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Broadcasting Amendment Bill 1989

Date Introduced: 1 November 1989
House: House of Representatives
Portfolio: Transport and Communications

Digest of Bill

Purpose

To allow the Australian Broadcasting Tribunal (ABT) to revoke, vary or impose licence conditions and issue certain directions where an adverse finding has been made against the suitability requirements of a radio or television licensee. The Bill will also allow a public radio or television licensee, or an applicant or potential applicant for a public licence who has been granted a temporary transmission permit, to transmit sponsorship and community service announcements.

Background

The ABT was established in 1977 and is an independent statutory authority responsible, through the Minister for Transport and Communications, to the Parliament. The ABT may grant, renew, suspend or revoke radio and television licences and impose conditions upon which, and the period for which, any licence is to be granted. The ABT also has power to approve or refuse certain share transactions where there are changes in ownership or control of licences and to order the divesting of interests held in contravention of the *Broadcasting Act 1942* (the Principal Act). The ABT's present membership consists of a chairperson, an acting vice-chairperson, four other members and an associate member. Members of the ABT are appointed by the Governor-General for up to five years and are eligible for re-appointment. Decisions are made by a majority of the votes of the members present and the chairperson of the meeting has a casting vote. The ABT's average staffing level in 1987-88 was 147. Expenditure in respect of the ABT in 1988-89 was \$9.994 million.¹

The ABT may, at any time, hold an inquiry into whether a licence should, in the public interest, be suspended or revoked. The criteria for suspension or revocation is whether a person is a fit and proper person and has the financial, technical and management capabilities necessary to provide an adequate and comprehensive service (the suitability requirements). Corresponding suitability requirements apply in relation to the granting, renewal, and transfer of a licence. The phrases 'fit and proper person' and 'financial, technical and management capabilities necessary to provide an adequate and comprehensive service' are not defined in the Principal Act. The scope of the terms is a matter for the ABT to determine on the basis of available case law,

statutory interpretation, and analysis of the facts of the case before it. An adverse finding by the ABT may result in a licensee having their licence revoked or suspended; not renewed; renewed for a period less than the maximum; or having conditions imposed on the licence.

Despite the range of sanctions available to the ABT, there has been criticism that the legislation is deficient in providing flexible mechanisms to punish and deter breaches of the Principal Act. One criticism has been that the main licensing sanctions are excessive. For example, if a licensee's unsuitability was due to the conduct or character of a person in a position to control the licensee company, or its operations, as was initially found to be the case with Allan Bond, sanctions available under the Principal Act may be too inflexible to allow any other option but the licensee ceasing to transmit. Another criticism has been that there have been no prosecutions for offences (apart from a Ministerial suspension of the licence of TVT - 6 Hobart for two hours of peak - time viewing in 1975), suggesting that the scope of operation of the offence provisions of the Principal Act are unclear.² A further criticism has been that many technical breaches of the Principal Act (e.g. content or classification provisions) attract the same penalties as the more serious breaches.

In July 1989, a Departmental discussion paper titled, *Review of Broadcasting Legislation* was released. Issues canvassed in the paper included program content, the need for objectives to be spelt out in the legislation; new methods of licence allocation; and sanctions. The discussion paper suggested that the range of sanctions available to the ABT could be expanded to include, for example, the making of probationary orders which could be directed either towards internal discipline or organisational reform and making orders which require the licensee to publicise the finding that a contravention has occurred. In contrast to these suggestions, a Report from the House of Representatives Standing Committee on Transport, Communications and Infrastructure, in November 1988, released a report titled *The Role and Functions of the Australian Broadcasting Tribunal*, and concluded that the current sanction powers available to the ABT are appropriate, and recommended that the ABT institute a system of monitoring broadcasts to detect breaches of program standards and licence conditions.³

The financial viability of Australian commercial television enterprises and the maintenance of current broadcasting standards has been the subject of recent media attention. In October 1989, the Nine network announced the termination of several programs and the retrenchment of 100 staff. The Ten network has removed two game shows and announced plans to save \$141 million over the next year with 349 staff to be retrenched. For the Seven network, three programs ceased and there were reports of 250 staff to be retrenched. The problems being faced by the industry have been attributed to a number of factors, including debt servicing (e.g. Bond Media Ltd has confirmed debts of approximately \$700 million); excessive prices being paid for some programs; falling share prices; static growth in advertising revenue; and poor financial management. Some media commentators have predicted that the financial difficulties of networks may lead to a fall in local drama content, regional production, and standards.⁴

Main Provisions

A radio or television licensee, or applicant for approval of a transaction that will change the ownership or control of a company holding a licence, will have failed to meet the 'suitability requirements' that apply to the licence if the licensee or applicant is no longer a fit and proper person to hold the licence or interests to which the transaction relates, or does not have the financial, technical or management capabilities to provide an adequate and comprehensive radio or television service (clause 3).

Clauses 7 – 10 require the ABT, when determining whether it should refuse to renew, revoke, or suspend a radio or television licence because of a failure to meet suitability requirements, to have regard to its proposed powers to revoke, vary or impose conditions on the licence, or give certain directions proposed by clauses 16 and 17 (see below). Where the ABT is satisfied that a licensee has failed to meet the suitability requirement that apply to the licence it may revoke, vary or impose conditions on the licence, or give certain directions proposed by clauses 16 and 17 (see below).

Clause 11 will allow a public radio or television licensee, or an applicant or potential applicant for a public licence, who has been granted a temporary transmission permit to broadcast sponsorship and community service announcements. Any money received from broadcasting sponsorship and community service information is to be used only for certain purposes, including the provision, maintenance or improvement of the broadcasting service to which the temporary licence applies and for the benefit of the broadcasting service generally.

Clauses 12 – 15 will modify the provisions that allow the ABT to extend the six month period within which an applicant, who has been refused approval of a transaction that would change the ownership or control of a company holding a radio or television licence, has to divest themselves of certain non – approved interests. Where the refusal was because the applicant failed to meet the suitability requirements such an extension is not to be granted. Where the ABT has refused to approve a transaction because the applicant failed to meet the suitability requirements it may revoke, vary or impose conditions on the licence, or on renewal of the licence, or give certain directions proposed by clauses 16 and 17 (see below).

Clause 16 provides that where the ABT has found that a radio or television licensee, or applicant for ABT approval of a transaction that would change the ownership or control of a company holding a licence, has failed to meet the suitability requirements, it may give a person certain directions. These include directions requiring the licensee to meet the suitability requirements that apply to the licence; or preventing the person from doing an act that is likely to have an adverse effect on: the licensee's ability to comply with the conditions of the licence, the licensee's operation, or the selection of programs to be broadcast. The persons to whom the ABT may give directions include a person in a position to exercise control of the licence; the licensee or applicant for ABT approval of a transaction that would change the ownership or control of a company holding a licence; and a person whose conduct, character

or capacity gives rise to, or contributes to, the licensee's or applicant's failure to meet the suitability requirements.

Where the ABT has found that a radio or television licensee, or an applicant for ABT approval of a transaction that would change the ownership or control of a company holding a licence, has failed to meet the suitability requirements and the ABT is satisfied that the holder of particular interests in a company gives rise to, or contributes to, the licensee's failure to meet the suitability requirements, the Tribunal may direct that the person divest themselves of specified interests in the company within 6 months to enable the suitability requirements to be met. The ABT may also prohibit the person from disposing their interest or related interests to a specified person or class of people (clause 17).

Clause 18 will allow public radio licensee's to broadcast community promotional material.

The amendments made by the Bill, in relation to a failure to meet the suitability requirements, will apply whether the ABT found that the failure occurred before or after the commencement of this clause, including where the facts on which the ABT makes that finding happened before commencement (clause 20).

References

1. Portfolio Program Estimates 1989 - 90, *Budget Paper No. 3*, p. 257.
2. Department of Transport and Communications, *Review of Broadcasting Regulation*, July 1989, p. 46.
3. House of Representatives Standing Committee on Transport, Communications and Infrastructure, November 1988, p. 98.
4. *Time Australia*, 23 October 1989, pp. 48 and 49.

For further information, if required, contact the Education and Welfare Group.

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This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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