Inside This Issue

The Role of Media in Australian Law and Its Relation to Defamation Law

The role of media in Australian law and its relation to defamation law is a complex and evolving area of law. Media organizations, such as newspapers, websites, and television channels, play a crucial role in informing the public about events and issues of importance. However, this role is not without its challenges, particularly in the area of defamation law.

Defamation law is designed to protect individuals from false or malicious statements that cause damage to their reputation. However, the use of the media to report on events and issues can sometimes overlap with defamation claims. Media organizations must be careful to ensure that the information they publish is accurate and fair, and that they do not trespass into areas of personal privacy.

The law of defamation applies to all forms of media, including print, broadcast, and online. It is important for media organizations to understand the laws of defamation and to take steps to ensure that they are publishing accurate and fair information.

The Role of Media in Australian Law and Its Relation to Defamation Law is an important topic for media organizations to consider. By understanding the laws of defamation and taking steps to ensure that they are publishing accurate and fair information, media organizations can help to protect the public from false and malicious statements while also maintaining their role as a critical source of information.
The Role of Media Satire in Australia and its Relation to Defamation Law
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The Andrew Olle Lecture 2002 Delivered by Mr Lachlan Murdoch Sydney, October 18, 2002
Lachlan Murdoch, in this much discussed lecture, examines a range of issues confronting modern journalism.

Olympic TV Rights
Toby Ryston-Prrat, in this highly commended finalist of the 2002 CAMLA essay competition, reviews the ever-evolving saga that is Olympic broadcasting rights.

Regional Telecommunications Inquiry Report
Graham Phillips reports on the findings of the inquiry into regional telecommunications services chaired by Dick Estens.

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David McCulloch comments on policy and political developments in telecommunications over the last 15 months.

This power to comment on politics is limited, as seen in the Pauline Hanson case, but the legal principles of personal injury and her policies were praised, and ruled to be defamatory. Australia’s lack of a constitutional right to free speech is a subject that is recognized by Article 19 of the International Covenant on Civil and Political Rights. As Ronald Dworkin said, “Freedom of Speech is the core of the choice modern democracies have made”. By Australia not embracing this fundamental freedom, it diminishes the efficacy of our democracy.

...and then the refugee kid says...
"But mum I don't know how to swim!"
Yuk... Yuk... Yuk...

Did you hear about the new nativity church parking lot?... They've got spaces for cars, motorcycles and tanks!
Yuk... Yuk... Yuk...

Did you hear about the American military...
They're putting a photo of George W Bush on all their smart bombs to camouflage them... Yuk... Yuk... Yuk...

It's a real parliamentary privilege...

Yuk... Yuk... Yuk...

continued implementation of the Government’s $163 million package of rural communications services in response to the Bailey Inquiry, including: the $32 million National Communications Fund; $59.5 million for improved mobile coverage, $41 million Internet Assistance Program, and satellite broadband subsidies;

roll-out of a satellite internet subsidy by Telstra, as part of the provision of untethered local calls in the most remote areas of the country (the “Extended Zones”);

announcement of a $187 million upgrade by Telstra to rural networks;

announcement by Senator Alston of consideration of “future proofing” options for telecommunications services;

The Rural Telecommunications Inquiry (Estens Inquiry) - a three month inquiry into current and future rural telecommunications services that reported in November 2002. The report made substantial findings about the state and future of rural telecommunications, and made dozens of recommendations. The Government is expected to consider and respond to those recommendations in February 2003.

For most of 2002 - at least beneath the public gaze - the Democrats and the Greens were in being “up to scratch” - the sale of Telstra seemed a key priority for the Government to progress as quickly as possible.

There were two key hurdles, though. First, gaining the agreement of the National Party, parts of which remained implacably opposed to the further sale. Second, was the need for Senate approval. Given the seemingly firm commitment of the Liberals and the Greens to oppose any further sales, approval would require the agreement of all of the remaining other minor party/independent Senators, namely Senator Meg Lass (Independent and former Democrat), Senator Len Harris (One Nation), Senator Shayne Murphy (Independent and former ALP), Senator Brian Harradine (Independent).

As 2002 progressed, the prospect of gaining support of all four Senators seemed increasingly remote. The Report of the Estens Inquiry in November 2002, which found improvements in services, made a number of recommendations requiring specific response and action by the Government. Until that was well in train, it was unlikely that any National Party Senator would accept that services were “up to scratch”. At the same time, the Telstra share price continued to languish.

It was in that context that in late November 2002 the Government indicated its intention to defer the sale of Telstra beyond 2003. It justified this on the basis that the Government was unlikely to obtain the proper return from a sale in the near term, given the Telstra share price.

The Government gave signals, however, that Cabinet would still proceed to consider the introduction of legislation authorizing the sale in the short term. If the Government would seek the passage of that legislation, the Government would then be free to determine the timing of the actual sale following passage of the legislation.

Should legislation be introduced in 2003 the Telecom Group has put off the actual sale means that the temperatures of the public and political debate may be lower, and the stakes not as high for the Government. If the legislation is passed by the Senate, it has the potential to create a double dissolution trigger.

Labor’s continued and strident opposition to the further sale of Telstra is a key differentiating point for the Opposition. The Shadow Minister for Communications, Information Technology, and the Arts, Lindsay Tanner in early 2003 has broadened the Telstra debate from the Opposition perspective by issuing a discussion paper in May 2002 “Reforming Telstra” which examined Telstra’s structure, and options for separation of Telstra. Separation (beyond the accounting separation framework contained in the Bill discussed above) was opposed by the Government.

It was curious then that later in the year (December 2002), Senator Alston commissioned an inquiry by the House of Representatives Standing Committee on Communications Information Technology and the Arts into the very topic of structural separation. The Committee was asked to examine the impact of structurally separating Telstra’s core network from its core businesses, and reducing the Commonwealth’s current shareholding in Telstra’s non-network businesses.

It seems that the Minister’s strategy was an attempt to gain by embracing or “_owning” Opposition by giving it the platform to raise the issue, on the basis that the inquiry would not fill a current public interest of opinion in favour of structural separation, and that the Committee would ultimately oppose structural separation.

It was originally planned that the inquiry would last though most of 2003. This was a risk strategy given the Government’s hope to introduce sale legislation as soon as possible. The two sides agreed to this advice.

The Government seemed to subsequently recognize this in truncating the inquiry and commissioning the report in March 2003.


The views expressed in this article are those of the author and not necessarily those of Oupts.

David McCulloch is General Manager Government Affairs at Oupts.
Publishers and Content Providers

Uncertainty and Ambiguity: The Recent Developments

Dow Jones & Cunliffe — Certainty for

ICANN, the Internet Corporation for Assigned Names and Numbers

ICANN and the New gTLD Program

The Domain Name System (DNS) is the global naming system for the Internet. It translates human-readable domain names into the numerical addresses (IP addresses) that computers use to communicate. The DNS consists of a hierarchy of domain name servers that store information about domain names and the locations of resources connected to the Internet.

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ICANN, the Internet Corporation for Assigned Names and Numbers, is a non-profit organization that manages the system for domain names and IP addresses for the entire Internet. ICANN is responsible for coordinating the assignment of new domain names, ensuring the security and stability of the DNS, and promoting competition in the Internet services market.

ICANN and the New gTLD Program

In 2005, ICANN announced its intention to expand the number of generic top-level domains (gTLDs) beyond the traditional .com, .net, and .org extensions. The New gTLD program was designed to increase competition in the domain name market and provide consumers with more choice and flexibility.

ICANN issued a call for applications in 2010, and over 1,900 applications were submitted. The applications were evaluated based on criteria such as the proposed domain name's relevance, uniqueness, and potential for meaningful use.

In 2012, ICANN announced the approval of 1,000 new gTLDs. However, many of these gTLDs have not launched due to a variety of factors, including the cost of running a domain name registry and the lack of demand for certain extensions.

ICANN is currently working to improve the New gTLD program to make it more accessible and user-friendly. The organization is also considering proposals for new gTLDs that would support languages and scripts other than the Latin alphabet.

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is that the publication of a defamatory statement in a single issue of a newspaper, or a single issue of a magazine, although such publication is by multiple publishers and copies widely distributed, is in legal effect, one publication which gives rise to one cause of action and that the applicable statute of limitations runs from the date of that publication. In contrast, common law views every publication as a separate tort.

After examining the single publication argument and the context of how the rule came to be law in 27 of the States of America, the Majority was of the view that applying the rule in Australian law is problematic because “what began as a term describing a rule that all causes of action for widely circulated defamation should be litigated in one trial...came to be understood as affecting, even determining, the choice of law to be applied in deciding the action.” Australian law has separate principles, one dealing with prevention of multiple suits and choice of law principles to deal with which law should be applied. Notwithstanding that the single publication rule is influential in the US, it was rejected by the High Court as it does not fit with defamation law as developed in Australia.

The Majority does canvass the problems in applying their decision where damage to reputation is suffered in numerous jurisdictions. They consider that where there is an injury to reputation said to have occurred as a result of publication in a number of different places, then it may be necessary to distinguish between cases where the conduct attributed to Australian publication as opposed to cases where publication is alleged to have occurred both in and outside Australia.

The first issue they canvass is that the forum may well be considered as inappropriate (as discussed above) and the libelousness if more than one action is brought. Secondly, they suggest that where the publisher’s conduct has occurred outside the forum then there may be a need for development of common law defences to defamation to recognize where the publisher has acted reasonably before publishing the material that is subject to complaint. This development of the common law they suggest, has a common theme of the policy of the resolution of particular disputes by the bringing of a single action. They say that their policy can be applied in cases where a plaintiff complains about the publication of defamatory material to many people in many places. The policy can be given effect by applying principles preventing vexation by separate suits or after judgment by applying principles of preclusion such as res judicata and estoppel.

We acknowledge that the High Court must view this issue from an Australian context, however we question whether this is enough in an international context given that common law principles do not govern the entire world.

The decision highlights the reality for internet (and other international) publishers. International publication means making a risk assessment when deciding on which law to comply with regarding a particular publication. This is of particular concern with the internet publications that can be made almost anywhere. With internet agreement there is, and continues to be, considerable uncertainty regarding the law(s) that will apply to such publications.

FORUM SHOPPING AND A GRAB FOR EXTRATERRITORIAL JURISDICTION

The natural limitations suggested above do not, in our view, realistically prevent plaintiffs from embarking on forum shopping in defamation cases, particularly as communications continue to improve and reputations extend all over the world. Further there is nothing in precedent on the issue that would encourage plaintiffs around the world to exercise restraint and discretion before exercising long-arm jurisdiction in international matters.

A practical consequence of the Court’s unanimous decision that the proper law of a defamation is the place(s) of publication, is that public figures could theoretically use a similar argument to say that they believe there is damage to their reputation. Of course they should consider the extent of enforceability of the decision, but the problem nevertheless is that there is no effective restraint on forum shopping and even plaintiffs suing concurrently in more than one jurisdiction.

Theoretically, under Australian defamation law a number of different suits are possible. However, the Majority and Gaudron J say that practically this will not occur. The Majority favours the policy of the resolution of particular disputes by the bringing of a single action. They say that their policy can be applied to cases where a plaintiff complains about the publication of defamatory material to many people in many places. The policy can be given effect by applying principles preventing vexation by separate suits or after judgment by applying principles of preclusion such as res judicata and estoppel.

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Kirby J’s View

Kirby J was the only judge to reflect on features of the internet that may require a new approach:

“its basic lack of locality suggests the need for a formulation of new legal rules to address the absence of congruence between cyber space and the boundaries and laws of any jurisdiction.”

In his view the advent of the internet has brought a need for:

“adopts new principles, or to strengthen old ones in responding to questions of forum or choice of law that identify, by reference to the conduct that is to be influenced, the place that has the strongest connection with or is the best position to control or regulate such conduct.”

He explicitly admits that there could be undesirable consequences of rendering a website owner potentially liable to proceedings in courts of every legal jurisdiction where the subject enjoys a reputation. He says that the publisher

Guidelines about the ACCC’s powers to regulate anti-competitive conduct.

The ACCC is required to formulate guidelines for the exercise of its power to use Part A competition notices.

Telecommunications access codes.

The TPA empowers the ACCC to declare an industry body as the Telecommunications Access Forum (TAF).

Exemption from standard access obligations.

The ACCC is able to exempt a specified class of carrier or CSP from the requirements of SOAs in relation to an active declared service.

Access undertakings.

Under Division 5 of Part XIC, approvals of access undertakings are only available for active declared services.

Ordering and provisioning

Implied but not explicitly stated that the requirements of an SAO include the ordering and provisioning of an active declared service.

Review of competition decisions.

The TPA sets out the functions and powers of the ACT in relation to decisions of the ACCC.

Competition notices and advisory notices etc.

The ACCC is not required to consult with an affected party prior to issuing a Part A competition notice.

Record-keeping rules and disclosure directions.

The ACCC can make record-keeping rules requiring carriers or CSPs to keep records as directed.

The Bill requires the ACCC, within 12 months of the Bill’s enactment, to address in those guidelines the appropriateness of issuing competition notices as opposed to using other powers contained in Parts XIC or XIC of the TPA.

The Bill abolishes the TAF. The ACCC will have power to make telecommunications access codes.

The ACCC will be able to exempt prospectively a specified class of carrier or CSP from the requirements of an SAO.

The Bill will enable the ACC to accept an undertaking from existing and potential access providers, irrespective of whether the services have or will be declared or are in existence. Further, the Bill will create two types of undertakings: ordinary access undertakings and special access undertakings.

The Bill explicitly includes ordering and provisioning as an aspect of “technical and operational quality” for the purposes of an SAO and allows for the regulations to specify an act or thing as ordering or provisioning.

The Bill clarifies these powers. In particular, the amendment makes clear that the ACT has the power to substitute a decision where the ACCC has decided not to do something.

The Bill will require the ACCC to consult with the affected party prior to issuing a Part A competition notice. The Bill will also allow the ACCC to issue an advisory notice whether or not it has issued a Part A competition notice.

The Bill empowers the Minister to direct the ACCC in relation to the exercise of its powers under ss151BU and three further sections added by the Bill.

These three inserted sections (151BUD, 151BUDB and 151BUC) provide for public access to ministerially-directed reports and periodic reports at the ACCC’s direction.

The Bill would also allow for a person to request the ACCC to exercise its power under the existing ss151BUA, 151BUB and 151BUV in relation to a particular report or series of reports. Also power to issue special Telstra directions and order ACCC analysis of reports.
Summary - Key Changes Under The Trade Practices Act

The ACCC will no longer prohibit or enforce provisions of general application. The Act will focus on prohibiting or enforcing provisions of general application. The Act will focus on prohibiting or enforcing provisions of general application. The Act will focus on prohibiting or enforcing provisions of general application. The Act will focus on prohibiting or enforcing provisions of general application. The Act will focus on prohibiting or enforcing provisions of general application. The Act will focus on prohibiting or enforcing provisions of general application. The Act will focus on prohibiting or enforcing provisions of general application. The Act will focus on prohibiting or enforcing provisions of general application. The Act will focus on prohibiting or enforcing provisions of general application. The Act will focus on prohibiting or enforcing provisions of general application. The Act will focus on prohibiting or enforcing provisions of general application. 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CONCLUSION

Defamation laws around the world balance the competing rights of freedom of information and protection of reputation. Different cultures will continue to have different values and priorities regarding this balance. Consequently, attempts to impose one culture’s values on another will fail to impose one culture’s values on another. The decision in Jones v Guineic is an illustration of this. No one approach to law is ultimately correct. While this decision brings into sharp focus the questionable practice of courts exercising a long-arm jurisdiction, it also highlights that an international agreement regarding jurisdiction and applicable law will at least give publishers, content providers and Internet users some certainty regarding the various laws that they will be answerable to.

1. ibid at paragraph 71. The US-based publisher of Barron’s and Barron’s magazine.
2. ibid at paragraphs 45-48.

The Andrew Olle Lecture 2002
Delivered by Mr Lachlan Murdoch
Sydney, October 18, 2002
Good Business: Great Journalism

Lachlan Murdoch, in this much discussed lecture, examines a range of issues confronting modern journalism.

Thank you for inviting me to address Australia’s pre-eminent media event generously hosted by the ABC. It is the privilege of the media industry at the same time honouring Andrew Olle, a great Australian journalist. I very much thank you for this opportunity.

Although I give the odd speech now and then, I’ve never actually given a lecture before, so I hope you’ll bear with me.

In preparing for speeches I generally try to divorce the audience from the subject matter in order to gain a sense of the type of speech you may be expecting. Reading Kerry Stokes’ comments from last year was extremely poignant, as this lecture is once again held under a pall of terrible tragedy. Sadly, Kerry’s speech could just as well be written now. As I write this, we find ourselves in all too familiar territory.

JOURNALISM IN TIMES OF CRISIS

Tonight, as we honour the memory of a great Australian journalist, it is also a timely occasion to mark the work of all our colleagues and friends who have worked under heart-breaking circumstances to inform their fellow Australians and in many instances, the rest of the world. After last week’s bombing in Bali, so many of our journalists, photographers and camera crews are now working in extreme conditions and under incredible threats to piece together the harrowing story that unfolded on October 12. We sometimes forget that those we report for us places like Bali feel the trauma and grief like everyone else. We forget that those working behind a camera, a recorder or notebook feel the pulse of humanity as we do.

The best of them feel that pulse more strongly.

It struck me when I heard The Sydney Morning Herald’s Matthew Moore and The Daily Telegraph’s Peter Laker speaking to Sally on ABC radio earlier this week, their voices trembling.

Reporting in The Tele on Tuesday Peter went on to write:

“There are times when a pen and a notebook are inadequate shields against the attack. Tomorrow I promise I will be hard-nosed, today I have to grieve with all these people.

On one hand, there is a lack of future-proofing to regulate potential access disputes between ISDN and other important services. As the Committee heard and as was recommended in some submissions, customer convenience being at odds against over-regulating services and fostering uncertainty in how others will be regulated. At the same time, flexibility should be retained in the management of future disputes in other services. It should be recognised, however, that the making of subordinate legislative instruments is subject in its own right and the addition of any other service to the “core” list may be too late - after an access dispute has commenced. The benefits of a set of model terms may arrive too late for commercial non-core services, while some same benefits will be delivered for services in which the battles have already been fought and settled (there are exceptions). Nonetheless, this is an advance in relation to the PSTN, ULLS or LCS.

The Committee considered that access to pay TV services was a potential area for dispute but stopped short of recommending its specific inclusion as a core service.

How far will accounting separation go? The Bill does not specifically enshrine on Telstra to prepare its wholesale and retail accounts in the manner proposed by the Government in its public statement, or as contained in the Explanatory Memorandum (such as earmark / historic costs) and the analysis which may be required of a Ministerially- directed report from the ACC (such an an imputation analysis). Considering that a special Telstra direction is open to public comment, and the time limit for deliberation on those comments is at the Minister’s discretion, it is significant that the desired benefits of the accounting separation process will be subject to delay and uncertainty. Such a result would be contrary to the promise of early and total separation and the overall objectives of transparency and timeliness which underscore the Bill. It is not inconceivable that Telstra will raise objections on such grounds as confidentiality and reasonableness.

There is also the question as to how precisely the aim of the Bill in terms of transparency and non-price terms and conditions will be achieved. Although in its amended form, the reference is now made to “wholesale and retail services”, it is expressed in terms of an accounting separation process. For what is desired and included subject terms and conditions to be disclosed as part of that process? The issue is not one of a record-keeping process. The advice of other parties is required. For these reasons, it remains to be seen whether an effective Ministerial direction will actually be implemented in the manner which provides true price and non-price transparency.

The retention of merits review on timeliness

The retention of merits review for access undertakings was considered by a number of submissions to be a half-improvement against regulatory gaming. With a renewed emphasis on access undertakings ("ordinary" and "special" undertakings), the ACC will exist for regulatory gaming. It is to be hoped that the ACC will simply shift to another forum, thereby undermining the rationale for improved timeliness.

It is therefore uncertain whether the benefits of avoiding arbitration decisions from merits review will yield in proportioned benefits. The "watch and see" view of the Committee and the Government could mean that gaming counter-measures arrive too late.

WHERE TO FROM HERE?

It remains to be seen in practice how the reforms will be implemented.

What will the ACCC include in its model terms and conditions for core services and how far will they assist commercial negotiations?

What will be the effect of the consultative process on the model terms?

How will decisions on the inclusion of future core services be determined?

Will the record-keeping rule framework really deliver on transparency in price and non-price for Telstra’s wholesale and retail operations?

Will the renewed emphasis on undertakings promote negotiated access, or will regulatory gaming move in following the retention of merits review?

In light of the recently announced parliamentary inquiry into the structural separation of Telstra’s infrastructure businesses, these questions are likely to become even more acute. While the Committee has confirmed the Government’s position on a commitment to T3, this examination of structural separation may or may not have a discernable impact on these latest legislative reforms. The industry and investors will continue to monitor these developments closely.

The views expressed in this article are those of the authors and not necessarily those of the firm or its clients.

Angus Henderson is a Partner and Michelle Rowland is a Lawyer at the Sydney office of Gilbert and Tobin.

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"Ticer, and the way they each strive to serve their readers. I believe narrow-mindedness—disguised as high-mindedness—will keep the media irrelevant, and instead of being as diverse and valuable to as many people as possible. We all have to expand our capabilities to encompass the changing world, its growing diversity and, indeed, its complexity. And we all have to avoid the perils of that narrow-mindedness that threatens to narrow our future—so restrict our opportunity—at a time when that future and opportunity is vast.

It seems that those who criticise the larger media companies for their reach and the excellence of their products and who have again been unsuccessful in their efforts to mimic them. Their criticisms are, in reality, the factors for our success and their failure.

I think a point of pride for companies like ours is our ability to be a 10 members of society; to all demographics and the media that are different and deserves the same. That lack of is a point of distinction. We do not patronise our readers and audiences. We believe that there’s no “high culture” or “low culture” but simply that the world understands that there is no way that any of the age, income, or status of its target audience.

The Times is a newspaper in publishing a Nobel Prize winning book. It is more diverse and of the quality of media that will be a failure to serve the breadth and depth of the communities in which we live.

But in order to serve these diverse communities, we must be profitable. The pressure to lose money by doing work which will allow our ability to reward shareholders and pay employees; it’s fundamental to excellent journalism. Far from corrupting the craft, profit is what will enable us to continue our work. The profits of our other newspapers, with whom they now compete vigorously. The Australian competes against all our metropolitan dailies and MX with The Herald-Sun.

The profits of those papers have thus allowed us to play a significant role in the growing range of quality journalism in Australia. Profits have increased competition, not lessened it, and made our media landscape for readers.

Another manner in which the health and vitality of each of our companies has been our understanding that our industry is in the sharing of some very powerful: human talent. The ability to move individuals and intellect from all over the globe has given Australians an enormous benefit, as Australians now populate many key positions in the media overseas.

The oldest continuously-published newspaper in America is headed by an Australian editor, Col Allan. Les Hinton, who runs our British newspaper, started his career at a copy boy on the Adelaide News. BSBY Richard Freudenstein hails from here too as does Fox Sports CEO, David Hill. And it was a cause culture when we met Robert Thomson editor of The Times. It is not possible to mention each Australian editor, photographer, sub-editor and cadre that we have posted overseas.

I am assured that in Australia, News is often compared to a US company, while the US and in the UK we are seen culturally and legally, as very much Australian. As the global growth of globally profitable companies we can offer Australian journalists and media executives opportunities to compete on the world stage, gain invaluable experience, and perhaps one day bring that experience home.

THE CRAFT AND THE BUSINESS OF JOURNALISM: A MUTUAL INTER-DEPENDENCE

Above all else, profits underwrite our most important work without any regard for the matter. The bottom line. The organisations world-wide, this was the case on September 11, 2001, and just one week ago when we all scrambled to cover another terrorist error this time on our own doorstep.

My first reactions on September 11 were, like everyone else, of horror and bewilderment. My next thoughts were those of a newspaper writer. Where and supplementary reports by the Opposition and the Democrats significantly appears a significant problem with the reforms. Presumably, the ability for the ACCC to issue guidelines about deferring access to arbitration while the ACC is considering an access undertaking is an attempt to deal with having of the merits review process.

Anticipatory exemptions and modifications

At present, the ACCC can exempt certain carriers from the requirements of the standard access obligations ("SAOs") for the supply of an active declared service. Such services may be subject to such conditions or limitations as specified by the ACCC in its exemption determination. However, such exemptions can only be made in relation to declared services in operation. The ACCC provides two mechanisms to overcome the resultant disincentive to invest in telecommunications infrastructure.

First, section 152ASA introduces anticipatory exemptions into the regime to allow the ACCC to determine that a telecommunications provider is exempt from current and possible future SAOs in relation to a particular proposed service, even if that service may not exist in the time that the exemption is sought.

Secondly, the ACCC extends the provisions relating to access undertakings under Part XIC by allowing the ACCC to accept undertakings from and potential access providers of all telecommunications services, irrespective of whether those services or have been declared or in existence.

The amendments create two types of undertakings: ordinary access undertakings and special access undertakings. Special access undertakings will cover telecommunications and services which may exist to some extent but not yet declared. Further, unlike ordinary access undertakings, special access undertakings will not have maximum time limits, although they must specify some expiry date.

Accounting separation

The Minister will now be able to direct the ACCC in the use of its current record-keeping powers under Part XIC.

This means that by issuing a written direction to the ACCC, the ACCC must follow the direction in accordance with that direction:

- how carriers or carriage service providers must keep and retain records (the current record-keeping rules);
- how the ACCC's record-keeping rules apply when it is made and it requires the preparation of a report, this report will be known as a "ministerially-directed report".
- carriers or carriage service providers to themselves give access to Ministerially-directed reports; or
- for carriers or carriage service providers to give access to Ministerially-directed periodic reports.

In this way, the framework of the ACCC's existing record-keeping rules will now be subject to Ministerial direction, rather than at the discretion of the ACCC itself, while avoiding re-inventing a new model of accounting disclosure.

At the time of the Government's initial announcement that accounting separation measures would come into effect in 1999 the government was clear as to how, "a more transparent regulatory market" would be achieved and how "accounting separation of Telstra's wholesale and retail operations" would work in practice.

- The preparation and publications of accounts to ensure transparency of Telstra's wholesale and retail costs, in particular the separation announced immediately prior to the tabling of the Bill with a statement that the ACCC will be required to ensure that:
  - Telstra prepares current and existing cost accounts, including estimates of future expected costs, and sustainable wholesale and retail costs;
  - Telstra publishes current and historic cost key financial statements for core international telecommunications services (excluding commercially-sensitive detailed financial and traffic data);
  - it prepares and publishes an imputation analysis to examine any systemic price squeeze behaviour (based on Telstra's competitive environment, the core telecommunications services at the price changes access seekers); and

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The current telecommunications landscape is characterized by rapid technological advancements and increased demands for reliable and efficient communication services. This has led to the need for reforms to ensure efficient and effective telecommunications policies and regulations. The aim of these reforms is to foster innovation, competition, and access to telecommunications infrastructure. The deployment of new technologies such as 5G and fiber optic networks has become a key focus, with the goal of enhancing connectivity and improving the quality of services available to consumers. The development of these technologies is expected to drive economic growth and create new employment opportunities. Furthermore, sustainable approaches to telecommunications infrastructure are being prioritized, with a focus on reducing energy consumption and environmental impact. In conclusion, the telecommunications sector is undergoing significant changes, and the implementation of these reforms is crucial for a smooth transition and continued progress in this vital industry.
Olympic TV Rights

Toby Ryston-Pratt, in this highly commended finalist of the 2002 CAMLA essay competition, reviews the ever-evolving saga that is Olympic broadcasting rights.

In the lead up to the Melbourne Olympics, then International Olympic Committee ("IOC") President, Avery Brundage, commented that the "IOC has managed without TV for 60 years, and believe me, we are going to manage for another 60." Brundage could not have been more wrong. Now the Olympics are supported by the sale of TV rights which account for 50% of Olympic revenue. Although the Olympics have clearly moved on since Brundage's comment, broadcasting the Olympics continues to cause legal complication. In this paper, I first consider the historical origins of the sale of Olympic TV rights. Second, I analyze the legal infrastructure of Olympic TV rights, focusing mainly on the Sydney Olympics. Finally, I consider the future of Olympic broadcasting.

HISTORICAL ORIGINS

Olympic TV rights were first sold for the 1948 London Olympics when the BBC reportedly paid 100 guineas for exclusive rights - approximately AUS $4,000 using current exchange rates. Despite this development, the IOC did not rush to embrace television and expressed concern that allowing payment for TV rights would be contrary to the Olympic ethos. Regardless of the IOC's conservative stance, by the time of the 1956 Melbourne Olympics, the progress of television internationally meant that the market for TV rights was a growth area. Seeking an opportunity, the Melbourne Olympic Committee ("MOC") looked to capitalize on the sale of TV rights. The MOC reached agreement with British principal broadcaster, Associate Rediffusion, who offered £25,000 after securing a US$500,000 sponsorship deal with Westinghouse. Despite the Rediffusion offer, international interest was limited. Wealthy US networks refused to pay for rights claiming that the Olympics were a news event, not entertainment. They appealed to the constitutional rights of free press and demanded free and equal access to the Melbourne Olympics. As a compromise, the MOC offered the networks three minutes of footage per day, which was maintained that any more would damage the commercial distribution of the official Olympic film. The US networks were not satisfied with the offer and demanded up to nine minutes per day. Amidst the furor, Rediffusion cancelled their contract and the MOC turned to the Australian networks in arguing that the right to televise the Olympics should be free. The stalemate between the MOC and the international networks resulted in the networks boycotting the Olympics. The New York Times remarked that "the Olympic Games as an institution, Australia and television's medium of the free world...all have suffered from the consequences of the aggressive blackout." Local stations, principally Channel Nine who secured a sponsorship deal with Ampol, did broadcast the Olympics, but only within Melbourne.

Despite the negative impact of the Melbourne boycott, 1956 proved a key turning point in the history of Olympic TV rights. The IOC launched an investigation into the role of television in the Olympic Movement which resulted in amendment of the Olympic Charter to recognize television and limitation of the role of television. But, Brundage remained sceptical and in his will, he said that he wanted his children to "have the great opportunity of spending a useful, altruistic and full life in newspaper and broadcasting activities." All of us here tonight share that great opportunity of a full life in newspaper and broadcasting. And this week, journalists around the country proved their usefulness and yes, their altruism in reporting to a shattered nation. In doing so, we regained an appreciation for the role we play in people's lives.

Media is much more than an outlet for news; it is a forum for opinions, emotions and shared convictions that strengthen us all when we need strength most. This is why the providers of media must focus so hard on the pursuit of profits: because that enables us and to focus on profits at the times when our best and most important work has nothing to do with them. This is true not just in the case of monumental global events but all the time and in all our businesses. Profits fund the excellence of our media services and the high quality of our products. Profits also provide a measure of our success that is critical to our desire to improve. Our hard work to maximise revenues at our newspapers and TV stations year-round means we won't be forced to compromise the quality of those pages and stations in the event of a worldwide advertising slump, a price war declared by a rival, or the kind of event we saw last year or last week. At News our three fundamental beliefs - the good use of profit, the importance of international diversity, and the dangers of disunity - help value the drive, the value, in my opinion, of all modern media providers. Great journalism needs profits, it needs to be broad minded, and it needs to always steer clear of elitism.

You know, when I was 6 years old standing in The New York Post's loading dock, amongst the papers I loved then as I do now, I didn't really think about all this stuff. I only cared about the paper, its words and its images and I instinctively, I guess, understood its unique ability to relate to and inform its readers. I'd love to be back there now, in that headspace, and not be concerned about the realities of the world.

But none of us can do that. We've all grown up and don't have that luxury anymore.

Lachlan Murdoch is the Chairman of News Limited and Deputy Chief Operating Officer of News Corporation. As broadcast on ABC TV and available through ABC on-line. Reproduced with the kind permission of the Australian Broadcasting Corporation and Mr Lachlan Murdoch.

mecanisms need to be integrated and publicly articulated; and
• the ability to seek compensation for loss of business from carriage service providers is not sufficiently well known and could be given more prominence in industry and Government publicity material.

The Inquiry's recommendations mainly related to improving the better communication of the existing legislative consumer rights.

SHARING FUTURE BENEFITS

The Inquiry considered how regional Australia can share in the benefits of future technological advances and competition. This element of the Inquiry was intended to consider what 'future-proofing' mechanisms could be put in place, a key political issue in the further privatization of Telstra.

The Inquiry's recommendations include:
• the Government establish a process to regularly review telecommunication services in regional, rural and remote Australia and to assess whether new service advancements are being delivered equitably in these areas;
• the structure for future reviews should:
  • provide certainty for regional, rural and remote communities, including a "high degree of certainty that Government funds will be made available to service support improvements;
  • ensure that reviews are independent from executive governments;
  • allow flexible and appropriate policy responses to meet the range of needs in regional, rural and remote Australia; and
  • promote competition and commercial service delivery as the most effective and sustainable service outcome.

OTHER ISSUES

The Inquiry also addressed the provision of a local presence in regional Australia by Telstra and noted that its recommendation would be for it to maintain an ongoing local presence in the region, though this should be broadly compatible with Telstra's commercial interests. Telstra should also be required to develop and publish a local presence plan to set out the range of activities and strategies it would deploy in regional Australia.

The Report also considers issues relevant to remote Indigenous communities, education and health services, training awareness and support for consumers and online public access.

IMPLEMENTING THE RECOMMENDATIONS

No doubt the Government will aim to action the recommendations with some urgency, in order to support its policy of privatizing Telstra. Many of the recommendations advocate action by Telstra, by way of one-off or ongoing actions, reports or reviews. Telstra, keen to move to full privatization, is likely to actively address these issues. Its announcement in November 2000 that it has implemented the Estens recommendation to cut connection times to under 20 seconds in rural and remote areas flags its intention to act promptly. To the extent that Telstra opposes the implementation of particular recommendations, new licence conditions may be imposed on it. Most of the recommendations directed at the Government are expected to be referred to the    as a matter of urgency. The most difficult and contentious issues are likely to be:
• the review of arrangements for USO contestability, costing and funding; and
• the establishment of a structure for future reviews and responses.
The Office of Customer Experience (OCE) has been tasked with improving the customer experience by enhancing the communication channels and improving the quality of services provided. This is being achieved through a variety of initiatives aimed at increasing customer satisfaction and loyalty. One such initiative is the implementation of a new customer feedback system, which will allow customers to provide real-time feedback on the services they receive. This feedback will be used to identify areas for improvement and to develop strategies for enhancing the customer experience further. Additionally, the OCE is working closely with other departments to ensure that all customer interactions are positive and efficient. By focusing on customer satisfaction, the OCE aims to create a culture of excellence and build long-term relationships with its customers.
Regional Telecommunications Inquiry Report

Graham Phillips reports on the findings of the inquiry into regional telecommunications services chaired by Dick Estens.

O n 8 November 2002, the Regional Telecommunications Inquiry ("Inquiry") released its final report ("Report") into the provision of telecommunications services in regional, rural and remote Australia. The Inquiry had been established by the Minister for Communications, Information Technology and the Arts, Senator Richard Alston on 16 August, 2002 to assess the adequacy of telecommunications services in these areas.

Over 600 submissions were accepted from the public and telecommunications industry participants. The 35 findings and 43 recommendations of the Inquiry related mainly to the adequacy of:

- fixed telephone services and payphones;
- mobile telephone services;
- Internet services;
- high band Internet services; and
- legislated consumer safeguards.

Other issues such as the rural presence of Telstra and assuring future benefits were considered.

In general, the Report does not make any major policy recommendations. For the most part, the recommendations involve putting contentious issues to the Government for further review.

**FIXED TELEPHONES AND PAYPHONES**

The Inquiry's main findings in relation to fixed telephone services include:

- basic telephone services are readily available to Australians and have a high rate of connection;
- the universal service obligation ("USO") testability pilots have not been conducted; and
- Telstra is to be put on a "level playing field" through the sale of its fixed network.

As a matter of principle the Inquiry is supportive of further work needed to validate its "practical utility;"

Toby Ryson-Pratt is an Arts/Law student at the University of New South Wales.