



# Broadcasting Amendment Act 1991

No. 158 of 1991

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## An Act to amend the *Broadcasting Act 1942*

[Assented to 21 October 1991]

The Parliament of Australia enacts:

### PART 1—PRELIMINARY

#### Short title etc.

1. (1) This Act may be cited as the *Broadcasting Amendment Act 1991*.

(2) In this Act, “Principal Act” means the *Broadcasting Act 1942*<sup>1</sup>.

#### Commencement

2. This Act commences on the day on which it receives the Royal Assent.

3. After section 17 of the Principal Act the following section is inserted in Division 2 of Part II:

**Confidentiality**

“17AA.(1) Where, under this Act, the Tribunal receives information of or about a proposed acquisition, the Tribunal must not disclose that information to any person unless:

- (a) it is necessary to do so for the purposes of:
  - (i) an inquiry; or
  - (ii) an application to the Federal Court of Australia, or any proceedings arising out of such an application; or
- (b) the Tribunal is satisfied that the information is so widely known that disclosure would not be a breach of confidence.

“(2) This section is not intended to limit the operation of section 125.”.

**Tribunal may seek information**

4. Section 89X of the Principal Act is amended:

- (a) by omitting from subsection (1) “21 days” and substituting “7 days”;
- (b) by inserting after subsection (1) the following subsections:

“(1A) The Tribunal may specify a period of fewer than 7 days in a notice served on a person under subsection (1) if it is satisfied that, in all the circumstances, it is reasonable to do so.

“(1B) To avoid doubt, it is declared that the Tribunal may exercise its powers under this section whether or not it is holding, proposes to hold, or is considering whether to hold, an inquiry.”;

- (c) by inserting after subsection (3) the following subsections:

“(3A) Where a person fails to comply with a requirement in a notice served on the person under subsection (1), the Tribunal may make application to the Federal Court for an order under subsection (3B).

“(3B) Where, on an application under subsection (3A), the Federal Court is satisfied that the information or documents required to be produced by the notice are necessary to enable the Tribunal to exercise any of its powers, or perform any of its functions or duties, under this Part, the Court may order that an acquisition of interest, to which the information or documents relate, not occur until the information or documents have been produced in accordance with the notice.”.

5. The Principal Act is amended by inserting after section 90H the following sections:

**Notification of interests**

“90HA.(1) This section applies to a person in any of the following circumstances:

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- (a) the person holds interests that amount to a prescribed interest in a licence;
- (b) the person proposes to acquire interests that, together with any other interests already held by the person, would amount to a prescribed interest in a licence;
- (c) the person:
  - (i) is a foreign person as defined by section 90G; and
  - (ii) holds interests that result in a contravention of that section;
- (d) the person:
  - (i) is a foreign person as defined by section 90G; and
  - (ii) proposes to acquire interests that, together with any other interests already held by the person, would result in a contravention of that section;
- (e) the person holds interests that result in a contravention of section 92JB;
- (f) the person proposes to acquire interests that, together with any other interests already held by the person, would result in a contravention of section 92JB;
- (g) the person holds interests that, if they were aggregated with interests held or proposed to be acquired by an associate or associates of the person, would be such that, if all the interests were held by one person, that one person would hold a prescribed interest in a licence;
- (h) the person proposes to acquire interests that, if they were aggregated with:
  - (i) interests already held by the person; and
  - (ii) interests held or proposed to be acquired by an associate or associates of the person;would be such that, if all the interests were held by one person, that one person would hold a prescribed interest in the licence;
- (i) the person:
  - (i) is a foreign person as defined by section 90G; and
  - (ii) holds interests that, if they were aggregated with interests held or proposed to be acquired by an associate or associates (whether foreign or not) of the person, would be such that, if all the interests were held by the first-mentioned person, they would result in a contravention of section 90G;
- (j) the person:
  - (i) is a foreign person as defined by section 90G; and
  - (ii) proposes to acquire interests that, if they were aggregated with:
    - (A) interests already held by the person; and

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(B) interests held or proposed to be acquired by an associate or associates (whether foreign or not) of the person;

would be such that, if all the interests were held by the first-mentioned person, they would result in a contravention of section 90G;

(k) the person holds interests that, if they were aggregated with interests held or proposed to be acquired by an associate or associates of the person, would be such that, if all the interests were held by one person, that one person would contravene section 92JB;

(l) the person proposes to acquire interests that, if they were aggregated with:

(i) interests already held by the person; and

(ii) interests held or proposed to be acquired by an associate or associates of the person;

would be such that, if all the interests were held by one person, that one person would contravene section 92JB.

“(2) If this section applies to a person because of an associate or associates of the person, this section applies equally to the associate or associates, and references in the rest of this section to ‘the person’ are references to each of them.

“(3) If:

(a) this section applies to a person because the person proposes to acquire interests; and

(b) the person knows, or has reason to believe, that this section so applies because of the proposal;

the person must lodge with the Tribunal a notice of the acquisition:

(c) at least 21 days before the acquisition takes place; or

(d) if the person becomes aware of the acquisition at a later time, but before the acquisition takes place—as soon as practicable after becoming aware of the acquisition.

“(4) If:

(a) a person has given a notice under subsection (3) about an acquisition; and

(b) the acquisition takes place;

person must lodge with the Tribunal a notice to that effect as soon as practicable and, in any case, within 7 days, after the acquisition takes place.

“(5) If a person becomes aware that this section applies to the person because the person holds an interest, the person must lodge with the Tribunal a notice of that fact as soon as practicable and, in any case, within 7 days, after becoming aware of that fact.

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“(6) A notice under subsection (3) or (5) must contain:

- (a) such matters specified in subsection 90J(7CC) as are applicable; and
- (b) such other matters as are prescribed.

“(7) If a person has lodged a notice under subsections (3) and (4) about an acquisition, the person is not obliged to lodge a notice under subsection (5) about the same acquisition.

“(8) If:

- (a) because of a transaction that has taken place, paragraph (1)(a) applies to a person; and
- (b) the person has lodged an application about the transaction under subsection 90J(4);

the person is not obliged to lodge a notice about that transaction under subsection (5) of this section.

“(9) If:

- (a) because of a proposed transaction, paragraph (1)(b) applies to a person; and
- (b) the person lodges a notice under subsection (3) about that transaction; and
- (c) the transaction takes place; and
- (d) the person lodges a notice under subsection (4) about the transaction;

then, to the extent only of the matters covered in the notice lodged under subsection (3), the person is taken to have lodged an application under subsection 90J(4) at the time when the transaction took place.

“(10) For the purposes of this section, a person is the **associate** of another person if the first person:

- (a) is related to the other person by blood or marriage; or
- (b) is the de facto spouse of the other person; or
- (c) is related to the de facto spouse of the other person by blood or marriage; or
- (d) is, or has been, at any time during the past 5 years:
  - (i) a partner of the other person; or
  - (ii) an employee or employer of the other person; or
  - (iii) if the other person is a company—an officer of that company; or
  - (iv) if the other person is a company holding a commercial radio licence or a commercial television licence—the holder of interests in that company amounting to a prescribed interest in that licence; or
  - (v) a legal, financial or accounting adviser or representative on retainer to the other person or one who has acted in that capacity for the other person on more than one occasion; or

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- (vi) a beneficiary under a trust of which the other person is a trustee or a beneficiary; or
- (vii) acting, or intended, accustomed or expected to act (whether under an arrangement or understanding or not), in accordance with the directions, instructions or wishes, or in concert with, the other person; or
- (viii) if the other person is a company—a related company; or
- (ix) an associate of an associate of the other person (including an associate of the other person by any other application or applications of this subparagraph).

“(11) For the purposes of subsection (10), a corporation is related to another corporation if they are related bodies corporate within the meaning of the *Corporations Act 1989*.

“(12) Without limiting the ordinary meaning of the word ‘propose’, for the purposes of this section a person is taken to propose to acquire interests if the person knows, or has reason to believe, that the person is to acquire those interests by gift or by operation of law.

**Tribunal to have regard to associates**

“90HB. In exercising its powers under this Part in relation to a person, the Tribunal is to have regard to the associates of that person, as defined by section 90HA.

**Exempt classes of associates**

“90HC.(1) The Tribunal may, by notice published in the *Gazette*, determine that a specified class of associates is to be disregarded for the purposes of sections 90HA and 90HB.

“(2) The Tribunal may only make such a determination if it is satisfied that the interests that are or may be held by that class of associates are not likely to contribute to contraventions of this Part by persons with whom they are associated.

“(3) A determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.”.

6. The Principal Act is amended by inserting after section 92E the following sections:

**Notification of interests**

“92EA.(1) This section applies to a person in any of the following circumstances:

- (a) the person holds interests that amount to a prescribed interest in a licence;
- (b) the person proposes to acquire interests that, together with any other interests already held by the person, would amount to a prescribed interest in a licence;

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- (c) the person:
  - (i) is a foreign person as defined by section 92D; and
  - (ii) holds interests that result in a contravention of that section;
- (d) the person:
  - (i) is a foreign person as defined by section 92D; and
  - (ii) proposes to acquire interests that, together with any other interests already held by the person, would result in a contravention of that section;
- (e) the person holds interests that result in a contravention of section 92JB;
- (f) the person proposes to acquire interests that, together with any other interests already held by the person, would result in a contravention of section 92JB;
- (g) the person holds interests that, if they were aggregated with interests held or proposed to be acquired by an associate or associates of the person, would be such that, if all the interests were held by one person, that one person would hold a prescribed interest in a licence;
- (h) the person proposes to acquire interests that, if they were aggregated with:
  - (i) interests already held by the person; and
  - (ii) interests held or proposed to be acquired by an associate or associates of the person;would be such that, if all the interests were held by one person, that one person would hold a prescribed interest in the licence;
- (i) the person:
  - (i) is a foreign person as defined by section 92D; and
  - (ii) holds interests that, if they were aggregated with interests held or proposed to be acquired by an associate or associates (whether foreign or not) of the person, would be such that, if all the interests were held by the first-mentioned person, they would result in a contravention of section 92D;
- (j) the person:
  - (i) is a foreign person as defined by section 92D; and
  - (ii) proposes to acquire interests that, if they were aggregated with:
    - (A) interests already held by the person; and
    - (B) interests held or proposed to be acquired by an associate or associates (whether foreign or not) of the person;would be such that, if all the interests were held by the first-mentioned person, they would result in a contravention of section 92D;

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- (k) the person holds interests that, if they were aggregated with interests held or proposed to be acquired by an associate or associates of the person, would be such that, if all the interests were held by one person, that one person would contravene section 92JB;
- (l) the person proposes to acquire interests that, if they were aggregated with:
  - (i) interests already held by the person; and
  - (ii) interests held or proposed to be acquired by an associate or associates of the person;would be such that, if all the interests were held by one person, that one person would contravene section 92JB.

“(2) If this section applies to a person because of an associate or associates of the person, this section applies equally to the associate or associates, and references in the rest of this section to ‘the person’ are references to each of them.

“(3) If:

- (a) this section applies to a person because the person proposes to acquire interests; and
- (b) the person knows, or has reason to believe, that this section so applies because of the proposal;

the person must lodge with the Tribunal a notice of the acquisition:

- (c) at least 21 days before the acquisition takes place; or
- (d) if the person becomes aware of the acquisition at a later time, but before the acquisition takes place—as soon as practicable after becoming aware of the acquisition.

“(4) If:

- (a) a person has given a notice under subsection (3) about an acquisition; and
- (b) the acquisition takes place;

the person must lodge with the Tribunal a notice to that effect as soon as practicable and, in any case, within 7 days, after the acquisition takes place.

“(5) If a person becomes aware that this section applies to the person because the person holds an interest, the person must lodge with the Tribunal a notice of that fact as soon as practicable and, in any case, within 7 days, after becoming aware of that fact.

“(6) A notice under subsection (3) or (5) must contain:

- (a) such matters specified in subsection 92F(7CC) as are applicable; and
- (b) such other matters as are prescribed.

“(7) If a person has lodged a notice under subsections (3) and (4) about an acquisition, the person is not obliged to lodge a notice under subsection (5) about the same acquisition.



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“(8) If:

- (a) because of a transaction that has taken place, paragraph (1)(a) applies to a person; and
- (b) the person has lodged an application about the transaction under subsection 92F(4);

the person is not obliged to lodge a notice about that transaction under subsection (5) of this section.

“(9) If:

- (a) because of a proposed transaction, paragraph (1)(b) applies to a person; and
- (b) the person lodges a notice under subsection (3) about that transaction; and
- (c) the transaction takes place; and
- (d) the person lodges a notice under subsection (4) about the transaction;

then, to the extent only of the matters covered in the notice lodged under subsection (3), the person is taken to have lodged an application under subsection 92F(4) at the time when the transaction took place.

“(10) For the purposes of this section, a person is the **associate** of another person if the first person:

- (a) is related to the other person by blood or marriage; or
- (b) is the de facto spouse of the other person; or
- (c) is related to the de facto spouse of the other person by blood or marriage; or
- (d) is, or has been, at any time during the past 5 years:
  - (i) a partner of the other person; or
  - (ii) an employee or employer of the other person; or
  - (iii) if the other person is a company—an officer of that company; or
  - (iv) if the other person is a company holding a commercial radio licence or a commercial television licence—the holder of interests in that company amounting to a prescribed interest in that licence; or
  - (v) a legal, financial or accounting adviser or representative on retainer to the other person or one who has acted in that capacity for the other person on more than one occasion; or
  - (vi) a beneficiary under a trust of which the other person is a trustee or a beneficiary; or
  - (vii) acting, or intended, accustomed or expected to act (whether under an arrangement or understanding or not), in accordance with the directions, instructions or wishes, or in concert with, the other person; or

- (viii) if the other person is a company—a related company; or
- (ix) an associate of an associate of the other person (including an associate of the other person by any other application or applications of this subparagraph).

“(11) For the purposes of subsection (10), a corporation is related to another corporation if they are related bodies corporate within the meaning of the *Corporations Act 1989*.

“(12) Without limiting the ordinary meaning of the word ‘propose’, for the purposes of this section a person is taken to propose to acquire interests if the person knows, or has reason to believe, that the person is to acquire those interests by gift or by operation of law.

#### **Tribunal to have regard to associates**

“92EB. In exercising its powers under this Part in relation to a person, the Tribunal is to have regard to the associates of that person, as defined by section 92EA.

#### **Exempt classes of associates**

“92EC.(1) The Tribunal may, by notice published in the *Gazette*, determine that a specified class of associates is to be disregarded for the purposes of sections 92EA and 92EB.

“(2) The Tribunal may only make such a determination if it is satisfied that the interests that are or may be held by that class of associates are not likely to contribute to contraventions of this Part by persons with whom they are associated.

“(3) A determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.”.

#### **Notification of acquisition of cross media interests**

7. Section 92JC of the Principal Act is repealed.

8. After section 92N of the Principal Act the following section is inserted:

#### **Tribunal may accept undertakings during inquiry**

“92NA. During an inquiry, the Tribunal may accept a written undertaking from a person affected, or likely to be affected, by the inquiry about any matter relevant to the inquiry.”.

#### **Powers of Federal Court of Australia**

9. Section 92P of the Principal Act is amended:

- (a) by omitting paragraphs (1)(a) and (aa) and substituting the following paragraph:

“(a) for the purpose of preventing, or of preventing a continuation of, a contravention of any provision of this Part; or”;

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- (b) by omitting subsection (2) and substituting the following subsection:
- “(2) The Court may, on application by the Tribunal, at any time after the Tribunal has opened an inquiry, make such order or orders as it thinks necessary or expedient:
- (a) for the purpose of preventing a person affected, or likely to be affected, by the inquiry from doing any act or thing likely to have an adverse effect on:
- (i) the ability of a licensee to comply with the conditions of its licence; or
- (ii) the operations of a licensee in providing the service pursuant to its licence or the selection or provision of the programs to be broadcast pursuant to its licence; or
- (b) for the purpose of enforcing, or preventing a breach of, an undertaking given to the Tribunal under section 92NA.”;
- (c) by inserting in subsection (3) “or subsection (2)” after “subsection (1)”;
- (d) by omitting from subsection (4) “subsection (1), orders made for the purpose referred to in paragraph (1)(a)” and substituting “subsections (1) and (2), orders made under this section may include”;
- (e) by adding at the end of section (6) “or (2)”.

**Secrecy**

10. Section 125 of the Principal Act is amended by inserting after subsection (3) the following subsection:

“(3A) Subsection (2) does not apply to the disclosure of information, or the production of a document, to the Trade Practices Commission or the Foreign Investment Review Board for the purposes of enabling the Commission or the Board, as the case may be, to carry out its functions.”.

**Transitional**

11. If:

- (a) subsection 90HA(3) or 92EA(3) applies to an acquisition; and
- (b) that subsection commences fewer than 10 days before the acquisition;

that subsection has effect as if paragraph (c) were omitted and the following paragraph were substituted:

“(c) as early as practicable before the acquisition takes place; or”.

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**NOTE**

1. No. 33, 1942, as amended. For previous amendments, see No. 39, 1946; No. 64, 1948; No. 80, 1950; No. 41, 1951; No. 12, 1953; No. 82, 1954; Nos. 33, 65 and 92, 1956; No. 36, 1960 (as amended by No. 32, 1961); No. 96, 1962; No. 82, 1963; Nos. 67 and 121, 1964; Nos. 38 and 120, 1965; No. 57, 1966; No. 47, 1967; No. 69, 1968; Nos. 21 and 31, 1969; Nos. 8, 72 and 136, 1971; No. 49, 1972; No. 50, 1973; No. 216, 1973 (as amended by No. 20, 1974); No. 55, 1974; No. 56, 1975; Nos. 89, 157 and 187, 1976; No. 160, 1977; Nos. 36, 52 and 210, 1978; Nos. 143 and 177, 1980; Nos. 61, 113 and 153, 1981; No. 154, 1982; Nos. 7, 37, 39, 91 and 136, 1983; Nos. 10, 63, 72, 163 and 165, 1984; Nos. 66 and 191, 1985; Nos. 2 and 76, 1986; Nos. 68, 79, 80, 134 and 184, 1987; No. 56, 1988; No. 146, 1988 (as amended by No. 7, 1991); and No. 147, 1991 (as amended by No. 7, 1991); Nos. 23, 102 and 103, 1990; and Nos. 7, 11 and 99, 1991.

*[Minister's second reading speech made in—  
House of Representatives on 12 September 1991  
Senate on 9 October 1991]*