



21 March 2016

Senate Environment and Communications Legislation Committee

Inquiry into the provisions of the Broadcasting Legislation Amendment (Media Reform) Bill 2016 (the 'Bill')

1. About Prime Media Group

Prime Media Group is an ASX-listed company with commercial television licences in regional NSW, regional Victoria, the ACT, Mildura, the Gold Coast area of Southern Queensland, and regional WA.

Prime has an affiliation agreement with the Seven Network for the provision of programming for 3 general entertainment channels that are broadcast to the abovementioned regional areas. In addition to the general entertainment channels, Prime broadcasts a racing channel and has datacasting licences for two shopping and information channels.

Prime also owns, through two joint ventures with WIN Corporation, s.38B licences in regional WA and in Mildura. The s.38B licences broadcast the Network Ten signal (3 general entertainment channels) under an affiliation agreement with Ten.

Prime has offices located in the following regional centres:

- Northern NSW: Coffs Harbour, Gold Coast, Lismore, Newcastle, Port Macquarie, Tamworth, Taree;
- Southern NSW: Batemans Bay, Dubbo, Nowra, Orange, Wagga Wagga, Wollongong;
- Victoria: Albury-Wodonga, Ballarat, Bendigo, Mildura, Shepparton, Traralgon, Warrnambool;
- Western Australia: Albany, Broome, Esperance, Geraldton, Kalgoorlie, and Karratha; and
- in Canberra, Sydney, Melbourne, Brisbane and Perth.

Prime employs over 450 staff and owns or operates over 150 transmission towers located in regional, rural and remote Australia.

2. About Save Our Voices

In mid-2015, the four regional-only broadcasters - Prime, WIN, Southern Cross and Imparja - launched the "Save Our Voices" campaign, which aimed to highlight the importance of local media to regional and rural Australians and to raise public awareness of the challenges facing regional media operators. "Save Our Voices" has prosecuted the case for media reform on the basis that the current media laws are anachronistic and that the future of local news services was under threat unless there was urgent regulatory change that would enable regional television broadcasters to organise themselves in a more economically efficient manner.

We are united in our support of the repeal of the 75% Audience Reach Rule and the 2 out of 3 cross media control rule.



3. Abolition of 75% Audience Reach Rule

The 75% Audience Reach Rule (**‘Reach Rule’**) states that: “A person, either in their own right or as a director of one or more companies, must not be in a position to exercise control of commercial television broadcast licences whose total licence area population exceeds 75% of the population of Australia”¹.

Prime supports the repeal of Subsections 53(1), 55(1) and 55(2) of the *Broadcasting Services Act* and to omit Subsection 53(2) as contemplated in Schedule 1 of the Bill.

Prime has been a vocal and consistent supporter of the repeal of the Reach Rule. The rule has become increasingly irrelevant since the advent of the internet, and Prime reaffirms the observations made in its written submission and in the evidence it gave to the Joint Select Committee on Broadcasting Legislation in March 2013. It should be noted that the Committee unanimously recommended abolition of the 75% audience reach rule² in June 2013, confirming the earlier (and broader reaching) recommendations of the 2012 Convergence Review³.

Since 2013, however, with no change to the regulatory framework, the redundancy of the Reach Rule is now more pronounced. The audio-visual entertainment market is saturated with alternatives to traditional broadcast media that can all reach 100% of the Australian population, including video on demand services operated by:

- international giants, such as Netflix, You Tube, Google and Apple;
- local start-ups, such as Presto⁴, Stan⁵ and Fetch TV;
- our national broadcasters – with catch up services offered by the ABC’s iView and SBS on Demand;
- FOXTEL; and
- the three metropolitan free-to-air broadcasters – who offer PLUS7, TenPlay and 9JumpIn and are live streaming their metropolitan broadcast signals over the internet and potentially into all Australian households, including into Prime’s regional licence areas.

Prime’s business scope is limited to transmission, infrastructure, television advertising airtime sales and news operations. This is a direct consequence of the Hawke Government policy of regional television equalisation, often referred to as “aggregation”, which resulted in a phasing in of two additional television channels in each of the regional markets where aggregation was to occur.

The concept of aggregation was designed to give regional viewers access to the same channels on offer in metropolitan markets, where previously regional viewers only had one

¹ Subsection 53(1) *Broadcasting Services Act 1992*

² *Joint Select Committee on Broadcasting Legislation: Three Broadcasting Reform Proposals*. Recommendation 1: “The Australian Government introduce legislation to abolish the 75% audience reach rule, provided there is legislation or legally enforceable undertakings to safeguard local content in regional Australia. Prior to the introduction of the legislation, a clear definition of local content needs to be established which ensures regional viewers have access to appropriate levels of high quality, locally devised, and locally presented programming”

³ *Convergence Review Final Report*, p.xvii

⁴ A joint venture between Seven West Media and Foxtel

⁵ A joint venture between Nine Entertainment Co and Fairfax Media



commercial channel in their area. Until the late 1980s and early 1990s when regional licence areas were served by a single (or “solus”) commercial television station, regional broadcasters could “cherry pick” program content from the three metropolitan networks, generally at low cost. These single regional television stations were financially strong and capable of sustaining a large investment in the production of local programs such as local news bulletins, children’s shows, sporting telecasts (including regionally based professional golfing tournaments), local awards nights and presentations, and documentaries.

While aggregation provided regional viewers with a more varied slate of programs consistent with metropolitan networks, it substantially reduced the profitability of regional television stations and ultimately led to the demise of uniquely local television programming across regional Australia. Almost thirty years later the regional television industry is facing significant structural challenges, which include:

- A fall in the regional advertising market – with a loss of \$65 million in combined advertising revenue in the past 3 years;
- A decline in actual audience numbers year on year with the aggregated markets of Queensland, northern and southern NSW and Victoria losing 6.9% of the total audience, a decline of 10% for people aged 25-54 and a fall of almost 15% in the audience for people aged 16-39;
- Affiliation fees payable by regional broadcasters to metropolitan networks continue to rise year on year; and
- Metropolitan network live streaming and catch up TV services can reach 100% of Australians, so regional broadcasters are competing for audience with the very organisations from whom they buy their content under the affiliation model.

Regional broadcasters, including Prime do not own any intellectual property, except the local news services they produce. They do not have the capacity, flexibility or scale to innovate or respond to the rapidly evolving media landscape. Prime cannot use the content it receives from the Seven Network or Network Ten under the affiliation arrangements to introduce streaming or catch up services, or enter into joint ventures to explore non-broadcasting opportunities to exploit content. Unlike metropolitan networks, Prime is not a production company; it does not acquire content from Hollywood studios or major sporting bodies, and it has no digital rights in any of the programming it broadcasts under its affiliation arrangements to regional and rural Australians.

The fact that Australians living in regional and rural Australia can now watch commercial free-to-air television delivered from the metropolitan broadcasters via the internet – which:

- does not include any local regional news; and
- does not include local regional advertising;
- does not include any local community service announcements; and
- is not subject to regulatory safeguards and advertising controls contained in the Commercial Television Industry Code of Practice (because it is not a “broadcast”),

demonstrates profoundly why the Reach Rule needs to be retired.



Prime further notes that the current “reach” of the three major commercial broadcasters is, according to the ACMA⁶, as follows:



73.55% of the population:
Sydney, Melbourne,
Brisbane, Adelaide, Perth,
Darwin and NBN (northern
NSW)



66.7% of the population:
Sydney, Melbourne,
Brisbane, Adelaide and Perth



73.18% of the population:
Sydney, Melbourne,
Brisbane, Adelaide, Perth,
and Seven Qld (regional
Queensland)

The percentages set out above (and published by the ACMA) are based on the 2011 ABS census data when the population was 21,507,717. The population of Australia is now in excess of 24 million, having reached that milestone on 16 February 2016.

As the bulk of the population growth is likely to be in metropolitan licence areas, it is possible that the 2016 census may in fact reveal that two of the three metropolitan networks could be, with their current licences, in breach of the Reach Rule if it is not repealed beforehand.

There is incontrovertible evidence to demonstrate that regional television services benefit from scale and the synergies that can be achieved when they part of a metropolitan network, especially in relation to the provision of local news services. NBN, operating in the northern NSW licence area and producing 6 local nightly news services, is owned by Nine Entertainment, and Seven Queensland which operates in regional Queensland – and produces 7 local nightly news services, is a wholly owned subsidiary of Seven West Media.

If the Reach Rule is abolished it opens up opportunities for regional and metropolitan broadcasters to merge and effectively create ‘national’ commercial free-to-air broadcasters on the same scale as the ABC, SBS and FOXTEL, with additional regulatory safeguards proposed to preserve local content as set out in Schedule 3 of the Bill.

4. Abolition of 2 out of 3 Cross Media Ownership Rule

Prime supports the abolition of the 2 out of 3 cross media control rule (**‘2 out of 3 Rule’**) as contemplated in Schedule 2 of the Bill.

The logic of the 2 out of 3 Rule made sense when “media” consisted of Australian-based radio, television and associated (printed) newspapers. The Convergence Review recommended its abolition⁷, and Prime believes that at a time when there are now hundreds of independent media platforms and voices spanning Australia, with no concept of borders – or indeed licence areas, it is obsolete.

⁶ <http://www.acma.gov.au/Industry/Broadcast/Media-ownership-and-control/Ownership-and-control-rules/statutory-control-rules-media-ownership-control-acma>

⁷ *Convergence Review Final Report*, p.xvii



Removing this regulatory impediment will give Australian media companies an opportunity to grow, merge or joint venture with other Australian (and overseas) media companies, subject to the other media ownership and control laws that remain in the *Broadcasting Services Act* and the regulatory controls in the *Competition and Consumer Act 2010*, the *Foreign Acquisitions and Takeovers Act 1975* and the *Foreign Acquisitions and Takeovers Regulations 2015*.

Because of the proliferation of internet-based media companies, “media” must now be viewed as a global construct. Australian media companies are competing for audiences and advertising revenue with international juggernauts, and at the same time, unlike their international counterparts they:

- continue to tell Australian stories (for which there are Australian content quotas prescribed⁸ that broadcasters must adhere to);
- pay significant licence fees that are out of kilter with those payable in the rest of the world⁹; and
- are subject to a stringent regulatory regime that does not capture international or Australian internet content providers.

By way of example, below is the market capitalisation of some of the more prominent global media companies and ASX listed Australian media companies:

| Company | Market capitalisation ¹⁰ |
|--------------------------------|-------------------------------------|
| Apple | \$594 billion* |
| Google/You Tube (Alphabet Inc) | \$519 billion* |
| Facebook | \$320 billion* |
| Netflix | \$43 billion* |
| News Corporation | \$9.96 billion |
| Fairfax Media | \$1.89 billion |
| Seven West Media | \$1.57 billion |
| Nine Entertainment Co Holdings | \$1.41 billion |
| Southern Cross Austereo | \$868 million |
| APN News & Media | \$612 million |
| Network Ten | \$374 million |
| Prime Media | \$148 million |

*US Dollars

⁸ S.121G(1) of the *Broadcasting Services Act*: For primary commercial television broadcasting services, Australian programs must be at least 55% of total hours of programming transmitted by a licensee in a year during targeted viewing hours (ie between 6am and midnight (s 121G(4))).

S.121G(2) of the *Broadcasting Services Act*: For all other commercial television broadcasting services (not primary), the total hours of Australian programs being transmitted by a licensee in a year during targeted viewing hours (ie between 6am and midnight (s 121G(4))) must not be less than 1460.

⁹ Australian licence fees are 4.5% of gross revenue, whereas in the US the licence fees are 0.06% of revenue and in the UK they are 0.18% of revenue.

¹⁰ As at close of trade on ASX 18 March 2016 and on NASDAQ 17 March 2016



The sheer size of the international and metropolitan-based media companies in comparison to Prime highlights the commercial pressure facing regional television broadcasters who compete for audiences and advertising revenue with some of the most successful businesses in the country - and the world.

Prime draws the Committee's attention to the erosion of its market capitalisation in recent years:

- **March 2013:** Prime's market capitalisation was \$406 million
- **March 2014:** Prime's market capitalisation was \$373 million
- **March 2015:** Prime's market capitalisation was \$318 million
- **March 2016:** Prime's market capitalisation was \$148 million (which is a fall of 57% in 12 months).

There has been some concern about the threat to media diversity if the 2 out of 3 Rule is repealed. The long term risk of not repealing this rule could be the failure of some Australian media companies listed above – which from a public policy perspective could adversely impact the number of Australian voices and the number of Australian jobs that the media sector presently supports.

In terms of access to news, the internet has meant that Australians can access all international news websites, and are able to avail themselves of local online news services such as The Guardian, BuzzFeed, Huff Post, Daily Mail, Crikey, The Conversation, New Matilda, and Mamma Mia – none of which are owned by traditional media companies such as Fairfax Media, News Corporation or APN.

To suggest that media diversity is at risk if the 2 out of 3 Rule is repealed, fails to acknowledge the significant structural and technological changes in the media landscape since 1992.

5. Local programming requirements for regional commercial television broadcasting licensees

Prime supports amending the local programming requirement for regional commercial television broadcasting licensees on the occurrence of a trigger event as proposed in Schedule 3 of the Bill.

Prime does not however support the definition of a trigger event as happening on a change of control, as is presently set out in the Trigger Event provision (61CV).

A. Definition of Trigger Event

Prime notes that the Explanatory Memorandum ('EM')¹¹ states that the Reach Rule "has the practical effect of preventing mergers between any of the predominantly metropolitan commercial broadcasters (Seven, Nine and Ten) and any of the regional commercial television licensees (Prime, WIN and Southern Cross)"¹² and that repeal of the Reach Rule

¹¹ Broadcasting Legislation Amendment (Media Reform) Bill 2016 Explanatory memorandum, p.1

¹² Ibid



will “allow consolidation within the commercial television sector to compete in an environment where audiences can readily access premium content online.”¹³

In addition to what is stated in the EM, the purpose of the trigger event was further explained in the Second Reading of the Bill:

“The requirement for the licensee to be part of a commercial television group that reaches over 75 per cent of the population ensures that the additional local content obligations are only 'triggered' after the licensee is in a position to benefit from the additional scale and efficiency that the media reforms will allow.”¹⁴

Prime submits that the 61CV Trigger event provision in the Bill is flawed because it has unintended consequences that do not align with concepts outlined in the EM or the Second Reading of the Bill.

The following two issues need to be addressed:

(a) Deemed Control versus Actual Control:

Under the current drafting, a ‘person’ could start to be in a position to exercise “control” a regional commercial television broadcasting licence and, immediately after that event control 2 or more commercial television broadcasting licences with the combined licence area populations exceeding 75% of the population, by acquiring just over a 15%¹⁵ shareholding in a regional commercial television broadcasting licence.

Having a 15.01% interest in (or ‘deemed control’ of) a regional commercial television broadcasting licence is unlikely to yield any “consolidation”¹⁶, “additional scale” or “efficiency”¹⁷, and clearly is not the intention of the Bill as outlined in the EM and Second Reading.

Prime submits that a preferable methodology would be to use the actual (as opposed to deemed) control parameters set out in the *Broadcasting Services Act*¹⁸, without reference to a 15% ‘deemed control’ threshold, would be more appropriate as set out below:

- “(d) *the person, either alone or together with an associate of the person, is in a position to:*
- (i) *veto any action taken by the board of directors of the licensee or the company; or*
 - (ii) *appoint or secure the appointment of, or veto the appointment of, at least half of the board of directors of the licensee or the company; or*
 - (iii) *exercise, in any other manner, whether directly or indirectly, direction or restraint over any substantial issue affecting the management or affairs of the licensee or the company; or*

¹³ Ibid

¹⁴ Broadcasting Legislation Amendment (Media Reform) Bill 2016 Second Reading Speech, Wednesday, 2 March 2016, p.3

¹⁵ Broadcasting Services Act, Schedule 1—Control and ownership of company interests, Part 3, section 6

¹⁶ Broadcasting Legislation Amendment (Media Reform) Bill 2016 Explanatory memorandum, p.1

¹⁷ Broadcasting Legislation Amendment (Media Reform) Bill 2016 Second Reading Speech, Wednesday, 2 March 2016, p.3

¹⁸ Broadcasting Services Act, Schedule 1—Control and ownership of company interests, Part 2, sections 1(d) and 1(e)



(e) *the licensee or the company or more than 50% of its directors:*

(i) *act, or are accustomed to act; or*

(ii) *under a contract or an arrangement or understanding (whether formal or informal) are intended or expected to act;*

in accordance with the directions, instructions or wishes of, or in concert with, the person or of the person and an associate of the person acting together or, if the person is a company, of the directors of the person.”

(b) Control not two way:

The draft legislation only contemplates the scenario where a metropolitan commercial television broadcasting licence holder starts to be in a position to control a regional commercial television broadcasting licence, not the other way around.

On the current drafting, this means that if a regional commercial television broadcasting licensee starts to be in a position to exercise ‘control’ of a metropolitan commercial television broadcasting licence and immediately after that event controls 2 or more commercial television broadcasting licences with the combined licence area populations exceeding 75% of the population, it would not be a “trigger event” and that entity would not be required to increase the material of local significance it provides.

This anomaly needs to be rectified.

B. Points System

Prime supports the changes to local programming “points” for material of local significance that come into operation 6 months after the trigger event as set out in 61CW and 61CX of the Bill for aggregated and non-aggregated licence areas.

Prime complies with the existing licence condition¹⁹ and in many areas, significantly exceeds the minimum requirements (including in regional Western Australia, where there is presently no licence condition). Prime has no plans to reduce its existing local news services.

¹⁹ *Broadcasting Services (Additional Television Licence Condition) Notice 2014*

PRIME MEDIA GROUP



VICTORIAN LICENCE AREA



WESTERN
AUSTRALIAN LICENCE
AREA

REGIONAL WA: only WIN and Prime hold licences in regional WA and the Ten signal is carried via a joint venture between WIN and Prime (a 33 licence)

Regional Western Australia

REGIONAL WA NEWS:
30 MIN BULLETIN
WEEKNIGHTS
(PRODUCED IN
BUNBURY). SOURCED
FROM 8 LOCATIONS
ACROSS WA



No licence condition
in this market to
provide any 'material
of local significance',
including local news