

- can control a significant proportion of the operations of the company;
- can veto any action taken by the board of directors;
- can appoint, secure or veto the appointment of at least half of the board of directors;
- can exercise direction or restraint over any substantial issue affecting the management or affairs of the licensee or company.

Similar criteria apply to newspapers, their publishers and persons exercising

control of them. More than one person may be in a position to exercise control of a licence, a company or a newspaper. In general, an employee is not regarded as being in a position to exercise control. If you are in doubt about whether you are regarded as controlling a licence you are entitled to request an ABA opinion (see below).

**WHAT ARE THE PENALTIES FOR FAILING TO LODGE A NOTIFICATION?**

Failure to lodge a required notification

constitutes a breach of the Act.

If a breach relates to a commercial television broadcasting licence, the ABA can refer the matter to the Director of Public Prosecutions. If an offence is proven, a court can impose a fine of \$50 000. Similarly, for a commercial radio broadcasting licence a fine of \$5000 can be imposed for an offence.

**REQUESTS FOR ABA OPINIONS CONCERNING CONTROL OF LICENCES**

This leaflet is designed to explain the operation of provisions of the Act under which anyone may request a written opinion from the ABA about whether they are in a position to control a licence, a newspaper or a company.

ABA opinions provide persons affected or potentially affected by the ownership and control provisions of the Act a degree of regulatory certainty given the high penalties applying to breaches of those provisions.

**WHAT ARE ABA OPINIONS?**

People affected or potentially affected by the control provisions of the Act may apply to the ABA for a written opinion as to whether the control provisions apply to them in the circumstances they have outlined (see above for examples of control).

For example someone may wish to know whether a commercial opportunity can be acted on in a particular set of circumstances and may request a prior ABA opinion before proceeding further.

Opinions may be requested in advance of a proposed transaction, contract, agreement or other arrangement, or to confirm an applicant's understanding of an existing situation.

Once the ABA has given an opinion, the ABA and other Commonwealth agencies will be bound by the opinion. If the ABA gives an opinion that a person is not in a position to exercise control of a licence or newspaper then no action can be taken subsequently against the person under the Act on the basis that the person is in a position to exercise control of the licence or newspaper, providing that the circumstances advised to the ABA in the application remain substantially the same.

**HOW DO I REQUEST AN ABA OPINION?**

You should obtain an application form from one of the ABA's offices.

Your completed form may be lodged in person or by post or courier. You will be sent a confirmation of receipt of your application.

Your completed form must include a statement of your own opinion as to whether the person or company about whom the opinion is sought is, or would be, in a position to exercise control of the licence, newspaper or company in question.

The ABA may charge a fee for providing an opinion.

**WHAT ARE THE ABA'S OBLIGATIONS?**

The ABA may consider that additional information is required before an opinion can be given. If so, the ABA must make a written request for that information within 30 days of receiving your application.

The ABA is obliged to give you its opinion in writing as soon as practicable. In any case, it must provide its opinion within 45 days of receiving the application or the further information or else it is taken to have given an opinion at the end of that period that accords with your own opinion.

