

PRODUCTIVITY COMMISSION INQUIRY
INTO
BROADCASTING LEGISLATION
AND REGULATION

SUBMISSION BY HCJB AUSTRALIA LIMITED

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LIST OF ABBREVIATIONS

ABA	Australian Broadcasting Authority
ABU	Asian Broadcasting Union
ACA	Australian Communications Authority
BSA92	<i>Broadcasting Services Act 1992</i>
FATA75	<i>Foreign Acquisitions and Takeover Act 1975</i>
HCJB	HCJB Australia Limited (Heralding Christ Jesus Blessings)
HF	High Frequency
IHFB	International High Frequency Broadcasting
RA92	<i>Radiocommunications Act 1992</i>
Spectrum	Radio Frequency Spectrum
TV	Television

HCJB POLICY POINTS

Focus of the HCJB Submission

This Submission focuses on international high frequency broadcasting (IHFB) by non-government organisations.

Our view is that licencing of this activity is possible under current legislation, the BSA92 and RA92. The reasons are detailed in Annex A. However Government policy has been to exercise discretions in the legislation to preclude non-government IHFB, allowing only Radio Australia to operate IHFB services. Radio Australia is owned by the Australian Government.

On 19 April 1999 the Minister for Foreign Affairs and the Minister for Communications, IT and the Arts jointly announced new policy for international broadcasting, including IHFB. The Government will amend BSA92 to include a new licence category controlling content of transmissions broadcast under a licence issued under RA92. This content licence category will cover international broadcasting generally, including IHFB.

A copy of the joint media release is attached as Annex B.

The purpose of this submission is to highlight the need for early enactment of the BSA92 amendments and early issue of a licence to HCJB.

International High Frequency Broadcasting (IHFB)

IHFB has been conducted by government and non-government organisations around the world for at least 70 years. It is conducted in the high frequency (HF) band (3 to 30 MHz), which has unique propagation characteristics. HF transmissions are reflected from the ionosphere, whose height above earth varies by day, night, season of the year and other factors.

The waves travel for thousands of kilometres through this reflective process. HF is therefore used for long range international transmissions. Later technologies, especially satellite broadcasting, have diminished the role of IHFB, but it is still widely used by many nations and organisations.

HCJB Australia

HCJB Australia has been established in Australia for 25 years making Christian broadcasting programs in Melbourne in many languages.

HCJB Australia is a mainstream, highly respected Christian organisation, controlled in Australia by an Australian Board of Directors with a democratic constitution and an impeccable reputation. Its objective is to broadcast a Christian message strongly promoting family values.

HCJB never criticizes other religions, nor implies that any race or culture is superior or inferior. Its programs include cultural, health, educational, family and community programs.

The central organisation of the international federation, HCJB World Radio International, is the best known international religious broadcaster using high frequency bands (the Voice of the Andes).

- HCJB World Radio International has operated for 67 years, mainly from Ecuador, funded by donations (not governments) and gifts of services to the value of US\$22M per annum.
- The international federation head office in Colorado Springs USA has 63 staff.
- It assists HCJB Australia with advice but exercises no control.

HCJB IHFB Licence Application

HCJB applied to the Australian Communications Authority (ACA) on 11 August 1997 for a licence to broadcast programs internationally using HF radio.

Its plan is to establish new transmission facilities at Kununurra in Western Australia to transmit programs, principally to Asia. It has the strong support of the Government of Western Australia.

Asia is already covered by the transmissions of Christian broadcasters, including the federal HCJB organisation in Ecuador. However the new signal from Kununurra would cover parts of Asia more effectively, on a similar technical and geographical basis to the former Radio Australia facilities in Darwin.

The ACA has been very helpful in considering all technical aspects but has been unable to issue a licence, due to the Government policy constraints mentioned above.

Apart from preventing HCJB achieving its objective of broadcasting its Christian message, this refusal has also delayed investment of \$15M in the new facility in Kununurra and the permanent employment of 25 people in a rural area, including several Aboriginal people.

The policy sits very oddly with international precedents, including the following:

- Australia already permits international TV broadcasting by satellite from Australia to Asia (ATV).
- Non-government IHFB has been operating for decades from many countries, including Pacific Islands administered by the USA (Guam and Palau).
- The UK now has a very open regulatory regime with no content restrictions - HCJB World Radio International is now broadcasting from the UK to Europe

including the CIS (former USSR).

There are many other examples of non-government IHFB including from nations who do not have the democratic traditions and free speech of Australia.

The New Legislation

HCJB has had many discussions with Ministers and Members of Parliament, who have generally been very supportive of the HCJB objective.

Concerns have focussed on whether an open licencing regime would be exploited by organisations, perhaps foreign, with agendas not acceptable to the Australian Government. These might be, for example, political or racial or in some other way contrary to the Australian national interest.

In response to these concerns HCJB suggested to the Government:

- means for ensuring Australian ownership and control of non-government IHFB organisations, and
- content rules focussed on Asian Broadcasting Union (ABU) Guidelines, which have the general support of Asian nations.

We also suggested how these might apply to HCJB to enable it to be issued with an IHFB licence.

These points are covered in greater detail below. Our suggestions are written on the basis that:

- only Australian owned and controlled organisations would be acceptable IHFB licencees, and
- content rules are necessary to ensure that this form of broadcasting is positive in its impact on Australian relationships with countries to which the broadcasts are directed.

Status of the Licence

A natural person can change citizenship without great difficulty and without disturbing legal or equitable rights, such as ownership of assets or holding of licences. Issues of dual citizenship can also arise.

A constitutional corporation incorporated in Australia cannot easily change its place of incorporation. Status and election of its directors are also subject generally to the Corporations Law and specifically to the constitutional documents and procedures of the corporation. Constitutional documents can contain rules about ownership and control.

It would therefore seem appropriate to follow the precedent of Section 52 of the TA97, which excludes natural persons from eligibility to apply for a licence. Those able to apply are constitutional corporations, partnerships of constitutional

corporations and public bodies, meaning an entity of the Commonwealth, a State or a Territory.

Australian Ownership

Assuming that in the private sector only constitutional corporations can be licenced, criteria for Australian ownership and control are necessary. While the BSA92 would appear to be the logical place to look, the ownership and control provisions of that Act tend to focus on control of commercial television stations and cross media rules. They have a different policy intent from that likely to apply to IHFB.

The tests of the FATA75 by comparison are simpler and provide a clear test of whether or not an organisation is Australian. To be Australian, an organisation must be both owned and controlled by Australians.

Australians under this Act are Australian citizens and Australian permanent residents, namely persons who are ordinarily resident non-citizens. Citizens and permanent residents must meet the requirements of the relevant acts, namely the *Australian Citizenship Act 1948* and the *Migration Act 1958*.

The FATA75 broadly regards any organisation as foreign if :

- a shareholding of a foreigner exceeds 15%; or
- foreign shareholdings exceed an aggregate of 40%.

If persons are “associated,” their individual shareholdings are regarded as one combined person. An Australian shareholder “controlled” by a foreigner is regarded as a foreigner.

It is obvious from the rules above that Australian ownership is synonymous with Australian control.

ABU Guidelines

While IHFB has existed for around 70 years and was once a primary means of international and mass communication, satellite broadcasting has emerged as a far more pervasive medium. Individual satellites commonly cover a quarter of the earth and perhaps 50 nations simultaneously with high quality video transmission.

Small satellite dishes are evident in large numbers even in poor countries and those with particular sensitivities in politics, culture and religion. Indonesia for example, with its Palapa satellites, was one of the early nations with this cross border capability. China in the last decade has been a major provider of launch services for satellites providing commercial services, including those intended for broadcasting.

The major expansion in satellite broadcasting led the ABU in 1994 to produce Guidelines for Transnational Satellite Broadcasters in the Asia Pacific Region. They point out that countries within the region are broadcasting “home produced” programs within the region as well as European and American product.

The guidelines are designed to avoid “detrimental effect on values, customs and cultures” and possible “cultural invasion”. However they also emphasise the positive effects of a free flow of information and the “potential to contribute to viewer sovereignty and international understanding.”

The guidelines are attached as Annex C, specifically covering sensitivities on:

- religion (respect and sensitivity)
- ethnic diversity (avoidance of derogatory comment)
- sex (good taste and decency)
- crime and violence (matters of glamour, drugs, cruelty and effects on children)
- news (fairness, impartiality, lack of bias)
- national laws including intellectual property
- advertising (truth and avoidance of exploitation)
- pronunciation (accuracy to avoid offence).

The ABU guidelines are comprehensive, formulated by countries in the region and directly applicable to IHFB as well as to international satellite broadcasting.

Suggestions for Australian Government Content Rules

The purpose of content rules is to ensure that material projected by radio from Australia to other countries does not adversely affect the relationship between the Australian Government and Foreign Governments.

Radio broadcasts from Australia, by the fact that they exist and are directed to specific foreign audiences, might be seen as representing Australian Government policy. They may be seen at the receiving end as an invasive imposition of foreign views and as interference in national political matters. Adverse political and trade consequences may follow.

As non-government broadcasters are not policy instruments, they should conform with content rules to ensure that they do not by intention or perception become regarded as such instruments. However, programs which are not invasive in a political or cultural sense may be regarded as a friendly, welcome and complementary dimension to local media offerings.

Fundamental Criterion

The fundamental criterion for the suitability of radio material transmitted to a foreign nation is that it could not reasonably be expected to harm, directly or indirectly, the relationships between Australia and the recipient nations. These relationships are broad and particularly include economic and trade matters.

Specific Criteria

Specific criteria are that there should be no:

- implication that content is provided or sanctioned by the Australian Government or any other government
- implication that any race of people or its customs is superior or inferior to any other race
- comment on the political policies and political activities of a government
- criticism of any religion
- material in any language which would be regarded by reasonable recipients in that language as pornographic, crude or blasphemous.

General Criteria

The general criteria of the ABU Guidelines for Transnational Satellite Broadcasters in the Asia Pacific Region should also be observed.

Permitted broadcasts therefore may include factual news without interpretations, commercial, advertising, cultural, religious, educational, music and other material which meet the criteria above.

HCJB Intentions

HCJB would in fact go further than observing the content rules covered above. HCJB wishes not merely to be neutral in its effects on the Australian national interest, but to provide a positive impetus. We would willingly include the following items in our programs.

Instruction in English

Programs would include English language instruction by Australian teachers with accompanying inter-activity through the Internet web sites of Australian tertiary institutions. This would expand existing highly successful Australian educational activities in Asia in both cultural and financial terms.

Health Programs

These would be focussed to needs of target audiences, again with appropriate reference to research and information on the web sites of Australian tertiary institutions and Australian commercial companies. Specific mosquito borne tropical diseases are an example where information could be provided.

Programs on Tourist Activities in Australia and Target Countries

HCJB World Radio International already has programming skills in this area focussed on the Americas. This expertise is readily transferable to HCJB in Australia and would bring both cultural and financial benefits to Australia and the countries involved.

Broadcast of ABC News and Radio Australia News

HCJB is willing to transmit ABC News and Radio Australia News to compensate for the reduction of Radio Australia services.

Summary of Key Points

HCJB is an Australian mainstream Christian broadcasting organisation of 25 years standing, affiliated with the world's oldest Christian broadcaster with a 67 year IHFB history.

The HCJB licence application will have been in progress for 2 years in August 99, the earliest likely date for passage of legislative amendments.

The regulatory process has substantially delayed its objective of wider Christian outreach and incidentally inhibited investment and employment in rural Australia.

While appropriate new policy is now in place, the broadcasting regulatory system is such that significant further delay is likely.

- Annexes:
- A. Regulation of International Broadcasting
 - B. Media Release – New Licences for International Broadcasting
 - C. ABU Guidelines

ANNEX A**REGULATION OF INTERNATIONAL HIGH FREQUENCY
BROADCASTING**

While the main focus of the BSA92 is on broadcasting to Australian audiences, we suggest that current legislation contains sufficient power to regulate international broadcasting from Australia.

Objects of the Act, particularly in Sections 3(b) (d) (f) (g) (h) (j) and Regulatory Policy in Section 4 are broadly drafted, not necessarily applying only to broadcasts intended for internal Australian reception. The role of the ABA in Section 5 would not preclude regulation of international broadcasting . Part 9 provides a mechanism so that program standards which apply for international broadcasting can be developed.

Similarly the RA92 generally and Part 3.3 in particular contains wide powers directly applicable to the issue of apparatus licences, including Section 100 (4) (a) providing the ACA with powers which could include conformity with government international broadcasting policy.

In short, we suggest that clear and sufficient powers exist which allow the Government to both authorise and control IHFB.

Given that the legal mechanisms exist now to issue licences, the key questions become:

- how are ownership and control to be determined, and
- what content rules and other conditions should apply?

We acknowledge that the Government view is that wider policy considerations require amendment to the legislation before the issue of licences.

ANNEX B

New licences for International Broadcasting

19 April

1999

Senator the Hon Richard Alston
Minister for Communications, the
Information Economy and the Arts

The Hon Alexander Downer MP
Minister for Foreign Affairs

JOINT MEDIA RELEASE

The Government will amend the *Broadcasting Services Act 1992* to include a new licence category for international broadcasting services transmitted from Australia, the Minister for Communications, Information Technology and the Arts, Senator Richard Alston, and the Minister for Foreign Affairs, Alexander Downer, announced today.

'Currently, the content of international broadcasting services is unregulated—any broadcaster with the appropriate transmitter licence and use of an international shortwave facility may transmit from Australia regardless of the impact these broadcasts may have on Australia's national interest,' Senator Alston said.

'Existing and prospective international broadcasting services will now require a content licence from the Australian Broadcasting Authority (ABA) in addition to the transmitter licence from the Australian Communications Authority (ACA).'

The ABA will refer applications to the Minister for Foreign Affairs to make an assessment of whether the proposed service is contrary to national interest. The assessment will consider the likely effect of the service on Australia's international relations.

'This amendment will ensure that international shortwave radio services and international satellite radio and television services are covered by the Act, thereby protecting Australia's national interest,' Mr Downer said.

'Consistent with their separate Charter responsibilities, national broadcasting services will be exempt from the new licensing regime. The current ABC international service, Radio Australia, operates in accordance with ABC editorial policies and it is appropriate that these arrangements continue,' Senator Alston said.

'Significant growth is expected in international broadcasting and Australia is likely to be a base for some services broadcasting to the region.

'This new regulatory regime will provide certainty for broadcasters through licence provision as well as safeguarding Australia's interests.'

ABU GUIDELINES FOR TRANSNATIONAL SATELLITE BROADCASTERS IN THE ASIA-PACIFIC REGION

Introduction

A number of satellite television services are now being transmitted in the Asia-Pacific region. While most of these have been airing European and American programs, there is now an increasing number of services operated by regional broadcasters and made up of home produced programs.

This change is advancing the exchange of news and programs among countries in the region, bringing greater program diversity and extending the choice of viewers as well as opening up new horizons for the broadcasters themselves. This will undoubtedly foster the free flow of information and has great potential to contribute to viewer sovereignty and international understanding.

On the other hand, there is serious concern that this situation could have a detrimental effect on the values, customs and cultures of the countries of the region. Indeed, in some quarters, satellite television is seen as a cultural invasion.

Against this backdrop, the members of the Asia-Pacific Broadcasting Union felt that it would be helpful if a set of guidelines could be produced to assist satellite broadcasters in their desire to offer quality programs while ensuring respect for the many cultures and values of the region.

General

Broadcasters transmitting programming into the Asian region should be aware of, and sensitive to, the diversity of values and cultures of the region.

Because of this diversity, it is difficult to define precisely what is and what is not acceptable programming, so it is important that broadcasters adopt a responsive approach and make a conscious effort to learn as much as possible of the countries concerned and their social, cultural and traditional values.

Religion

The diversity of the region extends also to religion, so religious matters should be handled with respect and sensitivity. Great care must be taken to avoid programming that disparages any religion or questions religious beliefs. It is also important to be careful about programs that might run the risk of exciting religious or cult fervour in any country.

Ethnic diversity

The Asia Pacific region is composed of many ethnic groups and most Asian countries are multiracial in composition. Respecting this diversity, broadcasters should be particularly careful to ensure that programming does not contain statements or expressions that might be derogatory of any particular ethnic group or nationality.

Sex

Sexual matters require special care and should be treated with good taste and decency, bearing in mind that in some Asian countries such matters are not openly discussed. Nudity of either sex should be handled with great discretion, as should the use of obscene or offensive language.

Crime and Violence

- Programs which depict criminal behaviour as desirable or glamorous, or which otherwise encourage people to commit or condone crime are not acceptable.
- In particular, drug abuse is regarded as a major problem throughout the region. Therefore, programming should avoid any implication that drug use or trafficking is in any way acceptable, desirable or glamorous.
- Also to be carefully handled is programming that explicitly depicts cruelty or which contains scenes that are excessively violent, particularly cartoons or other programs aimed specifically at children.

News

News coverage must be accurate and report the facts in a fair, impartial and unbiased manner. In dealing with controversial subjects, arguments of the parties concerned should be reported objectively.

Legal Considerations

Efforts should be made to understand the laws relating to the media in the countries of the region. In particular, intellectual property rights should not be violated,

Advertising

The above guidelines apply equally to advertising as to general programming. In addition, care should be taken in the handling of products which are subject to advertising restrictions in the domestic media.

Advertising which makes exaggerated claims or exploits superstitious beliefs should be avoided.

Pronunciation

Care should be taken to use the correct pronunciation of the names of places, personalities and events in the region, as mispronunciation can cause offence.