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Broadcasting Services Amendment (Media Ownership) Bill 2002 [No. 2]

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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Broadcasting Services Amendment (Media Ownership) Bill
2002 [No. 2]

Kim Jackson
Law and Bills Digest Group
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Broadcasting Services Amendment (Media Ownership) Bill 2002 [No. 2]

Date Introduced: 5 November 2003

House: House of Representatives

Portfolio: Communications, Information Technology and the Arts

Commencement: Royal Assent

Purpose

To amend the Broadcasting Services Act 1992 (the BSA) to remove controls on the foreign ownership of Australian media and to allow the Australian Broadcasting Authority (ABA) to issue exemption certificates in respect of the cross-media ownership rules.

Background

The Broadcasting Services Amendment (Media Ownership) Bill 2002 was first introduced to the House of Representatives on 21 March 2002.¹ It was referred to the Senate Environment, Communications, Information Technology and the Arts Legislation Committee, which reported on 18 June 2002.²

The Bill was subject to forty-eight amendments in the Senate, six of which were rejected by the House of Representatives. The Senate insisted upon these amendments and the bill was laid aside by the House on 27 June 2003. The reintroduced Bill contains those amendments agreed to by both chambers and is thus substantially different to that originally presented in March 2002. The major changes relate to:

- material of local significance (proposed new sections 43A and 43B)
- the minimum number of media groups test (proposed new sections 61FA and 61FB), and
- local sports programming (proposed new clause 5A of Schedule 6).

Readers should consult the Parliamentary Library brief on Media Ownership Regulation³ for more detailed background on the issues.

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Main Provisions

Schedule 1 contains amendments to the BSA to remove restrictions on the foreign ownership of free-to-air and subscription television licences. **Item 1** repeals the objective of the Act 'to ensure that Australians have effective control of the more influential broadcasting services'. **Item 3** repeals Division 4 of Part 5 of the Act, which imposes limits on foreign company interests and directorships in commercial free-to-air television licences. **Item 10** repeals Divisions 3, 4 and 5 of Part 7. These impose limits on the foreign ownership of subscription television licences, describe the offences for breaches of the limits, and provide for notification procedures.

Item 1AA of Schedule 2 inserts a new section 43A which will ensure that the ABA requires regional aggregated commercial television broadcasting licensees to broadcast minimum levels of material of local significance, including local news. **Item 1AB of Schedule 2** inserts a new section 43B which will ensure that the ABA requires metropolitan commercial broadcasting licensees to broadcast minimum levels of material of local significance, including local news. The ABA is to effect these requirements by including a condition in the licences of the broadcasters. The condition is to define 'local area' and 'material of local significance'.

Item 1A of Schedule 2 inserts a new section 49A which prohibits contracts or arrangements for the transfer of commercial radio broadcasting licences that include any restrictions on the program format of the radio service.

Item 4 of Schedule 2 inserts a new Division 5A to provide for exemptions to the cross-media rules.

New section 61BA broadens the definition of 'newspaper' with regard to regional licence areas so that it may include some newspapers that are not in the Associated Newspaper Register maintained by the ABA.

New section 61C provides that a person who has the benefit of a cross-media exemption certificate is exempt from the cross media rules in section 60 or 61 so long as the conditions attached to the certificate are satisfied. Exemption certificates can only be granted in relation to a set of media operations that involves only two of the three media types (i.e. radio, television, newspapers) for a given licence area.

New section 61D allows the ABA to issue cross-media exemption certificates to persons who present applications in an approved form containing:

- a set of conditions to which the certificate is subject and an undertaking to satisfy those conditions, and
- organisational charts illustrating editorial decision-making responsibilities.

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The ABA may request additional information from the applicant if it considers that such information is required. An applicant who has been refused a cross-media certificate by the ABA may apply to the Administrative Appeals Tribunal for a review of the decision (see section 204 and **item 9**).

New section 61E requires the ABA to issue a cross-media exemption certificate to an applicant if it considers that:

- the conditions included in the application are sufficiently detailed and that they will provide an adequate means of continuously meeting the ‘objective of editorial separation’ for the set of media operations to which the certificate refers, and
- the ‘minimum number of media groups test’ is satisfied.

New section 61F defines what is necessary to meet the objective of editorial separation. This consists of separate editorial decision making for each of the entities that make up the set of media operations i.e. the television station and/or radio station and/or newspaper that make up the set. The objective is met if, and only if, each of the entities have:

- separate editorial policies
- organisational charts consistent with separate editorial decision-making, and
- separate editorial news management, news compilation processes and news gathering and news interpretation capabilities.

The sharing of resources and other forms of cooperation between entities is permitted providing these conditions are met.

New section 61FA sets out the minimum number of media groups test. **New section 61FB** provides that some media operations in remote areas may be exempt from the minimum number of media groups test.

New section 61FC establishes the ‘separately-controlled newspaper test’ which has the effect of ensuring that the holder of an exemption certificate will not be able to control more than one newspaper associated with a licence area of a commercial radio broadcasting licence.

New section 61N requires the ABA to maintain a Register of cross-media exemption certificates (including the conditions to which each is subject) and to make the Register available for inspection on the Internet. However, the ABA is not required to publish material which could reasonably be expected to prejudice substantially the commercial interests of a person and the ABA is satisfied that such prejudice outweighs the public interest in the publication of the material.

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New section 61P requires broadcasting licensees who are the subject of cross-media exemption certificates to ensure that the objective of editorial separation is continuously met in relation to their licence.

Comment: this provision operates in conjunction with **Items 13 and 16 of Schedule 2**, which make compliance with **new section 61P** a standard condition of commercial television and radio licences. Repeated breaches of these conditions can lead to loss of the licence under the provisions of section 143 of the BSA.

New sections 61PA to 61PG require the holders of cross-media exemption certificates to disclose the cross-media relationship to their audience or readership.

New sections 61Q to 61Y deal with the local news and information requirements for regional broadcasting licensees that have the benefit of a cross-media exemption certificate.

New section 61R sets out the minimum service requirements for local news, community service announcements and emergency warnings.

Comment: the news requirements are presented in two alternative formats – section 61R(1)(a) and (b), suitable for television and radio respectively (although the Bill does not stipulate a particular format for each medium). The format suitable for television requires five local news and weather bulletins each week, to be broadcast in prime time (between 5.00 pm to 10.30 pm) on different days, with each bulletin adequately reflecting matters of local significance. The format suitable for radio requires six or more bulletins each week, with at least five being broadcast in prime time (between 6 am to 10 am) on different days, with the bulletins (when considered together) adequately reflecting matters of local significance.

New section 61S empowers the ABA to define what is meant by the term 'local' with regard to specified licence areas. Such definitions are disallowable instruments.

New section 61U requires regional licensees who are the subject of cross-media exemption certificates to provide statements to the ABA containing:

- the average weekly number of local news and weather bulletins, and
- the average weekly number of minutes of local news and weather bulletins (both inside and outside of prime time)

for the year before the exemption certificate became active (referred to as the 'benchmark year'). The ABA is required to make these statements available for inspection on the Internet.

If the ABA is satisfied that a licensee who provided a statement under proposed section 61U has met the minimum service standards for local news in the benchmark year then, under **new section 61V**, it must require the licensee to:

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- meet or exceed the minimum service standards for local news, community service announcements and emergency warnings (as defined in **new section 61R**)
- ensure the number of, and time devoted to, local bulletins (both inside and outside prime time) must not be any less than the level provided in the benchmark year, and
- provide to the ABA relevant records on their performance under this section.

If the ABA is not satisfied that a licensee who provided a statement under proposed section 61U has met the minimum service standards for local news in the benchmark year then, under **new section 61W**, it must require the licensee to:

- meet or exceed the minimum service standards for local news, community service announcements and emergency warnings (as defined in **new section 61R**), and
- provide to the ABA relevant records on their performance under this section.

Comment: new sections 61V and 61W are designed to ensure that broadcasters who are already exceeding the minimum service standards do not reduce their services to the minimum required, while those who are not meeting the minimum standard raise them to the level required.

The requirement to meet these specified levels of local news content must be revoked by the ABA if licensee no longer holds an active cross-media certificate (**new section 61X**).

Items 12 to 16 amend Schedule 2 of the BSA to make the requirements placed upon licensees in new sections 61P, 61PA, 61PC, 61PD, 61U, 61V and 61W standard conditions of a broadcasting licence. Failure to abide by these conditions can ultimately lead to the cancellation of the licence under the provisions of section 143 of the BSA.

A person who believes that a licensee has breached the objective of editorial separation or the requirements for minimum levels of local news and information may lodge a complaint with the ABA. If the ABA decides that an investigation is warranted it must make the results of its inquiries available on the Internet (**items 7 and 8**). The ABA is not required to publish material that would substantially prejudice the commercial interests of a person unless the ABA believes that the prejudice is outweighed by the public interest.

Endnotes

- 1 The Digest for this Bill can be obtained from:
<http://www.aph.gov.au/library/pubs/bd/2001-02/02bd132.htm>
- 2 The report can be obtained from:
http://www.aph.gov.au/senate/committee/ecita_ctte/media_ownership/report/report.pdf
- 3 Available at: http://www.aph.gov.au/library/intguide/SP/media_regulations.htm.

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