COMMUNICATIONS LAW BULLETIN

The Official Publication of the Australasian Communications Law Association (ACLA)

ISSN 0705-9043 EDITED BY JOHN MANCY *LLB* Vol. 1 No. 2 July 1981

Roles for Lawyers in Broadcasting

The role of the lawyer in the regulation of broadcasting raises two fundamental questions. The first is that lawyers should, or will, have a role and secondly that there will continue to be regulation of broadcasting.

The Chairman of the Australian Broadcasting Tribunal, Mr David Jones, addressed an Australasian Communications Law Association (ACLA) luncheon in Sydney on 24th April, 1981. His topic: The Role of Lawyers in the Regulation of Broadcasting.

It is my view that there will always be regulation, the form of the regulation will obviously change and this, I believe, represents one of the big challenges for lawyers. The regulation will really fall into two categories — government or statutory regulation and what's known as self-regulation.

I think it's fair to say that the moves and the endeavours should be towards self-regulation as distinct from statutory regulation. I think this was well expressed by the Federal Communications Commission in the United States when they came forward with a substantial recommendation of deregulation of radio in that country and what the Chairman of the FCC said was, "we are not selling out to the commercial interests, we are not letting down the public or the public interest groups, this move is proper and reasonable for the simple reason that the public interest can be achieved in this way". In other words it is not necessary to have detailed statutory regulation to ensure that the radio industry operates in the public interest. Market place and other forces, bearing in mind the way in which the industry has developed, will achieve that. And this, I think represents the challenge to all those involved in this particular area, to achieve the balance between what is necessary in the public interest by way of statutory regulation and where the public interest can be achieved by leaving the regulation to the people who are involved in the market place.

The development of new technology in this medium must have an impact on present and future regulation and that again represents a challenge to all those involved in this area; to work out how the new technology can be fitted in to our country, into our lifestyle, and to adjust our thinking to accommodate that new technology. We cannot continue to automatically assume that the issues that are presently posed and need to be addressed in a regulatory system remain the same with these advances. A good example is cable television. It must raise the question that if cable television is injected into the present system, what degree of regulation is necessary for the current system and the new system bearing in mind that cable may open up considerable opportunity for diversity in the ownership and control of the electronic medium and in the provision of programs and other material to the public through that medium.

In a report by the staff of the FCC on this subject, they have taken the position that the best way to proceed in regulating their broadcasting industry is not to try to increase the regulation that exists in the present industry and adapt it to new systems, but to free up the opportunity for new systems to develop and in that way expand the market place, expand the opportunity for diversity etc., which will bring about in itself, its own form of additional competition which the regulation was designed to achieve.

Continued Page 14

Cable Inquiry Submissions

The Australian Broadcasting Tribunal has reported that the public hearings of the Cable and Subscription Television Services Inquiry are expected to commence in mid-September.

No firm dates or venues have been set for the commencement but it is expected that the hearings will be held in Sydney and Melbourne only.

The hearings will be conducted by the Chairman, Mr David Jones, Mr Keith Moremon and Mr Ken Archer, Tribunal Members, and Mr Jim Wilkinson and Dr Donald Gibson, Associate Members.

Continued Page 6

In This Issue

Registered for postage as a publication, Category B. Printed by Beaver Press, 29 Alberta Street, Sydney 2000. Inquiries and contributions to: The Editor, Australasian Communications Law Bulletin, 4/167 Phillip Street, Sydney, 2000. (DX 600).

CABLE INQUIRY SUBMISSIONS

From Page 5

Mr Jones indicated on 25 May 1981 that submissions to the Inquiry would close on 28 August following the Minister's direction to expand the Terms of Reference to include a more detailed consideration of radiated subscription television services.

The Tribunal had received 171 written submissions to the Inquiry as of 27 May (see list below).

Mr Jones and Mr Brian Connolly, Secretary of the Tribunal, recently went to the U.S.A., Canada and Europe — gathering background information on cable systems.

Mr Keith Moremon earlier made a similar trip.

The Minister for Communications has advised the Tribunal that he expects a Report of the Inquiry by the end of March 1982.

The Tribunal advises that anyone seeking information regarding the Cable Inquiry should contact Jim Adamson on (02) 922.2900 extension 367.

The Australian Broadcasting Tribunal has issued this Submission List (up to 27.5.81) for the CABLE TELEVISION SERVICES AND RELATED MATTERS INQUIRY:

1 : MR E. LLOYD SOMMERLAD; 2 : FOSTER PARENTS PLAN OF AUSTRALIA; 3 : MR P.K. MALLOY, COUNTRY : USA; 4 : ELECTRONICS IMPORTERS ASSOCIATION; 5 : TOKYO CABLEVISION, COUNTRY : JAPAN; 6 : LIBRARY ASSOC. OF AUST. & AACOBS; 7 : THE WIRELESS INSTITUTE OF AUSTRALIA; 8 : TELEVISION & ELECTRONIC SERVICES ASSOCIATION LTD; 9 : AUSTRALIAN ASSOCIATED PRESS; 10 : BROTHER PATRICK DARLEY; 11 : BUDDHIST DISCUSSION CENTRE (UPWEY); 12 : TOTALISER AGENCY BOARD OF W.A.; 13 : MICRO CONSTRUCTORS, INC., COUNTRY : USA; 14 : RCA CORPORATION, CABLEVISION SYSTEMS, COUNTRY : USA; 15 : PVC PIPE & FITTINGS MANUFACTURERS DIVISION OF THE PIA; 16 : THORN ELECTRICAL INDUSTRIES PTY LTD; 17 : AUSTRALIAN CABLE SPORTS (being formed) (See notes); 18 : AUSTRALIAN WRITERS GUILD; 19 : VICTORIA RACING CLUB; 20 : ENTERTAINMENT SERVICES PTY LTD; 21 : HOME BOX OFFICE, INC., COUNTRY : USA; 22 : SANDOWN GREYHOUND RACING CLUB; 23 : BAHAKEL TELEVISION & RADIO STATIONS, COUNTRY : USA; 24 : AUSTRALIAN ASSOCIATION OF NATIONAL ADVERTISERS; 25 : DR P. EDGAR & DR R. PEPPER (See notes); 26 : WALLIS THEATRES; 27 : OAK INDUSTRIES INC., COUNTRY : USA (See notes); 28 : THE HERALD & WEEKLY TIMES LTD; 29 : CANADIAN CABLESYSTEMS LTD, COUNTRY : CANADA (See notes); 30 : TOTALIZER AGENCY BOARD OF NSW; 31 : THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS; 32 : AUSTENNA PTY LTD (See notes); 33 : TVW ENTERPRISES LTD (See notes); 34 : HOYTS THEATRES LIMITED; 35 : JOHN FAIRFAX LTD; 36 : VICTORIAN COUNCIL FOR CHILDREN'S FILMS & TELEVISION; 37 : DR PETER B. WHITE; 38 : M.C. STUART & ASSOCIATES PTY LTD (See notes); 39 : AUST'N FILM MANAGEMENT SERVICES PTY LTD; 40 : SOUTH AUSTRALIAN MOTION PICTURE EXHIBITORS' ASSOCIATION; 41 : STEREO F.M. PTY LTD; 42 : MR MARK D. STARKEY; 43 : E.C.E.T.; 44 : FAIRSKY DRIVE-IN THEATRE; 45 : SELECTV LIMITED, COUNTRY : UK; 46 : CATHOLIC WOMEN'S LEAGUE; 47 : MR ROBERT WALSH; 48 : COMMUNICATIONS EQUITY ASSOCIATES, COUNTRY : USA; 49 : AUSTRALIAN JOCKEY CLUB; 50 : MR ANDREW GONCZI; 51 : LOCAL GOVERNMENT & SHIRES ASSOCIATIONS OF NSW; 52 : PACIFIC COAST CABLE SERVICES, COUNTRY : USA; 53 : AUST'N TELECOMMUNICATIONS EMPLOYEES ASSOC., FED. COUNCIL (See notes); 54 : HILLS INDUSTRIES LTD; 55 : TELCOM AUSTRALIA (See notes); 56 : EDUCATION DEPT. OF SOUTH AUSTRALIA; 57 : GENERAL INSTRUMENT (AUSTRALASIA) PTY LTD; 58 : AUSTRALIA COUNCIL; 59 : GAY WAVES GAY RADIO COLLECTIVE; 60 : AUSTRALIAN TROTTING COUNCIL INC; 61 : WELCOME TELEVISION PTY LTD (See notes); 62 : CABLE TELEVISION ENTERPRISES PTY LTD; 63 : WEST AUSTRALIAN NEWSPAPERS LIMITED; 64 : AUST. COUNCIL FOR RADIO FOR PRINT HANDICAPPED COOP LTD; 65 : VICTORIAN EDUCATION DEPARTMENT; 66 : TELEASE, INC., COUNTRY : USA; 67 : A.C.E. THEATRES PTY LTD; 68 : NEW SOUTH WALES FILM CORPORATION; 69 : MR IAN SAYER; 70 : INSTITUTION OF RADIO & ELECTRONICS ENGINEERS AUST; 71 : AUSTRALASIAN PERFORMING RIGHT ASSOC LTD; 72 : NEW LIMITED; 73 : SWAN TV & RADIO BROADCASTERS LTD; 74 : BENDIGO CINEMAS PTY LTD; 75 : MR A.H. PAUL; 76 : AUSTRAL STANDARD CABLES PTY LIMITED; 77 : AUST CAPITAL TERRITORY HOUSE OF ASSEMBLY; 78 : AUSTRALIAN POSTAL & TELECOMMUNICATIONS UNION; 79 : MR NIGEL PATTERSON; 80 : PIRELLI ERICSSON CABLES LIMITED; 81 : VISIONHIRE (AUSTRALIA) PTY LTD; 82 : QUEENSLAND NEWSPAPERS PTY LTD; 83 : ADVANCE AUSTRALIA TELEVISION INDUSTRIES PTY LTD; 84 : APPLIANCE HOLDINGS PTY LIMITED; 85 : PREMIERE (See notes); 86 : FEDERATION OF AUSTRALIAN RADIO BROADCASTERS; 87 : HENRY JONES (IXL) LIMITED; 88 : VICTORIAN BROADCASTING NETWORK LIMITED; 89 : TELEVISION WOLLONGONG TRANSMISSIONS LIMITED; 90 : FILM CENSORSHIP BOARD; 91 : REGIONAL TELEVISION AUSTRALIA PTY LTD; 92 RADIO 2UE SYDNEY PTY LIMITED; 93 : BIRCH, CARROLL & COYLE LIMITED; 94 : AMPOL PETROLEUM LIMITED; 95 : DAVIES BROTHERS LIMITED; 96 : TASMANIAN DRIVE-IN THEATRE HOLDINGS LTD; 97 : PROVINCIAL NEWSPAPERS (QLD) LIMITED; 98 : WESTERN AUSTRALIAN SPORTS FEDERATION INC; 99 : ENTERTAINER-TV; 100 : WESTERN DISTRICT CABLE TV PTY LTD; 101 : 3AW BROADCASTING CO PTY LTD; 102 : PUBLISHING & BROADCASTING LTD; 103 : GREATER UNION ORGANISATION PTY LTD; 104 : AUSTRALIAN COPYRIGHT COUNCIL; 105 : AUSTRALIAN RECORD INDUSTRY ASSOCIATION; 106 : CONFEDERATION OF AUSTRALIAN SPORT (See notes); 107 : CANBERRA TELEVISION PTY LIMITED; 108 : THE MYER EMPORIUM LIMITED; 109 : COX CABLE COMMUNICATIONS, INC, COUNTRY : USA; 110 : SOUTHERN PACIFIC HOTEL CORPORATION; 111 : TELEVISION SOCIETY OF AUSTRALIA; 112 : FILM & TELEVISION PRODUCTION ASSOCIATION OF AUSTRALIA; 113 : AUSTRALIAN TELECOMMUNICATIONS DEVELOPMENT ASSOC; 114 : CREATIVE YOUTH ENTERPRISES PTY LTD; 115 : VILLAGE THEATRES LTD (See notes); 116 : PHILIPS ELECTRONIC SYSTEMS; 117 : WATERLINE PTY LTD; 118 : ACTORS & ANNOUNCERS EQUITY ASSOC OF AUSTRALIA; 119 : INFORMATION RETRIEVAL SERVICES; 120 : PRODUCERS & DIRECTORS GUILD OF AUSTRALIA; 121 :

Continued Page 8

TV Advertising Standards — "time for some clarification"

The Australian Broadcasting Tribunal has acknowledged that clarification of the Television Advertising Standards is desirable following its recent decision in the so-called "Richard Nixon look-alike Case".

The Tribunal indicated in its decision on this matter that it proposed to consult relevant industry bodies as soon as possible regarding suitable amendment to the Standards. Here is the ABT's official Decisions and Reasons:

Re: An Advertisement Produced by the Campaign Palace for Sanyo Australia Pty. Ltd. for the product Betacord

DECISIONS AND REASONS

1. The Federation of Australian Commercial Television Stations ("FACTS") operates a Commercials Acceptance Division. This Division ("CAD") examines advertisements proposed to be telecast on commercial television stations and advises stations on their suitability for television having regard to the legal and other requirements that apply to such advertisements.

2. The Campaign Palace, an advertising agency, has had correspondence and discussions with CAD regarding a television advertisement for Sanyo Australia Pty. Ltd. ("Sanyo") which involves the depiction of an impersonation of former President Richard Nixon of the United States in advertising Sanyo's video-cassette recorder, Betacord. CAD refused to give its approval to the advertisement as it did not consider, because of the use of the impersonation of Richard Nixon, that it was suitable for television. The Campaign Palace and Sanyo objected to that refusal and appealed according to the appellate procedure of FACTS for a reconsideration of the refusal.

3. The advertisement has been referred to the Tribunal which has viewed it in the presence of a director of the Campaign Palace and its legal adviser and subsequently with executives of FACTS and CAD and their legal adviser. The parties have also made submissions to the Tribunal about the advertisement.

4. Section 100 of the Broadcasting and Television Act 1942 (as amended) ("the Act") provides that although a licensee may televise advertisements it shall comply with such standards as the Tribunal shall determine with respect to the televising of advertisements.

Section 129 provides that the provisions of the Act are deemed to be incorporated in a commercial television licence as terms and conditions of the licence. Effectively, therefore, compliance with the Advertising Standards is a condition of a licence.

Section 101 of the Act provides:

> "Where the Tribunal has reason to believe that any matter (including an advertisement) which it is proposed to ... televise is of an objectionable nature, that matter shall be subject to such censorship as the Tribunal determines."

5. In refusing to approve the advertisement CAD has referred to a number of paragraphs of the Advertising Standards›

(i) Paragraph 38(a) — Advertising matter must comply with the laws of the Commonwealth and the States relating thereto. It is argued by CAD that the advertisement could be defamatory.

(ii) Paragraph 38(g) — Advertisements should be presented with courtesy and good taste. CAD maintains that the impersonation of Richard Nixon for commercial purposes without his permission is not in good taste.

(iii) Paragraph 38(i) — Advertisements should contain no claims intended to disparage ... institutions. It could be argued that the advertisement disparages the office of President of the United States.

(iv) Paragraph 40(b) — A licensee may refuse to televise advertising matter which he has good reason to believe would be objectionable to a substantial and responsible section of the community. It could be argued that the impersonation of such a public figure in an advertisement is objectionable.

6. The Campaign Palace has maintained that the advertisement does not contravene these or any other Standards. It argues that the particular depiction is not objectionable or in bad taste and was not intended and does not disparage the office of the Presidency of the United States. It acknowledges that the impersonation of a leading figure may in other circumstances contravene the Standards — e.g. the Prime Minister of Australia — but maintains that each case should be judged on its merits and that the depiction of an impersonation of a real person, per se, in an advertisement does not necessarily contravene the Standards.

7. Although the Television Advertising Standards do not specifically deal with this question it should be noted that the Radio Advertising Standards do so:

Paragraph 32(f) — "The voices of real persons must not be simulated unless permission has been obtained from the person whose voice it is proposed to simulate."

It is clear that the advertisement depicts an impersonation of Richard Nixon and in the Tribunal's view in a context associating him with the Presidency of the United States. It is not disputed that his permission has not been obtained for such a depiction. Is this type use of public figures permissable under the Act and the Standards?

8. In the Tribunal's view the impersonation of real persons in advertisements for commercial goods and services without their permission is not in the public interest. It would be objectionable to a substantial section of the community and it would not be in accordance wth community attitudes to individual rights of privacy. Therefore the Tribunal considers that the impersonation of Richard Nixon in this advertisement constitutes matter of an objectionable nature and should be subject to censorship pursuant to s.101 of the Act. The Tribunal determines that the advertisement as submitted and viewed by it shall not be telecast.

9. The Tribunal acknowledges that clarification of the Television Advertising Standards is desirable and proposes to consult with relevant industry bodies as soon as possible regarding suitable amendments to the Standards. In conclusion the Tribunal accepts that the Campaign Palace has endeavoured to produce the advertisement so as to conform with their understanding of the relevant industry guidelines.

Dated 16 April 1981 For the Tribunal, David Jones — Chairman, Catharine Weigall — Member, K.A. Archer — Member.

CABLE INQUIRY SUBMISSIONS

From Page6

MR TREVOR BARR; 122 : PENINSULA DRIVE-IN PTY LTD; 123 : TELEPHONE RECORDED INFORMATION OF AUSTRALIA; 124 : PUBLIC BROADCASTING ASSOCIATION OF AUSTRALIA (See notes); 125 : DEPARTMENT OF TRANSPORT (See notes); 126 : CINEMATOGRAPH EXHIBITORS' ASSOCIATION; 127 : HORAN WALL & WALKER & SOUNDTRACKS PTY LTD; 128 : JUSTICE IN BROADCASTING; 129 : JOHN SEXTON PRODUCTIONS PTY LTD; 130 : CHILDREN'S PROGRAM COMMITTEE; 131: TASMANIAN TELEVISION LIMITED; 132 : SENATOR JOHN BUTTON; 133 : A'ASIAN MECH CPYRT OWNERS SOC LTD AUST MUSIC PUB ASSOC; 134 : RUPERT PUBLIC INTEREST MOVEMENT INCORPORATED; 135 : INTERIM BD FOR EDUCATIONAL FILM & TELEVISION; 136 : S.A. TOTALIZATOR AGENCY BOARD; 137 : GREYHOUND RACING CONTROL BOARD (NSW); 138 : AMALGAMATED WIRELESS (AUSTRALASIA) LIMITED; 139 : AUSTRALIAN COUNCIL FOR CHILDREN'S FILMS & TELEVISION; 140 : CHRISTIAN TELEVISION ASSOCIATION; 141 : NORTH SYDNEY MUNICIPAL COUNCIL; 142 : ELECTRICITY SUPPLY ASSOCIATION OF AUSTRALIA; 143 : SWANLAKE DRIVE-IN PTY LTD & GIPPSLAND CINEMAS PTY LTD; 144 : THE NEWS CORPORATION LIMITED; 145 : WEST AUST MOTION PICTURE EXHIBITORS' ASSOC INC; 146 : AUSTRALIAN BROADCASTING COMMISSION; 147 : CLEARVIEW TV CABLE, COUNTRY : USA; 148 : AUSTRALIAN COUNCIL OF GOVERNMENT FILM LIBRARIES; 149 : AUSTRALIAN COUNCIL OF TRADE UNIONS; 150 : MAGNA TECHTRONICS (AUST) PTY LTD; 151 : FED OF AUSTRALIAN COMMERCIAL TV STATIONS; 152 : PROF GRANT NOBLE; 153 : MOTION PICTURE EXHIBITORS' ASSOC QLD INC; 154 : NORTH QLD NEWSPAPER COMPANY LIMITED; 155 : AUSTRALIAN POSTAL COMMISSION; 156 : PAMELA STEELE; 157 : AUST CAPITAL T'TORY TOTALIZATOR AGENCY BOARD; 158 : KALBA BOWEN ASSOCIATES INC, COUNTRY : USA; 159 : CABLE CONCEPTS LTD, COUNTRY : USA; 160 : TOTALIZATOR AGENCY BOARD OF VICTORIA; 161 : ORANA DRIVE-IN THEATRE; 162 : ROCKY MOUNTAIN CATV LTD, COUNTRY : CANADA (See notes); 163 : WESTERN REGION COUNCIL FOR SOCIAL DEVELOPMENT; 164 : LEONGATHA DRIVE-IN; 165 : AUSTRALIAN TEACHERS' FEDERATION; 167 : MICROWAVE ASSOCIATES COMMUNICATIONS CO, COUNTRY : USA; 168 : DEPARTMENT OF ABORIGINAL AFFAIRS; 169 : MEDIA ETHICS ACTION GROUP; 170 : AUST FED OF FESTIVAL OF LIGHT, COMM STDS ORGANISATIONS; 171 : UA-COLUMBIA CABLEVISION INC., COUNTRY : USA;

NOTES

Submission Number:

17 — includes a supplementary submission,
25 — includes a supplementary submission,
27 — includes a supplementary submission,
29 — includes a supplementary submission,
32 — includes a supplementary submission. The Tribunal has granted confidentiality in part to the primary submission,
33 — the Tribunal has granted confidentiality in part to the submission,
38 — includes a supplementary submission,
53 — includes a supplementary submission,
55 — includes a supplementary submission,
61 — videotape included as part of the submission. Arrangements to obtain a copy for viewing should be made with Tribunal staff,
85 — the Tribunal has granted confidentiality to this submission,
106 — the Tribunal has granted confidentiality in part to this submission,
115 — videotape included as part of the submission. Arrangements to obtain a copy for viewing should be made with Tribunal staff,
124 — videotape included as part of the submission. Arrangements to obtain a copy for viewing should be made with Tribunal staff,
125 — Department of Transport; previously incorrectly listed as Western District Cable TV Pty Ltd (see number 100),
162 — videotape included as part of the background material. Arrangements to obtain a copy for viewing should be made with Tribunal staff.

Media Seminar

NEW MEDIA: LAW AND POLICY

A seminar organised by the Australasian Communications Law Association and the Faculty of Law, University of New South Wales.

University of New South Wales 22nd August 1981

OUTLINE

Session One

9.00-10.30 **OPTIONS FOR NEW SERVICES**

Cable Services
Professor Henry Mayer
(University of Sydney and Media Information Australia)

Cable Services
Henry von Bibra
(Legal Practitioner, Melbourne)

Other New Technologies: Some Implications
Les Free
(Publishing and Broadcasting Ltd)

Discussion

10.30-11.00 Morning Tea

Session Two

11.00-1.00 **CONTROL, NETWORKS AND SUPPLEMENTARY LICENCES**

Regional TV
Nigel Dick
(Victorian Broadcasting Network)

Radio
Paul Marx
(Boyd, House & Partners)

Independence and Control
Ray Watterson
(Newcastle University)

Session Three

2.00-3.30 **WHAT BENEFITS, AND FOR WHOM?**

Will the Voice of the Public be Heard?
Dirk Bakker and Stuart Fowler,
(Justice in Broadcasting)

Further Details Page 11

Senator Button has some more to say on Media Regulation

A DISCUSSION PAPER BASED ON A SPEECH GIVEN TO THE AUSTRALIAN COMMUNICATIONS LAW ASSOCIATION BY SENATOR JOHN BUTTON, SHADOW MINISTER FOR COMMUNICATIONS, ON MARCH 20, 1981 IN SYDNEY.

Senator John Button, Federal Labor Party spokesman on Communications, was widely reported earlier this year for his speech to the March 20th luncheon of the Australasian Communications Law Association, in Sydney. Here is a Discussion Paper by Senator Button based on the ACLA speech:

Once again, the Government is proposing to amend the Broadcasting and Television Act. There is a danger that we are now in for another bout of short-sighted policy making and knee-jerk responses to particular situations. It is disappointing, especially when it is considered that this Government made a reasonable start in 1976/77 with the Green Report and the subsequent introduction of the public hearing process before the Australian Broadcasting Tribunal.

As a result of all that, it looked for a time as though a true 'public interest' concept was growing up in broadcasting administration. The Tribunal made mistakes, and its performance has been erratic, but nevertheless progress was made.

In the 2HD case, and in the ATV-10 case, the discretion allowed as to what is in the public interest enabled it to extend the bare bones of the ownership and control restrictions. It is the latter case, of course, involving the Murdoch interests, which is the prime reason for the proposed amendments.

The Minister, in answer to a question last December, said: "It (the Government) is concerned that there should be three major networks operating, if at all possible, in the Brisbane, Sydney, Melbourne and Adelaide context".

This short discussion deals briefly with some of the lessons of the history of broadcasting development, and the need for a proper policy. This leads up to some of the current problems, especially those connected with hearings.

The ALP has always argued the case for diversity in the media. We do this not just for political reasons, but for social and cultural reasons as well. I refer to diversity in two areas — of ownership and control and of programming. It is worth making the distinction, because it does not necessarily follow that diversity of ownership and control, especially within any one sector, leads to real diversity of programming. We are, I note, not alone in this view, of the importance of diversity. Malcolm Fraser's excursion into the realm of philosophy, delivered recently in a major speech in Adelaide, saw him say, referring to the Liberal Party, "it believes that society is healthier, and the lives of people happier, when responsibility, enterprise and power are spread widely through the community, rather than concentrated in one or a few places." Thus the argument now ought to be about how these noble sentiments are to be realised.

A good broadcasting system should provide the widest possible range of programming in all areas — entertainment, education and information. It should be dynamic and react quickly to change. It should exhibit competition, both between categories of broadcasting and within categories of broadcasting, and be characterised by a diversity of sources of funding. It should be recognised that there are national, regional and local communities of interest, and the diversity of sources, programming rules and related arrangements should recognise this sensibly. There should be public accountability, free from political interference.

In some useful respects we have reached this point in Australia, even if it has been done in a series of ad hoc decisions. It is necessary now to pause and consider where we have arrived at, and where we go from here.

Accountability

I believe it is necessary to concentrate on two areas: firstly, the role of program regulation and its interrelationship with broadcasting structures and, secondly, the mechanisms of public accountability. Much effort in the past has gone into the day-to-day regulation of program standards. This seems to have been the rationale for the setting up of the old Broadcasting Control Board in 1948.

This was done by a Labor Government, of course, but the belief was bipartisan. In 1956 the Menzies Government's Minister of the day dealt at length with the social power of television when introducing the amendments of that year. He said that self-regulation would not be sufficient to secure programs which would be of a suitable standard to satisfy the public.

Today this belief has been largely replaced by the view that governments have a strictly limited place in regulation. I agree with this view. For one thing, program standards tend to be negative — you can only exhort licencees to make better programs — not compel.

In general, industry codes, coupled perhaps with the encouragement of professional standards within groups involved such as journalists and producers, are a better way of encouraging standards.

There are, of course, exceptions.

Children's programming

There is special and widespread recognition of the need for better children's programming. I would support the 'C' classification system. I welcome the setting up through the Australian Education Council initiative of a Children's Television Foundation. I also support the establishment of Australian content levels — I believe in an "Australian look" — and some regulation of advertising. There are things which are comparatively easily defined, and they set a framework in which licensees know in a clear-cut way what they have to do.

But it must be realised that the consequence of governments largely withdrawing from regulation is that they have to ensure that the broadcasting structure is right. In other words, they have to get a structure which is financially viable, and in which broadcasters are encouraged to produce diversity of high quality programming.

This alone is not enough to secure a perfect system, but in a country with our traditions, it has obvious philosophical attractions. I do have some misgivings, for instance, about bias in news and current affairs broadcasting. The ALP has on occasions suffered from this, and has documented it, but I do not see that you can correct

Continued Page 10

Senator Button on Media Regulation

From Page 9

it by any kind of government or public authority paternalism. Bringing it out at a public hearing is a much better way of controlling it.

It is a pity that the focus within the last few years on ownership and control questions in the commercial sector has distracted attention from other developments which are also important, such as the Inquiry into the ABC and the beginnings of multicultural television.

Both of these developments lead to consideration of broadcasting structure. There are considerable shortcomings with the ABC, but in my view a vigorous and viable ABC is vital to the well-being of the Australian system. I believe that competition *from that body — almost certainly in*volving a second television channel — could have a more positive effect on commercial broadcasting than whole books of program regulations.

Government regulation of broadcasting structures is said to rely on the *physical scarcity of channels. At the* moment, of course, that still applies — if anything it is getting more critical. But with cable systems it could be removed. It may be asked, is there then any justification for any structural regulation?

I believe that the answer is 'yes', because economic constraints will still apply. There is a limit to the number of licencees, and there will be competition for that limited number.

Revenue

I think commercial broadcasters realise this better than most. They have to be sufficiently viable to both do good programming and to make a profit. Therefore there is litle or no justification for a proliferation of stations which would put this viability at risk.

It is sometimes claimed that many more commercial licences should be allotted, and it is the licensee's own responsibility as to whether he goes broke or not. The effect of this sort of policy is likely simply to fragment the sources of revenue, and the failing licensees would simply limp along with a very low, cheap standard of *programming, to no-one's benefit, in*cluding the public's.

Limitation of the number of licensees has had a bad name in Australia because it was practised for too long in radio and passed off as a technical limitation. But that does not negate a good policy, it simply indicates that a sensible application of it is needed.

It does not follow, of course, that making an adequate profit will ensure good programming. It is a prerequisite — a necessary but not sufficient condition. The real task is to devise a market situation, a professional atmosphere, and a system of public accountability which ensures that licensees do deliver in return for use *of a valuable public resource. (I might* not that the proposed Sinclair amendments ignore this real task completely; they are concerned ultimately with jeopardising much of the progress we have made.)

I do not think that within the commer*cial sector, therefore, we should move* to the American situation. It would accordingly be wrong to expect a future ALP Government to launch into vast increases in numbers of commercial stations. (There may, of course, be commonsense arguments for new ones in growth areas.) Instead one would expect further extension of public broadcasting and proper provision of ABC and multicultural broad*casting and along with that you would* expect disciplined management by those organisations.

Public interest

I now turn to the question of public accountability and the question of public interest. In effect, broadcasters operate in a market protected by the government against new entrants. *You need a licence to enter.* Therefore, they should be accountable for their performance, and it is reasonable that the State, or the public, expect a return on their investment. This is especially so when it is considered that the State takes care to ensure that the licence is potentially viable.

But also, it must be recognised that licensees have a considerably property interest in a licence. It is the resolution of this apparent conflict that is proving difficult. Questions of what is the public interest and who is entitled to represent it have arisen quite critically since the 1977 legislation.

The present government took a very wide view when the 1977 broadcasting legislation was introduced. In the Senate, Senator Carrick in reply to a comment of mine discussing the detailed provisions of the Act, had this to say:

"Some question has been asked about Clause 10 and the interest of a person or organisation in intervening before the Broadcasting Tribunal. The Bill does not say 'pecuniary interest'; it says 'interest'. My understanding is that any genuine person who can show an interest — an interest as a viewer, as a family, or as an oganisation in a particular program or activities — would be regarded as quite bona fide and would have access to the Tribunal."

They are his words, not mine. They are not the words of any Chairman of the Tribunal. But evidently it is what this Government had in mind when it introduced this present legislation in 1977.

The real problems arise in the practical matters of Tribunal inquiries. In the beginning the Tribunal was very liberal in its admission of parties. It later became more selective, and appeared to be working out some rules.

Licensee

There has been considerable opposition from within the commercial licensee ranks to wholesale admission of the public. One objection is that people who appear are not representative of the public. I might add that neither are they fair examples of the public, in any sense that a statistician *would recognise. They are represen*tative of interest groups. That is not the same as saying, of course, that they are therefore unable to put evidence that goes to the licensee's performance. In fact, the so-called public interest groups, similarly to public interest groups in other areas, are characterised by the fact that they have a general or altruistic interest in broadcasting policy, rather than a vested or financial interest.

There is also the considerable problem of unequal weight of representation — those who come forward from interest groups usually cannot afford the expensive legal representation and research that the licensees can.

One solution which has been suggested is that of separated hearings. At one, a general hearing into the state of radio or television in one area would be held. The licence would not be at stake. At another type of hearing, conducted in a more formal way, deci*sions on licence renewal would* be made.

This suggestion has been made to overcome the problems of standing and admissibility of evidence which have arisen. Some groups have wished, quite understandably, to make *general submissions relating to TV or* radio service in their area. At present, the only avenue for that is an inquiry on a particular licensee.

Continued Page 11

Senator Button on Media Regulation

From Page 10

The suggestion is an attempt to sidestep the real problem. Essentially, the problem is that our procedures are well worked out for adversary situations, where one type of interest confronts a similar type, but the idea of confronting a property interest with the public interest, put by the public, is fairly novel. Similar situations arise in other areas, e.g. in environmental decision-making.

I believe it must also be recognised that it is unrealistic to expect a licensee to lose a licence from individual complaints relating to program content. However proven, serious and repeated complaints must jeopardise the licence, i.e.g persistent offences. Nor is it to say that there should not be an adequate forum for complaints.

The Administrative Review Council has now reported on the procedure of the Tribunal. Their report is a serious and helpful attempt to grapple with the problem, and I believe that it contains some answers.

Fundamentally, the Council does not endorse the concept of separate hearings. It suggests instead the extensive use of pre-hearing conferences to handle much of the work. It envisages that a member or members of the Tribunal would preside over such conferences. They would be informal.

Conferences could lead to combining of witness groups, or refinement of complaints, into a forum to go to the formal hearing. Subject to a few conditions, I believe that such procedures could go a long way to expediting the formal hearing. It would be essential that such conferences be open to the press and public, and mandatory that an accurate report go forward from the pre-hearing conference to the hearing proper.

One difficulty arises with standards. If formal, general program standards are no longer to apply, it is difficult to see what yardstick the licensee's performance is to be measured against. It may, therefore, be necessary to have an agreed set of objectives, or standards which are not necessarily policed continuously, but which are available at renewal time to be compared with performance. Alternatively, the promise of performance concept may be developed further.

Finally, I believe that it is essential that those who appear in the hearing at least approach equality of representation with the licensees. This applies to both research and case preparation, and to the actual appearance before the Tribunal.

For information and case preparation, I believe that the concept of the Broadcasting Information Office was commendable. In my view it should have been separate from the Tribunal, as an independently funded office, charged with research and with providing information to the public. However, it has fallen foul of the Razor Gang and will not be continued.

So one by one, the bold reforms which the Government itself initiated in 1977 are being eroded. The most horrendous, of course, are the amendments currently under discussion, which threaten to put the commercial industry into turmoil, and for no good purpose which will benefit the viewer.

High Court

Despite its erratic start, the Tribunal, with some stiffening from the High Court, had begun to develop some important public interest precedents. In July 1979 it blocked the sale of 2HD Newcastle on the grounds that it would have given too high a concentration in one city across media — two out of three radio stations and the sole TV station. The High Court confirmed this decision, saying in effect that the limits set in the Act were ceilings, but not necessarily entitlements. Secondly, it refused to approve the ATV-10 transaction on the grounds that it would give too much power in the network to one interest.

The Tribunal could do this because it had a discretion. Spelling out the criteria in the Act would remove that. At the same time, what is spelled out in the Minister's statement of legislative intent is incomplete. It says nothing about the criteria involved in either the ATV-10 case, nor about some other matters of public interest.

I believe that it is in the interests of all involved to recognise realities and to recognise the need for recognition of the public interest.

There is no doubt that the advent of new technology will cause us to have to think a lot more about the kind of broadcasting system we want. The industry and the people of Australia need some direction in these matters. There is a need for a public inquiry as there was in 1954 prior to the introduction of television, with the aim of devising the best system in the interests of the Australian people.

Media Seminar

From page 8

Session Four

4.00-5.30 **CAN THE LAW AND POLICY CATCH UP?**

The Interface between the Broadcasting System and New Technologies
Martin Cooper
(News Corporation Ltd)

The Role of Government and Freedom of Speech
Mark Armstrong and Terry Buddin
(University of New South Wales)

The Gap Between Law and Planning
Helen Valier
(Australian Associated Press)

Discussion

5.30-7.00 **Informal Dinner at the University Union**
Guest Speaker: Rod Muir

Registration Form

Saturday, 22nd August

Registration fee (including all seminar sessions, morning and afternoon teas and luncheons) $45

Informal dinner at the University Union including wine $20

I enclose my cheque for $

(Cheque to be made payable to the University of New South Wales)

Please complete and return, together with your cheque to:

Ms Jane Trethewey
Faculty of Law
University of New South Wales
PO Box 1
KENSINGTON NSW 2033

Name .....

Organization .....

.....

Address .....

.....

Business Phone .....

Home Phone .....

THE SATELLITE SYSTEM

The issues facing advertisers with the advent of Australia's National Communications Satellite System were the subject of a speech by the Secretary, Department of Communications, Mr R.B. Lansdown, to the annual seminar of Australian Association of National Advertisers, in Sydney on 2nd March, 1981. CLB reproduces that speech (with slight editing changes) for the better backgrounding of its subscribers.

Before I go into specific details of what a communications satellite system would mean for the Australian advertising industry, I would like to give some background on the system, proposed ownership and management plans for it, and the rationale behind developing such a system.

A national communications satellite system would have a profound impact on Australia's communications industry and that means on the people informed and served by the industry, on those employed by it and on those investing in it. Coupled with other technological changes, a satellite will also lead to important changes in the operation of our broadcasting system and the services it provides.

I will not go into these potential developments in any detail here, but just ask you to bear in mind that the satellite system needs to be seen in the context of other activities which all have ramifications for communications.

There has been public debate on the concept of a communications satellite system for Australia, via a number of forums including public inquiries, seminars and discussion in the media. But despite this, I suspect the debate is frequently so shrouded in jargon and technical detail, that only those with a compelling interest in the subject have the tenacity to follow it through. This results in decisions being made which affect people from all spheres, although they have little awareness of the implications of these decisions.

I shall try first to demystify the satellite for some of you.

Background

In October 1979, the Government announced it had decided in principle to establish a National Communications Satellite System. This followed government consideration of a report by a working group of officials and an earlier Task Force appointed late in 1977 to consider the potential of a communiations satellite for Australia. In its investigations, the Task Force called for public submissions and investigated the situation in other countries using communications satellites.

A Satellite Project Office was established within the Postal and Telecommunications Department — now the Department of Communications — to develop proposals for establishing the system. This worked closely with other bodies such as the Overseas Telecommunications Commission, the Australian Broadcasting Commission, Telecom Australia and the Department of Transport.

It was intended that the satellite would provide television, radio and telephone services for remote areas of Australia and for other areas which do not receive these services adequately. Also a satellite system would be able to distribute high speed data communications and improve other services, such as navigational communications.

The Present Position

Where are we now in planning for the satellite?

Tenders for the space and earth segments were called for in late October and an eight volume Request for Tender was released to interested organisations in Australia and overseas.

Tenders close on May 4 this year, and those working on the satellite system are aiming at a spacecraft launch date of 1985. Discussions have been taking place with overseas organisations to find a suitable vehicle to launch the satellite and options have been taken out on the Space Shuttle and Delta.

As an interim measure, the Government has directed that the Overseas Telecommunications Commission will manage and develop the satellite; as part of this function, OTC invited tenders for space and earth segments, on behalf of the earth segment authorities. My Department, largely through what has now become the Satellite Policy and Co-ordination Division, will provide overall policy advice to the Government on the role of the satellite, and issues such as financial implications, Australian industry involvement and employment aspects.

Type of Satellite

What type of satellite are we talking about and just what does a communications satellite do?

A satellite communications system is different to a terrestrial system not only in concept, but also capability. It represents a major breakthrough in the way in which we can design information systems.

To communicate between the opposite ends of Australia, it has sometimes been necessary to wait until a network of landlines and microwave repeater stations is installed. Sometimes, necessarily, development of these networks came after the economic development of an area.

Because of its altitude, a satellite system can pass information between any number of places in Australia without waiting for an extensive infrastructure to be developed. Also, because the satellite system operates in the microwave region, it has an enormous capacity to handle information.

The very fact that its transmissions can be received anywhere in Australia places a new perspective on what could be achieved in broadcasting. No longer are the broadcasters limited by the vagaries of terrestrial propagation. In theory, if not in practice, any person with suitable equipment could receive signals transmitted by the satellite system. It is usual when designing a satellite system for broadcasting applications, to specifically design the characteristics of the system so as to minimise the cost of the necessary ground equipment.

Some decisions on the precise parameters of the satellite system will have to wait until all the tenders are in. The tender documents do, however, contain detailed specifications on the services to be provided and the ways in which this should be done.

Continued Page 13

The National Communications Satellite System — The Issues for Advertisers

From Page 12

The satellite system will be made up of a space segment and an earth segment.

The space segment is composed of the satellites and the associated ground control stations — tracking telementry control and monitoring stations.

It is envisaged that in the space segment there will be three satellites. One of these will be operational in orbit, one will be spare and in orbit, and one will be a standby on the ground. There is also an option for a further satellite if required.

Each spacecraft will have 15 transponders, or in lay terms receiver transmitter devices. Four of these will each have a 30w power output and the remainder will each have an output of 15w.

It is planned that the ABC will be able to use the high-powered transponders in operational unit No 1 to transmit television and radio programs to isolated homesteads and small communities, and each transponder would be able to carry one television and up to four radio channels at the same time.

The other, lower-powered, transponders will be used for services such as telephony and data communications, and can have the capacity to carry up to 1,000 voice circuits at once as well as being able to be used by broadcasters.

The earth segment comprises the wide range of earth stations transmitting and receiving the communications signals for television, radio, telephony data etc. Relatively large earth stations with antenna diameters of 8 metres will be located in each capital city. In areas of high rainfall however, such as Darwin, diameters of 11 metres will be needed. At the other extreme, tens of thousands of small earth stations with antenna channels of 1.2 to 1.8 metres will be located in more remote regions throughout Australia.

Isolated homes and communities receiving television and radio services via the satellite's high-powered transponders will generally own their own earth stations. It is very difficult at this stage to estimate costs accurately but something of the order of $1,000 at present day prices is anticipated.

Services to be provided by the Satellite

To discuss in a little more detail some of the services which could be provided by the satellite system. The issues for advertisers will, after all, depend on what services the satellite provides.

We need to remember that these services will complement the existing terrestrial telecommunications network within Australia. Because satellite-related technology is in a constant state of development and change, we cannot predict exactly the limits to which broadcasters may use such a facility in the years to come.

Another point to realise is that the full potential of a satellite system cannot be reached immediately. We speak of different "generations" of satellites, meaning that each system has a life expectancy of 7 to 10 years, before it needs replacing.

The satellite system can be used to provide broadcasting services in a number of ways. It can be used:

- in the production and assembly of programs, or in the exchange of program items such as news events;
- in the distribution of programs by relaying material from an originating station to a network of terrestrially-based transmitters; and
- in the provision of direct broadcasting services, that is, going directly from the satellite into houses.

Programs via satellite may be transmitted on a fully national basis or within specified regions or zones.

The regions or zones which have been specified are:
•Western Australia, including the north-west shelf;
•Central Australia — including South Australia and the Northern Territory;
•Queensland; and
•South Eastern Australia including New South Wales, victoria, Tasmania, Lord Howe Island and Norfolk Island. These zones coincide approximately with State time zones.

In a first "generation" satellite system proposed for Australia, using three satellites, the ABC would be able to use the 30W transponders in satellite unit No. 1 for broadcasting.

It would use these transponders:
•for program exchange purposes;
in the distribution of ABC programs to ABC terrestrial transmitting stations for transmission by those stations;
•to bring ABC services to remote areas which are currently denied such services, in the form of a "direct" broadcasting service.

This direct broadcasting service is usually referred to as the Homestead and Community Broadcasting Satellite Service or HACBSS. Homesteads or communities would receive the transmissions by using the small receiver or dish — a dish 1 to 2 metres in diameter and expected to cost about $1,000.

A three-satellite system — one in service, one on stand-by and one on the ground — could be used for broadcasting purposes other than the ABC.

It could be used by commercial broadcasting interests, for example to provide:

- program exchange, including news events which are gathered around Australia and then sent to (say) Sydney for incorporation in national news programs;
- program distribution, such as distributing programs from a central point to a network of stations which would then transmit the program via their terrestrial transmitters.

The satellite could help in overcoming some problems with existing terrestrial facilities. One example of which you will be aware, is the Perth situation where there is effectively only one bearer to Perth from the east coast. This limitation has often prevented the transmission of topical programs, such as sport to the West. With a satellite system, this type of problem will be overcome.

With a three-satellite system, and with commercial broadcasters using the 15 watt transponders in that system, it is unlikely the commercial services would have a "direct broadcasting" application, except in those rare cases where a person or community was prepared to invest in a large earth station to receive the commercial transmissions on a direct basis:

The ease with which the satellite system can distribute commercial television programs throughout Australia raises the vital issue of networking by commercial television interests. This raises issues relating to the independence and viability of the smaller metropolitan stations and regional stations, for there is a body of opinion that says that stations can be controlled through programming and advertising, just as effectively as through shareholding.

Continued Page 14

The National Communications Satellite System — Issues for Advertisers

From Page 13

These are questions which strike at the basis of the broadcasting system as we know it in Australia today. In looking at them, we must realise that the issue of regional control and identity for television stations is complex. There is a demand for more television channels by viewers in regional areas. But this has to be balanced against the critical need to ensure diversity in ownership and control of this very powerful communications medium — a principle which is recognised in the present Broadcasting and Television Act.

I have discussed the potential of a three-satellite system. It is possible, in the first generation satellite to have four or even five satellites. With a "four satellite" package, this would mean 2 operational in orbit; one spare in orbit and one on the ground.

If there were a 4 satellite system, this would mean we would have 4 extra 30 watt or high power transponders as well as the extra 15 watt transponders. It would thus be possible to have a second HACBSS or direct broadcasting service covering the whole of Australia through the 4 zones which I have described.

There are various ways in which a second HACBSS could be used:

- a commercial service licensed to an existing licensee on a national basis, or licensed to 4 separate existing licensees on a zone by zone basis;
- a commercial service licensed to a new licensee on a national basis, or 4 new licensees on a zone by zone basis, providing alternative programming to the existing terrestrial commercial services;
- a nation-wide subscription television service, licensed to private enterprise or operated by the ABC;
- a second ABC television network;
- a national multicultural television network;
- an educational television network, perhaps also incorporating other forms of special purpose television;
- and various combinations of the above.

Strong expressions of interest have been registered in this second HACBSS from various quarters. These are being considered very carefully because the concept of a second HACBSS raises a number of major broadcasting policy issues.

Bearing in mind that, in a 4-satellite package, there can only be 2 HACBSS services — one for the ABC and a second for another purpose — the second HACBSS gives rise to a number of interesting questions:

- what should it be used for?
- in the case of a commercial or subscription service, to which organisation should it be allocated?
- what impact will a second HACBSS have on the operation of the existing broadcasting system, and the viability of existing licensees, bearing in mind the direct broadcasting capability of the second HACBSS?

Coupled with these issues will be the need for financial, operating and pricing judgements associated with the provision of a second HACBSS.

These and all of the related issues will be considered carefully by the Government when it reaches a decision, later this year, whether our first generation satellite system should comprise a "3-satellite" package or a "4-satellite" package.

Whatever the decision, there can be no doubt the availability of a national communications satellite system will open up fresh opportunities for national advertisers in the use of broadcasting.

To sum up

A national communications satellite system will have a profound impact on Australian communications services.

It will not replace existing terrestrial communications services, but will supplement and complement them.

For national advertisers, it will provide opportunity to make more effective use of broadcasting as an advertising medium.

For the organisations you represent, it has the capability to provide a wide range of information and data transmission services.

It will bring efficient communication services to those people in remote areas who are currently denied such services.

It will be an important step in the application of satellite technology to Australia's communication requirements — the first step in what probably will be a series of satellite systems designed to meet our country's special needs.

Roles for Lawyers — from Page 5

That is an interesting concept and obviously one, for example, we will have to address in the cable inquiry. It is also raised by the possibility of a communications satellite, and subscription television. They could all add to the spectrum, to the existing systems and offer the opportunity for additional diversity in all senses of the word.

Now where does our lawyer stand in all this? In my view, the role of the lawyer in this field will very much depend upon lawyers themselves and whether they really want to have a role. If they're not prepared to find out what the communications area is all about in all its aspects, and I mean not just in the strict legal sense, and if they're not prepared to show a willingness to adapt their thinking and their approaches to accommodate a new technology, new developments, they may find that they don't have a very great role at all because the advice and assistance they are able to provide to the people working within the broadcasting industry will not be helpful and therefore will not be utilised. Those people will tend to turn to other advisers who may be prepared to learn, who may be prepared to be constructive, etc.

I think that would be unfortunate not only for lawyers, but for the public and for the development of communictions in this country, because in my view, lawyers with the expertise, knowledge and approach have a very big and expanding role to play in the development, operation and regulation of the broadcasting industry.

But that is going to require a willingness to understand not only the law but the way in which the industry operates, to understand the existing technology without being experts, and to try to understand the future technology because unless that is done it is unlikely that any advice profferred will be of real assistance to the people who are working within the industry.

Continued Page 15

Roles for Lawyers in Broadcasting

From Page 14

It also needs a positive rather than a negative approach, because we are dealing with a very fluid situation, things change almost daily mainly because the technology is changing so rapidly and we have to adjust. The lawyer needs to be adjustable and be able to bring to bear on the problems the talents and skills that can be very valuable. I mean by those not just the knowledge of the law or how to find out what the law is, but the training in being disciplined in thinking, being able to assimilate and evaluate material, articulate and analyse issues and solutions to issues and recommendations.

Those skills a good lawyer can use to great advantage because what this is about is finding out or determining the issues that are arising as a result primarily of the new technoogy. And then how should those issues be solved, what is the best way to solve them?

Issues

The issues aren't really whether someone goes three seconds over in an advertisement or transgresses in the scheduling of a particular program. They are not real issues as far as the regulation of broadcasting is concerned. What is a real issue is the extent to which programs should contain material relating to violence, sex, other matters that are of concern to the community. The extent to which advertisements should depict, and if so in what way, the advertising of alcohol and drugs and things of this nature. And then who should own and control the existing medium, and the new medium, and how the existing medium should be linked to the new medium. They're the sorts of issues we have to address in terms of regulation — and lawyers who are prepared to understand these issues and use their skills in applying the technology will be very valuable.

There are a number of different organisations or different roles lawyers may follow within our total system.

Looking at the regulatory body itself, the Australian Broadcasting Tribunal. It's interesting that the previous regulatory model the Control Board, as I understand it, didn't have lawyers involved on the Board and initially the Tribunal didn't have lawyers involved. I think there was a view that with the new concept of public involvement and public acountability the presence of lawyers may be in conflict with those concepts. The appointments of Catharine Weigall and I are, I think, some indication that experience showed that that was not necessarily correct. You will be aware that lawyers are very much present in other similar regulatory bodies such as the FCC or the CRTC. My view is, and it is shared by the rest of the Members of the Tribunal, that at least one member of the regulatory body needs to be a lwayer and that's the view also of the Administrative Review Council and was a view expressed in most of the submissions to that Council. The reason for that is that many of the matters that need to be dealt with by the Tribunal have some legal content or form of ramification which requires the background, training and experience of a lawyer. Clearly, it would be contrary to the concept of the Tribunal to have it completely composed of lawyers, because the concept of the Tribunal is a specialist body involved in this area which can bring various points of view to bear on the problem. I think there is no doubt that there is a role for a lawyer to play as a part of that specialist body.

What about the staff of the particular organisation? Unlike the FCC and the CRTC the Tribunal at this stage doesn't have any lawyers on its staff although it has the ability to call on outside legal assistance. It's not good enough in my view to say, "Well if you've got a lawyer on the Tribunal you don't need any lawyers on the staff because the lawyers on the Tribunal can handle legal problems or issues which arise". Lawyers are not appointed to the Tribunal to be the counsel or the legal advisor to the Tribunal. They may use their legal experience in dealing with matters that arise but in my view, and we've put this proposition forward to people like the ARC, some staff lawyer involvement is important because there are many things that need to be done such as the preparation of standards, regulations and other documents and the examination of legal type problems which require the attention of someone who can concentrate on them alone. I would hope that in the not too distant future we'll find that we have a lawyer performing this role at the Tribunal, that is as a staff member of the Tribunal. And we may be able to use that person in the role, for example, to assist at hearings.

It has been suggested that an organisation like the Broadcasting Information Office should provide legal assistance to people appearing at hearings. That's a matter that I don't want to debate at this stage but I think that there is a role, on some occasions at least, for the use of a staff lawyer not only to assist in the preparation for a hearing but also in the hearing itself.

Another important role for lawyers is in the area of government policy and planning, and by that I mean, for example, in the Department of Communications. There are some lawyers operating in that Department but it is clear to me that the skills of a lawyer that I mentioned before can be very valuable in making planning and policy decisions within the existing legislation and system and also in considering and developing new proposals which often involve extremely complex issues. Again we're not so much talking about a knowledge of the law but rather these other skills that a good lawyer possesses of being able to be analytical, to evaluate and to articulate. One of the most valuable roles I see in that capacity is the link between the Department, representing its Minister, and parliamentary counsel, who have to frame legislation. The translation of the policy and the philosophy is absolutely crucial to the outcome of the legislation.

Policy

If the issues and the policy are not properly translated it is likely that the legislation that ultimately follows will not be satisfactory and particularly will not represent the policy that has been decided. I think lawyers can have a very valuable role in this regard and it is an example of the use of lawyers in the public sector that can be very valuable.

I was disappointed to read recently that the experiment that the Government has been conducing of lawyers coming from the public sector to the private sector and vice versa has been disappointing in that although many lawyers have moved from the public sector few lawyers have come from the private sector. I think the broadcasting area is an area which would benefit both in the public sector and the private sector from lawyers working in both, in other words exchanging their positions.

Continued Page 16

Roles for Lawyers in Broadcasting

From Page 15

Another very important role for lawyers is the representation of the various business interests that are involved in the communications area. In my view, there is no doubt that as the technology advances, as the amounts of money become larger and the issues become more difficult the need for the right type of lawyers will increase.

If these lawyers are there then there will be no lack of work for them. I think an analysis of the fee books over the last twelve months in this area will indicate that there is no shortage of work. This will continue because the problems will get more complex and that's in keeping with out society becoming more complex. But the lawyer must be available to deliver the goods if he is to be retained by the businessman, because he is under a lot of pressure and therefore looks to his lawyer for assistance that is positive and constructive rather than negative. What I mean by that is not only being able to deal with particular problems as they arise and are referred to the lawyer. In addition, the lawyer has to be, or try to be, out in front, in other words trying to anticipate what is happening, where regulation may be heading, and advising his client accordingly. And not only advising his client on how his client may adapt his particular business to accommodate what is happening or about to happen, but endeavouring to have some input and be involved in making changes or influencing changes that may occur. I see this as another important role for lawyers in representing not only business interests, but also what I may call, public interests. This is a lobbying-type role, not in the crude sense of the word, but in the sense of assisting whoever the client is to be able to put before government and government departments, proposals, propositions, submissions on how regulation can be improved or is not working.

There is no doubt that if people are prepared to do this and do their homework and to articulate their proposals carefully and comprehensively they can have a significant influence on the way in which decisions are made and the form that regulation ultimately takes.

I believe that is a very positive role lawyers can play because they have the skills that can be used for that purpose, but it means more than just reacting to a problem occurring or to a request for assistance. It means trying to look ahead to anticipate where things are going and to assist the particular client accordingly.

If lawyers adopt this approach and this philosophy their role will increase, as in the U.S. It will not be confined to the traditional role of appearing in court or appearing before a Tribunal whether it be the AAT or the ABT. Clearly that role will continue and probably increase, but I would like the stress the other role I have been talking about because I think there is even more scope for the lawyer in that role — that is the advising role of helping the client to develop policies and to develop submissions to government and to assist that person to articulate what those problems are.

In Washington there are at least 150 law firms who do nothing else but communications law. We won't reach that stage here, but I think the opportunity for lawyers to be involved in this important area of administratiave law will increase. The extent to which they do will be very much up to them.

Q. Mr. Max Keogh: Mr. Jones the ARC has recently issued a report to the Attorney General in which there is a very strong criticism of the Tribunal's behaviour in administering tests before parties wishing to appear before it on the question of standing. Elsewhere in administrative law I think there's a trend also towards realism and away from the more archaic and less appropriate property based propriety tests that we are familiar with. Yet despite those trends and the criticism contained in the ARC's report as recently as 48-50 hours ago the Tribunal employed those discredited techniques to exclude legitimate interests with relevant evidence before a Tribunal inquiry. Those interests, I am sure they had done their homework, perhaps they had done it too well. But I would like to ask you, in view of the ARC's criticism of Tribunal procedure in this matter of standing, what is your opinion of that criticism and also what is your opinion of the very constructive recommendations the ARC has made in relation to how the Tribunal should in fact interpret standing?

A. David Jones: I don't think it is appropriate for me to comment on a matter that is currently before the Tribunal so I won't comment on the particular example that you gave. However, I am happy to comment on the matter generally. I think the ARC recognised that the current provisions of the Act create difficulties for all concerned in deciding who has standing and who doesn't and unfortunately the High Court didn't assist when the matter went to the High Court. The Tribunal's submission to the ARC was that the Act should be amended to make the Act more certain, which it isn't at the moment. In essence I think I can say that we basically agree with the ARC's recommendations about amendments in relation to standing. As far as I am concerned since I've been Chairman of the Tribunal, and as was indicated in one of our decisions, we have attempted to administer that particular provision as broadly and as constructively as we can bearing in mind the legal constraints as we see them that are put on by the provision itself. I don't think I can say anything more than that.

• The rest of the questions and answers will appear in the next issue of the Communications Law Bulletin.

Subscriptions

This second issue of the Communications Law Bulletin has been made available to all members of the Australasian Communications Law Association. However, future issues will be restricted to financial members of ACLA and institutional subscribers.

Although membership of ACLA is not open to firms or organisations, these are welcome to subscribe to CLB at the institutional rate. Institutions may subscribe for extra copies at $1.00 each (e.g. a $32.00 subscription covers THREE copies of each issue for 12 months).

Individuals may enter a personal subscription to CLB for 12 months and obtain details of ACLA membership by sending a cheque for $20.00 to:

The Secretary,
Australasian Communications Law Association,
C/- Faculty of Law,
University of N.S.W.,
P.O. Box 1,
Kensington N.S.W. 2033.