



Australian Government
Department of Communications

Ms Lyn Beverley
Committee Secretary
Senate Finance and Public Administration Committee
PO Box 6100
Canberra ACT 2600

Dear Ms Beverley

Inquiry into Omnibus Repeal Day (Autumn 2014) Bill 2014

The Department of Communications (**Department**) welcomes the opportunity to respond to issues raised by FreeTV Australia (**Free TV**) and News Corp Australia (**News Corp**) in submissions to the Senate Finance and Public Administration Committee's inquiry into the *Omnibus Repeal Day (Autumn 2014) Bill 2014* (**Bill**).

Background to Communications portfolio provisions of the Bill

Amendments to Communications portfolio legislation comprise approximately half the content of the Bill. The reasons for this are numerous. Of specific note is the consultation process that has been undertaken by the Department of Communications and the Australian Communications and Media Authority (**ACMA**) in relation to deregulation initiatives since September 2013. In particular:

- The Minister issued a request in November 2013 to communications industry stakeholders to provide suggestions for both short term and long term deregulatory reform initiatives. Stakeholders invited to make submissions included business, industry bodies, regulators and consumer advocate groups.
- More than 30 submissions were received in response to the request referred to above. The Minister, the Parliamentary Secretary and the Department engaged in discussions with a number of the stakeholders on their responses.
- The Minister established his Ministerial Advisory Council on Communications earlier this year. Although the Minister did not provide a draft of the Bill to the members of the Council, he and the Parliamentary Secretary did discuss the general themes of the Bill with those members. Those members were supportive.

Therefore, although the Department did not undertake specific consultation in relation to the Communications portfolio provisions of the Bill, those provisions were heavily influenced by the significant consultation on the deregulation agenda outlined above. The specific issues raised in the News Corp and FreeTV submissions were discussed by the Department with FreeTV prior to the introduction of the Bill into Parliament. The comments below reflect the discussions held with FreeTV at that time.

Reporting on directorships

Both News Corp and FreeTV have raised issues around the proposed changes to section 62 of the *Broadcasting Services Act 1992* (**Broadcasting Act**) regarding annual notification of directorships.

News Corp has expressed a preference that item 212 of Schedule 2 to the Bill be amended to repeal subsection 62(3) of the Broadcasting Act, rather than repeal and substitute the subsection as currently proposed. This is on the basis that the directorship limits contained in Division 3 of Part 5 of the Broadcasting Act apply only to television, radio and television/datacasting, and not to corporate newspaper publishers.

We, of course, agree with News Corp that the directorship limits in the Broadcasting Act do not apply to newspaper publishers. But newspaper company directorships are nevertheless a relevant factor for assessing compliance with the statutory control rules, particularly the cross-media diversity scheme in Part 5 of the Broadcasting Act. For example, the presence of one or more directors, or a number of directors known to be associates, on boards across a number of media companies may provide an early indication of a control relationship. Therefore, at the present time, we do not consider that there is merit in amending section 62 in the manner that has been suggested by News Corp.

FreeTV has suggested that section 62 should be repealed in its entirety on the basis that information regarding directorships of broadcasting and datacasting licensee companies is already reported to the Australian Securities and Investments Commission (**ASIC**).

ASIC collects information to assess compliance with very different obligations than the ACMA. Accordingly, we do not consider that the complete repeal of section 62 would be appropriate.

The ACMA, in consultation with the Department, has commenced a program of review of statutory reporting obligations in the context of the government's deregulation agenda. This will include consideration of any legislative changes that should be made. The ACMA's review program will of necessity result in further consideration of the need for section 62.

Notification of changes in control

Both News Corp and FreeTV have suggested that items 215 and 217 of Schedule 2 to the Bill, containing timeframes within which certain changes in control must be notified to the ACMA, should be amended to provide for notification within 10 *business* days rather than 10 calendar days (as proposed) or 5 calendar days (current).

Relevant licensees, publishers and incoming controllers will be very likely to have advance notice of transactions with the potential to result in changes of control. This would be the case as it would be expected that relevant transactions would be examined carefully to ensure that there was no potential for breach of the statutory control rules in the Broadcasting Act. This allows consideration, prior to the relevant transaction, of whether a change in control will occur such that notification to the ACMA will be required. Accordingly, there is limited need for an additional period of time to be allowed for such notification to occur.

FreeTV has also separately indicated that the Bill should be amended to remove the requirement for both an incoming controller and a licensee to notify the ACMA (separately) about certain changes in control. The Department's view is that it remains appropriate for both to have this obligation, to ensure that all relevant notifications are made and there are no inadvertent omissions, particularly as some licensees have a large number of controllers. In any event, we understand that, as a matter of practice, licensees, publishers and controllers are able to provide notification using a single form where the notification relates to a single change of control. Allowing for such a single notification (covering multiple parties) per transaction reduces the administrative burden on parties subject to section 63 and 64 of the Broadcasting Act. Accordingly, we do not agree that further amendments are required at this time. Again, this position is able to be reconsidered as part of the general review of statutory reporting obligations.

Audited accounts

FreeTV has expressed a preference that the Bill be amended to exempt joint venture companies holding commercial television broadcasting licences, issued under section 38B or 38C of the Broadcasting Act, from the requirement in s. 205B of that Act to provide audited accounts (rather than the ACMA being empowered to exempt classes of licensee by legislative instrument as is currently proposed).

The Department considers that the change suggested by FreeTV would favour particular classes of licensee to the potential exclusion of others who could also claim that they were entitled to an equivalent exemption. It is therefore more appropriate to provide the ACMA with the flexibility to respond to evidence and circumstances which may change from time to time.

Yours sincerely

~~Ms Angela~~ Flannery
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Department of Communications

17 April 2014