Australian Government

Department of Infrastructure, Transport, Regional Development and Communications

Submission to the Senate Environment and Communications References Committee Inquiry into media diversity in Australia

January 2021

Contents

Media diversity in Australia
Submission 49

About the Department

In February 2020, the Department of Infrastructure, Transport, Cities and Regional Development and the Department of Communications and the Arts were integrated to form the Department of Infrastructure, Transport, Regional Development and Communications (the Department).

The Department's role is to achieve our purposes and deliver results through:

- **Providing policy and strategic advice:** We provide Government with the best options and policy advice on issues relating to infrastructure, transport, regional development, cities, territories, communications, arts and culture. Our advice is evidence-based and informed by research, consultation, analysis and broader Government objectives. We identify trends and emerging issues in markets and society to provide the best strategy and policy advice.
- **Delivering programs and services:** We deliver efficient and effective programs and services to achieve the Australian Government's policy outcomes. We adhere to the highest standards of public administration.
- **Fit-for-purpose regulation:** We administer portfolio legislation efficiently and effectively, and review and shape regulatory frameworks to ensure that they are fit for purpose and not acting as an impediment to investment.
- **Relationship building and collaborative stakeholder engagement:** We work with portfolio entities, federal, state and territory, and international governments, international organisations, industry, research institutions and the community to generate innovative advice and make sure the advice and services the Department delivers are effective and meet the needs of the community. We engage proactively with our stakeholders with a clear understanding of their issues and challenges and we value diverse perspectives and ideas.

As outlined in the 2020-21 Corporate Plan, one of the Department's outcomes is to promote an innovative and competitive communications sector, through policy development, advice and program delivery, so all Australians can realise the full potential of digital technologies and communications services[1].

This includes providing strategic policy advice to the Government on the media industry, including issues relating to media diversity, ownership and competition, public interest journalism, broadcasting content, and national broadcasting. The Department also administers a number of programs that support the media sector, including the Public Interest News Gathering (PING) Program and the Regional and Small Publishers Jobs and Innovation Package.

[1] The Department's 2020-21 Corporate Plan is available online at: https://www.infrastructure.gov.au/department/about/files/ditrdc-corporate-plan-2020-21.pdf

1. Introduction

A strong and vibrant news media sector is critical to the health of Australia's democracy; an informed citizenry is a prerequisite for political, social and cultural participation.

Australian media organisations play a crucial role in informing Australians about events and developments that are important to their daily lives and enable them to participate in our democratic processes. Journalism is also vital in holding public office holders and those in positions of power to account and exposing wrong doing and injustice.

Access to a diversity of voices provides a critical safeguard against undue influence over Australia's public discourse and democratic system, while effective competition enhances the incentive for media businesses to produce high-quality, accurate news and journalism. A strong, independent media sector, capable of producing trusted public interest journalism, is also an important countermeasure to the increasing proliferation of disinformation.

Australia's media sector is primarily regulated by the *Broadcasting Services Act 1992* (BSA). The BSA contains rules regarding the control and diversity of media ownership in Australia. These rules are based on the premise that ownership, or control, is a proxy for voice, which in turn translates to influence in shaping views and opinions in society. This premise has always been at the heart of media control and diversity rules in Australia, and in many overseas jurisdictions. However, these rules only consider the contribution to diversity of the services that were most influential in 1992 – those being commercial television broadcasters, commercial radio broadcasters, and some print publishers.

While these services remain influential today, the sector includes a wider range of news services that are not counted in relation to the media control and diversity rules, including community radio, the national broadcasters (ABC and SBS) and most print publishers. This is despite the important role of these services in the communities that they serve. For example, community radio and the ABC's coverage of emergency warnings and information in the 2019-20 bushfire season was acknowledged by the recent Royal Commission into National Natural Disaster Arrangements.

Across the past decade, the Australian media sector has experienced a period of disruption through the introduction of online aggregators, including Apple News and Google News, and, to a lesser extent, online-only news publishers, such as The Conversation and The Guardian. This has resulted in falling audiences and declining advertising revenue for traditional media organisations[2] due to the growing popularity and reach of digital platforms and changing consumer preferences. These trends have been exacerbated by the COVID-19 pandemic.

While the digital platforms have created significant benefits for Australian consumers, including allowing access to a wider range of news sources and content, their impact on traditional media business models has been profound and has substantially transformed the production and distribution of media content. Further, the capacity of the media sector to provide Australian programming, local content and public interest journalism is being challenged.

[2] For the purposes of this submission, 'traditional media organisation' refers to any commercial television broadcaster, commercial radio broadcaster, community television broadcaster, community radio broadcasters, or print newspaper publisher.

2. State of play – the Australian media sector

Historically, the traditional Australian media sector operated under a business model supported primarily through advertising revenue. Advertising remains a primary source of revenue for many television, radio, and print media organisations. However, the media landscape has radically changed in recent years, as digital content providers have disrupted the business models of the traditional media sector, and in turn, the production, distribution and consumption of media content.

Consumers now have more choice over the type and volume of content they consume, and when and on what devices they consume it. The greater variety of content available online has also improved access to a diverse range of news sources and content from across Australia and the world, including in regional markets.

Many traditional media organisations are facing declining audiences due to this greater competition and changing consumption habits of consumers. This trend is highlighted below:

- The percentage of Australians aged 14+ who viewed free-to-air television over a seven day period fell from 90 per cent in 2015-16 to 80 per cent in 2019-20.
- The percentage of Australians aged 14+ who read a newspaper (including digital access) over a seven day period fell from 83 per cent in 2017-18 to 78 per cent in 2019-20.
- The percentage of Australians aged 14+ who listened to the radio over a seven day period fell from 87 per cent in 2015-16 to 76 per cent in 2019-20.[3]

Although audience numbers are falling for traditional media, demand for news content continues to grow in Australia. In February 2020, 56 per cent of news consumers accessed news more than once a day, an increase of 4% since 2019.[4]

Television remains the most popular source for accessing news, but is declining, while consumption of news online and through social media steadily increases. The number of Australians watching news on television fell from 66 per cent in 2019 to 63 per cent in 2020, while those using social media to access news increased from 46 per cent to 52 per cent.[5]

Traditional media's advertising revenue is also falling as advertisers shift to the products offered by digital platforms, such as Facebook and Google, which have lower advertising costs and enable greater personalisation. In 2003, online advertising accounted for only one per cent of the total advertising market in Australia. By 2018 it had risen to 53 per cent, and is expected to grow further.[6]

Print media in particular has struggled to maintain viability in recent years as falling revenue that began with the loss of classified advertising revenue in the early days of the internet has accelerated. As a result, Australian print media has experienced a 28 per cent decline in revenue between 2015 and 2019.[7]

In response to these pressures, some print media businesses have attempted to adopt online business models to remain viable. However, the willingness of consumers to pay for online news content

---

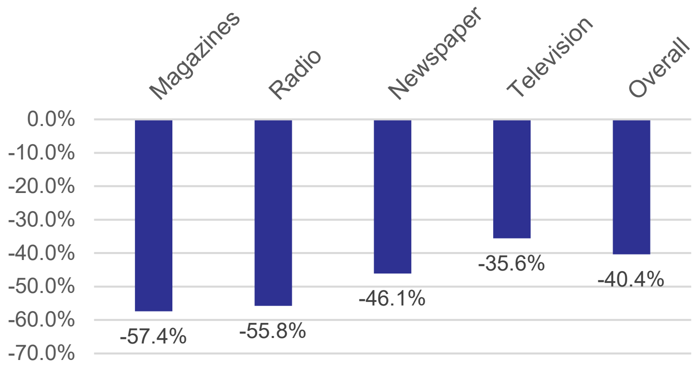
[3] Roy Morgan single source.
[4] *Digital News Report: Australia 2020*, University of Canberra News and Media Research Centre.
[5] *Digital News Report: Australia 2020*, University of Canberra News and Media Research Centre.
[6] *Digital Platforms Inquiry Final Report,* ACCC.
[7] PwC, Global Entertainment and Media Outlook 2020-24.

remains low, despite the growing number of online news outlets introducing subscription models. Currently only 14 per cent of Australian consumers pay for news online, broadly in line with international trends in comparable markets.[8] As a result, moving online does not always secure sustainability, and the Australian Competition and Consumer Commission (ACCC) found that new digital-only news publications have not been able to develop financially viable business models to deliver journalism online.[9]

Similarly, a move towards offering Broadcast Video on Demand (BVOD) services has not significantly improved the financial performance of the commercial television broadcasters, as the advertising revenue gained from BVOD does not yet make up for the losses from current broadcast services. Overall, advertising revenue earned by metropolitan commercial television broadcasters through agency bookings fell by 31.8 per cent between 2010 and 2020.[10]

The structural trends and pressures have been exacerbated by the COVID-19 pandemic. Advertising revenues dropped sharply during the peak of the pandemic, as highlighted in **Figure 1**. Despite a lift in audiences due to increasing demand for news as a result of the 2019-20 Bushfires and COVID-19[11], the traditional media sector's heavy reliance on advertising exacerbated the decline in revenue.

Figure 1: Year-on-year change in advertising expenditure by sector, May 2020 vs. May 2019



Source: Standard Media Index

These pressures more significantly affect regional media businesses due to their cost structures, which are different to metropolitan media businesses as they cover wider geographical areas with smaller populations. Regional television broadcasters are also affected by higher fixed costs to maintain terrestrial broadcast equipment.

The impact on regional media is demonstrated by the significant decline in advertising revenue between 2018-19 and 2019-20. According to Standard Media Index data, the total advertising spend in regional areas (regional press, regional radio, and regional television) in the fourth quarter of the 2019-20 financial year declined by 33 per cent to $99.6 million compared to the same period in the 2018-19 financial year ($148.5 million).[12]

---

[8] *Digital News Report: Australia 2020*, University of Canberra News and Media Research Centre.
[9] *Digital Platforms Inquiry Final Report,* ACCC.
[10] Standard Media Index. Real figures have been calculated using the Australian Bureau of Statistics Consumer Price Index.
[11] *Digital News Report: Australia 2020*, University of Canberra News and Media Research Centre.
[12] Standard Media Index.

There have been some signs of improvement in advertising markets as lockdowns and restrictions have eased. The industry-wide revenue fall of 17 per cent between August 2019 and August 2020 was an improvement compared with the equivalent May 2019 to May 2020 figures, which saw a decline of 40 per cent.[13] Nevertheless, the COVID-19-driven downturn is likely to have ongoing implications for the viability of many media businesses.

The media sector has responded to these challenges by pursuing efficiencies and service reductions to try to manage the immediate fallout. According the Public Interest Journalism Initiative's (PIJI) Australian Newsroom Mapping Project[14], the Australian news landscape has experienced 194 contractions[15] since January 2019, with approximately 92 per cent of these occurring since the start of COVID-19 (as of 8 December 2020). PIJI has also noted there have been 50 expansions[16] since the start of 2020.

As financial viability is affected by competitive pressures in the face of digitisation and convergence, the capacity for the media sector to provide Australian programming, local content and public interest journalism is being challenged.

There is also an inherent tension in any media control framework between the protection of diversity through preventing excessive consolidation and the financial sustainability of commercial media businesses. When media businesses do not have the flexibility to optimise operating structures and harnesses economies of scale, business failures may result in voices disappearing from the market.

It is important to acknowledge the funding model of the national broadcasters, ABC and SBS, being predominantly funded by the Government, and so are less affected by the issues facing commercial and community media organisations. The ABC remains one of the most trusted sources for news and the SBS continues to provide a valuable service for Australia's multicultural communities, including Aboriginal and Torres Strait Islander peoples.

3. Overview of media regulation in Australia

As noted above, the BSA is the primary piece of legislation that sets the rules and regulations for the media industry in Australia. Replacing the *Broadcasting Act 1942*, the BSA substantially overhauled the legislative and regulatory framework governing media services in Australia. A key driver for this change was the need for the regulatory framework to deal with emerging technologies and services.[17]

The objects of the BSA relevant to this inquiry[18] include the following:

a) *to promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information;*

b) *to provide a regulatory environment that will facilitate the development of a broadcasting industry in Australia that is efficient, competitive and responsive to audience needs;*

c) *to encourage diversity in control of the more influential broadcasting services;*

---

[13] Standard Media Index.
[14] The Australian Newsroom Mapping Project, accessed online at: https://anmp.piji.com.au
[15] PIJI defines a contraction as a closure, merger, end of print editions, or service reductions.
[16] PIJI defines an expansion as a new masthead, station or website, a newsroom opened, an increase in service, or a new print edition.
[17] Bradley, M. & Hayne, I. 1993, *Broadcasting Reform: A new approach to regulation – A guide to the reforms in the Broadcasting Services Act 1992*, Transport and Communications.
[18] Section 3 of the BSA

e) to promote the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity; and

g) to encourage providers of commercial and community broadcasting services to be responsive to the need for a fair and accurate coverage of matters of public interest and for an appropriate coverage of matters of local significance.

Part 2 of the BSA sets out the categories of broadcasting services to which the BSA relates, including national broadcasting services; commercial broadcasting services, including television and radio; community broadcasting services, including television and radio; and subscription television services.[19] The extensive regulation of broadcasting services at a Commonwealth level is enabled under section 51(v) of the Australian Constitution, which enables the Commonwealth to make laws for "postal, telegraphic, telephonic, and other like services".

The Australian Communications and Media Authority (ACMA) – an independent Commonwealth statutory authority – is responsible for overseeing and regulating these services.[20] As part of its role, the ACMA has a range of functions and powers that are to be used in a manner that will produce regulatory arrangements that are stable and predictable and deal effectively with breaches of the rules established in the BSA.[21] Under the BSA, the ACMA is required to maintain a number of registers of media operations, including the Associated Newspaper Register, the Register of Controlled Media Groups, and the Register of Foreign Owners of Media Assets.

The BSA, and by extension the ACMA, does not regulate all media services. For example, print media is predominantly self-regulated and only a limited number of provisions in the BSA apply to newspapers. Oversight falls to independent industry bodies, such as the Australian Press Council (APC). The APC has 34 members, including News Corp Australia and Nine Entertainment Co., and describes its role as 'promoting good standards of media practice, community access to information of public interest, and freedom of expression through the media'. The APC is also the principal body with responsibility for responding to complaints about Australian newspapers, magazines, and associated digital outlets. The APC's membership base does not cover the entire news media sector. Notably, The Guardian and Seven West Media have established their own internal self-regulation.

The ACMA's role in relation to print media is limited to what are known as 'associated newspapers'. For the purposes of the BSA, an associated newspaper is any newspaper where at least 50 per cent of its circulation is in the commercial television or commercial radio broadcasting licence area of an associated organisation. For association with a commercial radio licence area, the ACMA must also be satisfied that the newspapers circulation covers at least two per cent of the licence area population. Associated newspapers, such as The Canberra Times and the Herald Sun, are subject to the media diversity rules under the BSA (see Chapter 4 of this submission) and are included on the ACMA's Associated Newspaper Register.[22]

While national broadcasting services (the ABC and SBS) are a category of broadcasting service under the BSA, the ACMA only has a limited role as regulator. In the case of the ABC and SBS, their national broadcasting services are provided in accordance with the *Australian Broadcasting Corporation Act*

---

[19] Section 11 of the BSA.
[20] Section 5 of the BSA.
[21] Section 5(1) of the BSA.
[22] Section 59 of the BSA sets out that the ACMA is to maintain an Associated Newspaper Register. This register is accessible online at: https://www.acma.gov.au/publications/2019-11/data/associated-newspaper-register-20-february-2020

1983 and the *Special Broadcasting Services Act 1991* respectively.[23] Section 13(5) of the BSA states that, except as expressly provided by the BSA, the regulatory regime established by the BSA does not apply to national broadcasting services. Under the BSA, the ABC and SBS are required to develop codes of practice relating to programming matters and to lodge these codes with the ACMA. If consumers are not satisfied with the response from the ABC or SBS in relation to a complaint they have lodged directly, or if they do not receive a response within 60 days, the matter can be referred to the ACMA for investigation.[24]

Additionally, digital-native media services, including online-only news publishers and internet streaming services, are not captured by current media regulation in Australia. For example, live internet streaming services (including television, radio, and social media video streaming services) are currently excluded from the BSA definition of a "broadcasting service" under the *Broadcasting Services ("Broadcasting Service" Definition — Exclusion) Determination 2019* (commonly known as the 'Alston Determination').[25] These services are not currently subject to the regulatory provisions in the BSA including media ownership rules, content regulation and quotas, and licensing requirements.

However, in response to the ACCC's Digital Platforms Inquiry, the Government has committed to a program of work and series of reforms to promote competition, enhance consumer protection, and support a sustainable Australian media landscape in the digital age. As part of this work program, the Government has introduced the News Media and Digital Platforms Bargaining Code into the Parliament and has released a Media Reform Green Paper (discussed in Chapter 6).

Media ownership in Australia is also regulated by the *Competition and Consumer Act 2010* (the CCA) and the *Foreign Acquisitions and Takeovers Act 1975* (the FATA).

Merger proposals in the media sector are subject to the merger provisions in section 50 of the CCA, which is administered by the ACCC. The key purpose of the merger provisions is to protect competition in markets, including media markets, by prohibiting mergers that are likely to substantially reduce competition. Recent examples of mergers in the media sector include the merger between Nine Entertainment Co. and Fairfax in 2018 and the proposed merger of Seven West Media and Prime Media Group in 2019. Both mergers were considered by the ACCC, which decided to not oppose them. While the Nine and Fairfax merger was completed, the Seven West and Prime merger was ultimately voted down by shareholders.

Foreign investment in Australian media businesses is regulated under the foreign investment review framework in the FATA, which is administered by the Treasury. While the BSA does not restrict foreign ownership of Australian media operations, media is a 'sensitive sector' under the foreign investment review framework. This means that all foreign persons need to apply for and receive foreign investment approval to make an investment of five per cent or more in an Australian media business, regardless of value.

On 9 December 2020, the Government passed reforms to the foreign investment framework to ensure that the FATA keeps pace with emerging risks and global developments. As part of the reforms, the definition of an *Australian media business* was amended to include businesses that operate online

[23] Section 13 of the BSA.
[24] Section 150 of the BSA.
[25] On 10 September 2019 the Australian Government extended the Alston Determination for a period of three years. The decision followed a review and consultation process ahead of the Determination's 1 October 2019 sunset date.

services to better reflect the modern media environment.[26] The reforms commenced on 1 January 2021.

4. Media control and diversity rules in the BSA

The BSA currently contains a number of rules regarding the control and diversity of media ownership in Australia. These rules support the objects of the BSA to promote a diverse media sector by limiting the number of media operations that can be controlled by a person or organisation in any single licence area. A 'media operation' is defined in the BSA as a commercial television broadcasting licence, a commercial radio broadcasting licence, or an associated newspaper.[27] The three main rules are:

- Section 53 – the one-to-a-market rule for commercial television;
- Section 54 – the two-to-a-market rule for commercial radio; and
- Section 61AB – the minimum voices (5/4) rule.

The BSA also prevents a person from being in a position to exercise control of a commercial television broadcasting licence and a datacasting transmitter licence.[28] Further, the BSA places limitations on the number of directorships that a person can hold for commercial television,[29] commercial radio,[30] and commercial television and datacasting.[31]

Collectively referred to as the media control and diversity rules, these rules are based on the concept of 'control' rather than ownership. The BSA recognises that the concept of control can be complex.[32] Generally, a person is regarded as being in a position to exercise control of a company (or a licence) if that person has company interests in a company exceeding 15 per cent.[33] However, control may also come about through company interest of 15 per cent or less, where other shareholders are small (for example 2 per cent) and the other shareholders do not act in concert. Further, more than one person can be regarded as being in a position to exercise control over a single company or licence. Schedule 1 sets out mechanisms that are to be used in deciding whether a person is in a position to exercise control of a licence, a company, or a newspaper for the purposes of the BSA, and for tracing company interests of persons.[34]

However, as noted previously in this submission, the current framework continues to only regulate the control and diversity of the media services that were most influential in 1992, specifically commercial television and radio broadcasters and associated newspapers. This is despite the emergence of digital platforms as producers and distributors of news content across the past decade and the long standing role of the ABC and SBS in the media market.

The ACMA has responsibility for administering the media control and diversity rules. As part of its role, the ACMA is required to prepare licence area plans that determine the number and characteristics of

---

[26] The definition of an *Australian media business* is outlined in the *Foreign Investment Reform (Protecting Australia's National Security) Regulations 2020.* The Regulations are available online at: https://www.legislation.gov.au/Details/F2020L01568
[27] Section 61AA of the BSA.
[28] Section 54A of the BSA.
[29] Section 55 of the BSA.
[30] Section 56 of the BSA.
[31] Section 56A of the BSA.
[32] Schedule 1, Section 1(1) of the BSA.
[33] Schedule 1, Section 1(1) of the BSA.
[34] Section 7 of the BSA.

broadcasting services that are to be available in particular areas of Australia.[35] These licence areas are used by the ACMA for administering the media control and diversity rules.

One-To-A-Market Rule for Commercial Television

The one-to-a-market rule states that no person can be in a position to exercise control of more than one commercial television broadcasting licence allocated by the ACMA under section 36 in the same licence area.[36]

The BSA provides two additional licence categories that provide an exemption for this rule:

- Section 38A – Additional commercial television licences in single (solus) markets
- Section 38B – Additional commercial television licences in 2-station (dual) markets.

Additional information on the licencing framework for commercial television broadcasting is set out in **Appendix A**.

Two-To-A-Market Rule for Commercial Radio

The two-to-a-market rule states that no person can be in a position to exercise control of more than one commercial radio broadcasting licence in the same licence area.[37] Commercial radio broadcasting licences are also allocated by the ACMA under section 36, however, unlike with commercial television licences, there are no additional commercial radio licences that provide exemptions from this rule. Further, this rule does not mandate that there must be two separate radio operators in each licence area.

Minimum Voices Rule

The minimum voices rule, also commonly referred to as the '5/4 rule', states that an 'unacceptable media diversity situation' will exist if there is less than five voices in each metropolitan radio licence area[38] or less than four voices in each regional radio licence area[39]. The BSA sets out a range of remedies available to the ACMA to rectify an unacceptable media diversity situation.

For the purposes of the minimum voices rule, a registrable media operation or media group counts for one voice (referred to as points in the BSA). A media group is defined as a group of two or more media operations.[40]

The minimum voices rule does not consider other services in the media sector – such as the national broadcasters, community radio, community television, subscription television, non-associated newspapers, and online media – for the test of whether there is an unacceptable media diversity situation.

[35] Section 26 of the BSA.
[36] Section 53 of the BSA.
[37] Section 54 of the BSA.
[38] Section 61AB(1) of the BSA.
[39] Section 61AB(2) of the BSA.
[40] Section 61AA of the BSA.

Further, the minimum voices rules does not consider the specific services that each 'voice' provides in each licence area, including whether the service produces and distributes news specific to that local area. Instead, the rule focus on who is deemed to be the controller of each media operation or group.

As part of its regulatory role, the ACMA is required to maintain an online media control database, known as the Register of Controlled Media Groups. The register provides information on the number of independent voices in each radio licence area and is accessible on the ACMA's website.[41] Information accessed from this register by the Department in October 2020 indicates there that 30 of the 105 radio licence areas are currently below the minimum voices threshold, including Alice Springs (3 voices), Griffith (2 voices), Mt Gambier (3 voices), and Spencer Gulf North (2 voices).

5. Government support for public interest journalism

As outlined in Chapter 2 of this submission, the Australian media sector is experiencing significant challenges. In recognition of these challenging market conditions, the Government has announced a number of grant programs since 2017 to provide financial assistance to media organisations to support the production of public interest journalism. These include:

- the Regional and Small Publishers Jobs and Innovation Package; and
- the Public Interest News Gathering program.

The Government's support for public interest journalism extends to the annual appropriation it provides to the national broadcasters, the ABC and SBS.

Regional and Small Publishers Jobs and Innovation Package

In 2017, as part of the Broadcast and Content Reform Package, the Government established the Regional and Small Publishers Jobs and Innovation Package (RASPI). The RASPI package was designed to help small metropolitan and regional publishers adapt to the challenges facing the contemporary media environment, create employment opportunities for cadet journalists, and support regional students to study journalism. The package was worth $60.4 million over three years and consisted of three programs:

- the Regional Journalism Scholarships Program;
- the Regional and Small Publishers Cadetship Program; and
- the Regional and Small Publishers Innovation Fund.

The Regional Journalism Scholarships Program had one round that closed in August 2018 and awarded around $2.5 million to 16 universities for 66 scholarships.

The Regional and Small Publishers Cadetship Program had one round that closed in August 2018 and awarded around $2 million to 39 regional and small publishers across Australia for 43 cadetships.

The Regional and Small Publishers Innovation Fund, administered by the ACMA, ran three separate rounds, awarding a total of $17.6 million:

[41] Register of Controlled Media Groups, Accessed online at: https://www.acma.gov.au/register-control-media-groups

- Round One (2018 Round) – this round closed in August 2018 and awarded around $3.6 million to 25 grant applicants for 29 projects.
- The Regional Grant Opportunity – this round closed in June 2019 and awarded around $9 million to 62 grant applicants.
- 2020 Round – this round closed in August 2020 and awarded around $5 million to 43 grant applicants.

Across its three-year period, the RASPI package allocated a total of $21.5 million of the $60.4 million available to regional and small publishers.

Public Interest News Gathering program

On 15 April 2020, the Government announced a package of short-term measures to support Australian media businesses during COVID-19. This included the $50 million Public Interest News Gathering (PING) program. The PING program consisted of $13.4 million of new money as well as $36.6 million in unallocated funds from the Regional and Small Publishers Jobs and Innovation Package.

The objective of the PING program is to support regional broadcasters and publishers to maintain or increase their production and distribution of public interest journalism in regional communities during the COVID-19 pandemic.

On 29 June 2020, the Government announced that 107 regional broadcasters and publishers would receive funding under the PING program. The funding was allocated between three streams:

- Stream 1: Commercial Television – $20 million
- Stream 2: Commercial Radio – $12 million
- Stream 3: Publishing (including online and print) – $18 million

Grants are being used to fund a range of activities including journalist and support staff costs, printing equipment, website development and cameras. As at 5 January 2020, all grant agreements have been executed and grantees have received their first payment.

ABC and SBS

While the ABC and the SBS are not counted for the purposes of the media control and diversity rules, they are a critical element in the Australian media landscape and make a significant contribution to civic journalism in Australia.

The ABC and SBS are provided with long-term certainty in funding through a three-year triennial funding allocation process which has been in place since 1988. The provision of nearly $3.2 billion and $887 million respectively, over the three years of the current triennium from 2019-20 to 2021-22, represents a substantial investment of public funds in our national broadcasters. This funding assists the ABC and SBS in the provision of news and media services in line with their Charters.

The ABC's funding includes $43.7 million over the current triennium for the ABC to continue the Enhanced News measure, which supports local news and current affairs, including regional newsrooms and specialist investigative journalists.

The Enhanced News Funding program enables the ABC to deliver more tailored news, more local news and bring news from across the country to a national audience. As a result, ABC News has made a significant investment in its regional newsgathering capacity and local content-makers in regions where it was previously under-represented or not represented at all. Overall, it is estimated that there are currently 69 positions attached to the Enhances News Services funding. This measure has enabled job creation at a time when commercial news media are rationalising their services and contracting or amalgamating regional news resources.

6. Proposed future Government support

On 12 December 2019, the Government released its response to the ACCC's Digital Platforms Inquiry.[42] The Government's response included a staged process to reform media regulation toward a platform neutral regulatory framework, voluntary codes of conduct to govern the relationships between news media businesses and digital platforms, and a range of other measures.

News Media and Digital Platforms Mandatory Bargaining Code

In its response to the ACCC's Digital Platforms Inquiry, the Government supported the ACCC's recommendation in principle and tasked the ACCC with facilitating agreement between news and media businesses and digital platforms on voluntary, industry-developed codes.

On 20 April 2020, the Government announced that it had directed the ACCC to develop a mandatory code of conduct to address the bargaining power imbalances between Australian news media businesses and major digital platforms. The announcement acknowledged the need to accelerate the development of a code in response to the COVID-19 pandemic exacerbating pressures on the news media sector. The announcement also indicated that the ACCC considered it unlikely that any voluntary agreement would be reached with respect to remuneration. The Treasurer indicated that it was the Government's expectation that the code of conduct should result in payment from digital platforms to news media businesses.

On 9 December 2020, the Government introduced the News Media and Digital Platforms Mandatory Bargaining Code into the Parliament. The code establishes a bargaining and arbitration framework, as well as a set of compulsory minimum standards, to address the bargaining power imbalance between Australian news businesses and the major digital platforms, Google and Facebook. The legislation has been referred to the Economics Legislation Committee for inquiry, which is expected to provide its final report by 12 February 2021.

Media Reform Green Paper

On 27 November 2020, the Government announced the next stage of its media reform program with the release of a Media Reform Green Paper. The green paper outlines a set of proposals to improve the sustainability of Australian media businesses and the range and quality of services and content available to all Australians.

The centrepiece of the proposed reforms is a new category of licence for commercial television broadcasters. Under this proposal, the holders of existing commercial television broadcasting licences would have the option to make a one-time transition to a new licence. The new licence would allow

[42] The Government's response can be found on the Treasury's website: https://treasury.gov.au/publication/p2019-41708

broadcasters to operate under a lower cost model with two important changes to the present arrangements:

- the holder of a new licence would no longer be required to pay a tax for the use of spectrum; and
- the holder of a new licence would be required to transition to using less radiofrequency spectrum, to be initiated by Government when certain conditions were met.

Advances in technology mean that broadcasters could move to transmission arrangements which use less spectrum, but which maintain their service levels at close to current levels with a minimal impact on viewers. This provides an opportunity to realise a second digital dividend through the auction of available spectrum. A portion of auction proceeds could be used to fund measures that support key media policy outcomes, such as the production and distribution of public interest journalism and the creation and distribution of Australian content.

The green paper proposes the establishment of a Public Interest News Gathering Trust, which, as outlined above, could be capitalised with a portion of the proceeds from the sale of spectrum. The Trust could be administered by a dedicated PING trustee (an incorporated entity), with a board, including people with relevant industry and subject matter expertise. The board would have oversight of the Trust's operations, be responsible for funding decisions, and have regard for prevailing market conditions.

The purpose of the PING Trust would be to provide a capital fund that could be drawn on over time for grant funding to support the provision of newspaper, radio, television and online news services in regional Australia. This focus on the needs of regional and remote areas of Australia recognises that the provision of news and journalism in these markets is particularly challenged.

Further details on the proposed PING Trust are included in the Green Paper. The Government has invited public submissions on the Green Paper by 23 May 2021.[43]

---

[43] Public submissions can be lodged online at: https://www.communications.gov.au/have-your-say/new-rules-new-media-landscape-modernising-television-regulation-australia

Appendix A: Commercial television licencing framework

Part 4 of the *Broadcasting Services Act 1992* deals directly with the allocation of commercial television licences. The Australian Communications and Media Authority (ACMA) is responsible for the allocation of commercial television broadcasting licences. In doing so, the ACMA must ensure that the number of commercial television broadcasting licences in any particular television licence area does not exceed three.[44]

Where a service will use the broadcasting services bands,[45] the ACMA may allocate one of the following three licence types for terrestrial commercial broadcasting:

- Section 36 – Primary licence
- Section 38A – Additional commercial television licence in single (solus) markets
- Section 38B – Additional commercial television licence in 2-station (dual) markets

Section 36 of the BSA requires the ACMA to determine a price-based system for allocating commercial television broadcasting licences that are broadcasting services bands licences. Most commercial broadcasting licences are issued under section 36, including licences for metropolitan commercial television networks and, at a minimum, the first licence in each regional and remote licence area.

Where there is only one commercial television broadcasting licence allocated under section 36 in a particular licence area, section 38A of the BSA permits an additional licence to be allocated to the existing licensee, under certain circumstances, provided certain conditions are satisfied. A licence held under section 38A is disregarded for the purposes of control rules in Part 5 of the BSA, so long as both it and the related section 36 licence continue to be held by the original licensee.

Where there are only two commercial television broadcasting licences allocated under section 36 in a particular licence area, section 38B provides that, under certain circumstances, provided certain conditions are satisfied, an additional licence may be allocated to a joint-venture company formed by the existing licensees, or one of the existing licensees. A licence held under section 38B is disregarded for the purposes of control rules in Part 5 of the BSA, so long as it continues to be held by the original licensee.

The ACMA may also allocate a commercial television licence under section 38C of the BSA, for commercial television broadcasting service provided with the use of a satellite, or under section 40, if the service does not use the broadcasting services bands. No commercial television broadcasting services are currently operating under section 40 licences. These licence type is not considered further in this document.

As part of its role as regulator, the ACMA is required to prepare licence area plans that determine the number and characteristics of broadcasting services that are to be available in particular areas of Australia. For commercial television licences, these licence areas fall into three categories – metropolitan licence areas; regional aggregated licence areas; and regional non-aggregated licence areas. Aggregated licence areas were created in the 1980s and 1990s to create larger licence areas that were more commercially viable for the broadcasters.

[44] Section 37A of the BSA.
[45] The broadcasting services bands are that part of the radiofrequency spectrum that is designated as being primarily for broadcasting purposes.

Appendix B: Key changes to media regulation since 1992

Prior to the introduction of the BSA in 1992, the Government introduced a Regional Equalisation Plan. This was legislated in 1987 through an amendment to the *Broadcasting Services Act 1942*. Between 1989 and 1992, the aggregation of a number of regional markets was completed to introduce larger markets that were more commercially viable in order to provide regional Australian's with access to three commercial television services. The five regional aggregated markets are Regional Queensland, Northern New South Wales, Southern New South Wales, Regional Victoria, and Tasmania.

Since 1992, various governments have implemented amendments to the BSA and in particular the provisions which regulate media control and ownership.

In 1995, the *Broadcasting Services Amendment Act 1995* inserted a new section to provide an additional commercial television licence in single markets. This licence category was only available to existing licensees holding a licence under section 36 in the licence area. The amendment also provided an exemption from the operation of the ownership and control limits for services allocated under the additional commercial television broadcasting licence. This exemption does not apply to the existing licensee's section 36 licence.

In 2000, the *Broadcasting Services Amendment (Digital Television and Datacasting) Act 2000* amended the BSA to insert a second additional commercial television licence. This new licence category, provided under section 38B, would allow for the allocation of an additional commercial television licence in 2-station markets. This licence category was available to a joint-venture from both existing licensees in a market, or to a single existing licensee. However, an additional licence could not be allocated under section 38B if one of the existing licences was issued under section 38A.[46]

In 2006, the *Broadcasting Services Amendment (Media Ownership) Act 2006* led to the following amendments:

- removal of broadcasting sector specific foreign ownership restrictions in the BSA that limited the control of commercial and subscription television licences of foreign persons;
- discontinued newspaper-specific foreign ownership restrictions under the *Foreign Acquisitions and Takeovers Act 1975*;
- enabled cross-media mergers in a commercial radio licence area involving three regulated media operations;
- required the ACMA to establish and maintain a Register of Controlled Media Groups identifying the control and ownership in each licence area;
- expanded the ACMA's enforcement powers to include criminal and civil penalties, divestment powers, injunction powers, and an ability to accept enforceable undertakings; and
- introduced offence provisions and disclosure requirements related to breaches of the new cross-media rules.

[46] This clause was later repealed in the *Broadcasting Legislation Amendment (Digital Television) Act 2010*.

In 2017, the *Broadcasting Legislation Amendment (Media Reform) Act 2017* repealed two control provisions that prevented a person from controlling:

- commercial television licences that collectively reach in excess of 75 per cent of the Australian population (the '75 per cent audience reach rule'); and
- more than two of the three regulated forms of media (commercial radio, commercial TV and associated newspapers) in the one commercial radio licence area (the '2 out of 3 rule').