

# Communication LAW

THE OFFICIAL PUBLICATION OF THE COMMUNICATIONS  
AND MEDIA LAW ASSOCIATION (CAMLA)

B·U·L·L·E·T·I·N

Registered by Australia Post. NBG 4474

EDITED BY MICHAEL BERRY

VOL 8 No 2 SEPTEMBER 1988

NSW Attorney-General John Dowd



## Criminal defamation and the road to uniformity

**The NSW Attorney-General John Dowd believes there should be a break on individuals bringing defamation actions for personal reasons.**

**M**r Dowd was giving his views about criminal defamation in a lunchtime address to members of CAMLA at the Hilton Hotel on Friday August 19.

Mr Dowd posed the question, "... if it is acknowledged that the practices which presently constitute criminal defamation are undesirable ... how can they be stopped?"

Mr Dowd said he agreed with Mr Justice Hunt of the Supreme Court and the NSW Director of Public Prosecutions who have suggested that there should be some discretion in deciding whether or not a prosecution for criminal defamation should go ahead.

*"There should be some controlling factor to prevent the launching of such actions by individuals for personal reasons, without any consideration as to the interests of the community as a whole."*

The NSW government has been guided by the views of the experts said Mr Dowd, and it has decided to include the recommended discretion in criminal defamation actions.

This discretion to prosecute or not, will be exercised by the Director of Public Prosecutions. In Mr Dowd's view, this will ensure that political considerations will not have any bearing on the exercise of the discretion. The change would not affect the individual's right to sue for civil defamation.

Mr Dowd said his government was also looking at reducing the limitation period under which defamation proceedings must be commenced.

*"Where a person's reputation has been impugned, there is no logic in having a six year limitation period", Mr Dowd said. "In most, and probably all cases, the maligned person*

*will wish to clear his or her reputation at the earliest possible opportunity.*

*"The Government has been considering reducing the six year limitation period to six months for defamation proceedings.*

*"It should be noted that the proceedings would merely need to be commenced within the six month period. Any delays after that time, for example by lawyers or courts, would not bar the*

*person's right to bring action", Mr Dowd said.*

In his speech to CAMLA members the Attorney-General invited suggestions from anyone who might help smooth the way towards a uniform defamation law.

One of his own suggestions was a co-operative scheme similar to the companies and securities arrangements shared by the states.

## Violence on television

**The latest government inquiry into television violence is using the BBC as a role model. How relevant is the experience of Britain's "Aunty" to the Australian television scene?**

**T**he BBC's guidelines on television violence are the starting point for the inquiry into violence on television, initiated by the Minister for Transport and Communications, Senator Gareth Evans.

The inquiry is being conducted by the Australian Broadcasting Tribunal and is likely to produce the strongest guidelines so far to control the portrayal of violence on commercial television.

The Tribunal has no power to inquire directly into the operations of the ABC and SBS although both broadcasters have been invited to participate in the inquiry.

The 28-page booklet, "Violence on Television - Guidelines for Production Staff" was published last year by thirteen heads of

departments in BBC Television. Copies of the guidelines have been circulated to interested organisations and individuals throughout Australia as the basis for debate on the issue.

According to the Minister, "Possible outcomes of this inquiry could be a new set of relevant rules or guidelines, either in the form of an approved self-regulatory code or appropriate Tribunal standards".

The BBC guidelines are directed at the Corporation's production staff. They refer to news, current affairs, drama, children's television, natural history and promotional clips. There is no attempt to lay down a set of rules for programme-makers. In fact, the

*Continued on p7*

# Public sector broadcasting in Australia: REDEFINING THE STATUS QUO

---

**Huw Evans examines the SBS TV papers and finds them lacking in political realism and failing to come to grips with the marketplace of commercial television**

---

**A**t its outset, 1988 promised to be a turning point for Australia's sector broadcasters. The Review of National Broadcasting Policy by the Department of Communications was thought to contain all the ingredients needed to induce long-overdue and convulsive change in the ABC and SBS - a view reinforced by the ferocious public brawl which ensued between the ABC and the Minister, Senator Gareth Evans. Unfortunately, short of some as yet unheralded further convulsion, the sound and fury of those encounters may, I fear, count for all too little in the end. (1)

The ABC's answer to the Government's reform proposals has been exquisitely inscrutable. Armed with a triennial funding guarantee extracted from the Minister, the Corporation has devised plans for streamlining its operations to achieve virtually all its present functions within the limits of its budget - a practice wholly unremarkable elsewhere but which still bears the whiff of novelty in some public sector organisations. More resources will be channelled away from administration and into production; accommodation will be rationalised; sub-contracting of programs will increase; staff numbers will diminish.

The quid pro quo for absorbing this pain internally is a demand by the ABC that it continue to provide a "comprehensive" service without advertising or sponsorship.

Acceptable though such an outcome would be to many, it has the potential in a relatively short space of time to create problems for the ABC far more serious than those from which it is trying to escape. It comes down to this: defining the future of the ABC in terms of the past and present rather than the possible and the necessary will deprive it of the very thing it most needs to survive - a dynamic of flexibility. Nothing is more likely to secure the ABC's demise than clinging to the status quo.

The Government's recently released options for the future of SBS-TV are proving no less controversial. By one of those curious political coincidences, SBS-TV has tumbled into the melting pot amidst a prickly debate over the Fitzgerald Committee's report on Immigration, especially its observations about

community attitudes to "multiculturalism". The Opposition's headlong plunge into this seething brew has added still more piquancy to it.

*"SBS-TV has tended to view multiculturalism principally through the prism of ethnicity".*

The risks of social divisiveness resulting from such a debate are high; yet it is probably not inappropriate, in the wake of our bicentennial self-congratulation that we should attempt to pin down what we mean by terms like "multiculturalism", "cultural identity" and "national identity". Until now, as Stephen Castles has observed nicely in another context, there may have been a political consensus that multiculturalism was a good thing, but there was never a consensus about what it actually was. (2)

Whatever it was, SBS-TV has tended to view multiculturalism principally through the prism of ethnicity. This has unquestionably limited the capacity of the service to other than a marginal degree of inter-cultural exchange with what might be termed "mainstream" Australia. There is a compelling case for accepting the view expressed by the former Director of the Institute of Multicultural Affairs (now an Office of the Prime Minister's Department) Dr Peter Sheldrake:

"Academic examination of culture suggests that identity, and the cultural basis for this, comes from a person's simultaneous membership of several overlapping but different groups. Each person in society belongs to groups characterised on the basis of ethnicity, gender, class, occupation, geography, etc. An approach to multiculturalism which ignores these groups, and their contribution to identity, will be both inadequate and ineffective." (3)

Not surprisingly, the Departmental Review papers approach the question of a multicultural "charter" for SBS-TV extremely gingerly. It leaves little doubt that SBS-TV's

longer term viability will be determined by its capacity to attract a larger audience by broadening the appeal of its programs. However this objective is all but contradicted by the insistence that SBS-TV's role be confined to one of complementing the existing broadcasting system.

Messiest of all are the funding proposals. The Review papers are quick to point to the implicit contracts between Parliament and each of the national broadcasters resulting from their respective legislated Charters. In the ABC papers this idea is extended to recognise that if Charter objectives are endorsed in legislation, Government and the Parliament should then, logically, guarantee funds for those purposes.

*"The SBS-TV papers propose a mixed funding mechanism which offers not the slightest prospect of securing the required funds."*

However, after citing a consultants' estimate of \$73.0-million as the minimum program expenditure required, i.e., expenditure over and above administrative and operating costs, the SBS-TV papers propose a mixed funding mechanism which offers not the slightest prospect of securing the required funds. Moreover, the proposal to accept advertising is so structured as to invite an almost inevitable nexus between programmatic content and audience size.

Indeed, the element least in evidence in the SBS-TV papers is political realism. Whatever options the Government ultimately distills into its reform legislation will need to withstand all the lobbying efforts of the ethnic communities, commercial networks, parties, party factions, and other sectional interests. The Australian Democrats have already signalled their opposition to advertising. The Opposition is whipping up a storm over multiculturalism. The Minister will need

more than luck. Without a watertight, pre-negotiated political consensus, legislation designed to effect even modest structural change to the SBS will founder in the Parliament. The odds probably favour a deadlock and consignment of the issue once again to the "too-hard" basket.

The resulting status quo would, however, be a precarious one indeed. Amalgamation of the SBS with the ABC would no doubt re-emerge at some point as an option. Alternatively, SBS TV could find its role curtailed exclusively to "ethnic", non-English, foreign-purchased programming without sub-titles, receiving commensurately reduced levels of budget funding. Its multicultural function - achieving some degree of inter-cultural exchange between cultural sub-groups and Australian society as a whole - might cease altogether.

On balance, the probability seems to be that while the overall scale of public sector broadcasting may decrease marginally and its efficiency improve, the broad status quo is likely to persist in the short term, in spite of the policy review.

And therein lies the problem. Far from acting to position our public sector broadcasting utilities strategically for long-term usefulness, our reform focus has confined the agenda to the refurbishment of existing structures and practices. We should not presuppose that these national broadcasters will be durable. The evidence for such assumption grows daily more wobbly.

Three powerful, interacting dynamics of change are reshaping the nature of modern media: technology, market realignments and new perceptions of culture and identity.

Australia, among developed nations, came late to many of the media opportunities made possible by new technology. Domestic satellite distribution has yet to be fully exploited. The use of cable technology for delivery of television services has been eschewed by successive Governments. Even the licensing of new radio services - with the exception of the "Public" (Community) stations - has proceeded, until recent weeks, at an almost glacial pace.

*"In television particularly, this comfortable closed shop has acted to produce a sameness of program genres."*

(The important exception has been the video-cassette which, although not a "broadcast" medium in the conventional sense, now enjoys an extraordinary market-penetration

in Australia of almost 55% of all households.)

**T**his highly conservative approach to the development of Australian media outlets has suited the established commercial oligopoly and the ABC almost equally well, protecting profits for the former and ensuring an adequate social and political constituency for the latter. Indeed, commercial operators have generally supported an ongoing role for the ABC, recognising its capacity to satisfy some of the "special interest" expectations traditionally judged less profitable than mainstream program tastes and thus assisting the case against the licensing of new commercial competitors.

In television particularly, this comfortable closed shop has acted to produce a sameness of program genres and scheduling across the spectrum. Paradoxically, the relatively high degree of program regulation imposed by Government "in the public interest" has, by requiring commercial broadcasters to comply with certain minimum content criteria, in some ways exacerbated the problem.

Nevertheless, there is some evidence to suggest that commercial television is at last becoming interested in exploiting some quite profitable "special interest" audiences. This trend is well established in metropolitan commercial radio where most licensees deliberately seek to capture specific market "demographics" through formats appealing directly to particular groups or tastes. Print has always sought to serve particular readerships; the range of newspapers, magazines and journals available today is bewildering in its diversity and continues to grow.

Yet at the Government level it remains the prevailing policy assumption that commercial TV can and should only address "popular" audiences and leave special interests to the ABC and SBS.

The assumption is naive and contradicts each of the three dynamics of change cited above.

No technological impediment exists to prevent a significant increase in the number of television outlets in Australia. A single UHF frequency is currently available in most markets. This is now being contemplated as a vehicle for a PAY-TV service. Ample transponder capacity is planned by AUSSAT for Direct Broadcasting by Satellite (DBS). Microwave frequencies are also available. Telecom is moving inexorably to complete the trunk links of an exciting, national fibre-optic cable network which, given expanded access to individual homes in major population centres would permit a quantum increase in the potential number of channels.

Increased sophistication in audience interests and demand for programming which meets particular needs and tastes will create new media markets for these new technologies to serve.

The most important dynamic of all is the emergence in Australia of a much more self-confident and complex sense of national cultural identity. That this should occur at the same time as the globalisation of popular culture and its extensive reflection on television will provide particular challenges to the resilience of this newly emerged self-confidence as well as to the Australian television production industry.

The commitment of public funds to the process of broadcasting in Australia has historically been justified on a number of grounds. Most if not all of these were transplanted from the United Kingdom and derived from the experience of the BBC. The intention was to embody, in broadcasting, a "public sphere" to sustain the democratic policy, nourish the cultural life of the nation and act as a kind of counterweight to the private sector.

The question for the future lies not in the general desirability of these objectives but in the means by which they are to be achieved. What is being challenged is the assumption that these "public sphere" objectives automatically require the existence of a public utility engaging directly in the production and transmission of radio and television programs.

As increasing number of radio and television services are made available by new technology and realigned markets, a more appropriate response will be to achieve the greatest possible number of these policy objectives through more precise forms of private sector licensing. The granting of private sector radio and television licenses according to particular as opposed to comprehensive criteria will make it possible for Government to vacate significant areas of the current media landscape and deregulate others. In any event, an increase in the number of private sector broadcasters is likely to call increasingly into question the disposal of public funds to achieve similar objectives.

*"The consumer would benefit from both a quantitative and qualitative increase in program choice."*

Such a regime would greatly encourage the development of consumer sovereignty in media. The "pay-per-view" precept, so imaginatively addressed by the recent Peacock Committee of Review on Financing the BBC, attaches comfortably and probably inevitably to a system of greater media diversity, enabling Government to determine far more precisely the extent, nature and application

its regulatory and assistance strategies. The consumer would benefit from both a quantitative and qualitative increase in program choice as well as from greater precision in program pricing. (4)

Measured against this sort of scenario the ABC's resistance to structural and functional change has been quaintly anachronistic. Its position has been to seek to maintain, enhance or expand the output of its existing services. Nowhere does it tackle the question of its future role nor its likely relative position in the totality of Australian media, concentrating instead on achieving improved efficiency.

Not that the need for streamlining should be understated. Operational and administrative sloppiness have, more than anything else, been responsible over the past decade for the declining quality of the ABC's output. The problem is that by the time this new, lean, efficient ABC is achieved (and its own proposed reforms will take, on the ABC's best estimate, at least five years) the rest of the industry will have changed so radically that the ABC will, in relative terms, have almost stood still.

Unfortunately, in their various attempts to restructure or revitalise the Australian electronic media, successive Governments have tended to approach the problem on a sectoral basis. Seldom have policies or changes adequately reflected the complex inter-relationships between public and private sectors or the sub-componentry of each.

The latest Department Review is consistent with that approach. At the time of its preparation Government assistance to the film industry was being reviewed by another Department. Television constitutes far and away the most important single market for Australian film-itself heavily assisted through State and Federal budgets. The issue appears to have counted for little in the development of policies for the National Broadcasters.

Similarly, the development of Public (Community) Broadcasting is virtually ignored in the Departmental Review papers released so far. Yet test transmissions are now being undertaken in Melbourne and Sydney by Public TV groups and a substantial number of radio licences have already been granted to local community-based operators. Is it seriously assumed that there is no potential policy conflict between these sectors?

The point is that publicly-funded broadcasting (i.e. the ABC and SBS) can only ever be justified on the basis of its usefulness to the society that bears its cost. When any of its roles and functions are fulfilled by other broadcasters its level of usefulness is correspondingly diminished. As new technology, shifts in markets and changes in culture generate a proliferation of new electronic media outlets,

the public sector will need to find new and very specific roles to survive. If, as seems to be its intention, it clings, however efficiently, to the status quo, it will effectively engineer its own irrelevance and demise.

Notes:

- (1) Department of Transport & Communications. Review of National Broadcasting Policy Discussion Papers: Australian Broadcasting Service; Consultants' Reports - SBS Television 1988
- (2) Castles, Stephen "A New Agenda in Multiculturalism", Clearing House on

Migration Issues, Melbourne, June 1987, p.4

- (3) Sheldrake, Peter. Multiculturalism - Policy Considerations; address to Committee of Review, Migrant and Multicultural Programs and Services Seminar, 1986
- (4) H.M.S.O. London. Report on the Committee on Financing the BBC July 1986

*Huw Evans is a Sydney-based broadcaster and media consultant.*

## Friends of the ABC

# Our culture and national identity: The ABC of it

---

**Long-time friend of the ABC, Lella Cumming considers the Review of National Broadcasting Policy has dire consequences for the future of the public service broadcaster**

---

**T**he main proposal in the recent Review of National Broadcasting Policy by Gareth Evans is to drastically reduce the size of the ABC and to make it a 'complementary broadcaster'. That is, a broadcaster providing only those types of programs which other broadcasters do not provide and limiting its broadcasting to certain carefully defined types of program. This policy goes completely against the 65 year history of the ABC.

Funding of the ABC has always been predominantly by the Commonwealth Government. Funds have been cut since 1976, with considerable staff losses, and 9000 more are to go in the next five years. At the same time the ABC will pay about \$30m from its funding for the satellite. Funding in 1986/7 was \$325.6m and the total revenue was \$43.6m.

Senator Evans, in an address 'Guaranteeing the ABC's Future' describes its Charter as containing 'confusion and general lack of direction' and claims that 'The Charter should be an explicit contract with the Parliament' but instead is 'a mixture of high sounding rhetoric and generalised directives which between them, give little or no guidance to the ABC as to what it should be actually doing...'

Concern about the need for clear interpretation of the Charter had already been expressed by the previous Board of Directors and in 1985 they published *The Role of a National Broadcaster in Contemporary Australia* giving such an interpretation. They added a warning, however, that 'An appropriate philosophy for a public service broadcaster such as the ABC must not be didactic in ways that unduly restrict the passions, artistic freedom or creativity of its staff and'... the ABC's philosophy must also provide an ethos - an atmosphere or sense of purpose - to encapsulate the organisation's commitment to the community it serves'.

---

## The proposals in more detail

---

Under the new Evans Policy the programs to which the ABC would be confined are defined narrowly so as to allow only one interpretation and would be the ABC's Charter responsibilities - the things it must do. These include news and current affairs as a priority, drama, the arts, children, educational, information and political matter. These areas would be funded primarily from the Budget within the context of 'agreed multi-year Plans'

but would be 'capable of supplementation'. The new charter would be 'an explicit contract with the Parliament'. There might also be non-charter programs such as light entertainment, sports, family activities and religious matter, whose funding might be negotiated year-to-year but might be supplemented by other means, for example, sponsorship. The rest of the ABC's present activities are classed as 'peripheral' and bear 'no clear-cut or direct relationship to the ABC's main purpose'. They include Radio Australia, the orchestras, public concerts, parliamentary broadcasting, transmitting stations and earth stations and they would be either transferred to other organisations or wound up. Even marketing might be 'contracted out'.

### The possible drawbacks

Some of the proposals resemble those being advocated by Huw Evans. For example, in the March 1986 Quadrant he wrote, 'The orchestras should be hived off and separately administered. Radio Australia likewise should become a separate, efficient utility.' Evans, however, went much further, recommending that national (nationwide) broadcasting should be abandoned too. 'I believe the ABC is destined to become our ... regional and community broadcaster ... Nothing need prevent the new ABC from pooling some of its resources to maintain a national news and information service. But its essential role should be to provide a distinctive and specific service, communicating imaginatively regional and local affairs and culture...' How crippling this could be is indicated by the ABC's own reminder in the 1976 Green Report that, 'The single importance of the Australian Broadcasting Commission in Australian life is that it is the one national information service.'

Implications of the Evans Policy for the quality of broadcasting in Australia are not very good. For 65 years the ABC has been an expression of our national culture which all the people in the cities, the towns, the countryside and the remote outback, have been able to share. In addition, it has set high standards which those competing with it for audiences could not disregard and it has been the training school from which other broadcasters have recruited much of their staff in all categories. For audiences, it has been a strong counter to consumerism.

Implications are serious too, in the case of Radio Australia. There has been a suggestion, for example, that it be put under the Department of Foreign Affairs; an act which could turn an independent broadcaster into a mouthpiece for Australian foreign affairs. Last April the comment was made in the Sydney Morning Herald that, 'For radio Australia to be seen as simply pushing the Australian line

would be disastrous. There are hundreds of millions of people out there, and they're not stupid.'

The notion of a contract, too, if it is meant to be taken seriously, introduces a radical change. The ABC was first a Commission, with Commissioners appointed by the Governor-General and a General Manager appointed by the Commissioners, with a Charter of powers and functions and a flexible management structure. In 1983 it became a Corporation, with much the same charter but with a Board of Directors and Managing Director and a non-flexible management structure. Evans now proposes the ABC become contractor, carrying out certain specified tasks for an agreed payment. This could be a threat to its independence and its ability to broadcast 'without fear or favour', because of the Evans provision that, 'the broadcaster's performance would be judged by its charter'. The ABC is expected to be innovative, but, the Evans charter programs are so narrowly specified that a genuine innovation could mean a program which did not fit the specifications, and this might be judged as a breach of the contract.

### The reasons for change

There are claims that many of the ABC's services are superfluous and a waste of public funds because many of them are now supplied by the SBS and some commercial broadcasters. It is also claimed that the ABC is no longer the only national broadcaster, because the SBS is also national and some of the commercials are broadcasting nationally too. These things make it necessary to determine the special, 'essential' role of the ABC which its present Charter fails to specify. If the exact types of programs it was responsible for, were to be strictly defined so as to allow only one interpretation, then they would constitute and limit its essential and enforceable duties, and the strictness of definition would also facilitate forward-funding estimates and ensure the ABC's independence.

The Evans argument contains many weaknesses. The argument that SBS and some commercials are also national equivocates 'national' as belonging to the nation and as broadcasting nationwide. Although the SBS and some commercials have similar programs to the ABC, the SBS has a narrow reach and the quality of commercial programs is weakened by cuts for advertisements. The argument in the Review of National Broadcasting Policy for a complementary role uses a misquotation of a statement by the Australian Broadcasting Commission in the 1976 Green Report. The statement reads:

*The National Service should take due account of the special needs of people*

*living in rural areas. It should also contribute to the development of national unity and provide for a continuing expression of Australian identity. The Commission interprets this emphasis of its national responsibilities as requiring it to operate stations serving particular community needs not fulfilled by other types of stations...*

This is a misquote where the vague 'needs' is substituted for the specific expression, 'particular community needs'. The resulting phrase, 'satisfying needs not met by other broadcasters', is explained like this in Evans' Review:

*In a metropolitan environment, the ABC would be under some obligation to provide programming of a kind not offered by the mainstream commercial network channels and stations; whereas in a regional, rural or remote environment where there is not yet a comprehensive spread of commercial broadcasting, the ABC's programming responsibilities would be correspondingly broader.*

*It is hard to imagine a valid argument for something with such potentially harmful consequences as the reduction of the national broadcaster to a merely complementary role.*

### New look Bulletin

This is the first edition of what is intended will be a more regular, informative and responsive Bulletin to the needs and interests of CAMLA members.

I would appreciate contributions from members in the form of letters, feature articles, extracts, case notes etc.

Before putting fingers to word processors, why not ring me regarding editorial requirements on: 02 950 4381 during business hours. Editorial submissions should be posted to:

The Editor  
Communications Law Bulletin  
4 Tullp St Chatswood 2067

## *"Horses for Courses"*

# **Waterhouse v Gilmore & Ors**

---

**A rare criminal libel prosecution recently involved the  
ABC's television current affairs programme, Four Corners.**

---

**Robert Kaye of the Sydney Bar surveys the decision on**

---

**January 12, 1988 of Mr Justice Hunt.**

---

**T**he principles expounded in the recent decision of *Waterhouse v Gilmore* (Hunt J) emphasise not merely the difficulties which are likely to be encountered by a Plaintiff in seeking to prosecute a defamation by way of criminal proceedings, but also the substantial distinctions to be drawn between criminal and civil libel suits. Notwithstanding the marked lack of success in criminal libel prosecutions in recent times (*viz Gibbs v Spautz; Gypsy Fire v Truth Newspapers Pty Ltd*) Robert Waterhouse (the Plaintiff in the suit before Hunt J) and his father, William Waterhouse, laid informations alleging that an executive producer and a reporter employed by the ABC had each committed the indictable misdemeanour of criminal defamation by their publication of a "Four Corners" television programme entitled "Horses for Courses" telecast by the ABC.

The programme dealt with the Plaintiffs alleged involvement in a greyhound doping case, his persuasion of witnesses to lie to stewards on his behalf, his management of an illegal casino and his association with an underworld crime figure. The Magistrate upheld the Defendants' submission that there was no case for them to answer in relation to the informations laid by Robert Waterhouse, and they were discharged. The Magistrate found, however, that the Defendants had a case to answer in relation to the informations laid by the Plaintiffs father.

In the present proceedings before Hunt J the Plaintiff sought orders that the Defendants be committed for trial and alternative orders for declaratory relief, prohibition, certiorari and mandamus.

After emphasising the restricted nature of the Court's jurisdiction to review a Magistrate's decision in committal proceedings, His Honour pointed out that a Magistrate's decision in such circumstances was "not within that category of executive acts accessible to correction by this Court by way of prohibition or certiorari". In relation to man-

damus, His Honour held that the Magistrate had not misunderstood the nature of the jurisdiction which he purported to exercise and that, in any event, such relief should be refused on discretionary grounds.

Insofar as a declaratory relief was concerned His Honour was of the view that this would constitute an unwarranted interference with the Magistrate's exclusive jurisdiction. Furthermore, a declaration would be of no practical utility where the Defendant had already been discharged and, indeed, the DPP was the relevant decision-maker in respect to the filing of an indictment.

In relation to the application for mandamus the Plaintiff argued, firstly, that the Magistrate had erred in ruling that, once the issue of lawful excuse is raised in the committal proceedings the informant does not establish a prima facie case unless he leads evidence which, if accepted, would tend to negate any such lawful excuse; and secondly, in ruling that such an issue of lawful excuse had been raised. In relation to the former point, it was conceded that whilst the ruling would have been correct at a trial, the onus upon an informant is quite different in a committal. After citing *Spautz v Williams* (1983) 2 NSWLR 506 His Honour rejected the proposition primarily on the basis of "the golden thread" (*viz* the Crown bearing the onus of proof) which ought apply equally to criminal defamation.

The Plaintiff relied upon s.417 and s.3 of the Crimes Act, 1900 (NSW) in support of his position that the onus lay upon the Defendant to establish the existence of lawful excuse at the committal. His Honour described such approach as an "affront to common-sense". In response to the argument that s.51(3) of the Defamation Act, 1974 (NSW) (which places the onus of proof upon the prosecution to negate lawful excuse once raised) incorporates the words, "at the trial of the person..." and therefore doesn't apply in the context of a committal, His Honour pointed out that it was the common law which

prevented s.417 of the Crimes Act from being made applicable by s.3; if that were not the correct position the onus in respect to an issue such as self-defence would lie on the accused.

**H**is Honour did find, however, that the Magistrate had made a mistake of law by giving weight to the Defendants' belief as to the truth of the allegations in the course of deciding whether the issue of truth had been raised. The mere fact that the Defendant so believed was no evidence of actual truth. Furthermore, the tender of the video-tape was insufficient in that there were no statements by either Defendant suggesting the truth of the imputations. However, this error of law was described by His Honour as "simply an error in the application of the ordinary rules of evidence...", and did not amount to a misunderstanding on the Magistrate's part as to the nature of his jurisdiction.

Even if an error of law warranting mandamus had been established, His Honour indicated that he would have refused such relief on the following discretionary grounds:

- i) The availability of the lawful excuse of qualified privilege pursuant to s.22 of the Defamation Act;
- ii) The inability of the Plaintiff to obtain an injunction to restrain publication, and the Plaintiff's failure before Young J to injunct on the basis of contempt (insofar as publication would prejudice criminal charges arising out of the "Fine Cotton" affair);
- iii) The fact that civil proceedings had been instituted in the ACT in respect to the same programme and the availability of punitive damages to the Plaintiff if he were to succeed in those proceedings;
- iv) The significant differences between criminal and civil defamation proceedings;

"A private prosecution for criminal defama-



tion is justified only where the subject of the prosecution is such as to affect the community; it has nothing to do with vindicating or with protecting the reputation of the person defamed."

These principles had earlier been expounded by His Honour in *Spautz v Williams* when applying *Wood v Cox*, and *Stevens v Midland Counties Railway Co*.

- 7) It is ultimately the decision of the Attorney-General or the DPP to determine whether an indictment should be filed.

In an appendix to his judgement, His Honour elaborated upon the differences between s.50 of the Defamation Act and the tort of defamation. Separate causes of action in relation to each imputation do not arise from the statutory offence.

Furthermore, s.50(1) (b) requires that the probability that the publication would cause serious harm and the accused's knowledge thereof must exist at the time of publication.

Finally, His Honour appended an earlier passage of his judgement in *Spautz* concerning the need for reform of s.50 with a view to reinstating the leave provisions in respect to criminal defamation prosecutions (as applied prior to the 1974 Act). An applicant for leave was previously obliged to demonstrate that a matter of public welfare was involved, as distinct from a dispute between individuals. The notion of reforming the law so as to incorporate the requirement of leave prior to commencement of a criminal defamation prosecution had earlier been mooted by Viscount Dilhorne in *Gleaves v Deakin & Ors* 1980 AC 477 as follows (p.487-88):

"It would, I think, be an improvement in our law if no prosecution for criminal libel could be instituted without leave. There are many precedents for the leave of the Attorney-General or the Director of Public Prosecutions being required for the institution of prosecutions. In considering whether or not to give his consent, the Attorney-General and the Director must have regard to the public interest. The leave of a judge must be obtained for the institution of a prosecution for criminal libel against a newspaper (Law of Libel Amendment Act 1888, s.8), and where such leave is sought, the judge must consider whether a prosecution is required in the public interest: see *Goldsmith v Pressdram Limited*. As I do not myself regard it as very desirable that judges should have any responsibility for the institution of prosecutions, I would like to see it made the law that no prosecution for criminal libel could be brought without the leave of the Attorney-General or of the Director of Public Prosecutions."

The House of Lords in the *Gleaves* decision also lent weight to the test of "seriousness" (as compared with "triviality") in establishing the existence of criminal libel, and shifted from the earlier requirement that it involve the public interest or the likelihood of disturbance of the peace.

It should be noted that shortly after this decision the New South Wales Director of Public Prosecutions determined that no bill of indictment should be filed in respect of the informations laid by William Waterhouse. In his statement of reasons for that determination the Director accorded significant weight

to the judgement of Hunt J and accepted His Honour's assessment that lawful excuse of qualified privilege was a strong argument available to the two accused.

Whilst one can only speculate as to the outcome of the proceedings before the Magistrate had the Plaintiff chosen to give evidence, and whether, in that event, the DPP would have proceeded to file bills of indictment, the *Four Corners* case when read together with *Spautz* provides a useful analysis of the obstacles to be encountered by a prospective prosecutor in criminal defamation proceedings.

*Robert Kaye is the joint author of "Defamation Law Practice", to be published by Butterworths.*

## Violence on television

from p1

introduction to the booklet lays the decision making about violence firmly at the feet of the programme-maker:

"Decisions on whether to include violent material in any television programme are complicated and subtle. They change according to context, the time of transmission, the content of surrounding programmes and the current climate of the society in which we live. The most important element in making these decisions cannot be prescribed by these guidelines. They are the programme-maker's own common sense, human sensibilities, feeling for what is right, proper, decent, prudent and necessary to put before a general audience; an audience which may contain one's own and other people's children, one's own and other people's parents, the mentally disturbed and those who have experienced the very actions which are depicted on the screen."

The BBC also acknowledges the difficulty in providing a regulatory framework to control violence on television.

"There is a mass of confusing and inconclusive research into violence on television. Piecing together the findings, one is left with the impression that the relationship between violence on the screen and violence in real life is extremely complicated."

**T**he BBC prefers to take the route of urging its programme-makers to take a reflective, "how would you feel?" approach to the use of violence in television programmes. They are urged to get advice from colleagues and to place themselves in the viewer's chair when deciding whether or not scenes are overtly violent.

This was a theme expressed in discussions at the recent Prix Jeunesse International in Munich. A Creed for Producers was

suggested to cover children's television in particular. The maker of children's programmes should endeavour to develop a child's positive self-image, confidence and dignity and help his or her capacity for sharing and caring and getting on with others.

One of the social differences of opinion between the BBC and Australian television programmers is at what time of the evening the viewing pattern changes from the whole family to just adults. In Britain the BBC has a well established policy of making 9pm the pivotal point of the evening's television. Any programme before that time is considered suitable for viewing by children.

In Australia the pivotal point is 8.30pm and it is interesting that the latest industry code established by the Federation of Australian Commercial Television Stations (FACTS) to cover programme promotions allows for the following depictions of violence after 8.30pm.

1. Use of guns or other weapons in a threatening manner.
2. Heavy punches or other physical violence against humans or animals.
3. Violence to, or abuse of, children.
4. Generally frightening situations.
5. Actions involving loss of life.
6. Close-up views of dead bodies.
7. Close-up views of wounded bodies.
8. Nudity or partial nudity.
9. Depictions of, or discussion of, sexual activity.
10. Improper language.
11. Condoning references to illegal drug use.

Recent research, although fragmented and inconclusive, points to special concern by viewers over real violence as presented on news bulletins. Of course, all major television news bulletins are broadcast within the family viewing period before 8.30pm.

The BBC's view is that a sense of shock is part of a full understanding of certain news stories - terrorist outrages, wars, natural disasters. In instances like these the BBC feels

# The Problem of Violence

---

In this essay Will Wyatt assesses the influence of violence on British television and the obligations of the BBC to its audience.

---

**T**elevision brings us so much of the world that it must expect to be seen as part of the ills of the world. Violence is not the only or even the chief cause of complaint about television, but with violence, as with complaints about bad taste, sexual morality, language and much else, television is in the dock not only for its own alleged transgressions, but also as the most vivid portrayal of a world which is the cause of much worry, fear and regret.

The concern about violence on television is actually a number of quite different concerns, as the letters sent both to the Director-General and the Home Secretary have reflected. These concerns, while not conflicting, are about quite separate and not necessarily consistent aspects of violence and require separate attention. What gives a small child nightmares may be the least likely incident to arouse an aggressive teenager to action. What is a shocking scene to an elderly person may be viewed by others as a well-deserved act of retribution.

The worries about violence tumble over into wider unhappiness about the ways in which human beings behave to each other and how this is represented on the screen. The cry that there is too much violence seems often to be a howl of rage that people are not as one would wish them to be, that things are

not as they once were and that television not only shows this but, at times, appears to relish it.

*"News does tend to be a catalogue of what has gone wrong in the world because what has gone right is, thank goodness, the routine."*

One clear category of complaint is from those who are shocked, frightened or upset by individual violent incidents. This situation can be improved by giving viewers more and clearer information about what they are likely to experience in particular programmes, so that they come across material which is not to their taste as rarely as possible.

The BBC has an obligation to broadcast a service to all the people. This inevitably means that no one will be pleased all of the time by what he or she finds in the television schedule. It is right that there are occasions when the other fellow has his go. But it is a discourtesy for broadcasters to surprise viewers by failing to let them know what they are in for.

Forewarned is forearmed, and with clear information, viewers can and do exercise their choice.

Clint Eastwood films tend to be violent, but the genre is well known to the viewing public so that, while the huge audience which enjoys them can seek them out, those who dislike or disapprove of such material are able to steer clear. Thus, when Eastwood films are transmitted there are few complaints about violence, rather more about cuts that the BBC has made.

There are times when it is legitimate for programmes to shock, both in news and fiction. With some news stories - terrorist outrages, wars, natural disasters - a sense of shock is part of a full human understanding of what has happened. If there are pictures, with care, they should be shown. Simply telling people what happened may not be enough. What the news staff have to remember is that you cannot shock too often without ceasing to shock and, worse, robbing the audience of its capacity to be shocked.

The climate of opinion within which television is watched is constantly changing, and broadcasters need to be in tune with viewers' current sensitivities in order both to maximize the pleasure which their programmes may bring and to minimize any upset. In recent years there has been a heightening of

---

## Violence on television

from p7

that violence should be used to shock viewers. Again, in drawing the line, the BBC guidelines leave it to the good sense of the individual news editor.

"Try to anticipate the best feelings of the viewers - the moment when many will say to themselves: 'It is right for me to leave now. I have seen enough'. However, it is in the section on News that the BBC offers some does and don'ts.

"Take great care with pictures of dead bodies. Avoid close-ups, save in exceptional circumstances.

Grief should be reflected with restraint. Funeral coverage should not dwell on close-ups of the grieving ...

Reports of suicide may include the fact of

the method if editorially relevant - but not the details of the method.

Reports of rape cases should spare details."

One of the most useful reminders to news editors and current affairs producers is their propensity to become world-weary about real violence.

"The production team may have become used to the pictures and descriptions; the audience will come fresh to them. Remember your own first reactions."

**O**ne of the most potentially useful sections in the BBC booklet is a series of questions that programme-makers are urged to ask themselves when they are making editorial decisions. They include:

"Could the violence be implied rather than shown? Is the viewer meant to identify with the perpetrator? What is the reaction of

the victim? How long should the violence last? On the assumption that every programme-maker will want the world to be a better place is the violence in the programme likely to make the world less violent - or more?"

Unfortunately, there is no guidance as to how the programme-maker should go about answering these questions. The BBC prefers to, "rely on the good sense of every member of the team".

Given the variety of programme-making talent and range of editorial strengths within the television industry this rather unguided collection of guidelines is likely to produce an ad hoc and personalised approach to the portrayal of violence on television; a situation that is really no different to that which exists at present.

Michael Berry



awareness of violence, both in word and deed, towards women and across the races. While these were never treated lightly in the past, programme makers now need to take particular care.

A second group of complaints voice a neighbourly concern for the sensibilities of others, who they fear will be disturbed by particular programmes. These writers may well say that they, too, have not liked the programme (sometimes they have) but they do not feel themselves damaged, frightened or shocked by it. It is others they are concerned for.

'Violence does exist in our society and I would expect you to report it when it occurs. However, there is a difference between holding up a mirror and using a colossal magnifying glass. Very few people in Britain have seen a violent death in real life, yet we are constantly shown them on the screen as if it were quite a commonplace thing.' This letter to the Director-General was one of many which said that the world in reality is not as the world seen on television. Of fiction, they felt that it exaggerated the badness and violence of people. Of the news, they asked, in effect: is it really this bad?

News, whether in the press or on television, does not seek to reflect the whole of life. It aims to report those things which have happened today which had not happened yesterday and which are sufficiently important or exceptional to be worth bringing to general notice. A safe bus journey would not make the news, a bus accident probably would; a day of modest progress at the office would not, a mighty take-over would; a quiet day shopping and looking after the children would not, a kidnap or murder would.

News does tend to be a catalogue of what has gone wrong in the world because what has gone right is, thank goodness, the routine. But viewers do not put the rest of their experience of life in abeyance just because they are watching the news. They know that most bus journeys are safe, that most days there is not an earthquake, that there are not riots in most places in the world, that most people will not be kidnapped and held to ransom. It is important, though, for news staff to place events in a context, to sketch in, wherever possible and however briefly, something of the background which shows why the events in the foreground are exceptional.

The final two areas of disquiet give most concern. As one woman wrote to the Home Secretary: 'It is possible that many young children will not actually suffer visibly - i.e. nightmares, aggressive behaviour, etc - although some do show such symptoms of distress. But they are growing up accustomed to violence, which they see every day on their television screens. It is their norm.'

Teachers are worried about playground

games in which children imitate violent television programmes. In so much as the teachers witness unpleasantly aggressive behaviour in children who have never exhibited it before, their concern may be justified. But there is surely nothing especially surprising nor very worrying when a television programme is merely the conduit through which children channel their normal pleasure in competitive and aggressive games. Children played cowboys, pirates, Robin Hood and cops and robbers, pretending to bump each other off in all kinds of unpleasant ways, long before television became an influence. Their behaviour was not always very lovable then.

At the same time, television offers many models of kindness, bravery and generosity. The argument that television acts as a sort of moral or immoral tutor cuts both ways. If television programme makers ought to be fearful of copy-cat violence, might they also be permitted to be hopeful about copy-cat virtue?

*"... who wishes to harm anybody? Who wants to make programmes which lead to people being brutalised?"*

In seeking to protect children and yet provide a full, rich service of programmes for all the public, broadcasters have to try to strike a balance. At one extreme is the argument that because broadcasters cannot determine who is watching and when, there is little point in worrying about times of transmission.

More or less anything might go at any time. At the other, those who say that because children may be watching at any time, then nothing should ever be transmitted which is not suitable for young children.

This is the kind of problem which is common in democratic societies where interests have to be balanced; to suppress or to liberate; to control or to make free; to give people the power to choose or to protect. It is a problem we should relish. There is little violence on television in the Soviet Union. Free broadcasting in a free society somehow has to reflect the world as it seems to be and not to stifle significant talents. At the same time who wishes to harm anybody? Who wants to make programmes which lead to people being brutalised?

In finding a sensible course for this country there are some facts which are often overlooked. Teenagers, usually considered the group most likely to be spurred into action by watching violence, are the lightest

viewers of television. Viewers in the 16 to 24 age group are outnumbered by as much as seven to one by viewers over the age of 55. In looking at the audience composition for a number of films and programmes with some violent content, it was evident that the younger section of the audience was significantly under-presented. Present in higher than average numbers were the middle-aged and elderly. And it should be remembered that fewer than one half of all households with a television contained children. This does not make care for the young audience any less important. It does point to the problem of trying to fulfil a service to all the viewers.

Most worrying of all is the argument that television is blunting our sensibilities, that viewers, especially the young, are growing used to a world where death comes cheaply and violence is the means by which problems are solved. This is the drip, drip argument. It may not be that individual programmes, scenes or items are at fault, it is the accumulation which threatens. As one woman wrote: "Some years ago I could not even look at scenes of violence in programmes or news reels, but now I am so conditioned by frequent exposure to it that I am able to watch, albeit reluctantly, and I still resent its presentation. It is significant that I am now able to watch it."

Are the people of this country more tolerant of violence, harder in their responses, more likely to urge violence upon others? If they are, television must have played a role along with the other messengers in society. It is prudent for broadcasters to work on the assumption that to some extent, for some people, for some of the time, television may well promote violence. But that is not to say that television is a leading cause of violence. It may reflect it, it may exaggerate it. But violence is in people and there is enough violence in human history for us to know that television's role must be tiny.

Of course, broadcasters must continue to take care about violence, about the overall picture of the world they present, to find a proper place for values other than the aggressive, the cynical, the opportunistic. This is not an issue of censorship but of straightforward editorial responsibility: the programme-makers' job is to think through their material and respect the audience. Then they can seek new ways to exploit television's awesome ability to transmit to millions the humanity of others, to show us something of what it is like to be another human being.

*Will Wyatt is the head of Documentary Features for BBC Television. This edited article appears in, "Violence on Television" Guidelines for Production Staff 1987*

# The immortal grandfather: A case for euthanasia

**Leo Grey examines the grandfather clauses in the Broadcasting and Television Act and asks have they outlived their usefulness**

In that lost age when the law of broadcasting was relatively simple, when people trusted in the efficacy of rules that said you could not buy television stations without prior approval, and gentlemen did not take the Control Board or the Tribunal to court every week, there was one sub-section in the Broadcasting & Television Act, namely s.92(3), which was known affectionately as "the grandfather clause". Purists in the bureaucracy preferred to call it (inaccurately) "the freezing provision", but the image of a grandfather clause sitting quietly in the Act, rocking its way inconspicuously into retirement and eventual repeal was far more attractive.

That original grandfather was born in 1965, when all the new ownership rules based on the concept of a "prescribed interest" were enacted. It had a relatively uncontroversial life, and passed away quietly in 1984, buried by the cold anonymity of the *Statute Law (Miscellaneous Provisions) Act (No 1) 1984*. But in this era of the titanic struggle to build a new broadcasting system, where each of the last few years has seen massive legislative and commercial offensives, where the map of broadcasting is now pitted with shell craters and sown with unmarked minefields, and everyone dreams of the "law to end laws", the descendants of the old grandfather have turned into monsters.

*"The complexities of the grandfathering provisions and the obscurity of the language are almost mind-numbing."*

The facts are these. There is now a complete Division of Part IIIB of the Act, divided into four Sub-Divisions, comprising 14 sections and 38 1/2 pages of legislation, entitled

"grandfathering provisions": see ss.92ZA-92ZN. It would be pointless for an article like this to try and explain how these provisions operate upon the substantive limits in the Act - the complexities of the grandfathering provisions and the obscurity of the language are almost mind-numbing. Suffice it to say that they are all intended to prevent the new limits from applying to interests existing before certain "grandfathering days".

There are, as I read it, at least nine different grandfathering days. Four of these days are fixed for particular purposes: 28 November 1986 for the first overall television limit and the television/newspaper cross-media limits; 2 June 1987 for the MCS limits; 4 August 1987 for certain "one to a market" limits; 29 October 1987 for the overall radio limits and the radio/television and radio/newspaper cross-ownership limits. The remaining grandfathering days are dependent upon the dates of Ministerial declarations or notices. At least one of these provisions (the television population limit) will create a new grandfathering day every time the Minister publishes a notice under s.91AAD (i.e. after each Census).

*"These grandfathers are, to all intents and purposes, immortal."*

Moreover, none of the grandfathering provisions contains any "sunset clause", that is, a provision stating that the grandfathering of interests exceeding the new rules will cease on a particular date in the future. Neither do they operate on the basis that they "freeze" existing excess shareholdings as the old grandfather in 2.92(3) (may it rest in peace) was always thought to do until reassessed after its demise. A person who holds grandfathered interests does not kill off his grandfather by acquiring additional interests above the limit. All that happens is that the grandfather takes a holiday, and the person is then in breach of the Act. But if the interest drops back to the level that had been grandfathered, the grandfather returns as hale and hearty as ever. These grandfathers are, to all intents and purposes, immortal.

The only way that grandfathers may age and die is through the operation of a legislative "ratchet". That is, if a grandfathered interest is reduced to another level which is still above the new limit, the grandfather applies in the future only to this lower level. It is not possible to go back up to the former grandfathered level and claim the original protection - the movement is only one way, hence the notion of the "ratchet".

Considering all that, the question has to be asked - can it be justified on policy grounds?

The policy proposition which led to the original grandfather in 1965 was a simple one which, reduced to its essentials, seems sensible and fair at first glance: if the ownership rules change, those people holding pre-existing interests which complied with the old rules but not with the new rules should not be unfairly penalised. This policy is still the basis on which the hydra-headed scheme described above is based.

As with many apparently simple policies, there is a gulf between concept and practice in this case which requires the answering of certain difficult questions: How important is it that the new ownership rules should apply to everyone? What would be the consequences to individual interestholders of applying the new rules to everyone? Are those consequences unfair when balanced against the public interest embodied in the new rules? Would it be unfair to require people to bring themselves under the new rules within a certain period of time? Should people be allowed to regain the protection of a grandfather clause if they buy additional interests after the new rules come into effect?

One might assume the Government has answers to all these questions. Some can be implied from the mere existence of the grandfathering provisions. But I am not aware of any real analysis and balancing of competing interests done by the Government and placed on the public record. Moreover, I doubt that anyone in the Department of Transport and Communications and the Australian Broadcasting Tribunal has any definite idea what existing interests are, or might be, covered by the grandfathering provisions.

The Government places great weight on its new ownership rules. But what is their worth if the real position is that the law retains in practice a mixture of old and new limits, possibly in perpetuity? What does it say about the Government's commitment to breaking the cross-media links, if it is thought acceptable to allow existing links to survive forever wherever they may be?

Whatever might be my view about the grandfathering provisions, I do not suggest that all of them should be repealed tomorrow. My solution is to put a sunset clause in Part IIIB Division 7. A generous period of time could be allowed - say five years from each of the specified grandfathering days. At the expiry of that period, if a person still retained an interest exceeding the new limits, divestiture would be required. It may well be that at the end of five years there will be few interests left exceeding the new limits, in which case the sunset clause will be uncontroversial.

If, on the other hand, there are extensive

*Continued on p12*

# Communications and the Liberals

---

**The Liberal Party's Communications Policy promises increased competition and a less regulated market. Ranald Macdonald looks at the implications for media ownership.**

---

**L**et's begin by stating the underlying principle that supports the Opposition's approach to communications.

The Opposition believes that by issuing more television and radio licenses and bringing about further deregulation, the resultant competitive market will ensure better programmes, more employment, greater diversity of ownership and freedom of choice for consumers (viewers, listeners and readers) and suppliers (journalists, creative talent and others involved in production).

John Howard was initially opposed to the Government's introduction of cross ownership limitations - the one thing that the Hawke Government introduced which caused disfigurement and limited the size of some of the media groups. That is, limited them from all powerful to powerful, from gigantic to just huge.

The "Duffy Memorandum", which followed Rupert Murdoch's takeover of the Herald and Weekly Times, has resulted in new players in the media game. As they keep changing, one should spell them out - Westfield (and Frank Lowy), Bond of Bond Dalhold, Skase of Quintex have joined the reduced Fairfax empire and Packer (now undisputed magazine king and owner of the Canberra Times).

At this stage, I will pass by the management buyouts of the Brisbane Sun and the Adelaide News - and Holmes A'Court.

Radio with Hoyts, Wesgo, the new owners of the Macquarie network and other investors in the airwaves are of only peripheral interest in the overall scheme of things.

That is, unless a Howard-led Liberal/National coalition government removes the cross media ownership restrictions, or the Trade Practices legislation continues to be ineffectual.

The new media barons are incredibly powerful in the branch of the media they have chosen. And I suppose it is just possible that these people (who often administer conglomerates in a quite personal and ruthless way) would not influence a newly-elected conservative government against full implementation of its media policy. With additional television and radio licenses it is not hard to conjecture on the impact this move would have on electronic media profits.

*"Unless a Howard-led Liberal/National coalition government removes the cross media ownership, restrictions or the Trade Practices legislation continues to*

The Opposition policy promised by John Howard - and presumably fully backed by the National Party (despite recent differences over television reach levels and country television agglomeration), includes the following promises:

- Streamlining a "relevant" Australian Broadcasting Tribunal.
- Continuing cross-ownership controls introduced by the Labour Government.
- A press free from government control.
- The issuing of new television licenses where appropriate.
- Acceptance of a further extension of television networking to allow economies of scale.
- Immediate introduction of pay and cable television.
- The issuing of additional radio licenses in the FM band.
- Maintenance of existing ownership limits applying to radio (16 stations).
- Lifting of the present restriction of television networks having a maximum 60 per cent reach of the total Australian population.
- A more efficient and effective ABC and SBS, less reliant on public funding - with SBS maintaining its separate identity.
- Full private sector ownership of Aussat with OTC, Telecom and Australia Post becoming public companies.

In short, the Liberal and National parties have backed increased competition, greater

public ownership of government enterprises and a freer, less regulated market.

While this philosophy may have attraction to advocates of the free market economy, de-regulation, free enterprise or whatever, there are some important counter viewpoints.

First and foremost is that media ownership is different to the ownership of mattress and manufacturing plants or flour mills. The media deals in information, debate and diversity of viewpoint and they are based on the underlying principles of the public's right to know and freedom of expression.

Also, the current situation of media ownership and its concentration in Australia is totally unsatisfactory. Therefore, other areas which could be used to ensure diversity of ownership and genuine competition throughout the media spectrum, i.e. trade practices legislation, foreign ownership guidelines, industry self-regulatory bodies and broadcasting legislation, all need to be reviewed.

In the home of free enterprise, the United States of America, there is strong anti-monopoly legislation and also special evaluation of media ownership and its implications. In Britain too, there is recognition that public interest is involved in ownership and control of the nation's media.

Why not here?

It can't be assumed that simply handing out more television and radio licenses equates with better programmes.

A policy of less regulation and "economies of scale" results in the rich and powerful becoming more rich and more powerful.

There are players in the game who have a media arm in their huge conglomerates which presumably will be expected to perform in line with other group investments, whether they be in mining or property speculation or whatever. Worse, perhaps, the synergy expected relates to benefits the media ownership can bring to the rest of the group. For synergy, read self or corporate promotion; the selling of old scores, pressurising, lobbying managed or slanted news - in short, anything that benefits the corporation or its owners.

Already Mr Bond has declared that his television network is not providing a satisfactory return on his investment. Well, it was his decision to pay one-billion dollars for the

## Liberals policy

from p11

Nine Network - heaven help The Age if someone actually does spend 700-million dollars odd to buy it! and then seeks a satisfactory return.

On a lighter note and speaking of competition, for 2 cars and the Sale of the Century cash you are invited to identify the last two shadow ministers of communications - that is since Ian MacPhee was relieved of his crusading role.

The Hawke Government also recently changed horses but that is an easier question. The admirable Michael Duffy was taken over by the Evans juggernaut - Gareth is happy to hold forth on any subject so why not the media even if the PM/Keating alliance makes the media decisions.

By the way, the answer is Julian Beale and Tony Messner, with one out of two being a good pass.

I end this review, as I began it. It is all well and good assessing a policy document prepared while parties are in opposition, but how much of it will be implemented?

Neither the current media position for the Opposition's vision even remotely satisfy the most basic tests as to community need or public interest.

Let's hold Australia's first Royal Commission into the Media - electronic and print - and bring it all out in the open away from politics. Then let's actually do something to solve the problem - for problem there is.

*Ronald Macdonald is a lecturer in Media Studies in Melbourne.*

## Grandfather clauses

from p10

interests still exceeding the new limits after five years, that just confirms the need for a sunset clause in order to ensure that stated policy of Parliament embodied in the substantive rules for the ownership of broadcasting is reflected in the real world. Let's not pretend that anyone in Government or Parliament considered the grandfathering provisions as an intrinsic part of the policy (if they even bothered to read them) - they were just there to smooth the passage.

A Government lacking the intestinal fortitude for even this moderate measure could add a provision allowing the Tribunal to defer the sunset date for up to another six months or a year, where certain economic damage can be proved that was not the result of procrastination or other default on the part of the interestholder.

Without a sunset clause on excess interests, the new ownership limits may be no more than symbolic policy. In my opinion, the Government should prepare its broadcasting grandfathers for a dignified but definite end.

*Leo Grey*

## Communications and Media Law Association

The Communications and Media Law Association was formed early in 1988 and brings together a wide range of people interested in law and policy relating to communications and the media. The Association includes lawyers, journalists, broadcasters and publishers, reformers, academics, and public servants.

Issues of interest to CAMLA members include:

- defamation
- contempt
- broadcasting
- privacy
- copyright
- censorship
- advertising
- film law
- telecommunications
- freedom of information

In order to debate and discuss these issues CAMLA organises a range of seminars and lunches featuring speakers prominent in communications and media law and policy.

Speakers have included Ministers, Attorney-Generals, judges, and members of government bodies such as the Australian Broadcasting Tribunal, Telecom, the Film Censorship Board, the Australian Film Commission and overseas experts.

CAMLA also publishes a regular specialist journal covering communications law and policy issues - the Communications Law Bulletin.

The Association is also a useful way to establish informal contacts with other people working in the business of communications and media. It is strongly independent, and includes people with diverse political and professional connections. To join the Communications and Media Law Association, or to subscribe to the Communications Law Bulletin, complete the form below, and forward it to CAMLA.

To: The Secretary, CAMLA, Box K541, Haymarket, NSW, 2000.

Name .....

Address .....

Telephone ..... Fax ..... DX .....

Principal areas of interest .....

I hereby apply for the category of membership ticked below, which includes a COMMUNICATIONS LAW BULLETIN subscription, and enclose a cheque in favour of 'CAMLA' for the annual fee indicated:

- Ordinary membership \$40.00
- Corporate membership \$70.00
- Student membership \$20.00
- Subscription without membership \$40.00 (Library subscribers may obtain extra copies for \$5.00 each).

Signature: .....