Australian Broadcasting Corporation Amendment (Rural and Regional Measures) Bill 2019

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Social Policy Section

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Date introduced: 31 July 2019
House: House of Representatives
Portfolio: Communications, Cyber Safety and the Arts
Commencement: The day after the Act receives Royal Assent

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.
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The Bills Digest at a glance

The Australian Broadcasting Corporation Amendment (Rural and Regional Measures) Bill 2019 seeks to amend the Australian Broadcasting Corporation Act 1983 to:

- change the Australian Broadcasting Corporation (ABC) Charter to include the requirement that ABC programs contribute to a sense of regional identity and reflect the geographic diversity of the Australian community
- establish a ‘Regional Advisory Council’ for the purpose of advising the ABC Board on matters relating to the provision of broadcasting services in regional areas
- require the Government to take all reasonable steps to ensure that the ABC Board has at least two appointed non-executive directors who have a substantial connection to, or substantial experience in, a regional area and
- add several matters to those the ABC is required to include in its annual report. These include information on all consultations between the ABC Board and the Regional Advisory Council, the number of individuals employed in metropolitan and regional areas, and the total number of hours of local or regional news bulletins broadcast during the reporting period.

The measures proposed in the Bill were previously introduced in the Australian Broadcasting Corporation Amendment (Rural and Regional Measures) Bill 2017, which was in identical terms to the current Bill.

Measures proposed in the Bill, when introduced in 2017, were supported by stakeholders such as Free TV Australia, the National Farmers Federation and Northern Territory Cattlemen’s Association, though some suggested more should be done to ensure that remote areas are better recognised by the Bill.

The ABC was opposed to the 2017 Bill, arguing that it has maintained a strong commitment to regional Australia and that the measures in the Bill are unnecessary.

The Bill raises broader issues such as the adequacy of the ABC’s coverage of regional areas, the extent to which the ABC should be regarded as a ‘market failure’ broadcaster and whether the Bill represents ‘legislative interference’ in the operations of the ABC.
History of the Bill

On 1 December 2015, Senator Bridget McKenzie introduced a Private Senator’s Bill to Parliament, the Australian Broadcasting Corporation Amendment (Rural and Regional Advocacy) Bill 2015 (the McKenzie Bill). The McKenzie Bill was referred to the Senate Environment and Communications Legislation Committee on 3 December 2015.¹

The Senate Environment and Communications Legislation Committee planned public hearings for May 2016,² but after the Governor-General dissolved the Senate and the House of Representatives on 9 May 2016, the Bill lapsed.³ The Committee released an interim report on 5 May 2016, detailing the McKenzie Bill and responses by stakeholders, including the ABC, the Media Entertainment and Arts Alliance, and state and local governments.⁴

After the 45th Parliament commenced on 30 August 2016, the McKenzie Bill was restored to the Notice Paper and the Senate again referred it for inquiry, with a report to be produced by 30 November 2016.⁵ This was later extended to 13 April 2017.⁶

The Committee’s final report made several recommendations to adjust the 2015 Bill.⁷ Between the introduction of Senator McKenzie’s Bill and the Committee’s final report, other developments occurred, including concessions made by the Government to Pauline Hanson’s One Nation (PHON) in order to pass media reform laws.⁸ One concession was a commitment to introduce the McKenzie proposals.

The Government introduced the Australian Broadcasting Corporation Amendment (Rural and Regional Measures) Bill 2017 (the 2017 Bill) in the Senate on 18 October 2017.⁹ This Bill responded to both the intent of the McKenzie Bill and negotiations made with PHON. This Bill subsequently lapsed at the end of the 45th Parliament.¹⁰

The Australian Broadcasting Corporation Amendment (Rural and Regional Measures) Bill 2019 (the Bill), which was introduced into the House of Representatives by the Government on 31 July 2019, is in equivalent terms to the 2017 Bill.¹¹

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¹ Senate Standing Committee for Selection of Bills, Report, 16, 2015, The Senate, Canberra, 3 December 2015.
² Senate Environment and Communications Legislation Committee, Australian Broadcasting Corporation Amendment (Rural and Regional Advocacy) Bill 2015 homepage, Australian Parliament website.
⁸ The relevant law was the Broadcasting Legislation Amendment (Broadcasting Reform) Act 2017. The negotiations to secure passage of this legislation are discussed in more detail below.
¹⁰ Ibid.
Purpose of the Bill

The purpose of the Australian Broadcasting Corporation Amendment (Rural and Regional Measures) Bill 2019 (the Bill) is to amend the Australian Broadcasting Corporation Act 1983 (ABC Act) to:

• change the Australian Broadcasting Corporation (ABC) Charter to include the requirement that ABC programs contribute to a sense of regional identity and reflect the geographic diversity of the Australian community
• establish a ‘Regional Advisory Council’ for the purpose of advising the ABC Board on matters relating to the provision of broadcasting services in regional areas
• require the Government to take all reasonable steps to ensure that the ABC Board has at least two appointed non-executive directors who have a substantial connection to, or substantial experience in, a regional area and
• add several matters to those the ABC is required to include in its annual report. These include information on all consultations between the ABC Board and the Regional Advisory Council, the number of individuals employed in metropolitan and regional areas, and the total number of hours of local or regional news bulletins broadcast during the reporting period.

Neither the Explanatory Memorandum to the Bill nor the Minister’s second reading speech identify a specific policy problem or issue (for example, service gap) that the Bill is seeking to address. According to the Minister for Communications, Paul Fletcher, the purpose of these changes is to ‘ensure regional communities are provided for in the functions of the [ABC], and represented on the ABC Board’. Further, the Bill is intended to ‘support and cement’ the ABC’s role in regional Australia and ‘ensure the ABC continues to focus on and meet the diverse needs of rural and regional Australia’.

Structure of the Bill

The Bill has one Schedule, comprised of two parts.

Part 1 introduces amendments to the ABC Act that provide for the Government’s measures relating to the role of the ABC in regional Australia.

Part 2 contains provisions concerning when amendments relating to annual reporting will commence, and transitional provisions intended to provide for the introduction of the new requirement that at least two directors have a substantial connection to, or substantial experience in, a regional area.

15. Ibid.
Background

In August 2017, the Government secured the support of Pauline Hanson’s One Nation Party (PHON) for passage of the Broadcasting Legislation Amendment (Broadcasting Reform) Act 2017.16 In exchange for this support, the Government agreed to initiate an inquiry into ‘whether or not the practices of the national broadcasters are breaching the general principle of competitive neutrality17 and that they are operating on a level playing field with their commercial counterparts’.18 Legislative initiatives arising from the Government-PHON arrangement were:

• a public register of foreign-owned media assets, and a community radio package, addressed in the Broadcasting Legislation Amendment (Foreign Media Ownership and Community Radio) Bill 2017,19 and a commitment to further funding in 2019–20 and 2020–21 to support community digital radio rollout
• a legislative requirement for ABC news and information to be ‘fair’ and ‘balanced’, addressed by the Australian Broadcasting Corporation Amendment (Fair and Balanced) Bill 201720
• measures to require the disclosure of the remuneration of senior staff and on-air talent at the national broadcasters (the disclosure measures), addressed by the National Broadcasters Legislation Amendment (Enhanced Transparency) Bill 201721 and
• proposals to enhance the ABC's focus on rural and regional Australia, addressed by this Bill.

The remainder of this background provides information on legislation, governance and operations of the ABC, and recent debates about the ABC and regional Australia.

Legislation, governance and operations of the ABC

The ABC is a Commonwealth Government statutory authority established under the ABC Act.22 The ABC Charter outlines the functions and responsibilities of the ABC, and is found in section 6 of the ABC Act. While part of the Act, any alleged ‘breach’ of the Charter does not result in enforcement action. The Charter outlines obligations on the ABC that the ABC Board can interpret as it sees fit.

6 Charter of the Corporation

(1) The functions of the Corporation are:

(a) to provide within Australia innovative and comprehensive broadcasting services of a high standard as part of the Australian broadcasting system consisting of national, commercial and community sectors and, without limiting the generality of the foregoing, to provide:

(i) broadcasting programs that contribute to a sense of national identity and inform and entertain, and reflect the cultural diversity of, the Australian community; and

16. P Hanson (One Nation Senator for Queensland), One Nation gives conditional support to media reform, media release, 15 August 2017.
17. Competitive neutrality requires that government business activities should not enjoy any net competitive advantages simply by virtue of public sector ownership. This allows market competition to drive the efficient production of goods and services by the lowest cost business.
18. M Fifield (Minister for Communications), One Nation support for media reform package, media release, 15 August 2017.
19. This Bill passed both Houses on 22 August 2018. The Broadcasting Legislation Amendment (Foreign Media Ownership, Community Radio and Other Measures) Act 2018 received Royal Assent on 31 August 2018 and commenced on 1 September 2018.
20. This Bill lapsed at the end of the 45th Parliament.
21. This Bill lapsed at the end of the 45th Parliament.
(ii) broadcasting programs of an educational nature;

(b) to transmit to countries outside Australia broadcasting programs of news, current affairs, entertainment and cultural enrichment that will:

(i) encourage awareness of Australia and an international understanding of Australian attitudes on world affairs; and

(ii) enable Australian citizens living or travelling outside Australia to obtain information about Australian affairs and Australian attitudes on world affairs; and

(ba) to provide digital media services; and

(c) to encourage and promote the musical, dramatic and other performing arts in Australia.

Note: See also section 31AA (Corporation or prescribed companies to be the only providers of Commonwealth-funded international broadcasting services).

(2) In the provision by the Corporation of its broadcasting services within Australia:

(a) the Corporation shall take account of:

(i) the broadcasting services provided by the commercial and community sectors of the Australian broadcasting system;

(ii) the standards from time to time determined by the ACMA in respect of broadcasting services;

(iii) the responsibility of the Corporation as the provider of an independent national broadcasting service to provide a balance between broadcasting programs of wide appeal and specialized broadcasting programs;

(iv) the multicultural character of the Australian community; and

(v) in connection with the provision of broadcasting programs of an educational nature—the responsibilities of the States in relation to education; and

(b) the Corporation shall take all such measures, being measures consistent with the obligations of the Corporation under paragraph (a), as, in the opinion of the Board, will be conducive to the full development by the Corporation of suitable broadcasting programs.

(3) The functions of the Corporation under subsection (1) and the duties imposed on the Corporation under subsection (2) constitute the Charter of the Corporation.

(4) Nothing in this section shall be taken to impose on the Corporation a duty that is enforceable by proceedings in a court.

The ABC is subject to the Public Governance, Performance and Accountability Act 2013 (PGPA Act), which sets the standards of governance, performance and accountability for all Commonwealth Government entities. The ABC is required to issue an annual report to the Minister for Communications under section 46 of the PGPA Act. Matters to be included in the annual report are set out in section 80 of the ABC Act.

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23. The ABC’s legislative framework includes a number of other Acts, which are set out at: Australian Broadcasting Corporation (ABC), ‘Legislative framework’, ABC website.
The ABC is also guided by internal policies, codes, and corporate social responsibility principles. ABC Board

The ABC Act also establishes the ABC Board (section 7), which has responsibility for the operations of the ABC. The duties of the Board are outlined in section 8 and include:

• ensuring that ‘the functions of the ABC are performed efficiently with maximum benefit to the people of Australia’
• maintaining the ‘independence and integrity’ of the ABC
• ensuring that ‘the gathering and presentation of news and information is accurate and impartial, according to recognised standards of objective journalism’
• ensuring that the ABC complies with legislative and legal requirements and
• developing codes of practice in relation to programming and other matters.

The Board consists of a Managing Director, Chairperson, staff-elected Director and between four and six other Directors (subsection 12(1) of the ABC Act). The Chairperson and non-executive Directors (other than the staff-elected Director) are appointed by the Governor-General on recommendation of the Government (subsection 12(2) of the ABC Act). The Managing Director is appointed by the Board (subsection 13(1) of the ABC Act).

Directors must be experienced in broadcasting, communications or management, or have expertise in financial or technical matters, or have cultural or other interests relevant to the provision of broadcasting services (section 12(5) of the ABC Act).

ABC Advisory Council

The ABC Advisory Council is established by the ABC Board (subsection 11(1) of the ABC Act). It advises the ABC Board on matters relating to the ABC’s broadcasting programs (subsection 11(3) of the ABC Act). The ABC Board may establish additional Advisory Councils in relation to a state, territory or region in order to advise the ABC Advisory Council on ‘matters relating to the Corporation’s broadcasting programs in that state, territory or region’ (subsections 11(2) and (4) of the ABC Act).

In making appointments to the ABC Advisory Council, the ABC Board must ‘have regard to the desirability of including in the membership of that Advisory Council a broad representation of the Australian community’ (subsection 11(6) of the ABC Act).

ABC offices

The ABC Head Office is in Ultimo (Sydney), New South Wales. This includes the corporate offices with responsibility for audiences, commercial activities, engagement, finance, government relations, news, radio, technology and television.

The ABC has an office in each state or territory capital and 46 offices in non-capital city locations across Australia.

The ABC has Overseas Offices in seven locations: Beijing, Jakarta, London, Nairobi, Port Moresby, Tokyo and Washington.\(^{27}\) It also has home-based reporters in Bangkok, Beirut, New Delhi and Jerusalem.

**ABC and regional Australia: recent debates**

**Budget cuts 2014–15**

While debates around the ABC and regional Australia are old, the most recent policy discussion can be traced back to the 2014–15 federal budget, and its reduction in ABC and SBS funding. These ‘efficiency savings’ involved ‘a one per cent reduction in the base funding of the Australian Broadcasting Corporation and the Special Broadcasting Service Corporation’, totalling ‘$43.5 million over four years’.\(^{28}\) According to the budget papers, this represented a ‘down payment on the ABC and SBS Efficiency Study’, where further savings would be considered.

The ABC criticised the decision at the time. Representatives argued the cuts would jeopardise the Corporation’s ability to produce the content expected of it. According to the then Managing Director, Mark Scott, the ABC was already an efficient organisation, without obvious inefficiencies to cut:

> The funding cuts will be disappointing for audiences. The government gave repeated commitments before and after the election that funding for the Corporation would be maintained ... The ABC is very tightly geared. We have been diligent in reducing backroom costs over recent years to ensure the ABC can deliver better and more varied content to our audiences. That strategy has enabled the ABC to self-fund important new initiatives like iview, ABC News24, triple j Unearthed online and a range of other new digital services.\(^{29}\)

It was announced in January 2014 by the then Minister for Communications, Malcolm Turnbull, that Peter Lewis, former Chief Financial Officer of Seven West Media, would assist the Department of Communication and the Arts to undertake a study into the efficiency of the operations of the ABC and SBS.\(^{30}\) Adopting a broad definition of efficiency, the study proposed a range of operational efficiencies and savings.

In November 2014, the then Minister for Communications, Malcolm Turnbull, released the Government’s five year funding arrangements for the ABC and SBS. This involved a much larger cut—of $254 million and $25 million respectively. According to Mr Turnbull, these changes would ‘see the ABC and SBS eliminate inefficiencies in their back office operations, ensuring they deliver Australia even better value’:

> For the ABC this means it will receive $5.2 billion over five years rather than $5.5 billion—a saving of $254 million or 4.6 per cent. For the SBS this means its operating budget will be reduced by $25.2 million or 1.7 per cent over the five year period. A legislative change to allow SBS to generate further revenue by changing its advertising arrangements will bring the total savings returned to the budget to $53.7 million or 3.7 per cent.\(^{31}\)

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27. Ibid., p. 253.
29. ABC, ‘*ABC budget response*’, ABC website, 13 May 2014.
30. Department of Communications, *ABC and SBS efficiency study: draft report*, The Department, Canberra, April 2014.
In the week after Mr Turnbull’s announcement, Mr Scott announced a series of changes to ABC operations. This included up to 400 job cuts, the closing of Adelaide TV studios, the ending of state-based ‘7.30 reports’, and the downsizing of foreign bureaus. It also involved closing a number of regional radio posts in Wagin, Morwell, Gladstone, Port Augusta and Nowra. It also decommissioned Radio National’s rural program, ‘Bush Telegraph’.  

Regional Members of Parliament, particularly those from the National Party, reacted angrily to these changes. These MPs argued that the ABC was reducing its regional presence, while consolidating its operations to Sydney and Melbourne. Darren Chester, for instance, described it as an ‘example of the twisted priorities in the organisation and a Sydney focus’. As reported by The Australian, Victorian Nationals Senator, Bridget McKenzie, said she would write to Mr Scott and ABC chairman James Spigelman to protest against the cuts.  

A month later, in hearings for the Select Committee into the Abbott Government’s Budget Cuts, held in December 2014, Senator McKenzie continued to question the ABC’s direction. This went beyond the recent decisions, with the Senator challenging the organisation’s broader corporate strategy:

"Has Mark Scott got his priority settings right, given the conversation we have been having? There is the Catalyst and Compass issue that you raised in your opening statement, when we compare it to entering a breakfast media market that is already covered by Seven, Nine and Ten, and the resources that have been flooding into the digital effort, if you like. It is focused on the audience—always the audience—to the detriment, I would suggest, of those programs that nobody else is going to make: things like Compass, Catalyst and content around regional areas—not just being able to beam it into Sydney but having a physical presence across the country. Has Mark Scott got the priorities right in how he has delivered these savings?"  

### Senator McKenzie’s Private Senators’ Bill

On 1 December 2015, Senator McKenzie introduced a Private Senators’ Bill to Parliament, the Australian Broadcasting Corporation Amendment (Rural and Regional Advocacy) Bill 2015 (the McKenzie Bill). The McKenzie Bill included a number of amendments to the ABC Act intended to ‘define the Corporation’s mandate for its public service function for journalism in rural and regional Australia’. The proposed amendments included:

- the creation of a ‘Rural and Regional Council’ to advise the ABC Board on policies ‘affecting regional areas’
- a requirement that the ABC Board include at least two directors who reside in regional areas
- a requirement that the ABC ‘broadcast at least five radio bulletins that consist solely or primarily of regional or local news between 5am and 8pm, at regular intervals’
- changing the ABC Charter to include:
  - reference to reflecting Australia’s ‘geographic’ as well as ‘cultural’ diversity

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34. Ibid.  
35. Q Dempster (private citizen), Evidence to the Senate Select Committee into the Abbott Government’s Budget Cuts, 12 December 2014, p. 42.  
a requirement that the ABC ‘foster an environment conducive to the promotion of regional journalism and allocate the resources necessary to carry out the Corporation’s functions and duties in rural and regional Australia’

– a requirement that the ABC ‘maintain an effective presence in regional communities and ... provide regular transmissions of local content across a variety of platforms’ and

– a requirement that the ABC ‘approach its obligations to provide services in regional Australia from a social service and community perspective, as opposed to a purely commercial position, when making programming and management decisions’

• a requirement that the ABC ‘facilitate employment of a proportion of staff in regional areas’

• a requirement that the ABC include ‘additional matters for inclusion in the Corporation’s annual reports in relation to the activities of the Rural and Regional Advisory Council and the Corporation’s activities in regional areas’.

In Senator McKenzie’s second reading speech, she presented a broad rationale for the changes. The first emphasised what she saw as the ABC’s mandate as a public broadcaster:

The ABC is a public broadcaster and in turn, is expected to provide services to certain areas and to certain community groups with reference to community service and local relevance. To be more explicit, as a public broadcaster, it is expected to pay greater attention to market-failure principles and serve the areas and demographics where commercial companies would fear to tread.

Senator McKenzie suggested the amendments would promote coverage in these areas, even if it was not profitable for private enterprise:

This Bill removes ambiguity as to ABC’s mandate in regional Australia and reinforces the expectation that as a public broadcaster, its mandate is not to compete for breakfast news ratings, but rather to prioritise service to our regions with a civic purpose in mind, not a commercial one. As a public broadcaster, no economic rationalist need be brought to the table when arguing about the provision of basic services to our regions. The digital age should be expanding horizons and narrative choice, not creating local media black spots.

Committee inquiry and developments at the ABC

The McKenzie Bill was referred to the Senate Environment and Communications Legislation Committee on 3 December 2015.

The Committee planned public hearings for May 2016. But, after the Governor-General dissolved Parliament on 9 May 2016, the Bill lapsed. The Committee released an interim report on 5 May 2016, detailing the McKenzie Bill and responses by stakeholders, including the ABC, the Media Entertainment and Arts Alliance, and state and local governments. The Committee concluded that further analysis was necessary:

In this interim report, the committee has outlined submitters' views and the ABC's response to the bill. The committee has yet to examine these in depth through public hearings and thus has not been able to draw any specific conclusions. The issues raised will be further explored during the conduct of the inquiry.

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38. Ibid., pp. 2–4.
40. Ibid.
After the 45th Parliament commenced on 30 August 2016, the McKenzie Bill was restored to the Notice Paper and the Senate again referred it for inquiry, with a report to be produced by 30 November 2016. This was later extended to 13 April 2017.

Between the introduction of Senator McKenzie’s Bill and the Committee’s final report in relation to it, two developments arose regarding the ABC’s presence in regional areas. One was the ABC’s decision to restructure, savings from which were to be used for new content and increased investment in regional Australia. According to the then Managing Director, Michelle Guthrie, the fund would ‘extend reach and engagement’, with a special focus on regional areas:

> Regional investment will be a priority. We’re committing to an injection of funds, ultimately building to $15 million a year, to provide more reporters and content makers, better tools and increased video and digital output. The ABC will recruit up to 80 new content roles in regional areas within 18 months.  

Former Senator Fiona Nash, the Coalition’s Minister for Regional Communications at the time, welcomed the new funding and positions. In her view, there should be ‘more like it’:

> I certainly won’t be taking a backwards step in watching what the ABC is doing, in terms of their commitment to regional communities. It’s vitally important that they get a good deal, and that the ABC recognises how important regional people are right across this country.

The second development involved changes to ABC radio. In February 2017, Ms Guthrie informed the Committee that the ABC would terminate shortwave transmission services to the Northern Territory. According to Ms Guthrie, this was because it duplicated other services, and ‘was not in the best interests of the efficient operation of the ABC budget’. The decision received a number of complaints from remote citizens, though the ABC claimed they were modest in number.  

The Committee ultimately criticised the cuts:

> The committee considers that the termination of shortwave transmission services in the Northern Territory points to the ABC’s lack of understanding of the importance of this form of transmission. Although the number of users of shortwave may be small, these users are often located in the remotest parts of Australia with no other means of receiving news and crucial emergency information. In particular, the committee is disturbed by the ABC’s lack of consultation with important stakeholders before the decision to terminate the service was taken.

In the Committee’s final report, released in April 2017, the majority supported the McKenzie Bill’s central aim. ‘While acknowledging the importance of the ABC’s independence and the need for operational flexibility in a rapidly changing media environment’, the report stated, ‘the committee considers that further mechanisms are required to ensure that communities in rural and regional Australia are not disadvantaged in their access to ABC services’. The majority report recommended passing the McKenzie Bill, subject to certain amendments. Those amendments would have removed the direct content obligations, while keeping the changes to the ABC’s board and charter:

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43. Ibid.
45. Ibid., p. 24.
46. Ibid., p. 36.
The committee considers that it is highly desirable that the Charter be amended to reflect the importance of the ABC in rural and regional Australia. In particular, the committee supports the change to the Charter contained in proposed subparagraph 6(1)(a)(i) so that programs broadcast by the ABC not only contribute to a sense of national identity or cultural diversity, but also reflect the regional identity and geographic diversity of the Australian community.

However, the committee does not support requiring the ABC to approach its obligations to provide services in regional Australia from a social service and community perspective, as opposed to a purely commercial position, when making programming and management decisions (proposed subparagraph 6(2)(a)(vi)). The committee recommends that this provision be omitted from the bill.

The committee recommends that proposed subparagraph 6(2)(a)(vi), paragraph 8(2A)(a), subsection 27(2), section 34 and paragraph 80(ea) be omitted from the bill.47

One Nation negotiations

In June 2017, the Government introduced a separate piece of media reform, the Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017. This changed ownership rules, removing the law that prohibited commercial television broadcasting licensees from controlling licences whose combined licence area populations exceed 75 per cent of the Australian population, as well as the law that prohibited control over more than two out of three regulated media platforms in any one commercial radio licence area. In negotiations with the Government, One Nation demanded concessions in return for its vote:

One Nation will support the package in return for the Government implementing and introducing legislation, where necessary, to give effect to:

- A public register of foreign-owned media assets;
- The proposals of Senator Bridget McKenzie to enhance the ABC’s focus on rural and regional Australia;
- A range of enhanced transparency measures for the public broadcasters, and;
- A community radio package.48

The second concession explicitly references Senator McKenzie’s Private Members Bill. One Nation’s agreement outlined its expectations in further detail:

Government will introduce the McKenzie proposals as Government legislation by the end of 2017. These changes would ensure that the needs of rural and regional communities would receive appropriate focus by the ABC. Specifically these proposals would be to:

- Insert words into the ABC Charter to explicitly require a focus on regional Australia;
- Require the ABC Board to establish a Regional Advisory Council;
- Require the ABC Board to consult with the Regional Advisory Council on service changes which will have a significant impact on regional audiences in particular;

47. Ibid., pp. 36–38.
48. Fifield, One Nation support for media reform package, op. cit.
- Require the ABC Board to have at least two non-executive directors, who have a substantial connection to, or experience in, a rural or regional community through business, industry or community involvement. When appointing non-executive directors to these positions, the Minister must table a statement in Parliament detailing how the appointees satisfy this criterion; and

- Require the ABC to include certain particulars in its Annual Report, such as a breakdown of rural and regional versus metro employees, ratios of journalists to support staff and hours of local rural and regional news broadcasts aggregated by broadcast area.49

The Australian Broadcasting Corporation Amendment (Rural and Regional Measures) Bill 2017 (2017 Bill), which was introduced to Parliament on 18 October 2017 responded to both the intent of the McKenzie Bill and the commitment made by the Government to One Nation to ensure the passage of its media reforms.50 The 2017 Bill lapsed at the end of the 45th Parliament.51

The Australian Broadcasting Corporation Amendment (Rural and Regional Measures) Bill 2019 (the Bill), which was introduced into the House of Representatives on 31 July 2019, is in equivalent terms to the 2017 Bill.52

Committee consideration

Senate Environment and Communications Legislation Committee

The Senate Selection of Bills Committee has recommended that the Bill not be referred to committee.53

The 2017 Bill was referred to the Senate Environment and Communications Legislation Committee for inquiry and report by 16 February 2018. Details of the inquiry are at the inquiry homepage.

Report

The Committee found that the 2017 Bill ‘contain[ed] a range of important and appropriate measures to support and cement [the role played by the ABC in rural and regional Australia] and ensure the ABC continues to focus on and meet the diverse needs of rural and regional Australia’.54 It recommended that the Bill be passed.

Dissenting reports

In a Dissenting report, Labor Senators on the Committee opposed the recommendation of the Committee, arguing that ‘the Bill is unwarranted, misguided, duplicative and costly’.55

The Australian Greens Senators on the Committee also tabled a Dissenting report, which also recommended that the Bill not proceed.56 According to the Australian Greens Senators, the measures in the Bill represent ‘a solution in search of a problem’ and ‘[i]f there is a need for the

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49. Ibid.
51. Ibid.
52. Ibid.
55. Ibid., p. 15.
56. Ibid., p. 20.
ABC to do more to meet the particular needs of rural and regional audiences, then perhaps there is a need for the ABC to be funded to provide more’. 57

**Senate Standing Committee for the Scrutiny of Bills**

At the time of writing, the Senate Standing Committee for the Scrutiny of Bills had not considered the Bill. The Committee made no comment on the 2017 Bill. 58

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

At the time of writing, no comments on the Bill by non-government parties or independents have been identified.

In relation to the 2017 Bill, as noted above, both Labor and Greens Senators on the Senate inquiry into the Bill opposed the Bill. 59

PHON supported the 2017 Bill as part of their earlier negotiations with the Government on media reform. 60

**Nick Xenophon Team/Centre Alliance**

Former Senator, Nick Xenophon, has spoken about the need to preserve broad ABC coverage around Australia. He opposed the closure of ABC television studios in Adelaide. 61 He presented a Bill to restore ABC shortwave transmission in 2017. 62 It is unclear, however, whether the Nick Xenophon Team (now, the Centre Alliance) supports the specific measures in this Bill.

**Cory Bernardi**

While a specific position on this Bill has not been identified, Independent Senator Cory Bernardi has previously advocated a greater rural and regional focus for the ABC. In Senate debate over the *Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017*, he said that, ideally, ‘we would give the consolidated broadcaster a greater rural and regional focus, which is where the market breakdown is happening’. 63

**Andrew Wilkie MP**

Andrew Wilkie has previously spoken about the impact of ABC funding cuts on regional and rural coverage. 64 It is not clear, however, whether he supports these measures.

**Position of major interest groups**

Key stakeholders issues statements in response to the 2017 Bill, and made submissions to the Senate Environment and Communications Legislation Committee inquiry into that Bill, which are discussed below. No stakeholder commentary on the current Bill has been identified.

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57. Ibid., p. 21.
60. Fifield, *One Nation support for media reform package*, op. cit.
ABC
The ABC opposed the 2017 Bill, arguing that ‘the current ABC Act, including the ABC Charter, is appropriately drafted to ensure that the ABC is well placed now and into the future to serve all Australians, irrespective of where they live’. 65

ABC Friends
In its submission to the Committee inquiry into the 2017 Bill, ABC Friends stated its ‘commitment to ABC service provision throughout the country’ and noted additional recent investment in regional areas. 66

In relation to the proposed requirement that two ABC Directors have a connection with/experience in regional Australia, ABC Friends said that it does not ‘consider that merely living in a particular area of Australia necessarily equips a Board Member to interpret and advise on a wide range of policy directions in a complex media environment’.

In relation to the proposed establishment of a Regional Advisory Committee, ABC Friends stated that ‘the ABC Advisory Committee already constitutes a broad cross section of representatives from all states, so we believe this entity is already fulfilling a role in reflecting issues from around Australia’

Cotton Australia
Cotton Australia supported the 2017 Bill, regarding the measures as ‘a means to refocusing and increasing emphasis towards regional services within ABC’. 67

Free TV Australia
Free TV Australia (FTVA) supported the 2017 Bill. 68

National Farmers’ Federation
The National Farmers’ Federation (NFF) ‘welcome[d] the regional measures contained in [the 2017] Bill as a means to refocusing and increasing emphasis towards regional services within ABC and [was] supportive of this Bill’. 69

Northern Territory Cattlemen’s Association
The Northern Territory Cattlemen’s Association (NTCA) supported the 2017 Bill, but argued in relation to the proposed requirement that two ABC Directors have a connection with/experience in regional Australia, that ‘one of the two directors should be from remote Australia’. 70

68. Free TV Australia (FTVA), Submission to the Senate Standing Committee on Environment and Communications, Inquiry into the Australian Broadcasting Corporation Amendment (Rural and Regional Measures) Bill 2017, 18 January 2018, p. 2.
70. Northern Territory Cattlemen’s Association (NTCA), Submission to the Senate Standing Committee on Environment and Communications, Inquiry into the Australian Broadcasting Corporation Amendment (Rural and Regional Measures) Bill 2017, 10 January 2018, p. 2.
Financial implications

The Government says that the Regional Advisory Council will ‘result in an outlay for the ABC of $0.1 million per annum ongoing’, which will be ‘absorbed by the ABC’. It says that the other measures in the Bill are not expected to have a financial impact.

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.

Parliamentary Joint Committee on Human Rights

At the time of writing, the Parliamentary Joint Committee on Human Rights had not examined the Bill. The Committee considered that the 2017 Bill did not raise human rights concerns.

Key provisions

Definitions

Item 2 of the Bill inserts definitions of the terms metropolitan area and regional area into existing subsection 3(1) of the ABC Act. The Explanatory Memorandum says these are ‘central to various new transparency measures proposed by the Bill’.

Metropolitan area would be defined as a ‘Greater Capital City Statistical Area’ (GCCSA) as per the Australian Bureau of Statistics (ABS) Australian Statistical Geography Standard (most recent published edition). Regional area would mean an area in Australia that is not a metropolitan area.

Comment—adequacy of definitions

Under the proposed definition, metropolitan (that is, GCCSA) area would include each state capital, Darwin and the entire Australian Capital Territory. The ABS defines everything that is not part of a GCCSA as ‘rest of state’ and includes large cities (such as Newcastle, Wollongong, Geelong, Toowoomba, Gold Coast, Cairns, Townsville, Mackay and Launceston), urban centres and rural and remote localities. Around two thirds of Australians live in metropolitan areas and one third live in regional areas.

Some submissions to the inquiry on the 2017 Bill noted that the proposed definition of regional area is broad and could lead to an insufficient focus on remote areas. For example, in an individual submission Benjamin Quilliam, a pastor from Alice Springs, argued:

71. Explanatory Memorandum, Australian Broadcasting Corporation Amendment (Rural and Regional Measures) Bill 2019, p. 4.
72. The Statement of Compatibility with Human Rights can be found at page 5 of the Explanatory Memorandum to the Bill.
74. Explanatory Memorandum, Australian Broadcasting Corporation Amendment (Rural and Regional Measures) Bill 2019, p. 9.
75. This new definition of ‘regional area’ does not apply to advisory councils established under existing section 11(2) in relation to a state, territory or region.
76. Australian Bureau of Statistics, TableBuilder data extract.
... remote Australians are still at risk of being left out as the Bill currently stands. The Bill’s definition of “regional” is fairly broad and encompasses significant urban areas as well as remote areas.  

Pastor Quilliam went on to suggest some options for better representing remote areas, including ‘chang[ing] the categorisation to a three-fold “metropolitan”, “regional (or rural)” and “remote”’.  

Similarly, the Northern Territory Cattlemen’s Association argued:

... one of the two proposed Directors should be specifically from "remote" Australia. Given the definition of “regional” in statistical terms the majority of the continent could still be unrepresented under the proposed amendment.

It is also possible to question whether ‘rural’ communities will be adequately covered by the definition of ‘regional’ presented in the Bill. As noted above, in the Bill, a ‘regional area’ is any area that is not ‘metropolitan’. However, it could be argued that it is an all-encompassing definition that does not provide enough certainty that towns and areas commonly thought of as ‘rural’, as opposed to ‘regional’, will be appropriately catered for.

In its submission to the 2017 Bill inquiry, the ABC raised concerns with the introduction of a distinction between metropolitan and regional services, noting that many staff based in metropolitan areas provide assistance to regional teams and/or program content focused on regional areas. This is discussed in further detail below.

**Inclusion of regional and geographic diversity**

The Bill proposes to change the ABC Charter to include the requirement that ABC programs contribute to a sense of regional identity and reflect the geographic diversity of the Australian community.

According to Minister Fletcher:

Most Australians would be surprised to learn that the Charter currently has no such references. This is an important amendment that codifies the relationship that the ABC already has with regional Australia, and helps to ensure the organisation continues to provide services that are valued by, and reflect the needs of, rural and regional communities.

In order to introduce this change:

- **item 3** of the Bill inserts the words ‘regional and’ into subparagraph 6(1)(a)(i) of the *ABC Act* and
- **item 4** of the Bill inserts the word ‘geographic and’ into subparagraph 6(1)(a)(i) of the *ABC Act*.

The effect of these amendments would be that under **proposed subparagraph 6(1)(a)(i)** the functions of the ABC would be to provide:

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78. Ibid.
81. Fletcher, op. cit., p. 6.
(i) broadcasting programs that contribute to a sense of *regional and* national identity and inform and entertain, and reflect *geographic and* the cultural diversity of, the Australian community [...] (italics added).

**Comment—changes to the ABC Charter**

A number of submissions to the Senate inquiry into the 2017 Bill welcomed the proposed change to the ABC Charter. For example, the Northern Territory Cattleman’s Association argued that the change ‘will enhance the feeling of diversity, and promote greater understanding and acceptance of rural and regional life within the national psyche’. In its submission, Free TV Australia (FTVA), the organisation representing Australia’s commercial free-to-air television broadcasters, saw this change as relevant to ensuring that the ABC provided ‘unique’ services in regional areas—that is, services not already being provided by commercial media. It said that the amendments ‘would add some much-needed detail to the ABC’s charter and help the broadcaster operate within the intention of its Act’:

Importantly, Free TV notes that the proposed amendments would work alongside clause 6(2)(a)(i) of the Charter that requires that the ABC take account of the broadcasting services provided by the commercial and community sectors of the Australian broadcasting system. Properly interpreted and enacted, this should mean that the new provisions contained in this Bill would focus the ABC on providing unique services to regional and rural areas.

In its submission to the Senate inquiry into the 2017 Bill, the ABC said that the inclusion of the words ‘regional’ and ‘geographic’ in the ABC Charter was ‘superfluous’, arguing that the current wording of the Charter needs to be understood in the context of the whole *ABC Act*:

The current phrases “national identity” and “cultural diversity” must be and are interpreted broadly. Therefore, when fulfilling its Charter obligations, the Corporation is already obliged to take account of regionalism and geographic diversity when broadcasting programs that contribute to Australia’s national identity and cultural diversity.

The ABC said that ‘[t]he delivery of that obligation is demonstrated not only by the range of the ABC’s programming, but also by its direct financial investment in dedicated services to rural and regional audiences’. It highlighted the 46 ABC offices in non-capital city locations across Australia and noted recent increased investment in regional areas of $15 million annually through the *Connecting Communities* initiative, and $4 million in one-off funding for new tools and equipment for regional ABC offices to ‘enhance video and digital reporting for local and national audiences’.

Further, it estimated that ‘over one-third of its total annual budget is specifically invested in services to the one-third of Australians who live in regional and rural centres’—this includes ‘content, transmission and other infrastructure costs’.

The ABC also made the point that ‘regional and rural audiences also enjoy the benefit of the ABC’s overall investment in national services and programs, such as digital and online services, national

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82. NTCA, op. cit., p. 1.
83. FTVA, Submission to the Senate Standing Committee on Environment and Communications, op. cit., p. 1.
84. ABC, Submission to the Senate Standing Committee on Environment and Communications, op. cit., p. 6.
85. Ibid.
86. ABC, *ABC accelerates regional jobs and services under Connecting Communities plan*, media release, 14 November 2017.
87. ABC, Submission to the Senate Standing Committee on Environment and Communications, op. cit., p. 4.
radio networks like triple j and Classic FM, Australian television drama programs and nationally important news and current affairs programs like Four Corners and 7.30’. 88

As noted earlier, there are no legal consequences attached to the ABC ‘failing’ in its obligations under the Charter. This raises the issue, then, of what function the proposed amendments will perform. It is presumed that they will function within the scope that the Charter presently has, which includes the following: to provide responsibilities and obligations, and to designate specified roles that can be aligned with ABC’s business plan.

In respect of the latter, the ABC stated in its Corporate Plan (2017–18), that in order to meet the requirements stipulated in the ABC Charter, ‘strategic priorities and vision statements’ have been developed which are aligned with particular performance metrics. 89 Questions have been raised in the past, however, about the clarity and effectiveness by which the ABC converts its Charter responsibilities into business initiatives. The Department of Communications and the Arts ABC and SBS Efficiency Study, published in 2014, for example, found that: ‘Interpreting Charter obligations and turning them into business plans with appropriate performance indicators is an ongoing challenge for the broadcasters as the generality of the Charters mean that many activities can fall within their scope’. 90 In November 2014, then Minster for Communications, Malcolm Turnbull, described the ABC Charter in the following terms: ‘The commercial broadcaster’s core KPI, like any private sector firm, is its profitability. The ABC's KPIs - set out in its charter, are much more subjective than a line in an income statement’. 91

In regard to the ‘generality’ of the ABC’s Charter, a further potential issue for the proposed amendments is whether they will help address observations that the current Charter is too broad and vague to provide clear and direct guidance regarding how the ABC fulfils its obligations and allocates resources. 92

**Establishment of a Regional Advisory Council**

The Bill proposes to establish a ‘Regional Advisory Council’ for the purpose of advising the ABC Board on matters relating to the provision of broadcasting services in regional areas.

The Minister says that this amendment will:

> ... ensure that a more formal mechanism is in place to ensure decisions of the ABC board are taken after proper consultation with affected audiences. 94

Key provisions intended to establish the Regional Advisory Council include:

- **item 5** inserts *proposed subsection 11(1A)*, which requires the ABC Board to establish a Regional Advisory Council within three months after the day of commencement (that is the day after the Bill receives Royal Assent)

- **item 6** inserts *proposed subsection 11(3A)*, which establishes that the function of the Regional Advisory Council is, either on its own initiative or at the request of the Board, to advise the Board on matters relating to the provision by the ABC of broadcasting services in regional areas

88. Ibid.
93. See, for example, Department of Communication and the Arts, *ABC and SBS efficiency study*, op. cit.
94. Fletcher, op. cit., p. 6.
• item 7 inserts proposed subsections 11(6A) and 11(6B), which specify that in order to be appointed to the Regional Advisory Council, a person must:
  – have a substantial connection to, or substantial experience in, a regional area through business, industry or community involvement and
  – not be a member of another ABC Advisory Council or Advisory Committee

• item 10 inserts proposed subsection 11(13), which specifies that the Board must consult the Regional Advisory Council before making a decision:
  – will result in a change to a broadcasting service provided by the Corporation in a regional area (proposed paragraph 11(13)(a)) and
  – is likely to have a significant impact on audiences in the regional area (proposed paragraph 11(13)(b))

• item 10 also inserts proposed subsection 11(14) which clarifies that the ABC Board is not required to consult with the Regional Advisory Council prior to it being established.

Comment—need for a Regional Advisory Council
In its submission to the Senate inquiry into the 2017 Bill, as with the proposed change to the ABC Charter, FTVA indicated that the introduction of the Regional Advisory Council (and the measure to ensure regional representation on the ABC Board) would help focus the ABC on what FTVA believed was its proper role:

Free TV considers that these two measures are important as they would enable the ABC to make better informed investment decisions in regional areas and ensure that they have full knowledge of the suite of services already provided by the commercial sector. In turn this will help focus the expenditure of taxpayers’ money in markets consistent with the ABC’s Charter.95

As noted in an earlier section of this Bills Digest, the ABC Act contains provisions enabling the ABC Board to establish additional Advisory Councils in relation to any state, territory and region of Australia (subsection 11(2)) and advisory committees ‘consisting of such persons as the Board appoints, to furnish advice to the Board on particular matters or classes of matters relating to the functions of the Corporation’ (subsection 11(8)). As such, the ABC Board would appear to have existing powers to enable it to establish bodies capable of providing advice relating to the provision of broadcasting services in regional areas (or on any other matters relating to the functions of the ABC). The effect of this particular measure would be to require the ABC Board to establish a body to provide advice in relation to a particular segment of the community. In its submission to the inquiry on the Bill, the ABC argued that ‘any intervention in the Charter and the Act in response to specific interests, no matter how important they may be, should be approached with extreme caution’.96

Further, the ABC Act provides that in making appointments to the Advisory Council, ‘the Board shall have regard to the desirability of including in the membership of that Advisory Council a broad representation of the Australian community’ (subsection 11(6)). This presumably would include people with a substantial connection to, or substantial experience in, a regional area of Australia.

According to the ABC in January 2018, six of the 12 Advisory Council members were located in regional areas, including from the Torres Strait, Launceston, Grafton, Cairns, Jamieson and

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95. FTVA, Submission to the Senate Standing Committee on Environment and Communications, op. cit., p. 2.
96. ABC, Submission to the Senate Standing Committee on Environment and Communications, op. cit., p. 8.
Further, ‘[o]f the remaining six members, a number have also at some point lived or worked in regional Australia’.

The ABC argued that ‘an additional permanent and ongoing, and effectively competing advisory body would simply replicate the functions and advice provided by the current ABC Advisory Council, while also adding to the costs of the council and its secretariat support’.

Further, the ABC opposed the proposed requirement that the ABC Board must consult the Regional Advisory Council on matters that will have a significant impact on regional audiences, arguing that it:

... effectively removes from the ABC Board its ability to choose the matters on which it will consult when discharging its responsibilities, therefore diminishing its discretionary powers.

The ABC submission also said that the proposed change ‘undermines the ABC Board’s ability under subsection 11(9) of the ABC Act to determine the manner in which advisory bodies perform their duties’.

**ABC Board connection to regional Australia**

The Bill proposes amendments to the *ABC Act* to require the Government to take all reasonable steps to ensure that the ABC Board has at least two appointed non-executive directors who have a substantial connection to, or substantial experience in, a regional area.

According to Minister Fletcher:

This measure will ensure that, at the highest level in the organisation, the needs and views of regional and rural areas are appropriately represented.

The Bill seeks to introduce this change primarily through items 11 and 12.

**Item 11** proposes that new requirements be added to section 12 of the *ABC Act*:

- **proposed subsection 12(5E)** of the *ABC Act* would require that in recommending to the Governor-General appointments of Directors (other than the Managing Director or staff-elected Director) to the ABC Board, the Government must take all reasonable steps to ensure that at least two of the Directors are persons who have a substantial connection to, or substantial experience in, a regional area through business, industry or community involvement.

- **proposed subsection 12(5F)** would require that if the Governor-General appoints a Chair who has a substantial connection to, or substantial experience in, a regional area through business, industry or community involvement, the Prime Minister must prepare a statement that outlines the person’s substantial connection or experience. This must be tabled in each House of the Parliament within 15 sitting days after the instrument of appointment has been signed by the Governor-General and

- **proposed subsection 12(5G)** would require that if the Governor-General appoints a Director (other than the Managing Director, Chair or staff-elected Director) who has a substantial

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97. Ibid., p. 9. See also: ABC, ‘ABC Advisory Council’, ABC website. In September 2018, the ABC invited applications for three new positions with the ABC Advisory Council to begin February 2019.

98. Ibid., Submission to the Senate Standing Committee on Environment and Communications, op. cit., p. 9.

99. Ibid.

100. Ibid.

101. Ibid.

102. Fletcher, op. cit., p. 6.
connection to, or substantial experience in, a regional area through business, industry or community involvement, the Minister must prepare a statement that outlines the person’s substantial connection or experience. This must be tabled in each House of the Parliament within 15 sitting days after the instrument of appointment was signed by the Governor-General.

**Item 12** would add **proposed subsection 24B(2A)** of the **ABC Act**, which requires that a Nomination Panel established to conduct a selection process for a Director (other than the Managing Director or staff-elected Director) to the ABC Board, must assess whether each applicant for the appointment is a person who has a substantial connection to, or substantial experience in, a regional area through business, industry or community involvement. The Nomination Panel would also be required to prepare a report of the assessment which must be included in the report on the outcome of the selection process.

**Comment—Board appointments**

Minister Fletcher noted that ‘[t]hrough its appointments to the ABC Board, the Government has ensured that this new requirement will already be satisfied’. The purpose of this change is to:

... establish a ‘baseline’ for the regional skills of the ABC Board, and any future appointment processes will then need to take this into account.

Thus, he argues, the change will ensure ‘that the ABC board will always have at least two members who have an understanding of the needs of rural and regional communities’.

This change was supported in a number of submissions on the 2017 Bill. As noted above, FTVA, for example, saw this change as valuable in ensuring that the ABC Board is better informed about the kinds of media services required in regional areas.

In its submission to the Senate inquiry on the 2017 Bill, the ABC noted that under the current process, ‘regional applicants can and do apply, and in fact, two current Board members already satisfy the requirements of the proposed amendment’.

The ABC also raised concerns about the use of ‘arbitrary quotas’, arguing that these:

... may actually act against the best interests of the Corporation and its audiences. The ABC is a corporation operating in a complex and rapidly-changing media environment. Stewardship of that business requires board members with business and media skills. The ABC would be concerned if prescribed quotas were to hinder the ability of Government to choose people best qualified to help steer the Corporation through this challenging landscape.

**Annual reporting obligations**

The Bill proposes to add several matters to those the ABC is required to include in its annual report. These include information on all consultations between the ABC Board and the Regional Advisory Council, the number of individuals employed in metropolitan and regional areas, and the total number of hours of local or regional news bulletins broadcast during the reporting period.

According to Minister Fletcher:

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103. Ibid., p. 6.
104. Ibid.
105. Ibid.
106. ABC, Submission to the Senate Standing Committee on Environment and Communications, op. cit., p. 11.
107. Ibid.
This is important for transparency. It is appropriate that the Parliament, and the Australian people, are able to see the deployment of staff and the production of local content.\textsuperscript{108}

As such, the Bill seeks to amend the section of the \textit{ABC Act} (section 80) which establishes those matters to be included in the ABC’s annual report.

\textbf{Item 14} would insert a \textbf{proposed paragraph 80(1)(h)} into the \textit{ABC Act} which would add particulars of any advice received by the Board during the reporting period from the Regional Advisory Council to those matters to be included in the annual report.

\textbf{Item 15} would insert the following five new paragraphs related to reporting on the geographic location of staff and the production of local content:

\begin{itemize}
  \item the total number of individuals employed by the ABC in regional areas (\textbf{proposed paragraph 80(1)(m)})
  \item the total number of employees employed by the ABC in metropolitan areas (\textbf{proposed paragraph 80(1)(n)})
  \item the ratio of employees employed by the ABC as journalists to support staff, in regional areas (\textbf{proposed paragraph 80(1)(o)})
  \item the ratio of employees employed by the ABC as journalists to support staff, in metropolitan areas (\textbf{proposed paragraph 80(1)(p)}) and
  \item the total number of hours of local or regional news bulletins broadcast on each broadcasting service provided by the ABC in a regional area (\textbf{proposed paragraph 80(1)(q)}).
\end{itemize}

\textbf{Item 15} also inserts \textbf{proposed subsection 80(2)} into the \textit{ABC Act} to define the terms journalist and support staff used in \textbf{proposed paragraphs 80(1)(o)} and (p).

\textbf{Comment—additional reporting requirements}

In general, annual report requirements for Commonwealth entities arise from: the \textit{PGPA Act}, rules made under the \textit{PGPA Act} and other legislation, such as an entity’s establishing legislation. For the purposes of the \textit{PGPA Act}, the ABC is defined as a corporate Commonwealth entity (CCE) (another example of a CCE is the Commonwealth Science and Industrial Research Organisation).

The \textbf{Public Governance, Performance and Accountability Rule 2014} establishes differing requirements for what must be in an annual report for different types of entity. In contrast to the other type of \textit{PGPA Act} entity, non-corporate Commonwealth entities, such as the Department of Human Services, the Australian Federal Police, and the Australian Taxation Office, CCE’s such as the ABC are \textbf{not required} to report on the location of staff.\textsuperscript{109}

In its submission to the 2017 Bill inquiry, FTVA supported this measure on the grounds that it would enhance transparency.\textsuperscript{110}

The ABC argued, however, that the information presented as a result of this change would be misleading:

\begin{quote}
  The proposed amendments, which would see employee numbers reported as a simple regional versus metropolitan comparison, are arbitrary and based on a fundamental misunderstanding of how the ABC is structured to provide value for taxpayers. A direct comparison without the inclusion of relevant
\end{quote}

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{108} Fletcher, op. cit., p. 6.
  \item \textsuperscript{109} Rule, paragraph 17BE(i).
  \item \textsuperscript{110} FTVA, Submission to the Senate Standing Committee on Environment and Communications, op. cit., pp. 2–3.
\end{itemize}
\end{footnotesize}
context would also fail to present an accurate picture of how many ABC employees are dedicated to producing content and delivering services for regional audiences.

For example, the ABC employs a significant number of employees in support services from finance, administration, transmission through to property services – all of whom are based in metropolitan areas for efficiency reasons but who spend a significant proportion of their time providing support, advice and services to the ABC’s regional teams. These teams provide the necessary business support to regional teams, which in turn allows these regionally-based employees to focus on creating and producing content.

Under the current wording, these employees would be classified as metropolitan employees yet a significant proportion of their work is dedicated to serving regional areas. Similarly, some program teams are based in metropolitan areas due to the practicalities of requiring access to specialist skills like television editing and post-production. These teams, including those who work for Landline and Back Roads, produce content focused on regional Australia for regional and metropolitan audiences. Yet under the proposed annual reporting requirement, these teams would be classified as metropolitan employees. The ABC is therefore concerned that requiring the ABC to report in this way will result in a skewed and inaccurate representation of the ABC’s true commitment to serving regional Australia.111

The ABC also argued that the proposed requirement to ‘report the total numbers of hours of local or regional news bulletins broadcast appears to place significant emphasis on news bulletins at the expense of live radio programming and online and mobile content’.112

Key issues

As noted above, the Government has not identified a specific policy problem or issue that the Bill is seeking to address. Rather, the Government’s justification for the measures in the Bill is more generally to ‘support and cement’ the role of the ABC’s role in regional areas and to ensure that the ABC ‘continues to focus’ on these areas.113

Nevertheless, discussion of the Bill has been based on some key themes concerning the operation and objectives of the ABC.

ABC services in regional areas

As discussed above, following cuts to the ABC budget in 2014, the ABC made a number of changes to its operations, including the closing of a number of regional radio offices and cancellation of Radio National’s rural program, ‘Bush Telegraph’. This led to criticism of the ABC by members of parliament and the introduction of a private senator’s Bill by Senator Bridget McKenzie in 2015, the Australian Broadcasting Corporation Amendment (Rural and Regional Advocacy) Bill 2015. That Bill was intended to address Senator McKenzie’s concerns about ABC services in regional areas,114 including particular issues, such as what content and support activities the Corporation prioritises.115 This latter issue can be contextualised in terms of then Minister for Communications, Malcom Turnbull’s repeated claim in late 2014 that the ‘efficiency study’ identified many ways the

111. ABC, Submission to the Senate Standing Committee on Environment and Communications, op. cit., pp. 11–12.
112. Ibid., p. 12.
113. Fletcher, op. cit., p. 6.
115. Ibid., pp. 9422–9423.
Australian Broadcasting Corporation Amendment (Rural and Regional Measures) Bill 2019

Corporation could make savings other than the cancellation of programs, as well as his specific remark in November 2014 regarding changes to ABC’s rural operations and programming: ‘It does appear that the ABC is using … [Federal Budget measures] as an excuse to implement long-planned programming and structural changes which are totally unrelated to the savings measures required by the government’.

Some measures in Senator McKenzie’s Bill are included in this Bill: for example, the creation of a body to advise the ABC Board on policies affecting regional areas; and changing the ABC Charter to include reference to reflecting Australia’s ‘geographic’ as well as ‘cultural’ diversity, and additional matters to be included in the ABC’s annual report. Further, while Senator McKenzie’s Bill proposed the requirement that the ABC Board include at least two directors who reside in regional areas, this Bill requires that at least two directors have a substantial connection to, or substantial experience in, a regional area. However, there are no measures proscribing how the ABC should allocate its resources to carry out functions and duties in rural and regional Australia.

As such, it would be reasonable to say that the 2015 changes affecting regional ABC operations form a substantial part of the background to the Bill. These have been raised by some supporters of the 2017 Bill, as has the 2017 decision by the ABC to discontinue shortwave transmission services to the Northern Territory.

In response to such concerns, the ABC has argued that the 2017 Bill would ‘produce no tangible results for regional and rural audiences that are not already being met by the ABC’.

Other historical aspects to the Bill include the following:

- the Report of the Independent Inquiry into the Media and Media Regulation, published in February 2012. While this report did not focus in depth on rural and regional media, it did find that there ‘was a need to protect, or bolster, the types of news and information channels available across regional/rural Australia’ and it suggested that small regional communities are, in particular, ‘poorly served for local news’ and that this ‘situation could be ameliorated with some limited support by the government’.

- the Australian Broadcasting Corporation’s Commitment to Reflecting and Representing Regional Diversity report by the Environment and Communications References Committee, published in March 2013. The Committee made five recommendations, each of which can be related to measures introduced in both the 2015 and 2017 rural and regional advocacy Bills:
  - in the context of the range of services provided by the Corporation, a proposal to change the ABC Charter to ensure ‘the ABC is producing content across all platforms that reflects regional diversity’

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116. See, for example, M Turnbull, ‘The future of our public broadcasters’, Malcolm Turnbull, blog, 19 November 2014; M Turnbull, National broadcasters to implement efficiency measures, media release, 19 November 2014.

117. S Maher, op. cit.

118. See for example, National Farmers’ Federation, Submission to the Senate Standing Committee on Environment and Communications, 18 January 2018, p. 1; NTCA, op. cit., p. 1.

119. ABC, Submission to the Senate Standing Committee on Environment and Communications, op. cit., p. 5.


122. Ibid., p. 164.

• in order to maintain and promote ‘ongoing program production outside of Sydney and Melbourne’, it was recommended that the ABC consult ‘with regional stakeholders in the film and television industry’, ‘annually publish its regional content production performance’ for television, ‘establish a regional television production fund’, and ‘publish at regular intervals its future financial commitment to investing in production outside of Sydney and Melbourne’.124

**ABC and ‘market failure’**

Some have argued in relation to the ABC and its connection to regional areas that it should pay greater attention to providing services in areas where services are not provided by commercial broadcasters.

For example, as previously mentioned, in her second reading speech for the Australian Broadcasting Corporation Amendment (Rural and Regional Advocacy) Bill 2015, Senator McKenzie said that in its role as a public broadcaster it is expected that the ABC ‘pay[s] greater attention to market-failure principles and serve[s] the areas and demographics where commercial companies would fear to tread’. She also suggested:

> What many people have noticed is that the ABC's funding is being used to help it compete in commercial territory. Territory that once entered and conquered could help the ABC generate its own existence on its own two feet. Is this what we expect of a public broadcaster? No. We expect that a public broadcaster will go where no commercial broadcaster would see a business case, simply to ensure that those communities receive vital social and public benefits.125

Submissions to the Senate inquiry in support of the 2017 Bill advanced similar arguments. For example, FTVA suggested that the ABC should focus on ‘unique’ services in regional areas.126 Similarly, Benjamin Quilliam argued:

> ... the changes the Bill proposes will help to nudge the ABC more firmly into this role of “filling the gaps”. At the moment I think the ABC is too preoccupied with competing with the commercial broadcasters, and are overlooking the obvious needs and gaps left by said broadcasters.127

The ABC is required under its charter to ‘take account of’, among other things, ‘the broadcasting services provided by the commercial and community sectors of the Australian broadcasting system’ (subparagraph 6(2)(a)(i) of the ABC Act).

In response to such suggestions, in its submission on the 2017 Bill the ABC rejected the interpretation of its role as being to fill gaps left by commercial broadcasters:

> The argument that the ABC can and should simply redirect funds away from digital and other activities to address commercial broadcasting market failure pockets in rural and regional Australia is fundamentally flawed, and betrays a lack of understanding about the ABC's history, production, programming, budgeting and Charter. This argument also wilfully ignores the fact that regional and rural audiences enjoy the same programming and expect access to the same services, including digital services, as their metropolitan counterparts.

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124. The background context to this inquiry includes the announcement in November 2012 by then ABC Managing Director, Mark Scott, that the Hobart television production unit would be closed. In response, then Minister for Communications, Stephen Conroy, referred to the ABC’s responsibility in ‘promoting the national identity and cultural diversity’ which is not served, he suggested, by the Corporation centralising its operations in Sydney and Melbourne.


126. FTVA, Submission to the Senate Standing Committee on Environment and Communications, op. cit., p. 2.

127. Quilliam, Submission to the Senate Standing Committee on Environment and Communications, op. cit., p. 2.
Despite claims to the contrary, the ABC has never been, and nor will it ever be, a ‘market failure broadcaster’. It was created and exists alongside commercial broadcasters to provide a range of quality programming and to maximise diversity within the Australian media sector. This role is well understood and well appreciated by the community.128

Nevertheless, there remains the issue of how to best ensure adequate media services in regional areas. The final report of the Senate inquiry into Senator McKenzie’s Bill highlighted evidence from academic researchers ‘that there was a need to ensure adequate coverage of news and other events in rural and regional areas as commercial media contracts in many locations’.129 The report quoted Dr Alexandra Wake of RMIT University as follows:

... it has never been more important or more difficult for journalists in this country, but particularly in regional and remote areas, to hold to account people and institutions whose functions impact social and political life. We are in the midst of what has been called by Associate Professor Margaret Simons a potential civil emergency caused by a breakdown in the commercial model of journalism. Newspapers, commercial radio and television are struggling in metropolitan areas, and news organisations are cutting back in regional areas. Many reporters in regional newspapers have no-one to read their work before it is published immediately online, and decisions are increasingly being made in capital cities by people who think that everyone has access to a strong digital service.130

The report also quoted Associate Professor Lisa Waller of Deakin University as saying that an amendment to the ABC Charter requiring the ABC to have regard for rural and regional concerns 'would probably provide more of a guarantee to the affected communities that their interests would continue to be catered to'.131

Along with her colleagues Dr Julie Freeman and Dr Krissy Jess, Waller also published an academic article in 2017 that includes an analysis of the submissions received by the Committee in 2016.132 Based, in part, on their finding that a narrative about ABC’s focus on Australian urban listeners and viewers is present in the submissions, as well as a sense that ‘Australia’s rural/regional areas are the “hardest hit” by ABC adaptations to funding reductions’,133 the authors suggest that ‘the submissions highlight the importance of local public spheres being elevated as a key dimension of the ABC’s modus operandi’ and that ‘the push to amend the ABC’s Charter ... and the views offered by submitters to this Bill’ suggests that currently the Corporation ‘neglects the myriad of voices in Australia’s diverse rural and regional communities’.134

**Independence**

The ABC argued that the 2017 Bill amounted to ‘gratuitous legislative interference’.135 As noted above, the ABC Board has responsibility for, among other things, ensuring that functions of the ABC (as outlined in the ABC Charter) are performed efficiently with maximum benefit to the people of Australia and ensuring that the ABC complies with legislative and legal requirements.

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128. ABC, Submission to the Senate Standing Committee on Environment and Communications, op. cit., p. 5.
130. Ibid.
131. Ibid.
133. Ibid., p. 122.
134. Ibid., p. 127.
135. ABC, Submission to the Senate Standing Committee on Environment and Communications, op. cit., p. 2.
The measures in this Bill are intended to remove some of the discretion currently exercised by the ABC Board with regard to the operations of the ABC.

According to the ABC:

... any intervention in the Charter and the Act in response to specific interests, no matter how important they may be, should be approached with extreme caution. There has only been one such instance of intervention and this occurred in March 2013 when the Government sought to amend the Act to include a new Charter responsibility to ensure the ABC would provide digital media services. This Charter responsibility was for all Australians, as is appropriate for a national broadcaster.  

On this point, the ABC argued that ‘unnecessary legislative intervention will only serve to set a dangerous precedent for future political interference aimed at undermining the independence of the ABC and its Board’.  

In addition to this matter of principle, the ABC was concerned that measures in the 2017 Bill could impact in a practical sense on its ability to properly carry out its functions under the ABC Charter. For example, in relation to the requirement that the ABC Board include at least two people with a connection to or experience in regional Australia, the ABC argues:

... the use of arbitrary quotas as proposed in this legislation may actually act against the best interests of the Corporation and its audiences. The ABC is a corporation operating in a complex and rapidly-changing media environment. Stewardship of that business requires board members with business and media skills. The ABC would be concerned if prescribed quotas were to hinder the ability of Government to choose people best qualified to help steer the Corporation through this challenging landscape.

Concluding comments

The Bill includes several measures intended to ensure the ABC maintains its role in regional Australia. The Government has not outlined a specific policy problem or issue (for example, service gap) that the Bill is seeking to address.

The Government introduced the 2017 version of this Bill as a result of an arrangement struck with Pauline Hanson’s One Nation Party for passage of the Broadcasting Legislation Amendment (Broadcasting Reform) Act.

Measures proposed in the 2017 Bill were supported by stakeholders such as Free TV Australia, the National Farmers Federation and Northern Territory Cattlemen’s Association, though some suggested more should be done to ensure that remote areas are better recognised by the Bill.

The ABC was opposed to the 2017 Bill, arguing that it has maintained a strong commitment to regional Australia and that the measures in the Bill were unnecessary.

The Bill raises a number of broader questions, including:

- does the ABC provide an adequate level of service to regional areas? When considering this question, is it sufficient to consider only specific local programming or should we also include support provided by staff in metropolitan areas and national programming produced in metropolitan areas? What would a fair share of resources look like (one third to cover the third

136. Ibid., p. 8.
137. Ibid., p. 13.
138. Ibid., p. 11.
of Australians who live in the regions? What share of that one third should and is feasible to go to remote areas?

- what role should the ABC have in filling in gaps in services provided by commercial broadcasters? To what extent would such an approach be sustainable?

- should the parliament intervene in what has previously been the responsibility of the ABC Board? Given such interventions have been historically rare, it is reasonable to assume the bar for such changes is high. Has the Government made a sufficient case for change in this instance?

- given questions raised about the effectiveness of instruments such as the Charter to implement specific policy initiatives or provide clear accountability objectives, will the proposed changes lead to an increased level of service by the ABC in regional and rural Australia?