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## SUBMISSION TO

Department of Broadband, Communications and the Information Economy

### Comment on the framing paper for the Convergence review

June 2011

The Australian Council on Children and the Media (ACCM) welcomes the opportunity to provide comment to this Inquiry.

This submission has been prepared for the Australian Council on Children and the Media by Prof. Elizabeth Handsley (ACCM President and a specialist in media law as it relates to children), and Barbara Biggins OAM, CEO.

The ACCM would welcome the opportunity to expand on the issues raised, at a later date.

For further information, please contact Barbara Biggins at above address.

#### 1. INTRODUCTION

**The ACCM** is a not-for-profit national community organisation whose mission is to support families, industry and decision makers in building and maintaining a media environment that fosters the health, safety and wellbeing of Australian children.

ACCM has a national Board representing the states and territories of Australia, and a broad membership of organisations and individuals who support its mission.

**The ACCM's core activities** include the collection and review of research and information about the impact of media on children's development, and advocacy for the needs and interests of children in relation to the media.

More about the the ACCM can be found at Appendix 1.

#### 2. THIS SUBMISSION REFLECTS THE FOLLOWING PRINCIPLES

##### 2.1 The International Convention on the Rights of the Child Article 17, viz:

"States Parties recognise the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

- (b) Encourage international co-operation in the production of, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority groups or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of Article 13 and 18."

**2.2** The Code under the *Classification (Publications, Films and Computer Games) Act 2005* (Cth):

"Classification decisions are required to give effect to the following principles which are set out in the Code:

- (a) adults should be able to read, hear and see what they want
- (b) minors should be protected from material likely to harm or disturb them
- (c) everyone should be protected from exposure to unsolicited material that they find offensive, and
- (d) the need to take account of community concerns about:
  - (i) depictions that condone or incite violence, particularly sexual violence, and
  - (ii) the portrayal of persons in a demeaning manner."

**2.3** Objectives h) and j) of the *Broadcasting Services Act 1992* (Cth), s 3.

- (h) to encourage providers of broadcasting services to respect community standards in the provision of program material; and
- (j) to ensure that providers of broadcasting services place a high priority on the protection of children from exposure to program material which may be harmful to them;

**2.4** The Policy Guidelines on Children's Media of the Australian Council on Children and the Media.

**3. IN THE PREPARATION OF THIS SUBMISSION, THE ACCM HAS:**

- relied on its experience and active involvement in issues related to healthy and safe use of all media
- listened to community concerns about the content of TV, films, publications and games
- drawn on its ongoing activity of reviewing the current research literature as it relates to the impact of media on children.

#### 4. INTRODUCTORY COMMENT

The ACCM welcomes the opportunity to comment on issues relating to regulation of content on new and converging media.

The framing paper at p 2 says that ‘a good starting point’ for considering convergence is one of freedom of communication. However, in the next breath it says that communications are no different from activities like driving a car, in that the government sometimes needs to step in for the greater good.

We doubt that anybody would say that the starting point with driving a car is one of personal freedom. Rather, the starting point is that driving a car puts immense power in the hands of an individual, and that the cost of this privilege is having restrictions on one’s ability to use that power as one sees fit. Regulation is not a derogation from freedom that needs to justify itself, rather it is inherently necessary from the get-go.

We believe that communications should be seen in the same way. We are well beyond the era of the speaker’s corner or the town-hall meeting, where speakers could never be heard by any but a few other people, and they would always be identifiable and potentially held accountable for their statements. Rather communications technologies put awesome power in the hands of those who can access them, and at the same time, in many cases, provide the means of avoiding accountability for the use of that power. Sometimes this is due to opportunities for anonymous communication, sometimes to the ability to package one’s message in a way that makes it appear acceptable (for example by misleading the public into believing a lie) and sometimes to the sheer power of large corporations to bully even democratically elected governments into leaving them alone.

Moreover, just as motorists rely on the right to use roads, a piece of infrastructure provided for the common good by governments, so the users of modern communications technologies rely on the use of public resources, be they radiofrequency spectrum or fibre optic cables. ***This is another reason why we think the time has come to stop seeing communication as an individual, pre-social pursuit. If it was ever such (which we doubt), in modern times communication takes place in a social context on many levels. Therefore the responsibilities that it carries should be conceived, not as an afterthought or a derogation from some starting point of idealised freedom, but as integral to the activity itself.***

This not to say that it will always be possible to achieve consensus on what those responsibilities should be – but then again the amount of revenue raised through traffic fines shows that we clearly do not have consensus on appropriate vehicular speed limits, either! It is important to have robust structures for ongoing debate about the content of communications regulation, with a place at the table for science, values and a range of interests.

Paragraph 1(c) of the terms of reference requires the Committee to consider the impact of reform options on consumers.

***We very much hope that in this context the review will make a special effort to look at children as a special sub-set of consumers.***

We doubt that there would be any difficulty with this in principle, considering the long tradition in our media regulation policy of recognising children’s particular needs and vulnerabilities, including both economic and psychological.

However we wish to take this opportunity to point out that these needs and vulnerabilities have not lessened over time, or with the introduction of the technologies that bring forth the need for this review. They may have changed in shape and emphasis, but if anything they have become greater, with the advent of cyber-bullying, integrated marketing, downloadable material with high levels of violence, and so on.

We are aware that in the current neo-liberal climate there is pressure on governments to foist on to parents the responsibility for protecting children from the excesses of marketing, violent media and sexualisation. This was obviously rejected a generation ago, when the current regulations were being formulated.

***If anything, parents are even less well equipped now to go it alone in protecting their children. The content and carriage environments are so much more complex, and ever-changing; and parents have more competing demands on them than ever.***

In any case there is a fundamental policy flaw in the idea that government should have no, or minimal, role in protecting children from inappropriate communications experiences. Neo-liberal discourses of personal responsibility have some logic to them if the person harmed by a failure of responsibility is the same as the person who had the responsibility. Each individual is left to suffer the consequences of his or her lack of responsibility, and this knowledge should provide some incentive to act responsibly. But the logic breaks down when one person's failure of responsibility harms another. This is precisely what can happen with children and parents. Children are not just an extension of parents, or something akin to property: they may be harmed by parents' actions or inaction, and it is not always possible (or politically palatable) to hold parents accountable for that harm.

In the area of communications, the parent might not know about the risk of such a harm, and the effects might not be apparent immediately. The harm might be very subtle, and it might be something that is not of great concern at an individual level but that carries a chance of a population-level shift. For example, exposure to violent media is thought to carry a risk of desensitisation to violence. An individual parent might not particularly mind if his or her child is desensitised, and might not even notice the desensitisation. But if a large proportion of children are subject to such an effect, this will be felt at the societal level, if only in years to come.

***The ultimate question is what responsibility society has for those children whose parents cannot or will not take responsibility to protect their children against harmful communications experiences. Do we simply throw those children to the wolves? Hopefully we do not; hopefully we realise that the raising of healthy, happy children is a matter of public interest and one in which the community should be involved, including through the government.***

For the above reasons, we hope that in the context of paragraph 3(a), the protection of children will be reaffirmed as an appropriate regulatory objective.

## **5. COMMENT ON THE PRINCIPLES**

### **Principle 1: Australians should have access to a diversity of voices, views and information**

The ACCM supports this principle, but in the hope that there is a built-in recognition that 'diversity' alone could never warrant the propagation of voices, views and information that are harmful to society or a section of it (for example, children).

**Principle 2: The communications and media market should be innovative and competitive, while still ensuring outcomes in the interest of the Australian public**

The ACCM supports this principle as well, at least in so far as it recognises that competition does not always work in the interests of small and vulnerable sub-groups of consumers. For example, 'competition' is often cited as a reason for abandoning children's interests, or for ramping up inappropriate content.

However, rather than a statement like 'competition should only be restrained where it is in the best interests of the Australian public' (p 13) we would prefer to see the adoption of a principle that puts the public interest first, and embraces competition only to the extent that it serves the public interest.

We understand the attraction of the principle of consistent application to like services regardless of platform. If material is subject to certain regulations on existing platforms, then in principle it should be subject to the same regulations on any new platform. However, we do not support any principle that would lead to the lessening of restrictions on some platforms in order to bring them into conformity with other platforms where regulation might be more difficult. In other words, the principle should not be allowed to become the occasion for a 'race to the bottom'.

We would like to see affirmation of the proposition that competition can sometimes mean loss of market share by one sector, and that this is not necessarily an occasion for the reshaping of regulation in order to shore up the interests of the traditionally powerful. Yet this seems to be the pattern so far in regulatory responses to technological changes.

**Principle 3: Australians should have access to Australian content that reflects and contributes to the development of national and cultural identity**

The ACCM wholeheartedly supports this principle, noting that if anything children have even greater needs in this connection than the broader community.

**Principle 4: Australians should have access to news and information of relevance to their local community**

The ACCM supports this principle, noting that it might not be of direct significance to the child audience.

**Principle 5: Communications and media services available to Australians should reflect community standards and the views and expectations of the Australian public**

The ACCM has no objection to a principle in favour of considering community standards, but it notes that when it comes to children and the media the 'community' does not have a monopoly of wisdom. The community itself, or sections of it, may have been influenced in their views by the very material that the research has identified as harmful. For example, parents may have been desensitised to violence, in which case their 'standards' would accept a higher level of violence in communications than would otherwise be the case.

Moreover, the 'community' may be an artificial construct in many cases, with deeply divided views as to appropriate 'standards'.

***Therefore we call for current research on children and the media to be given at least equal billing with community standards. In this connection it needs to be noted that the research community itself does not always speak with one voice; therefore it would be desirable for this review to develop recommendations on principles and processes for extracting the most reliable and cogent evidence from the research. We should welcome the opportunity to comment further on this matter in due course.***

**Principle 6: Australians should have access to the broadest range of content across platforms and services as possible**

The ACCM has reservations about this principle, because historically the need to protect children against harmful content has been required to face off against adults' demands for access to that same content. This is because it is often impossible to protect children without restricting the freedom of adults to some extent.

***We trust that, at the very least, the Committee will take an active interest in developing mechanisms for protecting children from content that might be made available to adults under this principle, and ultimately that it will recognise the possibility that the needs of children might have to win the day.***

We are sceptical of terms such as 'flexible and adaptable' (p 16) as we know that in practice, the pressures for flexibility and adaptability are voiced most strongly by those with a vested interest in increasing their profits by making more material more freely available. We hope that the Committee will consider the development of robust gatekeeping structures that provide an equal voice to all interests before any such changes were introduced.

**Principle 7: Service providers should provide the maximum transparency for consumers in how their service is delivered**

The ACCM supports this, in the particular hope that transparency structures will be designed with the needs and interests of parents and children in mind.

**Principle 8: The government should seek to maximise the overall public benefit derived from the use of spectrum assigned for the delivery of media content and communications services**

The ACCM supports this; and indeed we would like to see a fortification of the principle that access to spectrum is a privilege that comes with certain responsibilities.

**Other issues;**

**The impact of legislative and regulatory frameworks** outside the Minister's portfolio which may impact on issues within the scope of the review—paragraph 2.

**The impact of policy settings on industry and government revenue**—paragraph 5(c).

**Appropriate ways to treat content sourced from outside Australia**—paragraph 5(d).

**International approaches and Australia's international obligations**—paragraph 5(g).

***There is an urgent need either to consolidate media and communications matters within a single portfolio or to establish effective and enduring mechanisms for cross-portfolio co-operation. A particular case in point is the classification of films, publications and computer games with its overlap into broadcasting and online content regulation.***

**END**

## APPENDIX 1

### ABOUT US: THE AUSTRALIAN COUNCIL ON CHILDREN AND THE MEDIA

The **ACCM** is a peak not-for-profit national community organisation whose mission is to support families, industry and decision makers in building and maintaining a media environment that fosters the health, safety and wellbeing of Australian children.

Its patrons are Baroness Susan Greenfield and Steve Biddulph.

The ACCM has a national Board representing the states and territories of Australia, and a broad membership of organisations and individuals who support its mission.

**ACCM membership** includes ECA (Early Childhood Australia), ACSSO (Australian Council of State Schools Organisations), AHISA (Association of Heads of Independent Schools of Australia), AEU (Australian Education Union), APPA (Australian Primary school Principals Association), Infant Mental Health Association of Australia, Parenting Research Centre, Enough is Enough: anti-violence movement, SAPPA (South Australian Primary Principals Association), Federation of NSW P&C (Parents & Citizens), and the Council of Mothers' Union in Australia.

**The ACCM's core activities** include the collection and review of research and information about the impact of media on children's development, and advocacy for the needs and interests of children in relation to the media.

**The ACCM's core services** include:

- the national freecall 24/7 Children and Media Helpline (1800 700 357);
- the ACCM website [www.childrenandmedia.org.au](http://www.childrenandmedia.org.au) containing evidence based information about media and children (attracting over 1000 visits per day);
- the award-winning, popular *Know before you go* child-friendly movie review service (now with more than 600 movie reviews);
- the development of parent media awareness materials,
- making submissions and participating in media interviews related to media regulation.

**The ACCM's current issues** include the early s\*xualisation of children in and by the media; the impacts of media violence; the marketing of violent entertainment and junk foods to the young; management of screen time and content by the very young, quality of programs for children.

**The ACCM's programs** are lead by a team of expert volunteers, supported by a small paid staff. Its programs are supported by project grants and much volunteer input.

**The ACCM's awards** include National Community Crime Prevention awards 2009, 2006; 2001; National Child Protection 2005.

**The ACCM is a structured as a company limited by guarantee.** Its ABN is 16 005 214 531. The organisation is registered for GST, and has DGR and ITEC status.