

**Joint Select Committee on Broadcasting Legislation**

**Answer to Question on Notice**

**Department of Broadband, Communications and the Digital Economy**

**Senator the Hon Barnaby Joyce asked**

1. What work has the Department done to ascertain the likelihood of mergers occurring between metropolitan and regional broadcasters if the reach rule is removed? What would be the likely effects if the regional broadcasters were to merge with the metropolitan broadcasters?
2. In the Department's discussions with the Office of Best Practice Regulation, did the OBPR advise the Department that a Regulatory Impact Statement would be needed?
3. Has the removal of the reach rule discussed by Cabinet? If so, when did that discussion occur? Was a Cabinet paper discussing the removal of the reach rule circulated to other Cabinet Ministers prior to a discussion by a Cabinet? If so, when were those papers circulated?
4. What proportion of Australians watch TV predominantly on the internet? What proportion of Australians watch most of their TV news on the internet?
5. How many non-capital city separate TV news services are there at the moment? That is, how many areas have their own news separately produced in a town outside a capital city?
6. What additional obligations will the Government place on regional broadcasters if the reach rules are removed? Will the Government require broadcasters impose more stringent requirements on broadcasters to produce material of local significance?
7. Has the Department prepared a requirement for broadcasters to advise any potential purchaser of it about the existence of the local content obligations? If so, what is that requirement in detail?
8. I refer you to a quote from Minister Conroy on *Insiders* yesterday:

*I mean around the world: in the US, the top two newspaper groups cover about 14 per cent. Even in Canada, a country more akin to ourselves in terms of geography, 54 per cent coverage from the top two. In Australia it is 86 per cent coverage. We've already got one of the most concentrated media sectors in the world and we don't believe it should be allowed to be shrunk any further. (Stephen Conroy, *Insiders*, 17 March 2013).*

Why is the Government proposing to remove a rule that might lead to more concentration in the media market given that the Minister does not think it should be "shrunk any further"?

9. Given that the Minister has stated that “we don’t believe [the media sector] should be allowed to be shrunk any further”, will the Public Interest Media Advocate reject any proposal for a merger between a metropolitan and regional broadcaster?
10. Is there any provision in the *Public Interest Media Advocate Bill 2013* which requires the Public Interest Media Advocate to consider the impact of a proposed merger on the provision of local content?
11. How would the Public Interest Media Advocate weigh the importance of local content against other public interest objectives?
12. Did the Convergence Review take separate submissions from WIN, Prime and Southern Cross on their individual opinion on the removal of the reach rule? If not, why was this not canvassed in detail during that review?
13. Does the government plan to remove the reach rule even if the Public Interest Media Advocate Bill does not pass?

## **Answers**

1.

The department is aware of press speculation but has no additional information on the detail or likelihood of mergers. The department has prepared a table to the Committee to show the potential impacts of some merger scenarios. Any analysis of merger activity is speculative at this stage – it would be up to the ACMA, ACCC and Public Interest Media Advocate (if relevant legislation is passed by the Parliament) to consider the details of such proposals.

2.

A Regulatory Impact Statement exemption for Convergence Review proposals was provided on the basis that extensive consultation had already been undertaken as part of the Convergence Review and the Independent Inquiry into the Media and Media Regulation. The recommendation to remove the 75 per cent reach rule was included in the recommendations of the Convergence Review in conjunction with rationalising other diversity rules and the introduction of a national public interest test.

3.

The department is not in a position to comment on Cabinet business.

4.

The department has provided the Committee with Chapter 1 of the ACMA’s Communications Report 2011-12 which provides some information on these issues. While television and radio remain dominant in relation to access to content, this has changed over recent years and is predicted to evolve further, particularly amongst younger demographics.

5.

Regional commercial television licensees are required, as a condition of their licence, to provide local news programs they terrestrially broadcast in their licence area to the providers of the Viewer Access Satellite Television (VAST) service. There are currently around 40 such services available from the VAST service. The department does not hold information on how or where these programs are produced. The commercial television broadcasters would be able to provide further detail on news services that are provided in regional Australia, including the type of service and from where these are produced.

6.

As per the attached *Briefing Note on 75% reach rule*, which was tabled in the Senate on 14 March and has been provided to the Committee Secretariat, the government proposes in conjunction with the removal of the 75 per cent reach rule, to impose an additional condition on each licensee in a regional aggregated commercial television licence that requires the licensee to provide a binding undertaking to the ACMA within 28 days after the commencement of the provisions. The undertaking must be to the effect that the licensee will, within 5 days of becoming aware, notify any person who comes into a position to exercise control of the licence that the licence is subject to a condition requiring the broadcast of material of local significance.

7.

See the answer to question 6 and the attached *Briefing Note on 75% reach rule*.

8.

The Government is not at this stage proposing to remove the 75 per cent audience reach rule. It has referred the matter to the Joint Select Committee on Broadcasting Legislation for inquiry and indicated it would include this amendment in the general package if the Committee is able to come up with a quick resolution on this issue. The Government's proposals include the introduction of a Public Interest Test against which changes in control would also be assessed.

9.

The public interest test will only apply to 'news media voices' whose audience or subscriber number is above a threshold.

The Advocate will decide whether to approve transactions involving significant news media voices. The Advocate may only approve a transaction if satisfied that the transaction would not result in a substantial lessening of diversity of control of registered news media voices or the public benefit outweighs any detriment constituted by any lessening of diversity of control.

10.

The public interest test does not currently require that the Advocate must in all circumstances consider the impact of a proposed merger on the provision of local content.

The second limb of the public interest test enables the Advocate to approve a transaction where satisfied that the benefit of the transaction outweighs or would outweigh, the detriment to the public caused by any lessening of diversity of control. In assessing and weighing the potential public benefits, whether a lessening of diversity of control is substantial, or whether to accept an undertaking submitted by an applicant, the Advocate might take into account, where relevant, a range of issues including whether undertakings concerning local content have been provided.

11.

This would be a matter for the Public Interest Media Advocate to consider in light of the circumstances of the individual transaction.

12.

Extensive consultation with stakeholders was undertaken throughout the course of the Convergence Review, and all stakeholders were given the opportunity to engage with the review.

For instance all stakeholders were invited to make submissions on the range of issues facing the media environment, such as the effectiveness of existing media diversity rules, including the 75 per cent audience reach rule and whether it is still appropriate.

Neither Prime Media Group nor WIN Network made separate, individual submissions to the Convergence Review consultation processes.

In their submission to the Review's 'open call for submissions,' Southern Cross Austereo, in noting the changed environment since the *Broadcasting Services Act 1992* was established, stated that "there is no justification for a continuance of a population reach rule applicable to commercial television."

13.

This is a matter for the government to consider following receipt of the Committee's report.

**Briefing Note on 75% reach rule**

**The '75% audience reach rule' proposal**

Subsection 53(1) of the *Broadcasting Services Act 1992* (BSA) contains the current '75% audience reach rule'. This provision states:

A person must not be in a position to exercise control of commercial television broadcasting licences whose combined licence area populations exceed 75% of the population of Australia.

The Government proposes to repeal this provision.

**Related local content licence condition**

Under section 43A of the BSA, commercial broadcasters in regional aggregated commercial television licence areas in New South Wales, Victoria, and Queensland, and in Tasmania, are subject to a local content related licence condition that requires them to provide a minimum level of *material of local significance* in specified *local areas*. The Australian Communications and Media Authority (ACMA) is responsible for defining the italicised terms (as well as the minimum level of content required).

In conjunction with the removal of the 75% audience reach rule, the Government proposes to impose an additional licence condition on each licensee in a regional aggregated commercial television licence area that requires the licensee to provide a binding undertaking to the ACMA within 28 days after commencement of the provisions. The undertaking must be to the effect that the licensee will, within 5 days of becoming aware, notify any person who comes into a position to exercise control of the licence that the licence is subject to a condition requiring the broadcast of material of local significance.

**Briefing Note on 75% reach rule**

**Proposed Amendments**

**4 After section 43A**

Insert:

**43AAA Undertaking relating to section 43A licence condition**

- (1) A regional aggregated commercial television broadcasting licence is subject to the following conditions:
  - (a) within 28 days after the commencement of this section, the licensee will give the ACMA a written undertaking that meets the requirements set out in subsection (2);
  - (b) the licensee will comply with that undertaking.
- (2) The undertaking must state that, if the licensee becomes aware that a person who was not in a position to exercise control of the licence has become in a position to exercise control of the licence, the licensee will:
  - (a) notify the person, in writing, that the licensee is subject to the condition of the licence imposed in accordance with subsection 43A(1); and
  - (b) do so within 5 days after becoming so aware.
- (3) In this section:

*regional aggregated commercial television broadcasting licence* has the same meaning as in section 43A.

**5 Section 52**

Repeal the section.

**6 Subsection 53(1)**

Repeal the subsection.

**7 Subsection 53(2)**

Omit "(2)".

**8 Subsections 55(1) and (2)**

Repeal the subsections.

Briefing Note on 75% reach rule

Existing Provision on material of local significance

**Broadcasting Services Act 1992**

43A Material of local significance—regional aggregated commercial television broadcasting licences

- (1) The ACMA must ensure that, at all times on and after 1 January 2008, there is in force under section 43 a condition that has the effect of requiring the licensee of a regional aggregated commercial television broadcasting licence to broadcast to each local area, during such periods as are specified in the condition, at least a minimum level of material of local significance.
- (2) For the purposes of subsection (1), a *regional aggregated commercial television broadcasting licence* is a commercial television broadcasting licence for any of the following licence areas:
  - (a) Northern New South Wales;
  - (b) Southern New South Wales;
  - (c) Regional Victoria;
  - (d) Eastern Victoria;
  - (e) Western Victoria;
  - (f) Regional Queensland;
  - (g) Tasmania.
- (3) The condition must define *local area* and *material of local significance* for the purposes of the condition. The definition of *material of local significance* must be broad enough to cover news that relates directly to the local area concerned.
- (4) To avoid doubt, this section does not:
  - (a) prevent the condition from setting out different requirements for different types of material; or
  - (b) prevent the condition from specifying periods that recur (for example, the hours between 7 am and 10 am Monday to Friday); or
  - (c) prevent the condition from setting out different requirements for different periods; or
  - (d) create any obligations under subsection 43(2) that would not exist apart from this section.
- (5) Subsection 43(5) does not apply to the condition.
- (6) This section does not limit the powers conferred on the ACMA by section 43 to impose, vary or revoke other conditions.