THE SENATE

BILLS

Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013, Television Licence Fees Amendment Bill 2013

Second Reading

SPEECH

Wednesday, 20 March 2013

BY AUTHORITY OF THE SENATE
Senator BIRMINGHAM (South Australia) (19:02): I rise to speak on these bills, the Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013 and the Television Licence Fees Amendment Bill 2013. These bills are not unreasonable bills, but they are bills being dealt with in an unreasonable manner. These bills are subject to, as it has demonstrated time and time again, this government's poor management of this Senate, to its approach of downgrading proper debate in this chamber. These two will be Nos. 160 and 161 in the long, long list of bills guillotined by this government. Like the previous bill, the NDIS legislation, this is completely and utterly unnecessary because these bills command broadly bipartisan support. They have been roped in together with a media package that is incredibly controversial and which the opposition vehemently opposes. But these two bills we do support.

These two bills deal with a number of matters that flow from the convergence review, a review that the government received 12 months ago. For 12 months the government has had the convergence review and the associated Finkelstein report. Minister Conroy has had them on his desk. He has had all the time in the world to deal with these two reports, and now—at the eleventh hour of this parliament, the eleventh hour of this session of the parliament, the eleventh hour of this sitting week—suddenly, finally, some degree of response to the convergence review is presented and is rammed through the parliament with guillotines applied here and limited debate in the other place and less than one week of consideration for the legislation.

That is right, these bills were first introduced into the parliament last Thursday. Last Thursday is the first time the parliament saw them. Nonetheless, the coalition are willing to support the passage of these two bills. We are willing to support the passage of these two bills because, unlike the other reforms proposed, these bills do not provide an unfair or undue new level of regulation on the Australian media. Unlike the other bills that are tangled up in the House of Representatives at present, these bills do not restrict the operation of a free press, of journalists and of a free media in Australia.

Unlike the other bills, the content of these bills have at least been subject to some reasonable consideration and negotiation and discussion with key industry sectors. It was like chalk and cheese going through the Senate inquiry—which Senator Cameron only just tabled the report for—when you asked media industry companies about negotiation on these bills and negotiation on the four bills currently before the House of Representatives. On these bills, television companies in particular indicated that there was ample discussion with the government and the terms of these bills were largely settled in November last year.

And while I know there are organisations that would have preferred to have had a greater period of time to have some input into these bills—in particular, I know the Screen Producers Association of Australia have genuine concerns about some elements of these bills and yet were not given the time or opportunity to put a submission to or give evidence in the Senate inquiry due to the rushed nature of the consideration of these bills—the coalition at least acknowledges there was some level of industry consultation that went into these two bills we are debating tonight. Should the House, sadly and foolishly, pass the other four bills under consideration, well then it will be a different matter. Nobody had any forewarning about the material contained in those bills, or their details, until last Thursday when they were first published.

The Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013 amends the Broadcasting Services Act, the Australian Broadcasting Corporation Act and the Special Broadcasting Service Act. In doing so it achieves a number of outcomes which, generally speaking, flow from recommendations of the Convergence Review. In particular, it changes rules prescribing the amount of Australian content that is shown on commercial television to enhance the availability of such content according to the intentions and objects of these changes. The current requirement for 55 per cent local content during prime time viewing hours on main or primary channels will be elevated to a legislative arrangement rather than a regulated arrangement. An Australian content quota will also be introduced for the first time to multichannels. Those being the second and third digital channels operated by the three major commercial free-to-air networks. Networks will have therefore more scope
to meet their content obligations regarding drama, documentaries and children's programming across all of their channels.

These reforms also restrict the number of commercial television networks in Australia to three by preventing the Australian Communications and Media Authority from issuing more than three broadcasting licences. I am sure everyone in this place would know that it has long been a topic of debate in Australia as to whether a fourth licence should or should not be issued. Obviously, the dynamics of that debate have changed in the era of multichannels and because of the fact that most Australians now enjoy access to many more free-to-air channels than was the case just a few years ago. This bill will restrict the number of commercial networks to three, as I say, and in doing so reflects those changes.

It also amends the Australian Broadcasting Corporation Act and the Special Broadcasting Services Act as recommended in the Convergence Review to expressly reflect their online activities. Once again we have seen a change in dynamic, as has occurred right across the media landscape, where the ABC and SBS have responded to that changing dynamic and nowadays undertake far more activity online than was ever foreseen in the drafting of their legislation. So to ensure that without any doubt the ABC and SBS are able to continue to provide that digital content the legislation will be amended to facilitate that and specifically allow for it.

Reflecting the fact that SBS has merged or undertaken the operations of the NITV, the legislation also amends the SBS Act to require the minister to have regard to the need to ensure that at least one of SBS's non-executive directors is an Indigenous Australian. That, again, is a sensible reform and a reform that the coalition is very happy to support, as we have supported the elevation in standard, availability and access to NITV around Australia.

The legislation also repeals a statutory review provision relating to Australian content and captioning of television programs. The legislation also deals with a restriction on the Commonwealth funding international broadcasters, ensuring the ABC can be the only international broadcaster; and, in handling SBS online digital arrangements, the legislation makes some changes relating to SBS advertising. I will have a little more to say about both of those issues.

As indicated, the commercial broadcasters support most of the measures in this legislation, particularly the flexibility on Australian content and making the 50 per cent rebate on licence fees ongoing. That, of course, relates to the other bill that is before us—the Television Licence Fees Amendment Bill 2013. That bill provides a permanent reduction to the annual licence fees payable by commercial television broadcasters by 50 per cent, which will see their licence fees, on an ongoing basis, being 4½ per cent of their gross earning.

It is important in these debates to emphasise that those licence fees are based on gross earnings. That of course means it is not their profits but, in fact, their total revenue stream. This amounts to a reduction in fees for broadcasters nowadays of about $140 million per annum, which has already been factored into the 2012-13 forward estimates as updated in MYEFO and is, of course, reflective of rebates provided over recent years. The reduction in those fees will bring broadcasters into close alignment with their international counterparts, who generally pay lower fees, and also recognises that TV broadcasters will be using half as much spectrum as previously as a result of the shift to digital broadcasting and the freeing up of spectrum through that process.

The free spectrum will be auctioned as part of the digital dividend in April, although, I do note news reports today that indicate that the government has reallocated the year in which those funds will be received, which is a curious little budgetary measure by the government. They are shuffling, it appears, the funds from being recognised this year, where they were once seeking to achieve a budget surplus, into the next financial year—no doubt so as to make the next budget look as attractive as it possibly can in the lead-up to an election.

Generally speaking, on all of those substantial and detailed issues, the opposition has no concern. We equally have no concern with the matter of allowing advertising on the SBS and allowing advertising on SBS digital content. Indeed, that is something that the coalition, when in government, did allow and facilitated amendments to the SBS Act to allow for advertising. We are supportive of measures that allow SBS to generate revenue in an appropriate manner, including through advertising and sponsorship arrangements on their digital media services. But I do, and not for the first time today, note the hypocrisy of the communications minister and the leader of the government in this place, Senator Conroy, in making these changes, given his past very strident opposition to advertising measures properly implemented by SBS in accordance with the SBS Act.
Back in 2006 the SBS board approved a new structure allowing for in-program advertising, having program breaks. The then shadow minister for communications and information technology, Senator Conroy, railed against those measures. At Senate estimates he argued that such advertising was not in accordance with the SBS Act or the intent of parliament. Senator Conroy said:

Do you seriously believe that the SBS’s interpretation is consistent with the intent of parliament?

... ... ...

It just seems to me that with the way the act was written—and I have spoken to some of the people who were involved in drafting it—it was not open slather. Clearly, it does not say: 'Just have ads wherever you want;' it says: 'You can have ads in only a couple of places,’ and yet, as you have testified, there is now open slather in every single program. That just seems to me to be inconsistent with the intent of the limits that the legislation attempted to set. You have now defined those limits as being unlimited.

Senator Conroy has now been Australia's communications minister, sadly, for around five years—five very long years for anybody who has looked at his track record. In that time he has not once sought to address this issue of SBS advertising that he was so concerned about back in 2006. In this legislation he actually opens up the SBS Act and makes amendments not to do what he claimed he would do or restrict advertising on SBS that he claimed he was concerned about but to enshrine further in the legislation the capacity of SBS to have advertising on its digital content.

The coalition support those changes. We supported in an open and transparent way when we were in government the right of SBS to have in-program advertising and we support here in opposition the right of SBS to have advertising on its digital platforms. Unlike the minister for communications, we are not guilty of hypocrisy when it comes to matters like this. That is what we stood for in government, stand for in opposition and will stand for when we are in government again, I hope. Senator Conroy, however, is caught out by these reforms. No doubt he was hoping that five, six or seven years down the track people would have forgotten. Well, we have not forgotten what he used to stand for and we have not forgotten the fact that he crab walked away from those complaints the moment he became the minister for communications.

There is one area where the coalition has concern with these bills—clause 27 of the Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill, which proposes to insert new section 31AA that legislates for the Australia Network to remain with the Australian Broadcasting Corporation, the ABC, in perpetuity with no possibility of the service ever again being put out to tender. I know there is a fair degree of sensitivity on the other side, especially with Senator Conroy, in this regard. There should be deep embarrassment about the handling of the last Australia Network contract, a contract that was acknowledged as being corrupted—and that was the word that was used—in its context and in its handling. The minister twice sought to get an outcome and, when he did not like the recommendation of the tender review panel, he twice subverted the process so that he eventually got his own way, not of course in the end through an open tender process but by abandoning the tender process and instead simply allocating the tender back to the ABC.

The coalition is not opposed to the ABC operating the Australia Network and it may be that the ABC will forever be the best party to operate the Australia Network, but the coalition does not believe that there should be a legislative prohibition on governments exploring other alternatives as this legislation proposes. The coalition believes it would be helpful to at least maintain an element of competitive tension in this regard. What happens when the current contract expires in a little under 10 years time? What happens then when the minister goes back to the ABC and says we need to renegotiate a contract for you to provide the Australia Network? I will tell you what will happen: the ABC board and managing director will look at the minister of the day and say: 'We don't need to negotiate. The law of the land says we are the only ones who get to do it. The law of the land says you must use us.' That is what this bill will see happen.

We do not think that is good public policy. We think it is foolish to let this slip through. So the one amendment to these reforms that the coalition will be proposing and that I will be moving in the committee stage is to remove clause 27 of the convergence review and other measures bill to ensure that proposed new section 31AA is not incorporated into the ABC Act so that all future governments will have a degree of flexibility in their handling of these matters.
The coalition are happy overall to facilitate the passage of these two bills. We have grave concerns that I have outlined about the rushed process behind this but we are not concerned overwhelmingly with any of the content in these bills, save the one clause that I mentioned. I am concerned, however, that in this media debate Senator Conroy seriously appears to have gone missing in action. Mr Wilkie confirmed this afternoon that all of his discussions about the media reform legislation before the other place were with Ms Gillard and Mr Swan. Senator Conroy was nowhere to be seen. I have not seen him in the chamber since question time, and I have been here a lot of the time and we have debated a lot of procedural motions relating to his legislation. I do not know whether the government has put him in hiding—that could well be the case for their best interests—or whether he is hiding under a rock of embarrassment somewhere because of the deep strife his legislation seems to have gotten his government into.

Senator Ludwig: Be relevant to the debate. Come back to the debate.

Senator BIRMINGHAM: It is very noble of Senator Ludwig to try to defend the Leader of the Government in the Senate, but the Leader of the Government in the Senate’s handling of these reforms has been appalling and has been an embarrassment for the government. It has put this Senate and this parliament in an awkward position of having to deal with legislation—

Senator Ludwig: Mr Acting Deputy President, I rise on a point of order on relevance. I was prepared to allow the usual slurring and misstatements that go on, but at this point, Senator Birmingham, I think you have gone a little bit longer than needed. Quite frankly, we should get back to the debate. You have a limited time. You do not want me to burden your time by taking points of order to bring you back to relevance. You might note that you yourself went missing on carbon. It is a shame that you did, but at that point on the whole debate—

The ACTING DEPUTY PRESIDENT (Senator Edwards): Minister, please address the chair. There is no point of order, and I ask Senator Birmingham to resume.

Senator BIRMINGHAM: It is to the shame of Senator Conroy and the government that they have allowed him to get away with the mishandling of such important reforms.