

SUBMISSION

BY

MEDIA ENTERTAINMENT AND ARTS ALLIANCE

TO

**SENATE ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY
AND THE ARTS REFERENCES COMMITTEE**

**INQUIRY INTO THE AUSTRALIAN COMMUNICATIONS AND MEDIA
AUTHORITY**

FEBRUARY 2005

The Media Entertainment and Arts Alliance

The Media Entertainment and Arts Alliance (Alliance) is the industrial and professional organisation representing the people who work in Australia's media and entertainment industries. Its membership includes journalists, artists, photographers, performers, symphony orchestra musicians and film, television and performing arts technicians.

The Media Entertainment and Arts Alliance appreciates the opportunity to make submission to the Senate Environment, Communications, Information Technology and the Arts References Committee Inquiry into the Australian Communications and Media Authority (ACMA) and to appear before the Committee on 10 February 2005.

The Alliance was asked to make comment on the manner in which board members of the new regulator might be dismissed.

Currently, a member of the Australian Communications Authority (ACA) can be dismissed if, in the opinion of the Minister, their performance has been unsatisfactory for a significant period of time. Further, if, in the opinion of the Minister, the performance of the ACA has been unsatisfactory for a significant period of time, all members can be dismissed.

“The appointing authority must terminate the appointment of a member or associate member if the Minister is of the opinion that the performance of the member or associate member has been unsatisfactory for a significant period of time” and “[T]he Governor-General must terminate the appointment of all of the members and associate members if the Minister is of the opinion that the performance of the ACA has been unsatisfactory for a significant period of time.”

A member of the ACA may also be dismissed for misbehaviour, bankruptcy and failure to comply with a number of the sections of the Commonwealth Authorities and Companies Act 1997.

Conversely, members of the Australian Broadcasting Authority (ABA) can only be terminated individually and then only for the more usual reasons of becoming bankrupt, applying to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounding with his or her creditors or making an assignment of his or her remuneration for their benefit, failure to comply with obligations under section 27F or 27J of the *Commonwealth Authorities and Companies Act 1997*, or extended absence from duty, as is the case with most statutory authorities.

The ACMA Bill has adopted the ACA model rather than the ABA model.

The Alliance considers the ABA model preferable to the ACA model.

The Alliance notes that the ACMA Bill in section 14 allows for the Minister to give directions to the ACMA in the following terms:

- (1) The Minister may give written directions to the ACMA in relation to the performance of its functions and the exercise of its powers.
- (2) However, such a direction can only be of a general nature if it relates to:
 - (a) the ACMA’s broadcasting, content and datacasting functions;
 - or
 - (b) the ACMA’s powers relating to those functions.
- (3) A direction under subsection (1) must be published in the *Gazette*.
- (4) The ACMA must perform its functions, and exercise its powers, in a manner consistent with any directions given by the Minister under subsection (1).
- (5) This section does not affect the Minister’s powers under the Broadcasting Services Act 1992 to give directions to the ACMA.

However, section 15 provides that the ACMA is not otherwise subject to direction in the following terms:

“Except as otherwise provided by or under this or any other Act, the ACMA is not subject to direction by or on behalf of the Commonwealth.”

Whilst these sections of the Bill are helpful, the Alliance nonetheless considers that the ministerial discretion in determining the termination of members is too broad and may compromise the independence from the Commonwealth direction that Sections 14 and 15 seek to clarify.