

# SUBMISSION

To

SENATE ENVIRONMENT, COMMUNICATIONS,  
INFORMATION TECHNOLOGY AND THE ARTS COMMITTEE

INQUIRY INTO THE BROADCASTING SERVICES AMENDMENT  
(MEDIA OWNERSHIP) BILL 2006 AND RELATED BILLS

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This submission addresses the mechanisms for maintaining media diversity in the Broadcasting Services Amendment (Media Ownership) Bill 2006. It argues that the mechanisms proposed, namely the combination of a 5/4 “minimum voices test” and the competition provisions of the Trade Practices Act, are likely to facilitate further concentration of media ownership and a reduction in both the quality and localism of news and current affairs content, and are therefore contrary to the public interest in their current form. The submission offers a number of recommendations that would improve the diversity provisions of the legislation.

As the Communication Minister’s Discussion Paper on Australia’s Digital Future and the Explanatory Memorandum to the Bill explain, the intention of relaxing the current cross-media ownership restrictions is to facilitate mergers in the media sector that will provide media companies with efficiency savings through economies of scope.

In establishing a framework specifically designed to encourage media consolidation, the government must give greater priority to protecting the public interest, especially in relation to media functions that fulfil public service - rather than purely commercial - objectives.

An implied contract between commercial media operators and government (acting on behalf of the public) for the provision of public service media functions – especially news services – as part of the return for using public broadcast spectrum has underpinned Australian media policy since broadcast media began in Australia. However, as commercial media programming has shifted toward more profitable entertainment forms, the quality and quantity of public service content provided by commercial media outlets has declined, along with the real plurality of views and opinions in our public sphere. The dynamics of media consolidation – initiated as they usually are by greater demands for profitability – are likely to further compromise the provision of public service media content, such as news and current affairs services that are expensive to produce, but vital to the operation of modern democracy. These essential services cannot be simply left to the mercy of the marketplace to provide. New media technologies and genres may one day fill this gap, but such an argument is still highly contested and far from clear, despite the frequent vigour with which it is asserted.

Given the significant protection offered to incumbent players under the government’s proposed digital policy framework (e.g., the ban on any new commercial free-to-air TV entrants and the ability of incumbents to bid for the lucrative new Channel B spectrum) the public has the right (and the government a duty) to expect a greater public interest dividend than our commercial media presently provide. The legislative changes now proposed offer an opportunity to increase the real plurality of views and opinions provided through the commercial media. However, as it presently stands, the proposed diversity mechanism is more likely to have the opposite effect.

The 5/4 “minimum voices” rule is too blunt an instrument to account for the nature and scale of media voices in any particular media market. Aside from the obvious fact that these minimums will allow fewer voices than many areas presently have, the test implies a false equivalence between different kinds of media services. If a minimum voices test is to be used, it should - at the very least – be more calibrated to relate to voices that actually matter. The kind of diversity that provides media consumers with choices in entertainment content (such as Reality TV) should not be regarded as equivalent to the kind of diversity that provides citizens with choices in news and current affairs content. As it stands, the proposed 5/4 rule takes no account of such differences and assumes an equivalence in voices of widely divergent scale and nature.

Nor does the solution to this problem lie in the Trade Practices Act. The recent discussion paper on media mergers produced by the Australian Competition and Consumer Commission provides little reassurance that the present competition provisions of the TPA will be adequate to protect the public interest in considering

media merger proposals facilitated by the new legislation, especially in relation to assessing the provision of news and current affairs, which tend to be regarded as simply commodities in a marketplace. This submission therefore supports the general argument proffered by the Productivity Commission in its 2003 Inquiry into Broadcasting in favour of a media-specific public interest test for proposed media mergers.

In addition, the legislation should ensure that the parlous state of regional news and current affairs services are not permitted to further decline. The writer of this submission is not aware of any evidence to support the view that media consolidation, and the opportunities for increased economies of scope and scale for consolidated entities, has increased the diversity or localism of news and current affairs content. The proposal to include the present requirements on commercial regional television licensees to provide a minimum level of news and information programming would simply give legislative force to requirements that are widely regarded as inadequate by both audiences and professional practitioners. Many of the services provided to fulfil these requirements are produced in centralised hubs that are often geographically remote from audiences (e.g., Prime's Newcastle service is produced in Canberra) and comprise perfunctory "rip-and-read" news updates that make almost no meaningful contribution to local public discourse. The proposed extension of similar requirements to regional commercial radio is unlikely to stimulate any significant improvement in this medium, unless accompanied by measures such as more rigorous local news and current affairs content quotas, and mandatory requirements for independent local news rooms staffed by locally employed journalists who can independently gather local news information for local news bulletins. This submission recommends such requirements for any merged media entity.

The proposed changes to the cross-media ownership laws are also likely to stimulate further consolidation of news rooms to provide content across different media platforms. Whilst this may give an appearance of greater diversity in increasing the *quantity* of news information provided by a consolidated media entity, it is likely to reduce real plurality, since the same journalists will be producing content in multiple formats. This submission therefore recommends editorial separation requirements (such as contained in the legislation proposed in 2003), together with adequate monitoring and enforcement provisions. Properly implemented, such requirements could make a significant contribution to real plurality, and provide a dividend for democracy from the further commercial advantages provided to already powerful and wealthy media organisations through the proposed changes.

**Recommendations:**

1. Media organisations (e.g., music-only radio stations) that do not provide a news service (or provide only a minimal news service) should not be counted as voices in any "minimum voices" diversity test for the acceptability of media mergers.
2. Media mergers should be permitted only where they would improve (or at least not reduce) the current level and independence of locally produced news and current affairs services provided in a media market.
3. Proposed media mergers should be subject to a media-specific public interest test such as that proposed by the Productivity Commission in its Inquiry into Broadcasting (2000), in addition to any of the competition provisions of Trade Practices Act.
4. Merged entities in regional areas should be required to establish and maintain editorially independent local news rooms with minimum levels of journalistic staff for the independent gathering and production of local news and/or current affairs content.

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