

# **Australian Labor Party Minority Report**

## **Procedural failings of the inquiry**

Labor Senators note certain concerns regarding the conduct of this inquiry.

The Bill was referred to the ECITA Committee for inquiry on 10 May 2007. On 16 May 2007, the Committee advertised for submissions to be received by 28 May 2007.

Labor Senators do not consider that the Committee had sufficient time to adequately review each of the submissions.

Only 4 submissions had been received by 28 May 2007. These 4 submissions were from Festival of Light, NSW Council for Civil Liberties, Mr David Bath and The Arts Law Centre of Australia.

On 29 May 2007, 2 submissions were received from Electronic Frontiers Australia Inc and Australian Mobile Telecommunications Association. It was then agreed by the Committee to hold an inquiry on 1 June 2007. Later that day, a further submission was received from Communications Alliance.

On 30 May 2007, 4 further submissions were received from Internet Industry Association, Microsoft Corporation, DMG Radio and Australia Subscription Television and Radio Association (the latter 2 submissions being received after 6.00pm).

On 7 June 2007, 6 days after the Inquiry was held, a final submission by Free TV Australia was received from the Committee. This submission was dated 1 June 2007.

The method by which this inquiry process was handled would appear to demonstrate the methods by which the Government will go to ensure that their bills are passed through Parliament with only limited external scrutiny of legislation.

Given the receipt of late submissions and no obvious time imperative to pass the Bill through Parliament, Labor Senators query why the inquiry process was so swift.

### **Legislative short-comings identified**

The Submissions received raised a number of issues in relation to the Bill. The key issues were identified as follows:

- The Bill does not prevent prohibited material being accessed from overseas content providers.
- The use of restricted access systems for content that is, or is likely to be classified R18+ and MA 15+.
- This ensures that content that is classified MA 15+ that is now accessible to those aged 15 and over (such as movie previews/ trailers) cannot be hosted on an Australian website with out an age verification system.
- This disadvantages the internet vis-à-vis television. Further, Restricted access system is not defined in the Bill. As credit cards are not available to those under the age of 18, what method of age verification system can be used for those aged between 15- 17, who are entitled to view MA15+ content on television but who do not have a credit card to verify their age?
- The Bill prohibits content rated RC and X18+, the effect of this is that films rated RC and X18+ cannot be watched on the internet. Films that are rated X18+ are currently legally available in the ACT and NT and can be purchased interstate via mail order.
- Consultation with makers of content appears to have been deficient. The Bill discriminates against artists that use media technology for the creation and dissemination of their work (ie: video artwork, web and sound art and short film);
- ACMA may give a special take-down notice to a hosting service provider that hosts or is proposing to host content that is the same or substantially similar to content identified in the take-down notice. This raises issues such as how will ACMA know a content host was proposing to host certain content? How would ACMA or the content host know that content was sufficiently similar to prohibited content, that it would be subject to the interim or final take-down notice?
- The Bill provides for trained content assessors to be hired by commercial content providers to assess live content. This provision raises issues such as the cost of training such assessors and the level to which they must be trained.

- Definition of service cessation notice in relation to live content is unclear as to whether the notice be apply to an individual “stream” of live content or must it be for the service as a whole.
- Definition of content service, with its 22 exemptions, is confusing and would appear to confuse the role of content service provider and content carriage provider.

Labor Senators do not consider that the short time frame between receipt of the submissions and the Inquiry, combined with the length of the Inquiry permitted the Committee to consider these issues in detail.

### **Conclusion**

Labor Senators do not consider that the inquiry process was sufficient. Insufficient time was allowed to review the submissions and to prepare for the inquiry.

**Senator Kate Lundy**

**ALP, Australian Capital Territory**

**Senator Ruth Webber**

**ALP, Western Australia**

**Senator Dana Wortley**

**ALP, South Australia**

**Senator Stephen Conroy**

**ALP, Victoria**

