

Write your name and address here

Dear \_\_\_\_\_,  
Write your elected representative's name here

I refer to your recent form letter response to my letter about Internet censorship. Since you clearly decided that I wasn't worth enough respect to justify a personal, self-authored reply, I am returning the favour by replying with my own form letter.

In this letter I will address each of the important points the ALP head office required you to make. Having despatched them I am confident that you will be able to send me a new reply full of new statements which you thought of yourself, and from that starting point I trust that we will be able to carry out an intelligent conversation.

In this letter you will find your errors reproduced in a box, keeping them confined so that they can do no further damage to the public discourse. My corrections with references will follow below.

I am aware that the proposal for ISP filtering has attracted some criticism from those, like yourself, who are concerned that it will lead to censorship of the internet. However, the Australian Government has no plans to stop adults from viewing material that is currently legal, if they wish to view such material.

You are profoundly misinformed.

On October 20th 2008 under questioning from Senator Scott Ludlam in the Senate, Senator Stephen Conroy and his advisors repeatedly asserted<sup>1</sup> that the blacklist which will be used by the government's proposed censorship system already exists, and is the ACMA "Prohibited Content" list.

In the Technical Testing Framework attached to the Expression of Interest for the government's proposed (and delayed) "live trials", repeated reference is made to the ACMA Prohibited Content list as the URL list for the mandatory "first tier" blacklist<sup>2</sup>.

Reasonable readers may therefore conclude that the ACMA Prohibited Content list constitutes the list of material which the government wishes to prevent adults from viewing.

Minister Conroy claims that the ACMA Prohibited Content list is a list of illegal material.

The legislation, on the other hand, does not. Schedule 7 of the Broadcasting Services Act<sup>3</sup> defines "Prohibited Content" in section 20, which reveals that it consists of material classified by the Classification Board as X18+, R18+, and some commercial MA15+ audio and video content; and material which has been Refused Classification.

<sup>1</sup> <http://www.aph.gov.au/hansard/senate/committee/S11346.pdf> beginning on page ECA 76

<sup>2</sup> [http://www.dbcde.gov.au/\\_data/assets/pdf\\_file/0006/89160/technical-testing-framework.pdf](http://www.dbcde.gov.au/_data/assets/pdf_file/0006/89160/technical-testing-framework.pdf)

<sup>3</sup> [http://www.austlii.edu.au/au/legis/cth/consol\\_act/bsa1992214/sch7.html](http://www.austlii.edu.au/au/legis/cth/consol_act/bsa1992214/sch7.html)

Under Commonwealth law, *each and every one of those categories is legal for Australians to read and view*, unless and until a judicial finding is made to establish that specific content is child abuse material or child pornography material<sup>4</sup>.

X18+ material is legal to sell in the ACT and NT and legal to purchase throughout Australia. R18+ material is available for sale in shops and exhibited in public cinemas everywhere in Australia. MA15+ material is shown on free-to-air television throughout Australia. Even RC material is legal for a private owner to possess everywhere except Western Australia, and legal to read and view via the Internet everywhere except Western Australia and the Northern Territory, unless it is specifically found to be child pornography/abuse/exploitation according to Commonwealth or State law.

This makes your contention that the government “has no plans to stop adults from viewing material that is currently legal” completely false. There is plenty of legal material on the ACMA Prohibited Content list, even though that is the list of material that your own form letter says your party wishes to censor.

Your party has lied to you, and you have embarrassed yourself by forwarding those lies to a constituent after endorsing them with your signature. This is a theme which will recur frequently throughout the remainder of this letter.

The Government has committed \$125.8 million over the next four years to a comprehensive range of cyber-safety measures, including law enforcement, filtering and education. Measures include:

- Australian Federal Police (AFP) Child Protection Operations Team - funding to detect and investigate online child sex exploitation;

The previous government's final budget included a \$51.8m budget increase for the AFP's Online Child Sexual Exploitation Team (OCSET), along with provision for 90 new staff by 2010.

The budget was in response to complaints by the AFP that OCSET was so resource-constrained that it was unable to take on new cases, and was instead referring them to State police forces. The AFP's team of specialist online child abuse experts was unable to investigate online child abuse<sup>5</sup>.

After your Prime Minister's “razor gang” had done their work, the Rudd Government's first budget reduced the coalition's \$51.8m allocation to \$49m, and pushed the planned staff increases back a year to 2011<sup>6</sup>.

I fail to understand how law enforcement budget cuts and staff delays can be trumpeted as a key feature of the ALP's cyber safety policy. Perhaps you could explain, in your own words, without reference to a form letter from head office.

A key part of the Government's plan to make the internet a safer place for children is the introduction of ISP level filtering. The policy reflects our community's growing belief that ISPs should take some responsibility for enabling the blocking of illegal material on the internet. Filtering would cover illegal and prohibited content using an expanded ACMA blacklist of prohibited sites, which includes images of the sexual abuse of children.

Please indicate where your estimate of “our community's growing belief” came from.

I can point to any number of sources which suggest that my community has no such belief, as shown by their stupefied reaction to this repugnant policy. In case you are out of touch with my community, a brief non-exhaustive list might be helpful:

<sup>4</sup> [http://www.austlii.edu.au/cgi-bin/sinodisp/au/legis/cth/consol\\_act/claoaoma22004729/sch1.html?query=%22child%20abuse%20material%22](http://www.austlii.edu.au/cgi-bin/sinodisp/au/legis/cth/consol_act/claoaoma22004729/sch1.html?query=%22child%20abuse%20material%22) References to “child abuse material” and “child pornography material” in the Crimes Legislation Amendment (Telecommunications and other matters) Act (No. 2) 2004

<sup>5</sup> <http://www.news.com.au/heraldsun/story/0,21985,21923386-662,00.html> Herald Sun “No money to chase internet pedophiles”, June 18 2007

<sup>6</sup> <http://www.liberal.org.au/news.php?id=77> Coalition press release “Internet safety a low priority as razor gang strikes”, and [http://libertus.net/censor/ispfiltering-au-govplan.html#s\\_38](http://libertus.net/censor/ispfiltering-au-govplan.html#s_38) Irene Graham's analysis of the ALP's 2008-09 Federal Budget papers.

\* On Tuesday 6 January 2009 *The Advertiser* published an article<sup>7</sup> on the matter. The poll attached to that article attained over 2500 responses in less than 24 hours, and 95% of them were against the government's censorship proposal,

\* Derryn Hinch received similar results when he polled his listeners on 29 October 2008<sup>8</sup>: 82% against the government,

\* Channel 7's *Sunrise* programme polled their viewers<sup>9</sup>: 80% against the government,

\* The Opposition is against the policy<sup>10</sup>,

\* Senator Nick Xenophon is "not sympathetic to the Government's proposal"<sup>11</sup>,

\* Senator Cory Bernardi opposes it<sup>12</sup>,

\* Derryn Hinch opposes it<sup>13</sup>,

\* Holly Doel-Mackaway from Save the Children, the world's largest children's rights agency; and James McDougal from the National Children's and Youth Law Centre oppose it<sup>14</sup>.

To the best of my knowledge, the groundswell of community support you refer to is completely fabricated, a manifest falsehood propagated to a voter over your signature, consistent with Harvard University's finding<sup>15</sup> that governments tend to overstate internet content problems in a cloud of "moral panic".

An article<sup>16</sup> on ABC's web site last year asked, "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 own 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?"

Or, to put it more succinctly: Why do you hate parents?

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<sup>7</sup> <http://www.news.com.au/adelaidenow/story/0,22606,24876765-5006364,00.html> "Why Kevin Rudd's internet censorship plan will not work", opinion piece by Mark Newton

<sup>8</sup> Poll result reported on [www.3aw.com.au](http://www.3aw.com.au) throughout November, now deleted from the site

<sup>9</sup> <http://au.youtube.com/watch?v=xThNk0Vd4ws&NR=1>

<sup>10</sup> <http://forums.whirlpool.net.au/forum-replies.cfm?t=1116809&r=17707387#r17707387> Letter from Senator Nick Minchin to the editor of *The Advertiser* responding to the article cited in footnote 7 on 6 January 2009

<sup>11</sup> <http://forums.whirlpool.net.au/forum-replies.cfm?t=1118943&p=41#r803> Letter from Senator Nick Xenophon to Mr. Mark Newton, 9 January 2009

<sup>12</sup> <http://www.senatorbernardi.com/2008/12/corys-comment-isp-filtering.html> Statement from Senator Cory Bernardi, 12 December 2008

<sup>13</sup> [http://media.mytalk.com.au/3AW/AUDIO/291008\\_Internet\\_Filter.wma](http://media.mytalk.com.au/3AW/AUDIO/291008_Internet_Filter.wma) Audio of interview between Senator Nick Xenophon and Derryn Hinch, 3AW Drive Programme, 29 October 2008

<sup>14</sup> <http://www.theage.com.au/news/technology/childrens-welfare-groups-slam-net-filters/2008/11/28/1227491813497.html?page=fullpage#contentSwap1> *The Age*, "Children's welfare groups slam net filters", 1 December 2008

<sup>15</sup> <http://cyber.law.harvard.edu/pubrelease/isttf/> "Enhancing Child Safety and Online Technologies", Internet Safety Task Force, commissioned by 49 US attorneys general, researched by the Berkman Center for Internet & Society at Harvard University.

<sup>16</sup> <http://www.abc.net.au/news/stories/2008/11/10/2414895.htm> "Filtering advocates need to check their facts", Mark Newton, 10 November 2008

Consideration is being given to more sophisticated filtering techniques for those individual families who wish to exclude additional online content in their own homes.

Senator Conroy announced his intention to proceed with this policy<sup>17</sup> during one of his first official engagements as Minister in December 2007. He clearly hadn't had time to examine the Australian internet industry before he made his controversial statements, because if he had he'd have seen that the industry had already provided "more sophisticated filtering techniques" for families who want them, without imposing them on families who don't, via the Internet Industry Association's (IIA) Family Friendly ISP<sup>18</sup> scheme.

This costs the taxpayer a grand total of \$0 per annum, and solves all of the government's stated problems.

The System Administrators' Guild of Australia (SAGE-AU) has proposed a policy alternative<sup>19</sup> for the government which would see funding provided to compliant ISPs to enable them to offer "filtered" services at prices equivalent to regular services, following the observation that "filtered" ISPs tend to be slower and more expensive than their competition. This funding would come from the \$44.5m allocated by the government to its "clean feed" policy.

The government has given this sensible policy alternative short shrift by completely ignoring it, prompting SAGE-AU to respond with an open letter<sup>20</sup> damning the government's proposals on technical and public policy grounds.

The Government wants to ensure that Australian parents can access a 'clean feed' internet service. This will be informed by the technology adopted in countries such as the United Kingdom, France, Sweden, Norway, Finland and Canada where ISP filtering, predominantly of child pornography, has been successfully introduced without affecting internet performance to a noticeable level.

\* UK: Optional system, currently under substantial controversy for making poor decisions about blacklisted content and imposing sufficient performance and usability degradation upon Wikipedia to make it useless for most UK citizens during the week of Dec 6 2008<sup>21</sup>. The UK's IWF is now in the humiliating position of having identified what they claim is illegal child pornography, but knowingly and deliberately failing to blacklist it because doing so would cause too much disruption to the UK internet. Meanwhile, publicity surrounding the fiasco attracted over ten million viewers to the so-called "child pornography" on Wikipedia in one weekend.

\* France: No government-mandated censorship system, although courts have ordered removals of nazi memorabilia from eBay auctions.

\* Sweden: Optional system<sup>22</sup>. Embroiled in substantial controversy last year when it was revealed that police were lobbying to add BitTorrent trackers to their blacklist, in contravention of Swedish law.

\* Norway: Optional DNS blacklisting system<sup>23</sup>. Note that DNS blacklisting is inherently overbroad, destroying access to entire sites due to one "bad" URL. Norwegian citizens can escape the resulting annoyances by choosing to not be censored.

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<sup>17</sup> <http://www.abc.net.au/news/stories/2007/12/31/2129471.htm> ABC Online, "Conroy announces mandatory internet filters to protect children"

<sup>18</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) IIA

<sup>19</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) IT News, "Duplicate content filter will hurt family friendly ISPs", 10 November 2008

<sup>20</sup> <http://www.sage-au.org.au/display/SAGEAU/Press+Releases> "Open letter from SAGE-AU to Minister for Broadband, Communications and the Digital Economy"

<sup>21</sup> <http://www.eff.org/deeplinks/2008/12/internet-censors-must-be-accountable-things-they-b> Electronic Frontiers Foundation, "Internet censors must be accountable for things they break."

<sup>22</sup> <http://libertus.net/censor/ispfiltering-gl.html#sweden>

<sup>23</sup> <http://libertus.net/censor/ispfiltering-gl.html#norway>

\* Finland: Voluntary system. Came under fire in 2007 when it blocked the website of the World Wide Web Consortium as child pornography by mistake, and in 2005 when an anti-censorship campaigner's website was added to the blacklist of censored sites after an activist reproduced a copy of the Government's blacklist<sup>24</sup>.

\* Canada: Optional system<sup>25</sup>. The FAQ website for the service specifically states that it's a voluntary measure and that individual ISPs may have a variety of reasons for not participating. 7 ISPs in all of Canada participate.

The Minister's form letter is wrong about every single one of its examples. None of the countries he uses as examples have mandatory government-controlled ISP censorship systems, and nor do any other Western democracies. Where filtering exists at all, it invariably allows customers to choose whether or not they want to be censored. The only governments which remove that choice are regimes which value totalitarian control more than freedom of speech, such as China, Saudi Arabia and Iran.

It is clear that the ALP hopes Australians will believe there is some useful comparison to be made between the countries it lists as examples and the proposals being formulated for Australia. There can be no useful comparison until the Australian proposal recognizes that any systems implemented here must be optional, both for ISPs and end-users -- Just like in the UK, France, Sweden, Norway, Finland and Canada.

The Government's ISP filtering policy is being developed through an informed and considered approach, including industry consultation and close examination of overseas models to assess their suitability for Australia.

On 23 December 2008 Asher Moses from *The Sydney Morning Herald* reported, in a front-page story<sup>26</sup>, that the Minister had suppressed a report his own department had commissioned from the IIA which said that his mandatory censorship scheme could not possibly work.

Is that the ALP's "informed and considered approach" to "industry consultation"? Is it right for this government to "consult" with industry then suppress inconvenient responses?

Are you endorsing this approach by failing to speak out about it?

ACMA recently completed an extensive laboratory trial of available ISP filtering technology. The trial looked specifically at the effect of a range of filter products on network performance, effectiveness in identifying and blocking illegal and inappropriate content, scope to filter non-web traffic, and the ability to customise the filter to the requirements of different end-users.

The lab trial report<sup>27</sup> concluded by pointing out that performance of censorship products tends to be inversely proportional to accuracy: Tested censorship systems which don't slow down the internet don't work very well, systems which have low overblocking error rates cause performance degradations of 87%. The report also mentioned that *none* of the products tested in the trial were capable of reliably distinguishing between legal and illegal material, even under controlled laboratory conditions with vendor support.

By not mentioning any of this, you are misleading by omission, and endorsing the lie with your own signature.

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<sup>24</sup> <http://libertus.net/censor/ispfiltering-gl.html#finland>

<sup>25</sup> <http://libertus.net/censor/ispfiltering-gl.html#canada>

<sup>26</sup> <http://www.smh.com.au/news/technology/web/fatal-flaws-in-web-censorship-plan/2008/12/22/1229794328860.html> *Sydney Morning Herald*, "Fatal flaws in website censorship plan, says report".

<sup>27</sup> [http://agencysearch.australia.gov.au/search/click.cgi?url=http%3A%2F%2Fwww.acma.gov.au%2FWEB%2FSTANDARD%2Fpc%3DPC\\_311316&rank=1&collection=agencies](http://agencysearch.australia.gov.au/search/click.cgi?url=http%3A%2F%2Fwww.acma.gov.au%2FWEB%2FSTANDARD%2Fpc%3DPC_311316&rank=1&collection=agencies) "Closed environment testing of ISP-level internet content filtering", ACMA, 2008

Of course, perhaps that's all of very little import, because the Minister has disavowed the laboratory trial report anyway<sup>28</sup>. Why is the ALP's form letter bringing it up if it doesn't care about the results?

The laboratory trial indicated that ISP filtering products have developed in their effectiveness since they were last assessed in 2005. The Government will now proceed with a 'live' pilot in the second half of 2008 which will provide valuable information on the effectiveness and efficiency of filters installed in a 'real world' ISP network. An Expression of Interest will be released in due course seeking the participation of ISPs in the pilot.

The "live" pilot did not proceed in the second half of 2008. The entire process has been a disaster zone<sup>29</sup>, with the Minister announcing on the commencement day of his promised 24 December 2008 trial that it would instead proceed in mid January 2009<sup>30</sup>.

The Expression of Interest documentation included such gems as:

\* No requirement to test IPv6, a technology which will become an absolute requirement for the continued operation of the internet from late 2010,

\* No requirement to test faster than 12 Mbit/sec, even though the Minister's NBN project forbids speeds slower than 12 Mbit/sec, and

\* Despite its status as a "live trial", some of the testing is to be simulated, and should not involve real users. Somehow we are expected to learn something about real-world deployments from those results.

Having established that most of the important points covered in the form letter which appeared above your signature are so inaccurate, dishonest, or obsolete that it requires 6 pages of text to correct them, I respectfully reiterate that your party has lied to you, repeatedly, without shame, and you have not only swallowed it hook, line and sinker but *you have distributed the lies in your own name*.

It was obviously disrespectful for you to take such an amateurish form letter from your head office, endorse it with your signature, and supply it to a constituent in your electorate. Such a profound error of judgement reflects very poorly on your ability to represent my interests in the parliament.

Please rectify this grievous error by disavowing your endorsement of this "unwanted content" from head office and substituting your own words conveying your own beliefs in its stead.

I know you can do this. It wouldn't have been worth electing you if you couldn't.

Sincerely yours,

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Sign your name here

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<sup>28</sup> <http://techwireddau.com/2008/10/interview-with-media-contact-for-senator-the-hon-stephen-conroy-regarding-australian-internet-filter/> Interview with Tim Marshall, media liaison for Sen. Stephen Conroy. "... now there needs to be clarification on those tests they were designed by the previous government so they weren't necessarily testing things that we may have tested if we were designing the parameters of that research."

<sup>29</sup> <http://www.smh.com.au/articles/2008/12/09/1228584820006.html> Sydney Morning Herald, "Labor plan to censor internet in shreds", Asher Moses, 9 December 2008

<sup>30</sup> <http://www.abc.net.au/news/stories/2008/12/24/2454789.htm?section=justin> ABC Online, "Net filtering trial delay 'another Govt bungle'", Adrian Crawford, 24 December 2008