription television services was imposed in 1986, so regional commercial television broadcasters could adjust to the new policy of aggregation. However, subscription services were also banned in metropolitan markets not affected by aggregation (Papandrea cited in IPA, sub. DR242).

Subscription television broadcasting services were finally made possible in 1992. The initial emphasis was on satellite transmission — an attempt to make the sale of AUSSAT (the government-owned satellite company) more attractive (Papandrea cited in IPA, sub. DR242). One licence was offered to the ABC; another two satellite subscription licences were offered in April 1993 by first price, sealed bid auctions.

Both licences were awarded to new media operators, although one (licence B) was intended for existing media operators. Hi Vision bid $177 billion for licence A and Ucom bid $212 million for licence B (McMillan 1994). But neither paid these prices for their licences. The Government did not require a deposit or impose any penalties for defaulting, so both companies placed ambit bids (to guarantee they won) and a series of lower bids. Both defaulted on their initial bid so the licences were awarded to the next highest bidders, again Hi Vision and Ucom.

Ucom paid $117 million for licence B some four months (and several defaults) later. It was another five months before licence A was finalised — Ucom paid $77 million for it ($100 million less than Hi Vision's original bid). Ucom onsold both licences — licence A to Continental Century and licence B to Australis Media (McMillan 1994).

The introduction of these satellite services was further delayed because the BSA stipulated the use of digital technology which was not yet available. Problems with developing a common standard delayed introduction until 1995 and increased the costs of satellite subscription services. In the meantime, other subscription services, delivered via multi-point distribution systems, had already commenced despite changes to the legislation prohibiting such services until 31 December 1994, by which time it was expected that satellite services would have commenced.

This unfortunate history was a product of protection for free to air broadcasters, trying to sell a satellite, technologically specific regulation that was overtaken by technology, and a faulty auction process. The ACA has now greatly improved its auction processes.

However, subscription television operators are still subject to licence conditions designed to protect the incumbent free to air operators, such as anti-siphoning restrictions that limit the ability of subscription broadcasters to televise sporting events (see chapter 12) and restrictions on advertising.

Advertising and sponsorship were banned on subscription television services before 1 July 1997. After that date, advertisements and sponsorship announcements have been permitted, but subscription fees must continue to be the 'predominant source of revenue for the service' (BSA, schedule 2, part 6, s. 2 [b]). The prime motivation for this restriction appears to be to protect the incumbent free to air commercial broadcasters from competition in the advertising market. As noted in chapter 4, the restriction on advertising revenue is not binding. Further, subscription services have a commercial incentive to limit advertising time, because absence of advertising is one of the attractions of subscription television.

The Commission finds that the restriction on advertising is anti-competitive and seems to serve no useful purpose. It should be removed under the principles of the Competition Principles Agreement.

RECOMMENDATION 8.8

The restrictions on advertising and sponsorship on subscription television services should be removed.

Licensing arrangements

Subscription television broadcasters require a licence from the ABA to operate. However, subscription television broadcast licences do not carry a right of access to any means of delivery, unlike most commercial television broadcasting licences.[2]

Subscription television broadcasting licences authorise the holder to distribute television programming. They are technologically neutral, which means that licensees may use any means or combination of means — cable, satellite, multipoint distribution system or other means — to deliver programming to audiences. A licensee may organise the delivery of its service by commercial arrangement with potential carriers, or may need to acquire appropriate apparatus or carriage licences or seek carriage access rights under other legislation.

A subscription broadcasting service may be transmitted anywhere in Australia. A separate licence is required for each subscription channel, and if the licensee varies the service content according to location, a separate licence is required for each location. The ABA charges one fee per application, which may be for a single licence or for multiple licences.

Technological convergence (see chapter 3) means that many of the traditional differences between free to air television services and subscription television services are likely to become less relevant. In particular, terrestrial broadcasters will be able to provide conditional access services (such as subscription based and pay-per-view services), so terrestrial broadcasting services will look and feel similar to traditional subscription television services. As these broadcasting types become more similar, the Commission considers that it is appropriate to examine whether the different licensing arrangements can still be justified.

[2] Most commercial television broadcasting licences are issued under s. 36 of the BSA and include access to spectrum in the broadcasting services bands. Commercial television broadcasting licences issued under s. 40 of the BSA do not include access to any means of delivery, including spectrum in the broadcasting services bands. The ABA has issued six s. 40 commercial broadcasting licences, but none is operating at present.

The Commission recommends that multiplex licences be introduced to manage the use of spectrum for digital broadcasting services. In effect, a multiplex licensee will have a similar role to current subscription television broadcasting licensees in that the licensee will coordinate the use of the channels available on its multiplex. The Commission does not consider that multiplex licensees should be responsible for ensuring programming meets the Government's content standards. Rather, programming and content should be a matter for broadcasting licences and therefore the responsibility of channel providers. The Commission recommends a vertical separation between those delivering programming and those providing programming, with the latter being responsible for ensuring their programs fulfil the Government's content requirements (see chapters 11 and 13).

The Commission considers that similar licensing arrangements should be applied to the subscription television broadcasting industry. There are benefits from making those who provide content on subscription television responsible for ensuring that their programming complies with content regulations, such as restrictions on tobacco advertising and X-rated material (see chapter 13). It would be easier to enforce content regulations, making the system less susceptible to problems such as enforcing the minimum expenditure requirement for Australian productions on drama channels.

The Commission is not suggesting that subscription television channel providers be subject to the same content regulations as those that apply to free to air providers. Rather, the Commission is suggesting that the existing regulations be applied to those providing content, not those transmitting the content. The Commission recommends that an independent inquiry into content policy and related audiovisual industry and cultural policy be conducted by 2004 (see chapter 11).

RECOMMENDATION 8.9

Subscription television channel providers should be licensed separately from the subscription television carrier.

If pay per view or subscription services were to be provided by free to air broadcasters, these should be treated as subscription television services and regulated accordingly.

8.6 Narrowcasters

Narrowcasting services are broadcasting services that have limited reception in at least one of the following ways:

- they target special interest groups;

- they are intended for limited locations (for example, arenas, business premises, or limited geographic areas);
- they are provided during a limited period or to cover a special event;
- they provide programs of limited appeal; or
- some other reason (BSA, s.18).

The introduction of narrowcasting in the BSA appears to have permitted a wide range of new services, from school television systems to racing radio stations. Almost any special interest service may be provided under the narrowcasting regime on either an 'open' basis (that is, freely available to any member of the public with standard reception equipment) or a subscription basis (that is, available only by subscription or payment of a program based fee with special equipment).

Narrowcasting services operate under the class licence provisions of the BSA. Class licences are not individually issued, but are a standing authority for any operator to enter the market and provide a service, as long as the operator has access to delivery capacity and abides by the conditions applicable to the relevant category of class licence. Class licence service providers using the broadcasting services bands to provide a service must apply to the ABA for a transmitter licence to operate their service. These licences are issued under the *Radiocommunications Act 1992*.

Issues in narrowcasting

Inquiry participants raised four issues in regard to narrowcasting:

- licence period and renewability;
- distinctions among licence types;
- narrowcast licence hoarding; and
- catering for educational and other government users.

The latter three points are discussed below, and the first is discussed in Chapter 6 (which covered the issues of spectrum allocation more generally).

Distinctions between licence types

Some inquiry participants perceived problems with the current distinctions among licence types (box 8.5). Best FM, for example, argued that these distinctions have encouraged conflict between licensees, due to difficulties in distinguishing narrowcast radio services from commercial and community radio services

(sub. 140, p. 1). Similarly, the Australian Subscription Television and Radio Association stated:

> While the criteria for narrowcast services are set out under ss.17 and 18 of the BSA, the determination of what is or what is not narrowcasting is subject to the vagaries of the ABA. (ASTRA, sub. 80, p. 7)

And:

> In some markets a dance music format is perfectly acceptable to the ABA and in other markets it's not; same thing with country music and so forth. (Really Really Big Productions, trans., p. 166)

The 'Explanatory memorandum' to the Broadcasting Services Bill 1992 recognised that some service providers may try to:

> … push the limits of the licensing regime to secure commercial advantage by attempting to operate under the least costly and least restrictive licence category. … operators may seek to operate under a class licensing regime as open narrowcasters while providing advertiser supported commercial broadcasting services. The Act empowers the ABA to investigate any service providers suspected of doing this, determine the category into which a service falls and, where an operation is in breach of the Act, take action.

There are substantial penalties in the BSA for providing a commercial, community or subscription broadcasting service without the appropriate licence. If there is any doubt, an aspirant broadcaster may seek an opinion from the ABA on the correct service category (s. 21). The ABA also has power under the BSA to 'determine additional criteria or clarify existing criteria for the purposes of distinguishing between categories of broadcasting services' (s. 19). The ABA could exercise these powers to provide greater certainty to all operators.

Some of these issues may have arisen as a result of pent-up demand for commercial and community radio broadcasting licences, which has been constrained by the ABA planning process. Delays in licence area planning and limits on the number of services that may be provided in licence areas have created incentives for operators to seek other mechanisms (such as narrowcasting licences) to provide services. The Commission's recommendations on spectrum allocation should make spectrum more freely available and relieve some of these pressures.

Narrowcast licence hoarding

Several submissions have alleged that low power open narrowcast (LPON) transmitter licences are being hoarded in an attempt to limit competition and reduce diversity. According to the ACA, approximately 65 per cent of the 1560 LPON radio transmitter licences on issue are not being used to provide a radio service.

Further, 20 licensees hold over 50 per cent of licences. The low cost of holding LPON licences means so-called hoarders have little incentive to use or sell their licences (sub. DR258, att. p. 3). The ABA originally issued LPON licences free of charge, but they now attract an annual $34 licence fee. When the ACA took over issuing LPON licences in 1996, the first year licence fee was $346.

Licence hoarding may lead to inefficient use of spectrum even though there is an opportunity cost of scarce spectrum not being used. 'Hoarders' do bear a cost — the forgone revenue they could have earned from selling hoarded licences, if there is significant excess commercial demand. However, licence hoarding may allow licensees to engage in anti-competitive conduct (for example, preventing the entry of new operators), and this may lead to inefficient outcomes if demand exceeds supply. There may also be equity considerations if the excess demand is non-commercial in nature, and non-commercial operators cannot afford to pay commercial prices for hoarded licences. The ACA reports that prices on the secondary market range from $5000 in regional Australia to tens of thousands of dollars in major metropolitan areas (sub. DR258).

The ACA has released a discussion paper on licence hoarding, outlining the following options:

- retaining the current licensing arrangements;
- imposing a 'use it or lose it' condition as is already applied in some form to other radio services;
- increasing LPON licence fees; or
- replacing individual LPON licences with an ACA class licence. Under this option, existing apparatus licences would not be renewed. The ACA would issue an LPON class licence, which would permit LPON operators to transmit from any location providing that the standard LPON technical conditions were met (ACA, sub. DR258).

A number of inquiry participants supported the 'use it or lose it' option:

> … loopholes presently being exploited should be closed so that hoarding could not occur — the 'use it or lose it' option. (Presbyterian Women's Association of Australia in NSW, sub. DR 195, p. 1)

The ACA has finalised its considerations on the issue and expects to make recommendations to the Minister shortly (sub. DR258).

The Commission's recommendations on spectrum planning and licence transferability (see chapter 6) have implications for narrowcast licences. The Commission recommends that spectrum planning criteria be revised to remove non-

technical planning criteria, giving greater freedom for market forces to decide the number of services and those supplying them. The Commission also recommends that narrowcast apparatus licences be subject to the same licence period and renewal conditions that apply to other broadcasting licences. A more market-based system may not eliminate hoarding altogether, but it is likely to encourage a more efficient use of these licences. A market-based system may result in larger numbers of commercial broadcasting licences being available than under the current system. Hoarding narrowcast licences may not be an effective means of significantly limiting competition in this environment.

Educational and other government users

A number of State and Territory governments (New South Wales, Tasmania and the Northern Territory) have highlighted the opportunities that digital broadcasting presents to governments, to deliver their services online for example. Similarly, educational institutions (such as schools and universities) have expressed interest in using digital broadcasting to deliver education services. These two potential users of digital broadcasting have raised two issues:

- licence type; and
- access to spectrum.

Licence type

The Australian Vice-Chancellors' Committee emphasised the potential digital broadcasting presented for delivering education services to students online. However, it expressed concern about how such services would be licensed:

> Universities do not fit neatly into any of the existing categories of broadcasters outlined in chapter 5 of the Draft Report. Some of their activities are commercial in nature, but they would not seek the same role as existing commercial broadcasters. They are largely Commonwealth-funded and have a national role in education, but again would not want to mimic the national broadcasters (the ABC and SBS). Community broadcasters, similarly, have different aims from those of universities. (AVCC, sub. DR257, p. 4)

The Committee suggested creating another licence category called, 'educational television'. However, the Commission is not of the view that a new licence category is required for education providers and government agencies. First, the narrowcasting licence category exists for those wishing to target specific audiences or transmit programming for a specific purpose.

Narrowcasting licences are not subject to the strict licensing conditions that are applied to other broadcasting licence types (such as commercial and community broadcasting licences). Neither are they limited to any particular delivery platform or a specific geographic location. The Australian Racing Radio Association, for example, operates on narrowcasting licences around Australia to deliver its radio services. Similarly, the Victorian Department of Education SofNet satellite television network is licensed as a narrowcasting service. Narrowcasting services may be open services that anyone can access, or closed services that require consumers to purchase a receiver and/or pay a subscription fee.

Second, creating a new licence type unnecessarily may make the licensing system too unwieldy. The BSA already specifies six different licence categories, of which each is subject to different licensing arrangements and conditions, and the Commission is recommending Indigenous licences as another category. The Commission considers that the extra costs of administering an educational licence would outweigh the benefits.

Spectrum access

Some inquiry participants raised a second issue which relates to spectrum access. They argued that spectrum should be reserved for education and government purposes:

> … the NSW position is that the Commonwealth must ensure that decisions about spectrum allocation and use include conditions to guarantee that Commonwealth and State Governments can use datacasting to deliver online services without additional cost to government. (NSW Government, sub. DR193, p. 2)

And:

> … a proportion of digital spectrum [should be] reserved by the nation for this purpose. (AVCC, sub. DR257, p. 4)

And:

> … spectrum [should] be specifically allocated for the transmission of education content at standard definition resolutions… (EdNA Reference Committee, sub. DR270, p. 2)

Governments and education providers all argued that they would be using a community resource to provide community services. The Commission agrees that there may be benefits to the community from receiving government information and/or education services that are delivered using broadcasting spectrum. However, the Commission has some concerns about reserving channels for governments and education providers. It notes that government departments currently pay for the spectrum used to provide services; for example, State and Territory governments

pay for the spectrum used by emergency services such as police, fire and ambulance.[3] Further, government departments and education providers pay to access other platforms used to deliver online services. Providing online services via the spectrum would merely replace telephone lines as the delivery platform.

The issue is whether and to what extent the community would benefit from access to broadcasts by government agencies or educational bodies that otherwise would not be provided. The Commission recommends earlier in this chapter that a channel be made available in each licence area for community television services (recommendation 8.3). The current community television trials indicate that community broadcasters are unlikely to transmit programming continuously; for example, community television services in Melbourne are available on average for six hours each day. The remaining broadcast time could be made available to governments and education providers wishing to deliver some services via spectrum. That is, community broadcasters, governments and education providers could share a standard definition channel, which could be made available in each licence area if there is sufficient demand. Governments and education providers requiring additional spectrum for digital broadcasts could purchase access to a channel from a multiplex licensee.

RECOMMENDATION 8.10

Education providers and government agencies should share access with community groups to a standard definition digital television channel which could be made available in each licence area where there is sufficient demand.

[3] Only emergency services in remote areas and volunteer organisations, such as Surf Life Saving, are exempt from apparatus licence fees levied by the ACA.

9 Concentration, diversity and regulatory barriers to entry

An ongoing aim of broadcasting legislation has been to limit undue concentration of media and to foster diversity in the services offered to consumers. Yet somewhat paradoxically, the legislative framework and its administration have also created major barriers to entry.

Australia's traditional media industries of newspapers, radio and television are relatively highly concentrated. This is an important issue not only because concentration may give existing firms market power in the economic sense of the word, but also because it has implications for the diversity of programming and the diversity of information and opinion that is provided. But the development of new media services, such as subscription television and the Internet, is blurring the boundaries of traditional media markets. Soon it may be difficult to define where one market starts and another finishes. Convergence also creates the potential for new services and new players to emerge. In this environment, barriers to entry may stifle innovation as well as competition.

In recent years, government policy generally has been directed at removing regulatory restrictions and promoting greater competition. The National Competition Policy specifies that any legislation that restricts competition should be retained only if the benefits to the community as a whole outweigh the costs and if the objectives can be met only through restricting competition. The benefits that can flow from competition include increased choice, lower prices and greater innovation.

9.1 Concentration and diversity

Concentration in media markets is a significant economic, social and cultural issue in Australia and many other countries. The traditional media industries of newspapers, television and radio have few major players, and substantial barriers to entry (both economic and regulatory) discourage or prohibit new entrants. In addition, with the development of new media services such as the Internet, media markets are broadening and concentration is becoming increasingly difficult to

define (see chapter 10). This situation has implications for competition and diversity.

Concentration in the media, as in other industries, may provide incumbents with market power. This may translate into the ability to raise prices (for example, cover prices, advertising rates or subscription services) above competitive levels, to reduce quality, or to reduce the prices paid for inputs (for example, programs). Concentration in one sector, including ownership of facilities with natural monopoly characteristics, may give incumbents power over related markets. Concentrated ownership of program material may also yield market power in broadcasting.

Although control of more than one broadcasting licence in a licence area may encourage diversity in programming, concentration may limit the range of ideas and information available to the community. The inherent power of the media to influence community attitudes and beliefs has prompted most countries to apply special rules to the ownership or control of media businesses. Australia is no exception.

The current suite of legislation affecting Australia's media industries affects diversity of ownership and control and thus diversity of content and opinion. Parts of the *Broadcasting Services Act 1992* (BSA) are anti-competitive; for example: no more than three commercial television broadcasters can operate in any licence area; restrictions on foreign ownership and control limit entry (see chapter 10); and planning processes have had the effect of restricting new commercial radio licences (see chapter 6). Other parts of the BSA — the provisions concerning the cross-media ownership and audience reach rules and limits on the number of licences held in one licence area — limit media concentration.

Concentration in Australian media

Relatively few players own or control Australia's media industries. Two newspaper groups (News Limited and John Fairfax Holdings) account for over 90 per cent of the circulation of daily newspapers in Australia. Only three commercial television networks broadcast, although these are complemented by two national television networks, the Australian Broadcasting Corporation (ABC) and the Special Broadcasting Service (SBS), and in some areas, community television. Of the three commercial networks, the Seven Network and Network Ten each owns licences for Sydney, Melbourne, Brisbane, Adelaide and Perth. In contrast, the Nine Network's metropolitan licences are only for Melbourne, Sydney and Brisbane. Affiliation agreements mean the three commercial networks influence programming across

Australia. Further, Australia has only three major providers of subscription television services, and no more than two operate in any one area (see chapter 2).

Commercial radio broadcasting involves multiple independent operators, but concentration has increased markedly in some geographic markets. With the introduction of a 'two stations per licence area' rule in 1992, three radio networks (Austereo, Australian Radio Network and Southern Cross Broadcasting) came to dominate commercial radio in metropolitan areas. In early 1999, Austereo had 11 metropolitan licences out of the 39 in Australia, while Australian Radio Network and Southern Cross Broadcasting had eight and five respectively. Several operators have taken advantage of the two station rule; for example, Austereo has two licences in each of Sydney, Melbourne, Brisbane, Adelaide and Perth. Concentration among FM stations is even more marked, and most metropolitan regions have only four commercial FM licences, with two entities each controlling two licences.

The consequence of these ownership patterns is that there are few controlling interests in free to air commercial broadcasting and newspapers in any one area. In Melbourne, for example, three commercial free to air television networks, nine free to air commercial radio stations (controlled by six different entities) and two major newspapers mean 11 different commercial entities control the main media. This could decrease to 10 if full advantage was taken of the two radio station rule. In an area such as Wollongong, with only two commercial radio stations and one newspaper, six entities control the main commercial media (with the potential to decrease to five).

If cross-media mergers were permitted[1], but other ownership and control rules remained, the number of operators in some markets could decrease markedly (Jackson 1999). In the Wollongong market, for example, the number of separate commercial entities could fall from the minimum of five possible under the current rules, to three. However, this takes no account of the influence of the non-commercial broadcasting sector. Most markets have two national broadcasters (in both radio and television) and some community broadcasters. Including the national broadcasters and counting them as two distinct groups would change the minimum number of separate entities supplying media services in Wollongong, down from seven under current cross-media rules, to five without such rules (table 9.1).

[1] The cross-media rules in part 5, division 5 of the BSA prohibit a person from being in a position to control more than one of the following in the same licence area: a commercial radio broadcasting licence; a commercial television broadcasting licence, and a newspaper associated with that licence area (see chapter 10).

Table 9.1 **Possible effect of repeal of cross-media restrictions on numbers of separately controlled media businesses**

	Control under current cross-media rules							*No cross-media rules*	
	Media outlets per market								
	Television		*Radio*			*Controllers per market*			
Market	*Comm.*	*National*	*Comm.*	*National*	*Daily press*	*Actual*	*Minimum*	*Minimum*	*Reduction*
	no.	no.	no.	no.	no.	no.	no.	no.	%
Melbourne	3	2	9	6	2	13	12	7	42
Sydney	3	2	9	6	2	13	12	7	42
Launceston	2	2	2	4	1	7	6	4	33
Wollongong	3	2	2	4	1	8	7	5	29

Note: Assumes that the ABC and the SBS are counted as separately controlled businesses, and that ownership of more than two radio licences in one area, or more than one television licence in an area would be prohibited.

Sources: ABA (1999e) and Productivity Commission calculations.

The decrease in diversity would be softened to some extent by considering community broadcasters, narrowcasters and subscription television (where they are present). While this analysis is somewhat simplistic (for example, in not addressing differences in the influence of the different media businesses), the point remains that ownership and control of traditional media businesses in Australia are concentrated, and could become more so if the cross-media rules are relaxed and no other compensating effects or measures (such as freeing up entry) occur.

The influence of the new media on concentration is a contentious issue. Some inquiry participants argue that the traditional media and telecommunications businesses, unrestrained by legislation, have been quick to colonise the new media. The Communications Law Centre noted:

> The 'new media' business of subscription television has brought a new player into regional television but the major metropolitan subscription television operator Foxtel is controlled by old media players, Telstra, News Limited and PBL, all of whom have extensive other media and communications interests. The involvement of a major free to air television player from the early stages of the development of subscription television contrasts sharply with the evolution of these markets in the US and the UK. (sub. 109, p. 24)

Similarly the Internet is potentially a vast source of independent information with numerous players. But the traditional media (including the ABC) have taken advantage of their control over content to establish beachheads in this new medium. The Media Entertainment and Arts Alliance claimed that:

> Despite the claims in 1997 by opponents of cross-media restrictions that the burgeoning of new services have rendered the cross rules redundant, … four content houses

> continue to dominate the traditional and new media markets: Fairfax, [Publishing and Broadcasting Limited], News and the ABC. With each able to effectively squeeze new players out of the market by zero pricing their online content there is no sign that change is imminent.
>
> While the web has created a new distribution system — removing some of the start up costs associated with printing and delivery of print products — it is clear that there remains a significant bottleneck around content. The opening up of distribution has made content the key resource and has placed the major media groups in a commanding position on the net. (sub. 119, p. 6)

Among the top ten Australian Web sites most visited by Australians in the week ending 31 December 1999, three sites directly relate to traditional media businesses — www.ninemsn.com.au (Publishing and Broadcasting Limited), www.abc.net.au (ABC) and www.news.com.au (News Limited) (table 9.2). Two sites devoted to cricket in the top ten are also linked to established media players: the number one site (www.cricket.org) is linked to ninemsn, and the number seven site (www.thepavillion.com.au) is part of the suite of f2 web pages and thus is linked to Fairfax. Although not in the top ten on this particular date, f2 also had a number of other high traffic sites.

Telstra's Web page at www.telstra.com.au is a multipurpose site which contains information about, and links to, its more traditional telecommunications services, while also providing news, sport and other information services in a manner similar to that of media organisations such as News Limited. However, although Telstra's home page adds to structural diversity (another outlet for news and information), it depends on outside agencies such as Australian Associated Press for much of its content (illustrating the point above by the Media, Entertainment and Arts Alliance).

Table 9.2 **Top ten Australian Web sites accessed by Australians**

Ranking at 31 December 1999	*Web site*	*Category*
1	www.cricket.org	Sport
2	www.yahoo.com.au	Search
3	www.ninemsn.com.au	Media
4	www.abc.net.au	Media
5	www.comsec.com.au	Finance
6	www.whitepages.com.au	Directory
7	www.thepavillion.com.au	Sport
8	www.news.com.au	Media
9	www.start.com.au	E-mail
10	www.telstra.com.au	Company

Source: Lake (1999).

It is difficult to assess the net effect of the Internet and subscription television on concentration. Some new entrants have emerged, but many older media players have retained a strong presence in the new environment, especially through their control over content. Control over the production and use of content may become even more important in the digital age, because digital technologies enhance the ability to repackage content for different purposes and outlets, thus giving added impetus to mergers among firms in different but converging industries driven by economies of scale and scope.

Overseas comparisons

Many inquiry participants claim that Australia's media industries are concentrated by world standards, but few gave any concrete comparisons. Such claims are difficult to assess, but appear to have been influenced by the high concentration in Australian newspaper markets.

In some parts of the world, broadcasting has been so tightly regulated that private television broadcasters have been allowed to enter the market only in the past decade. The Organisation for Economic Cooperation and Development (OECD) notes that substantial growth in the number of (mainly terrestrial) television broadcasters occurred in the 1980s — with the number of private television channels in member countries reported to have increased from 18 to 84 — but that subsequent growth has been in satellite and cable channels.

Differences in reporting make it difficult to compare the numbers of free to air channels across countries. But there are sufficient examples to illustrate, at least in television, that Australia's industry is no more highly concentrated than in many other places. Australia (with three commercial networks and two national television networks) compares reasonably favourably with the United States (one public and four private), the United Kingdom (two public and three private but now with multichannelling) and Japan (two public and five private) (OECD 1997). Many OECD countries had fewer television channels than Australia in 1995.

It is difficult to draw any meaningful conclusions from these comparisons. Although strong economies of scale and scope in broadcasting will tend to drive concentration, the structure of broadcasting in most countries seems to owe as much or more to regulatory intervention and spectrum scarcity as to what the market might support.

Implications for diversity

A key objective of broadcasting in most developed countries is that consumers have access to a broad range of services — in other words, diversity in the content and sources of information and opinion that go to air. This is important for both catering to a range of consumer tastes, and ensuring access to a variety of sources of viewpoints.

Diversity of content

Diversity of content is related to the number of different operators supplying broadcasting services. Suppliers in most markets compete on the basis of price and product features. In free to air broadcast markets financed by advertising, different operators are primarily concerned with delivering audiences to advertisers (see chapter 4). Where a small number of free to air broadcasters operate, all can be expected to target the mass audience, or at least major components of that audience. This has led to a charge of sameness in programming against the commercial radio and television broadcasters. The Australian Radio Network claimed:

> … competition between advertiser supported stations does not maximise diversity, leads to wasteful duplication of formats and least common denominator programming. … a new entrant would seek to maximise ratings by mimicking the scheduling and program format of the most successful stations. (sub. 112, p. 2)

But people have varying tastes making it possible to target particular groups with particular programs. Noam (1991) developed a simple model of program diversity and audience shares under different regulations, ownership and channel quality. In this model, a single channel would maximise its audience by running programming that appeals to the largest audience segment. If a new broadcaster entered the market and provided exactly the same style of programming, the two broadcasters would split the same audience. By differentiating their services, each broadcaster attracts new viewers who are disinterested in the offerings of the other provider. However, the further one broadcaster strays from the middle ground, the more room it makes for the other.

This explanation is important because it highlights why competing broadcasters are attracted to the middle of the taste spectrum, yet have an incentive to differentiate themselves to some extent. A relatively large number of channels may be required to satisfy the taste preferences of the more outlying groups in society. But the economies of operating a free to air broadcasting business may ultimately limit the potential to cater for increasingly smaller niche groups. Even though they may have strong demand for a particular program genre, these groups may be of small value to advertisers. Thus public and community broadcasting have provided an important

service for relatively small proportions of the population in Australia, who prefer programming that advertisers would not support sufficiently to make them commercially viable.

While more free to air channels could be expected to add to diversity, more owners or controllers would not necessarily achieve the same result. Where the number of broadcasters is relatively small, program diversity may be enhanced by a single entity controlling several channels, because that entity would want to minimise duplication across its channels. In this respect, Southern Cross Broadcasting noted:

> Since [radio] broadcasters have been allowed to control two licences in the same licence area, programming diversity has undoubtedly increased. This is because broadcasters can provide complementary programming that spans a broader demographic than a single service can provide, and for example, male/female listening preferences within the same demographic can be better catered for. (sub. 65, pp. 20–1)

Southern Cross Broadcasting (sub. 65, p. 21) claims that relaxation of the two licence rule (for commercial radio licences in the same licence area) would encourage even more diversity, particularly in music programming.

The economics of cable or satellite services make it possible to deliver a great deal of diversity in commercial programming to Australian households. Digital multichannelling — under current regulations not permitted for free to air commercial television, at least until 2006 — is likely to significantly enhance the ability of terrestrial television broadcasters to deliver multiple services at little extra cost in terms of distribution, and Internet broadcasting may provide further program options.

These types of outcomes pose particular dilemmas for policy makers. If concentration of a fixed number of channels in few hands encourages diversity in programming, it may come at considerable cost. Fewer operators implies market power in setting advertising rates, and greater power over program makers. Further, while diversity of programming may be enhanced, diversity of sources of information and opinion may not.

Diversity of opinion

One of the most difficult broadcasting policy issues is the influence of media concentration on diversity of sources of information and opinion in a political, social and cultural context. While ownership of several outlets (when licence numbers are relatively limited) may promote diversity of programming, such concentration may not provide diversity of comment or information. Congdon noted:

> There is no particular public policy interest in having highly differentiated soap operas, but there is considerable public policy interest in having highly differentiated political broadcasts. (Congdon et. al. 1995, p. 20)

Many inquiry submissions addressed the question of diversity, with differing views on whether diversity of ownership and control matters. The ABC was concerned that:

> … if media outlets are concentrated in fewer hands, there could be a rationalisation of news sources within that media group, reducing outlets for independent reporting and leaving fewer sources from which to purchase news and information. (sub. 78, p. 17)

Some inquiry participants argued that the new media have greatly increased the diversity of sources of information and opinion, and that changes are required in the way in which media are regulated. PBL claimed:

> Since 1992 the array of information and opinion provided by media outlets has grown substantially. In 1992 there were far fewer media outlets, both in type and volume, and legislators may have believed that diversity in ownership was necessary for diversity in viewpoints. However, that conclusion needs to be rethought in light of media proliferation. (sub. 52, p. 5)

The views expressed by these and other inquiry participants challenge one of the fundamental building blocks of media regulation — that is, whether diversity of information and opinion requires diversity of ownership or control as necessary prerequisites. News Limited claimed that a concentrated media market and diversity of voice are not necessarily inconsistent:

> Conventional wisdom suggests that numerous, independent media outlets, competing vigorously and providing a diversity of views, foster the political and cultural health of a society. The rationale is that if the distribution function is highly concentrated then the public's access to important information or viewpoints could be restricted. The danger media concentration would pose is sometimes identified as a loss of diversity.
>
> Yet the connection is demonstrably wrong. A highly concentrated market has a few dominant firms, accounting for most of the output. Diversity, on the other hand, refers both to the number of independent media companies, regardless of their size (source diversity), and to the variety of viewpoints expressed in the media (content diversity).
>
> Accordingly, an unconcentrated media industry may nevertheless exhibit little content diversity — thousands of media voices each saying much the same thing and attracting similar audiences. And a concentrated media market may, nevertheless, exhibit great diversity, independent voices exhibiting every possible political hue and cultural view, with a few capturing most of the public's attention. (sub. 51, pp. 10–11)

Similarly, Harris has claimed that:

> … diversity of ownership and diversity of source has never guaranteed diversity of opinion, and that independent ownership has never guaranteed quality, just as group ownership does not guarantee the absence of quality. (1997, cited in Grattan 1998)

A highly concentrated media may still provide diversity of opinion. As News Limited stressed, there may be many voices, even if a few capture most of the attention. Editorial independence and coverage of different views in news, current affairs and documentaries could mean that these few provide a diverse range of views. However, while these outcomes are possible, diversity of opinion and information is more likely to be encouraged by diversity in the ownership and control of the more influential media.

Intrinsic in this debate is the notion of what is, or is not, a credible and accessible source of opinion. It is not sufficient to have multiple voices if those voices are not accessible or lack the credibility of the main media. A large number of separately controlled outlets does not add to diversity if they all have similar views or are not readily available to media users. There are potentially as many sources of opinion on the Internet as there are users, for example. But if relatively few people have access to it and most are unlikely ever to use it (see chapter 3), it may be considerably less influential than a more pervasive medium such as free to air television. The Internet and subscription television have unquestionably broadened the range of potentially independent sources of content and opinion. However, in a practical sense, they are less accessible than traditional media, and will remain so for some time.

Many people argue accordingly that the new media may add to diversity of opinion, but the traditional media still enjoy such dominance that it is too early to loosen the regulations on ownership and control. Network Ten, for instance, stated that:

> Despite rapid technological developments, newspapers, television and radio remain the most influential media at this time. Diversity of opinion is best ensured through diversity of ownership of these influential media. (sub. 48, p. 1)

While much of the policy focus has been on the ownership and control of broadcasting licences, an associated issue is the diversity in sources from which radio and television stations draw their news and editorial information. A rationalisation that has swept through various media sectors (radio in particular) in recent years has been the outsourcing of the gathering of news material. Much news on commercial radio stations comes from outside news bureaus such as AAP and Reuters. Stations can use their discretion over which items they run (sometimes referred to as 'rip and read') and may repackage material but they depend on these agencies for their raw material. Thus concentration among news bureaus may also be an important issue. Radio stations are influential in other ways, not just through the news items they carry and the manner in which they are presented. In-house material such as talk-back segments and editorialising by announcers may be far more influential than the way in which news material is treated. Thus, even if

common news sources are being used, diversity of ownership and control of radio stations could still be important in securing diversity of opinion.

Some participants and media observers advocated the retention or strengthening of the ownership and control rules so as to provide multiple employers of journalists. It was argued that editors and journalists, with more potential employers, would feel less constrained to keep to a proprietorial line. This is especially important where media proprietors have substantial nonmedia assets. Commenting on the influence of proprietors on opinions expressed in their media assets, Grattan (1998) argued that:

> What is critically at issue in the diversity debate is the ability to expose information. This requires commitment at both proprietor and journalistic level. The more the media is concentrated, and owners' interests stretch across the media and into other businesses, the greater the risk this ability is likely to be compromised.

The main Australian media proprietors have links with a variety of nonmedia businesses (see chapter 2); PBL now owns Crown Casino, and News Limited has equity in the National Rugby League and Ansett Australia among other businesses. Some participants claimed that such business interests create conflicts of interest which can influence reporting of events relating to those businesses (for example, Friends of Fairfax, sub. 111). As Pokarier (1996) stated:

> It would take considerable personal fortitude on the part of any media owner to stand back and let his or her own outlet give prominence to news or voice to opinions that could have a substantial negative impact on other business interests. (p. 10)

While codes of ethics are one way of trying to ensure fair and accurate coverage of news and current affairs, they may not be sufficient. Network Ten argued that:

> … in a country where journalistic independence is enshrined in a code of ethics, journalists and editors should be trusted to uphold balance and objectivity. However, without alternate potential employment with a number of other media outlets, the risk is that at the very least, some form of self-censorship will influence journalistic and editorial standards.
>
> Another argument is that diversity is ensured by the presence at any one particular outlet of commentators with varying backgrounds and views. However, the reality is that awareness of a proprietor's viewpoint or other interests do play a role in the overall reporting of key issues.
>
> … Diversity of ownership will help promote an independent journalistic culture, will promote additional employment paths for journalists and most importantly will guard against the creation of an environment where the power of influence may be misused.
>
> The most effective, objective way of promoting diversity of views is to ensure diversity of ownership. (sub. 48, pp. 6–7)

Not all inquiry participants agree on the degree to which proprietors influence journalists. Expressing a personal point of view, Professor David Flint (Chair of the Australian Broadcasting Authority) argued that media proprietors were 'ephemeral' in the sense that they 'come and go' and that:

> … there has been a significant devolution within the media from proprietors and from editors to individual journalists, a devolution of authority to the journalists. There has been a blurring of news and opinion. Opinion, which was once the preserve of the editor, has now gone down to the journalists. So once where there was a significant power in owners, with editors reporting to owners, that has been diffused and that has been a cultural change. (ABA, trans., p. 506)

Even if there has been a devolution of authority to journalists, as Professor Flint suggests, the point made by Grattan, Network Ten and others remains — that is, that it is not necessary for proprietors or their editors to be heavy handed about editorial direction or the content that may or may not be covered. Self censorship by journalists may achieve similar outcomes to explicit intervention.

In the Commission's judgment, the likelihood that a proprietor's business and editorial interests will influence the content and opinion of their media outlets is of major significance. The public interest in ensuring diversity of information and opinion, and in encouraging freedom of expression in Australian media, leads to a strong preference for more media proprietors rather than fewer. This is particularly important given the wide business interests of some media proprietors.

9.2 Regulatory restrictions on entry

Regulatory restrictions on entry into an industry are relatively rare in Australia. They are usually related to a skill or qualification (such as certain professions and trades), to industries whose growth the government wishes to constrain (such as hotels and casinos) or to industries based on a limited resource (such as forestry or fisheries). But regulatory restrictions on entry, over and above those related to scarcity of spectrum, have been a longstanding feature of the Australian commercial broadcasting industry.

The BSA places two types of regulatory restriction on entry into the broadcasting industry:

- a ban on any new commercial television licences until 31 December 2006; and
- a spectrum planning process, which has limited the release of spectrum for broadcasting services.

In addition, the Commonwealth Government announced on 21 December 1999 its intention to regulate the content that datacasters may broadcast to prevent them from becoming *de facto* broadcasters, thus limiting their ability to become alternative sources of information and opinion to the mass market. The ownership and control provisions of the BSA — including the cross-media rules, and restrictions on foreign investment in television — also limit the potential for entry (see chapter 10).

Regulatory restrictions on entry into broadcasting potentially reduce the number of broadcasters and thus diversity in the ownership and control of broadcasting services. This is contrary to two of the objectives of the BSA:

> … to encourage diversity in control of the more influential broadcasting services. (objective [c])
>
> … to promote the availability throughout Australia of a diverse range of radio and television services offering entertainment, education and information. (objective [a])

Having restricted entry, the BSA attempts to compensate by imposing other regulations on broadcasters that aim to enhance diversity, through content regulation and a variety of ownership and control provisions. These issues are discussed in chapters 11 and 10 respectively.

Ban on new commercial television licences

The BSA (as amended by the *Television Broadcasting Services (Digital Conversion) Act 1998*) states that

> the ABA must not, after 25 June 1998, allocate any new commercial television licences in any licence area before 31 December 2006. (BSA, s. 28)

Prior to 1998, this section prohibited the ABA from allocating more than three commercial television broadcasting licences in any licence area. The amended clause also prevents the allocation of new licences into areas that have fewer than three commercial licences, thus preventing parts of Tasmania, Western Australia and various other regional areas in Australia from possibly gaining the full complement of three commercial stations.

Limited release of spectrum

The BSA (s. 23) sets out criteria for the ABA's planning of the broadcasting services bands. These criteria — some technical and some non-technical (particularly the economic and demographic ones) — have been applied to the entry of new radio stations but not to television, where new entry is prohibited. If s. 28 of the BSA were repealed, the criteria of s. 23 would then apply to the planning of any

new television licences; s. 23 also applies to new services arising from convergence and digital technology, and planning for digital television must consider these criteria.

The common property resource characteristic of the radiofrequency spectrum necessitates government involvement in spectrum planning. At one level this is essentially a technical task. In an economic sense, this task involves allocating property rights, similar to the Government's role in assigning forestry and fisheries rights. Given that the broadcasting services bands are insufficient to accommodate all aspirant broadcasters, spectrum planning will continue to be a major issue, at least until analog broadcasting is phased out of operation.

A planning process based on technical characteristics is quite complex. But the economic and other non-technical criteria of s. 23 add extra complexity to this planning process, potentially adding further delays and limiting the release of spectrum (see chapter 6). The ABA's interpretation of these criteria has also limited the release of spectrum. The ABA's attempt to estimate the demand for new broadcasting services is a function that is left to the market for most industries. It has meant that fewer licences are issued than warranted by technical criteria alone, as illustrated by the draft licence area plans for Sydney, Gosford, Katoomba and Lithgow (box 9.1). The ABA has interpreted the economic and other non-technical criteria in a similar manner in other areas.

Under the terms of reference for this inquiry, the Commission must determine whether the benefits to the community of these (and other) provisions in the BSA outweigh the costs, and whether the objectives of the BSA can be met only through restricting competition. Although analog radio planning processes are now well advanced, it is important to consider how effective amending s. 23 (to limit planning criteria to technical aspects only) would be to opening up broadcasting to further competition. The effects on the planning of digital television services also need to be considered.

The ABA has argued that it has largely completed the analog planning process for radio (sub. DR226, p. 6) and thus that it would be essentially futile to amend s. 23. As the ABA stated:

> The problem we really have is that your [draft] report appears to be redesigning the planning process so it would have run better if we start in 1992, and we've got no problems with the idea that that would have speeded things up. … The trouble is that at the moment as we sit here analog opportunities to transmit new services will be largely exhausted by the time you could possibly get changes through parliament. (trans., p. 1102)

Box 9.1 **The ABA planning process**

The ABA recently released a draft licence area plan that proposes two new commercial radio services for Sydney. The plan identified six unused frequencies that could be allocated to new radio services. The ABA stated that it:

> … believed object 3(a) of the Act and the 'economic and efficient' use of spectrum is best served by making comparable coverage services available rather than low powered services addressing only a fraction of the population served by the existing licensees. (1999d, p. 7).

The ABA concluded that three of these six available frequencies were not suitable for commercial services because they could not provide a comparable coverage to the existing commercial services. Thus the potential number of new commercial licences was reduced on non-technical grounds.

The ABA also proposed to allocate only two of these frequencies for commercial purposes and the third frequency to a community broadcaster. The ABA explained that a deciding factor was the need (under s. 23 of the BSA) to consider the number of existing services and demand for new broadcasting services. The effect of this decision is that there may be 11 commercial broadcasters and eight community broadcasters by 2004. However, only an estimated 4 per cent of Sydney's population listened to community radio from April 1998 to March 1999, while 67 per cent listened to commercial radio. If the third frequency had been allocated to a commercial broadcaster rather than a community broadcaster, the ratio of commercial to community stations would have more closely matched the respective size of their audiences.

Finally, the ABA concluded that:

> Planning services that are not allocated, or that are allocated but not successfully established, would not appear to promote the objects of the Act, particularly the economic and efficient use of spectrum. However, apart from situations where planning two additional commercial radio services would occupy all available capacity, which is not the case in Sydney, the ABA does not regard planning two additional commercial radio services as potentially wasteful of spectrum. (1999d, p. 46)

Sources: ABA (1999d); Roy Morgan Research (1999).

The Commission does not consider that it is too late. Planning of digital television has a considerable way to go, and while FM radio planning may well be advanced, it is not set in concrete forever. If the Commission's recommendations on these matters are accepted (see chapter 6, section 6.5), it would be appropriate to reconsider how many additional licences could be allocated in licence areas already planned. Analog radio is likely to be with us for many years yet, so this is not an inconsequential matter. Neither is the application of s. 23 to digital services. While s. 23 is largely redundant in the planning of television services, adoption of the Commission's recommendations for digital broadcasting will gradually open up entry and bring this issue into focus.

RECOMMENDATION 9.1

When the non-technical criteria in s. 23 are removed, spectrum plans should be reviewed to make any unallocated spectrum available for sale.

9.3 Reasons for restricting entry

The value of broadcasting licences (see section 9.4) suggests that the restrictions on entry are of significant benefit to existing broadcasters. Arguments have been put forward to justify the ban on entry into commercial television broadcasting, with the main one being that it is a *quid pro quo* for certain obligations placed on the licence holders.

Quid pro quo for broadcasters' obligations

The main argument put forward to justify the restriction on entry into free to air commercial television broadcasting, is that it is a tradeoff for obligations placed on the licensee, such as the requirement to meet the Australian content and children's programming quotas. The ban on entry is said to be required to protect the revenue base of the broadcasters, and to provide them with the funds to pay for Australian drama, documentaries and children's programming subject to the subquotas (see chapter 11). The obligation to convert to digital technology is another argument put forward for protecting the revenue base of the existing broadcasters, and provided the rationale for the amendment to s. 28 of the BSA, which bans entry altogether until at least 2007.

The Federation of Australian Commercial Television Stations argued that:

> The key feature of this regulatory support is a degree of protection of the industry's revenue base, in the form of limits on the number of commercial television services in each market. This recognises that, for a commercial television service, the most direct, across the board competition for all categories of local and national advertising is from another commercial television service. (sub. 49, p. 18)

The Seven Network submitted that:

> Australian drama, comedy and documentaries are very costly to produce. If there is a new entrant in the commercial [free to air] television industry, then it may adversely affect the provision of high quality Australian programs. (sub. 151, att. 3, p. 25)

The underlying assumption is that these obligations provide benefits to the wider community, so the broadcasters should be compensated in some way for the costs

they incur in meeting these conditions. (The benefits of digital technology are addressed in chapter 7, and the benefits of the content requirements are addressed in chapter 11.)

It is questionable whether the restrictions on entry are a necessary tradeoff for imposing such obligations on the commercial broadcasters. Few industries enjoy entry restrictions to compensate for public obligations. The *Therapeutic Goods Act 1989*, for example, imposes standards on new drugs developed by the pharmaceutical industry. Building codes impose obligations on the construction industry. All industries must meet the requirements of various codes, standards and regulations, such as environmental standards and occupational, health and safety regulations. It is not clear why the broadcasting industry is marked for special treatment and compensated for meeting its obligations. Higher costs do not justify restrictions on entry.

The case for restricting entry to help the existing broadcasters make the conversion to digital television is also debatable, given other advantages available to them. They are to be supplied with additional spectrum without charge to facilitate the conversion. Further, because time is required for new, competitive digital services to commence, and for consumers to convert, digital conversion provides a lengthy in-built phasing adjustment period. Thus, even if a new digital broadcaster starts broadcasting on 1 January 2001, it would only gradually become a significant threat to the incumbents after some years into the conversion process. Further, the liberalised conversion scheme proposed in this report would provide significant new business opportunities for existing broadcasters.

The cost of Australian drama, documentaries and children's programming, and thus the revenue base that arguably needs protecting, also needs to be put into perspective. Expenditure on Australian made programs is a relatively small part of the total costs of running a television station. In an overall sense, program costs are a major expense for television broadcasters (see chapter 5); for example, the commercial free to air television broadcasters spent 35 per cent of their total expenditure on programming in 1997-98. However, only about 14 per cent of this share, or about 5 per cent of the broadcasters' total expenditure, was spent on programs subject to content subquotas for Australian first release drama, children's programs and documentaries.

The relatively small amount spent satisfying the subquotas suggests the cost burden is not great in an absolute sense. Further, it is simplistic to look at only the cost side of the equation. Many Australian programs are expensive to produce relative to imported programs priced to the market, but they rate well and the additional cost is offset to some extent, at least through greater advertising revenue. Restrictions

placed on advertising during children's programs may limit advertising revenue, but advertising revenue would not be high at these viewing times even if other programs were shown, so the effect on total revenue is probably small.

Fragmenting advertising revenue

A number of inquiry participants argue that the introduction of new broadcasters would fragment the advertising market, because the same amount of advertising expenditure would be spread among more broadcasters (see chapter 4). They argue that this would jeopardise the ability of broadcasters to fund their licence obligations. The Federation of Australian Commercial Television Stations noted:

> Advertisers will not spend more on television as a medium just because there are more commercial services. However, major advertisers would undoubtedly have to reallocate their television spending to ensure that they reached their target audience which would then be split between four or more commercial services, rather than three. This would inevitably affect the revenue of existing stations. (sub. 150, p. 5)

In the short term, the entry of new players will probably result in the incumbents losing some market share and revenue. Regulatory limits (on the amount of advertising that may be shown per hour and on the number of licences) constrain the amount of advertising space on commercial free to air television. Strong growth in advertising prices suggests there is unmet demand into which a new commercial free to air broadcaster may tap. But because advertising prices would fall, the revenues of existing networks could be expected to drop.

The situation may differ in the longer term. First, the advertising market is growing strongly, meaning that any dilution of market share will be offset to some extent by growth of the revenue 'pie'. For incumbents, the time needed for any new digital broadcasters to build market share will reinforce this effect. Commercial television revenue from advertising has grown strongly for many years; for example, the annual compound growth rate was 4.8 per cent between 1992 and 1998[2]. This exceeded the growth in advertising revenue for most other forms of main media, with the important exception of magazines (see chapter 4).

Second, to the extent that new entrants add to content diversity and appeal to a new audience (more viewers or more time spent watching television by existing viewers), some growth in the market may be expected. By itself, the entry of an additional broadcaster that largely replicates the content styles of existing broadcasters may not increase the market (other than through catering for demand currently constrained by the hourly limits). This is evidenced by the modest growth

[2] Commission estimates based on CEASA (1999a) and ABS (1999).

in television advertising revenue that accompanied the introduction of third commercial licences in areas such as Canberra and Perth (BTCE 1998). However, as argued in chapter 4, the advertising market is becoming much more dynamic. Better market research is assisting programmers to target audience groups more closely with appropriate programming, and there is potential to use digital technologies to cater for niche groups and provide new advertising services.

In summary, obligations such as Australian content children's and content quotas are imposed on broadcasting licensees as a means of achieving some of the social and cultural objectives of the BSA (see chapter 11). The Commission is not convinced that these obligations require restrictions on entry to the broadcasting industry. Further, it is not convinced that the costs of conversion to digital television warrant prohibition of entry, particularly given that spectrum for the conversion has been made available at no cost. The Commission's proposals for digital conversion would also lower the costs of conversion.

9.4 Effects of restrictions on entry

The effects of restrictions on entry into broadcasting are felt widely, and are likely to become more significant as convergence proceeds and digital technologies are adopted. Further, restrictions on entry into broadcasting appear to be contrary to the objectives of the BSA.

Market power

Tight restrictions on entry are likely to have provided the three television networks with market power in dealing with the Australian content production industry and the advertising industry.

Content production industry

A number of inquiry participants suggest that the Australian content production industry has suffered from the market power of the television networks (Australian Writers Guild, sub. 12; Screen Producers Association of Australia, sub. 47; Australian Screen Directors Association, sub. 110; Media Entertainment and Arts Alliance, sub. 119). As evidence, they point to the low and static program licence fees that the broadcasters pay for Australian produced content (see chapter 5). The Screen Producers Association of Australia noted:

> There is a significant difference in the market power of broadcasting and independent producers. Australian productions must gain the majority of their costs from the

> Australian market, but are being prevented by the unequal bargaining power of broadcasters. This has led to artificial restraints on program licence fees paid by the networks. (trans., p. 101)

Further, the Australian Screen Directors Association stated:

> The current downside of the oligopolistic structure for program makers is that this privileged market position has been used to force down … licence fees. This is despite the fact that advertising revenues have been increasing for high rating series, and that production costs have also increased.
>
> … in recent years [the broadcasters] have drastically increased their profitability without passing this on to the production sector despite the rise in budgets over the same period. (sub. 110, p. 4)

The Australian Football League (AFL) is in no doubt that the television networks have substantial market power. It noted that the limited number of commercial stations (of whom some may be committed to other sports or programming), and the antisiphoning provisions limit the competition for the television rights to cover AFL football. These issues of sports coverage are considered further in chapter 12.

To the extent that the networks are exercising such market power, they may also be affecting the ability of the Australian content production industry to provide high quality and innovative programs. This would be contrary to two objectives of the BSA:

> … to promote the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity. (objective [e])
>
> … to promote the provision of high quality and innovative programming by providers of broadcasting services. (objective [f])

Removing barriers to entry would help to reduce the market power of the networks and, depending on how Australian content rules are implemented, result in higher program licence fees being paid for Australian produced content. The suppliers to any industry can generally expect their position to improve where the number of buyers increases, or where there is greater contestability. The Australian Screen Directors Association stated:

> … if you actually increased the number of players and the content quota stays the same there would be an increase in Australian content because they would have to provide a certain amount of hours of Australian content. (trans., p. 848)

It added that this should somewhat mitigate the oligopolistic practices in the broadcasting industry.

The effect on licence fees would be influenced by how Australian content regulations were configured in the new environment. The demand for Australian

programming would be uniformly greater if the same content quotas were extended to the new entrants. With more competition for their services, and a proportional increase in the amount of Australian programming, licence fees could rise substantially. Even if content regulation changed, more vigorous competition among an increased number of broadcasters would still be likely to provide some stimulus to licence fees (see chapter 11).

Some inquiry participants propose alternative approaches to offsetting the perceived market power of the content buyers. The Screen Producers Association of Australia (sub. 47) proposes an independent production quota that would compel the broadcasters to outsource a specified amount of their program material to independent content producers. The Australian Screen Directors Association (sub. 110) proposes to extend the minimum program licence fees for children's programming to include other forms of drama and documentary programming. Such approaches would apply an additional layer of regulation in an attempt to overcome the problems caused by the original regulations, and do not address the underlying source of the problem — that is, the regulatory restrictions on entry of ss. 28 and 23 of the BSA.

Advertising industry

The market power of the three television networks would appear to be affecting the advertising industry also. The Australian Association of National Advertisers noted that:

> … the current regulated market establishes and preserves an oligopoly with no effective competition.
>
> … it is clear there is little evidence of vigorous competition both at a network and local station level whether in terms of advertising rates, advertising air-time, programming and program quality. This highly comfortable environment stems throughout the limited number of participants in the broadcasting industry in Australia and AANA believes that such deregulation of the broadcasting industry would enable a free and open market which would in turn be the most competitive environment. Without such deregulation, this industry will continue to be restrictive. (sub. 168, pp. 2-3)

When asked at the inquiry hearings about the possible effects of restructuring of the marketplace — including new entry — on competition and advertising rates, the Association stated:

> I think you would see a complete restructuring of the pricing … At the moment allocations are going up two, three times the growth of [the] CPI because there is a pricing structure that has developed over the years. With a restructuring of the market, the pricing structure there - or the pricing will have to be restructured and at the same time there will be growth. This will stimulate growth. (AANA, trans., p. 1124)

The Association confirmed that it anticipated this would mean lower advertising rates on the three existing networks (trans., p. 1124).

Advertising rates have been growing strongly (see chapter 4), but because regulation constrains the supply of advertising time, and the economy has been growing strongly for some time, rates might have increased even with greater competition among broadcasters.

In defence of the commercial networks, the Federation of Australian Commercial Television Stations stated that:

> … in neither the program production industry nor the advertising industry do small companies predominate. Several large international production companies dominate the production industry. Several large buying groups dominate the advertising industry, and account for the vast majority of advertising placement in main media. We do not believe that commercial broadcasters have undue market power in either of these markets. (sub. DR231, p. 11)

The Federation implied that the size of these upstream businesses is such that they provide countervailing power to the three commercial networks, and thus, that broadcasters trying to push advertising rates up (and push licence fees down) face an equally strong force pushing rates down (and licence fees up). It is difficult to assess these counterclaims. It is possible that advertising buyers or production companies may sometimes have some market power over the networks.

The independent content production industry is passing through some significant changes at the moment (the Seven Network and Granada joint venture being one example), which may increase concentration (although from a low base). The production industry consists of a number of enterprises (see chapter 5); there are no regulations against entry to content production, and it is an internationally tradeable sector, so it would appear to be far more competitive than is television broadcasting at the moment. Similarly, given the large number of advertisers — including major advertisers — it would be relatively easy for the networks to induce some advertisers to break ranks and weaken the negotiating power of the buying groups. Further, the buying groups appear to be losing some of their market share.

Market power in the television advertising market also needs to be considered in the broader market for advertising. If mergers are permitted between businesses operating in different media, and a new firm has market power in more than one medium, it may gain greater competitive advantage over its competitors. As Allan Brown stated:

> Common ownership of different media outlets in the same markets would allow cross-promotion and package deals for advertising across commonly owned media to the disadvantage of companies with interests in only one medium. (sub. 152, p. 9)

In other words, the advantages to a firm from the joint marketing and sales of advertising in the two media (an example of economies of scope) may further encourage concentration in the broader media market. This may be a crucial issue in a merger involving a capital city newspaper and a commercial television licence in the same area (which is currently prohibited by the cross-media rules, as discussed in chapter 10).

Limiting entry affects licence values

Despite the imposition of quite substantial licence fees and the alleged cost penalties imposed on television broadcasters by the content subquotas, broadcasting licences have become valuable assets. According to Australian accounting standards, the valuation of licences should reflect the capitalisation of the future stream of expected profits, and thus implicitly include any cost burden from licence fees, content regulation, the expected costs of conversion to digital, and other social and cultural obligations of the licensees. A positive valuation of the broadcasting licence represents an expected benefit over and above these costs.

The total value of television licences in Australia (as reported to the ABA) was over $3 billion at June 1998 (table 9.3). More recent ABA data are not available, but the indications are that licence values have risen since that date. The Seven Network (1999) revalued its licences during 1998-99, from $570 million to $1050 million at 30 June 1999.

Table 9.3 **Australian commercial television station licence values, 30 June 1998** [a]

	Stations	*Value*	*Average value*
	no.	$m	$m
Australia	47	3051.8	64.9
Market			
Sydney	3	1041.5	347.2
Melbourne	3	603.3	201.1
Brisbane	3	291.7	97.2
Adelaide	3	125.7	41.9
Perth	3	163.7	54.6
Multi-station regional	21	668.0	31.8
Solus regional	11	157.9	14.4

[a] Licence value data are from the ABA's *Broadcasting Financial Results*. The ABA does not stipulate accounting standards to licensees so there may be differences in accounting practices among licensees.

Source: Productivity Commission estimates based on ABA (1999b).

The total value of commercial radio licences in Australia was over $790 million at June 1998 (table 9.4). The ABA estimates that the average value of a commercial radio licence is around $3.7 million, with FM licences averaging $5.3 million. Licences for major metropolitan markets are considerably more valuable than those for regional markets. Commercial FM licences for capital city markets, for example, were valued at $20.7 million, while those for large regional areas averaged $4.8 million.

The high commercial value of broadcasting licences reflects their scarcity, and that the benefits to incumbents of restrictions on entry far exceed the costs of their obligations. But because licences can be sold, there are capital costs to broadcasters (although not to society as a whole) in purchasing or holding on to them. These can be actual expenditures (the cost of debt or equity capital required to purchase them) or opportunity costs (the cost of keeping the capital tied up in television licences rather than in a competing investment). The higher cost structure feeds into advertising rates, and ultimately into the cost of the goods and services advertised.

While capital market disciplines will to some extent ensure existing licences are used efficiently, the market would be much more contestable if potential broadcasters could obtain new licences. Regulatory restrictions on entry prevent potential broadcasters from entering or threatening to enter the broadcasting industry, and thus from competing for the audiences of the existing broadcasters. This system protects less efficient broadcasters from more efficient aspirants, which is contrary to the BSA objective:

> … to encourage a regulatory environment that will facilitate the development of a broadcasting industry in Australia that is efficient, competitive and responsive to audience needs. (objective [b])

Digital consequences

The entry of new broadcasters would be expected to enhance diversity of content and diversity of information and opinion, particularly in a convergent environment. Given that the prime policy objective is to maintain or enhance diversity of opinion, and that this is more likely to be achieved with more owners rather than fewer, an important policy goal should be to encourage entry of new broadcasters.

However, the way in which different policy instruments interact in the digital era needs some consideration. The Key Centre for Cultural and Media Policy argued that if the existing television stations are allowed to multichannel, entry of new broadcasters would be less likely to occur (subs. DR254 and DR289). By multichannelling, the existing stations could target the same niche audiences that may appeal to a new single channel broadcaster, but they would have the advantage

of economies of scale from operating several channels side by side. If programming costs increase in proportion to the number of channels operated, and if there is little offsetting growth in the market, then the profitability of television broadcasting would fall, and make entry less enticing. For these reasons, the Key Centre for Cultural and Media Policy advocates retaining the current prohibition on multichannelling until there is a significant number of new players in the industry (sub. DR289, p. 9)

Table 9.4 **Australian commercial radio station licence values, 30 June 1998** [a, b]

	Stations	*Value*	*Average value*
	no.	$m	$m
Australia			
AM	106	216.7	2.0
FM	109	577.2	5.3
Total	**215**	**793.9**	**3.7**
Market			
Capital city			
AM	18	119.4	6.6
FM	21	434.6	20.7
Total	**39**	**554.0**	**14.2**
Larger regional			
AM	18	38.4	2.1
FM	26	124.8	4.8
Total	**44**	**163.2**	**3.7**
Medium regional			
AM	37	45.5	1.2
FM	33	12.5	0.4
Total	**70**	**57.9**	**0.8**
Smaller regional			
AM	33	13.5	0.4
FM	29	5.3	0.2
Total	**62**	**18.8**	**0.3**

a Licence value data are from the ABA's *Broadcasting Financial Results*. The ABA does not stipulate accounting standards to licensees so there may be differences in accounting practices among licensees. **b** Of the 221 commercial radio stations that were operational at 30 June 1998, 215 stations provided financial information to the ABA.

Source: Productivity Commission estimates based on ABA (1999b).

The Commission accepts there may be some tradeoff between multichannelling and new entry, but does not see the development of digital services in such a static sense. In the Commission's view, existing broadcasters should not be held back

from using digital technologies to experiment with the services they can provide in the bandwidth available. Multichannelling is only one of the things they may choose to do; enhanced programming, high definition television and datacasting are others. Given that these too may give the incumbents a competitive edge over new entrants, are they to be prohibited as well until new entrants have emerged? The Commission considers that they should not. Innovation is a key driver of competition in any market, and to so constrain the activities of the incumbents seems unwise.

Judging by the interest shown by potential providers of digital services, there appears to be little risk of entry not occurring, provided regulators permit it. These potential providers include large media corporations such as News Limited and John Fairfax Holdings and would-be datacasters such as Ozemail, so there are good prospects for a range of new services to emerge. This would enhance both diversity of information and opinion, and diversity of content in the medium to long term as spectrum becomes available.

9.5 Conclusion and recommendations

Allowing new entry is the key to greater competition in Australia's broadcasting industries and to the loosening of regulatory ties that have constrained its development and growth. Competition is relevant not only in the normal sense of the word. Lower (advertising and other) prices and better service quality are important, but more important is the presence of competing voices in the Australian media. Diversity of sources of information and opinion is a keystone in a democratic society. While the Commission accepts that diversity of information and opinion may not be inconsistent with a concentrated media sector, other factors being equal, it is more likely to be achieved where there is diversity in the ownership and control of the more influential media. (Ownership and control issues are discussed in chapter 10.)

Regulatory restrictions on entry are constraining the achievement of this important policy objective. These include bans on new television stations until 2007, and the use of non-technical criteria in spectrum planning under the provisions of the BSA. These regulations have led to the erection of other compensatory regulatory restrictions, such as the restrictions on cross-media ownership and control, and datacasting in the digital television conversion scheme.

If the Commission's recommendations on defining datacasting as digital television are adopted, such that new entrants would not be classified as commercial broadcasters (see chapter 7), s. 28 would apply only to analog services. There is insufficient spectrum available for new analog services, so s. 28 would eventually

become redundant. However, if the Commission's proposed definition is not adopted, this provision would continue to be a barrier to competition. Either way, it should be repealed immediately.

Removing the economic and other non-technical criteria for planning the broadcasting services bands from s. 23 of the BSA is also required. Applying the attenuated set of criteria to existing and future licence area plans should result in the greater availability of commercial broadcasting licences (radio and digital television) in some licence areas.

The Commission finds that the restrictions on entry inherent in ss. 28 and 23 (a–c) of the BSA contravene the provisions of the Competition Principles Agreement.

RECOMMENDATION 9.2

Section 28 of the BSA, which prevents any new commercial television licences being allocated before 31 December 2006, should be repealed immediately.

10 Ownership and control

Ownership and control restrictions on broadcasting media are a continuing thread in Australia's broadcasting history. These restrictions recognise the significant degree of influence that broadcasting services can have on community attitudes and opinions. An ongoing aim of broadcasting legislation has been to limit undue concentration of media and to foster diversity in the services offered to consumers.

The *Broadcasting Services Act 1992* (BSA) contains provisions that affect cross-ownership and control of television, radio and newspapers, the foreign ownership and control of television licences, the audience reach of commercial free to air television, and the number of licences that a person may control in the one licence area. These provisions have profound effects on the structure of Australian broadcasting and the media more generally, and involve important tradeoffs between economic and social ends. But a legislative focus on traditional broadcasting and newspapers is too narrow to cope with a rapidly converging environment. If ownership and control provisions are to be effective in achieving the Commonwealth Government's broadcasting objectives, a broader approach is required.

10.1 Introduction

The BSA mostly focuses on the concept of control rather than ownership or level of equity holding. This approach recognises that a variety of means can be used to achieve control, including 'arrangements, agreements and accustomed courses of conduct between people', and that control can be 'exercised individually or with an associate' (DTC 1993, p. 18). A person who has company interests of over 15 per cent of a prescribed media business is deemed to have control of that business, but control may also be achieved with a smaller ownership share.

Schedule 1 of the BSA sets out conditions and limits for determining whether a person is in a position to exercise control of a licence (regardless of whether they exercise that control). The schedule represents an attempt to move beyond the narrow and legalistic tests that previously applied, and to give the Australian

Broadcasting Authority (ABA) the flexibility to cope with changing circumstances and avoidance strategies.[1]

The explanatory memorandum to the Broadcasting Services Bill explains that generally less stringent ownership and control conditions apply to licences other than commercial broadcasting licences because these services are unlikely to have a wide penetration and thus licensees would not be in a position to influence a large number of people. An example is subscription television licences, for which there are restrictions on foreign ownership but not on foreign control.

The ownership and control provisions address three of the objectives of the BSA (s. 3), viz.:

(a) to promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information;

(c) to encourage diversity in control of the more influential broadcasting services; and

(d) to ensure that Australians have effective control of the more influential broadcasting services.

This chapter addresses each of the major areas of ownership and control. It also addresses briefly some issues concerning third party access to broadcasting services. Broadcasting relies on the use of valuable infrastructure assets which in some cases may be bottlenecks limiting competition in related markets. Third party access provisions are incorporated in the BSA (for digital transmission services) and the *Trade Practices Act 1974*.

10.2 Foreign ownership and control rules

Foreign ownership and control restrictions for commercial television have existed since television began in 1956. The restrictions were intended to protect national sovereignty by preventing foreigners from gaining a position of influence on domestic opinion. The ABA suggests the rationale for restricting foreign ownership and control of Australian broadcasting businesses has subsequently evolved. Initially the concern was:

> … about foreign political influence and national security. In the debate on that resolution, Prime Minister Menzies said that the question was whether to allow 'the

[1] The existing control provisions under the BSA are set out in ss. 6, 7 and 8 (interpretation), part 5 (commercial television and radio), division 3 of part 7 (subscription television) and schedule 1 (definition of control). These provisions can be separated into three broad categories: limitations on foreign ownership and control; cross-media restrictions; and constraints on the number of licences that may be held.

> most intimate form of propaganda known to modern science' to be in the hands of 'people who do not belong to this country'.
>
> More recent arguments for foreign ownership and control limits refer to the concern about cultural dominance by foreign interests and the need to safeguard and support Australian cultural industries. (sub. 45, p. 15)

The provisions relating to foreign ownership concern only commercial and subscription television licences. For commercial television licences, foreign persons are prevented from being in a position to exercise control of a licence, and two or more foreign persons are restricted to having combined interests of 20 per cent. Foreign persons must not have company interests in a subscription broadcasting licence that exceed 20 per cent in the case of an individual or 35 per cent in the aggregate. There is an important distinction between these two rules. No control provisions apply to subscription television, thus enabling foreign firms to set up in the subscription television industry by establishing contractual relations with Australian owned licensees. Under the control rules applying to commercial free to air television such arrangements could constitute control and thus would be disallowed.

The BSA applies no special rules to radio or newspapers. This reflects the presumption that television is the most influential medium, and the BSA's objective 3(d) is to ensure Australians have effective control of the more influential broadcasting services. Foreign Investment Review Board guidelines govern this issue, and proposals are considered on a case basis.

Whether to liberalise foreign ownership and control for television

Foreign ownership of Australian broadcasting businesses has been an emotive issue over the years. However, specific restrictions which applied to radio have been repealed, and a broad range of inquiry participants — including all three television networks, the Media Entertainment and Arts Alliance (MEAA), John Fairfax Holdings (Fairfax), and Friends of Fairfax — now favour (or acquiesce to) some relaxation of the foreign investment and control rules for television, free to air and subscription. They argue that such restrictions are inappropriate and perhaps harmful in a globalising environment, that they limit the potential for greater diversity, and that they have been largely subverted already.

Benefits

As in other sectors of the economy, Australia's media industries are becoming more global both in their technology and equity links. Australian media firms are

increasingly taking interests in overseas businesses, forming joint ventures with overseas firms, or being invested in or taken over by foreign firms (table 10.1 and chapters 2 and 3). Media convergence in all of its manifestations is imposing considerable pressures on existing media players to take strategic positions in the marketplace and to shore up their competitiveness through better use of economies of scale and scope. This is manifest in the many links that Australian media companies have both within Australia (see chapters 2, 3 and 7) and abroad. Restrictions on foreign investment and control restrict the options open to Australian media businesses.

Australia is a small market within which to attract the sorts of interests who have the capital, skills and content rights to operate a large scale media business. Removing the foreign investment constraints opens up the capital market for television, and improves access to technology and managerial know how. As the Australian Competition and Consumer Commission (ACCC) stated, the maintenance of a restriction on foreign investment is at odds with policies that encourage international competition in other sectors of the economy (sub. 159).

A significant issue in this inquiry and in media policy generally is the effect that investment in nonmedia businesses may have on a media proprietor's preparedness to accommodate unfavourable comment on his or her interests (see chapter 9). Removing the restrictions on television would improve the prospects of attracting media proprietors who do not have significant nonmedia assets in Australia. CanWest claimed that:

> The reality is that foreigners have less reason to interfere in local domestic affairs, because they are less likely to have a substantial range of other investments which could lead to the risk of conflicts of interest. (sub. 43, p. 5)

In conjunction with removal of barriers to entry, a less restrictive foreign investment and control regime would encourage greater diversity in control and thus greater diversity in information and opinion. It is an important mechanism for guarding against excessive concentration in the media. A number of inquiry participants, including the MEAA (sub. 119), emphasised this point.

Costs and risks

Concerns about foreign ownership and control of Australia media have traditionally focused on foreign proprietors being less sympathetic to local cultures and more inclined to misrepresent national interests in favour of those of their country of nationality. These concerns largely arose when it was more difficult to communicate with the outside world. Access to high speed communications networks operating on a global scale, including satellite broadcasting and the Internet, means

international boundaries no longer constrain the flow of information as they once did.

Foreign media proprietors must meet the needs of their host audiences, providing programming that will appeal to Australians. In a competitive industry they may find it costly to compromise commercial objectives for the pursuit of some other goal. This is not to say that any proprietor (foreign or domestic) may not find it commercially attractive to take a particular editorial policy, but the pursuit of non-commercial goals can be expected to have a commercial cost. Pokarier (1996, p. 9) emphasises that:

> … differences of opinion along the lines of nationality are very rare. The major cleavages of opinion in Western liberal democracies at least, have typically been along ideological lines and cut across national boundaries.

Similarly the Hon. PJ Keating stated:

> While Australian control of media outlets is desirable to achieve a closer co-incidence of editorial view with the national interest, in practice the globalisation of news media is likely to mean that no particular bias or supra-national view will impose itself through a foreign controlled media organ or outlet in Australia.
>
> The greater problem for the Australian community is not the possible dissemination by a foreign corporation of material biased against Australia's national interests, but a lack of diversity and plurality of views among the mainstream outlets. (sub. 39, p. 6)

Turning to content, it may also be argued that foreign perceptions and values (particularly American) are embodied in foreign programming, and that a foreign owner may be more inclined to show foreign programs. A foreign owner who is also a content producer may have access to a large array of foreign content, but programming choices will still need to reflect cost and appeal to audiences. Concerns about content are explicitly addressed through local content requirements (see chapter 11).

Existing foreign ownership

Foreign investment rules have to some extent already been subverted through the use of sophisticated financial instruments and other contractual arrangements. This has occurred to a degree that may be difficult to unravel. As the MEAA noted:

> After careful consideration the Alliance has reluctantly come to the conclusion that while an Australian owned media remains preferable, this objective has been largely undermined and will be difficult to pursue unless the Government is prepared to consider divestment. It will be increasingly difficult as media and telecommunication services become more globalised. (sub. 119, pp. 13–14)

Table 10.1 **International links of selected Australian media companies, 31 December 1999**

Company	*Foreign ownership of media companies operating in Australia*	*Foreign links of media companies with interests in Australia*
News Corporation [a]	Controlled by Rupert Murdoch (US).	**Newspapers:** Includes *New York Post* (US); *The Times*, *Sun*, and *News of the World* (UK); and other interests in New Zealand, Fiji and Papua New Guinea.
		Books: Harper Collins Publishing (US, Canada, UK and Europe) includes Regan Books; Hearst Book Group, Zondervan Publishing House.
		Magazines: Includes *TV Guide Magazine, Weekly Standard*, *News America FSI*; *News* and *America In-Store* (US); Shareholding in Gordon Gotch. (NZ).
		FTA TV: 22 Fox television stations (US).
		Subscription TV: Includes 40% BskyB (UK); 36% NetSat (Brazil); 30% Innova (Mexico); 49.9% VOX (Germany); 66% TM3 (Germany); 33% Stream (Italy); and STAR TV which has various interests in China, Taiwan, Japan and India.
		Radio: 71% Sky Radio (UK); Radio 538 (Europe); 28% Sky Radio (Sweden).
		Film: 82.8% Fox Entertainment Group (US).
		New media: Includes Epartners (UK), a vehicle for taking equity stakes in new media opportunities; News America Digital Publishing (US) which develops interactive services; Kesmai Corp (US).
Publishing and Broadcasting	US finance company Charles Schwab owns 50% of ShareTrade Australia Stockbroking.	Australian Consolidated Press (UK), with 2 publications; ACP (South East Asia), with 8 publications in the area. Australia Consolidated Press NZ Ltd., with 20 publications in NZ.
	Microsoft own 50% of ninemsn.	20.5% of New Regency, a US film production company.
	Acxiom Corporation (US) own 50% of Acxiom, a customer relationship and information management system provider.	32% of EasyCall Asia, a paging service.
John Fairfax Holdings		Strategic Publishing Group, who publish specialist IT and financial magazines including MIS Asia, Business Online (Singapore), MIS New Zealand, MIS South Asia (India, Sri Lanka, Pakistan). They also have Asian IT database and regional web portal MISweb.
Seven Network [b]		Seven Network Asia in Hong Kong. Supplier of non-drama foreign programming.
		24.5% of Brillstein-Grey Entertainment (US), a television production company.
		Produces Odyssey, a documentary channel for Optus Vision - in partnership with US West (US).
Ten Group	CanWest (14.99% shareholding and 57.5% 'economic interest') (Canada).	
Prime Television		Prime TV Broadcast throughout NZ via satellite; 50% Channel 9 Network (Argentina).

Southern Cross Broadcasting	The Ten Group owns 14.76%.	
Telecasters Australia	The Ten Group owns 8.3% Network Ten Pty. Ltd. owns 6.56% (fully owned by the Ten Group).	
Austar United Communications	Majority owned by UnitedGlobalCom (US).	Saturn Communications (NZ), who provide integrated telephony, subscription television and Internet services
Telstra Corporation		Telstra HK, Telstra NZ, Telstra UK and Telstra US offer voice data and Internet services.
Cable and Wireless Optus	Parent entity: Cable & Wireless (UK). Cable & Wireless (Investments) Limited (its wholly owned subsidiary) holds 52% of Cable & Wireless Optus Limited.	39.99% Southern Cross Cable Holdings Limited (cable outside US) 39.99% Pacific Carriage Holdings Limited (inside US).
Austereo		Austereo International owns 5 radio stations in Malaysia.
PMP Communications	Largest shareholder: Independent Newspapers PLC (Ireland).	Attic Future (UK, Germany) Pacific Magazines (NZ).
Rural Press		Rural Press (USA) Ltd., owners of the Farm Progress chain. Have 36 state farming magazines and 2 national agricultural publications. N.Z. Rural Press Limited and Communication Associates Limited, which have 6 publications in New Zealand.
APN News and Media		33 % economic interest in The Radio Network (NZ).

a The Foreign Investment Review Board regards News Corporation as being foreign owned under the Foreign Acquisitions and Takeovers Act (advice from Commonwealth Treasury 9 December 1999) **b** UK media company Granada acquired 9.1 per cent of the Seven Network in February 2000.

Source: Productivity Commission estimates based on company documents.

Many inquiry participants pointed to the substantial interest of CanWest Pacific Communications in Network Ten to illustrate both the benefits of foreign ownership and the manner in which a way has been found around the rules applying to commercial television licences. CanWest was part of a consortium that purchased the network from its receivers in 1992 after alleged difficulties in attracting interest from many Australian institutions to take a majority share of the business (sub. 48, p. 14). After a Federal Court challenge and negotiations with the ABA, CanWest now holds an 'economic interest' of 57.5 per cent (including a shareholding interest of 14.99 per cent) in Network Ten. To many commentators (for example PBL, sub. 52), that CanWest holds a substantial 'economic interest' by way of subordinated debentures and still is not deemed to be in control of the company seems to circumvent the purpose of the legislation.

Similarly, despite the foreign ownership rules that apply to subscription television licences, the subscription television operators Cable and Wireless Optus (Optus) and Austar are majority foreign owned companies. They have been able to comply with the law by establishing Australian licensees who act on their behalf in the provision of subscription television services. The benefits of this arrangement over a more liberal arrangement that allows for foreign ownership of licences are unclear. It may retain a vestige of Australianness in the control of subscription television but, since the licencees are controlled by foreign owned entities (in the cases of Optus and Austar), this is superficial only.

That the rules on foreign ownership of commercial television licences and subscription television licences have been so compromised suggests they should be clarified or jettisoned. They do not appear to be achieving the BSA objective of giving effective control to Australians, they compromise corporate governance and, to the extent that they still limit foreign investment, they limit the pool of potential owners of Australian television businesses.

Newspapers and radio

With the introduction of the BSA in 1992, specific restrictions on the foreign ownership and control of radio licences were lifted. Foreign investments in radio (and newspapers and television) are nevertheless monitored under special provisions of the *Foreign Acquisitions and Takeovers Act 1975*.

Inquiry participants had various views on the effects of the 1992 liberalisation on the radio industry. The Federation of Australian Radio Broadcasters (FARB) noted that there is no industry consensus on the matter (sub. 83). There is little available

evidence to gauge the effects, other than to point to the purchases of existing stations by foreign firms.

With so many changes occurring in the regulation of radio, it is difficult to isolate the effects of any one change on the range of radio services available and the diversity of programming and opinion. Greater foreign investment has coincided with the development of networks, and has been blamed by some for a loss of regional services. This appears to be more a consequence of networks, whether foreign or Australian, trading off regional services for economies of scale. What is reasonably clear is that the less restrictive conditions appear to have stimulated the demand for new licences, and thus are a step towards greater diversity in radio services.

Other regulatory restrictions on foreign investment

All media assets valued at $5 million or more are subject to the Foreign Acquisitions and Takeovers Act which empowers the Treasurer to examine proposals for the acquisition of assets in a company. If the Treasurer determines that such an acquisition would result in control of the company by a foreign person, and that such control is contrary to the national interest, then the acquisition can be blocked.

The Foreign Investment Review Board is responsible for administering the Act and giving recommendations to the Treasurer. The board also examines foreign direct investment proposals on the basis of consistency with Australia's foreign investment policy, and makes recommendations to the Treasurer accordingly.

Australia's foreign investment policy includes provisions for media and telecommunications. All proposals involving foreign direct investment or portfolio share holdings above 5 per cent in Australian media are subject to approval by the Commonwealth Government. The implication is that foreign investment in commercial radio and newspapers, although not restricted under the BSA, may not be approved under Australia's foreign investment policy. The policy does not explicitly address investment in radio, but all mass circulation newspapers are covered by paragraph 36, which states:

> Foreign investment in mass circulation national, metropolitan, suburban and provincial newspapers is restricted. All proposals by foreign interests to acquire an interest of 5 per cent or more in an existing newspaper or to establish a new newspaper in Australia are subject to case by case examination. The maximum permitted aggregate foreign interest (non-portfolio) investment/involvement in national and metropolitan newspapers is 30 per cent with any single foreign shareholder limited to a maximum interest of 25 per cent (and in that instance unrelated foreign interests would be allowed to have aggregate (non-portfolio) shareholdings of a further 5 per cent). Aggregate foreign interest direct

involvement in provincial and suburban newspapers is limited to less than 50 per cent for non-portfolio shareholdings. (Commonwealth Treasury 1999)

The perception of concentration in Australian media industries mostly derives from the high concentration in the newspaper industry. There are substantial economic barriers to entry for statewide or national newspapers (where economies of scale are large), but the restriction on foreign investment in newspapers further restricts contestability. A more liberal foreign investment policy for newspapers may therefore be a small but significant step in opening up the possibilities for more diversity in newspaper markets. The effects may also be felt more broadly. By restricting foreign investment in newspapers, this policy also restricts the potential for allied developments in other related services.

Options

The Commission accepts that there are good reasons for taking a more liberal approach to foreign investment in television. There are two broad options for change:

- to abolish special rules under the BSA for foreign investment, ownership and control in television; or
- to increase the foreign ownership limits but retain tight limits on control.

Abolishing foreign ownership and control restrictions in the BSA

This option would help regulatory consistency and provide a framework for the more equal treatment of Australian radio and television industries. It would improve access to capital, increase the pool of potential media proprietors, and act as an important safeguard on media concentration.

If the foreign ownership provisions pertaining to television (free to air and subscription) are removed from the BSA, the generic provisions of the Foreign Acquisitions and Takeover Act and Australia's foreign investment policy would be applied on a case basis.

Increasing foreign ownership limits but limiting foreign control

Various inquiry participants suggested options that would increase the permissible level of foreign ownership but retain Australian control. This is a variation of the approach taken to CanWest's interests in Network Ten. It would arguably provide

some benefits of foreign investment (access to capital) while retaining Australian control.

This approach could enhance access to capital and allow Australian control to be retained if voting shares are distinguished from non-voting shares and other passive equity instruments. The Seven Network recommended:

> … in the interests of plurality of ownership and diversity of opinion, and to diminish the risk of further concentration of ownership, increased foreign equity participation in Australian media be encouraged through:
>
> - raising the limit on foreign equity investment in Australian media enterprises to an aggregate 49 per cent company interest;
> - restricting individual foreign ownership to 14.9 per cent;
> - retaining the existing prohibition on foreign control; and
> - vesting regulatory oversight of foreign ownership and control provisions with the Treasurer in consultation with the Foreign Investment Review Board operating under the provisions of the Foreign Acquisitions and Takeovers Act. (sub. 151, p. 20)

This approach would be an improvement over the *status quo*, but it would not achieve the full benefits of removing the restrictions. Foreign firms are more likely to invest in an Australian business (and *vice versa*) if they can be assured of voting rights in proportion to their investment. Retaining Australian control does not seem to be a necessary condition for broadcasting programming demanded by Australians.

Implementation issues

Although many inquiry participants argued that competition and diversity in Australian media industries would benefit from a relaxation of the foreign ownership and control rules, some sought to attach conditions to such a relaxation. Fairfax argued that it should be conditional on the liberalisation of access to and pricing of digital broadband platforms (sub. 8, p. 6). Publishing and Broadcasting Limited (PBL) argued that foreign ownership restrictions should be removed only in conjunction with removal of the cross-media rules; it argued that to do otherwise would compromise its ability to increase its capital base and effectively compete with foreign companies (sub. 52, 'Executive summary', p. 5). News Corporation was similarly concerned that companies like itself, which already have substantial domestic interests, would have to sit on the sidelines while other foreign controlled firms line up for a chance to bid for Australian television interests or new broadcasting licences (sub. DR293, p. 4).

In an ideal world these reforms might indeed be implemented side by side. But if diversity of ownership and control is to be enhanced, there must be scope for the entry of additional media businesses. Difficulty of entry to broadcasting may delay the implementation of any substantial reforms to the cross-media rules, but it need not delay the reform of foreign investment and control rules. There are benefits from doing this now. A more vigorous market for the existing commercial licences would improve efficiency, allow existing foreign investors to reorganise corporate structures in line with their economic interests, and offer the prospect of greater links with overseas interests.

Substantial reform of the foreign investment rules in the BSA is warranted. Radio and television (subscription and free to air) should be treated equally under the Foreign Acquisitions and Takeover Act and Australia's foreign investment policy. This would entail vesting regulatory oversight of foreign ownership and control provisions with the Treasurer in consultation with the Foreign Investment Review Board operating under the provisions of the Foreign Acquisitions and Takeovers Act.

RECOMMENDATION 10.1

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.

Foreign managed funds

Currently the BSA treats investment by Australian sourced but foreign managed funds as foreign even if the majority of funds under management are Australian sourced. With the high proportion of foreign owned fund managers operating in Australia, the Federation of Australian Commercial Television Stations and others have argued that this rule unduly limits the access of television companies to capital (sub. 99, p. 4). It also adds to the costs of monitoring and compliance.

Network Ten noted 'a similar anomaly has been previously addressed through legislation relating to investment in Telstra, Qantas and Australian airports' (sub. 48, p. 17). In those cases foreign managed funds are deemed to be Australian if foreign persons hold less than 40 per cent of the capital of the fund. A test on income also applies in some cases. Failing more substantial revision of the foreign investment constraints, the Commission can see no reason for not aligning this provision of the BSA with these other provisions.

If the current restrictions on foreign ownership and control are retained, the restrictions on foreign managed funds investing in Australian television businesses warrant attention. Under such circumstances the BSA should be amended to allow for investment of Australian sourced funds managed by foreign managers.

RECOMMENDATION 10.2

If recommendation 10.1 is not adopted, the BSA should be amended immediately to remove restrictions on investment by foreign managed, but Australian sourced, funds in Australian commercial television businesses.

10.3 Cross-media rules

Attempts to limit the degree of cross-ownership and control of different media have been a controversial aspect of broadcasting regulation in Australia and elsewhere. The objective of such rules has been to prevent undue concentration occurring across media boundaries and thus to encourage a diversity of sources of information and opinion (see chapter 9). In Australia and overseas such rules have been introduced to address the perceived inadequacy of conventional trade practices law in addressing specific social objectives.

The BSA contains important rules limiting the degree to which a person can control newspapers, commercial television licences and commercial radio licences in the same licence area. First introduced in 1987, and carried over to the BSA, the rules require that a person who is in a position to exercise control of a commercial television or radio licence must not also be in a position to exercise control of a newspaper in the same licence area.[2] Similarly, a person is prevented from being in a position to exercise control of a commercial television licence while also being in a position to exercise control of a commercial radio licence in the same licence area.

The cross-media rules have had a profound effect on the structure of Australia's media industries. By preventing mergers across the boundaries of radio, television and newspapers, the rules potentially have an efficiency cost. To many, this would be a small price to pay if the rules effectively encourage diversity. However, when they were formulated, there was no subscription or digital television and the Internet

2 Given that newspaper circulation crosses the boundaries of broadcasting licence areas, some means was required for identifying whether a newspaper was 'associated with the licence area of' a commercial radio or commercial television licence. Thus the ABA is required to maintain an Associated Newspaper Register. A newspaper is associated with a licence area if it meets certain threshold tests: for example, if more than 50 per cent of a newspaper's circulation is within the licence area of a commercial television broadcasting licence, then the newspaper is added to the register in terms of that commercial television licence (BSA, s. 59).

was in its fledgling stages. In a rapidly changing and globalising environment it is appropriate to question whether these rules are still appropriate.

Effects on diversity of information and opinion

It is difficult to measure diversity of sources of information and opinion. As chapter 2 demonstrated, people use different media for different purposes. Roy Morgan research data show that many people who read newspapers are medium to heavy consumers of commercial television (table 10.2). The separate ownership of newspapers and television stations, and the fact that each of the television networks and newspaper groups collects some of their own news material, mean that people are accessing different sources of information and opinion. In the absence of the cross-media rules, and with mergers between existing players in different media, some of that diversity of sources of information and opinion would be lost. Many readers of the *Age* in Melbourne, for example, are relatively light viewers of commercial television, and thus may be little affected by a merger between a commercial television firm and any of the major daily newspapers. On average, *Age* readers would be less affected than *Herald Sun* readers by a merger involving the respective newspaper and a commercial television channel (table 10.2).

Table 10.2 **Commercial television viewing by newspaper readership, Melbourne, April 1998 to March 1999** [a]

Commercial TV viewing	*Herald Sun*	*Australian*	*Age*	*AFR*[b]	*Suburban*	*Total*
	%	%	%	%	%	%
Heavy (4+ hours per day)	23.4	8.1	9.3	4.2	20.0	17.7
Medium (2-3 hours per day)	45.5	32.3	35.2	29.9	41.7	41.0
Light (<2 hours per day)	28.3	51.2	47.9	60.0	34.0	36.5
No viewing	2.7	8.2	7.7	6.2	4.4	4.7

a Readership measures the number of issues of a newspaper read by people aged 14 years and over in a week. **b** A*ustralian Financial Review*.

Source: Roy Morgan Research (1999).

This rather static analysis can be further refined by examining which television news and current affairs shows are viewed by the readers of the major daily newspapers. News and current affairs programs are relevant because they are more likely than other program genres to influence political opinion. *Herald Sun* readers are more likely than readers of the *Age* to get their television news and current affairs from the commercial networks. Thus mergers between existing newspaper groups and television will have different effects on the diversity of sources of information and opinion for different people. To further illustrate this point, many people who read the *Age, Australian* or *Australian Financial Review* also consume

ABC news and current affairs services, and so may not be directly affected by mergers of either Fairfax or News Corporation with, for example, the Seven Network (table 10.3).

Table 10.3 **News and current affairs viewing by newspaper readership, Monday to Friday, Melbourne, April 1998 to March 1999** [a]

Program	*Age*	*AFR*[b]	*Herald Sun*	*Australian*
	%	%	%	%
ABC News	20	20	8	19
Seven Nightly News	5	7	14	8
National Nine News	13	14	21	14
SBS World News	4	5	2	5
Ten News	5	6	10	7
7.30 Report (ABC)	11	12	5	11
Today Tonight (7)	5	5	10	6
A Current Affair (9)	7	8	15	9

[a] Readership measures the number of people aged 14 years and over who read at least one issue of a particular newspaper between Monday to Friday. [b] *Australian Financial Review*.

Source: Roy Morgan Research (1999).

Effects on industry structure

The cross-media rules clearly have had a marked influence on industry structure. Before 1987, a person could control only two television licences (in different licence areas), but there were no restrictions on cross-media ownership. Regionally based conglomerates were the norm. As the MEAA explained:

> Up until 1987, television proprietors could own only two television stations or six radio stations, Australia-wide, whether they be major city services or small country stations. There were no restrictions on ownership of newspapers, television and radio in the same market.
>
> As a result, two of the major media groups — Fairfax and Herald and Weekly Times — had accumulated, over the years, interests in television, newspapers and radio in their respective markets of Sydney and Melbourne. (sub. 119, pp. 3–4)

The reasons for the formation of these conglomerates appear to be found in the synergies between the different businesses (economies of scope), the pursuit of market power, and attempts to diversify risk.

The introduction of the cross-media and other rules meant a radical change in the structure of these media sectors.[3] With new cross-media investments in the same licence area outlawed, media businesses redirected their capital resources into the development of networks. This strategy emphasised the efficiency advantages of operating a number of like businesses (economies of scale) at the expense of the jointly operating different businesses (economies of scope). While the new rules did not disallow the option of buying different media in different licence areas, this has not occurred to any marked degree.[4] This suggests that economies of scope may be greater where the different media businesses are in the same region (and thus may cover similar issues), than where they are in different regions.

However, many firms have invested in various media businesses, some covered by the cross-media rules and some not. Investing in different media can help firms to diversify risk, position themselves to take better advantage of opportunities as they arise, and improve efficiency through whatever economies of scale and scope are available. PBL, for example, owns several commercial television licences — which prevents it from owning commercial radio or newspaper businesses in the same areas — but it publishes many magazines, and has substantial interests in subscription television, and the Internet (table 10.4). Further analysis of the links between media businesses is contained in chapters 2 and 3.

There is little empirical analysis to guide discussion on the broad issues of economies of scale and scope. Allan Brown of Griffith University notes several studies that show conflicting results for the effect of cross-media ownership on advertising rates (sub. 152, p. 1). Inquiry participants have many disparate views on the benefits of merging different media businesses. However, the Commission received little specific evidence on this subject. Such evidence would have been useful for considering the efficiency costs of meeting the BSA objectives that relate to ownership and control.

The qualitative evidence presented to the Commission and the behaviour of firms in these industries in Australia and elsewhere provides mixed messages about the significance of economies of scale and scope, and about their influence on industry structure and performance.

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3 The Communication and Media Policy Institute argues that 'most of the major structural changes that have occurred in the industry can be traced to changes in the provisions regulating ownership of media assets.' (sub. 169, p. iv)

4 Southern Cross Broadcasting — which controls several radio licences as well as a commercial television licence for Adelaide as part of the Nine Network — is an important exception to this general rule.

Several inquiry participants emphasised the benefits of using the same or similar content in different media. Most interest concerns the possibilities for repackaging material produced for television or the print media and supplying it through the new media. Network Ten noted:

> Major media companies in Australia such as [Publishing and Broadcasting Limited], Fairfax and News Corporation are exploring new media opportunities which can exploit economies of scale through utilising the same content. (sub. 48, p. 9)

Table 10.4 **Media interests of selected media companies operating in Australia, 31 December 1999[a]**

Company	*FTA TV*	*Subscription TV*	*Radio*	*Newspapers*	*Magazines*	*New media*	*Non-media interests*
News Corporation		✔		✔			✔
Publishing and Broadcasting	✔	✔			✔	✔	✔
John Fairfax Holdings				✔	✔	✔	✔
Seven Network	✔	✔				✔	✔
Ten Group	✔		✔			✔	
WIN Television	✔						
Prime Television	✔						✔
Southern Cross Broadcasting	✔		✔				
Telecasters Australia	✔						
Austar United Communications		✔				✔	✔
Telstra Corporation		✔				✔	✔
Cable & Wireless Optus		✔				✔	✔
Austereo			✔				✔
RG Capital			✔				
Rural Press			✔	✔			✔
West Australian Newspapers Holdings				✔			✔
PMP Communications					✔		✔

APN News & Media	✔	✔	✔		✔

a Includes the media interests of subsidiary companies, either partly or wholly owned.

Source: Productivity Commission estimates based on company documents.

Digitisation may enhance the ability of firms to use the same content on different digital platforms (see chapter 9), thus increasing the costs to efficiency of the cross-media rules.

Economies of scale and scope may also arise in areas such as sales, advertising and promotion. Many firms see potential in using their established brand names in new media markets, gaining economies of scope in promotion. PBL stated that it hopes to benefit from 'having the ability to save costs and increase revenue through cross-promotion, using brands across different businesses etc.' (sub. 52, p. 20). In a similar vein, it is also reportedly intending to set up an integrated sales office which would package advertising space in its different media businesses, including free to air television, magazine, cinema and database marketing interests (*Australian* 20 January 2000, 'Media' p. 9). This may prove to have marketing advantages — by presenting an integrated package to large advertisers — but it may also lower costs.

Some participants claim there are benefits from combining traditional media businesses. Prime Television, for example, was 'able to identify significant economies of scale that would have benefited both the continuing commercial television operations of Prime and the radio stations targeted for acquisition' (sub. 50, p. 11).

The benefits of economies of scale and scope may not be confined to the Australian market. To the extent that the cross-media laws prevent Australian media companies from building a more substantial domestic base, they may limit the ability of those firms to compete with foreign investors and expand into overseas markets. PBL argues that 'The cross-media rules are impeding the opportunity for Australian media companies to achieve the scale and capital base necessary to participate effectively in this global environment' (sub. 52, p. 4). News Corporation is an example of an Australian firm skilled in managing newspapers and television that went on to become a major global player.

Economies of scope may also arise through vertical integration between content, carriage and retailing of broadcasting and telecommunication services. Such integration may also be undertaken to take advantage of opportunities as they emerge in different points of the value adding chain.

Other participants claim the benefits of using the same content across different media are overstated. They argue that news production, for example, for different media requires different journalistic skills, limiting the savings from rationalising a news service across newspapers, television and radio. The MEAA stated:

> As any working journalist will attest, the 'news cultures' of the three media [radio, television and print] just do not make them compatible for integration other than for cross promotion. (sub. 119, p. 6)

Similarly, Win Television argued that any economies of scope from centralising advertising sales would be difficult to achieve:

> We tried for about six months to have one sales organisation servicing both the radio and the television and it didn't work. … We split them totally and with totally different management structures, sales, promotions … (trans., p. 768)

What is a media market?

The problems in trying to assess coverage of the cross-media rules stem from the difficulties in defining media markets. A number of media companies have stated that the media market should be defined broadly in the context of competition policy. They argue that with such a definition, specific cross-media rules would no longer be required to achieve the objective of diversity of sources of information and opinion. It is argued that, even if further consolidation occurs, the new businesses would not have undue influence or market power because there has been a compensating explosion in the diversity of new media products and services within this broader market. Further, digital technologies offer the potential to free up the spectrum and create more contestable broadcasting markets. Under this approach, concentration in this broad media market could be addressed through the normal application of the Trade Practices Act. But what is important here is the definition of the market under that act.

An economic or competition policy approach to defining markets includes all products or services that are close substitutes. Two products or services are close substitutes if a rise in the price of one encourages consumers to increase substantially their consumption of the other. Thus the cover price and advertising rates of one magazine may have to be set carefully to minimise the risk of losing customers to other magazines targeted at the same audience. But if, for example, the cover price and advertising rates for newspapers have no effect on those set by magazine publishers, then newspapers and magazines may be regarded as being in different markets. This principle is an important feature of trade practices law in Australia and elsewhere, and has led to some narrow market definitions applying to media industries.

Within the bounds of their capacity to pay (see chapter 2), people arguably have access to more media outlets and products than ever before, including subscription television and the manifold possibilities of the Internet. The different forms of media are substitutes for each other in many senses, such as the provision of news services. This supports the notion of a large single market. However, a broad definition of media markets may be difficult to sustain under trade practices law as it currently exists. The ACCC stated that:

> Application of the [Trade Practices Act] as it currently stands will not necessarily restrict cross-media ownership between two media companies operating in different media sectors (e.g. electronic and print media) … (sub. 159, p. 15)

It has taken the view that under the Trade Practices Act, the relevant product market is the market for advertising, and that there are different markets for newspapers, radio and television. The ACCC claimed:

> … it made very extensive inquiries of advertisers, advertising agents and the newspaper, television and magazine industries to determine whether or not there was competition between them for advertising. The general answer was that there was little competition other than at the margin. (sub. 159, p. 15)

For similar reasons it also distinguishes free to air television from subscription television. There is nonetheless considerable debate about the degree to which these two forms of television compete in an economic sense (Veljanovski 1999). That free to air and subscription television are to most people far more substitutable than newspapers and free to air television, for example, illustrates the difficulty of stretching the definition of the media market under trade practices law as it is currently interpreted, by the courts as well as the ACCC. The upshot is that the general competition rules may be effective in preventing mergers or acquisitions that would substantially lessen competition within a market segment, but they could not be relied on to address cross-media mergers adequately.

Distinguishing between markets on the grounds of the degree of substitution of advertising expenditure between them is a useful approach to testing for market power in an economic sense. But to some extent this is not the issue. From the perspective of the social objectives of broadcasting policy, and the normal notions of community welfare, viewers, listeners and readers are the consumers of commercial broadcasting and newspapers, not advertisers. Whatever the advertising substitution between these different media, they are all sources of information and opinion. *In the context of government and community interest in diversity of sources of information and opinion, it is the market for 'ideas', rather than the market for advertising, that is relevant.*

In this framework, the normal approach to competition policy with the current definition of media markets does not appear to provide a sufficiently robust

framework to prevent concentration in diversity of information and opinion. Whether a wider market definition would provide sufficient sources of information and opinion is therefore somewhat of a moot point. Indeed, the ACCC's current approach to defining markets would not appear to prevent, for example, PBL and Fairfax merging, or Telstra purchasing Fairfax. The Communications Law Centre claimed that a possible merger between PBL and Fairfax:

> … might not represent an undue concentration from a competition point of view, [but] we would certainly think that would represent an undue concentration from the point of diversity of control of major sources of information, entertainment and ideas. (trans., p. 743)

Similarly Iosifides (1997) acknowledges that:

> … [there is concern] over the impact of concentration on economic aspects, … there is also the question of the social performance of the market (that is pluralism and diversity). … [and asks whether] measures tailored to measure economic concentration [are] good enough to capture concentration levels in the political and cultural market, the so called 'market place for ideas'. (p. 646)

In a marketplace for ideas the supply of information and opinion (not entertainment) is the crucial issue. While this approach provides an important conceptual framework within which to consider cross-media policy, it too has a number of problems. Again one must define the boundaries of a cultural/political market, and these could be wide and porous. Such a market may include books and magazines, and could be extended to conversations in the pub. There are also problems in deciding what constitutes an abuse of power. But the greatest problem is with measuring concentration and influence. Green (in Congdon et al. 1995, p. 36) notes 'Measuring influence is itself hugely difficult. Measuring the relative influence of different media operating under different controls is bound to be arbitrary'.

Industry coverage of cross-media rules

The cross-media rules under the BSA are restricted to newspapers, free to air television and free to air radio on the grounds that these were judged to be the more influential media. But times have changed, and if such rules are to be maintained, other related areas might now be considered. In particular, the steady growth in the uptake of subscription television, the imminent arrival of datacasting and Internet broadcasting, challenge the philosophical basis of the cross-media rules and erode their ability to achieve the objectives of the BSA.

Cross-ownership of subscription and free to air television is one of the more contentious issues. Subscription television is not formally covered by the part 5 cross-media rules. However, ss. 106-108 of the BSA (now lapsed) prohibited

newspapers, commercial television licensees and telecommunications carriers from being able to control the first subscription satellite television licence to be issued (see chapter 8).[5] The subscription television sector has nevertheless developed to the point where the pre-existing media companies News Corporation and PBL each have a 25 per cent stake in, and provide some content for, the largest participant in the subscription television market (Foxtel). The Screen Producers Association of Australia noted:

> Cross-media rules were introduced to apply to the initial satellite licences. … However, similar cross-media rules were not introduced to cover subscription services delivered by cable or by MDS [Microwave Distribution System]. As a result we now have extensive cross-media ownership of subscription television services by established broadcasting, newspaper and telecommunications interests along with vertical integration of both service and delivery systems. (sub. 47, p. 24)

Subscription television has been regarded as less influential than free to air television, partly because it does not have the same penetration, each of the numerous channels has a low rating, and consumers choose to subscribe. But consumer uptake is increasing; when free to air television stations offer multichannelling, their audience ratings per channel will decline. As a result, subscription services may become no less pervasive and influential than free to air services.

The case for including Internet services is less clear. Some commentators see the Internet as a potentially important source of alternative views and information. Internet users may access the home pages of numerous media outlets, both here and abroad. Others see it more as a medium for communication, and thus not a broadcasting medium in the normal sense. Stewart Fist argued that it is not a mass medium, but more aligned to postal and telephone services as a means of communication (sub. 85, p. 12).

The emergence of Internet broadcasting may more fundamentally challenge the application of the existing rules. Budde (1999) forecasts that Australian households will be able to choose from a number of options for high speed access to the Internet within a couple of years. The implication is that Internet television may, to some audiences, quickly become a viable alternative to television delivered by other means. Internet radio is already popular with many online users.

Whether telecommunications firms should be included in the coverage of cross-media rules is another important issue. The traditional businesses of

[5] These provisions limited the participation of newspapers, existing commercial television licensees and telecommunications providers in the new subscription licence. They ceased to have effect from 1 July 1997.

telecommunications are based on 'any to any' communications, not on content, so they are not a source of information and opinion in the same sense as television, radio or the press. But telecommunications firms control major broadband delivery platforms, and are almost invariably Internet service providers too.

Convergence may link telecommunications and all forms of broadcasting so cross-ownership may have competitive implications. Already the vertical integration of the telecommunication companies into subscription television has raised third party access issues. Further integration between broadcasting services and telecommunications services will complicate the competitive landscape.

Measuring concentration in a cross-media world

If the objective of cross-media policy is to limit the concentration any one person can have in the marketplace for ideas, some methods need to be developed to measure concentration. Given the different nature of the media sectors involved this is a difficult job. Several approaches can be used, either alone or in combination, to measure concentration across different media. These include:

- the number of licences controlled by a single entity;
- financial measures; and
- audience based measures.

Controlling the number of licences

Limits on the number and type of licences that a person may control in a licence area apply to television and radio in Australia (one licence for television, two for radio). In conjunction with an association test for newspapers, they are also a basis of the cross-media rules. The advantage of these rules is certainty and transparency, which mean they are readily understood.

However, they have drawbacks. The cross-media limits imply that a radio licence is as influential as a television licence or a newspaper, irrespective of size, audience reach and the mix of entertainment and opinion. Further, this approach has the same absolute effect on mergers between media minnows in regional centres, as on media whales such as News Corporation, PBL and Fairfax. Also, where it relies on legislation to define the coverage of the cross-media rules, this approach can be inflexible in the face of changing circumstances.

Financial measures

Financial measures that could be used to measure concentration include revenue, expenditure or market capitalisation. Revenue is a useful economic measure of concentration in a market, but may be less useful in a cultural and political sense. It has the advantages of being readily measurable (the ABA currently collects revenue information from commercial broadcasters, but not from subscription licensees), and can be easily aggregated across sectors.

Network Ten suggested a scheme based on revenue in which:

> Ownership across influential media will be permitted provided that no person/company is in a position to attract more than:
>
> - a designated percentage of the national advertising market for television, newspaper and radio combined; and
> - a designated percentage of the advertising revenue for newspaper, radio and television in any given geographic market.
>
> For the purpose of applying the diversity test, a control threshold will need to be determined.
>
> Under the proposed model, advertising revenue is used as an objective correlation of potential influence. This is appropriate given that advertising rates in mass media reflect the size and characteristics of audiences (and therefore the potential scope of influence).
>
> In addition, ownership concentration potentially gives power to manipulate advertising rates, thus impacting on diversity by limiting the competitiveness of smaller media companies. (sub. 48, p. 12)

A weakness of using revenue is that it does not measure how consumers use media, and thus does not account for differences in the influence of each form of media. While it may measure market power in the market for advertising, it is a relatively poor proxy for measuring concentration in the broader market for ideas. However, as Iosifides (1997, p. 653) acknowledges:

> … [it] may serve as a useful element to be considered because it captures power in the marketplace to acquire rights, for example, in a way that other criteria (such as audience share) fail to do.

Expenditure on media, as a measure, may better capture consumers' valuation of programs and thus the potential for influence. In a pay-per-view world, expenditure could be a good measure of the intensity of preference, but this approach is somewhat limited while television and radio are still predominantly free to air.

In some circumstances, market capitalisation may be a useful measure to accommodate firms with high growth prospects but little current revenue (such as

most Internet stocks). However, problems may emerge when apportioning value where firms such as Telstra operate in a number of markets.

Audience based measures.

Audience based approaches try to measure concentration from the consumer's point of view. An audience based approach would mean that an operator that controls many channels (for example, through subscription television) may not have a great deal of influence if its service is not reaching many consumers.

There are nevertheless problems in measuring the consumption of different media services, and relating consumption to influence. Exposure to media does not necessarily lead to influence. Influence is a highly qualitative concept which will vary with the content consumed, the manner in which it is conveyed, who is receiving it, and individuals' reception of that information. An hour spent listening to the radio may have substantially different social and political influence from an hour spent watching television, reading a paper or surfing the Internet. And a program consumed by a small audience of people influential in policy making may have far greater influence than one consumed by a larger group of less directly influential people. Network Ten suggested it 'is important to attempt to identify the amount of material which is potentially able to exert influence on matters of public significance' (sub. DR263) and that relative influence could be measured by the percentage of content devoted to news, current affairs and editorial items.

The UK Government considered introducing a share of voice measure which weights the consumption of different media according to their perceived influence. However, the setting of such weights is contentious and largely arbitrary. The UK Government subsequently opted for a mix of more traditional policy instruments, including audience reach and control of licences to address concentration issues (Department for Culture, Media and Sport, no date).

All of the approaches to measuring concentration and influence are flawed in one way or another (Robinson in Congdon et al. 1995). Despite underpinning fundamental aspects of the BSA — including the control provisions — little is known about influence and how it should be measured. And little interest has been shown in supporting research on this crucial issue of policy. *To the extent that it remains a crucial aspect of Australian broadcasting policy, the measurement of influence in its various dimensions needs further research* (see chapter 13).

Cross-media options

Reform of Australia's cross-media rules is warranted as part of a package of measures that address the different facets of broadcasting policy. The Commission notes that pluralism or diversity in sources of information and its interpretation is a government and community objective. Like many others who have reviewed concentration in media markets in pursuit of this end, the Commission accepts that this objective leads to a continuing need for specific regulation of the media in addition to the existing general competition laws administered under the Trade Practices Act and as presently interpreted.

While the key objective should be to encourage diversity of information and opinion, cross-media regulation should not unduly constrain the development of media companies that would be in the national interest.

The Commission's terms of reference require that it recommend retaining existing regulation only if the benefits to the community outweigh the costs, and if the objectives can be met only through restricting competition. The objectives of the BSA to which the cross-media rules most directly contribute are 3(a) 'to promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information'; and 3(c) 'to encourage diversity in control of the more influential broadcasting services'. *The Commission takes the view that diversity should be viewed in terms of a wide range of broadcasting and related services, not just the traditional media.* Thus objective 3(b) is also relevant in that options for regulating cross-media control should encourage an 'efficient, competitive and responsive' broadcasting industry.

Ensuring diversity of ownership and control is a practical policy instrument for attempting to encourage diversity of information and opinion in the media. But it can be implemented in different ways. The broad options are:

- to limit control across media boundaries, which includes the *status quo* and variations on it; and
- to introduce a new specific public interest test to apply to media acquisitions and mergers (to be applied by the ACCC or a specific media regulator).

Limits on control across specific media sectors

A number of possibilities within this framework could address the industry sectors covered, a market threshold below which cross-media mergers may be permitted, and the threshold test used for deeming control. A further option would be to

grandfather the existing rules, and only allow cross-media investment in new businesses.

In terms of sectoral coverage, inquiry participants who support the cross-media rules did not indicate that they thought the rules should apply less widely. However, as discussed above, the existing coverage is already somewhat arbitrary in the sense that it prevents all cross-media mergers irrespective of their advantages and disadvantages, and their effects on influence. Extending such a prescriptive approach into other arguably less influential media may have efficiency costs and stifle opportunities for innovation.

If cross-media control rules are retained, consideration could be given to permitting cross-media mergers below a specified threshold. This would have the advantages of permitting some smaller mergers to proceed and allowing small media companies to gain strength through economies of scope. But care would be needed to limit the application to markets in which alternative sources of opinion are available. Regional media markets may be an example. There are different views on this possibility. DMG argued that:

> Relaxation of the cross-media rules in regional areas would inevitably lead to the merger and consolidation of local newspapers, television stations and radio stations. … At the end of the day, however, with the relaxation of cross-media rules in these areas, local news and local opinion could be reduced in many cases to one source only. Regional areas may no longer have two or three sources of local news and local opinion. Such areas would lose that plurality and diversity. (sub. 26, p. 11)

However, rather than decreasing diversity, such mergers may strengthen the ability to produce local news. Economies of scope may help the new entity to underpin local news services on television and radio by using reporters from the local newspaper. The *West Australian* newspaper is a strong advocate of this reform, arguing that it would boost local programming on a jointly owned television station (sub. 142, p. 2).

Another possibility would be to grandfather the application of the rules. No mergers or acquisitions would be allowed between existing media businesses, but no particular restrictions would apply to those businesses investing in new enterprises. Grandfathering would allow firms to take advantage of commercial advantages in other media, and benefit from any economies of scale and scope. As long as existing media businesses do not contract or fail, this approach would not increase concentration. However, there is always the risk, to the extent that the new multi-media firms have a significant competitive advantage over separately owned media businesses, that this approach may accelerate such an adjustment. There is also a practical problem of defining new and old media businesses over time.

Further fine tuning of the control thresholds might also be considered. Low thresholds may limit the ability of an organisation to benefit from the cross-fertilisation at the board level which comes from cross-ownership of similar organisations. But high thresholds may allow a minority shareholder to gain effective control. Control thresholds have been a contentious issue for the ABA to administer. Some inquiry participants suggested the current threshold of 15 per cent should be substantially decreased on the grounds that such an equity holding may give a person effective control in some circumstances. The Hon. P J Keating, for example, argued that it should be reduced to 5 per cent (sub. 39, p.6).

The Commission is not convinced that it is necessary to reduce the limits to such an extent. The existing ownership and control provisions under the BSA are flexible enough to accommodate such circumstances; if there is a large number of small shareholdings, a single shareholder controlling say 10 per cent of the voting stock could be construed as being in control. This degree of flexibility seems appropriate to the Commission.

Introduction of a media-specific public interest test

Cross-media regulation could be accommodated under a media-specific public interest test that could be incorporated into the Trade Practices Act or the BSA. The test would emphasise the social, cultural and political dimensions of the public interest in the control of media businesses.

Specific tests are a feature of broadcasting regulation in the United Kingdom, Germany and the United States. Thomas (1999) observes that:

> In Germany the National Cartel Office applies general competition law but a media specific competition body, the KEK, is responsible for media concentration, limiting ownership according to audience share and judging whether mergers are in the public interest. In the US, after the Department of Justice has judged whether a merger is anti-competitive, the FCC also has to check that it is pro-competitive and in the public interest, applying a market opening test. This ensures that the social impact of the media is taken into account when assessing competition issues, as well as pure economic issues.

The ACCC has provided advice on how a media-specific public interest test could be implemented in the Australian context (sub. 159, p. 16):

- all proposed media acquisitions or mergers above a certain size would be required to be notified in advance to the ACCC. They would be prohibited unless the parties to the acquisition could demonstrate it was not contrary to the public interest;

- the ACCC would then apply its normal merger guidelines (ACCC 1996b). If the merger is likely to lead to a substantial lessening of competition in the market, the matter need not be considered any further (unless the parties choose to ignore the ACCC's advice and proceed, in which case the commission could apply to the Federal Court for an injunction, penalties or divestiture);
- if the merger is unlikely to lead to a substantial lessening of competition, either the ACCC or the media-specific regulator could consider the proposal under a new public interest test. If the parties could not demonstrate that the proposal is not contrary to the public interest, the merger or acquisition would be prohibited;
- there would be a right of appeal to the Australian Competition Tribunal.

The public interest would need to be carefully defined for the purposes of this approach. Some criteria would be required, and in this case the ACCC argued for incorporating them into the Trade Practices Act[6]:

> Legislation might specify a process for evaluation of the acquisition under the broader public interest test using such criteria as a requirement that the Commission account for the likely impact of an acquisition on editorial independence, the free expression of opinion, and the fair and accurate presentation of news. (sub. 159, p. 17)

The Seven Network takes a slightly different approach by advocating the incorporation into the Trade Practices Act of a convergence of ownership rule that:

> … incorporates a test as to whether an agreement, action, acquisition or merger would be 'likely to substantially lessen plurality' of ownership and thereby lessen diversity of opinion in the media market. (sub. 151, p. 2)

To underpin this rule it suggests that a range of variables be developed to measure 'market ownership and market power' and that they also be incorporated in the Trade Practices Act. Since a substantial lessening of plurality could be one feature of a public interest test, the end result of these two approaches is similar.

Australia can take some guidance on this issue from the United Kingdom which has already adopted a more flexible approach to cross-media rules which incorporates a media-specific public interest test. The test applies in certain situations where the holders of specified types of radio and television licences may become associated with the proprietor of a newspaper; for example, a national newspaper that has less than 20 per cent of national circulation is not prevented from applying to control a broadcasting licence but may be subject to a public interest test. The public interest test sets out matters that the Independent Television Commission and the Radio Authority must consider:

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6 The concept of public benefit is crucial to the consideration of merger authorisations but it is not defined in the Act. However, a definition has developed through case law.

- … the desirability of promoting plurality of ownership in the broadcasting and newspaper industries;
- the desirability of promoting diversity in the sources of information available to the public and in the opinions expressed on television or radio or in the newspapers;
- any economic benefits that might be expected to result from the holding of the licence by that body which could not be expected to result from the holding of the licence by another body which was not, and not connected with, the proprietor of a newspaper; and
- the effect of holding of the licence by that body on the proper operation of the market within the broadcasting and newspaper industries or any section of them. (Department for Culture, Media and Sport 1999)

An Australian media-specific public interest test could include some of these elements. By including plurality of ownership and diversity of information and opinion, and the possibility of benefits through economies of scale and scope, the UK test addresses some important issues.

Several inquiry participants were critical of the media-specific test on the grounds that its application may be complex, somewhat uncertain and costly to comply with (box 10.1). One of the more controversial aspects of the ACCC's proposal is that media mergers would be prohibited unless it could be demonstrated that they would be in the public interest. This involves a reversal in the onus of proof, compared with the way in which the Trade Practices Act applies to other mergers. Mergers or acquisitions normally may proceed, but the ACCC can challenge them on the grounds that they would substantially lessen competition. (The ACCC encourages the parties to a merger to consult with them beforehand.) Some participants thought that putting the onus on industry to prove that a media merger or acquisition would be in the public interest would be a heavy handed approach, especially if the industry coverage of the test extended into sectors not covered by the current cross-media rules.

Similarly, some inquiry participants were wary of the public interest test involving public consultation on the grounds that it was too intrusive. The Federation of Australian Radio Broadcasters commented that:

> Such a course would have significant implications for the speed, cost and confidentiality of commercial transactions. It does not reflect commercial realities and may significantly impede investment in Australian media. (sub. DR266, p. 8)

However, the Commission considers that there are strong grounds for including a public consultation process in the public interest test, much as the 'authorisation' process currently requires. This would enable other agencies and the public to provide evidence on each case before the body concerned. With the prospect of

expert input from agencies such as the ABA and the Department of Communications, Information Technology and the Arts, this process would also help overcome any criticism about the determining body being unsuitably qualified to consider the social and cultural dimensions of the public interest. It would be important too that the regulator be subject to scrutiny, and that it publish its reasons for approving or rejecting a media merger.[7]

[7] A perceived weakness of the UK approach to assessing the public interest in media mergers is that the Independent Television Commission's processes are not particularly transparent (sub. 304, p. 4).

Box 10.1 **Views of some participants on the media-specific public interest test**

PBL is critical of the media-specific test arguing that there are major difficulties with measuring both the concentration across media sectors (when different measures are appropriate to each); and the relative influence of each medium. It also stated that the process would discourage mergers proceeding because delays were likely in reaching a resolution and because there would be a 'diminished ability to maintain confidentiality' (sub. DR269, p. 11). News Corporation was similarly critical, and argues that the test is not necessary because the new media are providing diversity of opinion, and it should be possible for the ACCC to adopt a broader definition of the media market to which the Trade Practices Act would apply (sub. DR293).

Network Ten supported the test. It argued that the test elements should be quantifiable wherever possible, and advocated the use of a number of measures including share of advertising revenue, and audience share combined with measures of relative influence which could be based on the proportion of 'news current affairs and editorial in content' (sub. DR263, p. 3).

The Seven Network was generally supportive (having advocated a substantial lessening of plurality test), but warned that it should be applied within the broad definition of a multimedia market. It argued that 'The power of players to leverage and exert undue influence across what were previously regarded as separate markets must be contemplated, as must the effect of an accretion of those activities across markets on competitors' (sub. DR234, p. 9).

The MEAA supported the retention of the current cross-media rules, but argued that if a media-specific public interest test was to be introduced it should 'be applied broadly and recognise the interaction of media, entertainment and sport' (sub. DR272, p. 1). It suggested that it should consider matters such as 'strengthening Australian culture, commitment to localism within Australia, protection and creation of employment, no net reduction in competition, no net reduction in media outlets, and no net reduction in major companies operating in the media.'

While not openly opposing the introduction of the test, the Australian Key Centre for Culture and Media Policy argued that it would be subjective and open to abuse and political interference (sub. DR254. p. 2).

Cable and Wireless Optus supported the introduction of a new test, but stated that the development of the test would 'attract intense interest from the public' (sub. DR216, p. 14). It welcomed the opportunity to participate in a public review of how the test should be constructed.

The Australian Consumers Association was 'less certain that the future of media diversity can be happily consigned to the TPA, albeit with a media-specific public interest test. The issue of media concentration is not as the [Productivity] Commission seems to conceive it, a passing problem to be solved by digital conversion' (sub. DR197, p. 3).

Further, the body concerned could be given the power to accept commercial in confidence material if in the public interest, although the conditions under which it may exercise this power should be tightly proscribed, so as to maintain as much transparency (and thus the public's faith) in the process as possible. An example of material which may be in the public interest to treat as commercial in confidence is quantitative evidence on the economies of scale and scope that the merger would enable.

There are two responses to the general charge that this approach is too heavy handed and cumbersome. First, at least for commercial broadcasting (television and radio) and newspapers, this approach is more flexible than the status quo. Instead of outright bans on such mergers, a media-specific public interest test creates a possibility for mergers and acquisitions to occur where they previously could not.

Second, extending the new approach to cross-media regulation into other areas is justifiable to the extent that those media have substantial influence. Thus further research is required on the ways in which the different media influence the development of opinion in society (see chapter 13). Given that the objective would be to capture mergers of only the more influential media businesses, the research would be important in designing threshold tests (that is, examples of situations in which it is unlikely that the merger would be opposed —'safe harbours') to guide firms contemplating a merger or acquisition of another firm covered by the new test.

The media-specific public interest test is also open to criticism on the difficulty of measuring concentration in the conceptual market for ideas (for example PBL, sub. DR269). As discussed previously, measuring market shares and relative influence across the different media is fraught with problems. But this should not discourage policy makers from seeking a better approach to regulating cross-media controls than we now have. As problematic as they may be, different measures of market share across different media (such as audience share and advertising revenue) would help establish whether a *prima facie* case existed that warranted more detailed examination of the public interest.

The Commission considers that implementing a media-specific public interest test in Australia is achievable and desirable, at least until such time as competition among media firms can be adequately addressed under mainstream competition law. Further, such is the speed with which convergence is occurring in the ownership of media and communications businesses, that the test should be implemented as soon as possible, and apply more widely than the current rules. In the course of time, the new test should replace the current rules, but there is a case for them to coexist until other important steps are taken (see below).

To implement the media-specific public interest test, the following key points need to be addressed:

- *The definition of the test.* The test should prohibit mergers and acquisitions among businesses in prescribed sectors unless it can be demonstrated that they are not contrary to the public interest. The Commission favours a relatively simple definition that emphasises the public interest in a diversity of sources of information and opinion, although other elements may also be considered. The Commission accepts the ACCC point that the test criteria should be legislated.
- *Development of guidelines.* These would be analogous to the merger guidelines (ACCC 1999a) now published by the ACCC for application to mergers on competition grounds. They would set out processes and issues that the administering authority would consider in deciding if a merger was in the public interest. The guidelines should set out some clear principles for assessing media mergers and illustrate the situations in which a merger is unlikely to be opposed.
- *Designation of which sectors to be covered.* As well as the three sectors already covered (that is, newspapers, free to air television and radio — although mergers between firms in these sectors would also be subject to the existing rules for a time), the list could include Internet service providers, telecommunications firms and subscription television operators. The sectors covered could be listed through regulation. This would be preferable to specifying the list in legislation because it would enable coverage to respond more flexibly to technological change and convergence.

  The Commission is calling for further research to be undertaken on the influence of the different media. One option would be to wait until this research has been completed before setting the sectoral boundaries of the new test. But in a rapidly converging environment, the Commission is of the view that speedy action is required. Instead the research should enable the Government to develop more robust guidelines in the future, including threshold tests. In this way media businesses contemplating a merger will gain a clearer idea of how they are likely to be affected. In many cases it could be a relatively simple exercise to demonstrate that a merger was in a safe harbour or otherwise not contrary to the public interest.
- *Legislation and administration.* The test could be drafted into the Trade Practices Act or the BSA; if the latter, some coordinating mechanisms would be needed in both Acts. The Commission can see benefits in having the test in the Trade Practices Act and administered by the ACCC. This would provide a one-stop shop for media mergers, and some benefits in coordinating the two different assessments. Concerns that the ACCC is unskilled in assessing the social and political dimensions of the public interest could be addressed by amending the

Act to require the ACCC to seek advice from the ABA, and that advice to be in the public domain. The ACCC could also be required to explain why it either accepted or rejected the ABA's advice.

- *Appeals.* As is the case for considering mergers under the competition aspects of the Trade Practices Act, findings of the ACCC on the new media-specific test would be appealable to the Australian Competition Tribunal (and to the Federal Court on matters of law). Again, it would be appropriate to require the tribunal to consult with the ABA.

Summary on cross-media

Cross-media regulation is a contentious issue in broadcasting policy. The Commission has received many submissions arguing for the retention of the current rules, and others arguing for their modification, abolition or replacement with different approaches. The greatest advantage of the current rules is their simplicity. But this is also their greatest disadvantage; while they have been effective as a means of promoting diversity of information and opinion, they are arbitrary, inflexible and potentially costly.

Media markets are in a state of constant turmoil and innovation. Convergence in all of its manifestations is beginning to challenge the basis of the current cross-media rules. Looking to the future, the digital revolution in broadcasting creates the potential for a more competitive market and more diversity in the sources of information and opinion. In this dynamic environment, it is time to consider a more measured approach to cross-media regulation based on encouraging diversity of information and opinion.

But repealing the cross-media rules in isolation from other initiatives would not be wise. It is clear that the Trade Practices Act as it stands would be unable to prevent many cross-media mergers or acquisitions which may reduce diversity. It is also clear that the adoption by the ACCC of a broader definition of the media market would not adequately address the social dimensions of the policy problem, and would be open to legal challenge. Facilitating entry of new players is critical, as is a careful eye on mergers between existing players.

For these reasons the Commission is proposing a strategy that aims for the repeal of the current cross-media rules, but *only* after the following important conditions have been met:

- removal of regulatory barriers to entry (the s. 28 limit on allocating more than three licences in an area [see chapter 9], and the s. 23 economic planning criteria

[see chapters 6 and 9]), together with the availability of spectrum for new broadcasters;

- repeal of restrictions on foreign investment, ownership and control in the BSA; and
- amendment to the Trade Practices Act to provide for a media-specific public interest test to apply to mergers and acquisitions.

Entry of new television broadcasters has long been prevented by legislation or planning constraints (see chapter 9). Removing these regulatory barriers will enhance the prospects for new players to emerge. But without spectrum, entry of new free to air broadcasters cannot occur. Thus contestability in broadcasting effectively requires both the removal of regulatory impediments and the availability of spectrum.

The completion of the digital conversion process will greatly increase the amount of spectrum available for new digital services. The potential will be created for more independent operators and greater diversity of sources of information and opinion. But the Government should not wait until the digital conversion process is complete. Adopting the Commission's recommendations for accelerating the conversion process should bring forward the time when some of the existing analog spectrum is handed back to the Government and is available to be reallocated.

A step along this path could be taken when a limited amount of new spectrum becomes available for the purposes of datacasting. The Commission recommends that liberal conditions be attached to datacasting licences (see chapter 7).

The relaxation of the foreign investment restrictions applying to television (free to air and subscription) is an important condition for the relaxation of the cross-media rules. By opening up foreign investment, access to capital, technology and management will be improved. And the pool of possible owners with media expertise will be enhanced, including those without substantial nonmedia interests in Australia.

A media-specific public interest test that would apply to all proposed acquisitions or mergers in designated media industries should be legislated. This test would be included in the Trade Practices Act. Significant media acquisitions or mergers would not be permitted unless it could be demonstrated that the merger or acquisition is not contrary to the public interest. A test that adequately addresses the public interest in promoting diversity of ownership and diversity in the sources of opinion and information is a more flexible alternative to the current approach. The test criteria should be legislated. Each case would involve public consultation.

The Commission considered whether less stringent conditions could apply before replacing the existing cross-media rules with the new approach. It could be argued, for example, that the ready availability of spectrum and the removal of regulatory barriers to entry and foreign investment, would be sufficient in conjunction with normal trade practices law. This would improve substantially the prospects of new media companies being established in Australia, and provide new opportunities for existing businesses. The concern is that without a media-specific public interest test, this approach would be unable to prevent cross-media mergers and acquisitions among established players. The Commission is of the view that the media-specific public interest test is a crucial part of the package. *However, in the interests of good public policy the need for the test should be reviewed in the context of a more open and competitive media industry.*

RECOMMENDATION 10.3

The Trade Practices Act 1974 should be amended immediately to include a media-specific public interest test which would apply to all proposed media mergers. The test would be administered by the Australian Competition and Consumer Commission, and require that the commission seek ABA input on social, cultural and political dimensions of the public interest.

The media-specific public interest test should be introduced as soon as possible, and without the repeal of the current cross-media rules. The current rules would continue to apply to newspapers, commercial television and commercial radio, but the new test would apply more widely. This will be important for dealing with the rapidly converging ownership of media, telecommunications and Internet businesses. Only when other conditions relating to the contestability of the broadcasting industry are met should the present rules be removed.

RECOMMENDATION 10.4

After the following conditions have been met:

- ***removal of regulatory barriers to entry in broadcasting (s. 28 and the s. 23 non-technical criteria), together with the availability of spectrum for new broadcasters;***
- ***repeal of BSA restrictions on foreign investment, ownership and control; and***
- ***amendment to the Trade Practices Act 1974 to provide for a media-specific public interest test to apply to mergers and acquisitions;***

the cross-media rules should be removed.

10.4 Audience reach and regional operators

In 1987, a rule which restricted a person from controlling more than two television stations Australia-wide was replaced with an audience reach rule. This change recognised the potential economies of scale from allowing a broader base of operation, and was a *quid pro quo* for the introduction of the cross-media rules. The audience reach rule provides that a person may not be in a position to control television licences for which the combined licence area population exceeds 75 per cent (initially 60 per cent) of Australia's population.

All three television networks have affiliations with local operators in most other licence areas, enabling them to offer a virtually national service. Minor exceptions include the solus markets, in which local monopoly suppliers of free to air television may have arrangements to purchase programming from two or all of the commercial networks. Some inquiry participants argued that the affiliation arrangements make the audience reach rule all but obsolete. PBL argued that the rule:

> … has never had any practical effect, other than to create a second tier of commercial television broadcasting companies beneath the major networks. But networking arrangements between major networks and their affiliates, pursuant to which most Australians receive all three network services, have long rendered the rule moribund. (sub. 52, p. 5)

However, this depends on what the rule was intended to achieve. It was a *quid pro quo* for the cross-media rules, but it also appears to have been intended to:

- limit the audience reach to less than the full population, thus making room for regional operators; and
- underpin local program production.

Efficiency effects

When this rule was introduced, the then Minister claimed that it would provide 'an incentive to encourage the move to aggregation on a competitive basis.' (House of Representatives 1987, p. 2193). By effectively restricting the major metropolitan-based stations from expanding into nonmetropolitan Australia, this rule allowed regional operators to establish their own smaller networks. It was anticipated that the stronger of the regional operators would extend their operations and offer new services in previously underserved areas.

It is hard to judge how far the rule encouraged aggregation. However, given that there were 36 solus operators in 1987 and now there are only four, the combination of the two policies appears to have been successful. This is not to say that other

approaches might not have been as successful; for example, if there were no limits on audience reach, the metropolitan-based networks might have moved even more quickly to set up regional operations.

Could the benefits of networking be achieved through contractual arrangements rather than through ownership and direct control? Where transactions costs are low, contractual arrangements could provide benefits similar to those of ownership, as indicated by the fact that PBL has not moved to directly own more capital city commercial television stations than it could under the current regulations, and instead relies on networking agreements.

Albon and Papandrea (1998, p. 62) argue that the main economies of networking derive from the programming related operational savings rather than savings in program costs. There are strong economies of scale in showing the same content to larger audiences, which would be expected to be reflected in contractual rates negotiated between the networks and their affiliates. But if the cost of the rights to broadcast programming are related to audience size, one form of control may have little advantage over the other. However, a single operator could achieve savings over multiple independent stations in the purchasing or production of that content. There may also be some advantages for advertisers interested in aggregating a national audience in dealing with a centrally owned network rather than multiple individually owned stations.

Limiting audience reach to less than the whole population may have only a relatively minor negative effect on network efficiency. Without other considerations, this would suggest a case for removing the audience reach rule. It is therefore necessary to examine what else this rule may achieve.

Effects on local programming

In his second reading speech, the then Minister expressed the hope that the rules would eventually produce ‘a more balanced commercial television industry less reliant on Sydney–Melbourne based interests for their programming’. Relative to the environment of numerous small stations with virtually no capacity to produce local program content, stronger regional operators were considered more able to finance and broadcast local content. However, this has not eventuated to any marked degree, other than for the production of local news programs. This outcome is consistent with the strong negotiating position of the metropolitan-based networks that sell their programming stream to affiliates on a ‘take it or pay’ basis. Given that the marginal cost of any one program is zero, replacement by a locally produced program is costly.

Regional operators argued that relaxation of the audience reach rule would jeopardise even this small amount of local content. Southern Cross Broadcasting claimed:

> The audience reach rule is a rule that, in economic terms, costs very little to maintain. The community also obtains significant and definite value from retention of the rule. If the rule is abolished, network dominance of television will grow, with consequent loss of local programming and jobs, and for little economic return. (sub. 65, p. 7)

WIN Television Network claimed similarly that:

> It is a relatively easy exercise to evaluate the savings that could be derived by dismantling the existing Australian regional television facilities and infrastructure to merely relay the capital city network signal across the country. The savings would certainly outweigh the loss of local revenue … (sub. DR264, p. 2)

Without undertaking detailed business planning, it is difficult to test the veracity of these claims. The Commission accepts that there could be some impacts from the removal of the rule, and from any subsequent purchase of regional operators by the main networks, but whether local program production would further erode is uncertain. Different organisations could be expected to respond differently to the same circumstances. A truly national network, controlled by the one interest, may or may not jettison local programming in deference to national programming. This may be the least cost option, but it is used at some cost to ratings and thus advertising income. The decision of many regional stations to produce a local news program at their own cost indicates the inherent commercial value of such programs. This need not change under different ownership arrangements. Indeed, representatives of the Nine and Seven networks were recently reported as being generally supportive of the role of local programming in operating a national network (*Australian*, 16 September 1999, 'Media', p. 12).

Some participants used the ABC as an example of how a national network may cut regional services in response to cost pressures (for example, Northern Territory Government, sub. 137). But the ABC is not a good indicator of how a commercial network may respond to the economies of scale that national coverage would provide. A commercial network will judge the marginal costs of providing local programming, and the marginal revenues this may bring through higher ratings. A different sort of calculus applies in the ABC. With no revenue from advertising, it must make programming choices that meet its obligations under its charter. Further, the ABC provides a range of different broadcasting and online services which provide a mix of national, State and local coverage.

Local programming options will also be enhanced significantly under a multichannelling approach to broadcasting, and through the advent of datacasting, however defined. Already the ABC is planning to provide local news programs

through a datacasting service to be provided over one of its proposed multichannels. The commercial networks may also find it worthwhile to tailor new services on one or more of the multichannels they would be allowed to operate under the Commission's proposals for digital conversion (see chapter 7).

If the audience reach rule is relaxed, and the main networks move to extend their audience reach by acquiring regional licences, the opportunity to foster the growth of these relatively small regional television businesses may disappear. When digital conversion is complete and spectrum is more abundant, this second tier of television businesses could provide a basis for competition in metropolitan regions that they do not currently service. To do so, they would need to change their mode of operation. If they choose to compete against the main networks, they could lose access to the program stream on which they currently rely for virtually all their programming.

It is by no means clear that relaxation of the audience reach rule would have any adverse effects on local programming, or that it would necessarily result in the metropolitan based networks automatically moving to 100 per cent reach. The rule is already somewhat obsolete because affiliates have effectively given the metropolitan stations a national coverage. However, the gains from its removal may not be great.

Given the inherent concerns about this issue, the Commission can see some value in reviewing this provision after digital services have been rolled out sufficiently to gauge the effects on local programming. This assessment should be based on consumer services primarily, not on the viability of regional operators.

RECOMMENDATION 10.5

The retention of the audience reach rule should be reviewed in the light of developments in new digital broadcasting and information services.

10.5 Limits on the number of licences

The first limitations on ownership of broadcasting services were introduced in 1935 in response to fears that newspaper interests would monopolise the growing radio industry. Limits on the number of radio licences a person could hold continued largely unchanged until the 1980s, when they were tightened by a series of amendments.

The BSA limits the number of commercial radio and television licences a person may control in the one licence area. Section 53 (2) specifies that a person must not

be in a position to control more than one commercial television broadcasting licence in the same licence area, and s. 54 specifies that a person must not be in a position to exercise control of more than two commercial radio licences in the same licence area.

In an environment constrained by spectrum availability, restrictions or prohibitions on new licences (and in the case of radio a conservative approach to licence planning), these measures arguably help to constrain concentration of ownership and control of commercial radio and television licences. However, they can have different effects on the diversity of programming and the diversity of information and opinion. The effects of concentration on diversity was discussed in chapter 9, where it was noted that ownership of more than one radio station by the same entity has encouraged diversity of programming because the common owner/controller has an incentive to minimise duplication and seek out new audiences. A similar result can be expected in commercial television if the one licence rule is relaxed, and it is evident in subscription television where many differently formatted channels are provided. However it was also noted that the effect of concentrated ownership and control of media outlets is to decrease the diversity of sources of information and opinion.

The Commission has considered the consequences of relaxing these rules. The radio rule seems largely irrelevant in many areas, and little if any effects would be felt from its repeal. If a regional market can support only one or two commercial radio licences — an outcome not uncommon in many country areas — then the existing two licence rule would not restrict multiple ownership or control. In large metropolitan markets where there are many radio licences, the two station rule would appear to prevent some owners from purchasing or establishing additional stations. The television rule prevents the control of more than one commercial television licence by a person.

It is not clear that these rules are necessary when the Trade Practices Act also applies.[8] The narrow market definitions which are a feature of trade practices law in Australia (radio and television are regarded as separate markets) are likely to be sufficient to capture mergers or acquisitions which substantially lessen competition between competing free to air radio or television stations (respectively). In such

[8] The ABA noted that: 'In the case of AUSTEREO v TPC (1993) 115 ALR 14, the Full Bench of the Federal Court held that s. 54 of the BSA did not confer any right to a person to hold two licences in a licence area and that the TPA applied to the transfer of commercial radio broadcasting licences. This decision established that Part V of the BSA did not provide an exhaustive scheme for the regulation of the concentration of ownership and control within the broadcasting industry, and that the provisions of the BSA did not exclude the operation of s. 45 or s. 50 of the TPA.' (sub. 45, p. 18)

circumstances the Trade Practices Act (as it exists and is currently implemented) may also provide a sufficient safeguard of diversity of opinion and information within any one medium.

Given the Commission's other recommendations on regulating ownership and control, which are designed to promote contestability and diversity, and in view of the safeguards provided by the Trade Practices Act, the ongoing need for these rules is questionable. The introduction of a media-specific public interest test would provide additional safeguards against undue concentration developing in the absence of these rules.

In developing the guidelines to be used with this test, the circumstances in which further concentration within radio or television would not be contrary to the public interest (safe harbour rules) should be considered. In the United States, for example, the Federal Communications Commission recently relaxed similar rules but retains a link to the effect of a merger on the number of independent voices that would remain post merger. Thus a single entity may own two television stations in the same area if eight independent television stations (commercial and non commercial) remain post merger and if one of the stations is not in the top four ranked stations based on market share (FCC 1999).

RECOMMENDATION 10.6

As the normal competition provisions of the Trade Practices Act 1974 would apply to mergers of commercial broadcasting licences within a licence area, ss. 54 and 53(2) of the BSA should be repealed.

10.6 Access to essential services

Regulation of the ownership and control of broadcasting licences, and the application of the normal competition provisions of the Trade Practices Act, can be used to encourage competition in the supply of broadcasting services. But where the services of natural monopoly facilities are concerned, these regulatory mechanisms may not be enough.

Electricity distribution and transmission services are examples of natural monopoly facilities. Strong economies of scale make it more efficient to have only one set of wires to service consumers in a given area. However, related markets may be actually or potentially competitive; these could be upstream markets (such as electricity generation) or downstream markets (such as retail sales and customer service).

Opening up related markets to competition may require mandatory access to the services of bottleneck facilities and/or separation of the natural monopoly and contestable components of vertically integrated firms. Access legislation has thus been a key feature of the Competition Principle Agreement. General access rules are contained in the Trade Practices Act (part IIIA) and specific access regimes apply to some areas. A specific regime introduced into the Act regulates access to carriage services provided by telecommunications carriers (part XIc). Further, a specific access regime has been drafted into the *Television Broadcasting Services (Digital Conversion) Act 1998* to allow for access to transmitters for supplying digital transmission services.

Third party access issues were a major concern to some inquiry participants. Fairfax viewed access to a range of delivery platforms as a key issue in promoting competition in broadcasting services (including 'datacasting'):

> At the present time, there are bottlenecks and roadblocks in access to digital networks television, satellite, cable, telephone. These digital pathways are the pipes that carry content to users. The pipes are limited in number and capacity, in part due to government decisions regarding the allocation of, and access to, spectrum, in part due to significant economies of scale and in part due to potential technical barriers at each end of the pipe. As a result, competition policy requires that existing players and new entrants have access to the pipes and end-to-end devices on terms and conditions that are not anti-competitive. (sub. 8, pp. 1–2)

Others such as the Seven Network also stress the importance of access to a variety of distribution systems, but are more focused on access to the hybrid fibre coaxial cable infrastructure as a means of independently supplying subscription television and other retail services (sub. 151).

Access to the hybrid fibre coaxial cable infrastructure

The ACCC recently declared (for the purposes of providing third party access) analog subscription television broadcast carriage services by means of lines (that is, the hybrid fibre-coaxial cable networks of Telstra, Optus and others). It also considered declaring technology neutral carriage services which would have had the effect of covering both analog and digital services. In view of uncertainties about how competition will unfold in the provision of digital subscription carriage services, the ACCC chose not to proceed down this path.

The analog subscription declaration opened the way for third parties to negotiate with the owners and operators of all existing and future cable networks to carry their analog services. If applicants are unable to negotiate access on reasonable terms, the ACCC can arbitrate and determine the terms and conditions of access.

Either party can apply to the Australian Competition Tribunal for a review of the determination, and there is a right of appeal to the Federal Court on questions of law. Alternatively, the facility owners can negotiate with the ACCC beforehand, and submit an undertaking on the terms and condition of access.

The ACCC's justification for declaring this service is based on the distinct nature of the subscription television market (which it regards as a market separate from free to air television), substantial barriers to entry in this industry, and the vertical integration between carriage and retail subscription television services which provides an incentive for cable operators to deny access to services that may compete with their own. Without the declaration, the ACCC (1999, p. 40) stated that 'a narrower range of programming would be available, and at higher prices, than would otherwise be the case'.

The ACCC understands that several third parties have subsequently approached Optus and Telstra to provide access to their cable systems. In particular, the Seven Network and Television and Radio Broadcasting Services approached Telstra (Telstra Multimedia) to carry their services. However, Telstra has denied access on the grounds that it had an exclusive agreement with Foxtel when the declaration was made. This matter is before the Federal Court.

The Seven Network case illustrates the problems of third parties gaining access to services of vertically integrated suppliers of carriage services. PBL and News Corporation are shareholders in Foxtel and one of the main channels carried by Foxtel, Foxsports. Consequently, they have an interest in Telstra denying access to Seven Network's own C7 sports channel. This situation may not have arisen if carriage and content had been separated from the outset.

Access to transmitters

Part 5 of the Digital Conversion Act sets out a 'Transmitter access regime'. The regime gives commercial television licensees, national broadcasters and datacasters rights of access to the transmission towers and the sites of transmission towers for the purpose of installing or maintaining a digital transmitter. The regime requires that the owner or operator of the transmission tower must enter into negotiations with the access seeker. If agreement cannot be reached the parties must enter into arbitration.

A further important feature of the regime is that the Act authorises the ACCC to develop a code relating to access which would set out conditions of compliance. If the ACCC does develop a code, it must consult with commercial television

licensees, national broadcasters and the owners and operators of broadcasting transmission towers. Curiously, it is not required to consult with datacasters.

NTL commented that the access code:

> … should be designed to ensure the most efficient use of available spectrum having regard both to the legitimate interests of existing players and the interests of new entrants who would want to use the new technology across a wide range of services (i.e. the creation of a level playing field).
>
> It should also ensure that services are provided in the most cost-effective manner so that the new technology is available to as many people as possible. To achieve these objectives, access arrangements should ensure wide geographical coverage, speedy roll-out of new services, a universal low-cost standard for receiving equipment and the efficient allocation of spectrum ... (sub. 89, p. 12)

Comment

Third party access is a complex but important area of broadcasting regulation. Access to bottlenecks in broadband delivery systems including conditional access equipment may be important in promoting competition and diversity in broadcasting (and datacasting) services, particularly in the digital age. Potentially, content suppliers may reach customers through a number of different broadband platforms, including the traditional copper wire telephone network, satellite, multi-point distribution systems, hybrid fibre-coaxial cables and broadcasting spectrum. These platforms are not perfect substitutes for each other in all respects, some being better than others at providing some services. The Commission considers that it was appropriate for the ACCC not to declare digital carriage services, and instead to monitor the development of competition in supplying such services.

Whether one digital pipe or several go into a customer's premises, access to gateway services such as the electronic program guide of access providers may be a more important bottleneck to competition in providing digital services to consumers. Interoperable set-top boxes would largely facilitate third party access, but with the prospect of different proprietary technologies being used by different parties (free to air versus subscription versus datacasters and so on), true interoperability may take some time. The Commission notes that the Trade Practices Act currently allows for the services of conditional access equipment to be included among declared services that should be made available to third parties. This is a feature of the analog declaration.

Several inquiry participants argued for the uniform application of competition rules to the different platforms, with some stating that it is inequitable to subject one segment of the industry (cable television) to mandatory access arrangements but not

others (for example, Telstra, sub. 95, p. 18). However, to some extent this comparison is not appropriate. The Commission calls for the removal of regulatory barriers to entry in terrestrial broadcasting, and it is primarily by such a measure (not mandating access) that competition will be enhanced. In other areas genuine bottlenecks may occur, and it will be appropriate to consider them on a case basis. Care will need to be taken in defining markets, especially in a converging environment. Too narrow a definition will capture too many services, which would unduly constrain innovation and investment in a rapidly changing environment. A technology neutral approach to defining services will assist in this regard, as the ACCC acknowledged.

PART VI

PROGRAM CONTENT AND STANDARDS

11 Australian content regulation

The regulation of program and advertising content for radio and especially television has a direct impact on consumers:

> Regardless of the mechanisms for delivering programs to audiences, the critical questions are the programs and the audiences. In the end, the audiences watch programs not delivery systems. (FFC, trans., p. 906)

The objectives of content regulation are cultural and social rather than economic. The current regulatory mechanisms include Australian and children's program quotas, production subsidies (see chapter 5), access restrictions for sports events (see chapter 12) and other program and advertising regulations (see chapter 13).

In the longer term — in a fully digital and convergent media environment — the current system of technology-specific content regulation is unlikely to be appropriate, effective or sustainable in meeting the community's social and cultural objectives. To continue addressing these objectives, the current system will need to be reviewed, and alternative policies may need to be implemented, before the switch-off of analog broadcasting (commencing in 2009). Future issues for the social and cultural objectives of broadcasting are discussed in section 11.6.

In the interim, until the implementation of new policies to address social and cultural objectives, the Commission is recommending that much of the current content regulation system be retained. However, this system has economic as well as social and cultural effects; it is not costless to the community. The Commission's recommendations that most of these content regulations be maintained over the interim period are influenced by the uncertainties of the transition period and by the costs of introducing additional instability. The Commission therefore emphasises that appropriate policies should be developed for the pursuit of cultural and social objectives in the future converged media environment. This is something the industry does not yet appear to have done.

The Commission does not attempt to evaluate or comment on the social and cultural objectives of content regulation. Rather, it takes the stated social and cultural objectives as given and, in line with the terms of reference, attempts to clarify them and to consider whether the existing policies address them effectively.

11.1 Objectives of Australian content regulation

The stated objectives of Australian and children's content regulation are of a cultural and social nature. Seven of the ten objectives of the *Broadcasting Services Act 1992* (BSA) are concerned with content. These relate to the overall role of broadcasting, in terms of its national importance and potential to influence the community. They also relate to particular program attributes such as quality and accuracy, and to questions of taste, decency and the protection of children (see chapters 1 and 13).

Maintaining a particular level of activity for the Australian film and television production industry is not a stated objective of the current legislation. However, it is often argued that if production activity falls below a certain (unspecified) level, the cultural and social objectives could not be achieved. Consequently, social and cultural objectives have become closely entwined with economic issues in the field of Australian content regulation. This section seeks to clarify these objectives and related issues by examining each separately.

Social and cultural objectives of Australian content regulation

The Australian Content Standard sets out minimum requirements for Australian programs on commercial television. Its stated objective relates to the cultural objectives of the BSA directly:

> … to promote the role of commercial television in developing and reflecting a sense of Australian identity, character and cultural diversity by supporting the community's continued access to television programs produced under Australian creative control. (ACS, c. 4)

Cultural concepts of Australian identity and imagery may be difficult to define explicitly or objectively, but they are not unique to broadcasting policy. This reflects the dynamic rather than static nature of cultural concepts such as national 'identity', 'diversity', 'character' and 'community', which must be continually revisited to retain their contemporary meaning (see, for example, statements by the High Court of Australia in *Project Blue Sky v ABA,* [1998] HCA 28). The cultural objectives of the Act and of the Australian Content Standard are necessarily broad.

These cultural objectives are closely related to other objectives of the BSA, which are not re-stated in the Australian Content Standard. They deal with the social dimensions of broadcasting, including community education and information, as well as more general broadcasting objectives such as quality and innovation in all programs and advertisements.

In these areas, the BSA aims:

> … to promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information; and … to promote high quality and innovative programming by broadcasters. (s. 3[a] and [f])

Few participants in this inquiry directly addressed the practical application of these objectives, but many emphasised the importance of diversity and choice in all areas:

> Local content rules in general and certain program categories in particular (such as drama, documentary, children's drama and other children's programming) are based on cultural policy objectives of diversity. It is not about privileging certain program forms over others, but ensuring a wider range of programs are available in schedules than would otherwise occur. The ultimate objective is to provide a choice for Australian audiences between a greater range of program formats, genres, sources of information and entertainment. (AFC, FFC and Film Australia, sub. 107, p. 7)

Looking towards the future, other participants perceive these objectives in the context of growing global trade in audiovisual products:

> Important social and cultural policy goals are achieved through local content regulation. … Local content is becoming increasingly important with the globalisation of media markets and the cultural pressures that derive from transborder broadcasting. The Seven Network accepts the value to Australia of its obligation to meet quota requirements. (Seven Network, sub. 151, p. 5)

Elsewhere, it has been argued that access to a diversity of cultural products, including television programs, plays a role not only in national cultural development but also in political development and civic participation:

> Access to and participation in culture imply issues related to freedom of expression and opinion and its extension, people's right to know. These rights and freedoms are vitally linked to the vitality of democracies. (Giroux 1999, cited in Given 1999, p. 7)

Inquiry submissions echoed this idea:

> The cornerstone of any democracy is a well-informed and interested populace. People need to know what is going on. They also need access to a wide range of views and … the opportunity to absorb cultural experiences that they find enjoyable and enriching … there have to be rules to safeguard diversity and thereby safeguard our democracy. (PJ Keating, sub. 39, p. 1)

These points draw on a long history of cultural policy which has attributed a multifaceted and influential role to Australian television programming. Then Minister for Posts and Telecommunications, Hon. Tony Staley, noted in 1978 that:

> Broadcasting is inextricably linked with matters of national policy. … It projects, influences and reflects socio-cultural values and opinions to an extent unrivalled by any other medium. (House of Representatives 1978, p. 996)

More recently, the Gonski review also emphasised the varied social influences and roles of Australian film and television for the community:

> They expose us to others' dreams and visions, tell our stories, show us to ourselves and others and ensure that future generations can see into our lives as we have lived them. At the end of the twentieth century, they have emerged as the most accessible of all cultural activities and a medium in which Australian creators have been able to reach the world. (Gonski 1997, p. 15)

Social and cultural objectives of Australian children's program regulation

It is generally accepted that television is very influential in the socialisation and development of children:

> In the lives of most children, television is an enormously influential force, as an educator and as an entertainer, so it is vital to their development that the television to which they are exposed is stimulating, enriching and responsive. (PJ Keating 1995, p. 48)

Children's programs on commercial television are regulated by the Children's Television Standards. Similar to the regulation of adult programming, these standards seek to ensure diversity and appropriateness in programs for children. The stated objective of the Children's Television Standards is to ensure children:

> … have access to a variety of quality television programs made specifically for them, including Australian drama and non-drama programs. (CTS, Criteria for a Children's Program)

Many inquiry participants stressed the importance of addressing these objectives:

> Children's television remains a strong area of community concern, with focus on providing child specific entertainment, on the educative role of children's programming and about levels of 'adult' content to which children are exposed. (SPAA, sub. 47, p. 23)

Industry issues for content regulation

Regulation that requires a minimum amount of certain categories of programs to be broadcast is necessary only if it is likely that sufficient quantities of these programs would not otherwise be shown. That is, it must be apparent that without this regulation, there would not be sufficient Australian programming to meet the social and cultural demands of the community as a whole. In accordance with the Competition Principles Agreement, it must also be apparent that this form of regulation is the most appropriate and efficient way to achieve these objectives.

Television program markets

In addition to its cultural and social significance, an important consideration for content regulation is how it interacts with one of the key BSA economic objectives:

> To facilitate the development of a broadcasting industry in Australia that is efficient, competitive, and responsive to audience needs. (s. 3[b])

Several characteristics of the current market for television programs — and of the nature of commercial free to air broadcasting — mean a competitive broadcaster may not always provide sufficient levels of Australian and children's programming to meet the needs of the community (see chapter 2).

In all free to air broadcasting, the social and cultural effects (beneficial or harmful) flowing from programs are of a 'public' nature in that they are freely and equally available to all viewers. To the extent that programs may influence viewer attitudes or behaviour positively or negatively (for example, a decrease in racist behaviour or an increase in teenage drug use), the effects may also flow to the whole community.

These effects are not captured within the free to air broadcasting market, which can neither exclude parts of the community nor charge them directly for any benefits. Neither are these social benefits or costs reflected in the value of a program to an advertiser; advertisers pay for broadcasting time according to whom they are reaching, not community welfare, and will not pay more to advertise during programs with greater social or cultural benefits.

For the commercial broadcaster, the decision to broadcast a particular program does not depend on its social and cultural value to the community. The broadcaster's main concern is the program's ability to generate a profit — that is, its advertising revenue relative to its cost. High cost programs with social and cultural value may be vulnerable to replacement by programs with a better revenue-to-cost ratio, even if the alternative is less popular with viewers and advertisers. New Australian drama series (which may have high social and cultural value), for example, typically have much higher licence fees than those of US drama series of similar genre (see chapter 5), and may be vulnerable to replacement, even though the US program attracts a smaller audience. Programs that are popular or valuable to the community will therefore not necessarily be provided by the market (chapter 2).

In the case of subscription television, mainly subscribers, rather than advertisers, pay for programs, so there is a direct relationship between the broadcaster and the viewer. This allows consumers to express their viewing preferences directly, and the broadcaster to exclude non-paying viewers (see chapter 2). Therefore, the 'public good' nature of free to air television does not apply to subscription television, so there is less justification for content regulation in the public interest.

Production industry assistance and content regulation

The stated rationale for Australian content policy is the promotion of social and cultural objectives, not assistance to the local production industry. Some inquiry participants argued that achieving the stated cultural and social objectives depends on the maintenance of a certain level of activity in the local production industry:

> To have programs which reflect Australian cultural identity there must be a viable Australian production industry to make them. (AFC, FFC and Film Australia, sub. 107, p. 4)

This argument assumes, first, that the Australian film and television production industry must be above a certain size, or 'critical mass', to be able to produce Australian programs of suitable quality and quantity. Second, it assumes that without a certain level of content regulation, demand for Australian programs would fall to such an extent that the industry would shrink below this (unquantified) critical level and become unsustainable. However, content regulation is not the only driver of demand for Australian television programs (see chapter 5), and neither is it a necessary condition for the existence of the industry at a critical or desirable level.

In the past, nurturing an infant Australian film and television production industry has been a direct objective of Australian television content regulation. This was particularly true of the early years of Australian television, when little Australian film material was available, and Australian program production skills and resources were still developing. The Australian television advertising quota was introduced in 1960 as an explicit measure to encourage the development of Australian creative resources in television (Cunningham 1992). This background of assistance appears to be reflected in current industry attitudes to Australian content regulation.

The Australian film and television industry — although still subject to fluctuations in demand — is now established, so 'infant' assistance considerations may no longer apply. The Australian production industry has exhibited long term growth in both output and employment during the 1990s, along with increased Australian and international investment in facilities and productions. As a vital element of the national cultural and arts industries, film and television production in Australia (as in most other countries) receives direct assistance in the form of Government investment and production subsidies (see chapter 5). This is in addition to the assistance provided as a 'side effect' of content regulation.

11.2 Current content regulation system

Current content regulation is complex and media specific. In general, the level of regulation is related to the assumed influence of each type of media (see

chapter 13). Commercial free to air television, to which 99 per cent of Australians have access at home (see chapter 2), is the most heavily regulated, with quota requirements for Australian programming overall and for several program categories.

Compliance with Australian content quotas is a condition of licence for commercial and subscription television broadcasters. There are no comparable Australian content requirements for national or community television and radio, for narrowcast television or for other media such as Web sites, newspapers or magazines.

Definition of an Australian program

Australian creative elements test

For commercial television broadcasters, the Broadcasting Services (Australian Content) Standard 1999 defines local content using a 'creative control' test rather than a 'look and feel' test. The criteria relate to the nationality of key personnel and to the location of the program's production and post-production (box 11.1). The location of filming, source of subject matter, sources of finance and nationality of the production company are not relevant criteria.

Broadcasters must apply this test to all programs (or segments of programs) they wish to include in their local content quota, including series, serials, feature films, infotainment, game shows, documentaries, sport, news and current affairs. Other programs will count towards the Australian content quota if they are made as official co-productions or in New Zealand (see below). Feature films certified under division 10BA of the *Income Tax Assessment Act 1936* no longer automatically qualify as Australian content, as was the case under the previous Australian Content Standard 1995 (replaced 1 March 1999). Programs made with financial assistance from the (now defunct) Australian Commercial Television Production Fund are excluded (ACS, c. 7).

Box 11.1 **What is an Australian television program?**

A program is an Australian program if it is produced under the creative control of Australians [citizens or permanent residents] … if:

(a) … the producers of the program are Australian (whether or not the program is produced in conjunction with a co-producer, or an executive producer, who is not Australian); and

(b) either … the directors of the program are Australian or … the writers of the program are Australian; and

(c) not less than 50 per cent of the leading actors or on-screen presenters appearing in the program are Australians; and

(d) in the case of a drama program, not less than 75 per cent of the major supporting cast appearing in the program are Australians; and

(e) the program is produced and post-produced in Australia (whether or not it is filmed in Australia) … except a news, current affairs or sports program that is filmed outside Australia and produced or post-produced outside Australia, because it is impractical to [do this] inside Australia; and

(f) in the case of an animated program, .. at least three of the following is Australian: the production designer; the character designer; the supervising layout artist; the supervising storyboard artist; or the key background artist.

Source: Broadcasting Services (Australian Content) Standard 1999 (c. 7).

Australian look and feel

This 'creative control' approach can be contrasted with tests using 'look and feel' criteria, such as the 'Australianness' of the location, story, language or humour of the program. 'Look and feel' tests can be difficult to construct in a simple and objective manner. Identifying criteria for an Australian 'look and feel' test which avoid national stereotyping could be particularly problematic, because a diversity of values, lifestyles and identities is found in the wider Australian community, and because we share English as a national language with many other countries.

These difficulties in defining 'Australianness' for the purposes of program quotas were discussed by Chief Justice Brennan in the *Blue Sky* case:

> The content … may be difficult to define in a statute, for it has to do with the communications of sights and sounds that convey ideas and the classification of an idea as 'Australian' is a rather elusive concept. But that is not to deny the reality of Australian ideas; they are identifiable by reference to the sights and sounds that depict or evoke a particular connection with Australia, its land, sea and sky, its people, its fauna and its flora. They include our national or regional symbols, our topography and

> environment, our history and culture, the achievements and failures of our people, our relations with other nations, peoples and cultures and the contemporary issues of particular relevance or interest to Australians. … The 'Australian content of a program' is the matter in a program in which Australian ideas find expression. (Brennan, CJ, *Project Blue Sky v Australian Broadcasting Authority* [1998] HCA 28, para. 10)

The judicial majority in the *Blue Sky* case observed that:

> … the phrase 'the Australian content of programs' in s. 122 is a flexible expression that includes, *inter alia*, matter that reflects Australian identity, character and culture. A program will contain Australian content if it shows aspects of life in Australia or the life, work, art, leisure or sporting activities of Australians or if its scenes are or appear to be set in Australia or if it focuses on social, economic or political issues concerning Australia or Australians. Given the history of the concept …, a program must also be taken to contain Australian content if the participants, creators or producers of a program are Australian. (McHugh, Gummow, Kirby and Hayne JJ, *Project Blue Sky v Australian Broadcasting Authority* [1998] HCA 28, para. 23)

Depending on the 'look and feel' criteria selected, if the nationality of those making the programs is not considered, then programs from anywhere in the world can potentially become 'local content'. It has also been argued that because film is a co-operative product, Australian creative elements can be complex to define and separate from other elements using criteria other than the nationality of the people involved in its production:

> While one or two people may be responsible for an original idea and for developing this to the stage where it is ready for production, it is the collaborative work of those in the key creative positions that shapes the result. (AFC, FFC and FAL, sub. 107, p. 17)

For these reasons, the possibility of replacing the current creative control test with a look and feel test was dismissed by participants in this inquiry as unworkable and undesirable. Indeed, there was no support from industry participants or from relevant government agencies for replacing the current creative elements test with a look and feel style test. Internationally, look and feel definitions are not commonly used for regulatory purposes (see appendix F).

Status of New Zealand programs and official co-productions

The application of the Australian content quotas has become more complicated following the High Court judgment in *Blue Sky v Australian Broadcasting Authority* [1998] HCA 28, which found the Australian content standards to be inconsistent with Australia's Closer Economic Relations agreement with New Zealand. Following this decision, the ABA reviewed and amended the Australian and children's television standards so as to comply with the agreement.

The effect is that from 1 March 1999, programs made in New Zealand have been eligible as 'Australian' for quota purposes, even though the Australian Content Standard states that 'Australian culture and New Zealand culture are different from each other' (ACS, c. 5). The Commonwealth Government has indicated that it intends to amend the BSA to restrict the effect of this decision to the Closer Economic Relations agreement, thus quarantining the Australian Content Standard from possible obligations to include other foreign programs under other international agreements (ABA, sub. 45, p. 28). The Australian Content Standard now includes a creative elements test for New Zealand programs which is separate from but equivalent to the existing Australian creative elements test.

Official co-productions must also be recognised as Australian for broadcasting quota purposes 'in order to be consistent with Australia's international co-production obligations' (ACS, c. 5 and c. 18). Official co-productions are those made by agreement or arrangement between an Australian government agency (such as the Australian Film Commission or Australian Film Finance Corporation) and that of another country. Since 1 January 1999, Australia has had co-production agreements with the United Kingdom, Ireland, Canada, Italy, Israel, France and New Zealand (ACS, c. 20).

Currently, official co-productions do not need to meet the Australian creative control test to qualify as Australian content for quota purposes (ABA, sub. DR226). Other, 'non-official' co-productions may also sometimes qualify as Australian content, but these must meet the creative elements test (MEAA, sub. DR219, p. 13).

Australian content quotas for commercial television

Encouraging Australian programs on commercial television has been a feature of broadcasting regulation since soon after the commencement of television broadcasting in 1956. Quotas for Australian programs were introduced in 1960 and have been revised periodically. From 1961 to 1973, an overall Australian broadcasting quota of 40–50 per cent of broadcasting time applied (with varying other conditions). In 1973, this was replaced with a points system, with quotas continuing for some categories such as first release drama. In 1990, an overall Australian broadcasting quota was reintroduced at 35 per cent, and increased by 5 percentage points each year to reach 50 per cent in 1993 (see appendix G).

Since 1998, the total transmission quota for Australian content has been 55 per cent of all programs broadcast between 6.00 am and midnight, averaged over a year.

Within the overall transmission quota, there are several sub-quotas:

- at least 225 points per year (equal to 80–258 hours, depending on program categories shown) — and 775 points over three years — of Australian first release[1] drama, including musicals and scripted comedy, broadcast between 5.00 pm and 11.00 pm. Points are awarded at the rate of one point per hour for drama series or serials produced at the rate of more than one hour per week; two points for drama series or serials produced at the rate of less than one hour per week; and 3.2 points for feature films, telemovies, mini-series and self-contained dramas. This scale is intended to encourage a mix of program types, including more expensive telemovies and similar productions (ABA, sub. DR226, p. 44);
- at least 20 hours per year of Australian first release documentaries of at least 30 minutes duration each. Subject matter is not prescribed but may not include news, current affairs or 'infotainment';
- at least 130 hours of first release Australian children's (C) programs, including at least 32 hours of Australian first release C drama (for which a minimum licence fee of $40 000 per half hour must be paid), to be shown during the C time bands of 7.00 am to 8.00 am and 4.00 pm to 8.30 pm on week days and 7.00 am to 8.30 pm on weekends and school holidays. Another eight hours of Australian repeat C drama must be shown per year; and
- 130 hours of Australian preschool (P) programs per year (which may be repeated no more three times in five years), to be shown during the P time band of 7.00 am to 4.30 pm on week days.

In terms of actual broadcasting time, the total transmission quota (55 per cent) requires an average of around 10 hours per day of Australian programming (or 14 hours per week day if none is shown on weekends). The combined sub-quotas represent around one and a half to two hours per week day for each commercial broadcaster, depending on the types of drama programs broadcast (table 11.1).

Sub-quota programs account for only a small proportion of the overall transmission quota. However, sub-quota programs must be shown during 'prime time' — evenings for adult drama and outside school hours for children's programs (see chapter 2). These programs are therefore more significant in terms of their potential audience reach than is implied by a simple comparison of time requirements.

The remainder of the transmission quota — up to 90 per cent of it — may be filled with Australian sports, news, current affairs, variety, game shows, infotainment and other first release and repeat programs which meet the Australian, New Zealand or

[1] First release programs must have been acquired by the broadcaster within two years of the completion of production (three years for feature films) or before 16 February 1999, so as to 'exclude back catalogue material' from the definition (ACS 1999).

co-production definitions (see above). Live broadcasts of Australian sport which commence before midnight may count towards the quota until 2.00 am, effectively allowing an additional two hours of Australian sport for quota purposes (see chapter 12). These quotas are due for review by the ABA by the end of 2000 (ACS, p. 1).

Table 11.1 **Australian content quotas for commercial television broadcasters, 2000**

Australian quota requirements	*Per year*	*Per week day*	*Proportion of broadcast hours (6 am to midnight)*
	hrs	mins	%
Total Australian transmission quota	**3613**	**834**	**55.0**
Australian adult drama sub-quota [a]	80–258	19–60	1.2–4.0
Australian documentary sub-quota	20	5	0.3
Australian children's sub-quota	130	30	2.0
(First release children's drama sub-quota)	32	7	0.5
Australian pre-school sub-quota [b]	130	30	2.0
Australian sub-quotas total [a]	**360–538**	**83–124**	**5.5–8.3**

[a] First release adult drama must equal 225 points per year. Total time commitment per year will vary between 80 and 258 hours, depending on the type of drama programs selected for broadcast. [b] The Australian pre-school quota includes repeats as well as first release programs.

Source: Australian Content Standards.

Children's content quotas for commercial television

The Children's Television Standards require all commercial broadcasters to screen at least 260 hours of C programs and 130 hours of P programs annually, during specified C and P time bands (see above). At least 130 hours of C programs and all of the required P programs must be Australian. Regardless of their country of origin, C and P programs must be made specifically for children; be entertaining; be produced to high standards; enhance a child's understanding and experience; and be appropriate for Australian children (CTS).

Advertisements during C programs broadcast in most of the C time band are restricted to a maximum of 10 minutes in each hour of programming (compared with an average of 15 minutes per hour for adult programs). C drama programs broadcast between 6.00 pm and 8.30 pm may show 13 minutes of advertising per hour (CTS 14). No advertisements may be shown during P programs. Advertising during C programs must have a G classification, which proscribes unsuitable material, pressure, presentation, competitions or promotions. General restrictions on advertisements for alcohol, tobacco, gambling and intimate products also apply.

Australian advertising quota for commercial television

Television Program Standard 23 requires commercial television licensees to:

> Ensure that at least 80 per cent of the total advertising time (other than exempt advertisements)[2] broadcast in a year by the licensee, between the hours of 6.00 am and midnight, is occupied by Australian produced advertisements.

The stated objective of this requirement does not appear to relate to the main objectives of the BSA directly, but is stated in the following rather circular fashion:

> To ensure that the majority of advertisements on television are Australian made, by means of a flexible regulatory system that recognises the market reality of advertising.

Nevertheless, the broad objectives of the BSA apply to advertisements as to all programming, including the encouragement of cultural identity, diversity, education, information, quality and innovation in programming (see section 11.1).

Under this standard, (a) 'Australian' advertisements must be wholly pre-produced, filmed and post-produced in Australia or New Zealand,[3] or (b) at least six of the following personnel must be Australian residents or citizens: producer; principal director; principal photographer; writer; visual editor; sound track recorder and editor; feature actor or 'talent'; all voice-overs and sound track performance; sound track composer; or animator and computer graphics producer.

Advertisements are classified as Australian or foreign by Commercials Advice, which is wholly owned by the Federation of Australian Commercial Television Stations, and is responsible for assigning a viewing classification (PG, G, C or other classifications) and country of origin to each new advertisement. The ABA monitors administration and compliance. These requirements have been in place since 1 January 1992. Previously, 100 per cent of advertisements had to be Australian, using similar definitions and exemptions.

Australian program regulation for subscription television

Subscription television operators are required to spend at least 10 per cent of program expenditure for adult and children's drama channels (but not other channels) on new Australian drama films or television programs. The form of expenditure is not prescribed and may include purchase or investment in a range of

[2] Exempt advertisements are those advertising feature films, videos, overseas entertainers and paid community service announcements. The definition of 'advertisement' does not include sponsor announcements of 10 seconds or less, unpaid community service announcements, or station and program promotions (Television Program Standard 23).

[3] New Zealand commercials have qualified as Australian for quota purposes since 1981.

film and television development and production. There is no requirement to screen the quota programs funded.

Prior to December 1999, this regulation was effectively unenforceable because it applied to the subscription television licensees, rather than to the channel content providers, who are the actual purchasers of program rights. The expenditure requirement therefore operated on a voluntary basis under guidelines developed by the ABA (AFC 1998, p. 169).

Amending legislation was passed in December 1999. The expenditure quota is mandatory (a condition of licence) for adult and children's drama channel providers from 1999-2000. Extending the quota to documentary channels was considered during Parliamentary debate, but was not implemented (House of Representatives, 7 December 1999). The ABA is reviewing this option and is due to report on the matter by December 2000.

Unlike commercial television broadcasters, there are no special regulations governing Australian children's programming on subscription channels, other than the 10 per cent expenditure requirement for children's drama channels. Instead, the Australian Subscription Television and Radio Association Code of Practice requires that:

> Program material will be scheduled with appropriate sensitivity to the audience and … have particular regard to ensure the protection of children from harmful or distressing material in the selection and scheduling of programs, program promotions or advertisements. (c. 3.6)

Australian music quota for commercial radio

Co-regulation for commercial radio stations was introduced with the BSA in 1992. Previously, all commercial licensees were required to broadcast music performed by Australian nationals for at least 20 per cent of the time spent broadcasting music between 6.00 am and midnight.

Table 11.2 **Australian music quotas for commercial radio stations**

Category	*Station format*	*Minimum proportion of Australian music*
		(6.00 am – midnight)
		%
A	Pop/rock; album oriented rock; contemporary hits	25
B	Adult contemporary; gold; classic hits; hits and memories; news and talk	15
C	Easy listening; country	10
D	Niche formats including jazz, big band, classical, etc.	5
Other	All station formats other than niche	10

Source: FARB Code of Practice 4.

The co-regulatory Federation of Australian Radio Broadcasters Code of Practice sets out four categories for metropolitan and regional commercial radio stations serving populations of 10 000 or more. Australian music quotas now require up to 25 per cent for all music broadcast between 6.00 am and midnight to be performed by 'predominantly' Australian residents (table 11.2). No Australian content requirements apply to radio content other than music.

The code is intended to provide a 'safety net only, in anticipation that the majority of licensees will exceed the requirements, subject to suitable material' (FARB Code of Practice 4). The federation and the Australian Music Performance Committee (comprising the federation, the Australian Performing Rights Association, the Australian Recording Industry Association, the Media, Entertainment and Arts Alliance and the Musician's Union) supervise the code, and decide the format category applicable to each radio station.

Proposed content regulation for datacasters

The Commonwealth Government's policy statement (December 1999) proposes that datacasters be prevented from showing more than limited amounts of video (see chapter 7). This will effectively prevent them from broadcasting traditional television programs and films, including the categories identified in the BSA as culturally and socially valuable (namely, Australian drama, documentaries and children's programs). It is inconsistent for programs deemed essential (for their social and cultural value) on one form of broadcasting to be prohibited on another form. But such is the outcome of the network of *quid pro quos* that constitutes the policy framework.

The proposed rules would also restrict the type of Internet content to which datacasters could provide access. These rules would apply only to services using the broadcasting bands and not to satellite or cable services (chapter 7).

11.3 Compliance with content regulation

Compliance with content regulation varies considerably among broadcasters. Most notably, subscription television drama broadcasters did not meet their 10 per cent expenditure quota for Australian programs (which was voluntary until December 1999). Compliance is now a condition of licence for both commercial and subscription broadcasters, with possible penalties including cancellation of licence (see chapter 13).

Australian content quotas for commercial television

It is sometimes claimed that commercial broadcasters barely meet their Australian content quotas. The Gonski review (1997, p. 56) found that compliance with the overall quota (then 50 per cent and now 55 per cent) was generally good, but that:

> … the quota is mainly reached through the broadcast of television news and current affairs and sports and infotainment programs. There is general recognition that the transmission quota has had little impact on the actions of commercial broadcasters in programming decision making. Commercial broadcasters regularly exceed the transmission requirements contained in the standard, suggesting that other factors — most importantly viewer preference for Australian material — influence broadcasting decisions.

Broadcasters met the Australian programming transmission quota (50 per cent and 55 per cent) relatively easily from 1996 to 1998 (table 11.3). The networks exceeded the first release drama and documentary sub-quotas by a reasonable margin, excepting documentaries on Network Ten (table 11.3).

Table 11.3 **Australian content quota compliance**

6 am – 12 pm	*Trans-mission quota*	*Aust. drama first release*	*Aust. doc. first release*	*Aust C drama first release*	*Aust C drama repeats*	*All C first release*	*C total*	*P total*
	% hrs	points	hrs	hrs	hrs	hrs	hrs	hrs
1996								
Min. quota	*50.00*	*225.00*	*10.00*	*24.00*	*8.00*	*130.00*	*260.00*	*130.00*
Seven [a]	58.58	330.80	19.00	24.00	16.00	144.00	260.90	131.00
Nine [b]	60.73	270.40	19.50	24.00	81.00	133.17	269.00	131.00
Ten [c]	51.32	248.40	10.00	24.25	27.50	160.25	306.75	131.00
1997								
Min. quota	*50.00*	*225.00*	*10.00*	*28.00*	*8.00*	*130.00*	*260.00*	*130.00*
Seven [a]	56.52	264.32	35.60	27.50	6.50	134.40	262.40	130.50
Nine [b]	62.13	270.47	24.67	28.00	34.50	133.67	271.67	130.50
Ten [c]	50.90	266.50	10.50	28.00	34.50	131.50	282.10	130.50
1998								
Min. quota	*55.00*	*225.00*	*10.00*	*32.00*	*8.00*	*130.00*	*260.00*	*130.00*
Seven [a]	58.16	296.24	21.10	33.60	28.40	131.60	265.40	130.50
Nine [b]	65.17	251.70	38.53	32.00	52.50	133.50	269.83	130.50
Ten [c]	56.12	277.80	11.70	32.50	32.00	132.50	263.80	130.50

[a] The Seven Network average for Sydney, Melbourne, Brisbane, Adelaide and Perth. [b] The Nine Network average for Sydney, Melbourne and Brisbane. [c] The Network Ten average for Sydney, Melbourne, Brisbane, Adelaide and Perth.

Sources: ABA (1999f, p. 4); AFC (1998, pp. 170–3).

During the peak evening viewing time of 5.00 pm to midnight, when drama quota programs must be shown, Australian first release drama programs accounted for 24–29 per cent of all first release drama, and 5–9 per cent of total peak evening viewing in 1998. During these times, the amount of total Australian programming varied from 48.1 per cent (Network Ten) to 64.8 per cent (the Nine Network). On all three networks, around 90 per cent of Australian first release drama broadcast time was spent on series and serials rather than films or mini-series (ABA 1999f, pp. 11–4).

ABA compliance data for 1998 confirm the common perception that the majority of Australian quota programming is composed of sport, news and current affairs and light entertainment, with some variation between networks (table 11.4). Adult and children's drama programs comprise 7–18 per cent of total Australian programming time, but a larger share during peak viewing times.

Documentaries account for less than 1 per cent of total Australian programming time on commercial television. ABA data show that within the documentary category, nature documentaries predominate on all three commercial networks, with smaller numbers featuring sport, social or historical themes (ABA 1999f, p. 7).

Table 11.4 **Australian transmission quota programs by category [a], 1998**

Three city average, Sydney, Melbourne, Brisbane

Category [b]	*Seven Network*		*Nine Network*		*Network Ten*	
	hrs broadcast	% quota programs	hrs broadcast	% quota programs	hrs broadcast	% quota programs
Documentary	32.3	0.9	47.5	1.1	25.5	0.7
Drama	666.1	17.8	297.6	6.9	451.8	12.3
Infotainment	106.0	2.8	309.3	7.2	303.7	8.2
Light entertainment	730.7	19.5	868.3	20.3	1166.1	31.6
News and current affairs	1060.5	28.3	1552.5	36.3	725.3	19.7
Sport [c]	1123.4	30.0	968.7	22.6	796.2	21.6
Other	27.6	0.7	235.7	5.5	215.0	5.8
Total Australian quota programs	**3746.5**	**100.0**	**4279.6**	**100.0**	**3684.0**	**100.0**
ACTPF [d]	4.4		5.3		6.7	

a Australian transmission quota is 55 per cent of programming from 6.00 am to midnight. **b** All categories include children's and adult programs (repeat and new release). **c** Sport includes live and recorded broadcasts and other sports programs. **d** Programs produced with assistance from the Australian Commercial Television Production Fund are not eligible for inclusion in the drama or overall quotas.

Source: ABA (1999f, p. 9).

Australian children's content quotas for commercial television

All three networks barely met their Australian first release C drama and P program quotas from 1996 to 1998 (table 11.3). The ABA notes that historically:

> 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. (ABA, sub. DR226, p. 23)

This trend — together with the fact that the C and P quotas are rarely exceeded — implies that the Australian children's drama quotas have increased the amount of Australian children's drama above that which would otherwise have been shown by the commercial broadcasters (table 11.5).

Table 11.5 **Australian children's drama quotas and broadcasts**

	First release Australian C drama annual quota[a]	*Australian C drama programs*
	Minimum broadcast requirement	% all C drama broadcast
1979–83	None	16.2
1984–89	8 hours	43.5
1990–95	16 hours	62.1
1996–99	24, 28 and 32 hours progressively	68.6

a Minimum broadcast requirement

Source: ABA (sub. DR226, p. 24).

In 1997, the Seven Network did not meet some parts of the C program sub-quotas (table 11.3). The ABA accepted that this 'occurred due to an administrative error'. To rectify the error, the network undertook to schedule an additional 30 minutes of first release C drama in 1998 and to commission two first release C drama programs for broadcast in 1999. It fulfilled these undertakings and the ABA took no further action (ABA, sub. DR226, p. 44).

Australian advertising quota for commercial television

The Australian Content Standard for advertising on commercial television does not appear to be 'biting' (influencing broadcasters' behaviour). All commercial stations broadcast well below the 20 per cent of imported advertisements (based on transmission time) allowed under the standard. The proportion of imported advertisement time has fluctuated since the lowering of the quota for Australian advertisements from 100 per cent to 80 per cent in 1992, but appears to have stabilised at under 10 per cent (table 11.6).

If there were strong pressure to increase the foreign component to the limit of 20 per cent, the adjustment could have been expected to be much faster. The slow and unsteady speed at which the industry has adjusted may reflect a natural preference for Australian advertisements among Australian (and other) advertisers.

Table 11.6 **Imported advertisements on commercial television, [a]**

	Seven Network [b]	*Nine Network* [c]	*Network Ten* [d]
	% advertising time	% advertising time	% advertising time
1992	5.5	4.7	8.1
1993	8.8	5.5	9.9
1994	9.6	5.3	9.7
1995	9.8	6.4	8.6
1996	9.9	7.7	10.6
1997	11.4	7.5	9.8
1998	11.2	7.0	11.0
1999	8.8	7.7	9.4

a Excludes advertisements exempt from quota requirements or from advertising definitions (see section 11.3). **b** Average of network stations ATN, HSV, BTQ, SAS and TVW. **c** Average of network stations TCN, GTV and QTQ . **d** Average of network stations TEN, ATV, TVQ, ADS and NEW.

Source: ABA (sub. DR226, p. 28; sub. DR300, p. 2).

In terms of the number of separate advertisements shown (as opposed to air time), 3.3 per cent of the 44 496 commercials cleared by Commercials Advice in 1999 were imported. Another 10.5 per cent were exempt from import classification, including advertisements for films, videos, recordings and live appearances, some

of which were imported. This was a slight reduction from 1998, when 3.9 per cent of commercials cleared by Commercials Advice were foreign and 11.6 per cent were exempt (ABA 2000c, p. 2). This gap between the proportion of imported advertisements cleared, and the proportion of imported advertising air time, indicates that on average, imported advertisements were either longer, or shown more often, than Australian advertisements.

An ABA survey of 100 Australian and 100 foreign advertisements cleared by Commercial Advice in 1998 showed that imported advertisements were more likely to be for particular consumer products (including toys, cameras, sports products, toiletries and cosmetics) than for general retailers and service providers.

In the same survey, the ABA found that all of the Australian advertisements surveyed were claimed to be:

> … wholly pre-produced, filmed and post-produced in Australia or New Zealand. No applications in the sample relied on the creative elements test in [Television Program Standard] 23 to qualify as Australian/NZ produced. As all aspects of the production and filming of the sampled commercials occurred in Australia, the impact of the creative control test on foreign content in Australian commercials appears to be minimal. (ABA, sub. DR300, p. 3)

This sample suggests that the current creative elements test for Australian and New Zealand advertisements is little used if at all, and that Australian advertisements do not generally include any imported elements.

Australian expenditure quota for subscription television

As a group, subscription television drama channels have not met their expenditure target of 10 per cent of total program expenditure in any year to date (in practice, a voluntary target until December 1999 (see section 11.2). The total amount spent increased over the three years for which data are available, but fewer licensees wholly complied with their voluntary obligations (ABA 1999h).

In 1995-96, 11 predominantly drama channels spent an aggregate $1.7 million, or 7.1 per cent of their program expenditure, on new Australian drama. This group included six channels which reported spending nothing. In 1996-97, 15 channels spent a combined total of $3.2 million, or 5 per cent of their total program expenditure of $64 million (AFC 1998, p. 169) — half of what they would have been required to spend if the expenditure quota had been enforced.

In 1997-98, 16 channels spent $8.2 million on new Australian drama. The four ‘new movie’ drama channels, which met their 10 per cent requirement, accounted for 63 per cent of this expenditure, mainly through financing Australian feature films.

The ABA and Bureau of Transport and Communications Economics forecast that the total cost of the expenditure quota for subscription drama channels, if it is fully met, will be $23 million in 2000-01 and 'up to $40 million by 2004-05' (ABA 1999h).

Investment in Australian television and feature films, rather than licence fees for programs to be broadcast, made up a high proportion of these expenditures:

> … new Australian drama productions have attracted pay TV investment, apart from investment in employment and development in the Australian film and production sector. These include *Kiss or Kill, Family Crackers, Two Hands, The Boys, Radiance, In the Winter Dark, In a Savage Land* and *Siam Sunset.* (ASTRA, sub. DR255, p. 10)

The Australian Subscription Television and Radio Association claims that almost all films and programs funded through the expenditure quota were broadcast by the subscription channels, but that this outcome was due to the need for channels to appeal to Australian audiences with Australian programming, rather than to the requirements of the quota (ASTRA, trans., p. 1367).

No current data are available to indicate how much Australian material is shown on subscription television overall, or on the particular channels subject to the quota. On documentary channels (which are not subject to the quota), Film Australia notes a low level of Australian content; 3–10 per cent of documentaries on the four mainly documentary channels from 1997 to 1999 were estimated to be Australian (Film Australia, sub. DR268, p. 3). The Minister for Communications, Information Technology and the Arts has directed the ABA to investigate whether the current expenditure quota should be extended to documentary channels (and whether eligibility criteria for new drama expenditure should be modified) — the investigation to be completed by December 2000 (Commonwealth of Australia 1999b).

Australian music on commercial radio

Commercial radio stations have generally adhered to their Code of Practice. In 1997-98, only one commercial radio station was found to have breached the relevant sections of the Federation of Australian Radio Broadcasters' Code 4 (ABA 1999j).

11.4 Access, diversity and content regulation

If the objective is to give audiences access to a diversity of Australian programs for cultural and social reasons, does it matter whether they are delivered on free to air,

on subscription television or through other means? If Australian and children's content were only available through subscription services, then people who do not subscribe will not have access. Access to viewing (rather than production) of programs is the objective, so the potential audience reach is important.

Subscription television, with its numerous specialist channels, has strong potential to improve the diversity of programming for Australian viewers, including those for whom geography or language may impede access to commercial television:

> The subscription broadcasting industry has not only offered a diversity of programs but more importantly … has offered consumers in regional and remote areas greater choice in viewing while it has also effectively offered particular ethnic communities within Australia a greater range of viewing and listening. (ASTRA, sub. DR 255, pp. 10–11)

However, given its much greater audience reach in the current broadcasting environment (see chapter 2), free to air commercial television remains the focus of Australian content regulation.

Program diversity on commercial television

Encouraging diversity in commercial television programming is a key social and cultural objective of Australian content regulation (see section 11.1). The effectiveness of the regulations in achieving this aim was much debated in the inquiry hearings and submissions.

Programming diversity can be defined in a number of ways. In terms of program categories or genres, all stations show a large range of program types. Programming profiles differ between commercial and national networks, and, to a lesser extent, among commercial networks (table 11.7). For example, in 1998, the Seven Network showed more mini-series, movies and children's programs, and less current affairs and variety, than did the other commercial networks. These data do not reveal the extent of 'diversity' within each program category, or whether any diversity of program categories is attributable to the content quotas, other regulatory mechanisms or industry characteristics.

Table 11.7 **Television broadcasts by program category, Sydney, 1998**

Program category [a]	*ABC*	*Seven Network*	*Nine Network*	*Network Ten*	*SBS*
	Average percentage of total broadcasting time (24 hours per day)				
Australian drama	2.6	5.5	2.2	5.2	0.1
Comedy	3.6	7.6	7.9	8.8	1.2
Children's	26.2	17.6	8.3	14.5	2.0
Cultural	3.4	0	0	0	0.3
Current affairs	5.9	5.9	11.4	9.6	1.1
Documentary	11.3	1.5	3.0	0.5	11.6
Drama — one-off	0.6	0	0	0	0.1
Game show	0.0	2.1	3.6	0.9	0
Informative	11.1	3.0	3.5	11.6	15.3
Mini-series	0	1.5	0.3	0.1	0
Movies	2.0	14.4	8.8	6.8	14.3
Music	7.2	0	0	4.8	0.8
News	7.4	10.8	10.0	9.6	34.4
Other serials and drama [b]	7.5	8.0	11.6	7.4	3.2
Religious	0.7	0.6	0.6	0.4	0
Specials	0.2	2.3	2.1	1.3	1.2
Sports	7.5	15.8	17.7	14.0	13.1
Variety	2.9	3.7	8.8	4.4	1.2
Total	100	100	100	100	100

[a] Self reported by broadcasters for 28 December 1997 to 27 December 1998. Category definitions do not match definitions used for content quota purposes. Categories include first release and repeats, Australian and imported programs (except where otherwise labelled). [b] Other serials and drama are not Australian.

Source: AC Nielsen in ABC (sub. 78, attach. 4).

The national broadcasters have different objectives, regulations and resources to those of the commercial broadcasters and this is reflected in their programming. The Australian Broadcasting Corporation (ABC) broadcasts a higher proportion of documentaries and children's programs, but less sport and movies than the commercial broadcasters. SBS broadcasts a high proportion of news and documentaries but few children's programs. Only 25 per cent of SBS programs were Australian in 1997 (AFC 1998, pp. 159–60). Although the ABC and SBS have a relatively small audience share (combined 12 per cent in 1986 and 17 per cent in 1997) (AFC 1998), their presence significantly increases the diversity of programs available to the community.

In terms of source countries for programming, there is little diversity between the three commercial networks. The majority of imported programs come from the United States (31.9–41.3 per cent of total programming in 1998), with small amounts from the United Kingdom and even smaller amounts from elsewhere. Only two hours of network programming in 1998 came from New Zealand — the feature film *Once Were Warriors* (ABA 1999f, p. 12).

Factors that affect program diversity on commercial television

The Federation of Australian Commercial Television Stations argues that despite programming diversity being a stated objective of Australian content regulation, the current system actually impedes diversity by:

- providing an incentive to focus on high volume program formats and a disincentive to invest in short run programs that are more expensive or risky;
- entrenching outdated formats that viewers and advertisers no longer want; and
- preventing capture of competitive advantage through specialisation in program genres or targeting of demographic niches (FACTS, sub. 49, p. 44).

Other participants similarly claim that imposing program quotas equally on all broadcasters has produced a certain 'sameness' in programming and discouraged innovation and experimentation in program style and subject matter.

It is not clear how much, if any, of this alleged lack of diversity and innovation in programming is due to the quota system rather than to market factors. The drama and documentary sub-quotas do not define the subject of a program, only its broad genre and labour inputs. The drama quota is broadly defined to include scripted comedy and musicals, while the documentary quota excludes only current affairs and 'infotainment' material. Neither quota precludes other types of programming.

Ultimately, broadcasters, responding to their own markets, will decide how to fill their quota time and whether to exceed it. Network Ten, for example, shows a minimum of documentaries because it claims the format does not suit its 'youth' audience and network image (FACTS, sub. 49, p. 44), while the Nine Network screens far more Australian programming overall than is required (table 11.7).

However, where there is a small number of broadcasters, such as in Australia, they are likely to produce similar programs to attract a similar mass audience (see chapter 9). In a restricted broadcasting market, program diversity is affected by:

- established viewing habits among consumers and advertisers wanting familiar and consistent programs (for example, police dramas or outback documentaries);
- risk aversity on the part of broadcasters and advertisers;
- regulatory barriers to entry that limit the number of broadcasters — and thus total broadcasting time — available to show a wider variety of programs or to target the interests of different niche markets (see chapter 9); and
- whether an owner can control more than one radio or television station in an area (see chapter 9).

In the current restrictive Australian broadcasting market, the quotas provide some certainty that at least a minimum amount of new Australian content will be available to audiences, and not replaced by repeats or imported programs aimed at the same mass audience. However, the quotas cannot similarly guarantee minimum standards of education, quality or innovation in Australian (or other) programming.

Australian cultural characteristics and content regulation

Ensuring an appropriately Australian cultural identity and perspective in television programming is a key objective of content regulation. In the practical application of the Australian content quotas, the Australian creative elements test — while preferable to culturally subjective and potentially divisive or stereotypical 'look and feel' tests — cannot guarantee that all quota programs will have an especially 'Australian' identity or other cultural qualities. A program may meet the creative elements test but have been developed and produced primarily to appeal to the tastes and sensitivities of an international rather than a local market (see chapter 5). This situation can arise in any production made for an overseas market, but seems to be more likely to occur in the case of official or unofficial co-productions (MEAA, sub. DR219. p. 13).

Some inquiry participants argue that to address this issue, the creative elements test should be tightened, for example, by requiring all scriptwriters to be Australian (MEAA, sub. DR219, p. 13). However, other inquiry participants believe the current test strikes an appropriate balance between production flexibility and Australian control. The ABA points out that the post-production requirement (box 11.1) is particularly effective in disqualifying foreign and co-productions filmed in Australia and using mainly Australian personnel, which might otherwise be eligible:

> 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 genuinely an Australian product … 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. (ABA, sub. DR226, p. 24)

Similarly, in a recent survey of Australian and imported advertisements, the ABA found that all of the surveyed advertisements classified as Australian had met the pre-production, filming and post-production requirements of the criteria rather than the separate creative control test for Australian advertisements (see section 11.3). That is, post-production of these advertisements was wholly completed in Australia.

11.5 Effects of Australian content quotas

Many inquiry participants expressed strong support for content regulation, given the perceived cultural benefits of Australian programs (including their contribution to national identity and character) and their potential social benefits (including education, information, participation, quality and innovation). Assistance and protection for the Australian production industry is not a stated objective of content regulation, but content regulation, nevertheless, affects the production industry (see section 11.1).

Lack of appropriate data makes it difficult to assess objectively the cultural and social value to the community of Australian programs and thus of Australian program quotas. Papandrea (1996) found that 71 per cent of respondents agreed that 'Australian films and television programs are more meaningful to viewers than imported ones' and 77 per cent agreed that 'Australian films and television programs improve understanding of our country and way of life'.

On the other hand, only half of the respondents agreed that they 'prefer to watch Australian programs to imported ones of the same type and quality', and only 35 per cent agreed that 'Australian television would be less attractive if fewer Australian programs were shown' (Papandrea 1996, p. 126).

In evaluating the effectiveness of each quota in meeting its stated social and cultural objectives (see section 11.1), two key questions must be examined:

- would there be less of this category of program in the absence of the quota?
- if the quota were removed and the program category declined, would there be a loss of significant cultural or social benefits to the community that would exceed the net cost of retaining the quota?

Australian first release adult drama and documentary quotas

Given the characteristics of Australian adult drama and documentaries (such as cost and continuity) and the features of the commercial television market (see section 11.1), without content regulation these programs would not be likely to be broadcast in sufficient quantities to meet the stated social and cultural objectives. First release Australian drama generally has higher licence fees than those of imported drama, so may be less profitable for the broadcaster (see chapter 5). Similarly, although Australian documentaries may be popular with viewers, they can be expensive to purchase and can have limited advertising appeal, as a result of their 'one-off' nature and their potential incompatibility with product imagery (Papandrea 1996).

If availability of these programs to Australian audiences declined, a loss of social and cultural benefits to the community would be likely. Australian drama can be effective in providing information and education as well as entertainment, for example, by canvassing contemporary community issues and concerns. Documentaries have a direct role in providing information and education.

The requirement that drama programs be screened at peak evening viewing times ensures they have a large potential audience. Documentaries may be screened at any time, allowing flexibility to show them in afternoons or on weekends when younger audiences may be able to watch them. The first release requirement for both categories encourages new programs that are more likely than repeated programs to have contemporary relevance to the audience, and possibly more likely to be innovative.

In the case of both drama and documentaries, information and education benefits to the community may arise from relevant imported documentaries as well as from Australian ones, but Australian programs may carry cultural benefits in addition to these social benefits. Equally, not all Australian drama and documentary programs, by virtue of their 'Australianness', will contribute positively to social or cultural objectives. Individual programs can vary substantially in relevance, popularity, innovation and quality. But as program categories, Australian drama and documentaries are valuable for their potential to inform, educate, reflect and shape the Australian community.

To continue to address these social and cultural objectives in broadcasting in the long term, these quotas will need to be reconsidered — along with alternative policy mechanisms — to ensure appropriate, effective and efficient policies are in place for the future digital, converged broadcasting environment (see section 11.6).

Overall Australian transmission quota

The overall Australian transmission quota (55 per cent) does not discriminate between program types according to their social or cultural value to the community or their potential for quality and innovation. There is no distinction between new programs and repeats, or between programs screened at peak viewing times or at other times during the day. The quota includes many types of program, most notably sport, news, current affairs, and repeats, which the broadcasting market is likely to provide adequately:

> Inclusion of all programs in a quota that affects only some of them is clearly not well focused. … Intervention [should] focus on those programs that are more likely to contribute to the cultural objective of the regulation and that would not be supplied in

> sufficient quantities without the intervention. (Communication and Media Policy Institute, sub. 169, p. 24)

Australian sport, news and current affairs programs have a high information and education value for the Australian community. They are popular with viewers and advertisers, and are not easily substituted with imported programs (AFC, FFC and FAL, sub. 107, p. 8; Communication and Media Policy Institute, sub. 196, p. 18). Indeed, sport, news and current affairs comprised 40–60 per cent of Australian programming, and 32–39 per cent of all programming, on the three major commercial networks in 1998 (tables 11.4 and 11.7).

However, other categories of Australian programming that are included in the overall quota but not captured by the sub-quotas, may be reduced in the absence of the overall quota. These include Australian variety, light entertainment, lifestyle and game shows, which are often copied from overseas program formats and may be easily replaced with imported versions of similar programs (or any other programs likely to attract a similar audience) for a lower price.

Some inquiry participants argued that such programs may not address the objectives of cultural identity, diversity, education, quality or innovation as strongly as some Australian drama or documentary programs, but that they are of cultural and social value to a large proportion of Australian audiences — or at least of greater value than imported programs (SPAA, trans., p. 1275; Australian Key Centre for Cultural and Media Policy, sub. DR254, p. 13). A quiz show asking Australian questions of Australian participants, for example, is likely to have more cultural and educational benefits than imported programs of similar format and quality.

The effect of removing the overall Australian content quota is unclear for these more vulnerable program categories; neither is it clear whether this would result in a significant loss of cultural or social benefits. It may result in some loss of demand for the Australian production industry (see section 11.5), but as discussed in section 11.1, industry assistance is not an objective of the quota. Not enough is known about the economic structure of the Australian film and television production industry (see chapter 5) to determine the exact effect of removing general quota protection for these programs in the short term.

Options for improving the flexibility of the Australian transmission quota (without removing it completely) may include making it a voluntary code of practice rather than an enforceable standard. Options for improving its ability to target the objectives of the BSA may include removing eligibility for repeat programs so as to better encourage new innovative programs.

In the long term, the effectiveness of this quota will need to be considered in the context of the likely future digital, convergent broadcasting environment, rather than the current analog television environment. The Commission is not convinced of the value of the overall transmission quota in meeting the social and cultural objectives of broadcasting. However, in the interests of not introducing additional uncertainty for Australian audiences at a time of rapid change, the Commission takes the position that it would be best to retain the current Australian transmission quota at 55 per cent as an *interim* measure, until it is reviewed and more effective policies are developed to address the social and cultural objectives of broadcasting in a digital and convergent media environment (see section 11.6).

Effectiveness of children's program quotas

The key objective of children's television regulation is to provide children's programs that are informative, educational, entertaining and diverse. Like adult programs, Australian children's programs are not inherently of better quality, more educational or more entertaining for children than imported programs. However, there are cultural reasons for promoting Australian children's programs over imported ones (see section 11.2).

Many perceive the provision of children's programs as the role of all broadcasters. The majority of Australian children continue to watch mainly commercial television but many also watch the ABC and an increasing (but still small) proportion are watching subscription television (see chapter 3). This distribution of viewing habits is likely to continue for some time, but may alter in the longer term as media converge and as the relative position of various broadcast platforms changes.

Children's program regulation for commercial television

Many inquiry participants argue that without content regulation, children's programs on commercial television would decline:

> … the existing legislation, providing minimum levels of Australian content and children's programs, performs a crucial role in delivering important content to the audience, which would not otherwise exist. Any proposals to dilute, relax or dismantle these regulations would have serious ramifications. (ACTF, sub. 102, p. 1)

The Australian Children's Television Foundation states that appropriate scheduling of children's programs is also important to ensuring effective audience access. The C and P time slots currently include early mornings and weekends, when the advertising revenue forgone by broadcasters can be minimised, but when children

may not want to watch television (or their parents prohibit it) (ACTF, trans., p. 712).

For other participants, the quality of children's programs on commercial television was of concern:

> … the commercial stations have always had to be dragged screaming and kicking, via regulation, to produce any sort of quality material for children. You only have to look at the quality and standard of children's programs which are not C classified or P classified to see the sort of standard of material that we would get if that regulation weren't in place. We'd have wall-to-wall American toy-subsidised cartoons. Children's story-telling would be impoverished greatly because … they have no stories of worth to tell our kids. (Young Media Australia, trans., p. 802)

And:

> Quality of commercial programming is often poor and so is its value to children. The ABC, on the other hand, has had substantial success with the production of children's programming. (Communication and Media Policy Institute, sub. 169, p. 24)

In response, some broadcasters argue that the C and P classification criteria have led to programs of low appeal and value to children:

> The subjective, excessively interventionist and determinist nature of these standards has distorted program outputs to the point where they have become too sanitised and lost their appeal to a mainstream audience. (Seven Network, sub. 151, p. 7)

And:

> … we've been terribly ineffective with the rules and regulations we've set on children's content because all we've ended up doing is produce three programs that look the same, sound the same, and the kids aren't entertained by it. (Prime Television, trans., p. 249)

These comments suggest that not all children's programs on commercial television are wholly successful in informing, educating and entertaining Australian children. Quality issues are better addressed through specific measures, including training and financial assistance, such as that provided by the Australian Children's Television Foundation (see chapter 5), rather than through broadcasting quotas. However, in terms of quantity, without content regulation, fewer Australian children's programs would be available on commercial television, and most of the Australian community would regard this as a significant cultural and social loss.

Children's program regulation for subscription television

Inquiry participants made little comment on children's program regulation for subscription television. AC Nielsen (cited in Budde 1999) estimated that about one million households had subscription television in 1999. Children aged 5–12 years in

these households were estimated to spend 79 per cent of their viewing time watching subscription rather than free to air television.

All subscription operators provide at least one children's channel, even though they are not required to do so (see section 11.2). Nevertheless, the trend toward children's increased use of subscription television has raised some concerns about the possible effects on the wider children's broadcasting market:

> Viewing analysis suggests that the current approach is beginning to drive many children who have access to pay television to the virtually unregulated fare that is available on those channels. This reduces the audience base for free to air children's programs, making the economics of such programming ever more difficult to sustain. The growing chasm between what the community says it wants commercial free-to-air services to provide for children, and what children actually choose to watch, suggests to FACTS that the current rules need to be completely rethought. (FACTS, sub. 49, pp. 44–5)

As children's broadcasting consumption habits change further in response to future developments in broadcasting technology, these issues will need to be addressed within the wider broadcasting regulatory framework (see section 11.6). As with other quotas discussed above, the maintenance of appropriate and efficient policies for addressing the social and cultural objectives of children's broadcasting will need to be reconsidered as the future converged media environment develops.

Costs of Australian children's program regulation

Some inquiry participants noted the disincentives for commercial broadcasters to show children's programs (for example, Seven Network, sub. 151, p. 7; Prime Television, trans., p. 249). Children's time slots are worth less in advertising revenue because the audience demographic has limited appeal to advertisers and because tighter regulation (and exclusion for P programs) applies to advertisements during children's programs (see section 11.2). This opportunity cost for broadcasters applies equally to Australian and imported children's programs. For the community as a whole, these costs are unlikely to outweigh the social and cultural benefits of ensuring suitable Australian (and foreign) children's programs are available to children at suitable times and with suitable restrictions.

Australian advertising quota

Unlike Australian drama, documentaries and children's programs, the Commission has not been presented with convincing evidence that Australian advertisements would decline in the absence of the quota. As discussed above, in every year that the quota has operated, a far higher proportion (around 90 per cent) of

advertisements on commercial television has been made in Australia than is required by the quota.

This outcome is related to the function of advertisements. To be effective marketing tools, advertisements must resonate with their audience. Advertising:

> … is produced with the express objective of being retained in the viewers' memory for a sufficient time and with sufficient impact to influence purchasing and other behaviours. …Very sophisticated strategies of reflecting cultural indices are employed in the creation and dissemination of television advertising. (Australian Key Centre for Cultural and Media Policy, sub. DR254, pp. 12–3)

Advertisers and advertising agencies go to great lengths to create images which appeal to (or 'push buttons' for) their target audience. For Australian audiences, this will often require an Australian identity or image for the product or service being advertised, thus creating a natural demand for advertisements produced in Australia. This demand comes from Australian products and companies, as well as foreign companies, which may seek nationalistic or patriotic images to sell their goods and services locally or to 'camouflage their foreignness' (Sinclair, 1987). For example:

> A number of advertisers like Coca-Cola and McDonalds are actually finding that they're most effective when they actually act globally and then act locally. They actually are dealing with local conditions to suit their international marketing … they are now targeting each country and actually working out the specifics of that market, what are the specifics of that audience. (ASDA, trans., p. 1304)

In other cases, companies may wish to project an international rather than a local image, in keeping with the product or service being advertised:

> Many of the major advertisers in Australia are global advertisers who will want to be able to communicate with consumers in the same ways they communicate in major overseas markets. (Advertising Federation of Australia, sub. DR229, p. 1)

If the advertising production quota were biting (that is, if foreign advertisements were close to the quota limit), it would limit the ability of companies to make this choice between Australian and international advertising, without, in the Commission's view, compensating cultural and social benefits. Further, if the advertising quota were met or broken, it is not clear how it would be regulated. How would foreign advertisements be selected for broadcast? And by whom?

Some inquiry participants argued that although the quota limit has not been approached, its very presence and its high rate influence advertisers and advertising agencies to select Australian advertisements over imported ones (AANA, trans., pp. 1119–20; AFA, trans., p. 1135). Skill shortages during periods of high activity in film and television production sometimes affect Australian advertising production costs. These shortages tend to arise in advertising rather than other

sectors of production because experienced personnel usually prefer to work on films or television programs rather than advertisements (see chapter 5; MEAA, sub. DR219, p. 17). The Australian Association of National Advertisers claims that cyclical shortages already occur for experienced producers for advertisements:

> … we've had examples where it's been cheaper to shoot ads in New Zealand. It's been cheaper for us, at one stage, to even go and shoot ads in Hollywood than have the Australian production done. One simple reason for that is between the Australian feature film industry and the advertising industry, there are [only] so many producers out there and it becomes a demand and supply situation, where we're frequently seeing top quality Australian producers in short demand because of feature films and, consequently, their costs rise, based on availability. (AANA, trans., p.1120)

The competition principles guidelines provide that anti-competitive regulation such as quotas should be retained only if there are no other ways of providing this assistance and only if the benefits exceed the costs. There is a strong case for removing the high advertising quota. The Australian advertising production industry enjoys a high degree of natural protection, and in the Commission's judgement, market forces will act to ensure a high level of Australian advertisements. Removing the quota is unlikely to have significant adverse social or cultural effects.

RECOMMENDATION 11.1

The Australian content quota of 80 per cent for advertisements on all commercial television stations should be removed immediately.

Subscription television expenditure quota

Until December 1999, the 10 per cent expenditure quota for adult and children's drama channels on subscription television operated on a voluntary basis only and did not come close to being fulfilled (see section 11.3). Even though this expenditure quota is now mandatory for drama channels, it is not effective in addressing the stated social and cultural objectives of content regulation because it does not require subscription channel providers to broadcast the programs and feature films they have funded. Another anomaly is that this quota applies to only drama channels, not to channels showing other program categories identified in the BSA as socially and culturally valuable (such as documentaries and children's programs other than children's drama).

In its current form, this quota is not consistent with the social and cultural objectives of content regulation, particularly as they apply to commercial television. It appears to be an industry assistance policy rather than one targeted at social and cultural objectives.

The Commission is not convinced that programming quotas are appropriate measures for subscription broadcasters. As described in section 11.1 and chapter 2, unlike free to air broadcasters (which must target mass audiences for advertisers), subscription broadcasters have a direct financial relationship with their viewers. If subscription viewers want to watch Australian drama or documentaries, they can express their preferences directly. The Australian Subscription Television and Radio Association indicates that such demand for Australian programs on subscription television is already evident:

> We need to have channels that are appealing to the public and Australian audiences obviously want Australian programming. So our view is that because pay television is market driven, there's actually no need for that sort of regulation … that is the fundamental difference between the free environment and the pay environment in that we are catering, we're very market driven, we have to make sure that we're capturing the imagination of the subscriber. (ASTRA, trans., pp. 1367–8)

In addition, subscription television provides a large choice of channels and program types, but individual channels tend to have specialised programming and small audiences. These qualities mean that subscription television does not readily lend itself to the effective application of content quotas aimed at providing particular types of socially and culturally valuable programs for mass Australian audiences.

RECOMMENDATION 11.2

The Australian production expenditure quota of 10 per cent for subscription adult and children's drama channels should be removed immediately.

Cost effects for broadcasters and consumers

In addition to its social and cultural effects for the community, content regulation affects the broadcasting industry, the film and television production industry, advertisers and consumers. Some effects are apparent, but some (particularly some of the cost effects) are far from transparent.

Australian and children's content quotas are not 'costless' to the community, as is sometimes assumed. The costs of content quotas to broadcasters include higher program licence fees and, particularly in the case of children's programs, lower advertising revenue than might otherwise have been the case.

These costs are largely hidden from consumers, but nevertheless are paid by them. In commercial television, additional programming costs are ultimately passed on through higher advertising rates which are recovered from advertisers, producers and ultimately consumers of advertised goods and services. In subscription television, they are passed directly to viewers through increased subscription costs.

Particularly for free to air television, this lack of transparency of the costs of Australian and children's content quotas may make it difficult to balance the costs of the current system objectively against the social and cultural benefit they provide (which are even more difficult to quantify), or against potential policy alternatives.

All content quotas also have administration and compliance costs for individual broadcasters, industry associations (such as the Federation of Australian Commercial Television Stations and the Federation of Australian Radio Broadcasters, which are involved in the administration process) and government regulators. Some participants say these administration costs are 'substantial' (Communication and Media Policy Institute, sub. 169, p. 24) while others claim they are small. The broadcasting industry absorbs some of these costs and passes them on to consumers through increased advertising and subscription prices. Taxpayers (through government agencies) absorb other costs.

Production industry assistance effects

The Australian film and television production industry receives assistance from two main sources: the Australian content quotas for commercial broadcasting and financial assistance to film and television production (see chapter 5). This assistance imposes additional costs on broadcasters and consumers of film and television. It also imposes indirect costs on other industries and consumers through the taxation system and through the distortions it creates in capital and labour allocation across industries. Australian content regulation acts as an assistance mechanism to the production industry in several ways:

- the Australian creative elements tests for television programs and advertisements support Australian employment as well as Australian identity; and
- the first release requirement for drama, documentary and children's programs supports new Australian production relative to new imported programs and all repeats. Within each quota category, Australian programs must compete with one another for broadcasting time on the basis of normal market characteristics such as price, quality, relevance and innovation.

'Critical mass' and training paths in the production industry

Several inquiry participants stressed the importance of the quotas in contributing to the development of particular industry niches, and in maintaining the 'critical mass' of the industry as a whole.

Young Media Australia stated:

> We believe the C and the P quotas have really helped develop an Australian children's television production industry that has been the envy of overseas countries. (trans., p. 802)

The Screen Producers' Association of Australia argued that:

> … the throughput from domestically originated television drama and documentary, and domestically originated television commercial production is crucial to contributing towards that critical mass. (SPAA, trans., p. 1268)

The boundaries of this 'critical mass' are not always clear. As noted in chapter 5, little is known about the economic structures and incentives of Australia's film and television production industry. The production industry has links to many other industries, such as performing arts, tourism and multimedia, but is not a sub-set of them. Many of the skills and technologies it requires are highly specialised and may not be easily transferable to other industries. Within the audiovisual production industry, some skills and techniques are limited to specialised niches, while others are used across the whole industry (see chapter 5).

The extent to which television program and advertising quotas increase total demand for the whole film and television industry is difficult to determine. Given that some quota programs and advertisements would be produced and broadcast anyway (see section 11.4), the additional activity resulting from each quota may be marginal for the industry as a whole, although the effect of targeted quotas may be significant for specialised niches within the industry, such as children's or documentary program development and production.

For those who work in the industry, a key reason for seeking to keep certain sections of the industry above a certain size (and thus maintain a 'critical mass' for the industry as a whole) is to ensure individuals are able to work across a range of production types within the industry, as demand for each changes (see chapter 5):

> The television commercials industry is one key plank in maintaining the critical mass necessary for a viable film and television industry. There is considerable cross-over of employment between commercials, film and television drama, documentaries and other forms of television programs. A viable television advertising industry is essential to ensure the ongoing pool of talent needed for a viable television industry. Both rely on a freelance workforce. (MEAA, sub. DR219, p. 17)

Related to this issue is the view that television production and especially advertising production provide a unique training ground and career path for future film production cast and crew, as well as providing alternative employment when other areas of production are low (ASDA, trans., p. 1301; MEAA, sub. DR219, p. 17; AFC and FFC, sub. DR215). As discussed above, this use of advertising work as a

stepping stone and counter-cyclical filler may have its benefits for employees seeking employment continuity, but it can lead to skill shortages in advertising during times of high activity elsewhere in the industry. In any case, television production quotas are an indirect and limited mechanism for assisting the industry with training and career paths. Formal education and on-the-job training programs are more appropriate.

Content quotas and current Australian industry policy

Since the 1960s, when the Australian content quotas were first introduced, the general stance of Australia's industry policy has changed. Measures to protect Australian products from foreign competition have been reduced or removed in most industries. The television production industry is unusual in that protective barriers have been maintained or even increased over time. The protective quota for Australian advertising remains particularly high, at 80 per cent. This support occurs despite evidence that the industry is internationally competitive and export oriented:

> We are a forward looking industry, we're looking to the future, that we are open to the global marketplace and that we are efficient and competitive by any world standard. … We embrace change. (SPAA, trans., p. 1263)

Other inquiry participants were more critical. The Australian Association of National Advertisers was particularly concerned that the advertising quota is not consistent with the contemporary economic environment:

> The quota, as is the case with other features of the regulation of this industry, is nothing more than a structural or protectionist measure which preserves very high cost structures in Australia and was brought about in an environment several decades ago when this industry was in its infancy and when protectionist measures were negotiated by the then entrants. That level of protection is no longer appropriate in today's environment and it is about time that all aspects of this industry, including the production end of the industry, had to face the realities of competition to address their own internal cost structures. (trans., p. 1119)

One industry commentator noted:

> … industry protection as a basis for broadcasting content regulation is becoming virtually impossible to maintain. (Cunningham 1992)

In the absence of demonstrated social, cultural or other benefits, industry assistance alone cannot justify the maintenance of content quota regulations (see section 11.1). If they are imposed as industry assistance measures rather than for social and cultural purposes, content quotas are contrary to contemporary Australian industry and competition policy. Industry assistance to the production industry should not be

the basis for regulating the broadcasting industry (or any other industry) in the future.

Evaluating the social and cultural effects of content regulation

No systematic evaluation of the quota system's success in meeting its stated social and cultural objectives is in place. There have been many reviews and alterations to the Australian content and children's quotas over the decades (see appendix I). These reviews have been *ad hoc* and do not constitute a regular, structured process of evaluation. The next review of the Australian Content Standard is due in 2000, and that of the Children's Television Standard is due in 2001 (ACS, p. 1).

In the case of children's program regulation, many inquiry participants emphasised the need for proper evaluation — and ongoing, supporting research — for social and developmental reasons (for example, ACTF, sub. 102; Prof. Marie Bashir, sub. 44). As one medical practitioner stated:

> In view of the major impact television has on the community and especially the child psyche, research and recommendations to the public as consumers of the media product should be a clear objective of the [BSA]. (Dr George Blair-West, sub. 173, p. 1)

Good public policy design should include regular monitoring and evaluation, to assess policies and regulatory measures against their stated objectives. Policy objectives and evaluation procedures should be clearly defined (Uhr 1991; DOF 1994; ORR 1995). The principles of public program evaluation should also apply to any new policies introduced to meet the social and cultural objectives of broadcasting in the future.

RECOMMENDATION 11.3

For all current and future policies and regulations aimed at achieving the social and cultural objectives of broadcasting, the ABA should conduct regular, public evaluations against the stated policy objectives.

11.6 Australian content regulation and the future of broadcasting

The current system of Australian content quotas was designed for the analog broadcasting environment, with a limited range of broadcasting technologies and a fixed number of broadcasters operating within Australia's national borders. It is predicated on the traditional concept of broadcasting as single program streams

transmitted by individual (or networked) stations, within discrete areas and subject to enforceable national regulations.

When these conditions no longer apply, some types of quota and other mechanisms aimed at achieving the cultural and social objectives of broadcasting may become unenforceable, ineffective or unsustainable. As Vizard has questioned:

> In five years time, in 10 years time, in the face of globalisation, can we continue to impose obligations on all who enter our marketplace to include Australian information? Is it legally possible? Do we have jurisdiction over off-shore suppliers who beam in by Internet, phone and satellite? How do we force the Los Angeles news Internet provider to include content relevant to us? How do we mandate that the BBC international news service include Australian weather reports? Or that the Discovery Channel include a pack of Tasmanian Devils savaging a sparrow? (Vizard 1999, pp. 11–12)

Even if it were feasible to do so, imposing new quotas or other content regulations on each new form of media as it emerges (as suggested by the SPAA, sub. DR228 and the ABC, sub. DR206) would create regulatory barriers between media platforms which, in many other respects, are converging (see chapter 3). Such a policy would inhibit innovation and inevitably involve games of 'catch-up'.

Further, an increased number of broadcasting content providers across a range of delivery platforms will increase the amount (and probably diversity) of programming material available to Australian audiences. This may reduce the need for policies such as content regulation to meet social and cultural objectives in broadcasting. But in view of convergence, if government policies are still required to achieve these objectives, it would be more appropriate that the policies address the objectives more directly — that is, they should target the creation and dissemination of culturally and socially beneficial material, rather than the platforms by which it is disseminated.

Australian content regulation and the transition to digital television

Several aspects of the digital television conversion scheme (see chapter 7) may affect the effectiveness of current Australian content regulation for commercial television:

- the quota of 20 hours per week of high definition transmission per broadcaster;
- the possible introduction of multichannelling (subject to review);
- the time lag between metropolitan and regional broadcasters in switching off analog simulcasting;
- the restrictions on audiovisual programming for datacasters (see section 11.2); and

- the proposed penalties for failing to meet the high definition quota relative to the penalties for failing to meet the existing Australian content quotas.

One of the key programming issues for broadcasters arising from the mandating of high definition digital transmission will be the increase in production costs for television programs suitable for high definition broadcasting. Programs (and advertisements) to be shown in high definition must be of a high technical and visual quality (including sets, design and editing) and must be shot on 35mm film or high definition video, using relatively expensive equipment (see chapter 5). These increased production costs for high definition programs can be expected to be particularly problematic — and possibly even prohibitive — for sports broadcasts and other live events, which must be relayed and edited in real time from mobile broadcasting equipment (see chapter 12).

These high production costs mean that the choice of programming (other than feature films) suitable for broadcast during high definition transmission may be limited, and programming diversity may be reduced, at least during the quota periods. Many types of popular but cheaply produced Australian programs (such as serials, infotainment and game shows) will be unsuitable. So will many programs imported from the United Kingdom and Europe, where standard definition is already the norm for digital television in their own broadcasting and production markets (see chapter 5).

The Government policy statement of December 1999 proposes that all free to air broadcasters be required to broadcast programs made in high definition (that is, shot on film or high definition video rather than simply 'up-converted' from standard definition digital or other video) for at least 20 hours per week, or nearly three hours per day (see chapter 7). This requirement is to be imposed on top of the existing Australian content regulations for commercial broadcasters.

If broadcasters judge that high definition broadcasting will increase their audience and advertising revenue, then the high definition quota period is likely to be broadcast during peak viewing periods. Given the likely unsuitability of many cheaper Australian serials, lifestyle and other popular programs for this format, this quota may reduce the amount of Australian programming shown during peak viewing times. Where broadcasters currently broadcast more than their Australian programming quota of 55 per cent, they may respond by reducing their total transmission of Australian programs, rather than moving the programs to other time slots.

On the other hand, broadcasters may seek to reduce the cost of broadcasting in high definition, by showing a minimal amount of new, expensively produced material during high definition transmissions. This would mean high definition transmissions

may consist of mainly feature films or pre-existing television programs, which were shot on film (for example, television programs made before video was introduced). This minimum cost approach may also lead broadcasters to transmit their high definition quota during periods when the opportunity cost (in terms of lower audiences and lower advertising revenue) is smallest — that is, outside peak viewing times (for example, with midday movies). Neither scenario is likely to advance the social or cultural objectives of broadcasting policy.

If multichannelling is permitted for commercial broadcasters while analog simulcasting continues, then content quotas are likely to be applied to the main (simulcast) channel only, with no quotas for secondary channels offering specialised or enhanced services. After analog simulcasting ceases, the quotas may be applied to the entire multiplex or to one or more channels separately. Applying quotas to individual channels may be inappropriate, or may even impede the development of specialist services (for example, applying a drama quota to a sports channel). Total Australian television programming may or may not increase as a result.

The Commission is recommending that the final switch off of analog services occur simultaneously for all broadcasters, bringing forward the date for the analog switch-off for regional broadcasters (see chapter 7). If this recommendation is not accepted and regional simulcasting continues after it has ceased in capital cities, then regional broadcasters' programming costs are likely to increase. Metropolitan stations are likely to be multichanelling by that stage. This will allow them to develop specialised channels once the requirement for simulcasting ceases. Network programming will reflect this change in the structure of capital city broadcasting, which may not be appropriate for networked regional stations that are still simulcasting a single channel. Regional stations will then need to convert or compile their own programming.

The penalty for failing to meet the high definition broadcasting quota is different from the penalty for failing to meet the Australian content quotas, because the former is not a condition of licence. The ultimate penalty for breaking the Australian content quotas (loss of broadcast licence) is extremely high and has never been applied (see chapter 13). By contrast, the stated penalty for failing to meet the high definition quota is loss of the spectrum made available for digital transmission, but not loss of licence. This appears more likely to be applied in practice than the penalty for failing to meet the content quotas. If a broadcaster must choose between failing to meet either the high definition quota or a content quota (for example, because they do not have enough Australian high definition material, so must choose between high definition *or* Australian), they would be more likely to break the content quota than the high definition quota.

The potential interactions between the proposed high definition regulations and the existing Australian content quotas are therefore complex and uncertain. They may also have other unintended consequences for television programming schedules and for audience access to Australian programs.

Inquiry into audiovisual industry and cultural policy

In the long term, the current system of Australian content regulation is likely to become unsustainable as a means of addressing the social and cultural objectives of broadcasting. An alternative, technologically neutral policy approach should be developed — one which will not impede future media innovation or convergence, and which is well integrated into the audiovisual industry and cultural policy more broadly.

In its draft report of October 1999, the Commission invited further discussion about appropriate policies for achieving the social and cultural objectives of broadcasting in the future broadcasting environment. It received few responses on this issue, or on the likely effectiveness or sustainability of existing mechanisms in the future. Information and data about the economic structures, finances, incentives and markets for Australian and international audiovisual production industries are also inadequate (see chapter 5). More needs to be known about the production sector before comprehensive policy is developed for the new media environment. Given the complexity of these issues, the Commission recommends that further research be undertaken in preparation for the establishment of a new policy framework.

This policy should be developed through an independent, public inquiry process. To ensure timely implementation and to minimise uncertainty for the industry, the intention to undertake this inquiry should be announced as soon as possible, and it should be completed no later than 2004. Its recommendations should be implemented prior to the switch-off of analog simulcasting. This inquiry should:

- examine which audiovisual industry and cultural policies will be appropriate, effective and efficient in achieving the social and cultural objectives of broadcasting in a digital media environment, and how they should be applied, according to National Competition Policy principles;
- examine the economic and financial structure of Australia's audiovisual production industries, including film, television, advertising and multimedia production and, to the extent that they are relevant, other industries that contribute to audiovisual content (such as sport and the performing arts);
- examine the role of all forms of television, radio and other broadcasting media, including national, commercial, subscription, community, regional and Internet

broadcasters in distributing audiovisual content to Australian audiences and in addressing the social, cultural and economic objectives of broadcasting; and

- be foreshadowed in the Government decision on this report and completed by 2004, early in the life of digital television.

Some policy options for pursuing the social and cultural objectives in the context of the future broadcasting environment could involve extending and adjusting the existing quotas to new forms of broadcasting as they emerge. But, as discussed above, such a policy runs counter to the objectives of technological neutrality and to National Competition Policy principles, and would extend regulatory distinctions between different media. It would be far better to address the objectives at a more fundamental level.

Relevant policy options could include, for example, the removal of impediments to entry to broadcasting and to competition between broadcasters (see chapter 9). Subsidies — such as the production subsidies and taxation incentives now offered by various Commonwealth and State government agencies (see chapter 5) — could be targeted at particular types of program production, distribution or broadcasting. In this context, broadcasting subsidies would involve subsidising broadcasters to screen particular programs, with possible refinements such as paying a higher subsidy for particularly desirable programs or for larger audiences. National broadcasters could also be given additional resources to increase broadcasts of nominated types of programs (subject to their operating charters). All of these and other policy options should be carefully considered in the context of the future digital broadcasting environment.

Australian content regulation in the interim

Ensuring Australian consumers have access to Australian programming has been a long standing objective of successive Australian Governments. Although subscription television and other broadcasting services (such as Internet broadcasting) are now available, currently they are used by only a small proportion of the population (see chapter 2). Commercial free to air television remains the primary means of delivering Australian programming to Australian audiences; at least in the short term, it must remain the major focus for pursuing the stated social and cultural objectives of broadcasting.

As discussed above, without Government intervention, commercial broadcasters in the current broadcasting environment would be likely to provide fewer Australian drama, documentary and children's programs. The potential extent of this reduction is not clear. Not every program in these three quota categories will directly produce

social and cultural benefits for the community, but as a group, they appear to address the stated social and cultural objectives.

The Commission has strong concerns about the value of the overall transmission quota of 55 per cent for Australian programs in meeting the stated social and cultural objectives. In its draft report in October 1999, the Commission was inclined to recommend the immediate removal of this quota. In response, many inquiry participants highlighted the uncertain effects of removing the transmission quota on a wide range of Australian programming, particularly during the introduction of digital television. This quota is not clearly targeted at social or cultural objectives, and is likely to become less effective as the digital television revolution proceeds, but the Commission judges that it does not impose such high costs in the short term as to justify the uncertainty that its removal would create.

RECOMMENDATION 11.4

To ensure that the social and cultural objectives of broadcasting continue to be addressed in the future digital media environment, the Government should:

- ***commission an independent, public inquiry into Australian audiovisual industry and cultural policy, to be completed by 2004; and***
- ***following this review, but prior to the final switch-off of analog services, implement a new framework of audiovisual industry and cultural policy.***

Until this new policy is implemented, the following quotas for free to air commercial broadcasters should be retained in their current form and at their current levels:

- ***the overall transmission quota of 55 per cent for Australian programming;***
- ***the Australian first release drama quota;***
- ***the Australian first release documentary quota; and***
- ***all quotas for children's 'C' and preschool 'P' programs.***

12 Television broadcasting of sport

Sports broadcasting is an important part of Australia's social and cultural life — as Roy and HG might say, 'too much sport is barely enough'. Sporting events such as World Cup cricket and soccer, the Australian Open tennis, Grand Prix motor racing and the Australian Football League (AFL) premiership competition attract very large television audiences. As a programming genre, sport is a key draw card for advertisers on free to air television and for subscribers on subscription television. Since colonial times, sport has been an essential feature of the Australian social landscape and, even today, sporting traditions such as the Melbourne Cup, football grand finals and the Olympics are part of the celebrations Australians enjoy. Sporting champions and legends provide role models and heroes that help unite Australians and raise national consciousness.

A number of regulations and proposed regulations affect consumer access to sport on Australian television. These are the restrictions on multichannelling and on entry to broadcasting, and the 'anti-siphoning' provisions. If enacted, current proposals on datacasting and the mandating of high definition digital television will limit the opportunity for enhanced and additional sport broadcasts. This chapter considers the effects of regulation on consumers' access to sports broadcasting.

12.1 Broadcasting of sport in Australia

The time given to broadcasting sport is comparable to that of news and current affairs. A national survey of Australians' sporting interests by Brian Sweeney and Associates found that 96 per cent of the people surveyed watch sport on television (1999). Cricket and Australian rules football ranked highest, being viewed regularly by 3.7 million and 3.5 million capital city residents respectively. Yet despite the high level of televised sport, it is concentrated on a handful of sports. Tennis attracted 38 per cent of the television audience, and motor car racing, Rugby League, soccer and swimming all had a strong following. Women's sport in particular has had little coverage on commercial free to air television.

Broadcasting of sport has expanded beyond traditional media forms to the Internet. The Australian Broadcasting Corporation's (ABC) cricket commentary is accessible on its Web site, in addition to its radio network. Web television will allow enhanced

visual coverage of sport on the Internet. Sports related Internet sites, particularly www.cricket.org and www.afl.com.au, are among the most popular Web sites visited by Australians. The growth of Internet broadcasting has led sporting organisations such as the AFL to analyse ways of increasing revenue:

> … by licensing rights in various categories including free to air and pay television broadcasts and new types of digital services. (sub. DR240, p. 30)

The revenues from sports broadcasting enable sporting organisations, such as the AFL, to provide programs that support training and career opportunities for young people in sport and related industries. The AFL refers to its programs for Aboriginal communities in the Northern Territory in this context (AFL, sub. DR240, p.11).

In the course of this inquiry, the Commission has become aware of the poor level of data and analysis of the economics of sport in Australia. Yet sport is a significant economic activity in this country. Better data and analysis would help to develop more effective and efficient policies.

12.2 Relationship between broadcasting and sport

Television strongly influences many sporting competitions, including the size, shape, colour and scheduling of the competition and the careers of individual players. It also promotes public interest. Basketball and soccer both owe much of their increased popularity in Australia to television (Appleton 1995, p. 34).

Sports such as cycling, rowing and women's sport, which receive limited television coverage, could have potential to grow in popularity from the role of the media in generating and building interest. Phillips (1996) found that television coverage of women's sport in 1996 was just 2 per cent of total sport broadcasting. Commercial network television coverage of women's sport was 0.2 per cent and non-commercial coverage was 20 per cent. Anecdotal evidence suggests women's sports coverage may have increased slightly in recent years, but it is still very low:

> It is all sports' dream to be on a commercial television station but for women's sport this is a huge battle due to many factors, one being money! If minor sport or women's sport cannot be offered to pay television if they are not on free to air, then there is little hope for them. …women's sport and those other sports seen as minor are not as relevant as the might of the AFL, ARL, soccer, etc., yet the potential for growth in our area is huge. (Women's National Basketball League, sub. DR283, p. 1)

The coverage by commercial broadcasters reflects their judgement of its worth to advertisers. The advent of new broadcasting technologies provides the opportunity for commercial broadcasters to test the markets for sports which they previously have not broadcast or which may appeal to niche markets. But proposed rules for

these new technologies will inhibit this development. The same point could be made for community, cultural and theatrical activities.

The mounting involvement of broadcasters in sporting events reflects the importance of sport as content. For the five mainland state capitals, the cricket World Cup Final was the highest rating program in 1999, while the National Rugby League (NRL) and AFL Grand Finals were also in the ten most watched broadcasts (AC Nielsen 1999, *Sydney Morning Herald*, 30 November 1999, p. 10). This popularity allows the commercial broadcasters to charge a premium for advertising during football broadcasts. The Seven Network, for example, charged around 70 to 80 per cent more for advertising time on those Friday evenings in Melbourne in 1999 when it was broadcasting an AFL match. This premium increased to around 145 per cent for a match in the Finals series[1].

Overseas experience shows that sport tends to be a major driver of subscription to pay television. Rupert Murdoch was quoted as arguing that 'sport overpowers film and everything else in the screen-entertainment genre', adding his intentions 'to use sports as a battering ram and a lead offering in all our pay television operations' (*Business Review Weekly*, 23 July 1999, pp. 88–92). Rugby Union coverage is said to have been an incentive for people to subscribe to Foxtel in New South Wales and Queensland as was AFL coverage for Optus in the other States (*Sydney Morning Herald*, 29 April 1999, p. 11).

The value of broadcast rights to major sports events escalated in the 1990s. The Seven Network pays more than $40 million a year for AFL games, compared with $1 million to the Victorian Football League 12 years ago (*Business Review Weekly*, 23 August 1999, p. 88). A major contributor to this increase in the price of broadcast rights has been broadcasters' desire to secure appealing content. Web television, as well as datacasting and multichannelling services, are likely to fragment advertising markets. Programs with the ability to draw mass audiences, such as major sporting events, will become increasingly valuable, particularly when broadcast rights are exclusive. Some sport is additionally attractive because, unlike movies, it is not 'one-off' programming. Rights to the AFL and NRL competitions provide continuous coverage throughout their seasons.

Increasingly, sporting events have been organised to cater for television networks and their viewers. Bodies such as the NRL and the AFL schedule night games to capture prime time audiences, thus raising the value of their broadcasting rights. For some, the act of altering sports to make them more 'television friendly' has even extended to changing the rules of the game. The development of international one-day cricket games is an example.

[1] Productivity Commission estimates based on unpublished data from AIS Media.

Sport and media mergers

Around the world, broadcasting networks have sought to form ownership links with the sporting events they televise, as a means of tying up the broadcasting rights. News Corporation owns the Los Angeles Dodgers baseball team, and through BSkyB has interests in three Premier League soccer clubs in England. Mediaset owns Italian soccer club AC Milan, while Canal Plus owns French soccer club Paris Saint Germain (BBC 1999). In Australia, the trend is most pronounced in the NRL, with News Limited owning 50 per cent of the competition and 40 per cent of the Brisbane Broncos. Broadcasters have been unable to purchase teams in the AFL, because private ownership of clubs is barred in that competition. The Seven Network is a major investor in Colonial Stadium, the future home ground of three AFL clubs.

Given the nature of broadcasting rights in Australia, this investment by the Seven Network is significant. Australian law does not expressly recognise broadcasting rights. Instead, event organisers typically own or lease a stadium, and broadcasting rights arise out of property rights to the stadium. The event organiser can then exclude certain broadcasters from entering the stadium, and allow other broadcasters entry (*Sports Australia,* 1999).

The Media Entertainment and Arts Alliance asserted that vertical integration issues can impede public access to balanced sport coverage:

> We see in numerous media organisations them buying various franchises, sport franchises, stadiums, rights to certain broadcasts … and then seeking to maximise that franchise by marketing it through their own organisations and to a certain extent seeking to minimise other organisations reporting on the same franchise. (MEAA, trans., p. 927)

Broadcaster ownership of sporting franchises reduces competition for broadcasting rights, and has attracted concerns that it can damage the sport. In the United Kingdom, the Competition Commission recommended that BSkyB's proposed merger with Manchester United be prohibited because it would 'restrict entry into the sports premium channel market by new channel providers' and concluded 'the merger may be expected to reduce competition for Premier League rights'. In part, their recommendation was influenced by the way the deal:

> … would give BSkyB additional influence over Premier League decisions relating to the organisation of football, leading to some decisions which did not reflect the long-term interests of football. (Competition Commission 1999)

Exclusive rights

Links with a sporting event secures leverage for broadcasters in the negotiation of broadcasting rights, especially exclusive rights. However, rights of this nature can diminish the amount of coverage received by a sport. The Media Entertainment and Arts Alliance raised one case where News Limited's ties with Rugby Union hindered other media organisations' ability to report on the game, even when that report was to be posted on the Internet:

> … this Saturday night, Australia plays Ireland in Brisbane — it's a big rugby test — we've been told ('we' being the *Sydney Morning Herald*) we can't take photographs for the Internet for that test. (MEAA, trans., p. 940)

Exclusive rights contracts can facilitate profitable merchandising and marketing opportunities for broadcasters. Thus in 1979, Publishing and Broadcasting Limited (PBL) secured merchandising rights to all goods and services relating to Australian cricket matches sanctioned by the Australian Cricket Board, as well as a share in gate receipts, for ten years (Barry 1993, p. 191). For vertically integrated broadcasters, sporting team ownership can present cross-promotional opportunities. Disney has reportedly used its movies, television shows and children's magazines to cross-promote the Angels baseball and Mighty Duck hockey teams, in which it has interests through ESPN (*LA Times,* 21 March 1998).

12.3 Restrictions on sport broadcasting

All broadcasting, including sports broadcasting, is restricted by the legislated prohibition of new free to air television broadcasters until at least 2007. It is also restricted by the banning of multichannelling by commercial broadcasters, while restraints on subscription broadcasters constrain their sports broadcasting. Further, the December 1999 policy statement of the Government proscribes sports broadcasting by datacasters, while the mandating of high definition digital television is also likely to discourage sports broadcasting.

Barriers to entry

The legislative regime that prevents new broadcasters from market entry has meant the consumer faces a limited choice of program viewing. Experience from the United States shows the amount of sport on television increases with the number of broadcasters. When a market entrant, Fox Network, bought exclusive rights to the National Football Conference in 1994, previous rights holder, NBC, responded by televising college football games that had not previously been broadcast.

The barriers to entry have an additional effect where proprietors of free to air networks hold interests in subscription broadcasters. Strategic games over sports rights between free to air rivals can extend to the subscription medium. The result may restrict the amount of televised sport. The Seven Network has exclusive AFL broadcast rights, for example, and provides significant portions of its coverage to its subscription channel, C7. However, C7 is available on Optus only, the third ranking subscription service. The Seven Network has sought access to Telstra's cable network to broadcast its C7 services more widely. This has been refused on the grounds that Telstra has an exclusive agreement with Foxtel for the carriage of subscription television services. This matter is before the Federal Court — see chapter 10. PBL partly owns Foxtel and Fox Sports, so competitive rivalries could underpin this issue.

The Commission is recommending that the legislated prohibition of entry to television broadcasting be revoked (see chapter 9).

Conversion to digital television

Digital television has the potential to augment traditional sport broadcasts, but restraints on multichannelling and datacasting, and the mandating of high definition, limit this potential.

The proposed restrictions on these innovations (see chapter 7) will be a considerable impediment to additional consumer access to sport, particularly sports that previously have been broadcast little or not at all. The prohibition on multichannelling means that free to air networks will be denied the opportunity to broadcast simultaneous sporting events to which they hold the rights.[2] Thus, if multichannelling is permitted, clashes such as that experienced in 1999 by the Nine Network (between the cricket World Cup and the first week of the French Open tennis) need not preclude the live broadcast of both events on free to air television.

The Government's proposed policies of December 1999 on digital conversion would prevent datacasters from broadcasting any live sport. This would limit the breadth of coverage of sport on television. Datacasting could provide a platform for minor sports or lower levels of competitions, such as regional matches, and allow market testing of sports. Low cost, basic standard definition equipment could be used, which could be supported by low advertising revenue (see chapter 7).

[2] Multichannelling is to be allowed under the Government's policy statement of 21 December 1999 only when a sporting program overlaps with another scheduled program.

Enhanced programming services have many applications in sport broadcasts. Apart from choosing camera angles, viewers could be offered access to additional player information and game statistics. Bandwidth constraints mean a sporting event broadcast in standard definition will offer greater scope than high definition for enhanced programming (see chapter 7).

The costs of live broadcasts of sport in high definition are substantial. Outside broadcast equipment for high definition is much more expensive than for standard definition. In the United States, high definition sports broadcasting has been rare, and appears to depend on substantial continuing sponsorship from high definition equipment manufacturers (see chapter 5). If high definition broadcasting of sport is too expensive, and if standard definition broadcasts of sport are more prevalent, then enhanced services will be more readily available. But these costs may also distort the programming choices of Australian broadcasters. Importing high definition productions may be a more viable way of reaching the high definition quota of 20 hours per week than producing local sport in high definition format. Broadcasters may reduce their overall Australian content to the specified minimum as a result (see chapter 11).

The Commission recommends that regulation should not impede the development of new digital television services. The prohibition on commercial multichannelling (subject to review) and the genre restrictions on datacasting should be removed (see chapter 7). Given the importance of sport in broadcasting, it could be expected that, in the absence of such restrictions on multichannelling and datacasting, sport would benefit from the development of such new digital services. Indeed, the availability of enhanced sports broadcasts have been widely seen as major consumer benefits of digital television, and is likely to encourage consumers to take-up digital television. Current policy is likely to disadvantage Australian consumers in obtaining access to sports broadcasting.

Anti-siphoning provisions

The *Broadcasting Services Act 1992* (BSA) empowers the Minister to list certain sporting events that should be televised free to the general public (s. 115). Known as the anti-siphoning list, it covers events in eleven sporting categories. The intent is to prevent the 'siphoning' or migration of these sports to subscription television on an exclusive basis. The BSA states that the objective of the anti-siphoning provision is to ensure that:

> … sporting events of national importance and cultural significance… be received by the public free of charge. This process should ensure, on equity grounds, that Australians continue to have free access to important events. It will, however, also allow subscription television broadcasters to negotiate subsequent rights to

complementary, or more detailed, coverage of events. (BSA, 'Explanatory memorandum)

The anti-siphoning provisions encompass a broad range of sporting events. It includes every one-day cricket match played by the Australian national team, even those matches played against provincial or invitational sides, and all matches in the Australian Open Tennis Championships and other grand slam tennis tournaments (including all men's and women's doubles, mixed doubles, senior and junior matches). All Rugby Union games in the World Cup, the Hong Kong Sevens tournament and test matches involving the Australian national team are also listed. The list includes large amounts of material that is never shown on free to air television.

Box 12.1 **The anti-siphoning list**

Horse racing — the Melbourne Cup

Australian Football League — all AFL Premiership competition matches, including the finals, and each State of Origin match

Rugby League — all NRL Premiership competition matches, including the finals, each State of Origin match and each international Rugby League match involving Australia

Rugby Union — all Rugby World Cup matches, each international Rugby Union test match involving Australia and each match in the Hong Kong Sevens tournament

Cricket — all Australian test matches, each one-day cricket match involving Australia (including World Series Cricket) and each World Cup one-day cricket match

Soccer — each finals match of the National Soccer League's competition, the final of the English FA Cup and each match in the FIFA World Cup tournament

Tennis — each match in the Australian Open, Wimbledon, French Open, US Open, the Hardcourt Championships, the Adidas International Tennis Tournament and the Davis Cup when an Australian team is involved

Netball — each international match involving Australia

Basketball — each match in the Australian National Basketball League playoffs

Golf — each round in the Australian Masters, the Australian Open, the US Masters, the US Open, the US Professional Golf Association Championship and the British Open

Motor Sports — each race in the Formula 1 World Championship (Grand Prix), the Motorcycling World 500cc Motorcycle Championship, the Australian Touring Car Championship, the Bathurst 1000 and the Australian IndyCar Grand Prix

Source: ABA (1999a).

It is a condition of a subscription television licence that the licensee will not acquire the right to televise, on a subscription television broadcast service, an event that is specified on the anti-siphoning list unless:

- a national broadcaster (ABC or SBS) has the right to televise the event on its broadcast service; or
- the television broadcasting service of commercial television licensees who cover more than 50 per cent of the Australian population, has the right to televise the event (BSA, schedule 2, part 6, clause 10 [1][e]).

A subscription television operator wishing to televise an event on the anti-siphoning list must wait to see whether a free to air broadcaster acquires it. If a free to air broadcaster acquires exclusive rights to the event, the subscription broadcaster is excluded altogether from live coverage, unless the free to air broadcaster permits it.

Alternatively, the sporting organisation which owns the rights to an event may have sold only the free to air rights, allowing a subscription broadcaster to acquire its own rights separately. If no free to air broadcaster has acquired the rights to a listed event, a subscription broadcaster can acquire them only if the event is removed from the anti-siphoning list.

Events are automatically delisted one week after the event has occurred. An event can also be delisted at the Minister's discretion, if:

> the national broadcasters and commercial television broadcasting licensees have had a real opportunity to acquire the right to televise an event, but none of them has acquired the right within a reasonable time. (BSA, s. 115 (2))

The Australian Subscription Television and Radio Association claimed this is a 'cumbersome and lengthy process' and can be difficult to resolve in time to allow a scheduled event to be broadcast live by a subscription service (sub. 80, p. 25).

Several inquiry participants criticised the extent of the anti-siphoning list and the procedures for administrating its provisions:

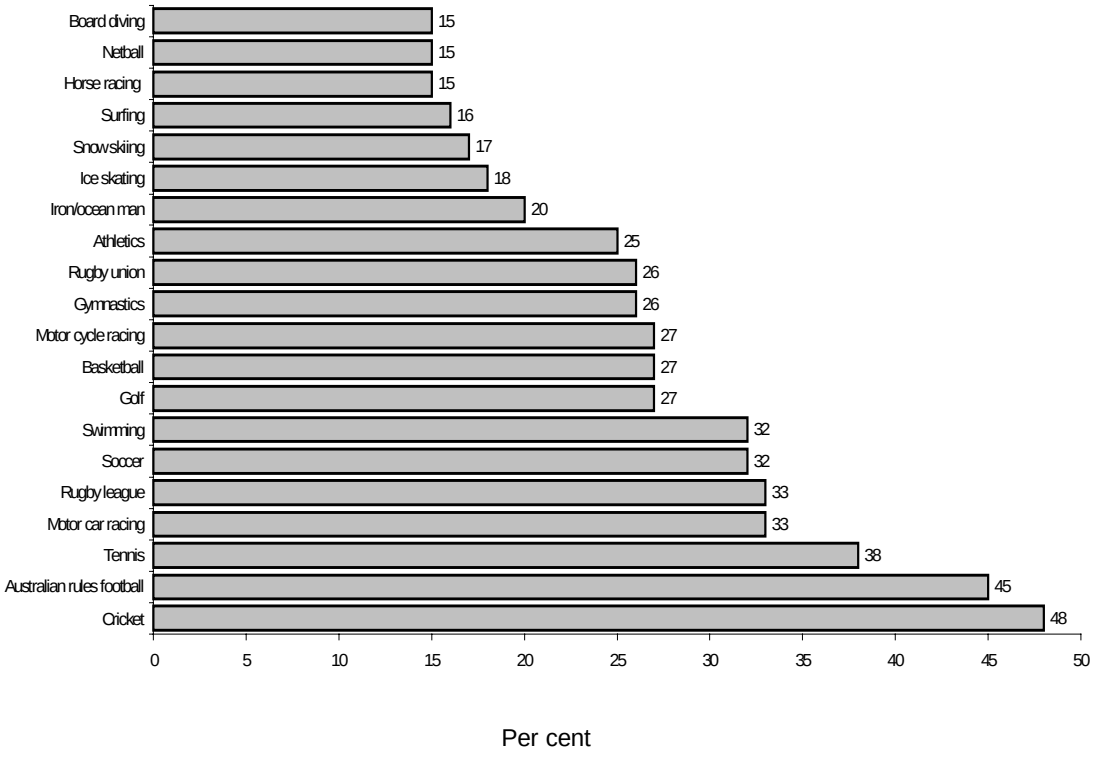
> … the list is too broad. It encompasses 13 separate sports, 31 different categories of sporting and greater than 2400 separate events each of which is protected. (News Limited, sub. 51, attachment 1, p. 2)

And:

> Vast amounts of material on the list are never shown on free to air television, never have been and never will be. Every match at Wimbledon is covered amounting to 90 hours of play per day. The three commercial networks together could not televise this. Similarly, every game of every round of the NRL and AFL competitions is covered. This would require two networks to devote their entire day time weekend schedules to coverage … (ASTRA, sub. 80, p. 11)

The Sweeney Sports Report (1999) raised questions about how the anti-siphoning list has been composed. The report found that popular spectator sports such as swimming, gymnastics and athletics (track and field) are ranked within the top fifteen sports watched on television (figure 12.1), but they are not represented on the anti-siphoning list. Rugby Union and gymnastics were both watched by 26 per cent of those surveyed, yet Rugby Union matches are covered by the anti-siphoning provisions and gymnastics is not. Similarly, swimming and tennis have the highest public participation rates (39 per cent and 24 per cent respectively), yet tennis is included in the anti-siphoning list and swimming is not.

Figure 12.1 Percentage of people who watch each sport on television[a]



a Based on a phone poll of 1500 people, who were asked to specify which of 51 nominated sports they watch on television. Respondents were not asked how often they watched each sport.

Source: Sweeney (1999).

The events on the list may have been selected on the basis of their 'national importance and cultural significance' as outlined by the BSA's 'Explanatory memorandum'. In 1997, International Olympics Committee President Samaranch labelled the Olympic Games as one such event:

> … everybody has the right to see the Olympics without paying. Events like the Olympics should be protected from subscription broadcasting because they are part of a cultural heritage to which viewers have a right. (*Sydney Morning Herald*, 22 February 1997, p. 22)

However, the Olympic Games are not on Australia's anti-siphoning list. The list does not correspond well with the sporting events that are shown on free to air television. The Commonwealth and Olympic Games are extensively televised, but are not listed; in contrast, games in the Rugby Union Hong Kong Sevens tournament are listed, but attract little if any live free to air coverage.

No transparent criteria appear to have been used to determine the listing of an event. The BSA does not specify any listing guidelines, but states:

> The Minister may, by notice in the Gazette, specify an event, or events of a kind, the televising of which, or the live televising of which, should, in the opinion of the Minister, be available free to the general public. (BSA, s. 115(1))

This gives the Minister broad discretion to include events on the anti-siphoning list.

The anti-siphoning provisions do not actively encourage free to air broadcasters to exercise the rights reserved for them. Broadcasters have frequently provided delayed coverage, or televised only a small proportion of an event. A well documented example was when the Nine Network, having bought the rights to the 1997 cricket Ashes series, did not screen the first session of each Test because it clashed with regular prime-time programs. Thus, although the Nine Network's coverage was incomplete, subscription broadcaster Optus Vision was limited to showing the sessions that the Nine Network had 'rejected'. Optus Vision was reported as condemning this arrangement:

> We were forced to babysit Channel Nine's audience for them so as not to interrupt their schedule and then when it suited them to show the other sessions, we were not entitled to show the match live so our viewers then had to switch back to Channel Nine. (*Weekend Australian*, 22 August 1998, p. 14)

International anti-siphoning regulation

The Australian anti-siphoning measures are restrictive compared with those used in other countries. Subscription broadcasters in the United States face no such handicap in their negotiation for broadcasting rights to sporting events. European Union regulations allow member countries to develop their own 'anti-siphoning' lists, which prohibit listed events from being offered to subscription broadcasters exclusively within each country.

The United Kingdom divides its anti-siphoning list into categories that reflect the significance of each group of events. Complete live coverage of 'Group A' events must be offered to both free to air and subscription broadcasters on a non-exclusive basis, unless an exemption is granted. Events in 'Group B' can be shown live on

subscription channels exclusively, so long as there is provision for edited highlights or delayed secondary coverage on the free to air services.

European lists tend to be far more limited than Australia's anti-siphoning list. For tennis, the United Kingdom lists only the final match of Wimbledon as a Group A event, with the rest of the games listed as Group B events, whereas the Australian list includes the entire Wimbledon Championships. Germany's list for soccer nominates only the opening match, semi-finals, finals and games involving the German team in the World Cup, whereas Australia's soccer list covers the whole World Cup tournament, despite the fact that Australia has qualified only once for the event (ITC 2000).

Anti-hoarding provisions

To deal with the problem of free to air networks not televising events for which they had obtained exclusive rights, anti-hoarding provisions were recently added to the BSA. These provisions impose a 'must offer' obligation on the free to air broadcasters and their regular program suppliers who have live broadcasting rights to designated events or series, but who do not intend to provide live television coverage of these events. Free to air commercial broadcasters in this situation have to offer the unused rights to the ABC or SBS for a nominal charge. The ABC and SBS have to offer such rights to each other in similar circumstances.

It can be argued that the anti-hoarding provisions are a product of the depth of the anti-siphoning list. If the list more accurately reflected the sporting events shown by the free to air networks, then the problem of networks 'hoarding' the broadcasting rights to listed events would diminish.

Although the anti-hoarding provisions force the commercial free to air networks to offer broadcasting rights to the ABC and SBS in certain circumstances, they cannot guarantee that the events thus traded will be shown live. The minimum 'offer time' of 30 days before the event makes it difficult to accommodate such events in the programming schedules of the national broadcasters. Accommodating these events at short notice would also be difficult for subscription operators, who generally distribute monthly television guides. Further, as raised by the AFL,:

> … why would the ABC or SBS agree to babysit commercial free to air network viewers through higher rating periods? (AFL, sub. DR240, p. 19)

Impact on broadcasters

The anti-siphoning provisions directly limit competition between free to air and subscription broadcasters — that is, they give the free to air broadcasters a

competitive advantage over the subscription broadcasters. Free to air broadcasters are able to gain exclusive rights to an event whether or not it is on the anti-siphoning list by entering into contracts with the owners of the rights. Subscription television operators can only obtain exclusive rights to a listed event if, in addition to the consent of the rights holder, no free to air broadcaster wishes to acquire the rights and the event is delisted in time for a contract to be negotiated.

The anti-siphoning restriction on sports coverage reduces the ability of subscription television to compete with free to air broadcasters for audience share and creates delays and difficulties in the programming and promoting of events for broadcasters seeking to have an event 'delisted' (ASTRA, sub. 80, p. 25). Fox Sports described the situation as:

> … a fairly long-winded process in that we have to show the ABA and the minister's office that everyone has had a fair and reasonable opportunity to acquire the rights, so we had to create a paper trail that's a mile long. They won't assess it until such time as they have got paperwork from each of the free to air operators. The free to air operators … are pretty mindful of that fact, and can delay the process for some time, so it actually takes two to three months to do it. (Fox Sports, trans., p. 1393)

To avoid the delays of having an event delisted, Fox Sports claimed it is sometimes best to persuade free to air networks to buy broadcasting rights to an event they do not intend showing live or in its entirety, so the subscription operator can then show it themselves. In the past, this has led Fox Sports to:

> … tip in more into the delivery of a particular event to try and ensure that they have the rights because they [the free to air networks] won't take them in any other way. (Fox Sports, trans., pp. 1393–4)

Overseas experience indicates that exclusive coverage of popular sports events is a prime incentive for people to subscribe to subscription television. In Australia, the anti-siphoning rules prevent subscription broadcasters from using exclusive sports coverage to attract subscribers:

> Without the anti-siphoning rules, there is no doubt that many major sporting events would migrate to pay television: major live sport is regarded as an important subscription driver, so pay television operators are prepared to pay extremely high prices for it as a 'loss leader'. (FACTS, sub. 49, p. 36)

Impact on sporting organisations

The anti-siphoning provisions reduce competition in the negotiation of rights to listed events, affecting the price and nature of broadcast rights. Sporting bodies selling these rights are obliged to deal first with the free to air broadcasters, who then negotiate with subscription television operators. Given that subscription content providers are prevented from competing in an already limited market, this

reduction in competition is substantial. The provisions reinforce the market power of the small number of free to air broadcasters when they deal with event organisers for broadcast rights inhibiting competition and reducing the potential benefits to these sporting bodies of exclusive rights.

The AFL claimed that their inability to negotiate a package of rights for each of subscription and free to air television constrained the total revenue they received from broadcasting rights:

> The AFL could reasonably expect to derive additional revenue from the sale of rights to more matches on both free to air television and pay television if the current anti-siphoning provisions were abolished. (sub. DR240, p. 20)

Exclusive coverage of a listed sporting event gives the broadcaster market power in television access to that event. The AFL claimed the free to air networks, rather than the sporting organisation, gain the increased revenues from these exclusive rights.

This restricted market has led to suspicions of collusive arrangements between commercial networks. The AFL contends it suffered from a 'keep off the grass' agreement between commercial networks during the 1980s that caused them to sell their broadcast rights for the 1987 season to Broadcom for a reduced sum (trans., p. 1583). The anti-siphoning rules exacerbate the scope for oligopolistic behaviour, particularly collusion (tacit or explicit) which also acts to lessen the amount received for broadcast rights.

The anti-siphoning rules can act to restrict the level of exposure that listed sports receive, affecting the sporting organisation's endeavours to promote that sport. One illustration is the coverage of AFL games in the developing markets of New South Wales and Queensland. Matches involving those States' teams rate well enough to command prime time free to air broadcasts consistently in these States, but at times, the Seven Network has provided delayed, late night coverage instead.

The AFL would like to increase its exposure and sponsorship revenue by having these matches broadcast live in Sydney and Brisbane in prime time. Subscription television or multichannelling could accommodate this. While multichannelling is prohibited (at least until 2005), subscription coverage of AFL games might:

> … build the following for AFL in these markets and assist the AFL to develop a product which might eventually migrate to free to air television, as the market matures. (AFL, sub. DR240, p. 21)

The multiple channels of subscription operators gives these broadcasters greater flexibility than free to air broadcasters in telecasting sport. But rights holders of listed sports events are prohibited from offering any rights to subscription television

operators unless a free to air network also has the rights and does not preclude pay television coverage, or unless the event is delisted.

Fox Sports claimed that the time and effort required to acquire the rights to broadcast of listed sporting events that are not wanted by free to air networks has previously deterred them from covering netball:

> … we had an occasion to actually want to purchase the rights to a netball event but didn't do so on the basis that it came up right at the last minute and we knew there'd be no chance of getting a free to air operator or to get it delisted in that short time. (Fox Sports, trans., p. 1396)

Athletics Australia is not subject to the anti-siphoning limitations when negotiating broadcast rights, and can consequently divide coverage packages between free to air and subscription broadcasters. They believe this arrangement is suitable because:

> … there are two distinct audiences for our sport — one audience is serviced by subscription TV, the other is serviced by free to air TV, and market forces have assisted this sport achieve more total hours of TV coverage (subscription and free to air), wider TV coverage and greater revenue from the sale of TV rights. (Athletics Australia, sub. DR288, p. 2)

Overseas experiences indicate that the high 'exclusivity' premium that subscription operators may be willing to pay for exclusive broadcast rights can allow organisations to improve their sport. In the case of British Premier League soccer, shown exclusively on subscription service BSkyB, it has been reported that:

> BSkyB's money has helped spur a revival in English football. Old stadiums have been refurbished; attendance has climbed; big-name foreign stars now add glamour to the game. (*Newsweek*, 21 September, 1998)

If sporting associations (whose events are listed) decide that the extra money from an exclusive deal with a subscription broadcaster would be of net benefit to their sport, then the anti-siphoning rules prohibit them from reaching such an agreement.

Effect on sports broadcasting

The AFL pointed out that the current legislation has allowed the free to air channels to 'cherry pick' from the sport programs available in Australia and overseas 'and still retain control over the whole orchard' (sub. DR240, p.18). This occurs because the anti-siphoning provisions enable the free to air networks to purchase both free to air and pay television rights to a sporting event. Although sporting organisations can insert clauses into their contracts with these broadcasters, there is no obligation for free to air networks to on-sell to subscription operators the broadcast rights for the matches or events that they choose not to show. Thus, viewer access to major sporting events is restricted to those events that the free to air broadcasters are

willing to televise. The limited programming time available on free to air services means many events captured by the list may not be shown in full or at all:

> The unavoidable result of the current legislation is less sport on television than would be the case if pay television could compete fairly with free to air for television rights. (ASTRA, sub. 80, p. 25)

The AFL agreed that the consequence of the anti-siphoning rules is less sport on television:

> … many AFL matches are scheduled concurrently, with the result that live coverage is denied in the case of a match or matches other than the one chosen by the free to air broadcaster. (AFL, sub DR240, p. 20)

The anti-siphoning mechanism is likely to distort the relative prices of broadcast rights to listed and non-listed events. Free to air networks face limited competition when bidding for rights to listed events, with subscription operators excluded from negotiations. Thus prices for these rights could be less than those for non-listed events, where both types of broadcasters bid competitively; that is, the price of listed events relative to non-listed events is reduced.

12.4 Is migration a problem?

In the absence of the anti-siphoning rules, would consumer access to sport broadcasts be restricted excessively through 'migration' from free to air to subscription television? In addressing this question, it is relevant to evaluate the effect of subscription television on sport coverage both domestically and overseas, particularly in cases of migration.

United Kingdom experience

The United Kingdom's narrower, non-exclusive list has allowed certain sports to migrate to subscription television. The best known case is the Premier League soccer. Pay operator BSkyB secured exclusive rights to cover that competition in 1992, and has since retained them. Viewers have a choice of watching live games and extensive coverage on subscription television, or highlight packages on free to air television. The exception is the FA Cup Final, which is listed as a 'Group A' event, and therefore is simultaneously broadcast on both BSkyB and a free to air network.

The experiences of Premier League soccer and Rugby Union in the United Kingdom demonstrate how pay television companies can use exclusive sport coverage to drive up subscriber numbers. BSkyB network subscriptions more than

tripled after the company bought the rights to Premier League games *(Los Angeles Times*, 10 September 1999). Further, the soccer and rugby experiences highlight the strategies these operators are willing to implement to control sporting rights. BSkyB signed several prominent First Division soccer clubs to a 'rebel' league in 1991, then negotiated with the Football Association to create the Premier League, with BSkyB gaining the exclusive rights to that competition. At the time, the financial state of many of the clubs in the First Division did not reflect the popularity of their product. BSkyB persuaded more profitable clubs in the competition to join an elite, restructured league. It also signed a unilateral 10-year deal with the Rugby Football Union in 1996, fracturing traditional relations between England and other members of the Five Nations Championships and causing England to be expelled temporarily from the championships.

These developments in English soccer and rugby illustrate that some degree of migration is a likely outcome when subscription television companies can penetrate the ownership and administration ranks of sport organisations.

United States experience

An extensive investigation by the Federal Communication Commission in 1994 revealed that no significant migration of sporting events from free to air to subscription broadcasting was apparent in the United States. This occurred in the absence of any anti-siphoning measures comparable in scope to those in Australia or even the United Kingdom.

The Federal Communication Commission found that competition between the various types of broadcasters directly expanded the amount of sport on television. Moreover, the coverage on subscription channels was generally supplementary to that provided by free to air networks. Importantly, it found:

> … the marquee events, such as the Super Bowl, the World Series, the NBA Championships and the NCAA basketball championships remain on [free to air] broadcast television. (FCC 1994)

Several different factors drove the increase in the total quantity of sport broadcasts in the United States. One was the willingness of sporting organisations to organise games explicitly for pay television coverage, beyond those normally televised on free to air networks. The Major League Baseball created Sunday night baseball specifically for subscription television, so free to air baseball broadcasts did not decrease as a result of this coverage. Similarly, subscription broadcasters are showing 'home' games live by in the host city, where previously the games had not been televised at all in order to protect gate attendances.

The importance of sport content and the willingness of networks to retain it have contributed to the growth of televised sport. When CBS lost the broadcasting rights for the National Football Conference to free to air rival Fox in 1994, it responded by purchasing the rights to telecast college football games on a national basis. Also, when Major League Baseball granted pay operator ESPN some exclusivity to Wednesday night games, free to air broadcasters reacted by televising more games on other week days to make up for the games no longer available. This led the Federal Communication Commission to consider 'the ESPN contract an addition to output rather than an example of migration or preclusive contracting' (FCC 1994).

Sporting organisations have had a central role in ensuring the retention of free to air coverage of their product. Broadcasting arrangements for both the National Football League and Major League Baseball suggest that the leagues seek to maximise their revenues without compromising exposure by migrating to subscription television.

Some sports were able to use exposure on pay television as a means of generating sufficient interest to receive free to air coverage. Ice hockey and college basketball both attracted free to air coverage after gaining popularity through exposure on pay television. The Federal Communication Commission (1994) described the National Hockey League as 'a case of reverse migration at the national level'.

Australian experience

Television coverage of listed sporting events has not migrated to subscription television in Australia. The anti-siphoning rules guarantee that any coverage of listed events by subscription operators either is supplementary to free to air coverage or occurs because the free to air networks have chosen not to show it. Two recent examples from cricket are the 1999 World Cup and the 1999 Australian tour of the West Indies. In the World Cup, the Nine Network chose to televise only games featuring the Australian team, while Foxtel televised as many games as was possible, with the Australian team's games on slight delay. No free to air network opted to televise the Australian tour of the West Indies, which allowed Foxtel to exclusively televise that event.

The creation of Super League in 1995 was an attempt by subscription operators to gain greater access to Rugby League broadcast rights than was possible under the anti-siphoning rules. News Limited, in a manner that draws close comparison to BSkyB's involvement in Premier League soccer, contracted assorted Australian Rugby League players and clubs to compete in its Super League. In the National Rugby League, a merged entity of the Australian Rugby League and Super League, News Limited's 50 per cent ownership ensures Foxtel has less inhibited access to games. As a result, in 1999 Foxtel televised six live games a week, as well as

replays of the two games that the Nine Network selected to televise (Fox Sports, trans., pp. 1397-98). In 1994, prior to the Super League split, Foxtel did not show any live matches.

The Super League and Premier League experiences indicate that subscription operators search for coverage of dominant sports to boost subscriptions for their pay television service. This pursuit can entail buying interests in these sports. In such instances, the allocation of rights to sporting events can be skewed toward subscription television. In the absence of the anti-siphoning rules, activity of this nature may result in migration in Australian sports broadcasting.

Not all sporting events traditionally shown on free to air networks are contenders for migration to subscription television. For those events not perceived as subscription 'drivers', coverage on pay television can complement that provided free to viewers. The only horse racing event included in the anti-siphoning list is the Melbourne Cup, but free to air networks broadcast both the Melbourne Spring and Sydney Autumn carnivals in their entirety. Pay television channel Sky Racing, which usually televises national racing events on a daily basis, has been prevented from televising selected races live, due to exclusivity contracts between racing clubs and the free to air networks. Racing clubs seek the high exposure offered by free to air broadcasters; subscription television suits viewers willing to pay for access to more extensive racing coverage.

Non-exclusive rights

In its draft report, the Commission was inclined to recommend that major sporting events have 'non exclusive' broadcast rights. That is, neither free to air nor subscription broadcasters, for example, would be able to enter into contracts that excluded the other from acquiring broadcasting rights. Rights holders for sports events would then be able to deal with both free to air and subscription television networks equally.

PBL regards exclusive rights to sport broadcasts as essential, stating that:

> … the ability for free television to write ad revenue against the telecast of an event depends on having exclusive access to that event. (PBL, trans., p. 324)

Consequently, PBL claims that a non-exclusive regime would lead to an overall decline in its coverage of major sporting events. It argues that viewers will watch subscription rather than free to air coverage of corresponding events, given the lower advertising content, and that this would:

> … undermine the viability of the telecast by the free to air operator, who can't afford therefore to telecast the event and will end up not telecasting the event. (PBL, trans., p. 324)

Subscription broadcasters have subscription revenue as well as advertising revenue streams; their decision to broadcast events is not as sensitive to advertisers' evaluations of audience numbers and composition as is the decisionmaking of free to air broadcasters. PBL argues that non-exclusive rights would lead to a migration of sporting events to subscription television.

Several listed events are already telecast simultaneously. Recent examples include the FA Cup Final, World Cup Cricket, World Cup Rugby and various Rugby League matches, including the NRL Grand Final. However, it has not been suggested that subscription coverage of these events has endangered their viability on free to air television. Experiences in the United States also demonstrate that simultaneous coverage of an event by subscription television has not led free to air networks to abandon their coverage. In any case, the lower fee for broadcast rights to a non-exclusive event would allow the free to air networks to cover costs with less advertising revenue.

But those events that have been broadcast simultaneously are undoubtedly among the most popular, and guaranteed to draw viable audiences despite being non-exclusive to free to air networks. Considering this, PBL's statement on the necessity of exclusive rights to sporting events may hold true for those events not significant enough to capture a viable free to air audience when simultaneously televised on subscription television.

Web television broadcasters are not prohibited from obtaining exclusive broadcast rights to listed events under the anti-siphoning provisions. If that medium develops into a capable platform for such content, and Web television broadcasters are deemed not to be commercial television broadcasters, then the anti-siphoning rules will be ineffective in preventing migration to online broadcasters.

Cable and Wireless Optus expressed concern that a non-exclusive anti-siphoning list may discriminate against subscription operators in favour of Internet broadcasters:

> If this approach is adopted it could also be extended to Internet and online content producers and datacasters, if this were within the definition of datacasting. In other words, we … would, as a second preference, like to see this extended to new forms of media so that each type of right can be sold separately so that online content provider doesn't itself obtain exclusive rights to the sports events. (Cable and Wireless Optus, trans., p. 1437)

12.5 Conclusion and recommendations

The success of many sports is now closely linked to public exposure through broadcasting. Broadcasting promotes sport, benefiting both players and audiences. Funding of infrastructure, competitions, training and players of many sports all depend on a sport's ability to sell broadcasting rights and the often related rights to marketing and merchandising. But to make themselves attractive to broadcasters, sports associations have had to change many aspects of their competitions and to develop their commercial acumen. Otherwise, they could be weak negotiators with content-hungry networks, both free to air and subscription.

The anti-siphoning rules were born out of fear that events of major public interest would be lost to free to air television. Information presented in this chapter suggests such fear may be overstated for most sports. Commercial judgement and the sporting bodies' interests in maintaining a mass audience and interest in their sports are likely to prevent migration of the major events as long as pay television's market penetration is limited. In Australia, a number of non-listed high profile sporting events are still shown on free to air in preference to pay television. Despite the high penetration of pay television in the United States, the main sporting events are still shown on free to air television without any list.

The anti-siphoning rules cannot prevent a sporting body or players from dealing with subscription television if they are so minded, as the Rugby League has shown. Neither do they ensure the events on the list are actually broadcast by the free to air stations. They could even have the perverse effect of reducing broadcasting of listed competitions by preventing subscription television from broadcasting them. Further, they do nothing to facilitate the broadcast of sports that are not on the list.

Left alone, sporting organisations are likely to use a combination of exclusive and non-exclusive rights with a variety of broadcasting platforms. Experience in unregulated sporting markets in both Australia and the United States shows that the major events tend to be reserved for exclusive deals on free to air television,

because that is where the largest audience and the greatest advertising revenue will be. This is supplemented by subscription television, radio and Internet coverage of events of lesser status. As the AFL said:

> It is the mass market objective of the AFL, and the imperatives which drive it, that will ensure far more effectively than the anti-siphoning provisions, that AFL football will be viewed by as many Australians as possible. (AFL, sub DR240, p. 22)

The anti-siphoning provisions also restrict competition for broadcasting rights, reducing returns to sporting bodies and to the community participating in these sports, to the benefit of the free to air broadcasters.

The Commission finds that the anti-siphoning rules are anti-competitive and that the costs of the current scheme to sporting organisations, the broadcasting industry and the community as a whole, exceed their benefits. These anti-competitive effects will be even greater if the free to air stations are to be allowed to multichannel on digital television, as recommended in this report. As currently constituted, the anti-siphoning provisions of the BSA contravene the Competition Principles Agreement.

However, UK experience shows there is a risk of migration to pay television of some events of cultural or social significance, particularly as subscription services seek to build their market shares. The Commission has therefore concluded that some regulation is justified to prevent this migration, providing the costs can be kept in line with the benefits.

It is important to minimise the anti-competitive effects of anti-siphoning regulation and to promote consumer choice. In the Commission's judgement, the most effective approach is to require that broadcasting rights to listed events should not be granted exclusively to a particular media form (that is, to free to air, subscription television, radio or the Internet). This would not prevent broadcasters acquiring rights that excluded other broadcasters in the same form of broadcasting; events not on the list could continue to be acquired on an exclusive basis.

RECOMMENDATION 12.1

Broadcasters in one form of broadcasting should not be allowed to acquire the broadcast rights of sporting events of major national significance to the exclusion of those in other forms of broadcasting.

Subject to Recommendation 12.1, the anti-siphoning list should be tightly restricted to events of high social or cultural significance. This should be determined by the application of strict criteria relating to the event's significance, Australian location or participation and high ratings. The current list is quite arbitrary; many of the listed competitions and events would not meet such criteria, and some that may meet the criteria (such as the Olympic Games) are not listed. In any case, this non-

exclusive list must be restricted to the most major events; evidence presented to the Commission suggests that free to air coverage of some less significant sporting events may not be viable if the rights are non-exclusive.

RECOMMENDATION 12.2

Criteria for a new and much shorter anti-siphoning list should include:

- ***demonstrated national significance, such as Australian involvement;***
- ***events that have been consistently broadcast by free to air television stations in the past five years; and***
- ***events that have received a high level of viewing by Australian audiences, as determined by ratings.***

The administrative procedures for the anti-siphoning provisions should also be streamlined to speed up processes and improve transparency and accountability. The extent of Ministerial discretion and involvement in administering the list is anomalous and out of step with current trends in public administration. The Commission considers that responsibility for administration of the anti-siphoning list, including review of the list according to the new criteria, should be transferred to the ABA.

RECOMMENDATION 12.3

Responsibility for administration of the anti-siphoning provisions should be transferred from the Minister to the ABA and procedures should be streamlined to reduce the time taken for decisions and to improve their certainty and transparency.

13 Codes, conditions and compliance

The content and conduct of the broadcast media are more stringently regulated than print or online publications. The rationale for regulation lies in the degree of influence that broadcast media may exercise in political, commercial, cultural and social life. Governments attempt to both promote 'beneficial' types of media content (see chapter 11) and control harmful media content or content that offends community standards. This chapter examines the regulatory framework developed to control 'negative' broadcasting content.

13.1 Managing the influence of broadcasters

The perceived power of broadcasting to influence the community has long underpinned broadcasting regulation. Several objectives of the *Broadcasting Services Act 1992* (BSA) relating to managing the influence of broadcasters encourage them to be responsive to the need for a fair and accurate coverage of matters of public interest (s. 3[g]), and to respect community standards in the provision of program material (s. 3[h]). Related objectives include encouraging the provision of means for addressing complaints about broadcasting services (s. 3[i]), and ensuring providers of broadcasting services place a high priority on the protection of children from exposure to program material that may harm them (s. 3[j]).

Broadcast media are believed to be influential as a result of their potential to set agendas, promote sectional interests and shape public views, behaviour and opinions (see, for example, Jacka and Johnson, in Smith 1998, p. 209). The Key Centre for Ethics, Law, Justice and Governance stated:

> … any discussion of media regulation and reform should recognise the critical role of the media in the formation of public opinion on political, economic, social and cultural issues. While most media organisations are commercial operators within the market, they are also critical to the functioning of our democracy and our culture. (sub. DR237, p. 1)

The perceived influence of broadcast media has shaped the regulatory framework in various ways. Government responses have included regulation of program content, the adoption of classification systems that incorporate community standards, mandatory programming (such as Australian and children's content) and the

development of complaints mechanisms and industry codes of practice. Concern over the political influence of the media is reflected in legislation designed to ensure fair and accurate reporting, diversity of ownership and opinion, and political coverage.

The BSA explicitly includes 'principles of regulation'. These principles state that regulation should be linked to the degree of influence of each form of media in shaping community views. Under the BSA, free to air television is presumed to have the most influence and thus attracts most regulation.

Despite widespread agreement that the main media are influential, there is also broad recognition of how difficult it is to define and measure influence. Uncertainty surrounds the nature and extent of media influence. The Australian Key Centre for Cultural and Media Policy stated:

> 'Influence' … is an historically central and necessary term in media law and policy, but is rarely interrogated and there is increasing pressure to justify its relevance. (sub. 254, p. 15)

There is little agreement on the relative degree of influence of different media. Telstra argued that free to air television is far more influential than subscription television, datacasting, online services and interactive games. It suggested that:

> … in the case of [free to air] we can see that with the highest audience level, so few providers (limited by legislation), and no customer control over content that the influence of the service is a lot greater than for the other services. (sub. 145, p. 4)

Other inquiry participants argued that other media have equivalent or greater influence. The Australian Key Centre for Cultural and Media Policy stated that print media exercise influence out of proportion to their readership because they form the political agenda, and that radio is at least as influential as television in influencing opinion (sub. DR254, pp. 16, 17). Cable and Wireless Optus argued that the regulatory focus on traditional media has overlooked the influence of 'new media', particularly online services (sub. DR216, p. 13).

The Commission considers that further research should be undertaken into the relative influence of different media on setting agendas, promoting sectional interests, and shaping public views, behaviour and opinions. The Australian Broadcasting Authority (ABA) has an established role as a principal source of expert advice and information on broadcasting and related issues, and is the appropriate body to undertake or commission such research.

The Commission notes that the ABA is considering a research project into one aspect of 'influence' — the production and distribution of news and current affairs and ownership of the industry. It intends that the results will, among other

outcomes, 'contribute to and inform future assessments of the notion of influence' (ABA, Sydney, pers. comm., 24 February 2000; sub. DR226, p. 18).

RECOMMENDATION 13.1

The ABA should undertake or commission research into the influence of the various forms of media on Australian society.

13.2 Promoting freedom of expression

The objectives of the BSA include encouraging broadcasters to respect community standards in the provision of program material (s. 3[h]). This requires the determination of the prevailing 'community standard'. However, the notion of a community standard is somewhat arbitrary, and attempting to define it can lead to significant tensions.

Different sectors of the community have different standards. The Reformed Churches of Australia — Classis WA, for example, stated that 'The ABA has constantly rejected our complaints because we don't fit in with community standards' (sub. DR210, p. 2). In addition, standards may change over time; for example, the Festival of Light (South Australia) argued that broadcasters condition audiences over time to accept what was formerly unacceptable (sub. DR236, p. 5).

Given that establishing a 'community standard' is arbitrary, a consideration of the benefits of freedom of expression should balance the desire to manage the influence of broadcasting. Controlling the potentially harmful consequences of media influence must be weighed against the benefits of independent and open media in a democratic society.

The High Court has recognised the importance of freedom of expression having found and refined an implied constitutional guarantee, 'freedom of communication and discussion', concerning all aspects of government (*Nationwide News v Wills* (1992) 177 CLR 1 and *Lange v ABC* (1997) 189 CLR, p. 520).

In its draft report, the Commission recommended adding an additional objective promoting freedom of expression to the existing objectives in the BSA. Some inquiry participants, such as the Presbyterian Women's Association of Australia in NSW (sub. DR195, p. 3), the Reformed Churches of Australia — Classis WA (sub. DR210, p. 1), the National Viewers and Listeners Association of Australia (sub. DR250, p. 2), the Festival of Light (South Australia) (sub. DR236, p. 2) and Christina Spurgeon (sub. DR256, p. 7) did not support the addition of such an objective to the BSA. They were concerned that if such an objective amounted to a

'guarantee' of freedom of expression, it could have the unanticipated effect of strengthening the 'rights' of commercial interests of broadcasters and advertisers at the expense of the interests of consumers and other users of these services.

However, other inquiry participants, such as the Federation of Australian Radio Broadcasters (sub. DR266, p. 8), the Communications Law Centre (sub. DR244, p. 1), Dr Paul Jones (sub. DR211, p. 1) and the Aboriginal and Torres Strait Islander Commission (trans., p. 1625) strongly supported the inclusion of such an objective. The Media Entertainment and Arts Alliance, for example, believed it would provide 'a clear declaration of an important public policy' (sub. DR219, p. 21).

As new media proliferate and media organisations converge with other businesses, regulatory restrictions on 'freedom of expression' will have an increasingly important place in media law. The benefits of independent and open media in a democratic society, and the importance of the flow of information, ideas and debate should be recognised among the general objectives of the BSA.

The ABA argued that the current objectives of the Act and the various codes of practice already have the effect of promoting freedom of expression (sub. DR226, p. 31). If this is the case, the addition of the objective could make a valuable statement of policy validating this effect. This does not imply a 'guarantee' of freedom of expression, or that freedom of expression should override the other objectives of the BSA; as now, there will be a balance between competing objectives.

RECOMMENDATION 13.2

A further objective 'to promote freedom of expression' should be added to the objectives in s. 3 of the BSA.

13.3 The BSA and co-regulation

The BSA represented a conscious attempt to implement good regulatory practice and was a major step towards a more market based, less interventionist approach to broadcasting regulation. Its drafters attempted to apply most of the regulatory principles set out in chapter 1, but the timing of the Act (enacted in 1992) meant that it predated many of the reforms in competition principles that have informed more recent regulatory practice. (The Hilmer committee of inquiry into national competition policy reported in 1993.) Several aspects of the original BSA restrict competition, and subsequent amendments have also had anti-competitive effects.

Nevertheless, the Act represented a significant change in emphasis for the regulation of broadcasting. The previous *Broadcasting Act 1942* imposed a closely prescriptive approach, with an active 'hands on' regulator (the Australian Broadcasting Tribunal). Those who drafted the 1992 Act aimed to reduce the role of regulation substantially. The then Minister stated in the Second Reading Speech for the Broadcasting Services Bill:

> While this means that there must continue to be obligations placed on broadcasters, the Bill has nonetheless been developed in the context of the Government's broader micro-economic reform agenda. Every effort has been made to avoid unnecessary regulation. (Senate 1992, pp. 3599–600)

The role of the ABA was intended to be less interventionist than that of its predecessor, the Australian Broadcasting Tribunal, and it was given wide discretion in the use of its functions and powers. The explanatory memorandum to the legislation says the Act:

> … promotes the ABA's role as an oversighting body … rather than as an interventionist agency hampered by rigid, detailed statutory procedures and formalities and legalism, as has been the experience with the [Australian Broadcasting Tribunal]. It is intended that the ABA monitor the broadcasting industry's performance against clear, established rules, intervene only when it has real cause for concern, and has effective redressive powers to act to correct breaches.

The term 'co-regulation' implies that industry develops and administers its own arrangements, while the Government provides legislative backing for enforcement. The BSA is described as a 'co-regulatory' scheme, but in practice it creates a multi-tiered structure. Direct legislative controls apply to some areas (for example, the number of commercial television licences, rules about ownership and control, anti-siphoning provisions and tobacco advertising restrictions), while ABA developed standards govern Australian content and children's television standards, and industry developed codes of practice cover other areas. The different regulatory instruments have different compliance mechanisms and different consequences for breaches.

The industry enthusiastically supports the current co-regulatory structure. The Federation of Australian Commercial Television Stations, for example, stated:

> FACTS has strongly supported industry self-regulation since the Broadcasting Services Act made it a practical and preferred alternative to detailed regulation of a regulatory body. (sub. DR231, p. 13)

However, a regulatory regime is justified only if it achieves its objectives. Therefore, it is important to assess whether the current arrangements are achieving their objectives, and to determine whether they can be improved.

13.4 Broadcasting codes of practice

The BSA (s. 123[2]) gives the ABA powers to develop standards or to register codes of practice developed by industry for the following matters:

- preventing the broadcasting of programs that, in accordance with community standards, are not suitable for that section of the industry to broadcast;
- ensuring that the protection of children from exposure to potentially harmful program material is a high priority;
- promoting accuracy and fairness in news and current affairs programs; and
- providing methods for handling complaints.

In practice, the ABA has developed standards only where mandated by the Act (the Australian Content for Television and Children's Television Standards), and relies on industry developed codes of practice for all other 'matters'. All codes on the Register of Codes of Practice deal with these matters, although in slightly different ways, as appropriate for the type of broadcasting service concerned (ABA, sub. 45, p. 22).

The Act and the codes of practice also include specific rules relating to the amount, content and placement of broadcast advertising. In addition, the BSA's definition of a 'program' includes advertising or sponsorship matter, whether or not of a commercial kind, so program standards and codes may relate to all kinds of broadcast advertising.

The explanatory memorandum to the BSA states that 'a rationale underpinning the codes of practice provisions is that inappropriate regulation can bring with it significant economic costs through efficiency and productivity losses. There can also be social costs as formal regulation can deprive industry of the opportunity to devise a flexible and responsive approach meeting the demands of the community'. Some inquiry participants' comments about the flexibility and efficiency of the codes system are summarised in box 13.1.

Although industry groups develop codes of practice, the ABA plays an active role in the development of codes, and also a role in monitoring and enforcing the codes once they are registered. The ABA will register a code of practice only if it is satisfied that the code provides appropriate community safeguards; a majority of the service providers of that industry sector endorse it; and members of the public have had adequate opportunity to comment on the code (BSA, s. 123[4]).

Box 13.1 **Benefits of broadcasting co-regulation**

The ABA recognises the flexibility of the codes system, and states that the codes allow for the different degrees of influence of different services:

> There are differences between the regulatory codes developed for the different types of services. These reflect, in part, their different levels of influence on the community. As industry groups have developed codes, they have borne in mind the role of their members in their respective broadcasting sectors. (sub. 45, p. 20)

Although the ABA does not generally run on the basis of cost recovery, it stated that one reason a co-regulatory framework was introduced was to place part of the cost of regulation on the industry:

> Making industry largely responsible for regulation was intended to ensure that industry manages the costs of the co-regulatory scheme. As far as the ABA is aware, industry has not identified problems with compliance costs. (sub. 45, p. 20)

The Federation of Australian Commercial Television Stations stated that the efficiency and simplicity of the code of practice process made up for the cost to the industry, estimated at approximately $3 million annually:

> … it is more efficient, simple and direct than any regulatory alternative. We believe that it operates in the interests of the public and the industry. … the Code of Practice approach is more effective and efficient than direct regulation in achieving public interest objectives, in terms of flexibility, responsiveness to community views, transparency and ease of use by stations and viewers alike. (sub. 49, p. 39)

Sources: ABA (sub. 45); FACTS (sub. 49).

The registered codes of practice are listed in box 13.2. The national broadcasters — the Australian Broadcasting Corporation (ABC) and Special Broadcasting Service (SBS) — are required under their respective Acts to develop their own codes of practice and to notify the ABA of them. The ABA has no formal role in the development of these codes, but is involved in responding to complaints about the ABC or SBS.

The ABA's monitoring of code compliance tends to be limited to collecting information from broadcasters about complaints, investigating those complaints that broadcasters have failed to deal with satisfactorily, and surveying community attitudes on issues about programs. Enforcement mechanisms provided for under the Act are designed to deal with recurring breaches of the codes rather than individual breaches, and have seldom, if ever, been employed. In this sense, the current system of codes is closer to self-regulation than co-regulation. The industry undertakes limited monitoring of its codes but has few disciplinary powers. One disciplinary option is the expulsion of offending broadcasters from the industry association. This has reportedly been proposed for one radio station following the ABA Commercial Radio Inquiry (*Sydney Morning Herald*, 10 February 2000, p. 3).

Under the Commercial Television Industry Code of Practice, the Federation of Australian Commercial Television Stations compiles a quarterly summary of complaints received by its members and forwards it to the ABA.

Box 13.2 **Codes of practice registered with the ABA**

The following codes of practice had been registered or notified:

- the Commercial Television Industry Code of Practice;
- the Commercial Radio Code of Practice;
- the Community Broadcasting Code of Practice;
- the Subscription Television Broadcasting Code of Practice;
- the Subscription Television Narrowcasting Code of Practice;
- the Subscription Radio Narrowcasting Code of Practice;
- the Open Narrowcasting Television Code of Practice;
- the Open Narrowcasting Radio Code of Practice;
- the ABC Code of Practice;
- the SBS Code of Practice; and
- the Internet Industry Association Content Regulation Codes of Practice (covering both Internet service providers and Internet content hosts).

Sources: ABA (sub. 45, p. 23); ABA (1999).

Codes and standards

Broadcasting regulation of 'harmful' content is primarily based on a two-tiered structure of standards (conditions on broadcasters' licences) and codes of practice. Industry develops the codes of practice, and individual broadcasters are largely responsible for their implementation (with ABA oversight). The Australian Subscription Television and Radio Association, for example, stated:

> The BSA sets out a hierarchy of matters in relation to a broadcaster's licence. Some matters are 'not negotiable' and these are listed as conditions of licence, and others, while important, are deemed to be matters that in the first instance should be a matter for the broadcaster to resolve; these are the matters to be covered by codes of practice. (sub. DR255, p. 13)

Many inquiry participants expressed concern that these self-regulatory arrangements are ineffective. Dorothy Wentworth-Walsh, editor of the Onlooker Investigative Newsletter, stated:

> … the ABA [is] long overdue for a complete overhaul, if not disbanding. Its present ethos of … the broadcasting industry [being] self-governing is a nonsense. (sub. DR246, p. 2)

The Festival of Light (South Australia) also stated:

> … there is growing objective evidence that 'co-regulation' … this term really means 'self-regulation' … is akin to putting dracula in charge of the bloodbank … or putting a rabbit in charge of a lettuce. (sub. DR236, p. 3)

In the draft report, the Commission suggested that concerns about the degree of self-regulation could be addressed by making the codes of practice conditions of broadcasters' licences. This would give the ABA greater powers to deal with breaches of the codes (see section 13.8). Industry associations responded with concern that any changes to the current regulatory structure, particularly in relation to the enforcability of codes of practice, would be tantamount to abandoning the principle of co-regulation. The Australian Subscription Television and Radio Association, for example, stated:

> Of particular concern is the draft recommendation that relevant codes of practice, once registered, automatically become conditions of a broadcaster's licence. Such a recommendation seems to negate the policy of 'self-regulation' as provided by the BSA … (sub. DR255, pp. 12–13)

The Federation of Australian Commercial Television Stations argued that broadcasters would not support the current codes if they were enforceable:

> If stations faced the severe penalties the Commission proposes, they would not continue to support a wide-ranging, broadly expressed code of practice of the kind the industry now has. They would insist on a narrow, legally-drafted Code — a 'black letter' document. We would, in short, be back to the situation that existed before the Broadcasting Services Act. (sub. DR231, p. 14)

The Communications Law Centre stated that the current regulatory structure of codes and standards is appropriate, and that the distinctions between the two should be maintained (sub. DR244, p. 2).

The Commission, after considering the responses to the draft report, considers that the current structure of codes and standards creates an appropriate regulatory form for controlling broadcasting content. The codes implement important public policy objectives, but the detailed mechanisms created by the codes in pursuit of those objectives are not essential.

However, broadcasting codes cover a wide range of activities, of which many have important implications for audiences. The Commission considers that the regulatory system would be more effective if, within the current structure, some elements of the codes were made conditions on broadcasters' licences.

Two major areas of concern are significant enough to warrant placing conditions on broadcasters' licences. First, there is the issue of fair and accurate reporting (see section 13.5). Second, the Commission considers that licence conditions should set out the general duties expected of broadcasters.

The BSA sets out matters for which the ABA may develop standards or register codes of practice. A set of general conditions based on these matters should be placed on broadcasters' licences, with the codes of practice providing detailed advice on how these conditions could be met. The codes would provide a means of 'deemed compliance'; a broadcaster that could demonstrate that it followed the code would be deemed to meet the conditions. However, the mechanisms specified in the code need not be the only means of complying with the conditions — that is, a broadcaster may be able to demonstrate an alternative means of compliance.

This system of general duties, supported by detailed codes of compliance, is found in other areas of co-regulation, most commonly in relation to occupational health and safety (IC 1995). It provides two particular advantages: first, it allows the regulator to impose penalties for a sufficiently serious failure to meet the general duties expected of broadcasters; and second, it does not reduce any of the existing flexibility of broadcasters in meeting these general duties as efficiently as possible.

The Commission anticipates a more active compliance role for the ABA in administering the new conditions, although under current arrangements the ABA already has nominal responsibility for administering the existing codes. The Commission considers that the ABA's existing discretions in the use of its powers would be sufficient to ensure this does not result in overreaction to trivial breaches. The Commission considers that the main compliance mechanism would continue to be a system of responding to complaints. The Commission examines the shortcomings of the current complaints mechanisms and recommends improvements in section 13.7.

RECOMMENDATION 13.3

Schedule 2 of the BSA should be amended to impose the following conditions on broadcasters' licences.

Broadcasters must take reasonable steps to:

- ***prevent the broadcasting of programs that, in accordance with community standards, are not suitable for their section of the industry to broadcast;***
- ***ensure the protection of children from exposure to potentially harmful program material; and***
- ***provide methods for handling complaints.***

Compliance with a relevant, registered code of practice covering these matters would be deemed to be evidence of having taken 'reasonable steps'. However, compliance with a code need not be the only means of satisfying these requirements.

13.5 Fair and accurate coverage

One objective of the BSA (s. 3[g]) is to encourage broadcasting services to be responsive to the need for fair and accurate coverage of matters of public interest. The explanatory memorandum to the Broadcasting Services Bill 1992 explains the role of this objective:

> [It] recognises that for most people, broadcasting is a major source of information on issues and events in the world. It is intended that, in the reporting of events and the presentation of issues, providers of broadcasting services will report the facts and facilitate the presentation of the range of views on any particular issue.

The concept of fair and accurate reporting has many elements. It covers not only editorial independence and integrity, and ethical news gathering and reporting practices, but also the accuracy of information reported and mechanisms for correcting significant errors or omissions in broadcasts.

The major responsibility for fair and accurate reporting has been left to the codes of practice. Relevant sections of the Federation of Australian Commercial Television Stations' code are summarised in box 13.3. The Commercial Radio Code and the ABC and SBS codes also contain news and current affairs requirements.

The codes emphasise the content of broadcasts; there is little reference to ethical news gathering and reporting practices. This is in contrast to the Australian Journalists Association code of ethics, which requires journalists to use fair and honest means to obtain news, films, tapes and documents (MEAA 1999).

Ethical news gathering practices are becoming increasingly important as the lines between news, current affairs, 'infotainment' and entertainment become more blurred. The incentives for broadcasters to achieve ratings can create pressures to compromise ethical practices when pursuing stories. Wendt (1997), stated that:

> While the current affairs programs on the commercial networks have won high ratings, the need to win and maintain large audiences has shaped and distorted news agendas.

Box 13.3 **Commercial Television Industry Code of Practice — news and current affairs programs**

Section 4 of the Federation of Australian Commercial Television Stations' code is intended to ensure news and current affairs programs are presented accurately and fairly; are presented with care for the likely composition of the viewing audience; take account of personal privacy and cultural differences; and present news impartially. The section applies to news programs, news flashes and updates, and current affairs programs. 'Current affairs' means a program focusing on social, economic or political issues of current relevance to the community.

When broadcasting news and current affairs, among other obligations, licensees must:

- present factual material accurately and represent viewpoints fairly, and not present material in a manner that creates public panic;
- not use material about a person's private or personal affairs, or which invades an individual's privacy, other than where there is an identifiable public interest reason for the material to be broadcast;
- not portray any person or group of persons in a negative light by placing gratuitous emphasis on age, colour, gender, national or ethnic origin, physical or mental disability, race, religion or sexual preference. Nevertheless, where it is in the public interest, licensees may report events and broadcast comments in which such matters are raised; and
- make reasonable efforts to correct significant errors of fact at the earliest opportunity.

When broadcasting news, among other obligations, licensees also must:

- present news fairly and impartially; and
- clearly distinguish the reporting of factual material from commentary and analysis.

Source: ABA (1998b).

Under the BSA, the ABA may determine program standards where there is convincing evidence that a code of practice has failed, or where no code is developed. There has been some concern that the existing codes have failed to ensure fair and accurate reporting, and that fair and accurate reporting may not be an appropriate field for self-regulation. The Communications Law Centre, for example, state in relation to 'advertorials' and disclosure of relevant interests that:

> A program standard is the only way to communicate the seriousness with which the regulator regards the issue and to ensure the regulatory instrument and the potential for *immediate sanctions* in the event of breaches of it, applies to all licensees. (CLC 1999a, p. 12)

The immediate risks involved in unfair or inaccurate reporting of news and current affairs are much greater than those related to reflecting community standards in

content. The consequences for individuals who are wrongly identified or inaccurately reported can be extremely serious. If a misleading or untrue report has been made, a rapid retraction or correction is desirable, but an admission of fault may harm the reputation of the licensee and expose the licensee to further liability. It is also difficult for most individuals to pursue complaints about fairness and accuracy of reporting through alternative means such as the courts; actions for defamation are extremely costly and uncertain. Professor Graeme Turner argued that 'tabloidisation' means that:

> … ethically questionable techniques in newsgathering or in the development of current affairs stories … have produced several instances where the subjects of these stories have suffered personal and professional damage well beyond what the community should accept. The systems of redress available for citizens who wish to complain about being placed in this situation are completely inadequate. (sub. 69, p. 2)

Commercial broadcasters appear to be very cautious about making on-air corrections, despite the requirement in the Federation of Australian Commercial Television Stations' code that broadcasters 'must make reasonable efforts to correct significant errors of fact at the earliest opportunity'. Mr John McAlpine, Chief Executive of Channel Ten and Chair of the Federation of Australian Commercial Television Stations, made the following comments when asked whether news services would run a correction following an inaccurate news story:

> … it would be unlikely to have a withdrawal on air. … I think the networks have a view that they handle it with the greatest discretion. There is the occasional mistake made, but at this stage, there are no plans made to offer apology on air. … I think the main stumbling block there — and it's something that we've looked at very closely over the years, most recently in the course of redrafting our code of practice, is the legal one; that legal advice is often very strongly against offering any on-air apology if there's a legal action on foot. (trans., p. 226)

The federation clarified this position in a later submission:

> Stations do broadcast corrections when it is the appropriate way of responding to a factual misstatement. Where a factual misstatement is of a minor nature, broadcasters normally respond in writing to the person or persons who raise it. This happens regularly as part of the industry complaints process. The general policy of most stations is to rely on legal advice in relation to the broadcast of corrections. Where there has been a complaint about material broadcast, and particularly where there is a threat of litigation, a station generally will not broadcast a correction unless it is in settlement of all claims and the station can be assured that it will not be sued. The reason for this is that if a correction is broadcast, it will usually have the effect of removing many defences to defamation proceedings that might otherwise be available. (sub. 150, p. 22)

The federation noted that the Australian Press Council will not investigate matters unless the complainant agrees not to sue the newspaper concerned: 'There is no

similar process for broadcasters, since people can (and do) choose both to sue and to complain to the ABA' (sub. 150, p. 22).

The Catholic Communications Commission provided an example of broadcaster reluctance to make corrections:

> There was a 20 second brawl in the football match, and the announcer gave the names of those involved as the brawl went on. The mother of a boy who was incorrectly named … was in the supermarket and heard a couple of women saying, 'Oh, you heard that young Bill Smith …was involved in that brawl on television the other night.' So she asked that they just make a correction and say, 'We got the name wrong, it was actually someone else.' No way. They said, 'Sue us.' So she is. But of course it's been going for three years already. They expect it will take 10 years, if she can afford the money to keep it going that long. (trans., p. 88–9)

The ABA noted surprise that broadcasters would adopt such a position:

> I would suggest they change their lawyers. The board has consciously adopted a policy that we will expect stations to apologise and correct as soon as they become aware of having done something wrong, and we've applied that in a couple of cases. (trans., p. 521)

The ABA stated that it has a strong commitment to ensuring that broadcasters issue on-air apologies and corrections more frequently than previously, and that this continues to be a subject of discussion at regular meetings between the ABA and the Federation of Australian Commercial Television Stations (sub. DR226, p. 36).

As a general principle, more explicit Government regulation should be considered where a problem is of high risk and high impact or significance, and where there is a systematic compliance problem (ORR 1998, p. D5). Ensuring fair and accurate broadcasting appears to have all these characteristics — that is, inaccurate reporting can have significant effects on individuals, but broadcasters face incentives not to offer corrections or retractions.

The Key Centre for Ethics, Law, Justice and Governance recommended establishing an 'ethics regime' for the media industry (box 13.4). The centre's proposal for an Australian media and broadcasting ethics and integrity regime incorporates ethical standard setting (industry, corporate and professional 'codes of ethics'), legal regulation (laws that impose sanctions for breaches of ethics) and institutional reform (supportive organisational and management structures). It emphasises an active role for an ethics commissioner in promoting high ethical standards.

The Key Centre has proposed a regime whose intention overlaps that envisaged for broadcasting within the existing regulatory framework. The objectives of the BSA could be characterised as the 'ethics code' for the broadcasting industry. Part of the ABA's role is to promote ethical standards in the broadcasting industry, by

developing standards, contributing to the development of codes of practice, and monitoring and enforcing standards and codes. Outside the formal regulatory system, many broadcasting corporations and professions have developed codes of ethics.

However, concerns remain about the ethical standards of broadcasting — for example, those reflected in the ABA's findings in the Commercial Radio Inquiry of 1999–2000. Accordingly, the Commission considers that the ABA should pursue its ethical objectives through more active implementation of existing arrangements. The Government and the ABA should examine the ABA's current practice in the light of the proposal of the Key Centre for Ethics, Law, Justice and Governance, with a view to adopting a more active promotion of ethical standards.

In addition to taking a more active role in promoting ethical behaviour, the ABA also has a role in setting minimum standards and reacting to perceived breaches. In this context, the Commission considers that an ABA developed standard for fair and accurate reporting, subject to ABA monitoring and enforcement, is more appropriate than an industry developed code of practice (even if such a code were supported by a general condition on the broadcasters' licences).

The ABA should be more active in dealing with complaints about fair and accurate reporting. Complainants should be able to go directly to the ABA to complain about a breach of the standard. If a broadcaster receives a complaint about fair and accurate reporting, it should report the complaint and its proposed response to the ABA as soon as practicable. The ABA should then monitor the broadcaster's actions. It should also have the power to direct broadcasters to take certain actions (including broadcasting retractions and corrections) in response to complaints about fair and accurate coverage.

The Commission considers that issues of fair and accurate reporting and ethical news gathering and reporting practices are significant enough to be made conditions on licences. The Commission envisages an ongoing role for broadcasters, and industry associations and members of the public in the formulation of these standards and the monitoring of compliance.

RECOMMENDATION 13.4

The ABA should actively promote ethical practices in broadcasting. It should develop standards dealing with fair and accurate coverage and ethical news gathering and reporting practices. Among other provisions, 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 practicable;***
- ***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.***

13.6 Consultation

Successful co-regulation requires the acceptance and support of the industry to be regulated, and must give the public confidence that it will achieve its objectives. Therefore, co-regulatory schemes must incorporate adequate mechanisms for both industry and public consultation.

Industry consultation

The BSA provides for industry consultation. It states that 'it is the intention of Parliament' that radio and television industry groups representing the various categories of licensees, in consultation with the ABA, will develop codes of practice for their industries (s. 123[1]). There is also a requirement for a degree of unity in code making. The ABA must be satisfied that a majority of broadcasters within the relevant section of broadcasting have endorsed a code before it is registered.

However, the ABA notes a concern with this requirement. Although not a problem for 'mainstream' broadcasters, there may be difficulties in industry sectors where it is difficult to identify the number of service providers (such as narrowcasting services, where there are class licences rather than individual licences) (ABA, sub. 45, p. 21).

A scheme to regulate online (Internet) content introduced in 1999 dealt with this problem by removing the requirement for majority support. However, this may have implications for industry acceptance of the code. Domination of the code making process by one group can impose anti-competitive conditions on other groups that will be bound by the code; for example, it has been reported that smaller Internet providers feared that the online code of practice would be developed by larger players, who could afford more expensive compliance mechanisms (*Australian Financial Review*, Monday 26 July 1999, p. 18).

The National Indigenous Media Association of Australia has similar concerns, stating that it is bound by the community television broadcasting code of practice, despite having no say in its development (trans., p. 6). (The ABA stated that the registration of the current code had catered for the special needs of the Indigenous sector (sub. DR226, p. 32).)

The Australian Subscription Television and Radio Association favoured a concept of 'general support' and stated:

> The essential objective is for the Codes to be supported and implemented by the relevant sector, not that a majority of broadcasters have endorsed the code. (sub. DR255, p. 12)

On the other hand, the Federation of Australian Radio Broadcasters was concerned that the concept of 'general support' is 'too vague and uncertain'. The federation noted that it would be more appropriate for the ABA to work with broadcasters and industry associations to establish how 'the majority' can be identified where there are difficulties doing so (sub. DR266, p. 9). The ABA was also concerned that a 'general support' test would be difficult to define and to administer, and potentially vulnerable to legal challenge (sub. DR226, p. 33).

The Commission considers that the current rule requiring 'majority support' for a code before it may be registered suffers from two defects: it does not prevent 'oppression of the minority' by the majority, and it does not allow for an unknown or unclear number of licensees in a particular broadcasting category. More appropriate tests are whether broadcasters within the relevant section of broadcasting have had an adequate opportunity to comment on the proposed code, and whether there is support within all sections of the industry group for the proposed code.

Further, if 'general support' cannot be achieved, then it is inappropriate to impose such a code as part of a co-regulatory system. A co-regulatory system is based on industry support for industry developed requirements. If an industry is so diffuse that general support cannot be demonstrated, then some other form of regulation (perhaps supported by less structured industry consultation) should be considered.

'General support within the relevant section of the industry' is a somewhat vague term, but it avoids the arbitrary nature of requiring majority support. The ABA could provide greater certainty by developing and publishing guidelines on how it will assess general industry support. In an industry group where a majority can be easily determined, majority endorsement would be expected to be a significant element of a test of general support, but there would still be scope to respond to significant minority opposition. In an industry group where a majority cannot be

easily determined, general support implies acceptance — or at least acquiescence — across all sectors of the industry group.

Community consultation

Under the BSA (s. 123[2a]) all codes deal with 'preventing the broadcasting of programs that, in accordance with community standards, are not suitable to be broadcast by that section of the industry'. The Act requires codes to account for community attitudes towards a number of issues, including:

- the portrayal of violence;
- the portrayal of sex and nudity;
- the use of offensive language;
- the portrayal of the use of drugs, including alcohol and tobacco; and
- the portrayal of matter likely to incite or perpetuate hatred against, or vilify any person or group on the basis of ethnicity, nationality, race, gender, sexual preference, age, religion, or physical or mental disability.

The BSA requires that members of the public be given 'an adequate opportunity to comment' on a proposed code of practice before it is registered. The ABA noted:

> The processes of code development and review involve public submissions and consultation with the ABA and these, together with licensees' consideration of complaints, ensure that licensees are well informed of community concerns about broadcasting. (sub. 45, p. 20)

However, the Act gives little direction on what amounts to 'adequate opportunity to comment', and the ABA has not developed a standardised procedure for developing codes. The ABA assesses the adequacy of consultation on a case basis.

Many inquiry participants complained of inadequate opportunity for public consultation in the development of codes. The Reformed Churches of Australia — Classis WA asked 'Who assesses community values? … How are community values assessed?' (sub. DR210, p. 2). The Festival of Light (South Australia) stated:

> At present, broadcasters write their own codes of practice, giving the impression of lip service only to public involvement. … The codes of practice are generally rubber stamped by the ABA, in accord with its interpretation of the industry self-regulation principle of the BSA. (sub. DR236, p. 4)

A revised code of practice for the commercial television industry was registered in April 1999. Critics of the consultation process include, for example, Young Media Australia:

> Submissions were called to review the code very shortly after the first draft review was put out at the end of 1996. Consumers then heard nothing about the progress of the review until March [1999] and we were then given about three weeks to reply, to see whether we liked the latest draft code. We replied by the deadline. The code was out on the street within a week. We just were totally frustrated in terms of how much notice was taken. We spent about three weeks getting our response ready and they didn't even take that long to review. So we are not confident that this code that is now in place is actually reflecting consumers' concerns. (trans., p. 796)

The Reformed Churches of Australia — Classis WA agreed:

> The submission by Young Media … voiced precisely how we felt at the time because that is exactly what happened to us regarding FACTS codes of 1999. (sub. DR210, p. 2)

In commenting on this case, the ABA noted that two rounds of public consultation occurred before the draft of the revised code was submitted to it for registration (1998a, p. 65). It suggested some amendments and recommended the third (relatively brief) period of consultation.

The Federation of Australian Radio Broadcasters stated that its community consultation processes encompass elements such as on-air broadcasts and opportunity for public comment. It also noted that the ABA has the discretion to convene a public hearing if it believes one is appropriate (sub. DR266, p. 9).

The Federation of Australian Commercial Television Stations did 'not accept that its consultation with viewers is inadequate':

> FACTS advertises code of practice reviews prominently in the press in every state and territory. … we release successive drafts of the code of practice for public comment, and make staff available to consult with interested interest groups and agencies. It has become practice for the Senate Committee on Information Technology to take a close interest in the commercial television industry code of practice, and to call industry representatives before it to testify on proposed amendments to the code. (sub. DR231, p. 13)

In addition to direct public consultation in the development of codes, several mechanisms (box 13.4) exist to incorporate community attitudes in broadcasting. These mechanisms range from the influence of market forces to formal research into community attitudes.

Box 13.4 **Mechanisms for incorporating community standards in broadcasting**

Public consultation. The Act requires that the ABA be satisfied that 'members of the public have been given an adequate opportunity to comment' on a proposed code of practice before registering that code.

Market forces. Market forces provide strong incentives to reflect community standards in programming:

> It was expected that industry groups would appreciate that it was in their interest to ensure that an appropriate balance was struck between the public interest in the maintenance of standards of taste and decency and their desire to provide competitive services. This expectation appears to have been well founded. (ABA, sub. 45, p. 22)

Subscription relationships. Subscription service providers have a direct relationship with subscribers.

Advocacy. In addition to direct public consultation, the ABA has undertaken an advocacy role to ensure codes contain safeguards 'that the community expects to be in place':

> In the course of the codes development or review process, the ABA has negotiated with industry groups with a view to the inclusion of provisions to address particular issues. (ABA, sub. 45, p. 21)

Research. A primary function of the ABA under the BSA (s. 158[g]) is 'to conduct or commission research into community attitudes on issues about programs'. The Act (s. 123[1]) requires codes to account for any relevant research conducted by the ABA:

> The ABA's research is provided to, and discussed with, industry groups. In particular, relevant parts of research results, which may propose ways of addressing specific issues in codes provisions, are drawn to the attention of the appropriate sections of the broadcasting industry. Research also provides a reality test against which community concerns reflected in complaints received may be verified. (ABA, sub. 45, p. 21)

Office of Film and Literature Classification. The Act requires commercial and community television codes to ensure a level of consistency with the classification system administered by the Office of Film and Literature Classification. This has led to a consistent system of classification across film, video and television.

Complaints. Complaints data may be a further source of information on community standards.

Improving consultation

Despite these mechanisms, inquiry participants remained concerned about the opportunities for consultation. The Festival of Light (South Australia) argued that insufficient public consultation means that 'the philosophy of self-regulation [is] not working very well':

> It is relatively difficult for ordinary people to provide feedback to broadcasters and we believe that the feedback mechanisms need to be expanded, strengthened and shifted to give greater opportunity for the public to respond and hence for the public interest to be taken more seriously than it is at the present time. (trans., p. 785)

Community pressure and market forces provide strong incentives for broadcasters to reflect community concerns. But market forces alone may not provide sufficient certainty that community standards will be met; a public code allows for consistency of application across broadcasters, and a means of recourse for breaches. Oversight by the ABA, independent research and alignment with other accepted content classification systems provide some guarantee that codes will incorporate community attitudes. However, appropriate opportunities for public consultation are essential if the public is to have confidence in the resultant codes.

The Communications Law Centre (sub. DR244, p. 1) and Young Media Australia (sub. DR204, p. 3) strongly supported the adoption of a standardised public consultation process. They stated that it would increase transparency and accountability and reduce the scope for accusations of undue influence. Informal public hearings and advertising may encourage adequate opportunity to comment on a code under development or review. The specific details of a standardised consultation process should be developed cooperatively by the ABA and representatives of industry and the community. These guidelines could provide for:

- on-air broadcasts at peak or other appropriate audience times, announcing that a code is under development or review and inviting comment;
- dissemination of information such as discussion papers and drafts;
- public hearings; and
- minimum periods for consultation.

RECOMMENDATION 13.5

The mechanisms for consultation on the development of codes of practice should be amended such that:

- ***a requirement for general support from within the relevant section of the industry replaces the requirement that a majority of broadcasters within the relevant section of broadcasting endorse a proposed code of practice;***
- ***the ABA, in consultation with industry, develops guidelines on how it will assess whether a code has 'general support from within the relevant section of the industry'; and***
- ***the ABA, in consultation with industry and the community, develops guidelines on 'adequate opportunity to comment' to support community consultation on a proposed code of practice.***

13.7 Complaints

One objective of the BSA (s. 123[h]) is to encourage the provision of means for addressing complaints about broadcasting services. The ABA is responsible for two complaints mechanisms: complaints against broadcasters and complaints about online (Internet) content. The regulatory regime for online content is discussed in section 13.9.

The co-regulatory framework requires complaints about breaches of the codes to be made in writing to the broadcaster concerned. Complainants may approach the ABA directly if they are dissatisfied with the licensee's response, if the matter is not resolved within 60 days, or if they have complaints about possible breaches of the formal program standards or conditions of licence. All registered codes incorporate formal complaints handling procedures. The procedures under the Commercial Television Industry Code of Practice are summarised in box 13.5. Subscription service providers, as a result of their direct contractual relationship with subscribers, have relatively sophisticated complaints handling mechanisms in place. Subscription television providers already have established 'call centres' which deal with a number of subscriber issues, including complaints (ASTRA, sub. DR 255, p. 12).

The Commission considers that it is useful to divide complaints against broadcasters into two categories. The first category comprises complaints about inappropriate program content. These typically focus on raising awareness of a potential breach and preventing repeat breaches by the broadcaster. The relevant program usually has been shown already and the complainant possibly wishes to punish that offence and prevent a recurrence. Such complaints may be valuable to the broadcaster, because they may provide useful information on audience preferences.

The second category comprises complaints about fairness and accuracy of reporting. These typically focus on achieving a correction or other restitution, and punishing the broadcaster. Such complaints may expose the broadcaster to further legal liability. If the Commission's recommendation that the ABA develop a standard for fair and accurate reporting is adopted, then complaints about a breach of a standard (a condition of licence) could be made to the ABA in the first instance.

Box 13.5 Commercial Television Industry Code of Practice — complaints procedures

Licensees must provide regular on-air information about the code and its complaint procedures (360 on-air spots each calendar year, across all viewing zones). A Federation of Australian Commercial Television Stations' on-air advertising campaign promotes a hotline providing information about the code, the complaints process and contact information for local broadcasters.

In response to oral complaints, licensees must ensure that switchboard staff record the substance of telephoned comments from viewers and bring it to the attention of key staff. If complainants wish to pursue the matter, staff must advise them that written complaints may be made within 30 days of the matter broadcast, and that the licensee is required to respond in writing to those complaints.

Written complaints must be about matters covered by the code; be in writing (which includes facsimiles but not e-mail or computer disk); identify the complainant, the material broadcast and the nature of the complaint; and be made within 30 days of the related broadcast. Complainants with a disability may complain via telephone or audio cassette.

In response to written complaints, licensees must provide a substantive written response as soon as practicable, but in any case within 30 working days of the complaint. They must advise the complainant that the matter may be referred to the ABA; make every reasonable effort to resolve complaints promptly; and report to the Federation of Australian Commercial Television Stations (within 15 working days of the end of each quarter) the number and substance of code complaints, details of any complaint upheld and action taken.

The Federation of Australian Commercial Television Stations must provide a summary of the quarterly complaints information to the ABA (within 10 working days of receiving it from licensees); hold a Code Administration Council meeting four times each year to review administration of the code (with an ABA observer); and publish a public annual report on code administration (containing the number and substance of code complaints received by licensees, the details of each complaint upheld, and actions by the licensee in each case).

In response to complaints about commercials, licensees must accept written complaints about a television commercial that it has broadcast, and deal with complaints concerning the placement of the commercial or the amount of non-program matter broadcast. They must refer content related complaints to the Advertising Standards Board or, in the case of advertising directed to children, to the ABA. They must advise the complainant of the referral within 10 working days of the licensees' receipt of the complaint.

Source: ABA (1998b).

Complaints about program content

Several inquiry participants questioned the adequacy of current complaints mechanisms. Participants' concerns included:

- the lack of knowledge about the complaints mechanisms;
- whether the licensee is the appropriate first point of contact for complaints;
- required specificity of complaints;
- delays; and
- accountability and transparency.

Knowledge of the complaints mechanisms

The general community's lack of knowledge or understanding of the complaints mechanisms is a concern. The complaints processes in the codes do not require complainants to identify a particular code or section of the code in their complaint, but it is argued that lack of knowledge about the codes and their contents inhibits complaints. Young Media Australia stated:

> One of our concerns about codes of practice is the great difficulty that the average broadcasting consumer has in keeping up with all of the different codes that apply to the different arms of the media. (trans., p. 796)

The revised Federation of Australian Commercial Television Stations' code (registered in 1999) requires licensees to provide 360 on-air spots each year 'across all viewing zones', giving information about the code and its complaint procedures. This requirement replaced a general requirement that licensees provide 'regular' on-air announcements. The revised Commercial Radio Codes of Practice (registered in 1999) require licensees to publicise the existence of the code(s) and a general description of the nature and effect of their operation at least once a week, at different times and in different programs from week to week.

The ABA also plays an important role:

> 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. (sub. DR226, p. 32)

The ABA annual survey of community attitudes included in 1999, for the first time, a question relating to knowledge of the commercial television complaints

mechanisms. Findings from the survey and focus groups revealed a low level of awareness of the process for making a complaint about television programs. A small proportion of survey respondents (6 per cent) said they had made a formal complaint at some stage in the past. Just under two thirds of those who complained were not satisfied with how their complaint had been handled compared with one quarter who were satisfied. Lack of satisfaction was due to no action being taken, the contact person being uninterested or rude, no reply being received, or no one taking the complaint.

More than half the survey respondents (58 per cent) believed that making a formal complaint would not change the kinds of things shown on television, and half said they would not know to whom they could complain. More than half the respondents (57 per cent) said they had not seen information on television in the last year about how to complain (ABA 2000b).

First point of contact for complaints

A complaint about a matter covered by a code of practice must first be made to the broadcaster concerned. It is the broadcaster's responsibility to deal with the complaint and attempt to resolve the matter to the satisfaction of the complainant. A matter proceeds to the ABA only if a complainant is not satisfied with a broadcaster's response, or if they do not receive a response within 60 days.

There has been some concern that broadcasters are not the most appropriate first point of contact because they may have incentives to discourage or downplay complaints. On the other hand, the broadcaster may be viewers' first choice for making a complaint. Many viewers may be unaware of the ABA or its role as a content regulator, but will know the station making the broadcast.

The ABA investigated 94 out of over 1900 complaints about code matters over 1997-98 (sub. 45, p. 22). This implies that the broadcaster concerned satisfactorily resolved the rest, or that complainants chose not to pursue their complaints, for whatever reason. The Festival of Light (South Australia) stated, given their experience with the complaints mechanisms, that most complainants would not persevere with complaints:

> From our experience it is quite remarkable that as many as 94 Australians out of 1900 had their complaints investigated by the ABA in a year. Those 94 plaintiffs must be highly literate and very persistent. (sub. DR236, p. 4)

Concerns about the appropriate first point of contact are best addressed by improving viewer awareness of the arrangements for complaints. It is also important to monitor broadcasters' internal complaints procedures to ensure compliance with

established procedures, particularly maintaining a log of telephone complaints and advising telephone complainants of their rights.

All codes of practice require broadcasters to report complaints to the ABA. This report could be expanded to include complainants' experiences with the complaints system, or the ABA could survey complainants about their experiences.

Required specificity of complaints

The code requires complainants to identify in writing the material broadcast and the nature of the complaint. Some inquiry participants argued that these requirements:

- artificially reduce the number of complaints recorded;
- discriminate against people who are less literate or persistent; and
- make it difficult to complain about general perceptions of broadcasting, rather than specific programs.

Many inquiry participants argued that flaws in the complaints mechanisms mean that the broadcasters and regulator do not recognise many complaints. Young Media Australia stated:

> … if they [make an oral complaint] to the television station or the ABA themselves, the response almost always is, 'Well, if you can't be bothered to put it in writing or to elaborate on your complaint, or more to the point, if you can't be bothered to have noted the exact time of day and what station or network the program was on, then we are not going to treat the complaint as a formal one,' and therefore it doesn't get into the record books as such as something that really reflects community concern. (trans., p. 797)

The Festival of Light (South Australia) argued that the system discriminates against 'typical Australians' who were 'not the sort of people who would readily write a letter' (trans., p. 787). To overcome this problem, it recommended a free telephone complaints line:

> … where you can leave a recorded message giving your name, address and phone number, [and] the substance of your complaint and that could be handled as a valid complaint by the broadcaster. (trans., p. 787)

Television and radio are broadcast to all Australians, and all Australians should have the opportunity to voice their opinion about content. The Festival of Light's (South Australia) suggestion of a voicemail system for oral complaints appears to have several merits:

- it allows oral complaints to be made relatively simply;
- it allows a permanent, objective record of the complaint to be made; and

- it is easily accessible to most consumers of broadcasting services.

The Federation of Australian Commercial Television Stations stated that several stations have experimented with voicemail systems for oral complaints, and that:

> Their experience has been that most callers will not leave contact details, and that many anonymous callers are highly abusive. FACTS does not believe that a voicemail system would add anything to the range of alternatives currently available to viewers. (sub. DR231, p. 14)

However, these concerns appear to apply equally to the initial telephone contact with complainants under existing arrangements.

The ABA questioned the resource implications of requiring all licensees to maintain a voicemail system (sub. DR226, p. 35). It may be more resource efficient for each industry association to maintain a 'hotline' which would record complaints, then pass them on to both the ABA and broadcaster concerned. The Federation of Australian Commercial Television Stations has some experience with telephone information systems, having recently established a 'hotline' to provide information about the code of practice and complaints procedures (sub. DR231, p. 14).

Other inquiry participants are concerned that current arrangements make it difficult to complain about stereotyping of minority groups and children in broadcasts. These concerns are based on viewing many broadcasts, rather than the broadcast of a single program. The Muslim Women's National Network, for example, is concerned about the negative portrayal of Muslim women (trans., p. 460). The Federation of Parents and Citizens of NSW is concerned about the portrayal of young people. It notes that 'the television media tends to portray young people in a very negative light' (trans., p. 136).

The codes of practice are intended to deal with stereotyping. The Federation of Australian Commercial Television Stations' code of practice includes a section dealing with appropriate portrayal of persons in news and current affairs. The code operates alongside the Commercial Television Industry Advisory Notes, which are designed to encourage industry employees to understand and be responsive to community concerns about privacy and the portrayal of Aboriginal and Torres Strait Island people, cultural diversity, women and men, and people with disabilities. The commercial radio codes also have guidelines and explanatory notes on the portrayal of Indigenous Australians and women on commercial radio. In addition, the codes proscribe the broadcast of 'material likely to incite or perpetuate hatred against or vilify any person' on grounds such as age, sex and race.

The Commission recognises that it is often difficult to address stereotyping. One defence against stereotyping is to have sufficient diversity of programming to

provide multiple viewpoints. However, the Commission notes inquiry participants' concerns, and encourages the ABA, industry associations and broadcasters to work together with representatives of relevant community groups to promote balanced and sensitive portrayals in broadcasts.

Delays

There are two sources of delays in complaints procedures. One is the '60 day rule' which provides that if complainants do not receive a response from a broadcaster within 60 days, they may then make a complaint to the ABA. (Complainants may complain to the ABA at any time if they are dissatisfied with a broadcaster's response.) The ABA stated that 'in its experience, in most cases licensees respond within the code timeframes (which may be shorter than the 60 days specified by the Act) (sub. DR226, p. 36). The other source of delay is in the ABA's handling of the complaints investigation.

The ABA was concerned about the 60 day rule, but noted that it can act before the end of the 60 day period. The Chairman of the ABA stated:

> I'm wondering about whether 60 days is too long. … Even using the existing delay of 60 days, we think that in dealing with unresolved complaints, we can make it very clear to the broadcasters by example that we expect immediate corrections once they know something is wrong. (trans., p. 521)

The Festival of Light (South Australia) recommended shortening the current 60 day period to 21 days (sub. DR236, p. 6).

Several participants such as Young Media Australia argued that delays at the ABA mean investigations can become prolonged:

> The complaints system is too slow, too hard and the wait is often not worth it. We have waited up to 18 months in some instances to have complaints resolved. (trans., p. 804)

There appears to be some substance to concerns about delays at the ABA. At the start of the 1997-98 reporting period, six of its 43 outstanding investigations had started in the 1995-96 reporting period (that is, they were at least 12 months old, and possibly over two years old), and 37 had started in 1996-97 (so they were up to 12 months old). However, by the end of the period, seven of 32 outstanding investigations were between three and four months old, and the remainder were less than three months old. In the 1997-98 reporting period, an investigation took an average of approximately 11 weeks, which was an improvement on the average of 20 weeks in the previous reporting period (ABA 1998a, p. 68).

In the 1998-99 reporting period, an investigation took an average of 15 weeks, which was nearly four weeks longer than the average in the previous period. At the

end of the period, the ABA had 37 outstanding investigations — six were more than six months old and 25 were less than three months old (ABA 1999i, p. 66).

Accountability and transparency

Some inquiry participants argued that an important outcome of a complaints process is the public exposure of unacceptable behaviour. They were concerned that although the ABA may reach what it regards as satisfactory arrangements with the broadcasters involved, there is little public accountability, and that ABA processes are not transparent. The Communications Law Centre suggested that greater accountability and transparency in the complaints handling procedures of the ABA would improve compliance with the codes:

> … we would like to see more attention to the level of public information about, for example, individual complaints processes. In a self-regulatory regime that becomes a kind of jurisprudence. … Journalists have got to know who got nailed for what, what's okay, what's not okay. That means you don't just need a code of practice, you need to know and be able to analyse what sorts of decisions have been made. (trans., p. 745).

The ABA publishes a quarterly summary of licensees' responses to complaints, and a summary of breach investigations and their outcomes in its annual report. It also places copies of investigation reports on its Web site, issues news releases in a number of cases, provides hard copies of reports, and publishes summaries of breach investigation findings in its monthly journal, *Update*.

Additional publicity could be generated by requiring licensees in breach of the code to make on-air announcements of the nature of the breach and subsequent action. This would promote the existence of the codes and complaints mechanisms; identify breaches (and therefore the prevailing community standard); and act as a form of sanction (see 'consequences of code breaches' below).

Improving complaints mechanisms

The Commission considers that an effective co-regulatory system is the only practical way of regulating broadcasting content in a digital world. As the number of services proliferates, the ability of any regulator to monitor the content of each service diminishes. (This co-regulatory system is in addition to the promotion of ethical practices discussed in section 13.5.) Responding to viewer complaints becomes the most efficient way of dealing with code breaches. However, as discussed above, inquiry participants were concerned that the current complaints system is not adequately addressing viewers' concerns.

In its draft report, the Commission recommended a package of reforms to improve complaints mechanisms, including on-air announcements, ABA monitoring of community awareness, and acceptance of e-mail and telephone complaints. Many participants, such as the Communications Law Centre (sub. DR244, p. 2), the Media Entertainment and Arts Alliance (sub. DR272, p. 4), the Festival of Light (South Australia), (sub. DR236, p. 3) and the Presbyterian Women's Association of Australia in NSW (sub. DR195, p. 3), supported these recommendations. Young Media Australia, for example, stated:

> … these recommendations will enable the community to be more effective in lodging complaints. … Consumers need more assistance to understand the codes and systems, and what they have a right to expect. (sub. DR204, p. 3)

The Federation of Australian Radio Broadcasters noted that its codes incorporate elements of these recommendations:

> The FARB codes provide for at least weekly announcements about the existence and effect of the Codes, broadcast at different times and in different programs. A listener may make a telephone complaint to a licensee but will be asked to confirm the complaint in writing if it is not resolved by the telephone call. (sub. DR266, p. 9)

The Commission recommends the following improvements to complaints mechanisms to address inquiry participants' concerns.

RECOMMENDATION 13.6

The co-regulatory scheme should be amended such that:

- ***all codes of practice include the requirement for community service announcements about the complaints mechanism, to be broadcast at peak or other appropriate audience times;***
- ***the ABA undertakes ongoing monitoring of community awareness of complaints mechanisms;***
- ***licensees are required to accept e-mailed complaints as well as written and faxed complaints; and***
- ***each industry group covered by a code of practice is required to institute a telephone complaints system which would advise complainants of their rights and on which complainants may record telephone complaints. These complaints should be forwarded promptly to the relevant broadcaster, and a summary of these complaints should be provided to the ABA.***

Consequences of code breaches

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 ABA also has a role in investigating and reporting on ABC and SBS breaches of their respective codes. If the ABA finds that a national broadcaster has breached its code, it may recommend that action be taken to comply with the relevant code. This may include the broadcast of an apology or retraction. If the national broadcaster does not take the recommended action, the ABA may provide the Minister with a written report, which must then be tabled before both Houses of Parliament.

However, a different process applies to dealing with code breaches by other broadcasters. A complaint against other broadcasters for breaching a code of practice must be made first to the station involved. If the complaint is not resolved within 60 days, or the complainant is not satisfied, then the matter may be referred to the ABA. The ABA can then investigate and rule on the matter, but at this stage, cannot impose fines or suspend or cancel a licence for a breach of the code. (The ABA may also initiate its own investigations without formal complaint.) The only sanction available to the ABA is to impose a condition on the broadcaster's licence. If the licensee then breaches the condition on the licence, the ABA may direct the licensee to comply with the licence condition, impose a fine or move to suspend or revoke the licence.

Under current arrangements, a licensee is unlikely to face a sanction for breaching a code of practice. The Deputy Chairman of the ABA summarised the ABA's responses to findings of a breach of a code or standard:

> In all cases where the ABA has found a breach of either a code of practice or licence condition the licensee has introduced corrective measures to ensure, as far as possible, that a similar breach does not occur in future. To date, the ABA has been satisfied with these corrective measures and has not found it necessary to apply further penalties other than publishing the report of the investigation. This is consistent with the Act's underlying philosophy of self-regulation by the broadcasting industry. (Grainger 1999, pp. 4–5)

For the first time, the ABA notified two licensees of its intention to make compliance with a code of practice a condition of licence in 1999 — commercial television station QTQ Brisbane concerning the broadcast of promotions in G viewing periods; and commercial radio station 2UE concerning news and current affairs, and advertising. But by far the most common response to breaches of codes is to have them published in the ABA's annual report.

An additional form of 'moral suasion' which may be brought to bear on broadcasters would be to require them to broadcast the fact that they have been in breach of the code of practice. The Media Entertainment and Arts Alliance (sub. DR272, p. 4), the Festival of Light (South Australia) (sub. DR236, p. 3), the Presbyterian Women's Association of Australia in NSW (sub. DR195, p. 3) and the Federation of Australian Radio Broadcasters (sub. DR266, p. 9) supported the recommendation that licensees found to be in breach of a relevant code of practice be required to broadcast an on-air announcement of the ABA's finding.

On the other hand, the Federation of Australian Commercial Television Stations stated that requiring stations to acknowledge breaches would damage the operation of the code of practice by discouraging stations from acknowledging breaches. It stated that, because most breaches are 'self-found', the requirement to acknowledge breaches 'would encourage stations to deny a breach, and take their chances on the complainant not pursuing the matter to the ABA' (sub. DR231, p. 14).

The Festival of Light (South Australia) was concerned at the lack of significant penalties for initial breaches of a code. It stated, in relation to the Commercial Radio Inquiry being undertaken by the ABA:

> Does this mean that if radio talkback hosts are shown to have deceived listeners about financial influences on their publicly expressed opinions, the radio stations which employed them would merely be told not to allow it to happen again? (sub. DR236, p. 3)

This appears to be the case. The ABA conducted its first hearing into code breaches, the Commercial Radio Inquiry, in 1999–2000. In February 2000, it found that radio station 2UE Sydney had breached the BSA five times and the commercial radio codes of practice on 90 occasions. The panel hearing the matter also concluded that 2UE's management systems were not adequate to prevent breaches of the codes or the conditions of its licence. The proposed penalty was the imposition of two conditions on 2UE's licence 'that are intended to ensure that listeners will be made aware by whom or for whom they are being persuaded' (ABA 2000a, p. 8). At no stage did 2UE face the prospect of more significant penalties for the code breaches, and if another broadcaster were to commit similar breaches, they would not face more significant penalties than imposing conditions on their licences. Other related investigations that form part of the Commercial Radio Inquiry are continuing. At their conclusion, the ABA will consider whether industrywide remedies are warranted. In addition, the industry association is reportedly considering expelling 2UE (*Sydney Morning Herald,* 10 February 2000, p. 3).

The system of cascading sanctions is designed to increase the penalty if a licensee disregards a direction from the ABA. Breaches of the code that occur before the ABA intervenes, no matter how serious or evident of inadequate management

systems, are subject to the limited sanction of a condition upon a licence. If the general matters covered by the codes of practice are made conditions on broadcasters' licences, then the ABA would be able to apply more significant sanctions, such as fines, for sufficiently serious breaches of those conditions.

Some commentators suggest that the system of cascading sanctions was a deliberate response to the perceived excesses of the previous system, under which the Australian Broadcasting Tribunal was seen as an overly aggressive regulator. Sandy Dawson of the Communications Law Centre was reported as saying:

> The problem was, the previous regime was seen to be extremely disruptive. They were very interventionist, and tended to throw their two bobs' worth in more than was strictly desirable. Certainly you don't want an adversarial relationship existing between the regulator and the industry participants, because that way, the only people who end up losing are the audience. So it was tamed down, in 1991, and there was a general view that self-regulation was the way to go. (*Australian*, 'Media' 22-28 July 1999, p. 7)

The Commission considers, for a co-regulatory system to work effectively, that the regulator should possess credible powers to penalise transgressors. The ABA does not have such a credible threat for initial breaches of the codes. The National Viewers and Listeners Association of Australia stated:

> We have no confidence in the ABA functioning as a watchdog. It needs more teeth, such as financial penalties. (sub. DR250, p. 3)

The Reformed Churches of Australia — Classis WA argued that the ABA should be able to impose penalties for all breaches of codes of practice (sub. DR210, p. 2).

If the general matters covered by the codes of practice are made conditions on broadcasters' licences, then the ABA would be able to apply sanctions for sufficiently serious breaches of those conditions. In addition, the Commission considers that greater publication of breaches, and giving the ABA discretion to direct broadcasters to take remedial action, are appropriate sanctions for breaches of conditions on licences.

RECOMMENDATION 13.7

The co-regulatory scheme should be amended such that, in addition to existing sanctions:

- ***licensees found to be in breach of a relevant licence condition are required to broadcast an on-air announcement of the breach finding and subsequent action during the relevant program or time slot; and***
- ***the ABA is given the power to issue directions for action to broadcasters found in breach of a relevant licence condition.***

13.8 Enforcement

Investigations and hearings

Under the BSA, the ABA may conduct investigations or hold hearings for the purposes of the performance of, or exercise of, any of its functions or powers. The main distinction between investigations and hearings is that the examination of a person during an investigation must be held in private, while hearings may be held in public. Otherwise the conduct of investigations or hearings is largely within the discretion of the ABA. The first compliance hearings (still under way) were initiated in mid-1999.

However, despite the ABA's monitoring and enforcement role and the broad powers granted to it, the ABA does not appear to have engaged in significant monitoring or enforcement of the codes of practice. It does not undertake auditing of licensees' compliance regimes. Rather, as required by the BSA, the ABA responds to complaints and conducts an annual national survey of people's concerns about material they have watched on television and heard on radio. The research examines community awareness of the television classifications and the perceived suitability of movies on commercial television. The most recent survey also surveyed awareness of the code complaints mechanisms.

The ABA monitors compliance with the content requirements of the Australian Television Standard and Children's Television Standards. Content related matters accounted for 12 of its 135 investigations in 1997-98 (table 13.1). Other investigations resulted from unresolved complaints to licensees and complaints about breaches of standards (licence conditions) made directly to the ABA.

The ABA has stated that ensuring long term compliance is becoming a higher priority as the regulatory scheme is 'bedded down' (ABA 1998a, p. 9). In 1997-98, 38 of the 59 code breaches related to commercial television services; two related to privacy issues; six to fairness and accuracy; one to sensitivity to victims; five to complaints handling; three to broadcasting distressing material; 19 to programs containing material outside their ostensible classification; and two to programs shown outside the appropriate classification time zone (ABA 1998a, pp. 69, 118–20). In 1998-99, 57 of 75 code breaches related to commercial television services. Four investigations into the amount of non-program matter scheduled by four commercial television licensees resulted in findings of 34 code breaches. Of the remaining breaches, one related to fairness and accuracy; 13 to complaints handling; one to broadcasting distressing material; four to programs containing material outside their ostensible classification; and four to programs shown outside the appropriate classification time zone. Of the 55 breaches of licence conditions,

28 resulted from one investigation into the broadcasting of political matter without the 'written and authorised' tag on six commercial television services (ABA 1999, p. 65, pp. 120–2).

Table 13.1 **ABA investigations resulting in breach findings[a]**

	1996-97	*1997-98*	*1998-99*
Number of investigations started	93	123	110
Number of investigations completed	115	135	109
Breaches by type of regulation			
Code of practice	41	59	75
Licence condition	8	24	55
Broadcasting Services Act	0	1	6
Total	49	84	136
Code breaches by type of service			
Commercial television	19	38	57
Commercial radio	10	5	4
Community radio	5	3	8
ABC television	5	6	4
ABC radio	2	6	2
SBS television	0	1	0
SBS radio	0	0	
Licence condition breaches by type of service			
Commercial television	1	15	52
Commercial radio	0	1	1
Community radio	4	3	2
Open narrowcast radio	2	4	0
Open narrowcast television	1	0	0
Subscription television	0	1	0

a Investigations completed in the reporting period. The broadcast under investigation may not necessarily have been in the reporting period.

Source: ABA (1998a, p. 69; 1999j, p. 64; correspondence 18 February 2000).

Many inquiry participants, such as the Presbyterian Women's Association of New South Wales (trans., p. 367) and the Festival of Light (South Australia) (trans., p. 785, and sub. DR236, p. 5), argued that the co-regulatory scheme lacks sufficient enforcement mechanisms, and called for increased monitoring and investigation.

However, as the number of services proliferates, the ability of any regulator to monitor the content of each service diminishes. An exceptions-based system becomes the only practical regulatory regime; for example, one based on reacting to breaches rather than actively monitoring compliance. The Commission considers that co-regulation, supported by better public awareness, improved complaints mechanisms and more effective sanctions, most appropriately deals with the incorporation of community standards in broadcast content. ABA resources would

be better directed towards ensuring the co-regulatory system is operating effectively, by promoting ethical standards, monitoring the operation of licensees' internal complaints mechanisms, responding to unresolved complaints, and dealing with complaints about fair and accurate coverage.

The Commission's recommendations on separating licences granting access to spectrum (administered by the Australian Communications Authority) from broadcasting licences (administered by the ABA) would mean that the ABA would become a specialist content monitor. This would enable it to place its primary focus on content issues, rather than having the divided responsibilities for spectrum planning and management as well as content.

13.9 Regulation of online content

Recent amendments to the BSA established a regulatory regime designed to deal with complaints about online (Internet) content. The *Broadcasting Services Amendment (Online Services) Act 1999* attempts to enforce the blocking and removal of objectionable content hosted by computers connected to the Internet in Australia. The scheme also promotes systems and tools to manage minors' use of online services, encourage content labelling, pursue international cooperative arrangements and set up a community advisory body (NetAlert).

The legislation imposes prohibitions on certain kinds of content; any material that would be rated RC (Refused Classification) or X and, if access is not restricted by a suitable adult verification service, material that would be rated R (based on the Office of Film and Literature Classification system for film and television).

The legislation establishes the ABA as the primary complaints body for online content (rather than the Internet content host or Internet service provider relaying the material). Different mechanisms are established according to whether the objectionable content is hosted on an Australian Internet site or an overseas site.

When the ABA receives a complaint about content hosted on an Australian site, it must obtain the views of the Office of Film and Literature Classification. The ABA may issue an interim take-down notice to the Internet content host, pending the site's classification. If the site content falls within one of the prohibited classifications, the ABA issues a final take-down notice. The ABA is also able to issue a special take-down notice, without having a site classified, for content 'substantially similar to' content for which it has previously issued take-down notices.

When the ABA receives a complaint about content hosted on an overseas site, it must undertake its own classification of the content. If it decides the content falls within one of the prohibited categories, it can issue a written 'standard access-prevention notice' to every known Australian Internet service provider, directing them to take all 'reasonable steps' to prevent users from accessing the content.

The objectives of the legislation require that the overall approach 'does not impose unnecessary financial and administrative burdens on Internet content hosts and Internet service providers'. The detailed requirements of the scheme are set out in codes of practice.

The ABA is also responsible for community education, research and international liaison. A community advisory body will, among other things, monitor material and advise the public about options such as filtering software.

The legislation has been subject to criticism. It has been argued that:

- it is 'overkill' and that existing laws were sufficient;
- it is not technically feasible and provides false assurance to those concerned about online content;
- it is inappropriate to regulate Internet service providers as broadcasters;
- it will have an unacceptable impact on freedom of expression;
- it will have an unacceptable effect on Australian Internet service providers and those wishing to do business online; and
- the film and television classification system is inappropriate for Internet content.

Existing legislation covers illegal activities on the Internet; that is, illegal activities do not become less illegal because they are conducted on the Internet. Existing laws prohibit people from knowingly accessing or transmitting objectionable material (or restricted material to a person under the age of 18). There have been successful prosecutions of offenders possessing illegal pornography on computers (Browne 1999, p. 13).

Many industry participants and technical experts have expressed concern about the practicality of the Government's approach. The CSIRO (1998) stated that 'blocking access to certain Internet material by [Internet service providers] or backbone providers will be largely ineffective', and it recommended voluntary user initiated content filtering and free distribution of filtering software. There has been concern that the existence of the regulatory regime may cause parents and others to assume that Internet content is now 'safe', and to reduce their own supervision of children's access, even though the scheme is ineffective.

The Institute of Public Affairs argued that the regulation of Internet service providers under the BSA is inappropriate:

> The [Institute of Public Affairs] is strongly of the view that the Broadcasting regulatory model is not appropriate for the Internet or for Internet service providers and that, as a consequence, they should not be regulated under the Broadcasting Services Act or by the ABA. (sub. 170, cover letter)

The institute argued that Internet service providers are service providers, like phone companies, courier services and the Post Office, and that service providers should not be held responsible for what their customers do with that service (sub. 170, p. 2).

Browne (1999, p. 3) noted that the legislation 'raises serious questions as to the status of freedom of expression in Australia as well as our vulnerability to invasions of privacy and access to confidential information'. The Media Entertainment and Arts Alliance was strongly opposed to the attempt to regulate online content, and 'strongly supports any review of the amendments which holds out any hope of repealing these restrictions on freedom of speech' (sub. DR219, p. 21).

Many Internet service providers are concerned that the legislation will impede online trading with other countries. They are also concerned that the local industry will become less competitive if costs are imposed on Internet service providers through enforced regulation or capital expenditure for equipment to block sites and deployment of additional resources to monitor online content.

The statutory requirement that regulatory action be 'technically feasible and commercially viable' aims to ensure that the regulations are not excessively onerous for Internet service providers. The Internet Industry Association code establishes a procedure, under which providers will have to remove content only when instructed by the ABA, rather than attempt to filter all content for objectionable material. Internet service providers will also be required to provide an ABA approved filtering software program to all users, and to ensure that appropriate age verification procedures are in place.

To implement and operate the online content regulations, the ABA has been allocated a budget of $1.95 million for 1999–2000, and $1.9 million per year thereafter. This is to help fund NetAlert and to pay for the cost of having content rated by the Office of Film and Literature Classification. The Government allocated NetAlert an additional $3 million from the Telstra 'social bonus'. Budde (cited in Gibson 2000, p. 1) estimated the compliance cost of the legislation to the Internet industry at $150 million.

The Internet Society of Australia was reported as commending the ABA for not requiring central filtering, but feared that the new code would lead to 'up to 25 per cent higher charges for Internet users' (*West Australian*, 21 December 1999, p. 43). It also noted that the definitions of an Internet service provider and an Internet content host are much broader than previously thought, 'calling into question the extent to which the Act can be enforced in practice' (ISOC-AU 1999a; Phillips Fox 1999).

The legislation applies the Office of Film and Literature Classification system of film and television classification to the Internet. In the traditional media, separate classification systems exist for films and television, publications and computer games. Although it is difficult to predict how the Internet will develop, the vast majority of Internet sites are picture and text based. The legislation has the potential to introduce anomalies into the classification of material, depending on how it is accessed; for example, there is no equivalent to an 'R' classification for computer games, but there could be for computer games on the Internet.

The Government has acknowledged that regulating the Internet will be difficult, but in the Second Reading Speech to the legislation stated that 'where it is technically feasible and cost-effective to block material, this should be done. It is not acceptable to make no attempt at all on the basis that it may be difficult' (Senate 1999a, p. 3963). The Reformed Churches of Australia — Classis WA (sub. DR210, p. 3) and Young Media Australia support this position. Young Media Australia stated:

> We support the Government's current attempt to regulate this area. We see it as a reasonable attempt to tackle what is obviously a very difficult area. … it's just not good enough to do nothing. (trans., p. 800)

It is too early to judge whether the recently legislated scheme will prove an efficient and cost effective way of achieving the Government's objectives, and how the legislation will affect freedom of expression. However, significant concerns have been raised about the regime for regulating online content, and it is a fundamental principle of good regulatory practice to build in opportunities for review of the success or failure of regulatory schemes.

The Broadcasting Services Amendment (Online Services) Bill included provision for a review of Internet content filtering technologies by 1 January 2003 (ABA, sub. DR 226, p. 40). The Commission considers that a broader review of the regulation of online content is required, and should be undertaken relatively soon.

The Communications Law Centre (sub. DR244, p. 2) supported a broader review, and Young Media Australia argued the review should also encompass the success for consumers of the NetAlert initiative, the associated hotline and community education campaigns (sub. DR204, p. 3). The Commission agrees with this

suggestion, because these alternatives may prove to be more effective and efficient means of addressing the problem.

RECOMMENDATION 13.8

The regulatory scheme for controlling access to online content, including the legislative requirements on Internet content hosts and Internet service providers, the associated codes of practice, and the NetAlert initiative, associated hotline and community education campaigns, should be reviewed after one year of operation. The 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.***

PART VII

APPENDICES

A Conduct of the inquiry

This appendix outlines the inquiry process and lists the organisations and individuals that have participated in the inquiry to date.

The Commission is to report to the Commonwealth Government by 5 March 2000. As in all of its inquiries, the Commission aims to improve the overall performance of the Australian economy. It must have regard to the established economic, social, environmental and regional development objectives of governments. The full terms of reference are on page IV.

Following receipt of the terms of reference on 5 March 1999, the Commission placed a notice in the national press inviting public participation in the inquiry and released an issues paper to assist participants in preparing their submissions. The Commission received 177 submissions before releasing the draft report and an additional 128 following the draft report. Those who made submissions are listed in section A1.

The Commission also held informal discussions in Sydney, Melbourne, Brisbane and Canberra with companies, government agencies and other organisations involved in broadcasting. This visit program assisted the Commission to obtain a wide understanding of the issues confronting the industry and the views of participants. Organisations visited by the Commission are listed in section A2.

In May and June 1999 the Commission held public hearings in Brisbane, Sydney and Melbourne which included video conferences with participants in Hobart, Adelaide and Perth. Following the release of the draft report, a second round of public hearings were held in Sydney, Melbourne and Brisbane in December which including video conferences with participants in Perth, Adelaide, Canberra and Hobart. Submissions and transcripts of the hearings are publicly available.

Two consultancies were let for the inquiry:

- the Key Centre for Cultural and Media Policy prepared a background paper on indigenous media (see appendix C); and
- Brian Dermott and Associates undertook a study of media consumption with particular reference to digital television uptake, using the Roy Morgan Research Single Source Database.

A1 Submissions received

Participants	*Submission no.*
3CR — Community Radio Federation	63, DR248
3MBS FM Music Broadcasting Society of Victoria	27, DR189
3UZ Pty Ltd (Radio Sport 927)	21, DR279
3ZZZ	DR251
4MBS Classic FM	19
AAP Information Services	36
Aboriginal and Torres Strait Islander Commission (ATSIC)	177, DR202, DR281
Advertising Federation of Australia	DR229
AOL Bertelsmann Online Services	40, 116
Athletics Australia	DR288
Austar	82, DR209
Austereo	55, 175
Australia Council of the Arts	DR284
Australia Trade and Shipping Radio FM 88 Springwood	41, DR238
Australian Association of Independent Regional Radio Broadcasters (IRB)	10, DR230
Australian Association of National Advertisers (AANA)	168, DR224
Australian Broadcasting Authority (ABA)	45, DR226, DR298, DR300
Australian Broadcasting Corporation (ABC)	78, 86, 106, DR206
Australian Children's Television Foundation (ACTF)	102, DR200
Australian Churches Media Association (ACMA)	7
Australian Communications Authority (ACA)	28, DR258
Australian Competition and Consumer Commission (ACCC)	159
Australian Consumers' Association	91, DR197
Australian Federation of Film and Television Associations	DR205
Australian Film Commission (AFC)	107, 144, 146, DR215
Australian Film Finance Corporation (FFC)	107, DR215
Australian Football League	DR240
Australian Key Centre for Cultural and Media Policy	DR254, DR278, DR289,
Australian Press Council	98
Australian Racing Radio Association	13
Australian Radio Network (ARN)	112
Australian Record Industry Association	DR243, DR259, DR292
Australian Screen Directors Association	110, DR217
Australian Subscription Television and Radio Association (ASTRA)	80, 165, DR255

(continued)

Participants (continued)	*Submission no.*
Australian Vice-Chancellors' Committee	DR257
Australian Writers Guild	12
Bartlett, Kerry MP, Federal Member for Macquarie	141
Bashir, Professor Marie Roslyn	44, 134
Bathurst Christian Broadcasters	38
Bayside Community Radio Association	5
Best FM	140
Blacktown City Council	147, DR225
Blair-West, George	173
Brown, Allan	152
Cable and Wireless Optus (Optus)	100, DR216, DR277
Cadence FM 99.3	6, DR241
Can West Pacific Communications	43
Captain Video Services	DR181
Catholic Communications Commission	76
Christian City Church	128
Christian Democratic Party (Western Australia)	17
Committee for the United Family Channel	DR275
Communication and Media Policy Institute, University of Canberra	169
Communications Law Centre	109, DR244, DR304
Community Broadcasting Association of Australia (CBAA)	73, DR214
Convergence Lobby	DR287
Creative Broadcasters	71
Crosio, Janice, MP, Federal Member for Prospect	153
Dean, Mrs Beth, Delforce, Miss Deidre and Dean, Kerry-Anne	154
Dean, Mrs C. E.	148
de Mol, Ian	DR285
Department of Commerce and Trade, Western Australia	115
Department of Foreign Affairs and Trade	133
Digital Convergence Australia	167
DMG Radio Australia Partnership (DMG)	26, 172, DR186
Dobbie, Phil	DR191
Dolby Laboratories	DR198
Education Network Australia (EdNA) Reference Committee	DR270
Elliott, J.	22, 60
Epworth Hospital	14

(continued)

Participants (continued)	*Submission no.*
Estiot, Jean-Georges	130
Ethnic Broadcasting Association of Queensland	31
Federation of Australian Commercial Television Stations (FACTS)	9, 150, DR231, DR302
Federation of Australian Radio Broadcasters (FARB)	83, DR266
Federation of Parents and Citizens' Associations of New South Wales	77, DR220
Festival of Light (South Australia)	88, DR236
Field, Wm. H.	124
Film Australia Ltd (FAL)	107, 144, DR268
Fist, Stewart A.	18, 85
Flew, Terry — Queensland University of Technology	64, DR233
Fox Sports	DR218
Francois, Dr Patrick	156
Friends of Fairfax	111
Giesecke, Terry	57, DR183
Global Television	DR181
H.S. Lilburn and Associates	118, DR223, DR249
Hawkesbury City Council	138
HCJB Australia Limited	113
Heart 'n' Soul Productions	114, DR227
Hellstrom, Rob	127
Hessey, Peter	122, DR184
HOT FM	DR196
Howell, David	62
Ibbertson, Dale	160
Institute of Public Affairs (IPA)	104, 170, DR242
International Dynamics	DR178, DR203, DR245, DR247, DR253, DR260, DR280, DR303
Investment and Financial Services Association Ltd	DR305
Irvine, Robert	131
John Fairfax Holdings (Fairfax)	8, DR182, DR276
Jones, Dr Paul — University of NSW	143, DR211
Keating, Hon. P. J.	39
Keogh, Max	58, 121
Key Centre for Ethics, Law, Justice & Governance, Griffith University	DR237, DR295
Kings, Richard	135
Kiss FM	105
Land and Water News	92, DR207

(continued)

Participants (continued)	*Submission no.*
Logan City Council	101
Macarthur South West Broadcasting	158
Macquarie Bank	11
Malbend trading as Radio 3MP	54
Matsushita Electric Company (Australia)	108
May, Harvey	56, DR239
Media Entertainment and Arts Alliance (MEAA)	119, DR219, DR272
Merchant, D.L., O.A.M.	161
Merlin Integrated Media	72
Multilingual Broadcasting Council Northern Territory	30
National Ethnic and Multicultural Broadcasters' Council (NEMBC)	37, DR222
National Indigenous Media Association of Australia (NIMAA)	53, 164
NIMAA Executive and National BRACS Working Party of 1999	162
National Rugby League	DR282
National Viewers and Listeners Association	9, DR250
Network Ten	48, DR263
News Limited	51, DR293
New South Wales Government	DR193
Northern Territory Government — Office of Communications, Science and Advanced Technology	137
NTL Australia	89, DR208, DR267, DR301
Our Lady of the Rosary Parish, Social Justice Committee	DR212
Ozemail	42, DR213
Paul Budde Communication	4, 23, 66, 75, 123, 125, DR185
Paynter, Tony	33, 163, 171, DR187, DR199, DR221, DR252, DR271, DR296
Philips Sound and Vision	166, DR265
Plier-Malone, (Ms) J.	DR192
Pompei, Leon	132
Presbyterian Women's Association of Australia (New South Wales)	35, 139, DR195
Prime Television	50
Promo-Radios (Australia)	103
Publishing and Broadcasting Limited (PBL)	52, DR269
Queensland Community Broadcasting Association	20
Queensland Legal Reform Group	DR188
Radio 2SM	90, 117
Radio Logan trading as 101.1 FM	61
Ramin Communications	79

(continued)

Participants (continued)	*Submission no.*
RDJ-FM Community Radio Co-op	59
Really Really Big Productions	84
Reformed Churches of Australia — Classis Western Australia	15, DR210
Reynolds, S.	157
RG Capital Radio	68
Robinson, Ray W. — CEO, Living Sound Broadcasters	16
Rowcom Holdings	70
Rural Press	93
Santana, Joe L., Promo-Radios	DR232
SBS Corporation	96
Schwartz, John, Swinburne University of Technology	DR235
Screen Producers' Association of Australia (SPAA)	47, 155, DR228
Seven Network	25, 151, DR234
Sony Australia Limited	174
Southern Cross Broadcasting	65, 120
Southern Star Group	81, DR262
Spurgeon, Christina, School of Media and Journalism, Queensland University of Technology	DR256
Starck, Walter	176
Stewart, J.E.	DR194, DR201, DR297
TAFE Communications Network (Western Australia)	46
Tasmanian Government	126, DR294
Telecasters Australia	32
Telstra Corporation	95, 145, DR290
Turner, Professor Graeme — University of Queensland	69
TVG Communications	97
University of Southern Queensland	DR190
van Vuuren, Kitty — Griffith University	DR286
Varan, Dr. Duane, Chair, Marketing and the Media Programme, Murdoch University	DR273, DR274
Victrix Media	34
Wattle Park Partners	136, DR291, DR299
Wentworth-Walsh, Dorothy	DR246
West Australian Newspapers	142
Western Australian Aboriginal Media Association (Aboriginal Corporation)	29, 129, DR261
Whitehorse Boroondara Community Radio 94.1 FM	3, 94, DR179
Wilson, Gerard	67
WIN Television Network	24, DR264

(continued)

Participants (continued)	*Submission no.*
Women's National Basketball League	DR283
Wood, Roger	2
WOW FM	149, DR180
Yeomans, Guy	1
Yoram Gross EM.TV	87
Young Media Australia (YMA)	74, DR204

A2 Visits

Organisation
AAP Information Services
Austar
Austereo
Australian Broadcasting Authority
Australian Broadcasting Corporation
Australian Children's Television Foundation
Australian Communications Authority
Australian Film Finance Corporation
Australian Football League
Australian Subscription Television and Radio Association
Cable and Wireless Optus
Channel 31 — Melbourne
Communications Law Centre
Community Broadcasting Association of Australia
Department of Communications, Information Technology and the Arts
DMG Radio
Federation of Australian Commercial Television Stations
Federation of Australian Radio Broadcasters
Fox Sports
Foxtel
John Fairfax Holdings
L.E.K. Consulting
Media and Telecommunications Policy Group at RMIT
Media, Entertainment and Arts Alliance
Mitchell and Partners
Network 10
News Broadcasting
News Limited
Ozemail
Publishing and Broadcasting Limited
SBS Corporation
Screen Producers Association of Australia
Seven Network
Southern Cross Broadcasting
Southern Star
Telstra Corporation
Zenith Media Australia

A3 Public hearing participants

Brisbane, 20 May 1999
National Indigenous Media Association of Australia
4CBL Radio Logan 101FM
Music Council of Australia Broadcasting Committee
4MBS
Queensland Community Broadcasting Association
Australian Racing Radio Association
Terry Flew, Queensland University of Technology
Professor Graeme Turner, University of Queensland
Harvey May, School of Media and Journalism, Queensland University of Technology
Jim Elliott
Catholic Communications Commission
Celestial Industries, Australian Trade and Shipping, New Zealand Shipping Company, Camphor House and Radio FM88 Springwood
Sydney, 24 May 1999
Screen Producers Association of Australia
Federation of Parents and Citizens of New South Wales
NTL Australia
Really Really Big Productions
Community Broadcasting Association of Australia
Federation of Australian Commercial Television Stations
Sydney, 25 May 1999
Network Ten
Ramin Communications
Prime Television
Ozemail Internet
Living Sound Broadcasters
Austar Entertainment
Sydney, 26 May 1999
Publishing and Broadcasting Limited
Stewart Fist
Australian Association of Independent Regional Radio Broadcasters
Heart 'n' Soul Productions
SBS Corporation
Presbyterian Women's Association of Australia (New South Wales)
Australian Subscription Television and Radio Association
Sydney, 27 May 1999
3V/Merlin Integrated Media
Australian Writers Guild
News Limited
Muslim Women's National Network of Australia

AOL Bertelsmann Online Services

Macquarie Bank

Radio 2SM and Digital One

Sydney, 28 May 1999

Australian Broadcasting Authority

Paul Budde Communication

TVG Communications

Professor Marie Roslyn Bashir

Cable and Wireless Optus

Melbourne, 7 June 1999

Australian Broadcasting Corporation

Telstra Corporation

Australian Churches Media Association

3UZ (Sport 927)

Whitehorse Boroondara Community Radio 94.1FM

DMG Radio Australia Partnership

Melbourne, 8 June 1999

Kiss FM

Australian Children's Television Foundation

Southern Cross Broadcasting

Communications Law Centre

WIN Television Network

Cadence FM 99.3 — video conference (Hobart)

Festival of Light (South Australia) — video conference (Adelaide)

Young Media Australia — video conference (Adelaide)

Melbourne, 9 June 1999

Australian Press Council

National Ethnic and Multicultural Broadcasters' Council, 3ZZZ and Community Radio Federation 3CR

Australian Screen Directors' Association

Western Australian Department of Commerce and Trade — video conference (Perth)

Western Australian Aboriginal Media Association, Aboriginal Corporation — video conference (Perth)

Melbourne, 10 June 1999

John Fairfax Holdings

Australian Film Commission

Australian Film Finance Corporation

Film Australia

Media Entertainment and Arts Alliance

HCJB Australia

Matsushita Electric Company (Australia)

H.S. Lilburn and Associates — in camera

Friends of Fairfax

Sydney, 6 December 1999
Australian Film Finance Corporation Ltd
Australian Film Commission
Fairfax
NTL Australia
Presbyterian Women's Association, NSW
Federation of Parents and Citizens, NSW
Paul Jones, University of NSW
Mckerlie Consulting
Sydney, 7 December 1999
Australian Broadcasting Authority
Australian Association of National Advertisers
Advertising Federation of Australia
APL Digital
Ozemail
Sydney, 8 December 1999
Communications Law Centre
Australian Broadcasting Corporation
Heart N Soul Productions
Australian Association of Independent Regional Radio Broadcasters
Community Broadcasting Association
Federation of Australian Radio Broadcasters
Austar
Sydney, 9 December 1999
Screen Producers Association of Australia
Australian Federation of Film and Television Associations
Australian Screen Directors Association
Media, Entertainment and Arts Alliance
Screen Producers Association of Australia
Federation of Australian Commercial Television Stations
Australian Subscription TV and Radio Association
Seven Network
Sydney, 10 December 1999
Fox Sport
Philips Australia
Dolby Laboratories
Cable and Wireless Optus
Australian Consumers Association

Melbourne, 13 December 1999
Institute of Public Affairs
International Dynamics
Australian Children's Television Foundation
Terry Giesecke — video conference (Canberra)
Cadence FM — video conference (Hobart)
Festival of Light — video conference (Adelaide)
Land and Water News — video conference (Adelaide)
Young Media Australia — video conference (Adelaide)
Department of Commerce and Trade (Western Australia) — video conference (Perth)
National Viewers and Listeners Association — video conference (Perth)
Melbourne, 14 December 1999
John Schwartz:
Australian Football League:
RKR Radio and Macquarie National Network:
National Ethnic and Multicultural Broadcasters Council
3CR Community Radio Federation
3ZZZ
HCJB Australia:
Brisbane, 17 December 1999
National Indigenous Media Association Of Australia (NIMAA)
Aboriginal and Torres Strait Islander Commission (ATSIC)
Jim Stewart
University of Southern Queensland
Wow FM
School of Media and Journalism, Queensland University of Technology
Best FM Pty Ltd
Key Centre for Cultural and Media Policy
Australia Trade and Shipping/Radio FM 88 Springwood
School of Media and Journalism, Queensland University of Technology
George Blair-West
Key Centre for Ethics, Law, Justice and Governance, Griffith University

B Licence conditions and fees

National broadcasting services

The national broadcasters (the ABC and the SBS) are responsible for providing radio and television services that inform, educate and entertain all Australians and contribute to a sense of national identity. The ABC and the SBS do not require broadcasting licences because they operate under their own Acts. However, they do require apparatus (or transmitter) licences under the *Radiocommunications Act 1992*. The Australian Broadcasting Authority (ABA) must reserve some spectrum in the broadcasting services bands for national broadcasters under s.31 of the *Broadcasting Services Act 1992* (BSA) and it must respond to any complaints it receives about the national broadcasters under s.150.

Commercial television and radio broadcasting licences

Commercial broadcasting services provide programs that are designed to appeal to the general public and which can be received on commonly available equipment. They are funded by advertising revenue, a proportion of revenue being paid to the Commonwealth Government as licence fees, and operated for profit or as part of a profit making enterprise.

All commercial television broadcasting licensees and all but six commercial radio licensees use the broadcasting services bands (that is, licensees receive automatic access to spectrum in the broadcasting services bands) although commercial television and radio broadcasting services can be broadcast by other means. Some narrowcasters transmit outside the broadcasting bands.

Content standards

There are numerous conditions attached to commercial television and radio broadcasting licences that relate to program content. Commercial television licensees are subject to the Australian Content Standard and the Children's Television Standard which set minimum quantities for Australian programs, Australian drama programs, documentaries and children's programs to be broadcast.

Commercial television and radio licences also have conditions attached under Schedule 2 of the BSA which relate to the broadcast of programs of national interest, emergency announcements, political and controversial matter, and advertising of tobacco or medicines. Commercial television licensees are also subject to restrictions on the broadcast of programs classified X or R by the Office of Film and Literature Classification. In addition, commercial radio and television licensees are subject to program standards set out in their respective industry codes of practice. These codes of practice address areas such as fair and accurate reporting, community standards and the broadcast of programs that may be harmful to children. The commercial television code also restricts the time allowed for advertising and the commercial radio code imposes quotas for the broadcast of Australian music.

Ownership and control restrictions

A foreign person must not control a commercial television licence, and not more than 20 per cent of the directors of each commercial television broadcasting company may be foreign persons. There are no foreign ownership restrictions on commercial radio broadcasting licences under the BSA.

A person must not be in a position to exercise control of:

- a commercial television broadcasting licence and a commercial radio broadcasting licence in the same licence area;
- a commercial television broadcasting licence and a newspaper that is associated with the licence area of that broadcasting licence; or
- a commercial radio broadcasting licence and a newspaper that is associated with the licence area of that broadcasting licence.

Commercial television broadcasting licensees may own only one licence per licence area and cover no more than 75 per cent of the Australian population. Commercial radio broadcasting licensees may own no more than two licences in each licence area.

Licence period and renewal

Commercial broadcasting licences (for both television and radio) are valid for five years. Licences are renewed for a period of five years once the licensee applies for renewal and pays the renewal fee. The ABA will refuse to renew a licence only if it decides that the licensee is likely to commit an offence against the Act or breach the

conditions of the licence. It is not required to conduct an investigation or a hearing into whether a licence should be renewed.

Licence fees

Commercial television and radio broadcasting licensees are levied licence fees under the *Radio Licence Fees Act 1964* and the *Television Licence Fees Act 1964* (table B.1). A commercial television licensee with gross annual earnings of $30 million, for example, would be required to pay 7 per cent of its gross earnings (or $2.1 million) in licence fees.[1]

Table B.1 **Commercial broadcasting licence fees**

Gross earnings per annum	*Television*[a]	*Radio*[a]
$m	%	%
< 5	0.5 + (0.6{A/1m})	0.25 + (0.3{A/1m})
> 5 and < 6	3.5 + (0.5{[A–5m]/1m})	1.75 + (0.45{[A–5m]/1m})
> 6 and < 7	4.0 + (0.4{[A–6m]/1m})	2.2+ (0.4{[A–6m]/1m})
> 7 and < 10	4.4 + (0.3{[A–7m]/1m})	2.65 + (0.15{[A–7m]/1m})
> 10 and < 20	5.3+ (0.11{[A–10m]/1m})	3.1 + (0.1{[A–10m]/1m}) or 3.25, whichever is the lesser
> 20 and < 45	6.4 + (0.06{[A–20m]/1m})	..
> 45 and < 75	7.9 + (0.03{[A–45m]/1m})	..
> 75	8.8 + (0.008{[A–75m]/1m}) or 9, whichever is the lesser	..

[a] 'A' represents gross earnings. 'm' represents million. Not applicable.

Source: Radio Licence Fees Act; Television Licence Fees Act.

Commercial broadcasters also pay a nominal fee of $25 each year for their apparatus (or transmitter) licences.

Community television and radio broadcasting licences

Community broadcasting services:

- are provided for community purposes;
- are not operated for profit or as part of a profit-making enterprise; and

[1] = 6.4% + (0.06{[$30m–$20m]/$1m})% of $30m = 7% of $30m.

- provide programs that audiences can receive on commonly available equipment and that are made available free to the general public (s.15, BSA).

Community broadcasting licences that use the broadcasting services bands are issued following a merit-based selection process. The ABA must consider a range of factors in selecting licensees (box B.1). The licence, issued to the applicant most able to satisfy these conditions, grants access to the spectrum and automatic access to a transmitter licence.

Box B.1 **Allocating community broadcasting licences**

In deciding whether to allocate a community broadcasting licence that is a broadcasting services bands licence, the ABA is to have regard to:

- the extent to which the proposed service would meet the existing and perceived future needs of the community within the licence area of the proposed licence;
- the nature and diversity of the interests of that community;
- the nature and diversity of other broadcasting services (including national broadcasting services) available within that licence area;
- the capacity of the applicant to provide the proposed service;
- the undesirability of one person being in a position to exercise control of more than one community broadcasting licence that is a broadcasting services bands licence in the same licence area; and
- the undesirability of the Commonwealth, a State or a Territory or a political party being in a position to exercise control of a community broadcasting licence.

Source: s.84, BSA.

The ABA may also issue other community broadcasting licences under s.82 of the Act. These licences do not include automatic access to spectrum in the broadcasting services bands, and licensees must use a different platform to deliver these services. However, no community broadcasting licences are currently issued under s.82.

Content standards

Community television broadcasters are not subject to the Australian content quotas applied to commercial television broadcasters. However, they must comply with Children's Television Standards.

Community radio broadcasters must comply with Radio Program Standards developed in 1986. These program standards require that at least 20 per cent of the

time spent broadcasting music between 6.00 am and midnight must be devoted to Australian music.

All community broadcasters are prohibited from broadcasting advertisements, but they may broadcast sponsorship announcements. Current legislation limits community broadcasters to five minutes of sponsorship per hour.

Licence period and renewal

Like commercial broadcasting licences, community broadcasting licences are issued for five years and are largely subject to the same renewal conditions that apply to commercial broadcasting licences.

Temporary community broadcasting licences

The BSA also provides for temporary community broadcasting licences, which give community broadcasters access to broadcasting spectrum before a licence area plan is prepared (see chapter 2). These licenses can be allocated to eligible applicants for up to 12 months.

The ABA must specify the times during which a licensee may broadcast as a condition of the temporary licence. This allows more than one licensee to operate using the same channel at different times. If there is only one licensee, it may broadcast continuously.

Temporary community broadcasting licences cannot be renewed, but a licensee can apply for a new licence before a current licence expires. The terms and conditions of a new licence may be different from those of an earlier one. Alternatively, the ABA can extend the period of the licence.

Subscription television broadcasting licences

Subscription television broadcasting services are broadcasting services that are intended to appeal to the general public but are available only on the payment of subscription fees. The first three licences specified that licensees must deliver services via satellite. Two of these licences (licences A and B) were allocated for commercial use and auctioned to the highest bidder. The third was allocated to the ABC (Albon and Papandrea, 1998).

The ABA has subsequently issued other subscription television broadcasting licences on application and payment of the application fee ($1600). A licence is

required for each service, meaning subscription suppliers require multiple licences if they are delivering multiple channels. Prior to 1 July 1997, the ABA was prohibited from issuing licences which used a satellite as a means of service delivery. Since that date subscription licences that have been issued are not tied to any particular delivery platform.

Content standards

Providers of channels to subscription television adult and children's drama services, are required to allocate 10 per cent of their incurred expenditure to Australian or New Zealand programs (s. 103A, BSA).

Subscription television broadcasting licensees were not permitted to broadcast advertisements or sponsorship announcements before 1 July 1997. They remain subject to a licence condition that subscription fees must remain their predominant source of revenue.

Ownership restrictions

Foreign persons must not have company interests in a subscription television broadcasting licence that exceeds 20 per cent in the case of an individual or 35 per cent in aggregate.

Cross media restrictions were applied to the first of the two commercial satellite licences (licence A). Telecommunications operators, commercial television broadcasting licensees and owners of large circulation newspapers were limited to owning 2 per cent of licence A until 1 July 1997.

Licence period and renewal

Subscription television licences are issued in perpetuity and can only be revoked if the conditions of the licence are breached. Licences can be transferred.

Class licences for subscription broadcasting and narrowcasting

Licences falling into this category are:

- subscription radio broadcasting services;
- subscription radio narrowcasting services;

- subscription television narrowcasting services;
- open narrowcasting radio services; and
- open narrowcasting television services.

All such services have limited reception because they are:

- targeted to special interest groups;
- only intended for limited locations — for example, arenas or business premises, tourist and racing radio services;
- provided during a limited period or to cover a special event;
- of limited appeal; or
- restricted in some other way.

Subscription services are limited in that they are available only on payment of subscription fees.

Unlike commercial or community broadcasters, persons operating narrowcast services are not required to obtain an individual licence from the ABA. However, narrowcasters must obtain access to a means of delivering their service. Narrowcasters using spectrum in the broadcasting services bands require an apparatus licence from the Australian Communications Authority (ACA). These apparatus licences are issued on application and payment of the reserve price or at auction, depending on the level of demand. Licensees are also subject to annual apparatus fees.

Narrowcasters using spectrum outside the broadcasting services bands also require an apparatus licence from the ACA. Again, these licences are issued on application and payment of the reserve price or at auction, depending on the level of demand. These licensees are also subject to annual apparatus fees.

Licence period and renewal

Narrowcasters may operate their service for five years, after which the ABA may decide to renew the licence for a further period or reallocate a new licence using a price-based, auction-style allocation system.

Open narrowcast services using the broadcasting services bands can be high powered, medium powered or low powered. The Australian Communications Authority issues low power, open narrowcast licences over the counter. It can issue high and medium power licences over the counter or at auction, depending on the level of demand.

Other broadcasting services

The ABA does not license new media operators such as those offering services over the Internet. However, there is scope under the BSA to licence these operators if their services amount to 'broadcasting' under any of the definitions of the Act.

The *Broadcasting Services Amendment (Online Services) Act 1999* established a regulatory regime via the ABA to deal with complaints about online content, and to enforce the blocking and removal of objectionable Internet content. The legislation prohibits certain kinds of content — that is, any material that would be rated RC (Refused Classification) or X and, if access is not restricted by a suitable adult verification service, any material that would be rated R (based on the Office of Film and Literature Classification system for film and television classification).

C The Indigenous broadcasting sector

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[*The Commission requested Dr Michael Meadows of the Australian Key Centre for Cultural and Media Policy, Griffith University, to prepare a research paper on Indigenous broadcasting services in Australia. The purpose of the commissioned paper was to provide a brief profile of the Indigenous media sector together with an annotated bibliography on the subject. This appendix is the resulting paper.*]

Introduction

The potential of the Indigenous media sector today can be accurately described as unrecognised and unrealised, largely as a result of *ad hoc* policy making. Unlike both New Zealand and Canada, the existence and importance of Indigenous cultures and languages remains unacknowledged in the Australian *Broadcasting Services Act 1992*. While it is clear that the Federal Government will have a continuing role in supporting Indigenous media infrastructure and program production and distribution, few government agencies are aware of the existence of the sector, let alone its potential for getting their messages across to Indigenous audiences. The Indigenous media sector is probably the only medium by which information can be effectively transmitted across these cultural boundaries. As with existing national and multicultural broadcasting services, government involvement should be interpreted as an investment in the cultural future of Australia, which must include the cultural and linguistic future of Indigenous Australians.

Scope of current scholarship

Studies of Indigenous and development broadcasting show that 'participatory' models seem most appropriate to enable local broadcasting communities to counter

the centralising tendencies of modern communications' technology (Bhatia 1992, p. 53). Although non-Indigenous government policies have established the broadcasting framework in which Indigenous people operate, communications researchers suggest there is no reason why 'culturally authentic' forms of expression still can't emerge (Katz 1977, p. 114). Radio is a medium which allows Indigenous people to 'speak as well as hear' (Girard 1992, p. 2). In a similar vein, Canadian researchers argue that the Inuit experience in 'doing things at one's own pace' and 'speaking in one's own voice' is an important lesson to learn about the nature of Indigenous media (Roth and Valaskakis 1989, p. 232). Indigenous media producers say that it is more appropriate to define media in terms of its aims, the context of its production, the mode and scope of its diffusion, and use to which it is put, rather than how it might appear to uneducated non-Indigenous eyes. So many Indigenous practitioners define media as proactive in organising its own space and creating its own identity (Michaels 1986, 1990; O'Regan 1990; Hall 1991; Thede and Ambrosi 1991; Molnar 1991; Batty 1993; Langton 1993; Meadows 1994; Molnar and Meadows 2000 forthcoming).

The aim of much community-based media is to provide *alternative* media services to those offered by mainstream broadcasting. The primary role of Indigenous media is, in contrast, to provide *a first level of service* to its communities. It is because the mainstream media have not served Indigenous audience needs that much of the Indigenous media production worldwide has emerged (Roncagliolo 1991; Molnar and Meadows 2000 forthcoming). Audience surveys of native broadcast media, particularly in the Arctic, reveal that local media are the primary sources of information about Indigenous affairs for most native people (Wilson 1993). Recent research in Brisbane suggests that Indigenous community radio stations like 4AAA, with a weekly audience of around 100 000, are fulfilling the same role (Meadows and van Vuuren 1998).

Studies in Yuendumu in Central Australia in the early 1980s showed that the *Warlpiri* were adapting video to suit their cultural needs, 'inventing', so to speak, their own form of television. The message there was contained not only in the subject matter of the videotapes produced, but also in *how* the videotapes were produced — in the social organisation of each video production (Michaels 1986). The outcome is a form of television which might be unique to a particular culture (Michaels 1990, p. 25). Aboriginal and Torres Strait Islander broadcasters working in community radio say that they, too, must work within community social structures (Watson 1988; Bell and Burton 1988; Noah 1988; Meadows and Morris 1998). Some even suggest that a program itself is not necessarily the prime purpose of community radio or video. It may be more about facilitating a *process* of community organisation involving the producers and the community working together (Tomaselli and Prinsloo 1990; Ginsburg 1993).

Molnar and Meadows (2000 forthcoming) argue that Indigenous media represent both a resistance to influences such as globalisation and a reaction to mainstream media misrepresentation. It is a key community cultural resource — a form of strategic cultural management — which must be incorporated into community social structures.

There is an overarching need to pursue strategies which make Indigenous media 'ordinary' rather than 'extraordinary' or 'unique' — in other words, to enable Indigenous people to access media on the same equal basis as non-Indigenous Australians. This is a crucial point in the light of claims of Indigenous 'special treatment'. The exceptional strategies required should be seen as ones which create 'sameness' rather than uniqueness (Mickler 1998, p. 292).

Western media models are often accompanied by Western legal frameworks. Policy makers find it difficult to reconcile two different cultures whose concepts of intellectual property are vastly different. Morris (Meadows and Morris 1998, p. 3) has underlined the importance for Indigenous media producers to become involved in debates associated with intellectual property because of the potential impact of technological and commercial convergence, and the unregulated nature of online and multimedia services. She suggests that some Indigenous communities may not want access to technologies like multimedia. Some might prefer to work with low-band video as opposed to high-end equipment. And in the shakedown, local media may become more important than the information superhighway with its endless 'sophisticated junk mail' (UNESCO 1995, p. 107; Meadows and Morris 1998, p. 11).

Analytical and methodological frameworks for evaluating Indigenous media

Identifying objectives

Indigenous media organisations urgently need to identify their own objectives to ensure ownership of these. Many will need either government or non-government support and/or advice to enable them to engage in this process. At the very least, this is likely to identify the importance of media providing a service-based operation linked to existing community social structures that maintain and reinforce law, language and culture. The absence of such an approach in identifying local cultural objectives with regard to media has meant that many communities have been unable to produce significant amounts of local content. More often than not, this is despite strong interest in media production by some community members. It

underlines the importance of communities doing it 'the right way' from the beginning. At the same time, the opportunity for Indigenous commercial enterprise needs to be incorporated into this process to facilitate access to alternative sources of funding. Clearly commercial opportunities will vary enormously across Indigenous Australia.

Evaluating effectiveness

The threat of cultural disruption justifies the identification of Indigenous people as a unique service group deserving of special licensing and support provisions. However, available technological options within existing policy frameworks have often created other outcomes. More attention at the policy development level needs to be given to the use of small scale technologies and creative solutions such as videoconferencing, Broadcasting for Remote Aboriginal Communities Scheme (BRACS) networking, or high frequency (HF) radio linked with local radio, for example (Bomford 1999 pers. comm.). There is a clear tension between making an argument for support for Indigenous media on cultural grounds, but having to couch this in terms of existing economic constraints. This is a very real problem facing Indigenous media organisations now. This may account, in part, for the obstacles many BRACS units face in offering anything more than very basic local programming.

Evaluating the sector's effectiveness must necessarily be a multi-layered process. It might be assessed by recognising its dual role — providing a first level of service to communities as well as providing a cultural bridge for non-Indigenous audiences. It might be evaluated in terms of its effectiveness in cross-cultural communication. It might also be assessed in terms of the links between local media and community-based organisations, such as ATSIC, education, language and health centres, legal aid offices etc. It might be examined in terms of how effective BRACS units become as local communication centres. In some places like the Kimberleys, this is already well-developed, but many other areas have been unable to realise their potential largely because of the *ad hoc* nature of sector management.

An examination of Indigenous media program content alone may not be the best measure of effectiveness — the structures communities put in place to manage local media may be more indicative of how effectively media have been incorporated into community life. External measures like qualitative listenership surveys — such as that used in assessing 4AAA's effectiveness in Brisbane (Roy Morgan Research 1997) — might help establish the nature of the audience–producer relationship. In the Brisbane survey, for example, 'word of mouth' preceded 'media' as listeners' most popular source of information about Indigenous affairs. And 4AAA was top of the media list (Meadows and van Vuuren 1998). More work needs to be done in

developing culturally appropriate evaluation methods for diverse Indigenous audiences.

A first level of service

Indigenous media should be considered as providing a *first level of service* to its communities of interest. This places it outside the role of the existing community broadcasting sector in Australia which provides an *alternative* service for the vast majority of its audience. As a corollary to this, continuing support for the Indigenous media sector in Australia must be viewed as an investment in long-term sustainability. Indigenous media perform an essential public service providing communities with access to local languages, information, training, and networking unavailable from any other sources. Continuing mainstream media misrepresentation of Indigenous affairs is another powerful driving force behind the development of the Indigenous media sector. Two of the recommendations of the Royal Commission into Aboriginal Deaths in Custody address this directly, recommending adequate funding for the sector (Number 205) and acknowledging the facilitation role played by Indigenous media organisations (Number 208) (Royal Commission into Aboriginal Deaths in Custody Vol. 4 1991, p. 59).

There is strong evidence for the media's important role in language and cultural maintenance and regeneration. The Indigenous population is culturally and linguistically diverse and ways of presenting information for Indigenous people in Fitzroy Crossing, for example, may be quite different for those in Yuendumu, or the Torres Strait, or Sydney. Mainstream media are the 'major instigator in the promotion of English as the most viable and prestigious code' and fail 'to recognise Aboriginal languages as viable codes of communication' (Schmidt 1990, p. 16; Aboriginal Languages Association 1989). Indigenous media play a crucial role in the process of cross-cultural communication and in this sense, too, offers communities a first level of service.

The sector now offers its diverse audiences programs (mostly on radio) in an estimated 50 Indigenous languages including specialist programs for prisoners (4AAA Brisbane), children, along with community announcements, oral histories, local news and current affairs, and documentaries. This community-based radio programming contributes variously to language and cultural maintenance. CAAMA [Central Australian Aboriginal Media Association] (at least two languages in central Australia), TEABBA [Top End Aboriginal Bush Broadcasting Association] (six or seven languages across the Top End), TSIMA [Torres Strait Islander Media Association] (three language groups in the Torres Strait), and the Kimberleys' stations (seven or eight language groups) are some examples of where this is

happening now. Imparja Television, too, uses language for some of its locally-produced programs.

Many of the 150 or more Indigenous radio stations across the country are involved in training, leading to increased community self esteem as well as the transfer of important industry skills. Apart from a handful of available places in the ABC or SBS, there are few other training opportunities for those wishing to work in Indigenous media.

There is an increasing tendency for networking community language centres and education programs through local radio — for example, 28 stations are linked across the Top End (TEABBA), six or more in central Australia (CAAMA, PY Media [Ernabella] and the Tanami Network), 14 island communities in the Torres Strait (TSIMA), a dozen or so Cape York communities (TAIMA), and 17 BRACS' communities in the Kimberleys. These use technologies like TieLine where communities are linked over standard telephone lines but are able to send broadcasts to a central hub for re-broadcast to a region by satellite (CBAA 1999, p. 9). Where these stations have established community-based infrastructures, they are playing a crucial role in the maintenance of law, culture and language. In the remote regions, in particular, these elements are inseparable.

Technological convergence

The convergence of technologies offers new ways for Indigenous media producers to access communication networks — but which communication technologies do communities really want or need? While some remote communities still rely on a single telephone line to reach the outside world, in the South Australian desert, innovative use of CB radio with local broadcasting and satellite technologies has enabled effective, and cheap, long distance communication between various Indigenous groups. Similarly, use of videoconferencing by Indigenous communities in central Australia has revealed innovative uses of technology with a strong social bias (Toyne 1992; Granites and Toyne 1994)

Sector diversity

There is ample evidence of government departmental indifference towards the Indigenous media sector. Much of this can be attributed to ignorance of the extent and nature of the sector and its audiences. Even the national broadcaster, the ABC, cannot boast the ability or the potential to service the cultural and linguistic diversity of Indigenous Australia. The Indigenous media sector does have that

potential through the National Indigenous Radio Service and various Broadcasting for Remote Aboriginal Communities Scheme (BRACS) networks.

Economic self-sufficiency

While there is a powerful desire by Indigenous media organisations across Australia to become economically self-sufficient, there seems little likelihood that a significant proportion of the sector could achieve that goal. Opportunities for commercial diversification most certainly exist and some have already been exploited. *The Koori Mail* newspaper, for example, is commercially successful, as are a handful of other small, Indigenous-owned enterprises, but it is difficult to see many being able to achieve commercial success in terms of becoming self-sufficient. It is more likely in larger urban communities where popular radio stations, like 4AAA in Brisbane for example, do have the potential to make inroads into the commercial world. But for remote BRACS or even regional broadcasters with a potential audience of several thousand Indigenous people, the chance of economic independence is a remote possibility. Most of the sector will need some form of continuing government support even if existing operations can be better managed. In Canada, for example, where Native communication societies have existed since the 1970s, most are able to raise between 40-55 per cent of their operating revenue, at best. The remainder is government-funded (King 1998).

Existing policy: history, objectives, implementation and achievement

Aboriginal Affairs personnel formed a media working party in 1980 with representatives of the then Posts and Telecommunications Department but it was not until the 1984 Satellite Program Services (SPS) inquiry into use of AUSSAT that Indigenous concerns were first raised during public hearings. The Federal Government accepted its recommendations and subsequently licensed three Remote Commercial Television Services — Golden West Network (Western Australia), Imparja (Northern Territory) and QTV (Queensland).

At the same time as the SPS inquiry was underway, a Federal Government task force in 1984 prepared a report into Aboriginal and Torres Strait Islander broadcasting called *Out of the Silent Land*. It was the first attempt to develop a coherent policy on Indigenous broadcasting in Australia. One of the outcomes of this was BRACS, where around 80 Indigenous communities were identified and provided with rudimentary radio and television receiving equipment along with the potential for minimal local radio and video production. The scheme has had mixed

success because of a lack of consultation and a lack of funding for training, program production, and maintenance. Some suggest BRACS was set up so that it would fail (Corker 1989). But some regional groupings of BRACS' communities — in north Queensland, central Australia and the Kimberleys, for example — have revealed its potential to adapt to the enormous cultural and linguistic diversity across Indigenous Australia.

Recommendations from *Out of the Silent Land* were accepted by the Federal Government in an environment where the imminent broadcasting of English language satellite television into remote Indigenous communities was being described as 'cultural nerve gas' (Fesl 1985). These fears closely parallel those of the Inuit who described southern television broadcasting to the northern Native peoples of Canada, 12 years earlier, as 'neutron bomb television' (Kuptana 1987).

The Department of Aboriginal Affairs released a discussion paper on Indigenous broadcast policy in 1991, acknowledging recommendations of the 1991 *Royal Commission into Aboriginal Deaths in Custody*, which urged adequate funding for Aboriginal-controlled media in recognition of its social function. A similar view was expressed in the 1991 *Report of the National Inquiry into Racist Violence*. The discussion paper suggested using possible technical developments such as cable delivery, CD quality sound from digital audio broadcasting, and compression techniques to allow for more creative use of existing facilities. Between 1982–85, a National Aboriginal and Islander Broadcasting Association (NAIBA) existed to represent the needs of Indigenous broadcasters in the policy process. It folded, largely because of a lack of funding commitment at the federal level and political divisions within the emerging Indigenous broadcasting sector. Following a seven year gap, the National Indigenous Media Association of Australia (NIMAA) emerged in December 1992. NIMAA has a 1999 membership of around 130 community media producers across all sectors — print, radio, television and video, multimedia, and film.

In January 1993, a draft policy statement was circulated to Indigenous broadcasters for comment and input and shortly after, was adopted as ATSIC's first Indigenous broadcasting policy. It was justified in these terms:

- *Equity considerations*: Indigenous people should have the right to full access to information and entertainment available through national and regional media.
- *Cultural restoration, preservation and growth*: Broadcasting has the potential to provide communities with means to maintain languages and cultures.
- *Efficiency of communication*: Indigenous access and/or control of local radio and television can substantially improve delivery and exchange of vital information

on such issues as health, child welfare, substance abuse, domestic violence, education etc.

- *Employment*: Indigenous control provides employment and training opportunities in urban and remote communities and the possibility of access to mainstream media employment.
- *Enhanced self-image*: Watching or listening to culturally and linguistically relevant programming enhances a sense of worth and community profiles.

A comprehensive 1998 ATSIC review of the Indigenous media sector, *Digital Dreaming*, at the time of writing, had not been released.

Implications of technological change

A lack of access to mass communication networks has prompted Indigenous people to seek alternative ways of adapting technologies to suit local cultural needs, sometimes using low-cost and simple technologies like community radio, VHS or Hi 8, or to adapt technologies like videoconferencing (Toyne 1992; Granites and Toyne 1994). Small format production in the Pacific Islands has worked well where it has been seriously embraced (Molnar and Meadows 2000 forthcoming). While it is generally agreed that technology alone cannot lead to the destruction of Indigenous societies, Indigenous people must have the power to adapt these technologies to suit their cultural needs if they are to be used in culturally-appropriate ways (Kulchyski 1989, p. 50).

Communities potentially now have access to a huge range of new media technologies but there are important cultural questions which may need to be addressed. Indigenous media producers have recognised ways in which technologies — in this case, media technologies — are *learnt* rather than simply transferred. It seems clear that this 'technological learning' takes place on different levels. Technology must be learnt in a 'proper context of use' which finds a balance between local and non-local needs (Braa *et al* 1995, p. 21). Without a framework relevant to the cultural needs of a particular community, media production might only ever mimic other forms. This suggests the need for *informed consent* to become part of Indigenous media production processes to ensure communities maintain control over their cultural future (Meadows and Morris 1998, p. 12).

Relevant international models

Television Northern Canada (TVNC)

The push for a dedicated Native television network was spearheaded by the Inuit Broadcasting Corporation, and Television Northern Canada (TVNC) started broadcasting across Canada's remote north in 1992. It is listed as a charitable organisation and any surplus revenue is reinvested back into its operations. It includes nine members and six associate members. The nine members include six of Canada's 13 Native Communication Societies, Yukon College, the Government of the North West Territories, and the National Aboriginal Communications Society. The channel broadcasts in 13 Native languages, as well as English and French. It has an audience of around 100 000, of which more than half is of native ancestry, spread across five time zones. Surveys of northern communities have revealed high levels of interest in native television with audiences learning language and traditional skills through programming (Meadows and Brown 1995). TVNC is funded mainly through the Canadian Department of Communications (DOC) — a separate line of funding from the Department of Canadian Heritage's Northern Native Broadcast Access Program (NNBAP), which has funded production and distribution of native radio and television programming since 1983. The DOC allocated CAN$10 million over four years to establish TVNC and allocates around CAN$2 million each year for running the network (Meadows and Brown 1995; King 1998). Funding for the NNBAP has fallen from around CAN $13 million in 1989-90 to about CAN$8 million in 1998-99. TVNC is licensed as a commercial network and can advertise for up to twelve minutes an hour. Ten minutes of this is set aside for TVNC members with the remaining two minutes available to the network. TVNC raised around CAN$140 000 in 1997-98 from sponsorship. Audience surveys indicate almost all Indigenous people in the north watch TVNC, and native programs in particular (Meadows and Brown 1995).

In 1999, TVNC moved into the mainstream Canadian cable market. Following a landmark hearing by the Canadian Radio-television and Telecommunications Commission (CRTC), the Canadian regulator mandated that TVNC — renamed the Aboriginal People's Television Network (APTN) — now be carried as an essential national service along with the CBC and the commercial channel, CTV, on all cable networks. The expected annual income for APTN from this move into southern cable market is between CAN$15-18 million by charging cable subscribers an additional 15 cents per month. APTN is expected to begin its southern Canadian broadcasts in late 1999 (Nordicity Group Ltd 1997; Giberson 1998; APTN 1998). These developments in Canada have been made all the more possible by acknowledgment of the special place of Aboriginal people's cultures and languages

in the 1991 Canadian Broadcasting Act. The Act states in Section 3.1 (d)(iii) that Canadian broadcasting should:

> … through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of Aboriginal people within that society.

The Act also states in Section 3.1 (o) that:

> … programming that reflects the Aboriginal cultures of Canada should be provided within the Canadian broadcasting system as resources become available for the purpose.

Maori broadcasting

Through the Treaty of Waitangi, Maori broadcasters have had access to a named, legislated program fund since 1989. Section 53 of New Zealand's Broadcasting Act of 1989 established the agency, *Te Mangai Paho* with the primary aim of promoting Maori language and culture by funding broadcasting and programs (Te Mangai Paho 1996). The 1989 Broadcasting Act also established the Broadcasting Commission (NZ On Air) as an agency with a mandate to collect an annual Public Broadcasting Fee from television households. In addition, NZ On Air is responsible for promoting Maori language and culture through broadcasting, devoting 14 per cent of its 1998-99 budget to this and effectively setting Maori content of around 17 per cent on New Zealand television (NZ on Air 1998; NZ on Air 1999b). Public funding for broadcasting primarily aimed at Maori audiences in 1996 was more than NZ$30 million (Working Group on Maori Broadcasting Policy 1996; Ministry of Commerce 1997). The recognition of the importance of Maori language and culture in the New Zealand Broadcasting Act is significant and has placed Maori broadcasting in a strong position in relation to that in Australia. NZ On Air's role in relation to Maori broadcasting is described in s. 36 of the Act as:

(a) To reflect and develop New Zealand identity and culture by —

(i) Promoting programmes about New Zealand and New Zealand interests; and

(ii) Promoting Maori language and Maori culture;

A Maori television channel is due to go to air late in 1999. The cost of maintaining such a channel includes NZ$6–7 million (transmission) and between NZ$12–13 million available for program purchase with around half of this aimed at pre-school and teenage programs. In addition, the New Zealand government has set aside NZ$11.1 million in set up costs. It is estimated that the Maori television channel could generate advertising revenue of around NZ$750 000 a year and sponsorship

of around NZ$100 000 a year (Report of the Establishment Group for a Maori television Trust 1998).

Maori radio stations received funding of around NZ$9.3 million from Te Mangai Paho in 1997-98 (Ministry of Commerce 1998). Auckland station MAI FM is the most successful Iwi (local tribal) radio station in New Zealand. In 1999 it topped the ratings in the North Island city (Prior 1999). Programming is entirely directed to young people aged between 10–24 years (Wilson 1994, p. 100; Prior 1999). MAI FM produces around seven hours a day of Maori language programming and the country's 21 Iwi radio stations opt to take this or portions of it. Education is seen as a priority and several Maori language programs are designed for pre-schoolers and kindergarten age children.

Policy options

Acknowledgment of the exceptional importance of Indigenous languages and cultures in the Broadcasting Services Act would be a crucial step towards better establishing Indigenous media in the policy framework. At present, Indigenous media relies on uncertain support as it hovers uneasily between the whims of the community sector and a spate of federal government departments and agencies.

The *ad hoc* growth of Indigenous community radio stations, often with no operating guidelines in place or an examination of the possibility of sustainability, has meant large disparities in funding support between areas and aspiring media associations. There is a clear need for better coordination, particularly in the burgeoning community radio sector, perhaps focusing on regional rather than individual solutions. In remote Canada, native communities have adopted this model successfully (Meadows and Brown 1995).

The development of a national television channel has been discussed for some time now (West 1993) but a clear policy framework needs to be in place to manage the entire sector — particularly to explore the potential in community radio and BRACS — before a headlong rush into television which is far more expensive. Linking BRACS and community radio into community social structures offers the potential to see community media centres as a focus for programs such as education, health, language maintenance, and legal services. The 1998 ATSIC review details examples of existing facilities which do all of these things — but many communities simply use BRACS, for example, for precisely what the units were installed to provide an alternative to — watching mainstream television. A TVNC model for Indigenous television could tap into existing or planned regional strengths and extension of this from free to air to mainstream cable systems has the

potential to provide some income. However this would be a long term option given the slow rate of spread of cable across Australia. Indigenous people must be allowed to choose the model which best suits their purposes.

The Indigenous media sector in its diverse forms provides a *first level of service* to the communities in which it operates. The potential to extend on this is enormous and is being held back by various factors — lack of community expertise; lack of clear ideas on the role of media in communities; lack of understanding at both community and government level about the potential for community media to become true communication centres, tapping into services such as education and health. It seems crucial for Indigenous communities to be enabled and encouraged to identify their own goals and objectives in relation to local media and to examine the possibilities of pooling these through regional production centres. It is at the regional level where the real strength of BRACS seems to lie, enabling local linguistic diversity when appropriate.

Much of the Indigenous media sector will require ongoing funding support because of the isolated nature of many of the communities being served and the absence of alternative funding options. There needs to be a permanent, named production fund — similar to that in both Canada and New Zealand — to encourage and to promote Indigenous cultural production. The potential is there for Indigenous media operating in more affluent markets to tap into commercial opportunities as a result. However, the need for continuing government support seems likely for some years to come and should be seen as an investment in the development of the sector as a crucial communication network — an important and unique cultural resource.

Selected annotated bibliography

Batty, P. 1993, 'Singing the electric: Aboriginal television in Australia', in Tony Dowmunt (ed) *Channels of Resistance: Global Television and Local Empowerment*, London, BFI Publishing and Channel Four Television, pp. 106–125.

An analysis by one of the founders of the Central Australian Aboriginal Media Association (CAAMA) of the place of Imparja Television in the Indigenous media sector. This piece offers an analysis of Australian media policy at the time of the granting of the Imparja licence in the mid-1980s and its subsequent battle to begin broadcasting in 1988. The book from which this chapter is drawn, *Channels of Resistance*, offers a range of case studies of community radio and video production worldwide.

Girard, B. 1992, *A Passion for Radio: Radio Waves and Community*, Montreal, Black Rose Books.

This collection of community approaches to local radio is one of the best of its type. It documents different community experiences with local radio in Africa, South America and Europe. Most chapters make links between practical possibilities and local media policy environments.

Langton, M. 1993, *'Well, I heard it on the radio and I saw it on the television': An essay for the Australian Film Commission on the politics and aesthetics of filmmaking by and about Aboriginal people and things*, Sydney, Australian Film Commission.

Aboriginal anthropologist Professor Marcia Langton's landmark essay which provides an overview of ways of thinking about Indigenous identity through media and film production. She highlights the importance of cultural production for Indigenous media futures. She discusses a framework for thinking about Aboriginality and suggests co-productions as an ideal way for Indigenous and non-Indigenous media producers to work. She draws on several case studies of successful co-productions to make her case.

Meadows, M. 1992, *A watering can in the desert — Issues in Indigenous Broadcasting Policy in Australia*, Griffith University, Nathan, Institute for Cultural Policy Studies.

This provides an outline of the Australian media policy environment prior to the emergence of the first ATSIC Indigenous media policy in 1993.

Meadows, M. 1994, 'The way people want to talk: Indigenous media production in Australia and Canada', *Media Information Australia* 73, pp. 64–73.

This article is a summary of the Indigenous media policy environments in Australia and Canada along with a brief outline of current developments. It suggests parallel development for the two national sectors although responses in Canada have moved into television through a pan-Aboriginal model, Television Northern Canada, rather than the local approach used in the BRACS system in Australia.

Meadows, M. 1995, 'Voice blo mipla all ilan man: Torres Strait Islanders' struggle for television rights', in (eds.) J. Craik, J. James-Bailey, and A. Moran, *Public Voices, Private Interests: Australia's Media*, Sydney, Allen and Unwin, pp. 179–198.

This book chapter outlines the details of research into community perceptions of mainstream television on two remote islands in the Torres Strait in 1992 — Murray Island and Boigu Island. Television arrived on both islands within the past two years and communities had very different perceptions about its impact. On Murray Island, with a speech community of around 1000 and falling (Meriam language), people perceived English language television as a threat to language and culture and argued that it had changed the way Murray Islanders use time. The men now come home at lunchtime from fishing trips to watch the soaps. On Boigu, people generally welcomed mainstream television as a way of finding out about the world and of learning English. Here, the Kala Lagaw Ya language group has around 3000 speakers and is increasing. There were perceptions that mainstream television had influenced the ways in which young people behaved with knife fights and assaults within the community mimicking television. In this strongly religious community, there was a perception of an influx of inappropriate Western cultural values.

Meadows, M. and Brown A. 1995, *Northern Voices, Northern Choices: Television Northern Canada — A Background Report*, QUT Brisbane, Centre for Media Policy and Practice.

This monograph summarises the Canadian Indigenous media policy environment in depth and provides an overview of Canada's 13 Native Communication Societies along with community radio and Television Northern Canada. It reports on research

which identifies TVNC and community radio in Aboriginal communities as providing a first level of service for its audiences.

Meadows, M. 1996, 'Making cultural connections: Indigenous media in Australia and Canada', *Australian-Canadian Studies Journal*, vol. 14, nos. 1&2, pp. 103–117.

This article is an update on recent developments in Indigenous media policy in Australia and Canada. It draws comparisons between the two countries and highlights similarities between the kinds of cultural production in remote regions.

Meadows, M. and Morris C. 1998, 'Into the new millennium: the role of Indigenous media in Australia', *Media International Australia*, no. 88, pp. 67–78.

This journal article outlines progress on a research grant being undertaken through the Australian Key Centre for Cultural and Media Policy into the Indigenous media sector. In this piece, there is discussion of the importance of developing an appropriate framework for thinking about Indigenous media which comes from the communities themselves rather than being one which is imposed as a result of Western legal frameworks. It suggests that while new media technologies have the potential to offer Indigenous people access to communication networks, the idea of informed consent is a crucial element of any negotiation with communities who seek media access. Preliminary work suggests that media must be tied intricately into community social structures for it to succeed in meeting community expectations and obligations.

Meadows, M. and Vuuren K. van 1998, 'Seeking an audience: Indigenous people, the media and cultural resource management' *Southern Review*, vol. 31, no. 1, pp. 96–107.

This journal article reports on the first audience study of an Indigenous community radio station. The focus is 4AAA Murri Country in Brisbane, Australia's second 'special interest' Indigenous community radio station (1993) after CAAMA received the first licence in 1984. The survey, which included both quantitative and qualitative elements, revealed that apart from word of mouth, 4AAA acted as a primary source of information about Indigenous affairs for Brisbane's Indigenous community, most of whom are regular listeners. Around 100 000 people — mostly non-Indigenous — tune in to 4AAA each week. Focus groups run as part of the survey revealed a strong sense of community 'ownership' for the station. Its country music format was identified as one of its major elements of success.

Mickler, S. 1998, *The myth of privilege: Aboriginal status, media visions, public ideas*, Fremantle, Fremantle Arts Press.

Although not directly dealing with Indigenous media, this well-written book from the author of several studies of mainstream media treatment of Indigenous people makes a powerful argument which challenges labelling the 'unique' policies affecting Indigenous people as 'special treatment'. Rather, Mickler argues that within the idea of equality, exceptions must be those that create 'sameness' rather than 'uniqueness'. This idea is particularly important to current policy debates within the Indigenous media sector.

Molnar, H. 1993, *Indigenous use of small media: community radio, BRACS, and the Tanami Network*, paper delivered to 'Enhancing Cultural Value: Narrowcasting, Community Media and Cultural Development', CIRCIT, 4 December.

This is a detailed examination of the policy environment in the lead up to the installation of the Broadcasting for Remote Aboriginal Communities Scheme (BRACS). It documents the lack of consultation with communities throughout, and a subsequent lack of support for training, maintenance, and funding. It examines the potential of the local broadcasting system but concludes poor implementation has left BRACS to fall well short of its potential to counter the perceived impact of mainstream television and radio in remote Indigenous communities.

Molnar, H. and Meadows, M. 2000, *The way people want to talk: Indigenous media in Australia, the Pacific and Canada*, Sydney, Pluto Press (forthcoming).

This book describes media policy environments in Australia, the Pacific Islands and Canada and outlines the historical development of Indigenous media in the three regions. The study covers communication systems from the very beginning to the latest in technological and policy developments. It is critical of imposed media models and instead suggests the need for greater Indigenous community control of the means of production through appropriate policy regimes. The case studies reveal extraordinary successes — and failures — where particular media technologies were either adapted or rejected by communities, according to their cultural needs. There is a strong element throughout which is critical of a continuing trend to impose particular frameworks of thinking and particular technologies onto Indigenous communities without their informed consent. The book suggests that economic pressures and the legacy of colonialism continue to impede Indigenous ingenuity in the creative use of media technologies.

Roth, L. and Valaskakis G. 1989, 'Aboriginal broadcasting in Canada: A case study in democratisation', in Marc Raboy and Peter A. Bruck (eds) *Communication for and against Democracy*, Montreal, Black Rose Books, pp. 221–234.

These two well-known Canadian media policy researchers suggest that the native communication sector in Canada represents a remarkable example of democracy at work. Despite limited and state-controlled access to the airwaves over the past 30 years, Aboriginal people have managed to shape their media environment to suit their own cultural, social, and political needs. The writers suggest that it is at the margins where the most interesting developments often take place and suggest that Canada might well learn from its own Aboriginal people ways of speaking out with a voice which separates it from the background noise of the United States.

Thede, N. and Ambrosi, A. 1991, *Video the Changing World*, Montreal, Black Rose Books.

This is one of the best collections of approaches to community video production, worldwide. It outlines a wide range of ways in which local media initiatives have been able to subvert mainstream systems to enable some form of local communication by various minority groups.

Toyne, P. 1992, *The Tanami Network: New uses for communications in support of social links and service delivery in remote Aboriginal communities of the Tanami*, Paper presented to the Service Delivery and Communications in the 1990s Conference, 17–19 March.

This unpublished paper outlines the development of the Tanami Network in central Australia, based on local community social organisation. The paper details successful uses of compressed videoconferencing technologies to link four central Australian Aboriginal communities — Yuendumu, Lajamanu, Kintore and Willowra.

D Digital radio broadcasting

Two new digital radio distribution technologies have recently emerged: Internet radio and digital radio broadcasting (DRB). Internet radio streams audio through the Internet. DRB involves the broadcast of digitally encoded audio and data to a receiver through either terrestrial radio frequencies or through satellite transmission.

DRB offers a number of advantages over the existing analog system:

- better quality reception than is provided by analog AM and FM broadcasts to fixed, portable and mobile receivers;
- the ability to carry a range of ancillary services, often called program associated data, including graphics, data and text, which can provide information about the station and its audio programs (such as station name, song title, artist's name and record label, news, weather, time, traffic and promotional information); and
- dynamic reconfiguration so services can be easily changed from, say, a high quality music program in one time slot to two talk programs of lesser technical quality in another.

DRB technology comes at a cost; consumers will need new reception equipment and broadcasters will require new infrastructure.

Digital technology is also likely to change the content, format and style of radio. It offers new ways of presenting material, which is likely to have an impact on the material presented. Internet radio and DRB are different applications of digital technology, which may mean that content in these different forms evolves in different ways. However, as Berryman (1999 p. 51) comments:

> Internet Radio and DRB, the two digital distribution technologies on the rise, have different modes of transmission, one via cables and the other terrestrial transmitters and satellite; however, they share some similar digital concerns. The Internet is a great laboratory for the development of Net radio services and a useful environment for radio broadcasters to practise their craft, using a new combination of skills for a range of different tasks in the radio production process.

Development of digital radio

While there is at present no specific legislative framework for either Internet radio or DRB, the development of DRB has been discussed in two major reports. The first report, *Digital Radio Broadcasting for Australia* is a report of the Digital Radio Broadcasting Taskforce of the Australian Broadcasting Authority (ABA) and was released in 1996. The report considered the broadcasting requirements for DRB's use of the 1.5 GHz spectrum (1452–1492 MHz), identified by the World Administrative Radio Conference 1992 as an international allocation for DRB use. The taskforce's recommendations were presented to the Digital Radio Advisory Committee (ABA 1996).

The second report, *Digital Radio Broadcasting in Australia*, is the final report of the Digital Radio Broadcasting Advisory Committee established by the then Minister for Communications and was released in 1997 (DCITA 1997).

In 1997, the Minister for Communications, Information Technology and the Arts established a Planning and Steering Committee for digital radio broadcasting. Chaired by the Department of Communications, Information Technology and the Arts, it comprised industry representatives and other government agencies and aimed to develop a comprehensive framework for digital radio services to commence transmission in Australia in 2001 (DCITA 1998a).

In 1998, the Minister announced that existing commercial, community and national radio services would be permitted to convert to digital, but would be required to transmit their programs in analog mode for a simulcasting period to ensure listeners are not disadvantaged. The Minister also announced that there would be opportunities for new digital commercial radio services, with the number and timing of new entrants to be determined as part of the planning process (DCITA 1998a).

As with the conversion to digital television, the speed with which audiences adopt the new technology will depend on the cost of the new equipment. According to one academic commentator, the first domestic DRB receivers are likely to be available in Australia shortly, costing around $1000. A more affordable option is a PC card. A London-based company, RadioScape has recently produced a PC card costing less than $200, which provides high-quality sound and multimedia capability on a personal computer (Berryman 1999, p. 50). However, a Eureka 147 car radio with a dashboard control unit and a receiver in the boot is priced at around A$3300 in the UK (DMG 1999, p. 12).

Concerns have been raised about the uptake of digital radio by consumers. DMG Radio Australia states '[t]here are no portable or hand-held units available [in the

UK]. It is estimated that fewer than 1000 digital receivers have been sold after 12 months to a population of 59 million people' (DMG 1999, p. 12).

Digital technology

Different technologies are being developed to deliver DRB services. According to Soothill (1999, p. 37), those expected to achieve some success in the next five to ten years may include:

- Eureka 147;
- Worldspace;
- the USA's IBOC systems;
- the USA's S-Band satellite services;
- Japan's ISDB system;
- digital AM, both MF and shortwave; and
- various cable and satellite technologies (to fixed receivers).

Planning in Australia is proceeding on the basis that the Eureka 147 system will be used to provide digital services, generally operating in the L band frequency distribution of 1452 to 1492 MHz.

The technology required to transmit DRB is being assessed in Australia. Trials involving the then National Transmission Agency and Telstra have been undertaken in Melbourne and Sydney, using programs from the ABC, SBS, commercial and community broadcasters and narrowcasters. The National Transmission Agency has also undertaken trials in Brisbane (DCITA 1997). The Department of Communications, Information Technology and the Arts has undertaken further trials using satellites, and a consortium of four networks — the ABC, the Austereo Network, the Australian Radio Network and 2KY Racing Radio — has tested DRB in Sydney (Rollins 1999).

Eureka 147

According to the Digital Radio Advisory Committee (DCITA 1996), a consortium of broadcasters in Europe developed the Eureka 147 system. The system converts an audio signal to a digital signal, which is then compressed. A multiplex can bring together several audio channels and encode them into a single data stream. Data and other services can then be added to form an ensemble. Digital receivers separate and decode the ensemble for the listener. Each multiplex is able to carry five 'compact

disc quality' programs: around six 'FM quality' services; around 12 'AM quality' services; around 30 voice channels; or some combination of these. The signal can be dynamically reconfigured so a high quality service can be readily switched to a number of lesser quality services or vice versa.

Eureka 147 permits the establishment of single frequency networks, which allow for wide area coverage using several transmitters carrying the same signal on the same frequency. This means reception can be maintained when travelling from one area to another. Further, the signal can be re-transmitted on the same frequency to provide cheap 'in-fill' coverage in areas of poor reception and to shape the coverage to better match the intended service area. It may also be possible to insert local programming.

Eureka 147 generally allows for more effective spectrum use than provided by analog technology, both in carrying a greater number of services in a given amount of spectrum and in providing adjacent local coverage areas (DCITA 1996).

Overseas experience

To date, the United Kingdom has the most advanced use of DRB technology. DRB has commenced in the United Kingdom using Eureka 147. A legislative framework is in place, in which broadcasters and multiplex managers are licensed separately. The Government has allocated the spectrum to allow seven digital 'ensembles'. The BBC National Radio and Independent National Radio have each been allocated an 'ensemble'. The remaining five 'ensembles' will carry BBC and independent local and regional radio**.** The BBC launched its national service in 1995. The first commercial digital radio network was launched in November 1999 (sub. DR292, p. 3).

The Digital Radio Advisory Committee (DCITA 1997) and Soothill (1999, p. 35) have outlined developments in DRB in other countries and a summary of these developments appears in table D1.

Table D.1 **Overseas developments in DRB**

Country	*Stage of DRB development*
United States	No transmission standard has yet been selected.
China	Standards are being developed. Eureka 147 is being evaluated. A pilot digital network has been established in Guandong province using a three-transmitter single frequency network carrying six sets of programs.
India	Research has been conducted by All India Radio over several years including test transmissions in Delhi. Planning for a satellite distribution service of a digital ensemble with retransmissions in major cities is proceeding.
Japan	No transmission standard has yet been selected.
Hong Kong	A pilot digital radio single frequency network has been established.
Malaysia	A frequency planning study for digital radio has been completed. A pilot project has been planned for Kuala Lumpur.
Singapore	Radio Corporation commenced a digital service in 1999.
South Korea	Computer simulations have been conducted together with Eureka 147 field trials in the Seoul area. Eureka 147 is to be adopted over five years.
Canada	Canada is migrating all existing AM and FM broadcasters to digital technology using Eureka 147 and a combination of terrestrial and satellite coverage. A DRB frequency allotment plan was published in 1996, giving every AM and FM station access to digital broadcasting. Transitional digital licences are being issued for a period of three years while a permanent licensing system is developed. Existing broadcasters that intend to mainly simulcast current signals are granted automatic access to spectrum, while applications for new services are considered on a case by case basis.
France	Experiments with DRB have been conducted in France since 1994 using Eureka 147. By 1996, Radio France had set up a Working Group to examine which programs would be suited to digital. The intention is to establish DRB when consumer receivers become available.
Germany	Germany has been running pilot projects using Eureka 147 for a number of years. Since 1997, licence fees have included a special supplement to help the public service broadcasters build up the infrastructure for DRB.
The Netherlands	The Netherlands held an allotment planning conference in 1995 to allocate spectrum for DRB. Single frequency networks have been established, covering at least 50 per cent of the population. Several companies have also been involved in experimenting with ancillary services.
Sweden	Swedish experiments in DRB started in 1992 and a number of services have since begun transmission. Initially the transmissions were limited to simulcasting FM programs, and new services were added later.
Others	Italy, Switzerland, Belgium, Norway, Denmark, Finland, Hungary and Poland have also conducted DRB trials.

Source: DCITA (1997), Soothill (1999, p. 35)

E Cross-ownership and control rules in other countries

This appendix provides a brief summary of the cross-ownership and control restrictions in the media industries of other OECD countries (table E.1). Reflecting the nature of regulation in these countries, cross ownership and control regulations involving telecommunications businesses and media firms are listed separately from cross ownership and control regulations involving media businesses only. Restrictions involving telecommunications businesses are becoming more important as telecommunications infrastructure becomes a conduit for supplying broadcast-like services. In addition to any specific regulations, competition laws may also apply.

Table E.1 **Cross-ownership and control regulations in selected OECD countries**

Country	*Specific cross-ownership restrictions between telecommunications and media companies*	*Specific cross-ownership regulations between broadcast television, radio and newspapers*
Austria	Yes. Limits on cross-ownership of newspapers, television[a] and radio with cable companies	No
Belgium	Yes. Limits on cross-ownership of cable and terrestrial television	No
Canada	No[b]	No
Czech Republic	No	No
Denmark	Yes. Limits on cross-ownership of local television and cable companies	No
Finland	No	No
France	Yes. Population restriction on providing both terrestrial television and cable services	Not available
Germany	No	Yes. Limits on cross-ownership of newspapers and broadcasters
Hungary	Yes. Prohibition of cable company investment in, or provision of, terrestrial television services	Yes. Prohibition of ownership of radio and television licences by the same individual or company
Ireland	No	Yes. Details not available

(Continued on next page)

Table E.1 **(Continued)**

Country	*Specific cross-ownership restrictions between telecommunications and media companies*	*Specific cross-ownership regulations between broadcast television, radio and newspapers*
Italy	Yes. Restrictions between telecommunications, broadcasting and cable companies	Yes. Limits based on share of combined industry resources
Japan	Yes. Provision of cable infrastructure by television companies allowed only in limited cases	Yes. Prohibition on a company operating more than two of either newspapers, television or radio services except in limited cases
Korea	Yes. Prohibition of cross-ownership between cable and newspapers or broadcasting companies	Yes. Prohibition of cross-ownership between broadcasting companies and newspapers
Mexico	No	No
Netherlands	No	Yes. Shareholding limits on ownership of broadcasters by newspapers and market share limits on ownership of newspapers by broadcasters
Norway	Yes. Prohibition on cable companies holding television broadcast licences[c]	Yes. Limits on cross-ownership of newspapers and broadcasters
New Zealand	No	No
Portugal	No	No
Spain	Yes. Prohibition on private television companies providing cable infrastructure or holding more than one cable service licence	No
Sweden	No	No. Under review
Switzerland	No	Yes. Case by case assessment of threat to diversity
United Kingdom	Yes. Limits on cross-ownership between telecommunications, broadcasting and cable companies	Yes. Limits on cross-ownership of newspapers and broadcasters
United States	No[d]	Yes, Diversity or minimum 'independent voice' tests apply

a There are no private television companies. **b** The Canadian Radio, Television and Telecommunications Commission examines the issue on a case by case basis. **c** Under review. **d** Some Federal Communications Commission rules restricting cross-ownership have been retained.

Sources: OECD (1998, 1999b)

Table F.1 **Assistance to local broadcasting in other countries[a]**

Country	*Assistance*
Canada	**Television quotas** Canadian content status is determined on the basis of a 10 point scale. Programs are awarded points for each key creative person who is a Canadian citizen at the rate of two points each for the director and screen writer and one point each for the highest and second highest paid actor, the head of the art department, the director of photography, the music composer and the picture editor. Programs must be produced by a Canadian and have at least six points to be considered Canadian. To qualify for financial assistance, programs must attain 10 points. Co-productions can also meet requirements for Canadian content. Terrestrial television must devote at least 60 per cent of the broadcast year to the broadcasting of Canadian programs. Public licensees are required to devote not less than 60 per cent and private licensees not less than 50 per cent of the evening broadcast period (6 pm to midnight) to the broadcast of Canadian programs. Subscription television is required to provide 16–100 per cent Canadian content, depending on the service. Pay per view and video on demand services must offer a 1:20 ratio of Canadian to non-Canadian films, and a 1:7 ratio of Canadian to non-Canadian events. They must distribute no fewer than 12 Canadian feature films each year. Cable, direct to home satellite and microwave distribution service systems must ensure that a majority of the channels received by their subscribers are Canadian programming services (including the Canadian Broadcasting Corporation and its French language version stations or their affiliates, local commercial Canadian services and the provincial educational service). In addition, the basic service includes a community channel and the Canadian Parliamentary channel. **Radio quotas** Canadian content is determined by nationality of music composer, artist, place of production and author of the lyrics. Canadian content requires at least two of the four to be Canadian. Radio stations are required to broadcast 35 per cent popular Canadian music and a minimum of 35 per cent Canadian content from 6 am to 6 pm Monday to Friday. **Financial assistance** • Telefilm Canada's Feature Film Fund and Feature Film Distribution Fund provided CAN$22 million and CAN$10.3 million respectively to support the film industry in 1996–97. Telefilm also provides a Loan Guarantee Program and a Production Revenue Sharing Program that support television and film production.

(Continued on next page)

Table F.1 (continued)

- The Canadian Television Fund (CTF) provides CAN$200m (through the License Fee Program and the Equity Investment Program, comprising CAN$50 million annually from the Telefilm Canada budget, CAN$50 million annually from the cable television industry, and CAN$100 million annually from the Department of Canadian Heritage) to support production and distribution of Canadian drama, children's programming and documentary, performing arts and variety shows. The fund is available to only Canadian owned and controlled production companies for productions that meet Canadian content regulations and that will be broadcast in prime time by a Canadian television licensee within two years of completion. In addition, the Canadian Broadcasting Corporation can access up to 50 per cent of the fund in partnership with independent Canadian producers. Broadcast distribution companies (including new direct-to-home services) are required to contribute up to 5 per cent of gross annual revenues to the Canadian Television Fund. In its first two years of operation, the fund assisted in the creation of 2221 hours of new Canadian programming to be shown on Canadian television during prime time (generally 7 pm –11 pm).
- Canadian Film or Video Production Tax Credit program
- The Multimedia Fund assists in the development, production, distribution and marketing of Canadian multimedia products. Administered by Telefilm Canada, the fund provides $30 million for interest free loans.

Indigenous broadcasting

Television Northern Canada (recently renamed the Aboriginal People's Television Network) began broadcasting in 1992 to Inuit communities in Northern Canada. It broadcasts in 13 native languages, English and French and is funded through the Canadian Department of Communications at around CAN$2 million per year. It is licensed as a commercial network and can advertise for up to 12 minutes per hour. It was recently included as a basic cable service across Canada, with an additional charge to cable subscribers of 15 cents per month raising CAN$15–18 million for the network.

New Zealand

Quotas

None

Financial assistance

The Broadcasting Commission (NZ On Air) was established to 'reflect and develop New Zealand identity and culture by (i) promoting programs about New Zealand and New Zealand interests; and (ii) promoting Maori language and Maori culture' (*Broadcasting Act 1989*, part IV). In particular, NZ On Air television funding is allocated to the production of 'at risk' categories such as drama and documentaries. NZ On Air spent NZ$44.3 million on television programs in 1997-98, resulting in 801 hours of drama/comedy, documentaries and programs for special interest audiences such as children and minorities in the community. NZ On Air funds about 30 per cent of the cost of all local content on free to air television. In 1997-98, 21 per cent of content broadcast was local.

(Continued on next page)

Table F.1 (continued)

	Until 1 July 2000, subsidies are financed by the Public Broadcasting Fee levied on households with a television set. The fee is NZ$110 per year per household, and raised around NZ$89 million per year. The Government announced in the Budget on 20 May 1999 that the fee would be phased out and abolished on 1 July 2000. NZ On Air will then be funded from general taxation. **Indigenous broadcasting** Maori broadcasters have access to the Te Mangai Paho fund which promotes Maori language and culture by funding broadcasting and programs. NZ On Air devotes around 14 per cent of its budget to this fund. As a result of this fund, Maori content on New Zealand television is around 17 per cent. Maori radio stations received funding of around NZ$9.3 million from Te Mangai Paho in 1997-98.
European Union	**Quotas** The Television without Frontiers Directive 1989 (Directive 89/552/EEC), as amended by Directive 97/36/EC, specifies for member States the minimum content levels and quotas for productions by EU producers independent of broadcasters. Article 4 requires that 'Member states shall ensure where practicable and by appropriate means that broadcasters reserve for European works … a majority proportion of their transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping'. The Directive allows member States to apply stricter provisions where they are deemed necessary for national and cultural (notably linguistic) reasons. Article 5 requires member States to ensure, where practicable and by appropriate means, that broadcasters reserve at least 10 per cent of their transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping, or [alternatively], at the discretion of the member State, at least 10 per cent of their programming budget, for European works created by producers who are independent of broadcasters. **Financial assistance** Such assistance includes the MEDIA II program (running for five years to 31 December 2000) which provides grants and loans to 'promote the development of [film] production projects … aimed at the EU market'.
Denmark	**Quotas** Must comply with EU Directive

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Table F.1 (continued)

	Television quotas At least 50 per cent of programs must be of Nordic origin.
	Radio quotas Radio services are required to broadcast a representative proportion of news, information and arts programming.
France	**Quotas** Must comply with EU Directive
	Television quotas Terrestrial television must allocate 60 per cent of prime time to original EU works and 40 per cent of time to original French language works. Prime time is defined as 6 pm to 11 pm every day as well as 2 pm to 6 pm Wednesday. Terrestrial television must invest at least 15 per cent of revenue in the production of audio-visual material in French language and three per cent in the production of EU cinema (of which 2.5 per cent should be in French language cinema). Cable television has the same transmission requirements but no production obligations. Satellite television will eventually be subject to the same content requirements that apply to cable.
	Radio quotas All public and private radio stations must devote 40 per cent of prime air time to French songs.
	Cinema quotas Cinemas must reserve five weeks per quarter for French feature films, or four weeks per quarter for theatres that include a French short for six weeks of the previous quarter.
	Financial assistance Such assistance includes cinema taxes to support film production. Any producer of fiction, animation, cultural shows or documentaries whose programs have been broadcast by French television automatically receives a grant from the country's Film and Television Industry Support Fund.
Ireland	**Quotas** Must comply with EU Directive, although this is easily satisfied by programs imported from the United Kingdom.

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Table F.1 (continued)

	Television quotas Ireland's only private broadcaster, TV3, has been required to broadcast 15 per cent Irish programs per year since its establishment in 1998. This figure will rise to 25 per cent over a five year period. Ireland's public broadcaster, RTE, has a primary objective of providing local content, although it is under no statutory obligation to do so. In 1997, 41 per cent of RTE programming was local content. RTE also operates TnaG, a station (broadcasting for an average of nine hours per day) designed to promote the Irish language. Almost 60 per cent of the station's output is in the Irish language, with half of the remainder being other local content.
South Africa	**Television quotas** The aim is to achieve 50 per cent local content on the national broadcaster and 30 per cent on private free to air broadcasters, to be phased in gradually. Sub-quotas for national and private broadcasters within the overall quota relate to drama (20 per cent national and 15 per cent private), current affairs (80 per cent and 70 per cent), documentary (50 per cent and 40 per cent), educational (60 per cent national only) and children (50 per cent and 30 per cent). Private free to air services are required to ensure 40 per cent of local content is independently produced. No local content requirements apply to subscription services.
Spain	**Quotas** Must comply with EU Directive **Television quotas** At least half of the 51 per cent of broadcasting time reserved for EU works must be in Spanish or one of the other official languages of Spain (justified not as support for domestic production but as support for languages). **Cinema quotas** Theatres in Spain must show one day of new EU films for every three days of non-EU films they display. Film distributors can only receive a dubbing licence for foreign films when they contract to distribute a certain number of Spanish films.
United Kingdom	**Quotas** Must comply with EU Directive

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Table F.1 (continued)

Television quotas

Terrestrial television (channels 3, 4 and 5) must broadcast at least 25 per cent of qualifying programs made by independent producers.

For Channel 3, program quotas are incorporated as a licence condition. At least 65 per cent of program hours (including repeats) transmitted in a calendar year must be originally produced or commissioned for regional Channel 3 services. Consequently, not more than 35 per cent should be acquired programs (including repeats) originally made for some other market. In 1997, 71 per cent of regional Channel 3 transmissions were originally produced or commissioned and for the national breakfast time licensee (GMTV), the share was 85 per cent.

Channel 5 must originally produce or commission, rather than acquire, a minimum of 59 per cent of programs (including repeats).

Channels 3, 4 and 5 have licence conditions that specify strands of programs and the minimum quantities of each that have to be broadcast by the licensee (drama, entertainment, sport, news, factual programs, education, religion, arts and children's programs). Regional licensees are required to broadcast some programs of particular regional interest and origin.

GMTV is required to broadcast minimum amounts of programming defined as news, entertainment, sport, factual, education, religion and children's programs.

Cable and satellite television must comply with EU Directive.

Financial assistance

Such assistance includes assistance to the British film industry through organisations such as the British Film Institute, National Film and Television School, British Screen Finance, EU Co-Production Fund and the British Film Commission. British Screen Finance and EU Co-Production Fund have grants of £2 million each to encourage commercial investment in British films/co-productions.

a Focuses on direct assistance to broadcasting content, not the effects of general operations of national (publicly funded) broadcasters.

Sources: Cultural Industries Sectoral Advisory Group on International Trade (1999); ITC (1998); NZ On Air (1999a); OECD (1999b); Papandrea (1997); BTCE (1997).

G History of content regulation

Table G.1 **Historical development of Australian content quotas for free to air commercial television**

1956	The *Broadcasting and Television Act 1956* requires the employment of Australians as far as possible in the production and presentation of television programs (s. 114) but imposes no local program quotas on broadcasters. This requirement remains until the determination of the Australian Content Standard by the ABA in 1995.
1960	Television program standards, governing foreign content in advertising, are introduced.
1961	Television stations established for at least three years must show Australian programs for 40 per cent of total broadcast time, including at least one hour per week during prime time (7.30 pm–9.30 pm).
1962	The Australian program quota during prime time increases to two hours per week.
1964	The total Australian program quota increases to 45 per cent of total broadcast time. UK programs can be used to fill 5 per cent of content quota time, but are worth half the time credit, such that one hour of UK programs equals half an hour of Australian programs.
1965	The total Australian program quota increases to 50 per cent of total broadcast time.
1967	The Australian program quota during prime time changes to 12 hours per 28 days (including two hours of drama). One hour of children's programs is counted as two hours towards the total Australian program quota of 50 per cent of broadcast time. An hour of Australian drama counts as 1.5 hours for quota purposes.
1969	The Australian quota during prime time increases from 12 to 18 hours per 28 days.
1971	The total program quota of 50 per cent of total broadcast time changes to 50 per cent of broadcasts between 6 am and midnight. The Australian program quota during prime time changes from 18 hours per 28 days to 45 per cent of programming between 6 pm and10 pm (including at least six hours of first release Australian drama per 28 days). Extra credits can be obtained from only first release Australian drama and children's programs.
1972	The Australian program quota during prime time increases from 45 per cent to 50 per cent of broadcasts between 6 pm and midnight.
1973	The overall time quota is replaced with a points system based on program type, cost, employment and length. A first release Australian drama quota during prime time of 6 hours per 28 days continues.
1974	The first release Australian drama quota during prime time changes to 74 hours per year.
1976	The first release prime time Australian drama quota increases to 104 hours per year.
1990	The Australian Broadcasting Tribunal concludes a public inquiry. An overall quota is introduced at 35 per cent of total broadcast time for Australian programs, and increases by 5 per cent per year until a 50 per cent quota is reached in 1993. A points system is introduced for first release drama and six 'diversity' program categories
1996	The overall quota is retained at 50 per cent for Australian programs. A new points system for drama is introduced and a new definition of 'Australian content' in production applies to all programs. A new quota for first release Australian documentaries (10 hours during prime time per year) is introduced.
1998	The overall Australian program quota increases to 55 per cent of broadcast time between 6 am and midnight. Sub-quotas remain.
1999	New Zealand programs are now able to count toward all Australian content quotas.

Sources: ACTF (sub. 102); Armstrong (1999, pp. 8401–6); Papandrea (1997); ABA (sub. DR226)

Table G.2 **Historical development of Australian children's content regulation**

1953	The Royal Commission on Television receives public submissions and recommends (among other things) that an Advisory Committee be established to advise the Australian Broadcasting Control Board (ABCB) on children's television.
1956	The ABCB establishes the Advisory Committee on Children's Television Programs (ACCTP).
1967	An incentive system is established. One hour of children's programming is counted as two hours in the Australian program quota system.
1968	The first ACCTP is disbanded.
1971	A second Australian Children's Television Advisory Committee is set up to formulate guidelines for quota programs. The ABCB introduces children's quota of four hours per station for every 28 days for a nine-month experimental period. (Programs are to be shown at times suitable for school age children.)
1973	The advisory committee is highly critical of the standard of programs produced during the experimental period, and makes recommendations to ensure improvements (including program assessment by a standing committee and the withdrawal of programs from quota that did not meet the quota criteria). A points system is introduced for children's programs. First release school age quota programs receive five points per hour, and non-quota children's programs receive two points per hour.
1974	The children's television quota increases to six hours for every 28 days (to be shown between 4 pm and 7.30 pm).
1976	The children's program quota is increased to 10 hours per 28 days to be broadcast between 4 pm and 7.30 pm.
1977	An Australian Broadcasting Tribunal inquiry into self-regulation of broadcasting recommends a new classification — 'C' for children. A 'no advertisements' requirement is introduced for preschool programs.
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.
1979	The children's quota (six hours per 28 days) changes to three hours per week of C classified programs between 4 pm and 5 pm weekdays.
1980	The quota is increased to five hours per week of C programs between 4 pm and 5 pm. A quota is introduced for preschool (P) programs (30 minutes per weekday to be broadcast before 4 pm).
1983	The Australian Children's Television Foundation is established.
1984	The Children's Television Standard (CTS) and Preschool Children's Television Standard are introduced. A timeslot of 4 pm to 5 pm weekdays is reserved for C programs. The quota for first release Australian C programs is 50 per cent. The quota for first release Australian children's drama is eight hours per year. Advertising time limits during C classification periods are introduced.
1987	A review of the 1984 standards commences.
1990	Preschool Children's Television Standards are incorporated into the new Children's Television Standards (still in force in 1999).
1992	Children's Program Committee is disbanded. C and P programs are to be assessed by the ABA and independent consultants.
1996	The first release Australian children's drama quota increases to 24 hours per year. Introduction of an additional 8 hours of repeat children's drama and 100% Australian quota for P programs.
1997	First release children's drama quota increases to 28 hours.
1998	The first release Australian children's drama quota increases to 32 hours per year.

Sources: ABA (1999g); Edgar (1983); ABA (sub. DR226)

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