



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

BILLS

**Telecommunications Legislation Amendment
(Submarine Cable Protection) Bill 2013**

Second Reading

SPEECH

Wednesday, 4 December 2013

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

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Speaker Bandt, Adam, MP	Question No.

Mr BANDT (Melbourne) (18:14): I rise to make some brief remarks on the Telecommunications (Submarine Cable Protection) Bill 2013. The Greens generally support the principle behind this bill, but will refer it to a Senate committee for inquiry. We will do this for several reasons: first, to ensure that the results of the statutory review undertaken by ACMA five years after the 2005 legislation are adequate; second, to review the decisions taken by the government in addition to the outcomes of the review.

The Greens appreciate the extent to which Australia's connection to the world is dependent upon the security of telecommunications transmitted on submarine cables and wants them to be protected. As a May 2013 Australian Strategic Policy Institute paper noted, five main international cables, each not much thicker than a common garden hose, connect Australia to cyberspace and global voice networks, making them vital to our communications, economic prosperity and national security. The ASPI report noted that the AFP is responsible for compliance with the laws but indicated in the review process that they do not have the resources to monitor the cables in maritime zones. AMSA, the Australian Maritime Safety Authority, and the FMA provide some surveillance, but these agencies, as well as the cable owners, indicated in the review process that monitoring arrangements were unsatisfactory. It is unclear whether these issues have been dealt with in the bill.

New Zealand apparently does better in this regard than Australia, and perhaps we have something to learn here. These cables need protection from all the inadvertent, accidental causes of disruption, such as fishing and anchoring, as well as from attack as outlined in the bill. Our cables also require protection from tapping, which could lead to indiscriminate and unlawful access to Australian telecommunications data and content. Are the mechanisms outlined in this bill, and those already in place arising from the 2005 legislation, preventing this type of interference, and will they prevent this type of interference in the future? This is a question that we hope the Senate committee will be able to resolve.

The vulnerability of submarine cables to tapping is the subject also of recent revelations. A 7 July *Washington Post* article analysed the ways in which surveillance of telecommunications via fibre-optic cables on the seabed could be done through:

a seemingly mundane government power: the authority of the Federal Communications Commission to approve cable licenses.

The *Washington Post* piece discusses the four US submarines, fitted out for special missions, that attached listening devices on the outside of a cable's housing. Apparently, cable landing stations near or upstream from them are the likely locations for electronic copying in a way that is invisible. The *Washington Post* article also alleges that the licensing and permit approval processes in the US were held up essentially to allow time for lawyers from the FBI and departments of Defense, Justice and Homeland Security to broker deals with the firms wanting to lay cables that transited the United States.

The minister acknowledged in his second reading speech that he was a director of Reach. Reach would be the Telstra and PCCW joint venture company that was compelled to enter into an agreement with the FBI in 2001 to allow access to the data transmitted by undersea cable, including billing data and stored communications of Telstra customers. In the agreement, all of this was exempted from FOI and also from the privacy laws. Protecting the security of submarine cables is a very serious issue, as the minister states, but protecting the integrity of Australia's legislated privacy protections and the human right of Australian citizens to privacy and the rule of law standards are also very serious issues.

This bill includes new powers for the Attorney-General to direct ACMA to refuse a permit on security grounds. The bill provides that ACMA must, within two days of receiving an application, inform the Attorney-General, who must then get back to ACMA with a decision within 15 days. Under section 72A, the Attorney-General must consult with the Prime Minister and the minister before deciding that an action on cable permits would be

prejudicial to Australia's security. Hopefully, the Senate inquiry process will clarify what criteria the Attorney-General might use to make this determination. Given that the decision is not reviewable, what the Attorney-General needs to have regard to may need further elaboration.

The Greens are committed to ensuring that Australia's submarine cables are secure, and this is inextricably linked to ensuring that the privacy of Australians' telecommunications are protected from illegal and unsupervised surveillance.