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17 November 2008  
The Hon. Kate Ellis, MP  
Minister for Youth and Sport  
161a Main North Road  
Nailsworth SA 5083

Dear Ms. Ellis,

Thank you for extending the opportunity for me to meet with you on November 3rd 2008 to discuss the ALP's moves towards implementing a national Internet censorship scheme.

Sincere apologies if you think I came on a bit strong. I had been advised that I had only 20 minutes, and I had a lot of territory to cover, and you kept me busy by providing more inaccuracies which required corrections which added even more time pressure. I hope I managed to get my message across, and I intend to use this letter to reinforce the key points.

One aspect of our discussion which became abundantly clear during the meeting was that your party has lied to you. Many of the responses you raised in the meeting are the same responses which are found in the standard "form letter" replies which other Australian electors have received from their ALP local members across Australia. It seems obvious to me that your party has distributed some kind of briefing pack to all members of the Parliamentary Labor Party, and that that briefing pack is rife with errors and misleading statements. For example:

\* You asserted that the Government is only interested in banning material which is already illegal offline; and

\* I spent significant time debunking your assertion that other countries have implemented systems similar to the ALP's proposal.

Both of those assertions are factually baseless. Even Minister Conroy has backtracked on them in recent days, in response to questions in Senate Question Time from Western Australian Senator Scott Ludlam, which accused the Minister of making false and misleading statements in Senate Estimates on October 20th and enquired whether the Minister would be issuing a retraction<sup>1</sup>. The Minister followed up on November 13th 2008 with a clarification<sup>2</sup> which backtracked on his previous assertions by distinguishing his (and your) International examples from the ALP's proposals. I feel confident that if we had had our meeting today rather than two weeks ago you would have said different things about the ALP's proposals, in response to Senator Conroy shifting the ground beneath your feet, and I have sympathy for the difficult position he has placed you in by embarrassing you with misleading, inaccurate and incomplete information.

It is further interesting to note that the Minister has now added the term "unwanted" to his rhetoric, after having had it pointed out that the ACMA blacklist he keeps waving about is not actually a list of "illegal"

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<sup>1</sup> <http://scott-ludlam.greensmps.org.au/content/tv/senator-ludlam-questions-minister-conroy-internet-censorship>

<sup>2</sup> <http://www.openaustralia.org/senate/?id=2008-11-13.114.1&s=broadband> "The point I made was that these countries have introduced technologies that demonstrate that filtering is technically possible. I did not claim that arrangements in those countries are mandatory. This advice was confirmed by officials at the meeting, who stated quite explicitly that the arrangements in these countries are voluntary. At no time did I mislead the committee, as alleged by Senator Ludlam."

material<sup>3</sup> 4. I trust you will agree that his replacement term, “illegal and unwanted,” reinforces community concerns about the scope of the ALP’s proposal, especially given that the Minister has refused to clarify what, exactly, the new term means, and who gets to decide what is “unwanted.”

I understand that you are a mere cog in a larger Party machine, but I would guess that you would be professionally (if not personally) offended by the inaccurate information which your Party has provided to you, and which you are in turn providing to your constituents. Senator Conroy’s repeated inaccurate and misleading assertions have painted him in a very bad light, and you might perhaps do well to consider whether repeating his Ministry’s discredited rhetoric is likely to damage your own reputation.

During our meeting, I outlined several points against the adoption of the ALP’s policy. I will briefly address each point below, and request that you, in turn, address each point in your response.

#### **THE GOVERNMENT HAS FAILED TO IDENTIFY A NEED FOR THIS POLICY**

The Government has claimed that the purpose of the policy is to protect children<sup>5</sup>.

As I discussed in my previous letter, Australian parents appear to be sufficiently skillful that they do not require this form of Government assistance to protect their children. In my recent ABC Opinion piece<sup>6</sup>, I posed the question to the Government, “Do you honestly believe that Australian parents are so uniquely incompetent that we, unlike literally every other Western democracy on the planet, need to go down the ALP’s proposed path to protect our children? After spending 30 years proving that our nation can successfully raise children in an environment of ubiquitous access to uncensored online services, are you able to explain how profoundly Australian parents must have *failed* to justify this radical proposal?”

They were not rhetorical questions. I believe the Australian public deserves to have them answered. Please answer them.

#### **EVEN IF THERE WAS A NEED, THE GOVERNMENT HAS FAILED TO DEMONSTRATE THAT THIS SOLUTION IS WANTED BY THE PUBLIC**

Polls conducted by the Channel 7 Sunrise programme<sup>7</sup>, the Courier Mail<sup>8</sup>, and Derryn Hinch’s show on 3AW<sup>9</sup> have all shown more than 80% opposition to this proposal. While these are not scientific polls, I expect you will agree that anything over 80% is as close to unanimous as any poll is ever likely to produce, and that it’s difficult to imagine any other Government issue which unites so many differing individuals and community groups.

A worthy demonstration of the lack of public desire for filtered Internet connectivity was provided by Mr. Steve Dalby of iiNet on MMM’s “Spoonman” show<sup>10</sup> when he asserted that iiNet’s website has been offering free filtering software for four years and *zero* customers have downloaded it.

It is my observation that the Government has identified an alleged problem then committed itself 100% behind the first, dumbest solution that popped into its head. In all seriousness, is the Government’s vision so stunted that it believes that this policy is the absolute best way to spend \$44m to secure a child protection outcome? What happened to the “Government of New Ideas?”

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<sup>3</sup> <http://defendingscoundrels.com/2008/10/conroy-misleads-the-senate-on-.html> “Conroy misleads the Senate on ‘illegal material’”

<sup>4</sup> [http://www.acma.gov.au/WEB/STANDARD/531016/pc=PC\\_90169](http://www.acma.gov.au/WEB/STANDARD/531016/pc=PC_90169) ACMA web site answer to question “Is it legal/illegal to host prohibited content?” is, in part, “The Act does not make it an offence for a content service provider to host Prohibited Content.”

<sup>5</sup> <http://www.abc.net.au/news/stories/2007/12/31/2129471.htm> “Conroy announces mandatory internet filters to protect children”

<sup>6</sup> <http://www.abc.net.au/news/stories/2008/11/10/2414895.htm> “Filter advocates need to check their facts”

<sup>7</sup> <http://au.youtube.com/watch?v=xThNk0Vd4ws> - 80% against ALP Internet censorship

<sup>8</sup> <http://www.news.com.au/couriermail/poll/display/1.23815.5036556-953-2.00.html> - 91% against ALP Internet censorship, over 5000 votes recorded

<sup>9</sup> <http://www.3aw.com.au> - Still on the homepage at the time of writing. 82% against ALP internet censorship

<sup>10</sup> <http://austereo.castmetrix.net/podcast/378302368699163267/1/SpoonmanInternetCensorship.mp3> “Spoonman” 13 November 2008

### **EVEN IF THE PUBLIC WANTED THIS SOLUTION, IT WON'T WORK**

Interviews<sup>11</sup> with senior executives at three of Australia's largest ISPs have ridiculed the ALP proposal on practicality grounds. Simon Hackett, MD of Internode, helpfully pointed out that "... most families diagnose their computer problems by getting their children to fix them. So their children will know about anonymous proxies, they will work around this stuff. So it's not that it's not a problem to solve, but you can't make it a technical game, because the very people you're trying to protect are smarter than you."

The *Sydney Morning Herald* has reported<sup>12</sup> that iiNet CEO Michael Malone has publicly committed his company to provide "... hard numbers demonstrating how stupid it [the ALP proposal] is." He has described Senator Conroy as "... the worst Communications Minister we've had in the 15 years since the [internet] industry has existed."

Since the implications of this policy came to light, the Internet community in Australia has been working hard on free and effective circumvention methods<sup>13</sup>. Websites devoted to bypassing mandatory ISP censorship have been erected, and the ALP's policy has been rendered useless before it has even been implemented. It is safe to say that everyone who is inconvenienced by the ALP's censorship system will routinely bypass it at will.

### **EVEN IF IT COULD WORK, IT'S TOO EXPENSIVE**

The Government claims to have committed \$44m to its "clean feed" proposal. However, the Minister has not been drawn on whether the money remains available in the wake of budget "refactoring" due to the financial crash; and even if it is available, he has not provided a breakdown of how much would be available for ISP compensation and how much would be swallowed up by the ACMA bureaucracy to run the scheme.

My personal direct experience is that it will cost in excess of \$2m in the first year to fit-out an ISP which provides service to 2% of the Australian market, with a 50% premium in subsequent years for ongoing licensing fees. With conservative allowances for network growth, that easily turns the five year process into a \$500m scheme, with the Government providing less than a drop in the ocean, leaving the remainder to be provided to the Industry by ISP customers in the form of higher ISP bills.

In the current financial environment, imposing a half billion dollar mandate on ISPs to provide an unwanted solution to a nonexistent problem is disgraceful. Doing so with the full knowledge that it won't work is lunacy.

### **EVEN IF IT WASN'T TOO EXPENSIVE, IT'LL BE IMPLEMENTED POORLY**

Despite Mr. Conroy's repeated misleading statements about the infallibility of the ACMA blacklist, the current scheme *is already implemented poorly*. According to the ACMA "Report on the Co-regulatory Scheme for Internet Content Regulation"<sup>14</sup> covering the first six years of the scheme, less than half of the URLs gathered onto the Prohibited Content list by the ACMA were arguably illegal material.

Note that since the Act does not require the ACMA to seek a classification decision from the OFLC before adding overseas content to the blacklist, *this really is a case of one public servant's personal discretion deciding whether a content item should be banned in Australia, with no mechanism for notification or appeal*. In your opinion, does that represent good governance? Shouldn't we expect better? As I asked in my first letter to you, is it wise to place the same calibre of bureaucrat who decided Mohammad Haneef was a terrorist suspect or that Bill Henson was a pornographer in charge of a secret, unaccountable blacklist? During our meeting you scoffed, *but that really is what we're talking about here*.

### **IN THE UNLIKELY EVENT THAT IT'S IMPLEMENTED PERFECTLY, IT WILL ENABLE CHILD ABUSE**

If we suspend disbelief for long enough to accept that the scheme will be administered by perfect public servants with perfect discretion and perfect oversight, then we would clearly end up with a hypothetical blacklist containing only illegal material.

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<sup>11</sup> [http://www.zdnet.com.au/insight/communications/soa/ISP-level-content-filtering-won-t-work/0\\_139023754\\_339292158\\_00.htm](http://www.zdnet.com.au/insight/communications/soa/ISP-level-content-filtering-won-t-work/0_139023754_339292158_00.htm) Justin Milne from Telstra, Simon Hackett from Internode, Michael Malone from iiNet

<sup>12</sup> <http://www.smh.com.au/news/technology/biztech/net-censorship-plan-backlash/2008/11/11/1226318639085.html>

<sup>13</sup> <http://www.itwire.com/content/view/21451/1085/> "Bypass Australia's Internet filters for free" by Adam Turner, November 3rd 2008

<sup>14</sup> [http://www.archive.dbcde.gov.au/\\_\\_data/assets/file/0003/38334/online\\_content\\_co-reg\\_scheme\\_report\\_12.rtf](http://www.archive.dbcde.gov.au/__data/assets/file/0003/38334/online_content_co-reg_scheme_report_12.rtf) Total prohibited items 3634. Total referred to domestic or International police forces: 1742. No data is available on the number of arrests or successful prosecutions resulting from those referrals.

The Government would then require that blacklist to be distributed to several thousand employees at several hundred ISPs, whereupon it will certainly leak. I am prepared to accept debate about how long it will take to leak, but the fact that it will leak is beyond question.

As I pointed out in my original letter to you, once it leaks it will be available to every Internet-connected pervert on the planet, and any Australian perverts who avail themselves of circumvention methods. With any perceived positives accompanying the scheme undermined by the fact that it won't work, the negatives will be all we have left. Is increased world-wide child abuse an acceptable price that you, personally, are prepared to pay for the implementation of this policy?

### **POLICY ALTERNATIVES**

During our meeting, you asked whether there were any policy alternatives which you could take to Mr. Conroy as a constructive addition to the criticisms contained herein.

I pointed out that the Internet Industry Association (IIA) already runs a "Family Friendly ISP" programme<sup>15</sup>, which provides accreditation to ISPs which conform to the programme's Family Friendly ISP policy. These ISPs offer a variety of services, including "clean feeds," to members of the public who desire them.

It is worth noting that these ISPs' services tend to be more expensive than "traditional" ISPs' services<sup>16</sup>, and that extra expense may represent an obstacle to families acquiring their services. My recommendation during our meeting was that the Government should find a way to encourage and promote those kinds of companies, perhaps using the \$44m in "clean feed" funding to assist existing "clean feed" ISPs with advertising.

On November 10th 2008, the System Administrators' Guild of Australia (SAGE-AU) made an alternative proposal, suggesting that the Government's budgeted \$44m could be redirected to accredited "Family Friendly ISPs" by means of a grant programme modeled on the Australian Broadband Guarantee, "... wherein a participating ISP is subsidised for each subscriber."<sup>17</sup> The Guild also pointed out that a side effect of the Government's current proposal would be to destroy existing family-friendly ISPs by "commoditizing" their industry niche, thereby punishing the companies who have already done the most to support the aims of the Government's policy, and their alternative proposal cures that deficiency. The IIA and the civil liberties community have supported SAGE-AU's proposal, and it seems to me that it would be an honourable and controversy-free way for the Government to extricate itself from this mess.

The fact that Government representatives keep making wildly inaccurate statements about their Internet censorship proposal makes it abundantly clear that the ALP did not think this policy through before adopting it. Other organizations and individuals have clearly applied a lot more thought to these matters than anyone in the Government ever has, and my strong recommendation is that the Government should listen to them.

### **MR. CONROY'S PROFESSIONAL CONDUCT**

The final point in our meeting concerned Mr. Conroy's inappropriate behaviour towards me, the IIA and my employer.

I must admit to being slightly stunned by your claimed unawareness of this conduct, because I had drawn your attention to it on the cover sheet of the faxed copy of my letter, which was sitting on the table in front of you even as you denied any knowledge of it.

It has been widely reported<sup>18</sup> that during the week of the 24th of October 2008 Senator Conroy's Chief Political Adviser, Ms. Belinda Dennett, emailed a board member at the IIA to express "... serious concern that an IIA member would be sending [my criticisms]..." and labeling the expression of my political views as "... irresponsible behaviour." The email message was accompanied by a phone call demanding that it be passed on to the owner and Managing Director of the company which employs me.

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<sup>15</sup> [http://www.iaa.net.au/index.php?option=com\\_content&task=view&id=130&Itemid=33](http://www.iaa.net.au/index.php?option=com_content&task=view&id=130&Itemid=33) "Participating IIA 'Family Friendly' ISPs"

<sup>16</sup> [http://www.webshield.net.au/htm3/contents\\_faq.htm#q3](http://www.webshield.net.au/htm3/contents_faq.htm#q3) Webshield FAQ describes the enterprise as not-for-profit, with infrastructure which can only service 60,000 customers, with slower connections than other ISPs, and with standard firewall rules which claim to block P2P. Even with these cost-saving measures, Webshield's services are still more expensive than equivalent services offered by "traditional" ISPs.

<sup>17</sup> [http://www.itnews.com.au/News/88655\\_duplicate-content-filter-will-hurt-familyfriendly-isps.aspx](http://www.itnews.com.au/News/88655_duplicate-content-filter-will-hurt-familyfriendly-isps.aspx)

<sup>18</sup> <http://www.smh.com.au/articles/2008/10/23/1224351430987.html?page=fullpage> "Filtering out the fury: how government tried to gag web censor critics," Asher Moses, Sydney Morning Herald, Oct 24 2008.

It was grossly inappropriate for the Minister to use the IIA as a tool to place pressure on my employer over my personal political views. That reprehensible style of conduct is beneath the dignity of a Minister of the Commonwealth, and cheapens the professionalism of Mr. Rudd's entire front bench.

As a fellow member of that front bench, and one of Mr. Conroy's colleagues in the party room, your choices are to either publicly distance yourself from his outrageous behaviour, or, through your silence, indicate your acceptance of his excesses. If you have any integrity you will speak out against him, but if you do not then Australians will know exactly where you stand.

Regardless of your personal judgement on the matter, I require you to convey to the Minister my demand for a written apology for his unprofessional and inappropriate conduct, and for the conduct of his subordinate Political Advisor.

I also ask that you communicate the matter to the Prime Minister, Mr. Rudd, and convey my belief that if Broadband was half as important as he said it was before the last election perhaps it would be a good idea for him to put a grown-up in charge of the Broadband Department.

### **CONCLUSION**

In my previous letter, I stipulated that there were a great many serious, well-considered, thoughtful and well-argued reasons against the Government's Internet censorship policy. I also expressed disappointment at the fact that we have been debating this issue for over a year and *none* of those issues have been addressed by the Labor Government in general, or Mr. Conroy in particular.

By the time you read this letter, another month will have passed since you took receipt of my original letter. And, despite the increasing public profile that this issue has been receiving, the Labor Government in general, and Mr. Conroy in particular, *still* refuse to address any of these concerns on their merits.

This is an appalling display of basic governance skills, and is inconsistent with Mr. Rudd's oft-repeated claim to be running "a Government for all Australians."

The Minister's continuing poor conduct over this issue does little to inspire confidence that any of these criticisms will ever be addressed rationally. In addition to the accusations of unprofessionalism I have made above, Mr. Conroy *still* misleads (3 *Ibid.*), omits<sup>19</sup>, attacks (18 *Ibid.*), and accuses his opponents of supporting child molesters<sup>20</sup>. These degenerate behaviours cast a pall over the Rudd Government's approach to the Internet, highlighting poor judgement on Mr. Rudd's part in selecting Mr. Conroy to represent him in these matters.

In conclusion, I reiterate and expand the requirements I stated in my first letter. I require detailed responses to the criticisms contained herein, prepared with at least as much care and research as I've invested in preparing the criticisms in the first place. I require you to represent my interests as a constituent and one of this policy's stakeholders during party room deliberations on the matter. I require you to convey to Mr. Conroy my demand for a written apology for his unprofessional conduct; and for your own public condemnation of same. And I request and require that you privately approach the Prime Minister, Mr. Rudd, with my call for Mr. Conroy's resignation.

Sincerely yours,

Mark Newton

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<sup>19</sup> <http://www.openaustralia.org/senate/?id=2008-11-13.114.1&s=broadband> In the Senate on November 13 2008, Mr. Conroy described the processes used to populate the ACMA blacklist by saying, "These processes involve classification of content by the national Classification Board and include classifications which are determined prohibited." Mr. Conroy made no mention of the fact that the ACMA is not required to utilize the services of the national Classification Board, and can simply decide that candidate content "would be" classified as prohibited without seeking independent adjudication.

<sup>20</sup> <http://www.aph.gov.au/hansard/senate/committee/S11346.pdf> Senate Estimates Committee Hansard 20 October 2008 page ECA 76: Senator Conroy raises the suggestion that Senator Scott Ludlam might be a supporter of child pornographers: "Illegal material is illegal material. Child pornography is child pornography. I trust you are not suggesting that people should have access to child pornography." The sight of Sen. Conroy hurling McCarthyist slurs against a sitting Commonwealth Senator recalls Joseph Welch's famous rebuke, "Have you no sense of decency, Sir? At long last, have you left no sense of decency?"