

## **Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013**

*Introduced into the House of Representatives on 14 March 2013; passed both Houses on 20 March 2013*

*Portfolio: Broadband, Communications and the Digital Economy*

*PJCHR comments: [Report 4/13](#), tabled on 20 March 2013*

*Response received: 7 May 2013*

### **Summary of committee view**

3.1 The committee thanks the Minister for his response and considers that the information provided has addressed its concerns. The committee has no further comments on the bill.

### **Background**

3.2 This bill formed part of a package of measures which represented the government's response to two reviews conducted in 2011 and 2012 – the Convergence Review and the Independent Inquiry into the Media and Media Regulation.

3.3 The bill responded to matters raised in the Convergence Review primarily in relation to the television broadcasting spectrum, Australian content and public broadcasting. The bill proposed a number of amendments, including the limitation of commercial broadcasting licences; increasing the Australian content requirements on commercial broadcasters; and providing that at least one of the Directors of SBS, appointed after the commencement of the Act, must be an Indigenous person.

3.4 The bill and the accompanying five bills which constituted the media reform package were introduced into the Parliament on 14 March 2013. The committee indicated its concern that the period foreshadowed between introduction of the bill and its proposed passage did not permit sufficient time for a close examination of legislation by the Parliament or the committee, and that this was arguably inconsistent with article 25 of the ICCPR and the role of the committee under the *Human Rights (Parliamentary) Scrutiny Act 2011*.

3.5 The committee sought clarification from the Minister of the human rights compatibility of the Australian content standards and licence conditions and in particular their consistency with freedom of expression and the right of everyone to participate in cultural life.

3.6 The Minister's response is attached.

### **Committee's response**

3.7 The Minister provided a detailed response addressing the Australian content issue. The committee thanks the Minister for his response, which it considers sets out a sufficient justification for any limitation on the enjoyment of the right to seek, receive or impart information or ideas guaranteed by article 19(2) of the International Covenant on Civil and Political Rights.

3.8 The committee shares the Minister's view that the Australian content provisions may be viewed as a measure intended to promote and fulfil the enjoyment of the right to participate in culture guaranteed by article 15(a) of the International Covenant on Economic, Social and Cultural Rights.

3.9 The committee notes that the Australian Government has announced that the Broadcasting Legislation Amendment (News Media Diversity) Bill 2013, the New Media (Self-Regulation) Bill 2013, the News Media (Self-Regulation) (Consequential Amendments) Bill 2013 and the Public Interest Advocate Bill 2013, which accompanied this bill, will no longer be considered by Parliament.

3.10 The committee notes that this bill has already been passed by the Parliament.



## SENATOR THE HON STEPHEN CONROY

MINISTER FOR BROADBAND, COMMUNICATIONS AND THE DIGITAL ECONOMY  
MINISTER ASSISTING THE PRIME MINISTER ON DIGITAL PRODUCTIVITY  
LEADER OF THE GOVERNMENT IN THE SENATE

- 6 MAY 2013

Mr Harry Jenkins MP  
Chair  
Parliamentary Joint Committee on Human Rights  
Parliament House  
CANBERRA ACT 2600

Dear Mr Jenkins 

### **Human rights compatibility**

Thank you for your letter dated 20 March 2013 seeking clarification of a number of matters set out in the Parliamentary Joint Committee on Human Rights' *Fourth Report of 2013* (the report) concerning five media reform related bills that were introduced into Parliament during the period 12-14 March 2013.

The report examined the media reform package, including the Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013, the Broadcasting Legislation Amendment (News Media Diversity) Bill 2013, News Media (Self-Regulation) Bill 2013, News Media (Self-Regulation) (Consequential Amendments) Bill 2013, and the Public Interest Advocate Bill 2013.

### *Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013*

The Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013 (the Bill) was introduced into Parliament on 14 March 2013 and received Royal Assent on 30 March 2013.

The Committee noted in the report that the statement of compatibility accompanying the Bill did not specifically address the human rights compatibility of measures in the Bill requiring commercial television broadcasting licensees to broadcast minimum levels of Australian content. The Committee also sought clarification as to the consistency of these measures with Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR), which protects freedom of expression, and Article 15(1)(a) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which protects the right of everyone to take part in cultural life.



To the extent that the measures impose restrictions on the activities of commercial television broadcasting licensees, as natural persons are not eligible to hold commercial television broadcasting licences those measures do not engage any of the applicable human rights or freedoms. Only qualified companies are eligible to hold a commercial television broadcasting licence. The measures do not otherwise affect the rights of individual shareholders to communicate freely separately from the company.

The measures may limit the rights of some people to exercise the right to freedom of expression protected by Article 19(2) of the ICCPR, by limiting the distribution of foreign television programs on commercial television broadcasting services. As such, the measures may be characterised as reducing a foreign person's opportunity to freely communicate information and ideas through television programs broadcast by commercial television broadcasting services. The measures may also limit the rights of Australian audiences to receive such information and ideas via television programs broadcast by commercial television broadcasting services.

However, Article 19(3) of the ICCPR emphasises that there are special duties and responsibilities associated with Article 19(2), and for this reason, restrictions on the right to freedom of expression are permitted in limited circumstances, including to secure or promote the rights of others (but only to the extent necessary and proportionate).

Research undertaken for the Department has shown that international content can generally be sourced at much lower cost than Australian content<sup>1</sup>. The lower cost of this international content, together with its widespread availability, means that in the absence of prescribed quotas and incentives for the broadcast of Australian content, it is likely that lower levels of Australian content would be produced and broadcast. This could inhibit some people's rights to take part in Australia's cultural life (protected in Article 15(1)(a) of the ICESCR) – this includes people who participate in artistic and creative cultural activities such as producers, directors, writers, and actors in Australian television programs. The cultural rights of the Australian community would also be affected to the extent that fewer expressions of Australian cultural life would be seen on commercial television broadcasting services.

The United Nations Committee on Economic, Social and Cultural Rights has noted that the right to take part in cultural life includes the right of everyone to share cultural knowledge and expressions with others and to know and understand his or her own culture<sup>2</sup>. By prescribing the broadcast of minimum levels of Australian content, the measures in the Bill facilitate increased production (and transmission) of Australian content, and therefore promote greater access by Australians to television content that reflects a sense of Australian culture. These measures therefore promote the right of Australians to take part in a distinctly Australian cultural life, consistent with Article 15(1)(a) of the ICESCR.

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<sup>1</sup> PricewaterhouseCoopers, *How Do Local Content Requirements Impact Australian Productions?*, report prepared for the Department of Broadband, Communications and the Digital Economy, May 2011.

<sup>2</sup> United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 21, paragraph 15.

The United Nations Human Rights Committee has recognised the importance of ensuring a diversity of sources and views in the media to protect freedom of expression.<sup>3</sup> A measure that promotes the expression of Australian perspectives through commercial television broadcasting services promotes a diversity of views in the media.

Importantly, the Australian content requirements contained in the Bill do not constrain the types of matter that may be broadcast (in addition to the Australian content), nor the views able to be freely expressed in broadcast matter. The measures do not set quotas at levels that would prevent adequate levels of foreign content being transmitted. The Australian content transmission quota for primary commercial television broadcasting services between 6am and midnight would allow 45 per cent of programming to be foreign sourced.

The Australian content transmission quota for commercial television broadcasting services other than the primary service is initially the equivalent of two hours of Australian programming during specified viewing hours per day, which will increase over time to a quota the equivalent of four hours during specified viewing hours per day.

The measures contained in the Bill that impose Australian content requirements on commercial television broadcasting licensees are compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. To the extent they may limit the rights of some individuals to the freedom of expression, these measures promote the rights of other people to take part in Australian cultural life and to the freedom of expression. The measures are necessary and proportionate to achieve the goal of promoting the continued production and distribution of Australian content on commercial television broadcasting services.

#### *Other bills*

The Australian Government has announced the Broadcasting Legislation Amendment (News Media Diversity) Bill 2013, News Media (Self-Regulation) Bill 2013, News Media (Self-Regulation) (Consequential Amendments) Bill 2013, and the Public Interest Advocate Bill 2013 will no longer be considered by Parliament.

Thank you for bringing the Committee's concerns on these matters to my attention.

Yours sincerely



Stephen Conroy  
Minister for Broadband,  
Communications and the Digital Economy

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<sup>3</sup> United Nations Human Rights Committee, General Comment No. 34, paragraph 39.