Chapter 3

Key issues

3.1 This chapter considers the evidence received from stakeholders regarding the bill. Evidence received on the need for reform and the approach to reform as reflected in the bill is discussed first, followed by stakeholder views on the proposed abolition of the two media rules and the new local content requirements. The committee's overall findings are outlined at the end of this chapter.

The case for reform and the overall approach taken

3.2 The evidence received from media companies and many other stakeholders during this inquiry generally acknowledged, in principle, the case for repealing the 75 per cent audience reach rule and the 2 out of 3 cross-media control rule. However, in what way this reform should be achieved divided stakeholders. The committee heard compelling arguments as to why the proposed changes need be enacted as soon as possible. Conversely, other stakeholders argued that these reforms should only be pursued as part of a broader reform package. Accordingly, a significant amount of evidence received by the committee actually goes to matters that are not included in the bill.

3.3 This chapter outlines the evidence received about whether the proposed reforms should be pursued now and the opposing position that the proposed changes should be delayed so that certain other changes stakeholders consider desirable can be considered.

Arguments for reform based on the bill

3.4 The regional television broadcasters Prime Media Group, Southern Cross Austereo and the WIN Network were the most vocal in expressing support for the bill. For example, Mr Ian Audsley, the Chief Executive Officer of the Prime Media Group, told the committee that these three networks are 'in unanimous agreement that the existing media ownership laws are outdated and act as a brake on regional media being able to organise itself in an economically efficient manner'.[1] Mr Audsley indicated that the sustainability of the affiliation model the regional networks operate under within the current media control and ownership framework is questionable. He explained:

> The original television model is one of very high infrastructure costs: an affiliation model which is seeing programming fees paid to metropolitan networks escalating and a more challenged media market with increased competition from unregulated media. To exacerbate these problems,

1 Mr Ian Audsley, Chief Executive Officer, Prime Media Group, *Committee Hansard*, 31 March 2016, p. 33.

> metropolitan affiliates are now streaming their signals, containing advertising, into our licensed markets. This is the same material that we pay them for.[2]

3.5 Fairfax Media is 'strongly supportive' of the proposed abolition of the 75 per cent reach rule and the 2 out of 3 cross-media control rule, provisions of the *Broadcasting Services Act 1992* (BSA) that Fairfax described as being 'out of date in a modern global media environment'.[3] Fairfax explained:

> Technology and consumer demand have revolutionised the consumption and distribution of all forms of information and entertainment well beyond the present legislative regulation as to make it irrelevant and restrictive.
>
> The BSA does not even recognise the internet let alone the proliferation of internet based delivery systems such as SVOD, TVOD, IPTV or audio subscription services nor the impact of global search engines like Google or social media sites such as Facebook and Twitter. Overseas online publishers such as *The Guardian*, *Daily Mail* and *The Huffington Post* are creating limited local Australian content and are not subject to the BSA regulations, operating purely as online businesses.[4]

3.6 Like Fairfax, the Ten Network noted that the current legislation predates modern media platforms, such as the internet and subscription TV. Ten argued that the current legislation adversely affects the ability of Australian media companies to compete with global companies that operate in Australia without being subject to ownership and control restrictions. Ten submitted:

> When the media regulatory framework was enacted the 'princes of print and the queens of screen' operated across three defined, easily regulated, and highly influential platforms: printed newspapers, free-to-air terrestrial television channels, and free-to-air terrestrial radio stations, which were limited in number.
>
> In today's fully converged media market where someone in Perth can watch video embedded in an online news article on a Sydney news site, or watch a drama program on a television set in a lounge room in Adelaide that has been streamed over the internet by a US broadcaster without any employees in Australia, these traditional platform-based regulatory restrictions are clearly absurd.[5]

2 Mr Ian Audsley, Prime Media Group, *Committee Hansard*, 31 March 2016, p. 33.

3 Fairfax Media, *Submission 11*, p. 1.

4 Fairfax Media, *Submission 11*, p. 1.

5 Ten Network, *Submission 15*, p. 1.

Calls for broader reform

3.7 Although they recognised that aspects of the media ownership and control framework are outdated, some stakeholders questioned why other parts of the framework are not being reformed. For example, News Corp Australia advised that although it supports the passage of the bill in its current form, it would have preferred a 'holistic approach to media reform' that resulted in the removal of all five media ownership and control rules, rather than just two.[6] Similarly, Nine Entertainment Co provided 'conditional support' for the repeal of the rules 'as a path to reform'.[7]

3.8 The Australian Subscription Television and Radio Association (ASTRA) submitted that it is 'not opposed in principle to the reforms contained in the bill'. However, it also argued for 'a whole-of-industry deregulatory agenda'. ASTRA submitted that the reasoning used to support the bill applies 'equally to the subscription TV industry'. It explained:

> The same upheavals in the competitive landscape and the same financial pressures cited by the government as driving the reforms in this bill apply equally to the subscription TV industry. Subscription TV faces the same pressure on advertising revenue and fragmentation of audiences as… [free-to-air] broadcasters, and has to compete with the same largely unregulated overseas competitors, but faces the added challenge of price pressure from other subscription providers.[8]

3.9 The submission from the Institute of Public Affairs (IPA) also called for broader reform. It argued that the regulatory regime should be competitively neutral and 'approach the regulation of communications technologies on a functional basis, rather than on the grounds of their technological legacy'.[9]

3.10 In calling for broader reform, media companies and organisations outlined the various matters that they would like the government to consider.

3.11 The Ten Network's submission described the bill as 'an important first step in dismantling a set of regulations that are making Australian media companies less competitive in a global, converged media market'.[10] Ten argued that ultimately all five media ownership and control rules should be repealed, with mergers and acquisitions in the sector subject to competition law requirements only.[11]

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6 News Corp Australia, *Submission 8*, p. 1.

7 Nine Entertainment Co, *Submission 16*, p. 2.

8 Australian Subscription Television and Radio Association (ASTRA), *Submission 5*, p. 2. Like ASTRA, Foxtel argued for 'holistic' reform. However, Foxtel's submission differed from ASTRA's in that it expressly stated that Foxtel does not support passage of the bill 'at this time'. See Foxtel, *Submission 3*, p. 1.

9 Institute of Public Affairs, *Submission 7*, p. 1.

10 Ten Network, *Submission 15*, p. 1.

11 Ten Network, *Submission 15*, p. 3.

3.12 Nine Entertainment Co, Seven West Media and the Ten Network also called for the removal of television licence fees.[12] Ten submitted that commercial free-to-air broadcasters are required to pay a licence fee equal to 4.5 per cent of gross revenue'.[13] Ten argued that the continued imposition of licence fees is inequitable given that free-to-air networks are:

> …now competing directly for viewers and advertisers against billion dollar global internet companies that are exempt from local media regulation, don't pay television licence fees, pay minimal corporate tax despite taking billions in advertising revenue in this market and, in some cases, don't have a single local employee.[14]

3.13 Mr Tim Worner, Chief Executive Officer, Seven West Media, explained that Seven West Media seeks 'broad reform that could truly empower free-to-air broadcasters to meet what is an increasing pace of change that we are facing'. Mr Worner identified the removal of the licence fee as the most important 'by far' of the possible reforms that could be pursued.[15]

3.14 Since this evidence was received, licence fee relief has been announced. On 3 May 2016, as part of the 2016–17 Budget, the government announced that licence fees for commercial television and radio broadcasters would be reduced by approximately 25 per cent, applicable from the 2015–16 licence period.[16] The Minister for Communications also announced that further reductions in broadcasting licence fees will be considered.[17]

3.15 The anti-siphoning list was also identified by some submitters as requiring reform. ASTRA argued that the anti-siphoning scheme 'impairs the operation of the market for 1900 sporting fixtures each year'.[18] Mr Bruce Meagher from Foxtel told the committee that since 'the advent of new streaming and other services it is very obvious that the regime does not apply to anyone other than subscription television'. He argued that the list is discriminatory 'in the sense that it applies only to Foxtel, effectively'. Mr Meagher explained that under the current framework:

> …there would be nothing to stop one of the global streaming companies coming in and, for example, paying over the odds and buying the whole of

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12 Seven West Media, *Submission 14*, pp. 12–13; Ten Network, *Submission 15*, p. 1; and Nine Entertainment Co, *Submission 16*, p. 4.

13 Ten Network, *Submission 15*, p. 1.

14 Ten Network, *Submission 15*, p. 1.

15 Mr Tim Worner, Chief Executive Officer, Seven West Media, *Committee Hansard*, 31 March 2016, p. 14.

16 Australian Government, *Budget 2016–17: Budget Measures—Budget Paper No. 2*, May 2016, p. 8.

17 Senator the Hon Mitch Fifield, 'Supporting public broadcasting and creating a more competitive environment for commercial broadcasters', *Media Release*, 3 May 2016.

18 ASTRA, *Submission 5*, p. 2.

> the Australian Open tennis tournament out from underneath the free-to-air broadcasters and charging whatever they wanted for people to view that. The list does not protect against that.[19]

3.16 Mr Maiden from ASTRA advised that the subscription industry supports 'incremental reform' of the list.[20] The incremental reform sought was outlined by Mr Meagher, who stated that Foxtel accepts an anti-siphoning list of some form will continue to exist to cover events 'that are truly iconic'.[21]

3.17 Whether the definition of broadcasting used for regulatory purposes needs to be updated was also discussed. On this matter, Mr Chris Berg from the IPA commented:

> I very rarely watch television, but I still watch the ABC, because I have a computer plugged into my television where I load up iview or *7.30* or something like that, and I watch it. Is that broadcasting? It is done by a company called the Australian Broadcasting Corporation, but I am streaming it live or on a computer connected to what calls itself a television but is actually a computer monitor.[22]

3.18 Associate Professor Margaret Simons, a board member of the Public Interest Journalism Foundation, argued that to confine the term broadcasting 'to something which is delivered over the broadcasting spectrum is ridiculous, really'. To illustrate how the definition of broadcasting may no longer be appropriate, Associate Professor Simons recounted an occasion when she led a class of students who toured a metropolitan news network. Associate Professor Simons noted:

> In the feedback in the class afterwards, one of my students said, 'It's so quaint—they think everybody's sitting there watching the six o'clock news.' Of course, it is…largely people over 50 who are watching the six o'clock news. These students have already consumed that news content and have expressed their opinion about it on social media. Some of that will have been aggregated into a live blog on *The Guardian* and so on. So, to say broadcasting service means something delivered over the airways in that traditional way—if we take that sort of approach to thinking about what we should and should not do in media regulation then we are condemning ourselves to redundancy very quickly.[23]

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19 Mr Bruce Meagher, Group Director, Corporate Affairs, Foxtel, *Committee Hansard*, 31 March 2016, p. 24.

20 Mr Andrew Maiden, Chief Executive Officer, ASTRA, *Committee Hansard*, 31 March 2016, p. 25.

21 Mr Bruce Meagher, Foxtel, *Committee Hansard*, 31 March 2016, p. 24.

22 Mr Chris Berg, Senior Fellow, Institute of Public Affairs, *Committee Hansard*, 29 April 2016, p. 60.

23 Associate Professor Margaret Simons, Board Member, Public Interest Journalism Foundation, *Committee Hansard*, 29 April 2016, p. 47.

Should the measures in the bill be pursued at this time?

3.19 Some media organisations expressed concern that, although the reforms contained in the bill have merit, enacting them now may reduce the likelihood that other reforms will be pursued in the near future.

3.20 Seven West Media was one of the main proponents of this argument. Seven West advised the committee that it 'has neither sought nor opposed changes to media ownership rules'. However, it submitted that:

> In the debate around changes to media ownership rules, we have consistently warned that if these are addressed without knowing what other regulatory changes might be considered by the government, we are likely to find that there are quid pro quos down the track.[24]

3.21 Other stakeholders countered these arguments. Mr Grant Blackley, the Chief Executive Officer of Southern Cross Austereo, maintained that there is an 'urgent need' for the reforms in the bill to progress. He told the committee:

> There is a level of urgency upon a segment of the market in media called regional television, and I can say that, without the scale that we have with radio, we may not have a television business, because we lean on the resources within our radio sector to support television, not vice versa. I think there is an urgent need to address these considerations first and foremost…I have spent the best part of 30 years in media and I can assure you that there has not been meaningful legislative change that I can recall in the sector in that term. So one must start somewhere.[25]

3.22 Mr Greg Hywood, the Chief Executive and Managing Director of Fairfax Media, offered a similar perspective:

> We just have this opinion: let's get cracking and get something done now. We are not against further consideration of further reform—not at all.[26]

3.23 Although the bill is focused on two specific media control and ownership rules, it is possible that other reforms are under consideration. Mr Richard Windeyer, a first assistant secretary at the Department of Communications and the Arts, noted that the government has indicated 'this is not the end of reform'. He commented:

> This is the opportunity and proposal we have at the moment but it certainly does not preclude other things happening.[27]

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24 Seven West Media, *Submission 14*, p. 3.

25 Mr Grant Blackley, Chief Executive Officer, Southern Cross Austereo, *Committee Hansard*, 31 March 2016, p. 40.

26 Mr Greg Hywood, Chief Executive and Managing Director, Fairfax Media, *Committee Hansard*, 29 April 2016, p. 39.

27 Mr Richard Windeyer, First Assistant Secretary, Content Branch, Department of Communications and the Arts, *Committee Hansard*, 31 March 2016, pp. 70–71.

Stakeholder views on the proposed abolition of the 75 per cent audience reach rule and the 2 out of 3 cross-media control rule

3.24 The preceding paragraphs considered the evidence received about the overall approach taken to reform, as indicated by the proposals contained in the bill. This chapter now turns to the evidence received about the specific provisions in the bill, starting with the proposed repeal of two of the five media control and ownership rules in the BSA.

3.25 It is instructive to recap the positions of the major market participants here. As indicated in the previous section, three businesses involved in regional television (Prime Media Group, Southern Cross Austereo and the WIN Network) and Fairfax Media support the repeal of the 75 per cent reach rule and the 2 out of 3 rule without equivocation. Ten Network supports the repeal of the two rules, although it would like to see further reform including the repeal of the remaining three rules and the removal of licence fees. Seven West Media called for broader reform.

3.26 Nine Entertainment offered 'conditional support' for the removal of the two rules as proposed in schedules 1 and 2 (see paragraph 3.7), however, this support is linked to the local content regulation proposals in schedule 3: Nine Entertainment argued that the repeal of the control and ownership rules should not result in 'additional regulation with regard to local content.[28]

3.27 Other stakeholders also submitted their views on the abolition of the two media control and ownership rules. The NSW Farmers' Association acknowledged that the current regulatory regime 'does not account for the contemporary media landscape'. However, NSW Farmers noted that 'the traditional media platforms are the most powerful in the bush because data coverage is not universal…[and] it is often inconsistent when it is available'. NSW Farmers' views on the abolition of the two media control and ownership rules are also influenced by the proposed new local content requirements, which are discussed in the next section. The NSW Farmers' Association acknowledged that 'there may be merit' in the bill's objective of 'pursuing a more sustainable industry through economies of scale'. However, it argued that this 'will only work for regional programming if the quotas/points systems mean something and the rules are enforced'.[29]

3.28 Other submitters offered support for the abolition of the rules if other measures to promote quality journalism are considered.

28 Nine Entertainment Co, *Submission 16*, p. 2.

29 NSW Farmers' Association, *Submission 9*, p. 5.

3.29 The following paragraphs will consider the evidence received specifically about the abolition of the two media control and ownership rules. The first section will consider the 75 per cent audience reach rule in isolation, followed by the 2 out of 3 rule and evidence received about the likely effects of the abolition of both rules on diversity in the sector.

75 per cent audience reach rule

3.30 Of the two media control and ownership rules that the bill would repeal, the abolition of the 75 per cent reach rule received the largest amount of unqualified support. Among others, the Media Entertainment and Arts Alliance (MEAA), Prime Media Group, Southern Cross Austereo, and the WIN Network all support the abolition of the 75 per cent reach rule. The following extract from Southern Cross Austereo's submission provides an overview of the arguments generally made against the continued existence of the rule:

> 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. 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.[30]

3.31 MEAA emphasised that the 75 per cent audience reach rule 'should be removed now'.[31]

3.32 On the basis of the bill before the committee being the only option for reform,[32] Professor Ricketson, a professor of journalism at the University of Canberra, advised that he supports the repeal of the 75 per cent audience reach rule. He stated that:

> …this part of the existing legislation has been superseded by the advent of streaming video on demand technology, which has enabled television

30 Southern Cross Austereo, *Submission 4*, p. 4.

31 Mr Paul Murphy, Chief Executive Officer, Media Entertainment and Arts Alliance (MEAA), *Committee Hansard*, 31 March 2016, p. 61.

32 However, Professor Ricketson questioned whether the government had considered other options for reform. For example, he suggested that concerns about the entry of international media companies could potentially be addressed by regulating those companies. See *Committee Hansard*, 31 March 2016, p. 1.

networks to stream their content to more than 75 per cent of the population prescribed in the Broadcasting Services Act.[33]

3.33 Professor Jock Given from Swinburne University advised that he is 'reasonably relaxed about the proposed removal of the 75 per cent reach rule'.[34]

3.34 The Prime Media Group argued that, since the Parliamentary Joint Select Committee on Broadcasting Legislation recommended the abolition of the rule in 2013, the case for its repeal 'is now more pronounced'. This is because of, among other things, the entry of international 'giants' such as Netflix, local on-demand services, the online catch-up services offered by the ABC and SBS, and the live online streaming of metropolitan free-to-air broadcasts 'potentially into all Australian households'.[35] In particular, Prime noted that the online streaming of metropolitan broadcasts demonstrates why the reach rule should be repealed, as these online streaming services:

- do not include any local regional news;
- do not include local regional advertising;
- do not include any local community service announcements; and
- are not subject to the Commercial Television Industry Code of Practice (because they do not meet the definition of 'broadcast').[36]

3.35 In addition to the video-on-demand services and online streaming of metropolitan broadcasts, Prime added that the regional television industry is facing several other 'significant structural challenges', including:

- a reduction in the size of the regional advertising market (Prime advised that the regional television industry has encountered a loss of $65 million in combined advertising revenue in the past three 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 per cent of the total audience, a decline of 10 per cent for people aged 25–54 and a fall of almost 15 per cent in the audience for people aged 16-39'; and
- affiliation fees payable by regional broadcasters to metropolitan networks that increase each year.[37]

33 Professor Matthew Ricketson, *Committee Hansard*, 31 March 2016, p. 1. See also *Committee Hansard*, 31 March 2016, p. 5.

34 Professor Jock Given, *Committee Hansard*, 29 April 2016, p. 1.

35 Prime Media Group, *Submission 8*, p. 2.

36 Prime Media Group, *Submission 8*, p. 3.

37 Prime Media Group, *Submission 8*, p. 3.

3.36 Although the abolition of the 75 per cent rule was largely supported by submitters, Seven West Media questioned the arguments put forward for repealing the rule based on challenges faced by regional broadcasters. Seven West Media highlighted how Seven Queensland, which is owned by Seven West Media but managed as a stand-alone operation, is a regional broadcaster with a high share of advertising revenue and a popular local news program.[38]

3.37 The NSW Farmers' Association also expressed some misgivings about the proposed abolition of the 75 per cent audience reach rule. It noted that, following the bill's enactment, consolidation in the commercial television sector would be subject to the *Competition and Consumer Act 2010* (CCA). NSW Farmers stated that 'we have often found that in thin markets, competition law has been a weak tool'.[39] The ability of the CCA to promote diversity in the media sector is discussed later in this chapter.

2 out of 3 rule cross-media control rule

3.38 The proposed abolition of the 2 out of 3 rule attracted more debate than the 75 per cent reach rule. The following paragraphs will outline the principal arguments presented by stakeholders in support of repealing the rule, followed by the evidence received regarding the potential implications for diversity, competition and quality of journalism.

Arguments in support of repealing the 2 out of 3 rule

3.39 Prime Media Group, Southern Cross Austereo and the WIN Network support the repeal of the rule. WIN Network, for example, argued that the 2 out of 3 rule 'is as outdated as the 75 per cent audience reach rule'. Although the aim of the rule is to protect diversity of voice, WIN argued that in effect 'all it is doing is constraining the three traditional mediums of TV, radio and press'.[40] WIN added:

> The 2 out of 3 rule simply does not make sense in 2016 with hundreds of media platforms and independent voices spanning Australia without borders.[41]

3.40 The WIN Network also highlighted how the existence of the 2 out of 3 rule presents challenges for its business to organise itself in the most efficient way, capitalise on regional growth opportunities and invest in 'media assets that need scale'. WIN continued:

> In a challenged regional media environment, having the potential to merge with or acquire a regional radio network and a regional newspaper publisher would provide the opportunity to bulk up and be better placed to defend

38 Seven West Media, *Submission 14*, p. 5.

39 NSW Farmers' Association, *Submission 9*, p. 4.

40 WIN Network, *Submission 10*, p. 6.

41 WIN Network, *Submission 10*, p. 6.

> ourselves from much larger, often foreign owned media organisations. At a time when organisations, some with market capitalisation multiple times that of the Australian Television industry combined, are free to infiltrate Australian markets unrestricted, the 2 out of 3 cross media control rule restricts the ability of the Australian media to bulk up and compete more effectively with such organisations.[42]

3.41 Ms Annabelle Herd from the Ten Network, which also supports the repeal of the 2 out of 3 rule, argued that because the rule is 'so technologically obsolete' in that it focuses on three traditional platforms, if the rule remains in place 'inevitably people are just going to get around it'. Ms Herd noted that if the weekly newspapers stop printing physical copies of their newspapers and moved their publications entirely online, they would no longer be subject to the rule.[43]

3.42 Fairfax Media is another supporter of the abolition of the 2 out of 3 rule. It argued that repealing the rule would benefit consumers. Fairfax explained:

> The removal of the 2/3 rule would provide media owners the opportunity to explore amortising their investment in local content across multiple channels thereby improving the economics of such an investment. From a consumer perspective, this would lead to more high quality content being made available than would otherwise be possible.[44]

3.43 In support of this argument, Fairfax stated that the 'the ability of traditional media companies to invest in creating this content is being increasingly eroded', with newspapers and free-to-air television 'losing advertising revenue share to internet-based media platforms'. Fairfax argued that the below chart (Figure 3.1) 'demonstrates the inequity of continuing to apply ownership regulation to the three traditional formats…when the media market has drastically changed and their combined share continues to fall'.[45]

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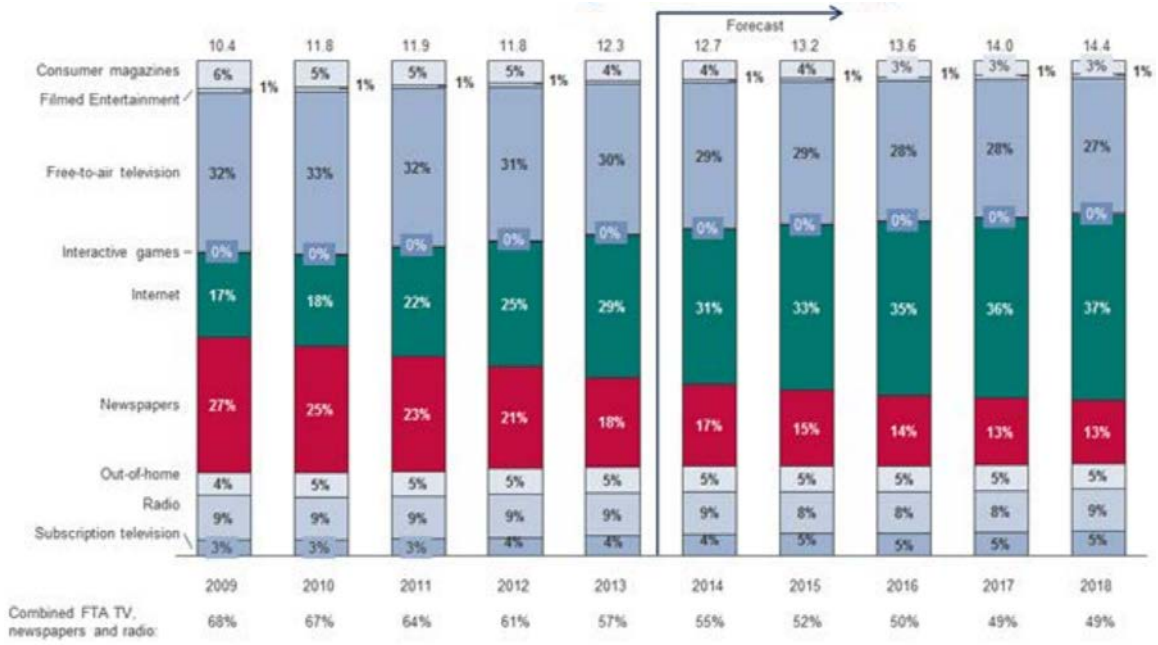
42 WIN Network, *Submission 10*, p. 7.

43 Ms Annabelle Herd, Director, Corporate and Regulatory Affairs, Ten Network, *Committee Hansard*, 29 April 2016, p. 23.

44 Fairfax Media, *Submission 11*, p. 3.

45 Fairfax Media, *Submission 11*, pp. 1–2.

Figure 3.1: Australian advertising market, 2009 to 2018 ($billion)



Note: Digital advertising figures for newspapers and consumer magazines have been excluded from each segment's totals, as they are included in the internet advertising figures.

Source: PricewaterhouseCoopers, *Entertainment and Media Outlook 2014–2018*; reproduced in Fairfax Media, *Submission 11*, p. 2.

Implications for diversity, competition and quality of journalism

3.44 In reviewing this bill, a key consideration is the likely effect of the measures on diversity in the media sector. Market participants and other interested stakeholders differed in their views on this issue.

3.45 Fairfax submitted that the benefits associated with the removal of the 2 out of 3 rule 'would not come at the expense of media diversity given how drastically the media market has changed since the 2/3 rule was enacted'.[46] Fairfax added:

> The restrictive nature of the current legislation impacts adversely not only on the Australian media industry but importantly on consumer choice, affordability and diversity.
>
> Despite some agenda-driven claims to the contrary, Fairfax Media believes the repeal of the current legislation will increase the diversity of information sources. Existing media operations will be afforded the opportunity to expand services across a wide range of media platforms and consumer choice will be increased.[47]

46 Fairfax Media, *Submission 11*, p. 3.

47 Fairfax Media, *Submission 11*, p. 1.

3.46 Fairfax and the Ten Network also argued that the current arrangements limit the ability of Australian media companies to access scale and attract investment. Ten suggested that the current laws therefore threaten the ongoing viability of a strong Australian voice and diversity in the market.[48] Ms Herd from Ten added that the bill could potentially 'allow the Ten board to have access to other sources of capital and scale that we do not have at the moment', which would help Ten to invest in innovation and content to compete with the international businesses.[49]

3.47 Fairfax argued that the current laws not only restrict investment opportunities for Australian media businesses, but have resulted in 'active disinvestment in the sector', which has implications for the quality of journalism. Fairfax stated:

> Disinvestment has very real consequences for quality journalism of the standard that Fairfax Media provides. The scale of journalism and standard of reporting that Australian consumers presently enjoy from Fairfax Media requires an investment environment that encourages it, not discourages it.[50]

3.48 Associate Professor Margaret Simons, a board member of the Public Interest Journalism Foundation, argued that diversity remains a concern. Associate Professor Simons explained:

> More outlets does not necessarily mean more journalists on the ground. And while the new digitally based players are indeed providing local content if you look at national content, they are not touching state parliaments and regional and country areas.[51]

3.49 Some stakeholders called for the pursuit of a different approach to supporting diversity in the sector. The CEO of MEAA, Mr Paul Murphy, emphasised that 'the starting point for any discussion of media law reform has to be acknowledging the clear public interest in having a diverse range of reliable sources for news, information and entertainment'. Mr Murphy told the committee that although the proposed reforms 'have some merit', the bill is 'focused almost exclusively on consolidation of the old analog world to the exclusion of anything to do with building opportunities offered by new platforms'. Accordingly, MEAA does not support repealing the 2 out of 3 rule 'until some further system reforms are advanced that address the need for plurality in our media'.[52]

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48 Ten Network, *Submission 15*, p. 1.

49 Ms Annabelle Herd, Director, Corporate and Regulatory Affairs, Ten Network, *Committee Hansard*, 29 April 2016, p. 22.

50 Fairfax Media, *Submission 11*, p. 4.

51 Associate Professor Margaret Simons subsequently added that the concern about diversity is partly about the number of journalists on location: 'For example, am I likely to find out what is happening in the Supreme Court in Melbourne today? Can I, as a citizen, be confident that by consuming media I will know the things I need to know to be an effective and informed citizen'. See Associate Professor Margaret Simons, Board Member, Public Interest Journalism Foundation, *Committee Hansard*, 29 April 2016, pp. 43, 49.

52 Mr Paul Murphy, Chief Executive Officer, MEAA, *Committee Hansard*, 31 March 2016, p. 58.

3.50 The Public Interest Journalism Foundation argued that, although the restrictions on mergers and acquisitions in the BSA are outdated, the government has a continued responsibility to 'ensure a diverse range of sources of news and information for all Australians'.[53]

3.51 Dr Derek Wilding, who works on media and communications industry issues at the University of Technology, Sydney, argued that regulation of the media sector should be designed 'to not address "diversity" per se, but the things diversity seeks to protect—most importantly, accuracy, fairness and privacy, as well as localism—while helping to shore up Australian newsgathering'. Dr Wilding submitted that this approach 'necessarily involves an acceptance of the repeal of the 2 out of 3 rule as well as the 75 per cent audience reach rule, encouraging a shift to cross-media standards of practice in the gathering and presentation of news and analysis and a streamlined, industry-based system to administer them'.[54]

3.52 Dr Derek Wilding told the committee that he believes the current media landscape 'is worth supporting' with respect to news and analysis. Dr Wilding concluded:

> I am in favour of repealing the two-out-of-three rule if it helps support the transition of print media companies into converged news gathering organisations in a landscape where we have at least three strong local commercial players.[55]

3.53 In any event, the Ten Network stressed that the 75 per cent audience reach rule and the 2 out of the 3 rule should be repealed simultaneously. According to Ms Herd, industry stakeholders had not argued that the 2 out of 3 rule is 'serving a purpose'. Ms Herd concluded:

> There does not seem to be any different level of urgency for getting rid of the reach rule than the two-out-of-three rule. They are both equally redundant and equally overtaken by technology. Given that, it would be crazy to do one without the other.[56]

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53 Public Interest Journalism Foundation, *Submission 13*, pp. 2–3. Professor Matthew Ricketson referred to the Foundation's recommendations when he informed the committee that he would support the repeal of the 2 out of 3 rule if 'specific mechanisms are put in place to support independent, quality journalism in Australia'. See *Committee Hansard*, 31 March 2016, p. 3.

54 Dr Derek Wilding, *Submission 17*, p. 12.

55 Dr Derek Wilding, *Committee Hansard*, 31 March 2016, p. 8.

56 Ms Annabelle Herd, Director, Corporate and Regulatory Affairs, Ten Network, *Committee Hansard*, 29 April 2016, p. 24.

Application of competition law and role of the ACCC

3.54 As noted in Chapter 2, section 50 of the CCA prohibits mergers and acquisitions that would result in a substantial lessening of competition. The ability of this test to take into account the unique features of the media was questioned. In particular, the Public Interest Journalism Foundation argued that, in the absence of sector-specific regulation, the policy objectives associated with the media sector cannot be met by the substantial lessening of competition test in the CCA.[57]

3.55 Professor Julian Thomas, a board member of the Public Interest Journalism Foundation, explained that the Australian Competition and Consumer Commission (ACCC) 'is properly preoccupied with the efficiency of media markets'. Professor Thomas added:

> The ACCC's remit does not extend to the public and civic function of journalism, and they have never pretended that it does. But that is what we are concerned with here, because we think that independent journalism—and journalism more broadly—has a vital part to play in the proper functioning of our democratic process as well as its importance in the economy to enable markets to form and to make sure that businesses can communicate with consumers.[58]

3.56 Dr Wilding commented that his concern with the reliance on competition law is that it would focus on the number of separate operators. He emphasised that a relevant concern should be 'whether you have companies that are able to invest in employment of journalists and the development of news gathering capability'.[59]

3.57 The ACCC, which administers the merger and acquisition provisions of the CCA, was questioned about its role in assessing acquisitions in the media sector. In particular, the ACCC was asked about the relationship between the substantial lessening of competition test that the ACCC applies when assessing mergers and acquisitions, and the concept of diversity in the media landscape.

3.58 Mr Rod Sims, the Chairman of the ACCC, explained that the substantial lessening of competition test has three components: 'one is price, two is quality of service and three is almost diversity really'. Mr Sims stated that, in his view, the overlap between the substantial lessening of competition test and diversity in the media sector 'is strong'.[60] He remarked:

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57 Public Interest Journalism Foundation, *Submission 13*, p. 2.

58 Professor Julian Thomas, Board Member, Public Interest Journalism Foundation, *Committee Hansard*, 29 April 2016, p. 45.

59 Dr Derek Wilding, *Committee Hansard*, 31 March 2016, pp. 10–11.

60 However, Mr Sims emphasised that news and current affairs would be of greater interest to the ACCC than entertainment, given the multitude of sources for movies and other forms of entertainment that exist. Mr Rod Sims, Chairman, ACCC, *Committee Hansard*, 31 March 2016, p. 43.

> …in media, because much of the content is superficially free, in the sense that it is free to air or radio, I think the question of the diversity of voices—to pick up your news, current affairs and opinion—would be a relevant criteria…Whether the [substantial lessening of competition] test…meets people's needs for diversity is of course a subjective matter, but potentially the main thing we would be looking at is diversity but through the lens of substantial lessening of competition.[61]

3.59 Should the bill be passed, the ACCC Chairman advised that he expects 'diversity of content available would probably be an even more important consideration' for the ACCC when it reviews an acquisition in the media sector.[62]

3.60 Mr Sims also responded to concerns that the competition law may not be as effective as specific media ownership and control rules. Mr Sims observed, for example, that the 5/4 minimum voices rule in the BSA:

> …is potentially much less restrictive than I think the merger laws would be. You could have three different radio station owners, one newspaper and one television, which means you might allow the three television stations to merge. Whereas under the competition provisions I am pretty sure we would not allow that to happen. I think the competition test is probably a more rigorous one in that sense, because we see a media market but we also see, within that, television markets, radio markets and newspapers. Of course they overlap but I suspect our provisions would have more effect on the number of voices than the five players in a market rule.[63]

3.61 Mr Sims also remarked that the removal of the two ownership and control rules could, potentially, enhance diversity. He stated:

> You have got a two-out-of-three rule. You have got a 75 per cent reach rule. [Abolishing the rules] clearly will lead to some merger activity and therefore some form of consolidation. But, with all the overseas players coming in and the wide range from which people can get content, removing artificial constraints on the local players could, as I say, allow them to be stronger players. They could leverage their journalism better. We were saying earlier that it could even enhance the role of the journalist. I do not think there is a one-to-one relationship between some consolidation that might occur and diversity. If we have got very strong overseas players who are leveraging marginal content in Australia and you have got hamstrung local players, you could find the removal of these rules gives us stronger local players, and that might actually ultimately enhance diversity.[64]

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61 Mr Rod Sims, ACCC, *Committee Hansard*, 31 March 2016, p. 43.

62 Mr Rod Sims, ACCC, *Committee Hansard*, 31 March 2016, p. 50.

63 Mr Rod Sims, ACCC, *Committee Hansard*, 31 March 2016, p. 47.

64 Mr Rod Sims, ACCC, *Committee Hansard*, 31 March 2016, p. 49.

3.62 Officers of the Department and Communications and the Arts also emphasised that diversity in the sector would be protected by the three remaining media ownership and control rules. The minimum voices or 5/4 rule, for instance, provides a 'diversity floor' that will remain.[65]

Stakeholder views on local programming requirements

3.63 This section outlines the views expressed in submissions and by witnesses about the proposed local programing requirements in schedule 3.

Overall approach

3.64 The importance of meaningful local content for people living in regional areas was emphasised by Mr Derek Schoen, the President of the NSW Farmers' Association. Mr Schoen told the committee:

> It is vitally important to maintain local content in delivery of media services to country areas. It is a little bit like if I went to go to Sydney I would find the news there very alien to me. And if you came to Corowa, I am sure you would find the media that we dish out fairly alien to you. It is vitally important that the content is applicable to the audience that is going to receive it.[66]

3.65 However, some submitters questioned the need for the proposed amendments in schedule 3. The IPA is one such submitter; it provided the following reasoning in support of its views:

> The fact that there are stakeholders that benefit from the current regime and may lose those benefits if the regime changes does not demonstrate that the current regime is in the public interest. Local content has never been cheaper to produce and it is possible that local content requirements are crowding out alternative entrepreneurs in this space.
>
> After all, the demand for local content is not infinite. The government has not demonstrated that there is a clear market failure in local content provision that would establish the case for the current regime, let alone an increased regulatory burden after a given ownership change.[67]

3.66 Nine Entertainment Co is 'greatly concerned' by the proposed additional local content requirements that would follow a trigger event. Nine submitted:

> It is curious that the additional quotas only come into effect where there is a change of ownership, therefore suggesting that no genuine market failure

65 Mr Richard Windeyer, First Assistant Secretary, Content Branch, Department of Communications and the Arts, *Committee Hansard*, 31 March 2016, p. 71.

66 Mr Derek Schoen, President, NSW Farmers' Association, *Committee Hansard*, 31 March 2016, p. 51.

67 Institute of Public Affairs, *Submission 7*, p. 2.

exists and therefore no public policy requirement for these additional quotas.[68]

3.67 Nevertheless, the majority of submitters expressed support for, or did not comment on, the proposal for additional local content requirements to accompany the abolition of the media control and ownership rules. For example, MEAA considered that the proposed extension of local content requirements following trigger events 'is a necessary and desirable change'.[69]

3.68 The specific approach taken in the bill was also endorsed; for example, the WIN Network supported two key aspects of the provisions, namely that:

- the increased local content requirements would apply only after a trigger event occurs; and
- a transitional timetable of six months would be provided for licensees to reach the new quota.[70]

3.69 Although the local programming requirements were supported by submitters overall, some specific aspects of the provisions were queried. The following sections explore this evidence.

Quantity and quality of local content following the proposed amendments

3.70 The methodology used for the new local content requirements was questioned. Seven West Media submitted that 'the new local content requirements will not maintain current levels of local news, much less increase them'. It noted that, based on the most recent figures available, 'many regional broadcasters in aggregated licence areas comfortably exceeded the proposed 'increased' local content levels of 900 points per six week period'. In addition, Seven West suggested that the new three point category for locally produced material could result in reduced local content overall, as the extra point for certain local news could allow a regional broadcaster to reach the minimum level of content required more quickly if three points are provided for certain local news rather than two points.[71]

3.71 The committee's public hearings provided an opportunity to examine the potential consequences arising from the addition of a three-point category. At the committee's Canberra hearing, the regional broadcasters argued that the proposed inclusion of a three-point category for local content would not lead to a reduction in local content. In response to concerns about the possible effects of the proposed new points system, regional broadcasters emphasised the amount of locally produced content that is currently broadcast and the reasons why they produce this content. For

68 Nine Entertainment Co, *Submission 16*, p. 7.

69 MEAA, *Submission 2*, p. 1.

70 WIN Network, *Submission 10*, p. 7.

71 Seven West Media, *Submission 14*, p. 6.

example, Mr Ian Audsley, Chief Executive Officer, Prime Media Group, advised that Prime exceeds the point system obligations 'dramatically'. He added:

> …we have committed to a local news bulletin in Western Australia, where we had no licence requirement to do it, says that we are not looking to cut back the amount of local content. We would much prefer to produce more local content.[72]

3.72 Mr Andrew Lancaster from WIN Network provided the following observations:

> From a practical perspective, if you as a broadcaster are going to go to the trouble of putting a cameraperson or a journalist and a cameraperson into a market to capture that footage to be locally relevant, why would you give it a reduced amount of time? It is good content. If you are going to invest in the capturing of that content to get that video content, you would not reduce the amount of minutes or the amount of time over a period that you aired that content. It does not make practical sense.[73]

3.73 Mr Grant Blackley from Southern Cross Austereo added that, in his view, the 'the advent of the three-point system acknowledges the value of the content produced to local communities'. He suggested that the existence of a three-point category 'provides an incentive for us to produce more, because we will achieve a higher threshold in that regard'.[74]

Concepts and definitions relied on in the bill

3.74 The NSW Farmers' Association recommended that the bill be amended to ensure 'that the character and quality of "local" content within a regional licensee's area is maintained following any future merger'.[75]

3.75 The concepts of 'local area' and 'material of local significance' also attracted some comment. As noted in Chapter 2, it is intended that these terms will be defined by the local programming determination made by the Australian Communications and Media Authority (ACMA).[76] Ms Jennifer McNeill from the ACMA explained how the

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72 Mr Ian Audsley, Chief Executive Officer, Prime Media Group, *Committee Hansard*, 31 March 2016, *Committee Hansard*, 31 March 2016, p. 38.

73 Mr Andrew Lancaster, Chief Executive Officer, WIN Network, *Committee Hansard*, 31 March 2016, p. 38.

74 Mr Grant Blackley, Chief Executive Officer, Southern Cross Austereo, *Committee Hansard*, 31 March 2016, p. 38.

75 NSW Farmers' Association, *Submission 9*, p. 4.

76 The ACMA already makes determinations about these matters; for example, an officer from the Department of Communications and the Arts noted that, within the large licence area for regional Queensland, the ACMA had 'developed a determination that sets out different local areas within that licence area'. Mr Rohan Buettel, Assistant Secretary, Content Branch, Department of Communications and the Arts, *Committee Hansard*, 31 March 2016, p. 69.

two concepts relate to each other and the approach that the ACMA is expected to take when formulating definitions for the purposes of the bill. Ms McNeill stated:

> Material of local significance currently is defined by reference to local areas. The ACMA, under the current arrangements, has had to develop a determination describing what a local area is. We would need to do the same thing under these new arrangements. My expectation is that we would take, as a starting point, the current approach to local areas, but we would necessarily publicly consult on whatever approach was proposed. In general terms, local areas correspond with major population centres within licence areas. In determining what amounts to a local area, we are likely to have regard to population, population density and commonality of interest—these sorts of things.[77]

3.76 The Prime Media Group raised two issues related to the concept of 'control'. The Regulation Impact Statement explains that the media ownership framework is based 'on the concept of "control", not ownership per se'. For instance, a person with company interests exceeding 15 per cent is 'regarded as being in a position to exercise control of the company'. In addition to holding company interests, there are other situations where a person may be regarded as being in a positon to exercise control.[78] The mechanism for determining whether a person is in a position to exercise control of a licence, a company or a newspaper for the purposes of the BSA is outlined in schedule 1 to the BSA.

3.77 The first matter raised by Prime is its view that an interest exceeding 15 per cent in a regional commercial television broadcasting licence is 'unlikely to yield any "consolidation", "additional scale" or "efficiency", and clearly is not the intention of the bill as outlined in the EM and second reading [speech]'.[79] That is, Prime argued a change in ownership which led to a person owning 15.1 per cent of Prime 'would not necessarily yield synergies or efficiencies'.[80]

3.78 Prime suggested that a more appropriate threshold would be based on actual control without reference to the 15 per cent deemed control threshold provided in Part 3 of schedule 1 to the BSA. Prime argued that paragraphs 2(1)(d) and (e) of

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77 Ms Jennifer McNeill, General Manager, Content, Consumer and Citizen Division, ACMA, *Committee Hansard*, 31 March 2016, p. 69. An officer from the Department of the Communications and the Arts noted that the existing Broadcasting Services (Additional Television Licence Condition) Notice 2014, which prescribes the current points scheme, provides a 'good guide' to the approach that will be taken in the new instrument. Mr Rohan Buettel, Assistant Secretary, Content Branch, Department of Communications and the Arts, *Committee Hansard*, 31 March 2016, pp. 68–69.

78 Explanatory Memorandum (EM), p. 6.

79 Prime Media Group, *Submission 8*, p. 7. See also Mr Ian Audsley, Prime Media Group, *Committee Hansard*, 31 March 2016, p. 33.

80 Prime Media Group, Answers to questions on notice, 31 March 2016 (received 15 April 2016), p. 3.

schedule 1 to the BSA provide a more appropriate methodology for determining control.[81]

3.79 The second matter raised by Prime was that the concept of control is 'not two-way'. That is, the definition of a trigger event only refers to a person who starts to be in a position to exercise control of a regional commercial television broadcasting licence'. If a regional commercial television broadcasting licensee starts to exercise control of a metropolitan commercial television broadcasting licence, the increased local programming requirements for affected regional commercial television broadcasting licensees would not be triggered.[82]

3.80 The Department of Communications and the Arts was questioned about the two issues raised regarding the concept of control. In relation to whether changes in deemed control should result in a trigger event, Dr Simon Pelling, a first assistant secretary at the department, commented that this is an issue for the minister that the department will 'need to consider further'. Nevertheless, Dr Pelling added:

> …if you start to play around with the definition of control in the Broadcasting Services Act, which has been well established over many years and around which all sorts of structures have been set up, there is some associated risk that would need to be thought through. For example, if you went from 15 to 50 per cent then the threshold would be suddenly much different. At the moment there are a number of media players who operate at round about the 15 per cent level, so they have a reasonable shareholding but they are not actually in control of the company. They could suddenly increase their threshold if you took it up to 50 per cent unless you did some strange thing which said 'only applies in this circumstance but not in that circumstance'. It would be, to my mind, quite complex as to how you would actually apply that.[83]

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81 Prime Media Group, *Submission 8*, pp. 7–8. Paragraph 2(d) provides that a person is in a position to exercise control of a licence or a company if 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. Paragraph 2(e) provides that a person is in a position to exercise control of a licence or a company if the licensee or the company or more than 50 per cent 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. *Broadcasting Services Act 1992*, schedule 1, paragraphs 2(d)–(e).

82 Schedule 3, Part 1, item 1 [proposed new section 61CV].

83 Dr Simon Pelling, First Assistant Secretary, Content Division, Department of Communications and the Arts, *Committee Hansard*, 29 April 2016, p. 65.

3.81 The department also responded to the evidence received highlighting that, as currently drafted, the concept of control used in the bill for a trigger event is not two-way. Dr Pelling again noted that whether the government would amend the bill is a matter for the minister, however, he advised that the department's view is that, in a situation where a person who controls a regional licence starts to control a metropolitan licence, it is not intended for this to be immune from causing a trigger event. Dr Pelling explained that his understanding of the government's policy intent is 'a focus on the formation of a group, not on whether it is one or the other which drives the process'. He stated:

> The broad intention here is that where groups form which go over the 75 per cent control rule, no matter who initiates it, the key issue is that the group is formed and then that constitutes the trigger event. In that sense, whether a regional broadcaster controls the rights of a metropolitan broadcaster or a metro broadcaster has the rights of a regional broadcaster should not necessarily be the key issue.[84]

3.82 In response to a question on notice, the department subsequently acknowledged that the definition of a 'trigger event' in proposed new section 61CV 'would not include changes in control where a regional broadcaster came to be in a position to control a metropolitan broadcaster'. As a result, 'the additional local programming obligations in proposed sections 61CW and 61CX would not apply'. The department advised that it considers this a technical error and it will seek authority from the minister to amend the bill.[85]

Committee comment

3.83 The concept of 'control' that the bill relies on is not new, it is used for all of the media control and ownership rules in the BSA. The concept of control is also not straightforward, however, it establishes that a person who has company interests exceeding 15 per cent is to be regarded as being in a position to control the company. The committee notes the argument that such a circumstance may not provide significant efficiency and scale benefits for regional broadcasters.

3.84 Based on the evidence before it, however, the committee has not recommended that a different test for control should be used for the bill. The concept of control should cover all relevant scenarios where a person may be in a position to control a broadcasting licence. The committee also notes that the local content requirements provide *minimum* local content obligations intended to ensure the availability of local content in most regional areas. In light of the evidence that the regional broadcasters provide content in excess of the obligations, it is not apparent that a trigger event caused by a change in company interests of 15 per cent would

84 Dr Simon Pelling, First Assistant Secretary, Department of Communications and the Arts, *Committee Hansard*, 29 April 2016, p. 65.

85 Department of Communications and the Arts, Answers to questions on notice, 29 April 2016 (received 4 May 2016), p. 1.

present a compliance challenge. Nevertheless, the committee draws the evidence received about deemed control to the government's attention for further consideration.

3.85 The committee also notes the argument that the bill, as currently drafted, would not impose additional local broadcasting obligations in a situation where a regional commercial television broadcasting licensee starts to be in a position to exercise 'control' of a metropolitan commercial television broadcasting licence. The Department of Communications and the Arts has advised the committee that this is a drafting error, and the department will seek authority from the minister to amend the bill.

Recommendation 1

3.86 The committee recommends that the government consider whether schedule 3 to the bill should be amended to provide that, if:

- **a person is in a position to exercise control of a regional commercial television broadcasting licence; and**
- **the person starts to be in a position to exercise control of a metropolitan commercial television broadcasting licence; and**
- **immediately after that event:**
  - **the person is in a position to exercise control of two or more commercial television broadcasting licences; and**
  - **the combined licence area populations of those licences exceed 75 per cent of the population of Australia;**

that event is also a trigger event for each of those licences that is a regional commercial television broadcasting licence.

The ACMA's ability to enforce compliance

3.87 As noted in Chapter 2, licensees affected by a trigger event would be required to provide two reports to the ACMA on compliance with the local broadcasting requirements. The first report would cover the first 12-month period that commences six months after the trigger event, and the second report would cover compliance during the subsequent 12-month period. The bill also includes record-keeping requirements.

3.88 Representatives from the ACMA discussed the proposed compliance arrangements during their evidence to the committee. Ms McNeill explained that the local content obligation persists beyond the two years during which licensees are required to 'proactively report on compliance'. Ms McNeill added that, following the two-year reporting period, the record-keeping obligation 'would equip the ACMA either to respond to complaints that it received or to proactively undertake some kind

of an audit program if there were indicators that that were an appropriate course of action if there were widespread concerns about compliance'.[86]

3.89 The committee received evidence that indicated support for the ACMA's proposed role in relation to the local programming requirements and its ability to monitor compliance with the provisions. Representatives from MEAA told the committee that it considers the proposed provisions in relation to the ACMA's role are adequate. They also noted that the planned review of the operation of the bill would allow any issues related to whether there was reasonable monitoring of compliance.[87]

3.90 The NSW Farmers' Association questioned why the compliance reporting requirement is intended to expire. Ms Jamie Lovell from the Association remarked that the limited compliance reporting requirements mean the additional local programming obligations effectively cease within three years.[88] In its submission, the NSW Farmers' Association argued that, if a trigger event is met, the ACMA's role in enforcing local content requirements is 'more important than ever'.[89]

3.91 The Department of Communications and the Arts was questioned about the approach taken to the compliance reporting requirements. Mr Richard Windeyer, a first assistant secretary at the department, told the committee that the drafting approach reflects the government's intention not to 'impose more burden on industry than necessary'. Mr Windeyer added that the two-year reporting period enables the ACMA to review compliance 'in the early stages'. Following this:

> …there are the tools like the record-keeping rules and the normal activity of the ACMA…which kick in and, if that initial reporting indicates a need for particular interventions, then there are things like the record-keeping rules that can continue to be used to gather data. The point is that the normal range of activity powers—investigative capacity and ability to monitor and get information from the industry, which the ACMA has at its disposal—remains, and that that continues to be an appropriate way to grapple with the measures in this bill and other aspects of the industry.[90]

86 Ms Jennifer McNeill, ACMA, *Committee Hansard*, 31 March 2016, pp. 66–67.

87 Mr Paul Murphy, Chief Executive Officer; Mr Matthew Chesher, Director, Legal and Policy, MEAA, *Committee Hansard*, 31 March 2016, p. 63.

88 Ms Jaimie Lovell, Policy Director, NSW Farmers' Association, *Committee Hansard*, 31 March 2016, p. 51.

89 NSW Farmers' Association, *Submission 9*, p. 5.

90 Mr Richard Windeyer, First Assistant Secretary, Content Branch, Department of Communications and the Arts, *Committee Hansard*, 31 March 2016, pp. 71–72.

Committee comment

3.92 On face value, the reasoning put forward by some submitters that the compliance reporting requirements should extend beyond two reports has merit. However, the committee is mindful that reporting requirements are a clear example of a regulatory burden on business. The committee is also aware that, in other areas of broadcasting regulation, there have been efforts to move away from regular reporting requirements to a complaints-based approach.[91]

3.93 The intent of the reporting measure is to enable the ACMA to be satisfied that a licensee is properly complying with the local content obligations before the reporting obligation ceases.[92] If the ACMA is concerned by the content of either compliance reports provided after a trigger event, or if it has received complaints that are worthy of investigation, the record-keeping requirements provided for in the bill enable the ACMA to pursue the matter after the reporting obligations cease.

3.94 As it is not clear that the regulatory burden associated with extending the reporting requirements will result in better regulatory outcomes, the committee has not recommended amendments to the reporting requirements.

Committee view

3.95 The 75 per cent audience reach rule and the 2 out of 3 cross-media control rule focus on the traditional media platforms of commercial television, commercial radio and newspapers. These platforms continue to attract large numbers of consumers. However, it is clear that the current regulatory framework ignores key features of the contemporary media environment, including subscription television, online video streaming services, Australian-based online-only news sources and the ease of access to international news sources. The 75 per cent audience reach rule and the 2 out of 3 cross-media control rule are not required for a modern regulatory framework. The committee considers there is a compelling case for repealing these two rules.

3.96 The committee also supports the proposed local programming requirements that are contained in the bill. Although there is evidence that regional commercial television broadcasting licensees exceed their local programming requirements and that there is a commercial incentive for providing this content, the strengthened obligations will ensure that residents of most regional areas will have access to local content.

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91 For example, the *Broadcasting and Other Legislation Amendment (Deregulation Act 2015* introduced amendments to allow for a complaints-based system for captioning services instead of annual reporting requirements.

92 EM, p. 41.

3.97 The committee recommends that the bill be passed. Before concluding this report, however, the committee will respond to the market participants in the media sector and other interested observers who argued that the reforms in this bill do not go far enough.

3.98 The inquiry provided an opportunity for market participants to advocate for further changes they consider are necessary. The committee acknowledges the calls for further reform and is confident that the government will continue to tackle remaining areas of media reform in a carefully considered and methodical way. However, the committee rejects criticism that the bill is pursuing 'piecemeal' reform. It is important to emphasise the broad agreement in the industry that the two media control and ownership rules targeted by the bill are outdated. An opportunity is available in the near future to make valuable changes that will improve the regulatory landscape while protecting local content. Reform is a continual process, which the committee is confident does not end with this bill. Indeed, further reforms are being implemented by the government, such as the recent announcements as part of the 2016–17 Budget that licence fees for commercial television and radio broadcasters will be reduced by approximately 25 per cent, and that further licence fee relief will be considered.

Recommendation 2

3.99 Subject to restoration of the bill to the *Notice Paper* of the House of Representatives, the committee recommends that, after due consideration of Recommendation 1, the bill be passed.

Senator Linda Reynolds CSC
Chair