

Chapter 1

Introduction

1.1 On 7 December 2017, the Senate referred the Communications Legislation Amendment (Regional and Small Publishers Innovation Fund) Bill 2017 to the Environment and Communications Legislation Committee for inquiry and report by 12 February 2018.¹

Conduct of the inquiry

1.2 In accordance with its usual practice, the committee advertised the inquiry on its website and wrote to relevant individuals and organisations inviting submissions. The date for receipt of submissions was 12 January 2018.

1.3 The committee received nine submissions. The submissions are listed at Appendix 1 and are available on the committee's website: www.aph.gov.au/senate/ec.

1.4 The committee also held a public hearing for this inquiry on 1 February 2018 in Melbourne. A list of witnesses who gave evidence at the hearing is at Appendix 2.

1.5 The committee thanks all of the individuals and organisations that contributed to the inquiry.

Scope and structure of the report

1.6 This report comprises two chapters:

- The remaining sections of this chapter discuss the review of the bill undertaken by the Senate Standing Committee for the Scrutiny of Bills before providing further background information relating to the bill and an overview of the provisions in the bill.
- Chapter 2 examines the principal issues raised by stakeholders relating to the overall intent of the bill and specific provisions within it. The committee's overall findings on the bill are provided at the end of that chapter.

Reports of other committees

1.7 When examining a bill or draft bill, the committee takes into account any relevant comments published by the Senate Standing Committee for the Scrutiny of Bills (Scrutiny Committee). The Scrutiny Committee assesses legislative proposals against a set of accountability standards that focus on the effect of proposed legislation on individual rights, liberties and obligations, and on parliamentary propriety.

1 *Journals of the Senate*, 7 December 2017, pp. 2512–14.

1.8 The Scrutiny Committee examined the bill in its *Scrutiny Digest No. 1 of 2018*. That committee commented on how various matters relating to the grants program the bill would establish are to be determined by non-statutory guidelines or in individual agreements, rather than being set out in the bill.² The provisions of the bill to which these comments relate are outlined below at paragraphs 1.15 and 1.16. This drafting approach is considered further in Chapter 2.

Overview of the bill

1.9 The bill would amend the *Broadcasting Services Act 1992* (BSA) to establish the legislative framework for a Regional and Small Publishers Innovation Fund (the Innovation Fund). The Innovation Fund is designed as a grants funding scheme, to be administered by the Australian Communications and Media Authority (ACMA), that would enable the ACMA, on behalf of the Commonwealth, to make a grant of financial assistance to a publisher of a newspaper, magazine or other periodical, or to a content service provider.

1.10 The explanatory memorandum (EM) advises that the purpose of the Innovation Fund is 'to assist regional and small publishers to transition, compete and innovate more successfully in a changing media environment'.³ The grants are intended to be used by publishers 'for initiatives that support the continuation, development, growth and innovation of Australian civic journalism, including initiatives that explore and expand the journalism funding model'.⁴ Examples of activities that could be eligible for grant funding include:

- the purchase of a particular piece of technology or equipment;
- supporting a program or an initiative that is intended to promote civic journalism;
- the development of an application for the delivery of news, and other media related content services;
- training and upskilling of staff; and
- efforts to increase revenue and readership.⁵

2 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest*, No. 1 of 2018, February 2018, pp. 14–15.

3 Explanatory Memorandum (EM), p. 2.

4 The EM notes that civic journalism 'has the primary purpose of investigating and explaining public policy and issues of public interest or significance with the aim of engaging citizens in public debate and informing democratic decision making'. EM, p. 2.

5 EM, p. 8.

Background

1.11 During 2016 and 2017, the Government announced various changes to Australian media laws. The key component of these changes was the amendments to the regulation of ownership and control of traditional media organisations. Specifically, as the result of legislation passed in 2017, two out of five media ownership and control rules (the '75 per cent audience reach rule' and the '2 out of 3 rule cross-media control rule'), were repealed.⁶

1.12 The rationale for updating Australia's media laws due to the disruption in the media sector caused by the internet was summarised in the ministerial second reading speech on the Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017. The following observations made in that speech are particularly noteworthy:

Australian media organisations play a pivotal role in our society, reflecting and representing Australian culture, informing local communities, and supporting our democratic processes. We've come to expect a lot of our media outlets, and the mastheads and networks we've grown up with are ingrained in our daily lives: at work, at home, and on the go.

But these organisations are under real pressure. Broadcasters and publishers are operating in an increasingly challenging environment, with intense competition for audiences and advertising revenue from other media companies, including online and on-demand operators and foreign technology companies.

The regulations governing our media companies don't allow them to meet these challenges on a level playing field. Figuratively speaking, they are in a fight with one hand tied behind their backs. Reform is essential if these companies are to have a future, and the Government is committed to implementing the necessary change.⁷

1.13 Another component of the media reform package is the \$60 million Regional and Small Publishers Jobs and Innovation package, of which the Innovation Fund proposed in this bill is part. Other measures comprising the Regional and Small Publishers Jobs and Innovation package include a Regional and Small Publishers cadetship program to support 200 cadetships, as well as 60 regional journalism scholarships.⁸

6 This reform was given effect by the *Broadcasting Legislation Amendment (Broadcasting Reform) Act 2017*. The amendments that gave effect to this reform were considered by this committee as part of two inquiries conducted in 2016 into the Broadcasting Legislation Amendment (Media Reform) Bill 2016.

7 *Senate Hansard*, 22 June 2017, pp. 4771–72.

8 The Hon Malcolm Turnbull MP and Senator the Hon Mitch Fifield, 'A new era for Australia's media', *Media release*, 14 September 2017.

1.14 In addition, other media reform measures recently enacted or currently before the Parliament include:

- the introduction of additional local programming obligations for regional commercial television broadcasting licensees that apply if, as a result of a change in control of a licence, the licence becomes part of a group of commercial television licences that reach 75 per cent of the Australian population;⁹
- the replacement of broadcast licence fees with a spectrum charge;¹⁰
- a reduction in gambling advertising during live sport broadcasts;¹¹
- reforms to the anti-siphoning scheme—these changes removed outdated and redundant provisions and reduced the number of events included on the anti-siphoning list;¹²
- a proposed public register of foreign-owned media assets;¹³
- various measures relating to enhancing the focus of the ABC on rural and regional Australia;¹⁴
- enhanced transparency measures for the public broadcasters;¹⁵
- including the words 'fair' and 'balanced' in the statutory duties of the ABC Board that relate to the gathering and presentation by the ABC of news and information;¹⁶ and

9 This reform was given effect by the *Broadcasting Legislation Amendment (Broadcasting Reform) Act 2017*. The amendments that gave effect to this reform were considered by this committee as part of two inquiries conducted in 2016 into the Broadcasting Legislation Amendment (Media Reform) Bill 2016.

10 This change was introduced by the *Commercial Broadcasting (Tax) Act 2017*.

11 It is intended that the new gambling promotions restrictions will be applied to broadcasting services via amendments to relevant industry codes of practice, and that the restrictions will be applied to online content services by the Communications Legislation Amendment (Online Content Services and Other Measures) Bill 2017. At the time of writing, that bill is before the Senate and is being examined by a separate inquiry conducted by this committee.

12 This reform was given effect by the *Broadcasting Legislation Amendment (Broadcasting Reform) Act 2017*.

13 This measure is proposed by the Broadcasting Legislation Amendment (Foreign Media Ownership and Community Radio) Bill 2017, which at the time of writing is before the Senate.

14 These proposed measures are contained in the Australian Broadcasting Corporation Amendment (Rural and Regional Measures) Bill 2017, which at the time of writing is before the Senate and is being examined by a separate inquiry conducted by this committee. These measures respond to this committee's report on the Australian Broadcasting Corporation Amendment (Rural and Regional Advocacy) Bill 2015, which is a private senator's bill introduced by Senator Bridget McKenzie. The committee's report on Senator McKenzie's bill was presented in April 2017.

15 These measures are contained in the National Broadcasters Legislation Amendment (Enhanced Transparency) Bill 2017, which at the time of writing is before the Senate.

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- a community radio package.¹⁷

Framework for how the Innovation Fund would operate

1.15 The bill provides that grants could only be made to a constitutional corporation that publishes a newspaper, magazine or other periodical, or to a content service provider.¹⁸ In addition, grants could only be made if a written agreement has been entered into providing terms and conditions on which financial assistance is granted. The terms and conditions are to include a condition that the recipient will spend the amount of the grant in connection with a matter specified in the agreement.¹⁹

1.16 The ACMA would develop and apply eligibility criteria for grants under the Innovation Fund as part of grant guidelines. It is intended that the criteria included in the ACMA's grant guidelines would reflect the eligibility requirements previously announced by the Government, namely that applicants would be required to:

- have an annual turnover of between \$300,000 and \$30 million;
- satisfy a primary purpose test (of producing civic and public interest journalism with an Australian perspective);
- satisfy an Australian residence test (applicants would need to be incorporated under Australian law with central management located in Australia);
- satisfy an independence test (applicants could not be affiliated with a political party, union, superannuation fund, financial institution, non-government organisation or policy lobby group);²⁰
- satisfy a control test (this would exclude organisations that are not majority controlled by Australian residents);
- be a member of the Australian Press Council or have a robust and transparent complaints process; and
- have editorial guidelines, a code of conduct or similar framework in place relating to the provision of quality journalism.²¹

16 This change is proposed in the Australian Broadcasting Corporation Amendment (Fair and Balanced) Bill 2017. At the time of writing, this bill is before the Senate and is being examined by a separate inquiry conducted by this committee.

17 This measure is proposed in the Broadcasting Legislation Amendment (Foreign Media Ownership and Community Radio) Bill 2017, which at the time of writing is before the Senate.

18 The term 'content service provider' relies on the term used for Schedule 7 of the BSA, which excludes, among other services, licensed broadcasting services.

19 Proposed new sections 205ZH(2) and 205ZJ.

20 The Department of Communications and the Arts has advised that the Fund is intended to assist 'regional and small publishers that are not aligned or associated with any group that may have an interest in specific policy or legislative outcomes'. Department of Communications and the Arts, Answers to questions on notice, Supplementary Budget Estimates 2017–18, No. 94.

1.17 Applications that satisfy the eligibility criteria would then be assessed according to merit criteria. Prior to the grant guidelines being finalised, it is intended that scoping papers on how the eligibility and merit criteria will operate will be released for consultation.²²

1.18 The bill would provide that grants may be made by the ACMA in 2018–19 and in the following two financial years, with the overall amount of financial assistance provided under the Innovation Fund to not exceed \$50.1 million. It is intended that grants 'will be capped at a maximum of \$1 million per year for any media group'.²³

1.19 The establishment of an advisory committee to advise the ACMA on the exercise of the ACMA's powers relating to the Innovation Fund is also envisaged. Under proposed new section 205ZK, the Minister may constitute such a committee and proposed new subsection 205ZK(2) would require the ACMA to have regard to any relevant advice given to it by the advisory committee.

1.20 This bill would not appropriate the money available for grants under the Innovation Fund; rather, it is intended that the money will be appropriated by another Act, which the bill and EM note will likely be an annual appropriation Act. This is a consequence of the bill being introduced in the Senate rather than in the House of Representatives.²⁴ Funding for the Innovation Fund was accounted for in the 2017–18 *Mid-Year Economic and Fiscal Outlook*, which was released in December 2017.²⁵

21 EM, p. 7; Mr James Penprase, Director, Industry Section, Department of Communications and the Arts, *Proof Committee Hansard*, 1 February 2018, p. 5.

22 Mr James Penprase, Director, Industry Section, Department of Communications and the Arts, *Proof Committee Hansard*, 1 February 2018, p. 5.

23 Proposed new section 205ZH.

24 EM, p. 7. Section 53 of the Constitution stipulates that 'proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate'.

25 Australian Government, *Mid-Year Economic and Fiscal Outlook 2017–18*, December 2017, p. 139.