

Broadcasting Services Amendment (Digital Television and Datacasting) Bill 2000

AUSTRALIAN DEMOCRATS' REPORT

The Chair's Report presents a thorough and accurate account of the evidence presented to the Committee during the brief period of the hearings. Composed under tight time constraints, it is a credit to its authors. While the Australian Democrats disagree with some of its conclusions, we are in broad agreement with the thrust of the few recommendations that it makes.

The Australian Democrats are particularly concerned about the brevity of this inquiry and the haste with which it was forced to be conducted. The reason given to us is a need to guarantee certainty for the broadcasting industry by ensuring the completion of the passage of legislation by the end of the Winter sitting period. The Government presented an outline of the broad shape of the legislative changes included in this Bill in December 1999. Having generated with their announcement the expectation that the Bill would become available for scrutiny and an appropriately measured inquiry in the early months of 2000, the Government then continually delayed its exposure. The result is that consideration of the Bill has been rushed to a farcical degree. Individuals and organisations were given ten days to construct submissions to the Senate inquiry, a ridiculous period for responding to a Bill of this size and complexity. Hearings were held over two days, a time constraint that meant that the Committee was forced to cut short questions to a number of witnesses.

The Australian Democrats deplore this rushed timetable. It does not reflect a reasonable or responsible approach to legislation that has complex ramifications for the Australian broadcasting and information technology industries. The Australian Democrats maintain that haste is no guarantee of certainty, particularly when dealing with a multifaceted issue of this kind. We reject the need for a resolution of issues by the beginning of July 2000, if the price of that resolution is an inadequate opportunity for proper Parliamentary scrutiny and debate.

As might be expected from a lengthy and detailed piece of legislation, the inquiry raised a great number of interlinked issues, which we will consider in turn.

High Definition Television

As the Chair's Report indicates, the majority of submissions and witnesses argued that High Definition Television (HDTV) will fail in the Australian marketplace (para.1.13). It is particularly noteworthy that the submissions and witnesses most directly attuned to the interests of consumers all questioned the adoption of HDTV, largely on the grounds that they expect the relevant hardware to be largely unaffordable.

This evidence was of little surprise to the Australian Democrats. During the initial debate of the proposed digital regime in 1998, we questioned the wisdom of pursuing HDTV as a primary driver of the uptake for digital television. Nonetheless, the

Australian Democrats acknowledge that the will of the Parliament, as communicated in 1998, is for the adoption of HDTV and have operated on that assumption.

In this light, the Australian Democrats apply to this legislation the principle that, as HDTV must be done, it must be done properly. We question the wisdom of a review of HDTV quotas during 2003, when all positive projections of the adoption of HDTV suggest that it will be at least five years before any trends are discernible.

In a similar vein, the Australian Democrats believe that all attempts should be made to ensure that HDTV production be done in Australia and take seriously the proposal made by the Screen Producers' Association of Australia (SPAA) that the HDTV quotas be amended to ensure a minimum level of Australia content.¹ The Committee's conclusion at paragraph 4.33 would seem to echo our concerns. We note also SPAA's concerns about the increased cost to local producers of generating material in acceptable high definition formats.² If this is unlikely to be matched by an increase in the price paid for HDTV material, it would seem appropriate for the Government to adopt measures to ensure that local producers engaging in HDTV production are supported.

Datacasting

Datacasting is a concept unique to Australia's approach to digital television. It results from the desire, enshrined in the 1998 legislation, to allow the creation of interactive digital information services that are transmitted via the broadcasting services bands, but which are not themselves television broadcasts. As datacasting is an entirely new and untested medium, it is not possible to determine at the outset what datacasting services will eventually look like, and as much scope as possible should be permitted within legislation to allow the nascent datacasting industry to evolve over time into a viable and sustainable segment of the Australian media and information industries.

The Australian Democrats have long maintained that the rules governing datacasting should be as flexible as is possible within the constraint that they not permit datacasting services to provide *de facto* television channels. In this light, we are not satisfied with the Government's "genre-based" approach, as it regulates datacasting on the basis of its content, rather than its specificities as a medium. However, we are yet to be satisfied that any of the specific alternative definitions proposed in submissions to the inquiry and at its hearings provides a suitable alternative.

In the absence of a satisfactory alternative, it seems that changes to the proposed legislation will be necessary. It is in this light, for instance, that we would endorse the Committee's fourth recommendation, which broadens the scope of video content of an

1 Screen Producers Association of Australia. Submission No.24, p.13

2 Screen Producers Association of Australia. Submission No.24, pp.15-16.

educational nature that is allowed under the datacasting rules. Likewise, we note the curious inversion that results in the requirement that datacast video content not be entertaining, even in circumstances, such as educational and informational programming, where a certain degree of entertainment value is a necessary part of making the material suitably engaging to ensure its success.

The Australian Democrats acknowledge the good sense of the proposal made, by ntl Australia, that the allocation of spectrum for datacasting should be subject to a “use it or lose” rule similar to the one governing digital television in the existing legislation as a means of preventing spectrum hoarding.³

Enhanced Programming

The extension of the concept of broadcasting by program enhancements would seem to be a logical step in the evolution of television. However, careful scrutiny of the limits of such enhancements is clearly necessary in light of the pay television industry’s robust opposition to them. Representatives of the pay television stations raised a series of concerns about the rules for enhanced services proposed in the legislation, arguing that they extend enhanced services substantially beyond the limits of the Minister’s December announcement.

Concerns were raised that the definition of Category A enhancements has been extended from programs closely and directly linked to the primary program to programs closely and directly linked to the *subject matter* of the primary program. The pay television argued that this would permit *de facto* multichannelling by broadcasters, as it allows for the possibility of previous episodes of a program or other similarly related matter to be broadcast under this provision. While the ABA indicated that they thought such multichannelling seemed contrary to the intent of the legislation, it is unclear what improvement the definition proposed in the legislation makes over the earlier formulation.

If the proposed Category A enhancements caused concern among members of the pay television industry, Category B enhancements excited outright anger. The industry argued that such enhancements eat into their already restricted ability to carry sports programming. The Australian Democrats have sympathy for their objections.

Finally, there is the question of “overlap multichannelling,” which is intended to provide broadcasters with the ability to maintain their programming schedules when live events run unforeseeably over time. As such, the concept is commendable. However, as pay television representatives argued, it would appear that there is a potential for *de facto* multichannelling if program scheduling is based on a deliberate underestimation of the duration of live events. While this is by no means the intention

3 ntl. Submission No.27, pp.5-6.

of the legislation and the free-to-air broadcasters maintain that they intend to use the capacity for overlap multichannelling only as intended, the pay television industry have nonetheless identified a plausible loophole in the Bill. Their proposed solution—allowing overlaps to extend only to news—seems unreasonably genre-based. A better solution may be to rely upon time limits to constrain program overlaps.

The National Broadcasters

As with so much of the current Government's policy, this Bill treats the national broadcasters very poorly. Where a distinct effort has been made to accommodate the desires and concerns of the rest of the television industry, no effort has been made to recognise the unique and important contribution that ABC and SBS make to Australia's cultural life or to recognise the specific needs and obligations of these national treasures.

In this light, it is heartening to see the Committee's recommendation that the ABC and SBS be permitted to transmit their radio programs as part of their datacasts. The Australian Democrats wholeheartedly endorse this recommendation.

Less heartening is the Committee's refusal to endorse multichannelling by the national broadcasters (para. 3.19). The national broadcasters provide complementary services that, among other things, provide content that commercial television stations will not touch. Multichannelling offers a means for the national broadcasters to extend the programming that they are able to offer and thereby to better meet their Charter obligations. The Australian Democrats reject the conclusion that there is any case for preventing them from multichannelling. We believe that the ABC and SBS should be permitted to multichannel and that the only restrictions on their multichanneling should be their respective Charters, Boards and budgets.

Similarly, the Australian Democrats reject the proposal contained in the legislation that datacasting services provided by the ABC and SBS should be subject to the jurisdiction of the ABA and reject the Committee's conclusion to that effect (para.2.63). It is one thing to create datacasting rules and require that the ABC and SBS adhere to those rules under the guidance of their respective Boards. It is another thing entirely to risk compromising the national broadcasters' independence by making them subject to the determinations of the ABA.

The Australian Democrats accept the arguments of the national broadcasters that, as non-commercial entities funded through Parliamentary appropriation, they should be exempted from the datacasting charge.

Community and other broadcasting sectors

Evidence presented by the Community Broadcasting Association of Australia (CBAA) indicated that the community broadcasting sector has been poorly treated in the development of this legislation. Whether by design or oversight, the Government has failed to follow through on its promise to ensure that community broadcasters will be provided with spectrum to allow them to broadcast in digital mode.⁴ Further, community broadcasters continue to labour under one year licences that undermine their ability to ensure a secure financial footing.

The Australian Democrats strongly suggest that the legislation be amended both to provide community broadcasters with certain access to digital spectrum and to ensure that their licences extend for a more substantial duration than one year.

The Australian Democrats also note the Productivity Commission's comments, both in evidence before the Committee and in their *Broadcasting Report*, on the possibility of creating a new category of broadcasting licence for indigenous broadcasters.⁵ The Australian Democrats believe that this is an excellent suggestion that should be pursued vigorously. While the need is perhaps not immediate, digital spectrum should be set aside in anticipation of the creation of indigenous broadcasting licences.

Access to spectrum

The Australian Democrats acknowledge the need for spectrum to be rationalised to maximise the number of channels available for datacasting, especially in the Sydney metropolitan area, which is recognised as a particularly significant market. In this light, we would submit that the Committee's second recommendation, which relates to channel clearance by the ABA, does not go far enough. It should be strengthened so that the ABA are not only empowered, but also *directed* to rationalise and clear spectrum, particularly for the creation of datacasting channels.

Reviews and timing of the transition to digital television

Much was made during the hearings of the type and timing of various proposed reviews of digital broadcasting regime. In particular, there was discussion of whether these reviews should be conducted by Departmental officers under the Minister's direction or as public, statutory reviews. Given that Departmental reviews will essentially be conducted for the benefit of the Minister, rather than to allow the Parliament scrutiny of the progress of digital television, the Australian Democrats' preference would be for public reviews. In the interests of employing the expertise

4 Community Broadcasting Association of Australia, Submission No.7, pp.1-2.

5 *Proof Committee Hansard*, pp.58-59; Productivity Commission 2000, *Broadcasting*, Report No.11, pp.282-291 and C.1-C.18.

collected within the Department, it might be wisest if these reviews were to be built around reports by Departmental officers.

Discussion of the timing of reviews tended to focus on questions of certainty for aspirant datacasters. Numerous witnesses called for reviews to be conducted sooner, rather than later. However, the most compelling argument made was that the need for certainty is best served by settling the details of licences before there is a call for applicants. The Australian Democrats do not believe that the spectre of modifications to licence conditions after datacasting licences have been granted provides any particular certainty to datacasters.

While it is not a subject of the Bill at hand, the Australian Democrats believe that any inquiry into whether streamed audio and video content constitutes a broadcast should be conducted publicly.

Electronic Program Guides

A number of witnesses presented compelling arguments in favour of the introduction of formal rules dealing with electronic program guides (EPGs). The Australian Democrats believe that the legislation should include rules governing EPGs such that programming information is passed freely between broadcasters in a standardised format, and that in cases where broadcasters provide programming information for a service other than their own, they are obliged to provide the same information about all other corresponding services. A strong priority in formulating the EPG rules should be ensuring that they guarantee fair and equal presentation of the content of all services represented within a given EPG.

Interoperability

The issue of ensuring interoperability of digital television hardware was raised by a number of witnesses. In particular, the argument was made that it would be better to avoid the “pizza box” effect, where numerous incompatible set-top boxes are stacked atop or beside television sets to provide access to different services. This phenomenon began with video recorders and pay television receiver boxes, and seems set to be exacerbated by the advent of digital television receiver boxes. The Western Australian Government is one of the few bodies in the country with any real experience of the difficulties of interoperable digital equipment. Their submission makes clear the inconveniences and costs associated with incompatible hardware.⁶

6 Government of Western Australia, Submission No.15, Attachment—“Submission to Productivity Commission Broadcasting Inquiry”, pp.2-3.

A similar argument was made that the datacasting industry requires a single middleware standard upon which datacasting content can be built. Such a platform will provide a stable platform for datacasting content development. Ideally, the industry should agree upon a standard, which should be based on open standards, if not open source code. However, overseas experience with digital interoperability standards suggests that if the industry is unable to quickly agree upon a standard, government intervention may prove necessary.

The Australian Democrats endorse the need for standards to ensure device interoperability and standardised middleware.

Captioning

The Australian Democrats endorse the captioning requirements proposed in the Bill. While evidence was received from regional broadcasters about potential difficulties of providing closed captioning of live content, we do not find it sufficiently compelling to reduce the public benefits that closed captioning will bring to the Australian community.

Senator Andrew Bartlett
Australian Democrats (QLD)