

ADDITIONAL STATEMENT

The Opposition members of the Committee agree with the report of the Committee in so far as it goes. There was only one issue that the Opposition members could not agree with the other members of the Committee. That issue was the role of the Minister for Foreign Affairs.

Role of Minister for Foreign Affairs

Under the proposed amendments to the BSA, it is the Minister for Foreign Affairs who decides whether a particular international broadcasting service or an application for an international broadcasting service is contrary to the national interest in respect of international relations. The Minister may order the ABA to refuse an application for an international broadcasting service licence, suspend or cancel a licence or issue a warning to a licensee.

HCJB Australia submitted that:

The Minister for Communications IT and the Arts has the portfolio responsibility for broadcasting. It is obviously sound policy for him to consider international impacts of broadcasting and an equally obvious source of good advice is the Minister for Foreign Affairs. However the final decision on licensing should rest with the Minister for Communications.

The intent of the national interest sections (proposed new Sections 121F, 121FA to 121FE of the Broadcasting Services Act 1992) could equally be achieved by providing these powers to the Minister for Communications. To meet the policy intent of the current legislation, provisions that “the Minister for Communications may consult the Minister for Foreign Affairs” would provide an authority for the consultation between Ministers without fettering the discretion of the Minister for Communications.

In practice any substantial disagreement between Ministers would be discussed within Cabinet, regardless of the precise legislative wording.

This matter was raised with the Department of Communications, Information Technology and the Arts in the hearings. Ms Megan Morris commented:

There is no other situation in which the Minister for Communications makes any national interest sort of assessment ... I think it is slightly confusing content regulation as content regulation and the national interest provision, which is what this legislation is about. It is not regulating or monitoring what is broadcast from Australia; it enables an assessment to be made of a broadcaster before a licence is given and it also enables the Minister for Foreign Affairs to take action if there is a complaint from another government about stuff being broadcast from Australia. So I think they are slightly different issues and there is no precedent for our portfolio minister to form a decision about national interest.

Although it may form a precedent for the Minister for Communications, Information Technology and the Arts, other Ministers have the responsibility for making decisions in the

national interest, such as the Treasurer under the *Foreign Acquisitions and Takeovers Act 1975*.

At some time or another, foreign governments might make strong representations to the Minister for Foreign Affairs for action to be taken against particular international broadcasts from Australia, which they consider to be offensive or objectionable. Those governments might exploit the fact the Minister is the statutory decision-maker under this legislation, thus putting the Minister under additional pressure. In some cases, it would be a straight forward matter for the Minister to make a decision in the national interest that would at the same time satisfy foreign concerns. However, there may be sensitive cases where the national interest is served by the Minister making a decision that does not necessarily satisfy a foreign government. If decisions in respect of the national interest under the BSA were the responsibility of the Minister for Communications, Information Technology and the Arts, it would place the Minister for Foreign Affairs in a better position to handle pressure which may be applied by foreign governments. Although the Minister for Foreign Affairs would obviously advise the Minister for Communications, Information Technology and the Arts on the matter, he or she would not be responsible for the decision. Any lingering resentment on the part of the foreign government would most likely be more diffused at being directed at the Australian Government rather than being focussed on the Minister for Foreign Affairs. This would clearly be in the interests of Australia's international relations.

If the Minister for Foreign Affairs were concerned about a particular international broadcast, he or she could take the initiative and advise the Minister for Communications, Information Technology and the Arts to take appropriate action under the BSA.

The Bill would also have to be amended to enable the Minister for Foreign Affairs to obtain records and reports from the ABA, and submissions from licensees which have been given notice of termination of licence, through the Minister for Communications, Information Technology and the Arts.

Recommendations

We therefore **recommend** that the Bill be amended to make the Minister for Communications, Information Technology and the Arts and not the Minister for Foreign Affairs responsible for deciding on whether an application for an international broadcasting licence or whether an international broadcasting service is contrary to the national interest.

We further **recommend** that the Bill be amended to provide for the Minister for Foreign Affairs to advise the Minister for Communications, Information Technology and the Arts on whether an application for an international broadcasting licence or whether an international broadcasting service is contrary to the national interest.

These two recommendations obviously have ramifications for the comments and recommendations contained in the report of the Committee. They are meant to override anything contained in the report. So, for example, the recommendation in Chapter 3 providing for the Minister for Foreign Affairs to make a statement to the Parliament, that should now be read as the Minister for Communications, Information Technology and the Arts making the statement to the Parliament.

John Hogg

Chris Schacht

