

1984

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

BROADCASTING AND TELEVISION AMENDMENT BILL 1984

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Minister for Communications,
The Hon. Michael Duffy MP)

OUTLINE

The Broadcasting and Television Amendment Bill 1984 is intended to remedy deficiencies in the existing legislation:

- (1) by closure of potential loopholes in provisions of the Broadcasting and Television Act 1942 that limit the number of radio or television stations which may be owned or controlled by one person;
- (2) in relation to supplementary radio and television licences, by providing for:
 - (i) the Australian Broadcasting Tribunal (the Tribunal) to take into account concentration of media ownership or control when considering applications for supplementary licences;
 - (ii) the collection of financial information by the Tribunal in relation to commercial and associated supplementary licensees; and

(iii) the progressive "phasing in" of transmitter facilities required to provide a supplementary service;

- (3) by amendment of the quorum requirements for licensing inquiries by the Tribunal to take account of the increased number of Tribunal members and by provision for automatic extension of the period of a licence until the completion of the renewal inquiry.

The amendments have no direct financial impact.

NOTES ON CLAUSES

Clauses 1 and 2

1. The first two clauses provide for the short title and commencement of the Bill. Sections 8, 9, 11 to 15 inclusive, 17, 18 and 19, dealing with closure of loopholes in the ownership or control provisions, are made retrospective to the date of the Minister's announcement foreshadowing the closures. Sections 1, 2, 5, 6, 7, 10, 16, 20 and 22 are to commence on the day the Act receives Royal Assent. Sections 3, 4 and 21 are to commence on a date or dates to be fixed by proclamation.

Clause 3 - Divisions of the Tribunal

2. The existing subsection 15C(1) is deleted and replaced by three new sub-sections. Subject to the other provisions of section 15C, the Chairman of the Tribunal may, for the purposes of an inquiry, appoint a Division of the Tribunal consisting of one or more members of the Tribunal designated by the Chairman. The Division may also contain one or more associate members. Inquiries into the suspension or revocation of a licence, or the renewal of the licence of a commercial station situated within 50 kilometres of the GPO of a State capital, must be heard by a minimum of three Tribunal members or associate members, at least one of whom is a member. Subject to sub-section 15c(11), a Division of the Tribunal is deemed to be the Tribunal for the purposes of the inquiry for which it is constituted, and for the purposes of making decisions, recommendations and reports on that inquiry.

3. The existing subsections 15C(6) and (7) are deleted and replaced with new subsections dealing with the operation of Divisions of the Tribunal. They provide that a quorum for a meeting of a Division is constituted by a majority of its members. The Chairman may appoint additional members or associate members to a Division, or replace existing members or associate members at any time up till the commencement of a hearing in connection with the inquiry. After commencement, he may only do so in special circumstances and, unless all parties to the inquiry agree otherwise, the hearing must be recommenced. After the commencement of hearings, the Chairman may only replace a member or associate member of a Division if that existing member or associate member is unavailable for the hearing or has ceased to be a member of the Tribunal. Where the Minister directs that Tribunal to inquire into a matter pursuant to section 18(2), or where an inquiry concerns the determination of program or advertising standards, the Chairman may direct that a decision, recommendation or report in relation to the inquiry be made by the full Tribunal rather than just the Division.

4. Divisions of the Tribunal already constituted under section 15C at the time the clause comes into force are to be conducted as if the clause had not been enacted.

Clause 4 - Member or associate member ceasing to be available

5. A Division of the Tribunal may not complete an inquiry unless it contains at least one permanent or acting full-time member, and in the case of an inquiry into the suspension or revocation of a licence, or the renewal of a metropolitan commercial station licence, two other members or associate members.

Clause 5 - Consideration of applications by the Tribunal

6. The Tribunal may not refuse to grant a supplementary licence in an area unless it determines that a second commercial licence is likely to be viable in the area and that it is in the public interest that applications for such a licence be invited. The public interest criteria to be considered by the Tribunal is amended to include consideration of whether granting the supplementary licence would lead to undue concentration of media ownership or control in the area. "Media" includes both radio and television stations licenced to serve the area and newspapers, journals and the like available in the area.

Clause 6 - Duration

7. Provision is made for automatic extension of the period of a licence until the Tribunal renews or refuses to renew the licence.

Clause 7 - Commencement of service

8. Where more than one transmitter is required to give a supplementary service adequate reception within its service area, the Tribunal has a discretion to allow the licensee to phase in the necessary transmitters over the initial five-year period of the licence.

Clause 8 - Interpretation

9. For the purposes of the Division imposing limits on the ownership or control of commercial radio stations, the term "interest" is defined as a share holding interest or a voting interest. The definition of a "prescribed interest" is widened to include control of 15% or more of the votes which could be cast in a poll at, or arising out of, a general meeting of a company, in respect of one or more questions. The amount of the voting interest is measured by the number of votes, and references to the kind of voting interest are references to the question or questions on which they entitle the interest holder to vote.

10. Nothing in the Division concerned with limitation of the ownership or control of commercial radio stations shall be taken to interfere with the rights of members of a company to appoint proxies to vote at company meetings.

Clause 9 - Limitation of interests in commercial broadcasting stations

11. A person is guilty of a separate offence for each day that person is in breach of section 90C, even if the breach occurs otherwise than as a result of a transaction requiring Tribunal approval pursuant to section 90J.

12. Subsection 90C(5C) is made subject to the new sub-section 90C(5D). (Sub-section 90C(5C) grants to a person a six month period of grace within which to dispose of an excess prescribed interest acquired as a result of a transaction to which that person is not a party. The period of grace runs from the date on which the transaction is approved in relation to the party to the transaction.)

13. Sub-section 90C (5D) grants a six-month period of grace to a person who acquires an excess prescribed interest as a result of a transaction to which that person is not a party, where the Tribunal has not served a notice either approving or refusing to approve the transaction in relation to the party to the transaction. The period of grace runs from the date of notification of a Tribunal decision either to approve or disapprove the transaction in relation to the third party.

14. Where a party to a transaction does not require Tribunal approval of the transaction, but a third party acquires an excess prescribed interest by virtue of the transaction, the third party

must reduce his holdings to the prescribed limits within six months of service of a Tribunal notice to either approve or refuse to approve the transaction in relation to the third party. (An application for approval must be lodged with the Tribunal within twenty eight days of the transaction.)

Clause 10 - Foreign shareholdings, &c.

15. Where, for the purposes of sub-section 90G(5), persons are deemed to control interests in another company, this is not to the exclusion of any other person.

Clause 11 - Changes in ownership of shares, &c.

16. Sub-section 90J(1) of the principal Act is amended to require Tribunal approval of changes in voting interests, as well as share or loan interests, held in a radio station licensee company as a result of a transaction in shares or debentures in the following circumstances. Approval is required if a person becomes the holder of a prescribed share, voting or loan interest for the purposes of the ownership or control tests, or if a person who already holds such a prescribed share, voting or loan interest increases that interest.

17. In the case of a voting interest, a full description of the voting rights attached to shares involved in the transaction must be set out in the notice to the Tribunal. The size of a person's voting interest in a company is the number of that person's votes

of a particular kind as a proportion of the total number of votes of that kind in the company.

Clause 12 - Approval of transactions

18. As a consequence of the amendments to sub-section 90J(1), the offence provisions in sub-section 90JA(10) are amended to cover voting interests acquired as a result of the transaction, if the transaction takes place after a refusal by the Tribunal to approve the transaction, in whole or in part, or after conditional approval of the transaction ceases to apply.

19. Existing sub-section 90JA(11) grants to a person a six month period of grace within which to dispose of a shareholding interest acquired as a result of a transaction which is disapproved by the Tribunal. Upon expiry of the period of grace there is a separate offence for each day the interest is held. The sub-section is amended to cover voting interests so acquired.

20. In the situation where a party to a transaction is refused approval of a transaction in whole or in part, the Tribunal may dispense with consideration of an application from a third party for approval of an interest acquired as a result of the same transaction.

Clause 13 - Interpretation

21. The existing definition of an "interest" for the purposes of the Division imposing limits on the ownership or control of commercial television stations is widened to include voting interests. A definition of a "financial interest", meaning a shareholding interest or a loan interest, is inserted.

22. A definition of voting interests, identical to the definition in Clause 9, is inserted.

Clause 14 - Approved investments

23. The existing section 91D is amended to reflect the new definitions of "interest" and "financial interest".

Clause 15 - Limitation of interests in commercial television stations

24. Section 92 is the television equivalent of section 90C. The amendment has the same effect as the amendment to section 90C contained in Clause 9.

Clause 16 - Foreign shareholdings, &c.

25. Section 92D is the television equivalent of section 90G. The amendment has the same effect as the amendment to section 90G contained in clause 10.

Clause 17 - Changes in ownership of shares, &c.

26. Section 92F is the television equivalent of section 90J. The amendment has the same effect as the amendment to section 90J contained in clause 11.

Clause 18 - Approval of transactions

27. Paragraphs 92FAA 9(b) and (d) are deleted, as they are rendered obsolete by the provision in clause 6 for automatic extension of the period of a licence until the Tribunal renews or refuses to renew the licence.

28. The amendments to sub-sections 92FAA(10) and (11) have the same effect as the amendments to the equivalent provisions for commercial radio stations, in sub-sections 90JA (10) and (11), contained in clause 12.

Clause 19 - Interpretation

29. For the purposes of the Division on enforcement of the ownership or control provisions, the definition of "interest" is broadened to include a voting interest.

Clause 20 - Licensee to keep accounts &c.

30. The licensee's obligation to keep accounts in sub-section 106(1) is applied expressly to a supplementary radio or

television service. The licensee of a commercial station and the related supplementary service must provide the Tribunal with an audited consolidated balance sheet and consolidated profit and loss account in a form approved by the Tribunal, as well as a statutory declaration showing the aggregated earnings of the commercial station and the supplementary service, and a consolidated balance sheet and profit and loss account. Where a supplementary service is operated by a consortium of commercial licensees, the audited balance sheet of each licensee must include a statement of the licensee's interest in the supplementary service, including a statement of the licensee's notional share of the gross earnings of the supplementary service. This notional share is based on the share of any profits of the supplementary service to which the licensee would be entitled.

Clause 21 - Application of Act

31. Section 111B of the Principal Act, which provides that references to commercial stations shall be read as references to public stations, does not apply to the requirement in section 15C(1A) that an inquiry into the renewal of a metropolitan commercial station licence should be conducted by a minimum of three Tribunal members or associate members.

Clause 22 - Transitional

32. The transitional provisions modify the application of this Bill to transactions caught by the retrospective effect of amendments to the ownership or control provisions. In the case of a transaction, taking place between 18 July 1984 and a date two weeks after this Bill receives the Royal Assent, to which sections 90J and 92F of the Principal Act would have applied in their unamended form, the amended Act applies as if the requirement for disclosure of full details of voting rights in sub-sub-paragraph 3(a)(ia) of each section were omitted. In a case where the unamended sections would not have applied to a person but, as a result of the amendments, one of the sections applies, the person is given a longer period in which to lodge an application for approval of a transaction under sub-section (7A) and is exempted from the offence provisions in sub-section (7E) of the two sections.

33. In the case of a transaction, taking place between 18 July 1984 and the date of Royal Assent of this Bill, where a third party acquires an interest in breach of the limitation of interests in sections 90C or 92 in a situation where the immediate parties to the transaction do not require Tribunal approval, the offence provisions in sub-sections 90C(5E) and 92(4E) are modified to delete reference in paragraphs 90(5E)(C) and 92(4E)(e) to a failure to lodge an application for Tribunal approval.

