



**JOINT SELECT COMMITTEE ON BROADCASTING
LEGISLATION**

SUBMISSION BY



9 April 2013

Joint Select Committee on Broadcasting Legislation

Submission by Seven West Media

1. 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.

2. The 75% reach rule

Seven West Media has previously made a submission to this Committee on the issues related to removal of the 75% reach rule. Our views have not changed since that earlier submission. We would however raise two additional matters for the Committee's consideration:

It is commonly asserted that the 75% reach rule is outdated. The basis for this assertion is that the availability of national online services means that local restrictions on ownership are now irrelevant. However, if taken to its logical extension this argument would equally support the removal of other geographical limits on commercial television licences such as licence area restrictions. Replacing the existing market based model with national broadcasting licences would of course be a significant change in our licensing arrangements and raise a complex set of considerations for the Government of the day. It is clear that the removal of the 75% reach rule is just one of a range of interrelated rules relating to ownership and control. It is inconsistent to consider changes to one rule relating to geographical limits without considering how this might impact on related rules.

Further, there is no evidence that viewers want national broadcast services. Even pay TV, which has had the ability to provide a national signal since it commenced in 1995, does not provide a single national service. This is because viewers value local news and information and other genres of programming provided in the appropriate time zones. The mere fact that a national signal is technically feasible does not make it inevitable that one will be provided.

The imminent rollout of the NBN is often cited as one of the technical developments that makes the 75% reach rule outdated. The proponents of such argument appear to assume that the rollout of the NBN will necessarily result:

- The imminent and widespread uptake of NBN delivery of services that are currently broadcast free to air; and
- Such services being nationally delivered rather than locally targeted.

However, at this point in time, such assumptions are unfounded.

The model adopted by the NBN for carriage of television services would require a Retail Service Provider to deliver the television services. Provision of services that are currently free to air by means of the NBN would also be a significant change for millions of Australians who would commence paying for television services previously available free of charge. It would also end the practice of “plug and play” television services, where consumers can purchase a television set, plug it into a wall and expect continuous delivery of their free television services thereafter. Under an NBN model, viewers must engage a telco to receive free-to-air services. The provision of different content to different television sets throughout the home would also present a challenge.

While the Convergence Review recommended the removal of the 75% reach rule, it did so in the context of other wide scale changes to television licence regulation, including the complete removal of licensing requirements. However, in the absence of making those other changes to the regulatory framework, and having a clear vision for how an NBN based content delivery model would itself be regulated, it is illogical to consider the roll-out of the NBN to be a justification for the removal of the 75% reach rule.

Finally, it is worth considering the potential impact on local business advertisers in making any such change. An aggregated service would presumably look for cost savings in all aspects of its operations, including local sales presence. A more uniform service offering would seem to suggest that advertisers who wanted to reach the whole market would be the preferred option for such a service.

This could create upward pressure on advertising rates and practical difficulties in negotiating local advertising slots for those local businesses who currently are able to access television advertising in their local sub-market.

3. Content Supply Agreements

The Committee has been asked to consider whether the Australian Communications and Media Authority (**ACMA**) should be specifically required to examine program supply agreements for news and current affairs when determining whether a person is in a position to exercise control of a commercial television broadcasting service. Seven West Media does not support this proposal.

Seven recognises that maintaining a diversity of voices, in particular in respect of news and current affairs content, is a key objective of the media ownership and control rules. We are fortunate that there is already great diversity in provision of news and current affairs programming by three directly competing commercial television broadcasters, public broadcasters, newspapers, pay television and an ever increasing source of news and commentary on the internet.

Broadcasting licensees should be free to source programming from third parties as they see fit, unless there is a demonstrated issue relating to control under the existing provisions of the Broadcasting Services Act 1992 (**BSA**).

Schedule 1 of the BSA already sets out a broad and comprehensive range of factors that should be taken into account in considering whether a person is able to exercise control of a commercial television broadcasting licence. These considerations have been developed over many years and have served the community well in maintaining diversity of ownership and control in our media. Any proposal to amend the existing ownership and control provisions in a manner that would distinguish between different genres of content would be a significant departure from the current approach. It should not be undertaken without detailed and appropriate consultation and the opportunity for all the implications to be identified and considered.

We are not aware of any demonstrated failure in the current rules that would indicate that an amendment to the BSA or specific direction to the ACMA is necessary in respect of news and current affairs programming.

In any event, the existing provisions of the BSA appear to us to already provide appropriate avenues for the ACMA to investigate and assess control of broadcasting licences, taking into account the full spectrum of matters that could constitute or be indicative of control, without the need for an additional requirement to specifically examine news and current affairs supply agreements.

Schedule 1 of the BSA sets out various means of determining whether a person is in position to exercise control of a licence, and already expressly recognises that shareholding interests and directorships are not the only way to be in a position to exercise control of a licence or company. In particular, clause 2(1)(b) of Schedule 1 of the BSA provides that a person will be in a position to exercise control of a licence if:

“the person, either alone or together with an associate of the person, is in a position to exercise control of the selection or provision of a significant proportion of the programs broadcast by the licensee.”

Therefore, control over the selection or provision of programs is already one of the matters considered by the ACMA in determining whether a person is in a position to exercise control of a television licence. While this provision does not expressly distinguish between news and current affairs content and other types of content, the selection or provision of important/marquee news and current affairs programs would no doubt be more likely to be considered ‘significant’ than many other program genres.¹

In the 2007 ACMA investigation into the control of commercial radio broadcasting licences held by Elmie Investments Pty Ltd (**Elmie Decision**) the ACMA provides the following list of factors that it considers are relevant to determining who is in a position to exercise control of a ‘significant proportion’ of programs:

- the decision to purchase programs from a particular program producer, supplier or distributor;
- the programs chosen to be purchased from that program producer, supplier or distributor;
- the terms of an agreement with any such producer, supplier or distributor;
- the decision to broadcast a particular program;
- the decision to cease broadcasting a particular program;
- scheduling decisions;

¹ It is our understanding that in interpreting these provisions the ACMA takes the view that the word ‘significant’ does not necessarily mean ‘substantial’ and could include a proportion that was less than half or not substantial. The ACMA interprets ‘significant’ to mean ‘relevant’ or ‘material’.

- the decisions which set budgeting limits on the purchase of programming;
- the decision to exceed a budgeting limit relating to programming;
- the ability to have complete editorial control over the style and content of the content services provided;
- the ability to withhold consent to a variation in 'the services' supplied;
- an inability to obtain news services from another source.

It is clear that decisions in relation to program content (including news and current affairs content) are already an important part of the factual matrix considered by the ACMA in making ownership and control decisions. For example, in the 1999 ABA investigation into the possible breach of any provision of Part 5 of the *Broadcasting Services Act 1992* by Prime Television Limited (**Prime Investigation**) the ACMA took the preliminary view that Prime was in a position to exercise control of Canberra FM and Radio Newcastle, as a result of arrangements between Prime and Austereo that Prime would provide news services to Canberra FM and Radio Newcastle in return for the radio stations promoting Prime on the radio, and acknowledging Prime as the source of the news.²

4. On air reporting of ACMA findings

Seven West Media does not support the introduction of a new requirement for ACMA findings to be reported on air.

Seven takes the role of the regulator seriously and believes it plays an important part in ensuring appropriate broadcast standards are maintained. However, we do not support mandatory on-air reporting of findings for the following reasons:

ACMA findings are already widely publicised in broadcast, print and online reports

The ACMA publishes its finding on its own website and issues media releases in relation to its decisions, as do other regulatory bodies. To the extent that those decisions are of interest to the general public they are already reported in the media, including by free to air television broadcasters. For example the ACMA decision last week finding Nine to have breached various code provisions in an *A Current Affair* story on former Olympic swimmer Neil Brooks, was widely reported throughout the media. For serious breaches, broadcasters also frequently volunteer to provide a link to the ACMA finding online, from the program and/or network website.

² It was not necessary for the ACMA to reach a final decision on this matter as the parties amended the relevant agreements.

There are also strong incentives in the existing Commercial Television Industry Code of Practice (the **Code**) for broadcasters to correct significant errors of fact on-air at the earliest opportunity – without the need for an ACMA investigation or finding.

The number ACMA breach findings in respect of the compliance with the Code is consistently very low. Based on the ACMA's annual reports, over the last three years across all 69 commercial television broadcaster licensees, the number of breach findings by the ACMA regarding compliance with the Code has been as follows:

Year	Complaints to Broadcasters	Code Investigations	Code Breaches	Code Breaches as a % of Complaints
2011-2012	3,315	85	21	0.006%
2010-2011 ³	2,816	61	16	0.006%
2009-2010	1,292	64	26	0.02%

To put these numbers in perspective, according to the ACMA 2011–1012 Communications Report, over the same period the number of breach findings by the ACMA in relation to prohibited internet content were: (2011–2012) – 2,011 findings of prohibited internet content; (2010–2011) – 1,338 findings of prohibited internet content; (2009–2010) – 1,328 findings of prohibited internet content. Similarly, in 2011–2012 the ACMA received 226,816 complaints about SPAM and the Telecommunications Industry Ombudsman received 193,702 new complaints regarding telecommunications service providers.

There is no evidence that further measures relating to mandatory publication are required to ensure a higher level of compliance.

Mandatory reporting of ACMA findings is could have commercial and scheduling impacts on broadcasters

Broadcasting is an ephemeral form of communication. ACMA findings are often made a considerable time after the original publication and can be difficult to present in context. Unlike print or online outlets, it is not possible to simply extend the space available to accommodate additional content.

This could create significant issues for program makers in finding the necessary time to read a full ACMA finding, not least being the commercial impact on viewers switching to competing providers who are likely to be presenting more attractive programming. The broadcast of lengthy ACMA findings could be very disruptive to programming schedules or inhibit the ability of broadcasters to present other material during a program that would be more relevant or newsworthy.

³ Online complaints were first introduced in 2010–2011.