

**DEVELOP WITH THE LOCALS: RESPONSE TO QUESTIONS IN THE AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY (ACMA) CONTEMPORARY COMMUNITY SAFEGUARDS INQUIRY ISSUES PAPER**

**Follow me dancing backwards in heels better than ACMA (That's entertainment)**

**You're the voice, try and understand it. (Farnham) How prophetic was that?  
(On a scale of 1-10)**

Carol O'Donnell, St James Court, 10/11 Rosebank St., Glebe, Sydney 2037  
[www.Carolodonnell.com.au](http://www.Carolodonnell.com.au)

**Overview of ACMA Contemporary Community Safeguards Inquiry Issues Paper (2013) and key recommendation to media on future regional directions**

It is a fact that in the absence of a glossary, one often has no idea what the Australian Communications and Media Authority (ACMA) is talking about and what it might want from the related inquiry and issues paper on contemporary community safeguards. This is bad as complainants unhappy with outcomes of the ABC or SBS complaints handling processes may then make their complaint to ACMA (p. 79). I guess they will end up in court. ACMA encourages censorship but truth may often seem rude and shocking at first. Where would family entertainment be without Freud and his many admirers for example?

In answer to ACMA **Q. 1** it is later shown why the 'seven key concepts' ACMA presents are confusing, including in relation to policy *calibration*, supposedly for efficiency, which affects many other key operational expectations. In regard to **Q. 3** the ACMA view of *community values*, its meaning and requirements are also unclear. This is also the case regarding ACMA treatment of *classification* and *decency*. These and the related concepts of *ethical standards* ideally appear best developed broadly and openly for debate in many related global and regional contexts, as discussed. This is also pointed out in reply to **Q. 26 and 27** on *ethical standards, fairness and accuracy interventions*.

In **Q. 75 and 85** ACMA states it has drawn a connection between *protection of the public* and *privacy* and asks for a response. Privacy cannot protect the public. It can only protect the individual and is ignorance of his affairs for everybody else. The perfect market requires perfect information and so does perfect risk control, which one may also find in immobility and death. Informed, experienced and open action will protect the public best from risks which are ideally sought in modified forms to grow and overcome them and to learn and carry on.

However, increasingly broad, varied and deep knowledge and expression are concomitant with the march of history, science, imagination and democratic wellbeing. More honest information provision is ideally what good communication is about. ACMA should try it instead of inviting the costs of the court or related lawyers.

A response to **Q. 103** on *Australian identity* is made in this context in which Australian geographical, historical, cultural, and related institutions normally guide individuals who may nevertheless try to reject or escape these strictures on a particular ground or another. This is not simply about Australians being '*able to experience Australian voices and stories when using or consuming media and communications services*' (p. 93). Identity is far more important than this and related to the globally inclusive pursuit of better values. Related recommendations to the NSW Independent Review of Local Government on the basis of the stated aims for the report 'Future Directions for NSW Local Government: Twenty Essential Steps'. (Sansom Report 2013) are therefore finally presented.

ACMA give us a break. When one reads the existing provisions in broadcasting legislation and codes which ACMA seems to see as relevant, they appear clear and good, as one would also expect from comparing Australian with other English speaking TV around the world. For example, ACMA Appendix 2, 'Relevant extracts from the Act' provides objects and key provisions which seem clear and socially responsible (pp. 87-92). This also applies to provisions in codes of practice referred to in the ACMA paper. As a citizen my view is that Australian media does a comparatively good job of giving the news we need. New York, in comparison, seems to be where no news is good news. As Alan Kohler demonstrated recently with a graph on ABC TV, no global financial crisis was ever predicted by those who are called experts in the game. Open theirs up.

ACMA appears to suit those who want more confused, costly, legal ideology and control at a time when quality Australian media continues with increasing difficulty to report on the activities of some of the human filth who politely rule and drive over us with their silences, pretences and lies. In the Sydney Morning Herald Weekend Business (SMH 22-23.6.13), for example, consider Lehman Brothers Australia activities which fleeced councils, churches and charities by putting their \$1 billion into toxic investments before the global financial crisis. This was followed by millions of dollars pointlessly deployed for liquidators and lawyers. Consider the inaction of the Australian Securities and Investments Commission (ASIC) in the face of the CBA fleecing its ageing clients of their retirement funds. Yet as West stated, 'quality newspapers get neither the billion dollar hand-outs of car makers nor are rusted together with the apparatus of the state in the cosy shelter of a Marxist-Leninist monopoly, as is the delight of the Australian stock exchange'. (Weekend Business p. 2) How true. But media has big power to raise us up. Support steps recommended to the NSW Independent Review of Local Government later.

Questions in the ACMA Contemporary Community Safeguards Inquiry issues paper are addressed later in international trade and other regional contexts where it is also argued the new '*16 enduring concepts*' proposed by ACMA (Appendix 3, p. 93) are unclear and confusing. In Australia, leave well enough media alone. Why keep fiddling without definitions? Better ways forward in many regional contexts are below, in company with local councils and others. Explore, for example, how media may help implement the National Disability Insurance Scheme. A cat can be black or white, if it catches mice.

**RECOMMENDATION: COMMUNICATE BETTER AND MORE BROADLY**

**Regional broadcasters should link in common aims with local governments and others openly, to seek the truth about production and its outcomes to improve them**

As shown later, ACMA does not meet its own goal of ‘regulator parity or coherence across media and communications markets’, and it seems likely more ACMA directed work of the current nature will generate more censorious and costly relations wherever it counts. In all regions, clearer recognition of the social and environmental contexts and administrative operations to reach key broadcasting goals is also vital for understanding what government and industry practice is and how it may change for the common benefit.

Those managing broadcasting industry operations should openly make more development links with governments and their related communities, defined later, and as also guided by ACMA Appendix 2 on objects of broadcasting (p. 87). For example, the NSW Independent Review of Local Government report ‘Future Directions for NSW Local Government: Twenty Essential Steps (Sansom Report 2013)’ made recommendations ‘to strengthen the role of the Division of Local Government in performing and supporting innovation’. Among the goals are a more constructive relationship between employers, employees and employee organization focusing on productivity improvements and performance rewards (p.7). Broader communication is necessary to provide more stable, fair and clearer outcomes for everybody involved in work or on the receiving end of it.

Sydney Lord Mayor, Clover Moore, has joined with some other councils in a submission to the NSW government which states there is no compelling evidence that abolishing local councils to build ‘strategic capacity’ by creating a new super Sydney Council, as recommended by the Sansom report, would deliver benefits for communities. They present no compelling evidence that it would not. This is discussed later in regard to evaluations of employee and subcontractor performance and the need to open up organizations in ways which can support more broadly informed, fair and healthy development and jobs. It is noted in this context that councils and the construction industry may increase and pass on many costs locally, but manufacturing or other export production also depending on them, must globally compete. This is a high risk situation.

It’s a global environment, Stupid. In this response to the more narrowly feudal ACMA direction, the key relevant post-war views of Sir Owen Dixon on trade in section 92 of the Australian Constitution and those of Fred Hilmer, currently Vice Chancellor of the University of New South Wales, whose report ‘National Competition Policy’ (1993) was accepted positively by all Australian governments, are discussed in international and related regional contexts later. This is also undertaken in the light of key United Nations (UN) and national directions and key views on ethics contained in The Discussion Paper on the Protection of Human Genetic Information by the Australian Law Reform Commission (ALRC) and the National Health and Medical Research Council (NHMRC) 2002. Ideally, co-regulation is not bowing to legal or other professional monopoly but preferring clear, unvarnished presentation of apparently relevant facts from any quarter.

Better communication can help deliver services more effectively and broadly. On the other hand, those who wonder where market trajectories for media end in future should

go to New York to see 40 TV channels pumping out continuous streams of cheap lying rubbish in any hotel room. Only lawyers can help? It's a frightening situation also reflected, as discussed, in the direction the ACMA report on contemporary community safeguards appears to be taking. In this context one can only agree with Peter Doherty, Nobel laureate for medicine, when he called for more political bipartisanship and said that the oppositionist attitude for whatever party is out of power is crazy and makes it impossible to get any reasonable public debate (SMH News Review 22-23.6.13, p. 6.)

The ACMA approach discussed below makes one fear the comparative state of clarity and good behaviour of Australian media will soon be driven downhill by general lack of community power and understanding and all the related lawyers, internationally driven by US financial approaches, economies of scale, 'strategic capacity' and related interests. Alternative, regionally planned, trading, funding and management directions are outlined later to enhance product and service quality, diversity, competitiveness, jobs and other benefits for all involved. These ideally also operate in comparatively open and stable ways, in comparison with market drivers. More international and regional direction is at [www.Carolodonnell.com.au](http://www.Carolodonnell.com.au))

### **Give new ACMA direction the flick: First response to ACMA Questions 1 and 3**

Without a glossary explaining key terms, **NO** is the only reasonable answer to *ACMA Issues Paper Question 1: Are the seven key concepts identified by ACMA relevant and useful core concepts in the broadcasting code context?* This is discussed later with reference to many related concepts in the ACMA issues paper, including with reference to the first ACMA key concepts of *community values, decency and classification* and the third ACMA key concepts of *ethical standards, accuracy and fairness*. Australian communicators should openly attempt to put current products and services in broader international and regional contexts of co-regulation and project and service delivery for improved trade and more informed discussion of comparative production outcomes. Good communications are of greater and fairer influence to the extent they are spread. The way of protecting the public does not lie in encouraging secrecy but in accurately informing people on matters apparently related to their current and historical interests.

ACMA trickily obscures the historical and contemporary roles of courts, legislation and so codes in all the contemporary affairs it addresses in its paper. From the globally ideal perspective of responsibility for good democratic communication, Australian commercial news and current affairs programs appear to point in the right direction in stating they will not use material relating to a person's personal or private affairs, or which invades an individual's privacy, unless there is a public interest in broadcasting such information (p. 54). As pointed out later, this is not just about buying and selling. ACMA's view that protection of the public (not the individual) lies in privacy is both high risk and wrong. It invites those who are richest with most highly vested interests to pursue censorship.

ACMA asks in **Question 3: Should the concept of 'community values' be relevantly included as a guiding core principle in contemporary broadcasting codes of practice?**

The ACMA paper often uses the bizarre word ‘*relevantly*’ without explanation of why it is included in the question. Sadly, one can only assume any word not included in a law must be considered irrelevant. This has major implications for the way codes are treated. The term, ‘community standards’, may be synonymous with the rule of law, or something else. The original establishment of codes of practice under state occupational health and safety acts in the 1980s was to provide guidance for action, from which deviations might occur to meet the apparently highly variable needs of the particular case, as in the way a doctor might use or deviate from some text book treatment, according to the needs of the individual and their situation. Lawyers often try to make following codes to the letter mandatory, like law. One is given no idea what is the case with broadcasting codes.

**ACMA should first use a glossary and does not meet its own goal of ‘regulator parity or coherence across media and communications markets’. Clearer discussion of the social and environmental contexts and operations of regulation is vital for understanding what current practice is and how it may best be improved.**

One wonders why the ACMA inquiry ‘*seeks to identify the core matters or concepts that are of enduring relevance and significance to contemporary broadcasting audiences and markets*’ (p. 1). From a logical perspective, why should ACMA or anybody else care about *enduring relevance* if only interested in *contemporary* people and markets? One also wonders how ACMA sees *audiences* and *markets* relating. The ACMA paper appears covertly to support many more unstable legal or commercial approaches leading to another global financial crisis. This undermines Australian strengths which lie in the comparative advantages of its more stable, effectively democratic, healthy development. Does ACMA understand the performance, accounting and funding requirements of this? I guess not. This is discussed again later in regard to Australian identity and content.

In the global economy of which Australian regions and producers are part, one assumes audiences are also part of international markets, ideally driving many exchanges. In this international context, in which post-war Australia has accepted and effectively integrated higher rates of immigration from around the world than almost any other country, one naturally also accepts the definition of community put forward by the International Labour Organization (ILO), the United Nations Education, Scientific and Cultural Organization (UNESCO) and the World Health Organization (WHO). In the context of community based rehabilitation (1994), these organizations defined ‘community’ as:

- a. a group of people with common interests who interact with each other on a regular basis, and/or
- b. a geographical, social or government administrative unit

This is a great definition of community because it is clear and allows services or goods to be managed transparently (openly, clearly) on related international and regional bases for the purposes of improving trade, wellbeing and understanding in Australia and beyond. It also encourages groups of people with common interests in Australia and beyond to organize with communications media for broader community improvement, including

jobs. On the other hand, one wonders what ACMA means by the key term ‘community’. It seems no interest broader than that of disputing lawyers can be recognized in courts.

ACMA states three sources were used as a starting point for identifying what issues and concepts to focus on in the issues paper. These sources were:

- ‘the Act
- existing codes of practice
- the ACMA’s Enduring concepts paper (sic. p. 14)

The Introduction suggests the ‘Act’ is the Broadcasting Services Act 1992 and that the government broadcasters ABC and SBS are included in the broadcasting industry (p. 6).

With reference to ACMA discussion of delivery of community standards later, one first notes the ABC and SBS apparently support Free TV Australia and others in the general principle that *‘the programming content standards should be platform-neutral’* (p. 23). ASTRA apparently also stated that it supports the general principle of:

Consistency in the assessment and classification of content to be delivered on any platform (p. 23). (*ACMA does not tell the reader who or what ASTRA is.*)

‘Platform neutrality’ is also discussed later when guessing what ACMA thinks and wants.

The ACMA issues paper sheds little light on the meanings related to *community values, classification and decency* issues it refers to, or on the outcomes of related deliberations of the Australian Law Reform Commission (ALRC) on the national classification scheme under the *Classification (Publications, Films and Computer Games) Act 1995*, discussed later. Is ACMA referring, approvingly or not, to this particular law in its discussion of ‘classification of content interventions’ and ‘decency’ interventions? One assumes so. This is discussed later in the context of ethical standards, including accuracy and fairness.

ACMA states the ALRC recommended that *‘platform-neutral regulation is best achieved via a new legislative classification scheme which would incorporate all classification obligations currently applying to media content, including television content which is currently regulated under the Act’* (p. 23) – (which Act?). This recommendation was apparently ‘endorsed in the Convergence Review’ (p. 23) which also recommended that *‘development of any new classification scheme, while being based on the ALRC’s recommendations, should also build on an industry-led comprehensive review of existing co-regulatory and self-regulatory codes which examine the potential harmonization of codes and the development of common standards’* (p. 24). Is this it?

How is the above direction expected to be pursued and what status do current ACMA deliberations have in this management process? Should all legislation related to broadcasting ideally be considered subordinate to the relevant ‘objects of this act’ (p.87) which is presumably also the Broadcasting Services Act? (This was done with a lot of outdated, narrow, legislation when state occupational health and safety acts were passed in the 1980s. They were comparatively new in stating the goal of making workplaces

safe and introducing non-mandatory codes of practice for guidance in doing so.) ACMA has no glossary and overlooks some of the key issues related to courts or lawyers. This seems to be because ACMA knows lawyers don't use definitions but will always win.

For an example of the need for clear explanation of key ACMA terms, to guide lesser mortals than lawyers, whose interpretations presumably remain under God or a related legal rule, the key ACMA principle of '*calibration*' appears a completely new mystery. This apparently also guides 'the framing of some of the questions' in the ACMA issues paper (p. 9) which states:

Policy settings should be calibrated to suit particular circumstances – therefore while regulator parity is desirable, the focus of regulation should be on coherence across media and communications markets (but not necessarily uniformity).

One hopes this means that, trying to act in the public interest, ACMA will support any focus on achieving legislated **goals** (objects) more broadly, supported by clear strategies for their attainment, as that should provide better designed jobs before money. This also involves analysis of the outcomes of action to achieve goals. Ideally such goal directed activities may be varied to meet the particular requirements of a particular environment or case (a state). Regional geographic, historical, organizational and related community or individual differences are ideally influences on management actions designed to achieve the broader goals of better orders. Classification and reasons for departing from related directions are discussed in this context later. The more broadly development is sought the more jobs appear potentially available.

As shown later, in discussion of the UN Declaration of Human Rights and related global goals, of which our regions appear part, protection is now ideally conceived more broadly as protection and enhancement of the quality of life of any people, ideally starting with the poorest and most vulnerable. This is different from earlier views of protection, which are mainly related to the erection of walls (Chinese or otherwise) which keep others out. In Australia, this recognition is accommodated under the Constitution, as discussed later.

In regard to any related free and open communication, the UN appears to have a bet each way in Article 27 when it states: (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits; and (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is author.

Popper (1953) famously stated all administration should be regarded as experimentation. This requires a broadly thoughtful awareness, rather than automatic, narrowly guided action. Variations from policy, guidelines or any apparently expert practice should be made and documented clearly, to meet the apparent needs of any specific situation, also considered on contextual merits. Treatment variations which are clearly documented become part of an overall research database which may also be investigated to advise all on future policy. Australian health promotion and service planning models stress the

importance of data driven, consultatively developed, regional policy and related service aims followed by service implementation and comparative evaluation of service outcomes. Filming situations may often be the clearest and most useful form of documentation.

The ideal administrative practice is consistent with the requirements of program or project management and action research. Regionally based, broadly evidence based approaches to treating individual and community problems ideally contrast with linking silo management by government bureaucracies and professional groups. Management is ideally conducted more broadly, with the active participation of many other communities and individuals. For example, the free beyondblue guide 'What Works for Depression' provides broadly related ideas. Communications media have huge potential to help find out what works and spread it in entertaining ways. Without broader direction, many high risk drug treatments become the norm and mind, environment, work, music or other development contributions appear increasingly ignored. Australian identity is discussed in this regional development context later. John Polson's Tropfest was a great example of film development potential, supported by Sony and others. Better development use could be made of the TV platform.

However, it is not clear what ACMA thinks or why. The rational optimist, who assumes the broadly scientific view of the concept of policy '*calibration*', described above, would assume a regulatory body like ACMA should also show a strong interest in the directions and codes historically developed by the government broadcasting services of ABC and SBS, because these operations were driven by national social aims and experiences years before ACMA arrived. They continue to operate strongly today and ideally seek further regional and global influence. The ACMA issues paper ignores this leadership and the related opportunity to consider how market driven operations may copy, mesh or differ. This is an opportunity missed, especially in regard to Australian identity and content.

In regard to complaints handling, however, ACMA points out that in the case of SBS, formal complaints are investigated by the SBS Ombudsman who reports to the Managing Director and is independent of all SBS programming departments. The Office of Audience Affairs is managed by the SBS Ombudsman. It replies to complaints and manages enquiries and issues about the complaints-handling procedures. In the case of the ABC, written complaints can be lodged with the ABC's Audience and Consumers Affairs (A&CA) which is independent of program making divisions within the ABC. The ABC website also invites audience members to share their views with content makers and others. If complainants consider the outcome of either the ABC or SBS process is inadequate, they may make a complaint to ACMA. What will ACMA do? Flick it to court. One needs to know more about ACMA real and ideal administration.

The approach which one sadly assumes will drive ACMA is to keep on following earlier black letter law approaches. This requires the slavish legal following of legal rules, rather than broader and more expert questioning of the attainment of desired practice outcomes, as media are more effectively established to do better, cheaper and quicker.

Currently, the huge tangle of legal rules may or may not differ from state to state, whatever the cost, and courts remain the most powerful throw-back there is to the feudal,



pre-scientific, pre-democratic era before many infinitely better ways of communicating were invented, besides atomic bombs. Lawyers normally travel with similarly driven and powerful commercial and related theoretical interests supporting their legal monopoly and secrets. Being feudal, the courts administration gives little or no data to assist injury prevention, for example in a service provision manner more like health care. All government and related decision making services, however, bow to court drivers because of the lawyer's privilege in keeping all key client and expert communications secret. This means any more sensible services beneath the court may be effectively neutered. In this context, broadcasting and communications media have great opening strengths going forward so it would be a great pity from every Australian perspective to lose them.

Being puzzled by what ACMA might mean by terms like '*relevantly, calibration, community, classification, decency, etc.*' one fears the result of its intervention will mainly encourage the richest vested interests to drive further via the dominating values of English and US courts which also influence Australian practice, so requirements become even more fragmented, unclear, dysfunctional and costly under law, in the absence of clearer and broader goals based on the public interest, with plain English definitions and more broadly educational administrative practices. ACMA should be more honestly and broadly informative and provide a glossary to clarify many of its key terms and statements for direction. Otherwise the issues paper consultation seems designed to undermine many of the apparently clearer statements already in broadcasting legislation and codes of practice referred to by ACMA. This seems to end in new, more complex and confusing formulations that will be argued interminably and expensively in court.

Taxpayers primarily support the rich through financially and otherwise unaccountable courts. Mass communications are incredibly powerful and underutilized harbingers of education and development because they can show what happens in practice, ideally or not, over time, to meet the needs of an audience, student, or others and not simply as a teacher in a classroom, hiding the quality of their work behind secret and expensive reviews by their professional peers. To the extent that the quality of the product or services lies in the particular needs and eye of the beholder, its openness is vital.

While one is happy for engineers and surgeons to be certified to practice by their expert fellows, as bridges or bodies might otherwise collapse and we might die, if all lawyers died in their sleep tomorrow, Australia could more easily, quickly and cheaply become a far better place from all more logical, scientific, democratic, empathetic and cost-cutting perspectives than is possible under their narrowly feudal professional monopolies and court privileged secrets. The rest of us have more relevant guiding knowledge and practice than lawyers do for designing law, its aims, key definitions and practice, and for dealing with disputes and apparent breaches in the modern world, so as to improve it. This is a hypothesis. To test it, dispute resolution systems must compete with courts on equal terms, not under lawyers' control. Systems must be opened up. ACMA will not do it so one must appeal to broadcasters to satisfy mutual or common objectives with others.

**Related Responses to ACMA Questions 26 and 27 on ethical standards and to Q. 75 and Q. 85 on privacy and protection of the public**

The key ethical issue for Australian or other democracy is that the comparatively narrow and feudal rule of lawyers and courts cannot help society establish rational directions or settle disputes more fairly, effectively and cheaply in the public or individual interest. On the other hand, better and broader communication certainly should. As President Obama said, there is no time for another meeting of the flat earth society. For Christ's sake do it or the US Anglosphere will take over much of the world not under Chinese domination. Economies of history and scale make this hard to avoid for English and Chinese speakers.

This is addressed below in response to ACMA *Question 26: Should the Concept of 'ethical standards' be relevantly included as a guiding core principle in contemporary broadcasting codes of practice?* What does ACMA mean by ethical standards?

*Question 27* also states: *The ACMA has drawn a connection between 'ethical standards' and fairness and accuracy interventions. Do you agree with this connection? Are there other interventions or safeguards that should be included here?*

Such questions ideally are addressed in regard to any particular bodies, their immediate surroundings and their globally related regional contexts. This is ideally done mainly in the light of Australian national objects, related UN directions and common dictionary definitions. Community based treatments and questions of ethics also appear more fruitfully addressed, for example, in 'The Discussion Paper on the Protection of Human Genetic Information by the ALRC and the National Health and Medical Research Council (2002, pp 289-305). This general direction is discussed again later. We are all condemned to be ethicists now. This is the post-Nuremburg common duty of care instead of the old noblesse oblige approaches to secret 'protection', in professional blinkers.

Trouble often starts at margins, as one also learns in insurance. More open and honest attempts at sharing risk more stably and fairly also seem good protections in democracy. Decisions are ideally debated openly and delivered clearly but depend on the case and its global environment. Ideally this is also openly recorded and justified from many openly related cultural perspectives thinking, studying, working or acting together. Openly plan service delivery for common benefit in related regions or democracy is ignorance voting. I guess this is largely reification and selection of much good Australian media practice and product which could help any coalition of the willing to serve more communities more broadly in common – e.g. ABC TV on Macquarie Island was terrific as a model.

ACMA *Question 75* states *'The ACMA has drawn a connection between 'protection of the public' and privacy interventions. Do you agree with this connection? Are there other interventions or safeguards which should be included here?'*

*Question 85* states *'Should the concept of 'protection of the public be relevantly included as a guiding core principle in contemporary broadcasting codes of practice?'*

The answer to both the above questions is **NO** because to link secrecy with protection of the public any further than it has been already through feudal privilege, would be yet

another invitation to the nastiest commercial and legal interests which often live richly and unaccountably on the lesser public and private purses. In practical terms this means democracy has been reduced to rich ignorance which periodically buys ignorant votes.

Greater human well-being came mainly from technological and scientific production. However, communication in modern democracy is centrally about written, pictorial or aural communications and the related handling of strong emotions, as well as information and entertainment, in ethical ways. Mind ideally takes care of itself and also learns simple accounting, which is an aspect of the concept of protection of the self. ACMA Appendix 2 entitled 'Relevant extracts from the Act' states (3AA) that the Parliament also intends that designated content/hosting services be regulated in a manner that:

- (a) enables public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on the providers of those services; and
- (b) will readily accommodate technological change; and
- (c) encourages:
  - (i) the development of communications technologies and their application; and
  - (ii) the provision of services made practicable by those technologies to the Australian community (p. 88)

The opinions and operations of court are antithetical to the achievement of all the above. This requires consideration to find better ways forward with those in other global regions. In Africa, for example, good newspapers play a vital information role for those who speak English. They need to be supported rather than trashed as global markets drive on.

The ACMA issues paper never directly discusses what is meant by classification which it addresses first in regard to community values, classification and decency. However, the earlier National Classification Scheme Issues Paper produced by the ALRC first asked the question '***Should the ALRC focus on developing a new framework for classification, or improving key elements of the existing framework?*** The ALRC paper went on to explain key requirements under the apparently driving legislation, the *Classification (Publications, Films and Computer Games) Act 1995*. The ALRC pointed out the national classification system seems to work quite well as it appears well known, practical and supported by the Australian public (p 16). I have no reason to doubt this.

The following purposes the ALRC outlined for regulating and classifying content seem good in this context, although they nevertheless reflect a comparatively censorious and narrow view of classification, which ACMA risks extending to more matters.

- Providing advice to consumers to help inform their viewing choices, including warning them of material they might find offensive;
- Protecting children from harmful or disturbing content; and
- Restricting all Australians from accessing certain types of content (p. 19)

Griffith has apparently observed that classification is different to censorship in that the latter is ‘suggestive of public order and idea of the public good whereas classification is associated with the facilitation of informed choice in a community of diverse standards’ (ALRC p. 19). In a historical context, censorship also seems associated with domination and repression of people, who with time became more educated about their surroundings and drivers. It is considered good to move to broader rather than narrower understanding. This incorporates appreciation of history, its debate and protection of the cultural records, monuments, etc. One has often argued parks and gardens appear the best way forward for protecting the interests of most vulnerable people and species in the interests of all. This may also be a less wasteful approach to any zero waste strategy than starting from the consumer with no control over the product or packaging. We take what we find.

However, the *Classification (Publications, Films and Computer Games) Act 1995*, refers narrowly to censorship, rather than working in searches for truth, improved construction, engineering and pleasure, which are ideally foundations of flourishing community life. More knowledge and pleasure has often been brought by mass media against the more ignorant, narrow, dominating, elitist, secrecy loving forces of the past. For example, the Attorney General’s Department (2003) stated access to justice can only ever mean relatively equitable access to the legal process. Even the common dictionary reflects this legally driven confusion between the broadly modern concept of justice as fairness, and earlier, feudally driven administrative reality in courts. It defines ‘*justice*’ as: *Quality of being just; fairness; judicial proceedings; judge; magistrate*. Surely ACMA knows this.

In Australia, the Constitutional legitimacy of our feudal court practice and ancient legal custom dominates and shapes others, unseen. Huge quantities of narrowly constructed, outdated and often conflicting laws which may be unknown to all but specialist lawyers, dictate legal action. Each law and its legal practice is blinkered by its narrowly feudal and adversarial past practice, rather than being capable of delivering any more scientific and democratic processes which ideally drive us all in any environment, whether or not we are considered subjects to a God ideally assumed the Embodiment of love as well as justice. The term ‘junk science’ is a polite family Freudian slip. It’s driving junk law that counts.

Nevertheless, classification and censorship are different and ALRC and ACMA issues papers appear engaged in discussion of the latter. The objects of broadcasting and related acts should assist more diverse trade, service, manufacture and related innovation and inquiry. Ideally guide and define more effectively and openly in many regional contexts also closely related to gaining better communication, information provision, education, entertainment, advertising, and all related global and regional classification and provision. UN, Australian Bureau of Statistics and related directions often appear useful in this context. This includes in issues of censorship, which may be conceived as a protection of people who appear comparatively vulnerable for some debatable reason.

For example, Article 1 of the 1948 Declaration of Human Rights generated Australian anti-discrimination legislation in stating that ‘*All human being are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood*’. Historically, the dominating spirit of

brotherhood has been secretly and forcefully tribal, feudal and then professionally and bureaucratically driven, as distinct from democratic. This is reflected inconsistently in increasingly specialised legislation. Key UN goals are designed to correct the effects of this by focusing on the need to assist development of the poor and women and children. It also seems likely to be a good idea to listen to and try to help any mobs in the open.

Article 3 of the 1948 UN Declaration of Human Rights states everyone has the right to life, liberty and security of person. The point of legislation to remove discrimination is to allow all to be treated and to express themselves more equally and therefore openly, without fear of harm. In many areas this may be more difficult for women or those from minority groups to do, perhaps because of related assumptions that the role of their men folk and mentors is to protect their interests. Whether this occurs more in the breach than in the observance and the effects of such action may be moot questions. However, those who abhor questioning others on the grounds that it is related to 'stereotyping' ideally should also recognize that classification and its questioning have been the global motor of scientific and risk management advance. More broadly open and truthful communication and information are the only ways to mutual understanding, which is not to say that the other's rejection or fear of communication should normally be denied. Heaven forbid.

In global development contexts, regional communications are ideally part of historical strengths, their problems and solutions. For example, when Kevin Rudd was Minister for Foreign affairs he made a speech to the Australian Council for International Development pointing to the centrality of Millennium Development Goals (MDG) in the government mission and that their focus is poverty reduction. He also said part of the government mission is 'giving voice to the voiceless'. At the MDG summit it was stated that before 2015 Australia expects to contribute considerable sums to women and children's health, education and food security. The Minister discussed a related Pacific Partnerships Development program. Good communications for any related development are vital because in their absence the money will be taken by the comparatively rich or aggressive.

In this context, it may be interesting to consider John Heilemann's on-line report in 'Wired', entitled 'The truth, the whole truth and nothing but the truth: the untold story of the Microsoft Antitrust case', in which he discusses the 18<sup>th</sup> failed mediation document made by the US Justice Department and Microsoft. He states that draft 18 required Microsoft to set a uniform price list for Windows; prohibited it from striking exclusive contracts with internet service and contract providers and forced it to open its programming interfaces. Although draft 18 would let Microsoft add new features to Windows like web browsing, which had originally provoked a law suit, PC makers would also have a right to demand operating procedures without those features so they could modify the desk-top, integrate rival software or add features of their own choosing. They would also be able to licence Windows source code. Did this failed mediation document appear to place Microsoft in a similar position to an arm of the state? Are such agreements useful in regional contexts such as those now hosting Gates Foundation developments or regarding other Australian regional broadcasting and governance?

ACMA questions and its presumed genuflection to the court in regard to favouring secrecy privileges and censorship as means of protection of the public appear outdated, likely to increase inequality and also likely to be costly in an international context where the UN primarily seeks social inclusion and protection of the poor before the rich, which are driving. The **right to know** what one is working with, for example, is also a central injury prevention principle of Australian occupational health and safety legislation. Chemicals are no different to anything else. Australian community and identity are later discussed in related regional, historical and trading contexts led by the eminent judge, Sir Owen Dixon on the Constitution and Fred Hilmer, Vice Chancellor of the University of NSW, on national competition policy. These directions should be supported in plain language not undermined to extend a more secretly dominating feudal past more broadly.

In matters of ethics, one offers the views of The Discussion Paper on the Protection of Human Genetic Information (Australian Law Reform Commission (ALRC)/NHMRC 2002, pp 289-305). It claimed that in recent public debates relating to the regulation of genetic research, 'ethics' has sometimes figured as the adversary of science. The report claims it has been argued, for example, that an 'inevitable tension' exists between the 'scientific community' who want 'unfettered opportunities for research', and the 'moral and ethics community' which seek guidelines and restrictions. The discussion paper points out that ethics need not be defined in opposition to activities like medical research.

Ethical conduct should rather be seen as an integral aspect of all such activities, as they relate to the interests of all members of society, which includes scientists and ethicists as well as an extremely wide range of other professional and community groups and individuals. (The latter may have some of the most up to date and relevant personal knowledge or experience of the matters being debated.) The discussion paper goes on to argue that from the broader vantage point, the aim is not primarily to 'balance' ethical commitments against scientific or medical interests, but to ensure that scientific and medical interests are pursued in ethical ways, in the interests of the whole community. This position appears true of any work or related community action other than medicine.

The paper approvingly quotes a statement by Saunders and Komesaroff that:

In a given situation, there is often no unique single, valid ethical decision or action. What makes a decision ethical is therefore not its substantive content, but the process that generated it – namely, the quality of the dialogue and the reflection in which the protagonists engaged.

It concludes ethical inquiry is consistent with scientific inquiry, in that it is centrally concerned with the kind of procedures or discussions that allow all relevant sources of information and viewpoints on a disputed matter to be taken into account in coming to a decision. In its exploratory sense, ethics is a rational and impartial activity, concerned to inform and justify decisions and actions in a community context. However, this does not imply that an ethical judgement will be a conclusive one. On the contrary, ethical judgment, like scientific activity, is necessarily an ongoing activity, since our community

life is continually developing, along with our knowledge and our related conception of truth. We may also take backward steps. Communications media should help us out.

The Discussion Paper on the Protection of Human Genetic Information further argues an emphasis on reason does not imply that ethical procedures seek to exclude or devalue emotion. Rather, they should seek to understand and compassionately evaluate all views and information, however passionate or dispassionate, in the context of the broader social and environmental influences and conditions which produced them. It states:

Many submissions emphasised the importance of education and debate in the area of genetics and favoured the view that ethical authority should be concentrated neither at the 'top' nor the 'bottom' of the hierarchy. Ethics should not be regarded as a matter solely for individual judgment; but nor should it be the preserve of an elite, whether political, scientific, professional or moral. Instead, ethical authority should be distributed across the system, encouraging an open minded and responsible attitude on the part of all decision-makers.

Relevant international and national agreements and directions should provide people with guidance as they represent the moral framework within which highly diverse communities and individuals ideally seek sensible operation. Communications media ideally assists in related dissemination of information to bring about this ethical process.

**Ideally, the international directions which regional governance also serves in the national interest, supported by joint pursuit of broadcasting and related goals, is ideally more openly and variably directed to improve democratic accountability.**

Joseph Borkin was chief of the patent and cartel section of the Antitrust Division of the US Department of Justice. His remarkable book, 'The Punishment of IG Farben', addressed the 20<sup>th</sup> century history of war manufacturing transfers to the US and the related global expansion of the key European interests in murdering people leading up to and after WW1 and II. Who else could have done it? The US people think guns protect them but have by far the highest murder rates in the OECD. One may demonstrate that from globally logical perspectives there are problems in theoretical structures starting from the approved secret relations between individuals that remain feudally driven wherever it counts, but why should that influence the dominant professional control and behavior? Continuing reinstatement of the credibility of key institutions, professions and theories still drive although they have historically failed to predict financial crash and fuel increased global inequality rather than more equally clearing markets as supposed in theory. The historical issue of weapons is the related antithesis of human rights. As a subordinate and a woman, I have always tried to assist much clearer, open, broader communication. In good communities open appeal may often be the best protection.

The clarification of better direction has often been attempted by governments or key lawyers before being buried by more of the latter. For example, Australian law and interests have historically been driven by England before World War 2 and by the US after it. Ayres biography of Sir Owen Dixon, apparently considered Australia's most

eminent judge, points out Owen's view of section 92 of the Constitution on the need for 'free' trade, has increasingly been seen, since his judgment in the 1950s, as being simply a prohibition of clearly protectionist measures (walls). As Ayres points out, however, Dixon's argument was a radical departure from this protectionist past in recognizing the existence of more than narrowly economic (price) considerations in trading. He stated:

Trade, commerce and intercourse among the States is an expression which describes the activities of individuals. The object of Sec. 92 is to enable individuals to conduct their commercial dealings and their personal intercourse with one another independently of State boundaries. The constitutional provision is not based on mere economic considerations. (2007, p. 66)

In 1993, Hilmer's report to Australian Heads of Government after an independent inquiry into national competition policy also recognized competition as being more than about price movements and any related government or professional limitations on movement, when he defined competition as, 'striving or potential striving of two or more persons or organizations against one another for the same or related objects' (1993, p.2). He stated that Commonwealth, State and Territory governments had earlier agreed on the need to develop a national competition policy which would give effect to the following principles:

- (a) No participant in the market should be able to engage in anti-competitive conduct against the public interest
- (b) As far as possible, universal and uniformly applied rules of market conduct should apply to all market participants regardless of the form of business ownership
- © Conduct with anti-competitive potential said to be in the public interest should be assessed by an appropriate transparent assessment process, with provision for review to demonstrate the nature and incidence of the public costs and benefits claimed
- (d) Any changes in the coverage or nature of competition policy should be consistent with, and support, the general thrust of reforms

A key inquiry into telecommunications competition regulation was later initiated by the former Treasurer, Peter Costello. The Productivity Commission (PC 2001) attitude to its own inquiry into allegations of unfair use of market power in telecommunications was summed up in its quote from the Hilmer Report (1993) on national competition policy:

The central conundrum in addressing the problem of misuse of market power is that the problem is not well defined or apparently amenable to clear definition.... Even if particular types of conduct can be named, it does not seem possible to define them, or the circumstances in which they should be treated as objectionable, with any great precision.....*Faced with this problem.....the challenge is to provide a system which can distinguish between desirable and undesirable activity while providing an acceptable level of business certainty* (My italics). (PC, 2001, p. 154)



One hopes that in seeking ‘calibration’ of policy settings (p. 9) ACMA is, like Dixon, Hilmer, or the Productivity Commission, seeking to move in related supportive directions. However, ACMA appears to ignore but kneel again to the power of courts. This appears to be the worst of all worlds from more democratic perspectives to regulation, which should be more clearly opened to be debated, before improved. In my view, Jennie Brockie on SBS and a lot of other Australian media, conduct debate in very productive and entertaining ways which enhance community understanding. Extend this.

On the other hand, ACMA has a comparatively dishonest approach to communications and media. As Weber, Foucault and others pointed out, this is a natural approach in bureaucratic and professional brotherhoods which genuflect to courts on a continuing career basis, while seeing off short-serving politicians. More open rather than adversarial and collegiate management ideally supports clear codes of practice in the public interest. (From this perspective, ‘Yes Minister’ was among the best educational TV ever made.)

The ACMA approach does not meet the goals of ‘regulator parity or coherence across media and communications markets’, as required by national competition policy, and accepted by all Australian governments. Ideally, competition between public and private sector services is conducted on ‘a level playing field’ of regulation unless another approach appears in the public interest. Instead of taking account of the ABC and SBS historical and cultural directions, which have developed many ways to enhance the Australian place and opportunities in the world, as distinct from rendering the nation into a more complete lackey of US product and propaganda, the ACMA issues paper appears to seek to reinvent many other key national broadcasting wheels separately, uninformed by ABC and SBS history, law or codes. The industry should work openly and better.

### **There is more to life than music: A response to Question 103 on Australian identity.**

*ACMA Question 103 asks ‘Should the concept of ‘Australian identity be relevantly included as a guiding principle in contemporary broadcasting codes of practice?’*

Can Australians avoid the Australian identity? I should think not. I guess ACMA seeks to avoid US economies of scale driving all before them in English speaking markets.

*Question 104 states The ACMA has drawn a connection between ‘Australian identity’ and interventions about Australian music. Do you agree with this connection? Are there other interventions that should be included here? Take more global approaches.*

ACMA states that the enduring concept of ‘Australian identity’ is that:

Australians should be able to experience Australian voices and stories when using or consuming media and communications services (p.72)

Australian geographical, historical, cultural, and related institutions normally guide individuals who may nevertheless try to reject or escape these strictures on a particular ground or another. Any family knows the feeling. Australian identity is not simply about

Australian voices and stories or music. Identity is more important and relates to the diverse, globally inclusive pursuit of better values. Music, like religion, sport, or other pastimes may effectively express culture and its emotion in highly personal ways. What one hears depends largely on what one comes across, which perhaps also feels accidental.

For me, God is a DJ in my head connecting me with life through a running commentary. As I also wrote to an aboriginal woman at the Koori Centre at Sydney University who, unlike Bill Gate's minions at Microsoft, never replied to me, although she was in much excellent Australian academic, government and commercial company in her silence:

*'I find myself incredibly conflicted about the US because their music, film and humour have been developmentally expressed in every fibre of my pleasure, understanding and soul since childhood, in a fashion which I also feel has been fundamentally democratic and liberating, at least for me. Wordsworth said that poetry is emotion recollected in tranquillity and that is certainly what this US cultural product helped express for me, in a way my more limited Australian history never could. It has always made me very happy.*

*On the other hand, I spent my life building a broadening critique of the US economic and government systems and have worked with other Australians towards the implementation with mixed success. This concrete process has also been increasingly prophetic and convincing for me emotionally and spiritually. As the follower of an Australian news media I deeply respect, I have at the same time become increasingly dismissive of Australian universities and major approaches within them. I find they have increasingly become obnoxious American tools. The US appears to me to be the international homeland, strongly reflecting most key global contradictions and then coming down on the side of an Anglo- feudal might which crushes better expression. This is not right.'*

Margaret Thornton's book 'Privatizing Public Education: The Case of Law', mourned replacement of direct state funding of higher education from general taxation by systems of deferred student payment which has also encouraged commercial discourse to infuse every aspect of life in law schools. Thornton's book voices the discontent of practicing legal academics in 40 law schools where 'learner earners' apparently 'choose educational products by reference to the reputation of a university, rather than by judgments about what they might learn'. A clear direction for the production of innovation and for redirection and broader increase in jobs is to help people give each other more open information, filmed action, related debate and certification of practice which is more relevant for life and work today and in future. This is the main aim of this submission.

Stiglitz (2010), one of a huge number of Nobel prize-winning US economists, argued there has been so much success in labour saving production in much of the world that there is a problem of persistent unemployment and insufficient demand, dealt with poorly through encouraging personal or government debt until a new crisis. A new global vision ideally puts less emphasis on generating demand for more material goods by those already over consuming and spending. It requires shift in the collective direction of investment towards saving natural resources and protecting environments – the factors of production and quality of life the market does not value or undervalues. Make it happen.

Regional broadcasters should seize all opportunities now available with governments and related industries, to gain mutual benefits from pursuing their joint key goals. Broadcasters should take sensible objects of the broadcasting act and openly implement them in cooperation with local councils or others. Who else is going to do that? Nobody I guess. Daniel Petre from Microsoft and the Petre Foundation made a similar point in stating on the ABC TV program 'Compass' that if wealthy people don't give to charity nothing will fix the global inequalities increasingly being produced by market drivers.

Australian regional identity is discussed in a global context where Coca Cola may also be cheaper than clean water for some of those poorest. One may well fear the economies of scale and values driving the treatment of land and water. Turn this around through more open regional planning and cooperation, including among broadcasters in the organizations and work under the Australia Broadcasting Services Act 1992. This industry includes the national broadcasters ABC and SBS, which ideally drive openly. Discuss broadly open cooperation in other regions, eg. - France, Turkey or Iran.

Embrace regional trade and planning to assist protection of internationally endangered species and related historical and cultural products and to encourage greener approaches to development across all regions. Dismantle feudally driven approaches to development which rest primarily on secrecy and adversarial behaviour designed to protect big producer interests rather than upon more open and scientific behaviour and jobs to serve the broader public interest. Design and manage services and taxation better to assist the achievement of economic, social and environmental aims. Invite scientists, artists and others to join in a cultural revolution which first recognizes the continuing meaning and existence of feudal relations as a way of achieving the above goals more openly for all.

Ideally broadcasters and media producers should make many community development links openly in regional contexts, perhaps starting logically with local councils. Further ACMA directed work appears likely to set Australia up for US driven failure. Australia can never compete with the historic economies of scale in US driven media production. Try to open technologies and science in more practical and interesting ways as the hidden men involved in these applied pursuits have always been the most important in improving human life. Driven by theory and silence, they are ignored. I think I blame lawyers.

The following recommendations thus relate mainly to the NSW Independent Review of Local Government on the basis of the stated aims for the report 'Future Directions for NSW Local Government: Twenty Essential Steps'. (Sansom Report 2013).

1. Everybody needs better communications and media to develop in more sustainable directions in future. Seek to meet this regional need jointly.
2. Local governments, those managing broadcasting and media, or those acting in related regional industry operations should openly pursue some joint goals, guided by the objects of the Broadcasting Services Act and their related objects.

3. Key aims of the review of local government are 'to strengthen the role of the Division of Local Government in performing and supporting innovation' and to gain a more constructive relationship between employers, employees and employee organization focusing on productivity improvements and performance rewards (p.7). Communications and media ideally support this direction.

Communications and media may be directed to achieve all the above while also assisting more stable, fair and clear outcomes for regional communities jointly involved in work or consuming it. Workers and funds should be directed to support joint development goals to benefit regional communities more effectively.

As a member of the body corporate executive at St James Court, one has often wondered whether anybody, let alone residents or owners, have ever had the necessary comparative information to know how well or badly a body corporate or a local government is managed – for example in regard to all the subcontractor or employee services performed in operations upon the common plots. State government has many related problems.

As shown in a submission on the NSW Government White Paper 'A New Planning System for NSW', it presented little or no understanding of the key requirements of quality service management and risk management so the planning goals were unlikely to be attained. Regional Growth Plans and Sub-regional Delivery Plans were similarly questioned in this state context where there appeared little attempt in the White Paper to square either type of plan with real national direction, life in construction and building management and maintenance, or sustainable development. The White Paper presented a superficial overview of the striving life which ignored the power and knowledge of the key producers about current and better procedures. Work with them to improve results.

Has clarity about what is value for money for the rate payer increased or reduced since 2001? The effects of practices which brought the global financial crisis of 2008, and the huge losses made by local councils as a result of placing funds in investments wrongly marked as secure by ratings agencies, whose reputations are apparently now reinstated for business as usual, suggests clarity about value for money in council services has reduced further since. While councils, construction and related service industries may increase and pass on costs to local consumers, much manufacturing or other export production also depending on these services are forced to compete internationally in the organizational and related national interest. This is a high risk situation which the recommendations seek to reduce through any open coalition of the willing.

For example, paper recycling magnate Anthony Pratt's proposal for a radical shift in industry policy to support food manufacturing could be addressed by many media operators. According to the Australian Financial Review (AFR 21.6.13, p. 1) he said:

We think food is a natural fit for Australia unlike the car industry. We don't have a competitive advantage in making cars as we do in food - particularly in food safety. I really think because of our proximity to China we have that advantage.

Growth, packaging and disposal of food are ideally routes to address waste management. Many other local opportunities for mutual benefit should be considered by broadcasters.

In local councils or other organizations, subcontractor and employees performance depend on the comparative work and environment goals and how the outcomes of work are produced and measured. This became clearer in the 1980s when workers compensation insurance changed from a system managed in the private sector under liberal governments, or managed in the public sector under Labor governments. Instead, systems were designed to manage industry funds in more open, stable ways, through insurer competition designed to achieve the required social and financial goals better.

Against the internationally driven odds, this and other new, comparatively stable and open fund management practices, for example in national health care insurance and in industry superannuation, have worked comparatively well for Australia, which also had comparatively good economic performance during and after the global financial crisis in 2008. Government then spent money on securing more services and jobs for ordinary people, not on bailing out financial institutions. In many cases this may again appear the best use of taxpayer funds, hopefully better managed jointly in future, with the assistance of regional communications and media organization goals, strategies and evaluations.

Thank you for the opportunity to make this submission. Carol O'Donnell  
St James Court, 10/11 Rosebank St., Glebe, Sydney 2037 [www.Carolodonnell.com.au](http://www.Carolodonnell.com.au)