

work. At the same time, the consumer protection requirements which safeguard minimum standards will be retained. Public service radio broadcasting will continue under the aegis of the BBC. BBC radio services will continue to be funded from the licence fee for some years to come. But BBC radio services will be subject to a much stronger stimulus of competition. The Government's proposals will create the conditions for an expansion of radio which should benefit broadcasters, advertisers and listeners alike. In the meantime the Government, as a step towards the new radio arrangements, has endorsed proposals by the IBA for a limited number of additional stations operating under present legislation.

## The UHF network

The UHF transmission networks run by the BBC and the IBA give a highly effective service to the public. They reach 99.4 per cent of the households in the UK, providing them with a reliable, high quality signal. This is a considerable engineering achievement, and it is highly regarded internationally. As broadcasting enters a more competitive phase, the Government intends to see that high technical standards are maintained, while moving the UHF transmission system progressively into the private sector, and separating transmission (ie service delivery) from service provision.

The Government considers that the best arrangement in due course would be a regionally based, privatised transmission system designed to promote competition, while containing certain common carrier obligations. The route towards this objective is complicated at present by the way in which the IBA's system is entwined with that of the BBC, and by the fact that the BBC's transmission responsibilities are rooted in its Charter which lasts until the end of 1996. The Government proposes to discuss with the BBC, the IBA and others how the objective of moving towards a privatised transmission system might best be taken forward. It will also be considering how, given its inherent monopolistic characteristics arising in part from topography, any necessary regulatory oversight should be arranged.

Until such a system is in place the BBC will continue to have responsibility for transmitting its television and radio services. The Government hopes that the BBC will, during this transitional period, test the market for the operation of its own transmission system by commercial contractors on a regional basis. This would be consistent with the steps which the BBC has already taken to test the market for a range of support services, as part of its general policy of devoting as great proportion as possible of its resources to programmes. This would be a useful step in

itself, and would also prepare the way for privatisation in due course. The advent of new services - such as the new national commercial radio services - will open up new commercial transmission opportunities. The Government also envisages that the BBC might, in the transitional period while it retains a transmission role, be able to arrange for its contractors to offer a transmission service to new entrants.

Under the existing arrangements the IBA owns and operates the uplink for its DBS contractors. The Government believes that DBS licensees should in future be responsible for the uplink themselves along with the rest of their transmission system (ie the satellite). The IBA is presently constructing the uplink for British Satellite Broadcasting and will operate it while the law remains as it is. The Government will discuss the transitional arrangements with the parties concerned.

## Independent productions

Traditionally, broadcasters in the UK have themselves made the television programmes they have not acquired from abroad. Channel 4 broke this mould. The results have exceeded all expectations. Independent producers constitute an important source of originality and talent which must be exploited, and have brought new pressures for efficiency and flexibility in production procedures.

The Government has already set the BBC and the ITV companies the target of commissioning 25 per cent of original material from independent producers as quickly as possible. Both the BBC and the ITV companies are committed to achieving this target by the end of 1992, subject to satisfaction on cost and quality. Good progress has already been made. A framework for the business arrangements for commissioning programmes has been agreed.

The Government has welcomed these developments, and the willingness of the BBC, IBA and ITV companies to embrace change. Under the arrangements proposed in Chapter VI, the Government envisages that independent producers will continue to play a greater part in programme making in the UK. So far as the position after 1992 is concerned, the Government's proposals for the independent television sector in any event envisage that no licensee should be required by the ITC to maintain any in-house production capacity as a condition of obtaining a licence.

Anyone interested in acquiring an unabridged copy of UK Broadcasting in the '90s should contact the BBC, 80 William St, Sydney. Tel: (02) 358 6411.

## FM Licence Grants

from p9

Again, this position can be contrasted to the situation in Newcastle, Gosford and Geelong where all winners had a major media interest as a shareholder and the ABT found it to be an advantage to have input and support of this type.

Another interesting aspect of the Sheparton decision is that the ABT assessed the personal qualities of the directors and their ability to implement the proposals proposed after determining the most suitable applicant on the basis of the best programming. This is quite a different approach to all other decisions.

In conclusion it is obvious that the Tribunal makes its decisions on a case by case basis. If prospective licence applicants are looking for precedents on which to base their applications then they can take little comfort from past decisions of The Australian Broadcasting Tribunal.

## The ABC Bill

Several items in the Broadcasting Legislation Amendment Bill, which whizzed through Parliament in December should have had much more public discussion.

Foremost of concern is the new Limited Licence which is not, as many people think, connected with aborigines in remote areas but concerned with the broadcasting of events like an Olympic Games or a Bicentennial.

The ABC will have no control over the awarding of licences and permits as this will be done by the ABT with fees paid to the government. Vet Clauses 7, 34 and 43 of the Bill provide that the Corporation may make broadcasting facilities and staff available to a limited licence holder for them to transmit programmes to the general public pursuant

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## Contributions

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## Defamation and parliamentarians

from p15

It is to be hoped that Australian courts, like the Canadian courts, will recognise that the nature of parliamentary work and developments in methods of communication are such that the meaning of "proceedings in parliament" must be broadened, at least to this extent.

The Parliamentary Privileges Act 1987 (Cth) defines "proceedings in Parliament" as "all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of a House or of a committee".<sup>22</sup> The reference to "incidental" matters extends the protection accorded to statements made by Federal Members of Parliament beyond statements made in the House or in committee proceedings; it is suggested that the courts should not allow the legislation to be used to protect Members of Parliament in respect of the publication of material unless this was necessary for the proper discharge of the Member's duties.

It follows from the common law and legislative developments outlined in this note that media organisations will have to make a judgment regarding the nature of statements made by Members outside their Houses to assess whether they are part of "proceedings in parliament"; if the statement is part of parliamentary proceedings, a fair and accurate report will be protected by qualified privilege.

*The material in this article forms part of the book - The Law of Journalism in Australia - written by Sally Walker and published by The Law Book Company early next year. Sally Walker is a senior lecturer in law at the University of Melbourne.*

## The ABC Bill

from p14

to the licence. Also the holder of a limited licence may transfer the licence to another person or admit another person to participate in its benefits or to exercise any of the powers or authorities granted by the licence.

The holder of a limited licence shall not broadcast an advertisement if (my emphasis) the licensee receives payment or other consideration for broadcasting it. But this does not apply to a certain kind of licence and any holder of a special limited licence can broadcast details about a sponsor.

Clause 8 of the Bill repeals the existing 26 page section about staff and service, replacing it with 28 lines including, "the terms and conditions of employment shall be determined by the Corporation".

References to "officers" are replaced

## Notes

1 I Will and Mr Sess 2, c 2 (1688).

2 The privilege applies:

(a) pursuant to legislation which adopts the privileges of the House of Commons (see, for example, Commonwealth Constitution s 49 and Constitution Act 1975 (Vic) s 19(1) and *Sankey v Whitlam* (1978) 142 CLR 1 per Gibbs ACJ 35);

(b) pursuant to legislation which provides that the Bill of Rights is part of the law (see, for example, Parliamentary Privileges Act 1987 (Cth) sub-s 16(1) and Imperial Acts Application Act, 1969 (NSW) s 6); or

(c) at common law, on the basis of necessity (*Gipps v McElhone* (1881) 2 LR (NSW) 18 per Martin CJ 21-22, *Manning J* 24 and *Windeyer J* 25-26; *Chenard and Co v Arissol* (1949) AC 127, 133-134).

In the Northern Territory, freedom of speech is confirmed by the Legislative Assembly (Powers and Privileges) Act 1977 (NT) s 5(1).

3 Gordon C (Ed), *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament* (20th ed, 1983) 94.

4 *Wason v Walter* (1868) LR 4 QB 73.

5 Parliamentary Privileges Act 1987 (Cth) s 10. Although the explanatory memorandum describes the defence as one of "qualified privilege", in fact, the privilege is expressed as an absolute privilege.

6 Defamation Act, 1974 (NSW) s 24 Sch 2 cl 2 (1) and s 26; The Criminal Code (Qld) s 374 (1); Wrongs Act 1936 (SA) s 7 (1)(ab); Defamation Act 1957 (Tas) s 13 (1)(a);

Wrongs Act 1958 (Vic) s 3A (1); The Criminal Code (WA) s 354 (1); ACT: Defamation (Amendment) Act 1909 (NSW) s 5(a) (applies only to newspaper reports); Defamation Act (NT) s 6(1) (ba) (applies only to newspaper reports). In New South Wales, Victoria, Western Australia and the Australian Capital Territory the statutory protection extends to the publication in that jurisdiction of a report of other State or Territory Parliaments.

7 The Criminal Code (Qld) s 377; Defamation Act 1957 (Tas) s 16; The Criminal Code (WA) s 357.

8 Aust, *The Law Reform Commission, Unfair Publication: Defamation and privacy* ALRC 11 para 135.

9 *R v Murphy* (1986) 5 NSWLR 18, 26-27; Parliamentary Privileges Act 1987 (Cth) para 16(2) (a); Parliamentary Evidence Act, 1901 (NSW) s 12; The Criminal Code (Qld) s 372; Defamation Act 1957 (Tas) s 11(b).

10 See the discussion of the Strauss case in UK, Parl, Report from the Select Committee on Parliamentary Privilege HC Paper 34 (1967-8) paras 80-81 and 86.

11 *Adam v Ward* (1917) AC 309 and *Horrocks v Lowe* (1975) AC 135.

12 Aust, Parl, Joint Select Committee on Parliamentary Privilege Final Report (October 1984) PP no 219, 1984 para 5.15.

13 *R v Abingdon* (1793) 1 Esp 226 (170 ER 337), 228 (338) and *R v Creevey* (1813) 1 M & S 273 (105 ER 102) per Lord Ellenborough CJ 278 (104), *Grose J* 279-80 (104), *Bayley J* 280-281 (104-105) and *LeBlanc J* 281-282 (105). The Member might be able to rely on qualified privilege, but, where the common law operates, this would be most unlikely to protect the Member unless the material was published only to a limited audience (*Adam v Ward* (1917) AC 309 and *Horrocks v Lowe* (1975) AC 135).

14 *Attorney-General of Ceylon v De Livera* (1963) AC 103, 121.

15 *Roman Corp Ltd v Hudson's Bay Oil and Gas Co Ltd* (1971) 18 DLR (3d) 134, 142; (1971) 23 DLR (3d) 292, 298.

16 *Ibid* (1971) 23 DLR (3d) 292, 299.

17 (1973) 36 DLR (3d) 413, 419.

18 *Re Clark and Attorney-General of Canada* (1977) 81 DLR (3d) 33, 58.

19 *Stopforth v Goyer* (1978) 87 DLR (3d) 373, 382.

20 Australian Broadcasting Corporation v Chatterton (1986) 46 SASR 1, 18-19.

21 *Ibid* 30-36.

22 Sub-section 16 (2)

throughout by "employees" and there is nothing about training qualifications, retirement etc.

Also dubious is Section 70D, which gives the ABC, a publicly owned authority whose possessions are of public concern, the power to give these as security for moneys borrowed. This is because the legislation permits the ABC to borrow from sources other than the Commonwealth. However, the ABC is not a money-making industry like, for example, Qantas, so failure to pay back a private loan might mean loss of its property to private ownership.

These provisions, together with the proposed control of the ABC and SBS by the Australian Broadcasting Tribunal, spell out the end of ABC independence if they are implemented.

*Leila Cumming,  
Friends of the ABC*