

# Chapter 1

## The Committee's Inquiry

### Referral of the inquiry

1.1 On 20 March 2008, the Senate referred the matter of the effectiveness of broadcasting codes of practice to the Senate Standing Committee on Environment, Communications and the Arts, for inquiry and report by 9 June 2008. The Committee presented a brief interim report to the President of the Senate on 6 June 2008.

### *Background to the inquiry*

1.2 On 18 March 2008, Senator Cory Bernardi speaking in the Senate raised the issue of coarse and obscene language on television, using the television program *Ramsay's Kitchen Nightmares*, broadcast by the Nine Network in Australia, to highlight his objections.

1.3 Senator Bernardi was clear that his own beliefs do not embrace censorship; however, he stated that:

... there is no excuse for gratuitous bad language to be broadcast repeatedly if it has no real bearing on the material being shown, in a relatively early time slot, and when it can clearly be beeped out or censored. I say this not because I believe in censorship but because I believe strongly that what we broadcast on our televisions has a profound impact on how we conduct ourselves, over the course of time.<sup>1</sup>

1.4 The Senator expressed the view that the administration of broadcasting standards did not reflect attitudes within the Australian community. Noting the relatively small number of complaints received by the broadcaster with regard to the *Ramsay* programs, particularly when compared with the high viewer ratings, Senator Bernardi suggested that this was not a fair representation of public attitudes to offensive language on television.

1.5 The complaints process for those who are offended by broadcast content, Senator Bernardi argued that it:

... dissuades a lot of people from making complaints or identifying areas of our public broadcasting system where they have particular problems. I also believe that there is an opportunity for us in government to review the process to give ordinary Australians more of a say and more of an impact on what is acceptable for viewing on our public broadcasting system.<sup>2</sup>

---

1 Senator Bernardi, *Senate Hansard*, 18 March 2008, p. 1198.

2 Senator Bernardi, *Senate Hansard*, 18 March 2008, pp 1197-1198.

1.6 This inquiry was referred to the Committee on the motion of Senator Bernardi.

### **Terms of reference**

1.7 Under the terms of reference, the Committee undertook an examination into the effectiveness of the broadcasting codes of practice operating within the radio and television industry, with particular reference to:

- (a) the frequency and use of coarse and foul language (swearing) in programs;
- (b) the effectiveness of the current classification standards as an accurate reflection of the content contained in the program;
- (c) the operation and effectiveness of the complaints process currently available to members of the public; and
- (d) any other related matters.

### **The Committee's approach**

1.8 This Committee does not see its responsibility as being an arbiter of public taste. As a group the Committee is not going to express a view on the use of particular words on air. Having reviewed the regulatory system the Committee believes that it is basically sound but that it requires strengthening in some areas.

1.9 Throughout this report the Committee has made recommendations aimed at strengthening the role of the regulator, the Australian Communications and Media Authority (ACMA). The Committee has also made recommendations with regard to the description of program ratings (G, PG, etc), time zones and the content of promotions for M and MA15+ shown in early evening time slots. It has also recommended changes to the way in which commercial broadcasters deal with complaints.

1.10 The Committee believes that there needs to be a greater appreciation by the regulator and on the part of those who would impose a range of social obligations on broadcasters of the business realities of commercial broadcasting. Business organisations are required to comply with the law that regulates them but within that regulatory framework they can be expected to pursue strategies which maximise their market share and advertising revenue. This places the onus very firmly on ACMA to represent the public interest with regard to broadcasting standards.

1.11 The need to generate ratings for particular programs and broadcasters as a basis on which to sell advertising and, increasingly, the competition from less regulated subscription television, will tend to push commercial broadcasters in the direction of testing the limits of codes of practice by putting ever more controversial or sensational programs to air. ACMA, while not acting as a censor, could better address community concerns with regard to program content by acting as a restraining hand on that tendency.

1.12 There are two distinct aspects to this inquiry. The first goes specifically to the use of coarse language, but more generally to the acceptability of content of a contentious nature, and relates to the elusive concept of community standards. There are several categories of material that is deemed to be unsuitable for broadcast on free-to-air television under any circumstances. These include 'sustained, relished or excessively detailed acts of violence', explicit sexual material, 'very coarse language that is aggressive and very frequent' and detailed description or portrayal of illegal drug use and suicide.<sup>3</sup>

1.13 'Milder' forms of all this material may be shown with an appropriate classification. What level of coarse language, (or violence, drug use or sex scenes) is acceptable under what conditions, particularly on free-to-air television and radio is determined by reference to a range of factors, most particularly 'community standards'; the need to protect minors and the context in which the material is used.

1.14 It is clear from this brief summary that there is significant latitude for interpretation at the margin of the various categories in determining what material may be shown and at what times. For example, what is 'very' coarse language as distinct from merely coarse language, or 'very' frequent as distinct from frequent? As the views expressed in submissions to the Committee make clear there is a wide divergence of opinion on what the 'community standard' is with regard to any of these matters at any given time.

1.15 In practice 'community standards' are not capable of a fixed definition – they are flexible, negotiable and highly dependent on context. Establishing community standards is best viewed as a continuous process or debate. This is clearly unsatisfactory to those who want either a complete absence of censorship or, alternatively, hard and fast boundaries defining what is acceptable, but it is the reality of a pluralist society.

1.16 The Australian Communications and Media Authority (ACMA) has a responsibility:

(h) to conduct and commission research into community attitudes on issues relating to programs and datacasting content; [and]

(i) to assist broadcasting service providers to develop codes of practice that, as far as possible, are in accordance with community standards.<sup>4</sup>

1.17 The effectiveness of this process is at the core of this inquiry and the Committee considers issues with regard to it in Chapter 4.

---

3 *Commercial Television Code of Practice*, July 2004, p. 19, paragraph 2.17.

4 *Australian Communications & Media Authority Act 2005*, s. 10 (h) & (i). ACMA is the Commonwealth Government authority responsible for the regulation of broadcasting and internet content.

1.18 Underlying the question of community standards are the conflicting principles exemplified by the National Classification Code that:

- (a) adults should be able to read hear and see what they want;
- (b) minors should be protected from material likely to harm or disturb them; [and]
- (c) everyone should be protected from exposure to unsolicited material that they find offensive; ...<sup>5</sup>

1.19 Studies undertaken by ACMA suggest that there is wide-spread community support for the above principles. The balance between the competing imperatives is sought through the use of codes of practice, ratings systems and time zones with the objective of limiting the availability of inappropriate material at times when children are likely to be watching or listening and providing parents and others with guidance as to the content of programs so that they can monitor and manage their own and children's viewing. The second part of the inquiry examines the effectiveness of these processes and the possible changes that might be made to improve them.

1.20 Included in this part of the report is an examination of complaints procedures. Senator Bernardi's initial expression of concern about broadcasting standards and many submissions to the Committee suggest that community attitudes are not fairly represented in the deliberations of ACMA or of the broadcasting service providers because the procedures by which those who were dissatisfied with program content could make a complaint are, it is argued, cumbersome, slow and obscure and discourage people from pursuing complaints. The Committee examines the issues with regard to complaints procedures in Chapter 5.

### **Conduct of the inquiry**

1.21 In accordance with its usual practice, the Committee advertised details of the inquiry in *The Australian* on 1 April 2008. The Committee also made direct contact with a range of organisations and individuals to invite submissions to the Inquiry. The Committee received written submissions from 86 individuals and organisations, as listed at Appendix 1.

1.22 A public hearing of the Committee was held in Adelaide on 23 May 2008. Details of the hearing, including a list of witnesses who gave evidence, are shown at Appendix 2.

1.23 During the course of the inquiry, the Committee became aware of an unauthorised disclosure of Committee proceedings, when one submitter, the Australian Christian Lobby (ACL), posted its submission on its website before the submission had been accepted or published by the Committee. This breach was drawn

---

5 *Classification (Publications, Films and Computer Games) Act 1995*, Schedule 1.

to the attention of the ACL, which apologised and immediately removed the submission from the Internet.

1.24 Particularly in light of ACL's prompt response, the Committee decided not to pursue the matter any further. However it reminds everyone who decides to participate in a Senate Committee inquiry that publication of a submission is a matter for the Committee. If someone decides to publish their submission before the Committee has done so, then that publication is not protected by parliamentary privilege, and submitters could expose themselves to legal action. It is therefore in the interests of both parliamentary Committees and submitters that the rules governing parliamentary procedure are respected.

### **Acknowledgments**

1.25 The Committee wishes to express its appreciation to everyone who contributed to the inquiry by making submissions or appearing before it to give evidence.

