



SUBMISSION IN RELATION TO THE JOINT SENATE COMMITTEE ON BROADCASTING LEGISLATION IN RELATION TO ON-AIR REPORTING OF ACMA FINDINGS

Introduction

1. WIN opposes the proposal to require on-air reporting of ACMA findings.
2. The proposal requires the media to broadcast content dictated by the executive arm of government, and thus constitutes a significant intrusion by government into the operations of a free and independent media. In a democratic and plural society, there must be clear and cogent reasons for such intrusive government intervention – yet no real case had been made to show that the current arrangements are deficient.
3. There are, in addition, real risks that the proposal could unfairly compromise the ability of broadcasters to respond properly to allegations (which have not been tested in an independent court) made by both the regulator and individual complainants.

Current arrangements are balanced and sufficient

4. Currently, broadcasters subject to an adverse ACMA finding will provide, through their websites, a link to the relevant ACMA finding.
5. This allows the broadcaster, in a clear and readily understandable way, to distinguish what the regulator has concluded in relation to the broadcaster's conduct, and what the broadcaster has to say in response. This ensures that the role of regulator and broadcaster is clearly demarcated, and gives an adequate right of reply – which is particularly important in cases where litigation concerning the subject matter of ACMA's finding (whether by the broadcaster against the regulator or by a complainant against the broadcaster) is either anticipated or is actually on foot.
6. By being in a position to give a more comprehensive explanation of the situation giving rise to the complaint on its website, the broadcaster can also properly contextualise the matter – for example, the broadcaster may choose to make an apology, outline the exceptional nature of the circumstances giving rise to the complaint, or explain what corrective steps have been taken to ensure that there is no repetition.
7. WIN is not aware of any concerns raised by complainants who were subsequently dissatisfied with the manner in which WIN communicated the relevant finding publicly.

Publishing the outcome of investigations in a one-sided manner

8. The proposal would rob the current system of much of its fairness – broadcasters would be required to sacrifice significant air-time to contextualise or convey its perspective in

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response to any ACMA finding which it is forced to broadcast. This is commercially unrealistic, as well as being potentially off-putting to an audience, with a consequential impact on audience viewing figures (to say nothing of the advertising revenue foregone during the period of any broadcast.)

9. Complaints often generate complex issues which require the exercise of evaluative judgement – there are (for example) no clear lines which demarcate where the public's right to be informed stops and the individual's right to privacy starts. Short, 30 second ACMA announcements on broadcast media carry the real risk of over-simplifying (and therefore misrepresenting) complex issues, while effectively denying the broadcaster a fair right of reply.

Imposing sanctions where an investigation is not definitively resolved

10. A related difficulty is that the proposal applies to regulatory findings which may be the subject of administrative law challenge by the broadcaster.
11. Under the separation of powers at Commonwealth level, the final and authoritative decision on the whether a finding by ACMA is lawful and authorised may only be made by a Chapter III court. Yet the proposal allows ACMA to pre-empt a court's eventual ruling by requiring a broadcaster to carry, in a manner calculated to cause maximum reputational damage to the broadcaster, a finding which may subsequently be overturned.
12. In this respect, a broadcaster will be "punished" before the "crime" is definitively proved – in a manner which cannot be readily reversed or remedied if ACMA is found subsequently to have exceeded its jurisdiction.
13. Further, by increasing, in effect, the sanctions for breach, broadcasters are more likely to initiate challenges against relevant ACMA determinations and will be far less inclined to engage constructively with the regulator, on a co-operative and non-confrontational basis, to resolve complaints.

Compromising court action involving ACMA or individual complainants

14. Further, the forced broadcasting of an adverse ACMA finding by the subject broadcaster, especially if coupled with any related power to require the broadcaster to issue an apology, will clearly prejudice that broadcaster in any civil proceeding involving the complainant (for example, in the context of privacy breaches, defamation, etc). This clearly places the broadcaster in an impossible position.