

**GOVERNMENT RESPONSE TO THE REPORT,
REGIONAL RADIO RACING SERVICES,**

BY THE

**HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON
COMMUNICATIONS, TRANSPORT AND THE ARTS**

**MINISTER FOR COMMUNICATIONS,
INFORMATION TECHNOLOGY AND THE ARTS**

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Recommendation 1

The Minister for Communications, Information Technology and the Arts should prepare amendments to the Australian Broadcasting Corporation Act 1983 to require the Australian Broadcasting Corporation under its Charter to consult more openly and comprehensively with its audience. (para 2.35)

The Government agrees that full and open consultation with its audience is an important part of the ABC's responsibilities. For that reason, it is disappointed that the ABC did not refer the decision to discontinue its Racing Services to its National Advisory Council ahead of the discontinuation.

Section 11 of the *Australian Broadcasting Corporation Act 1983* requires the ABC Board to establish an Advisory Council, 'to advise the Board on matters relating to the Corporation's broadcasting programs'. A National Advisory Council (NAC) has been established, with 12 members from around Australia selected by the Board to reflect the diversity of the Australian community. The Government believes that full and open consultation with its audience is an important part of the ABC's responsibilities, and believes that the ABC should use the consultative mechanism that the Parliament has provided for in section 11 of the *Australian Broadcasting Corporation Act 1983*.

The NAC meets formally three times each year and, in consultation with the Board's NAC Subcommittee, has adopted an annual work program now involving reviews of specified areas of programming. The 2000-01 work program is focused on youth, sport and civics education. The Council has established three subcommittees to examine these areas and is including small group community consultations as part of this process. It will report to the Board on these reviews.

In addition to the NAC's wide ranging brief to advise the Board about programming matters, the Board also refers specific issues to the Council for consideration.

The ABC also receives thousands of letters, emails and telephone calls (over 40,000 communications from audiences were recorded in 1999-2000) which provide important and valued feedback on programs, schedules, and new initiatives. In order to further facilitate this contact with its audience the ABC has recently appointed a Head of Audience and Consumer Affairs to implement a number of recommendations made following an independent external review of the ABC's communication with its audiences.

Recommendation 2

The Minister for Communications, Information Technology and the Arts should request the Auditor-General to conduct a performance audit of the history, efficiency and effectiveness of the planning and allocation of radiofrequency spectrum by the Australian Broadcasting Authority (ABA). (para 3.23)

The Government notes that the Australian National Audit Office proposes an audit of licence area planning, with the scope of the study to be determined in 2001.

The ABA has acknowledged to the Government that analog radio planning under the Broadcasting Services Act has proved disappointingly slow. The Minister for Communications, Information Technology and the Arts, Senator Alston, has asked the ABA to report to him monthly on the progress of licence area planning to ensure there are no further delays in the planning timetable.

The ABA has finalised licence area plans (LAPs) for radio in all parts of Australia, except for the remaining parts of group four (Adelaide and Perth) and a number of regional radio markets in planning group five (Gippsland, Murrumbidgee / Riverina, SE South Australia, Spencer Gulf, Tasmania and Western Victoria).

A final LAP for Brisbane radio was released in December 2000 and a final LAP for radio in Adelaide was released in September 2001. A draft LAP for radio services in Perth was released in November 2000.

Information papers inviting submissions from interested parties were released for each of the group five regions in May 2000. Draft plans for group 5 regional markets were released for public comment in mid 2001 and the final plans are expected to be issued in late 2001.

Recommendation 3

In those areas where spectrum is known to be available, a broadcaster wishes to provide a racing radio service and the Licence Area Planning process has not yet been completed, the Minister for Communications, Information Technology and the Arts should direct the Australian Broadcasting Authority to make spectrum available until such time as the Licence Area Planning process is completed. (para 3.26)

The Government places a high priority on the timely completion of the licence area planning process to ensure that spectrum is allocated in the most efficient and effective way. As a result, the Government believes it is important for ABA resources to be concentrated on the completion of this process. Analog radio licence area planning is expected to be complete by the end of 2001.

In general the ABA has preferred to consider whether spectrum should be made available for open narrowcasting services as part of the LAP preparation, provided under s. 26 of the *Broadcasting Services Act 1992* (BSA). This approach enables the ABA to take into account demand for other types of broadcasting service, when deciding whether spectrum should be made available for open narrowcasting services (such as racing radio).

The ABA has made a number of exceptions to this general approach over the years. For example, the ABA has used its powers under section 34(1) of the BSA to make spectrum available for open narrowcasting ahead of completion of the planning process. It has allocated spectrum for low powered open narrowcasting services in the 87.5 to 88.0 MHz sub-band. It has also allocated, on an interim basis pending completion of planning in those markets, spectrum for high powered open narrowcasting services using certain AM channels, for which no further engineering work was necessary before they were allocated. High powered channels made

available by this latter approach are made available through a price-based allocation system.

The ABA has advised that any effort to bring forward planning, in for example group five markets, to identify interim channels for racing radio is likely to delay the completion of the overall planning process due to the need to divert existing resources from the existing planning process.

The Government notes that future requirements for racing radio frequencies could be addressed by the ABA after the completion of the licence area planning process. The ABA can vary a licence area plan under subsection 26(2) of the BSA. However, it should be noted that the availability of suitable frequencies for high powered services is generally limited except in the remote areas of Australia.

Recommendation 4

The Minister for Communications, Information Technology and the Arts should direct the Australian Broadcasting Authority to renew existing open narrowcast licences held by racing radio broadcasters by way of application under s.100 of the *Radiocommunications Act 1992* and make the period for which licences are renewed 5 years. (para 3.50)

The Government supports the principle of extending tenure for high-powered open narrowcast licences (HPONs), including those which providing racing radio services. On 22 January 2001, the Minister for Communications, Information Technology and the Arts, Senator the Hon Richard Alston, issued a direction to the Australian Broadcasting Authority that it should renew the licences of those existing HPON licensees who provide a service in the broadcasting services bands, as long as spectrum continues to be made available by the ABA. This increased security of tenure recognises the contribution that high power open narrowcasting services have made to the diversity of radio services throughout Australia.

Recommendation 5

The Minister for Communications, Information Technology and the Arts in the event of narrowcast licences being renewed under s106 of the *Radiocommunications Act 1992*, should prepare amendments to the *Radiocommunications Act 1992* to provide for transmitter licences to be issued for a maximum period of ten years. (para 3.52)

This recommendation is addressed in the response to Recommendation 4.

Recommendation 6

The Minister for Communications, Information Technology and the Arts should direct the Australian Broadcasting Authority to review the operation of the open narrowcasting category of licences with view to creating within it a special category of open narrowcasting licence for the broadcast of racing in regional, rural and remote areas. (para 3.56)

The BSA does not empower the ABA to create a special category of open narrowcasting licence for the broadcast of racing. The ABA may use its power in section 34 of the BSA to specify the 'purpose' for which spectrum is made available, in order to limit use of frequencies to a particular subset of open narrowcasting. The ABA also has the power to 'determine additional criteria or clarify existing criteria for the purposes of distinguishing between categories of broadcasting services' under section 19 of the BSA. In addition, section 19(3) of the Act provides that the Minister may give 'specific directions' to the ABA as to the making of determinations and clarifications, and the ABA must observe those directions.

The ABA announced in April 2000 that it would use its power under section 19 of the *Broadcasting Services Act 1992* to conduct a review to clarify existing criteria for open narrowcasting radio services and, if appropriate, determine additional criteria. The ABA has published a discussion paper in March 2001 containing options for changes to the open narrowcasting criteria.

It is hoped that this review will bring greater clarity to the concept of open narrowcasting radio services. The process, which will involve wide public consultation, will seek to clarify for service providers the differences between, for example, an open narrowcasting radio service and a commercial radio service, or an open narrowcasting radio service and a community radio service.

At this time, the Government does not support the creation of special categories of open narrowcasting licence. The Government notes that the ABA's licence area planning process has identified competing demand from a wide range of community groups, including racing, religious, ethnic and other groups, for the limited spectrum available for narrowcasting.

Recommendation 7

The Minister for Communications, Information Technology and the Arts should direct the Australian Broadcasting Authority, as part of its review of the open narrowcasting category of licence, to work in collaboration with the Australian Communications Authority to assess the potential to extend the power of Low Power Open Narrowcasting services for racing broadcasts and to determine the implications of such a measure on other broadcast licence categories. (para 3.69)

The Government notes the view of the ACA and ABA that seeking to extend the power of LPON services, including those providing racing radio services, would give rise to substantial additional demand on the planning and spectrum management resources of both agencies. It would also be likely to delay completion of the current LAP processes. It is also expected that the provision of high power capacities to racing radio services would lead to similar demands from other groups. As indicated earlier, the Government places a high priority on completion of the licence area planning and spectrum sale processes and believes that ABA and ACA resources are more appropriately dedicated to these exercises at this stage.

The large number of LPON services currently in operation is possible because planning requirements for these services are minimal, frequencies allotted to LPONs can be re-used over relatively short distances and the equipment costs for establishing

a service are relatively small. It is the low power of these services which makes the management of interference and other regulatory considerations reasonably straightforward. By contrast, raising the power of LPON services will:

- result in interference to the reception of other LPON services, mainstream FM radio and TV broadcasting services;
- introduce the need for more elaborate planning processes that will complicate and slow the issuing of transmitter licences;
- significantly reduce the number of possible services and the opportunities for new service providers (by reducing the capacity to re-use spectrum); and
- favour the development of fewer, but more capital-intensive, services over the current large number of low cost services.

Recommendation 8

The Minister for Communications, Information Technology and the Arts should insert conditions on LPON licences that require the licence holder to use the licence within a given period of time or lose it. (para 3.76)

The Government supports this recommendation. On 22 December 2000, the Minister for Communications, Information Technology and the Arts, Senator the Hon Richard Alston, announced that he had issued a direction to the ACA that it should add a “use it or lose it” condition to LPON licences. This condition will ensure that holders of licences provide a service, rather than simply holding onto licences to exclude competition or for some other commercial benefit. The condition sets a six month deadline for starting a LPON service. If this timeframe is not achieved, the licensee may lose the licence, which could then be made available at auction to other aspirant narrowcasters willing to provide a service.

Recommendation 9

The Minister for Communications, Information Technology and the Arts should direct the Australian Broadcasting Authority to make available, where possible, high power FM licences in regional and remote areas to racing broadcasters who are interested in obtaining them. The licences should have attached a use it or lose it condition and a requirement that licence holders transmit at full power. (para 3.98)

Government policy provides for all new high-powered open narrowcasting licences, which are identified in licence area plans and have not yet been allocated, to be issued by price-based allocation. This allows any interested parties, including racing radio providers, to bid for licences on an equitable and competitive basis. Through this process, over 70 racing radio HPON services have commenced since mid-1998 when the ABC’s service ceased.

At present, there are 60 unallocated HPONs in regional areas, many of which have no racing radio service. Aspirant service providers can approach the ABA and express an interest in these HPON licences.

If there is strong community demand for racing services, then there is nothing preventing any of the existing national, commercial, community or narrowcasting services from including racing in their programming. The choice of programming is one for the individual service based on the demand of the audience for those programs.

As noted in the response to recommendation 6, the Government has some concerns with the creation of special categories of narrowcasting licence but will consider any advice provided by the ABA following its section 19 review of narrowcasting.

Existing operating conditions applying to high-powered narrowcasting address both “use it or lose it” conditions and power requirements for licensees. Part 4 of the *Radiocommunications Licence Conditions (Broadcasting Licences) Determination* specifies that licensees operating high-powered services must commence the service six months after the issue of the licence. The ABA’s Technical Planning Guidelines provide details of the tolerances for power levels at maximum and minimum levels and “start up” provisions for the commencement of new services.