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THE PARLIAMENT OF THE COMMONWEALTH  
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HOUSE OF REPRESENTATIVES

BROADCASTING AMENDMENT BILL (NO.2) 1990

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Transport and  
Communications, the Hon Kim C Beazley MP)



BROADCASTING AMENDMENT BILL (NO.2) 1990

OUTLINE

This Bill amends the Broadcasting Act 1942 (the Act) to improve the efficiency of administration of, and the effectiveness of, ownership and control and licensing provisions in the Act.

The main measures in the Bill will -

- . change the prescribed interest definition for commercial television licences to exclude loan interests and increase the threshold for shareholding interests from 5% to 15% (except in the case of the newspaper/television cross-media ownership limit) (clauses 11(b) and (c), 13(b) to (e), 14, 18, 24(a), (b) and (c), 25(d) to (f) and (h) to (k), 27, 28, 29 and 32);
- . change the share transactions approval process to only require Australian Broadcasting Tribunal inquiry into, and approval of, transactions which result in the acquisition of a prescribed interest, a change in actual control or possible breaches of the foreign ownership conditions; reduce reporting requirements to the Tribunal and introduce a 6 month time limit on Tribunal inquiries into approval of transactions (clauses 19, 20, 21(a), (b) and (d), 23, 24(d) to (k), 25(a), (b) and (g), 30 and 33);
- . introduce a requirement that licensees notify the Tribunal of persons who secure actual control of the licensee (clauses 22 and 26);
- . clarify the definition of control of a company and introduce an associate provision (clauses 11(a) and 15 to 17);
- . extend the maximum licence renewal period for licences other than special event limited licences from 3 to 5 years and require certain joint renewal inquiries for commercial licensees to only be conducted with the consent of those affected (clauses 3, 5, 21(c) and 25(c)); and
- . include remedial provisions to ensure that certain networking arrangements with licensees do not breach relevant ownership and control limits or require prior Tribunal approval (clauses 4, 6, 7, 9, 12 and 13(a)).

## **FINANCIAL IMPACT**

The Bill is expected to have no significant impact on Commonwealth expenditure or revenue. The amendments will assist in reducing the Australian Broadcasting Tribunal's backlog of licence renewals and share transaction inquiries. They will also allow existing Tribunal resources to be applied to other functions more directly related to actual performance of licensees.

## **ABBREVIATIONS**

The following abbreviations are used in this Explanatory Memorandum:

the Act:                   the Broadcasting Act 1942  
the Amending Act:   the Broadcasting Amendment Act (No.2) 1990  
the Tribunal:       the Australian Broadcasting Tribunal.

## **NOTES ON CLAUSES**

### **Clause 1 - Short title etc.**

This clause provides for the citation of the Broadcasting Amendment Act (No.2) 1990 and provides that in the Amending Act, 'Principal Act' means the Broadcasting Act 1942.

### **Clause 2 - Commencement**

This clause provides for the commencement of provisions of the Amending Act.

Clause 2(1) provides for certain measures in the Amending Act to commence upon Royal Assent.

Clauses 2(2) and (3) provide for the retrospective commencement of certain minor amendments in Schedule 1 which correct drafting errors.

Under clauses 2(4) and (5) the following measures commence 6 months after the date of Royal Assent or, if a date is Proclaimed before then, on that date -

- .       the provisions changing the prescribed interest definition for television shareholding interests to exclude loan interests and increase the threshold for shareholding interests from 5% to 15%;
- .       the provisions changing the share transactions approval process; and

- . the provisions requiring notification of persons who come to be in a position to exercise control of the licensee.

These measures are given 6 months delay before commencement to enable the Tribunal to prepare new forms, implement new procedures and make other administrative changes to meet the new requirements created by the amendments. If the necessary changes are made before 6 months elapse, clause 2(4) provides a mechanism to enable an earlier Proclamation.

### **Clause 3 - Ordinary inquiries**

Section 17C of the Act requires the Tribunal to hold an inquiry before exercising its 'substantive powers' under the Act. Subparagraph 17C(6)(b)(i) provides that the regulations under the Act may provide for the holding of joint ordinary inquiries into the exercise of 2 or more powers by the Tribunal.

This clause inserts a new subsection 17C(6B) to require the Tribunal to obtain the consent of the affected licensees before holding a joint inquiry into the renewal of 2 or more commercial licences whose service areas do not overlap. The new subsection will ensure that consent is obtained before such joint inquiries are held, for example, where there is a substantial amount of common programming, or the licences are commonly owned or otherwise linked by a networking arrangement. In these circumstances, a joint inquiry will enable the Tribunal to streamline its licence renewal process by hearing renewal issues common to all related licences in a single joint inquiry. Issues specific to a particular licence, such as the nature and extent of local programming, could be considered individually, but as part of a joint inquiry.

A joint inquiry into the renewal of licences not having the same service area will usually only be possible where the relevant renewal periods have been aligned. New subsection 87(2AB) inserted by clause 5(1)(c) provides a mechanism for aligning renewal periods with the consent of affected licensees.

### **Clause 4 - Interpretation**

Section 80 of the Act provides definitions of terms used in, and rules for interpretation of, Part IIIB of the Act.

This clause inserts a definition of "networking agreement" in subsection 80(1) for the purposes of the amendments in new subsections 89A(14), 89B(7) and 89CA(6) (clauses 6, 7 and 9). These amendments create an exemption in relation to networking agreements from the requirement for prior Tribunal approval of participation in the benefits of, or the exercise of any of the powers or authorities granted by, a licence.

The new definition requires a networking agreement to be in writing and to be lodged with the Tribunal in order to come within the exemption referred to in the previous paragraph.

#### Clause 5 - Duration

Section 87 of the Act provides for the duration of licences granted and renewed under the Act. Subsection 87(2) provides that subject to the Act and certain regulations, a licence is renewed for 3 years or such lesser period (not less than 12 months) specified in the licence, but the Tribunal shall not specify a lesser period unless it is satisfied that the circumstances justify its so doing.

Clause 5(1)(a) amends subsection 87(2) to increase the licence renewal period from 3 to 5 years.

Clause 5(1)(b) omits from subsection 87(2) the requirement that the Tribunal not specify a period of renewal less than the maximum unless satisfied the circumstances justify it, but the requirement is re-enacted by clause 5(1)(c).

Clause 5(1)(c) inserts new subsections (2AA) and (2AB) in section 87. New subsection (2AA) re-enacts the requirement deleted by clause 5(1)(b).

New subsection (2AB) provides that circumstances justifying the Tribunal specifying a less than maximum renewal period for a commercial licence can include where the Tribunal is satisfied that the shorter period is likely to enable a future renewal inquiry to be conducted as a joint ordinary inquiry and the licensee consents to the lesser period.

New subsection (2AB) is expressed to be 'without limiting the generality of subsection (2AA)'. It is not intended to create an implication that the circumstances will not justify the Tribunal specifying a less than maximum period unless the licensee consents in any case other than that contemplated by new paragraph (2AB)(a).

New subsection (2AB) will enable the Tribunal to align renewal periods for different licences so that joint inquiries can be held, for example, where there is a substantial amount of common programming or the licences are commonly owned or otherwise linked by a networking arrangement. For more details, see the notes on clause 3.

Subsection 87(2C) of the Act enables regulations to be made specifying grant and renewal periods for new categories of limited licence specified in regulations under subsection 81C(1).

Clause 5(1)(d) makes a minor amendment to subsection 87(2C) consequential upon the insertion of new subsection 87(2AA) by clause 5(1)(c).

Clause 5(1)(e) amends paragraph 87(2C)(b) to provide that the renewal period specified in regulations for new categories of limited licence may not exceed 5 years, rather than 3 years.

Clause 5(2) is a transitional provision which ensures that the increase in the renewal period from 3 to 5 years applies to licences in force under the Act upon commencement other than -

- . licences that had been renewed for a period less than 3 years; and
- . licences which would have expired but continue in force under subsection 87(3) because the Tribunal has commenced, but not completed, an inquiry into their renewal.

In some cases, the Tribunal may have renewed a licence for a period less than 3 years to enable the next renewal for that licence to be held as a joint inquiry with an inquiry into the renewal of another licence.

Clause 5(3) is a further transitional provision which gives the Tribunal a discretion, for a period of 3 months after commencement, to direct that a licence renewed for a period less than 3 years continue for an extended period, not greater than 2 years, specified in the direction. This provision will enable the next renewal inquiry for licences referred to in the previous paragraph to still be held as a joint inquiry.

#### **Clause 6 - Transfer of commercial licences**

Paragraph 89A(1)(a) of the Act enables a commercial licensee to transfer the licence to another person with the Tribunal's consent.

The power of the Tribunal to consent to a transfer under subsection 89A(1) is a substantive power (paragraph 17A(2)(e)). Where the Tribunal proposes to exercise any of its substantive powers under the Act, the Tribunal must hold an inquiry (subsection 17C(1)).

New subsections 90JA(3) to (3B) and 92FAA(3) to (3B) (inserted by clauses 21(a) and 25(a)) place a six month time limit on Tribunal inquiries into commercial licence share transactions.

This clause adds new subsections 89A(11), (12) and (13) which place a similar time limit on Tribunal inquiries into giving consent to commercial licence transfers.

New subsection 89A(11) deems the Tribunal to have consented to the transfer of a commercial licence where it has not made a decision 6 months after the inquiry by the Tribunal into the application for consent began, or at the end of that period extended under new subsection 89A(12).

New subsection 89A(12) enables the Tribunal to extend and make repeated further extensions of the period in new subsection 89A(11) to a particular date, where the Tribunal considers it necessary to enable a matters or matters relevant to the inquiry to be dealt with.

New subsection 89A(13) imposes a measure of discipline on the Tribunal's power to extend and make further extensions by requiring it to give written reasons for the extension to the date chosen.

Paragraph 89A(1)(b) of the Act enables a commercial licensee, with the Tribunal's consent, to admit another person to participate in any of the benefits of the licence or to exercise any of the powers or authorities granted by the licence.

On 21 November 1989, the Solicitor-General provided an Opinion to the Tribunal in relation to certain draft affiliation agreements. These draft agreements provided for the supply of programs by companies representing commercial television networks to regional licensees in approved markets which are proceeding to direct aggregation of existing regional commercial television service areas (see Part IIIC of the Act).

The substance of the Solicitor-General's opinion was that the draft affiliation agreements would, if implemented, result in a breach of -

- . the 60% reach limit in paragraph 92(1)(a) (in this regard, see the comments on clause 12); and
- . the prohibition in paragraph 89A(1)(b) of the Act.

The Solicitor-General advised that "a commitment by the holder of a commercial licence to the making to another person of regular payments calculated by reference to the volume of revenue generated under the licence must, as a matter of ordinary language, constitute admission of the recipient to participation in the benefits of the licence".

The Solicitor-General was also of the view that "the formation of a relationship whereby the holder of a commercial licence gives ongoing de jure or de facto control of a substantial part of the programming content of its broadcasts under the licence to another person constitutes admission of that person to participate in the powers and authorities granted by the licence".

This clause adds new subsections 89A(14) and (15) to make it clear that certain program supply agreements and copyright arrangements do not come within the terms of paragraph 89A(1)(b) and thereby require Tribunal consent.

New subsection 89A(14) exempts from the terms of paragraph 89A(1)(b) a party to a networking agreement, or a person holding a direct or indirect interest in the party, who

supplies programs to a commercial licensee under the agreement.

"Networking agreement" is defined in subsection 80(1) (clause 4).

The exemption only applies to the extent the party or interest holder would have been taken to come within paragraph 89A(1)(b) by the matters in new paragraphs 89A(14)(a) to (c); ie. the terms of the agreement relating to the supply of the programs, a business relationship created by those terms or the dependence of the licensee on the supply of the programs for the provision of the licensee's service.

New subsection 89A(15) exempts from the terms of paragraph 89A(1)(b) a person receiving payments of a proportion of the holder's gross earnings for the purpose of distribution to copyright owners and the copyright owners themselves.

The exemption would protect arrangements for distribution of royalties to performing artists and other copyright holders, but only applies to the extent the person or copyright owner would have been taken to come within paragraph 89A(1)(b) because of the payments or distribution.

#### **Clause 7 - Transfer of supplementary radio licences**

Paragraph 89B(1)(b) of the Act enables a supplementary radio licensee, with the Tribunal's consent, to admit another person to participate in any of the benefits of the licence or to exercise any of the powers or authorities granted by the licence.

This clause adds new subsections 89B(7) and (8), which are similar to new subsections 89A(14) and (15) to be added by clause 6, to make it clear that certain program supply agreements and copyright arrangements do not come within the requirements for Tribunal consent in paragraph 89B(1)(b) (for more detailed explanation see the notes on clause 6).

#### **Clause 8 - Transfer of public licences**

Subsection 89C(1) of the Act enables a public licensee, with the Tribunal's consent, to admit another person to participate in any of the benefits of the licence or to exercise any of the powers or authorities granted by the licence.

This clause adds new subsection 89C(4) which is similar to new subsection 89A(15) to be added by clause 6, to make it clear that certain copyright arrangements do not come within the requirements for Tribunal consent in paragraph 89B(1)(b) (for more detailed explanation see the notes on clause 6).



#### **Clause 9 - Transfer of remote licences**

Paragraph 89CA(1)(b) of the Act enables a remote licensee, with the Tribunal's consent, to admit another person to participate in any of the benefits of the licence or to exercise any of the powers or authorities granted by the licence.

This clause adds new subsections 89CA(6) and (7), which are similar to new subsections 89A(14) and (15) to be added by clause 6, to make it clear that certain program supply agreements and copyright arrangements do not come within the requirements for Tribunal consent in paragraph 89CA(1)(b) (for more detailed explanation see the notes on clause 6).

#### **Clause 10 - Transfer of limited licence**

Paragraph 89CB(1)(b) of the Act enables a limited licensee, with the Tribunal's consent, to admit another person to participate in any of the benefits of the licence or to exercise any of the powers or authorities granted by the licence.

This clause adds new subsection 89CB(7), which is similar to new subsection 89A(15) to be added by clause 6, to make it clear that certain copyright arrangements do not come within the requirements for Tribunal consent in paragraph 89CB(1)(b) (for more detailed explanation see the notes on clause 6).

#### **Clause 11 - Interpretation**

Section 89E of the Act provides definitions of terms used in, and rules for the interpretation of, Part IIIBA of the Act.

Clause 11(a) amends the definition of 'control' in subsection 89E(1) to make it clear that 'control' when used in relation to a company, includes both deemed (section 89K) control and actual (new section 89JA - inserted by clause 15) control.

Clauses 11(b) and (c) respectively amend the definition of 'interest' and omit the definitions of 'financial interest' and 'loan interest' in subsection 89E(1). These amendments are consequential upon the exclusion of financial interests from the definition of prescribed interest for a commercial television licence (clause 13(d)).

#### **Clause 12 - Insertion of new section**

The 60% population reach television prescribed interest limit prohibits a person from holding a prescribed interest in commercial licences whose service area populations together exceed 60% of the declared population of Australia (paragraph 92(1)(a) of the Act).

The television/radio cross-media prescribed interest limit prohibits the holding by a person of a prescribed interest in a commercial radio licence and in a commercial television licence having more than a 30% service area population overlap (subsection 92JB(1) of the Act).

The television/newspaper cross-media prescribed interest limit prohibits the holding by a person of a prescribed interest in a commercial television licence and an associated newspaper (subsection 92JB(2) of the Act).

On 21 November 1989, the Solicitor-General provided an opinion to the Tribunal in relation to certain draft affiliation agreements. These draft agreements provided for the supply of programs between companies representing commercial television networks and regional licensees in approved markets proceeding to direct aggregation of existing regional commercial television service areas (see Part IIIC of the Act).

The substance of the Solicitor-General's opinion was that the draft affiliation agreements would, if implemented, result in a breach of -

- . the 60% reach limit in paragraph 92(1)(a); and
- . the prohibition in paragraph 89A(1)(b) of the Act (in this regard, see the comments on clause 6).

One of the criteria for holding a 'prescribed interest' in a commercial television licence is that the person is 'in a position to exercise control, either directly or indirectly, of the licence' (paragraph 89F(2)(b) of the Act). Control can arise through formal or informal arrangements, whether or not having legal or equitable force (subsection 89E(1) of the Act).

One of the criteria for being in a position to exercise control of a commercial licence is that a person is in a position to exercise control of the 'operations of the licence' or the 'selection or provision of programs to be broadcast pursuant to the licence' (paragraph 89H(1)(c) of the Act).

The Solicitor-General was of the opinion that the practical dependence of a regional licensee on a network for all but an insubstantial part of its programming would constitute defacto control giving rise to a prescribed interest, both under the general terms of paragraph 89F(2)(b) and the specific terms of paragraph 89H(1)(c). The defacto control arises not simply from the terms of the arrangements, but also its commercial and practical context. The commercial and practical consequence noted by the Solicitor-General was that, within an aggregated commercial television service area, a regional licensee would be forced by commercial necessity to enter into an affiliation agreement with one or another of the networks and, having entered into such an

agreement, would be forced by commercial necessity to rely on the network almost exclusively in the selection and provision of programs.

This clause inserts a new section 89EA in the Act to exempt from the operation of relevant television reach and cross-media limits control of affiliate licensees which would otherwise arise as a result of program supply under networking arrangements.

New subsection 89EA(1) contains definitions of certain terms for the purposes of the new section.

The term 'competing licensee' includes both a commercial television licensee with competition from one or more other commercial television licensees and a commercial television licensee in an approved market proceeding immediately towards aggregation.

The definition of 'networking agreement' confines the type of agreement exempted to a written agreement lodged with the Tribunal providing for the supply of programs to a competing licensee.

New subsection 89EA(2) exempts a party to a networking agreement, or a person holding a direct or indirect interest in the party, who supplies programs to a competing licensee under the agreement, from being taken to have a prescribed interest in the competing licensee's licence for the purposes of the relevant television reach and cross-media limits.

The exemption applies only to the extent the party or interest holder would have been taken to have the prescribed interest by the matters in new paragraphs 89EA(2)(a) to (c); ie. the terms of the agreement relating to the supply of programs, a business relationship created by those terms or the dependence of the licensee on the supply of the programs for the provision of the licensee's service.

Subsection 92C(1) of the Act prohibits a person from being a director of 2 or more companies that are in a position to exercise control of licensees whose service area populations exceed 60% of the declared population of Australia.

Subsection 92JD(1) of the Act prohibits a person from being a director of a company in a position to exercise control of a commercial television licence and a company in a position to exercise control of a commercial radio licence.

Subsection 92JD(2) of the Act prohibits a person from being a director of a company in a position to exercise control of a commercial television licence and the publisher, or director of a company in a position to exercise control, of an associated newspaper.

New subsection 89EA(3) exempts a company which supplies programs to a competing licensee under a networking agreement from being taken to be in a position to exercise control of

the licence for the purposes of the television reach and cross media directorship limits in subsections 92C(1) and 92JD(1) and (2) of the Act.

The exemption applies only to the extent that the company would have been taken to be in a position to exercise control because of the matters in new paragraphs 89EA(3)(a) to (c), which are the same as the matters in new paragraphs 89EA(2)(a) to (c).

### **Clause 13 - Prescribed interests**

Section 89F of the Act creates rules which establish when a person has a prescribed interest in a commercial licence or newspaper. The prescribed interest concept is relevant to the radio and television ownership and control limits (sections 90C and 92), the cross-media ownership and control limits (section 92JB) and the share transaction approval scheme (sections 90J and 92F).

Clause 13(a) amends subsection 89F(2), which provides the rules for determining when a person has a prescribed interest in a commercial television licence, to make a minor change consequential upon the television networking exemption inserted by new subsection 89EA(2) (clause 12).

Paragraph 89F(2)(c) provides that a person has a prescribed interest in a commercial television licence if the person is in a position to exercise control of more than 5% of the general meeting votes in the licensee.

Clause 13(b) increases the level of general meeting votes required to amount to a prescribed interest from 5% to 15%.

Clause 13(c) makes a technical amendment to paragraph 89F(2)(c), consequential upon clause 13(d).

Paragraph 89F(2)(d) provides that a person has a prescribed interest in a commercial television licence if the person holds more than 5% of the financial interests in the licensee. 'Financial interest' is defined in subsection 89E(1) to mean a shareholding or loan interest.

Clause 13(d) omits the financial interest test in paragraph 89F(2)(d).

Paragraph 89F(2)(e) provides that a person has a prescribed interest in a commercial television licence if the person holds more than 5% of the shareholding interests in the licensee.

Clause 13(e) increases the level of shareholding interests required to amount to a prescribed interest from 5% to 15%.

**Clause 14 - Shareholding interests and voting interests**

Subsections 89G(3) and (4) of the Act provide rules which establish when a person has a loan interest in a commercial television licensee for the purposes of Part IIIA.

Consequential to the removal of the financial interest limit from the prescribed interest rules in subsection 89F(2) (clause 13(d)) and the repeal of the definition of 'loan interest' in subsection 89E(1) (clause 11(c)), this clause omits the rules in subsections 89G(3) and (4).

**Clause 15 - Insertion of new section**

One of the tests for the holding of a prescribed interest in a commercial licence is that the person is in a position to exercise control, directly or indirectly, of the licence (paragraphs 89F(1)(b) radio and 89F(2)(b) television).

Paragraph 89H(1)(b) deems a person to be in a position to exercise control of a commercial licence if the person is in a position to exercise control of the company that holds the licence.

"Control" includes control arising through any arrangements, whether or not having legal or equitable force (definition in subsection 89E(1)) and when used in relation to a company has the meaning given by section 89K. Section 89K provides rules for deeming a person in certain situations to be in a position to exercise control of a company.

In Re News Corporation Ltd (1987) 70 ALR 419, the Federal Court held that the term 'in a position to exercise control of a company'-

- . means the power to direct or restrain what the company may do on any substantial issue;
- . is not exclusively defined by the deemed control of a company provision (now located in section 89K); and
- . is satisfied where a person has control of the appointment of half of the board of directors of a company.

New paragraphs 90J(7CA)(b) and 92F(7CA)(b) inserted by clauses 20(a) and 24(d) require the Tribunal in certain circumstances to be satisfied that a person is reasonably likely to be in a position to exercise control of a licensee (otherwise than because of section 89K) before requiring an application for approval of a share transaction.

New sections 90LA and 92GA (inserted by clauses 22 and 26) require quarterly notifications of persons who come to be in a position to exercise control (otherwise than because of section 89K) of a licensee.

This clause inserts a new section 89JA providing rules for determining when a person is in a position to exercise control of a company (ie. is in a position of actual control of the company) to supplement the above changes.

The rules in new section 89JA are based on the concepts in Re News Corporation Ltd.

New paragraph 89JA(1)(d) provides that a person in a position to veto any action taken by the board of directors, appoint or veto the appointment of at least half of the board of directors or in any other manner to exercise, directly or indirectly, direction or restraint over any substantial issue affecting the management or affairs of a company is taken to be in a position to exercise control of that company.

New paragraphs 89JA(1)(e) and (f) deem such a person to also be in a position to exercise control of all acts and operations of the company and any votes that that company controls in another company.

New subsection 89JA(2) deems a person who is taken to be in a position to exercise control of a company by an application or applications of new section 89JA, to have any shareholding interest that that company has in another company.

#### **Clause 16 - Control of company**

Subsection 89K(1) of the Act deems a person with certain interests in a company to be in a position to exercise control of, amongst other things, that company.

New subsection 89JA(1) (to be inserted by clause 15) provides rules for determining whether a person has "actual control" of a company.

Clause 16(a) amends subsection 89K(1) to ensure that when determining whether a person has "actual control" of a company under new subsection 89JA(1), no account is taken of the "deemed control" rule in subsection 89K(1).

Subsections 89K(2) and (3) supplement subsection 89K(1) by providing a mechanism for the tracing of deemed control through successive companies in a corporate chain.

A person deemed to be in a position to exercise control of company A is deemed -

- . by subsection 89K(1), to be in a position to control any votes in respect of company B of which company A is in a position to control; and
- . by subsection 89K(2), to have any shareholding interest company A has in company B.

Subsection 89K(3) requires that interests traced through successive applications of section 89K be combined with interests actually controlled to determine whether deemed control exists.

Clause 16(b) adds a new subsection 89K(4) to confirm that the tracing mechanism in section 89K continues to operate for the purposes of deemed control by combining interests taken to be held through deemed (section 89K) control and interests held through actual (new section 89JA) control.

#### **Clause 17 - Insertion of new section**

The definition of relationships giving rise to 'control' in subsection 89E(1) of the Act includes control as a result of trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights.

The definition makes it clear that control can be exercised through arrangements or understandings not enforceable at law. This would, for example, encompass family and business relationships not covered expressly in the ownership and control rules (such as control exercised by a husband or wife through the combined voting power of family members).

This clause inserts a simple joint control provision in the Act intended to supplement, but not replace, the general concepts of control exercised through arrangements or understandings outlined above.

New section 89KA deems 2 or more persons to each be in a position to exercise control of a commercial licence, newspaper or company where, acting together for that purpose, they secure joint control through an arrangement, understanding or practice.

New section 89KA is not intended to attribute joint control where, for example, 2 persons at a shareholders meeting agree on a one off basis to vote together on a substantial issue affecting the management or business affairs of a company. Nor would such joint control be attributed necessarily because particular shareholders voted in a consistent manner over a period of time. It would also be necessary to establish that an arrangement, understanding or practice had been entered into for the clear purpose of exercising joint control.

It is a requirement of new section 89KA that two or more persons are in a position to exercise control 'between them' of a licence, newspaper or company.

It is intended, however, that a person in a position to exercise control of a licence, newspaper or company as a result of an association with one or more other persons would be taken to be in such a position for the purposes of Part

IIIBA of the Act under new subsection 89JA, even if new section 89KA did not apply because each of those other persons were not placed in a position to exercise joint control as a result of the association.

**Clause 18 - Repeal of sections 89P, 89Q and 89R**

Section 89P of the Act provides a rule for deeming persons in a position to control a company holding a loan interest in a company holding a commercial television licence to also hold the loan interest. This rule is unnecessary as a consequence of the removal of financial interests from the television prescribed interest test in subsection 89F(2) (clause 13(d)).

Section 89Q of the Act provides a scheme for registration of lenders whose loan interests are thereby excluded from the ambit of the television prescribed interest test. This section is also unnecessary as a consequence of the removal of financial interests from the television prescribed interest test.

Section 89R of the Act provides a scheme for Tribunal authorisation of interests no larger than 10% of voting interests, financial interests and shareholding interests in a company which are thereby exempted from attribution under the television prescribed interest test. This section is unnecessary as a consequence of the removal of financial interests and the increase in the voting and shareholding interests required for the purposes of the television prescribed interest test from 5% to 15% (see clauses 11(c) and 13(b), (d) and (e)).

This clause repeals sections 89P, 89Q and 89R.

**Clause 19 - Limitation of interests in commercial radio licences**

Section 90C of the Act creates rules limiting the interests a person may hold in commercial radio licences.

Subsections 90C(5B) to (5E) create offences where a person contravenes the ownership and control limits in section 90C as a result of a share transaction to which section 90J applies, after a period of grace during which the person can dispose of interests to end the contravention.

This clause omits subsections 90C(5C) to (5E) and substitutes new subsections and restructures subsection 90C(5B) as a consequence of the changes to the share transaction approval scheme, to provide new rules concerning the periods of grace which apply before an offence occurs.

The main changes to the rules will -

- . allow the period of grace for parties to a transaction to run from the completion of the relevant Tribunal transaction inquiry, or the last



day the Tribunal could have required an application to be lodged (at present, the period of grace for a party runs from the date of the transaction);

make the period of grace for non-parties to a transaction the same as for parties, but consistent with the current provisions of the Act enable the non-party's period of grace to run from the date of the Tribunal's decision on the transaction in so far as it affects the party; and

only allow the Tribunal to grant an application to extend a period of grace where the Tribunal is satisfied that the person has made all reasonable efforts to end the contravention within the original period of grace.

The second change referred to above arises from the decision in Australian Broadcasting Tribunal v Bond Corporation Holdings Ltd (1988) 3 BR 137. In that case, which concerned the period of grace provisions for contraventions of the cross media limitations as a result of share transactions, the Tribunal was found to have erred in law in its decision to refuse to extend the 6 month period of grace on the grounds that the respondents had not demonstrated the necessity for an extension and that they had not done all within their power to resolve the contravention. It is intended that the Act should make it clear that all reasonable efforts need to be made to dispose of contravening interests during a period of grace and that they cannot be held indefinitely, pending negotiation of a maximum sale price.

Subsection 90C(5B) of the Act creates certain offences where a party to a transaction to which section 90J applies contravenes the section 90C ownership and control limits as a result of the transaction.

Clause 19(a) amends subsection 90C(5B) to enable it to apply to both parties and non-parties to the transaction.

Paragraph 90C(5B)(a) creates an immediate offence where a party contravenes section 90C as a result of a transaction without lodging a prior notice or application with the Tribunal.

Clause 19(b) omits paragraph 90C(5B)(a), consequential to the new transaction approval procedures inserted in section 90J by clause 20(a) which no longer require prior notices or applications.

Paragraph 90C(5B)(c) creates an offence 6 months after the transaction takes place or such further period as the Tribunal allows within that 6 months.

Clause 19(c) omits paragraph 90C(5B)(c) and substitutes new paragraphs (c) to (f).

New paragraph 90C(5B)(c) creates a 6 month period of grace for a person who lodged or was required to lodge (ie. another person lodged it on the person's behalf) an application under section 90J, which runs from the day the Tribunal gives or refuses approval of the transaction.

New paragraph 90C(5B)(d) recognises that a non-party to a transaction required to lodge an application for approval, where a party was also required to lodge an application, should not have to make a decision concerning possible divestiture of interests before knowing whether or not the party's application is approved. Accordingly, under this new paragraph, the 6 month period of grace runs from the later of the Tribunal's decisions on the applications of the non-party and the party.

New paragraph 90C(5B)(e) creates a six month period of grace for a person who did not lodge and was not required to lodge an application under section 90J, which runs from the last day the Tribunal could have directed an application to be lodged under new subsection 90J(7CA).

New paragraph 90C(5B)(f) recognises that where a party was required to lodge an application in relation to the transaction, a non-party not required to lodge an application should not have to make a decision concerning possible divestiture of interests before knowing whether or not the party's application is approved. Accordingly, under this new paragraph, the 6 month period of grace runs from the later of the last day the Tribunal could have directed an application to be lodged under new subsection 90JA(7CA) and the Tribunal's decision on the party's application.

Subsections 90C(5C), (5D) and (5E) of the Act create offences with periods of grace where a person contravenes the radio ownership and control limits in circumstances other than those contemplated by the current subsection 90J(5B)(c). These subsections are unnecessary as a result of the amendments to subsection 90C(5B).

Clause 19(d) omits subsections 90C(5C) to (5E) and substitutes new subsections.

New subsection 90C(5C) enables the Tribunal to extend a 6 month period of grace.

New subsection 90C(5D) requires an application for such an extension to be made within the 6 months period.

New subsection 90C(5E) prevents the Tribunal granting an application for the extension of a period of grace unless the Tribunal is satisfied that the person has made all reasonable efforts to end the contravention within the period of grace.

**Clause 20 - Changes in ownership of shares etc**

All share (and for television - debenture) transactions which result in the acquisition of, or the increase in, a prescribed interest in a commercial radio or television licence are subject to a notification and approvals process (subsections 90J(1) radio and 92F(1) television).

A person who is, or intends to be, a party to a transaction (a 'prescribed party' - paragraphs 90J(2)(b) radio and 92F(2)(b) television) and who, as a result of the transaction, would acquire or increase a prescribed interest must, before the transaction is completed (subsections 90J(7E) radio and 92F(7E) television), notify the Tribunal or lodge an application for prior approval of the transaction insofar as it affects the person (subsections 90J(3) radio and 92F(3) television).

This clause and clauses 21, 24 and 25 amend sections 90J, 90JA, 92F and 92FAA of the Act to streamline the current notification, application and approval process for commercial radio and television share transactions. The main improvements -

- . reduce reporting requirements to the Tribunal while maintaining the provision of sufficient information to it to enable it to carry out its statutory functions;
- . reduce the number of transactions requiring inquiry and approval to enable the Tribunal to focus resources on more significant transactions; and
- . reduce delays in the current notification and approval process.

The new scheme differs from the previous scheme in relation to reporting requirements by -

- . removing the requirement for prior notification of, or application for approval of, a transaction (see clause 20(e));
- . removing the requirement for certain applications and notices to be lodged with a statutory declaration (currently found in subsection 90J(7B));
- . only requiring a party or a non-party to a transaction to lodge an application where the person acquires a prescribed interest; has a prescribed interest and because of the transaction is reasonably likely to be in a position to exercise actual (new section 89JA) control of the licensee; or the transaction might result in the foreign ownership conditions not being complied with; (under the current provisions, a party or a non-party must lodge

an application whenever the person acquires a prescribed interest, or has a prescribed interest and whose interests are being increased);

- . only requiring a party to a transaction to lodge a notice in relation to the transaction where the party has a prescribed interest and the party's interests are being increased by the transaction (new subsection 90J(7));
- . only requiring a non-party to a transaction to lodge a notice in relation to the transaction where the non-party has a prescribed interest and the non-party's interests are being increased by the transaction and a party to the transaction is not required to lodge an application or notice about the transaction (new subsection 90J(7B)).

Clause 20(a) omits subsections 90J(3) to (7C), which contain many of the elements of the current scheme, for commercial radio share transactions, and substitute new sections 90J(3) to (7CF) containing elements of the new scheme.

New subsection 90J(3) enables a party to a proposed transaction acquiring a prescribed interest in a commercial radio licence to apply for prior approval. This new subsection and new subsection 90J(6) maintain the current right of parties to transactions to lodge prior applications (paragraph 90J(3)(b)).

New subsection 90J(4) requires a party (who has not lodged a prior application), or non-party to a transaction, acquiring a prescribed interest in a commercial radio licence, to apply for approval.

New subsection 90J(5) requires a new subsection 90J(4) application to be lodged within 28 days after the transaction and allows an application in relation to a non-party to be lodged by a party to the transaction.

New subsection 90J(6) enables a party to a proposed transaction who has a prescribed interest in a commercial radio licence and is increasing the party's interests to apply for prior approval.

New subsection 90J(7) requires a party to a transaction who has a prescribed interest in a commercial radio licence and is increasing the party's interests and who has not lodged a prior application for approval to lodge a notice within 7 days after the transaction.

New subsection 90J(7A) requires a non-party to a transaction who has a prescribed interest in a commercial radio licence and whose interests are being increased by the transaction to lodge a notice.

New subsection 90J(7B) exempts a non-party from having to lodge a notice under new subsection 90J(7A) where a party to a transaction lodged an application for prior approval or is required to lodge an application for approval or a notice under new subsection 90J(4) or (7) respectively.

New subsection 90J(7C) requires a new subsection 90J(7A) notice to be lodged within 28 days after the transaction and allows a party to the transaction to lodge the notice on behalf of the non-party.

New subsection 90J(7CA) is a provision which performs a significant role in the new transaction approval scheme to reduce the number of transactions requiring inquiry and approval.

Under new subsection 90J(7CA), where an application or notice about a transaction is lodged under section 90J, the Tribunal may direct a person to lodge an application for approval of the transaction in so far as it affects the person and the person must comply within 28 days.

There are two restrictions on the Tribunal's exercise of this power. First, the Tribunal must be satisfied that -

- . the person to whom the direction is given has a prescribed interest in the licence and is having interests increased by the transaction and because of the transaction, the person is, or is reasonably likely to be, in a position to exercise actual (new section 89JA) control of the licensee; or
- . as a result of the transaction, the foreign ownership and control limitations under section 90G of the Act might not be complied with.

Second, the Tribunal must direct the application to be lodged within 3 months after -

- . where the applications were prior applications, the transaction took place; and
- . in other cases, the last application or notice (other than an application directed to be lodged under new subsection 90J(7CA)) was lodged.

New subsection 90J(7CB) requires an application to be in a form approved by the Tribunal.

New subsection 90J(7CC) sets out the content requirements for a notice under new subsection 90J(7) or (7A). Two types of notice requirements are created. First, general notice requirements applying to all applications which include matters such as the names of the person lodging the notice and the company to which the transaction relates, the number of shares concerned and a description of the voting rights attached to them, etc. (new paragraphs 90J(7CC)(a) to (j)).

Second, requirements to provide certain information where changes to that information have occurred since the last application or notice, lodged by, or on behalf of, the person required to lodge the notice, (new paragraph 90J(7CC)(k)).

The information concerned includes matters such as the issued capital of both the company required to lodge the notice and the company to which the transaction relates and the directors of the company required to lodge the notice. The requirement to lodge information of this type has been included in the Act to enable the Tribunal to maintain the accuracy of its ownership and control information database.

New subsection 90J(7CD) enables the Tribunal, on application, to extend the period in which a person is required to lodge an application or notice under section 90J.

New subsection 90J(7CE) prevents an application or notice being taken to be lodged if it is false or misleading in a material particular or respect.

New subsection 90J(7CF) enables certain applications or notices to be combined in one document.

Subsection 90J(7D) requires the Tribunal to accept or reject a notice or application given to or lodged with the Tribunal.

Clauses 20(b) and (c) amend subsection 90J(7D) to make minor changes consequential to the new transaction approval provisions.

Subsection 90J(7E) creates an offence where a transaction takes place and there has been no prior notification or application to the Tribunal.

Clause 20(d) removes the requirement for prior notification of transactions to the Tribunal by omitting subsection 90J(7E).

Subsection 90J(7F) creates an offence where a person fails to comply with the requirements for lodging an application in subsection 90J(7A).

Clause 20(e) amends subsection 90J(7F) consequential to the insertion of the new transaction approval provisions to make the offence apply to the failure to comply with the requirements to lodge certain applications or notices under section 90J.

Subsection 90J(7G) removes the requirement for a second notice to be lodged where a prior notice has been lodged under paragraph 90J(3)(a) and the only difference when the transaction occurs is that a lesser number of shares are involved.

Clause 20(f) omits subsection 90J(7G) consequential to the inclusion of new transaction approval provisions in section

90J removing the requirement for prior notification of transactions to the Tribunal.

Subsection 90JA(10) was a transitional provision requiring notice to the Tribunal of a person's prescribed interest in a newspaper where the person acquired a prescribed interest in a commercial radio licence during a transition period when the cross-media ownership rules were introduced.

Clause 20(g) omits subsection 90J(10) as the provision is no longer necessary.

#### **Clause 21 - Approval of transactions**

Section 90JA of the Act provides rules for the approval and refusal of a transaction where an application is made under section 90J.

Clause 21(a) inserts new subsections 90JA(3) to (3C) to place a 6 month time limit on Tribunal inquiries into applications for the approval of transactions.

New subsection 90JA(3) deems the Tribunal to have approved a transaction in relation to a person where it has not made a decision 6 months after the inquiry by the Tribunal into the transaction began or at the end of that period extended under new subsection 90JA(3A).

New subsection 90JA(3A) enables the Tribunal to extend and make repeated further extensions of the period in new subsection 90JA(3) to a particular date, where the Tribunal considers it necessary to enable a matter or matters relevant to the inquiry to be dealt with.

New subsection 90JA(3B) imposes a measure of discipline on the Tribunal's power to extend and make further extensions by requiring it to give written reasons for the extension to the date chosen.

New subsection 90JA(3C) provides a mechanism for automatic retriggering of the inquiry period under new subsection 90JA(3) for an inquiry begun into an application for approval of a transaction in so far as it affects a person, where that inquiry is joined with an inquiry in relation to a later transaction in so far as it affects the person.

Clause 21(b) makes an amendment to subsection 90JA(5) consequential upon the insertion of new transaction approval provisions in section 90J (clause 20).

Clause 21(c) makes an amendment to paragraph 90JA(9)(e) consequential upon the increase in the licence renewal period in subsection 87(2) from 3 to 5 years (clause 5).

Clause 21(d) makes an amendment to paragraph 90JA(11)(a) consequential upon the insertion of new transaction approval provisions in section 90J (clause 20).

**Clause 22 - Insertion of new section**

Changes in the control of a licensee company currently only need to be reported to the Tribunal -

- . if they arise through those share (or debenture for television) transactions which result in the acquisition of shareholding or voting interests (or financial interests for television) and which are subject to Tribunal approval under sections 90J or 92F;
- . if they arise through changes in the memorandum or articles of the licensee (sections 90K and 92FA); or
- . in the annual statutory declarations required to be lodged by senior management of the licensee stating, amongst other things, the particulars of every prescribed interest held during the period (paragraphs 90M(b) radio and 92H(b) television).

There is no adequate system of reporting of actual changes in control outside of the transaction approval system. Transactional changes in control of a licensee company beneath the specific prescribed interest threshold levels (ie. 5% television and 15% for radio) are not subject to any reporting requirements. The removal of financial interests from automatic attribution under the television prescribed interest rules (clause 13(d)) and the increase to 15% in the prescribed interest for approval of share transactions (clauses 13(b) and (e)) could remove from automatic scrutiny situations where persons are actually in a position to control a commercial licence.

Changes in the actual control of a licensee can also occur through other special provisions in the memorandum and articles of a licensee company. The obligation to report changes in the licensee's memorandum and articles in section 90K and 92FA is of limited effect because:

- . the notification of the change will not necessarily disclose the defacto nature of the controlling relationship which may result, particularly if the power under the memorandum or articles is only one part of that controlling relationship; and
- . the reporting requirement does not apply to any changes in control of a licensee company arising from a change in the control of a related company within the same corporate group.

This clause inserts a new section 90LA in the Act to provide a mechanism for quarterly reporting of changes in control of a commercial radio licensee.

It is not intended that the insertion by new section 90LA of a new quarterly reporting mechanism in the Act in any way



~~limits the Tribunal's information gathering powers under sections 89X and 124 of the Act.~~

New subsection 90LA(1) provides definitions of the terms "agreement", "holding company", "loan agreement" and "quarter" used in the new section.

New section 92LA(2) makes a licence subject to a condition that where a person was not in a position to exercise control of the licensee immediately before the commencement of a quarter but was in that position during that quarter, whether because of a loan agreement or another agreement, practice or event, notice of which does not have to be provided to the Tribunal under another provision of the Act, senior management of the licensee must notify the Tribunal within 28 days of the end of the quarter.

New subsection 90LA(3) prevents new subsection 90LA(2) applying to the quarter in which the new section commences or the next quarter.

New subsection 90LA(4) applies a similar requirement to that in new subsection 90LA(2) to the quarter after the quarter in which new section 90LA commences, but dealing with the period from the commencement of the new section to the end of that quarter.

New subsection 90LA(5) sets out the requirements for a notice under the new section. As well as naming persons in control and specifying the period of control, the notice must give particulars of any matter that has a material effect on the capacity of the person to exercise control known to the persons lodging the notice. Such matters could include agreements, arrangements, understandings or practices, whether formal or informal, whether or not having legal or equitable force or based on legal or equitable rights and whether enforceable or not.

New subsection 90LA(6) provides certain exemptions from the requirements for a notice and sets out some of the circumstances where a notice does not have to be provided to the Tribunal under another provision of the Act.

Under paragraph 90LA(6)(a), where a person has deemed (section 89K) control but not actual (new section 89JA) control, there is no requirement for a notice.

Under paragraph 90LA(6)(b), there is no requirement for a notice where a person is in a position to exercise control of the licensee only because the person is an officer or employee of the licensee or of a holding company. This ensures that there is no requirement to report simple management changes.

Under paragraph 90LA(6)(c), there is no requirement to report a change in control which arose because of a share transaction notified to the Tribunal or for which approval has been sought under section 90J.

Under paragraph 90LA(6)(d), there is no requirement to report a change in control caused by a networking agreement lodged with the Tribunal.

**Clause 23 - Limitation of interests in commercial television licences**

Section 92 of the Act creates rules limiting the interests a person may hold in commercial television licences.

Subsections 92(4B) to (4E) create offences where a person contravenes the ownership and control limits in section 92 as a result of a share transaction to which section 92F applies, after a period of grace during which the person can dispose of interests to end the contravention.

Clauses 23(a), (b), (c) and (d) make similar amendments to subsections 92(4B) to (4E) to those made to the period of grace provisions applying to contraventions of the commercial radio ownership and control limits. See the notes on clause 19 for more detail concerning the amendments.

**Clause 24 - Changes in ownership of shares etc.**

Section 92F of the Act provides a mechanism for notification and approval of share and debenture transactions which result in the acquisition of, or an increase in, a prescribed interest in a commercial television licence.

Clauses 24(a), (b) and (c) amend subsection 92F(1) as a consequence of the removal of financial interests from the test of a prescribed interest in subsection 89F(2) (clause 13(d)).

Clause 24(d) omits subsections 92F(3) to (7C) and substitutes new subsections (3) to (7CF) introducing a new scheme streamlining the notification, application and approval process for commercial television share transactions.

The new scheme is virtually identical with the new scheme for commercial radio share transactions. For more detail concerning the amendments, see the notes on clause 20(a).

Clauses 24(e) to (j) make similar amendments to section 92F to those made to section 90J by clauses 20(b) to (f). For more details of the amendments, see the notes on those clauses.

Clause 24(k) omits subsections 92F(9) and (10). Subsection 92F(9) is omitted as a consequence of the removal of financial interests from the test of a prescribed interest in subsection 89F(2) (clause 13(d)). Subsection 92F(10) is omitted as it is no longer necessary.

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**Clause 25 - Approval of transactions**

Section 92FAA of the Act provides rules for the approval and refusal of a transaction where an application to the Tribunal is made under section 92F.

Clauses 25 (a) to (c) and (g) make similar amendments to section 92FAA to those made to section 90JA by clauses 21(a) to (d). For more details of the amendments, see the notes on those clauses.

Clauses 25(d) to (f) and (h) to (k) make minor amendments to subsections 92FAA(10) and (11) consequential upon the removal of financial interests from the test of a prescribed interest in subsection 89F(2) (clause 13(d)).

**Clause 26 - Insertion of new section**

This clause inserts a new section 92GA in the Act to provide a mechanism for quarterly reporting of changes in control of a commercial television licensee.

New section 92GA is similar to new section 90LA to be inserted by clause 22. For more details concerning new section 92GA, see the notes on that clause.

**Clause 27 - Limitations on cross media interests**

Section 92JB of the Act creates rules limiting the cross-media interests a person may hold.

Subsection 92JB(4) provides that, for the purposes of the commercial radio/television cross-media limit, the level of interests required to amount to a prescribed interest for a commercial television licence is 15%. This rule is made unnecessary by the increase in the level of interests required to amount to a prescribed interest for a commercial television licence under subsection 89F(2) (clauses 13(b) and (e)).

Clauses 27(a), (b) and (c) amend subsection 92JB(4) to prevent the increase in the commercial television prescribed interest level from applying to the television/newspaper cross-media limit.

Subsections 92JB(8) and (11) are transitional provisions which modify the application of the radio and television period of grace provisions to contraventions of the cross-media limits in relation to transactions that took place during a transitional period that occurred when the new cross-media ownership and control rules were introduced.

Clauses 27(d) and (e) omit subsections 92JB(8) and (11) as they are no longer necessary.

Subsection 92JB(6) applies the radio period of grace provisions to a contravention of the cross-media limits resulting from a section 90J commercial radio share transaction. Subsection 92JB(9) applies the television period of grace provisions to a contravention of the cross-media limits resulting from a section 92F commercial television share transaction. Subsections 92JB(12) to (14) create specific period of grace provisions for a contravention of the cross-media limits resulting from a newspaper share transaction.

As a consequence of the increase in the level of interests required to amount to a prescribed interest for a commercial television licence from 5% to 15% (clauses 13(b) and (e)), television share transactions concerning interests between 5% and 15% do not come within the transaction approval process in section 92F and would not be reported to the Tribunal. Accordingly, clause 28 creates a new reporting obligation for these transactions and clauses 27(f), (g), (m) and (n) amend the newspaper share transaction period of grace provisions to apply them to television share transactions concerning interests between 5% and 15%.

Subsection 92JB(12) creates a rule which establishes to whom the newspaper period of grace provision in subsection 92JB(13) applies.

Clauses 27(f) and (g) amend paragraphs 92JB(12)(a) and (b) to ensure the subsection 92JB(13) period of grace rules apply to commercial television licence share transactions of which a person is required to give notice to the Tribunal under new subsection 92JC(1A) (see clause 28(a)).

Clauses 27(h), (j) and (k) make minor drafting changes to paragraph 92JB(13)(a).

Clauses 27(m) and (n) make minor drafting changes to subparagraphs 92JB(13)(b)(i) and (ii) to apply the period of grace rules to relevant commercial television licence share transactions.

In Australian Broadcasting Tribunal v Bond Corporation Holdings Ltd (1988) 3 BR 137, the period of grace provisions for contraventions of the cross-media limitations as a result of share transactions were interpreted as allowing extensions of the further period the Tribunal could allow beyond the 6 month period of grace.

Subsections 92JB(13) and (14) are in substantially similar terms to the provisions considered in that case.

Clauses 27(p) and (q) amend paragraph 92JB(13)(b) and insert new subsections 92JA(13A) and (13B) to make it clear that it is the original 6 month period of grace that the Tribunal may extend.

Subsection 92JB(14) requires a party to a transaction to apply for an extension of the period of grace before the end of the period and enables a non-party to apply for the extension after that period in certain circumstances.

Clause 27(r) amends subsection 92JB(14) to clarify that the only extension which a person may seek is of the original 6 month period of grace referred to in subparagraph 92JB(13)(b)(ii). No further extension can be made.

Clause 27(s) inserts new subsections 92JB(14A), (14B), (14C) and (14D).

New subsection 92JB(14A) prevents the Tribunal granting an extension of the 6 month period of grace upon an application made before the end of the period unless it is satisfied the person made all reasonable efforts to end the contravention within the period. For the reasons for this provision, see the notes on clause 19.

New subsection 92JB(14B) prevents the Tribunal granting an extension of the 6 month period of grace upon an application made after the end of the period (in the circumstances set out in paragraph 92JB(14)(b)) unless it is satisfied that the person made all reasonable efforts to end the contravention as soon as practicable after becoming aware of it.

New subsection 92JB(14C) places obligations on the length of time in which the Tribunal must consider an application for extension.

New subsection 92JB(14D) prevents technical breaches of the offence in paragraph 92JB(13)(b)(ii) when a notice allowing an extension of a period of grace is served after the period of grace has lapsed.

Subsection 92JB(15) of the Act creates a rule that sets out the order a person is taken to have acquired a prescribed interest in different media when a single transaction results in the acquisition of prescribed interests in more than one type of media. The purpose of the rule is to make clear which of the period of grace rules applies to the transaction.

Clauses 27(t) and (u) amend the existing rule in subsection 92JB(15) to reverse the notional order of acquisition of radio and television prescribed interests arising from a single transaction.

#### **Clause 28 - Person to notify Tribunal of acquisition of certain cross media interests**

Subsection 92JC(1) of the Act requires a person with a prescribed interest in a commercial licence to notify the Tribunal of the acquisition of a prescribed interest in an associated newspaper.

This clause amends section 92JC to create a similar notification obligation for a person with a prescribed interest in a newspaper who acquires a prescribed interest in an associated commercial television licence, otherwise than through a section 92F commercial television share transaction.

Clause 28(a) inserts new subsection 92JC(1A) which imposes the obligation referred to in the previous paragraph.

Subsection 92JC(2) creates a 28 day time limit for lodging a notice under subsection 92JC(1).

Clause 28(b) omits subsection 92JC(2) and substitutes a new paragraph with changes consequential to the new notification requirement in new subsection 92JC(1A).

Clause 28(c) makes a consequential amendment to subsection 92JC(3).

Clause 28(d) inserts a new subsection 92JC(3A) providing that, for the purposes of the cross-media notification rules in subsection 92JC(1) and new subsection 92JC(1A), a person is deemed to have a prescribed interest in a commercial television licence if the level of interests required to amount to a prescribed interest was at 5% rather than 15%.

#### **Clause 29 - Interpretation**

Section 92UA of the Act provides definitions of terms used in Division V of Part IIIA of the Act, which concerns ownership and control of remote licences and limited licences.

This clause amends the definition of "interest" in section 92UA as a consequence of the repeal of the definitions of "financial interest" and "loan interest" in subsection 89E(1) and the inclusion of a definition of "loan agreement" in new subsection 90LA(1).

#### **Clause 30 - Secrecy**

Section 125 of the Act is a secrecy provision preventing the disclosure of information acquired under the Act.

Subsection 125(2A) specifically emphasises that the secrecy provision applies to information in a notice or application under subsection 90J(3) or 92F(3) (ie. a notice or application prior to the transaction occurring).

This clause amends subsection 125(2A) as a consequence of the changes to the share transaction approval system to refer to the new provisions under which prior applications may be lodged with the Tribunal.

**Clause 31 - Amendments of Acts about broadcasting**

This clause provides for the Act and other Acts to be amended as set out in Schedule 1. The amendments are of a minor nature, correcting drafting defects and inserting some minor provisions for the purposes of creating consistency in the transfer requirements for certain classes of licences.

**Clause 32 - Consequential amendments**

This clause provides for the consequential amendments set out in Schedule 2 to be made to the Act.

**Clause 33 - Application**

This clause is an application provision which prevents the changes to the share transaction approval system from applying to transactions occurring before the commencement of those changes.

