

## **MINORITY REPORT BY ALP SENATORS ON AUSTRALIAN CONTENT REGULATION FOR COMMERCIAL TELEVISION BROADCASTERS**

### **1. Introduction.**

1.1 The importance of television as a medium for conveying society's culture, and its significant role in promoting Australia's cultural identity and developing the local production industry, is recognised through regulation of the Australian content of programming by the *Broadcasting Services Act 1997 (BSA)*. The consequence of the considerably higher cost of making local programs compared with that of importing programs with foreign content is that ratings are insufficient to ensure broadcasting of programs with Australian content.

1.2 The effect of the relevant content regulation has been diminished by the High Court decision in the *Project Blue Sky* case. There it was decided that s160(d) of the *BSA* requires that content regulations made by the ABA under section 122 of the *BSA* are subject to the Closer Economic Relations Trade Agreement (CER). This decision has the consequence of frustrating the objectives of the *BSA* by enabling New Zealand programs to qualify in fulfilment of Australian content quotas.

1.3 In order to ensure the important function of portrayal of Australian culture and identity is maintained the impact of this decision needs to be overcome. There are two ways in which this might be effectively achieved and the existing content rules thereby maintained. These potential solutions are considered below: 2.1 – 3.2.

### **2. ABA amendment of Content Standard.**

2.1 The Government's preferred solution was to give the Australian Broadcasting Authority (ABA) the opportunity to amend the offending regulations, which action the ABA is presently attempting to undertake. The draft new Australian Content Standard released for public comment on 13 November 1998 by the ABA allows New Zealand programs to qualify for Australian content quotas equally with Australian programs. Clearly this action will not further the objects of the *BSA*, nor will it protect the social values upon which the legislation is founded.

2.2 The ECITA Committee suggests that the ABA state in the introduction to its new standard that Australian and New Zealand cultures are distinct, and that New Zealand productions are only given special status in order to comply with CER Protocol obligations.

2.3 It appears that the object of the *BSA* is difficult to reconcile with the provisions of s160(d), thus placing the ABA in a seemingly near impossible situation in complying with its obligations under s122 of the *BSA*. In light of the effect of the draft Content Standard, alternative solutions to enable effective content regulation need to be considered and the ABA should explore and exhaust every avenue to achieve this objective.

#### ***Recommendation 1***

**At first instance, Labor Senators prefer that the ABA redraft the new Australian Content Standard so that it achieves the purpose Australian Content Standards are intended to achieve.**

### **3. Amendment of the Broadcasting Services Act 1997.**

3.1 If the ABA proves unsuccessful in redrafting the Australian Content Standard to properly protect the cultural values that the *BSA* seeks to safeguard, a Labor Government would amend the *BSA* so that the ABA would be able to set effective Australian content rules.

3.2 The Australian film and television production industry supports repeal or effective amendment of s160(d) so that the forces of international trade do not determine issues of cultural policy. There are potentially 900 treaties which s160(d) would require the ABA to take into account when creating a standard. The Industry argues that certainty and an ability to properly regulate content require the repeal of s160(d), which presently precludes meaningful local content regulation. The impact of meaningless regulation is likely to be long-term erosion of true Australian content and a consequent diminution of the cultural values the *BSA* seeks to protect. Destruction of the Australian production industry is a possible consequence which could further impact upon the quality, volume and availability of Australian programs.

#### ***Recommendation 2***

**If Recommendation 1 is unachievable, it is recommended that the Government legislate to amend section 160(d) of the *BSA* to enable the ABA to continue to set effective Australian Content Standards.**

### **4. Conclusion.**

The crucial role of content regulation in protecting the expression of Australian culture is recognised by Labor Senators. The problems that the ABA is presently encountering in

attempting to regulate Australian content demand a prompt and effective solution. The alternative procedures outlined above are the avenues a Labor government would pursue to ensure resolution of the dilemma which threatens the important policy objectives that the *Broadcasting Services Act* seeks to achieve.

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

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