



The powers of Australia's communications regulators

Submission by the Australian Council on Children and the Media (t/a Young Media Australia) to the Senate Environment, Communications, Information Technology and the Arts Committee

February 2005

Young Media Australia (YMA) thanks the Committee for this opportunity to comment on the proposed merger of the Australian Communications Authority and the Australian Broadcasting Authority and creation of an Australian Communications and Media Authority (ACMA).

Information about Young Media Australia can be found at the end of this document.

Streamlining regulation

The policy underlying the move is sound – that is, it is a sensible response to the convergence of media and communications technologies to streamline regulatory structures.

For some time, YMA has been an advocate of greater simplification of Australia's regulatory structures on the media; our ideal would be a 'one-stop shop' where members of the community (especially parents) can gain access to information and address their complaints on all media including television, radio, films (including videos and DVDs), online services, computer games and telephony.

From reading the Notes on Clauses, we gain the impression that the streamlining achieved by the proposed legislation is limited to the structure of the organisation, and the opportunity has not been taken to restructure actual powers and decision-making processes to reflect convergences in technology.

For example, clauses 8, 9 and 10 track the existing categories of ACA/ABA functions (telecommunications; spectrum management; broadcasting, content and datacasting). Clause 59 provides for the continued existence of the Consumer Consultative Forum (CCF), formerly established by the ACA, but not for the extension of its functions to consumer interests relating to broadcasting. Rather the clause refers only to 'matters affecting consumers'.

YMA submits that this clause should be reviewed to make it clear that the CCF can deal with all consumer-related issues under the Authority's portfolio, including broadcasting and online services. Consideration should then, of course, be given to broadening the membership of the CCF to reflect its new role.

Community involvement

YMA sees the creation of the ACMA as an ideal opportunity to address one serious shortcoming of the current regulatory scheme, namely the absence of proper support for community involvement.

As noted above, the co-regulatory schemes relating to television, radio and online services place considerable onus on the community to detect breaches and bring them to the notice of the appropriate body/ies. In our view, this asks rather too much of the community unless resources are provided to inform the public about the content of the various codes and regulations, and to help them determine whether it is arguable that material they have seen constitutes a breach.

We are a well-established community organisation dedicated to staying informed and keeping an eye out for possible breaches, and it is hard enough for us to fulfill this function effectively. It is therefore virtually impossible to imagine the average member of the public doing so.

Naturally, there are numerous possible ways that this shortcoming could be addressed, but all involve the devotion of resources. We submit that the legislation should provide that a nominated percentage of the

money raised from the sale of spectrum licences should be earmarked for the establishment of a National Media and Communications Information Office, with the function of informing the public about the content of the various codes and regulations, and of counselling members of the public who think they may wish to make a complaint under the same.

For much the same reasons, YMA has reservations about the cost recovery provisions of the Bill. Generally we believe that cost recovery provisions risk compromising the independence of any government authority, because they bring the authority into a closer, and one may say dependent, relationship with certain stakeholders but not with others – in this case, with industry but not with the community.

On the other hand, clause 60 does not appear to limit the cost-recovery power to functions performed at the behest of industry; it therefore leaves open the possibility that the ACMA could seek to recover costs from community members whose complaints it handles. As noted above, the current scheme already places too great a burden on community members who wish to participate. The addition of money costs relating to such participation would leave nothing but an empty shell paying lip service to community participation.

The legislation needs to recognise that government has an important function in evening out a power imbalance between the media – including some of the wealthiest and most powerful corporations in our society – and the average person. Therefore clause 60 should be reviewed so as to limit the powers and function of the ACMA which can become the subject of cost recovery, excluding those in which the interests of the community come into conflict with those of the industry and the ACMA has a quasi-judicial role as arbiter of the conflict.

Expertise on the ACMA

Another shortcoming of the existing regulatory scheme is the absence of any requirement that one or more members of the ABA be a person with expertise in child development.

As one of the stated objectives (and in our view the most important stated objective) of the regulation of media and communications is the protection of children and young people, we consider it imperative that a person with knowledge of those groups' needs be closely involved in the administration of the system. Our experience with the ABA indicates persistent failure to consider issues from a child development perspective, and the inclusion of a child development expert in decision-making could go a long way to remedying this.

YMA therefore submits that a provision should be included, stipulating that at least one member of the ACMA should be a person with expertise in child development. It would also be desirable to stipulate that any Division dealing with matters relating to the protection of children and young people contain at least one such person.

Delegation of all ACMA powers?

We note with some concern the proposal to allow the ACMA to delegate all of its functions and powers to a Division (clause 50).

We have some difficulty understanding this provision in the context of the careful provisions establishing the structure of the Authority, for example its constitution by 7 members. Clause 50 raises the possibility that more than half of the Authority could be disenfranchised, by the delegation of all functions to a Division consisting of as few as three members. More likely, of course, would be the isolation of one or two members whose views might be considered inconvenient.

We note that the delegation can only be made in relation to 'the kinds of matters a Division can deal with'.

However there is nothing to stop the creation of a 'Division' that can deal with all matters, and subsequent delegation of all matters to that Division. Alternatively a series of Divisions could cover, between them, all matters under the ACMA's powers and functions, which could then be delegated to those Divisions.

YMA submits that clause 50 should be considered carefully, with a view to limiting the delegation power to certain powers and functions, and/or to a certain proportion of powers and functions. This is considered important as a way of maintaining the integrity of the organisation.

Conclusion

Generally YMA welcomes the development that the proposed legislation represents, but we do have some reservations, notably about the limited nature of the streamlining; the lack of provision for supporting community involvement in the regulatory scheme; the cost recovery provisions and their potential impact on community involvement; the absence of any provision requiring the inclusion of child development expertise in the skill set of the Authority; and the potential of the provisions on delegation to a Division to upset the balance achieved by the provisions establishing the structure of the Authority.

If the Committee has any questions or would like to discuss the above points further, please contact in the first instance the primary author of this submission, Associate Professor Elizabeth Handsley, on (08) 8201 5256.

YMA thanks the Committee for considering this submission.

About Young Media Australia

Young Media Australia (YMA) is the trading name for the Australian Council on Children and the Media. It is a unique national community organisation whose members share a strong commitment to the promotion of the healthy development of Australian children. Their particular interest and expertise is in the role that media experiences play in that development.

YMA is Australia's only national advocacy organisation representing the interests of children and young people in relation to print, electronic and screen based media.

YMA is committed to promoting better choices, and providing stronger voices in children's media.

Mission statement

Our mission is to promote a quality media environment for Australian children and to raise community awareness of children's needs in relation to the media.

What YMA does

YMA:

- collects and reviews research and information related to children and the media
- provides information and advice on the impact of print, electronic and screen based media on children and young people
- advocates for the needs and interests of children in relation to the media
- conducts and acts as a catalyst for relevant research.

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How YMA does it

YMA:

- Provides information to parents and caregivers via the Young Media Australia website www.youngmedia.org.au with over 60 topics relating to children and media use (including movie reviews). These topics are also available in hard copy format.
- Provides advice and information via a 24/7 national freecall Young Media Australia helpline 1800 700 357. Operators come from a strong child development and parenting perspective and can provide callers with research based information about the media.
- Represents community concerns about the impact of media on children and young adults to legislators, regulators and the media

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YMA structure

- a national not-for-profit community organisation, structured as a company limited by guarantee
- registered for the GST, has tax deductible status and is a Deductible Gift Recipient (DGR)
- has a national Board representative of all Australian states and its corporate members
- has a comprehensive organisational membership which includes ECA (Early Childhood Australia (formerly AECA Australian Early Childhood Association), ACSSO (Australian Council of State Schools Organisations), AHISA (Association of Heads of Independent Schools of Australia), AEU (Australian Education Union), SAPP (South Australian Primary Principals Association), Federation of NSW P&C (Parents & Citizens), Mothers' Union in Australia, Gowrie Child Centres

The national office of YMA is located in Adelaide.

YMA Corporate Management

The Board of YMA consists of one Honorary Director for each State and two Directors representative of corporate membership, that is ECA (Early Childhood Australia) and the AEU (Australian Education Union).

An Executive Committee of the Board, based in Adelaide, is responsible for the oversight of organisational functions. The Committee is supplemented by other members with special expertise who are based in SA.

Ms Barbara Biggins, OAM, is the Honorary Chief Executive Officer and advises the Executive Committee of the Board.