

**BROADCASTING SERVICES AMENDMENT (DIGITAL TV AND
DATACASTING) BILL 2000**

MINORITY REPORT BY LABOR SENATORS

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EXECUTIVE SUMMARY

Datacasting

- The definition of datacasting, as it stands, is overly restrictive, complicated and goes beyond restricting datacasting to services that do not constitute broadcasting. Labor Senators believe that while datacasting cannot be de facto broadcasting, the definition should be amended to remove the artificial and unnecessary limitations on datacasting.
- Labor Senators believe it is crucial that this emergent industry is not stifled in its development and innovative capacity by overly restrictive regulation and that the benefits for Australia's technological advancement, improved consumer services and employment and economic opportunities should not be constrained.
- Labor Senators oppose the genre-based content definition of datacasting and call upon the Government to withdraw from that approach.
- Labor Senators support an approach that favours flexibility, minimises barriers to entry, and allows new services to develop over time.

ABA regulatory power

- Labor Senators note the ABA's regulatory role in the area of determining datacasting content. Labor Senators note the Bill denies interested parties the ability to access stay powers or seek injunctive relief in relation to decisions of the ABA. Labor Senators urge deletion of relevant exclusions in the Bill.
- Labor Senators acknowledge the legitimate concerns of the national broadcasters that the genre-based content definition of datacasting might impinge on programming decisions properly the province of their Boards. The definition of datacasting in the Bill gives occasion to this concern. Specific provisions that might apply to datacasting by the ABC and SBS might more appropriately be contained within the *Australian Broadcasting Corporation Act 1983* and the *Special Broadcasting Service Act 1991*.

National broadcasters and datacasting

- The nonsensical decision to impose datacasting fees on the national broadcasters should be reversed, and they should be exempted from payment of the fees.
- National broadcasters should be allowed to broadcast radio programs for datacasting purposes.

Datacasting transmission licences after the broadcasting moratorium

- Labor Senators believe it is important that the post-moratorium arrangements for datacasting licences, which have a term of 10 years with a 5-year option, be considered by early review.

Multi-channelling by the national broadcasters

- There is broad support for allowing the national broadcasters the ability to multi-channel. Labor Senators see no valid justification for denying the national broadcasters the ability to multi-channel, particularly when those arguments are balanced against the resultant benefits.

Spectrum loan to commercial television stations and HDTV

- There is some industry criticism of the Government's policy decision to loan spectrum to the commercial free-to-air television broadcasters for the purpose of conversion to digital and HDTV.
- Labor Senators believe that the arrangements mandating HDTV require early review to assess the continued mandating of HDTV broadcasting.

Enhanced programming

- On the evidence, it is not an unreasonable conclusion that the provisions of the Bill allow simultaneous, multiple broadcasts of distinct substance which could constitute de facto multi-channelling. This allows the free-to-air broadcasters to compete with the multi-channelling services offered by the pay TV sector.
- It is clear to Labor Senators that these proposed provisions may cross the boundary between what was conceived to comprise 'enhancements' pursuant to the Act and the Minister's media release of 21st December 1999, into the domain of de facto multi-channelling. The provisions are substantively different from those previously proposed.
- Labor Senators believe that the Bill should be consistent with the Minister's previous policy indications of what would comprise enhanced programming and the circumstances in which multi-channelling in the case of an 'overlap' would be permitted, so that commercial free-to-air stations do not engage in de facto multi-channelling.

Reviews

- In recognition of the transitional nature of the legislation, it is highly desirable that its consequences and efficacy are measured over the coming years to ensure that Parliament's policy objectives are being properly and effectively implemented.
- Labor Senators believe that it is critical for the proposed reviews to be instigated, completed and their findings considered in a timely manner consistent with the industry's requirement for certainty.

- Labor Senators believe it is pertinent for the reviews to be transparent and accountable to Parliament. As such they should be statutory and required by this legislation.

Community broadcasting

- Labor Senators consider some degree of legislative certainty consistent with the Minister's undertakings for community broadcasters to be warranted and appropriate.

Captioning arrangements

- Labor Senators welcome the captioning requirements, which have considerable benefit for a significant sector of the community.
- Whilst it is acknowledged that regional television broadcasters will inevitably bear a disproportionate burden of costs of the captioning requirements relative to metropolitan stations, the importance of captioning to those with hearing impairments or deafness should not be under-estimated.

INTRODUCTION

Inquiry process

Interested parties have eagerly awaited the tabling of the *Broadcasting Services Amendment (Digital TV and Datacasting) Bill 2000* for several months. The breadth of issues covered by the Bill has proven somewhat overwhelming for those who have had to analyse the detail and impact of the legislation over the last three weeks. The Committee received 38 submissions and held around 20 hours of public hearings over two days.

Detailed investigation of the *Broadcasting Services Amendment (Digital TV and Datacasting) Bill 2000*, which is the subject of this Inquiry, has been constrained by the timeframes imposed by the Government. The Government has sought to have Parliament enact the Bill at the end of a particularly eventful session.

The unreasonably short timeframe for conduct of the Inquiry, combined with the Government's undue haste, has compromised the ability of relevant industries to adequately formulate detailed responses to the many issues which the Bill addresses or raises.

It is in this context that Labor Senators have identified the issues we consider critical to the efficacy of the Bill in realising the policy objectives it explicitly seeks to achieve.

Development of commercial free-to-air television broadcasting regulation

Regulation of the commercial free-to-air television stations (and other broadcasting services) is achieved predominantly by the *Broadcasting Services Act 1992* (hereafter the "BSA"). The BSA and Australian broadcasting policy more generally, are predicated on various structural divisions within the broadcasting industry that are increasingly becoming less discrete as a result of technological developments.

An example of the inherent complexities of the framework for Australian broadcasting policy can be seen from the way the important policy objective of promoting Australian content on commercial television has been used to justify competitive restrictions for the entry of new broadcasters. Commercial television stations have argued that the imposition of the higher costs of Australian content on them necessitates protection of their revenues. At the same time, the consequence of limitations on competition has led to the risk of overly concentrated media ownership. In response to the fear that concentration of media ownership is not in the public interest, ownership and control of licences has been regulated. This chain of regulatory responses is illustrative of the inbuilt convolutedness of the BSA.

Regulation of the commercial television broadcasting industry has often involved a degree of technological specificity that is inflexible for an industry where technologies are so rapidly converging.

1998 legislative policy framework

The Government's policy framework for the introduction of digital television was established by the *Television Broadcasting Services (Digital Conversion) Act 1998* (hereafter "the Act"). There has been, in the intervening period, an announcement of Government policy by the Minister for Communications, Information Technology and the Arts on the 21st December 1999 to effect and implement that framework. It has been contended in evidence to the Committee's Inquiry into the *Broadcasting Services Amendment (Digital TV and Datacasting) Bill 2000* (hereafter "the Bill"), that the Bill contains significant variations from the policy framework as originally legislated.¹

Since the passage of the Act the importance of some its provisions to the success or failure of the digital conversion has become apparent. Notably, the Act provided for:²

- the requirement for digital transmission to commence on 1st January 2001 for metropolitan broadcasters and by 1st January 2004 in regional areas;
- the loan of 7 megahertz of spectrum to commercial free-to-air television broadcasters for the requisite period of analog and digital simulcasting;
- a moratorium on the allocation of new commercial television licences until 1st January 2007;
- mandatory quotas for digital transmission in high definition format;
- prohibition of multi-channelling by the commercial broadcasters;
- 'datacasting' (provisionally defined as a service other than broadcasting that delivers information) by existing broadcasters and new players;
- the capacity for broadcasters to provide 'incidental and directly linked' (undefined in the Act) enhanced programming.

1 Foxtel, Submission 26, pp.1-2; ASTRA, *Proof Committee Hansard*, 1/6/00, p.106.; Fox Sports, Submission 19, pp.1-2.

2 *Television Broadcasting Services (Digital Conversion) Act 1998*.

Criticisms of framework

Since the introduction of the *Television Broadcasting Services (Digital Conversion) Act 1998* the bases for the legislative provisions, which implement the Government's policy objectives have been criticised by sections of the industry, including suggestions that achievement of the policy objectives is in jeopardy of failure.

In 1998, it was suggested that high definition digital television would provide significant improvements in picture quality and consumer services, it was anticipated that consumer demand would consequently drive take-up of the technology and there was a presumption that HDTV would be the predominant technology in Western Europe, the United States and Japan.

It is yet to be seen whether these forecasts prove accurate, and consumer demand drives the consumer take-up that is critical to the affordability of the technology and success of the legislative framework.

The criticisms of the high definition format include international experiences involving disappointing results for HDTV. The US is the only other market to have legislated for high definition television and is therefore, with Japan, the only market with high definition content.³

The United States experience of high definition television is suggested as evidence of the inefficiencies of HDTV, particularly in the consumer marketplace. ASTRA has called HDTV "a dud" and noted "it is not working in America and there seems to be no enthusiasm for it."⁴ Mr. A. Encel of International Dynamics agreed with this statement, and advised "HDTV is acknowledged as a consumer product failure in the USA, and there are even fewer reasons for it to succeed in Australia".⁵ The Screen Producers Association of Australia has indicated that take-up of HDTV in Australia "is likely to be extremely low, especially in the early years of digital television" if the American experience can be extrapolated into the Australian setting.⁶

In the UK HDTV was rejected and a multiplexing, standard definition model was adopted. UK policy specifically facilitates the entry of new players into the commercial market, and this is suggested to be part of the explanation for the general consideration of the UK digital scheme as a success, and for the resultant substantial take-up rates. Similarly Europe has no plans for a high definition standard.⁷

3 SPAA, Submission 24, p.10.

4 ASTRA, *Proof Committee Hansard*, 1/6/00, p.103, p.112.

5 Submission 1, p.3.

6 SPAA, Submission 24, p.10.

7 ASTRA, *Proof Committee Hansard*, 1/6/00, p.103.

In Japan, HDTV transmission has been delayed until 2003.⁸ This suggests that there are some doubts remaining about the conversion to high definition format digital television.

There is some support for removal of the mandated HDTV transmission. Labor Senators believe it is important that this issue be reviewed at an early opportunity.

8 *ASTRA, Proof Committee Hansard, 1/6/00, p.112; FACTS, Proof Committee Hansard, 31/5/00, p.37.*

DATACASTING

Definition – criticisms

Considerable concerns have been raised with the Committee, by a wide range of organisations, relating to the scope of the definition of “datacasting” in the Bill. The Government has sought to confine datacasting, the wisdom of which is dubious in view of the denunciation by a range of interested parties of the means that has been chosen for implementing this restraint.⁹

The Productivity Commission, in its recent report on broadcasting, noted that the Government’s policy relating to datacasting “stifles competition and innovation and is at odds with major tenets of mainstream broadcasting policy”.¹⁰ It considers the regulatory restrictions:

“will be costly to Australian consumers and businesses alike, .. delay consumer adoption of digital technology and deprive business of opportunities to develop new products and services for the world as well as Australian markets.”¹¹

Telstra and the ACA¹² have concurred with the Productivity Commission’s position that prescriptive regulation is detrimental to the emergent industry and consumers. The Bill is considered likely to have a negative impact on Australian consumers due to the inability to provide the full range of new digital services, and on the emergent industry whose viability is significantly limited by the provisions of the Bill.¹³ Labor Senators believe it is crucial that this emergent industry is not stifled in its development and innovative capacity by overly restrictive regulation, with consequences for Australia’s technological advancement, improved consumer services and employment and economic opportunities.

Criticisms of the datacasting regime include:

- the constraint that 10 minute segments cannot be “self-contained” involves difficulty with objective definition of what is “self-contained”;¹⁴

9 Fairfax, *Proof Committee Hansard*, 1/6/00, p.92; Telstra, Submission 16, pp.2,4; Productivity Commission, *Broadcasting: Inquiry Report*, 3 March 2000, p.15; ACA, Submission 10, p.6; ABC, Submission 20, pp.4-5; SBS, Submission 11, p.2.

10 Productivity Commission, *Broadcasting: Inquiry Report*, 3 March 2000, p.14.

11 Productivity Commission, *Broadcasting: Inquiry Report*, 3 March 2000, p.15.

12 Telstra, Submission 16, pp.2,4; ACA, Submission 10, p.6.

13 Telstra, Submission 16, p.1; ACA, Submission 10, p.6.

14 SBS, *Proof Committee Hansard*, 1/6/00, p.89; Telstra, *Proof Committee Hansard*, 31/5/00, p.51; Telstra, Submission 16, p.2.

- restriction of the entertainment value of datacasting is likely to render it a commercially unattractive or inviable service to potential datacasters and undesirable to consumers;¹⁵
- restrictions are likely to stifle innovation and technological opportunities for consumers;¹⁶
- restricted definition of education will effectively exclude children's educational programs and programs that have considerable value to the community;¹⁷
- objections to restriction of datacasting according to content genre have been extensive;¹⁸
- the complexity of the definition will result in uncertainty;¹⁹
- the degree of technological specificity in the Bill will prevent datacasters from responding to technological advancements and offering new services as they become available;²⁰
- the definition of information and whether it precludes provision of opinion;²¹
- distinction between news and current affairs – a distinction which is difficult and inappropriate to make and has no apparent policy justification;²²
- the definition of foreign language programming requires no English content at all.²³

15 SBS, *Proof Committee Hansard*, 1/6/00, p.90; Fairfax Ltd, *Proof Committee Hansard*, 1/6/00, pp.92, 93; SPAA, *Proof Committee Hansard*, 31/5/00, p.20; ACA, *Proof Committee Hansard*, 31/5/00, p.67. Note however contrary opinion of FACTS, which considers the definition as able to accommodate "services that operate successfully, profitably and freely within the rules": *Proof Committee Hansard*, 31/5/00, p.30.

16 SPAA, *Proof Committee Hansard*, 31/5/00, p.20, 21; ACA, *Proof Committee Hansard*, 31/5/00, p.66.

17 Fairfax Ltd, *Proof Committee Hansard*, 1/6/00, p.94; ACA, *Proof Committee Hansard*, 31/5/00, pp.67, 68; ACA, Submission 10, p.6.

18 SBS, *Proof Committee Hansard*, 1/6/00, p.88; Fairfax, *Proof Committee Hansard*, 1/6/00, p.92; SPAA, *Proof Committee Hansard*, 31/5/00, pp.21, 22; ASTRA, *Proof Committee Hansard*, 1/6/00, p.107.

19 ACA, *Proof Committee Hansard*, 31/5/00, p.67; C & W Optus, *Proof Committee Hansard*, 1/6/00, p.108.

20 SPAA, *Proof Committee Hansard*, 31/5/00, p.22.

21 Fairfax Ltd, *Proof Committee Hansard*, 1/6/00, p.93.

22 Fairfax Ltd, *Proof Committee Hansard*, 1/6/00, p.93.

23 Fairfax Ltd, *Proof Committee Hansard*, 1/6/00, p.93; Submission 25, p.5.

Recommendation

Labor Senators believe the definition of datacasting, as it stands, is overly restrictive, complicated and goes beyond restricting datacasting to services that do not constitute broadcasting. Labor Senators believe that while datacasting cannot be de facto broadcasting, the definition should be amended to remove the artificial and unnecessary limitations on datacasting.

Alternative definitions

There are arguments that the proposed legislative categorisation goes beyond just prohibiting datacasters from broadcasting.²⁴ To this end, alternative distinctions have been recommended to the Committee including:

- removing the unnecessarily complicated restrictions from those programs which are permitted to be broadcast (without Category A/B distinction) whilst maintaining the 10 minute limitation of length;²⁵
- complete removal of the genre-based restrictions, and general relaxation of the limitations of the definition as detailed above.

Given the opportunity to define datacasting ab initio, suggested definitions included:

- a definition based on the distinction between datacasting and broadcasting being the interactivity of the former, rather than genre-based regulation;²⁶
- specify broadcasting as being the linear, passive, scheduled production of television programs on a repeatable or ongoing basis, and datacasting by reference to its not being broadcasting; that is differentiating datacasting from broadcasting by reference to the known quantity of broadcast, rather than by reference to the unknown quantity, datacasting;²⁷
- definition of datacasting as “services which ... are not broadcasting services”.²⁸

24 SBS, *Proof Committee Hansard*, 1/6/00, p.88; Fairfax Ltd, *Proof Committee Hansard*, 1/6/00, p.92.

25 SBS, *Proof Committee Hansard*, 1/6/00, p.88; Fairfax Ltd, *Proof Committee Hansard*, 1/6/00, p.93.

26 Fairfax Ltd, *Proof Committee Hansard*, 1/6/00, pp.93, 96.

27 ACA, *Proof Committee Hansard*, 31/5/00, p.67. This definition has the advantage of defining broadcasting, and people know what broadcasting is, rather than datacasting which we do not know at all: *Proof Committee Hansard*, 31/5/00, p.67. ACA, Submission 10, p.6.

28 C & W Optus, *Proof Committee Hansard*, 1/6/00, p.108.

The Government's approach appears to widely define broadcasting and expressly limit datacasting to a tightly limited range of services that were characterised by the ACA as "worthy but dull". The Government's policy approach fails to comprehend the scope of change in these industries, the undeniable and legitimate need for datacasters to package their products in attractive forms to succeed in emerging markets with products they create.

There is nothing wrong with datacasters packaging content in an attractive fashion. Labor Senators reject the argument of FACTS that this is or should be the sole domain of free-to-air broadcasters.

Recommendations

Labor Senators oppose the genre-based content definition of datacasting and call upon the Government to withdraw from that approach.

Labor Senators support an approach that favours flexibility, minimises barriers to entry, and allows new services to develop over time.

ABA regulatory power

The definition of datacasting in the legislation according to Category A prohibitions and Category B restrictions is likely to cause a "regulatory nightmare"²⁹ from the perspective of potential datacasters, although the Federation of Australian Commercial Television Stations considers the definition imminently workable.³⁰

Notably, the ABA considers itself well-positioned and well-qualified to make determinations according to the genre-based definition.³¹ However as a matter of practice, the ABA will make determinations only where there is a dispute over content transmitted by datacasting and decisions as to content for transmission will, in the first instance, be made by datacasters. As such, it is troubling that datacasters are so uncomfortable with the existing definition.

Labor Senators are similarly concerned that the Bill denies interested parties the ability to access stay powers or to seek interlocutory injunctive relief in relation to decisions of the ABA. The ABA failed to adequately justify this breadth of the ABA's power in the context of concerns raised by Fairfax Ltd that section 57 (Schedule 1) of

29 SBS, *Proof Committee Hansard*, 1/6/00, p.88.

30 FACTS, *Proof Committee Hansard*, 31/5/00, pp.30-31.

31 ABA, *Proof Committee Hansard*, 1/6/00, p.141.

the Bill does not permit the courts to grant interlocutory injunctive relief relating to ABA determinations that are appealed.³²

The national broadcasters have objected to the impact of the ABA's regulatory role in datacasting on their ability and right to determine their programming as they consider such decisions as properly being the province of their Boards as regulated by their Acts.³³ As discussed above, concerns at the extent of the ABA's decision-making powers have been disclosed to the Committee,³⁴ especially in light of the perceived complexities and the difficulty in objectively defining datacasting.

Recommendations

Labor Senators note the Bill denies interested parties the ability to access stay powers or to seek interlocutory injunctive relief in relation to decisions of the ABA. Labor Senators urge deletion of the relevant exclusions in the Bill.

The definition of datacasting in the Bill gives occasion to concern that the genre-based content definition of datacasting might impinge on programming decisions properly the province of their Boards. Specific provisions that might apply to datacasting by the ABC and SBS might more appropriately be contained within the *Australian Broadcasting Corporation Act 1983* and *Special Broadcasting Service Act 1991*.

The national broadcasters and datacasting

The national broadcasters have expressed their opposition to the overall restrictiveness of the scope datacasting permitted by the Bill; particularly that it prevents them from broadcasting radio programs for datacasting purposes..³⁵ This will preclude utilisation of that spectrum to deliver radio broadcasts to regional and remote areas which presently cannot access these broadcasts.³⁶

Additionally, the national broadcasters consider the imposition of the licensing charge on them illogical, as should Government funded broadcasters be required to pay that fee to the Government, the Government will have to increase their funding

32 ABA, *Proof Committee Hansard*, 1/6/00, p.142; Fairfax, *Proof Committee Hansard*, 1/6/00, p.94.

33 ABC, Submission 20, p.6; SBS, Submission 11, p.2; SBS, *Proof Committee Hansard*, 1/6/00, p.89; ABC, *Proof Committee Hansard*, 1/6/00, p.73. Note that the Department of Communications, Information Technology and the Arts does not agree that the ABA will, in effect, have power to determine content: *Proof Committee Hansard*, 1/6/00, pp.139-141.

34 ACA, *Proof Committee Hansard*, 31/5/00, p.67; Fairfax Ltd, *Proof Committee Hansard*, 1/6/00, p.94.

35 SBS, *Proof Committee Hansard*, 1/6/00, p.88; SBS, Submission 11, p.2; ABC, *Proof Committee Hansard*, 1/6/00, pp.71,73; ABC, Submission 20, p.6.

36 SBS, *Proof Committee Hansard*, 1/6/00, pp.90, 91; ABC, *Proof Committee Hansard*, 1/6/00, pp.80-81.

accordingly.³⁷ This is in the context of the recent triennial funding decisions by the Minister, which have not provided funding for the fee. In effect, a refusal by the Government to provide funding for payment for the fee would be a reduction in the funding of the national broadcasters, whilst provision of the additional funding would be tantamount to paying the datacasting fee to itself. This situation is nonsensical and requires resolution.

Recommendation

That the ABC and the SBS be exempted from payment of the datacasting licence fee.

Datacasting transmission licences after the broadcasting moratorium

The decision that licences for datacasting will be for 10 years with a 5-year option poses a problem regarding the termination of the moratorium period on broadcasting at the end of 2006. Potential datacasters have expressed concern at the uncertainty of ongoing licensing arrangements.³⁸ At this time, datacasters will hold datacasting licences, but what they will be permitted to do with those is presently unclear. A review is scheduled into the regulation of datacasting regulatory and revenue arrangements for 2007, however precisely what services a datacasting transmission licence will permit should be determined prior to that time so that datacasters have some degree of certainty.

The Department has indicated that use of the spectrum occupied by a datacaster will be able to be used “for any licensed services under the BSA”. A datacasting transmitter licence will not automatically convert to a broadcasting licence, rather it will leave open the option of taking out a broadcast licence.³⁹

Recommendation

Labor Senators believe it is important that the post-moratorium arrangements be considered by early review.

37 ABC, Submission 20, p.6; SBS, Submission 11, p.2; SBS, *Proof Committee Hansard*, 1/6/00, p.89; ABC, *Proof Committee Hansard*, 1/6/00, p.73.

38 For example, Telstra, Submission 16, p.2, Fairfax Ltd, Submission 25, p.9.

39 DoCITA, *Proof Committee Hansard*, 1/6/00, p.126-127.

MULTI-CHANNELLING BY THE NATIONAL BROADCASTERS

It has been made patently clear, by the national broadcasters, that they regard multi-channelling as critical to their future. The grounds for their request that they be exempted from the prohibition on multi-channelling are noteworthy. The ABC and the SBS believe that the capacity to multi-channel, pursuant to their Charters, is important because it will:

- enable them to better fulfil their Charters – giving viewers real additional choice by allowing more programming to be showcased, and at times that suit their audience;⁴⁰
- allow the ABC and the SBS to program content with a regional focus, and for the SBS to program additional Australian and multi-cultural content with that focus;⁴¹
- be cost-effective;⁴²
- encourage take-up of digital technology to the benefit of the industry as a whole.⁴³

The rationale for the decision to prohibit multi-channelling by the national broadcasters is not easily ascertained. Interestingly the commercial stations have indicated that they do not oppose multi-channelling by the ABC and SBS provided that the multi-channelling is:

“... very definitely within their charters and provided that the focus [is] very much on complementary programming, rather than quasi commercial programming or programming that is likely to compete in a serious sense with commercial television.”⁴⁴

The ABC and SBS dispute that their ability to multi-channel will have a detrimental impact on the pay television and free-to-air commercial television broadcasting industries.⁴⁵ FACTS indicated in evidence to the Committee that it competes with the ABC and the SBS for audience, and with the SBS for advertising.⁴⁶ Mr. S. Fist agreed; “if the ABC gets better, the commercials are going to lose out”.⁴⁷

40 SBS, *Proof Committee Hansard*, 1/6/00, p.88; ABC, *Proof Committee Hansard*, 1/6/00, p.71.

41 SBS, *Proof Committee Hansard*, 1/6/00, p.88; ABC, *Proof Committee Hansard*, 1/6/00, p.74.

42 SBS, *Proof Committee Hansard*, 1/6/00, p.88.

43 ABC, *Proof Committee Hansard*, 1/6/00, p.71.

44 FACTS, *Proof Committee Hansard*, 31/5/00, p.33.

45 ABC, *Proof Committee Hansard*, 1/6/00, p.71; SBS, *Proof Committee Hansard*, 1/6/00, p.88.

46 FACTS, *Proof Committee Hansard*, 31/5/00, p.33.

47 Mr S Fist, *Proof Committee Hansard*, 31/5/00, p.26.

Labor Senators consider that the SBS's share of one per cent of advertising revenue is insufficient to justify prohibition of multi-channelling by the national broadcasters for competitive reasons. Furthermore, Labor Senators do not believe the national broadcasters compete with commercial broadcasters in the true sense of that word.

Other sections of the industry have come out in support of permitting multi-channelling by the ABC and SBS. The Community Broadcasting Association of Australia indicated its regret that multi-channelling of national broadcasting services has been ruled out in the Government's legislative proposals. The CBAA has canvassed its interest in the potential alternative carriage option for community television, arising from the national broadcasters being permitted to multi-channel; namely the use of a digital multiplex shared with one or other of the national broadcasters.⁴⁸

The Screen Producers Association of Australia (SPAA) conveyed its perplexity at the Government's prohibition of multi-channelling by national broadcasters, and its opinion that permission to multi-channel would complement the broadcasters' charters.⁴⁹

The pay television industry does not support multi-channelling generally, and considers any multi-channelling by the national broadcasters to be in competition with their industry.⁵⁰

Labor Senators do not agree with the subscription television industry's view that the national broadcasters are in competition with them, and its conclusion that as such, the ABC and SBS should not be permitted to multi-channel for the same reasons commercial broadcasters are prohibited from multi-channelling. As such Labor Senators see no valid justification for denying the national broadcasters the ability to multi-channel, particularly when those arguments are balanced against the resultant benefits.

Recommendation

That the prohibition on the ABC and the SBS be removed to permit them to multi-channel within the constraints of their respective Charters.

48 CBAA, Submission 7, p.6.

49 SPAA, *Proof Committee Hansard*, 31/5/00, p.20.

50 ASTRA, *Proof Committee Hansard*, 1/6/00, p.110.

SPECTRUM LOAN TO COMMERCIAL TELEVISION STATIONS AND HDTV

There has been some industry criticism during the Inquiry of the Government's policy decision to loan spectrum to the commercial free-to-air television broadcasters for the purpose of conversion to digital and HDTV transmission, and of the policy decision to mandate transmission in high definition format. The *Television Broadcasting Services (Digital Conversion) Act 1998* implemented the Government's policy for digital conversion and provided for transmission in high definition format. Subsequently, as reflected in the Bill, the Government adopted a triplecast regime whereby broadcasters are required to transmit digital broadcasts in standard definition, with prescribed high definition quotas commencing in 2003.

Criticisms of the high definition requirement have centred on international digitisation strategies.⁵¹ In the context of the international experience, the mandating of HDTV and the consequent significant spectrum requirements are alleged to significantly compromise the efficacy of the Bill in effecting the digital conversion.⁵² No other country in the world has mandated HDTV quotas.⁵³

It has been suggested that there is no reason to mandate HDTV and that it should be left to market forces to determine whether demand will drive transmission in that format rather than to accept the restrictive consequences arising from directing that it be provided.⁵⁴

That HDTV is not necessary to receive new digital services (it may in fact reduce the diversity of digital services)⁵⁵, and that the improved picture quality is not distinguishable to the average consumer on normal size television screens (and as such may not warrant the substantial cost), are factors that will influence likely take-up rates in Australia.⁵⁶

The Federation of Australian Commercial Television Stations (FACTS) verified its support for high definition to the Committee stating:

“We are effectively betting our future on our ability to persuade Australian viewers to make the digital transition with us. To be successful we will need to be able to offer viewers a wide range of digital services. High definition will be very significant in promoting

51 ACA, *Proof Committee Hansard*, 31/5/00, p.69; International Dynamics, *Proof Committee Hansard*, 31/5/00, p.5, ASTRA, *Proof Committee Hansard*, 1/6/00, p.103.

52 International Dynamics, Submission 1.

53 ABA, *Proof Committee Hansard*, 1/6/00, p.125.

54 Submission 1, pp.3-4.

55 Productivity Commission, “Broadcasting: Inquiry Report”, 3 March 2000, p.237.

56 Submission 1, p.3.

digital television, although we would not expect large numbers of high definition sets to be sold in the early years.”⁵⁷

The production sector of the broadcasting industry (through SPAA) has expressed concern at the mandated HDTV quota. Should high definition continue to be mandated in the legislation, it is considered appropriate that Australian content quotas be imposed to ensure that the Australian production industry and the cultural importance of Australian content are retained in the digital environment

The Community Broadcasting Association of Australia (CBAA) has endorsed the Productivity Commission’s finding that the mandating of HDTV and the restriction against multi-channelling will discourage consumer uptake of digital.⁵⁸

The ABC has noted that should they ultimately be permitted to multi-channel the obligation to triplecast will essentially preclude them from offering datacasting services due to the resultant unavailability of spectrum.⁵⁹

Recommendation

Labor Senators believe that the arrangements mandating HDTV require early review to assess the continued mandating of HDTV broadcasting.

57 FACTS, *Proof Committee Hansard*, 31/5/00, p.30.

58 CBAA, Submission 7, p.6.

59 ABC, *Proof Committee Hansard*, 1/6/00, p.61.

ENHANCED PROGRAMMING

It has been argued to the Committee that the scope of enhanced programming permissible pursuant to the Bill is significantly wider in scope than allowed under the policy articulated by the Minister for Communications, Information Technology and the Arts on the 21st December 1999.⁶⁰ Those arguments have opposed the new definition contending that the enhanced services permitted by the Bill are tantamount to multi-channelling, contrary to the Government's express policy to prevent multi-channelling.

FACTS has disputed that the provisions differ in substance from the preceding policy announcement, and is of the opinion that the provisions simply "spell out some of the things that were implicit or slightly uncertain in the form of words that we have been operating on since 1998."⁶¹

The *Television Broadcasting Services (Digital Conversion) Act 1998* provided for additional 'incidental and directly linked programming' by commercial free-to-air television broadcasters. The term 'incidental and directly linked' was not defined in the legislation.

The Minister's policy announcement on the 21st December 1999 stated that:

"The Government will allow the free-to-air broadcasters to provide digital enhancements to their main simulcast programs, provided they are **directly linked to, and contemporaneous with, the main program**. This could take the form of additional camera angles on a sports match, statistics about a player or additional information about a segment in a lifestyle or magazine program. The Government will allow the broadcasters to multi-channel when dealing with "overlaps" – for example to allow the end of a sporting match to be shown even if it runs overtime and **clashes with a news bulletin** which commences at its scheduled time."⁶²

60 Foxtel, Submission 26, pp.1-2; ASTRA, *Proof Committee Hansard*, 1/6/00, p.106.; Fox Sports, Submission 19, pp.1-2.

61 FACTS, *Proof Committee Hansard*, 31/5/00, pp.32, 33.

62 Media Release "'Digital – new choices, better services for Australians'" Minister for Communications, Information Technology and the Arts, Media Release, 21 December 1999, p.2.

Category A enhancements

The primary concerns with the Bills provision for Category A digital program enhancement content is the breadth of the definition to include:⁶³

- content in the form of text, data, speech, music or other sounds, visual images or any other form or combination of forms,
- transmitted in digital mode,
- which has a “sole purpose” of enhancing a television program,
- has a subject matter which is closely and directly linked to the subject matter of the primary program,
- is transmitted simultaneously with the primary program, and
- where the primary program is transmitted in analog and SDTV mode.

The pay TV industry is concerned that there is no limit on the amount of video that can be broadcast and as such, significant amounts of video programming would be permitted as the secondary program, amounting to de facto multi-channelling.⁶⁴ The fear is that ‘Category A’ program enhancements would allow broadcasters to broadcast a re-run or different program of the same series of a sequential drama program, sitcom or miniseries at the same time as the primary program. Similarly the broadcast of a secondary program in which an actor stars could be broadcast where that actor was a special guest on a primary program. These broadcasts are considered multi-channelling by the pay television industry.⁶⁵ The pay TV industry believes that this kind of enhancement is permissible under the provisions of the Bill and believe the example in the section that ‘video highlights from past matches’ would be considered a program enhancement pursuant to ‘Category A’ supports their argument.

Category B enhancements

‘Category B’ digital enhancement content is a program providing simultaneous, live transmission of two sports events, in the same sport, at the same venue.⁶⁶ This enables free-to-air broadcasters to broadcast separate and distinct sporting matches at the same time. The pay television industry considers the impact of this provision to be particularly noteworthy for the reason that sport programs give pay television a

63 C & W Optus, Submission 13, p.8; the Bill’s proposed clause 6(14) of Schedule 4 of the BSA.

64 Ibid.

65 Ibid.

66 Amendments in Bill to clause 6(15) of Schedule 4 of the BSA.

competitive edge, and this competitive edge is used to justify the anti-siphoning regime.⁶⁷

Overlap multi-channelling

The Bill makes specific provision for ‘overlap multi-channelling’ in the amendments to clause 6(8), Schedule 4, of the BSA. The circumstances where this kind of multi-channelling is permitted are considerably more extensive originally contemplated, as understood by the pay television industry. The Minister’s announcement of the 21st December 1999 clearly indicated that multi-channelling would be permitted where events ran into a ‘news bulletin’.⁶⁸ The new clause allows multi-channelling where the overlap is into any scheduled program.

The concern that the provisions of the Bill might allow simultaneous, multiple broadcasts of distinct substance, so as to permit de facto multi-channelling⁶⁹ is not an unreasonable conclusion on the evidence. This will negatively impact the pay television industry, in its view, by allowing the free-to-air broadcasters to use their free spectrum to unfairly compete with the multi-channelling services offered by the pay TV sector.⁷⁰

It is clear to Labor Senators that these proposed provisions may cross the boundary between what was conceived to comprise ‘enhancements’ pursuant to the Act and the Minister’s media release of 21/12/99, into the domain of de facto multi-channelling. The provisions are substantively different from those previously proposed. Labor Senators believe that the Bill should be consistent with the Minister’s previous policy indications of what enhanced programming would comprise.

ASTRA and Fox Sports are seeking the deletion of Category B enhancements, and amendment of Category A so as to exclude the simultaneous broadcast of stand-alone, separate programs.⁷¹

The pay TV operators present an point of view which is irreconcilable with that of the free-to-air industry. Their concern is for the continued viability of the pay television industry, and they are apprehensive at the impact the effective multi-channelling on

67 C & W Optus, Submission 13, pp.8-10.

68 Media Release “Digital – new choices, better services for Australians” Minister for Communications, Information Technology and the Arts, Media Release, 21 December 1999, p.2.

69 C & W Optus, Submission 13, p.6.

70 C & W Optus, Submission 13, p.7.

71 ASTRA, *Proof Committee Hansard*, 1/6/00, p.107.

their industry particularly as to how it will affect their capacity to continue to provide a wide range of sporting events, in regional areas in particular.⁷²

The Bill in its present form is likely to have a detrimental impact on the services offered by subscription television to Australians living in regional and rural Australia, particularly in terms of sports programming.⁷³ The reasons for this impact on the regions are stated to be:⁷⁴

- that the commercial free-to-air broadcasters will have the capacity to ‘starve’ pay TV of the rights to, for example secondary sporting matches, by utilising anti-siphoning rules to their advantage; or
- the pay TV sports channels might decide not to broadcast those programs because they do not have the metro market available to them or that is being whittled away. This would result in a loss of existing programming.

Recommendation

Labor Senators believe that the Bill should be consistent with the Minister’s previous policy indications of what would comprise enhanced programming and when multi-channelling in the case of an ‘overlap’ would be permitted, so that commercial free-to-air stations do not engage in de facto multi-channelling.

72 C & W Optus, Submission 13, p.9.

73 ASTRA, *Proof Committee Hansard*, 1/6/00, p.107.

74 ASTRA, *Proof Committee Hansard*, 1/6/00, p.107.

REVIEWS

In recognition of the transitional nature of the legislation, it is highly desirable that its consequences and efficacy are measured over the coming years to ensure that Parliament's policy objectives are being properly and effectively implemented. Due to the doubts that have been raised during the process of this inquiry, it has become apparent that any reviews undertaken in analysis of the legislative scheme should be conducted as early as practicable.

Concerns have also been elicited relating to the transparency of these reviews. Transparency is best achieved by making the reviews statutory and required by this legislation and hence open and accountable to Parliament. Many witnesses before the Committee have concurred with the view that it is appropriate for the reviews to be statutory.

The ABC has expressed a general preference for the reviews to be statutory:

“We start from the premise that the ABC reports to Parliament, so we will always be more comfortable in any review that assumed that that was the process we go through.”⁷⁵

There have been indications that there is a general preference for the reviews to be done sooner rather than later in the interests of certainty, that transparency of these review processes is critical, and that it is, as a consequence, appropriate for the reviews to be statutory.⁷⁶

ABA review – video/audio streaming

In the second reading speech,⁷⁷ the Government indicated that the ABA would undertake, “over the next 12 months” a review of whether transmission of audio and video streaming are regulated by the *Broadcasting Services Act*. How these transmissions are characterised is determinative of the nature of regulation, or if indeed, they are regulated at all by the BSA. The ABA has indicated that the terms of reference for the inquiry have not yet been formulated, and the ABA has not formally commenced the inquiry.⁷⁸

75 ABC, *Proof Committee Hansard*, 1/6/00, p.74.

76 Fairfax Ltd, *Proof Committee Hansard*, 1/6/00, p.94.

77 Second Reading Speech, *House Hansard*, 10/5/00, pp.15337ff.

78 ABA, *Proof Committee Hansard*, 1/6/00, pp.128-129.

The ABC has indicated that it would prefer that the matter to be investigated was a matter for the Board. However, Mr. Shier, Managing Director of the ABC, agreed that “if it was to be done by the ABA, much as I would prefer that not to be the position, I think the review should be done earlier rather than later”.⁷⁹ The Australian Consumers’ Association indicated that it favours a statutory review over investigation by the ABA.⁸⁰

Overall there was a general eagerness within the industry for the review to be completed without delay to provide certainty prior to the commencement of broadcasting of the regulatory scheme applicable to video and audio streaming. It is noteworthy that this issue reflects the difficulties associated with technological convergence of the industry and the present regulatory structure which is transmission mode specific.

HDTV review

The legislation provides for a review of the HDTV transmission requirements in 2003 to assess the efficacy of digital uptake and the mandating of HDTV transmission by broadcasters.

The pay television industry, represented by ASTRA, has indicated that the review of the HDTV arrangements should be an open statutory review. Furthermore, it should be brought forward immediately because, in ASTRA’s opinion, HDTV is not going to work and once this is recognised Australia can “get on with the digital development...”.⁸¹

The ABC, however, expressed the contrary view that it was advisable for the review to take place later rather than earlier for HDTV to allow for consumers to have opportunity to see the technology before take-up rates are analysed, and policy changes made pursuant to that analysis.⁸²

The apparent problems that broadcasters will face in sourcing the requisite content for high definition quotas will have a disproportionate impact on the ABC, in the opinion of the ABC. The ABC anticipates problems with sourcing original content because much content comes from Europe where an HDTV standard has not been adopted. The ABC cannot commence production until probably 2003, hence a delayed timetable for the review will suit the ABC.⁸³

79 ABC, *Proof Committee Hansard*, 1/6/00, p.74.

80 ACA, *Proof Committee Hansard*, 31/5/00, p.68.

81 ASTRA, *Proof Committee Hansard*, 1/6/00, p.108.

82 ABC, *Proof Committee Hansard*, 1/6/00, p.74.

83 ABC, *Proof Committee Hansard*, 1/6/00, pp.74-75.

Recommendation

Labor Senators believe that the arrangements mandating HDTV require early review to assess the continued mandating of HDTV broadcasting.

Simulcast review

The *Broadcasting Services Act 1999* already requires a review be conducted before 31 December 2005 into the amendment or repeal of the requirement that a broadcaster must broadcast the same program in both analog and digital mode during the simulcast period. It has been recommended to the Committee that it is critical that analog transmissions cease as soon as possible. This cannot be done, however if adequate levels of digital take-up are not achieved. Accordingly, Labor Senators recommend that the implementation of digital policy be closely observed with the aim of achieving analog disconnection as soon as possible.

Review of datacasting arrangements

There are two reviews provided for in the Bill which are of particular significance to datacasting. The Bill requires a number of reviews to be undertaken before 1 January 2004, and one of these relates to whether any amendments should be made to Schedule 6, dealing with datacasting services. In light of the potential for this review to alter the arrangements applying to providers of licensed datacasting services and holders of datacasting transmitter licences, those interested in the emerging industry are keen for this review to be completed as soon as possible. Timeliness will afford the new industry with the certainty that it seeks.

Review of regulatory and revenue arrangements for datacasting licences

The Bill provides for a review of regulatory arrangements that should apply to, and the revenues to be raised by the Commonwealth in connection with the operation of, a datacasting transmitter (under a datacasting transmitter licence) to transmit licensed broadcasting services on or after 1st January 2007.

The timing of this review appears to be tardy considering the moratorium on the issue of broadcasting licences ends on 31st December 2006. Fairfax lends its support to the significance of expeditious completion of the review.⁸⁴ Similarly, C & W Optus

84 Fairfax Ltd, *Proof Committee Hansard*, 1/6/00, p.94.

considers certainty for datacasting licensees to be critical, and if a shorter timeframe for this review will bring that certainty, then that is welcomed.⁸⁵

Recommendations

Labor Senators consider it critical that all of these proposed reviews are instigated, completed and findings considered in a timely manner consistent with the industry's requirement for certainty.

Labor Senators believe it is pertinent for the reviews to be transparent and accountable to parliament. As such they should be statutory and required by this legislation.

85 C & W Optus, *Proof Committee Hansard*, 1/6/00, p.110.

COMMUNITY BROADCASTING

The Community Broadcasting Association of Australia (CBAA) has expressed concern at the omission of provisions in the Bill for the digital transition of community broadcasters.

The Minister for Communications, Information Technology and the Arts announced on the 24th March 1998 that:

“... the community television sector ... will be guaranteed free access to the spectrum needed to broadcast one standard definition digital channel.”⁸⁶

Since then, the Minister’s announcement of the 21st December 1999, has been the only further indication that the Government intends to fulfil its original promise:

“Community television will be broadcast in digital. This will be done in conjunction with datacasting services, as part of a ‘multiplex’.”⁸⁷

In evidence to the Committee the Department of Communications, Information Technology and the Arts conceded that the Department has not been asked or directed to do the policy work on community broadcasting which is preparatory to the technical work on the allocation and planning of spectrum. Nor is the Department aware of any plans to allocate the promised one standard definition digital channel in the next 12 months.⁸⁸

The CBAA appealed to the Committee for legislative provision of the regulatory detail that will apply to the digital conversion by commercial broadcasters.⁸⁹ Labor Senators concur with the CBAA that some degree of legislative certainty consistent with the Minister’s undertakings is warranted and appropriate for the continuation of this important industry.

It is pertinent to note that review of the arrangements applying to community broadcasters will be necessary should the Bill ultimately be amended to provide for multi-channelling by the national broadcasters.⁹⁰

86 Media Release, “Digital – A New Era in Television Broadcasting”, Minister for Communications, Information Technology and the Arts, 24 March 1998, p.2.

87 Fact Sheet appended to Media Release “Digital – new choices, better services for Australians”, Minister for Communications, Information Technology and the Arts, Media Release, 21 December 1999, p.2.

88 Department of Communications, Information Technology and the Arts, *Proof Committee Hansard*, 1/6/00, p.130.

89 CBAA, *Proof Committee Hansard*, 1/6/00, pp. 81-82.

90 CBAA, *Proof Committee Hansard*, 1/6/00, p.83.

Recommendation

Labor Senators recommend that some degree of legislative certainty consistent with the Minister's undertakings be provided for the community broadcasting industry.

CAPTIONING ARRANGEMENTS

Accessibility to broadcasting services is a crucial policy objective. The Bill provides mandatory quotas for captioning for free-to-air commercial television broadcasters which will empower those with hearing impairments or deafness to understand programs. The National Working Party on Captioning (NWPC) and Mr. N. Tayeh, who have long been campaigning for increased captioning on Australian television, have welcomed this initiative.

Criticism has arisen on two grounds:

- that the Bill does not go far enough in that it does not prescribe future increases in captioning quotas facilitating eventual full captioning;⁹¹
- that the captioning requirements place an undue burden on regional broadcasters.⁹²

Compared with the United Kingdom and the United States, Australia's achievements in advancing the interests of those with deafness or hearing impairments are deficient at best.⁹³ That does not deny the fact that the provisions are a necessary improvement.

Regional broadcasters have expressed dismay at the provisions arguing that the financial burden on their organisations is untenable. They have submitted to the Committee that regional broadcasters provide a higher proportion of local content in regional news and current affairs than metropolitan stations. Consequently, they will be forced to either cut into their already low profit margins or make the commercial decision to reduce local content to the detriment of regional communities.⁹⁴

Suggestions that remote stenocaptioning would overcome the difficulties associated with attracting properly qualified staff to regional areas were refuted by Prime and WIN Corporation. Prime and WIN consider the impracticality of remote captioning (as a result of regional services' last minute, multiple news bulletins and the cost of transmission of the news to and from the remote stenocaptioner) as excluding the viability of this option.⁹⁵

91 National Working Party on Captioning, Submission 18; Mr. N. Tayeh, Submission 6.

92 Prime, *Proof Committee Hansard*, 1/6/00, p.115, WIN, *Proof Committee Hansard*, 31/5/00, p.38, Southern Cross Broadcasting, *Proof Committee Hansard*, 1/6/00, p.118.

93 National Working Party on Captioning, *Proof Committee Hansard*, 31/5/00, p.16

94 ASTRA, *Proof Committee Hansard*, 1/6/00, p.107.

95 Prime, *Proof Committee Hansard*, 1/6/00, p.115; WIN, *Proof Committee Hansard*, 31/5/00, pp.42-43.

Prime requested that the requirement for captioning of local news by regional and remote broadcasters be relaxed until such time as affordable technology is available to facilitate the process in a cost efficient and affordable manner.⁹⁶

Whilst it is acknowledged that regional television broadcasters will inevitably bear a disproportionate burden of costs of the captioning requirements relative to metropolitan stations, the importance of captioning to those with hearing impairments or deafness cannot be under-estimated. This is the cost of achieving an important policy goal, and was provided for in the Act, which provided the framework in 1998. Broadcasters have been given ample notice and opportunity to investigate the most efficient means of achieving this goal.

Further, there is evidence that the requirements imposed by the Bill do not represent significant change to the existing captioning levels by the networks. The most significant consequence of the Bill is that the captioning levels are now legislatively imposed and become enforceable. Particularly for the Seven Network, the legislation does not require significant change to existing captioning levels, and the Nine and Ten Networks figures for overall captioning have not been improving over time.⁹⁷ This supports the conclusion that legislative captioning requirements are necessary for real industry improvements to the amount of captioned programming provided by broadcasters.

96 Prime, *Proof Committee Hansard*, 1/6/00, p.114.

97 Explanatory Memorandum to the *Broadcasting Services Amendment (Digital Television and Datacasting) Bill 2000*, Table p.45.

CONCLUSIONS AND RECOMMENDATIONS

Datacasting

Definition

The definition of datacasting, as it stands, is overly restrictive, complicated and goes beyond restricting datacasting to services that do not constitute broadcasting. Labor Senators believe that while datacasting cannot be de facto broadcasting, the definition should be amended to remove the artificial and unnecessary limitations on datacasting.

Labor Senators believe it is crucial that this emergent industry is not stifled in its development and innovative capacity by overly restrictive regulation and that the benefits for Australia's technological advancement, improved consumer services and employment and economic opportunities should not be constrained.

Labor Senators oppose the genre-based content definition of datacasting and call upon the Government to withdraw from that approach.

Labor Senators support an approach that favours flexibility, minimises barriers to entry, and allows new services to develop over time.

ABA regulatory power

Labor Senators note the ABA's regulatory role in the area of determining datacasting content. Labor Senators note the Bill denies interested parties the ability to access stay powers or seek injunctive relief in relation to decisions of the ABA. Labor Senators urge deletion of relevant exclusions in the Bill.

Labor Senators acknowledge the legitimate concerns of the national broadcasters that the genre-based content definition of datacasting might impinge on programming decisions properly the province of their Boards. The definition of datacasting in the Bill gives occasion to this concern. Specific provisions that might apply to datacasting by the ABC and SBS might more appropriately be contained within the *Australian Broadcasting Corporation Act 1983* and the *Special Broadcasting Service Act 1991*.

National broadcasters and datacasting

The nonsensical decision to impose datacasting fees on the national broadcasters should be reversed, and they should be exempted from payment of the fees.

National broadcasters should be allowed to broadcast radio programs for datacasting purposes.

Datacasting transmission licences after the broadcasting moratorium

The decision that licences for datacasting will be for 10 years with a 5-year option poses a problem regarding the termination of the moratorium period on broadcasting at the end of 2006, and the licensing arrangements applicable from that date. Labor Senators believe it is important that the post-moratorium arrangements be considered by early review.

Multi-channelling by the national broadcasters

There is broad support for allowing the national broadcasters the ability to multi-channel. Labor Senators see no valid justification for denying the national broadcasters the ability to multi-channel, particularly when those arguments are balanced against the resultant benefits.

Labor Senators do not believe the national broadcasters compete with commercial broadcasters in the true sense of that word, and that accordingly, there is no reason to deprive the national broadcasters of the benefits multi-channelling will provide. Labor Senators urge that the prohibition on the ABC and the SBS be removed to permit them to multi-channel within the constraints of their respective Charters.

Spectrum loan to commercial television stations and HDTV

There is some industry criticism about the Government's policy decision to loan spectrum to the commercial free-to-air television broadcasters for the purpose of conversion to digital and HDTV.

Labor Senators believe that the arrangements mandating HDTV require early review to assess the continued mandating of HDTV broadcasting.

Enhanced programming

The concern that the provisions of the Bill allow simultaneous, multiple broadcasts of distinct substance, so as to permit de facto multi-channelling is not an unreasonable conclusion on the evidence. This will allow the free-to-air broadcasters to compete with the multi-channelling services offered by the pay TV sector.

It is clear to Labor Senators that these proposed provisions may cross the boundary between what was conceived to comprise 'enhancements' pursuant to the Act and the Minister's media release of 21st December 1999, into the domain of de facto multi-channelling. The provisions are substantively different to those previously proposed.

Labor Senators believe that the Bill should be consistent with the Minister's previous policy indications of what would comprise enhanced programming and when multi-

channelling in the case of an ‘overlap’ would be permitted, so that commercial free-to-air stations do not engage in de facto multi-channelling.

Reviews

In recognition of the transitional nature of the legislation, it is highly desirable that its consequences and efficacy are measured over the coming years to ensure that Parliament’s policy objectives are being properly and effectively implemented.

Labor Senators believe that it is critical for the proposed reviews to be instigated, completed and their findings considered in a timely manner consistent with the industry’s requirement for certainty.

Labor Senators believe it is pertinent for the reviews to be transparent and accountable to Parliament. As such they should be statutory and required by this legislation.

Community broadcasting

The Community Broadcasting Association of Australia (CBAA) has expressed concern at the omission of provisions in the Bill for the digital transition of community broadcasters, notwithstanding the Minister’s promises.

Labor Senators concur with the CBAA that some degree of legislative certainty consistent with the Minister’s undertakings is warranted and appropriate for the continuation of this important industry.

Captioning arrangements

Whilst it is acknowledged that regional television broadcasters will inevitably bear a disproportionate burden of costs of the captioning requirements relative to metropolitan stations, the importance of captioning to those with hearing impairments or deafness cannot be under-estimated. This is the cost of achieving an important policy goal, and was provided for in the framework Act in 1998. Labor Senators welcome this initiative which has considerable benefit for a significant sector of the community.

SENATOR MARK BISHOP
(A.L.P., W.A.)

SENATOR STEVE HUTCHINS
(A.L.P., N.S.W.)

