

Labor Senators' Minority Report

Labor Senators do not support the recommendations in the Chair's Draft Report.

Labor Senators consider that there has been an abuse of process which shows complete disregard and contempt for the Senate's role as a house of review.

Procedural failings of the inquiry

It is worth noting for the record, relevant facts concerning the conduct of this inquiry.

Firstly, Labor Senators do not consider that interested parties had adequate time in which to consider the Bills and draft their submissions for the ECITA Committee.

Given that the objective of the Bills is to pave the way for digital radio in Australia, the lack of time allocated for submissions to be drafted meant that parties with interests in the future of the Australian radio communications were forced to consider some 137 pages of amendments in a very short time frame. This situation is clearly inadequate and cannot result in meaningful consultation.

Secondly, Labor Senators do not consider that they have had sufficient time to adequately review and/ or consider the submissions, particularly given the acceptance of late submissions and the provision of the draft report by the ECITA Committee on 23 April 2007, for a meeting of the Committee on 24 April 2007. Again, these circumstances are inadequate and unsatisfactory.

Labor Senators do not understand why this process appears to have been accelerated (once again) when there is no apparent time imperative for passing the Digital Radio Bills.

At the meeting on 24 April 2007, the ECITA Committee resolved to refer the Commercial Radio Australia submission to DCITA for comment and seek a response in the week commencing 30 April 2007, to table an interim report on 30 April 2007 and to meet in the week commencing 30 April 2007 to consider the draft report for tabling prior to the next day of sitting.

On 30 April 2007, members were informed that the Committee would meet again on 3 May 2007 to deliberate on the Bill and the ECITA Committee's Draft Report. At that stage, no further information had been received from DCITA or any other party, since the initial meeting on 23 April 2007.

On 1 May 2007, members were provided with a copy of a letter from DCITA to the ECITA Standing Committee. Over some 30 pages, the letter details DCITA's:

- responses to issues raised by Commercial Radio Australia's submission;

- comments on the ECITA Committee's summary briefing; and
- the consultation process.

Due to the ECITA Committee's tight deadlines, there has not been sufficient time in which to consider DCITA's response.

On 2 May 2007, the Chair confirmed that the meeting would take place on 3 May 2007 and provided members with a revised Draft Report, recommending that in light of DCITA's responses and notwithstanding that there "may be some fine tuning needed", the Bills should be passed.

The way in which this process has been handled demonstrates the government's disinterest in external scrutiny of its legislation and its disinterest in allowing the Senate to do anything more than simply rubber stamp its proposed legislation.

Legislative short-comings identified

The Submissions received revealed a number of significant issues with the drafting of the Bill. The short reporting time frame did not permit the Committee to fully explore all of these issues, however, key issues that have been identified are as follows:

- other supplementary platforms, such as Digital Radio Mondiale (DRM) will be required to ensure coverage in all regional and remote areas. At present, the Bill however only specifies the use of Digital Audio Broadcasting (DAB) technology;
- Item 15 of Schedule 1 restricts the definition of "digital program enhancement content" to text, still images and any prescribed forms- to encourage the take up of digital radio, this definition should be broadened to include animation and video clips (as is already available on mobile phones)
- ACMA can only issue multiplex licenses to "digital representative companies"-this is onerous for community organisations;
- The Bill does not provide guaranteed capacity for community radio broadcasting services on all available multiplexes- access rights to digital capacity for community broadcasting radio services can only arise where a multiplex is first brought into existence by virtue of commercial radio licensees exercising rights for digital capacity.
- Moratorium set out in section 35C should continue for 6 years after "adequate coverage date" in the relevant licence area, which should be defined as when coverage reaches 80% of relevant licence area population;

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- Should not be a “use-it or lose it scheme” under section 35D (whereby ACMA may convert a licensee’s licence back to analogue where they are not providing at least one digital commercial radio broadcasting service in its licence area) for at least 2yrs after the digital start-up date in a licence area and the Digital Radio Bill should set out guidelines for ACMA’s exercise of discretion in converting licences under s35D and defences/ reasonable excuses that could be raised by a commercial broadcaster

Labor Senators request a further extension of time in order that these points and following issues can be considered prior to the bills being passed:

- full assessment of issues raised in the submissions, including those in the Commercial Radio Australia, ABC and SBS submissions, which, due to the tight deadlines set by the Committee could not be adequately assessed; and
- full and frank consultation with stakeholders.

Conclusion

Labor Senators do not believe this inquiry process has been adequate nor has it allowed for full consideration of the complex issues encompassed by the Bill. The time allowed has been insufficient and has not allowed for the interested parties to properly consider the Bills or prepare their submissions, for full and frank inquiry or for serious consideration of the number of technical issues in the subject matter of the Bills. Labor Senators find it regrettable that the government is disinterested in improving radio-communications legislation and paving the way for digital radio in Australia and that it appears intent on forcing through the legislation as soon as possible, to the detriment of the Australian people.

Senator Kate Lundy
ALP, Australian Capital Territory

Senator Ruth Webber
ALP, Western Australia

Senator Dana Wortley
ALP, South Australia

Senator Stephen Conroy
ALP, Victoria

