

The Senate

Environment and Communications Legislation Committee

Communications Legislation Amendment
(Regional and Small Publishers Innovation
Fund) Bill 2017

February 2018

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Committee membership

Committee members

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Contents

| | |
|---|------------|
| Committee membership | iii |
| Chapter 1: Introduction | 1 |
| Conduct of the inquiry | 1 |
| Scope and structure of the report..... | 1 |
| Reports of other committees..... | 1 |
| Overview of the bill..... | 2 |
| Chapter 2: Key issues | 7 |
| Stakeholder views on the overall policy intent | 7 |
| Eligibility criteria..... | 9 |
| Advisory committee | 15 |
| Role of the ACMA | 17 |
| Committee view..... | 18 |
| Labor Senators' additional comments | 21 |
| Australian Greens' dissenting report..... | 23 |
| Appendix 1: Submissions and answer to questions on notice..... | 25 |
| Appendix 2: Public hearing..... | 27 |

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.

-
- 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.

Chapter 2

Key issues

2.1 This chapter examines the evidence received by the committee in submissions to this inquiry. Throughout this chapter, the committee has responded to specific matters raised in submissions. The committee's overall conclusions on the bill are at the end of the chapter.

Stakeholder views on the overall policy intent

2.2 The submissions received during this inquiry recognised the merit of developing measures to support Australian civic journalism, as well as the particular need to support civic journalism in regional areas. For example, Deakin University submitted:

Support for small and rural and regional publishers in the rapidly changing digital media environment is crucial to ensure the continuation of quality civic journalism for Australians living in regional, rural and remote areas.¹

2.3 Deakin University expressed support for the Regional and Small Publishers Innovation Fund (the Innovation Fund) and the remaining elements of the Regional and Small Publishers Jobs and Innovation Package that this bill does not address (the cadetships and regional journalism scholarships). Deakin University provided the following further comments about the current media environment to explain why such measures are required:

As publishers in rural and regional Australia struggle to create a new business model in the digital media landscape, assistance is needed to ensure they continue to employ well-trained and educated journalists...Additionally, amid the rapidly changing digital media landscape, there are risks of ill-informed rural and regional communities, which can create debilitating democratic deficits.²

2.4 Schwartz Media and Schwartz Publishing, which publish *The Saturday Paper*, *The Monthly*, *Quarterly Essay* and *Australian Foreign Affairs*, advised that they 'strongly support the bill, and are confident that it will have a beneficial effect on the operations of regional and small publishers, and thereby press diversity in Australia'.³

1 Deakin University, *Submission 2*, p. 2.

2 Deakin University, *Submission 2*, p. 1.

3 Schwartz Media and Schwartz Publishing, *Submission 9*, p. 1.

2.5 The Walkley Foundation, which was established to promote excellence in journalism and is well known for the Walkley Awards for Excellence in Journalism, expressed its 'enthusiasm' for the Innovation Fund as well as its willingness to provide advice on how to administer it.⁴

2.6 Country Press Australia (CPA) commended the Government for developing initiatives to support small regional and rural publishers. Overall, it welcomed the proposed Innovation Fund, although it suggested that attention needs to be given to measures that will lead to 'better long-term outcomes for business and for jobs'.⁵

2.7 Given the fiscal constraints faced by the Australian Government, SBS expressed its concern that the proposed Innovation Fund utilises funding which could instead support the provision of 'sufficient and reliable' funding for public broadcasters. SBS submitted that the proposed Innovation Fund has the positive aim of promoting and cultivating journalism in regional areas, however, it argued that this 'gain should not come at the expense of the valued and unique work of public broadcasters'.⁶

2.8 In commenting on the bill, the Indigenous Remote Communications Association (IRCA) emphasised the need to take into account experiences Indigenous Australians have had with the media as well as the specific needs of Indigenous Australian audiences. IRCA expressed concerns about how Indigenous people and issues have been represented in mainstream news and current affairs reporting, and argued that, as a consequence of this, 'First Nations peoples highly value First Nations news content'.⁷ IRCA also submitted:

...it is important that the role of First Nations broadcasters as the primary providers of news and current affairs to their communities is clearly understood. At a purely operational level, the delivery of a First Nations news service is a requirement for First Nations media organisations receiving funding through the Indigenous Advancement Strategy. At a strategic level, the delivery of a First Nations news service is a tangible enactment of Article 16 of the UN Declaration of the Rights of Indigenous Peoples to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.⁸

4 The Walkley Foundation, *Submission 5*, pp. 2, 4.

5 In particular, the CPA highlighted the need to support young adults from school into long-term employment in the sector, which it argued could be achieved through measures such as taxation rebates or wage support. Country Press Australia, *Submission 4*, pp. 1–2.

6 SBS, *Submission 6*, pp. 1–4.

7 Indigenous Remote Communications Association, *Submission 1*, p. 6. Evidence detailing these concerns and indicating preferences among Indigenous Australians regarding how to access news is outlined in pages 5–9 of the submission.

8 Indigenous Remote Communications Association, *Submission 1*, p. 5.

2.9 IRCA questioned the utility of the proposed Innovation Fund for remote Indigenous communities. IRCA's concerns are discussed in the following sections.

2.10 Guardian Australia advised that it supports the overall purpose of the proposed Innovation Fund in that it is intended to assist publishers to continue to produce Australian news and to employ Australian journalists in the face of market disruption. However, Guardian Australia suggested that an aspect of the proposed eligibility criteria might limit the extent to which this objective is achieved (this is discussed below).⁹

2.11 The Media, Entertainment and Arts Alliance (MEAA) submitted that it is 'supportive of the general approach' of the Innovation Fund—in particular it gave 'strong support' for the Fund's emphasis on civic journalism. MEAA is concerned, however, that as the Innovation Fund is a short-term program, its benefits will only result in a 'temporary boost' for the sector and 'be largely exhausted shortly after the 2020–21 financial year'. MEAA is 'hopeful' that consideration will be given to extending the Innovation Fund (as well as the other elements of the Regional and Small Publishers Jobs and Innovation Package) beyond 2020–21.¹⁰

2.12 MEAA's submission also commented on the remaining elements of the Regional and Small Publishers Jobs and Innovation Package, which are not addressed in this bill.

Eligibility criteria

2.13 As noted in Chapter 1, the Innovation Fund has been designed to enable the Australian Communications and Media Authority (ACMA) to make a grant of financial assistance to a constitutional corporation that publishes a newspaper, magazine or other periodical, or to a content service provider. The term 'content service provider' relies on the term used for Schedule 7 of the *Broadcasting Services Act 1992* (BSA), which excludes, among other services, licensed broadcasting services.

2.14 Other proposed eligibility criteria previously announced by the Government that are expected to be included in the grant guidelines issued by the ACMA are listed at paragraph 1.16.

2.15 The following paragraphs examine the evidence received during this inquiry about the proposed eligibility requirements contained in the bill and those to be set by the ACMA in the grant guidelines.

9 Guardian Australia, *Submission 7*, pp. 1–3.

10 Media, Entertainment and Arts Alliance, *Submission 8*, pp. 2, 7.

Annual turnover requirement

2.16 The explanatory memorandum (EM) notes that the Government has announced that applicants would be required to have an annual turnover of between \$300,000 and \$30 million, and that this requirement is expected to be included in the eligibility criteria to be developed by the ACMA.¹¹

2.17 CPA expressed concern that the \$300,000 threshold could exclude certain well-established small publications, particularly weekly publications. CPA recognised that a minimum threshold is necessary 'to guard against start-ups and the like', however, to ensure that established small publications can apply for funding, CPA argued that:

- the threshold could be reduced to \$200,000; or
- the eligibility criteria could be broadened to allow applications to be considered from 'small print publishers of long-standing who can demonstrate that they, too, should qualify'.¹²

2.18 The Department of Communications and the Arts (the department) was questioned about how the thresholds were identified. The department explained that the minimum threshold is intended to ensure that applicants are 'genuine providers of news content' that reach a reasonably sized audience, thus ensuring grants would have 'a reasonable level of impact for the content that's being supported'. The department also advised that CPA had written to the Minister to raise their suggestions with the Government directly.¹³

Committee comment

2.19 The committee notes the evidence from CPA regarding the proposed turnover requirement. In considering this evidence, it is important to note that the specific turnover thresholds are not prescribed in the bill, rather they will be determined in the eligibility criteria that will be finalised after the bill has been passed. The committee supports this approach for two reasons:

- First, the committee recognises that to ensure the Innovation Fund is successful, a minimum eligibility threshold based on turnover is required to ensure that grants are provided to applicants with sufficient scale and audience. Whether a particular threshold amount such as \$300,000 strikes the right balance, however, can be considered further outside of the legislative process. The committee has limited evidence before it to evaluate whether the \$300,000 threshold strikes the right balance. In any case, the committee has focused on the overall policy intent underpinning the Innovation Fund of

11 Explanatory Memorandum (EM), p. 7.

12 Country Press Australia, *Submission 4*, p. 2.

13 Mr James Penprase, Director, Industry Section, Department of Communications and the Arts, *Proof Committee Hansard*, 1 February 2018, pp. 9–10.

providing support to regional and small publishers. The committee is satisfied for the Government and the ACMA, with the support of the expert advice available to them, to determine the precise amounts for the annual turnover requirement that are appropriate for achieving the objectives of the Innovation Fund.

- Secondly, the committee considers the approach taken in the bill provides appropriate flexibility that would enable technical matters such as this to be reviewed at a later date if necessary. By leaving certain matters to the grant guidelines, it remains possible to tweak aspects of the arrangements for the Innovation Fund after the bill has been passed, including as part of the review that departmental officers advised would take place after the first 12 months of the Fund's operation.¹⁴ This approach should help to ensure the program is as well targeted as possible and that any perverse outcomes that might be identified can be readily addressed.

2.20 Although for the reasons outlined above the committee has not formed a view on the \$300,000 threshold, the committee recognises that CPA's evidence on this matter should be carefully considered. Accordingly, the committee requests that the Government and the ACMA have regard to CPA's evidence on this matter when finalising the annual turnover requirement.

Control test

2.21 As with the annual turnover requirement, it is expected that the eligibility criteria issued by the ACMA will include a control test requiring applicants to be an entity that is majority controlled by Australian residents.¹⁵

2.22 Guardian Australia argued against the control test, the inclusion of which would exclude it from applying for grants under the Innovation Fund. Guardian Australia noted that the text 'does not appear to apply to other government assistance to the media—not even to the cadetship fund which forms part of this same assistance package'. Guardian Australia concluded that the effect of the proposed arrangements for the Innovation Fund would be the exclusion of 'a new, fast growing source of Australian news and of jobs for Australian journalists', despite its understanding that 'the whole purpose of the fund is to encourage both those things'.¹⁶

2.23 MEAA similarly questioned the merits of including a control test, which it argued would 'isolate potential applicants who otherwise fit squarely within the program's objectives'.¹⁷

14 Mr James Penprase, Director, Industry Section, Department of Communications and the Arts, *Proof Committee Hansard*, 1 February 2018, p. 3.

15 EM, p. 7.

16 Guardian Australia, *Submission 7*, p. 3.

17 Media, Entertainment and Arts Alliance, *Submission 8*, p. 3.

2.24 This aspect of the eligibility criteria for the Innovation Fund was debated in the Senate during the debate on the bills which amended the media ownership and control rules and replaced the broadcasting licence fees with a spectrum charge. During this debate, the Minister informed the Senate that the government wanted the arrangements for the Innovation Fund focused 'on Australian media organisations'. The Minister noted that this would mean that *Guardian Australia* would be excluded, however, he added that other organisations such as *News Corp Australia* would similarly be excluded.¹⁸

2.25 Furthermore, during the committee's public hearing into this bill, officers from the department indicated that comparisons between the control test applied to the Innovation Fund and the absence of a control test for the cadetships and regional journalism scholarships measures are problematic. A departmental officer emphasised that the Innovation Fund is a business-oriented measure directed to Australian-controlled entities, whereas the principal beneficiaries of the cadetship and scholarship programs are individuals (namely, the cadets and recipients of the scholarships). In addition, the officer noted that the scholarships will be provided through universities, so there is no concept of a control test that is relevant to that measure.¹⁹

Committee view

2.26 The committee notes that, in designing the arrangements for the Innovation Fund, the Government's intention is that the program will only be available to Australian media organisations. The committee accepts the Government's policy decision and considers that the proposed control test is a suitable means to give effect to it.

Application to print and online only

2.27 IRCA commented extensively on how the bill has been drafted to make the Innovation Fund available to publishers of newspapers, magazines or other periodicals, or to content service providers, only. IRCA advised that it does not support the bill as currently drafted because licensed community broadcasters would not be eligible for funding.²⁰

2.28 IRCA explained that remote Indigenous Australian communities 'have very few print news publications available to them'. It submitted that, although a diverse range of delivery platforms have developed, broadcast news remains the dominant form of receiving news in those communities. IRCA argued:

The limitation in the proposed Bill to funding of only print media (and online) is not consistent with the historical and contemporary context

18 Senator the Hon Mitch Fifield, *Senate Hansard*, 14 September 2017, pp. 7352–53.

19 Mr James Penprase, Director, Industry Section, Department of Communications and the Arts, *Proof Committee Hansard*, 1 February 2018, p. 9.

20 Indigenous Remote Communications Association, *Submission 1*, p. 10.

of First Nations media or the diversity of platforms being deployed by First Nations news organisations to reach First Nations audiences.²¹

2.29 IRCA argued that Indigenous Australian broadcasters should be eligible for funding 'on the basis of their unique role in the primary provision of news and current affairs content to First Nations communities, as well as their unique position in the provision of news and current affairs through the lens of First Nations peoples'. In addition, IRCA argued that:

- a proportion of the total funds (10 per cent) should be allocated for Indigenous Australian news and media;
- funding should be able to be provided 'for the purposes of building news and current affairs capacity in transitioning to contemporary news platforms and systems as well as in building capacity for the development of an increasing number of First Nations journalists nationally'; and
- a broad definition of innovation should be adopted for the Innovation Fund that could include the development of a news and current affairs aggregation and sharing platform for Indigenous Australians.²²

2.30 In response to IRCA's concerns, the department explained that in developing the Innovation Fund, the Government decided that the program would be open to publishers and content service providers only. However, a departmental officer noted that regional television and radio broadcasters would be eligible to participate in the cadetship program. It was also noted that the Australian Government supports community broadcasting through the Community Broadcasting Foundation.²³

Committee comment

2.31 The committee acknowledges the concerns put forward by IRCA that measures to support civic journalism which are focused on print and content service providers could be of limited benefit for remote Indigenous communities given the reliance on radio and television in those areas.

2.32 In conducting this inquiry, the committee has focused on the legislative drafting of the bill and the overall merits of the proposed Innovation Fund. Fundamentally, the bill relates to publishing, not broadcasting. The Government's

21 Indigenous Remote Communications Association, *Submission 1*, pp. 7–9 (emphasis omitted). A survey undertaken in 2016 of news sources accessed by remote Indigenous communities revealed that local Indigenous community radio news was accessed the most (61 per cent of respondents), followed by NITV News (58 per cent), ABC TV News (52 per cent), CAAMA News (51 per cent), newspapers (27 per cent) and online (1 per cent). Indigenous Remote Communications Association, *Remote Indigenous Communications and Media Survey*, November 2016; cited in Indigenous Remote Communications Association, *Submission 1*, p. 9.

22 Indigenous Remote Communications Association, *Submission 1*, p. 10.

23 Mr James Penprase, Director, Industry Section, Department of Communications and the Arts, *Proof Committee Hansard*, 1 February 2018, p. 9.

intention to limit the scope of the Innovation Fund to print and online publishers is clear. This decision reflects that the Innovation Fund is a response to the substantial challenges that publishers of civic journalism face due to the significant transition in the media industry that is underway. The committee considers that support for the provision of journalism to remote Indigenous communities could more effectively be provided through the Regional and Small Publishers Cadetship Program and the Community Broadcasting Foundation. The committee draws IRCA's submission to the Government's attention for consideration as the cadetship program and any future policies regarding the media sector are developed and promoted.

Other evidence regarding the eligibility criteria and the arrangements for administering the Innovation Fund

2.33 The submission from Schwartz Media and Schwartz Publishing contained a series of questions seeking clarification about how the proposed eligibility criteria and other aspects of the Innovation Fund would operate in practice. Matters about which clarification is sought included:

- what a 'robust and transparent complaints process' entails;
- whether the requirement relating to editorial guidelines and a code of conduct or similar framework relating to the provision of quality journalism requires documentation, or whether 'proof by practice' would be sufficient;
- whether funds can be used to pay salaries to people involved in activities that are eligible for the Innovation Fund, such as the development of applications for the delivery of news;
- the frequency of grant rounds within each year;
- whether grant applications relate to one year of activities only, or will be required to address the three year timeframe; and
- whether 'there be any relationship between the size of grants and the size of a business receiving those grants'—for example, Schwartz Media and Schwartz Publishing questioned whether a company with turnover of \$300,000 could receive a \$1 million grant in one year.²⁴

2.34 The committee raised many of these issues with the department. The departmental officers' evidence clarified how particular aspects of the program are intended to operate. For example, the officers advised that it is currently planned that grant rounds would occur once a year, although it would be possible for applicants to seek funds relating to projects spanning more than one year. The officers confirmed that other matters relating to how the Innovation Fund would operate in practice would be outlined in detail in the grant guidelines. Furthermore, it was

24 Schwartz Media and Schwartz Publishing, *Submission 9*, pp. 1–2.

confirmed that there would be an opportunity for public consultation to inform the final grant guidelines.²⁵

Committee comment

2.35 Based on the evidence given by the department at the committee's public hearing, the committee is satisfied that the grant guidelines will provide the clarification stakeholders are seeking about how aspects of the grant application process will work in practice.

Advisory committee

2.36 As noted in Chapter 1, proposed new section 205ZK would enable the Minister to establish an advisory committee to advise the ACMA on the exercise of the ACMA's powers relating to the Innovation Fund. Proposed new subsection 205ZK(2) would require the ACMA to have regard to any relevant advice given to it by the advisory committee.

2.37 The EM notes that whether to establish the advisory committee, and composition and appointment of members to the committee, would be at the Minister's discretion. However, the EM added:

- ...it is expected the Committee is to comprise, at a minimum, a representative appointed by the Minister from each of:
- the Australian Press Council;
 - the Walkley Foundation; and
 - Country Press Australia.²⁶

2.38 The EM further noted that the bill has been drafted to require the ACMA to have regard to relevant advice provided by the advisory council because it is expected that the advisory committee 'will be comprised of members who will have significant experience with matters in relation to news, journalism, and other media related content'.²⁷

Stakeholder comments

2.39 MEAA submitted that it 'broadly support[s]' the idea of the ACMA seeking input on the distribution of grants from an external advisory committee comprised of the organisations identified in the EM.²⁸

25 Mr James Penprase, Director, Industry Section, Department of Communications and the Arts, *Proof Committee Hansard*, 1 February 2018, pp. 2, 5.

26 EM, p. 8.

27 EM, p. 9.

28 Media, Entertainment and Arts Alliance, *Submission 8*, p. 3.

2.40 The Australian Press Council submitted that it 'has the knowledge and experience to participate on the advisory committee...and welcomes the opportunity to do so subject to being satisfied that its participation on the committee would not give rise to any perceived, potential or actual conflict of interest'.²⁹ Similarly, the Walkley Foundation indicated its willingness to participate on the advisory committee.³⁰

2.41 Deakin University agreed that the members of the advisory committee suggested in the EM (the Australian Press Council, CPA and the Walkley Foundation) 'all...have significant experience in the news media'. Deakin University submitted that membership of the committee 'would be enhanced' if, in addition to the organisations identified in the EM, MEAA and academia were represented on the advisory committee.³¹

2.42 In light of its concerns about how Indigenous people and issues are represented in mainstream news and current affairs reporting (see paragraph 2.4), IRCA reasoned that 'groups not represented effectively in mainstream media need to be included in any activity aimed at enhancing public interest journalism'. Accordingly, IRCA called for the bill to be amended to require that culturally and linguistically diverse communities, including Indigenous Australians, are represented on the proposed advisory committee.³²

Committee comment

2.43 The committee considers that the establishment of an advisory committee to assist the ACMA is a sensible proposal. It is important to note that the bill does not mandate the creation of an advisory committee; rather, it provides that the Minister *may* establish such a body. The committee supports this approach, as it will provide the Minister with the flexibility to judge whether, and for how long, the advisory committee is required, and thus it promotes the efficient use of public resources. It would be unusual to stipulate in the bill that the Minister must make certain types of appointments to a body that the Minister is not required to establish.

2.44 In any case, the committee is confident that appointments made by the Minister will ensure the advisory committee has the expertise necessary to fulfil its function of advising the ACMA. The committee recognises, however, that the evidence received during this inquiry regarding the composition of the proposed advisory committee may assist the Minister in making appointment decisions and, accordingly, the committee draws this evidence to the Minister's attention.

29 Australian Press Council, *Submission 3*, p. 3.

30 The Walkley Foundation, *Submission 5*, p. 4.

31 Deakin University, *Submission 2*, p. 2.

32 Indigenous Remote Communications Association, *Submission 1*, p. 11.

Role of the ACMA

2.45 It is intended that the ACMA would administer the Innovation Fund. However, as discussed above, the Minister would be able to appoint an advisory committee to assist the ACMA in discharging its responsibilities. In addition, although the Innovation Fund would be administered by the ACMA, the department advised that it 'will be closely involved in its design and establishment'.³³

Stakeholder comments

2.46 Despite supporting the ACMA's work in other areas, IRCA questioned why the ACMA had been selected to administer the Innovation Fund. IRCA submitted:

IRCA has no issues with the integrity and professionalism of the ACMA and can only commend its capacity to manage spectrum, broadcast licensing, research and associated regulatory roles. However, the ACMA has no current capacity for administering a grants program and IRCA questions the cost-effectiveness, and risk of mixed purpose, in establishing a grants program in ACMA without the history of grants administration. The Department of Communications and the Arts has that experience and we strongly recommend that the Australian Government assign the grants administration role to that department.³⁴

2.47 Deakin University also noted that the ACMA's remit does not include print-based media 'which historically has been the province of the self-regulatory body, the Australian Press Council'. However, Deakin University's submission also noted the arrangements for the proposed advisory committee. Ultimately, it did not express a view as to whether the ACMA is the most suitable body to administer the Innovation Fund.³⁵

2.48 MEAA gave support for the Innovation Fund being administered by the ACMA.³⁶

2.49 The ACMA confirmed that the Innovation Fund would be the first grants program administered by the ACMA as, to date, the ACMA has not had the power to administer grants on behalf of the Commonwealth.³⁷ The department advised, however, that the Government considers it is important for the Innovation Fund to be administered by an independent authority such as the ACMA. Mr James Penprase, a

33 Department of Communications and the Arts, Answer to question on notice, Supplementary Budget Estimates 2017–18, No. 94.

34 Indigenous Remote Communications Association, *Submission 1*, p. 11.

35 Deakin University, *Submission 2*, p. 2.

36 Media, Entertainment and Arts Alliance, *Submission 8*, p. 3.

37 Ms Jennifer McNeill, General Manager, Content Consumer and Citizen Division, Australian Communications and Media Authority, *Proof Committee Hansard*, 1 February 2018, p. 4.

director in the department's industry section, provided the following evidence regarding why the ACMA had been chosen to administer the Innovation Fund:

One of the key objectives is to ensure that [the Innovation Fund] is administered at arm's length from the government to avoid any perception, real or otherwise, of interference of any type with the administration of the fund, and the ACMA fulfils this criterion. It's a statutory body with broad independence from government. Although to date it hasn't implemented grant programs on behalf of the Commonwealth, obviously the ACMA has extensive experience in and knowledge of the media industry.³⁸

2.50 The department also noted that the proposed advisory committee would assist the ACMA to administer the Innovation Fund.³⁹

Committee comment

2.51 The committee supports the Government's decision to allocate responsibility for administering the Innovation Fund to the ACMA. Fundamentally, there is merit in certain grants programs being administered by an independent statutory authority. The ACMA is a suitable agency to administer the Innovation Fund given its existing responsibilities regarding media ownership and control. Moreover, any remaining concerns stakeholders might have about the ACMA's lack of experience in administering grants to publishers and content service providers should be alleviated by the proposed advisory committee, which would provide the ACMA with an additional source of expert knowledge to help achieve the objectives of the Innovation Fund.

Committee view

2.52 It is vitally important that Australia has a healthy media sector and that Australians have access to high quality and relevant news reporting on issues of public interest or significance. It is also widely recognised that media organisations face significant challenges funding civic journalism in the current operating environment. Accordingly, it is in the public interest for the Government to ensure that the regulatory settings imposed on the broadcasting sector are appropriate and to support Australian media organisations to adapt to this changing media environment by providing well-targeted support.

2.53 As outlined in Chapter 1, this bill forms part of a suite of measures developed by the Government. These measures represent the most significant reform of Australia's media laws in decades. The committee commends the Government for its commitment to developing and delivering meaningful reform, such as the abolition in

38 Mr James Penprase, Director, Industry Section, Department of Communications and the Arts, *Proof Committee Hansard*, 1 February 2018, p. 4.

39 Mr James Penprase, Director, Industry Section, Department of Communications and the Arts, *Proof Committee Hansard*, 1 February 2018, p. 4.

2017 of technologically obsolete media control and ownership rules. Such reform will assist the sector to respond to these challenges.

2.54 The bill examined by this inquiry would establish the legislative framework for a grants scheme designed to assist regional and small publishers to innovate and compete more successfully in the changing media environment. The committee welcomes and supports this bill. The committee considers that the proposed Innovation Fund is an appropriate and well-targeted response to the need to support Australian civic journalism.

2.55 The committee thanks the stakeholders who contributed to this inquiry and recommends that the bill be passed by the Senate promptly.

Recommendation 1

2.56 The committee recommends that the Senate pass the bill.

Senator Jonathon Duniam
Chair

Labor Senators' additional comments

1.1 Labor Senators note that the Abbott and Turnbull Governments have been asleep at the wheel for years when it comes to addressing the crisis facing public interest journalism in Australia.

1.2 Just as it was Labor that established the Convergence Review and the Finkelstein Inquiry, both of which have been comprehensively ignored by the Turnbull Government, it was Labor who established the Senate Select Committee into Public Interest Journalism, with the support of crossbench Senators.

1.3 The Senate Select Committee found that more than 3,000 journalism jobs were lost over the past five years.

1.4 Labor Senators note that the Liberal National Government has cut hundreds of millions from the ABC and SBS—trusted sources of investigative journalism in Australia, repealed the 2 out of 3 cross media control rule—permitting even greater consolidation in Australia's already highly concentrated media sector, and gone so far as to threaten journalists with criminal sanctions simply for doing their jobs, with the Foreign Influence Transparency Scheme Bill 2017 (FITS Bill).

1.5 Labor Senators note that, at time of writing, the Turnbull Government appears to be backing down from this misguided approach under the FITS Bill, thanks to the vocal opposition of Labor and the media sector.

1.6 Labor Senators note that the Regional and Small Publishers Innovation Fund exists only because of a backroom deal between the Turnbull Government and the crossbench in exchange for support for the repeal of the 2 out of 3 cross-media control rule, rather than because the Turnbull Government is genuinely committed to promoting public interest journalism.

1.7 The 2 out of 3 rule was directed at ensuring that no individual or company controlled more than two out of three regulated media platforms—commercial television, commercial radio and associated newspapers—in the same licence area. It stopped any one voice from becoming too dominant and promoted diversity through competition between different voices.

1.8 Australia's level of media ownership concentration is one of the highest in the world, yet the Turnbull Government juked a safeguard that prevented it from getting worse.

1.9 The government's repeal of the 2 out of 3 rule permits media mergers and further concentration of Australia's already highly concentrated media market. Labor Senators question—why expend taxpayers' money on journalism cadetships and scholarships when there aren't enough jobs for existing journalists and where will all the new journalism cadets work when the media mergers, consolidations and job losses that follow the repeal of the 2 out of 3 rule occur?

1.10 With this deal, former Senator Nick Xenophon revealed the pitiful price he put on Australia's media diversity—\$60.4 million—in exchange for his vote to repeal the 2 out of 3 rule.

1.11 Labor Senators regard the Regional and Small Publishers Innovation Fund to be a short-term Band-Aid solution that does nothing to fill the void left by the repeal of the 2 out of 3 rule and is too little, too late for many media organisations.

1.12 The fact that innovative outfits like Crinkling News have announced their closure since the Turnbull Government's changes to media laws and the announcement of the Regional and Small Publishers Innovation Fund demonstrates the inadequacy of the Turnbull Government's measures.

1.13 Labor Senators further note the Fund exposes the rank hypocrisy of the Turnbull Government when it comes to using taxpayers funds to prop up the commercial media. The Turnbull Government hands \$30 million to Fox Sports, which has a foreign-based parent company, but excludes Guardian Australia from this Fund for the same reason.

1.14 Labor Senators note that the Regional and Small Publishers Innovation Fund runs out in only three years—which may well be before regional Australia actually comes to enjoy the reliable and affordable broadband service that Malcolm Turnbull promised would be delivered by now.

1.15 What regional Australia needs for innovation is broadband that works, not just a bit of equipment and a few cadetships.

1.16 Labor will hold the Turnbull Government to account for stuffing up the NBN, for attacking the ABC and SBS, and for destroying what precious little media diversity is left in Australia—one of the most highly concentrated media markets in the world.

1.17 Labor Senators understand the importance of public interest journalism to a robust democracy and affirm that, now, more than ever, with media companies struggling to adapt business models in an industry undergoing rapid transformational change, journalists must be left to do their important work as the Fourth Estate.

1.18 The Report of the Senate Select Committee on the Future of Public Interest Journalism contains a sensible set of recommendations that go some way towards addressing the crisis public interest journalism is facing today. Adoption of those recommendations would certainly be an improvement on the piecemeal, short-term and ideologically-motivated approaches that have been taken by the Turnbull Government to date.

Senator Anne Urquhart
Senator for Tasmania

Senator Anthony Chisholm
Senator for Queensland

Australian Greens' dissenting report

1.1 The Bill seeks to amend the *Broadcasting Services Act 1992* to make possible the establishment of a Regional and Small Publishers Innovation Fund, to be administered by the ACMA on behalf of the Commonwealth, for the purposes of providing grants as financial assistance to publishers of newspapers, magazines or other periodical, or to a content service provider.

1.2 The explanatory memorandum makes clear that the intention is to assist regional and small publishers in contributing to Australian civic journalism.

1.3 The Australian Greens support this intention. This particular effort to support it through legislation is, however, flawed.

1.4 The Australian Greens believe that the eligibility criteria for grants should be crafted to best support regional and small publishers, and to promote civic journalism, and that the eligibility criteria currently proposed do not do so consistently.

1.5 The 'control test' is an unnecessary inclusion to the Fund's eligibility criteria and should be withdrawn without delay.

1.6 The Australian Greens recognise that the intention of the Fund is to support Australian media organisations and assist public interest journalism. The Australian Greens believe that to achieve this outcome, the Fund should support Australian journalists and support Australian jobs for the benefit of Australian readers on issues relevant to Australian consumers. This is the best way to support Australian media; 'control tests' are a weak and poorly designed proxy.

1.7 Nowhere is it stated explicitly why one grant applicant, seeking to either:

- purchase a particular piece of technology or equipment;
- support a program or an initiative that is intended to promote civic journalism;
- develop an application for the delivery of news, and other media related content services;
- train and upskill staff; and/or
- make efforts to increase revenue and readership;

should be assessed as eligible or ineligible based on whether it is majority controlled by Australian residents.

1.8 The purpose of the Fund is to support civic journalism as its providers transition into a new and disrupted media environment. Insisting on a review of where an outlet's majority control is located does nothing to support civic journalism.

1.9 Instead, it creates unnecessary and ideologically driven carve-outs and exceptions that do nothing but limit eligibility to the grant scheme to those the Government believes are ideologically 'friendly'. This defies the intent of the Bill, and makes clear why civic journalism is so necessary.

1.10 Support cannot be offered only to those with whom the Government sees like-minds.

1.11 The use of taxpayer money to aid one's perceived allies in the fourth estate while withholding support from one's perceived opponents is an embarrassing and shameless partisan intervention into what should be an all-of-industry support mechanism.

1.12 The 'control test' does not aid the public interest and should not be included. Indeed, its inclusion weakens the effectiveness of the Fund to assist civic journalism and actively undermines the effectiveness of this Fund in doing what Australians need it to do.

1.13 The Australian Greens strongly recommend that the Bill be amended as a matter of urgency to prevent a control test from being introduced.

Senator Janet Rice
Deputy Chair

Senator Sarah Hanson-Young
Senator for South Australia

Appendix 1

Submissions and answer to questions on notice

Submissions

- 1 Indigenous Remote Communications Association
- 2 Deakin University
- 3 Australian Press Council
- 4 Country Press Australia
- 5 The Walkley Foundation
- 6 Special Broadcasting Service
- 7 Guardian Australia
- 8 Media, Entertainment and Arts Alliance
- 9 Schwartz Media and Schwartz Publishing

Answer to questions on notice

Department of Communications and the Arts – Answer to question taken on notice, public hearing, Melbourne, 1 February 2018 (received 6 February 2018)

Appendix 2

Public hearing

Thursday, 1 February 2018, Melbourne

Department of Communications and the Arts

Dr Carolyn Patteson, First Assistant Secretary
Mr James Penprase, Director, Industry Section

Australian Communications and Media Authority

Ms Jennifer McNeill, General Manager, Content Consumer and Citizen Division
Mr Jason Ives, Acting Manager, Diversity Localism and Accessibility Section