

Chapter 1

Introduction

Referral to the committee

1.1 On 21 June 2007, the Senate referred the Communications Legislation Amendment (Information Sharing and Datacasting) Bill 2007 (hereafter 'the bill') to the Senate Environment, Communications, Information Technology and the Arts (ECITA) Committee for inquiry and report by 30 July 2007.

1.2 In accordance with the usual practice, the committee advertised the inquiry in *The Australian*, on 27 June 2007 calling for submissions by 13 July 2007. The Committee also directly contacted a number of relevant organisations and individuals to invite submissions.

1.3 Submissions were received from five organisations, as listed in Appendix 1. The committee also held a public hearing in Canberra on Tuesday, 7 August 2007. A list of those who gave evidence at this hearing is at Appendix 2.

Acknowledgments

1.4 The committee thanks all those who contributed to its inquiry by preparing written submissions. Their work has been of considerable value to the committee. The committee would particularly like to thank DCITA and ACMA for their cooperation in providing additional information.

Outline of the bill

1.5 The bill amends the *Australian Communications and Media Authority Act 2005* (the ACMA Act) to authorise the disclosure of certain information by ACMA to the Minister for Communications, Information Technology and the Arts, departments, government agencies and regulatory bodies.¹ The bill also contains measures concerning the allocation of datacasting transmitter licences, in particular channel A and channel B datacasting transmitter licences. Accordingly, these measures would amend both the *Radiocommunications Act 1992* and the *Datacasting Charge (Imposition) Act 1998*.²

1 Communications Legislation Amendment (Information Sharing and Datacasting) Bill 2007, *Explanatory Memorandum*, p. 2.

2 *Explanatory Memorandum*, p. 3.

Information Sharing

1.6 ACMA, through the performance of its functions in relation to the regulation of broadcasting, the Internet, radiocommunications and telecommunications frequently receives information that would be relevant to other regulatory or administrative bodies or personnel. As an example, ACMA and the Australian Competition and Consumer Commission (ACCC) have a common interest in the media industry – ACMA in relation to the media ownership and control rules in the *Broadcasting Services Act 1992* (BSA), and the ACCC in relation to the merger approval procedures in the *Trade Practices Act 1974* (TPA). Either agency may receive information relating to the question of control of media assets that would be relevant to the other agency in the performance of its statutory functions.³

1.7 At present, the circumstances in which ACMA can legitimately pass on information to other Government agencies and regulatory bodies are uncertain. The Second Reading Speech stated that the amendments in the bill will provide ACMA with 'an appropriate level of certainty and in doing so, will enhance the efficiency of the regulator's enforcement activities'.⁴

1.8 The Explanatory Memorandum noted that amendments to the TPA, under the Corporations (NZ Closer Economic Relations) and Other Legislation Amendment Bill 2007, to provide the ACCC with authority to disclose protected information have also been brought before the Parliament. This bill would provide complementary, but not identical, information sharing authorisations to ACMA:

This would ensure that the ACCC is not denied access to certain information obtained by ACMA that would be relevant to the ACCC's performance of its statutory functions. Further, legislative authorisation of the sharing of certain kinds of information would reduce overlapping or duplicate requests for information made by regulators to industry.⁵

1.9 The bill would authorise ACMA to disclose certain classes of information in a limited number of circumstances, including:

- information given in confidence to ACMA in connection with the performance of its functions or the exercise of its powers;
- information ACMA has obtained as a result of its information-gathering powers, as set out in the BSA, the *Radiocommunications Act 1992*, the *Telecommunications Act 1997*, and the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; and

3 *Explanatory Memorandum*, p. 2.

4 *Second Reading Speech*, p. 1.

5 *Explanatory Memorandum*, p. 2.

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- information given in confidence to ACMA by a government authority of a foreign country. This reflects the cooperative efforts undertaken by ACMA with the regulatory agencies of foreign countries in relation to issues such as offensive Internet content and child-safety online.⁶

1.10 The information may only be disclosed if the ACMA Chair is satisfied 'that the information will enable or assist the authority that is to receive the information to perform or exercise any of its functions or powers'. The Explanatory Memorandum stated that:

This is an important safeguard which is intended to ensure that information will only be disclosed to authorities that have a genuine interest in receiving it.⁷

The ACMA Chair may impose conditions on the disclosure of particular information by ACMA officials. An example of such a condition might be that the information must not be further disclosed by the authority that receives it.

1.11 The bill would also authorise ACMA to disclose information to other people, including:

- the Minister for Communications, Information Technology and the Arts:

In the past there has been some uncertainty regarding the ability of ACMA to share important information it has obtained in connection with its regulatory activities, with the Minister.⁸
- another Minister, if the information to be disclosed relates to a matter arising under an Act administered by that Minister:

The range of ACMA's regulatory functions often necessitates close consultation and liaison across a range of ministerial portfolios. Accordingly, ACMA will be able to disclose information to another Minister.⁹
- the Secretary of the relevant Minister's department, or to another officer authorised by the Secretary, for the purposes of advising the Minister concerned; or
- a Royal Commission, where the protected information will assist the Commission in its inquiries.

Further disclosures of information may be prescribed by regulation.

6 *Second Reading Speech*, pp 2–3; *Explanatory Memorandum*, pp 2–3.

7 *Explanatory Memorandum*, p. 13.

8 *Second Reading Speech*, p. 3.

9 *Second Reading Speech*, p. 3.

1.12 The Second Reading Speech noted that:

The provisions in this Bill will enable ACMA to cooperate to the greatest extent possible with the Minister, government Departments and other key regulatory agencies in performing its vital functions in relation to the regulation of broadcasting, the Internet, radiocommunications and telecommunications.¹⁰

Datacasting

1.13 The *Broadcasting Legislation Amendment (Digital Television) Act 2006* amended the Radiocommunications Act to allow for the allocation of two previously unallocated channels of the television broadcasting spectrum known as 'channel A' and 'channel B'. The Digital Television Act also allowed for ACMA to specify two corresponding types of datacasting transmitter licences.¹¹

1.14 Channel A licences can be used for fixed, in-home, and free-to-air digital services. Channel B licences can be used for a broader range of services, including mobile television. The bill allows ACMA greater flexibility to carry out its spectrum management functions in relation to channel A and channel B licences, and also permits ACMA to vary the radiofrequency spectrum for a licence after it has been issued.¹²

1.15 The Radiocommunications Act currently specifies that a licensee must not operate or permit the operation of the transmitter except on a frequency/ies or a frequency channel other than that specified within the licence. Amendments proposed by the bill to section 111 and section 109(A) of the Act would make it possible for ACMA to revoke or vary a licence, or to vary the spectrum frequency at which a licence operates. ACMA's powers to vary frequencies on which licences operate is already possible in relation to other transmitter licences, but not to datacasting transmitter licences. The amendments proposed in this bill would bring a consistent approach to ACMA's spectrum management functions in relation to the full suite of transmitter licences.¹³

Datacasting charge

1.16 The *Datacasting Charge (Imposition) Act 1998* (Section 6) allows an annual licence fee to be imposed on a channel B licensee. Under this current legislation a channel B datacasting licensee that holds a commercial television broadcasting licence

10 *Second Reading Speech*, p. 4.

11 *Explanatory Memorandum*, p. 18.

12 *Second Reading Speech*, p. 4.

13 *Explanatory Memorandum*, pp 18–19.

could be liable to pay a charge where they provide a datacasting service under the provisions of that licence.¹⁴

1.17 The federal government has made a decision that channel B licencees should not be subjected to such a licence fee, and the bill includes provisions to amend paragraph 6(1)(a) of the Radiocommunications Act accordingly. The changes prevent an annual licence fee being imposed on a channel B licence holder where the licensee provides channel B datacasting services under the provisions of that licence. If the bill is agreed to by Parliament then these amendments would take effect from 1 July 2007.¹⁵

14 *Explanatory Memorandum*, pp 19–20.

15 *Second Reading Speech*, p. 5; See also *Explanatory Memorandum*, pp 19–20.

