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HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS

Reference: Community broadcasting

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HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS

Wednesday, 29 November 2006

Members: Miss Jackie Kelly *(Chair)*, Ms Owens *(Deputy Chair)*, Mrs Bronwyn Bishop, Mr Garrett, Mr Hayes, Mr Johnson, Mr Keenan, Mr Laming, Mr Ticehurst and Ms Vamvakinou

Members in attendance: Mrs Bronwyn Bishop, Mr Garrett, Miss Jackie Kelly, Mr Laming, Ms Owens and Ms Vamvakinou

Terms of reference for the inquiry:

To inquire into and report on:

- The scope and role of Australian community broadcasting across radio, television, the internet and other broadcasting technologies;
- Content and programming requirements that reflect the character of Australia and its cultural diversity;
- Technological opportunities, including digital, to expand community broadcasting networks; and
- Opportunities and threats to achieving a diverse and robust network of community broadcasters.

WITNESSES

MADDOCK, Ms Lyn, Deputy Chair, Australian Communications and Media Authority......................... 1

TANNER, Mr Giles David, General Manager, Inputs to Industry Division, Australian Communications and Media Authority.. 1

Committee met at 9.25 am

MADDOCK, Ms Lyn, Deputy Chair, Australian Communications and Media Authority

TANNER, Mr Giles David, General Manager, Inputs to Industry Division, Australian Communications and Media Authority

CHAIR (Miss Jackie Kelly)—I declare open this public hearing of the House of Representatives Standing Committee on Communications, Information Technology and the Arts inquiry into community broadcasting. The inquiry arises from a request to this committee by Senator the Hon. Helen Coonan, the federal Minister for Communications, Information Technology and the Arts. Written submissions were called for and 130 have been received to date. The committee is now conducting a program of public hearings and inspections. This hearing is the 12th for the inquiry.

I welcome the representatives of the Australian Communications and Media Authority. Although the committee does not require you to give evidence under oath, I should advise you that these hearings are formal proceedings of the parliament. Consequently, they warrant the same respect as proceedings of the House itself. It is customary to remind witnesses that giving false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Would you like to make a brief statement in relation to your submission?

Ms Maddock—No.

CHAIR—Maybe you could just expand on the government's recent announcements regarding the two unused digital channels.

Ms Maddock—I will ask Mr Tanner, who is much more technically minded than I am, to do that.

Mr Tanner—The government has passed laws which set the scene for us to reoffer what were originally called the two datacasting channels. But this time they are to be reoffered as two separate licences, to be called licence A and licence B. Licence A is intended to be dedicated to services that can be received on ordinary domestic digital television receivers. I guess you could see it as part of the digital action plan strategy. The idea is to try and get some new services that are available on ordinary TV receivers.

Licence B is going to be offered for a wider range of purposes. So it could be used for that, if that is what the market decides; but in fact it is also possible to use it for mobile television. Mobile television is a new application of digital channels which has emerged since the datacasting channels, as I used to call them, were first planned. Some of the early indications we have received are that there is considerable commercial interest in mobile television. So it is quite likely that it will be used for those sorts of services, which will not be able to be received on ordinary domestic television receivers.

We are in the process of developing a price based allocation process for that property. I think I gave some general information about the components of that process, but no indication as to time frames, when I was talking at Senate estimates about three or four weeks ago. I have no

advance on that but I am very hopeful that we will be in a position to make public announcements—I am optimistic but not certain—after the next meeting of ACMA on 7 December. I am hopeful that at that time we will be able to set out a fairly clear path towards private allocation of those channels.

CHAIR—Who has expressed interest? What sorts of companies—telcos, content providers or content producers? What sort of interest? Where do you gauge the interest for this type of demand?

Mr Tanner—In the first half of this year, the minister put out a paper on media reform issues which included asking some questions about the unassigned channels. At the same time ACMA put out a detail paper which invited submissions about the uses of those channels and the uses to which those channels could be put.

We received quite a few submissions from the sorts of people you are talking about plus infrastructure providers; Broadcast Australia was quite active; certainly some telcos. Some of those submissions were confidential; some I believe are on our website. We made a confidential report on those issues to the minister. Although it was a long report, I think broadly the main issue was information about demand that we gleaned from that call for submissions.

CHAIR—When you say mobile TV, I can go into Harvey Norman now and for 100 bucks buy a miniature television, wander around and, if I am within sight of Black Mountain tower, I can watch it, but if I am on the House of Representatives side it is a bit difficult. But what is to stop me, once I have picked up the signal on whatever mobile device, plugging in to my television receiver with some other connecting device?

Mr Tanner—I guess you can always get a device, but the point about mobile television is that it is actually a different kind of signal which is designed for mobile reception. On the one hand, it is a much more robust signal so that when you are driving around on a bus or you are going—sure, digital television is portable but it is not truly mobile in the way that a 3G telephone is. The point about mobile television is that it is broadcast television which is as mobile as mobile telephony.

The other characteristic which is distinctive is that it is designed to look good on a mobile telephone. We are now beginning to see mobile telephones that incorporate attractive little screens. People like Nokia and Samsung are very keen to manufacture mobile television-ready mobile phones. You do not need as many bits per second. You do not need as much picture quality to look good on a screen that big as you do to look good on standard definition television or high-definition television.

So mobile television can carry a much larger number of much lower picture quality channels. Whereas licence A, which will be used for fixed, might enable you to carry let us say four or five standard definition TV channels at most—maybe a bit more if you do not mind low-picture quality; it is fairly plastic, fairly flexible. The mobile television channel could be used to carry, depending on which standard you use, maybe 15, 20, 25 of these television channels which are only transmitted at a level of quality that will look good on your mobile device. It is a different sort of thing. I do not know why you would want to watch it on your screen. It is very likely that the sort of things you will see on your mobile device are the things you could get from Foxtel or

from free-to-air television anyway but at a nice picture quality over your cable, your satellite or your terrestrial UHF channel.

The point about mobile television is that it is a way that you can enjoy it without getting out of bed, while you are in the bus, when you are stuck in the train or something like that. I think that is the kind of idea that the proponents of mobile TV have.

Ms Maddock—Can I just add one other thing—and I will ask Giles to correct me if I start going wrong technically: the difference, as I understand it, between 3G, which you can currently get on your Hutch, or whatever, and mobile TV is that mobile TV is going to be much more robust. It will have a better picture quality and most importantly it will have much greater capacity. Because it is broadcast rather than one-to-one, you can deliver much more service than you can through a 3G type network.

CHAIR—On a 3G network, if I am driving from Sydney to Canberra I am going to have a few dropouts as I move, whereas in a broadcast I am not going to.

Ms Maddock—Much less likely to.

Mr Tanner—You are also paying for a dedicated broadband link when you are getting your information over telephony. You are actually paying for a broadband link. If your phone was also able to pick up mobile television, then instead of getting it through 3G and somebody—you or the service provider—paying the cost of that one-on-one link, there could be 20 channels and you are most likely to watch just what is available there, which 100,000 people can tune in to at once. That is what broadcasting does: it puts out signals from one point to every receiver in a large area.

It is one potential use of mobile television—we are not absolutely certain what the market for mobile T will actually look like. There is a lot of enthusiasm about it, but we are yet to see the market model emerge. It is a way of transmitting content which you can already get on your fixed service one way or another to truly mobile devices, and it is a cheap way of getting wanted television services—a cheaper way than 3G or whatever to telephone like devices.

It may very well be that, under some models we have heard discussed, you might have a telephone with a television in it and you might not know whether you are getting the TV through 3G or through a mobile telephone channel. It does not matter. You just know that you want to watch the sport; there it is. The fact is that your device is thinking: ‘Right, I’m in an area where I can pick up mobile television. That’s a cheap way to do it; I’ll do it.’

CHAIR—Do you have an iPod?

Mr Tanner—I do have an iPod but I do not use it much so don’t ask me much about iPods.

CHAIR—You do not, say, view podcasts on it?

Mr Tanner—No, I do not view podcasts.

Ms Maddock—I have an MP3 player which I do not use very much but I buy them regularly as presents for people and set them up to receive podcasts. I know how they work.

CHAIR—The only consumer I can see interested in this technology is someone who is a sports fanatic, as you said, and wants real-time sports and wants to watch the cricket the whole time the test is playing while they are at work, or someone who is a news nut and wants to get news on the hour rolling. Someone watching *Days of Our Lives*—please! I would download my podcast in the morning of the ones I want to pick up and if I am on the train or anything else I am going to be watching what I want to watch rather than the crap that is on midday television.

Mr Tanner—I think it is probably fair to say that, except in one or two countries—the Koreans are fairly advanced—we are yet to really see what this mobile television industry looks like and how big a winner it is. If you go back to two years when I first was learning about the standard, most of the enthusiasm was coming from the manufacturers of hand-held devices. Nokia and Samsung both thought they were going to make a trillion out of this—it was a great device. Someone commented to me that the broadcasters they heard talking about this were in a state of what he called 'informed bewilderment'. They were not sure what the business case was or why people would use this.

I think it is fair to say that we picked up a fair degree of enthusiasm from the market here in Australia to look at mobile TV seriously. There have certainly been quite a few telcos and service providers involved in the ongoing trial which Bridge have been conducting in Sydney. The sort of mix of channels they are putting out I think is a mix of what you could get on free-to-air or over pay—your sort of popular offerings. Perhaps the people to talk to get a sense of where they think the market might be might be people like Broadcast Australia or Bridge who have conducted the trial. Certainly, the target that the proponents of this have been pointing at is people's dead time. I think they are thinking of commuters on trains—

CHAIR—They are all iPoding it.

Mr Tanner—I have heard the suggestion that sometimes people like to stay in bed and just see what is on the sport rather than getting up and going downstairs.

CHAIR—That is why we have a TV in the bedroom; that is where the spare TV goes.

Mr Tanner—It has never really been ACMA's role to try and work out what is going to work in the market. That is a very challenging thing.

CHAIR—You are locking up two valuable pieces of spectrum on a punt on the mobile television, which you cannot even buy at Harvey Norman any more—they have died; they are not even stocking them. They have clearly gone out of consumer demand. It got killed off by the iPod revolution, and you are backing that somehow it is going to come back.

Ms Maddock—We are not the policy makers.

Mr Tanner—No, we are not backing anything. The government is allowing the market to decide what licence B is used for—that is what has happened. Mobile television is merely one use to which licence B can be put. If we conduct a price based allocation then it will be decided

on price what use that is put to. It is quite legal under the changed law, which has just been passed by the parliament, for that service to be bought for fixed services that transmit an MPEG2 to ordinary digital receivers. I have to emphasise that ACMA did not make that decision. We have gathered information at the government's request and we have provided it in confidence to the government. It is certainly not our role to pick winners. If I knew what was going to work in five years time I would not be sitting here, I can tell you, I would be in the south of France or somewhere with my feet next to a bucket of champagne.

CHAIR—Licence A: is there any thought about preserving one of those SD channels for a must carry option on community for community?

Mr Tanner—The latest word from the government—and this is a government decision, not an ACMA decision—is in the digital action plan that was announced late last week. From memory, what the government said was that it was looking to the community sector to seek to do deals with the people that acquire these licences—I guess in particular licence A—to simulcast in digital. That is in the minister's keynote speech at the ACMA conference.

CHAIR—It says:

The Government has committed to working with the community ... The sector is being encouraged to explore options for a simulcast arrangement with a digital platform operator.

Is that licence A or licence B?

Mr Tanner—It could be licence B if that was acquired for fixed services but it would certainly be licence A because we know that is mandated for fixed purposes.

CHAIR—The community sector is being encouraged to explore options for a simulcast arrangements as in pay to carry?

Mr Tanner—That is how I read it.

CHAIR—Otherwise, if they cannot come to that arrangement—the speech goes on to say that 'should no opportunity for a simulcast arrangement materialise, prior to digital switchover, the government will consider the allocation of the Channel 31 analog channel' and just switch that over to digital at switch-over.

Mr Tanner—And with a requirement to carry—

CHAIR—Which is totally contrary to anything that we have heard from the community sector. They definitely desperately want a simulcast period.

Mr Tanner—I have to emphasise that this is an issue for government not ACMA. ACMA simply does not have a role in this. We are the agents—

CHAIR—You have never given advice to government that the community television sector is losing viewers. Do you track Channel 31's viewers?

Mr Tanner—We are aware anecdotally that Channel 31 is losing viewers. We attended the CBAA conference. We heard Greg Dee's presentation at that conference which suggested that their OzTAM figures show a decline. It is not altogether surprising given that our survey shows a very rapid digitalisation of at least the main TV in the home. We provide a lot of information on request and unsolicited to the government. Most of it is technical and practical information to help them in making policy, but I have to keep emphasising: this is not a policy job which has been handed to us. We provide a lot of information, and it is the government's business what it does with that information.

CHAIR—What are some of the practical ways that community television has simulcast?

Mr Tanner—With the existing rules in television channels in Sydney, the only currently vacant digital television channels that they could simulcast on are the channels that will become licence A and licence B. The only other option we are aware of for high-power transmission on the broadcasting bands is Channel 31 itself. So there is not another channel in Sydney, Melbourne or in Brisbane that we are aware of that could be used.

CHAIR—How much would it cost them to get on, say, Foxtel or pay to run on another platform?

Mr Tanner—I am not privy to that. Foxtel gave undertakings in connection with its commercial arrangement with Optus. It gave undertakings to the ACCC that it would make some channel capacity available for community services. My understanding is that it has made that channel capacity available to other community services, not the free-to-air incumbents in those metro areas. I understand that Foxtel's position is that it would discuss access to its channels at a market price. That is my understanding from talking to the community sector and from talks in the past with Foxtel.

CHAIR—Do you see anything in the community sector that shows that they will be able to afford those prices—or even if they got a channel to be able to transmit?

Mr Tanner—It is an issue where I would like them to be able to speak for themselves. I make the general point that I think the cost of transmission probably has historically been the big problem that the community television sector has faced, and I guess it has been a key distinguishing factor for community radio.

Ms Maddock—We identified in some public advice to the minister of the day—

Mr Tanner—When we were ABA.

Ms Maddock—ABA, our predecessor—back in 2002 roughly, that the financial model for community television was much more difficult than the financial one for community radio. It was two factors: one was the cost of transmission and the other was the cost of production. Our advice was that they be looked at. In response to that, the government increased the amount of sponsorship time that people can have from five to seven minutes per hour. So they considered our report—

Mr Tanner—It also built in the sale of the air time as well.

Ms Maddock—Yes, and sale of the air time. So they considered our report and took some actions on it. Whether they are sufficient or not, I do not know.

Ms VAMVAKINOU—My question was more along the lines of prospective consumers and mobile television—it is probably not your role to consider this; more our role—and what that might mean for young people accessing this; the whole idea of technology making your car an extension of your living room and therefore impacting on concentration and possible driving habits and a whole series of other things. I am wondering whether that has ever come up. Mobile telephones are a real problem with people who continuously breach regulations and use them, and we are aware of all—

Mr Tanner—I think 'mobile telephone' is a misnomer. We will move to 3G. The platform—if I can call it that—the device with a screen that you carry around, is now quite protean, isn't it? You can get 300 or 400 kilobits per second over a 3D connection. Mobile television may be simply another attractive application that you can have on a mobile device. What we call mobile phones are rapidly morphing into whatever your heart desires in terms of having information wherever you want it, whenever you want it, and that has a whole lot of issues. It is obviously a much bigger industry than broadcasting; it is a very big industry historically in terms of revenue, just on the back of telephony. These issues are grading off the edge of what ACMA is really expert in, but the issues are real. I think we are seeing an extraordinary transformation going on in the way people use media.

Broadcasting—to go back to your terms of reference—is very conscious of it too. Anybody who is running an FM radio station would be aware that the younger part of their audience is increasingly able to form communities of interest around music and audio material in a range of other ways. Some community stations are moving to distance themselves from their FM frequency a bit—the ones that are, I guess, most affected by that. For others, it is still watched with bemusement. We are now seeing gigantic changes going on, driven by technological convergence.

Ms Maddock—And the growth of options such as YouTube are also affecting both the willingness of people to participate in community television and their willingness to watch it; there are other alternatives available.

CHAIR—So you are against YouTube rather than the government killing community TV?

Mr Tanner—I think there are several distinct issues with community television. There was definitely a problem with the revenue model because of the factors that the ABA identified. I think the government sought to address those through greater revenue earning powers than community radio has. We have a community television sector at the moment, although we only have a community sector in a few major centres and a couple of regional centres. Digitalisation has a different set of challenges and the sector is now facing the government with it.

Ms OWENS—I am always interested in other ideas that are out there that may not have space in the current framework because of spectrum, licence regulation and whatever. Is there enough space in the community broadcasting world for people to really explore the options at the moment, given the way technology is changing and the new possibilities of delivering different kinds of material?

Mr Tanner—A defining feature of the community broadcasting world as opposed to YouTube or whatever is that the government provides a more or less free FM radio channel, except for a handful of old AMs from 30 years ago. We often sell those to commercial users for quite a lot of money, but the community sector is subsidised by the government in various ways. We subsidise directly through the Community Broadcasting Foundation, but certainly the major subsidy of the sector is that we have always ensured that a share of the FM spectrum in every market is available for community broadcasting. That is made available free, and with some of those we often get queues. Often people miss out, but we have a fairly happy group that actually gets on.

There is nothing to stop the community sector from renaming itself. In fact, they have had debates over several years about changing their name. A number of them have been quite keen to knock the word 'broadcasting' out because they actually see their audiences moving on. Particularly the youth services are directly affected by that. Some of them are doing extremely exciting things, whereas others are watching on in amazement and bemusement, probably like the rest of us in a lot of ways.

The point is that ACMA is not in a position, and the government really is not in the position, to give them any equivalent of a free channel in the broadband, online world. They are in a market out there and, if there is a role for community organisations, it is not going to be fostered by the government giving them anything in the spectrum for free; it is going to be through other ways or their own initiative. That really is where a lot of the action is happening: broadcasting and other internet applications. There is a very healthy debate in the sector about this, but the nexus between the community sector and the government has always been, apart from a bit of funding—a bit of seed money—through the supply of free channels. That, if you like, continues. You will notice that in the digital radio policy, which has been announced—we are still waiting for the legislation, but we have a pretty clear idea about what it is going to be like—community broadcasting will be represented on the first Eureka multiplexes.

Ms Maddock—I would like to add that I think that, fundamentally, three types of activities are embodied in community broadcasting: the first is participation in aggregating in the organisation—lots of people like to 'play radio', and that is great; the second is program making; and the third is making sure that something you want to listen to is available. With the plethora of platform choices available, I would think that there will tend to be much more concentration on what of those three aspects people are interested in doing. It has been all bundled until now because that has been the model, but I would have thought that some disaggregation of those three components may be what is happening.

That is not to say that they will necessarily be disaggregated. There will be some people who will want to do all three, and broadcast radio or television as we know it may be the most appropriate, but we now have the capacity for people to separate their interests into those three categories. I think that is starting to happen. A number of the traditional community radio stations are starting to stream. I do not think it will be long before they podcast, because the technology to do it is fairly simple. Certainly the capacity to listen to what you want is much greater once you go to broadband.

Mrs BRONWYN BISHOP—Podcasting is done on the FM band, isn't it?

Mr Tanner—No—that is done over the internet. It is about internet downloads.

Mrs BRONWYN BISHOP—Could community radio do that too?

Mr Tanner—Community radio does do it on quite a large scale already. The dilemma which a lot of community broadcasters and would-be community broadcasters come to me with is: yes, we know there is a proliferation of new ways that we can get out message out, but you cannot beat FM; have you got any more of those channels? I have occasional meetings with one or two of the bigger groups that have been unsuccessful to date in getting a channel and we have come really to the end of FM planning in terms of the settled areas that really congested markets. I find that each time we meet there are more roots to getting audiovisual material out to an audience that are coming into existence. They say, 'We've got a mainly conservative, older audience,' or something like that, and you really cannot beat FM. FM is a wonderful technology and it is by no means dead. People have been predicting the death of radio for about 50 years now. It has not died yet.

You would have to say, though, the long-term outlook for all analog media is not that brilliant. This rising tide of new applications is going to progressively move into the space of how people entertain themselves, inform themselves and get audio information. We are seeing that already at the edges with podcasting. At every edge there are new applications moving on.

Ms OWENS—You referred to the queue. How long is the queue now?

Mr Tanner—It is actually quite short because, basically, it substantially dispersed after the major allocations in most areas. It was worst in, I think, Sydney and Melbourne. We had, from memory, either 18 or 19 applicants in each city. There were three in Sydney—three high-powered opportunities to go on air—and maybe an extra low-powered one in Melbourne. That is from memory. Eighteen into three does not go very well. A lot of the groups who missed out had shown that they were capable of running a service by running extensive trials. An enormous amount of creative energy and talent basically dispersed, having been unsuccessful. But we still hear from one or two of the groups. Voice of Hope were applicants for an ethnic Christian service in Sydney. They are still searching. They are still very keen on the community broadcasting model and very keen to get on air. I think they made submissions to a recent minor licence area plan variation that we did in Sydney, so they are still out there. But, by and large, that creative energy has dispersed.

I should make the point that, confronted with these kinds of awful choices, the ABA was always very keen to say, 'Do any of you want to merge? Is there any value in sharing?' We very occasionally see mergers. We saw some mergers in Melbourne between the Christian aspirants—not all of them, but some of them—before the allocation process. In the main, they say, 'No. We want to win or we want to lose; we do not want to compromise and lose our identity.'

The late nineties would have been the height of the period when we had a lot of vacant channels around Australia. We had the temporary community broadcasting licence law and policy that were very generous to trialists. It meant those channels were continually in use for trials. We had several hundred temporary community broadcasting licences, all waiting for licences to be planned and then for the winner to be chosen.

Until about two years ago, often at the rate of 20 or 30 new licences a year, we worked through every one of those markets and allocated licences. We have allocated at least as many

licences as there were TCBL channels in use. So the sector as a whole has not got any smaller, but what we have seen is that the winners are now on air 24 hours a day, 365 days a year; the losers have dispersed. That creative energy either has to find expression through existing services or has to find expression elsewhere.

Ms OWENS—We have come to the end of the spectrum, but we have not come to the end of what people want to do.

Mr Tanner—No.

Ms OWENS—So, if it suddenly doubled, there would be a queue again.

Mr Tanner—Absolutely—or if digital opens up, which is a more likely scenario. We are moving on. The FM bands are congested. You could replan them, but that would involve discomfiting all the incumbents and shrinking all their audiences, and I do not know why you would do that at this stage of the lifespan of analog, which is a very mature technology that has digital rising up around it now.

Mrs BRONWYN BISHOP—What is going to happen to community radio and their opportunity to go digital, because they are kind of left out of the statement, aren't they?

Mr Tanner—Are you talking about television or radio? In radio—I have to emphasise once again that I come from the point of view of the government rather than ACMA—the government has decided that the broadcasting services bands, radio industry, can introduce Eureka, which is the most promising of the digital radio technologies, but only in the metropolitan areas, the big five cities. The government is basically keeping its powder dry on whether digital will replace analog. It has not decided that that will happen or how it would introduce digital radio or, indeed, whether it would do so in regions. I think the idea is that it would learn from the experiences in the cities. It has announced that digital radio will commence officially on 1 January 2009, and we at ACMA are working towards that. If you look at the detail of that, the government has said that not all incumbent broadcasting services, band services, are included in this. The narrowcasters are left out; the commercials and the ABC are in; the wide coverage community services in the big cities are given, I think, 128 kilobits per second of the channel width up to a total of 256 on each commercial multiplex, and there will be either one or two of those in any city.

Mrs BRONWYN BISHOP—Who would be considered for wide coverage? Would that include 2MBS, for instance?

Mr Tanner—Probably. Because most community broadcasting is powered lower than the really wide coverage services like the ABC and the big commercial ones, it would probably be the services that have city-wide licence areas. That would be a pretty good guide. 2MBS is one; 2SER—

Mrs BRONWYN BISHOP—So it would not be like my radio—

Mr Tanner—It would not include Windsor. It would not be the suburban services. They basically are not part of this trial. Also, we have very little detail yet on how the community

sector would be involved. The minister's statement—which I have actually got here, if you want to go to the words—basically says that she would see the community stations working together on how this is done. I suspect the detail will be left to ACMA to administer through subordinate legislation, once the legislation has gone through, but that is actually a speculation on my part. We have not yet seen the draft legislation and I do not believe we are going to see that this year.

Mrs BRONWYN BISHOP—The outcome could be that you see all the commercials and the ABC go digital; you could see the large networks, like 2MBS, go digital; and you could see the remaining small suburban ones remain on analog. That is a possible outcome.

Mr Tanner—I think the government is very much presenting the current policy as a first step. They are saying, 'We don't know for certain that digital broadcasting is going to replace analog broadcasting. No-one is queuing up for the spectrum which analog broadcasters are using and there is no talk of clearing it, so it is very different from television in that respect. But we understand that there is a lot of interest now in introducing digital and it may be the future, so we are going to invite the commercial incumbents to introduce Eureka in the metro areas and we will work out what we will do later, in light of that experience and as it becomes clearer.'

Mrs BRONWYN BISHOP—But what I said could actually turn out to be the case, at least for a number of years.

Mr Tanner—Certainly that is the initial decision—yes.

Mrs BRONWYN BISHOP—What about Vision Australia, who are very keen to go digital?

Mr Tanner—Vision Australia, the radio for the print handicapped services?

Mrs BRONWYN BISHOP—Yes.

Mr Tanner—They would have wide-coverage services in each market.

Ms OWENS—Regarding the restrictions on licence, or the regulation on what a community broadcaster can do, are they still as relevant as they were? Do you find people coming up with ideas that bump up against the regulation but are not outside the spirit of community?

Mr Tanner—I will answer that question in a slightly different way because I want to keep a distinction very clear. We are the administrators of the existing law, but we actually put a lot of effort into trying to help the community sector. A key issue for any community sector in any country is how it funds itself. If you look at countries around the world, you will see that they are on a continuum between: 'No advertising allowed; go and find some other way of doing it,' and 'You can advertise and, if you get the governance right, that's all that's important. You have to be not-for-profit and all those sorts of things.' We are somewhere in the middle. What we actually have is a prohibition on advertising as a condition and a series of dispensations to put in what is, in effect, advertising or promotional material, which is very wide. If you have any legal training, that should be immediately signalling complex issues, because it means that as soon as a community service wanders out of these wide dispensations it finds itself breaching the fundamental condition that it is not allowed to advertise. The main dispensation it has—you have probably heard all this from the community sector too—is on sponsorship announcements,

which can be promotional. There is not much difference between them and ads, but the act does not use the term 'ad', so we always insist that they have to have a tag. We do not mind if they otherwise sound like ads.

Ms Maddock—The act says you cannot have ads, but you can have sponsorship, which is the distinction.

Mr Tanner—Yes—you can have promotional sponsorship. We are saying, 'What is a simple one that they can understand?' We say, 'It has to have to a tag which acknowledges a sponsor.' That is relatively simple because, in the end, it comes down to tracking it with a stopwatch. Where I think they have run into difficulties in the last year or two has been around community promotional material, and certainly we have received a fair bit of feedback about that recently. There is a set of legal questions about where you choose to be on that international continuum. There are a lot of issues in that but they are policy issues. They are not really issues for us and it is best if we do not get drawn too much into speculation. I do think that it is very hard to get the very small organisations that often run community stations to understand and administer really complex law that lawyers can struggle with. So we have always promulgated and, in the past, periodically updated a guideline on the promotion and sponsorship of a community station.

What we have learned over the last six months—and I actually think the work of your committee has really revved this up—and what I certainly got a big earful about at the CBAA conference earlier this month, is that the sponsorship guidelines are out of date and that there is a lot of confusion, particularly around the issue of community promotion: where it adjoins sponsorship and where it becomes illegal advertising. We have undertaken to the sector to work with the CBAA—we will do the work; we are looking for the endorsement and buy-in from them and the feedback about whether we are being helpful—to update the guideline to take account of recent decisions of our investigation team which have caused real concern.

If your question is about the assumptions underlying the legislation—around how they raise money, how they promote, whether they are still relevant and whether there are other ways—that is a great conversation to have with the department or somebody who does policy, but we do not have a brief to do it. We have recognised and affirmed to the sector that we have allowed the guideline to get out of date and that we want to work with them to update that. Obviously we will work with the sector and this committee to the extent that you have picked up these things, but the initial feedback I have had is that the really big issue is around community promotion boundaries.

CHAIR—Just on that: submission 52 from Peter James suggests some changes that might make the whole issue easier. Are you aware of this? One of the suggestions was for ACMA to have the power to make determinations and grant exemptions. Are you in a position to do that?

Ms Maddock—I have just handed the submission to Giles. I brought it in. It is an interesting submission. We are quite used to—

CHAIR—Are his ideas practical or feasible?

Ms Maddock—I am not the lawyer; I am the economist.

CHAIR—Yes, but he is the lawyer and—

Ms Maddock—I am just going to refer to what we currently do in other areas. Giles will correct me on the sections of the act. We give guidance. People can come to us if they are commercial or narrowcast stations for us to give binding guidance under section 21 opinions.

Mr Tanner—Yes.

Ms Maddock—We are used for that process. As I read the submission, he was proposing something similar, so it would not be unusual or non-manageable.

CHAIR—All the volunteers and community people's only interference with ACMA is when they are being breached for something. It is actually helpful: 'No, you can't do it that way, but you could do it this way. Here's a determination and you will be safe.'

Ms Maddock—What typically happens under section 21 opinions is that people come to us and say, 'This is the type of service or offering we are thinking of doing. Is that going to be okay?' and we say, 'Yes, for these reasons' or 'No, because of these reasons,' and that opinion is binding for five years or something like that. It is an approach that we are comfortable with.

CHAIR—And he said that it should be taken out of the licensing condition and put in the codes of practice so it becomes something like vilification—something that volunteers are dealing with all the time—rather than it being elevated to this complex legal area.

Mr Tanner—As I hope I have made clear, all we can do now is try and explain the law better, but we cannot change the law. There is no tier. For example, there is not a lot of difference between a sponsorship announcement and an advertisement—it is true: there is not much; the tag makes the difference.

CHAIR—No—you get paid to do it and that is what keeps the thing going.

Mr Tanner—I would say that, in terms of certainty, the sponsorship rules are not the problem, because although it might be silly to add the tag in some people's view it is actually easier to know whether you are complying or not. The areas in which our guideline is not really working are elsewhere. The parliament, not us, would decide to make that distinction and give it clarification.

CHAIR—But you find his recommendations practical and feasible for ACMA to do?

Ms Maddock—Certainly we have had experience in giving binding opinions. It would depend upon the number; it would depend upon the workload et cetera.

CHAIR—It would certainly reduce a lot of the litigation and angst.

Ms Maddock—It would reduce the angst. We do not get a lot of litigation in the community sector given the number of decisions we make. We were thinking about that on the way here.

Mr Tanner—There is a lot of angst at the moment and it will be interesting to see the extent to which we can settle people down around community promotions through a guideline. It may be that the effect of the guideline is to convince everybody that it really is too hard and it may be that they will say, 'That's a bit simpler. Now I understand.' It is quite a complex legal situation now. You have a prohibition on advertising, which means that if you move outside the broad categories that are allowed—and that can be very promotional—then we have to ping you because you are breaching a fundamental condition. I think they do it minimally to guideline. We do not have any objection as an agency to being given a role to give self-binding clarification. As Lyn said, we do a lot of that already. We do not have a role here to do that at present.

CHAIR—Do you have any other suggestions for broadcasters to help them meet their obligations, besides Peter James's suggestions? Are there any others that you have just found in discussion over the tea towel, for instance: 'Gee, it would be good if we could do this.' Is that the circumstance?

Mr Tanner—I am just a bit uncomfortable. I would rather offer to help DCITA do this rather than move out of our proper role. That is the concern I have. It is not that we do not have ideas. We are obviously implementation specialists, but we are not really policy specialists.

CHAIR—This committee's report to government is going to be very helpful in terms of any changes to the community sector, so I suppose input from the widest areas is always helpful. Clearly, we have Peter James's suggestions, which we will take into consideration and make some comment on. We now have your comments on Peter James's suggestions. Do you want to expand any further on any other areas, otherwise you might find us making a recommendation and government taking it up when you think it is not practical or feasible?

Ms Maddock—I would say that it is always an interesting balance in that we get a certain amount of complaints from regional commercial radio operators that we are being far too generous in what we allow community radio stations in terms of the revenue they are raising. They are the source at times of a number of the complaints that come to us that result in breaches or nonbreaches as the case may be. I think what we try to do in our administration of the laws that we have been given is make sure we keep that balance.

Mr Tanner—I have an observation I might volunteer.

Ms Maddock—I have a different type of issue where people burst out of their boxes most profoundly is where the most angst, biggest workload and the most difficult and complex issues have been recently and where organisations have largely—that is probably too extreme—tended to operate as profit making enterprises. That has been an issue with some of the youth radio stations in which the associated sales of CDs et cetera or access to nightclubs or whatever—

CHAIR—Or the fraud. There is a lot of evidence of fraud. These things make money and then these people—

Mr Tanner—Yes, and there are various ways that community services can go bad. They get into financial difficulty; they become excessively dependent on what is basically advertising, on sponsorship announcements; and they begin to mould their format so that it is consistent and rates and enables them to sell advertising. What you find in that sort of business is that it is a

spiral which ends up with the original community purpose largely lost and very little scope for the community to really participate unless they are prepared to be part of a popular music format. That is one of the dangers.

What I was going to say was that perhaps a way of thinking about this is to go back to what I was saying. If you look internationally there are different models for community broadcasting. They range from what you might call the low-trust model where in order to enforce the difference from commercial you are not allowed to advertise. Australia had such a model in the 1980s. The advertising limitations were so severe, they were absolutely draconian. It meant community broadcasting sounded like the ABC used to sound before it began promoting itself.

Up the other end there is a view, and it is a view expressed by theorists inside the community sector, that you do not have to worry about advertising because if you get the corporate governance right, if you get the right structure, then you do not need to say, 'You must not advertise to excess or become commercial,' because it will self-regulate.

The governance issue which the parliament would have to negotiate with, for example, the commercial industry and other people that might be adversely affected, as well as with the community sector if we get this wrong, is trust. As you move along that continuum you are trusting more and more. And safeguards—as you move along that continuum it becomes more and more important to ask what safeguards you have if despite the governance, something goes wrong. I would suggest we are somewhere in the middle. If there is an argument with the community sector that it should be allowed to be less regulated in this area, then the question which the parliament will be asked I guess by people who have to pay for their FM licences is: what safeguards do we have; what proportion or way is there that ACMA can administer this which is not too oppressive for the sector but which gives us some sort of security? The more you permit, the more you leave to trust, and the more this question of what other safeguards you have is going to come into view.

That is the way I would approach the policy discussion. In terms of active solutioneering—and I love policy solutioneering—I would feel more comfortable in terms of my role here in doing that with the department which represents the government and the policy process.

CHAIR—On fraud—it came up at the conference—

Ms Maddock—The CBAA conference.

CHAIR—yes, the CBAA conference—about some serial fraudsters that just moved interstate from station to station defrauding these community organisations. As you say, get the trust of the community organisation, there is cash available, and just slide on through. How does that affect community broadcasters?

Mr Tanner—Community broadcasters are often quite vulnerable organisations. Things do go wrong. I think it is fair to say that, until about two or three years ago, when we got the new renewal powers, the government had largely deregulated accountability for those free FM channels they got. So you got a licence renewed every five years with no discretion to not renew it. The only circumstance in which we would ever turn one off is if we had a complaint come to us and we learnt something that was so heinous that we had no choice but to move to revoke.

That is an appealable decision to the AAT, so it is not that easy to revoke a licence if the group is fighting.

In the last two or three years we have seen the new renewal powers, which give ACMA a broad brief to review how each station is performing once every five years. We are seeing a rapid build-up of knowledge in the regulator about what a healthy and a less healthy community station looks like. We are seeing a periodic focusing inside the community sector on governance and how they are governing. It is not always one that they are happy about. Sometimes they are quite resentful or even a bit frightened. If you look at our record, you will find that almost no licences have been revoked. I think only one has been revoked. There were pretty extraordinary circumstances there. The station is actually still on air despite that revocation, but I will not go into that.

The point is that we have not exercised those powers in a draconian way; we have exercised those powers in a way which has forced stations to do a lot of work on the way they are run. It has caused them to focus on how they are getting volunteers, how they are attracting members and how they are making their content accountable to the members.

CHAIR—Is there any training requirement in licence renewal? Could you put in a training requirement and say, 'At least five of your volunteers must have had management training'?

Mr Tanner—We have a wide power to impose conditions either on the sector, through standards, or on individual stations. We do make conditions. That is typically where we go to first when we encounter major problems with a station. We impose conditions which are directed to try and fix the problem. An example where we have done something like this in the past is through the CBAA. We used to have a problem that hell hath no fury like a volunteer scorned. There are people who get booted off running the so-and-so program who make it their life's mission to get it raised in the Senate; to get justice at last from that bully of a station chairman that took them off air all those years ago. You have probably met them. We certainly meet them because we are seen by these people as a place which could dispense justice if only we could be motivated to invest the energy.

We worked out with the CBAA that a way of addressing this, which we hoped was both shrewd and cost-effective, was to require that stations have in place basic training around conflict resolution; that they have processes for mediating conflicts; and that they have certain policies and activities. We hoped to raise the quality of internal governance so that there were less angry refugees wandering around looking for justice.

Mr LAMING—Has it worked?

Mr Tanner—It has worked. It has worked to an extent. You cannot shut down a person obsessed with justice who goes everywhere. In the end, it makes work. Someone at each step is going to have to consider their claims, even if only to decide whether they have jurisdiction. The AAT, ACMA, politicians and the Ombudsman all get drawn into this. Sometimes there is something in the claims, but it was a major line of work that the old ABA used to do and the ABT before it—one that it was poorly suited to do. It is very hard to get to the bottom of something by writing letters from an office in Sydney or Canberra over a long period of time.

Ms Maddock—And you are very often solving the wrong problem.

Mr Tanner—We have virtually turned off that work of endlessly working out who hit who first, but we are very clear and firm about ensuring that stations have those policies in place. If we find that they do not have them in place, we take steps to get them going. I think it has been a successful measure in terms of getting rid of those intractable inquiries which we are very poorly placed to get to the bottom of. There is something it has not done, of course. Quite often disaffected volunteers have other complaints about the station. They allege impropriety or breaches of the law. We do not wish that away and we still do those investigations. A significant number of our investigations are started by people the stations find vexatious.

CHAIR—Some licence conditions have improved that. I do not think we have got rid of the old Stalinist regimes in a few of the stations. There are complaints about people not being notified if AGMs are on, of not being able to get a copy of the constitution et cetera.

Ms Maddock—The renewals process that we were pleased to get has only been under way for a couple of years, and the big bulk of them are going to happen in the next 12 months or so. One of the things that has happened in that process is we have been able to pick up—more than we could in the past—where those sort of things are happening, where the governance is not right, and to negotiate with the station where they give undertakings to address a number of those things. I am just checking my notes and we have had half-a-dozen or so so far, where as a consequence of that renewal process, people have made undertakings regarding corporate governance, membership, how community representation happens, because—

CHAIR—What are some of the mechanisms you use besides saying, ‘You will have a chartered accountant on your board’?

Ms Maddock—Typically, they would come back to us with a solution that they were going to improve the mail-out arrangements or the notification arrangements for annual general meetings or whatever. If it was a question of financial accountability it may well be that they get a chartered accountant on their board. It would typically be that we would put to them what we saw as the problem and let them come back to us with their proposed solution, because, again, sitting in Sydney you may not read what is appropriate for a particular place right. That is the sort of stuff. They might undertake to have training for their announcers on a different form than they currently do. It is a range of things like that. To the extent that those undertakings have been public—and I will just look around—we are more than happy to send you copies of the sort of undertakings—

Mr Tanner—Most often if we find a problem we are going to address it through voluntary undertakings to do something to address it.

Ms Maddock—We will send you a copy of these sorts of undertakings that have been made.

CHAIR—If you could very quickly run through an outline of this whole licence renewal process and just how onerous the volunteers are finding it—obviously, you are dealing with volunteers.

Mr Tanner—Yes.

Ms Maddock—It is partly as onerous and time staggered as it is because of the way the act was introduced, and we have an enormous bulk coming up. This happens every five years, and we were not given the capacity to stagger it, which would have made it easier.

Mr Tanner—I think it is more onerous for us than for them.

Ms Maddock—Yes, but it means that we build in processes which enable us to cope with our resources which we may not otherwise.

Mr Tanner—Yes, that is right. We have the power now to fail to renew a licence if—and I am putting this very broadly and I have an expert who administers this behind me who I might be turning to occasionally—it were a licence allocation we would not have granted them a licence in the first place. In other words, if a station has got to the point where if it were coming to us as an applicant we would not have given them a licence, and that is quite often the case, then—

CHAIR—They have not had an AGM in two years, they have not—

Mr Tanner—That is right. There is no energy there or any real life and certainly it is a waste of spectrum, and we have the power to turn it off. As I say, we have not made that our main focus. Our main focus has not been refarming spectrum. One of the big reasons for that is that aspirants do not queue up and argue to knock off incumbents—in fact, generally there are very few voices in the community, except maybe the disaffected volunteers, to tell you.

CHAIR—Normally they try and stack the AGM and take them over.

Ms Maddock—There is a more direct political approach to life, yes.

Mr Tanner—I think the primary focus has been on good governance and in order to do that we have moved because we cannot extend the licence while we do an inquiry. It expires when it expires and we have to renew it before it expires. We now have a power to require that they apply 12 months out, and we actually exercise that. We now have a very detailed form which invites them to tell us a lot about all the processes we would expect: what is their community purpose; what membership do they have; let us have a look at their constitution; let us have a look at their internal structure—their committees, their checks and balances, where they get their revenue, what their books look like—

Ms Maddock—How they recruit members.

Mr Tanner—That is what is onerous for the volunteers. Someone is going to have to fill out that form and what nearly always happens is that there is something incomplete, ambiguous or left blank and we go back to them. We come back in just about every case, and that is mainly for clarification. Every five years they are required to focus on how they comply with the obligations they are under to make use of that free channel they have, and that is what is onerous.

Ms Maddock—This is the first time it has been done so everyone is going through a learning process on it—them and us.

CHAIR—I am just wondering if this whole process would be made a lot easier if you had a set board structure, a set constitutional structure, and a set AGM time that coincides so the meetings are had for all this to occur before—so there are set things for stations. One of the things that I am very attracted to is, say, a board that consists of someone from the local council who has their finger on the pulse of the local government, which is really community; someone from a local educational institution being a school or a university; a chartered accountant because that is where a lot of the other problems come from; and some other qualified key people that you need to get governance right; and then XYZ community people rather than just the straight community thing. You actually build in a board that has some prerequisites that must be met to make sure there is a minimum of governance in-built into it.

Mr Tanner—Are you thinking about general purpose community services —

Mr GARRETT—A template.

CHAIR—A template.

Mr Tanner—or are you talking about all community services?

CHAIR—All community—radio. You find the most successful television networks have that sort of board anyway; that is the type of board where they work.

Ms Maddock—A couple of things: firstly, we see that as being much more the role of the industry association, the CBAA, to develop templates—

Mr Tanner—To promulgate good models, yes.

CHAIR—It would make your job a lot easier if that template was built in: 'Here is the constitution. You do not have to get it from the organisation because you can download it off the web—

Mr Tanner—I guess our rules are about outcomes—

Ms Maddock—CBAA does that, and I think that is to be highly encouraged. I think that there is need. One of the reasons I am not sure that it would be an appropriate role for us is the actual type of arrangement you might have for radio for the print handicapped or—I have forgotten the name—the FBI wide area youth in Sydney—

Mr Tanner—It is a youth art service, yes.

Ms Maddock—Or Wagga, Gundagai community service may well be quite different, and the industry association can actually reflect that better in templates. But I would have thought that is a very valuable role for CBAA to play, and it would make our life a lot easier.

CHAIR—And you are just left with scrutinising the activities role.

Mr Tanner—Because our rules are about outcomes we cannot say, 'And that means you have to have exactly this structure or this constitution to achieve the outcome.' We certainly can say,

'That seems a very odd or a very flawed way to achieve that outcome' or 'This seems to be a better way.' I think we have been keen to work with industry peak bodies on making sure there are models.

CHAIR—What kind of monitoring do you do of licence conditions? What sorts of activities do you scrutinise or do you just respond to complaints?

Mr Tanner—I would have said in the past we just respond to complaints unless we have had our attention drawn to a problem like we have got an undertaking because we have seen a problem and then we follow up. Now the renewal means that every five years we go back over the complaints we have received and ensure they have been met. I think, with that exception, we are in general an exceptions based regulator. If no-one complains about you under this scheme of legislation, the regulator generally leaves you alone.

Ms Maddock—Let me just add one further qualifier to that—that is, particularly when we have had a complaint and impose conditions on somebody for not meeting their obligations, we will generally put reporting requirements into that condition so they have got to keep in touch with us on what is going on. For instance, we have had—

CHAIR—So you put in a requirement for training and you say, 'You clearly need some management training and you must report back to us within six months that XYZ number of your volunteers have done this course with the CBAA.' Do you think there is a role to codify that more as a licensing condition and for the government to look at funding types of training courses—particularly, management training is what we were getting out of the sector. It does seem to be a training ground for the commercial sector, so a lot of people start out in community and get their skills in the community. So you are constantly—

Mr Tanner—Very true of the national sector—I have always thought, particularly a lot of national people will come out of community radio.

CHAIR—The community sector is always—

Mr Tanner—Training is always very useful. Training costs somebody money—that is the issue. There are certainly people like AFTRS that are very happy to provide services. We actually work with AFTRS on courses they do, but the community sector is not replete with money in the way that, say, commercial radio has a whole program for its young producers, which we help AFTRS with. But the community sector is very much dependent on help for that sort of thing.

CHAIR—But if government made it a licensing condition and then provided some funding for training.

Mr Tanner—The sort of condition you are thinking of—

CHAIR—A licence condition where every five years at least five volunteers would have had to have completed courses, A, B, C and D.

Ms Maddock—An alternative way of looking at that sort of issue is that the minister—and again I am not going to stray too far into the policy, because that is for DCITA—has got direction-making powers and could direct us in our renewals to give particular emphasis to training and their activities with regard to training.

CHAIR—But you just said the community sector is not really flushed with funds.

Mr Tanner—I am just very mindful here that the sector consists of a lot of quite small organisations.

CHAIR—There aren't too many courses they can do.

Mr Tanner—There is a community service on Kangaroo Island, which has got a population of 2,000, 3,000, 4,000 people—or there used to be anyway—and it was a very good community service when I last spoke to them. The rule for them often ends up being a bit different from the rule for 2SER Sydney or 3MBS.

Ms Maddock—Or Channel 31.

Mr Tanner—I am very conscious of the sort of direction you are going in. I suppose we see our renewals as one way of forcing them to focus on governments, but we do not have any money to give them to help them. They have to find the time for their volunteers or their paid staff to do it. The sort of suggestions you are making I am sure would be welcome to the sector, but someone would have to pay for them; that is the issue. So someone would have to make the assessment of the cost and the benefit.

Ms Maddock—We will send you along all the voluntary undertakings we have been given in recent years because that may very well spark some—we try to be as creative as we can in suggesting the voluntary undertakings that they make and it may give you some idea of the possibilities that are there and the ways that they can be addressed.

CHAIR—The other thing that training often does is you get people from Alice Springs into a central area talking about running it and you build up a swapping of programming and ideas, and it starts bringing the sector alive and more networked.

Mr Tanner—This is why we are big supporters of the CBAA conference. With about 300—that is a very rough number—licences around the whole continent and often with tiny budgets, there is no way that we can get to them or they can get to us. The Community Broadcasting Association Conference has been very successful in recent years in getting a big subsection together. We are strong supporters of that. There is never less than four or five of our people there.

Ms Maddock—I think we provide some funding for that.

Mr Tanner—We have always given a bit of money to help because it is so much in our interest to be able to hear from them and talk to a significant subsection.

CHAIR—There is a bit more of that happening in a constructive training environment, I think, especially on management.

Mr Tanner—You may have met the same Alice Springs people I met when I was there; I do not know. Periodically, you get a lot of energy coming out of a particular isolated city or town, and that is where you will actually tap into it.

Ms Maddock—The other thing that CBAA does, which I always think is interesting, is the distribution of some programming, which I think they distribute via the internet.

Mr Tanner—Satellite.

Ms Maddock—That is right: it is ComRadSat.

Ms OWENS—As in community radio, not comrade.

Ms Maddock—Going back to an earlier question, one would anticipate in the future that that is the sort of material that is eminently easy to podcast and perhaps better distributed to communities who are interested in podcasting.

CHAIR—I think there is a big future for it, and I think that starts to make community radio more robust and interesting.

Mr Tanner—It lowers the entry price for small communities if they are able to draw useful stuff off the satellite or the net, and I think all the special interest community sectors use the same sorts of techniques too. They trade and therefore lower the entry price.

CHAIR—I have only got a few other tricky questions left and they are the really contentious ones: the Central Coast of New South Wales. I do not know if you have been following that saga.

Mr Tanner—This is Progressive Community Radio.

CHAIR—This is the licensing of Rhema, the allocation to the licence of Rhema. Who actually applied for that particular licence?

Mr Tanner—I think both Progressive Community Radio and Rhema applied for it. There is a bit of a history though. You need to understand that it was offered to a group of applicants. ABA made a mistake in its procedure. It tried to award the licence to Rhema and that was successfully challenged at the Federal Court, which set it aside by Progressive Community Radio. The licence was reallocated. Both Progressive Community Radio and Rhema went—I am not sure if Yesteryear put up its hand again; I have it in my notes but I am not sure.

Ms Maddock—I think it did.

Mr Tanner—The licence was once again awarded to Rhema, but I have to emphasise it was a different panel. Some time after that decision, Progressive Community Radio once again applied to the Federal Court and we are in the process—I think we have already had a hearing but we are

waiting the decision to hear two matters. One is whether they should be allowed to lodge a late application—that has been opposed by the Rhema Group which has joined as a party—and also whether that decision should be set aside. The reason I am saying this is because it means that if they do set it aside, it will be remitted to ACMA. If we have made a mistake at law, we will be required to do the job again. I would want to be very cautious about getting drawn into the merits of the cases.

CHAIR—Would you say that the licence allocation by ACMA generally is transparent and accountable?

Mr Tanner—I believe so, yes. It is a public process. We put material out in public. I think in this case we actually had a hearing.

Ms Maddock—We had hearings.

CHAIR—You do not give reasons for the allocation; you just declare the allocation.

Ms Maddock—No, we give a report in which we set out our comparative assessment of the applicants.

CHAIR—Is that available to both applicants?

Ms Maddock—It is publicly available.

Mr Tanner—They can get a statement of reasons from us.

Ms Maddock—That is separate to the statement of reasons which they can also get. We had hearings.

CHAIR—Is there a way that licence applicants can challenge an ACMA decision without having to resort to lengthy and expensive legal proceedings?

Mr Tanner—No; there is no appeal on the merits to the AAT. There is only review on the law to the Federal Court under the ADJR Act.

CHAIR—That is expensive.

Mr Tanner—I should say that the decisions to revoke a licence or impose a new condition are both appellable to the AAT, but the decision on allocations is not. I guess I would—

CHAIR—Given that it is community radio, should we make it subject to the AAT?

Ms OWENS—Every unsuccessful one would appeal.

Mr Tanner—The point I was going to make was: if you had 18 applicants in Sydney for three licences, what were the odds of it going to the AAT? You can add an extra year or two. That is a

decision for the parliament if you want to do that, but it would mean the final decision was made not by ABA but by AAT. You are the parliament, so you judge.

The other comment I would make is that three years ago we were allocating 20 or 30 community licences a year because we were allocating those licences that we were planning in licensed area plans. I think in the last couple of years we have been allocating more like two or three a year. We have finished; not quite, but we have nearly finished. We could spend a lot of time shutting doors on allocation. In a lot of ways, I think that the thinking behind the renewals power was that we have come to the end of when a free new channel was the answer to every government's problem, dispute or inadequacy with the community broadcasting sector in a town. Now we have come to a time where you have got a pretty scarce resource; there are not a lot of alternatives in most places, so let us make sure that the incumbents are accountable. I guess that is where we are putting our resources and energy. But there are still occasionally new licences planned and there are still occasionally allocation processes.

CHAIR—The renewal of 3CCC in Bendigo—are you going to make that less painless?

Mr Tanner—I mentioned that we did not renew its licence. The reason we did not is that we reached the view that their application was so late—and they were quite a few months late—that we had no legal power to renew their licence. Because that is a decision about can't rather than won't and because their very late application has given them very little opportunity to put their claims on renewal to us, we found that we had no legal power to renew them, but we have left them on air on a temporary licence. That means that at some future date, if we decide to allocate a permanent licence to that market again, their claims to continue can be properly assessed.

CHAIR—They would be certainly helped by having a governance regime in place, where your constitution says, 'You must by 30 March have done this, and by the thing of October, and this far after the end of the financial year have—

Mr Tanner—I can give you a chronology which shows that strenuous efforts were made over quite a while to warn them of the consequences and to get an application from them. Notwithstanding that, we received an application many months late and in a time frame which gave us no opportunity to review their performance whatsoever. We do not know why, because we have not had the opportunity to properly look at their governance.

CHAIR—Probably more helpful for us would be a generic template: on an annual timetable how to get to the licence renewal phase a bit easier rather than—

Mr Tanner—Like a standing guideline on what we think would be good practice, is that what you are—

Ms OWENS—I think you can have a thousand rules and you can have it in the constitution a thousand times, and you will still have people that will not do it. You can write it down—

Mr Tanner—People will not know where the constitution is.

CHAIR—There can be no doubt that they knew the deadline, can there—no doubt whatsoever?

Mr Tanner—I would have thought the fact that the government was actually ringing them, taking the trouble to communicate with them and saying, 'Where's your application? You have to get it in—'

Ms Maddock—We did it several times.

Mr Tanner—is about the best safety net you can have. You do not always get that—and you probably would not get that from the Roads and Traffic Authority if your licence was about to expire—but we offer that service. Notwithstanding that service, I think that is a pretty fair account. As I say, take a look at the chronology and you will see we may be lean and mean but we do have the energy to prompt community services because we know there is a finite number of them and that they often have difficulties with organisation.

CHAIR—I am just going on the submissions that we got.

Ms OWENS—The late application issue is pretty standard across the whole—

Mr Tanner—This was very late and, without going too far—

Ms Maddock—We simply cannot, not want to.

Mr Tanner—our legal advice is that our power to accept late application is arguable if it is a slight delay; it is simply not arguable if it is a quite egregious delay, and we are creatures of law in the end. As I say, obviously I am in no position to give you any fair account of what has gone wrong—that they could not get an application in or how good a station they are—but they are still on air.

CHAIR—They have not breached any regulation though; it is simply just a late application. There is no regulation that says—

Mr Tanner—There is a requirement if they want to be renewed that they have to apply for their renewal within statutory timeframes. That is now a requirement on their licence.

CHAIR—On the form.

Ms Maddock—It is in the law.

CHAIR—I am wondering what options are available to ACMA when a station has been found to have breached regulation. What are some of the things? You can take them off air; you can fine them.

Ms Maddock—We can do a whole range of stuff. Depending on how bad the breach is and whether there are statutory requirements—in that particular case the statutory requirement was that we could not renew their licence—we use a whole range of stuff from discussions with them, so that they have voluntary undertakings. That is our preferred method of operation because it lets them craft the solution to achieve the outcomes. We have at times put conditions on particular cases. There was a particular case in Western Australia, Groove, a youth radio

station who we felt had walked a long way both in governance in what it was trying to do, and we put conditions on that licence, which included reporting.

CHAIR—You can put a condition on halfway through the five-year licence?

Mr Tanner—Yes, we can.

Ms Maddock—After an investigation and findings, if people do not adhere to those we can revoke that licence at the end of the day, but that is a very long process.

Mr Tanner—If there has been a revoke you can also in limited circumstances prosecute—that is another path. That is broadly the sanctions treaty, I suppose.

CHAIR—Have you prosecuted recently any community broadcasters?

Mr Tanner—I do not think we have ever prosecuted a community broadcaster.

CHAIR—You have been in court with them several times.

Mr Tanner—That is usually in an AD(JR) Act review or an AAT review—that is not a court but it is court-like.

CHAIR—So, really, it is just ADJR or AAT that are the main recourses the stations have when they have been found to have breached regulations. They cannot do a ministerial—

Mr Tanner—They can do a ministerial, and the minister actually does have some relevant powers here. For example, the minister can tell us to reserve capacity for a community broadcaster in an area. But the minister does not do that. They leave it to our planning processes to decide where to plan for a community broadcaster, but they certainly have that power. They can also direct us as to which communities of interest to give priority to, but that power is also not exercised. The minister does not have more day-to-day power to direct us about our dealings with licences that are already on air. Once they are on air they accrue the right to be left on air unless they do something badly wrong or we have grounds not to renew them at renewal.

Ms Maddock—I can add something else. Our experience of our capacity to impose active conditions is that we are quite hamstrung. I would say that we are quite conservative in anything we do other than voluntary undertakings. So the risk I think you are going to have, of being aggressively intrusive on our part, is lesser than it might appear on paper. When our powers have been tested in this field, they have generally been shown to be relatively limited. There was a case three or four years ago with regard to a commercial radio station in Ipswich, Queensland, which we felt was going well beyond its licence area. We tried to impose conditions on them to make them an Ipswich station, which we felt they were. The AAT told us we could not do that. Of course, we then built that understanding of our powers into all our decisions. There was the case with Groove in Western Australia where we have been involved in quite lengthy litigation with them over the conditions we tried to impose. I think we are probably close to an agreement—I am not sure whether you would call it an out of court or an in the corridors of the court agreement—with them whereby we will take something that is less intrusive. So we build those into our understanding of what we can do.

Mr Tanner—Yes, I guess we have discovered over the years the threat of AAT review. The AAT is quick to substitute what it thinks is fair—the AAT member over the expert authority. Accordingly, I guess that threat of AAT review has always made the regulator very cautious to ensure that it does what it should have done anyway—that is, take account of the costs or the unreasonableness of any measure it proposes, the proportionality, all those sorts of issues. There is a very real risk that if we push a station too far over a condition, it will challenge it in the AAT. It will get bogged down there for years, potentially, and we may have our decision overturned. And it is quite resource intensive, not just for them but for us.

CHAIR—You mentioned earlier commercial stations making complaints about community radio stations. We know from evidence that former members or current members of community stations also make complaints. Who else makes complaints? What other sector do you get complaints from?

Ms Maddock—Narrowcasters, occasionally. They are a variant of commercial.

Mr Tanner—You probably get a mixture. You get some from members of the public. Very often it is people who are, or were, associated with the station or its competitors, or it is people who are offended, put out or feel they have been badly treated by the media. With the community sector there is probably more of an emphasis on people who see themselves as being unfairly subject to competition or people who have a particular grievance about the way the station is run.

I should say it is not relevant to us who you are; you have a right to complain if you believe there is a breach of law. I often hear from community broadcasters: ‘Yes, but they’re the local so-and-so. Of course they complain.’ My answer to that is: ‘We don’t just investigate complaints from cleanskins.’

CHAIR—On receipt of a complaint, what do you do?

Mr Tanner—If there is a complaint that there has been a breach of an issue dealt with in a code of practice—an example of that might be racial vilification—then our coregulatory scheme means that we tell them to go and complain to the station. We will assist them to do that, perhaps tell them where the station is. If they are dissatisfied with the response then they have a right to complain to us and get the issue resolved and settled. That is how the coregulatory scheme works on code issues. If the breach is about a mandatory standard, a condition or a requirement of law, the complainant has a right to come to us and have a complaint that there has been a breach investigated without recourse to the station.

CHAIR—A commercial radio saying, ‘That ain’t sponsorship; that’s advertising.’

Mr Tanner—That is a legal issue because that is in their mandatory licence conditions, so the commercial station does not have to go to the community service first, it can come direct to us. The mere fact that they allege that requires us to investigate and report back to them. We would then proceed to do that—of course giving natural justice to the station.

CHAIR—Does the station get to know who it was who made the complaint?

Mr Tanner—No. Quite often complainants ask that their identity be kept quiet, and we would respect that. The reason, at the very broadest, we would respect that is that in general when you are a law enforcement body it is in your interest that people bring complaints to you and not be afraid to do that for whatever reason. So if they have a concern about anonymity, we would respect that.

CHAIR—But when it is a commercial radio station I think the community sector knows it has to be a commercial radio station, and they probably know who it is. Does a commercial radio station need protection when it is complaining about a community making a complaint?

Mr Tanner—That is a question of policy for the law-makers. The current law is that there are—and I go back to my continuum—are limits.

CHAIR—Fair enough if it is a disaffected person from within the station and it is personal of if there are neighbours involved.

Mr Tanner—If you were a commercial station and you felt that you were losing advertising revenue because a station was selling advertising in a way that breaks the law, and they got that licence for free, under our current law they have a perfect right to complain to us—the same right that you would have or a disaffected volunteer would have. If they sought anonymity—whether or not people can see through that—we would respect that. I think you would find that most enforcement agencies, including the police, would have a similar policy because in general—

CHAIR—But it is more of a civil litigation, isn't it? You could compare that to a civil matter rather than a policing matter in terms of someone bringing a civil complaint and saying, 'Listen, I think you are taking my market share and I think it is restraint of practise'. You would know who the other side was. There can be some argy-bargy about whether there was some sort of demarcation where it should occur. Do you think that is the case?

Mr Tanner—I am telling you what the law is, I suppose.

CHAIR—But say that we recommended to change that and said that if a commercial station brings a complaint against a community broadcaster then that must be communicated to the community broadcaster. Would you see any problems with that? Would that generate any problems? Would it deter commercials from complaining to you?

Ms Maddock—No. They would just do it through a third party.

CHAIR—Right

Ms Maddock—There is a strong suspicion we would have that, with a lot of the complaints we may get about commercial television, they may well be through parties associated with the competitor.

Mr Tanner—You see there is no concept of standing with our complaints regime. For some legal jurisdictions, in order to really be heard and make an appeal you have to have standing. You can only go to the AAT about a decision to revoke a licence if you are the licensee. You can

only challenge under ADJR if you are a person who is affected by a decision more than an ordinary member of the public. So if you were an advocate for print-handicapped rights, you might have standing to challenge a decision to revoke a radio licence. There is no standing rule with our complaints regime; any member of the public can do it. This means that a radio station can do it or their friend can do it.

CHAIR—Can we build in some standings then?

Mr Tanner—That is a question for the parliament.

CHAIR—So you would say that to complain about sponsorship you would have to be a party affected by loss of market share in that advertising market; to complain about administration, constitutional or accounting errors within a station's operations you would have to be someone associated with that operation, like someone within that operation; and then to complain about content you could be any member of the general public. So to complain about vilification or things like that you could be any member of the public. Could you build in something like that?

Ms Maddock—One of the issues that you would have to look at is that the whole system depends crucially upon what you might call outsourcing the compliance, the monitoring, to the public so that the public have an active role in complaining and advancing those complaints.

CHAIR—That is about things in the code of practice though, like vilification?

Mr Tanner—Well no, you have the standards issue too in general.

Ms Maddock—I am not sure where things like cash for comment would fall. That was not raised by anybody who, in a legal sense, had standing—unless you consider that *Media Watch* has that.

Mr Tanner—Actually we self-initiated with that one.

Ms Maddock—We self-initiated the inquiry, but the issue was raised in the public environment by somebody who would not have had standing in that sense. A lot of the ongoing activity that has been about ensuring that those obligations continue to be met are, again, by the Consumer Law Centre—who may well not have standing under that sort of approach. I guess what I am saying is that I do not know that there is an easy answer.

Mr Tanner—I am wondering if the number of complaints you would get would reduce, because it seems to me you are identifying the groups most likely to complain in each case. So you would probably get the same sort of outcome.

CHAIR—You want to reduce the opportunity for the commercial stations to give the communities a hard time. They are going along on the smell of an oily rag anyway. Having to deal with commercial stations' issues is—

Ms Maddock—The situation where we found most profoundly that a community station was being hit with enormous costs of responding to complaints was one in Tasmania where we took the view—

Mr Tanner—It was not a commercial.

Ms Maddock—No. It was a disappointed community group complaining against the community group that got it. They lodged hundreds and hundreds of complaints of breaches which resulted in enormous cost to the successful licensee. We do not have the power to dismiss vexatious complaints, for instance.

Mr Tanner—Actually, Lyn, we do have the power to dismiss a vexatious or a frivolous complaint, but the point is that is a quite high test. In the end we did use that in that case.

Ms Maddock—But we do not have the power to dismiss vexatious complainers, was the problem. So we would have had to establish for each complaint that it was vexatious. We managed to do that so that—

CHAIR—So it might be handy to have a power targeting complainers rather than complaints.

Mr Tanner—We do at present have the ability—

Ms Maddock—That is a policy issue, but it can certainly be an issue for us.

CHAIR—It just consumes—

Ms Maddock—Absolutely.

CHAIR—You are looking at ways of reducing the legal costs and litigation costs in the sector.

Mr Tanner—I guess if I could generalise I would say that complaints by commercial broadcasters against community broadcasters are things that only happen to a minority—and probably not a very large minority—of community broadcasters. I would say that we do sometimes see a situation where one individual or group is responsible for a large number of complaints about a particular service. I can see that that puts the service in question under a lot of pressure. Under the present law we do have an obligation to investigate every time. We have a discretion not to investigate a complaint which is frivolous, vexatious or an abuse of process, but those are very high tests. Lyn was giving an example where we did in the end enforce that test. It is a very high test and, in general—

CHAIR—But a lower test might be handy.

Mr Tanner—Yes. It is no defence to say to us: 'Look, we know who is doing this. They keep doing it and it is really exhausting us.'

CHAIR—Would you be able to give us the statistics just in terms of how many are disaffected aspirants or internal members and how many are commercial radio, so we get the balance of where the majority of complaints are coming from?

Mr Tanner—I will look at that question and see what we know.

Resolved (on motion by **Ms Owens**):

That this committee authorises publication of the transcript of the evidence given before it at public hearing this day.

Committee adjourned at 10.58 am