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 SMITH (Western Australia) (20:47): I also rise to speak on the Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013 and the Television Licence Fee Amendment Bill 2013, but before I do I think it is important to remind those who might be listening to the Senate this evening across Australia that this afternoon we saw the peak of this government's disregard for proper parliamentary process and proper parliamentary scrutiny of legislation. We have heard much in the last few days about the importance of a National Disability Insurance Scheme but what we saw today was total disregard for proper parliamentary participation and bringing that debate to a proper conclusion. Instead we saw it guillotined, as we have seen with these bills. At nine o'clock this evening the debate will end on these bills and they will be put to a vote. It is disappointing that I and other senators may not have—

Senator McKenzie: Shame.

Senator SMITH: Shame, indeed. It is a great shame for those people who put great value on our parliamentary traditions in this country.

As has been indicated to the Senate, the coalition does not oppose these bills. The purpose of the first bill is to amend the Broadcasting Services Act 1992, the Australian Broadcasting Corporation Act 1983 and the Special Broadcasting Service Act 1991 to enhance rules surrounding local content to provide networks with more scope to meet their content obligations and make changes to the charters of both the ABC and SBS to reflect their online activities.

As Senator Birmingham has already indicated, the coalition will move an amendment to deal with the provisions of the bill that prevent outlets other than the ABC from broadcasting taxpayer funded international news services. The purpose of the Television Licence Fees Amendment Bill 2013 is to permanently reduce the annual licence fees payable by commercial television broadcasters by 50 per cent to 4½ per cent on gross earnings. As I indicated a moment ago, the coalition will not oppose these elements of the government's media reform proposals.

Yesterday during my comments when taking note of answers in this chamber I said that people throughout this building were wondering which would go first: Senator Conroy's reforms or the Prime Minister's leadership. The House has not passed the remaining elements of the media reform package tonight, as I understand it, Senator McKenzie—and others might have a different understanding—and the House has now moved to the adjournment debate. It is clear to me, and I am sure to many others watching this charade, that the minister's reforms are now in very desperate trouble. It remains to be seen how much longer the Prime Minister's leadership will survive them or indeed how long Senator Conroy's stewardship of these reforms will actually survive.

While the coalition does not oppose these bills, I do have to express my deep concerns regarding other aspects of the government's proposed changes to media laws which will have a deleterious impact on the freedom of the press in this country and contain the most disturbing ramifications for the operation of our democracy. No Australian should be under any illusion about the seriousness of what is being discussed in relation to the other bills that form part of this total package. For the first time in our country's peacetime history the government is proposing to regulate the content of the news Australians read and digest. This is a most extraordinary step for any democratic government to take. What makes it all the more baffling though is that, after all the discussions on this issue over the last week, neither the Prime Minister nor Minister Conroy have been able to offer a single solitary example of why they need to introduce this regulation.

The government is proceeding to try to pass these bills with unedifying speed. The minister announced on Tuesday last week that the legislation would be introduced and demanded its passage by the end of this week. The legislation did not actually appear in the other place until Thursday. It was not actually debated there until yesterday, and it was pushed through and presented to us here in the Senate with the demand that we get it all
passed by the end of this week. As I understand it, the government is still struggling to get a deal to pass the rest of the package through the House of Representatives.

Normally that kind of speed is referred for dealing with legislation required to handle the gravest of crises—a natural disaster or an imminent invasion. So quite naturally we on this side of the chamber, the media and the Australian people are left asking: why the rush? Why the great speed? What is the crisis here? Where is the emergency? What is going on that demands the sort of pressure the Gillard government is placing upon this parliament and our democratic process in demanding it pass some of the most far-reaching reforms to media law imaginable in a democracy by the end of this week?

Of course, we all know what is going on really. The government is not pushing these bills on their merits; it is not even really trying to defend them on their merits. However, this is no longer a government that governs by prosecuting its arguments and attempting to persuade people that it is right on the issues. That time passed a long while ago. This week we have all seen that Labor are far too busy focusing on being a political party to worry about being a government. Legislation is introduced and then casually abandoned. Ministers are briefing against the Prime Minister in the media and then issuing non-denial denials to try and cover it up. There are fugitive meetings in far-flung corridors in this building as the assassins sharpen their knives. During question time in the other place, a procession of members make a pilgrimage to the member for Griffith's place on the back bench, doubtlessly pledging their loyalty to the once and future king. It is a pathetic sight: the once great Australian Labor Party brought low by a rabble of second-rate union hacks, faceless men and bewildered malcontents motivated by nothing other than the need for personal survival.

The total absence of leadership or even purpose within Labor ranks has been especially evident during the debate on these media law reform bills. Labor members and senators do not have a clue why they are being asked to rush these bills through our parliament. They just know they need to pass something—anything—to show that they are still alive and to try and hoodwink the Australian people into believing they are still governing.

Some of the performances we have seen from the government in its attempts to promote its changes to media laws have been absolutely pitiful. When asked to justify the rationale for these changes, Labor representatives have variously tried to claim they are protecting diversity in the media, protecting privacy or trying to civilise the tone of our public discourse. During Monday’s committee hearing, Senator Cameron referred to the UK phone-hacking scandal as justification for these laws. Precisely why the Australian parliament needs to legislate in response to events in the United Kingdom when there is no evidence whatsoever of the same thing occurring here in our country remains a mystery to me, to the public and to many, many others—and, I suspect, to most Australians.

So, while the coalition is supporting these two bills, should the House pass the remaining bills within this package tonight the coalition will oppose them in the Senate for two primary reasons. The first is the creation of the Public Interest Media Advocate. This individual—or it could be a committee; we do not yet know, because the government cannot yet tell us—will be responsible for protecting the public interest. They will be enforcing a public interest test. They will use this test to determine whether media acquisitions can proceed by determining if such transactions are in the public interest or in the public benefit. How are a public interest and a public benefit to be defined? The short answer is that they are not, and that goes to the nub of what is wrong with this whole suite of proposals. What is the test? The government cannot tell us. How will it be applied? The government cannot tell us. What is the length of the Public Interest Media Advocate’s term? What is their salary? The government cannot tell us any of this. The government is asking us to give huge, sweeping powers to the Public Interest Media Advocate, a person or body appointed by the government and answering to the government. Yet the government is unable to define the scope of these powers. In a free, liberal democracy like Australia, that fact alone should send a shiver up the spines of all of us. I draw the attention of senators to the words of Mr Greg Hywood, the CEO of Fairfax, who noted the other major problem with the Public Interest Media Advocate:

The practical application of this legislation is that it sets up a model where a minister of the government can pick up the phone to his own appointee and say 'fix it', fix it being 'get the media off our backs'.

Senator McKenzie interjecting—

Senator SMITH: Thank you very much, Senator McKenzie. I thought you had gone. 'Fix it; get the media off our backs,' would be the demand of government to the Public Interest Media Advocate. It is our strong view that the fact that a government feels it is not getting a fair go from one or another media outlet is a very poor
reason to regulate. In fact, it is the worst reason. Remember, Minister Conroy is the same minister who boasted to an audience overseas that he is so powerful he can force business executives to wear underpants on their heads. Minister Conroy thinks we should give him more power. It is profoundly disturbing that this senator—this minister—thinks that the Australian public should give him more power.

This brings me to the other major problem with the proposal: the restriction these bills place on freedom of speech in this country. As someone who started out quite cautious about the work of the Parliamentary Joint Committee on Human Rights, I was pleased earlier this week to participate in one of its meetings, where I took part in that committee’s inquiry into these bills. I encourage all senators to examine the findings contained in the committee’s report. That report found:

Neither the explanatory memorandum nor the statement of compatibility demonstrate why these reforms are necessary. They do not provide any detailed information or empirical data on the extent of the unacceptable intrusions by the news media on personal privacy in Australia, or of the adequacy or otherwise of existing procedures (media specific or under the general law) for obtaining redress if there is a violation of the right to privacy.

It is worth bearing in mind that this is a cross-party committee, so we know these concerns are not merely partisan. As I have noted before, the government has been totally unable to provide a single example of the wrong that these bills are supposed to correct—not one example.

With the limited time available to me, I thought I might quote Adam Smith in *The Wealth of Nations*. There is a passage in that book which seems eerily prescient.

Government senators interjecting—

**Senator Smith:** Oh, I thought the government had fallen asleep, but they are awake. Welcome back. There is a passage in that book which seems eerily prescient about the actions of this government:

The proposal of any new law or regulation of commerce which comes from this order, ought always to be listened to with great precaution, and ought never to be adopted till after having been long and carefully examined, not only with the most scrupulous, but with the most suspicious attention. It comes from an order of men, whose interest is never exactly the same with that of the public, who have generally an interest to deceive and even oppress the public, and who accordingly have, upon many occasions, both deceived and oppressed it.

The DEPUTY PRESIDENT: Pursuant to order earlier today, the time for debate has expired.