SENATE STANDING COMMITTEE

FOR THE

SCRUTINY OF BILLS

FIRST REPORT

OF

2001

7 February 2001

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MEMBERS OF THE COMMITTEE

Senator B Cooney (Chairman)
Senator W Crane (Deputy Chairman)
Senator T Crossin
Senator J Ferris
Senator B Mason
Senator A Murray

TERMS OF REFERENCE

Extract from **Standing Order 24**

(1)

(a) At the commencement of each Parliament, a Standing Committee for the Scrutiny of Bills shall be appointed to report, in respect of the clauses of bills introduced into the Senate, and in respect of Acts of the Parliament, whether such bills or Acts, by express words or otherwise:

(i) trespass unduly on personal rights and liberties;

(ii) make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers;

(iii) make rights, liberties or obligations unduly dependent upon non-reviewable decisions;

(iv) inappropriately delegate legislative powers; or

(v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

(b) The Committee, for the purpose of reporting upon the clauses of a bill when the bill has been introduced into the Senate, may consider any proposed law or other document or information available to it, notwithstanding that such proposed law, document or information has not been presented to the Senate.

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

FIRST REPORT OF 2001

The Committee presents its First Report of 2001 to the Senate.

The Committee draws the attention of the Senate to clauses of the following bills which contain provisions that the Committee considers may fall within principles 1(a)(i) to 1(a)(v) of Standing Order 24:

Aboriginal and Torres Strait Islander Commission Amendment Bill 2000

Broadcasting Services Amendment Bill 2000
(previous citation: Broadcasting Services Amendment Bill (No. 4) 1999)

Aboriginal and Torres Strait Islander Commission Amendment Bill 2000

Introduction

The Committee dealt with this bill in *Alert Digest No 18 of 2000*, in which it made various comments. The Minister for Aboriginal and Torres Strait Islander Affairs has responded to those comments in a letter dated 11 January 2001. A copy of the letter is attached to this report. An extract from the *Alert Digest* and relevant parts of the Minister's response are discussed below.

Extract from Alert Digest No. 18 of 2000

This bill was introduced into the House of Representatives on 29 November 2000 by the Minister representing the Minister for Aboriginal and Torres Strait Islander Affairs, [Portfolio responsibility: Aboriginal and Torres Strait Islander Affairs]

The bill proposes to amend the *Aboriginal and Torres Strait Islander Commission Act 1989* to:

- change the name of the Aboriginal and Torres Strait Islander Commercial Development Authority to Indigenous Business Australia;
- expressly allow the Aboriginal and Torres Strait Islander Commission to outsource its commercial functions, including decision making relating to the application of the funds to Indigenous Business Australia; and
- provide the option of appointing a full-time Chairperson to Indigenous Business Australia.

Delegation to 'a person'
Schedule 1, items 13 and 17

Section 7 of the *Aboriginal and Torres Strait Islander Commission Act 1989* sets out the functions of the Commission. Paragraph 7(1)(a) provides that one of these functions is to "formulate and implement programs for Aboriginal persons and Torres Strait Islanders".

Item 13 in Schedule 1 to this bill proposes to insert a new subsection 7(1A) in the principal Act. This subsection provides that a function referred to in paragraph 7(1)(a) need not be performed by the Commission itself, but may be performed by "other persons" who are authorised by the Commission to do so under contracts or agreements entered into by the Commission, or to whom the Commission has delegated the function.

Section 10 of the Principal Act sets out the powers of the Commission. Item 17 in Schedule 1 to this bill proposes to insert a new subsection 10(6) in the Principal Act. This subsection provides that, insofar as a person is authorised to perform a function as an agent or delegate of the Commission, the person may exercise any of the Commission's powers for or in connection with the performance of the function.

Since its establishment, the Committee has consistently drawn attention to legislation which allows significant and wide-ranging powers to be delegated to anyone who fits the all-embracing description of 'a person'. Generally, the Committee prefers to see a limit set either on the sorts of powers that might be delegated, or on the categories of people to whom those powers might be delegated. The Committee's preference is that delegates be confined to the holders of nominated officers or to members of the Senior Executive Service.

Neither of the amendments proposed by this bill imposes any limit on the functions or powers that may be delegated. The Committee, therefore, **seeks the Minister's advice** as to why the bill provides such a wide power of delegation.

Pending the Minister's advice, the Committee draws Senators' attention to these provisions, as they may be considered to make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, in breach of principle 1(a)(ii) of the Committee's terms of reference.

Relevant extract from the response from the Minister

> The Senate Standing Committee for the Scrutiny of Bills has raised concerns with Items 13 and 17 of the Aboriginal and Torres Strait Islander Commission Amendment Bill 2000 (the Bill) with regard to the breadth of those provisions in relation to delegation.
>
> The provisions proposed in items 13 and 17 of the Bill do not of themselves empower the Aboriginal and Torres Strait Islander Commission (ATSIC) to delegate any power or function. The operative delegation sections are in fact strictly limited.

Item 18, which would insert a new section 45B, is the key provision in relation to delegation. That provision would allow ATSIC to 'delegate to Indigenous Business Australia (IBA) any commercial functions falling within paragraph 7(1)(a)' in circumstances where IBA consents to the delegation. Far from being a general power of delegation to any person, the Bill limits the delegation so that it may only be made by ATSIC to IBA. It also restricts the functions which may be delegated to 'commercial functions'. Item 88 also deals with delegations and would allow IBA to delegate powers to the IBA General Manager or a member of staff only. This essentially reproduces the current provision (section 190) in relation to IBA's predecessor, the Aboriginal and Torres Strait Islander Commercial Development Corporation.

The intention and effect of the Bill is to allow a limited delegation by ATSIC (at its option) to IBA so that the smaller and more commercial orientated body may perform certain commercial functions which would otherwise be performed by ATSIC. IBA would be subject to the accountability requirements of the *Commonwealth Authorities and Companies Act* 1997 in the same way as ATSIC.

Once ATSIC has properly delegated a function to IBA under proposed section 45B, items 13 and 17 operate only to ensure that a delegation can take effect. Item 13 clarifies that ATSIC need not itself perform one or more of its functions where there is a proper delegation, contract or agreement already in place in accordance with the legislation. Item 17 ensures that the scope of a delegation can take effect in accordance with its terms. Neither of these proposed provisions would expand the scope of the strictly limited powers to delegate contained in sections 45, 45A and proposed 45B.

The Committee thanks the Minister for this response, and notes that Item 13 in Schedule 1 does not, of itself, empower the Aboriginal and Torres Strait Islander Commission (the Commission) to delegate any power or function, but simply facilitates the performance of functions that the Commission may validly delegate under other provisions of the Act.

The Committee also accepts that the power to delegate under the Act as presently drafted is limited, and that the immediate effect of the bill will be to allow the Commission (at its option) to delegate certain commercial functions to Indigenous Business Australia.

However, proposed new subsection 7(1A) is worded more generally. It also applies to anyone 'authorised' under contract to perform a function (in effect, 'delegation' through outsourcing), and might apply if the principal Act were later amended to increase the scope for formal delegations. It was in this wider sense that the Committee drew attention to the width of powers that might be exercised by persons or organisations other than the Commission. The Committee would, therefore, appreciate **the Minister's further advice** as to why no limit is imposed on the functions or powers that the Commission may authorise 'other persons' to undertake on its behalf.

Pending the Minister's further advice, the Committee continues to draw Senators' attention to these provisions, as they may be considered to make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, in breach of principle 1(a)(ii) of the Committee's terms of reference.

Broadcasting Services Amendment Bill 2000

(previous citation: Broadcasting Services Amendment Bill (No. 4) 1999)

Introduction

The Committee dealt with this bill in *Alert Digest No 1 of 2000*, in which it made various comments. The Minister for Communications, Information Technology and the Arts responded to those comments in a letter dated 3 May 2000, and in a further letter dated 20 December 2000. A copy of this letter is attached to this report. An extract from the *Alert Digest* and relevant parts of the Minister's response are discussed below.

The Committee notes that this bill was passed by the Parliament on 28 November and received Royal Assent on 21 December. The Minister's response may, nevertheless, still be of interest to Senators.

Extract from Alert Digest No. 1 of 2000

This bill was introduced into the House of Representatives on 9 December 1999 by the Minister representing the Minister for Communications, Information Technology and the Arts. [Portfolio responsibility: Communications, Information Technology and the Arts]

The bill proposes to amend the following Acts:

Broadcasting Services Act 1992 to provide a scheme for the regulation of international broadcasting services transmitted from Australia which requires the Minister for Foreign Affairs to make a national interest assessment of whether a service is likely to be contrary to the national interest;

Administrative Decisions (Judicial Review) Act 1977 to provide that decisions of the Minister for Foreign Affairs in relation to the proposed international broadcasting scheme are not subject to a requirement under the Act to provide a statement of reasons; and

Radiocommunications Act 1992 to provide that only persons who have an international broadcasting licence allocated by the ABA under the Broadcasting Act may be issued with a transmitter licence authorising operation of a transmitter for transmitting an international broadcasting service by the Australian Communications Authority.

No reasons for decision
Schedule 1, Part 1, Item 1

Schedule 1 to this bill is apparently identical to Schedule 3 to the Broadcasting Services Amendment Bill (No 3) 1999, considered above.

This Schedule also contains a scheme for the regulation of international broadcasting services transmitted from Australia. The Scheme enables the Minister for Foreign Affairs to refuse an application for a licence, or to warn a licence-holder, or to suspend or cancel a licence, where an international broadcasting service, or proposed service, is seen as contrary to Australia's national interest.

Item 1 of Part 1 of Schedule 1 to this bill proposes to amend the *Administrative Decisions (Judicial Review) Act 1977* so that these decisions are not subject to the requirement in that Act that a statement of reasons be provided. The Explanatory Memorandum again observes that "the nature of these decisions is such that exposure of the reasons for the decisions could itself be contrary to Australia's national interest".

As noted above, the Committee is concerned at the apparent finality of such decisions. If there is no obligation to provide reasons under the *Administrative Decisions (Judicial Review) Act 1977*, it is not clear what other rights of review or appeal (if any) are available to licensees where the Minister makes such a decision.

The Committee notes that under proposed subsection 121FL(6), a licensee must be given a reasonable opportunity to send a submission to the ABA where a licence is cancelled, and the ABA must forward this submission to the Minister, but there seems to be no obligation on the Minister to actually consider the submission, and no similar procedure for making a submission where a licence is suspended rather than cancelled.

Where a licence is refused, suspended or cancelled, it is also not clear whether there is any right of appeal to the courts, and whether any such right of appeal extends to a consideration of the merits of the Minister's decision. The Committee, therefore, **seeks the Minister's advice** as to these matters.

Pending the Minister's advice, the Committee draws Senators' attention to this provision, as it may be considered to make rights, liberties or obligations unduly dependent upon non-reviewable decisions, in breach of principle 1(a)(iii) of the Committee's terms of reference.

Relevant extract from the response from the Minister dated 3 May 2000

The Committee's Alert Digest 1/00 commented on the Broadcasting Services Amendment Bill (No.3) 1999 and Broadcasting Services Amendment Bill (No.4) 1999 (BSAB 4). In the second reading debate on Broadcasting Services Amendment Bill (No.3) 1999 in the House of Representatives on 7 December 1999, the Government moved an amendment to the Bill to remove Schedule 3 - International Broadcasting Services from the Bill. On 9 December 1999 the Government introduced BSAB 4 into the House. BSAB 4 contains the proposed amendments to the *Broadcasting Services Act 1992* (BSA), the *Radiocommunications Act 1992* and the *Administrative Decisions (Judicial Review) Act 1977* (AD(JR) Act) in relation to international broadcasting services.

The Committee has noted its concern about the apparent finality of decisions of the Minister for Foreign Affairs under the proposed new Part 8B of the BSA, the licensing regime for international broadcasting services. Under proposed new Part 8B of the BSA the Minister may direct the Australian Broadcasting Authority (ABA):

(a) not to allocate an international broadcasting licence to an applicant if the Minister for Foreign Affairs is of the opinion that the proposed service is likely to be contrary to the national interest;
(b) to issue a formal warning to an international broadcasting licensee if the Minister for Foreign Affairs is of the opinion that the service is contrary to the national interest;
(c) to suspend an international broadcasting licence if the Minister for Foreign Affairs is of the opinion that the service is contrary to the national interest; or
(d) to cancel an international broadcasting licence if the Minister for ForeignAffairs is of the opinion that the service is contrary to the national interest.

As a result of the proposed amendment to the AD(JR) Act to amend Schedule 2 of the Act to include these decisions of the Minister for Foreign Affairs, section 13 of the AD(JR) Act does not apply in relation to these decisions. Section 13 of the AD(JR) Act places an obligation on a decision maker to provide a statement of reasons to a person entitled to make an application to the Court under section 5 of the Act for judicial review of a decision, where that person requests a statement of reasons from the decision maker. The processes for review of a decision by the Minister for Foreign Affairs under the AD(JR) Act are otherwise unaltered by BSAB 4.

The proposed exemption from the requirement to provide a statement of reasons under section 13 of the AD(JR) Act does not prevent the Minister for Foreign Affairs from giving reasons for a decision if the Minister decides it would be appropriate to do so. However, the Minister for Foreign Affairs would not be required to give a statement of reasons and would be expected not to do so in cases in which giving a statement of reasons would be contrary to the national interest.

In addition to, or instead of, seeking review of a decision by the Minister for Foreign Affairs under proposed new Part 8B of the BSA under the AD(JR) Act, a person could seek review on common law grounds. The main common law grounds of review are breach of the rules of natural justice, ultra vires (decision exceeds power),

jurisdictional error, error of law on the face of the record, and failure to perform a duty.

In order to initiate common law review of a decision, a person aggrieved by a decision of the Minister for Foreign Affairs under proposed Part 8B of the BSA would take action against the Minister in the Federal Court. If a person was not satisfied with the outcome of the action in the Federal Court, the person could seek leave to appeal to the High Court.

There is no provision for review of the merits of a decision by the Minister for Foreign Affairs. This is consistent with guidelines in relation to decisions which should be subject to merits review issued by the Administrative Review Council in July 1999. The guidelines include policy decisions of a high political content as a factor that may justify excluding merits review. In the guidelines, a specific example of a policy decision of a high political content is a decision affecting Australia's relations with other countries.

The Committee has also raised two concerns in relation to the proposed power for the Minister for Foreign Affairs to cancel and suspend a licence. The first is the lack of a specific provision requiring the Minister for Foreign Affairs to consider any submission made in relation to a proposed cancellation of an international broadcasting licence; the second that the power of the Minister for Foreign Affairs to suspend a licence does not contain a similar procedure prior to the exercise of a power to suspend an international broadcasting licence.

In relation to the first issue, I am advised that it is not necessary for the Bill to specify that the Minister for Foreign Affairs is required to consider any submission. Failure of the Minister to consider a submission would amount to a breach of the rules of natural justice, which is a ground for review of a decision under the AD(JR) Act and is a common law ground of review.

In relation to the Committee's concern about the lack of a specific opportunity for a licensee to make a submission before the decision to suspend a licence, the specific requirement in relation to the cancellation of an international broadcasting licence has been included in proposed new Part 8B of the BSA because cancellation of a licence is a very significant act that would be likely to have a permanent impact on an international broadcasting licensee. As such it was considered appropriate that, if the Minister for Foreign Affairs was considering exercising his or her power to cancel a licence, there should be a statutory requirement for the licensee to be informed of the possible decision and a statutory requirement that a licensee be given the opportunity to provide a submission to the Minister. In contrast, the suspension of an international broadcasting licence would have a more modest impact on a broadcaster, as it is only for a specified period. It was considered inappropriate to include a mandatory consultation requirement before suspension because of the need to ensure that swift temporary action could be taken by the Minister for Foreign Affairs in the national interest.

In practice, if the Minister for Foreign Affairs was considering suspending a licence, it would be incumbent on the Minister to have regard to the rules of natural justice, including the hearing rule. Failure to do so could render a decision void, as it would be a ground for review of a decision to suspend a licence.

I trust this addresses the Committee's concerns.

The Committee thanks the Minister for this response and accepts that there may be difficulties in providing for administrative review where policy decisions involve a high political content.

However, this provision authorises the Minister to make decisions which, in effect, restrict freedom of expression in Australia. Where a provision authorises a Minister to make such a decision on objective criteria, then the bona fides of its exercise are transparent, and may be assessed. But where a provision authorises a Minister to make such a decision on subjective grounds – such as the 'national interest' – then it is much more difficult to assess the bona fides of its exercise.

One approach that may be taken in these circumstances is appropriate consultation. For example, appointments of judicial officers are discretionary, but only made after appropriate (and non-partisan) consultation. The Committee **would appreciate further advice from the Minister** as to whether there are any criteria against which such a Ministerial decision to restrict freedom of expression can later be assessed, or whether it is proposed that there be any non-partisan consultation prior to its exercise.

Pending the Minister's further advice, the Committee continues to draw Senators' attention to this provision, as it may be considered to make rights, liberties or obligations unduly dependent upon non-reviewable decisions, in breach of principle 1(a)(iii) of the Committee's terms of reference.

Relevant extract from the further response from the Minister dated 20 December 2000

> Further, following a recommendation of the Senate Foreign Affairs, Defence and Trade Legislation Committee, the Government agreed to amend the Bill to provide that if a person makes a request to the Minister for Foreign Affairs for a statement of reasons in relation to a decision of the Minister, the Minister must either provide a statement of reasons to that person, or prepare a statement about the decision and cause a copy to be laid before each House of the Parliament. This provision (section 121FS of the *Broadcasting Services Act 1992)* will ensure appropriate accountability for the Minister's actions, while giving appropriate safeguards to Australia's national interest.
>
> The Committee expressed concern about the lack of objective criteria for the Minister for Foreign Affair's national interest assessment. However, the Senate Foreign Affairs, Defence and Trade Legislation Committee acknowledged that it is not possible to be more precise about the specific criteria for determining national interest issues in relation to licensing decisions under the new legislation.

While there are no specific criteria for the Minister for Foreign Affair's national interest assessment, the Minister would take into account all relevant circumstances relating to Australia's international relations with the country or countries targeted by the international broadcasting service concerned. It is also open to the Minister to seek a report from the ABA on the service's compliance with the international broadcasting guidelines, where an existing licence is involved. The ABA must provide such a report when referring a licence application to the Minister.

The guidelines, to be developed by the ABA will draw on the Transborder Satellite Broadcasting Principles that have been developed by broadcasting regulatory agencies in the Asia-Pacific region. The guidelines will provide a degree of transparency and objectivity in terms of assessing whether an international broadcasting service is contrary to Australia's national interest.

The suggestion that there should be 'non-partisan consultation' on the Minister's decision is not appropriate given the sensitivity and complexity of issues relating to Australia's foreign relations. In any case, consultation is likely to be impracticable given the urgency that may be involved in the Minister taking action to protect Australia's international relations by suspending or cancelling an international broadcasting licence.

As you may be aware, since the Committee's report, the Bill has successfully passed through both Houses of parliament and will commence on Royal Assent.

The Committee thanks the Minister for this further response, and notes the amendment that was moved to enable requests to be made for statements of reasons.

Barney Cooney
Chairman

Office of the Minister for Aboriginal and Torres Strait Islander Affairs

Senator the Hon John Herron

RECEIVED
15 JAN 2001
Senate Standing C'ttee for the Scrutiny of Bills

Mr James Warmenhoven
Secretary
Senate Standing Committee for the Scrutiny of Bills
Parliament House
CANBERRA ACT 2600

11 JAN 2001

Dear Mr Warmenhoven

I refer to your letter of 7 December 2000 advising of the entry in the Scrutiny of Bills Alert Digest No. 18 of 2000 regarding the Aboriginal and Torres Strait Islander Commission Amendment Bill 2000, and inviting the Minister to respond to those comments.

I enclose the Minister's response including an electronic copy as requested in your letter. The Minister's response explains why the concerns raised by the Committee in relation to the breadth of certain provisions in relation to the delegation of powers in the Bill are unfounded.

Please do not hesitate to contact me if I can be of any further assistance.

Yours sincerely

for Jeff Herbert
Senior Adviser

Response to matters raised by Senate Standing Committee for the Scrutiny of Bills Alert Digest No 18 of 2000 (6 December 2000) in relation to the Aboriginal and Torres Strait Islander Commission Amendment Bill 2000

The Senate Standing Committee for the Scrutiny of Bills has raised concerns with Items 13 and 17 of the Aboriginal and Torres Strait Islander Commission Amendment Bill 2000 (the Bill) with regard to the breadth of those provisions in relation to delegation.

The provisions proposed in items 13 and 17 of the Bill do not of themselves empower the Aboriginal and Torres Strait Islander Commission (ATSIC) to delegate any power or function. The operative delegation sections are in fact strictly limited.

Item 18, which would insert a new section 45B, is the key provision in relation to delegation. That provision would allow ATSIC to 'delegate to Indigenous Business Australia (IBA) any commercial functions falling within paragraph 7(1)(a)' in circumstances where IBA consents to the delegation. Far from being a general power of delegation to any person, the Bill limits the delegation so that it may only be made by ATSIC to IBA. It also restricts the functions which may be delegated to 'commercial functions'. Item 88 also deals with delegations and would allow IBA to delegate powers to the IBA General Manager or a member of staff only. This essentially reproduces the current provision (section 190) in relation to IBA's predecessor, the Aboriginal and Torres Strait Islander Commercial Development Corporation.

The intention and effect of the Bill is to allow a limited delegation by ATSIC (at its option) to IBA so that the smaller and more commercial orientated body may perform certain commercial functions which would otherwise be performed by ATSIC. IBA would be subject to the accountability requirements of the *Commonwealth Authorities and Companies Act* 1997 in the same way as ATSIC.

Once ATSIC has properly delegated a function to IBA under proposed section 45B, items 13 and 17 operate only to ensure that a delegation can take effect. Item 13 clarifies that ATSIC need not itself perform one or more of its functions where there is a proper delegation, contract or agreement already in place in accordance with the legislation. Item 17 ensures that the scope of a delegation can take effect in accordance with its terms. Neither of these proposed provisions would expand the scope of the strictly limited powers to delegate contained in sections 45, 45A and proposed 45B.

SENATOR JOHN HERRON

SENATOR THE HON RICHARD ALSTON
Minister for Communications, Information Technology and the Arts
Deputy Leader of the Government in the Senate

20 DEC 2000

Senator Barney Cooney
Chairman
Senate Standing Committee for the Scrutiny of Bills
Parliament House
CANBERRA ACT 2600

Dear Senator Cooney Barney

In its Sixteenth Report of 2000 (8 November 2000), the Senate Standing Committee for the Scrutiny of Bills discussed the Broadcasting Services Amendment Bill 2000 (the Bill).

In that Report the Committee states that there is a provision in the Bill which may be considered to make rights, liberties or obligations unduly dependent upon non-reviewable decisions, in breach of principle 1(a)(iii) of the Committee's terms of reference. The Committee is referring to decisions of the Minister for Foreign Affairs to direct the Australian Broadcasting Authority (ABA) to not issue, or to cancel or suspend, an international broadcasting licence because he is of the opinion that the service would be, or is, contrary to Australia's national interest.

Accordingly, the Committee has requested my advice as to whether there are any criteria against which such a decision of the Minister for Foreign Affairs can later be assessed, or whether it is proposed that there be any non-partisan consultation prior to such a decision.

I do not believe that it is accurate to describe the decisions of the Minister for Foreign Affairs as non-reviewable. While the Minister's decisions may not be subject to merits review, persons affected by a decision of the Minister will be able to seek judicial review under the *Administrative Decisions (Judicial Review) Act 1977 (AD(JR)) Act 1977* or on common law grounds.

Further, following a recommendation of the Senate Foreign Affairs, Defence and Trade Legislation Committee, the Government agreed to amend the Bill to provide that if a person makes a request to the Minister for Foreign Affairs for a statement of reasons in relation to a decision of the Minister, the Minister must either provide a statement of reasons to that person, or prepare a statement about the decision and cause a copy to be laid before each House of the Parliament. This provision (section

121FS of the *Broadcasting Services Act 1992*) will ensure appropriate accountability for the Minister's actions, while giving appropriate safeguards to Australia's national interest.

The Committee expressed concern about the lack of objective criteria for the Minister for Foreign Affair's national interest assessment. However, the Senate Foreign Affairs, Defence and Trade Legislation Committee acknowledged that it is not possible to be more precise about the specific criteria for determining national interest issues in relation to licensing decisions under the new legislation.

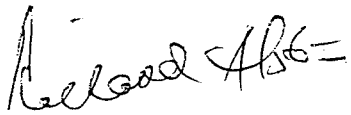
While there are no specific criteria for the Minister for Foreign Affair's national interest assessment, the Minister would take into account all relevant circumstances relating to Australia's international relations with the country or countries targeted by the international broadcasting service concerned. It is also open to the Minister to seek a report from the ABA on the service's compliance with the international broadcasting guidelines, where an existing licence is involved. The ABA must provide such a report when referring a licence application to the Minister.

The guidelines, to be developed by the ABA will draw on the Transborder Satellite Broadcasting Principles that have been developed by broadcasting regulatory agencies in the Asia-Pacific region. The guidelines will provide a degree of transparency and objectivity in terms of assessing whether an international broadcasting service is contrary to Australia's national interest.

The suggestion that there should be 'non-partisan consultation' on the Minister's decision is not appropriate given the sensitivity and complexity of issues relating to Australia's foreign relations. In any case, consultation is likely to be impracticable given the urgency that may be involved in the Minister taking action to protect Australia's international relations by suspending or cancelling an international broadcasting licence.

As you may be aware, since the Committee's report, the Bill has successfully passed through both Houses of Parliament and will commence on Royal Assent.

Yours sincerely



RICHARD ALSTON
Minister for Communications,
Information Technology and the Arts