SUBMISSION

to the

PRODUCTIVITY COMMISSION

BROADCASTING INQUIRY: RESPONSE TO DRAFT REPORT

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Introduction

As we stated in our earlier submission in May, and in oral evidence given to the Commission via a video conference in June, Festival of Light is participating in this inquiry as a community organisation representing the interests of families and children, as "consumers of broadcasting services".

In responding to the Draft Report of October 1999, we believe it is worth repeating edited extracts from our introductory remarks in our submission dated 21 May 1999:

> Our main problem with the terms of reference is number 4: "The Commission is to advise on practical courses of action to improve competition, efficiency and the interests of consumers in broadcasting services." There are fundamental conflicts within these three aims, and we fear that *competition* and *efficiency* may win out against *the interests of consumers*, as has already happened in other areas.
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> This problem is best illustrated by changing attitudes to conservation and pollution of the environment. Earlier this century, Australian farming and manufacturing methods put a priority on competition and efficiency without considering the long-term impact of certain (cheap, efficient) practices. Vast land clearances and irrigation induced high productivity in the short-term, but had a disastrous impact on the environment in the long term, resulting in considerable economic losses.
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> We believe there is a growing body of evidence showing that this century's discovery of cheap, efficient broadcasting has brought social harm along with social and other good. We therefore urge the Productivity Commission to give the long-term interests and safety of consumers top priority.
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> These considerations have been given sharper focus by the current Senate debate on the Broadcasting Services Amendment (Online Services) Bill. All senators have given lip service to the need to protect children in particular from offensive and harmful images and information - but the ALP and the Democrats want to remove any remaining "teeth" in the bill (making it effectively pointless) on the grounds that the original wording could make Australian businesses less efficient and competitive.

The Draft Report partly acknowledges the social harm done by broadcasting certain kinds of programs. However it moves in the opposite direction by exalting "freedom of expression" as a major principle in broadcasting - and recommends the inclusion of this principle in the Broadcasting Services Act without the vital proviso that free expression does not harm or mislead others.

We therefore again urge the Productivity Commission, in its Final Report on Broadcasting, to require that long-term public interest and community safety be of paramount consideration, taking precedence over freedom of expression, short-term competition and efficiency.

The flawed self-regulation philosophy underlying the Broadcasting Services Act 1992

We note with concern that the Draft Report, while recommending some worthwhile amendments to the BSA, generally supports the Act's basic principle of self-regulation or "co-regulation" of the broadcasting industry.

On page 268, the Draft Report acknowledges widespread disquiet about self-regulation, but does not share it:

> "Many participants appear to want program content to be more closely monitored. However, the proliferation of services makes this an increasingly difficult and resource intensive task. The Commission considers that co-regulation, supported by better public awareness, improved complaints mechanisms and more effective sanctions most appropriately deals with the incorporation of community standards in broadcast content. ABA resources would be better directed towards ensuring the co-regulatory system is operating effectively, by monitoring the operation of licensees' internal complaints mechanisms, responding to unresolved complaints, and dealing with complaints about fair and accurate coverage."

On page 246, the Draft Report states in glowing terms in a special box, the "Benefits of broadcasting

co-regulation", noting particularly the cost saving to both government and the industry.

However there is growing objective evidence that "co-regulation" (the Deputy Chairman of the ABA has confirmed that this term really means "self-regulation" - see Draft Report, page 260, line 11) is akin to putting Dracula in charge of the Blood Bank - or, as someone said recently, "putting a rabbit in charge of a lettuce". We believe that the Commission has been blinded by the benefits of cost savings and has not seen the long-term harm to the community of this system.

Evidence that self-regulation is unworkable: 'cash for comment' scandal

The evidence presented at the recent Australian Broadcasting Authority Inquiry into the radio talkback hosts "cash for comment" scandal has shocked the public. Yet both the public and the ABA would have remained ignorant of the deals between certain companies and the talkback hosts were it not for a concerted campaign by the ABC TV program *Media Watch*. The ABA was far from quick to respond, since we gather the first allegations were made last year. An ABA-sponsored "annual national survey of people's concerns" (p 268) would never have led to the current inquiry. There was no complaint from the general public because we are not paid, trained investigators.

Need for independent monitoring

We note a trend towards self-regulation in other industries in recent times, possibly as part of a new "efficiency and productivity" philosophy. However in many areas this philosophy is proving dangerous, since it ignores the tendency of human nature to cut corners and break rules if there is a low risk of being found out. Self-regulation is absurdly optimistic about human nature!

Trends towards self-regulation in the SA food industry led to the Garibaldi tragedy a few years ago. The sterilisation practices of a smallgoods firm were not monitored - despite a previous breach of regulations - and bacteria in its metwurst caused death and serious irreversible injury. A former ETSA inspector has told us privately that the new self-regulatory practices in the electrician trade are a time bomb waiting to blow up.

Independent monitoring must always be part of any regulatory system. Money may be saved in the short-term by self-regulation, but the long-term harm is not worth it. The industry can well afford a levy to cover the cost of adequate monitoring.

We do not yet know the ABA verdict in the talkback host inquiry, or the penalties to be imposed (if any). However the Draft Report does not provide reassurance that justice will necessarily be seen to be done. On page 260, the Deputy Chairman of the ABA is quoted as saying:

> "In all cases where the ABA has found a breach of either a code of practice or a licence condition, the licensee has introduced corrective measures to ensure, as far as possible, that a similar breach does not occur in future. To date, the ABA has been satisfied with these corrective measures and has not found it necessary to apply further penalties other than publishing the report of the investigation. This is consistent with the Act's underlying philosophy of self-regulation of the broadcasting industry."

Does this mean that if radio talkback hosts are shown to have deceived listeners about financial influences on their publicly-expressed opinions, the radio stations which employed them would merely be told not to allow it to happen again?

<u>Serious shortcomings of the Broadcasting Services Act (BSA)</u>

We believe that the BSA has serious shortcomings in the area of adequate safeguards and controls. We applaud the Draft Recommendations **10.3** on pages 260-261:

The co-regulatory scheme should be amended so that:

- ***all codes of practice include the requirement for community service type announcements about the complaints mechanism, to be broadcast at peak or other appropriate audience times;***
- ***the ABA undertake ongoing monitoring of community awareness of complaints mechanisms;***
- ***licensees be required to accept e-mailed complaints as well as written and faxed complaints;***

- ***each licensee be required to institute a telephone complaints system which would advise complainants of their rights and on which complainants may record telephone complaints. A summary of these complaints along with a summary of written complaints and action by the licensee should be provided to the ABA;***
- ***licensees found to be in breach of a relevant code of practice be required to broadcast an on-air announcement of the breach finding and subsequent action during the relevant time slot;***
- ***the ABA be given the power to issue directions for action to broadcasters found in breach of a relevant code of practice; and***
- ***the BSA be amended to provide that relevant codes of practice (once registered by the ABA) automatically become conditions of broadcasters' licences, and the ABA be given the power to impose penalties for all breaches of codes of practice.***

We also applaud Draft Recommendations **10.4** on pages 265-266:

The ABA should develop standards dealing with fair and accurate coverage and ethical news gathering and reporting practices. These standards should provide that:

- ***such complaints may be made to either the ABA or the licensee in the first instance;***
- ***licensees must inform the ABA of such complaints and their proposed action as soon as practicable;***
- ***the ABA must actively monitor the actions of the licensee in response to the complaint; and***
- ***the ABA may exercise its powers to direct licensees to take certain actions (including broadcasting retractions and corrections) in response to complaints about fair and accurate coverage.***

However we believe these recommendations do not go far enough in addressing the problems.

Problems with the current system of codes of practice

At present, broadcasters write their own codes of practice, giving the impression of lip service only to public involvement (as demonstrated by the evidence of Young Media Australia on page 250 - Festival of Light had a similar experience). The codes of practice are generally rubber-stamped by the ABA, in accord with its interpretation of the industry self-regulatory principle of the BSA (see ABA quote on page 260 of the Draft Report, mentioned previously). The vague words of the code are then interpreted by the broadcasters themselves, in ways which may not be in accord with the public interest.

The Draft Report fails to acknowledge this problem. It says (page 258): "The ABA investigated 94 out of over 1900 complaints over the year. This implies that the broadcaster concerned satisfactorily resolved the rest, or else complainants chose not to pursue their complaints, for whatever reason."

In oral evidence to the Commission via a video conference in June, we related the experience of one SA woman who was upset by the handling of the issue of illegal drugs on one edition of the Channel Ten series, *The Panel*. The woman sought advice from us after she saw the program because she did not know how to submit a complaint.

We encouraged her to write to Channel Ten (she was most unhappy with the way she was treated by the person who answered when she phoned her complaint). When she told us she was unhappy with the letter she received from Channel Ten, we encouraged her to pursue the matter with the ABA. She wrote, waited months, then wrote again. We believe that in these circumstances, the vast majority of Australians would not have persevered. From our experience, it is quite remarkable that as many as 94 Australians out of 1900 had their complaints investigated by the ABA in a year. Those 94 plaintiffs must be highly literate and very persistent!

We did not know the result of the ABA adjudication of the SA woman's complaint when we gave evidence in June. The woman has since told us that her complaint was not upheld. She was very upset by this finding, but there was nothing further she could do. She noted that Channel Ten used different arguments in defending their program to the ABA from the ones they had initially used in their letter to her. Since she did not have a videotape of the original program, and could not afford to

buy one from a media monitoring company (such tapes cost hundreds of dollars), she was unable to check the station's later claims. She still believes that her impression of the overall thrust of the program, as reported by her to the station and to the ABA, was correct.

Would this woman complain about another program, given the effort, frustration and disappointment this complaint has caused her? Probably not. That is the great weakness of the present system - the odds are too heavily stacked in favour of the broadcaster, who has access to brilliant lawyers, and the 60 day period which must elapse before an unresolved complaint may be referred to the ABA is far too long. The draft recommendations 10.3 and 10.4 do not address this imbalance or the time delay.

Public opinion surveys inadequate to monitor compliance with codes of practice

We strongly recommend more pro-active monitoring of broadcasting content by the ABA. The ABA claims (page 251) that its research into community attitudes, plus the operation of market forces, plus data from complaints, are sufficient to ensure that broadcasting is in line with community standards, but there are serious flaws in this reasoning.

National surveys are quite inadequate for detecting code breaches - most people forget things that may have upset them at a particular time, are not aware of the content of codes of practice, and many do not want to appear to be "whingers" when someone comes to interview them.

The money spent on expensive national surveys (which, like many opinion polls before the recent Victorian election, may not accurately reflect the views of the majority) would be better employed on monitoring TV and radio programs to give objective, concrete evidence of compliance with codes of practice.

Conditioning the public to accept the unacceptable

Moreover the broadcasters themselves have, by steadily pushing out the boundaries, conditioned viewers and listeners to accept what was formerly unacceptable. While numerous studies show the harm caused by violent programs, particularly where children are concerned, many parents continue to allow their children to watch such programs. Parents may be unaware of the harm caused, or may simply be unable to apply the consistent discipline needed to control their children's viewing.

Many observers have noted the steady "downhill slide" of broadcasting standards in relation to offensive and assaultive language, for example. A case in point this year was the official green light in May for the use of the word "bu..er" on a television ad. There were public complaints but they were not upheld, and soon the word was being used in many different programs and at least one other TV commercial. The word remains offensive to many older people who know what its meaning, and it can be used as a form of assault - not just as the allegedly humorous way in the first TV commercial.

This "slippery slide" of media standards means that even "family" viewing time slots on TV or day time radio cannot be relied on to be inoffensive.

Likewise, despite recent assurances that broadcasters have tightened their code of practice in areas of sex and violence, feedback we receive from the public suggests there has been no detectable improvement.

ABC and SBS among the worst offenders

We continually receive complaints about SBS television, Radio Triple J and ABC TV programs which do not have to adhere to the same code of practice as the commercial channels, and appear to be laws unto themselves.

WE RECOMMEND that all broadcasters, including government-funded bodies, be accountable to the same codes of practice and subject to the same penalties for breaches.

WE RECOMMEND that the self-regulation ("co-regulation") basis of the Broadcasting Services Act be changed to provide for tighter regulation by the Australian Broadcasting Authority, with much greater power to detect and punish serious breaches of licence conditions and codes of practice.

WE RECOMMEND that the ABA become more actively involved in ensuring the protection of the public interest in the writing of codes of practice.

WE RECOMMEND that the current 60 day period which must elapse before the ABA can take action on an unresolved complaint be shortened to 21 days.

WE RECOMMEND an industry levy to cover costs of independent program monitoring by the ABA.

Online content regulation

We were disappointed with the Draft Report's comments on the recent efforts by the federal government to remove harmful content from the Internet through amendments to the BSA. The Draft Report gave a lot of coverage to the self-interested groups who oppose any control of the Internet, and relatively little to those who support it (Young Media Australia seemed to be the only group cited in the latter category).

Of course, the new legislation passed in June impacts "freedom of expression" (page 269). So do many other laws. Local councils severely limit the freedom of expression of householders in the way they design their homes. Road traffic laws severely limit the freedom of expression of car drivers. Tax laws limit our freedom to express ourselves through buying expensive items. No community can live in harmony without curbs on individual freedom of expression. Why do those who protest so vociferously against such limits on the Internet think they should have different rights from other people?

While Internet technology is still new, money and time must be spent on research to find the most effective way of blocking or removing harmful content - but the legislation is urgently needed. We believe the current law does not go far enough (see our May 1999 submission and recommendations, pages 6-10).

WE RECOMMEND that the current law regulating Internet content be reviewed after five years (rather than the two years recommended in the Draft Report) to allow time for research into optimal ways to block illegal and offensive web sites.

WE RECOMMEND that the laws regulating Internet content be tightened to restrict all material which could harm children.

Freedom of expression is a qualified right

We were disappointed that the Draft Report, on page 242, considered "freedom of expression", without any mention of accompanying provisos against harm, should be elevated with a special mention in the objectives in s. 3 of the BSA.

WE RECOMMEND that 'freedom of expression' not be included in s. 3 of the Broadcasting Services Act.

How harm from broadcasting affects productivity

Our previous submission argued the harm which is caused to the community by violent programs: we understand that Young Media Australia has provided the Commission with a detailed list of references to papers which document this harm. The same principles apply to programs with explicit sexual themes.

Governments are despairing about increases in marriage and family breakdown which are leading to a new generation of young people with vastly higher levels of mental depression, suicide, and other problematic and anti-social behaviour. Yet there is a great reluctance for government bodies to address some of the influences, including broadcasting, which are contributing to the breakdown in family values and cohesiveness.

Broadcasters can be a force for good in promoting pro-social values - but our current self-regulatory system and the priority given to unqualified "freedom of expression" has meant that too much broadcasting has promoted anti-social values.

Conclusion

The promotion of pro-social, pro-family values should be of primary concern to the Productivity Commission.

Ultimately, a country cannot be productive if a significant percentage of its citizens cannot work or cannot work efficiently because of depression caused by unstable marriage and family life. This problem threatens to become increasingly serious, in Australia and other Western nations, unless governments act now to provide firmer control of anti-social media.