

The Senate

Standing Committee on
Environment, Communications,
Information Technology and the Arts

Communications Legislation Amendment
(Information Sharing and Datacasting) Bill
2007 [Provisions]

August 2007

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Abbreviations

ABC	Australian Broadcasting Corporation
ACCC	Australian Competition and Consumer Commission
ACMA	Australian Communications and Media Authority
ACMA Act	<i>Australian Communications and Media Authority Act 2005</i>
BSA	<i>Broadcasting Services Act 1992</i>
DCITA	Department of Communications, Information Technology and the Arts
DCPs	Digital Channel Plans
DTL	datacasting transmitter licence
OPC	Office of the Privacy Commissioner
TPA	<i>Trade Practices Act 1974</i>
TPGs	Technical Planning Guidelines

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.

-
- 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.

Chapter 2

Issues

2.1 A number of matters, including privacy issues and concerns about interference with terrestrial television transmissions, were raised in relation to the bill and these are discussed below.

Part 1 of the Bill – Information Sharing Provisions

2.2 Some submissions raised concerns about the consequences of the new information sharing arrangements created by the bill for personal privacy, and the committee put some of these concerns to DCITA and ACMA, seeking clarification.

Application of the Privacy Act and the Information Privacy Principles

2.3 One area affected by the information sharing provisions of the bill is the provision of information to, and by, ACMA and the Minister. Telstra argued that essentially any authorised disclosure information can be disclosed to the Minister or secretary of the department or an authorised departmental employee. Telstra suggested that a higher threshold should be placed on disclosure of information to Ministers or their advisors under sections 59A(2) and 59B(2) of the bill.¹ The committee sought information from the department on how the *Privacy Act 1988 (Cth)* and the Information Privacy Principles will apply to ACMA and the Minister under the bill.

2.4 DCITA stated that ACMA and the Minister are bound by the Privacy Act, which provides a framework for the collection, maintenance and disclosure of personal information collected by all government agencies.

2.5 That Act lays down strict safeguards which 'agencies' must observe in their dealings with personal information. 'Agency' is defined in section 6 to include, *inter alia*, Ministers, departments (that is, each 'agency' within the meaning of the *Public Service Act 1999*) and certain bodies established for a public purpose by or under a Commonwealth enactment. The Act applies to ACMA and the Minister in the same way as it applies to other agencies.²

2.6 The department observed that the provisions of this bill will not override the protections provided by the Privacy Act as it applies to personal information (including the Information Privacy Principles contained in that Act). DCITA noted that:

Other than creating an authorised exemption in prescribed circumstances, it is not intended that the disclosure provisions included in the Bill should

1 Telstra, *Submission 5*, pp 6, 9.

2 DCITA, Correspondence to the committee, 25 July 2007, p. 3.

otherwise affect the application of Information Privacy Principles contained in the Privacy Act 1988.³

Section 3 – 'authorised disclosure information'

2.7 Section 3 would insert a new definition, 'authorised disclosure information', into section 3 of the *Australian Communications and Media Authority Act 2005*. As discussed in chapter 1, the definition sets out a number of categories of information that fall within the meaning of 'authorised disclosure information'. The Explanatory Memorandum stated that while the majority of 'authorised disclosure information' would be commercial in nature, to the extent that such information includes 'personal information', as defined in section 6 of the Privacy Act, the provisions of that Act will apply.⁴

2.8 The Office of the Privacy Commissioner (OPC) and the Victorian Privacy Commissioner argued that reference to the definition of 'personal information' that is also 'authorised disclosure information' and compliance with the Privacy Act should be included in the bill.⁵

2.9 DCITA noted that advice provided to the department by the Office of the Parliamentary Counsel in drafting the Bill was that a specific provision noting the continued application of the *Privacy Act 1988* would simply re-state the law and 'would therefore not be necessary (or indeed preferable from a legislative drafting perspective)':

The *Privacy Act 1988* will continue to apply to ACMA and the information it collects regardless of whether or not the Bill specifically notes its continued application or makes reference to the definition of 'personal information' as defined in the *Privacy Act 1988*.⁶

2.10 The OPC argued that, for 'authorised disclosure information':

- consideration be given to expressly excluding personal information from being authorised disclosure information (as the majority of 'authorised disclosure information' will be commercial in nature); or
- the bill be amended to provide that, where personal information is disclosed, those disclosures are made to jurisdictions that are assessed in ACMA's view, to be subject to a law, binding scheme or contract which

3 DCITA, Correspondence to the committee, 25 July 2007, p. 4.

4 Explanatory Memorandum, p. 7.

5 OPC, *Submission 2*, p. 3; Victorian Privacy Commissioner, *Submission 1*, pp 2–3.

6 DCITA, Correspondence to the committee, 25 July 2007, p. 2.

upholds principles for fair handling of the information that are substantially similar to the Information Privacy Principles.⁷

2.11 DCITA noted that while the majority of information is likely to be commercial in nature some of ACMA's regulatory functions are likely to result in the collection of personal information:

There are likely to be instances in which this information is of potential benefit to other regulatory entities in performing their duties and functions and it would therefore be counterproductive to exclude 'personal information' from the definition of 'authorise disclosure information'.

2.12 In relation to the suggestion that disclosure of personal information to regulatory entities in other jurisdictions only be permitted where appropriate privacy protections are in place in that other jurisdiction, DCITA noted that it is envisaged that the majority of 'authorised disclosure information' will be commercial in nature:

In the limited circumstances in which 'authorised disclosure information' includes 'personal information', it should be noted that sharing of that information will only be permitted in circumstances where the ACMA Chairman is satisfied that the information will assist or enable the other party to perform any of its functions or exercise any of its powers.⁸

2.13 DCITA also noted that:

Often most international jurisdictions that we would change information with have developed similar systems to our own, but they are not necessarily going to sign up to ours. It is on the basis that the level of information exchange is much more in our favour than theirs, so the matter of leverage we would generate would be a lot less. So we would prefer to leave the flexibility with the chair to determine the basis of the change.⁹

2.14 DCITA noted that the bill also makes provision for the Chairman of ACMA to impose conditions to be complied with in relation to the disclosure of information and it is envisaged that this will include conditions addressing the treatment and protection of any personal information:

The Department believes that these measures, particularly when it is considered that the majority of 'authorised disclosure information' will be commercial in nature, provide an effective balance between the objectives of the Bill and the need to ensure appropriate controls are in place on potentially sensitive information.¹⁰

7 OPC, *Submission 2*, pp 3–4. See also Victorian Privacy Commissioner, *Submission 1*, p. 2.

8 DCITA, Correspondence to the committee, 25 July 2007, p. 5.

9 Mr Neil, DCITA, *Committee Hansard*, 7 August 2007, pp 22–23.

10 DCITA, Correspondence to the committee, 25 July 2007, p. 5.

2.15 The ABC and FreeTV Australia argued that the bill should specify that, in circumstances where ACMA discloses authorised disclosure information that has been provided to it on a confidential basis to another entity, ACMA must impose a condition on the recipient entity that it not further disclose the information.¹¹

2.16 The department, argued, however, 'we are [of] the view that the Bill already includes adequate protection through the inclusion of a provision for the ACMA Chairman to place conditions on recipient entities'.¹²

2.17 DCITA stated that:

....when ACMA is given information in the commercial in confidence context it imposes that requirement [of no further disclosure] when it exchanges with somebody else. Again, in the cases where ACMA exchanges commercial in confidence information it is only with agencies that have a direct responsibility in relation to that information, so it is typically agencies like the ACCC. They will use it in that context and, where necessary, the chair can impose a requirement but we think it is for the chair to decide the nature of the information.¹³

DCITA also noted that the ACCC and ACMA have already publicly signalled their intention to work together to develop guidelines for the handling of shared information.

Section 59F – disclosure of publicly available information

2.18 Clause 59F provides that an ACMA official may disclose authorised disclosure information if that information is already publicly available.

2.19 The Victorian Privacy Commissioner noted that 'publicly available information' is not defined in the bill and in its current form is 'extremely broad'. The Commissioner argued that the wording be amended to refer to a 'generally available publication' and that 'generally available publication' be defined in the bill.¹⁴

2.20 The department considered that the intention of this section is clearly expressed – 'this section clarifies that information that is already in the public domain may be disclosed by an ACMA official and has been included for the avoidance of doubt'. DCITA noted that the term 'publicly available' can be sufficiently understood through its ordinary meaning and that no express definition is required.¹⁵

11 ABC, *Submission 3*, pp 1–2; FreeTV Australia, *Submission 4*, p. 1; Telstra, *Submission 5*, pp 8–9.

12 DCITA, Correspondence to the committee, 25 July 2007, p. 6.

13 Mr Neil, DCITA, *Committee Hansard*, 7 August 2007, p. 23.

14 Victorian Privacy Commissioner, *Submission 1*, p. 2.

15 DCITA, Correspondence to the committee, 25 July 2007, p. 7.

2.21 The OPC argued that consideration should be given to excluding personal information from the operation of clause 59F.¹⁶ DCITA stated that it did not consider exclusion of personal information from the operation of this clause is warranted:

...it is envisaged that the majority of information ACMA is likely to share with other entities will be commercial in nature. Accordingly, it is envisaged that proposed new section 59F will primarily apply to information that is commercial in nature that is already publicly available. This will provide certainty for ACMA in its dealings with information, such as business structures and commercial offerings, which are already in the public domain.¹⁷

Section 59H – disclosure authorised by regulations

2.22 Clause 59H provides for the regulations to authorise an ACMA official to disclose authorised disclosure information in specified circumstances, and to provide that the Chair may, in writing, impose conditions to be complied with in relation to disclosure in those circumstances.

2.23 The OPC argued that regulation making powers under this clause should expressly provide for the privacy of individuals to be a matter of consideration for the Chair of ACMA and that the process include consultation with the Privacy Commissioner.¹⁸

2.24 The department stated, however, that the bill as currently drafted provides 'sufficient scope' for the consideration of privacy matters. In addition, the department again emphasised the highly limited circumstances in which 'authorised disclosure information' is expected to include personal information.¹⁹

2.25 The Victorian Privacy Commissioner argued that the 'specified circumstances' envisaged by this clause should be clearly expressed in the bill and that the disclosure of authorised disclosure information that is also personal information should be excluded from this provision.²⁰

2.26 DCITA noted that the reference to 'specified circumstances' in proposed new section 59H is deliberately broad:

The regulation-making power has been drafted in this way, to address future circumstances in which there may be a legitimate interest in ACMA sharing information, but which are not covered by the existing provisions.²¹

16 OPC, *Submission 2*, p. 5.

17 DCITA, Correspondence to the committee, 25 July 2007, p. 7.

18 OPC, *Submission 2*, p. 5.

19 DCITA, Correspondence to the committee, 25 July 2007, p. 8.

20 Victorian Privacy Commissioner, *Submission 1*, p.3.

21 DCITA, Correspondence to the committee, 25 July 2007, p. 8.

The department stated that the exclusion of personal information from the operation of this provision would not be consistent with the objectives of the bill.

Part 2 of the Bill – Datacasting Provisions

Protection against interference to existing services from changes to frequencies for datacasting transmitter licences

2.27 Items 6 and 7 would amend paragraph 111(1)(d) of the Radiocommunications Act to enable ACMA to vary spectrum frequencies specified in a datacasting transmitter licence (DTL).

2.28 The ABC argued that the proposed amendments to paragraph 111(1)(d) do not provide an adequate means of protecting terrestrial television transmissions from interference from Channel B mobile television services. The ABC suggested that thorough planning of the channels allocated to Channel B licences of the kind applied to the television services in adjacent channels is required.²² Free TV also argued that the introduction of new services into the broadcasting services bands must be comprehensively planned to avoid interference from the outset.²³

2.29 ACMA responded that:

...the entire planning process around planning for television channels is in fact fairly robust and is designed to prevent as far as possible interference happening and to put in place procedures for dealing with the problem should such problems arise. ACMA has been very clear in our consultative processes that we have been quite strongly committed to making sure that channel B will not actually interfere with any existing television services.²⁴

2.30 DCITA stated that the proposed provisions are a technical amendment which would allow ACMA to have greater flexibility in future planning and use of spectrum used for DTLs:

Whilst interference issues may be one issue which would require a change in frequency for a DTL, they are not the only issue and the primary purpose of the amendments is not interference mitigation *per se*.²⁵

2.31 DCITA further stated that:

The amendment really is a very technical amendment which is designed to give ACMA the kind of ability to, for example, reallocate frequencies for an apparatus licence which is what the datacasting transmitter licence is a form of. At the moment it is the only class of licence and there was no particular policy reason behind this, it is the way the legislation was drafted,

22 ABC, *Submission 3*, p. 2. See also FreeTV Australia, *Submission 4*, p. 1.

23 Ms Flynn, Free TV, *Committee Hansard*, 7 August 2007, pp 1–2.

24 Mr Cheah, ACMA, *Committee Hansard*, 7 August 2007, p. 13.

25 DCITA, Correspondence to the committee, 25 July 2007, p. 9.

it is the only category of apparatus licence which ACMA does not have the ability to change a frequency for after it is allocated. At the moment it allocates a frequency to the licence when it allocates and that is then essentially locked in and ACMA does not have any ability to change it.²⁶

2.32 The department further noted that there are already provisions relating to management of interference. The Technical Planning Guidelines (TPGs) made under section 33 of the BSA are specifically designed to guard against interference with existing television services, by minimising the likelihood of interference occurring and providing a means of appropriately managing any interference that does occur. The TPGs set out rules relevant to the planning and commencement of broadcasting services and services operating under a DTL.²⁷

2.33 The TPGs contain mandatory technical requirements to be met by commercial, community (including temporary community) and datacasting transmitter licensees using the broadcasting services bands, when planning and operating new transmission facilities or proposing changes to existing facilities. Paragraph 109A(1)(f) of the Radiocommunications Act requires a licensee of a DTL to comply with the TPGs. If interference with television reception does occur, the DTL licensee transmitting the interfering service must take immediate action to prevent the interference.²⁸

Planning processes for the allocation or variation of frequencies

2.34 FreeTV Australia argued that it is important that the introduction of mobile television services in Channel B is carefully planned to ensure the new mobile services do not compromise the availability and quality of free-to-air digital terrestrial television services and disrupt the smooth transition to digital television services for Australian viewers. FreeTV argued that the proposed amendments to the Radiocommunications Act should be revised to require ACMA to undertake a planning process for the allocation or variation of frequencies for datacasting services, consistent with the existing approach for broadcasting services.²⁹ Telstra noted the potential costs involved providing a mobile TV service.³⁰ Free TV argued that in the current bill ACMA is not required to undertake any planning or prior consultation before making changes to frequencies for channel A and channel B licensees.³¹

26 Dr Pelling, DCITA, *Committee Hansard*, 7 August 2007, p. 16.

27 DCITA, Correspondence to the committee, 25 July 2007, pp 9–10.

28 DCITA, Correspondence to the committee, 25 July 2007, p. 10.

29 FreeTV Australia, *Submission 4*, p. 1. See also Ms Flynn, FreeTV, *Committee Hansard*, 7 August 2007, pp 1–2.

30 Telstra, *Submission 5*, p. 10.

31 Ms Flynn, FreeTV, *Committee Hansard*, 7 August 2007, p. 1.

2.35 DCITA stated that the amendments to the bill do not reduce the need for consultation in relation to changes to frequencies in relation to DTLs. The legislation 'simply empowers ACMA to make these changes after the licence is issued':

A power enabling ACMA to change frequency allocations after the issue of a licence already exist in relation to transmitter licences for broadcasting services...The amendments make the situation in relation to DTLs consistent with the situation for transmitter licences for these broadcasting services.³²

2.36 The department noted that ACMA already plans channels for digital television in Digital Channel Plans (DCPs) which are subject to consultation requirements. ACMA would, in the case of significant changes to frequencies, conduct a public consultation process as a matter of course as a consequence of these frequency allocations being part of the DCPs.

2.37 ACMA noted that:

All this amendment really does is bring the DTL arrangements into line with all of the other planning arrangements for other licences. There are processes in place for consultation. Free TV has not criticised our processes in the past for any other licences.

...Free TV actually said we had consulted with them a lot—fully in relation to the construction of the existing digital channel plan. There has been no move to amend the digital channel plan at all and were there to be, we would consult.

Senator CONROY—I think they were suggesting that there is an existing framework that did not apply to channel B.

Mr Loney—I think that might be where we disagree with Free TV.³³

2.38 DCITA stated that although digital channels not relating to the conversion of analog television services do not need to be planned in a DCP (though they may be), ACMA would only undertake such planning without consultation with relevant stakeholders if it were satisfied that there was a low risk of interference:

ACMA's usual practice is to conduct public consultation. In any event, ACMA is required to comply with the objects of the Acts it administers. ACMA recognises the importance of existing free-to-air television services and will continue to ensure that there are appropriate safeguards in place.³⁴

2.39 DCITA advised the committee that ACMA has undertaken a significant amount of analysis and planning in relation to mobile television use of Channel B. ACMA has also conducted public consultation on the frequencies that could be used for the licences for Channel B, the technical arrangements, the approach to planning

32 DCITA, Correspondence to the committee, 25 July 2007, p. 11.

33 Mr Cheah/Mr Loney, ACMA, *Committee Hansard*, 7 August 2007, p. 20.

34 DCITA, Correspondence to the committee, 25 July 2007, p. 12.

and interference management. This consultation has included the release of discussion papers in March and December 2006 as well as specific consultation on the changes to the Technical Planning Guidelines.³⁵

Conclusion

2.40 The committee is satisfied with the bill as a whole. The committee believes the amendments in the bill in relation to information sharing will provide ACMA with an appropriate level of certainty and enhance the efficiency of the regulator's enforcement activities. The committee also supports the provisions relating to the Government's decisions concerning Channel A and Channel B datacasting transmitter licences.

2.41 The committee recognises the need, emphasised by the ABC and FreeTV, for careful planning to precede the introduction of mobile television services. The committee is confident that DCITA and ACMA are committed to processes that will ensure successful implementation in this area, and that this bill is just one element of preparation for decisions in relation to Channels A and B.

Recommendation 1

2.42 The committee recommends that the bill be passed.

Senator Alan Eggleston
Chair

35 DCITA, Correspondence to the committee, 25 July 2007, p. 13.

Labor Senators' Minority Report

Procedural failings of the inquiry

Labor Senators note certain concerns regarding the conduct of this inquiry.

On 20 June 2007, the Senate referred the Bill to the ECITA Committee for inquiry and report by 30 July 2007. Submissions were invited to be received by no later than Friday, 13 July 2007.

The first submission (from the Victorian Privacy Commissioner) was not received until 16 July 2007.

On 16 July 2007, the Committee informed members that submissions were expected from Free TV, Telstra and Optus.

On 17 July 2007, the Committee then received a submission from the Officer of the Privacy Commissioner. On 18 July 2007, submissions were received from the ABC and Free TV Australia.

On 18 July 2007, the Committee scheduled a teleconference for 19 July 2007 at 1pm. At the teleconference on 19 July 2007, it was agreed to put questions on notice to DCITA for its response.

On 25 July 2007, responses to the questions were received from DCITA.

On 26 July 2007, the Committee held a further teleconference at which they discussed the DCITA responses and agreed to hold an inquiry on either of Monday 6 August or Tuesday 7 August 2007.

On Friday 3 August 2007, the date for the inquiry was confirmed as 7 August 2007.

On 3 August 2007, the Committee received a further late submission from Telstra. This report was circulated to some but not all Committee members on 3 August 2007, however, it was not passed on to one Labor Senator until 6 August 2007.

No submission was received from Optus.

The Inquiry was held on 7 August 2007.

On 8 August 2007:

- at 12.11pm the Committee received a copy of the Chair's draft report, which dealt with the datacasting provisions of the Bill, that took up the majority of the inquiry, in 3 pages; and

- at 6.45pm the Labor Senators were informed by the Secretariat that if they did not agree with the Chair's report and they wished to submit a Minority Report it was required immediately.

Labor Senators note their concern at the Government's actions in taking less than a day to consider the exchanges and discussions at the inquiry, to issue the Chair's report and to demand a Minority Report.

There is no cause for such expediency - other than the Government's clear desire to table the Report and have the Bill introduced and passed as soon as possible.

The way in which this process was handled demonstrates again the lengths the Government will go to ensure that their bills are simply rubber stamped by the Committee and passed through Parliament.

Legislative short-comings identified

The submissions received raised 2 key issues in relation to the Bill. These are as follows:

- The datacasting provisions of the bill which amend the *Radiocommunications Act 1992* to give ACMA “flexibility” with respect to spectrum management functions, by providing ACMA with the power to vary the frequencies on which datacasting transmitter licences operate.

There is concern that there will be technical problems related to interference of the proposed Channel B with broadcasters in the Sydney, Gold Coast and Sunshine Coast areas and that the provisions of this Bill will be called into play sooner rather than later and that the Bill does not provide for consultation with stakeholders or a thorough assessment of the impact of any such change in frequency.

- The privacy provisions of the Bill which authorise ACMA to disclose “authorised disclosure information” to Ministers their staff and various state and federal government agencies and to Australian and overseas media and communications regulators. However, the Bill does not adequately address privacy concerns or provide adequate protection of confidential information.

Conclusion

Labor Senators consider that the short time frame between the inquiry and the receipt of the report and the meeting to consider whether to adopt the report did not allow the Committee to consider these issues in detail.

Senator Kate Lundy
ALP, Australian Capital Territory

Senator Ruth Webber
ALP, Western Australia

Senator Dana Wortley
ALP, South Australia

Senator Stephen Conroy
ALP, Victoria

Appendix 1

Submissions, Answers to Questions taken on Notice & Tabled Documents

Submissions

1. Office of the Victorian Privacy Commissioner
2. Office of the Privacy Commissioner
3. Australian Broadcasting Corporation
4. Free TV Australia
5. Telstra

Answers to Questions taken on Notice

Department of Communications, Information Technology and the Arts

Tabled Documents

Introductory Statement tabled by Ms Julie Flynn, Chief Executive Officer, Free TV Australia, 7 August 2007

Appendix 2

Public Hearings

Tuesday, 7 August 2007 – Canberra

Free TV Australia

Ms Julie Flynn, Chief Executive Officer

Mrs Pam Longstaff, Director of Legal & Broadcasting Policy

Mr Roger Bunch, Director of Engineering

Australian Communications and Media Authority

Mr Marcus Bezzi, General Manager, Legal Services

Mr Chris Cheah, Full-time Authority Member

Mr Mark Loney, Executive Manager, Pricing and Policy Branch, Inputs to Industry Division

Department of Communications, Information Technology and the Arts

Dr Simon Pelling, A/g Chief General Manager, Content & Media Division

Mr Gordon Neil, General Manager, Media Industries

Ms Trish Barnes, A/g General Manager, Digital Broadcasting

Ms Holly Brimble, Manager, Commercial Broadcasting, Media Industries

