



21 March 2016

## **Senate Environment and Communications Legislation Committee**

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

#### **1. About Southern Cross Austereo (SCA)**

Southern Cross Austereo is a leading media and entertainment company with the ability to reach 95% of the Australian population each week through our regional free-to air television stations, metropolitan radio stations, regional radio stations and digital platforms.

##### **1.1 Radio**

SCA operates the largest network of commercial radio stations in Australia centred on the *Hit Network* and *Triple M*. SCA has 78 stations across metropolitan and regional Australia, including New South Wales, Queensland, Victoria, South Australia, Tasmania, Western Australia and the Australian Capital Territory.

The map at Annexure A indicates the locations of the stations.

##### **1.2 Digital**

SCA's brands particularly based around the *Hit Network* and *Triple M* have a strong digital presence with DAB+ digital radio, online streaming of our stations and the creation of stand-alone online channels such as *Triple M Classic Rock*, and *Buddha Radio*. SCA has more than 80 websites, a strong presence on social media, particularly, Facebook and Twitter and offers podcasts of favourite shows.

##### **1.3 Free-to-air television**

SCA is licensed to broadcast free-to-air television into thirty regional sub-markets (population centres) across northern New South Wales, southern New South Wales, regional Queensland, regional Victoria, Tasmania, the Australian Capital Territory, the Spencer Gulf region of South Australia, Darwin and the remote regions of Australia.

Through affiliation agreements, SCA purchases the vast majority of its programming from the metropolitan networks and using more than 350 transmission towers located across the country, retransmits that programming into its licence areas. SCA pays a proportion of its advertising revenue to the metropolitan networks in return for supply of their programming.

While SCA primarily broadcasts the Network Ten channels, it also has affiliation agreements with Seven West Media and Nine Entertainment Company to broadcast the Seven and Nine into a number of licence areas.



21 March 2016

The map at Annexure A shows the SCA television broadcasts and the relevant affiliates.

While the majority of the licences are operated by SCA solely, the Ten Tasmania licence is a joint venture with WIN, the TEN Darwin service is a joint venture with Nine and the CDT Ten service in remote Central and Eastern Australian is a joint venture with Imparja Television.

## 2. Local content

In addition to the programs supplied by the metropolitan networks, SCA also produces and broadcasts local content as part of its services.

In the five aggregated markets of northern New South Wales, southern News South Wales, regional Queensland, regional Victoria and Tasmania, SCA is subject to a licence condition imposed under the Broadcasting Services Act 1992 requiring it to broadcast minimum levels of “material of local significance”.

SCA consistently meets the quota and in cases exceeds the licence condition in the five aggregated markets. The ACMA noted in its most recent annual report<sup>1</sup> that during the reporting period there were “no complaints or investigations involving compliance with the local content licence condition”.

SCA offers:

- local news updates to local areas across regional Queensland, southern New South Wales, northern New South Wales, and regional Victoria markets. News updates provided to Cairns, Townsville, Mackay, Rockhampton, Bundaberg, Toowoomba, Sunshine Coast, Gold Coast, Tamworth, Coffs Harbour/Port Macquarie, Newcastle, Canberra, Wollongong, Wagga Wagga, Orange/Dubbo, Albury, Ballarat, Bendigo, Gippsland, Shepparton and Tasmania (on TDT (Ten) as part of a joint venture with WIN Network) are produced in Canberra;
- a 60 minute news service broadcast seven nights a week in Tasmania on Southern Cross TV (Seven), produced in Hobart and Launceston. This is in excess of the licence condition imposed in Tasmania.

In addition, SCA also offers a number of news services in areas that are not subject to a licence condition. SCA offers:

- a 30 minute weeknight news service into Broken Hill and the Spencer Gulf. This news is produced in Canberra, sourced from reporters located in Port Pirie, Port Augusta, Port Lincoln, Whyalla and Broken Hill;

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<sup>1</sup> p. 75 ACMA Annual Report 2014-2015, tabled in Parliament on 28 October 2015



21 March 2016

- local news updates for Remote Central and Eastern Australia and for Darwin.

### **3. Save our Voices Campaign**

Levels of local content on free-to-air television in regional Australia have fallen in the past three decades.

Starting in the late 1980s the process of aggregation of regional television meant that viewers were for the first time offered a choice of three commercial television stations whereas previously they had one. While viewers had access to a wider variety of programs via the metropolitan networks, over time, the result of aggregation was the substantial reduction in profit of the regional broadcasters and the gradual reduction in local programs made for the local market including news, current affairs, children's shows and local sports coverage.

Local programming became less sustainable under the affiliation model as the fees regional broadcasters were forced to pay to metropolitan networks escalated dramatically.

As discussed in more detail below, as time has passed local programming has continued to become less sustainable.

Conscious that the outdated regulatory regime that applies to regional free-to-air television is contributing to this decline, in 2015 the regional networks SCA, Prime Media, WIN Network and Imparja joined forces to create the Save our Voices Campaign. The campaign seeks to raise awareness with regional viewers and their Parliamentary representatives that the outdated media ownership laws should be repealed to assist regional broadcasters to provide local programming in their local areas.

The campaign sought to raise awareness through advertising on our own medium, namely regional free-to-air television and garnering media coverage particularly local media through television, radio and social media.

The proponents of the Save our Voices Campaign unanimously agree that the 75% reach rule and the "two out of three rule" are outdated and are hindering their ability to produce local content.

### **4. Abolition of the 75 per cent audience reach rule**

Schedule 1 of the Broadcasting Legislation (Media Reform) Bill 2016 seeks to abolish the 75 per cent audience reach rule which prevents a person, either in their own right or as a director of one or more companies, from being in a position to exercise control of commercial television broadcasting licences whose combined total licence area covers populations exceeding 75 per cent of the population of Australia.

SCA supports abolition of the 75 per cent audience reach rule.



21 March 2016

Abolition is consistent with the recommendations made by recent reviews of the rule.

#### **4.1 The 75 per cent audience reach rule outdated**

In 2013 the Joint Select Committee on Broadcasting Legislation<sup>2</sup> recommended that the rule be abolished provided there is legislation or legally enforceable undertakings to safeguard local content in regional Australia. Protection of local content is dealt with in the Bill and is discussed below.

In 2012 The Convergence Review Chaired by Glen Boreham<sup>3</sup> concluded that the internet has reduced the relevance of the 75 per cent audience reach rule and it should be abolished.

The 75 per cent audience reach rule creates an artificial construct which prevents operation of a national free-to-air television business. Instead a broadcaster must enter into an agreement or number of agreements (an affiliation agreement) to ensure their programs are broadcast free-to-air to all Australians.

This results in the regional broadcasters in effect acting as broadcast re-transmitters for the metropolitan networks.

With changing viewer habits and levels, revenue resulting from this re-transmission is under pressure.<sup>4</sup> After payment of costs of government licence fees, affiliation costs to purchase the content and the cost to transmit across large expanses of Australia country, the viability of the regional re-transmission business model is severely challenged.

#### **4.2 Impact of digital technology**

Exacerbating the problem, the metropolitan networks retain the rights to exploit and monetise their content ubiquitously. This enables them to distribute and sell advertising on their programs through live streaming of the broadcast feed on the internet and via their catch-up television services<sup>5</sup>.

All three metropolitan networks are using the internet to stream some, or all, of their television broadcast signal across all of Australia with no regard for the exclusive broadcast licence areas and regardless of any cannibalisation this may cause to viewing<sup>6</sup> or revenue in regional licence areas.

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<sup>2</sup> *Three broadcasting reform proposals*, Joint Select Committee on Broadcasting Legislation June 2013

<sup>3</sup> *Convergence Review Final Report*, Department of Broadband, Communications and the Digital Economy, March 2012. (Mr Boreham has been a non-executive director of SCA since 2015.)

<sup>4</sup> KPMG figures revealed that total regional television advertising revenue fell -6.6% (YOY) for the period 1 July 2015 – 31 December 2015

<sup>5</sup> Plus7, 9Now, tenplay

<sup>6</sup> Seven Network recently reported that there were more than 7.4 million streams (46.4 million minutes) of the Seven Network's broadcast of the 14 days of the Australian Open tennis.



21 March 2016

Added to this, international operators such as Netflix and YouTube are able to distribute their programs to all Australians via the internet regardless of licence areas.

SCA welcomes the fact that viewers have more and more options for information and entertainment including via streaming. However, it should be noted that there continue to be and will continue to be into the foreseeable future, a large number of viewers who either by choice or by reason of expense, accessibility and reliability will continue to seek to use free-to-air television broadcasting.

SCA argues that outdated media ownership regulation devised in an analogue world that no longer works in the digital media era should be abolished.

#### **4.3 Impact on local content**

Shrinking revenue in the regional free-to-air market with high fixed transmission costs and increasing costs from affiliation fees means there is less capacity for expenditure on local programming.

Abolition of the 75 per cent audience reach rule will enable national broadcasters to be formed where the regional part of the business is not merely a re-transmitter of the city signals. It would benefit from the economies of scale of the wider operation including the ability to share resources and expertise.

The regional Seven operations and NBN operations in Northern NSW are evidence that regional businesses operated by larger “national” media companies, benefit from scale and jointly operated resources.

Seven Queensland which operates in regional Queensland and is a wholly owned subsidiary of Seven West Media (owner of the Seven Network capital city stations in Sydney, Melbourne, Brisbane, Adelaide and Perth), produces seven local news bulletins in regional Queensland.

NBN, which broadcasts the Nine signals in northern New South Wales, became a wholly owned subsidiary of Nine Entertainment in 2007. Since Nine Entertainment (also owner of the Nine Network capital city stations in Sydney, Melbourne, Brisbane, Adelaide, Perth and Darwin) acquired NBN, it continues to produce six local news bulletins in the northern NSW licence area.

### **5. Abolition of the two out of three cross-media control rule**

Schedule 2 of the Broadcasting Legislation (Media Reform) Bill 2016 seeks to abolish the two out of three cross-media control rule which prohibits a person being in a position to exercise control of more than two out of three regulated media platforms (that is, a commercial television broadcasting licence, a commercial television broadcasting licence, a commercial radio broadcasting licence and an associated newspaper) in any one commercial radio licence area.

SCA supports the abolition of the cross-media control rule and supports the abolition of the rule simultaneously with abolition of the 75 per cent audience reach rule.



21 March 2016

The two out of three cross-media control rule which is based on control of printed newspapers, analogue commercial radio and free-to-air television was designed in an era when these forms of media were almost the only sources of news and current affairs. With a proliferation of sources of entertainment and information with pay television and digital delivery, the barriers to entry into the media world have fallen away. Australians no longer need to rely on the three traditional forms of media to get their news and entertainment.

The two out of three cross-media control rule has become a blunt tool in managing media diversity in Australia. In contrast, the ACCC is empowered to consider and manage diversity in the media across all mediums.

While the three regulated sectors remain shackled to an outdated law based on broadcast licence areas which are disregarded by digital media and pay television, increasingly a regulatory imbalance is being created preventing companies from diversifying further.

Repeal of the two out of three cross-media control rule will reduce the regulatory burden on “traditional media” and provide more flexibility in the market. This flexibility will permit diversification within a media company assisting to create economies of scale and enable sharing of expertise and resources across the different distribution platforms.

## **6. Broadcasting Legislation Amendment (Media Reform) Bill 2016**

### **6.1 Schedule 1: 75 per cent audience reach rule**

SCA supports the provisions of Schedule 1 which seeks to abolish the 75 per cent audience reach rule.

### **6.2 Schedule 2: Two out of three cross-media control rule**

SCA supports the provisions of Schedule 2 which seeks to abolish the two out of three cross-media control rule.

### **6.3 Schedule 3: Local programming requirements for regional commercial television broadcasting licenses**

SCA appreciates that the Government’s objective is to maximise the levels of local content broadcast in regional areas. SCA supports the provision that upon a trigger event there will be an increase of points in aggregated markets from 720 points to 900 points per timing period and the introduction of a points system requiring a minimum of 360 points per timing period in non-aggregated markets to assist this objective.





21 March 2016

SCA notes that the amended points system will introduce the ability to earn three points for each minute of material that is news that depicts people, places or things in a local area. SCA supports this initiative, which by giving greater value to material generated in a local area, incentivises broadcasters to have a stronger local presence.

### 6.3.1 Trigger event

SCA supports the provision that the new local programming requirements only come into effect upon occurrence of a suitable trigger event. A trigger event is when a regional licensee becomes part of a group of commercial television broadcasting licences whose reach exceeds 75 percent of the Australian population. It is reasonable that the additional content obligations are only imposed after a licensee is in a position to benefit from the additional scale and efficiency that the media reforms will permit.

SCA however, does not support the definition of a trigger event as occurring on a change of control.

A trigger event is defined in 61CV as:

*“(a) a person starts to be in a position to exercise control of a regional commercial television broadcasting licence; and*

*(b) immediately after that event:*

*(i) the person is in a position to exercise control of 2 or more commercial television broadcasting licences; and*

*(ii) the combined licence area population of those licences exceed 75% of the population of Australia;...”*

The objective of including a trigger event is set out in the Bill’s Second Reading Speech which states:

*“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”<sup>7</sup>*

SCA submits that a regional commercial broadcasting licensee may not necessarily become “part of a commercial television group” upon a person starting to exercise control of the licensee, since acquisition of an ownership interest of just 15% or entry into certain other commercial arrangements, including sharing of resources, could be a trigger event under the definition of “control” in the Broadcasting Services Act 1992.

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<sup>7</sup> Broadcasting Legislation Amendment (Media Reform) Bill 2016 Second Reading Speech p 3



21 March 2016

In our view is very possible that a person could start to exercise control as defined in the Act, but there is no meaningful change in the operation or structure of the company.

It is SCA's view that the definition of a trigger event in 61VC should be amended to refer to a change of majority ownership (more than 50%) of a regional commercial television broadcasting licence. The concept of "relevant interest" under the Corporations Act may be used to determine whether a person has acquired more than 50% ownership of a regional commercial broadcasting licensee.

### 6.3.2 *Local programming determination*

We note that the Bill provides for the ACMA by legislative instrument to make a local programming determination. This determination will set out additional matters in relation to local programming including the meaning of "local area", the meaning of "material of local significance" and additional requirements that must be met before news is eligible for 3 points per minute of material.

Given the definitions and additional requirements will have a material impact on the local content that SCA will need to produce to comply with the legislation, we will be keen to review and comment upon the determination when it is available.



