

# The need for a communications act

**Les Free, of Consolidates Press Holdings, argues that with technological convergence the time is ripe for a comprehensive Communications Act**

**T**he raising of issues by The Department of Transport and Communications' Broadcasting Review Group's "Review of Broadcasting: Discussion Paper" of July last year (the Review) was certainly timely, if not long overdue.

The Review, by restricting itself to a discussion about the Broadcasting Act, failed to resolve the issue of the impact and implications of technological convergence of telecommunications, broadcasting, computers, print media, etc. Legislation needs to be devised to provide for:

- (a) the current evolutionary developments, which are already providing television delivery methods other than broadcasting;
- (b) the inevitable revolutionary changes for industry arrangements when the broadband integrated services digital network (B-ISDN) is introduced. This maybe as little as 10 years hence;
- (c) an anticipated industry restructuring of ownership and management arrangements due to financial criteria which require a shift from "free" television service provision to "user pays". For example, NBC President, Robert Wright, says that in new media mix, television "can't make it" on advertising support alone (Broadcasting May 1989).

## B-ISDN

The impact of the introduction of B-ISDN is expected to be dramatic, and traumatic, for many participants in the television industry because the technical quality of television will be dictated by the choice of the digital coding algorithm at the supply end, and will be delivered to the consumer virtually unimpaired. This controlled performance capability is arguably a pre-requisite for the successful introduction of high definition television (HDTV). It is doubtful whether existing broadcast transmissions, even with foreseeable upgrading, can successfully match this technical quality imperative for HDTV.

The B-ISDN will provide for the carriage of mass media, narrowcasting (as opposed to broadcasting), retrieval services, teleconferencing and even one-to-one television program exchange. Potentially, it will allow a consumer access to television program from anywhere around the world. It

will provide an abundance of channels. Regulation must be seen in terms of an unlimited supply of television program within an international context. It is only a matter of time before a television program will be able to be accessed by a consumer in Australia directly from an international supplier eg. Lethal Weapon 5 replayed from Los Angeles, in a manner similar to that which now applies to domestic 0055 telephone services for sound. How should this be regulated?

The B-ISDN offers the most straightforward and efficient method of conditional access, (i.e. the means by which access to programs is limited to certain consumers) which is expected to be a fundamental component of any future restructuring of the television industry.

It is clear, therefore, that a vital need exists for a comprehensive Communications Act, framed so that technological, financial, administrative, and policy imperatives might be easily accommodated as they occur.

## Proposed Act

**A** revised Communications Act could and should cover all media involved in conveying messages or information to consumers or between consumers. It should encompass content, whether it is described as information, entertainment, education, leisure viewing, background music, advertising material, etc., and carriage in terms of radiocommunications, telecommunications and transport. If exceptions were to be made to the operation of the Act, such as the distribution of videos, the print media, etc., these might simply be omitted from the legislation. It should be noted that, depending on the scope of the Act, the co-operation of the States may be required to overcome Constitutional restraints on the Commonwealth's powers to legislate in such areas as video distribution.

In particular, a new Communications Act should encompass:

- postal services;
- print media;
- television services for leisure viewing and entertainment;
- other visual services;
- sound broadcasting (colloquially known as radio in Australia); and
- information services.

This article presents only an outline of a

proposed Communications Act and primarily uses television to illustrate the concept. The arguments in the Review for a modular Act are sufficiently convincing that this proposal adopts the concept. The best way of visualising the proposed new Act might be the three dimensional framework shown in the figure. The figure is shown to have x,y,z axes. The figure should be seen only as a visual presentation for explanatory purposes. The x-y plane is split into two parts.

**P**art A lists general regulatory regimes including: planning; ownership and control; authorisation and licensing; content; carriage; and community service obligations.

The legislative provisions in Part A modules should set out general government policy and overall objectives.

The Part B provisions list specific regulatory regimes including: Broadcasting Act; conditional access radiocommunications - such as those services currently regulated under the government's Video-Audio Information and Entertainment Services (VAIES) regime; videos; and (a suggested) Guided Media Act.

Part B modules or Acts will draw on Part A modules or their subsets to various degrees. Also, Part B modules should set out specific government policy, and any special, objectives.

A Broadcasting Act might be included as a Part B module based on the concept that television programs are freely available to all members of the public and delivered by means of radiocommunications.

In recognition of the claims concerning the scarcity of spectrum, and the perceived persuasive power of television, a severe regulatory regime is at present in place involving a number of special conditions including unique content standards, community service obligations, sanctions and performance reviews. These specific items need to be retained as part of the Broadcasting Act Module.

In Australia, at this time, the television programs, perceived to be 'services with common characteristics' similar to those delivered by a broadcasting service, are available or potentially available to consumers by delivery methods other than broadcasting. These possibilities include VAIES and videos, which are considered below.

Conditional access of television program

service provision to consumers by means of radiocommunication transmissions which might use television broadcast channel allocations are believed to require a regulatory regime different from that set out in the Broadcasting Act. Therefore, it is proposed that a specific Part B module be created to

specify the terms and conditions for the conditional access of radiocommunication services carrying television programs for leisure viewing and entertainment, currently governed by the regime VAIES.

If video sale and hire is to be included in the legislation, a statement to the effect that

the delivery of videos is totally unregulated, except for Part A conditions.

It is envisaged that a separate Part B module will be required for regulation of the television services provided to consumers over guided (wired) media. It is anticipated that a regulatory regime very different from that of existing Acts will be required.

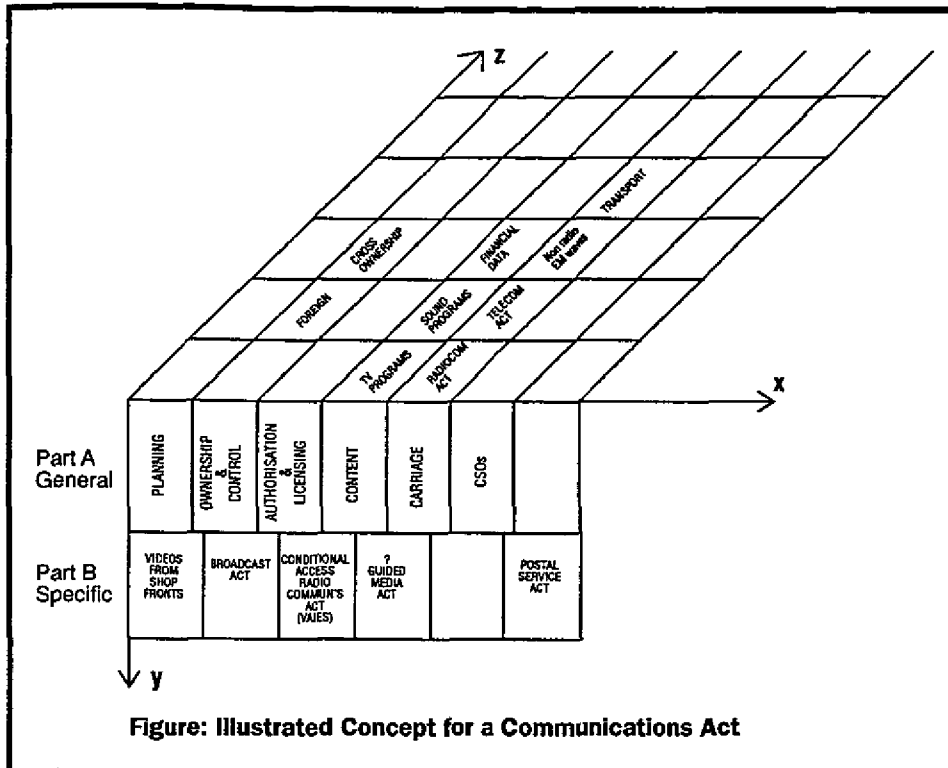
The x-z plane shows the component parts or subsets of the Part A modules.

For example, the content module might be seen to include: television programs, television program services, sound services and financial data services.

The content module might also be subject to Federal laws in respect of violence, pornography, etc., whereas more stringent content rules might uniquely apply within the Broadcasting Act.

A further example shows that the carriage module might consist of: a radiocommunications Act, a telecommunications Act, and physical transport.

It is envisaged that the integration of the several different Acts into an integrated Communications Act will enable anomalies to be eliminated, and lead to simplification of the regulations applicable to individual modules or Acts.



## "The Law of Journalism in Australia"

Bruce Donald, Manager of Legal & Administrative Services, ABC,

reviews this useful new text written by Sally Walker

The worst aspect of the common law system based on a mix of judge-made and statutory law mix has always been that discovering the law on any subject is something of a lottery. The passionate hopes of Jeremy Bentham for the gathering and codification of English based legal systems, readily intelligible to ordinary people as well as to professional lawyers, remains a twinkle in his embalmed eye which was wheeled out annually at the University College, London.

It is, however, a cause for great celebration that his intellectual tradition remains alive and well in the major academic treatises that collect and organise the law. Sally Walker has established her position in that tradition. This treatise is encyclopaedic yet precise, scholarly yet practical. It is a work which, while principally of use for lawyers, ought to have a place in every news room in Australia as well as in all colleges of communications and media. (I have already ensured that all of

the ABC legal team have a copy next to their bedside telephone for those late night advising sessions where precise law is needed.) In short, Sally Walker has performed a significant public and private service in researching and assembling this book.

Sensibly, the author has been concerned to expound the current state of the law without dwelling too much on the great debates concerning the law of journalism. For example, while naturally referring to the debate over the state of the defamation law in Australia and its weakness in the field of public figures and issues, she concentrates on the law as it is.

### Reporting the Courts

The book begins with the Courts. For me it is a depressing aspect of public curiosity and journalistic obsession that so much attention is focused on the matters and people who pass before the courts; it stands beside

ambulance chasing as the cause for the descent of electronic media into tabloid status. Walker covers the field in admirable detail from the fundamentals of the sub-judice rules through the range of often conflicting rules in the various jurisdictions on suppression and restriction of publication. At times she lets some of the judges off too lightly: notably the South Australians in the field of suppression orders. The law has changed dramatically in that State in response to the gross overuse of suppression orders so the book is already out of date in this respect. However, Walker should really have noted that the law in that State had permitted the suppression of the identity of the head of the Drug Squad right through his trial and up to the point of him ultimately pleading guilty on over eighty charges of drug dealing.

Walker appropriately points out the uneven enforcement of the sub-judice rules. In the ABC for example we take a reasonably strict approach stressing our journalists that