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AMENDMENTS TO THE BROADCASTING & TELEVISION ACT REGARDING PROGRAM STANDARDS

A bill to clarify the powers of the ABT to make program standards was tabled during the current session of Parliament. The Bill follows two decisions of the Full Federal Court and the High Court in the Saatchi and Herald Sun cases which held that the ABT's standard making powers for children's programs and advertisements were defective.

The Bill re-defines "program standards" to include the concept of "condition". This is to avoid the interpretation given in Saatchi that "standard" must relate directly to the quality or nature of the material broadcast. The inclusion of "condition" will enable the Tribunal to apply standards which regulate the circumstances connected with the production of a program. In particular, this will enable the Tribunal to apply standards which relate to Australian content in productions.

In addition, the Bill will affirm the Tribunal's power to make program standards for children's television programs. The standards may require prior approval for "C" programs (which are shown during 4-5 pm on weekdays). They may also provide for the pre-classification of children's drama programs.

In addition, the Bill will permit sub-classifications for programs designed for children under the age of 14 years. [At present the Tribunal's standards for children's programs are for those designed for the 6-13 year age group as a whole.] The Bill will also enable the Tribunal to extend its pre-classification standards to programs designed for children up to 5 years of age. The Bill will give the Tribunal the power to require pre-classifica-

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AMENDMENTS B&T ACT (CONT'D FROM PAGE 1)

tion of programs which are to be televised at times other than "C" time but which a licensee wishes to present as meeting the Tribunal's conditions for "C" time programs.

Under the Bill, the ABT is not given a general power of pre-classification. The Bill expressly limits the Tribunal's powers to require pre-classification to children's programs.

The Tribunal is now consulting the representatives of the television and production industry and other interested organisations about the options for pre-classification. At present, the Tribunal awards a "provisional C" classification at

script stage, with the subsequent award to a full "C" of the completed program. Broadcasters and producers wish children's drama programs to be awarded a full "C" classification at script stage prior to actual pre-production. [No revision of standards by the Tribunal is permitted under the Broadcasting and Television Act without prior consultation with broadcasters.]

The Bill also amends the enforcement provisions relating to program standards. A breach of a program standard will no longer attract a criminal penalty. The Bill will retain a modified power for the ABT to give directions to a licensee for the purpose of ensuring that program standards are complied with. A failure to comply with such a direction will remain a criminal offence. The giving of such a direction, however, will be the exercise of a substantive power by the Tribunal and therefore must result from an inquiry which will be subject to the uniform inquiry procedures. [These procedures were provided for in the 1985 Autumn sittings.] In matters of urgency, the Tribunal may vary the inquiry procedures or adopt different procedures as appropriate.

The Bill includes a new defence provision which applies where the failure of the licensee to adequately supervise broadcast was due to a reasonable mistake, reasonable reliance on information supplied by another person or the act or default of another person or any accident or other cause beyond the licensee's control and the licensee took reasonable precautions and exercised due diligence to avoid the breach. Such a defence will clearly apply to the benefit of regional stations which accept "program feeds" from the networks.

The Bill also empowers the Tribunal to reprimand or admonish a licensee for a breach of program standards and to direct the licensee to broadcast a reprimand or admonishment in such form and manner as is specified by the Tribunal in its direction. This will be a substantive power of the Tribunal and will therefore be subject to the uniform inquiry procedures.

The Bill does not give the Tribunal any power to impose temporary restrictions on advertising by licensees as a penalty for breaches of the Act or program standards. This power was recommended by the Administrative Review Council in its 1981 report.

Catriona Hughes