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SUBMISSION TO BROADCASTING INQUIRY

I wish to make this submission to the Commission's Broadcasting Inquiry.

2. Necessarily my submission is short because:
 - (a) the Issues Paper presents a most comprehensive questionnaire covering almost the entire broadcasting field,
 - (b) allows to the public - typical of Government enquiries - too short a preparation time for considered responses by private citizens, and
 - (c) I am too busy to have attempted anything more detailed as well as having learned over a lifetime that submission making most often is a futile occupation.
3. I make this submission both as participant in and consumer of Australian electronic media.
4. From my late 'teens to the present I have, at various times and for varying periods, served as a commercial radio programmer and presenter, a TV station manager, a music critic, film industry publicist, industry sector spokesperson and media lawyer. My 'submission experience' extends back to the 1953 Royal Commission on the Introduction of Television to Australia. For the past twenty-five years I have been involved at various levels in establishment and functioning of the public (community) radio broadcasting sector.
5. All that said, and bearing in mind this is a Productivity Commission, I have chosen, nonetheless, to ignore here one aspect I suspect to be of greatest relevance to the Inquiry: that aspect signalled by the often-appearing question: "What are the administrative and compliance costs... ?". I have done so because I have no competence to pronounce on costs in 1999 but, more importantly, I am more concerned about the effects of what is done (or left undone) than the costs thereof.
6. Whilst admiring the great range of questions posed in the Issues Paper, I can now offer only brief responses to a limited selection of them. As only the pages of the Paper are numbered (i.e. not the questions), those questions I attempt to address are given the number in which they occur on the relevant page and, of course, the page number.

P. 11, Q. 5 ("implicit in the objectives..."). I agree. Absent Government regulatory intervention, the dominance of the commercial broadcasting sector would lack motivation to address those objectives.

Q. 8 ('Does this list...?') I believe it is as good a recital as I have seen. ("What should be changed...?') I would reorder the paragraphs (assuming the present order indicates a descending priority). I would place paragraphs (e) to (h) inclusive immediately after paragraph (a).

P.13, Q, 1 to 5. Answer to all: No.

Q. 6: No. Educational content of electronic media may be assessed in terms of formal and informal education. To the extent that all visual/aural content has varying degrees of informal educational value, the answer must be ambivalent. For example, there are cycles of criticism of media for educating the impressionable young in methods of physical violence. Most reasonable citizens see media used in this way as anti-social and inappropriate. Pious voices rise, tire and retire - and the cycle is repeated, censorship ratings notwithstanding. Nothing changes.

This issue of child protection from undesirable 'education' seems to exhaust media's interest in searching to positive, socially desirable educational matter, with notable exception of the national broadcaster and a few community stations.

In the early days of Australian TV, some commercial stations appeared to link education in their mind with religious broadcasting, thus confining it to one weekly broadcast, most likely late at night or early Sunday.

This tradition of lip-service survives only on ABC-TV in the form of open University segments in pre-dawn hours. The public has been educated to not expect formal education from TV, although in its earliest days in the US, TV was promised to the public as about to bring a golden age of education (or was it only 'enlightenment?') into every American family home.

Television still has that potential but there never was any serious intent by the commercial advocates of TV to waste their time or money on education. Only with WGBH in Boston and the establishment and expansion of the public (i.e. non-commercial) stations in the US was education served seriously. Indeed, public television in America originally was known as Educational Television.

In answer to the associated question, the answer is a clear No; they are not adequate services and "full advantage of the opportunity" is not being taken: it is being all but ignored.

Frankly, I am disappointed to even see these questions are still being asked because doing so does no more than provide to those advocates or potential service providers of the new technologies an opportunity again to advance the 'educational potential' of their particular technology with no greater sincerity than their predecessors.

Radio presents an even more dismal result in education. To my knowledge, the Greater Sydney region presently is served by over thirty AM and FM radio services and only one of these offers any serious, formal education content on a regularly programmed basis.

P. 13, Q. 9 ('What should be done...") Given the unfortunate fact that education remains very largely within State jurisdiction there is little the Commonwealth authorities can, do. But that little is highly important.

The Commonwealth controls broadcast station licences and frequency allocations and it has funding. For decades in Sydney, the NSW Dept. of TAFE has enjoyed the luxury of possessing fully operational TV and radio studios lacking only a transmitter and a licence to transmit. Complementing those facilities is the considerable technical capacity of Commonwealth controlled Film, Radio and Television School (also in Sydney) as well as the even longer-established Film Australia complex.

Assuming the broadcast method to be FTA and with provision of the necessary transmitter(s) and licences, these very considerable assets (currently limited (except Film Australia) to media industry training) could provide very valuable and cost-effective education across four or more million people.

The licence pre-requisite is purely an administrative procedure. The transmitter(s) would require once-only funding and there would be additional costs for staffing. But greater than these is the problem of engendering the will at last to use media (and the ready facilities that exist) for exactly the purpose so piously proposed each time a new media format becomes available for exploitation. I see that as the major hurdle. To overcome it will require some influential bureaucrats to change. Too many minds in this area show no signs of any stretch-marks from innovative thinking.

P. 14. Q. 2 ("What do you perceive..."). Tolerance, objective and critical thinking, a clear sense of justice, an appreciation of the arts, of Australia's contribution to them, to science and medicine and sport... and much more.

Q3. Minimally, if at all.

Q4. The implications possibly are wider than were the assessments of TV itself in Australia in the early 50s -- and just as likely to be put aside.

Q. 8. ("Have government controls..."), (a) (restricted or promoted more diverse or innovative programmes?) Yes; but to a limited extent as to both diversity and innovation. Generally, it has been a case of "more of the same". Most local diversity is to be found in televised drama. In radio 1 find the best example of true diversity having been added to Australia's media menu to be use of 'live' satellite feeds from a number of international broadcasters (Radio Netherland, the BBC, Deutsche Welle, Radio Canada International , NPR (the American public radio network) and others) via ABC radio services such as PNN.

(b) (growth of the industry): The word 'growth' is not defined in the Paper and is open to interpretation. If merely 'bigger' is meant, then the answer clearly is Yes.

P.15, Q. 1. ("Can the social..."). To meet cultural and social objectives costs money. With exception of National and community broadcasters the industry's principal objective (i.e. profits) is not well served by any optional, voluntarily undertaken action to serve cultural and social objectives where that action fails to meet the industry's primary objective. Is more regulation necessary? As a consequence, unfortunately Yes.

Q.2 Not that occur to me.

P. 17, Q. 1. ("What do you understand..."). The assumed or measured amount of persuasion of a population by comparative media, data, the depth and sustainability over time of that medium's capacity to influence. 'Views about what?': The direction and values a society has or is being persuaded to have.

2: Television.

Q. 3.: It's as good as any I can think of immediately.

Q. 4.: (Foes the Act..."): No.

P. 19, Q. 5: ("Are foreign owners..."): Yes; more likely.

Q. 6: Yes; they appear sensitive to multinational's political lobbying, seeking constantly increased freedom to own and control (and thus benefit from) local media outlets. Possibly less sensitive is their control of peripheral broadcasting industries; but greater Australian investment in all these should be encouraged by the Government.

NB. "competition in global markets": It is not clear to me what precise meaning is intended to be conveyed by this phrase; hence no expression of a view, other than to say that, in one sense, Australia has enjoyed a long period of isolation from global competition" in terms of programme content. This may undergo some change as a result of new and still developing technology.

P.20, Q.1 ('What are...'): Ensures meeting by media outlets of the specified minimum Australian content which itself ensures ultimate consumption of the work of Australian writers, actors, composers, etc., and avoidance by outlets of legal sanctions covering non-compliance. The main disadvantage is philosophical: ideally it should not be necessary to have to force outlets to be good Australians.

It could be improved by more frequent adjustment of quota levels (percentages) and by more enthusiastic policing of individual outlet's compliance.

Q.2: ('Should Australian content...'): Definitely yes. ("Do consumers want such regulation?"): Is this question highly relevant? I doubt if more than a few consumers ever think about existence of quotas, as such. As to whether they want the content resulting, I would hope that those consumers with any interest in or regard for their homeland's cultural development would answer 'Yes' whilst those indifferent to that development are likely to be indifferent also to the content.

Q.3: ("How should content be measured?"): As now, but with consistent application of the High Court's recent decision (on New Zealand TV programmes) applied to all media formats, whether video, audio, etc.

Q. 4: ("Is some content more important than other? Why?"): Yes. It seems clear that after years of battle to gain exposure, Australian films and TV drama are now at their best. Many Australian filmmakers are comparable to the world's top achievers in this field. If the more 'popular' varieties of both these art forms can continue to be self-sustaining they might require performance quotas less than other forms of local artistic endeavour still seeking their commercial sustainability. It will be said that our theatrical films have achieved their universal success without application of production or theatre quotas; indeed because there were no quotas. In rebuttal it could be argued that, for the British film industry, the so-called 'quota-quickie', responsible as it was for some quite ghastly films, also was responsible for getting the post-war production industry back on its feet and, with the experience gained from trial and error, producing some of the finest films ever made in Europe.

6: ("Is there any need..."): This argument is as fallacious now as it was forty years ago. The AW meets now (not 'could') its social and cultural value responsibilities - although less effectively as unsympathetic governments reduce funding. It has done so since its inception; but it is only one aspect of a wider charter of responsibilities it is expected to meet. By contrast, the commercial FTAs would, if further deregulated, be left with no more than their basic responsibility as businesses; i.e. to satisfy their shareholders' financial expectations.

Q.7. (To what extent..."): In one sense, every broadcaster is in competition with every other broadcaster - for an audience. No broadcaster would be happy broadcasting to no one.

The size of that audience is indicated (more or less accurately) by 'the ratings'. Need for large (and increasing) ratings by the commercial FTAs is always desperate. It is a measure of 'success' and provides a basis for adjustment to charges to advertisers, hence revenue and profit levels.

For national broadcasters audience size is an indicator of success only in reaching their audience - a more targeted audience. Until educational and cultural values rise the size of this audience is unlikely to vary much from, year to year. It is a fundamental difference in fundamental values held by each sector: the commercial operators are keen on the number of heads listening or watching; the Nationals are more interested in what is inside those heads than how many they total. An exception to that generalization is that a sustained fall in audience figures for the Nationals could (and no doubt does) cause concern because it would provide industry critics (competitors, often) to urge government to consider the worth of public expenditure on services with faltering audiences.

Q.9: ("Alternatively,..."): Yes

P.21. Q.1 : ("What lessons..."): Looking only at the USA, Canada and the United Kingdom, all three had, explicit and enforced media standards. In the North American cases, all broadcasters were obliged to conform to regulations regarding content, right of reply, access to equal time, concept-based programme development, employment of national talent, etc. .After long lobbying by industry, favourable changes of governments and (in the case of the US) consequent appointment of judges persuaded by industry pleadings, much meaningful content regulation and fairness doctrines has been abandoned. The US regulator (the FCC) now is almost as near to being a mere cypher as the ABA is here.

In the UK, the BBC for many years suffered no (legal) competition. For decades the BBC was regarded by national broadcasters around the world as the model to emulate. That position changed some years ago. The BBC is now just one fish (but still a big one) in the pond and, like the ABC here, is hard-pressed by government-sanctioned and commercial competition. Forcing national broadcasters into competition with others having different objectives and standards constitutes a slow form of dictated suicide for the nationals.

Only to Canada can Australia look still for some guidance. We failed to do so at the time FM radio was introduced here in the mid 70s. We seemed prepared only to adopt a few Canadian 'catch-phrases' without adopting their substance. One example is the Promise of Performance required of licence applicants by the CRTC.

Q. 5: ("What are the strengths..."): There are no strengths visible except from the viewpoint of the service providers. Self-regulation, on the ground, is patent window-dressing.

Q. 7: see answer to Q.5.

Q.10: see answers to questions on page 20.

P. 24. Q.2 and 3: 1 cannot see strengths, if any, clearly displayed. The weaknesses however result from scattering responsibility for spectrum management and planning. One must question need for five authorities where there were two; also what inefficiencies and conflict arise from such increase. A slowdown in progress seems possible: the more players involved the longer each 'game' takes to play.

1 tend to the view that we should take heed of the US and Canadian models, especially the latter.

P. 25. Q.1: Yes, unfortunately.

Q.2: The strengths are beneficial only to existing providers and potential providers. A major weakness is reduction in the public's (consumers') ability effectively to participate in a regulatory framework in which they discover steel beams replaced by balsawood.

It is an old cliché of public administration that the fate of regulatory agencies is to become captured by the people or thing the agency was established to regulate. Merely changing an agency's name or appointing a new chairman and a few new members seldom is sufficient to change the culture of the agency without also a new supportive and advisory bureaucracy behind it.

P. 26, Q. 1: This is one of the most interesting questions in the Paper. Propensity to resort to litigation to settle a dispute depends largely upon the financial capacity of those in dispute. Often there is a vast imbalance of financial resources between the disputants. It follows that many important and valid questions are left undetermined.

This outcome seldom can be judged to be in the public interest.

Worse is a result where a question is not contested in the courts and, without much regard to principles of justice or equity, some form of compromised resolution is reached between the disputants. What results is a precedent reached on the basis of which side of the dispute was best equipped by financial dominance to dissuade its opponent from seeking an argued, reasoned and legally sound resolution.

Certainly, a highly regulated industry will be more likely than an unregulated industry to take its challenges to court, simply because there will be more to challenge in the former than the latter. The latter makes a financial gain by being saved from the expense. On the other hand, the smiles of those in an unregulated industry are met by the frowns and frustrations of the public. Between both extremes of the spectrum the practical, imperfect mean is to be found.

Q. 2: I'm not aware of any.

Q. 5: ("What progress..."): Unfortunately very little and very slowly.

Q. 8 and 9: It is pleasing to be able to answer that neither the status of the applicant nor the implementation of the BSA has appeared to have acted in a disadvantageous way to either commercial or non-commercial applicants.

P. 27, Q. 6: ('Should licence fees...'): The suggestion made here has real merit. But could a government be expected to show such logic and goodwill?

Q. 8: Consumer licence fees were abandoned when the cost of enforcement became greater than the revenue produced by the scheme. I'm ambivalent on the philosophical question but I believe we should not contemplate return to consumer licences for FTAs. Many new technology services involve fees and to burden consumers further with a government impost could be a disincentive to public acceptance of new services.

Q. 9: ("What have been...?"): a) No. b) No. To whatever extent the ABA is involved, the partnership is weakened. The ABA is the shell of its former persona left rotting on the sand by a high tide of deregulation. It is the reincarnation of the ABT which itself floundered on its own timidity and indecision. The Tribunal and much less the Authority could not exercise

the real powers of their common forebear, the Broadcasting Control Board. With hindsight, it is clear that with each change of name there has been a decrease in the agency's relevance.

The Board derived its powers from the legislation that gave it birth, the Broadcasting & Television Act, and it never flinched from exercising them. One by one, legislative amendments to that Act and, later, a new Act, drew the teeth of its successors and to-day's Authority is a rather wry misnomer.

The Authority's latest recruit as chairman is Prof. David Flint, an academic lawyer who, as chairman of the Australian Press Council gained many years experience with print interests and whose great eloquence and advocacy skills were exercised constantly on behalf of print media, supporting the industry's unremitting efforts to remove itself from, restrictions on publication arising out of well-established laws on defamation and contempt of court, all in the cause of freedom of speech.

The Press Council is a non-Government, privately controlled body with representation from press interests and some non-elected, internally appointed public representatives. Its more public presence centres on mediation of disputes arising from specific complaints -several hundred each Year - from members of the public concerning grievances arising from claimed bias, inaccuracies, privacy infringements and the like. Self-styled adjudication's are issued individually. Where these are critical of the press in sustaining a complaint against the publication, the publication involved is expected, if a member of the Council, to publish the reprimanding adjudication.

Thus it can be seen that the Council functions as a lobbyist to free the press from existing legal restraints, and as a form of ombudsman. It publishes a regular newsletter, carrying accounts of the chairman's many forays on behalf of the Council's desired law reforms and reports of its most recent adjudication. The Council publishes an annual report containing republication of its Press Releases for the year, a Balance Sheet, a detailed analysis of complaints adjudicated (with graphs and pie-charts) and, among other features, a list of addresses and speeches delivered over the year. A random choice of those from the Council's 1996 report lists the following subjects and locations of those speeches:

- Cross Media Rules (Sydney)
- The Media and the Republic Debate (Sydney)
- The Media - Freedoms, Restrictions and Responsibilities (Colon)
- Racial Vilification Legislation (Montreal)
- Off the Record (Melbourne)
- The Back Page (Ballarat)
- Legal and Political Implications of Globalisation of the Media (Melbourne)
- Freedom of Speech (Sydney and Melbourne)
- Regulation of Free Speech (Sydney and Melbourne)
- The Role and Responsibility of the Press (Sydney)
- * The Australian Press Council (Port Moresby)
- * Transnational Complaints Facility (Istanbul)
- * The Right to Privacy (?)
- Freedom of Speech (Manila)
- Government, Business and the Media (Freemantle)
- Defamation Law Reform and the Media (Sydney)

There are many Members of Parliament who do not receive fifteen opportunities to speak in a year and with thirteen articles out of fifteen submitted being published in metropolitan dailies and other periodicals, Prof. Flint's success rate as a freelance journalist would inspire envy.

It is from this largely self-determined programme of activity that the former Press Council chairman finds himself transported to a very different environment as head of a government agency possessing a public perception level probably comparable with the Office of Film and Literature Classification. Having spent many years at the bowling end of the pitch, Prof. Flint now finds himself in front of the stumps.

The ACCC, on the other hand, is chaired by Prof. Fels whose messages to businesses - the media among them - may not be as beautifully expressed but leave little available to interpretation in their directness and clarity. From Prices Surveillance, he is 'an old hand at the game'. Almost all of his pronouncements add to the apparent authority and serious intent of the ACCC. In this it appears to be more influential and more prepared to be confrontational than is possible for the ABA.

P. 28. Q.1: No, but they appear to be superior and are applicable to broadcasting media.

Q. 3: Again ... few strengths, many weaknesses, not the least of the latter arising from insecure, fluctuating policy statements from government. Clearly it is a highly sensitive area in which the ABA tries hard to not put a foot wrong

Q.5: No. See previous answers especially relating to transparency and public opportunity for input.

Q. 7: Progressively over the years since deregulation took hold, members of the public participating in consultation sessions have found little ultimate reward from their interest and few of their views reflected as elements of resulting codes.

Those more experienced in this apparently democratic process believe it is doomed to the role of a cosmetic by the inquisitors – easily removable each day at 5.07pm. But I believe the notion is correct that such displays of concern for input tends to keep the natives quieter than otherwise they might become. Some of us, however, are incurable optimists.

Q. 9: It follows from my response to Q.7 above that my answer is 'No'.

P.29. Q. 1: (“Is it the service provider...”): No.

Q. 4: Unsure. Has their awareness (or the public's as a whole) ever been surveyed?

Q-6: The ABA should be required at all times to provide reasons; hence all its decisions should be reviewable.

P. 30 The CER Agreement:

Q.1: No.

Q.2: a) Minimally, if at all. b) No.

Q.3: No apparent effect.

Q.4: Opportunities should be reciprocal.

Q.5: The principles of the High Court decision should not be applied narrowly, despite Australian industry protests. For example, the CER benefits should be applicable to, say, Australian radio content calculations in respect of music broadcasts no less than it is to visually transmitted material. At present this is not so.

Further comment in Relation to Music: Assuming that there is general acceptance among Australian musicians (performers and composers) that exposure of their talents through radio broadcasting - today, largely by FM stereo and recordings - and given our small population and its concentration, as a market, in just three capital cities on the eastern seaboard, there appears to be considerable under-utilization of broadcast music resources funded by all Australians and controlled by the National broadcaster.

A tendency is perceived to exist for the National broadcaster to regard 'as its own' most recordings it makes of Australian composers and performers rather than as a public resource available to other non-National radio broadcasters - specifically, those community stations specializing in classics.

There are, of course, occasional departures from this 'rule'.

The added costs of rights payments for use of this often unique resource is the major reason advanced for these recordings bearing restriction on use and these restrictions can reduce the National broadcaster's own use of the material it records as well as preclude its use at all outside the national network. The Commonwealth government funding provisions enabling this activity on behalf of Australian musicians should be increased to take into account these cost increases in order to permit wider and more frequent utilization of a national asset for creation of which the National broadcaster is uniquely equipped.

The Commission would be aware that there are well over one hundred community stations, most using FM transmission in stereo., operated by committed volunteers in the main. Almost all of these outlets broadcast music, in one form or another. A handful of stations exist specifically for lovers of so-called 'classical' music. Principally these exist in the heavily populated capital cities of Sydney, Melbourne, Brisbane and Adelaide. They are proud to feature Australian music in their programmes and take every opportunity themselves to record Australian performers and music. In the case of Sydney's fine music station, it has established a small catalogue of compact disc recordings for public sale. Yet all these efforts understandably total only a fraction of the resources and funding available to the National broadcaster for the same purpose.

Unfortunately, the product of those physical resources, combined with Commonwealth funding, are withheld from use by those of the self-funded community stations willing and able to supplement the efforts of the National broadcaster. A specific example provides an apt illustration:

In 1993 and again the following year, each of the six State symphony orchestras gave a total of twelve public concerts of Australian orchestral music. In 1993 there were thirteen works by a dozen composers. The 1994 series contained thirty-three works by twenty-eight composers. Both series were known by the title 'Composing Australia' and a total of nineteen solo performers were among the artists participating.

Taken overall, this project formed part of our serious music heritage.

All twenty four concerts were recorded by ABC-FM and each was broadcast once nationwide on its national network of FM stations.

At the conclusion of the 1994 series the project was discontinued - not for lack of music to be performed but for lack of funding.

Since that time nothing further has been heard of the forty-six compositions recorded and for all but three or four of them no alternative recorded versions exist. It is unlikely that alternatives will appear: more than one composer included in the series had waited forty years to hear his music performed.

Unlike creative Australians in literature or the graphic arts, composers in effect do not exist until their music IS heard: a composer without a performer is in much the same position as a jockey without a horse.

With a view to maximising the benefits of this and similar material to the consuming public for fine music, to the Australian performers and composers involved, attempts should be made to provide controlled access to these dormant recordings for strictly non-commercial broadcast purposes by non-National broadcasters. I commend this suggestion to the Commission.

In conclusion: I wish to thank the Commission for receiving this personal submission. The views expressed in this submission are my individual views and are offered only in my capacity as an Australian-born citizen, taxpayer and elector. They are not intended to be and are not offered as the views of any group or organization with which I am or may have been associated and they carry no endorsements other than my own.

I have answered only those questions set out in the Issues Paper that I felt I could answer spontaneously. Many I have passed over demand long consideration and reflection upon - hours I do not have.

With my thanks I express my sympathy to the Commission for having been given an assignment almost impossible of satisfactory completion in the time allowed by the Treasurer. Your brief constitutes an enormously broad sweep of a multi-faceted industry necessitating, I believe unremitting application for at least two years. You have half that time.

Whoever authored the Issues Paper clearly knows the questions to ask. That all their answers can be found within the time limit I fear is as unlikely as the 2000 Games witnessing establishment of 'the one-minute mile'. The tasks are about equally daunting.'

Max Keogh
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