

REFORMING AUSTRALIA'S MEDIA LEGISLATION TO MEET THE CHALLENGE OF A MULTI-MEDIA REVOLUTION

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I INTRODUCTION

On 18 October 2006, after many years of gestation and extensive debate, the Federal Parliament passed a package of legislation¹ to give effect to the Howard Government's long standing commitment to reform Australia's media laws.

The package amends the legislative framework with respect to media ownership and digital television. In relation to media ownership, the package provided for the relaxation of cross-media ownership rules, removal of foreign ownership restrictions, and for the introduction of new measures to protect diversity and local content.² In relation to digital television, it provided for the allocation of two reserved digital channels and made a number of amendments to enable free-to-air broadcasters to supplement their range of services using additional digital multichannels.

The purpose of this article is to examine the main features of the legislative package and of the media landscape generally, in order to expose the themes and motivations which underpin the Government's regulatory framework. This article will primarily focus on the legislative reforms which concern media ownership and media diversity. However, it is useful to consider those changes in the broader context of the current media landscape. A key feature of this new landscape is the rise of digital media, and the new opportunities that it presents.

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1 The legislative package consisted of the *Broadcasting Services Amendment (Media Ownership) Act 2006* (Cth), the *Broadcasting Legislation Amendment (Digital Television) Act 2006* (Cth), the *Television Licence Fees Amendment Act 2006* (Cth) and the *Communications Legislation Amendment (Enforcement Powers) Act 2006* (Cth).

2 The package received Royal Assent on 4 November 2006. However, not all components of the package commenced at the same time. The commencement of the media ownership and diversity amendments have been staggered to give the regulatory bodies sufficient time to prepare for the new operating environment.

II THE CASE FOR REGULATORY REFORM

A Digital Media

1 *Converging technologies and patterns of consumption*

The drivers for regulatory reform in relation to digital media are relatively clear cut. Digitisation is rapidly transforming all media and communications sectors. The digital platform enables the delivery of a common range of audio-visual, entertainment and information services to an increasingly more engaged, demanding, and fragmented audience. Traditional media services are being challenged by new digital technologies resulting in the emergence of new players, content, services and delivery platforms. For consumers, this means an increasing number of new sources of information and entertainment. For the media industry, while it poses challenges as audiences are attracted away from traditional media sources, it also presents substantial opportunities to embrace new ways of doing business. For the Government, the advent of digital media technologies demands a re-write of the regulatory settings, which were conceived for an analogue world.

To ensure the quality and diversity of services delivered to consumers, media policy has traditionally closely controlled who may enter the market and what services they may offer. This traditional 'analogue' approach to media regulation was the dominant feature of the *Broadcasting Services Act 1992* (Cth) ('BSA') until late last year. This regulatory framework has relied upon distinctions between different types of broadcasting. The capacity of digital technology to deliver new services and generate original or adapted content poses a distinct regulatory challenge. In a converging environment, it will become increasingly difficult to regulate new media players and new media services using distinctions more suited to the analogue era.

2 *Protecting Consumers in the Transition from Analogue to Digital Platforms*

The Government's package of reforms allows the Australian media sector to move from operating within an outdated analogue based regime to a new world of digital services. This will enable traditional media to co-exist and compete with new delivery platforms, whilst still protecting the services and diversity that audiences value and expect. In the transition from analogue to digital television, however, the interests of consumers will be promoted and protected.

The recent legislative amendments³ mark the next step in the transition to a digital era, with obvious positive implications for the take-up of digital technology by consumers. The key changes are:

- removing genre restrictions on the types of programming that may be shown on ABC and SBS digital television multichannels;
- enabling commercial free-to-air television services to provide high definition multichannels;

3 Principally contained in the *Broadcasting Legislation Amendment (Digital Television) Act 2006* (Cth).

- providing for the allocation of two previously reserved digital channels for new services; and
- improving the anti-siphoning provisions to ensure that significant events on the anti-siphoning list are not premiered by free-to-air broadcasters on their digital multichannels.⁴

These changes to digital television will soon be accompanied by a new regulatory framework to enable new digital radio services. Radio is the 'last frontier' in the transition from analogue to digital broadcasting. The transition to digital radio is arguably the most important strategic development in decades for Australia's most ubiquitous media format. It is already apparent that evolving digital technologies – such as MP3 players, iPods and other handheld digital audio devices – are changing listening patterns and re-shaping the way audio content is created, distributed and consumed.

On 28 March 2007, the Broadcasting Legislation Amendment (Digital Radio) Bill 2007 (Cth) ('the Bill') and the Radio Licence Fees Amendment Bill 2007 (Cth) were introduced into the Federal Parliament. The Bill will amend the *BSA*, the *Radiocommunications Act 1992* (Cth) and the *Trade Practices Act 1974* (Cth) ('*TPA*') to enable the licensing, planning and regulation of digital radio services under the supervision of the Australian Communications and Media Authority ('ACMA') and the Australian Competition and Consumer Commission ('ACCC'). The key premise of the framework is that digital radio will supplement existing analogue radio services for the foreseeable future, and may never be a complete replacement for analogue services. The Bill provides for a progressive transition to digital radio, without seeking to mandate an unrealistic and costly conversion time frame.

Since the roll-out of this new regulatory framework will coincide with further technological advances, the digital radio reform package proposes to provide a statutory review of issues surrounding the development of technologies that may be better suited to roll-out in regional areas. This review, proposed to occur by 2011, will consider the development of the digital radio platform in metropolitan Australia and overseas and as a result assist the implementation of digital radio in regional Australia.

B Media Ownership and Control

The rationale for reforming media ownership regulation is in large part derived from technological advances in the sector. To place the recent ownership amendments in context, it is useful to consider certain important characteristics of the Australian media industry.

4 Legislated changes to the anti-siphoning list have also been supplemented by new 'use it or lose it' guidelines, issued December 2006, which encourage greater coverage of major events on both free-to-air and pay television. Under the guidelines, listed events that do not receive adequate coverage, or which are not acquired by free-to-air broadcasters, may be considered for permanent or partial removal from the anti-siphoning list.

1 *Evolving Technology and Consumer Behaviour*

The media industry is dynamic. Consumers, in particular younger consumers, are increasingly seeking news and entertainment from outside the traditional sphere of television, radio and newspapers.⁵ As use of internet based media has increased,⁶ so too has access to foreign media and to non-traditional sources of news and commentary.⁷ For example, in the decade from 1990 to 1999, capital city commercial radio audiences during the breakfast time slot fell from 2 million to 1.8 million.⁸ It has been estimated that capital city newspaper circulation fell more than 10 per cent during the same period.⁹ Television, too, has suffered declining numbers of viewers and it is estimated that prime time free-to-air audiences fell nine per cent between 1995 and 2005.¹⁰

The media industry has generally been swift to react to the changing needs, behaviour and expectations of consumers. At times the industry has acted in anticipation of consumer demand. New and innovative devices and services have developed, which in turn have created new markets and opportunities. The emergence of third generation (3G) mobile phones, which can deliver audiovisual services as well as traditional voice and data applications, has contributed to further diversification of information and entertainment services. As a result traditional divisions between media platforms have become increasingly blurred. These days it is common, for example, for television broadcasters to provide what are essentially print media services, and for newspapers to provide video and audio streaming through the internet.

2 *A Need for Regulatory Change*

In such a dynamic environment, a Government needs to be careful to ensure that its legal and regulatory framework does not unduly inhibit technological advances or competitive growth opportunities.

5 See, eg. figures cited by Rupert Murdoch (Speech delivered to the American Society of Newspaper Editors, 13 April 2005) <http://www.newscorp.com/news/news_247.html> at 1 May 2007.

6 Australian Bureau of Statistics (ABS) research indicates that an increasing number of Australian households have access to the internet, and that subscribers are downloading rapidly increasing amounts of data. See ABS, *Household Use of Information Technology, Australia, 2005-06* <<http://www.abs.gov.au/Ausstats/abs@.nsf/0/acc2d18cc958bc7bca2568a9001393ae?OpenDocument>> at 30 April 2007; ABS, *Internet Activity, Australia, September 2006* <<http://www.abs.gov.au/Ausstats/abs@.nsf/e8ae5488b598839cca25682000131612/6445f12663006b83ca256a150079564d!OpenDocument>> at 30 April 2007.

7 Such non-traditional sources, often termed new media, include independent online analysis such as that provided by <crikey.com.au>, or commentary provided by webloggers or 'bloggers'. These developments are considered in greater detail in a recent Government discussion paper: Department of Communications, Information Technology and the Arts, *Meeting the Digital Challenge: Reforming Australia's Media in the Digital Age, Discussion Paper On Media Reform Options* (2006).

8 Bond University, 'Sources of news and current affairs: A research report in two stages conducted by Bond University for the Australian Broadcasting Authority' (Research Paper, Bond University, 2006) 287, <http://www.acma.gov.au/WEBWR/_assets/main/LIB100068/news_ca.pdf> at 30 April 2007.

9 See, eg. media consultants Fusion Strategy cited in 'TV's Uncertain Future', *Australian Financial Review* (Sydney), 18 April 2005, 61.

10 Ibid.

Cross-media ownership restrictions have been a feature of Australia's media law landscape since 1987. At that time media operations were dominated by the traditional platforms of television, radio and newspapers. Rules to restrict common ownership of media were regarded as necessary to safeguard against excessive homogenisation of information or concentration of supply of that information to the domestic consumer.

For some time, the Government has held the view that the regulatory scheme for Australia's media has failed to keep pace with industry development. The 'problem', which demanded a regulatory response, was that the regulatory scheme had been outflanked by changing technology and consumer behaviour. Most notably, the emergence of new media and multi-media formats, and accompanying changes in usage habits squarely challenged the existing policy rationale for imposing restrictions based upon old modes of commercial and consumer behaviour. In the Government's opinion, the policy rationale could no longer be justified. A re-think of the status quo was required.

A restrictive regulatory framework concerning who may invest in Australian media interests has inhibited the transfer of capital and management expertise between sectors of the Australian media industry and from other countries. This barrier to acquiring and sharing new expertise has coincided with the convergence of television, telecommunications and computer services. Similarly, the rules concerning capital movements and investment have also restricted growth opportunities in an environment where participants must outlay significant capital to ensure that available services keep pace with technological advancement. Excessive ownership restrictions have also prevented economies of scale that might otherwise have been achieved through a more flexible approach to industry consolidation.

That said, it is certainly not the case that the principle of media diversity is redundant. Instead, the case for regulatory reform of media ownership recognises that, whilst diversity of media ownership is important, it is not an end in itself. Rather, media diversity means more than 'who owns what' and should be achieved in a way that maximises efficiency and, as far as possible, minimises negative economic impact and flow-on effects for consumers.

III LEGISLATIVE CHANGES IN DETAIL

Given the nature of the regulatory challenge, a recurring theme for Government is the need to balance competing policy priorities. As discussed below, the Government's legislative reforms do not constitute a departure from the established goals of the *BSA*. The *BSA* continues to 'promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information'¹¹ and 'encourage diversity in control of the more influential broadcasting services'.¹² Rather, the reforms mark a logical progression that reflect recent changes and ensure

¹¹ *BSA* s 3(1)(a).

¹² *BSA* s 3(1)(c).

ongoing relevance, while maintaining a workable balance between protecting the public interest and facilitating new opportunities for providers of broadcasting services.

The new media reforms will open up opportunities for a range of new services for consumers, while maintaining the existing services that audiences value and enjoy. To protect the public interest, there are significant legislative safeguards to protect diversity and local content.

A Media Ownership and Control

1 Foreign Ownership and Control

The removal of all media-specific foreign ownership and control limits is consistent with the *BSA*'s object to facilitate the development of an efficient, competitive and responsive broadcasting industry in Australia. The repeal of the restrictions will achieve this by improving access to capital, increasing the pool of potential media owners and acting as a safeguard on media concentration. Removing the foreign investment constraints will open up the capital market for television broadcasters and print media, improve access to technology and managerial expertise, and, particularly in print media, increase the possibility of greater diversity through new market entrants. Compliance costs will be reduced through simplification of regulation and through removing the need to monitor foreign interests for the purposes of compliance with the *BSA*.¹³

The effect of removing the restrictions on foreign ownership from the *BSA* is that foreign ownership of commercial and subscription television interests will be regulated only by the Government's foreign investment policy under the *Foreign Acquisitions and Takeovers Act 1975* (Cth), where the media industry will be a 'sensitive sector'. The Government's foreign investment policy applies across other sectors of the economy, including some of equal or greater sensitivity or economic importance than television or newspapers. For example, there are no specific limitations on foreign investment in Australian commercial radio licenses. Experience in the radio industry suggests that foreign investors increase the potential pool of media owners, and create increased competition in the sale of licenses.

2 Cross-Media Ownership

The cross-media ownership reforms will also provide increased scope for generating efficiencies, new sources of capital, and exploitation of new media opportunities. The *BSA* now permits transactions involving commercial radio licensees, commercial television licensees and Associated Newspapers,¹⁴ including cross-media transactions, to proceed in certain circumstances. These reforms introduce greater flexibility into the regulatory framework. They account

13 A commercial or subscription television broadcasting licensee must be a company formed in Australia: see ss 37 and 95 *BSA*. A foreign owner would therefore need to establish an Australian subsidiary to the licensee company.

14 An Associated Newspaper is a newspaper that is associated with a licence area as a consequence of circulation levels of the newspaper within the licence area: see s 59(2), (3), (4), (4A) and (4B) *BSA*.

for changes in industry structure, the emergence of new media, and allow media companies to obtain economies of scale and scope by sharing capital and expertise.

(a) *Cross-Media Disclosure Obligations*

As part of the reforms to the cross-media and foreign ownership restrictions, the Government has introduced measures to address stakeholders' concerns about the potential for conflicts of interest to occur in news reporting and commentary in the event of greater consolidation. Accordingly, the *BSA* imposes a general obligation on commercial television and radio licensees and newspaper publishers to disclose cross-media relationships to their audience or readership.¹⁵

There are two methods of disclosure:

- the 'business affairs' model, which is the predominant disclosure model, requires disclosure of a cross-media relationship whenever an entity broadcasts or publishes matter, other than advertising matter, that is wholly or partly about the business affairs of a cross-controlled media organisation;¹⁶ or
- a 'regular disclosure' model which commercial radio broadcasters may elect to use to disclose a cross-media relationship so that their prime time audience is reasonably likely to be aware of the cross-media relationship.¹⁷

Compliance with the disclosure requirement is a licence condition for television and radio licences.¹⁸ As newspapers are not subject to the licensing scheme in the *BSA*, enforcement of the disclosure requirement with respect to newspapers is by way of criminal offence.¹⁹

(b) *Media Diversity Protections*

The Government's reform of media ownership restrictions is consistent with, and recognises the importance of, the objective of promoting diversity in the media landscape.²⁰ As such, the law now includes specific safeguards to support the maintenance of diverse media voices in metropolitan and regional licence areas. Additional measures have also been enacted to ensure that adequate media services continue to be provided to Australia's rural and regional communities.

Transactions relating to media ownership may only proceed where:

- they involve more than two out of the three regulated forms of media in the same radio licence area (that is, commercial radio, commercial television and Associated Newspapers);

15 *BSA* div 5B, pt 5.

16 *BSA* ss 61BB, 61BD and 61BF.

17 *BSA* ss 61BC and 61BE.

18 *BSA* sch 2 contains standard conditions for commercial television and commercial radio broadcasting licensees. Sch 2 was amended by the *Broadcasting Service Amendment (Media Ownership) Act 2006* (Cth) to add a new standard condition for each licence regarding the licensee's compliance with their disclosure obligations pursuant to ss 61BB, 61BD and 61BE *BSA*.

19 *BSA* s 61BF(8).

20 *BSA* s 3(1)(a).

- at least the minimum number of media groups²¹ would remain in the relevant radio licence area after the transaction completes;²² and
- the transaction would not breach the existing licence holdings and reach limits (statutory control rules).²³

The minimum number of commercial media groups – or ‘voices’ – for mainland metropolitan areas is five, with four being the minimum for other licence areas. If a person undertakes a transaction that results in the numbers dropping below these levels, an ‘unacceptable media diversity situation’ will exist.²⁴ It is an offence to cause an unacceptable media diversity situation to come into existence, or to reduce numbers in a licence area where an unacceptable media diversity situation already exists.²⁵ The same conduct may also result in the imposition of a civil penalty.²⁶

To ensure compliance with the minimum number of separate media groups rule, s 61AU requires ACMA to establish a Register of Controlled Media Groups (‘the Register’). The Register identifies the ownership and control of media groups in each licence area.²⁷ It is an offence for a person to undertake a transaction that breaches the *BSA*’s media diversity rules, and ACMA may issue remedial directions to ensure that the person complies with the *BSA* in future.²⁸ The Register will be a tool that may be utilised by industry to ensure its compliance with the media diversity rules in any transaction they undertake.

Media diversity protections are further enhanced by the ‘two-out-of-three rule’ that restricts one company from owning radio, TV, and newspaper businesses in the same market, whether it be a metropolitan or a regional market.²⁹ This prevents a three-way media entity from being created within a single licence area. Any media merger, including one that is not a cross-media merger, will not be permitted if it will reduce the number of media groups in a licence area below the minimum level.

The key benefit of such clear limits on media ownership is the creation of an objective and transparent framework to protect media diversity. This approach ensures that there are a minimum number of commercial media platforms (supported by other platforms, such as national broadcasters, pay TV, community broadcasters, internet and non-local newspapers) through which information, entertainment and opinion can be obtained.

21 A ‘media group’ is a grouping of one or more of a commercial radio licence, a commercial television licence and an Associated Newspaper (media operations) where there is at least one person in a position to exercise control over each of the media entities in the media group and where the media operation complies with the statutory control rules: see the definition of ‘media group’ in s 61AA and the Table in s 61AC.

22 *BSA* s 61AB(1) and (2).

23 *BSA* s 61AD. See also the Statutory Control Rules contained in div 2 and 3 of pt 5 *BSA*.

24 See *BSA* s 61AB for the definition of ‘unacceptable media diversity situation’.

25 *BSA* s 61AG.

26 *BSA* s 61AH.

27 *BSA* s 61AV.

28 *BSA* ss 61AN, 61ANA.

29 *BSA* s 61AEA

These protections are particularly important for regional markets. Absent these requirements there is no guarantee that a cross-media merger proposal in a regional market would be blocked on competition grounds alone. Many regional licence areas are already serviced by four or fewer separate media entities, following many years of consolidation enabled by the former arrangements. In these regional markets, the new laws ensure that no further mergers or acquisitions may occur unless a new entrant has increased the number of media groups above the minimum number of voices.

3 *Special Measures for Regional Australia*

The Government recognises that regional Australia is extremely diverse, ranging from large and rapidly growing centres like the Gold Coast to small towns struggling to deal with drought. Large or small, communities in Australia's regions are facing significant environmental, economic, and demographic challenges. Such changes are a predominant concern to these communities, and it is vital for the Government to look out for their interests, which includes access to relevant information and opportunities.

To protect media diversity in Australia's regions, s 61AZJ of the *BSA* provides that cross-media mergers and acquisitions involving a commercial radio licence, a commercial television licence and an Associated Newspaper in the same licence area outside mainland state capitals must obtain prior clearance from the ACCC under s 50 of the *TPA*. Section 50 of the *TPA* provides that a person must not directly, or indirectly, acquire shares or assets of a company or person if the acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in a market. This includes a substantial market for goods or services in a region of Australia.³⁰

It is an offence under the *BSA* for a person who is party to the transaction, or is in a position to prevent the transaction from occurring, to fail to obtain prior clearance from the ACCC.³¹ Section 61AZK provides that the same conduct also constitutes a contravention of a civil penalty provision.

Since specific types of mergers have the potential to significantly reduce levels of competition and diversity in regional markets, entities must comply with the *TPA*. This provides additional protection in regional licence areas where a reduction in the number of separate media operations may have a more significant impact on both competition and diversity than in metropolitan areas.

(a) *Local Presence Obligations for Regional Radio*

In addition, the new laws protect jobs in regional radio by requiring ACMA to impose licence conditions on commercial radio broadcasting licensees to maintain existing levels of local presence if a 'trigger event' occurs.³² A trigger event occurs where:

- the commercial radio licence is transferred to a third party;

30 *TPA* s 50(6).

31 *BSA* s 61AZJ.

32 *BSA* s 43B.

- a new media group is brought into existence; or
- there is a change in controller of a media group, of which the commercial radio licensee is a part.³³

These licence conditions will operate alongside the local content licence conditions imposed under Division 5C of Part 5 to the *BSA*, and the obligations in relation to Local Content Plans ('LCPs').

Since 1 April 2007, regional commercial radio broadcasting licensees have been required to keep records of their existing levels of local presence.³⁴ This record keeping obligation is ongoing and will help licensees to maintain existing levels of local presence in their licence areas when a trigger event occurs.

With effect from 4 April 2007,³⁵ regional commercial radio broadcasting licensees that are affected by a trigger event must maintain the 'existing level of local presence'. This is defined by reference to the staffing levels, and studio and other production facilities that existed in the three months prior to the trigger event. However, the condition provides some flexibility for broadcasters in the way that they comply with the local presence obligation that arises upon the occurrence of a trigger event.

For staffing levels, the licensee must ensure that there is no material reduction in average monthly staffing levels in a financial year (or part thereof) when compared to the average staffing levels that existed in the three months prior to the trigger event. For studios and other production facilities, the licensee must ensure that there is no material reduction in the number of average monthly broadcast hours produced using studios and other production facilities in the licence area when compared with the number of average monthly broadcast hours produced using studios and other production facilities in the licence area during this three month period.

(b) *Local Content Obligations for Regional Commercial Radio*

The framework for maintaining diversity in regional commercial radio broadcasting upon a trigger event will also require a minimum amount of local news, weather, and information services.³⁶ The minimum level is prescribed in relation to the broadcast of local news and weather bulletins, local community service announcements and emergency warnings,³⁷ and will be incorporated into a licence condition for regional commercial radio broadcasters.³⁸ However, they are not intended to be onerous. These protections are designed to ensure that people who live in rural and regional areas continue to receive local content,

33 *BSA* s 61CB(3).

34 Pursuant to s 43(1) *BSA*, ACMA has determined new conditions to apply to regional commercial radio licensees: the *Broadcasting Services (Additional Regional Commercial Radio Licence Condition – Local Presence) Notice 22 March 2007*.

35 *Ibid*, and following the commencement of sch 2 to the *Broadcasting Services Amendment (Media Ownership) Act 2006* (Cth) on 4 April 2007.

36 *BSA* ss 61CD and 61CB.

37 *BSA* s 61CE.

38 *BSA* s 43C which provides that the default amount of material of local significance is 4.5 hours broadcast during daytime hours.

irrespective of what other mergers or movements in licence holders may occur as a result of the broader legislative changes. These minimum settings may be adjusted if it becomes apparent that they are too onerous for a particular licensee.³⁹

If the minimum local content requirements are not complied with, ACMA may take enforcement action under the *BSA*, such as issuing a remedial direction under s 141. Furthermore, licensees must also submit LCPs to ACMA for consideration and approval. In the LCP, the licensee must specify how they propose to meet the local content requirements.⁴⁰

This will ensure that regardless of any mergers that may take place, regional audiences will continue to receive relevant local news and information from the commercial broadcasters in their area.

(c) Local Content Obligations for Regional Aggregated Television Markets

The Government also recognises that there are legitimate public concerns about maintaining relevant and appropriate levels of local and regional news and information programs on both television and radio. Consequently, the media reforms require ACMA to impose obligations on all commercial television broadcasters in the regional aggregated commercial markets of Northern New South Wales, Southern New South Wales, regional Victoria, regional Queensland and Tasmania to ensure that these licensees broadcast a minimum level of material of local significance.⁴¹ The term ‘material of local significance’ is to be defined by ACMA, but must cover news that relates directly to the local area concerned.⁴² ACMA must ensure that the relevant licence condition is in force from 1 January 2008.⁴³

IV IMPLEMENTATION AND REVIEW OF THE MEDIA REFORMS

The Government is committed to ensuring the efficacy of Australia’s new media arrangements. In a sense, the reform process will be ongoing even after the key planks are laid out in legislation. This is partly a reflection of the fact that the media environment is dynamic and will continue to change in response to technological innovations and consumer demands

A Statutory Review Mechanisms

Ongoing monitoring and fine-tuning is important. Therefore, the new media laws include provisions for a range of statutory reviews to be conducted into the operation of the new media arrangements, including:

39 Ibid.

40 *BSA* 61CF.

41 *BSA* s 43A.

42 *BSA* s 43A(3).

43 *BSA* s 43A(1).

- the appropriate amount of material of local significance to be broadcast by commercial regional radio licensees;⁴⁴
- the allocation of new commercial television broadcasting licences in the lead up to the switchover to digital television;⁴⁵
- local content requirements imposed on commercial regional radio broadcasters in the wake of a 'trigger event';⁴⁶ and
- a review of the operation of the anti-siphoning scheme.⁴⁷

These reviews will enable ACMA, the Government, and Parliament to consider the practical experience of the laws with a view to making necessary refinements to the legislative framework. For example, the forthcoming review of local content and material of local significance requirements will allow ACMA to consider hard evidence about the effect of these provisions on licensees and regional communities. The process of ongoing reform and refinement will be open, accountable and transparent.

B The Digital Action Plan

Government, industry, and regulators also need to be in a position to respond and adapt to the complex and sometimes arbitrary forces of market demand, constant innovation, and abundant choices.

On 23 November 2006 the Government released its Digital Action Plan.⁴⁸ With the major legislative settings in place, attention is now turned to implementation. In this context, the Digital Action Plan sets out the next steps for implementing digital television in Australia. The goal is to eventually switch off the analogue service, currently planned to occur in 2010-2012.⁴⁹ The key features of the Government's plan include:

- creating a dedicated body, Digital Australia, which will be responsible for coordinating the efforts of Government, industry, manufacturers, ACMA and consumers in the switch from analogue to digital;

44 *BSA* s 43C(4).

45 *BSA* s 35A.

46 *BSA* s 61CT. The ACMA has been directed by the Minister to review local news and content requirements by 30 June 2007. In addition, ACMA is required to review each approved LCP at least once every three years: s 61CN *BSA*.

47 Due for completion by 31 December 2009. In addition, in accordance with the new 'use it or lose it' guidelines, ACMA will report annually to the Minister about the operation of the anti-siphoning list for the previous year; whether events have been 'used' in accordance with the guidelines; and whether changes should be made to the anti-siphoning list. The Government is committed to a 30 day public consultation period about any proposed changes.

48 Department of Communications, Information Technology and the Arts, *Ready, Get Set, Go Digital – A Digital Action Plan for Australia* (2006)

<http://www.dcita.gov.au/__data/assets/pdf_file/53496/Digital_Action_Plan_web.pdf> at 27 June 2007.

49 *Ibid.*

- consideration by Government of an ACMA report on all technical factors⁵⁰ that may affect the timetable for digital switchover, including whether switchover should occur nationally or region by region; and
- introducing new consumer protections via a digital television labelling scheme to be jointly developed by industry and Digital Australia for inclusion in industry codes of practice registered by ACMA under the *BSA*.

However, these are just the initial steps. The Digital Action Plan will be an interactive process, since the Government cannot anticipate every technical or other challenge that may be encountered in the transition to digital.

C Next Steps: Digital Content

One of the biggest growth industries in Australia is information and communications technology ('ICT'). Within this industry, a major source of innovation and growth is digital content.

The Australian Government is committed to the future of the ICT and digital content industries, but is also alive to the serious public policy issues that accompany digital content. To this end, the Government is developing a comprehensive Digital Content Strategy, which will consider the wider social, economic and cultural issues that are associated with digital content.

One of the drivers of new digital content is the internet, as witnessed by the proliferation of multi-media websites. The Government has a role to play in regulating the internet to protect Australian consumers. Presently a combination of legislation, regulation, education and technology regulates offensive and illegal material on the internet. The Government plans to strengthen its regulation of digital content by extending the current legislative safeguards⁵¹ to content delivered over convergent devices such as 3G mobile phones. It is intended that these new laws will require age restricted access where digital content is suitable only for adults, and empower the ACMA to take steps to prevent public access to particularly explicit digital content which would be classified X18+, or refused classification, by the Classification Board.

V CONCLUSION

The recent legislative changes have updated a somewhat outdated regulatory framework which governed the ownership and control of Australia's media organisations. Instead of controlling market structures, the new regulatory framework allows for efficiencies of scale and scope by existing industry players and also encourages new entrants, new investment and new services to contribute to diversity in a competitive environment. At the same time, these reforms respond to the needs of both metropolitan and regional audiences by promoting

50 Technical factors include digital signal coverage, the performance of digital television receivers (digital TV black spots), and possible use of spectrum following switchover.

51 Sch 5 *BSA* regulates offensive content delivered over the internet.

and protecting a diverse range of radio and television services offering entertainment, education and information.

The Government is confident that in the wake of this wide-ranging and significant legislative reform package, supplemented by targeted policy initiatives, Australia's media interests, and those of the Australian public, are well positioned to meet the challenges and exploit the opportunities presented by the digital communications revolution.