

OWNERSHIP

TO INFORM THE INDUSTRY AND THE PUBLIC ABOUT THE OWNERSHIP AND CONTROL PROVISIONS OF THE NEW BROADCASTING SERVICES ACT 1992, THE ABA HAS ISSUED THREE FACT SHEETS. EDITED VERSIONS OF THESE FOLLOW BELOW. THEY ARE INTENDED AS A GUIDE ONLY AND SHOULD NOT BE RELIED UPON IN PLACE OF READING THE ACT ITSELF. THE ACT IS AVAILABLE FROM COMMONWEALTH GOVERNMENT BOOKSHOPS. A SUMMARY OF AND COMMENTARY ON THE BROADCASTING SERVICES ACT 1992 PRODUCED BY THE DEPARTMENT OF TRANSPORT AND COMMUNICATIONS WILL BE AVAILABLE IN THE NEAR FUTURE.

A SUMMARY OF THE CONTROL PROVISIONS OF THE BROADCASTING SERVICES ACT 1992

This leaflet is designed to summarise the main ownership and control limits and related provisions of the new Act. These rules apply to commercial broadcasting licences and licensee companies, to persons (including companies) who control them and to directors of such companies.

CROSS-MEDIA LIMITATIONS (SS.60 AND 61 OF THE ACT)

The cross-media rules were introduced to prevent common ownership of commercial radio, commercial television or newspaper outlets within a particular community.

The new Act's cross-media limits for control are similar to those under the old *Broadcasting Act 1942* while those for directorships and combinations of control and directorships are more exacting.

A person must not be in a position to exercise control of:

- both a commercial television broadcasting licence and a commercial radio broadcasting licence which have the same licence area; or
- either a commercial television or radio broadcasting licence and a newspaper associated with the licence area of such a licence. [This limit only applies to English language newspapers published on four or more days per week and circulated primarily by way of sale.]

For a newspaper to be associated with a licence area it must have more than 50% of its circulation within the licence area. The ABA maintains a register of such newspapers.

A person must not be a director of:

- a company in a position to exercise control of a commercial television

broadcasting licence and a company in a position to exercise control of a commercial radio broadcasting licence that has the same licence area; or

- a company in a position to exercise control of a commercial television or radio broadcasting licence and a company in a position to exercise control of a newspaper associated with the licence area of such a licence.

Similarly, anyone who controls a commercial radio or television broadcasting licence or a newspaper may not be a director of a company that controls another media interest of a different kind in the same licence area.

LICENCE AREA AND AUDIENCE REACH LIMITS (SS.53 TO 56 OF THE ACT)

A person must not be in a position to exercise control of:

- commercial television broadcasting licences whose total licence area population exceeds 75% of the population of Australia;
- more than one commercial television broadcasting licence in the same licence area;
- more than two commercial radio broadcasting licences in the same licence area.

A person may not hold a directorship in two or more companies which between them exceed these limits. Similarly, anyone who controls a licence or licences may not be a director of another company that controls a licence or licences if control of the combination by a single person would be prohibited.

Exception: In licence areas where there is only one commercial television broadcasting licence, the ABA may, in

certain circumstances, permit that licensee to provide a second commercial television broadcasting service.

LIMITATIONS ON FOREIGN PERSONS

The Broadcasting Services Act, unlike the old Act, places no restrictions on foreign control of commercial radio broadcasting licences or foreign directorships in companies which control such licences.

A foreign person must not:

- be in a position to exercise control of a commercial television broadcasting licence;
- have company interests in a commercial television broadcasting licence exceeding 15%.

Two or more foreign persons must not have company interests in a commercial television broadcasting licence exceeding 20%.

Not more than 20% of the directors of a commercial television broadcasting licensee may be foreign persons.

ROLE OF THE ABA

The ABA's role in the regulation and administration of the ownership and control provisions of the Act differs considerably from that of its predecessor under the old Act.

The ABA is charged with the responsibility to deal effectively with any breaches of the ownership and control rules established by the Act.

Acquisitions of controlling interests in commercial licences, through share transactions, the transfer of licences or in any other ways are not subject to approval by the ABA.

On application the ABA is required to provide a written binding opinion about

whether a person is in a position to exercise control of a licence, a newspaper or a related company.

On application, the ABA may give prior approval to temporary breaches for specified periods of all of the control and directorship limits outlined above except the limits on foreign control of commercial

television broadcasting licences.

The ABA may give a notice to persons in breach of any of the ownership and control provisions of the Act specifying the time in which the breach must be remedied. Under certain circumstances the ABA may grant one extension of time to comply with such a notice.

The ABA must keep a register containing much of the information it acquires (including all annual notifications of control and notifications of changes to control of licences) and certain kinds of decisions it makes in monitoring the ownership and control of commercial broadcasting.

NOTIFICATION OBLIGATIONS OF COMMERCIAL LICENSEES AND CONTROLLERS

This leaflet is designed to explain the reporting requirements that the Act places on commercial television and radio broadcasting licensees and persons in a position to control such licences.

These notification requirements replace the detailed notification and application processes which were part and parcel of the previous Act, the *Broadcasting Act 1942*. The rationalisation and simplification of the ownership and control reporting requirements is consistent with the Act's regulatory policy of minimising financial and administrative burdens on providers of broadcasting services.

WHO HAS TO NOTIFY THE ABA AND WHEN?

Annual notifications:

Within three months of the end of each financial year, each commercial television broadcasting licensee and each commercial radio broadcasting licensee must provide the ABA with the following information:

- details of persons who were in a position to exercise control of the licence;
- the name of each person who was a director of the licensee; and
- the name of each foreign person who was a director of the licensee at the end of that financial year.

Within three months of the end of each financial year, each person who is in a position to exercise control of a commercial television broadcasting licence or a commercial radio broadcasting licence must provide the ABA with details of any company interests that the person had at the end of the financial year in a newspaper that is associated with the licence area of the

licence. Note that the Act defines 'newspaper' to mean a newspaper that is in the English language, is published on at least four days each week and whose circulation is at least 50% by way of sale.

Notifications of changes in control:

Each commercial licensee must notify the ABA that a person has come to be, or ceased to be, in a position to exercise control of the licence within seven days of the licensee becoming aware of the event.

Similarly, a person who has come to be, or ceased to be, in a position to exercise control of a commercial licence must notify the ABA within seven days of the licensee becoming aware of the event.

All notifications should be in writing in a form approved by the ABA.

Note that ABA approval is not required for changes in control.

WHAT WILL THE ABA DO WITH THIS INFORMATION?

These reporting requirements have been designed to provide the ABA with the information it needs to monitor and enforce the ownership and control limits which the Act defines (see above).

The ABA maintains a register of all notifications provided by licensees and controllers.

The register is open for public inspection and a person is entitled to be given a copy of, or an extract from, any entry in the register. The ABA may charge fees for these services.

WHAT IS CONTROL?

The phrase 'in a position to exercise control' is peppered through the ownership and control provisions of the Act. Fundamental to the operation of these provisions is a wide ranging definition of control.

Control is intended to cover various formal and informal arrangements, including trusts, agreements, understandings and practices under which a person comes to be in a position to exercise control over a broadcasting service licence, a newspaper or a company. Schedule 1 to the Act contains a legislative essay entitled 'Control and Ownership of Company Interests' which provides a more detailed discussion of the definition of control.

Company interests are not restricted to shareholding and share voting interests but include dividend interests and winding-up interests.

WHAT ARE SOME EXAMPLES OF CONTROL?

This summary does not take the place of Schedule 1 to the Act to which you are referred for more information.

Normally, if a person has company interests exceeding 15%, the person is regarded as being in a position to exercise control of the company, unless there is proof to the contrary. This rule does not apply if another unrelated person (i.e., a person who is not an 'associate') has company interests in the same company exceeding 50%. A detailed definition of 'associate' can be found in section 6 of the Act.

Holding company interests is not the only way to be in a position to exercise control. Some other examples are where the person:

- is the licensee;
- can control the licensee;
- can control the selection or provision of a significant proportion of the programs broadcast by the licensee (program supply agreements are exempted);
- in the case of a non-licensee company