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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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No. 59 2002-03

Broadcasting Legislation Amendment Bill (No.2) 2002

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13 November 2002

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Broadcasting Legislation Amendment Bill (No.2) 2002

Date Introduced: 23 October 2002

House: House of Representatives

Portfolio: Communications, Information Technology and the Arts

Commencement: The substantive provisions (Schedules 1 and 2) commence on the 28th day after the day on which the Act receives the Royal Assent

Purpose

To provide a new regulatory framework for community television (CTV) services.

Background

Community Television Trial

In October 1991 Federal Cabinet decided to refer the use of the last free-to-air television channel available in most parts of Australia that could be used to provide a high power service (the so-called 'sixth channel') to the House of Representatives Standing Committee on Transport, Communications and Infrastructure. The Committee recommended that the sixth channel be used for community television until a decision was made on its permanent use. In December 1992 the Government accepted this recommendation and directed the Australian Broadcasting Authority (ABA) to undertake a trial of community television. As there was no provision in the *Broadcasting Services Act 1992* (the BSA) to licence community television services on the sixth channel on a temporary basis, the ABA used the class licensing regime for open narrowcasters¹ to facilitate the community television trial. The apparatus licences were issued to community groups on a temporary basis with a special condition attached that the services be provided for community and educational non-profit purposes.

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Current Community Television Services

The Minister advised in July 1998 that the sixth channel could continue to be used by the community broadcasting sector until the introduction of digital transmission on 1 January 2001.

On 31 May 1999, the Minister unreserved the sixth channel spectrum in all areas except where licences had been issued for trial community television services, that is, in the Sydney, Melbourne, Brisbane, Lismore, Perth, Adelaide, Hobart and Bendigo areas. This was in recognition of the need to make available as much vacant spectrum as possible to assist in the planning of digital television services.

Currently licences are held in the Sydney, Melbourne, Brisbane, Lismore, Perth and Adelaide areas. The community group in Hobart withdrew its interest in providing a trial community television service and the ABA has not renewed the licence in Bendigo. The current CTV services are listed in the table below.

Location	Broadcaster	Internet Site	Channel
Sydney	Community Television Sydney Inc.	www.commtvsyd.com.au	Ch 31
Lismore	LINC TV Inc.	www.linctv.org.au	Ch 68
Brisbane	Briz 31 Inc.	www.briz31.com.au	Ch 31
Adelaide	ACE TV Inc	www.acechannelsix.com	Ch 31
Melbourne	Melbourne Community Television Consortium Inc.	www.channel31.org.au	Ch 31
Perth	West Australian Community Broadcasting Association (WACBA)	http://www.accesstvwa.com	Ch 31

Reports and Papers

Under clause 60C of Schedule 4 of the BSA, the Minister was required before 1 January 2002 to cause a review to be conducted into the regulatory arrangements that should apply to the digital transmission of CTV using spectrum in the broadcasting services bands and how access to spectrum should be provided free of charge.

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To assist the review process the Minister directed the ABA to conduct an investigation into the trial of CTV that has been conducted since 1992. The ABA submitted its report to the Minister on 31 July 2001. The ABA evaluation concluded that:

Most CTV operators are financially vulnerable due to high capital and operating costs. Some are overly reliant on a limited range of revenue sources, thus increasing their financial risks. The sale of large amounts of airtime or reliance on benefactors/creditors may lead to circumstances where the commercial entity or benefactor involved may, in practical terms, be taken to control the licence, and who may influence editorial and access policies. Such circumstances may also lead to a breach of the licence condition of operation for community and educational non-profit purposes.

Significant governance and accountability concerns have been raised about some members of the sector. These concerns centre on the extent to which operators, using free spectrum, offer open access to community groups wishing to make programs.

The temporary nature of the trial and licensing regime has added to the difficulty CTV operators have had in obtaining sponsorship and savings from longer term contracting arrangements--for example, in relation to transmission. The lack of certainty has made it significantly harder to achieve financial stability and to generate surpluses for reinvestment in programs.

CTV audiences are small. Research commissioned by the ABA indicates that on average only one in four Australians in CTV transmission areas watch CTV and close to one third of survey respondents had never heard of CTV services.

The nature and quality of services provided by operators is highly variable.

The ability to sustain regular transmissions has been difficult for some operators and is hampered by high transmission, equipment and maintenance costs.

Poor transmission quality has been a major problem throughout the trial period. Picture quality has been hampered by low power transmissions, high maintenance costs, lack of funding for equipment upgrades, seasonal variations and the absence of back-up equipment.

CTV original programming fills a niche not met by other services. However, no operator was able to fill its airtime with programming produced or provided by community groups, resulting in a significant amount of 'filler' or retransmitted programming.²

The Government also released a discussion paper on the digital transmission of CTV on 5 June 2001, and invited submissions from all interested parties.³

The final report was tabled in June 2002.⁴ It concluded that:

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- an immediate or short-term transition to digital transmission for the CTV sector was not necessary; and
- consideration be given to providing an environment in which the sector will have greater regulatory certainty with stronger accountability and governance arrangements.

In August 2002 the Department released a discussion paper on proposed legislative changes to the licensing arrangements for community television and called for submissions.⁵ This Bill is the outcome of that process.

Main Provisions

Item 1 of Schedule 1 inserts the definition of a new type of community broadcasting licence – CTV licences – in subsection 6(1) of the BSA. These are licences to provide television services that are not targeted to one or more remote Indigenous communities. According to the EM, this exclusion is because licensees providing services to remote Indigenous communities do not have the resources to meet the higher governance and accountability requirements placed on CTV licensees. **Item 3** inserts a new section 8B in the BSA which allows the ABA to determine which communities are ‘remote Indigenous communities’ for the purposes of the Act. Such determinations are disallowable instruments.

Item 4 of Schedule 1 substitutes subsection 81(1) with new provisions ensuring that a CTV licensee must be a company limited by guarantee within the meaning of the *Corporations Act 2001*.

Item 8 of Schedule 1 inserts a **new section 87A** in the BSA which contains additional conditions on CTV licences which are intended to ensure that CTV licences do not operate in the same way as commercial television broadcasting services, namely:

- licensees must not sell access to more than 2 hours air-time in any day to any profit making enterprise, unless it is an educational enterprise; and
- licensees must not sell access to more than a combined total of 8 hours air-time in any day to profit making enterprises; and
- licensees must not sell access to more than 8 hours air-time in any day to a particular person or company.

Access to air-time is defined as the right to select or provide programs during that time (**new subsection 87A(12)**).

New subsections 87A(7) to (10) will enable the ABA to determine other conditions for CTV licences. The ABA is required to seek public comment before making such determinations, which will be disallowable instruments.

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Item 12 of Schedule 1 replaces subclause 9(3) of Schedule 2 of the BSA with new provisions which increase the time available for CTV sponsorship announcements from 5 to 7 minutes in any hour.

Item 15 of Schedule 1 amends the *Radiocommunications Act 1992* to insert a **new subsection 103(4A)** which provides that transmitter licences for CTV licensees will be effective for analog transmission until 31 December 2006, or any other date determined by the Minister. Such a determination is a disallowable instrument.

Note: 31 December 2006 is the end date for the moratorium for the allocation of new commercial television licences, as provided by section 28 of the BSA.

In assessing the suitability of an applicant for a community broadcasting licence currently the ABA is only entitled to take into account:

- the business record of the company
- the company's record in situations requiring trust and candour
- the business record of the chief executive and each director and secretary of the applicant
- the record in situations requiring trust and candour of each such person, and
- whether the company, or its key officers has been convicted of an offence against the BSA or the regulations.

Item 1 of Part 1 of Schedule 2 amends subsection 83(3) of the BSA to broaden the range of factors that the ABA may take into account when deciding if an applicant is suitable beyond the items listed in the subsection.

Items 4 and 5 amend section 91 of the BSA to enable the ABA to refuse to renew a community broadcasting licence if the licensee does not meet the criteria for the allocation of a new licence. **Items 6 and 7** amend subsection 123(1) so that community broadcasters serving Indigenous communities can develop their own codes of practice. **Item 10** amends subclause 9(2) of Schedule 2 of the BSA to add two new conditions to the standard conditions for community broadcasting licences. These new conditions state that the licensee must provide the service for community purposes and must not operate the service for profit.

Note: the amendments in **Part 1 of Schedule 2** of the Bill relate to all community broadcasting licences, not just CTV licences (ie. they also apply to community radio licences).

Schedule 3 amends the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992* to reflect the decision of the High Court in *Australian Capital Television v Commonwealth* (1992) 177 CLR 106. This decision found that sections of the

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Broadcasting Act 1942 which prohibited political advertisements in election periods were invalid.

Endnotes

- 1 Section 18 of the BSA defines open narrowcasting services as broadcasting services whose reception is limited:
 - by being targeted to special interest groups, or
 - by being intended only for limited locations, for example, arenas or business premises, or
 - by being provided during a limited period or to cover a special event, or
 - because they provide programs of limited appeal, or
 - for some other reason.
- 2 This summary is drawn from Department of Communications, Information Technology and the Arts, 'The Future of Community Television', June 2002.
- 3 The Discussion Paper is available at: http://www.dcita.gov.au/Article/0,,0_1-2_1-4_105963,00.html. The submissions can be obtained from: http://www.dcita.gov.au/Article/0,,0_1-2_1-4_103007,00.html
- 4 Department of Communications, Information Technology and the Arts, 'The Future of Community Television', June 2002. The report is available at: http://www.dcita.gov.au/Article/0,,0_1-2_1-4_108299,00.html
- 5 The Discussion Paper and submissions can be obtained from: http://www.dcita.gov.au/Article/0,,0_1-2_1-4_111240,00.html

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