



Communications Law Centre, UTS

Submission to the Inquiry into the Broadcasting and Other
Legislation Amendment (Deregulation) Bill 2014

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Executive Summary

1. The CLC supports streamlining regulation where it is in the public interest to do so. Where regulatory change has the potential to impact on the delivery of broadcasting services to the public, it should be carefully considered.
2. The CLC agrees that aspects of broadcasting legislation and regulation need to be reviewed in light of technological convergence and changes in service delivery. Where regulations no longer serve the public interest, or fail to deliver desired outcomes efficiently and effectively, they should be amended or repealed.
3. The CLC is concerned that some of the regulations marked for amendment and repeal in the Bill do serve the public interest in a way that does not impose unreasonable regulatory burdens on providers of broadcasting services. They also continue to remain relevant in the contemporary communications environment. These regulations should therefore be retained.
4. The CLC does not support a move from mandatory reporting to a complaints-based mechanism for the regulation of captioning services on television under Part 9D of the BSA. There is a risk that, under a complaints-based mechanism, potential breaches of regulatory requirements under Part 9D would be under-reported by users of captioning services.
5. Australian and New Zealand drama productions continue to be valued by local audiences. Any relaxation of regulatory controls relating to the provision of Australian content should be carefully evaluated.
6. If the mandatory auditing requirements for subscription television channel providers and licensees under Part 7, Div 2A *Broadcasting Services Act* are to be removed, the ACMA should undertake regular compliance monitoring regarding the subscription television industry's commitment to Australian and New Zealand drama productions and co-productions.
7. The requirements on certain broadcasting and datacasting licensees under s 62 of the BSA to provide accurate and up to date information to the ACMA regarding directorships are important to ensure transparency in the important area of media ownership regulation. They should therefore be retained.

1. Introduction

- 1.1 The Communications Law Centre, UTS (CLC) is an independent, non-profit, public interest centre specialising in communications, media and online law and policy. We appreciate this opportunity to respond to the Committee's Inquiry into the Broadcasting and Other Legislation Amendment (Deregulation) Bill 2014 ('the Bill').
- 1.2 The CLC supports streamlining regulation where it is in the public interest to do so. This is consistent with the regulatory policy stated in the *Broadcasting Services Act 1992* (Cth.) ('BSA') s 4 (2) (a), which requires public interest considerations to be addressed in a way that does not impose unnecessary

financial and administrative burdens on providers of broadcasting services. Likewise, s 4 (2) (a) places a responsibility on providers of broadcasting services to meet certain objectives. These include, amongst other things, to promote the availability of content and services to audiences throughout Australia, and promoting the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity.¹

- 1.3 Where regulatory change has the potential to impact on the delivery of broadcasting services to the public, it should be carefully considered. To this end, the CLC notes that the Bill was referred because of concerns regarding Australian content on subscription television, in addition to significant concerns over the Bill's proposed changes to captioning requirements. The CLC agrees with the Committee's assertion that changes in regulation in these areas have the potential to significantly impact the viewing experience of Australian television content for local audiences.
- 1.4 The CLC agrees with the Minister's view, articulated in his 2nd Reading Speech, that aspects of broadcasting legislation and regulation need to be reviewed in light of technological convergence and changes in service delivery.² Out-dated and anachronistic regulations that no longer serve the public interest should be removed. The CLC therefore supports the removal of regulatory provisions relating to the transition to digital television as proposed by the Bill. It is also in the public interest to promote regulatory mechanisms that deliver outcomes more efficiently and effectively. The CLC therefore supports most of the proposed amendments to ownership and control regulation as proposed by the Bill.
- 1.5 However, the CLC is concerned that some of the regulations marked for amendment and repeal in the Bill continue to serve the public interest in a way that does not impose unreasonable regulatory burdens on providers of broadcasting services. They also continue to remain relevant in the contemporary communications environment. These regulations should therefore be retained. The following comments relate to aspects of the Bill that the CLC believes should be amended.

2. Captioning reform

- 2.1 The CLC does not support a move from mandatory reporting to a complaints-based mechanism for the regulation of captioning services on television under Part 9D of the BSA. The CLC broadly agrees with the following submissions of Media Access Australia as paraphrased below:³
 - Captioning services enable disadvantaged members of society to access television programs of importance to them.

¹ See *Broadcasting Services Act 1992* (Cth.) s 3 (1) (a); s 3 (1) (e).

² Malcolm Turnbull, Minister for Communications, Broadcasting and Other Legislation Amendment (Deregulation) Bill 2014, Second Reading Speech (22 October 2014), House Hansard, 11606.

³ Media Access Australia, *Summary of the proposals and impacts of the Broadcasting and Other Legislation Amendment (Deregulation) Bill 2014* (November 2014). Available from http://www.mediaaccess.org.au/sites/default/files/files/Repeal_red_tape_captioning_provisions_Media_Access_Australia_summary.doc.

- To ensure that captioning services are provided effectively, it is important that regulation is fair, transparent and properly monitored.
- The reporting of compliance ensures that consumers are aware that a regulated quota is being met, with appropriate oversight from the Australian Communications and Media Authority ('ACMA').

2.2 There is a risk that, under a complaints-based mechanism, potential breaches of regulatory requirements under Part 9D would be under-reported by users of captioning services. The Explanatory Memorandum to the Bill makes the following claim:

*'Captioning requirements on the free-to-air television sector have gradually increased to such an extent that it has become clear to consumers when services do not meet them, allowing a move to a complaints-based compliance framework...'*⁴

The CLC does not agree that regulations about captioning are well known to consumers. For example, a report by the ACMA in 2011 found nearly half of all respondents (46%) did not know that there were any regulatory guidelines for subscription television, and less than a quarter knew that there were regulations governing Internet content.⁵ Although the existence of *some* regulation pertaining to free to air television (and radio) broadcasters was recognised by most respondents, awareness levels of specific regulatory instruments such as captioning requirements were not ascertained. Previous research undertaken by the CLC found that the awareness of the specific regulatory controls on media ownership in Australia was low:

*'...Citizens' knowledge of media ownership is scant. They generally don't remember ownership changes and they associate television ownership with network affiliation...'*⁶

An exception may occur where targeted measures designed to increase awareness are prescribed in regulation. For example, the awareness of television classification categories among the general public is very high, due to requirements in the Commercial Television Code of Practice to display classification symbols in television programs.⁷ In a review undertaken by ACMA, 96.8% of survey respondents stated they were familiar with the classification symbols shown before programs.⁸

2.3 If a complaints-based regulatory framework were to be introduced, then in order to alleviate the risk of under-reporting, it would become necessary to impose a regulatory requirement on broadcasters to make consumers aware of captioning requirements under the BSA, and aware of how to lodge a

⁴ At 44.

⁵ Australian Communications and Media Authority, *Digital Australians— Expectations about media content in a converging media environment*, Qualitative and quantitative research report (October 2011), 47.

⁶ Tim Dwyer, Derek Wilding, Helen Wilson and Simon Curtis, *Content, Consolidation And Clout: How will regional Australia be affected by media ownership changes?*, Communications Law Centre (2006), Executive Summary, xii.

⁷ See Cl. 2.18 of the Commercial Television Industry Code of Practice (2010).

⁸ Australian Communications and Media Authority, *Reality Television Review Final Report* (2007). As quoted in Australian Law Reform Commission, *Classification- Content Regulation and Convergent Media*, Report 118 (March 2012) at para 9.24.

complaint. This regulatory requirement could be inserted into the various codes of practice in a way similar to the requirement to display classification symbols. However, this would be likely to increase regulatory burdens on providers of broadcasting services, potentially more onerous than the current regulatory requirement for mandatory reporting. The CLC's preferred option, therefore, is to retain the annual compliance reporting framework as set out in s 130ZZC of the BSA. As stated above, the reporting of compliance is the best way to ensure that a regulated quota for captioning on television is being met and that consumers are aware that the quota is being met.

3. New Eligible Drama Expenditure Scheme auditing requirements

- 3.1 The CLC submits that Australian and New Zealand drama productions continue to be valued by local audiences. The Final Report of the *Convergence Review* identified drama, in particular, as containing 'the most artistically rich content', having 'the greatest capacity to tell complex stories and convey social and cultural messages.'⁹ The ACMA's *Enduring Concepts* report, which examined the concepts that are of ongoing importance to media and communications in Australia, also identified the maintenance of Australian identity as an important outcome for broadcasting regulation in a convergent media environment.¹⁰ Any relaxation of regulatory controls relating to the provision of Australian content should therefore be carefully evaluated.
- 3.2 The CLC submits that if the mandatory auditing requirements for subscription television channel providers and licensees under Part 7, Div 2A BSA are to be removed, the ACMA should undertake regular compliance monitoring regarding the subscription television industry's commitment to Australian and New Zealand drama productions and co-productions. Although there has been a high level of compliance with these regulatory requirements to date, this does not necessarily mean that these levels of compliance will be attained in the future in the absence of robust regulation.
- 3.3 Although regulatory controls on subscription television channel providers and licensees should be less onerous than for commercial television broadcasters in accordance with s 4(1) BSA, the provision of Australian content on a range of platforms is in the public interest. This is particularly relevant as media consumption shifts away from traditional free to air television to platforms such as on-demand streaming. It is notable that subscription television program providers are increasingly shifting content online, for example Foxtel's 'Anytime' on-demand streaming service.¹¹

4. Notification requirements under s 62 Broadcasting Services Act

- 4.1 The CLC submits that the requirements on certain broadcasting and datacasting licensees under s 62 of the BSA to provide accurate and up to date information to the ACMA regarding directorships are important to ensure transparency in the important area of media ownership regulation. The requirements should therefore be retained.

⁹ Department of Broadband, Communications and the Digital Economy, *Convergence Review Final Report* (March 2012), 59.

¹⁰ Australian Communications and Media Authority, *Enduring Concepts- Communications and Media in Australia* (November 2011), Executive Summary, 6.

¹¹ Foxtel, *Store+ Anytime*, <http://www.foxtel.com.au/discover/catch-up/default.htm>.

- 4.2 It is more efficient for businesses to report promptly to the ACMA than for the ACMA to monitor and search for the information they require. Compliance could be achieved however, by licensees being required, when they report to ASIC, to indicate in their report that the report should be forwarded from ASIC to the ACMA and in that case, ASIC should be required to do so.

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