

## **SUBMISSION BY AUSTEREO PTY LIMITED**

### **Background**

This submission is made on behalf of Austereo Pty Limited ("Austereo") in response to the discussion paper issued by the Department of Broadband, Communications and the Digital Economy on 5 March 2010 relating to local content requirements for regional commercial radio.

Austereo jointly operates two radio stations in Newcastle with Southern Cross Media Australia Pty Ltd (NXFM and KOFM) and two radio stations in Canberra with the Australian Radio Network (FM 104.7 and MIX 106.3 FM).

Austereo fully supports the submission made by Commercial Radio Australia ("CRA") on behalf of the commercial radio industry in relation to this issue and wishes to make the following submissions on its own behalf.

### **Introduction**

Austereo agrees with the Minister that there is a need to ensure that Australians living in regional areas have access to content that reflects the culture and diversity of their local communities. The local content, local presence and trigger event related legislative provisions implemented to protect against a potential loss of local content and local presence in regional radio services allow for very little flexibility for broadcasters in complying with the requirements.

Austereo contends that allowing regional commercial radio broadcasters greater flexibility in complying with the legislative requirements would encourage innovation and reduce the heavy regulatory and administrative burden placed on broadcasters. It is Austereo's belief that this would increase the ability of regional commercial radio broadcasters to meet the objective of protecting local content and maintaining local presence in regional radio services.

The current legislative provisions in relation to trigger events and the consequential local presence licence condition impose perpetual restrictive operating conditions and unworkable compliance burdens on regional commercial radio broadcasters. It is Austereo's submission that the definition of "trigger event" should be narrowed and the local presence licence condition and additional content and reporting requirements should be abolished or at least be made subject to a maximum duration of 12 months in order to render their effect less onerous.

Further, it is Austereo's contention that the trigger event and resulting local presence licence condition should not apply to licence areas such as Newcastle and Canberra which contain large cities served by a number of commercial radio services where localism is unlikely to be threatened.

## **Key Issues in the Discussion Paper**

**Key issue 1- should greater flexibility be provided for regional commercial radio broadcasters required to provide "material of local significance"?**

Austereo would welcome greater flexibility in this area. Material broadcast on weekends does not currently count towards the "material of local significance" quota. This seems incongruous as regional commercial radio broadcasters naturally aim to broadcast programs at the time they would have the highest appeal and this is often at weekends, local sports coverage serves as an example. Austereo contends that the legislation should be amended so that licensees can count material broadcast on any 5 days of the week towards their licence condition obligations relating to "material of local significance".

Austereo believes that the requirement to comply with the local content provisions for 52 weeks a year is unduly onerous and does not take into account the fact that on-air staff are usually entitled to 6 weeks of annual leave and it is often not feasible to engage temporary staff to produce and/or present local programming in periods of leave. Nationally syndicated programming is often used during periods of leave.

Austereo submits that it would be more equitable for the requirement to broadcast "material of local significance" to apply for 46 weeks a year as opposed to 52 weeks. This approach would also be consistent with the obligations of regional commercial television licensees.

**Key issue 2- should certain "local material" requirements apply to remote and regional commercial radio broadcasters primarily providing racing services and regional radio services operating outside the Broadcasting Services Bands?**

Austereo supports the submissions made by CRA in relation to key issue 2.

**Key issue 3- should section 61CB(1) be consistent with the media control principles in the *Broadcasting Services Act 1992* ("BSA")?**

Austereo is strongly opposed to any change in wording that would broaden the trigger event provisions as these are, in Austereo's opinion, already overly burdensome. In Austereo's opinion, referring to a "change of control" rather than a "transfer" would broaden the trigger event provisions and Austereo does not support such a change. Austereo would only support such a change if the definition of trigger event were limited to situations where a cross media transfer has occurred.

**Key issue 4- how can existing requirements be modified to ensure the appropriate application of the trigger event related provisions? What types of events, if any, should be exempt from the trigger event requirements?**

The current definition of "trigger event" captures many types of changes which have nothing to do with media diversity or commitment to local content within a licence area and which apply irrespective of the size of the licensee's market. For example, the trigger event provisions apply to the following events:

- Intergenerational transactions that do not involve a sale of shares in a licensee company for a regional commercial radio licence.
- Formation of a new registrable media group only due to significant population changes in the licence area.
- Internal corporate restructures where the ultimate controller does not change.
- "Radio only" to "radio only" sales (e.g. the sale of a regional commercial radio licence to a person who holds no other media interests in the relevant licence area).
- Changes in existing joint venture arrangements where one joint venture party sells its stake in the licensee to the other joint venture party.

An illustration of the unsuitability of the current definition of "trigger event" is that Canberra FM Radio Pty Ltd ("Canberra FM"), Austereo's joint venture with ARN, has been subject to four trigger events since the introduction of the legislation but none of them resulted in any change to programming. Two of the trigger events occurred within two months as a result of changes in shareholding in a company listed on the Irish Stock Exchange which has no involvement in the operations of Canberra FM.

In instances such as those mentioned above, where there is obviously no threat to localism, the administrative burden of the legislative provisions is excessive and completely unwarranted. Canberra FM recently spent over 35 hours completing the annual LCP2A return required by the ACMA for each licence which highlights the difficulties for licensees in complying with the relevant provisions.

Austereo supports CRA's call to narrow the definition of "trigger events" to instances where a cross-media merger occurs. At a minimum, the definition of "trigger events" should be amended to exclude the events listed as dot points above. This would still allow for the protection of local content but without unjustifiable burdens being placed on regional commercial radio broadcasters.

**Key issue 5- for how long should broadcasters comply with the additional requirements imposed after a trigger event occurs? If a change to the current arrangements is proposed, what type of change should apply and why is it appropriate?**

The effect of the local presence provisions in the legislation is that, following a trigger event, stations may not decrease either the number of staff they employ or the local facilities they use. This imposes an unreasonable burden on licensees, especially as there is no end date for this provision.

These requirements obviously restrict the ability of regional commercial radio broadcasters to operate their businesses in an efficient and profitable way.

The requirement after a trigger event occurs to maintain the number of studios and production facilities that were used at a particular point in time is incongruous considering the occurrence of rapid enhancements in technology. Freezing staff levels at a minimum number is also unjustifiable as licensees must be free to implement changes in order to improve productivity. Austereo submits that if licensees are unable to take advantage of technological advancements and reduce labour costs where they see fit it is actually detrimental to the production of local content which counteracts the intent of the legislation.

Austereo is wary of increasing employment opportunities in Newcastle and Canberra in stronger economic periods due to the local presence requirements as a trigger event would lead to a permanent staff and production facilities freeze which would prove unsustainable in an economic downturn.

If regional commercial radio broadcasters are not able to manage their staff and other assets in a flexible manner in order to respond to changing market conditions, they are severely disadvantaged in comparison with other sectors of the media industry.

Regional licensees affected by a trigger event must also meet certain minimum service standards for local news and information; this is a costly obligation. Further, reporting and record keeping obligations associated with trigger events are unreasonable as they are costly and extremely time consuming.

Austereo supports CRA's submission that section 43B and Division 5C of Part V of the BSA should be repealed or at least be subject to a "sunset clause" so that the maximum duration of the local presence licence condition and the additional content and reporting requirements is 12 months.

### **Exemption for Larger Markets**

The trigger event requirements currently apply to the licence areas of Newcastle and Canberra which include major cities that are served by a number of commercial radio services. Programming in larger licence areas such as Newcastle and Canberra is primarily driven by competitive forces and, in order to be competitive, high quality local content must be nurtured as it is popular with listeners.

Austereo's jointly owned stations in Canberra and Newcastle have a very strong local orientation of the kind required to serve such competitive media markets and it is Austereo's submission that there is no threat to localism in these larger markets. If the trigger event requirements are not repealed, we suggest that they should not apply to Newcastle and Canberra.

## **Conclusion**

Austereo strongly believes that it is vital for regional commercial radio broadcasters to have greater flexibility in complying with the legislative requirements regarding local content and local presence. Further, Austereo believes that section 43B and Division 5C of Part V of the BSA should be repealed or at least subject to a 12 month "sunset clause".

The amendments set out above would encourage innovation and reduce the heavy regulatory and administrative burden placed on broadcasters which in turn would increase the ability of licensees to meet the objective of protecting local content and maintaining local presence in regional radio services.