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# Official Committee Hansard

## SENATE

STANDING COMMITTEE ON ENVIRONMENT,  
COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE  
ARTS

**Reference: Communications Legislation Amendment (Information Sharing and  
Datacasting) Bill 2007**

TUESDAY, 7 AUGUST 2007

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**SENATE STANDING COMMITTEE ON  
ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY AND  
THE ARTS**

**Tuesday, 7 August 2007**

**Members:** Senator Eggleston (*Chair*), Senator Bartlett (*Deputy Chair*), Senators Birmingham, Kemp, Lundy, Ian Macdonald, Webber and Wortley

**Participating members:** Senators Adams, Allison, Bernardi, Boswell, Boyce, Bob Brown, George Campbell, Carr, Chapman, Conroy, Cormann, Crossin, Chris Evans, Faulkner, Ferguson, Fielding, Fierravanti-Wells, Fisher, Forshaw, Heffernan, Hogg, Humphries, Joyce, Lightfoot, Ludwig, Marshall, Sandy Macdonald, McGauran, McLucas, Milne, Moore, Nash, Nettle, O'Brien, Parry, Payne, Robert Ray, Siewert, Stott Despoja, Watson and Wong

**Senators in attendance:** Senators Birmingham, Conroy, Eggleston (*Chair*), Ian Macdonald and Wortley

**Terms of reference for the inquiry:**

To inquire into and report on:  
Communications Legislation Amendment (Information Sharing and Datacasting) Bill 2007

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**Committee met at 5.08 pm**

**CHAIR (Senator Eggleston)**—I declare open this public hearing of the Senate Standing Committee on the Environment, Communications, Information Technology and the Arts in relation to its inquiry into the Communications Legislation Amendment (Information Sharing and Datacasting) Bill 2007. The committee's proceedings today will follow the program as circulated. These are public hearings. The committee may also agree to a request to have evidence heard in camera or may determine that certain evidence should be heard in camera. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to the committee. If a witness objects to answering a question, the witness should state the ground upon which the objection is to be taken and the committee will determine whether it will insist on an answer having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may of course also be made at any other time.

A witness called to answer a question for the first time should state their full name and the capacity in which they appear. Witnesses should speak clearly and into the microphones to assist Hansard to record proceedings. Mobile telephones should be switched off.

I welcome everyone here today. In particular, if they are here, there is a South African delegation who may drop in and observe these proceedings from South Africa's National Council of Provinces.

**BUNCH, Mr Roger Geoffrey, Director of Engineering, Free TV Australia**

**FLYNN, Ms Julie, Chief Executive Officer, Free TV Australia**

**LONGSTAFF, Mrs Pam, Director of Legal and Broadcasting Policy, Free TV Australia**

**CHAIR**—I welcome the representatives of Free TV Australia. We have your submission as submission No. 4. Do you wish to make an opening statement?

**Ms Flynn**—I would like to make an opening statement if the committee permits.

**CHAIR**—That is fine. Please proceed.

**Ms Flynn**—Just to introduce myself, I am Julie Flynn, CEO of Free TV Australia. Free TV thanks the committee for the opportunity to appear today to discuss the issues raised in our submission. Our submission addressed the datacasting and information sharing amendments in the bill. The information sharing amendments were discussed more fully in the ABC's submission to the inquiry, which we fully support. Today we propose to focus on the datacasting amendments in part 2, division 1 of schedule 1.

On their face, these amendments appear to be very simple. They provide ACMA with the power to vary the frequency and transmission characteristics of datacasting transmitter licences. Free TV accepts that ACMA requires this power. ACMA may wish to change the frequency on which a service operates for a range of reasons including to avoid interference with adjacent television services. Our concerns are twofold: introduction of new services into the broadcasting services bands must be comprehensively planned to avoid interference at the

outset. That is, issues of interference with broadcasting services must be recognised and addressed before they occur, otherwise viewers suffer. Secondly, before making changes to the frequencies on which new services are permitted to operate, ACMA must first be required to assess in consultation with broadcasters the impact of the change on television services received by viewers.

It is important to understand that the channels assigned to datacasting were planned for high-powered services to traditional television reception equipment. This planning is reflected in the digital channel plans and technical planning guidelines applicable to services in the broadcasting services bands. These documents set the parameters which ensure that individual services in the broadcasting services bands do not interfere with one another.

As datacasting channel A will be used for services in accordance with the planned parameters of the digital channel plans and be able to be received on a standard television receiver, interference issues are unlikely to arise. However, the use of the other datacasting channel, channel B, will be for cellular based applications such as mobile television and this development has not been planned within the current digital channel plans.

ACMA's advice to the minister released under freedom of information identified issues of adjacent channel interference that 'would not be tolerable in Australia.' A case study based on Sydney showed that on average 1,000 people would be affected by interference from each additional mobile television repeater. We imagine there would be many tens of repeaters in a market the size of Sydney. To date, broadcasters have not been consulted on any planning for what might eventuate as the use of cellular technology in channel B. These new mobile television services cannot be planned in isolation. They must be planned to determine compatibility with broadcasting services.

Our immediate concern in relation to the current bill is that ACMA is not required to undertake any planning or prior consultation before making a change to frequencies for channel A and B licensees. It may well be that ACMA intends to undertake such a consultation before any change; however, we think that the issues of interference with existing television services are too important to leave to discretion. The level of reliance of Australian households on terrestrial television services is amongst the highest in the world. Australia is at a critical stage of the digital transition and it is important that the confidence of consumers is not undermined by interference to their television services from new services.

We respectfully request therefore that the committee consider an amendment that, prior to varying the conditions of a datacasting transmitter licence, ACMA ensure that technical guidelines have been developed for the proposed service including any variations to the frequency and other technical characteristics of the service, any proposed variation comply with those guidelines and that there be industry consultation on the proposed variation. My colleagues, Pam Longstaff and Roger Bunch, and I are pleased to answer any questions the committee may have. Thank you.

**CHAIR**—Thank you very much for that. I think we will go to Senator Conroy initially but the government senators may have some questions also, especially on this interference issue.

**Senator CONROY**—Free TV has noted its concern that the bill does not provide adequate protection against the disclosure of sensitive information that may have been disclosed to

ACMA on a confidential basis. Could you explain that to the committee and highlight the possible effects of this?

**Ms Flynn**—I think our concern is that we do not want to be having information passed on to others without it first coming back to us.

**Mrs Longstaff**—That information provided in confidence to ACMA should only be passed to other authorities in that same confidence.

**Ms Flynn**—On the same basis. Otherwise, information that is highly confidential and that may go to strategic interests in our business may then be made available more widely.

**Senator CONROY**—What sort of information are you concerned would be passed on to another agency?

**Mrs Longstaff**—There is a range of information that broadcasters provide to ACMA: financial information—

**Ms Flynn**—Technical.

**Mr Bunch**—Yes, certainly information that is provided that is not necessarily disclosed publicly that is used for planning purposes would be of interest to other organisations who may want to plan television broadcasting services. There is a wide range of technical information that is available that broadcasters are required to follow within the TPGs, within the DTTB planning handbook et cetera, but certainly there is some information that is provided through consultation, informal processes that should not necessarily be passed on.

**Mrs Longstaff**—There is a range of information that broadcasters may be required to provide in relation to cross-media ownership.

**Ms Flynn**—The proposed section 59F permits the disclosure of information if it is already publicly available, but we think that needs to be qualified to ensure that breaches of confidentiality, whether by ACMA or other persons, are not compounded by further disclosures. Confidentiality obligations in commercial contracts are commonly qualified in this manner and we have suggested the following wording for a proposed section 59F: ‘An ACMA official may authorise disclosure of information if it is already publicly available otherwise than as a result of a breach of an obligation of confidentiality owed to a person to whom the information relates.’

**Senator CONROY**—The committee wrote to DCITA and raised these concerns. DCITA responded: ‘This issue of privacy is adequately addressed as the bill provides for the ACMA chair to place conditions on recipients of the information and the ACCC and ACMA have signalled their intention to work together to develop guidelines for the handling of shared information.’ Does that adequately address your concerns?

**Ms Flynn**—I think that we would still prefer to see the issue and the matter that I just raised addressed in the guidelines in the legislation. That would be one area of concern.

**Mrs Longstaff**—My understanding of the bill is that information which is passed on to ministers, departmental secretaries, royal commissions and specified authorities can have conditions placed on them—that ACMA may impose conditions on information provided to royal commissions and specified agencies and one of those conditions may be, as you say, that the recipient does not further disclose the information, but the bill does not make any

provision for information disclosed to ministers or departmental secretaries to be made subject to conditions. I think it is just an overriding principle that information disclosed in confidence to one agency should not be passed to another without the same condition of confidence unless the original provider of the information waives that confidence. It is hard to envisage all the types of information that may necessarily be provided going forward. The bill allows for conditions to be imposed but that requires the chair of ACMA to consider the situation and impose the condition in each individual circumstance rather than there being an overriding expectation in the legislation.

**Senator CONROY**—So you are not saying that the information should not be passed on at all, just that it should be passed on on the understanding that it is kept confidential by the third party receiving it?

**Ms Flynn**—That's right.

**Mrs Longstaff**—That's right.

**Senator CONROY**—Free TV notes its concern that the proposed amendments to the Radio Communications Act 1992 will allow frequency variations to be made to datacasting services such as channel B without public consultation or a transparent assessment of the potential impact of such a change. Could you explain the importance of such a consultative process?

**Ms Flynn**—I will pass on to our director of engineering as he is more directly involved in these matters and has a long history.

**Senator CONROY**—If I could just add to that, Ms Flynn in her opening statement made some comments saying that you should not actually need to consult just afterwards because all of that should have taken place beforehand—that sort of consultation.

**Ms Flynn**—That's correct.

**Senator CONROY**—Could you take me through the usage there?

**CHAIR**—Just before you answer, Mr Bunch, I would like to welcome here a delegation from the National Council of Provinces of South Africa led by the Hon. Mr Setona. We welcome you here to observe this hearing, which is a short hearing of our Environment, Communications, IT and the Arts Committee. This is an IT hearing—information technology—and I hope you find it interesting and useful in terms of your observations of the activities of the Australian Senate. Mr Bunch?

**Mr Bunch**—Thank you very much. Senator Conroy, two points I would make very briefly: firstly, digital terrestrial television has been an evolving technology since 1996-97. Australia has been one of the first countries in the world to roll out these services on a widespread basis. We have been learning a great deal on a very sharp learning curve since 1997. Secondly, one of the keys to the success that we have had within this process is our digital channel planning consultative group that was initiated in 1997 by the ABA and allowed full, open and frank consultation at a technical level between the broadcasters and the planning department within the ABA. That has made a very successful process. All we are asking for is a similar process with respect to datacasting.

**Ms Flynn**—Given the potential for datacasting to interfere—

**Senator CONROY**—Could you explain to us non-technical people what happens when you say either channel B or channel A interfere? What are the potential ramifications?

**Mr Bunch**—One of the important things that we developed in 1999 when the legislation and the planning provisions were being developed was that in the first instance we would co-locate all our transmission equipment so it would be a first step to avoiding interference rather than moving the new digital transmitters to new sites to minimise that interference. In the same stroke, because we had not only the digital conversion that incorporated digital terrestrial television broadcasting but datacasting, decisions were made about datacasting along those lines.

The original guidelines for datacasting were based on high power transmitters that were from those same sites. For what is envisaged as channel A or type A, there does not appear to be a problem because it is reflected in the guidelines for our transmission characteristics for terrestrial television broadcasting; one and the same. However, if we are going to implement a different system—and I am making an assumption here that the channel B so-called mobile TV might have different characteristics, different transmission architecture such as a cellular network or a network that is based on a larger number of transmitters—then there is the potential for interference.

**Senator CONROY**—What does that mean in real terms? I am sitting at home watching my TV—

**Mr Bunch**—The important thing here is your antenna from where you might be getting an interference signal. At the moment we have antennas pointing to similar locations—collocations for both analog and digital, so we do not have the opportunity of getting some off-access signal from another direction that might cause interference. If we have a larger number of transmitters that are providing mobile television, we have the possibility of that occurring.

**Ms Flynn**—The digital cliff effect.

**Mr Bunch**—As well, with respect to the differentiation between the interference that you get to analog television services and digital television services—

**Senator CONROY**—It is the cliff effect with digital, I thought. If there is interference it would just go ‘whack.’

**Mr Bunch**—While digital provides us better pictures and better CD quality sound, the sensitivity of receiving those signals is far more critical, because instead of where the analog signal went to noise, in fact the digital signal just goes to black. So if we get compounded interference, we are going to have a greater impact on the reception characteristics of the television.

**Senator CONROY**—This is because it is being broadcast from the same kilt, so to speak.

**Mr Bunch**—If possible. Yes, the first step to minimise interference. The other important tenet that we had within our planning was of course the maintaining and pointing of antennas, if possible, to that location.

**Senator WORTLEY**—Can I just expand on what Senator Conroy has asked? If this goes through as it currently is without the changes that you are proposing or the amendments, what does that mean for someone sitting at home watching their television?

**Mr Bunch**—Increased levels of interference potentially to their existing digital services.

**Senator WORTLEY**—And increased levels of interference, you mean?

**Mr Bunch**—Blank screens. Basically the interference that some of us get at the moment in fact on our digital services, where we get large amounts of adjacent channel interference from other services, we just cannot get a signal. I live in a particular part of Sydney where in the adjacent channel to a particular service there is a lot of commercial land mobile activity and I know that it is causing me not to get that particular service.

**Senator IAN MACDONALD**—Have you raised this with ACMA?

**Mr Bunch**—A number of our issues have been addressed here, but also—

**Senator IAN MACDONALD**—What I want to know is: have you raised it and what was their response?

**Mr Bunch**—In two submissions we provided this information.

**Senator IAN MACDONALD**—What was their response?

**Ms Flynn**—We have not had any response.

**Senator IAN MACDONALD**—Do they agree with you? Do they say that your technicians are not as good as their technicians?

**Ms Flynn**—From the access under freedom of information to a paper that was supplied by ACMA to the government, they identified issues of adjacent channel interference that would not be tolerable in Australia and that is why there is a problem with channel B in Sydney.

**Senator IAN MACDONALD**—We will ask ACMA later. You might hang around to hear—

**Ms Flynn**—We are happy to. I think one of the points we would make is that there has been no consultation with us about the impacts on channel B to date; is that correct?

**Senator IAN MACDONALD**—That does not surprise me as a government senator.

**Senator BIRMINGHAM**—The department says in their response to questions asked by this committee that ACMA has recently conducted a public consultation on proposed amendments to the technical planning guidelines in the allocation of licence A and B datacasting transmitter licences.

**Ms Flynn**—We have submitted to that but you are asking me what—

**Senator BIRMINGHAM**—But there has been nothing that has come back from that consultation?

**Mr Bunch**—No. We are not unique in this process. Broadcasters overseas are going through a similar process within their regulatory environment.

**Senator IAN MACDONALD**—I am curious. If you are right, then you would think ACMA would be as worried as you would be, and certainly the government would be as

worried as you would be. I am wondering if ACMA are saying to you, 'Look, you do not understand. You are not as technically qualified as our people and you have got it all wrong.' You are saying that that has not happened to you; they have not told you that?

**Mr Bunch**—No, and if I could also make a judgement here it is that I do not think like a number of us do not have a solution. We are looking for a solution to all these issues in a number of other jurisdictions.

**Senator IAN MACDONALD**—That is why you think it needs to be so carefully planned beforehand?

**Mr Bunch**—Only last week the European Broadcasting Union put out a guideline on this.

**Senator IAN MACDONALD**—But will planning at the beginning avoid this by not having them close enough?

**Mr Bunch**—Absolutely essential to avoid problems.

**Ms Flynn**—Roger, I think it is fair to say that the protection ratios in having mobile television services in the broadcasting services band have not yet been identified. Is that correct?

**Mr Bunch**—Yes, there is a distinction here in a technical regulatory sense that broadcasting operates within a planned environment where we have protection ratios so that we virtually quarantine the amount of interference that we get to a television receiver.

**Senator IAN MACDONALD**—Perhaps ACMA's answer will be, 'You are just being too cautious.' They are prepared to take a bit of a risk whereas you want a Rolls Royce solution.

**Senator CONROY**—How many billion dollars has free-to-air television—

**Ms Flynn**—Over a billion dollars has been invested by the free-to-air broadcasters in the conversion to digital.

**Senator CONROY**—How much have ACMA got invested?

**Ms Flynn**—I cannot speak for ACMA.

**Senator CONROY**—Zero dollars.

**Mr Bunch**—Can I answer your question? The planning guidelines are a cautious approach. We have to take a planned and cautious approach to broadcasting, as we do to a number of other services within the radiocommunications technologies.

**Senator IAN MACDONALD**—I am just anticipating that ACMA may say you are wanting that Rolls Royce very, very safe thing whereas you will get by, you are just scaremongering.

**Ms Flynn**—I am sure there is not a government or opposition member of this parliament who does not know what happens when people have their television reception interfered with or have poor or no television interference.

**Senator IAN MACDONALD**—They do not have my telephone number, so you are wrong.

**Ms Flynn**—So that is why we have a black spots program and self-help programs. We are very concerned that we are at a critical stage in the transition. What Roger was saying earlier

was that we have rolled out technically extremely well in this country. Nobody else has done it as fast or across as large a part of the country as we did. Unlike the United Kingdom, we got the standard right at the beginning. We did not have the digital platform fall over and have to be reinvented as happened in the United Kingdom in 2003. All of that has been done.

**Senator IAN MACDONALD**—If you see it as a problem, why doesn't ACMA? I am trying to anticipate what ACMA might tell us later.

**Ms Flynn**—I have not seen what they have said to the committee.

**Senator IAN MACDONALD**—We will ask ACMA.

**CHAIR**—Your case is that there is interference in the current frequencies potentially and it should go to a higher frequency, is it not? Channel B.

**Ms Flynn**—What we are saying—

**Mr Bunch**—Upper band five. We take part, as our ACMA colleagues do, in a large number of forums. Free TV is a member of a number of broadcasting unions around the world and we have association with a number of broadcasting organisations from which in this particular process we have been gleaned information since 1995-96. The information that we have to date is that this is still basically a theoretical model and requires far more field testing to ensure that we have identified the correct planning parameters. There are a number of jurisdictions where field trials have been undertaken, including Australia. However, the solutions appear to be that self-mitigation that we refer to by putting the allocated mobile TV in the upper band five area region would cause us less interference to where we have the high powered services. The flip side of all this is that we want a solution for all. We do not want to also cause interference to the hand-held mobile receivers. That has been constantly a problem of us working in these forums to find this balance in the planning guidelines.

**Ms Flynn**—What we are saying is that if prior to varying the conditions ACMA will ensure that blah, blah, blah, that gives the certainty that these things will happen in a way that is consultative and can address the issues in advance rather than after they occur when everyone has troubles. We think that is in the datacasters' interests as well as in ours. So you must understand we are fundamentally not opposed to the government wanting to find or ACMA wanting to find the best—

**Senator IAN MACDONALD**—We are all heading towards the same direction but I would just be curious as to what ACMA or the government might say about your proposal. They seem reasonable to me.

**Senator BIRMINGHAM**—ACMA, in regards to your members, currently has the power to vary frequencies of licences.

**Ms Flynn**—Yes, it does.

**Mr Bunch**—But importantly what they have done over a period of time is consult. One of the important variations here is that we have enormous expertise through the broadcasting community throughout Australia who can provide on-the-ground feedback and advice about the propagation characteristics of signals in the areas to which they are going to apply those new changes or variations, also the topography and the demographics of what is happening with the population.

**Senator BIRMINGHAM**—So they have the power to vary, but there is a mandated consultation framework that exists.

**Mr Bunch**—There has been introduced a consultative process we would like to see continue.

**Senator BIRMINGHAM**—The explanatory memo to this legislation says that it would simply create a consistent approach for changing frequencies across channel A and channel B. Your contention is that it is not consistent because that consultation framework would not exist?

**Mr Bunch**—The real dilemma here is that some of the channel B allocations that were originally made back in 1999 with the plan for a high-powered DVB-T type service are not just suitable—and ACMA has identified this—for mobile TV. So what we are trying to do is provide advice through a consultative process that directs us all to an amicable solution.

**Ms Flynn**—So the issue is much more relevant in relation to these new services which are mobile and are not under the current planning arrangements and what we are seeking to do is to build in a consultation process in advance to ensure that these things are adequately addressed given that we already know that ACMA has identified that, in relation to channel B, there are major interference issues and we have not been consulted on them.

**Mrs Longstaff**—Could I just add that the two channels we are talking about—now called channel A and channel B—were planned in a consultative fashion as part of the digital channel planning group. It is just now that new different services that were not planned for will potentially use those channels.

**Senator CONROY**—What sort of services have been added in since then?

**Mrs Longstaff**—The services that were originally planned for were datacasting services that could be received on your standard television receiver at home.

**Senator BIRMINGHAM**—The new service has the notion that channel B will be a mobile TV service.

**Ms Flynn**—A mobile TV service.

**Mrs Longstaff**—A mobile.

**Ms Flynn**—As we said at the beginning, that has a different technical architecture which has the potential to interfere into all those other services that have been planned.

**Senator BIRMINGHAM**—Would the changes in this bill create consistency in the framework through which frequencies, be they for existing transmitters or for channel A or channel B, could be changed? Will it be a consistent approach, but what you are asking for really is an additional planning step be inserted prior to those frequencies going live essentially?

**Mr Bunch**—The framework within which we have operated for digital terrestrial television and broadcasting and datacasting, the datacasting model that was identified in 1999 has been in conjunction with the technical planning guidelines and the Digital Terrestrial Television Planning Handbook; two very important instruments that were developed by the Australian Broadcasting Authority and have been recently reviewed. The interesting thing is

that the technical planning guidelines still refer to datacasting, but what they refer to is the datacasting channel A model. What we would like to see is incorporation in the technical planning guidelines and as part of the consultation process, recognition of the same planning, if it is to be in the broadcasting services bands, for channel B.

**Ms Flynn**—And that is not written in at the present time.

**Senator CONROY**—ACMA unilaterally make changes if this bill gets passed.

**Ms Flynn**—As you said, they may well intend to do planning. What we are saying is that, because of the high potential for interference that has already been identified by ACMA, we think it is important to build this into the legislation now. It is not a major change and—

**Senator BIRMINGHAM**—Just to query Senator Conroy's question, ACMA would get to make changes with the same consultation framework as if it was making changes to the existing frequencies used?

**Senator CONROY**—No, there is an existing consultation process that is not included in this bill.

**Mrs Longstaff**—There is an existing planning framework for services in the broadcasting services bands. This amendment is to the Radiocommunications Act and there is no linkage back into those planning processes.

**Mr Bunch**—The broadcasting services licences are companioned with an apparatus licence. The datacasting licences are companioned with a radcomm licence. What we are concerned about is that we have got potentially two incompatible technologies being deployed in a planned band with a different architecture of regulation. We firmly believe, and the initial results of field trials that have been undertaken elsewhere and guidelines that we are receiving from some of our other broadcasting union colleagues indicate, that you cannot have incompatible planning. You have to have some reference of each service in order to have successful coexistence.

The way that the legislation appears to be framed at the moment is that there is not a reference by the potential datacasting variations to the Broadcasting Services Act and, therefore, there is this potential for interference to occur.

**Mrs Longstaff**—We should say that there is a reference to the existing technical planning guidelines, but those guidelines do not address new mobile services in those bands. They addressed the original datacasting model in 1999, which was your services to standard television receivers.

**Senator CONROY**—Unfortunately I have asked questions of ACMA about channel B and interference with channel B which you may have seen from Senate estimates a while ago—hopefully you have not, but it might make this line of questioning easier. ACMA indicated to us that there were problems with channel B because there was interference in the Sydney market, the Gold Coast market and the Sunshine Coast market. I was wondering would you be able to explain to us what that means to the best of your knowledge. I appreciate you have not been directly involved in testing and these sorts of things, but from your vast experience.

**Mr Bunch**—I will venture some suggestions. The first issue is the channel selections which I referred to before. In those markets you have identified, we have frequencies and

channels that are assigned within band four, which unfortunately could cause two things to occur: not only potentially if there was a cellular technology used for reception by the end user and therefore a cellular network, but interference from those new cellular transmitters into the receivers that are currently receiving DVB-T, importantly, in the home. Likewise, we are also concerned about some of the design of both the terrestrial receivers and also the hand-held receivers, that the high powered band four services from the terrestrial television could also cause interference back into the hand-held receiver.

**Senator CONROY**—Would this be on the basis of proximity? If you turned your mobile TV on at home you might interfere backwards and forwards between your TV in the lounge room and the one you are carrying around the house, or wouldn't it matter if you were two miles away?

**Mr Bunch**—It is proximity in both cases. First of all, you need a great deal more power to get to a hand-held mobile device from those cellular transmitters. Accordingly, from the high powered television broadcasting transmitters, if you were in the vicinity of those and the filtering is poor in the receiver, you are going to cause interference to that receiver. So this is why through trial and error and a number of reports that are starting to occur now in other jurisdictions we are starting to see the ill effects of poor receiver design in both cases, but also the importance of planning and the importance of architecture and complementary decisions being made about frequency selection, hence the points that we have made in our submission. We have made reference to the work that is being done in the United States, particularly in planning and field trials in the north-east of the United States with one particular technology, where they cleared, effectively, a particular frequency to allow these mobile services to be trialled, and it was successful.

**Mrs Longstaff**—My very simple understanding, if it helps, and Roger can correct me if I am wrong, is that in those particular markets that you mentioned the frequencies that have been allocated for channel B are too close to the frequencies on which television operates, so there is no guard band or protection distance for interference. Without that guard band, interference means that you can get either a very bad television picture or no television picture at all.

**Senator CONROY**—Okay.

**CHAIR**—This is UHF lower band, is it?

**Mrs Longstaff**—Band four, yes.

**Mr Bunch**—Those particular locations you have identified have, and as Pam has said, there are two mitigating effects that are used to improve interference rejection: one is geographic separation and the other one is frequency separation. That is the difficulty.

**Mrs Longstaff**—So they are both geographically and frequency close.

**Senator CONROY**—Too close. Okay. So if the channel B operator was to launch their service and all of a sudden TVs started dropping out, as is possible, you would suggest that it would make more sense to resolve this issue before you launched channel B than after you have launched channel B?

**Mrs Longstaff**—Television broadcasters have managed an interference management for the rollout of digital television because, similarly, rolling out digital television services in the broadcasting services bands meant there was potential for interference with analog television services. Indeed, in some cases there was interference. So we experienced firsthand the reaction of the public when that occurred and it was only through a very sophisticated interference management scheme that we were able to manage that interference and resolve it very quickly.

**Senator CONROY**—Let's just say channel B gets launched as it is configured at the moment. Presumably ACMA then would make the choice about moving somebody?

**Ms Flynn**—The government has said it will not allow channel B to interfere into existing services and we do not have any reason to doubt the government on that. What we are simply saying is if you are going to vary the allocation, which is perfectly acceptable, we understand there would be any number of reasons why you might want to, we first want to ensure that there is a proper planning process involved so that we do not end up dealing with the problem after the event rather than before the event.

**Senator CONROY**—Where can channel B move to spectrum wise? More importantly, where does Free TV get moved to if channel B gets given the priority by ACMA? What are your options? Let's say ACMA decide that channel B is going ahead.

**Ms Flynn**—The government has said they will not allow channel B to interfere into existing services. I do not think we should be speculating that the government is not genuine in that event.

**CHAIR**—We have got ACMA and the department coming after you.

**Ms Flynn**—I think the real issue is that we do not want to see a situation where there has been no consultation. These decisions are made with people thinking they are going to work out and then we find that they do not. Then we have to deal with the problem after the event. Presumably, they would then make the channel B licence holder switch off in those areas where they were causing interference.

**Mrs Longstaff**—It would be an enormous issue to change to the frequency on which television operated.

**Senator CONROY**—I thought that was the case.

**Mr Bunch**—The cost of changing or varying again the digital channel plans in band four for the terrestrial broadcasters would be met with a great deal of concern. I would venture to suggest that if we had a consultative process, we could identify potentially solutions for channel B, and that may well be, as we have suggested, in upper band five.

**Senator CONROY**—Who is in upper band five at the moment?

**Mr Bunch**—Terrestrial television broadcasters are. In fact, in our planning for digital services we ensured that there would be minimum digital allocations in current channel 69, if any at all, and few in channel 68.

**Senator CONROY**—Why haven't ACMA just said, 'Right, that's the place to put them?'

**Mr Bunch**—Not sure.

**Senator CONROY**—Is there a technological reason?

**Mrs Longstaff**—I think ACMA has said in one of its discussion papers that it was concerned about interference between mobile television and mobile GSM handsets, your standard mobile telephone. We do not understand that reason because—

**Senator CONROY**—Do they operate in channel 69 and 68 or in upper band five?

**Mr Bunch**—Yes, the GSM technologies operate above 900 megahertz. But from our reading of all the work that has been done, we do not understand why that is an impediment here in Australia.

**CHAIR**—Because it is used elsewhere? Senator Birmingham might have a question.

**Senator BIRMINGHAM**—Only one just to clarify on the matter of cost. Telstra has written to this inquiry as well and stated, ‘Unlike a broadcast television network, which is relatively inexpensive to retune, a mobile TV network must be rolled out on an additional number of towers to obtain adequate coverage. Hence, retuning is likely to be a costly exercise.’

**Ms Flynn**—We agree.

**Senator BIRMINGHAM**—So it is a costly exercise for Free TV to retune, you are saying, but you would agree it is even more costly for mobile providers.

**Ms Flynn**—That is right, and that is why the planning should be done in advance.

**Mrs Longstaff**—Rather than changing after the event when the interference has been caused.

**CHAIR**—There are problems possibly with interference in relocation. Do we have other questions or should we go to the department and ACMA?

**Senator CONROY**—I do not think Free TV have seen the answers that we got from the department when we wrote to them. It might be that we table them so that they are available.

**CHAIR**—We can do that if you want to.

**Senator CONROY**—DCITA states that ACMA has already undertaken a significant amount of analysis and planning in relation to mobile TV use of channel B and that it indicated in its December 2006 consultation paper how potential replanning would be undertaken in relation to channel B licence.

**Ms Flynn**—Yes, it did.

**Senator CONROY**—Does Free TV have any comment about that process?

**Ms Flynn**—Yes, we have not been consulted. We made the submission to that discussion paper. Roger, would you like to go across the issues we raised?

**Mr Bunch**—We had a number of concerns. First of all, we were very sympathetic to the tapestry of channels that were already assigned for channel B. We did not have any difficulties with the issues relating to channel A. But in fact, if you have a look at our paper, and there was an appendix to that paper, the issues that you have got in our latter part of the submission to you were expanded to a full degree where we had done a lot of theoretical analysis of ourselves based on a lot of desktop research and we are attempting through that analysis that

we provided to them, which are the same but expanded issues that we presented to you, to in a constructive way find solutions, but present the obstacles and challenges that are facing us all in developing a compatible environment. They are the same ones that we have in fact put in the submission to you but in more detail, and if you do not have a copy of those we would certainly be able to provide that to you.

**Ms Flynn**—It is in the 15 February submission.

**Mrs Longstaff**—We have outlined all the technical factors that needed to be planned for to ensure that there would not be interference. We have not had any further discussion with ACMA on that.

**Mr Bunch**—We talked in detail about the propagation characteristics of a fixed television signal, as we mentioned in your submission, and also the dynamics of mobile reception et cetera. So we have been consistent in our approach but also updating our knowledge as soon as new guidelines and reports have become available.

**Mrs Longstaff**—ACMA may have done further planning following those submissions. We have not been involved in that process. We have not been consulted on that process.

**Senator CONROY**—It has been suggested to me that moving channel 31 might be a solution here. Where does channel 31 fall in relation to upper band five, band four and channels 69 and 68?

**Mr Bunch**—It is in band four. Band four starts effectively down at channel 27 and goes up to the mid 50s and we have band five finish at 68.

**Senator CONROY**—Would channel 31 be a solution?

**Mr Bunch**—Again, in some locations around Australia you are going to run into adjacency. Adjacency issues manifest themselves as interference, and that is why we believe that we need to place mobile services quite separately to terrestrial broadcasting services, which have fixed reception characteristic.

**Senator CONROY**—Logically it seemed to make sense to me to put the mobile in with the mobiles rather than trying to mix them up, given they have such different characteristics. That would seem a logical thing to do. If you were to put them up into mobile TV up into channel 69, 68, or a variation around there, do you believe that would adequately solve the problem?

**Mr Bunch**—I not only believe that it would solve the problem but, if we looked at the long term, we would probably make mobile TV and its number of manifestations over a period of time, as technologies develop, a lot more secure.

**Senator CONROY**—DVB-H is not the only mobile TV. There is one that has been trialled, but I understand there is an entirely different mobile TV used in the US?

**Mr Bunch**—There are five different systems that are currently theoretically being developed at the moment and trialled.

**Senator CONROY**—There is one that is working quite successfully I understand in the US, though?

**Mr Bunch**—Yes, the one that is being trialled in the north-east of the United States is called MediaFLO. It is developed by the QUALCOMM Corporation and it is a very smart system. The other system that is being developed by our colleagues in Korea is TDMB, which is digital multimedia broadcasting. Of course we have DVB-H, which is also into its second generation of standardisation at the moment.

**Senator CONROY**—The reason I am asking that is: would any of these mobile TV options have the same interference characteristics?

**Mr Bunch**—They are differing technologies. It is dependent on not only the design of the transmissions—that is, the amount of power that is required—but also the sensitivities at any given time of the receiver population that you are going to have. There are different sensitivities in the design of the different receivers for the different technologies and therefore a difference in the way that you roll out the network. For instance, they tend to be cellular based, but of course our Korean colleagues have not only developed the transmissions for virtually through the air or wireless, but also they very successfully develop them in underground populated systems like the underground train system in Korea et cetera. So they are using lossy cable transmission techniques as well as fixed transmitters on towers.

**Senator CONROY**—That was a technical answer.

**Ms Flynn**—That was a very technical answer.

**Senator CONROY**—If I can just maybe rephrase my question.

**Ms Flynn**—They all cause some sort of interference.

**Senator CONROY**—At the moment we have not mandated DVB-H, as far as I understand, it is just that there is a mobile TV option and there will be, I presume, a variety of technologies being bid. Would all of those that you have mentioned—DVB-H, TDMB, MediaFLO—be resolved and put into upper band five?

**Mr Bunch**—Yes.

**Senator CONROY**—Would they have a problem if they were put into band four?

**Mr Bunch**—Yes.

**Senator CONROY**—It isn't like if you picked, say, MediaFLO, it could slide into band four without any dramas? All of them have the same fundamental characteristics because they are mobile?

**Mr Bunch**—The deployments we have seen for trials all rely upon a single frequency network or cellular type structure. So by virtue of this new topology coming in and new architecture coming into what is potentially being planned for the long term for terrestrial television with fixed reception, yes, they would cause interference.

**Senator CONROY**—Can you solve this problem particularly in Sydney for instance where I understand the topography of the landscape is an issue by building a lot more towers so they are not pointing at the same spot. So if you build a heap more towers around Sydney, you actually would not have the same problem?

**Mr Bunch**—The problem that we perceive in Australia is that we have high-powered singular transmissions, for instance in the Gore Hill triangle of Sydney. Where we get fringe

area reception in the outer areas of Sydney, if we were to place a mobile TV cellular structure within those areas where we are already getting fringe area reception it would impact drastically on the terrestrial television services and the reception of those.

**Senator CONROY**—When you describe those fringe areas, what are you describing?

**Mr Bunch**—A fringe area can be within the vicinity for instance of the Gore Hill triangle. It could be on the northern beaches where you just happen to be over a ridge, you are not direct signal and so if you have got a cellular tower nearby that has potentially got higher signal strength to the reflected signals you are getting from Gore Hill, you are going to end up with interference.

**Senator CONROY**—Thank you very much.

**CHAIR**—Thank you for appearing and we will get back to you.

**Ms Flynn**—Thank you very much to the committee for giving us the time to be heard.

**CHAIR**—You said you had some documents you wanted to table, is that right?

**Ms Flynn**—We can table our introductory statement and we are happy to provide the committee later if you want to have a look at our earlier submission.

**CHAIR**—Thank you very much.

**Senator CONROY**—If it helps, I am happy to have the department and ACMA together if that speeds the way.

**CHAIR**—That is what we are planning to do.

[6.01 pm]

**BEZZI, Mr Marcus, General Manager, Legal Services, Australian Communications and Media Authority**

**CHEAH, Mr Chris, Full-time Authority Member, Australian Communications and Media Authority**

**LONEY, Mr Mark, Executive Manager, Pricing and Policy Branch, Inputs to Industry Division, Australian Communications and Media Authority**

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

**BARNES, Ms Trish, Acting General Manager, Digital Broadcasting, Department of Communications, Information Technology and the Arts**

**BRIMBLE, Ms Holly, Manager, Commercial Broadcasting, Media Industries, Department of Communications, Information Technology and the Arts**

**NEIL, Mr Gordon, General Manager, Media Industries, Department of Communications, Information Technology and the Arts**

**PELLING, Dr Simon, Acting Chief General Manager, Content and Media, Department of Communications, Information Technology and the Arts**

**CHAIR**—I welcome the representatives from the Australian Communications and Media Authority and from the Department of Communications, Information Technology and the Arts. I remind members of the committee that the Senate has resolved that departmental officers shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions to superior officers or to a minister. This resolution prohibits only asking questions on opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Do you wish to make any kind of opening statement, ACMA or DCITA?

**Mr Loney**—No.

**CHAIR**—We will hand over to Senator Conroy and try and get your views on some of the issues which you raised.

**Senator CONROY**—Did you just invite them to respond?

**CHAIR**—I did. I invited you to ask questions.

**Senator CONROY**—You didn't want to respond—

**CHAIR**—They did not want to make an opening statement.

**Senator CONROY**—Not respond to some of the issues that were raised.

**CHAIR**—I did not actually put that to them. Did you want to respond to the issues that were raised in that discussion with Free TV or would you rather just respond to questions from the senators?

**Dr Pelling**—I think we would be quite happy just responding to questions because I am sure that senators will raise the issues that Free TV has raised.

**Senator CONROY**—Free TV indicated that government policy was for there to be no interference between channel B and free TV; is that correct as far as you are aware? Is that the stated policy position?

**Dr Pelling**—I think it is important an issue which was dealt with by ACMA through its planning processes and fundamentally my colleagues at ACMA I am sure will be prepared to explain the detail of the interference management process, but fundamentally as part of the planning of the frequencies for these different services involves a very careful management process for interference matters.

**Senator CONROY**—I thought Free TV were fairly clear and I am trying to make sure there is not a misunderstanding. Is government policy as described by Free TV that channel B will not interfere?

**Dr Pelling**—If you are talking about government policy in the sense of a specific announcement by the minister in that regard, I do not recall one, but certainly we would be concerned if there were significant interference issues and ACMA's planning is designed specifically to avoid that.

**Senator CONROY**—ACMA, is that your understanding, that there is a commitment from the government in a policy sense that there is to be no interference between channel B and free TV transmissions?

**Mr Cheah**—Chris Cheah, I am one of the full-time members of ACMA. I think the way Dr Pelling just described the situation is our understanding as well.

**Senator CONROY**—There is no specific policy that you are aware of?

**Mr Cheah**—No specific ones, but nevertheless the entire planning process around planning for television channels is in fact fairly robust and is designed to prevent as far as possible interference happening and to put in place procedures for dealing with the problem should such problems arise. ACMA has been very clear in our consultative processes that we have been quite strongly committed to making sure that channel B will not actually interfere with any existing television services.

**Senator CONROY**—As far as possible, no interference?

**Mr Cheah**—As far as humanly possible, that is right.

**Senator CONROY**—Fortunately most of the interference is not caused by you, it is caused by machines, but I guess that does not count then—or does it count? You might wave your hand in front of the aerial and it might interfere, but we have got a commitment you are going to make sure that does not happen.

**Mr Cheah**—We have a robust process in place which is designed to minimise interference and then to deal with problems should they arise.

**CHAIR**—Does your robust process involve going up into higher UHF channels and frequencies? That seems to be the solution.

**Dr Pelling**—I think the channels that are available were identified by ACMA as part of the original digital television channel planning process.

**Senator CONROY**—Was that back in 1999?

**Dr Pelling**—It would have been around about then or slightly later.

**Senator CONROY**—That was identified originally for datacasting, not mobile TV? That was a point made by the previous witness.

**Dr Pelling**—Yes, they were identified for datacasting although I would emphasise that datacasting as a concept relates to types of content rather than technologies by which it is delivered.

**Senator CONROY**—But back then the point was made that it was not a mobile TV cellular system when you allocated those channels?

**Dr Pelling**—I think it is true to say that the planning was done on the basis that the most likely use as we understood it or as ACMA understood it at that time was for services which used the same technology as terrestrial broadcasting—television more recent development.

**Senator CONROY**—I accept that policy that changed. I accept that point. What is a reasonable level of interference with free-to-air?

**Mr Loney**—Mark Loney, Executive Manager, Pricing and Policy Branch, ACMA. Mr Cheah has mentioned I guess the robust planning processes that we have and I would include in that the consultative mechanisms which we have already gone through in relation to the allocation of channels A and B, and that includes two discussion papers where ACMA identified interference risks should channel B be used for the provision of mobile services and made it quite clear that we would not tolerate the deployment of mobile services—in fact, any services that crystallise that risk that made it eventuate. As a result of that, we have taken a number of steps to make sure that should the licensee—the owner of channel B—decide to use that channel for mobile services because—

**Senator CONROY**—Which channel is that?

**Mr Loney**—Channel B. Channel B does not have to be used for mobile services. Channel B can also be used for fixed in-home datacasting services and that will be a choice of whoever purchases that licence. As was mentioned earlier, we consulted about some amendments to the technical planning guidelines. As a result of that public consultation process the authority has actually made those changes to the technical planning guidelines and they will be publicly available shortly from the federal register. As to the whole intent of having identified that there is a potential risk, ACMA has made it quite clear all the way through the process so far that that risk will result in limitations or constraints on the channel B licensee, that channel B will not be able to be operated in such a way as to cause interference to existing free-to-air television services.

**Senator CONROY**—Can that be done in band four?

**Mr Loney**—At the moment we are going through a simulcasting period for television services, so broadcasters are transmitting in both analog and digital and that means that the broadcasting services bands—the UHF band and the VHF band—used for television are congested. There is a lot of spectrum being used to provide the simulcast services. The digital

channel planning process that allowed the introduction of the digital services that we are currently enjoying resulted in the identification of two channels in each licence area across Australia that could be used for additional services. They are the two available channels.

**Senator CONROY**—But they were identified not for a channel B cellular system.

**Mr Loney**—There are a number of assumptions that are being made in the discussion and one of them is the assumption that the use of channel B for a mobile service will require the deployment of a cellular system. There was some mention before of MediaFLO, which is a technology developed—

**Senator CONROY**—I tried to ask that question.

**Mr Loney**—If you talk to QUALCOMM, they will say that MediaFLO is designed to operate in a manner that is entirely compatible with fixed in-home television broadcasting—that it is a high-power, high-site solution to mobile television broadcasting. They are deploying across the United States—I think Mr Bunch mentioned that they were trialling in the north-east of the United States. My understanding is they are now actually deploying to other markets across the US.

**Senator CONROY**—That is my understanding as well.

**Mr Loney**—It is still early days, but QUALCOMM are quite definite that a cellular deployment is not required to implement MediaFLO as a mobile television solution. Mobile television is an emerging field. There are a number of technologies; DVB-H has been mentioned as well which has been trialled in Australia. The issue for us in terms of planning, having identified that there are risks associated with the deployment of cellular technologies at a time when we have a number of competing technology standards, is to let the licensee make the decision about which is best suited to their service requirements and the planning arrangements that ACMA has in place which are intended to protect the reception of existing services by people in their homes with their existing antennas.

**Dr Pelling**—If I can just add to that in regard to the band five channels too. Firstly, in a market like Sydney for example, the channels, possibly with the exception of the ones right at the very top, are all used and so if you were to reallocate those channels for mobile you would have to relocate the broadcasting services that are already in them, if they are already in them. The second point—and Mr Loney might be able to correct me on this if things have changed, but my understanding from a few months ago was that the handset technology for mobile television reception was such as it precluded you being too close to GSM mobile spectrum, which is just above the top of the UHF spectrum. The reason for that is because the handsets are not just mobile TV handsets, they will be devices which include a range of technologies, one of which of course will be standard mobile phone technology. The chip sits in the design of the handset as such and if you put the frequencies for the mobile television service too close to the frequencies for the GSM service, then there is interference that occurs in the handset. That may be able to be overcome over time with improved technology.

**Senator CONROY**—I was going to come to the question of GSM colliding with mobile TV. If I could just stay for the moment in band four, so we will come to the band five issue and whether that is a solution that has been suggested. The previous witnesses were quite emphatic that none of these other mobile TV technologies could operate in band four where

they have been identified at the moment. You say that is not right? They were quite emphatic and it was a one word answer. It was as emphatic as ‘No, none of these can operate safely—’ if I can use that phrase, ‘—without interference.’

**Mr Loney**—Broadcast Australia has conducted a trial of the DVB-H technology in Sydney and we are not aware of any significant interference issues that arose from that trial. Once again it comes down to the assumptions I think people are making about how a channel B licensee would deploy a mobile television service. At the moment, we are still at a situation where there are a number of technology choices that a channel B licensee can make. Once the licence is allocated, if they have not already selected a technology, they would select their technology and commence their planning. If they identified the need for additional sites for infill repeaters, or any additional sites, they then need to come to ACMA and let us know what they think their requirements are and that is when we would start our processes.

**Senator CONROY**—Should that be identified before purchase?

**Mr Loney**—No, because—

**Senator CONROY**—Presumably if someone wants to come and buy this thing they have got to demonstrate to you before you will sell it to them that they are not going to interfere. In other words, they should give you their repeater sites and all that sort of stuff upfront so everyone can comfortably say, ‘It is fixed.’

**Mr Loney**—No, the approach that ACMA is taking is actually the reverse of that. We are making it very clear through things like the technical planning guidelines that we will not allow them to operate in a way that will cause interference. In effect, the risk is actually on the purchaser of licence B to make their own technical judgements about what is the most appropriate technology for their service model and to work through the issues associate with deploying whichever technology they wish in a way that does not interfere with existing services.

**Senator CONROY**—Was the BA trial on a cellular network?

**Mr Loney**—No it was a high-powered, high site.

**Senator CONROY**—Okay, so when we ask about whether cellular interferes and you say BA have just done a trial, it is not comparing apples with apples?

**Mr Loney**—My recollection of—

**Mr Cheah**—I think your question, Senator, was there was a claim being made that all of the band four frequencies were unsuitable for mobile television. I think Mr Loney made the observation that BA was conducting a trial. They are clearly using technology and it does not seem to be causing interference at the moment. So there is one example of a possible deployment strategy which could be done which may not have completely optimal things in terms of coverage but nevertheless has been done in such a way that does not seem to have caused interference.

**Senator CONROY**—This comes back to your question of an assumption about what technology would be used.

**Mr Loney**—And how it is actually deployed. You suggested that we should decide beforehand, but then at the moment I think there are five competing mobile television

technologies. I will not try and go through all the acronyms, but there are five technologies out there. They all have different technical characteristics. We do not know who the service model or the channel B licensee will be. What coverage will they actually be seeking to provide through the channel B licences or transmitters operated under the channel B licences.

**Senator CONROY**—The problem is you are not going to know the amount of interference until channel B turns on, by the sound of it.

**Mr Loney**—No, that is not the case because we have a large number of modelling tools and this also is not an exercise we would embark on by ourselves. Mr Bunch mentioned the Digital Television Channel Planning Consultative Group that was set up as part of the process that resulted in the digital channel plans that identified the two unassigned television channels. I would like to make the point that there was no statutory requirement for the ABA to establish that consultative group. The ABA, like the ACA, like ACMA, as a matter of good practice, quite often uses consultative mechanisms that are not statutorily required—

**Senator CONROY**—It sounds like it has been nearly eight months since the last consultation. That does not sound to be an optimal level of consultation.

**Mr Loney**—No, there was another discussion paper released earlier this year.

**Senator CONROY**—December 2006.

**Mr Loney**—We have consulted about changes to the technical planning guidelines, but I think the assumption is that, for an unknown channel B licensee deploying an unknown technology with an unknown business model, we should be able to solve all their problems beforehand. I just do not think that is the case.

**Senator CONROY**—You should not be able to solve them. They should be able to convince you they have solved them.

**Mr Loney**—No, I think all we need to do is provide a planning and regulatory environment that makes it clear what they are not allowed to do, which is that they are not allowed to cause interference to existing free-to-air services. Within that constraint which is set out in detail in our technical planning guidelines and other regulatory arrangements, that they can then come up with a solution that best suits their business model on the technology that they wish to deploy.

**Dr Pelling**—Another point worth making in that regard is that the government decided that the channels would be auctioned so you would not know who is the winner in the channel allocation process and therefore what—

**Senator CONROY**—But you have already put in writing to them that they cannot turn it on unless they can guarantee no interference.

**Mr Cheah**—Yes.

**Senator CONROY**—I thought that is what you indicated that you said to them.

**Mr Cheah**—Yes, we have and we made that very clear.

**Senator CONROY**—That is in writing.

**Mr Cheah**—In our two discussion papers we put out a discussion paper in December and another discussion paper in March, and in both discussion papers it is made very clear that if you buy the channel B licence, you will not be able to interfere with the existing analog.

**Senator CONROY**—Discussion papers are one thing, they are not legally binding.

**Mr Cheah**—The technical planning guidelines which we keep on referring to are and they go into a lot of detail about this.

**Senator CONROY**—They are to be incorporated in the tender process.

**Mr Cheah**—They are the law anyway.

**Mr Loney**—The technical planning guidelines are made under the Broadcasting Services Act but will in actual fact be a licence condition that will apply to the channel B licence, so they have to comply with—

**Senator CONROY**—Given that they have to comply, why do we need this amendment that gives you the power to move people around?

**Dr Pelling**—There have been a lot of issues raised in this discussion which go completely beyond the amendment. The amendment really is a very technical amendment which is designed to give ACMA the kind of ability to, for example, reallocate frequencies for an apparatus licence which is what the datacasting transmitter licence is a form of. At the moment it is the only class of licence and there was no particular policy reason behind this, it is the way the legislation was drafted, it is the only category of apparatus licence which ACMA does not have the ability to change a frequency for after it is allocated. At the moment it allocates a frequency to the licence when it allocates and that is then essentially locked in and ACMA does not have any ability to change it. Any other class of apparatus licence for a taxi mobile system or some other sort of system—

**Senator CONROY**—TV stations and taxi licences.

**Dr Pelling**—And TV stations as well. ACMA can change the frequencies. But in this one, by a legislative anomaly, it cannot. So this amendment is not getting into any of these sorts of bigger policy issues about planning for channel A or channel B. All it is designed to do is to—

**Senator CONROY**—It looks like it to me.

**Dr Pelling**—Sorry?

**Senator CONROY**—It looks like it to me.

**Dr Pelling**—All it is designed to do is to give ACMA a power in regard to one category of transmitter licence which it has for all other categories of transmitter licence and therefore, if you like, fix an anomaly in the act. If we did not do this, ACMA, for example, would not be able to change the frequency of a channel B licence if it was to be found causing interference and another channel were available. It may or may not be the case. If we allocated it in channel X, then it would always have to transmit in channel X. This means that if you put it in channel X, ACMA can then, if there is an issue with that or the licensee may at some stage come to ACMA with a request for a change, or when the analog television services are switched off there is some desire to look at the overall allocation of the spectrum that was used for analog services et cetera, it would be the annual channel which there would be no

ability for ACMA—or the licensee or for that matter should they make a case to do so—to change. So this just fixes a technical anomaly—it is one issue which is tagged on to the bill of the information sharing matter. There may well be issues in this broader debate and we can have a discussion and debate about this whole set of wider planning issues. I would emphasise that there is a whole process still to go through because as the minister made clear at the last estimates hearings there are still policy issues around the allocation of channel A and channel B—channel B in particular. But this is not designed to fix those problems.

**Senator CONROY**—That is exactly what it looks like from where I am sitting, I have to tell you.

**Dr Pelling**—From our perspective, it fixes a technical anomaly in the system.

**Senator CONROY**—Where would you move them to if you had the capacity to move them? They are told they are not allowed to broadcast into this area that causes interference. My assumption is if they do that, they are turned off—not you suddenly move them somewhere else. Where would you move them to?

**Dr Pelling**—It may be open to the person who has a particular frequency and it would not just be channel B. It could be channel A, or some other operator of a service wants to move—or another channel becomes available which might be better and ACMA might negotiate—

**Senator CONROY**—This is one of the issues where I get really concerned, because I got the sense from one of the descriptions before that part of the problem was because you have got dual simulcast of analog and digital at the moment, the problem will actually dissolve once there is only the one channel. I got some sense that the problem was perhaps because of that simulcast that that was actually the problem and once the simulcast is over period, hey, problem solved.

**Dr Pelling**—I think it is true to say that the congestion of channels in some markets like some of the eastern seaboard metropolitan markets makes this problem much more difficult, because there is a very close packing of analog and digital channels.

**Senator CONROY**—To me, what happens to that spectrum that becomes free is a government policy decision.

**Dr Pelling**—That's correct.

**Senator CONROY**—Not your way of solving something that you should not have let happen in the first place. To me, that is not a solution for you.

**Dr Pelling**—I think the whole question of what happens to the analog channels when they become available is—

**Senator CONROY**—And you should not be planning on the basis of what you think—presenting a fait accompli to any government of what we have already—you cannot do that with that now free spectrum because it is actually what is going to solve this problem here. It does not seem to be a sensible way of operating.

**Dr Pelling**—With respect, the decision was taken by this government to allocate two channels and we are working through the best way of allocating those two channels. That is legislated by the parliament.

**Senator CONROY**—I understand that.

**Dr Pelling**—But we are not doing anything—

**Senator CONROY**—You seem to be pre-empting a future decision—it does not matter who is in government. The sort of logic that you put forward earlier and the implication of what was said earlier was you are pre-empting what will happen with the future free spectrum.

**Dr Pelling**—I am not sure why you are reaching that conclusion because essentially we have a policy decision by the government to allocate two channels—A and B. It turns out that one of the emerging technologies should be mobile television, so we have to factor that into the debate. The process which we are now going through is to find the best way to put in place the process for allocating those two channels and part of the consideration for allocating channel B must be our capacity to optimise it for mobile should that be the desire of the applicant who wins that spectrum to use that spectrum in that way.

I do not think you can build in any assumptions about how the market might react and what sort of spectrum might or might not become available, or what sort of issues may arise over the course of the next few years in relation to this or any other kinds of services which may influence what sort of digital dividend—if I can use that expression—the government gives at the end of the day. All we are trying to do now is start a process which the government has set in legislation and which we have to undertake.

**Senator CONROY**—Let me try and be a bit more specific then to explain. The impression I got, and it could be wrong, was that part of the problem with where B is currently aimed is that the simulcast here—and I think Free TV made the point that was not enough buffer—is that the word? Safeguard? Is that the correct technical term?

**Dr Pelling**—I understand what you mean.

**Senator CONROY**—But the implication I got was that once there was not that simulcast period, then the safe buffer could be created which would encroach on your future digital dividend. To me that is not a planning process that you are authorised in any way to make. That is just how it sounded from the description: ‘It will be okay because we can then open up the buffer from either side which by definition reduces.’

**Dr Pelling**—There is no decision that more than the seven megahertz channel that has been allocated to these two services will ever be allocated to them, so I certainly do not think you should read into any of this that the government or ACMA will automatically decide that we should use some of the vacated analog spectrum to pad the side so that does not interfere.

**Senator CONROY**—The future government could suddenly be told when the simulcast is over, ‘No, we actually need to put in a wider buffer.’

**Mr Cheah**—I think, if anything, the amendments actually give us more flexibility. I think you actually run into a bigger problem in the sense of the problem you are talking about if you do not pass these amendments because, if you do not, we award a licence for 10 years and we say it is for this particular channel here with these particular frequencies. If we have no ability to move, then I suspect you actually cut off your options further down the track in terms of those—

**Senator CONROY**—No, you cut off channel B. That is what you cut off.

**Senator IAN MACDONALD**—That is hypothetical, though, when you are talking about other government.

**Senator CONROY**—No, I am saying any government. It does not matter.

**Senator IAN MACDONALD**—Could I plead your indulgence because I do have to go.

**Senator CONROY**—Jump in.

**Senator IAN MACDONALD**—You may well have answered it, but quickly before I go, did someone hear the evidence of the previous witnesses?

**Dr Pelling**—Yes.

**Senator IAN MACDONALD**—They have proposed an amendment which, to me, seems quite reasonable. How do you answer that; do you agree or disagree? Are you in a position to agree or disagree, or is it a government policy decision? As I understood it, correct me if I am wrong, they are suggesting an amendment which will require prior planning and consultation by ACMA. That, to me, seems eminently reasonable.

**Dr Pelling**—To answer your question it might be helpful if ACMA just details to you the processes. Mr Loney has gone into that to a certain extent, but we could deal with the processes and the types of consultations that they have done and will do in regard to allocation of the spectrum.

**Senator IAN MACDONALD**—I do not think we have enough time for that and I would rather you answer my questions. Are you saying that the amendments proposed are, policy wise, wrong for some reason and, if they are, can you tell me the reason?

**Dr Pelling**—It would be a policy matter for the minister. It is not a matter that I can—

**Senator IAN MACDONALD**—So it is a policy matter?

**Dr Pelling**—It is a policy matter for the minister.

**Senator IAN MACDONALD**—I must say from previous hearings that I have had in the telecommunications area, the lack of consultation by my government seems to be very, very poor. So when people say to me, ‘We weren’t consulted’ or ‘The consultation is no good,’ I easily relate to that. Perhaps unfairly and unfortunately the minister is not here to defend the department and herself. I treat these things responsibly, but I, like everyone on the committee, want to get a result that is good for the Australian public, and dare I be so crass as to say the voters, but it does seem to me that Free TV Australia had a sensible amendment that suggested—and I can well believe the suggestion, as I say—that the consultation was not perhaps as good as it could have been, with time constraints. I am wondering if anyone is prepared to say to me why that is a bad idea. Is it purely a policy position which I should ask the minister?

**Mr Cheah**—Can I firstly pick up on a factual issue which you just raised? You said that Free TV had said that we had not consulted. My impression was that that they said—

**Senator IAN MACDONALD**—I do not want to get into that. You heard them, didn’t you?

**Mr Cheah**—Yes.

**Senator IAN MACDONALD**—And you heard my questions to them. These are a bit unfair to the public service and I accept that, authority people. It seems to me if that amendment were passed, what harm could be done. It puts a bit of an additional onus on ACMA to actually consult. I think Free TV said that you probably would consult, but then you may not. It seems to me that it is not a bad suggestion for an amendment. I do not want to really draw you on things that you should not be talking about, but what I am really asking is: is there a technical reason why what Free TV were asking—and we went through a lot with Free TV, but their basic underlying thing as I understood it, was that they thought if there was an obligation to consult, an obligation to pre-plan, we would all be better off.

**Dr Pelling**—As I said earlier, I think that a decision on that would be essentially a matter for the minister. Is there a technical reason why I am not familiar with—I would prefer not to say off-the-cuff how such a proposition might be woven into the existing planning and allocation process—

**Senator IAN MACDONALD**—I am sorry, which of you are from the department and which from ACMA?

**Dr Pelling**—I am from the department.

**Senator IAN MACDONALD**—You are advising the minister. The minister must have said, ‘Do we need to have these proposals that Free TV have put in about consultations?’ And you must have said, ‘No, you don’t, Minister, because we are already consulting,’ but you are not.

**Dr Pelling**—I think our answer basically is that which we provided to the committee and I would not want to deviate from that.

**Senator IAN MACDONALD**—What is the answer? I am sorry I have not had the time to read it. You have given us three pages of bureaucratic stuff that none of us understand.

**CHAIR**—No, it is reasonable.

**Senator IAN MACDONALD**—Can someone summarise it for me? We are all on the same side here.

**Senator CONROY**—Speak for yourself.

**Senator IAN MACDONALD**—You are probably wanting the best result. You want everyone’s TV to cut out in the next three months.

**CHAIR**—Let’s move on quickly. Can we answer Senator Macdonald’s questions, because we are a long way over time.

**Mr Loney**—I have some information about the existing arrangements that might assist with your concern about this issue.

**Senator IAN MACDONALD**—Are you saying Free TV were wrong in what they said about lack of consultation?

**Mr Loney**—There are already statutory processes. There are already statutory requirements for consultation.

**Senator IAN MACDONALD**—Free TV do not think you did it. Commercial radio Australia did not think you did it in that previous one. Either Free TV are right or you do not agree with them.

**Mr Loney**—There has not been a situation yet where we have issued the licences and there has been no request to commence the statutory processes that apply to—

**Senator IAN MACDONALD**—You should have asked them before. Nobody has been near them.

**Mr Loney**—We have had two discussion papers. We have consulted about changes to technical planning guidelines.

**Senator IAN MACDONALD**—So you have had a discussion with Free TV Australia which means that they have given—

**CHAIR**—They have put in submissions—

**Senator IAN MACDONALD**—Have you responded to them? Have you talked to them about it?

**Mr Bezzi**—We are about to publish a new version. With the federal register of legislative instruments there will be a new version of the technical planning guidelines that will be the response to the submissions.

**Senator IAN MACDONALD**—They might be right off the planet. They might be quite wrong and you can say to them, ‘This is why you are wrong.’

**Mr Bezzi**—There has been consultation.

**CHAIR**—I did not hear them to be saying that there had not been any and there is no reason why—

**Senator IAN MACDONALD**—They put in a submission and they said it is a one way submission.

**Senator WORTLEY**—Can I follow up on that. Do you intend to respond to Free TV?

**Senator IAN MACDONALD**—Do you intend to talk to them?

**Senator WORTLEY**—Are you going to provide them with a response? Or are you just going to—

**Senator CONROY**—Publish another paper?

**Senator WORTLEY**—Yes, publish another paper. Are you going to respond to Free TV?

**Mr Cheah**—In terms of writing back to a particular submitter, that would not be the normal process.

**Senator IAN MACDONALD**—Why wouldn’t you go and talk to them and say, ‘Look, perhaps all wisdom does not rely on us. Perhaps you have got a few ideas that we could pick up.’

**Mr Bezzi**—That is absolutely the process that has happened, Senator. That has absolutely happened.

**Senator IAN MACDONALD**—So what you are saying is Free TV have told us little porkies?

**Mr Cheah**—No, we are under a slight misapprehension. All this amendment really does is bring the DTL arrangements into line with all of the other planning arrangements for other licences. There are processes in place for consultation. Free TV has not criticised our processes in the past for any other licences.

**Senator IAN MACDONALD**—They have concerns that you have not done any prior planning and you have not spoken to people who might not like them.

**Mr Cheah**—No, I did not hear Free TV say that. Free TV actually said we had consulted with them a lot—fully in relation to the construction of the existing digital channel plan. There has been no move to amend the digital channel plan at all and were there to be, we would consult.

**Senator CONROY**—I think they were suggesting that there is an existing framework that did not apply to channel B.

**Mr Loney**—I think that might be where we disagree with Free TV.

**Senator IAN MACDONALD**—What I would like to do is for everyone else to go and lock you guys in here with Free TV Australia so you can have a bit of a chat and who knows you might convince them they are wrong, or they might convince you there is a better way of doing it. That way we, the government, and the listening or viewing public of Australia would be all that much happier and the opposition would not have a plan to attack us in the next 12 years while they try to get government because we would have everyone happy. But we have obviously got a group of people representing Free TV Australia who are not going to the substance. They are simply saying, 'Well, if they had asked us, we could have told them X, Y and Z.'

**Mr Cheah**—Our view is we have a highly consultative process. It is a belts and braces consultative process. Embedded into it is a lot of consultation about every stage along the way. We have always followed it. We have not had any complaints about that process to date and the process we are proposing here is exactly the same.

**Senator IAN MACDONALD**—There must be a difference in committee hearings.

**Mr Bezzi**—I think the comment was that the old TPGs do not deal with some of the issues that they wanted to raise and our answer to them is that is correct, but the new ones do.

**CHAIR**—Thank you very much. We will just leave it at that. Are there any other questions on this matter?

**Senator CONROY**—We were talking about why you seemed to believe the best spot was band four, whereas Free TV were suggesting upper band five might be a more appropriate spot and then I think, Dr Pelling, you were starting to say earlier that there was potential for interference with GSM if you put it up into 69, 68?

**Dr Pelling**—Yes, my understanding is that I think about the mid 50s is the highest you could go before that interference becomes an issue.

**Senator CONROY**—For GSM networks?

**Dr Pelling**—No, the mid 50s in terms of the channel number that you could give for a mobile television service going into the same handset as a GSM signal.

**Senator CONROY**—So 69, 68 would cause interference with GSM handsets?

**Dr Pelling**—That is my understanding, yes. I do not know how technology has developed since I got that understanding.

**Senator CONROY**—Mr Bunch seemed to think that was not the case at all. Is there some empirical test we can do, Mr Loney?

**Mr Loney**—The discussion focused on GSM handsets and I think the assumption there is that we are talking about the 900 megahertz band. It is worth pointing out that the Telstra Next G network, which operates in the 850 megahertz band, will also potentially have similar problems in terms of being able to build a handset with integrated mobile television receiver and mobile phone because of adjacency issues, frequency separation.

**Senator CONROY**—So that is a future development of Telstra or an existing product?

**Mr Loney**—No, simply because they are both the 850 megahertz band used by Telstra for the Next G network and the 900 megahertz band used for GSM mobile phones are both close enough to—

**Senator CONROY**—Channels 68 and 69.

**Mr Loney**—For there to be problems. That is our understanding. However, as I think I mentioned before, the technology standards here are developing quite quickly. My understanding is that we reached that conclusion after our initial consultation paper last year. If Mr Bunch has additional information that would cause us to reconsider that we would be happy to look at it from a potential planning point of view. However, at the moment the two unassigned channels that we have available to allocate for channel A and channel B are the two channels set out in the digital channel plans and in the different licence areas we have allocated between channel A and channel B based on the channel B frequency in each licence area is the one we believe is most suitable to mobile television purposes should the licensee decide to use it for that purpose.

**Senator CONROY**—I put to Mr Bunch—and I think you were all in the room when I did—two questions, which he answered very emphatically. One was that none of the technologies of MediaFLO, TDMB, DVB-H or any of the other potential mobile buyers would not have interference issues in band four, and he said no, all of them would interfere. You have indicated from your understanding of the technical situation that is not right because it depends on the technologies that would be deployed.

**Mr Loney**—And the way they are deployed.

**Senator CONROY**—And the way they are deployed.

**Dr Pelling**—I think that is the key issue; the way they are deployed.

**Senator CONROY**—The second issue we asked the previous witnesses about was that would there be interference from any of these five I think you indicated exist at the moment if they were put into upper band five and he said, 'No, there would be no interference issues.'

You are saying on a technical basis that is not right either, because he was very emphatic about that. Yeses and nos. Not lengthy answers. Technologically.

**Mr Loney**—Putting aside the issue of interference in mobile phone handsets, because we have been talking about two separate types of interference, we have television services operating in both band four and band five and the unassigned channels that we have available are channel A and channel B that we have had our discussion papers about. At this point, we do not see that there is a potential to licence additional services in those bands.

**Senator CONROY**—Is that because of technical interference? As I said, the previous witness was quite emphatic; he did not believe there was any technical interference—he was arguing that they were cellular and you have indicated that it could be deployed in a different way, but he was quite emphatic about interference with all options, in the existing two you are proposing, and if they went up to channels 68 or 69, upper band five, no technical problems. You are saying wrong on both counts because of the following factors.

**Mr Loney**—Yes, it comes down to the assumptions underlying those statements.

**Senator CONROY**—I accept that point. Basically you are saying he has made not the wrong assumptions, he has just made some old assumptions.

**Mr Loney**—He has made different assumptions.

**Senator CONROY**—He has made different assumptions, and on the information you have, those assumptions that he has made are not correct, and therefore those interference problems which he believes do not happen in band four and do happen in band five are also not correct. He had the reverse position.

**Mr Loney**—Regardless of whether it is band four or band five, if you have an analog or a digital free-to-air fixed in-home television service and you deployed a mobile service badly, you could cause interference. So the issue then, for us, becomes what are the regulatory arrangements that we put in place to ensure that if someone chooses to use channel B for mobile that they deploy in such a way, or that they understand that they can only deploy in such a way that minimises the potential for interference to existing services.

**Senator CONROY**—Thank you.

**CHAIR**—That just about concludes these hearings then. We need perhaps to have a motion to accept any tabled documents.

**Senator BIRMINGHAM**—Chair, may I intrude briefly? I apologise I have been in and out a little bit.

**CHAIR**—That is okay.

**Senator BIRMINGHAM**—I will leave the datacasting aspects alone. Very briefly on the privacy aspects of the legislation, in response to questions posed by the committee related to submissions made by the Office of the Privacy Commissioner and others, the department says that the bill makes provision for the ACMA chairman to impose conditions on those who disclose information to other bodies or impose conditions on those other bodies. Rather than the position being that the chairman has the arbitrary decision to impose or not to impose, is there a reason why the legislation would not require the chairman to impose such conditions on release of information to jurisdictions where privacy principles such as those of the

information privacy principles referred to by the Office of the Privacy Commissioner are not in place?

**Dr Pelling**—I think it ultimately comes down to a question of giving the regulator adequate flexibility, but I might ask my colleague Mr Neil if he has got any further comment to make.

**Mr Neil**—On the question of requiring, I think the proposal was where jurisdictions did not conform with the Commonwealth's privacy requirements, for instance in South Australia and overseas, would it be appropriate for the chairman to be required to impose equivalent conditions in the change. One of our concerns was that particularly in an international environment it is not clear that we could do that effectively—if it went to an overseas jurisdiction where we are highly dependent on the information they provide us. For instance, in the internet we are not a major source of information, we depend a lot on sites identified in larger countries, so the information flow to us is much greater than the information flow out. The nature of information is not necessarily the sort that is highly controversial, but may include personal information because it is related to interactions with the internet. The concern was that agencies might simply say that the information you give us is not very much and isn't that significant and no, we are not prepared to adhere to your requirements. We have our own regulations and we adhere to those, but we will not accept yours. In that case, we ran the risk of important exchanges of information internationally that we require being damaged by that severe limit. We would expect the chair to seek arrangements to protect the information but we want to give him sufficient flexibility to reflect the international environment.

**Senator BIRMINGHAM**—The expectation would be that in the domestic environment you would expect the chair basically on all occasions to expect adherence to privacy principles but I can see internationally obviously you are talking in examples that stretch beyond that—with the submission from the ABC and from Telstra and so on, they are probably not companies that are likely to be captured within that internet framework that you are talking about.

**Mr Neil**—I think the essential problem for us is likely to be internationally where I think there are a lot of countries or international groups who simply would not be interested in committing themselves. They would say, 'We have our own systems. We have our own principles and we will adhere to those and we will respect your data in those contexts.' Often most international jurisdictions that we would change information with have developed similar systems to our own, but they are not necessarily going to sign up to ours. It is on the basis that the level of information exchange is much more in our favour than theirs, so the matter of leverage we would generate would be a lot less. So we would prefer to leave the flexibility with the chair to determine the basis of the change.

**Senator BIRMINGHAM**—Thank you.

**CHAIR**—Do you have any questions, Senator Wortley?

**Senator WORTLEY**—I was just looking here, further on that privacy issue and reading from your submission here, one of the submissions says: 'The bill should specify that in circumstances whether ACMA discloses authorised disclosure information that has been

provided to it on a confidential basis to another entity as authorised under the bill, it must impose a condition on the recipient entity that it not further disclose the information unless the organisation which originally provided the information to ACMA consents in writing for ACMA to provide the information without such condition.' That is what we were talking about just then. Can you just explain that further; why that is a problem?

**Mr Neil**—It is a different question. I think it goes to this question of information—the classic example in that case is information considered to be commercial in confidence. The question is that when ACMA is given information in the commercial in confidence context it imposes that requirement when it exchanges with somebody else. Again, in the cases where ACMA exchanges commercial in confidence information it is only with agencies that have a direct responsibility in relation to that information, so it is typically agencies like the ACCC. They will use it in that context and, where necessary, the chair can impose a requirement but we think it is for the chair to decide the nature of the information. One of the issues is that the temptation would be for groups to simply impose that condition to describe all of the information they provide as commercial in confidence and we would prefer to leave that decision to ACMA and to the chair—with the expectation that organisations like the ACCC do treat that sort of information appropriately and always have.

**Senator BIRMINGHAM**—My recollection is these proposed amendments were a result of the fact that the ACCC gained additional powers of disclosure and was able to provide information to bodies like ACMA, and you, however, were potentially unable to do so in return.

**Mr Neil**—That is the motivation for the entire bill. In fact, provisions have already been passed which allow the ACCC to provide commercial in confidence information to ACMA, but ACMA does not have the clear authority to reciprocate.

**Senator BIRMINGHAM**—How do the privacy restrictions imposed on the ACCC compare to those in this legislation?

**Mr Neil**—ACMA is bound by the Privacy Act and it is clear that this act does nothing to change those responsibilities.

**Senator BIRMINGHAM**—I will rephrase the question. It is about issues such as the one that Senator Wortley has just raised about the disclosure of the ACCC, which presumably can provide information to bodies other than ACMA. Can those bodies then pass on information as well? Are there nonsubsequential disclosure provisions that apply to the ACCC?

**Dr Pelling**—I think the bill is quite specific. Both the amendments to the Trade Practices Act from my recollection and these provisions are quite specific in terms of the ACMA having the ability to provide information to specified organisations. As to what those organisations can then do with the information, I think it is true to say that it is not—

**Mr Neil**—The ACCC has a similar provision to the one that we have in that the chair may impose conditions on the agency with whom they are exchanging information. It is a similar provision.

**Senator BIRMINGHAM**—The reviewing of the provisions, it is a chair's discretion.

**Mr Neil**—What we are saying is that the provision we have given to the chair of ACMA is similar to the provision which the chair of the ACCC has.

**Dr Pelling**—The bills are quite similar. The structure and substance of the amendments that parliament has already passed in relation to the ACCC are quite similar to this.

**Senator WORTLEY**—Could ACMA comment on the issues that were just raised?

**Mr Bezzi**—My comment would be that we agree with the position the department has put. Another way of putting what has been put is that the framework that has been established provides flexibility and it provides us with the capacity to protect peoples' legitimate interests and rights, but it also minimises the prospect that people can use their rights over confidential information as a way of obstructing legitimate investigations or communication between government agencies that really should happen to enable them to perform their various functions and roles. For example, if we and the ACCC are both looking at a media merger matter, people have less scope for gaming us by relying upon confidential information being only made available to one agency and not the other if there is a degree of flexibility there. So we very much welcome the framework that has been established under this bill.

**CHAIR**—If there are no other questions, we will conclude proceedings. We may need a motion from a member of the committee to accept any tabled documents, and we did have some tabled documents from the first witnesses. Moved, Senator Wortley; seconded, Senator Birmingham. I thank all witnesses for their informative presentations. I thank Hansard, the broadcasting unit and the secretariat and I close these hearings.

**Committee adjourned at 7.02 pm**