

## **Additional comments by Senator Bridget McKenzie**

1.1 Senator McKenzie recognises the intention of the Bill to remove what are in effect defunct rules such as the ‘reach rule’ and the uncompetitive ‘2 out of 3’ rule.

1.2 Senator McKenzie appreciates the great difficulties facing all media companies given the trend away from traditional forms of broadcasting towards streaming and the consequent loss of revenue to support their operations as they are currently structured. However, her primary focus is to ensure regional communities have access to locally produced news, current affairs and programming.

1.3 Commercial regional licensees have been hit hard. Due to the streaming of metro-based stations into their regional licence areas, they have seen a reduction in their advertising revenue with no commensurate reflection of that market share usurpation in their affiliate agreements with the encroaching metro-based, regional-streaming broadcasters.

1.4 Submissions to the inquiry by regional broadcasters highlight the difficulties of licence fee costs and affiliation fee increases, the reduced value of a programming relationship towards ensuring a business’s profitability has challenged their ability to service regional communities as they would like. The value of an ongoing affiliation is a poisoned chalice and regional commercial broadcasters are prudent to be consolidating their operations, however unfortunate for their regional audiences.

### ***Securing local content for regional communities***

1.5 The removal of the ‘one to a market’ rule should be a matter seriously considered by the Government as part of this Bill. This would allow regional broadcasters to consolidate amongst each other instead of operating in silos and their operational ability being diminished without an alternative redress to selling up.

1.6 As evidence was provided to the committee, a failure to allow regional broadcasters to consolidate will see the ABC as the sole provider of local content in rural and regional Australia – this simply unacceptable. Regional Australians are entitled to a variety of local content provision.

1.7 Another issue raised throughout the inquiry is the impact of metro-affiliates streaming content that regional licensees have purchased into their licence areas. The ability of regional licensees to compete with operators streaming over them is compromised. Also made more difficult is the production of local content in the regions.

1.8 As Hansard will show, metro-broadcasters have conflicting views on the relevance of the 2002 Ministerial Direction defining broadcasting services. Senator McKenzie sees the Direction as it stands as completely out of touch when considering current media environment.

1.9 It is incongruous that the definition of broadcasting remains archaic and does not include streaming. Whilst understanding that this definition underpins the regulation of broadcasting and that to attempt to alter the definition would affect digital rights and other rights also – but it must be made relevant.

1.10 Ultimately, the definition does not reflect the current landscape and has skewed competition. Regulation of the media landscape in the future must evolve to better reflect the market realities. At present, traditional media forms are advantaged over other players, by an illogical definition, that it has nonetheless become embedded in our outdated media law framework.

1.11 The flaw and the fact that broadcasting rights and digital rights have had to be dealt with separately since that definition was created, has meant the landscape has evolved and diverged in a multi-pronged way for some time. In turn, the legacy of this policy is that now it is a major impediment to necessary reform in the drastically evolved media market.

1.12 For a healthy media landscape we must allow a competitive industry, but also to remove impediments to healthy competition through deregulation where deregulation is called for. The exception to this is in local content where there is a lack of provision.

1.13 Senator McKenzie questions the need or purpose of a ‘trigger event’ to introduce the new local content regulations when most regional commercial broadcasters meet and exceed their local content quotas. To increase them further is a public policy initiative in recognition of the need to improve and maintain relevant discourse and news programming in the regions.

1.14 The behaviour of stakeholders in this rapidly changing environment has led Senator McKenzie to believe that the inclusion of the ‘trigger event’ as a means of incentivising the production of local content, is meaningless.

1.15 The original purpose of the trigger event was to aid in the smoothness of acquisition of regional broadcasters in any merger. Given a number of public assertions which bring in to question any desire to by metropolitan networks to acquire regional broadcasters, one wonders why the trigger event need be in place at all.

1.16 For example, when asked where acquiring a regional broadcaster sat as a priority, Mr Marks said:

“I don’t see acquiring a regional broadcaster as high on our priority list.”  
Hansard

“I don’t know if there will be a rush of mergers and acquisitions...my focus is [on being] a content business...as a content business the platform becomes less relevant.”

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1.17 In the past it was also noted by David Gyngell, former Nine CEO in late 2014 that “In five years’ time we will just go around regional television and stream our content into those markets. We ultimately won’t have a regional affiliate deal.”

1.18 In turn, Senator McKenzie seeks the removal of the need for a ‘trigger event’ to institute the increased regional content quotas (with the six-month lead-in time still remaining). This should apply to all licensees in aggregated and non-aggregated and Tasmanian markets.

1.19 Should any mergers take place, the status quo would remain. Secondly, any of their perceived efficiencies would still not be able to reduce adequate regional news programming.

1.20 With Nine expected to provide targeted ads on live streaming by the end of the 2017 year and regional affiliates’ reliance on programming at a high cost (50% of advertising revenue in the case of Southern Cross), the need for Nine and other companies to acquire regional broadcasters is defunct. Again, they can simply stream over the top of regional broadcasters.

1.21 The ‘one to market’ rule means that regional broadcasters cannot consolidate their businesses amongst themselves as a competitive business model.

1.22 From evidence to the inquiry and in public debate, it is clear that affiliate fees are highly unlikely to decrease, further affecting regional broadcasters’ ability to operate when their advertising revenue is diminishing. This is in large part due to metro-companies streaming over their heads and attracting advertising to themselves.

1.23 There is no way to control what metro broadcasters charge for content and this pressure is enormous considering the encroachment by other media companies into regional markets.

1.24 As the Nine CEO reminded the committee, metropolitan broadcasters do not need to acquire regional broadcasters to compete in regional markets. Their ability to stream into regional areas where they do not have a licencing agreement circumvents any urgency or need to acquire regional broadcasters.

1.25 In addition to ensuring regional broadcasters can compete, Senator McKenzie acknowledges that the exclusion of remote areas from requirements is rational. It further highlights the case for market-failure regions to be better served by our public broadcaster, the ABC. Regional Australians are entitled to a competitive media market and successful, commercial regional broadcasters exist - and should be given the opportunity to compete as a result of any media reforms.

1.26 Regional Australians are missing out on the forensic dialogue on important issues that is taken for granted by metropolitan residents. This has negative consequences for the decision-making and the cultural education of regional communities.

1.27 Senator McKenzie commends the Minister's commitment to ensure that the production of local content is promoted and protected.

1.28 The Government's Budget announcement of a 25% reduction in broadcasting licence fees is welcomed.

1.29 Material of local significance definitions must be carefully reviewed at some point in the future, given the problem in quality and journalism when 'rip and read' broadcast meet the local significance definition, but it is effectively poor quality journalism and outsourced to the detriment of those regions. It does not take much to understand that the quality and embeddedness of the best kind of journalism has not been evident here.

1.30 Our media laws must be amended to better reflect the reality of today's media landscape. Similarly, we must acknowledge unfair playing fields and seek to do what we can to enable broadcasting operators that are maintaining good programming and news delivery in regional areas, to continue their good work.

1.31 In summary, Senator McKenzie recommends that the Bill be passed and include the removal of the 'one to a market' rule, the definition of 'broadcasting services' be updated to include the internet and other forms of streaming.

**Senator Bridget McKenzie**  
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