

ABC ONLINE INQUIRY - FINAL REPORT

MINORITY REPORT BY LABOR SENATORS

1.1 The Senate Environment, Communications, Information Technology and the Arts References Committee tabled its Interim Report to the Inquiry into ABC Online on 12 April 2000. The interim report addressed the first and second terms of reference of the inquiry, that is terms of reference (a) and (b). This Report relates to the third term of reference of that Inquiry into the sale of ABC Online content, specifically:

(c) Any extension to legislation which could be considered to ensure the ABC is able to effectively provide an independent, innovative and comprehensive service in the online delivery environment.

1.2 This term of reference calls for a consideration of two main issues:

- Whether the ABC Act requires amendment to prohibit advertising on online and datacasting services.
- Whether the ABC Act requires amendment to incorporate online, datacasting and other emerging activities.

Background to Inquiry

1.3 The Australian Broadcasting Corporation's online activities and the commercial arrangements relating to such activities were the stimulus for this Senate Committee inquiry. The ABC's independence and integrity are recognised and valued by Australians. ABC Online was initiated in 1995, and has rapidly become a significant medium for the delivery of ABC material to audiences.¹

1.4 For those reasons, last year's proposed commercial arrangement between Telstra and ABC Online gave rise to a number of concerns that the arrangements conflicted with the ABC's role as an independent provider of information to Australians. Even though negotiations with Telstra were ultimately terminated,² and the deal not pursued, Mr Quentin Dempster's submission to this Inquiry notes that:

“...[the Managing Director's] stated reasons had nothing whatsoever to do with the risk of editorial independence through fully commercial business

1 Mr B. Johns, Additional Estimates, Senate Environment, Communications, Information Technologies and the Arts Legislation Committee, *Official Committee Hansard*, 10 February 2000, p 106; ABC website at <http://www.abc.gov.au/default.htm> and <http://www.abc.gov.au/corp/hist1.htm>.

2 See ABC Media Release at <http://www.abc.net.au/corp/mr00/mrjun0900.htm>

plans and strategic alliances with other online and broadband cable delivery systems.”³

1.5 As a consequence, the issues that were discussed in the interim report remain problematic as no resolution or precautionary measures have been implemented, and there is no apparent intention to resolve those issues in the near future.

Advertising

1.6 The *Australian Broadcasting Corporation Act 1983* (“ABC Act”) expressly prohibits the ABC from broadcasting advertisements.⁴

1.7 A concern raised with the Committee is that the ABC is not prohibited from advertising on other services which are not ‘broadcast’ such as online services⁵ and datacasting services. This is clearly an anomaly that exists simply because the drafters of the legislation could not have even conceived of the alternative means of delivery of ABC content now being utilised.⁶

1.8 Labor Senators believe that the prohibition on advertising should extend to all transmission/delivery platforms of the ABC as this is the only way to maintain the integrity, independence and freedom from commercialisation of the organisation as a whole.

1.9 It would seem that the ABC’s Managing Director supports us on this issue. In a recent speech,⁷ Mr Shier stated that:

“ABC management is not suggesting that we introduce advertising onto ABC television, radio or on ABC managed internet sites. You only need to look to countries like New Zealand and Canada to see what damage can be done to public broadcasting as a result of undue commercialisation.”

1.10 ALP Senators welcome this acknowledgment of the dangers of commercialisation and advertising on the ABC. Interestingly, Mr Shier includes ABC’s online activities in this denunciation of advertising on ABC services.

1.11 This concords with the position taken by Labor Senators that advertising should be prohibited on ABC Online.

3 Mr Quentin Dempster, Submission 1, p 1.

4 Section 31(1).

5 Mr Quentin Dempster, Submission 1, p 2; Friends of the ABC, Submission 2, p 1; Ms Ramona Koval, Submission 3, p 3; CPSU, Submission 4, p 1.

6 Mr Quentin Dempster, Submission 1; Friends of the ABC, Submission 2; CPSU, Submission 4, p 1.

7 At <http://www.abc.net.au/corp/pubs/speeches/spmar0601.htm>

New and emerging ABC services

1.12 The *Australian Broadcasting Corporation Act 1983* does not expressly provide for the ABC's online services and other services emerging in the new digital environment.

1.13 The ABC informed the Committee that its legal advice is that it has undoubted power under subsection 25(1) of the Act to establish and maintain its internet site.⁸

1.14 The ABC suggested that if any amendments to its Act are deemed necessary, they should be incorporated with consequential amendments arising from the *Broadcasting Services Amendment (Digital Television and Datacasting) Act 2000*.⁹

1.15 This is precisely the course of action pursued by the Opposition when the *Broadcasting Legislation Amendment Bill 2000* [2001] came before the Senate on the 27th February 2001.¹⁰

1.16 The amendments moved by the Opposition would have expanded the ABC Act to incorporate new activities and services that have already become available and will become available in the foreseeable future. The existing provisions of the Act do not presently cover those activities.

1.17 The amendments sought to address public concerns that the future commercialisation or even privatisation of these ABC services is being contemplated and is possible under the existing legislation. By bringing these services within the core functions of the ABC, the amendments would have gone some way to ensuring the future independence of the ABC from commercial interests and influences and updated the ABC's enabling Act consistent with its expanding role in the digital world.¹¹

1.18 Labor has clearly stated our position that it is appropriate for online, datacasting and other emerging activities to be included in the Act and Charter of the ABC. The *Broadcasting Legislation Amendment Bill 2001* will insert datacasting functions into the ABC Act if passed by the Parliament in its present form.¹² It is our policy position that new fields of endeavour should be regulated and comprehended by the Act and the Charter.¹³

8 Australian Broadcasting Corporation, Submission 6, p 2.

9 Australian Broadcasting Corporation, Submission 6, pp 2-3.

10 Senator Mark Bishop, Senate Hansard, 27/2/01, P22037 ff.

11 Senator Mark Bishop, Senate Hansard, 27/2/01, P22038.

12 Schedule 2 Item 3, *Broadcasting Legislation Amendment Bill 2001*.

13 Senator Mark Bishop, Senate Hansard, 27/2/01, P22038.

1.19 However the Democrats and the Government combined to defeat Labor's amendments in the Senate which would have included online services in the ABC Act. Online services are a notable omission now that datacasting functions are to be included in the Act.

1.20 Importantly, the amendments would have extended the ban on advertising on ABC broadcasts to the ABC's online and datacasting services. Escalating public concern about the commercialisation of the ABC was exacerbated by the leaking of the Bales Report late last year which advised the ABC on establishing advertising and commercial links on its website.

1.21 It is unfortunate that this opportunity to unequivocally pronounce that advertising on the ABC is unacceptable was passed over by the Democrats and the Howard-Anderson Government.

1.22 Labor Senators believe the express inclusion of datacasting and online services in the ABC Act is appropriate and the inclusion of online and other services in the new media environment needs to be addressed in the near future.

Recommendations

Labor Senators restate our support for:

- **legislative measures to prohibit advertising on any ABC service; and**
- **the inclusion of new services in the digital environment, such as online services, within the ABC Act so that they are core functions of the broadcaster that cannot be commercialised or privatised.**

Senator Mark Bishop (A.L.P., W.A.)