



Australian Government

**Department of Communications,
Information Technology and the Arts**

**A REVIEW OF THE VIABILITY OF CREATING AN
INDIGENOUS TELEVISION BROADCASTING SERVICE AND
THE REGULATORY ARRANGEMENTS THAT SHOULD APPLY
TO THE DIGITAL TRANSMISSION OF SUCH A SERVICE
USING SPECTRUM IN THE BROADCASTING SERVICES
BANDS**

May 2004

INTRODUCTION

The purpose of this discussion paper is to canvass issues relevant to a review of the viability of creating an Indigenous television broadcasting service and the regulatory arrangements that should apply to the digital transmission of such a service.

Clause 60(1) of Schedule 4 to the *Broadcasting Services Act 1992* provides that the Minister for Communications, Information Technology and the Arts must cause reviews of certain matters to be conducted before 1 January 2005. Clause 60(2) provides that the Minister must cause a report of the reviews of each matter to be prepared and clause 60(3) provides that copies of the reports are to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.

Clause 60(1)(k) provides for a review of ‘the viability of creating an Indigenous television broadcasting service and the regulatory arrangements that should apply to the digital transmission of such a service using spectrum in the broadcasting services bands’.

BACKGROUND

In April 2000, the Productivity Commission released a report into broadcasting in which it made a number of recommendations about Indigenous broadcasting, one of which was that the Government should examine the need for, and feasibility of, establishing an Indigenous broadcasting service (Recommendation 7). Following the release of the report, the Aboriginal and Torres Strait Islander Commission (ATSIC) and the now defunct National Indigenous Media Association of Australia (NIMAA) jointly commissioned and funded a study into the feasibility of establishing a National Indigenous Broadcasting Service (NIBS). The report, which was prepared by Malcolm Long Associates & Owen Cole, was released in December 2000.

Three organisational models were canvassed in the report: a minimalist model (essentially a funding entity supporting a range of independent Indigenous media initiatives), a public service broadcaster model (a national Indigenous broadcasting corporation similar to the ABC and SBS), and a partnership model.

The partnership model, which was the model supported by the consultants, would involve the creation of a National Indigenous Broadcasting Service (NIBS) as a statutory authority which would work in partnership with the existing Indigenous media industry. It would be directly funded by the Australian Government with powers to raise commercial revenue, to provide charter-driven national Indigenous radio, television and online services. It would oversee and fund a media alliance, linking existing regional services (e.g. former BRACS and community radio services operated by Indigenous communities) and new national media activities (eg news, news analysis, sport and other specialist programming for national Indigenous radio, television and online services).

Under the partnership model, NIBS would not be a full-blown public broadcaster such as the ABC or SBS. A National Indigenous News and Programs Unit would be established to manage program making, commissioning and broadcasting operations.

According to costings prepared in 2000, this proposal would require annual operational funding of between \$51 million and \$73 million by its fifth year depending on programming and transmission arrangements.

Under the minimalist model canvassed in the report, Commonwealth funding would continue to be made available through ATSIC/ATSIS, which would fund and promote a range of independent Indigenous media initiatives. The public service model would effectively absorb existing Indigenous broadcasting activity into a new public service broadcasting organisation which, like the ABC and SBS, would receive direct funding from the Australian Government. No costings are available for these two models.

EXISTING INDIGENOUS TELEVISION SERVICES

There is now a solid base of Indigenous creative and technical skills in the Australian audiovisual industries. A number of Indigenous media associations work in film, television and/or media production including CAAMA in Alice Springs; Mt Isa Aboriginal Media Association; Goolari Media Enterprises in Broome; Warlpiri Media in Yuemendu, NT; PY Media in Central Australia; and Townsville Aboriginal and Islander Media Association (TAIMA) in North Queensland.

National Broadcasters

Both national broadcasters (ABC and SBS) produce Indigenous programming. Under its Charter the ABC is required to broadcast programs which contribute to a sense of national identity, inform and entertain, reflect the cultural diversity of the Australian community (paragraph 6(1)(a)(i) of the *Australian Broadcasting Corporation Act 1983*), and, in providing its broadcasting services, take account of the multicultural character of the Australian community (paragraph 6(2)(a)(iv)). The ABC has an Indigenous Programs Unit which is responsible for Indigenous television programming. The unit produces a half hour magazine style program which tells the stories of Indigenous Australians entitled *Message Stick*, which is broadcast on ABC television on Fridays and repeated on Sundays. The unit works closely with the *Message Stick Online* website and also produces music CDs.

Under its Charter, SBS is specifically required to contribute to meeting the communications needs of Aboriginal and Torres Strait Islander communities (paragraph 6(2)(a) of the *Special Broadcasting Service Act 1991*). Also relevant are SBS's obligations to increase awareness of the contribution of a diversity of cultures to the continuing development of Australian society (paragraph 6(2)(b)), to promote understanding and acceptance of the cultural, linguistic and ethnic diversity of the Australian people (paragraph 6(2)(c)), to contribute to the retention and continuing development of language and other cultural skills (paragraph 6(2)(d)), and, as far as practicable, to inform, educate and entertain Australians in their preferred languages (paragraph 6(2)(e)).

In 2002–03 SBS TV broadcast about 40 hours of material of particular interest to Indigenous people including *Living Black*, ten half-hour episodes of news, current affairs and review produced from an Indigenous perspective by Indigenous production staff for a general audience. SBS Independent (SBSi), which commissions Australian drama and documentaries for screening in prime time on SBS Television, reserves a

minimum of 5 per cent of its total appropriation for program production commissioned from Aboriginal and Torres Strait Islander people. In the 2002–03 financial year, SBSi commissioned, along with a number of other Indigenous programs, a six-part series, *Everyday Brave*, focusing on the lives of successful Indigenous Australians.

Imparja Television

Imparja Television, based in Alice Springs, is Australia's major remote area distributor of Indigenous programming. Its digital satellite multiplex delivers one channel of commercial television and one channel of narrowcast television. The bulk of the output on Imparja's commercial channel consists of retransmissions of content produced by the Nine and Ten networks. Imparja's specifically Indigenous television output on its commercial channel represents only 3 per cent of broadcast time, although a further 5 per cent of its programming, while aimed at a general audience, has an Indigenous focus.

Several former BRACS networks (*see below*) in north west and central Australia are currently using Imparja's second, narrowcasting channel to distribute locally produced programming to remote area audiences who access it via a satellite dish and smart card or a satellite fed retransmission service. This satellite channel, which is not on the broadcasting services bands, currently carries six hours per day of Indigenous programming plus one hour per day of community information aimed primarily at the Indigenous community.

Broadcasting for Remote Aboriginal Communities Scheme (BRACS) Television

BRACS developed in the late 1980s to provide local insertion and retransmission facilities for radio and television in remote Indigenous communities. They were incorporated into the community broadcasting category when the *Broadcasting Services Act 1992* came into effect but are referred to in this paper, for convenience of reference, as 'former BRACS services'. BRACS installations consist of retransmission facilities for radio and television and basic production and switching equipment which permits local insertion of video and audio material. There are currently 80 former BRACS television licensees.

ATSIC TV

ATSIC TV, which began in 1994, produces broadcast programs and corporate videos. ATSIC TV has produced a total of 13 documentaries, which have been broadcast on the ABC and Imparja. Two more documentaries are currently in production. Subject matter is diverse, and includes self-determination initiatives in Charleville, the Indigenous opera *Trepang*, and the ceremonial burial of the ashes of Nugget Coombs at Yirrkala. ATSIC TV also produces *InFocus*, a five minute video magazine style program used by regional television (including Imparja) and in-flight entertainment channels, and video segments about Indigenous health shown as part of ABC TV's *Health Dimensions*.

TRANSMISSION OPTIONS

A number of options are possible for carriage of an Indigenous television broadcasting service.

One option would be to establish a stand-alone Indigenous national broadcaster in the mould of the ABC and SBS. This would necessitate the allocation of 7MHz of spectrum and a rollout of digital transmission infrastructure across Australia. This would be the most costly model—the total cost over ten years of the digital rollout of ABC and SBS television will be over \$1 billion. Substantial program production costs would, of course, also be involved.

Another option would be to establish an Indigenous national broadcaster with its programming carried on an ABC or SBS multichannel. This would involve minimal additional transmission costs, although there would still be substantial program production costs. Under this option control of the service would be vested in the Indigenous broadcaster itself rather than the board of the relevant national broadcaster. A disadvantage of this option would be the reduced digital capacity available to the host national broadcaster to transmit its own services. A variation on this option would be mandated carriage on some other platform, such as a pay TV or datacasting service.

A further possibility might be to provide funding to the ABC or SBS to strengthen Indigenous production and to carry that programming on a dedicated multichannel. Under this option editorial control would remain with the ABC or SBS board, although modifications to existing governance arrangements (e.g. mandatory Indigenous board representation or an Indigenous advisory committee for the service) could be considered.

Another option might be the creation of an Indigenous production body which is free to make commercial agreements with other broadcasters for programming to be shown by those other broadcasters. This option has the attraction of greater flexibility than some others, but would not create an identifiable Indigenous television ‘brand’ or provide the body with guaranteed access to ‘transmission’ time.

There are a number of regulatory, commercial and technical issues which will affect the ability to adopt these options. These are outlined in the Appendix.

DEMOGRAPHIC FACTORS

The Indigenous population has particular characteristics which influence what kinds of services, including television services, best meet its needs. The Aboriginal and Torres Strait Islander population was estimated at 458,000 in 2001, about 2.4 per cent of the total Australian population. More than half of all Indigenous people live in New South Wales and Queensland. However, about 28 per cent of the Northern Territory population is Indigenous compared to 2 per cent of the population of New South Wales.

According to the Australian Bureau of Statistics (ABS) the growth rate of the Indigenous population is 2.3 per cent, nearly double that of the total Australian population growth rate of 1.2 per cent. The Indigenous population is younger, with a median age of 20 years compared with 34 years for the total Australian population.

About a quarter of all Indigenous people live in remote or very remote areas, while less than 3 per cent of other Australians do so. Conversely, less than a third of Indigenous Australians live in the major cities (more than 100,000 people) compared with two-thirds of the Australian population as a whole.

ISSUES

Threshold matters for consideration include:

- what are the real problems that an Indigenous television service would address, whether there are more effective and efficient ways of addressing those problems than creating such a service, and what benefits it would provide; and
- whether an Indigenous television service could be viable, and if so how and what role it would play?

Answers to these questions would influence the nature, structure and objectives of such a service. The following issues and options are raised to assist submitters. Comments on the threshold issues above and the issues below, and on any other issues submitters consider relevant, are welcome.

Objectives

1. What should be the objectives of an Indigenous television service?

For example, should it:

- inform, entertain and educate Indigenous communities;
- maintain and promote Indigenous culture;
- assist in preserving Indigenous languages;
- provide new career options for Indigenous people with creative, technical and administrative abilities;
- provide support for community health and education initiatives;
- provide an efficient delivery mechanism for government services; and/or
- pursue other objectives?

2. Who should be the target audience of an Indigenous television service?

For example, should it:

- focus solely on Indigenous people, with the aim of entertaining and informing only that audience;
- aim to attract, in addition, a non-Indigenous audience (for example, to foster a greater understanding of Indigenous issues in the wider community and/or to attract advertising/sponsorship revenue); or

- aim to attract the broadest possible audience in the interests of providing more viewing choice to all viewers?

3. What should the service coverage of an Indigenous television service be?

For example, should it:

- be a national service; or
- focus on areas of particular need, for example, regional and remote areas?

Role

4. How best can an Indigenous television service's objectives be met?

For example, should it:

- be a broadcaster, along the lines of existing broadcasters;
- share studio and transmission facilities with another broadcaster; or
- have a primary role of production or commissioning programming which could be transmitted on existing broadcast networks?

5. If an Indigenous television broadcaster is established, how should that broadcasting service be transmitted?

For example, should Indigenous television:

- be carried as an ABC or SBS digital multichannel;
- be carried on spectrum used by another operator, such as Imparja's narrowcasting service;
- be carried on spectrum identified for datacasting;
- be carried on community television services, at such time as they convert to digital;
- have access to spectrum in its own right;
- be carried on pay-TV services; or
- utilise some other carriage arrangement?

6. If transmission is achieved by carriage over an existing broadcaster's network, what should be the nature of any carriage obligation?

For example, should an obligation be imposed on any broadcaster to transmit the Indigenous television service?

7. How much transmission capacity should the carrier be required to make available?

If there is an obligation to provide transmission capacity for Indigenous broadcasting, how great should be the obligations of the carrier? For example, should the Indigenous television service be:

- a full time service;
- a set number of hours of programming per day;
- a set number of hours of programming per day repeated on a rotating basis eg eight hours of programs played three times over a 24 hour period;

- a set number of hours per week; or
- a variable service depending on the needs of the carrier and/or the availability of Indigenous programming content?

8. Alternatively, should the service be primarily a source of programming that could be made available to any interested broadcaster? If so, should it produce that programming itself or commission it from external production houses?

For example, should it:

- outsource its program production to producers such as CAAMA;
- produce most of its own programming in-house; or
- establish a small production unit so that it can produce its own news, current affairs and sports programming but outsource other programming?

Licensing Regime

9. What would be an appropriate licensing regime for an Indigenous television service?

Indigenous broadcasters currently operate under different regimes. Former BRACS television services are licensed as community broadcasters, while Imparja has both commercial and narrowcasting services. Should:

- the licensing regime flow from the carriage arrangements (eg if a national broadcaster multichannel is used to carry Indigenous programming, should the Indigenous service be regarded as part of that national broadcaster);
- an Indigenous television service be licensed within the existing range of licence options (commercial, community, open narrowcasting or other) and if so, which one;
- a third national broadcaster be established in the mould of the ABC and SBS; or
- a new category of Indigenous broadcasting licence be established?

Organisation/Management structure/Model

10. Who should control an Indigenous television service?

For example, should:

- a statutory authority be established to operate an Indigenous television service;
- an Indigenous unit be established, on a non-statutory basis, either within the structure of an existing broadcaster, within a Government body, or in some other way; or
- if the service is carried on a national broadcaster digital multichannel, there be a requirement that one or more board members of the relevant national broadcaster should be Indigenous (bearing in mind that the boards of national broadcasters carry ultimate responsibility for what is broadcast)?

11. If an Indigenous television service were to be carried by an existing national broadcaster, should it be carried by the ABC or SBS?

Possible issues for consideration include the following:

- Under its Charter, the ABC is required to broadcast programs which contribute to a sense of national identity and reflect Australia's cultural diversity and multicultural character, but there is no specific mention of its obligations to Indigenous people. On the other hand, SBS's Charter specifically requires SBS to meet the communications needs of Australia's Aboriginal and Torres Strait Islander communities.
- ABC TV has an extensive network of services throughout Australia and by April 2004 SBS TV will be available terrestrially in all Australian communities of more than 5000 people. Both ABC and SBS television are provided by satellite and can be retransmitted terrestrially or received by DTH equipment in remote communities.
- The ABC has a larger terrestrial television transmission network than any other broadcaster whose analog coverage is required to be replicated in digital.

Related content issues

12. If sponsorship/advertising is permitted on an Indigenous television service, should there be any culturally specific content restrictions?

For example, should:

- advertising on an Indigenous television service be subject only to the restrictions imposed on other broadcasters;
- there be special legislative restrictions; and
- any such restrictions be left up to the board of the service, or perhaps incorporated into its code of practice?

13. In what language should an Indigenous television service broadcast?

For example, should it:

- be free to broadcast entirely in English if it wishes; or
- be required to provide a specified percentage of Indigenous language programming?

Funding

14. How should an Indigenous television service be funded?

What sources of funding should be available to an Indigenous television service? Can such a service have as an objective, commercial viability?

For example, should:

- the government fund the service as it does the ABC; or
- the service be partly government-funded and partly funded by advertising/sponsorship?
 - If the latter, what implications does that have in the case of carriage on an ABC/SBS multichannel (bearing in mind that the ABC is prohibited from carrying advertising on its domestic services and that SBS's capacity to carry advertising and sponsorship is also limited by legislation)?

INVITATION TO COMMENT**Invitation to Comment**

Comments are invited on each of the issues identified above, as well as any other issues that may be relevant to this review. Comments should be submitted by **Tuesday 10 August 2004**, and should be addressed to:

General Manager
Public Broadcasting
Department of Communications, Information Technology and the Arts
GPO Box 2154
CANBERRA ACT 2601

Electronic submissions should be emailed to elizabeth.nelson@dcita.gov.au. Submissions will be made public and placed on the Department of Communications, Information Technology and the Arts website unless the submitter requests confidentiality. Where confidentiality is requested, submitters are encouraged to provide a public version which can be made available on the website.

APPENDIX

FACTORS AFFECTING CARRIAGE OPTIONS FOR AN INDIGENOUS BROADCASTING TELEVISION SERVICE IN DIGITAL MODE

The legislative framework for digital terrestrial television broadcasting

The Government legislated for the introduction of digital terrestrial television broadcasting in Australia by amending the *Broadcasting Services Act 1992* (the BSA) with the *Television Broadcasting Services (Digital Conversion) Act 1998*. This framework was built upon by the *Broadcasting Services Amendment (Digital Television and Datacasting) Act 2000* and some subsequent amendments.

Key features of the digital television regulatory framework include:

- A requirement for national and commercial broadcasters to commence digital terrestrial television broadcasts on 1 January 2001 in capital cities, and in regional areas between 1 January 2001 and 1 January 2004.
- A simulcast period of at least 8 years, including requirements to provide analog, digital standard definition (SDTV), and minimum amounts of high definition (HDTV) transmissions, providing consumers with a range of equipment choices and time to convert to digital. (The length of the simulcast period is the subject of a statutory review scheduled to be completed before 1 January 2006).
- The loan of sufficient spectrum to each existing commercial and national broadcaster to enable them to provide all digital services required under the digital framework and to facilitate equivalent coverage.
 - 7 MHz of spectrum enables a broadcaster operating in digital mode to transmit data at a rate of up to 20 megabits per second (mbps). The full 7 MHz will be effectively utilised when the broadcaster is transmitting its SDTV version of its analog service (4 to 5 mbps), its HDTV version of that service (at least 14 mbps), and associated sound and service information data to operate the service (1 to 2 mbps).
 - Commercial broadcasters will be required to fill an HDTV quota of 1040 hours per year (an average of 20 hours per week, commencing July 2003 in state capitals) by transmitting ‘true’ HDTV programming, while the national broadcasters can fill their HDTV quota with ‘upconverted’ material. Compliance with the quota is a licence condition for commercial television broadcasters.
 - Spectrum is to be resumed by the Australian Broadcasting Authority (ABA) from each broadcaster at the end of the simulcast period, having regard to its most efficient use.
- A prohibition on multichannelling by commercial television broadcasters and limits on multichannelling by national broadcasters, designed to minimise the

impact of new digital free-to-air (FTA) services on the still-developing pay TV sector.

- The above conversion requirements relate to metropolitan and regional broadcasters; the arrangements for remote area broadcasting conversion to digital television broadcasting are being finalised by the Australian Broadcasting Authority (ABA) in consultation with stakeholders.
- A moratorium on the issue of additional commercial television broadcasting licences until 31 December 2006.
 - The moratorium recognises that commercial broadcasters will need to spend approximately \$1 billion on digital conversion while being required to maintain high quality television services, including local content, during the conversion period.
- Content restrictions imposed on new, digital-only datacasters to encourage the provision of innovative services that are different to traditional broadcasting services. The regime provides for the allocation of datacasting licences and provides that persons wishing to provide datacasting services must hold a datacasting licence.
 - The main restrictions on datacasting content relate to the provision of certain genres of programs commonly provided on FTA television, for example drama, sporting programs and events, music programs, infotainment and lifestyle programs, light entertainment and variety programs, 'reality' television, quiz programs and game shows. There are also restrictions on the provision of audio content.
 - Datacasting licensees are allowed to provide: information-only programs (including matter that enables people to carry out transactions); educational programs; interactive computer games; content in the form of text or still visual images; Parliamentary broadcasts; ordinary electronic mail; Internet content; news, financial information or weather bulletins; and short extracts of television programs.
 - FTA broadcasters may use spare digital capacity to provide datacasting services 12 months after the FTA broadcaster was required to provide SDTV services.
- Financial assistance (\$255 million over 13 years) by way of rebates on licence fees and grants to assist regional broadcasters to undertake the conversion process.

Spectrum allocation

The ABA has formulated digital television conversion schemes and developed digital channel plans for allocation of spectrum for digital television services by commercial television broadcasters and national broadcasters. In most areas some additional channels have been identified but not assigned, potentially for use by datacasters. No

provision has been made for spectrum, or the method of conversion, for community broadcasters or narrowcasters.

Effect on capacity for Indigenous broadcasters

Digital broadcasting offers the opportunity to provide more than one channel on the 7MHz of spectrum usually allocated to television broadcasters. Therefore technically there is the possibility that Indigenous broadcasters could offer a number of program channels on a 7MHz allocation of spectrum, or offer one channel on 7MHz of spectrum allocated to or shared with another service provider. Commercial factors, including the cost of spectrum would influence the willingness of operators to enter into such arrangements. In addition, regulatory requirements, such as mandated HDTV programming, multichannelling restrictions etc will also influence the ability of other broadcasters to accommodate Indigenous broadcasters on their spectrum.

Furthermore, at least in the simulcast period, there is limited spectrum available for other than commercial television broadcasters and national broadcasters. In addition, there is the possibility that new commercial television broadcasters will be permitted into the market after the end of 2006. Decisions will also need to be made about how community broadcasters and narrowcasters will operate in a digital environment.

Digital Television Regulatory Reviews

There are also several aspects of the regulatory framework which will be reviewed in the next two years, including:

By 1 January 2005:

- programming during simulcast (including multichannelling);
- prohibitions on broadcasters offering pay television;
- whether spectrum has been allocated efficiently;
- arrangements for datacasting transmitter licences conversion to other uses; and
- conditions to apply to commercial television licences after 2007.

By 1 July 2005:

- HDTV quotas and HDTV in remote areas.

By 1 January 2006:

- Duration of simulcast period.

Some of these reviews may affect the regulatory environment in which an Indigenous broadcasting service provider would operate.