Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017

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Date introduced: 15 June 2017
House: House of Representatives
Portfolio: Communications and the Arts
Commencement: the day after the Act receives Royal Assent with the following exceptions:
• Schedule 3, Part 2: six months after Royal Assent
• Schedule 5, items 2 and 7: 1 July 2016
• Schedule 5, items 3 to 5 and 8 to 10: 1 January 2017
• Schedule 6, Part 2: 1 July 2017.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the Federal Register of Legislation website.

All hyperlinks in this Bills Digest are correct as at August 2017.
The Bills Digest at a glance

Purpose

The purpose of the Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017 (the Bill) is to amend the Broadcasting Services Act 1992 to:

- repeal the ‘75 per cent audience reach rule’ and the ‘2 out of 3 cross-media control rule’
- amend local programming obligations and introduce additional obligations for a regional commercial television broadcaster which undergoes a change of control of its licence and as a result, the licence is absorbed into a group of commercial television licences whose combined licence area populations exceeds 75 per cent of the Australian population
- amend the anti-siphoning scheme and the anti-siphoning notice
- abolish television and radio licence fees and datacasting charges
- establish tax collection and assessment arrangements for an interim transmitter licence tax and establish a statutory review of the tax arrangements in 2021
- establish a transitional support payment scheme for commercial broadcasters which will operate for five years during the transition to the interim transmitter licence tax arrangements.

Background

- Since the advent of new media technology—which has brought the Internet and its promises of greater diversity of sources, multiple news and information voices and innovative practices—some media operators have become alarmed by what they maintain are the adverse effects of over-regulation of the traditional media. Consequently, they have intensified their long-standing advocacy for removal of certain rules, such as those targeted in this Bill, arguing that this is vital for their survival.
- The Turnbull Government has attempted to respond to the concerns of free-to-air broadcasters by introducing legislation to remove two important media regulations—the audience reach rule and the rule which prevents the ownership of radio, television and newspaper outlets in any one licence area (the two out of three rule).
- Two previous attempts to remove these rules have been unsuccessful. This Bill represents a third attempt at removing the rules noted above. It also contains additional provisions which have the support of the industry. The Government considers the package in this Bill and the Commercial Broadcasting (Tax) Bill 2017 will give free-to-air broadcasters ‘flexibility to grow and adapt in the changing media landscape, invest in their businesses and in Australian content, and better compete with online providers’.

Key issues

- On the one hand this Bill is not controversial as there is general agreement that some media rules, such as the audience reach rule, are outdated. There is also agreement that licence fee relief will assist the traditional media to cope with the changing media environment.
- One aspect of the changes outlined in this Bill has proven controversial, however. This is the proposal to remove the cross-ownership rule. A number of sources, citing the considerable concentration of television, radio and newspaper ownership in Australia, consider that this rule needs to be preserved to help to limit further concentration. Labor and the Australian Greens have taken this stance.
- The industry supports the changes proposed in this Bill, but only if it is passed in total.
Purpose of the Bill
The purpose of the Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017 (the Bill) is to amend the Broadcasting Services Act 1992 to:

• repeal the ‘75 per cent audience reach rule’ and the ‘2 out of 3 cross-media control rule’
• amend local programming obligations and introduce additional programming obligations for a regional commercial television broadcaster which experiences a change of control of its licence and as a result of that change of control, the licence is absorbed into a group of commercial television licences whose combined licence area populations exceeds 75 per cent of the Australian population
• amend the anti-siphoning scheme and the anti-siphoning notice
• abolish television and radio licence fees and datacasting charges payable by commercial broadcasters
• remove apparatus taxes payable by commercial broadcasters
• establish tax collection and assessment arrangements for an interim transmitter licence tax and establish a statutory review of the tax arrangements in 2021
• establish a transitional support payment scheme for commercial broadcasters which will operate for five years during the transition from revenue-based licence fee and charge arrangements to the interim transmitter licence tax arrangements.

Structure of the Bill
The Bill consists of seven Schedules:

• Schedules 1 and 2 to the Bill proposes to repeal the ‘75 per cent audience reach rule’ and the ‘2 out of 3 cross-media control rule’
• Schedule 3 will increase local programming obligations that currently apply in aggregated markets (and Tasmania) and introduce local programming obligations in non-aggregated markets, for regional commercial television broadcasting licences affected by a ‘trigger event’
• Schedule 4 will extend the anti-siphoning automatic delisting period, remove multi-channelling restrictions which currently apply to free-to-air broadcasters and repeal and replace the Schedule to the anti-siphoning notice to reduce the list of anti-siphoning events.
• Schedule 5 will abolish broadcasting licence fees and datacasting charges currently imposed on commercial broadcasters
• Schedule 6 deals with administrative arrangements for the transmitter licence tax it is intended will be imposed on commercial broadcasters under the Commercial Broadcasting (Tax) Bill 2017 (the Tax Bill).\(^1\) Schedule 6 also sets out transitional support payments to regional broadcasters that may be disadvantaged by the new tax arrangements for a period of five years and
• Schedule 7 requires the Australian Communications and Media Authority (ACMA) to conduct a review after five years into the new taxation arrangements implemented by this Bill and the Tax Bill.

History of the Bill
The first of the media reform Bills proposed by the Turnbull Government was the Broadcasting Legislation Amendment (Media Reform) Bill 2016 (the March 2016 Bill), which was introduced into the 44th Parliament on 2 March 2016.\(^2\) This Bill had not passed the House of Representatives when Parliament was prorogued on 15 April 2016. Hence, the Bill lapsed at that time. A second Bill, with the same title and content, was introduced into the 45th Parliament in September 2016.\(^3\) This Bill was passed by the House of Representatives in November 2016 and introduced into the Senate in December 2016. It was not debated in that chamber prior to the introduction of this Bill.

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Schedules 1 to 3 of the current Bill replicate the September 2016 Bill. Schedules 4 to 7 are new.

A considerable amount of the information in the background section of this Digest relating to the ownership and reach rules is taken from the Bills Digest to the second media reform Bill, the September 2016 Bill.4

Background

Ownership and reach rules

The federal government became concerned in the 1930s that a trend towards media concentration in Australia would be detrimental to the public interest if it was allowed to continue without restraint.5 To counter the trend the Government introduced media ownership and control regulations which restricted the number of commercial broadcasting stations that could be owned by an individual or company—four in any one state and eight throughout the country and only one metropolitan station per state.6

The 1930s regulations were not successful and from that time to the present, various governments have continued to address what has become an ongoing trend towards media concentration. This has resulted in the strengthening of regulations by some governments and the relaxation of rules by other administrations. However, despite the various strategies employed to curb media concentration, Australia now has one of the most concentrated media environments in the world.7

What have now come to be called traditional media operators—television and radio broadcasters and the press—have protested that the majority of regulations governments have imposed have been onerous. Not only have restrictions been onerous, according to the media operators, regulation has stifled the development of their businesses.

Since the advent of new media technology—which has brought the Internet and its promises of greater diversity of sources, multiple news and information voices and innovative practices—traditional media operators have become so alarmed by what they maintain are the adverse effects of regulation that they have intensified advocacy for the removal of what they argue are outdated rules. Their message has been that removal of rules, such as those targeted in this Bill, is vital for their survival.

The current media ownership and control regulations are the result of legislation introduced by a Labor Government under Bob Hawke and a Coalition Government led by John Howard.

Hawke Government

One report commissioned by the Hawke Government into the broadcasting media recommended that the government encourage local ownership, control and presence and prohibit the ‘buying and selling of licences for purely investments purposes’.8 Another report suggested that there was a need to strengthen the position of regional media owners in relation to their metropolitan counterparts, and that this could occur if a market reach limit was imposed and supplemented with a minimum number of owners rule.9

These reports were partly responsible for the introduction of legislation which changed media ownership rules in 1987. An ownership rule which prevented broadcasters from owning more than two television stations (introduced by the Menzies Coalition Government in 1956) was replaced by the audience reach rule.10 This rule stated that a person was not to control commercial television licences reaching more than 60 per cent of the population; more than one commercial licence in the same licence area; more than two commercial radio licences in the same area and in any area a combination of any two of the following—a commercial television

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5. R Jolly, Media ownership and regulation: a chronology; part one; from print to radio days and television nights, Research paper series, 2015–16, Parliamentary Library, Canberra, 2016.
9. Suggestions for the minimum reach rule originally ranged from 33 per cent to 43 per cent and were prompted by the fact that at the time the Murdoch and Packer families had control of two stations—in Sydney and Melbourne—the reach of which amounted to 43 per cent of the population. Forward Development Unit, Ownership and control of commercial television: future policy directions, vols 1 and 2, Department of Communications and AGPS, Canberra, 1986.
licence, a commercial radio licence or a major newspaper. The broadcasting reach rule was later amended to allow for an audience reach of 75 per cent of the population.

Treasurer Paul Keating is often quoted as proclaiming that the cross-media changes in the Hawke Government’s legislation would mean that media proprietors would have to choose whether they wanted to be ‘queens of the screen or princes of print’. According to a number of commentators, rather than this being what the legislation is remembered for, it is often cited as producing ‘the greatest media carve-up’ in Australia’s history. That is, the regulatory change which delivered more media concentration than any other.

Howard Government

When the Howard Government was elected in 1996 it announced that it was committed to abolishing what it saw as anachronistic limitations on the media. To this end, it directed the Productivity Commission (PC or the Commission) to inquire into broadcasting regulation and to provide advice ‘on practical courses of action to improve competition, efficiency and the interests of consumers in broadcasting services’. In so doing, the PC was to keep in mind that legislation which restricted competition should be retained only if the benefits to the community as a whole outweighed the costs and if the objectives could be met only through restricting competition.

In its report published in 2000, the Commission recommended that certain media regulations should be removed. The PC added one critical proviso that reform should only occur once a more competitive Australian media environment had been established. It also recommended that the media landscape should be structured so that broadcasters delivered services that took into account the public interest.

The Howard Government did not accept the PC’s recommendation, arguing that subjective judgement by an individual or organisation would inevitably occur in deciding what constitutes the public interest and that this would create uncertainty for the media industry. Nonetheless, the Government included public interest concessions in its media reform legislation which passed into law in 2006. These were the result of negotiations with some of its own backbenchers who were concerned that changes to regulations would have adverse effects for regional media. The changes resulted in the four/five rule that permits transactions involving commercial radio licensees, commercial television licensees and associated newspapers, including cross-media transactions, to occur subject to conditions under which there needs to remain a minimum number of separately controlled commercial media groups or operations—sometimes referred to as voices—in a relevant radio licence area following such transactions.

The minimum number of commercial media groups which must remain in a mainland metropolitan radio licence areas is five, and in regional areas it is four. If the number of media groups drops below these stipulated levels then an ‘unacceptable media diversity situation’ is said to exist.

13. This comment is attributed to Mr Keating by numerous commentators and academics, but there is no definitive source for the quotation. It appears from some reports that the comment was made in a Labor Caucus meeting and later reported to the media. G Earl, ‘Murdoch shakeout would trigger a media upheaval’, Australian Financial Review, 4 December 1986.
17. Ibid.
19. Ibid., p. 25.
20. Ibid.
22. Ibid.
23. Media group is defined as: a grouping of one or more of a commercial radio licence, a commercial television licence and an associated newspaper where there is at least one person in a position to exercise control over each of the media entities in the media group and where the media operation complies with the statutory control rules (BSA, section 61AA). The number of media groups is calculated in accordance with a points test. Radio licence areas are specific geographic areas which are determined in a Licence Area Plan (LAP). The Australian Communications and Media Authority (ACMA) defines Licence Areas in terms of areas defined by the Australian Bureau of Statistics for the purposes of the Australian Census.
The Australian Communications and Media Authority (ACMA) has established a Register of Controlled Media Groups (RCMG), the job of which is to identify who owns and controls the media groups in each licence area in order that compliance with the rules can be monitored and breaches of the rules investigated by the regulator.24

The full list of media ownership and reach regulations is summarised in Box 1.

**Box 1: current media rules**

<table>
<thead>
<tr>
<th>Rule Description</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>75 per cent rule</strong> (audience reach rule)</td>
<td>A person, either in his or her own right or as a director of one or more companies, must not be in a position to exercise control (see below) of commercial television broadcasting licences which have a combined licence area population that exceeds 75 per cent of the population of Australia.</td>
</tr>
<tr>
<td><strong>Two out of three rule</strong> (cross-media ownership rule)</td>
<td>A person can only control two of the regulated media platforms (commercial television, commercial radio and associated newspapers) in a commercial radio licence area.</td>
</tr>
<tr>
<td><strong>Five/four rule</strong> (minimum voices rule)</td>
<td>There must be at least five independent media voices in metropolitan commercial radio licence areas (the mainland state capital cities) and at least four in regional commercial radio licence areas.</td>
</tr>
<tr>
<td><strong>One to a market rule</strong></td>
<td>A person (either in his or her own right or as a director of a company) must not exercise control over more than one commercial television broadcasting licence in a licence area.</td>
</tr>
<tr>
<td><strong>Two to a market rule</strong></td>
<td>A person (either in his or her own right or as a director of a company), must not control more than two commercial radio broadcasting licences in the same licence area.</td>
</tr>
<tr>
<td><strong>Control</strong></td>
<td>A person whose interest in a company exceeds 15 per cent is regarded under the current rules as being in a position to exercise control of that company.</td>
</tr>
</tbody>
</table>

The rules also acknowledge that control can be exercised in other ways, such as through a person being in a position to appoint a majority of the board of directors of a company.

**Rudd-Gillard Government**

The Independent Convergence Review Committee (CRC), formed under the Rudd-Gillard Government, pointed out in 2013 that since the 1990s and in the short time since the 2006 media changes had come into effect, the media landscape had experienced major upheavals as a result of media convergence due to technological advances.25 The CRC considered that existing statutory control and media ownership and diversity rules are based on distinctions between traditional broadcasting and print media which no longer exist, as media enterprises increasingly operate across a range of platforms. The CRC recommended the abolition of the current rules and proposed instead that a public interest test could be used in conjunction with the Australian Competition and Consumer Commission’s (ACCC) media and merger powers to ‘provide sufficient safeguards to maintain diversity and a competitive market’.26

The Rudd-Gillard Government tried to implement media reforms, some of which were based on the CRC’s recommendations. But most of Labor’s plans for media reform were subject to intense criticism from within the media. Indeed some critics labelled some of its proposals ‘reckless and flawed media reforms’ and ‘a danger to

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24. ACMA, ‘About the Media Control database’, ACMA website. Note: licensees operating outside the broadcasting services bands are exempt from media diversity rules and are not considered in assessing an unacceptable media diversity situation. As defined in section 6 of the BSA, broadcasting services bands are that part of the radiofrequency spectrum that is designated under subsection 31(1) of the Radiocommunications Act 1992 as being primarily for broadcasting purposes and that part of the radiofrequency spectrum that is designated under subsection 31(1A) of the Radiocommunications Act 1992 as being partly for the purpose of digital radio broadcasting services.


democracy and free speech. The Rudd-Gillard Government’s attempt at reform was, in fact, spectacularly unsuccessful and abandoned by the Government.

**Abbott and Turnbull Governments**

Following the election of the Abbott Government, in early 2014 the then Communications Minister Malcolm Turnbull declared that he was ‘fairly sympathetic’ to relaxing media diversity and ownership regulations.

The Prime Minister, Tony Abbott, however, was reportedly reluctant to attempt any reform unless a broad consensus within the industry on the form it would take could be identified.

In late 2015 regional television networks began a campaign to allay disquiet that had been expressed by regional Members of Parliament about the consequences of lifting media restrictions. The ‘Save Our Voices’ campaign, led by Prime Media, Southern Cross Austereo, WIN Corp and Imparja, proposed that any changes to regulations should have to include the proviso that a buyer of a regional television station would be required to maintain that station’s local news services at existing levels. In addition, the networks suggested that buyers of regional networks should be required to provide a minimum local news service in markets where no such requirement currently exists.

Added to this campaign were reports that in effect, both the 75 per cent reach rule and the two out of three rule were being ignored, regardless of the directives of the BSA following legal advice that had led to a Seven Network decision to stream its channels via the Internet to lap-tops or mobile phones from Melbourne Cup Day in November 2015. This decision was based on advice that streaming programs was not covered by the BSA.

In 2016 Mitch Fifield, who became Communications Minister after Malcolm Turnbull replaced Tony Abbott as Prime Minister in September 2015, introduced into the Parliament reform proposals which he labelled the most significant reforms to media laws in a generation, ‘supporting the viability of our local organisations as they face increasing competition in a rapidly changing digital landscape’.

Minister Fifield’s first media reform Bill lapsed with the dissolution of the 44th Parliament, but following the 2016 election, the Government made a further attempt to change the media landscape with the introduction into the 45th Parliament of a revised Broadcasting Legislation Amendment (Media Reform) Bill 2016. This Bill was passed by the House of Representatives on 30 November 2016, but not debated by the Senate prior to the introduction of the revised reform package in this Bill.

**Anti-siphoning**

From 1982 when the Fraser Government asked the Australian Broadcasting Tribunal (ABT) to inquire into the possible social, economic or technical implications that could accompany the introduction of cable and subscription television to Australia, free-to-air broadcasters have argued that siphoning programs would be an inevitable consequence of the introduction of pay television and that this would have considerable social costs for audiences. According to the free-to-air broadcasters, the only way to prevent siphoning was to introduce an anti-siphoning scheme.

In opposition, potential subscription television operators told the ABT that such a...
scheme would prevent them from competing with free-to-air broadcasters to buy programs and some sporting bodies also opposed the introduction of an anti-siphoning regime.  

After a number of investigations into the issue of siphoning and its consequences, the Fraser Government’s Labor successor decided to impose the anti-siphoning regime on pay television. There are few who would deny that powerful free-to-air broadcasters, such as Kerry Packer, had some considerable influence on this decision which saw the Hawke Government deny pay television access to a vast amount of sports programming.

Once the list was in place subscription television providers at times attempted to circumvent its provisions so they could show certain sports on their channels, while the free-to-air broadcasters were accused of making arbitrary decisions about showing programs, thereby undermining the stated intention of the list. In response, the Government made changes to the list, such as introducing anti-hoarding provisions.

As part of its major inquiry into broadcasting in 2000, the Productivity Commission (PC or the Commission) reviewed the anti-siphoning scheme and concluded that it gave free-to-air broadcasters ‘a competitive advantage’ over subscription broadcasters and disadvantaged sport organisations by decreasing their negotiating power in marketing their products. In 2009 the Commission’s annual review of regulatory burdens on business called anti-siphoning ‘a blunt, burdensome instrument that is unnecessary to meet the objective of ensuring wide community access to sporting broadcasts’.

During a major inquiry into the anti-siphoning scheme in the same year Australian Subscription Television and Radio Association (ASTRA) labelled it antiquated, anticompetitive and dramatically limiting to Australian viewers’ choice to watch live sport. Moreover, ASTRA saw the list as detrimental to sports codes and grass roots sports competitions. In contrast, Free TV Australia argued that the existence of the list ensured that all Australians have access to sport on television, not just the minority who can afford to pay for a subscription television package.

Until recently the views of free-to-air broadcasters and subscription television providers have remained rigidly opposed. With the announcement of a revised reform package in May 2017, however, it appeared that a reluctant compromise had been reached with the representative bodies for both these media sectors praising the reforms proposed in this Bill.

Committee consideration

Selection of Bills Committee

The Selection of Bills Committee referred both the previous media reform Bills to the Senate Environment and Communications Legislation Committee for inquiry and report. The Selection of Bills Committee recommended that this Bill is not referred to a committee for inquiry.

39. Nilsen Premiere, Submission to the ABT, *Cable and subscription television services for Australia*, op. cit., submission 85, para. 13.22, p. 95; and the Confederation of Australian Sport, *Evidence to the ABT, Cable and subscription television services for Australia*, op. cit., p. 1027, para. 13.22.
42. Anti-hoarding changes required free-to-air broadcasters who did not intend to televise live a substantial portion of events to which they had live rights, to offer the unused rights for a nominal charge to the ABC and SBS. The ABC and SBS were then bound to televise live the designated events they accepted or to offer the rights (either in total or in part) to the other national broadcaster. Only if the public broadcasters did not want events, would they then become available to pay television.
**Senate Standing Committee for the Scrutiny of Bills**

The Senate Standing Committee for the Scrutiny of Bills reported in March and September 2016 that it had no comment on either iteration of the 2016 media reform Bills. In June 2017 it reported it had no comment on this Bill.\(^{50}\)

**Senate Environment and Communications Legislation Committee**

The May 2016 report of inquiry into the first of the previous media reform Bills recommended that the Bill should be passed subject to a change to a provision relating to trigger events in regional areas.\(^{52}\) The second Senate inquiry noted in its report published in November 2016 that the change previously recommended by the Committee was included in the revised 2016 Bill and that otherwise the proposed legislation was identical to the Bill examined by the Committee appointed in the previous Parliament.\(^{53}\)

**Policy position of non-government parties/independents**

**Australian Labor Party**

With reference to the 2016 media reform Bills Labor’s communications spokesperson at the time, Jason Clare, noted that in the Opposition’s view removing the 75 per cent reach rule was relatively uncontroversial.\(^{54}\) However, Mr Clare was not convinced that removing the two out of three rule would be compatible with media diversity.\(^{55}\)

In their dissenting report to the November 2016 Senate inquiry report Labor Senators Anne Urquhart and Anthony Chisholm agreed with Mr Clare’s comments, arguing that removing the two out of three rule would reduce diversity as it would result in further media concentration.\(^{56}\) They believed it was ‘ill-advised’ to remove the rule when Australia’s media is amongst the most concentrated in the world and when traditional media—newspapers, commercial television and commercial radio—continue to be the main source of news and current affairs for Australians, particularly in regional areas.\(^{57}\)

The current Shadow Minister for Communications, Michelle Rowlands, has iterated this view saying:

> Labor’s position on the two out of three rule has been crystal clear since November 2016 and is evidence-based. There is no gamesmanship in Labor standing up for the public interest, and our democracy, by limiting the ability of dominant media voices to consolidate even further in Australia’s already heavily concentrated media market.\(^{58}\)

In the debates on this Bill in the House of Representatives Ms Rowland elaborated further on Labor’s concerns for diversity:

> The majority of the top 10 news websites accessed by Australians are either directly or jointly owned by traditional media platforms—meaning that they are the same voices on different platforms. And the digital divide means that access to new media still remains out of reach for many Australians, given the substandard levels of broadband connectivity particularly in rural and regional areas.

> While Labor acknowledges the increasing influence of new media in Australia, we do not mistake the entry of new voices online or the abundance of online content for diversity in terms of diversity of ownership of Australian media. It is a mistake to confuse the proliferation of content for diversity of ownership or opinion.\(^{59}\)

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54. J Clare (Shadow Minister for Communications), *Interview with Michael Brissenden*, ABC AM: Media Reform, marriage equality, Western Australian MPs, transcript, 2 March 2016.
55. Ibid.
57. Ibid., p. 28.
58. M Rowland (Shadow Minister for Communications), *Statement on TEN Network Holdings announcement*, media release, 14 June 2017.
Labor’s Brian Mitchell continued:

Removing the two-out-of-three rule will concentrate Australia’s media assets in even fewer hands. We have existing owners demanding that they be allowed to buy each other out so that they can get bigger, which they say is necessary to better compete on the world stage. We have a scenario where already-massive media companies want to get even bigger so that they can face-off against similarly giant companies overseas. Such a scenario only has one outcome: the swallowing up, buying out and merging of competitors until, ultimately, only two global entities are left facing off against each other—and, one day, they themselves will ultimately want to merge. That is not a future that we should look forward to.60

At the same time, Mr Mitchell noted that Labor supports most of the measures in this Bill, ‘because they are Labor’s measures’. He argued that Labor had ‘led the way on reforming broadcast licence fee relief, gambling advertising restrictions and funding to support the broadcasting of women’s sport’.61

**The Australian Greens**

With reference to the first of the 2016 media reform Bills, the Greens’ Senator Scott Ludlam was of the view that while the Internet has changed the way Australians engage with media, it should not be an excuse to change media regulations ‘to suit some of the most powerful media barons in Australia, the country with the most concentrated media ownership in the world’.62 Senator Ludlam considered that it was too easy for the Government to claim that the Internet ‘has negated the need for any diversity protections’ as the dominant players in print and broadcast media ‘have successfully used their incumbency to cement their place at the top of Australia’s online news media space as well’.63 The Senator considered:

We need to make sure new entrants can compete, that existing players are not so dominant that new voices are crushed. We need to make sure local content is still being produced, and that Australian stories are still being told ...

Technological advances in streaming services and the like are being used as a reason to abolish the reach rule, but this only makes sense if there is a decent national broadband network to deliver these services.64

In a dissenting report to the November 2016 Senate inquiry Senator Larissa Waters stated that the Greens believed that in presenting the media reform proposed in the 2016 Bills the Government had missed an important opportunity ‘to progress meaningful reform of the Australian media landscape, and h[a][d] instead settled on a simplistic deregulatory approach that will do nothing to improve media diversity’.65

In May 2017 Senator Ludlam confirmed that the Greens were concerned about the removal of the two out of three rule as it represented ‘jumping to the commercial imperative’ without fully considering the public interest.66

**One Nation, Nick Xenophon Team and Independents**

In July 2016 Senator Hinch was reported to have said that he had not given the issue of media reform ‘a tremendous amount of thought, but that he would take it “issue by issue” and get briefings from the relevant ministers’.67 Twelve months later media reports indicated that Senator Hinch had ‘no qualms’ about removing the two out of three rule and had ‘thrown his weight’ behind the revised package in this Bill.68
It was speculated in 2016 that Senator Jacqui Lambie could be supportive if she could be convinced there would be protection ensured for local news coverage in Tasmania. It also had previously been reported that Senator Lambie was interested in ensuring that any media reform contained safeguards to protect local journalism jobs.

Senator Hanson’s office commented in July 2016 that media reform and its impact on regional Australians is an area of interest for One Nation Senators, but that at the time the party did not have a formal policy position. One Nation has now been quoted as saying that the two out of three rule is the main stumbling block for the party. At one point it appeared it supported a three out of four compromise rule, which was rejected immediately by the media industry, and no clear proposal was elaborated upon. In late June 2017, however, the One Nation Whip, Brian Burston, was reported as stating that the party was ‘rethinking its stance’ and a deal with the Government ‘was possible’. As Senator Hanson has previously called for more funding for community broadcasting and protections for local content in Queensland, reports suggest that One Nation’s support for media changes may depend on the extent to which the Government is willing to deliver concessions in these areas.

Senator David Leyonhjelm (Liberal Democratic Party) expressed his support for the previous media reform proposals and is likely to support this Bill, as is Senator Cory Bernardi. With regards to the first 2016 Bill, Independent Senator from South Australia, Nick Xenophon, commented that he would participate in the Senate inquiry process before deciding his position on the reforms proposed. Senator Xenophon added that he would like to see licence fees slashed and local television producers given more generous tax offsets and the revenue loss that this would incur could be recovered by ensuring that companies such as Netflix, Google and Apple ‘were paying their fair share of tax’. In the 45th Parliament Senator Xenophon leads the Nick Xenophon Team (NXT) of three senators and the NXT also has one member in the House of Representatives. In conjunction with debates on the second 2016 Bill Senator Xenophon agreed with industry advocates that free-to-air regional broadcasters operate in an environment where they pay high licence fees and where advertising revenue is declining. The Senator argued for a more level playing field, suggesting that companies such as Google, Facebook and Netflix should be ‘taxed on a turnover basis’ and the revenue gained could be used to offset the ‘disproportionately harsh cuts’ which community radio and community television have suffered.

In September 2016 there were also reports that Senator Xenophon had ‘struck a deal’ in relation to aspects of gambling reform in exchange for his support for the second 2016 Bill and that he had called for anti-siphoning changes to be include in the Bill, but Minister Fifield denied that the government had agreed to these concessions.

With regards to this Bill, a number of reports have indicated that because of the continued opposition from Labor and the Greens that it will not pass through the Senate without the support of ten of the 12 remaining senators, and that the support of the NXT is crucial to its passage. At the commencement of the Parliament’s winter break Senator Xenophon vowed to use the break to try to resolve the ‘stalemate’ over the Bill and in early July he and his colleague, Senator Stirling Griff, presented a package of compromise to the Government. The

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69. Christensen, ‘Pauline Hanson and Derryn Hinch’, op. cit.
71. Christensen, ‘Pauline Hanson and Derryn Hinch’, op. cit.
75. Remeikis and Batterby, ‘Hinch brings media reform closer’, op. cit.
77. N Xenophon, ‘Deal or no deal: media law changes must include licence fee cuts and a fair tax on Facebook, Google and Netflix’, media release, 1 September 2016.
78. Ibid. Note: a turnover tax is a tax levied on turnover (revenue) at a specific rate, irrespective of the source of revenue and whether or not the revenue is associated with any profit or loss to the entity (as defined by Economics Section, Parliamentary Library).
80. R Lewis, ‘Media bill set to be left in the cold’, The Australian, 23 June, p. 4.
package reportedly included ‘a tax on Facebook and Google and tax breaks for smaller and regional publications’.81

**Position of major interest groups**

**Industry**

**Previous comment**

In 2013, in conjunction with the Labor Government’s attempt to reform media legislation, a Senate Committee investigated the 75 per cent reach rule and concluded that it was irrelevant in the modern media environment. The Committee recommended removal of the rule, but added that this should be on the condition that either legislation or legally enforceable undertakings were in place to safeguard the delivery of local content for regional Australia.82

At the time of this investigation most broadcasters argued that the rule was out of date, and that removing it would mean that regulations were more consistent with converging media technologies. In addition, if the rule were removed, regional networks and metropolitan networks would be allowed to merge and this would increase industry efficiency and economies of scale (see a snapshot of current major media interests in Appendix A).83 The WIN and Ten Networks in particular expressed some doubt that rescinding the reach rule would be as beneficial as most of their fellow broadcasters believed.84 WIN, for example, voiced concern that the end of the rule could mean the end of local content on regional stations.85

WIN later changed its opinion, and its submission to the Senate inquiry into the 2016 media reform proposals argued that not only is it the case that pay television can reach 100 per cent of the population, but the Seven, Nine and Ten networks are able to do so through their regional affiliates.86 In addition, WIN considered the ABC and SBS, as ‘direct competitors’ for viewers and SBS a competitor for revenue. WIN therefore:

> ... question[ed] why a government broadcaster is free to compete for regional advertising revenue whilst not being constrained by the 75% audience reach rule and also not being required to work to the local content obligations that apply to regional broadcasters.87

The broadcaster added:

> Online broadcasters such as Netflix, Foxtel Go, Stan, Presto, Quickflix, ABC iView, SBS on Demand, Ten Play, 9 Now, Plus 7, Fetch TV, Hulu, Google, YouTube and any other online media group in Australia, and for that matter the world, is able to broadcast their content to 100% of the population whilst Australian commercial television networks are constrained from gaining scale by the 75% Reach Rule.

Perhaps the most telling example of the redundancy of the Reach Rule is the recent action of Seven West Media and more recently Nine Entertainment Co in streaming their channels into regional Australia, effectively bypassing the Reach Rule. Regional Broadcasters pay a large percentage of their gross revenue to these Metropolitan broadcasters for the right to broadcast the programming and are being forced to compete with their own product suppliers for viewers and for revenue.

WIN, along with the other independent regional broadcasters have together argued that the abolition of the 75% audience Reach Rule will give regional broadcasters the ability to find opportunities through which to gain scale, either through acquisition, merger, partnering with, in a material fashion or selling into, a Metro Broadcaster. All of

83. I Audsley, (Chief Executive Officer, Prime Media Group), Evidence to Joint Select Committee on Broadcasting Legislation, 18 March 2013, p. 17.
84. WIN Network and Network TEN, Submissions to Joint Select Committee on Broadcasting Legislation, March 2013.
85. A Lancaster (Chief Executive Officer, WIN Network Pty Ltd), Evidence to Joint Select Committee on Broadcasting Legislation, 18 March 2013, p. 11.
87. Ibid.
these options lead to the gaining of scale for television networks and create the opportunity to remove unnecessary or duplicated costs in non-generating content areas of television businesses and allowing the regional division of the up scaled business. The result being a greater opportunity to continue with the current investment into local content and support in regional communities.88

In 2015 Fairfax’s Nick Falloon commented that media ownership changes, such as are proposed in this Bill, will correct what he called ‘an imperfect market’ which ‘gives unregulated overseas players a complete free hand’.89 In early 2016 Fairfax Group’s Chief Executive, Greg Hywood, stressed the point that a level playing field was what Fairfax wanted and he insisted that the Group was not interested in buying a television network, despite any changes to regulations as:

... it could produce as much video as it wanted across its websites and the ‘notion of scale in advertising between print and TV is not remotely as powerful’, thanks to the digital revolution ...

“We’re very supportive of operating in a deregulated, unregulated environment because it just provide optionality [sic] and we should have optionality because the major competitors in our advertising are not having to deal in a regulated environment at all.”90

News Corp Australia, was more cautious in its support, but nevertheless it labelled the proposals as ‘a step towards media reform’.91 It could be argued that at the time News Corp’s caution was prompted by its failure to convince Minister Fifield to consider including proposals to amend the anti-siphoning scheme.92 Foxtel, which is 50 per cent owned by News Corp, also did not support the repeal of media ownership and control rules unless that repeal occurred in conjunction with reform of the anti-siphoning regime.93

Re-introduction of reform proposal

The Ten Network welcomed the re-introduction of the second 2016 media Bill and called on the Parliament to pass it ‘as a matter of urgency’.94 Ten Network chief executive officer Paul Anderson urged Parliament to support Australian media companies that are investing in local content and local jobs by passing the legislation. According to Mr Anderson, unless the Bill passed ‘our big tech competitors [will continue to get] a free ride by strangling local media companies’.95 In response to concerns raised about removing the two out of three rule Mr Anderson added that he had heard no rational argument in favour of its retention; it was ‘illogical and antiquated and threatens local diversity by constraining Australian media companies in our efforts to grow and compete’. The Ten Network officer was ‘disappointed’ that there was to be another inquiry into the reform proposals.96

News Corp Australia welcomed the introduction of the second Bill into the Parliament and supported its passage, as did WIN Network Chief Executive Officer, Andrew Lancaster, who saw the legislation as ‘pivotal’ for ensuring Australian companies are able to compete with ‘foreign-owned tech companies’.97 The Chairman of Prime Media Group, John Hartigan, called upon all Parliamentarians to support the reforms in the Bill and warned that if they were not passed ‘the Federal parliamentarians who chose to stand in the way of reform need to be prepared to accept the blame for less diversity, the value erosion of Australian media companies and...

88. Ibid.
92. The anti-siphoning regime prevents certain televised events, which have been listed by the Government, from being appropriated by pay television operators so that only those who subscribe to a pay service are able to view the events. Free-to-air television broadcasters argue that it is not in the public interest to allow subscription operators to force audiences to pay to view programs; subscription television owners argue free-to-air broadcasters support the anti-siphoning list because it is in their financial interest to do so and not for any concern about the public interest. For a detailed discussion of this issue see R Jolly, Sport on television: to siphon or not to siphon? Research paper, 14, 2009-10, Parliamentary Library, Canberra, 2010.
95. Ibid.
96. Ibid.
the loss of hundreds of jobs’.98 Grant Blackley, CEO Southern Cross Austereo, added his support for the legislation and stressed his view that rules put in place in the days before the Internet, pay TV, Google, Facebook and YouTube ‘have no place in today’s media landscape and are holding back regional media businesses’.99

These comments supplement those made to the Senate Committee inquiry into the earlier version of this Bill and re-stress the arguments that commercial media, in particular regional commercial media, are undergoing ‘significant structural challenges’, including the loss of advertising markets to online platforms.100 Prime Media, for example, noted that regional television had suffered falls in advertising revenue of $65.0 million in the three-year-period prior to 2016.101

The 2017 Bill

When Minister Fifield announced prior to the 2017–18 Budget that broadcasting licence fees would be abolished for commercial free-to-air broadcasters, and this commitment was confirmed in the Budget, the industry bodies Commercial Radio Australia and Free TV Australia welcomed the announcement.102 Free TV saw the change as ‘crucial’ for Australian jobs and for the industry’s ‘ability to continue creating great local programming that is watched by millions of Australians every day’.103

At the time the Government noted that it would set a price on the use of radiofrequency spectrum that it argued would more accurately reflect its use and that this would give commercial broadcasters ‘flexibility to grow and adapt in the changing media landscape, invest in their businesses and in Australian content, and better compete with online providers’.104 In addition, the licence fee relief would make it possible for the Government to deliver ‘a community dividend’ in the form of gambling restrictions.105 The Broadcasting and Content Reform package announced by Minister Fifield was also to enhance proposals in the two previous media reform Bills by including changes to anti-siphoning rules to allow pay television operators more opportunity to bid for major sporting events.106

As the Parliamentary Library’s analysis of the 2017–18 Budget noted, it appeared significant concessions were made in developing this broadcasting and content reform package.107 For example, as noted earlier in this Digest, free-to-air broadcasters and subscription television operators have for many years taken uncompromising stances on the anti-siphoning list, with the former opposed to change. However, the representative bodies for both these media sectors from the outset praised the 2017 proposals.108 According to the ASTRA, such support resulted from the involvement of ‘the entire media industry in the development reforms that address the broad concerns of all participants’.109

In the last week of May 2017 media industry leaders addressed a Government-organised summit in Canberra to attempt to persuade crossbench senators to support the new media package as presented in this Bill. The leaders included News Corp’s Michael Miller, Seven West Media’s Tim Worner, Fairfax Media’s Greg Hywood, Foxtel’s Peter Tonagh and Macquarie Media’s Adam Lang in what was touted as a ‘rare display of pan-industry support’ for change.110 Prior to the summit, Michael Miller urged the Senate to pass the entire media package

98. Ibid.
99. Ibid.
100. Prime Media, Submission to Senate Standing Committee on Environment and Communications Legislation Committee, Inquiry Into Broadcasting Legislation Amendment (Media Reform) Bill 2016, 21 March 2016, p. 3.
101. Ibid.
102. M Fifield (Minister for Communications and the Arts), Major reforms to support Australian broadcasters, media release, 6 May 2017; Commercial Radio Australia, Commercial radio welcomes removal of licence fees, media release, 6 May 2017.
103. Free TV Australia, Broadcasting reforms positive for Aussie content and local jobs, media release, 6 May 2017.
104. Fifield, Major reforms, op. cit.
105. Ibid.
106. Ibid.
108. Free TV, Broadcasting reforms, op. cit. and Australian Subscription Television and Radio Association (ASTRA), Media changes a welcome first step, media release, 6 May 2017.
109. ASTRA, Media changes, op. cit.
‘to ensure the future viability of the sector’. He argued also that only ‘holistic and complete reform’ would support local media voices. 111

Following the Bill’s successful passage through the House of Representatives, industry spokespersons expressed disappointment that it did not pass in the Senate before the winter break for the Parliament, but sources noted that it was better to defer the legislation if it meant the legislation would eventually succeed. Importantly, one spokesperson warned that unless the whole package was passed, internal industry agreement could not be guaranteed, stating that if there were ‘any cherry picking or an attempt to pull [the proposals in the Bill] apart then the deal’s off from the sector’s point of view’. 112

Media and other commentators

Criticism of changes to media regulation

In 2014 Ben Eltham in the New Matilda asked what deregulation in general would mean for Australia’s media and for democracy and concluded that the result would be media consolidation ‘and a further weakening of diversity in the Australian mediascape’. 113 Mr Eltham’s 2016 assessment was that, while the Government says that local content will continue to be protected if changes are made to media ownership restrictions, ‘Australian citizens that rely on journalists to gather and report the news so they can make informed decisions about our democracy may beg to differ’. 114 The efficiencies that will be inevitable as media companies merge will mean job losses and fewer, larger media companies will control fewer media voices. In Mr Eltham’s view, this will also mean there will be fewer journalists to report and investigate. 115

Crikey commentators Bernard Keane and Glenn Dyer also discussed media changes in an article in 2014. In relation to the possible removal of the two out of three rule, Keane and Dyer considered the only substantial beneficiary would be News Corp, as this international media giant would then be able to take control of the Ten Network and have the potential to increase its influence over Australian audiences. In Keane and Dyer’s opinion, this was because:

[...] despite a fragmenting media landscape, there’s still nothing more politically influential in Australia than a TV network, which is one of the last places where hundreds of thousands of Australians still gather to be told what’s going on. 116

Commenting on the announcement of the media package reflected in the current Bill, Dyer and Keane were sceptical of the extent to which traditional media can realistically be assisted to cope with the new media environment. They saw the overall package as ‘aid’ for an industry ‘up against an unstoppable wave of change’ and argued that licence fee cuts and/or any media mergers or takeovers that may result from removing legislative restrictions will not halt that change. 117 In Dyer and Keane’s opinion, Google and Facebook will continue to undermine other forms of media and ‘care packages’ will not be able to save ‘media dinosaurs’. 118

Keane and Dyer have argued also that media changes should not proceed while questions remain about the circumstances surrounding Network TEN being placed in administration. They ask for clarification of a number of issues, including what was the role of Lachlan Murdoch, 21st Century Fox and Bruce Gordon and conclude that until there are clear answers:

... any decision by parliamentarians about the media reform Bill may be undertaken with at best an incomplete understanding of the facts; possibly, they may have been actively misled. And if the Bill is passed, that passage will always be clouded by questions of whether the entire political process was gamed. 119

112. Lewis, ‘Media bill set to be left in the cold’, op. cit.
115. Ibid.
117. G Dyer and B Keane, ‘Winners from the media package will need a lot more than handouts’, Crikey, 8 May 2017.
118. Ibid.
In his 2016 commentary on the previous reform proposals academic Vincent O’Donnell maintained that they did not represent reform; they were instead:

... a capitulation to the interests of licensees, shareholders and rent-seekers in the Australian media industries, painted up in the gaudy raiment of the protection of the public interest.\(^{120}\)

In relation to local content measures in previous Bills, and which are also a feature of this Bill, Mr O’Donnell continued:

[t]he proposed changes to the points system, which deals with the number of news stories relating to ‘local’ areas, seeks to support diversity. But like so much government regulation, conscientiously planned by those with little experience of the industry it will affect, it will be easy to meet the target without honouring the purpose.

Story selection, buying in copy, sourcing amateur footage from mobile phones and using uncorroborated eyewitness accounts are among the many ways of covering the surface of events without providing the depth that serious news journalism demands.\(^{121}\)

Others who have expressed similar concern include Associate Professor Tim Dwyer from the University of Sydney who in 2016 said that, should the two out of three measure become law, there will be an inevitable reduction in the news sources people need to access a wide range of points view.\(^{122}\) More recently Professor Dwyer has argued that removing the two out of three rule, ‘the last major remaining bulwark’ is not the solution to media concentration; removal will only make Australia’s media more concentrated in Rupert Murdoch’s hands.\(^{123}\) Professor Dwyer argues:

... Australia needs to have a comprehensive review of how news is now consumed across online and traditional media. This would serve as a precursor to media diversity policies that tackle the changing news environment ... The media reform package smacks of the government doing deals with the incumbent commercial TV networks and News Corp’s Foxtel. It is a short-sighted political play, and not a serious attempt to tackle structural change in the media industries by looking at ways to maximise diversity for audiences.\(^{124}\)

Professor Michael Fraser from the University of Technology Sydney has also argued that ‘it is important to maintain the media ownership laws we have to ensure diversity in the mainstream media’.\(^{125}\) Denis Muller from the University of Melbourne has contended that while the two out of three and 75 per cent reach rules this Bill proposes to rescind are ‘unenforceable’ and ‘mocked’ by digitisation, the underlying rationale for them remains valid.\(^{126}\) Dr Muller believes that it is ‘in the public interest to have a diversity of voices in the news media and some restraints on the concentration of media power’. He has maintained that while

[t]heoretically, digital technology enables everyone with a computer, access to the internet and the skills of basic literacy to become a publisher. A few new players have emerged as a result, most notably Crikey and The Guardian Australia, but the overwhelming majority of people who get their news online get it from the long-established media organisations – the ABC, News Corp and Fairfax.

The reason is that even with the heavy cuts to journalists’ jobs, these organisations still have more resources, more access to newsmedia, a bigger news-making capability and stronger reputations than most start-ups.

If the mooted rule changes go through, the mergers already foreshadowed by the media industry will mean less diversity – not more.\(^{127}\)

Support for change

121. Ibid.
123. T Dwyer, ‘Why media reform in Australia has been so hard to achieve’, The Conversation, 12 May 2017.
124. Ibid.
125. M Fraser, Statement to Media Watch, 27 January, 2016, Media Watch, transcript, Australian Broadcasting Corporation (ABC).
126. D Muller, ‘Diversity and local voices at risk as media owners aim to become emperors of everything’, The Conversation, 29 February 2016.
127. Ibid.
ACCC Chairman, Rod Sims, has criticised current media legislation as obsolete and ‘possibly protectionist’. According to Mr Sims, the reach rule potentially limits competition and efficient investment in the media industry, while the two out of three rule may be preventing the efficient delivery of content over multiple platforms. In addressing the concerns expressed by commentators such as Bernard Keane and Glenn Dyer about a possible News Corp takeover of the TEN Network as a result of change, Mr Sims has also commented that section 50 of the Competition and Consumer Act 2010 prohibits any deal that would have the effect, or likely effect, of substantially lessening competition.

Senior Lecturer in Political Science at the University of Canberra, Michael de Percy, has argued that it is a contentious point whether localism (a term which includes both the provision of local content by regional broadcasters and the local ownership of those broadcasters) has ever existed in Australia in the first place. Dr de Percy sees localism as ‘much more than simply requiring commercial television stations to provide local news services’. In his opinion, the broadband services that now exist enable greater consumer participation in news media production and social networks transform ‘traditional top-down localism of television programming to a more participatory localism driven by consumers’. Dr de Percy is of the view that this has eroded the relevance of Australia’s cross-ownership laws. In such an environment:

... [continuing to place] restrictions on cross-media ownership where the distinction no longer exists is hardly the recipe for a commercially viable and internationally competitive communications industry. Ideas about localism need to change too if the advantages of reconvergence are to be realised by Australian media companies. Indeed, regulating for localism may well benefit overseas competitors rather than the people it was designed to serve.

An editorial in The Australian argued in 2014 that the removal of cross-media ownership law may be the way that local content offerings can be improved for regional areas because a proprietor who owns television, radio, print and Internet assets in an area ‘could deepen and expand local content and news’. In a similar vein Chris Berg from the Institute of Public Affairs argued that ‘it is possible that local content requirements are crowding out alternative entrepreneurs’ who may be better able to produce local content.

In his critique of the first media reform Bill, Dr Derek Wilding from the University of Technology Sydney considered the media changes suggested represented ‘a media landscape that is worth supporting’. Dr Wilding was in favour of repealing the 75 per cent rule and the two out of three rule if it helped ‘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’. His proviso for supporting this situation was, however, that there needed to be an assurance of ‘reasonable standards of practice’ such as accuracy, fairness, transparency and respect for privacy. He concluded:

If the number of independent sources of information is reduced, whether through market forces or legislative change, then in my view it becomes more important that those players are committed to appropriate industry based standards of accuracy and fairness in reporting. It is also appropriate that, in a regulatory environment permitting cross-media ownership, those standards apply across media platforms.

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131. Ibid.
132. Ibid.
133. Ibid.
136. Ibid.
137. Ibid.
138. Ibid.
### Audiences

Audience views of changes to media regulation can reflect the types of questions asked in surveys. For example, in 2013 Essential Report research found that most voters were not overly enthusiastic about removing media regulation. The majority of those surveyed by Essential believed that media regulation was either ‘about right’ or that there needed to be more regulation (see Figure 2 below). 139

A later survey of regional audiences by JWS Research for the *Australian Financial Review* in 2015 concluded that there was almost equal support for retention of the media regulation and changing the rules (see Figure 3 below). The interesting finding from this latter survey was that people were very supportive of rule changes if they thought that these would ensure they continued to receive local news. 140

**Figure 2: 2013: satisfaction with media regulation**

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>Vote Labor</th>
<th>Vote Lib/Nat</th>
<th>Vote Greens</th>
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<tr>
<td>Needs to be more regulation</td>
<td>29%</td>
<td>38%</td>
<td>22%</td>
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<td>Present regulation about right</td>
<td>43%</td>
<td>36%</td>
<td>55%</td>
<td>35%</td>
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<tr>
<td>Don’t know</td>
<td>17%</td>
<td>18%</td>
<td>12%</td>
<td>16%</td>
</tr>
</tbody>
</table>

Source: Essential Report 141

**Figure 3: 2015: audience opinion of media reform**

Financial implications

As noted in the Explanatory Memorandum to this Bill, the provisions in Schedule 5 of this Bill will result in an estimated revenue loss of $417.7 million in the period 2017–18 to 2020–21. Some of this revenue will be recovered through the proposed new tax imposed under the Commercial Broadcasting (Tax) Bill 2017. This is expected to deliver an estimated $43.5 million per annum.

However, payments to assist broadcasters affected by the transitional transmitter licence arrangements will also cost the Government. These payments are estimated at approximately $18.4 million for the period to 2020–21.

Statement of Compatibility with Human Rights

As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.

With regards to the local content obligations proposed, there may be some question about the extent to which broadcasters would be able to deliver local content to the satisfaction of all constituencies within each area within the limited time frames that will be introduced under this Bill—albeit arguably, they are an improvement on the existing local content.

On Line Opinion commentator David Vadori made the following observations with regards to how the rights of audiences may be affected by the proposals in the September 2016 Bill and similar arguments would apply with regards to this Bill:

The democratic ideal of a media which is impartial, and designed to inform citizens, is inevitably compromised as media ownership becomes more concentrated. Article 19 of the Universal Declaration of Human Rights unequivocally states that everyone has the inalienable right ‘to hold opinions without interference...’ However this right is undermined as media ownership becomes more concentrated and the number of proprietors is reduced.

Concentration of media ownership is frequently seen as a problem of contemporary media and society. The fundamental threat that concentrated media poses to any society is that, as the influence of privately funded media increases, the democratic capacity of the media as an instrument to inform and educate citizens is diminished. This is due to a reduction in the number of perspectives that are available to citizens on any given issue, at any given time; and this interferes with an individual’s ability to formulate an opinion, as access to information presented in an unbiased and balanced fashion becomes more and more restricted. In Australia, this problem is markedly more acute than elsewhere in the world and thus governments should strive to ensure that the Australian media is impartial and informative.

Parliamentary Joint Committee on Human Rights

The Parliamentary Joint Committee on Human rights did not consider that either of the previous Bills raised human rights concerns. At the time of writing, it has not commented on this Bill, which on 21 June it deferred for consideration at a later date.

143. Explanatory Memorandum, p. 12.
144. Ibid.
145. Ibid.
146. The Statement of Compatibility with Human Rights can be found at pages 13 to 19 of the Explanatory Memorandum to the Bill.
### Key issues and provisions

**Schedule 1**

Schedule 1 of the Bill proposes to repeal the sections of the BSA which set out the conditions of the 75 per cent reach rule. Subsections 53(1) and 55(1) and (2) of the BSA set out this rule which prevents a person, either as an individual or as a director of one or more companies, from being in a position to exercise control over commercial television broadcasting licences whose combined licence area populations exceed 75 per cent of the population of Australia.\(^\text{150}\)

**Schedule 2**

Schedule 2 of the Bill proposes to repeal the two out of three cross-media control rule which is set out in section 61AEA and subdivision BA of Division 5A of Part 5 of the BSA. The two out of three rule prohibits a person controlling more than two out of three regulated media platforms (that is, a commercial television broadcasting licence, a commercial radio broadcasting licence and an associated newspaper) in any one commercial radio licence area.

Items 1 to 3 of this Schedule propose to repeal the definition of unacceptable three-way control situation and the prohibition on media business transactions which may lead to a three-way-control situation. The other items in this Schedule are either consequential to the repeal of the two out of three rule or are technical amendments.

**Schedule 3: Part 1**

**Box 2: definitions**

| **Aggregated markets**: aggregated markets came into being in the 1980s. Aggregation involved creating larger regional television markets by combining certain existing licence areas in the well-populated eastern states so that the combined areas could be served by three commercial services. The rationale for aggregation was that larger service areas would provide an opportunity for licensees to expand and develop regional content and that the preferences of viewers would provide an incentive for regional licensees to produce local programs.\(^\text{151}\) The current aggregated markets are listed in the definitions at proposed section 61CU of the BSA, at item 1 of Schedule 3 to the Bill. These are: Northern New South Wales, Southern New South Wales, Regional Victoria, Eastern Victoria, Western Victoria, Regional Queensland and Tasmania. |  |
| **Non-aggregated markets**: non-aggregated markets are those that have been considered to be too widespread geographically and which do not have the population to support three competing commercial television services.\(^\text{152}\) These are listed in proposed section 61CU. They are: Broken Hill, Darwin, Geraldton, Griffith and the Murrumbidgee Irrigation Area, Kalgoorlie, Mildura/Sunraysia, Mount Gambier/South East, Mt Isa, Remote and Regional Western Australia, Riverland, South West and Great Southern and Spencer Gulf. |  |
| **Trigger event**: proposed section 61CV of the BSA will define a trigger event for a regional commercial television broadcasting licence as: occurring when a person starts to be in a position to exercise control of a commercial television broadcasting licence, and immediately after that event, is in a position to control two or more television broadcasting licences (including at least one regional commercial television licence) with a combined licence area population that exceeds 75 per cent of the population of Australia. |  |
| **Material of local significance**: proposed section 61CU intends that material of local significance will be defined in a local programming determination. Proposed section 61CZ provides that the ACMA will make the local programming determination. The determination will deal with issues such as: what areas will be designated local areas ‘in relation to’ a regional commercial television licence, what constitutes material of local significance for a local area and what is required for news reports to receive three points towards quota points.\(^\text{153}\) |  |

Item 1 of Schedule 3 proposes to insert a new Division (Division 5D) into Part 5 of the BSA. Commercial television broadcasters who broadcast in aggregated markets and who are affected by a trigger event will be

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151. Department of Communications Forward Development Unit, Future directions for commercial television, AGPS, Canberra, 1985, p. xx.

152. Australian Broadcasting Authority (ABA), Adequacy of Local News and Information Programs on Commercial Television Broadcasting Services in Regional and Rural Australia (Solus Operator and Two Operator Markets), ABA, Sydney, June 2004, p. 3.

required to broadcast to local areas material of local significance in order to accumulate at least 900 points in each timing period (with at least 120 points being broadcast each week) that commences six months after the trigger event occurs (proposed subsection 61CW(1)). A timing period is six weeks.  

In the six month transitional period the broadcaster will be required to broadcast 720 minutes of local content (with at least 90 points broadcast each week) (proposed subsection 61CW(2)). There is no change in the local content broadcasting requirements for broadcasters who are not affected by a trigger event (proposed subsection 61CW(3)).

New subsection 61CX also proposes to introduce local programming requirements for non-aggregated markets if a trigger event occurs. The broadcaster will be required to broadcast to each local area material of local significance to accumulate 360 points (with at least 45 points being broadcast each week) in each timing period that commences six months after the trigger event occurs. The proposed subsection does not apply to licences granted under sections 38A and 38B of the BSA.  

Proposed section 61CZA requires licencees who have experienced a trigger event to produce and retain (for 30 days after each six week timing period or longer if ACMA requires) an audio visual record of the material of local significance it has broadcast in local areas. The record must be provided to ACMA on request.

In addition, proposed section 61CZB proposes that licencees subject to trigger events must provide ACMA with two compliance reports. The first of these is to cover a 12-month period commencing six months after the trigger event and the second report to cover the 12-month period after the first report period.

Box 3: the points system—definitions and allocations

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<th>Item</th>
<th>Material</th>
<th>Points for each minute of material</th>
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<td>1</td>
<td>News that: (a) is broadcast during an eligible period by a licensee covered by subsection 61CW(1) or 61CX(1); and (b) has not previously been broadcast to the local area during an eligible period; and</td>
<td>3</td>
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154. Proposed subsection 61CY(2) of the BSA.

155. For current requirements see section 43 of the BSA and Broadcasting Services (Additional Television Licence Condition) Notice 2014.

156. Section 38A of the Broadcasting Services Act 1992 (the BSA) provides for the allocation of an additional commercial television licence to an operator who is providing the only commercial television service in a market. Under section 38B the BSA provides for the allocation of additional commercial television broadcasting licence to licencees in markets where there are two commercial television licences in force. The Explanatory Memorandum to the Bill provides that ‘section 38A and 38B licences are allocated by the ACMA to existing licencees to ensure that regional audiences receive all three main television networks, where there are less than three broadcasters in the licence area’: Explanatory Memorandum, p. 85.
(c) depicts people, places or things in the local area; and
(d) meets such other requirements (if any) as are set out in the local programming determination.

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<td>2</td>
</tr>
<tr>
<td></td>
<td>(b) has not previously been broadcast to the local area during an eligible period; and</td>
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<td></td>
<td>(c) relates directly to the local area; and</td>
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<td></td>
<td>(d) is not covered by item 1.</td>
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<th>Other material that:</th>
<th></th>
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<td>3</td>
<td>(a) is broadcast during an eligible period; and</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>(b) except in the case of a community service announcement—has not previously been broadcast to the local area during an eligible period; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(c) relates directly to the local area.</td>
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</thead>
<tbody>
<tr>
<td>4</td>
<td>(a) is broadcast during an eligible period; and</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>(b) has not previously been broadcast to the local area during an eligible period; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(c) relates directly to the licensee’s licence area.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Other material that:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>(a) is broadcast during an eligible period; and</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>(b) except in the case of a community service announcement—has not previously been broadcast to the local area during an eligible period; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(c) relates directly to the licensee’s licence area.</td>
<td></td>
</tr>
</tbody>
</table>

Proposed subsections 61CY(5) and (6) place limitations on the material that is able to be used towards accumulating points. These subsections intend that material which relates to an overall licence area (or in the case of the Regional Victoria licence areas 104 and 106, to the combined areas) can accumulate no more than 50 per cent of the points required under the legislation.

Further limitations apply to the number of community service announcements that can be broadcast to accumulate points. Under proposed subsection 61CY(7) the first broadcast of a community service announcement (and four repeats of that announcement) are eligible to accrue points. In addition, no more than ten per cent of points accumulated in a local area in a timing period can be community service announcements (proposed subsection 61CY(8)).

**Box 5: ACMA and the Minister**

Proposed subsection 61CZC will require ACMA to review the new Division 5D, the licence conditions in paragraph 7(2)(ba) of Schedule 2 of the BSA (see below) and the local programming determination and provide a report to the Minister on its findings.

It is intended that the Minister will be able to direct ACMA about the exercise of the powers conferred on it by Division 5D (other than the review and reporting requirements in proposed subsection 61CZC) and that ACMA must comply with these directions (section 61CZD).

Item 2 of Schedule 3 to the Bill proposes to impose a new licence condition in Schedule 2 of the BSA. This will be imposed under proposed paragraph 7(2)(ba) and will require all commercial television broadcasting licences to comply with the applicable local programming requirements.

**Schedule 3: Part 2**

Item 3 proposes to repeal section 43A of the BSA which sets out the current requirements for regional aggregated commercial television broadcasting licences to provide material of local significance. The repeal of this section is to take place six months after this Bill receives Royal Assent.

Item 4 provides that ACMA is taken, six months after the Bill receives Royal Assent, to have revoked the Broadcasting Services (Additional Television Licence Condition) Notice 2014, which currently sets out the detail of
the local content condition. The requirements in subsections 43(2) and 43(3) of the BSA do not apply to the revocation. However, the Notice continues to apply with regards to material broadcast during a timing period that commenced before the revocation is taken to have occurred.

Schedule 4

Schedule 4 deals with the anti-siphoning list, which sets out a list of events that the Minister considers should be available on free-to-air television. Item 1 of Schedule 4 amends subsection 115(1AA) of the BSA which currently states that events are removed from the anti-siphoning list and available for subscription television providers to purchase 12 weeks before the event commences. It is proposed that events on the anti-siphoning list will be delisted 26 weeks before they commence.

Items 5 to 8 propose to repeal clauses in the BSA which restrict commercial television and national broadcasters (the ABC and SBS) from televising an event listed on the anti-siphoning list on a secondary channel unless the broadcasters have previously televised the event on their primary service or they will television the event simultaneously on their primary and secondary services.

Item 9 repeals the Schedule to the Broadcasting Services Events Notice (No. 1) 2010 which contains the list of events that compromises the anti-siphoning list. This list is specified by the Minister under subsection 115(1) of the BSA. The item intends to replace the current list with the one shown below in Box 7.

Box 7: proposed anti-siphoning list

<table>
<thead>
<tr>
<th>Olympic Games</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Each event held as part of the Summer Olympic Games, including the Opening Ceremony and the Closing Ceremony.</td>
</tr>
<tr>
<td>• Each event held as part of the Winter Olympic Games, including the Opening Ceremony and the Closing Ceremony.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Commonwealth Games</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Each event held as part of the Commonwealth Games, including the Opening Ceremony and the Closing Ceremony.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Horse racing</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Each running of the Melbourne Cup organised by the Victoria Racing Club.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Australian rules football</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Each match in the Australian Football League Premiership competition (including the Finals Series).</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rugby league football</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Each match in the National Rugby League Premiership competition (including the Finals Series).</td>
</tr>
<tr>
<td>• Each match in the National Rugby League State of Origin Series.</td>
</tr>
<tr>
<td>• Each international rugby league test match that involves the senior Australian representative team and is played in Australia or New Zealand.</td>
</tr>
<tr>
<td>• Each match of the Rugby League World Cup that involves the senior Australian representative team and is played in Australia, New Zealand of Papua New Guinea.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rugby union football</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Each international test match that involves the senior Australian representative team selected by the Australian Rugby Union and is played in Australia or New Zealand.</td>
</tr>
<tr>
<td>• Each match of the Rugby World Cup tournament that involves the senior Australian representative team selected by the Australian Rugby Union.</td>
</tr>
<tr>
<td>• The final of the Rugby World Cup tournament.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Cricket</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Each test match that involves the senior Australian representative team selected by Cricket Australia and is played in Australia.</td>
</tr>
</tbody>
</table>


158. Subsections 43(2) and 43(3) provide that if ACMA proposes to vary or revoke a licence condition or to impose a new condition, it must: give to the licensee written notice of its intention, give the licensee a reasonable opportunity to make representations to the ACMA in relation to the proposed action and publish the proposed changes in the Gazette. This section does not allow the ACMA to vary or revoke a condition set out in Part 3 or 4 of Schedule 2 of the BSA.

159. Broadcasting Services (Events) Notice (No. 1) 2010.
- Each test match that involves both the senior Australian representative team selected by Cricket Australia and the senior English representative team; and is played in the United Kingdom.
- Each one day cricket match that involves the senior Australian representative team selected by Cricket Australia and is played in Australia.
- Each Twenty20 cricket match that involves the senior Australian representative team selected by Cricket Australia and is played in Australia.
- Each match of the International Cricket Council One Day International World Cup that involves the senior Australian representative team selected by Cricket Australia and is played in Australia or New Zealand.
- The final of the International Cricket Council One Day International World Cup if the final is played in Australia or New Zealand.
- Each match of the International Cricket Council World Twenty20 tournament that involves the senior Australian representative team selected by Cricket Australia and is played in Australia or New Zealand.
- The final of the International Cricket Council World Twenty20 tournament if the final is played in Australia or New Zealand.

**Soccer**
- Each match of the Fédération Internationale de Football Association World Cup tournament that involves the senior Australian representative team selected by the Football Federation Australia.
- The final of the Fédération Internationale de Football Association World Cup tournament.
- Each match in the Fédération Internationale de Football Association World Cup Qualification tournament that involves the senior Australian representative team selected by the Football Federation Australia and is played in Australia.

**Tennis**
- Each match in the Australian Open tennis tournament.
- Each match in each tie of the International Tennis Federation Davis Cup World Group tennis tournament that involves an Australian representative team and is played in Australia.
- The final of the International Tennis Federation Davis Cup World Group tennis tournament if the final involves an Australian representative team.

**Netball**
- A semi-final of the Netball World Cup if the semi-final involves the senior Australian representative team selected by the All Australian Netball Association.
- The final of the Netball World Cup if the final involves the senior Australian representative team selected by the All Australian Netball Association.

**Motor sports**
- Each race in the Fédération Internationale de l’Automobile Formula One World Championship (Grand Prix) held in Australia.
- Each race in the Fédération Internationale de Motocyclisme Moto-GP held in Australia.
- Each Bathurst 1000 race in the V8 Supercars Championship Series.

### Schedule 5

Part 1 of Schedule 5 repeals the Regulations and Acts which impose annual licence fees and charges on commercial radio and television broadcasters. Part 2 of this Schedule makes consequential amendments to the BSA and the Australian Communications and Media Authority Act 2005 as a result of the repeal of the licence and datacasting fees proposed in Part 1. **Item 22** of Schedule 5 proposes that ACMA will retain the power to collect fees for the periods in which the licensing fees and datacasting Acts and Regulations were in force.

### Schedule 6

The items in this Schedule relate to the imposition of the new tax to be imposed by the Commercial Broadcasting (Tax) Bill 2017 (Tax Bill) and make changes to a number of Acts to define terms, make clear that the tax would be related to the use of spectrum, clarify conditions for issue of certain licences and state conditions for the return of overpayments of tax and pro-rata returns of payments.160

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Items 3 and 9 of Schedule 6 propose to insert the definition of ‘interim tax’ into the BSA and the Radiocommunications Act 1992 (Radcomms Act).\(^{161}\) The interim tax is the tax that it is intended will be imposed under the Tax Bill. Item 3 will also insert the same definition of ‘transmitter licence’ as is in the Radcomms Act into the BSA.

Broadcasting Services Act 1992

Item 5 proposes to insert a new part into the BSA which deals with the collection of the interim tax (Part 14AA). The simplified outline of collection is that ACMA would make written assessments of what interim tax is to be paid and that this would be payable 28 days after the assessment is delivered (proposed section 205AA).

Proposed section 205AE provides for refunds of overpayments. Penalties will be imposed for late payment of the interim tax under proposed section 205AF.

Radiocommunications Act 1992

Item 10 deals with licences that can be issued under section 100 of the Radcomms Act to assist in achieving or improving the reception of commercial broadcasting services; services such as re-transmission by self-help providers come under this category. Item 10 proposes that two new subsections will be added to the Radcomms Act so that section 100 licences cannot be used to avoid paying the transmission tax. Under proposed subsection 100(3BA) ACMA would be prevented from issuing a section 100 licence if it has ‘reasonable grounds’ to believe the application for the licence is part of a scheme to avoid paying the tax. Proposed subsection 100(5A) under Item 11 would require ACMA to consider, when deciding whether to issue a transmitter licence under section 100, whether the licence could be used to transmit broadcasting services without paying the interim tax, even if it is not part of a scheme to avoid paying tax.

Radiocommunications Taxes Collection Act 1983

Items 14 to 16 amend the Radiocommunications Taxes Collection Act 1983.\(^{162}\) Item 14 proposes to insert a new section (proposed section 4A) so the question as to whether a transmitter licence is associated with a commercial broadcasting licence is determined for the Radiocommunications Taxes Collection Act in the same manner as it is in the Commercial Broadcasting (Tax) Bill 2017. Item 16 deals with refunds of overpayments of the tax by ACMA (proposed section 10B) and pro-rata refunds of tax paid for licences issued before 1 July 2017 (proposed section 10C).

Radiocommunications (Transmitter Licence Tax) Act 1983

Items 17 to 37 propose that a transmitter licence associated with a commercial broadcasting licence is determined for the Radiocommunications (Transmitter Licence Tax) Act 1983 in the same manner as it is in the Commercial Broadcasting (Tax) Bill 2017.\(^{163}\) This concept will be used to determine which licences will no longer be required to pay the transmitter licence tax imposed under this legislation from 1 July 2017 licensees when they would instead pay the new interim transmission tax.

Part 3 of Schedule 6 proposes to establish transitional support payment arrangements for broadcasters to ensure that no commercial television or radio licensee is worse off by more than $2,000 annually for a period of five years as a result of the new taxation arrangements to be imposed under the Commercial Broadcasting (Tax) Bill 2017. A table of payments for 19 eligible companies is included in Item 40.

Schedule 7

This Schedule proposes to insert a new section in the BSA (proposed section 216AA) to require that ACMA must conduct a review of the interim tax arrangements on or before 1 July 2022 to determine if they should be repealed.

Comment

The national and community broadcasters issue

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As noted in comments made in the Library’s digest for the previous iteration of this Bill.\textsuperscript{164}

One issue which has not been discussed in great detail in relation to these changes is the role the national broadcasters, the Australian Broadcasting Corporation (ABC) and the Special Broadcasting Service (SBS) could, or should play, in light of media reforms.\textsuperscript{165} A Department of Communications’ media ownership and control discussion paper noted in 2014 that any examination of media diversity in Australia needs to consider the role of SBS and the ABC.\textsuperscript{166} According to this paper, the national broadcasters:

... make a significant contribution to media diversity through their provision of television, radio and online services. This is particularly so for the ABC, the reach and depth of whose media outlets compare favorably to its commercial counterparts in most areas of Australia ...

The television, radio and online services provided by the national broadcasters, particularly the ABC, are also prominent in regional and remote Australia, providing audiences with an additional source of news and information in areas where there are frequently few local commercial media outlets.\textsuperscript{167}

In addition, community broadcasting services, predominantly community radio services, also add to media diversity.\textsuperscript{168}

Senator Nick Xenophon, among others, has made the point that funding could be provided to the ABC in ‘the absence of a commercial television presence in regional areas’ to increase news services and local content offerings.\textsuperscript{169} While under its Charter, the ABC is already required to deliver such services whether commercial broadcasters choose to do so or not, the Charter could be amended to include specific requirements for the types of local content it must deliver and the variety of sources from which it must obtain that content.\textsuperscript{170}

It appears that the principle of the ABC taking on these obligations would be acceptable to the commercial industry. In 2013, with reference to suggestions that local content provisions should be extended to non-aggregated areas, Free TV Australia, the commercial television industry lobby group, observed that if regional news in these areas was decided to be in the public interest, then the government should provide it, instead of imposing additional regulations on commercial broadcasters.\textsuperscript{171} However, given the frequent criticism of the ABC’s supposed use of government funding to compete with commercial broadcasters, from within and outside the industry, it is not likely that it would support additional funding to the national broadcaster for this purpose.\textsuperscript{172}

Audiences, on the other hand, may be satisfied with this alternative. Molly Johnson from The Australia Institute cites polling which shows that there is very strong overall support for increasing funding for the ABC to improve regional services, even among city-dwelling Australians.\textsuperscript{173}

Funding the ABC (and in addition SBS and community broadcasters) in this manner may go a long way towards alleviating concerns expressed about the loss of local content.

Questions about local content

It can be asked what content actually qualifies as ‘local’ and further, can such content ever have been said to exist. The definition of ‘material of local significance’ for television in the BSA is broad and leaves room for considerable interpretation of what material relates directly to a local area or a ‘licensee’s licence area’.\textsuperscript{174}

\footnotesize{164} R Jolly, Broadcasting Legislation Amendment (Media Reform) Bill 2016, Bills digest, 13, 2016-17, Parliamentary Library, Canberra, 2016.
\footnotesize{165} This is not to say that it has not been raised; for example Labor’s spokesperson Jason Clare has alluded to the role of the ABC as noted previously in the Digest for the previous version of this Bill.
\footnotesize{166} Department of Communications and the Arts (DCA), Media control and ownership, Policy background paper, 3, June 2014.
\footnotesize{167} Ibid., p. 20.
\footnotesize{168} Ibid.
\footnotesize{169} N Xenophon, Statement to Media Watch, 27 January, 2016, Media Watch, transcript, Australian Broadcasting Corporation (ABC).
\footnotesize{170} The Charter is set out at section 6 of the Australian Broadcasting Corporation Act 1983.
\footnotesize{171} Free TV Australia, Submission to Australian Communications and Media Authority Regional Television Local Content Investigation, 27 August 2013.
\footnotesize{172} For example, J Sloan, ‘Aunty suddenly fills the air, and it’s a real shame’, The Australian, 2 October 2010, p. 13.
\footnotesize{173} M Johnson, Heartland: why the bush needs its ABC, Australia Institute, Canberra, September 2015, pp. 9–10.
\footnotesize{174} Broadcasting Services (Additional Television Licence Condition) Notice 2014, section 8.
Stipulations for material of local significance are more stringent for radio than television but, nevertheless, there is room for considerable interpretation about what constitutes local.  

As academics Kristy Hess and Lisa Waller from Deakin University have stated, currently, and under changes proposed in this Bill, points are gained for commercial television broadcasters for broadcasting local content. Local areas are calculated by ACMA maps, but these group towns and cities that are often hundreds of miles apart and include a number of local government areas.  

In Hess and Waller’s opinion, the process of media reform needs to redraft the idea of local. They suggest that perhaps a grid system could be beneficial, where broadcasters gain bonus points for covering towns and cities at a considerable distance from the centre of a local area, or points for regularly presenting a full range of stories from all corners of the grid.  

This suggestion may also help to alleviate some of the concerns about the potential loss of reports of a truly local nature. To work effectively, however, it would most likely need to involve some sort of compulsory reporting of broadcaster compliance as was required for radio, for example, until the most recent licence condition notice came into effect in 2014.  

In 2013 ACMA suggested a subsidies scheme that could be adapted to encourage the production and broadcast of more local content. ACMA’s suggestion involved paying broadcasters direct subsidies or providing regulatory relief as incentives. This could be adapted to encourage broadcasters to provide more local content than will be required under the proposed revised regulations. A variation of this idea from ACMA was that subsidies could be provided to community organisations or to the national broadcasters to produce local content for commercial broadcasters to air.  

Further to the issue of where the public broadcasters are situated in the local content debate, DigEcon Research comments:  

For many years local programming has been the forte of the ABC. The innovative ABC Local program took that to another level, encouraging community generated content for publication on ABC platforms. The ABC’s digital platforms are a critical channel for the dissemination of this material. ABC local radio provides real local content on an ongoing basis.  

Better funding the ABC to provide local content in regional areas is a preferable policy tool to ineffective content regulation of commercial providers. Indeed, this should be the policy position across all content regulation (except for self-regulated classification) in the radio and television markets.  

Screen Producers Australia Chief Executive, Matthew Deaner, has made a number of pleas for savings from licence fee reductions for free-to-air broadcasters to be accompanied by further obligations to invest in local content. In 2016 Mr Deaner claimed that ‘commercial free-to-air’s investment in drama, documentary and children’s production is around $160 million annually, less than half that spent by these broadcasters on sports’.  

In response to the 2017 proposal to abolish licence fees, Mr Deaner noted that the abolition of licence fees was based in part on arguments ‘that they will use these windfalls to invest in local content’. Mr Deaner quotes Australian Bureau of Statistics figures to argue that previous reductions in fees have not delivered on these promises; he contends in fact that in the case of commercial television broadcasters, since 2011–12 they have:  

... cut their commitment to Australian drama and documentaries by 20 per cent and increased the substitution of Australian content for cheap second-run New Zealand content. The broadcasters are also moving more production  

177. Ibid.  
179. ACMA, Regional commercial television local content investigation report, ACMA website, December 2013, p. 35.  
180. Ibid., p. 36.  
in-house, from 44 per cent of production in 2011-12 to 55 per cent in 2015-16. This, together with worsening deals being offered to the independent production sector, should be ringing competition alarm bells in the Government and the ACCC. Independent producers are being driven to the wall.\(^{184}\)

**Alternative means to deliver more diversity**

The Public Interest Journalism Foundation has suggested that new types of measures could be introduced to replace simple regulation and protect and monitor plurality and diversity in news and information.\(^{185}\) The Foundation considers three measures particularly appropriate:

- Regular review of media diversity

  The Government could be required to establish an independent committee to review and report every three years on the plurality and diversity of news and information sources and the adequacy of local news in regional Australia.

- Establishing an independent production fund for public interest journalism

  This measure would involve legislation that would establish a production fund for independent journalism. The fund would be ‘designed to encourage innovation and experimentation in digital journalism, especially in regional and rural Australia’.

- Government incentives to promote a culture of philanthropy to promote quality journalism, such as those that have a long history in the United States.\(^{186}\)

**Trigger events**

In relation to trigger events, Professor Matthew Ricketson from the University of Canberra noted in commenting on the previous iterations of this Bill that the definition of ‘trigger event’ was imprecise:\(^{187}\)

> … it is given as a ‘change in control’ of a licence that would result in the licence covering a market that exceeds 75 per cent of the population. It seems likely that the definition of ‘control’ derives from the existing definition in the *Broadcasting Services Act*. More significantly, the ‘trigger event’ only occurs in the context of the 75 per cent reach rule, not the two out of three cross-media control rule. So a merger or acquisition that resulted in ownership of two out of three licenses in a market but whose reach stayed within 75 per cent of the population would not be a trigger event, and so the new provision of local content rules wouldn’t apply.\(^{188}\)

Professor Ricketson also notes there are only two compliance reports required following a trigger event. Professor Ricketson implies that it may be naive to assume that broadcasters will continue to comply with requirements, given that there are no reporting obligations beyond the two compliance reports.\(^{189}\)

**Definition of control**

Prime Media also raised the issue of control in its submission to the Senate inquiry into the first 2016 Bill. Prime suggested that a more precise definition of control may be achieved by confining its meaning to that found in Schedule 1 of the *BSA* (see box below).\(^{190}\) The Senate inquiry report published in May 2016 suggests that the Government may wish to consider the issue of control in the context of this reform, but this issue was not addressed in either the September 2016 or this Bill.\(^{191}\)

**Box 6: a more precise definition of control?**

\(^{184}\) Screen Producers Australia, *SPA welcomes relief for broadcaster, but notes the entire value chain is under pressure*, media release, 28 June 2017.


\(^{186}\) Ibid.


\(^{188}\) Ibid.

\(^{189}\) Ibid., p. 3.

\(^{190}\) Prime Media submission to Senate Environment and Communications Legislation Committee Inquiry, op. cit., pp. 7–8.

\(^{191}\) Senate Environment and Communications Legislation Committee Inquiry report, op. cit., pp. 34–35.
Prime Media suggests that a more precise definition of control of a media company could be achieved with reference to paragraphs 2(1)(d) and (e) of Schedule 1 of the BSA.\textsuperscript{192}

These define a person as in control of a company if:

(d) 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; or

(e) the licensee or the company or more than 50% 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.

\textbf{Anti-siphoning issue}

In the discussions leading up to the introduction of pay television anti-siphoning was controversial and divisive and until the Government’s announcement of the reform package in May 2017, free-to-air broadcasters and subscription television providers took opposing positions. But the anti-siphoning provisions in this Bill have been able to bring both sides together as both benefit from the provisions. While this is the case, the fundamental question relating to anti-siphoning remains; and it is likely that the solutions delivered are temporary. The arguments put by subscription broadcasters, for example, that the anti-siphoning list amounts to a protection from competition for free-to-air broadcasters, will continue while there is a list. Similarly, free-to-air broadcasters will argue that there must be a list, to ensure that the public interest is served, as all people are entitled to see the important events that reflect Australia’s national identity.

However, as Professor David Rowe from Western Sydney University points out, a number of international events are no longer on the list and the implication is that events involving Australian sport teams and individuals in several overseas locations are no longer regarded as being of national importance and cultural significance.\textsuperscript{193} Moreover, the list is male dominated, despite the rising popularity of women’s sports.\textsuperscript{194} Also as a result of the diminution of the list, ‘what people could once see for free, punctuated by advertisements, they will now have to pay for—while still being exposed to advertisements’.\textsuperscript{195}

Professor Rowe’s observations raise questions about what constitutes national and cultural identity and whether in the process of writing this legislation there should have been public consultation about what events should remain, and/or be added to the anti-siphoning list. Objectives of the list have been continually cited as delivering a service to the public and enhancing cultural citizenship, rather than delivering audience numbers to, broadcasters—regardless of whether they are free-to-air or subscription operators. Accordingly, this appears to be a legitimate question that should be raised in discussions about changes to the composition of the list.

At the same time, as one commentator noted in 2015, the anti-siphoning list has been:

\begin{itemize}
  \item[D Rowe, ‘Anti-siphoning changes a blow to sports fans who want to watch on free-to-air TV’, The Conversation, 5 June 2017.]
  \item[Ibid.]
  \item[Ibid.]
\end{itemize}
...a very Australian arrangement. In many countries, pay TV has been able to secure the rights to major sporting codes thus requiring sports fans to pay for a subscription. Our arrangements, which are very long-standing and are amended from time to time, strike a balance between egalitarianism and our sense of a fair go on the one hand and strict economic rationalism on the other.  

So while public consultation was not considered in drafting the anti-siphoning provision in this Bill, it could be argued that seeking this balance continues to be the Government’s underlying objective in shortening the list while maintaining events which have featured on the list since its inception and events which have become popular over time.

## Appendix A: major media interests snapshot: June 2017

<table>
<thead>
<tr>
<th>Owner</th>
<th>Interests: broadcasting</th>
<th>Interests: print</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bruce Gordon</td>
<td>WIN Network (family owned)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>14.96% of Ten Network*</td>
<td></td>
</tr>
<tr>
<td></td>
<td>14.96% of Nine Entertainment</td>
<td></td>
</tr>
<tr>
<td>Gina Rinehart</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>8.52% of Ten Network*</td>
<td></td>
</tr>
<tr>
<td>James Packer</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>7.68% of Ten Network*</td>
<td></td>
</tr>
<tr>
<td>Lachlan Murdoch</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>7.68% of Ten Network *</td>
<td></td>
</tr>
<tr>
<td></td>
<td>100% of Nova Entertainment</td>
<td></td>
</tr>
<tr>
<td>Rupert Murdoch</td>
<td>100% of News Corp Australia</td>
<td>Estimated ownership of 58.2% of print media involving national, metropolitan,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>regional and community newspapers</td>
</tr>
<tr>
<td></td>
<td>13.23% HT&amp;E</td>
<td></td>
</tr>
<tr>
<td></td>
<td>50% of Foxtel</td>
<td></td>
</tr>
<tr>
<td>Foxtel</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>13.84% of Ten Network*</td>
<td></td>
</tr>
<tr>
<td>Bill Caralis</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Super Network Radio (family owned)</td>
<td></td>
</tr>
<tr>
<td>Janet Cameron</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fairfax Media</td>
<td>54.5% of Macquarie Media</td>
<td>Estimated ownership of print media: 31.6% involving national, metropolitan,</td>
</tr>
<tr>
<td></td>
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<td>regional and community newspapers</td>
</tr>
<tr>
<td>John Singleton</td>
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<td></td>
<td>32% of Macquarie Media</td>
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<tr>
<td>Kerry Stokes</td>
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<tr>
<td>Seven Group Holdings</td>
<td>41% of Seven West Media</td>
<td>Seven West Media estimated 7.8% ownership of print media involving</td>
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<tr>
<td></td>
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<td>metropolitan, regional and community newspapers</td>
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<tr>
<td></td>
<td>11% of Prime Media Group</td>
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</tbody>
</table>
Macquarie Group
6.10% Nine Entertainment Co. Holdings Ltd

Source: ACMA and Ibis World

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197. ACMA, ‘Media Interests snapshot’, current as at 28 June 2017, note: this ACMA page also provides more detailed information about the business interests of broadcasters, and Ibis World, Newspaper publishing in Australia, June 2017, available only through subscription.