

Public Interest Media Advocate Bill 2013

Introduced into the House of Representatives on 14 March 2013

Portfolio: Broadband, Communications and the Digital Economy

Summary of committee view

1.91 The committee seeks clarification about whether the combined effect of proposed powers to compel a person to provide information in the Broadcasting Legislation Amendment (News Media Diversity) Bill 2013 and proposed powers in this bill which enables the PIMA to disclose information to bodies with prosecutorial or regulatory enforcement functions is compatible with the right not to incriminate oneself.

Overview

1.92 This bill seeks to create a new independent statutory office of the Public Interest Media Advocate (PIMA) which will perform functions under the News Media (Self-regulation) Bill 2013 and the proposed new Part 5A of the *Broadcasting Act 1992* (if enacted).⁴⁵

Compatibility with human rights

1.93 The bill is accompanied by a self-contained statement of compatibility which sets out in some detail the rights engaged by the bill and articulates justifications for the proposed limitations on the enjoyment of those rights.

Right not to incriminate oneself

1.94 Clause 20 of the bill provides that the PIMA may disclose certain types of information to listed bodies and agencies. These include bodies such as the Australian Securities Commission (ASIC), the Australian Prudential Regulation Authority (APRA) and the Director of Public Prosecutions, which have responsibilities for prosecuting persons for criminal offences or instituting civil penalty proceedings.

1.95 The information that may be disclosed will include information obtained by the PIMA under the proposed new section 78FA of the *Broadcasting Services Act 1992* (to be inserted in that Act by the Broadcasting Legislation Amendment (News Media Diversity) Bill 2013). Proposed new section 78FA provides that if the PIMA

45 The committee has provided comments on these new functions in its commentaries on the Broadcasting Legislation Amendment (News Media Diversity) Bill 2013 at paras 1.31-1.60 and the News Media (Self-regulation) Bill 2013 at paras 1.61-1.90.

‘believes on reasonable grounds that the person has information or a document that is relevant to the operation of this Part’, the PIMA may require the person to provide the information or documents to the PIMA. Failure to comply will expose the person to proceedings for a civil penalty.⁴⁶ There is no explicit provision that a person may refuse to comply with such a requirement on the ground that it may tend to incriminate the person or expose them to a penalty.

1.96 The statement of compatibility provided with the bill states that ‘[n]othing in this bill is intended to abrogate an individual’s common law privilege against self-incrimination’.⁴⁷ However, it is not clear whether this stipulation would prevent information obtained under the proposed new section 78FA of the *Broadcasting Services Act 1992* from being used in such a way. In addition, the common law privilege against self-incrimination may not be co-extensive with the right not to incriminate oneself under human rights law.

1.97 The committee intends to write to the Minister for Broadband, Communications and the Digital Economy to seek clarification about the combined effect of the proposed new section 78FA of the *Broadcasting Services Act 1992* and the proposed power of the PIMA under clause 20 of this bill to disclose information to bodies with prosecution or regulatory enforcement functions. In particular, the committee is concerned that the combination of the two provisions may have the effect of infringing the right not to incriminate oneself in criminal proceedings (including civil penalty proceedings, to the extent that these may be considered ‘criminal’ for the purposes of human rights law).

46 Proposed new subsections 78FA(4) and (5).

47 Statement of compatibility, p 4.