SENATE ENVIRONMENT AND COMMUNICATIONS LEGISLATION COMMITTEE

INQUIRY INTO THE PACKAGE OF MEDIA REFORM BILLS

SUBMISSION BY

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Senate Environment and Communications Legislation Committee

Inquiry into the Package of Media Reform Bills

Submission by Seven West Media

Seven West Media

Seven West Media is Australia's largest publicly listed multiple platform media company with market leadership in broadcast television, market-leading newspaper and magazines publishing businesses and commitment to securing its future through online and new communications technologies. Seven West Media brings together the Seven Network, The West Australian, Pacific Magazines and Yahoo!7.

Seven is Australia's most-watched television network and has stations in Sydney, Melbourne, Brisbane, Adelaide, Perth and regional Queensland. The Seven Network is one of the country's largest producers of Australian content and the only significant producer that is Australian owned.

The West Australian is one of Australia's best performing newspaper companies. Pacific Magazines publishes nearly one in three magazines sold in Australia. One in two Australians visit Yahoo!7 every month.

The Committee Process

Seven is deeply concerned at the process being engaged in by the Government in relation to this package of legislation which represents the most significant change in media regulation in the past twenty years.

There has been very little time to either digest or debate the measures proposed in this package. It is disrespectful to both industry stakeholders and the parliament for such a complex and significant package of legislation to have been announced, introduced and considered by Committees and voted on in little more than a one week timeframe.

We appear before this Committee as a mark of respect to the Committee members whose important work in the Australian Parliament deserves to be acknowledged and respected. However, it is our understanding that this Committee is required to deliver an interim report less than a day after conclusion of its public hearings and that the timetable for voting on the legislation in the Senate will not permit any issues identified by this Committee to even be considered.

This process is nothing short of shameful.

Print Media Regulation - News Media (Self-Regulation) Bill 2013

This Bill creates a framework that in effect requires print media organisations to belong to a self-regulatory body approved by the Public Interest Media Advocate in order to be able to publish their newspapers. This is not light touch regulation.

As a matter of principle, Seven West Media is opposed to Government intervention in the operations of a free press. This Bill is not about asking self-regulatory bodies to apply the standards they set for themselves. In fact there is no evidence that either the Independent Media Council or the Australian Press Council do not rigorously apply their own published standards or that these standards are not satisfactory.

Just because a newspaper might not print what you like is no reason to regulate it.

In the case of The West Australian, there has been no suggestion that this is anything other than a quality publication. Over the past 12 months, The West has received around 20 complaints. Most of these have been resolved directly with the complainant to their satisfaction. Of 8 complaints referred to the Independent Media Council, 2 were upheld. The IMC process is speedy and effective. We fail to see what problem has been identified that would prompt such an unprecedented intrusion into press freedom.

The specific problems we see with the Bill as currently drafted are:

- The Bill creates a mechanism where a single and unaccountable official appointed by the Minister will have a direct line of control and supervision covering all major print media organisations in Australia.

- Effectively this forces print media organisations into a position where their operations are subject to Government scrutiny, when those same organisations should be free to examine and criticize the Government. This is a highly inappropriate proposal.

- The list of matters the PIMA must consider when deciding whether a regulatory scheme can be registered is wide and subjective, including a wholly subjective assessment of what might constitute “community standards”.

- Industry bodies are forced to subject their membership rules and fees to review by the Government appointed regulator.

- The list of matters to be considered by the PIMA involves many matters of subjective judgement where the view of the PIMA cannot be predicted and which may involve competing considerations. For example should the PIMA give greater

weight to accessibility of the self-regulatory body to all members through low fee structures, or whether funding arrangements are "sustainable"? The proposed approach makes it possible for the PIMA to reject the compromise judged best by the organisation that must run the scheme.

- The discretionary power to deregister a self-regulatory body gives the PIMA significant power over that body including the power to influence the outcome of its regulatory processes. For example if a Minister did not like the outcome of a complaints process, he or she could call the PIMA and discuss whether or not the PIMA should be appointed for a further term. The PIMA could then decide that community standards have changed and threaten to revoke the declaration of the self-regulatory body. This in turn would have implications for the operation of the print media publications subject to the rules applied by that self-regulatory body.

- There is very little time for self-regulatory bodies to prepare applications to the PIMA and clearly insufficient time for any such body to consider and/or respond to the matters listed in the eligibility requirements. The timetable is completely unworkable and likely to leave some or all newspapers without the protection of the Privacy Act exemption for extended periods of time while a scheme that is compliant with the new rules is developed.

- There are no appeal rights from decisions of the PIMA and the decisions of the PIMA appear not to be subject to any administrative review. This is completely unheard of in government administration with the level of power proposed for the PIMA. The ACCC, many other tribunals and most courts have appeal mechanisms. Considering the importance of the decisions being made it is staggering that there is no appeal mechanism or any way to hold the PIMA to account for objectivity, consistency and balance.

- The list of areas of prior experience that the PIMA must have do not give any confidence that the person appointed must be suitable for the role. For example, a career in media would not necessarily make a person a suitable candidate to regulate it.

- The scheme is an additional burden which will involve significant internal and external costs for media organisations and the Government in establishing the necessary bureaucracy to service the PIMA.

- It is possible under the Bill as it stands that the Independent Media Council in Western Australia may not be declared by the PIMA as a "news media self-regulatory body". In particular the PIMA is required to only declare companies limited by guarantee. On the other hand the PIMA must take into account the need to "minimize" the number of self-regulatory bodies. This seems designed to allow the PIMA to reject an application from the IMC.

- The IMC has an excellent track record of independence and speedy complaints handling. In the past year it has received 8 complaints and most have been resolved within days. There is simply no suggestion that there is a problem with either the standards being applied by The West Australian or the IMC or that the IMC members or processes are other than exemplary. We are unclear why a body such as this would not be encouraged rather than viewed with suspicion.

- Surely the important issue here is whether the standards that are applied and the processes that are in place are appropriate, not the identity of the self-regulatory body that administers them.

- There also appear to be at least two significant drafting issues in the Bill. Firstly it would appear to require a major change to the membership of the Australian Press Council and the Independent Media Council. Currently the members of these organizations are generally the parent companies under whom sit a number of related or subsidiary companies that publish individual titles. However the Bill does not seem to allow for this structure, instead requiring each individual corporate entity to be a member of the self-regulatory body in its own right.

- Secondly we understand that it is intended that a small business operator as defined by the *Privacy Act* (less than $3m turnover per annum) will not be affected by this new regulatory regime. The idea seems to be to make the Self-regulation Bill consistent with the Privacy Act in scope because if an organisation isn't covered by the *Privacy Act* it won't need the benefit of the exception for journalism in that Act that will be conditional on belonging to a declared news media self-regulation body.

- However, there is a list of business activities in the *Privacy Act* that render a business operator not a small business operator. For present purposes the provision of interest is 6D(4)(d) which provides that a business is not a small business operator if he, she or it "(c) discloses personal information about another individual to anyone else for a benefit, service or advantage" . This provision was directed at organisations trading in mailing lists and qualified contact information but it also seems to describe a newspaper. The result seems to be that small business operators who publish newspapers or online news publications would be subject to the requirements to become members of a self-regulatory body with its attendant costs and administrative burdens.

The Public Interest Test - News Media Diversity Bill

This Bill enables the Public Interest Media Advocate to decide whether media mergers and acquisitions of national significance cause a substantial lessening of diversity of news media voices.

Seven West Media opposes this new and subjective approval process for media mergers. The media sector is experiencing both cyclical and structural change, particularly the print media. One of the drivers of that change, the internet, is the source of unprecedented choice in information, opinions and voices. The Australian public is experiencing greater diversity in sources of information and opinion than ever before. In our view it would be misguided to focus on ownership structures for traditional media outlets in the face of this significant change in the media landscape.

The Government says it is concerned to encourage diversity of ownership in traditional media. But a public interest test aimed at achieving this outcome is almost certain to have the perverse result that it will act as a disincentive to investment and therefore diversity rather than the opposite.

The Government's stated commitment to diversity seems at odds with its plans to remove the 75% reach rule which would reduce the number of separate media entities operating in commercial television from six to four almost immediately.

There are a number of specific issues with the Bill. These include:

- The test proposed in the Bill is arbitrary and uncertain. There is no definition of "diversity", a key concept in the framework.

- It requires a person seeking approval for a merger to prove to the PIMA that the merger will not lessen diversity, rather than the PIMA being required to form and justify a view that it will. The default position of the PIMA is to block all transactions unless it can be persuaded otherwise.

- Internal media restructures appear to be subject to the approval of PIMA as does the launch of new publications.

- There are new rules about what it means to be in a position to control a media entity. The existing and well understood rules under Schedule 1 of the BSA appear to have been considerably widened with no justification and potentially far reaching effect.

- The Eligibility Rules are essential to the operation of the rules. But these are not specified and there is no formal restriction on what these rules may contain.

- The PIMA has extremely broad powers to assess and block transactions yet the institution established to carry out these functions appears inadequate and unaccountable. It would be more appropriate for decisions regarding the public interest test to be made by a tribunal or statutory authority or even the ACCC that is subject to the rules of process, subject to guiding principles and rights of appeal.

- The PIMA has retrospective powers that seem to extend to “unwinding” deals that took place before these laws come into force. This is unprecedented.

- There are no rights of appeal on the merits of the PIMA’s decisions.

Australian Content

Seven continues to be the major producer of Australian drama in this country. In 2011, we broadcast more hours of Australian drama than any other broadcaster, a total of 169 hours compared with around 80 hours on other FTA networks and around 32 hours on pay TV.

Seven's commitment to quality Australian drama is well known through programs such as "Home and Away", "Packed to the Rafters", "Winners and Losers". We will be building on this strength with the soon to be launched period drama "A Place to Call Home".

As an industry, FreeTV spends more than $1.23 billion annually on Australian content, making us by far the most important source of support for the Australian film and television production sector. Together we broadcast around 450 hours of first run Australian drama every year. 72% of all program expenditure by the industry is on Australian content and the industry employs over 15,000 people on its productions.

Producing Australian drama and indeed all Australian content, is a risky enterprise. When it works it delivers strong audiences. However generally speaking the marginal return on an hour of a successful Australian television program is lower than would be made on an hour of a moderately successful overseas program. And of course if an Australian program has been commissioned but does not rate, the loss is very much greater.

Free-to-air broadcasters are facing long term change to their businesses, much of it driven by new sources of online entertainment. This will be exacerbated as improving broadband speeds allow increasingly reliable delivery of high quality video content. The issue for commercial broadcasters is how we can continue to fund Australian content at existing levels in this environment.

It is simply not realistic to be discussing how commercial free to air broadcasters can fund more local drama. The question is how they can continue to fund the significant amounts they do now?

Seven West Media supports the proposed changes to Australian content rules, which will allow greater flexibility in scheduling of Australian drama, childrens and documentary programs across digital multichannels.

They will also deliver 1490 hours of Australian content on digital multichannels. This is in addition to the existing 55% transmission quota that currently applies to the primary channel and represents a 40% increase in the number of quota hours of Australian content on commercial free to air television.

Television Licence Fees

In general, Seven West Media supports the proposals to reduce television licence fees and provide for greater flexibility in the operation of Australian content sub-quotas.

A reduction in Television Licence fees is entirely justified on international comparisons and in light of commercial and structural pressures affecting commercial television broadcasters. Licence fees were last reviewed in 1987, when the communications landscape and the competitive position of commercial free to air broadcasters was much different.