



Broadcasting Services Amendment (Media Ownership) Act 2006

No. 129, 2006

An Act to amend the *Broadcasting Services Act 1992*, and for other purposes

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Broadcasting Services Amendment (Media Ownership) Act 2006

No. 129, 2006

An Act to amend the *Broadcasting Services Act 1992*, and for other purposes

[Assented to 4 November 2006]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Broadcasting Services Amendment (Media Ownership) Act 2006*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	4 November 2006
2. Schedule 1	1 February 2007.	1 February 2007
3. Schedule 2	A single day to be fixed by Proclamation. However, if the provision(s) do not commence before 1 January 2008, they commence on that day.	4 April 2007 (<i>see</i> F2007L00837)
4. Schedule 3	1 January 2009.	1 January 2009

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments commencing on 1 February 2007

Broadcasting Services Act 1992

1 Subsection 6(1)

Insert:

business day means a day that is not a Saturday, a Sunday or a public holiday in the place concerned.

2 Subsection 6(1)

Insert:

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

3 Before section 50

Insert:

50A This Part does not apply in relation to licences allocated under subsection 40(1)

This Part does not apply in relation to:

- (a) a commercial television broadcasting licence; or
 - (b) a commercial radio broadcasting licence;
- if the licence was allocated under subsection 40(1).

4 At the end of Division 1 of Part 5

Add:

52A Newspapers—additional constitutional basis

- (1) Without limiting its effect apart from this section, this Act also has effect as provided by this section.
- (2) This Act also has the effect it would have if each reference in this Part to a newspaper were, by express provision, confined to a newspaper where:

- (a) the publisher of the newspaper is a constitutional corporation;
or
- (b) at least part of the circulation of the newspaper is:
 - (i) in 2 or more States; or
 - (ii) in a Territory; or
 - (iii) in a foreign country.

5 After subsection 59(4B)

Insert:

- (4C) Despite subsections (3) and (4A), if the ACMA is satisfied that:
- (a) a person (either alone or together with one or more other persons) has entered into, begun to carry out or carried out a scheme to publish a newspaper; and
 - (b) the person did so for the sole or dominant purpose of ensuring that the number of points in the licence area of a commercial radio broadcasting licence would be increased or maintained;
- the ACMA may refuse to enter the name of the newspaper in the Register.

- (4D) If:
- (a) a newspaper is entered in the Register; and
 - (b) the ACMA is satisfied that:
 - (i) a person (either alone or together with one or more other persons) entered into, began to carry out or carried out a scheme to publish the newspaper; and
 - (ii) the person did so for the sole or dominant purpose of ensuring that the number of points in the licence area of a commercial radio broadcasting licence would be increased or maintained;
- the ACMA may remove the name of the newspaper from the Register.

6 Subsections 59(5) and (6)

Repeal the subsections, substitute:

- (5) The Register may be maintained by electronic means.
- (6) The Register is to be made available for inspection on the Internet.

7 At the end of section 59

Add:

(8) In this section:

points has the same meaning as in Division 5A.

scheme has the same meaning as in Division 5A.

8 After Division 5 of Part 5

Insert:

Division 5A—Media diversity

Subdivision A—Introduction

61AA Definitions

In this Division:

commencement day means the day on which Schedule 2 to the *Broadcasting Services Amendment (Media Ownership) Act 2006* commences.

controller of a media group means a person who is in a position to exercise control of each media operation in the media group.

daytime/evening hours means the hours:

- (a) beginning at 6 am each day; and
- (b) ending at midnight on the same day.

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

interest in a share means a legal or equitable interest in the share.

media group means a group of 2 or more media operations.

media operation means:

- (a) a commercial television broadcasting licence; or
- (b) a commercial radio broadcasting licence; or

- (c) a newspaper that is associated with the licence area of a commercial television broadcasting licence or a commercial radio broadcasting licence.

metropolitan licence area means:

- (a) a licence area in which is situated the General Post Office of the capital city of:
- (i) New South Wales; or
 - (ii) Victoria; or
 - (iii) Queensland; or
 - (iv) Western Australia; or
 - (v) South Australia; or
- (b) the licence area known as Western Suburbs Sydney RA1.

name of a commercial television broadcasting licence or a commercial radio broadcasting licence means the service licence number of the licence.

points, in relation to the licence area of a commercial radio broadcasting licence, has the meaning given by section 61AC.

regional licence area means a licence area that is not a metropolitan licence area.

Register means the Register of Controlled Media Groups maintained under section 61AU.

registered controller of a registered media group means a person whose name is entered in the Register as a controller of the media group.

registered media group means a media group that is entered in the Register.

registrable media group, in relation to the licence area of a commercial radio broadcasting licence, means a media group covered by item 1 of the table in subsection 61AC(1) in its application to that licence area. For this purpose, disregard subsection 61AC(2).

scheme means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not

enforceable, or intended to be enforceable, by legal proceedings; and

- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

shared content test has the meaning given by section 61AE.

statutory control rules has the meaning given by section 61AD.

unacceptable 3-way control situation has the meaning given by section 61AEA.

unacceptable media diversity situation has the meaning given by section 61AB.

61AB Unacceptable media diversity situation

Metropolitan licence area

- (1) For the purposes of this Division, an *unacceptable media diversity situation* exists in relation to a metropolitan licence area of a commercial radio broadcasting licence if the number of points in the licence area is less than 5.

Regional licence area

- (2) For the purposes of this Division, an *unacceptable media diversity situation* exists in relation to a regional licence area of a commercial radio broadcasting licence if the number of points in the licence area is less than 4.

61AC Points

- (1) Use the table to work out the number of points in the licence area of a commercial radio broadcasting licence (the *first radio licence area*):

Schedule 1 Amendments commencing on 1 February 2007

Points		
Item	This ...	is worth ...
1	a group of 2 or more media operations, where: (a) a person is in a position to exercise control of each of those media operations; and (b) each of those media operations complies with the statutory control rules; and (c) if a commercial television broadcasting licence is in the group—more than 50% of the licence area population of the first radio licence area is attributable to the licence area of the commercial television broadcasting licence; and (d) if a commercial radio broadcasting licence is in the group—the licence area of the commercial radio broadcasting licence is, or is the same as, the first radio licence area; and (e) if a newspaper is in the group—the newspaper is associated with the first radio licence area	1 point.
2	a commercial radio broadcasting licence, where: (a) the licence complies with the statutory control rules; and (b) the licence area of the licence is, or is the same as, the first radio licence area; and (c) item 1 does not apply to the licence	1 point.
3	a newspaper, where: (a) the newspaper complies with the statutory control rules; and (b) the newspaper is associated with the first radio licence area; and (c) item 1 does not apply to the newspaper	1 point.

Points		
Item	This ...	is worth ...
4	a group of 2 or more commercial television broadcasting licences, where: <ul style="list-style-type: none"> (a) each of those licences complies with the statutory control rules; and (b) more than 50% of the licence area population of the first radio licence area is attributable to the licence area of each of those commercial television broadcasting licences; and (c) the core commercial television broadcasting services to which those commercial television broadcasting licences relate pass the shared content test in relation to each other; and (d) item 1 does not apply to any of those commercial television broadcasting licences 	1 point.
5	a commercial television broadcasting licence, where: <ul style="list-style-type: none"> (a) the licence complies with the statutory control rules; and (b) more than 50% of the licence area population of the first radio licence area is attributable to the licence area of the commercial television broadcasting licence; and (c) none of the commercial television broadcasting services provided under the licence passes the shared content test in relation to any of the commercial television broadcasting services provided under another commercial television broadcasting licence, where more than 50% of the licence area population of the first radio licence area is attributable to the licence area of the other commercial television broadcasting licence; and (d) item 1 does not apply to the first-mentioned licence 	1 point.
	(2) If, apart from this subsection, all the media operations in a group of media operations mentioned in an item of the table are also in one or more other groups mentioned in an item of the table, then, for the purposes of subsection (1), ignore the existence of: <ul style="list-style-type: none"> (a) if one of the groups has the highest number of media operations—the remaining group or groups; or 	

- (b) if 2 or more of the groups have an equal highest number of media operations:
 - (i) all but one of the groups that have an equal highest number of media operations; and
 - (ii) the remaining group or groups; or
- (c) if the groups have an equal number of media operations—all but one of those groups.

61AD Statutory control rules

For the purposes of this Division, a media operation *complies with the statutory control rules* if, and only if:

- (a) no person is in breach of a prohibition in Division 2 or 3 that relates directly or indirectly to the media operation; or
- (b) a person is in breach of a prohibition in Division 2 or 3 that relates directly or indirectly to the media operation, but the ACMA has approved the breach under section 67.

Note: Section 67 is about approval of temporary breaches.

61AE Shared content test

- (1) For the purposes of this Division, a commercial television broadcasting service *passes the shared content test* at a particular time in relation to another commercial television broadcasting service if:
 - (a) the program content of at least 50% of the total number of hours of programs broadcast by the first-mentioned service during daytime/evening hours during the 6-month period ending at that time;
were the same as:
 - (b) the program content of at least 50% of the total number of hours of programs broadcast by the other service during daytime/evening hours during the 6-month period ending at that time.
- (2) For the purposes of subsection (1), ignore the following:
 - (a) advertising or sponsorship material (whether or not of a commercial kind);
 - (b) a promotion for a television program or a television broadcasting service;

- (c) community information material or community promotional material;
 - (d) a news break or weather bulletin;
 - (e) any other similar material.
- (3) For the purposes of subsection (1), ignore any material covered by paragraph 6(8)(b), (c) or (d) of Schedule 4.

61AEA Unacceptable 3-way control situation

For the purposes of this Division, an *unacceptable 3-way control situation* exists in relation to the licence area of a commercial radio broadcasting licence (the *first radio licence area*) if a person is in a position to exercise control of:

- (a) a commercial television broadcasting licence, where more than 50% of the licence area population of the first radio licence area is attributable to the licence area of the commercial television broadcasting licence; and
- (b) a commercial radio broadcasting licence, where the licence area of the commercial radio broadcasting licence is, or is the same as, the first radio licence area; and
- (c) a newspaper that is associated with the first radio licence area.

61AF Overlapping licence areas

Section 51 does not apply to this Division.

Note: Section 51 is about overlapping licence areas.

Subdivision B—Prohibition of transactions that result in an unacceptable media diversity situation coming into existence etc.

61AG Prohibition of transactions that result in an unacceptable media diversity situation coming into existence—offence

A person commits an offence if:

- (a) one or more transactions take place on or after the commencement day; and
- (b) the transactions have the result that:

- (i) an unacceptable media diversity situation comes into existence in relation to the licence area of a commercial radio broadcasting licence; or
 - (ii) if an unacceptable media diversity situation already exists in relation to the licence area of a commercial radio broadcasting licence—there is a reduction in the number of points in the licence area; and
- (c) the person was:
- (i) a party to the transactions; or
 - (ii) in a position to prevent the transactions taking place; and
- (d) the ACMA has not approved the transactions under section 61AJ.

Penalty: 20,000 penalty units.

61AH Prohibition of transactions that result in an unacceptable media diversity situation coming into existence—civil penalty

- (1) This section applies if:
- (a) one or more transactions take place on or after the commencement day; and
 - (b) the transactions have the result that:
 - (i) an unacceptable media diversity situation comes into existence in relation to the licence area of a commercial radio broadcasting licence; or
 - (ii) if an unacceptable media diversity situation already exists in relation to the licence area of a commercial radio broadcasting licence—there is a reduction in the number of points in the licence area; and
 - (c) the ACMA has not approved the transactions under section 61AJ.
- (2) A person must not be:
- (a) a party to the transactions; or
 - (b) in a position to prevent the transactions taking place.
- (3) Subsection (2) is a civil penalty provision.

61AJ Prior approval of transactions that result in an unacceptable media diversity situation coming into existence etc.

- (1) A person may, before a transaction takes place that would place a person in breach of section 61AG or 61AH, make an application to the ACMA for an approval of the transaction.
- (2) An application is to be made in accordance with a form approved in writing by the ACMA.
- (3) If the ACMA considers that additional information is required before the ACMA can make a decision on an application, the ACMA may, by written notice given to the applicant within 30 days after receiving the application, request the applicant to provide that information.
- (4) If, after receiving an application, the ACMA is satisfied that:
 - (a) if the transaction took place, it would place a person in breach of section 61AG or 61AH; and
 - (b) either:
 - (i) the applicant; or
 - (ii) another person;will take action, within a period of not longer than 2 years, to ensure that:
 - (iii) an unacceptable media diversity situation does not exist in relation to the licence area concerned; or
 - (iv) if an unacceptable media diversity situation already exists in relation to the licence area concerned—there is not a reduction in the number of points in the licence area concerned;the ACMA may, by written notice given to the applicant:
 - (c) approve the transaction; and
 - (d) if subparagraph (b)(i) applies—specify a period within which action must be taken by the applicant to ensure that:
 - (i) an unacceptable media diversity situation does not exist in relation to the licence area concerned; or
 - (ii) if an unacceptable media diversity situation already exists in relation to the licence area concerned—there is not a reduction in the number of points in the licence area concerned; and

- (e) if subparagraph (b)(ii) applies—inform the applicant accordingly.
- (5) The period specified in the notice must be at least one month, but not longer than 2 years.
- (6) The ACMA may specify in a notice given to an applicant the action that the ACMA considers the applicant must take to ensure that:
 - (a) an unacceptable media diversity situation does not exist in relation to the licence area concerned; or
 - (b) if an unacceptable media diversity situation already exists in relation to the licence area concerned—there is not a reduction in the number of points in the licence area concerned.
- (7) In deciding whether to approve a transaction, the ACMA may have regard to:
 - (a) any relevant undertakings that:
 - (i) have been accepted by the ACMA under section 61AS; and
 - (ii) have not been withdrawn or cancelled; and
 - (b) such other matters (if any) as the ACMA considers relevant.
- (8) If the ACMA refuses to approve a transaction, the ACMA must give written notice of the refusal to the applicant.
- (9) The ACMA must deal with applications under subsection (1) in order of receipt.
- (10) If the ACMA receives an application under subsection (1), the ACMA must use its best endeavours to make a decision on the application within 45 days after receipt of the application.

61AK Extension of time for compliance with prior approval notice

- (1) A person who has been given a notice under section 61AJ may, within 3 months before the end of the period specified in the notice but not less than one month before the end of that period, apply in writing to the ACMA for an extension of that period.
- (2) The ACMA may grant an extension if it is of the opinion that an extension is appropriate in all the circumstances.

- (3) If the ACMA considers that additional information is required before the ACMA can make a decision on an application, the ACMA may, by written notice given to the applicant within 30 days after receiving the application, request the applicant to provide that information.
- (4) The ACMA must not grant more than one extension, and the period of any extension must not exceed:
- (a) the period originally specified in the notice; or
 - (b) one year;
- whichever is the lesser period.
- (5) In deciding whether to grant an extension to an applicant, the ACMA is to have regard to:
- (a) the endeavours that the applicant made in attempting to comply with the notice; and
 - (b) the difficulties that the applicant experienced in attempting to comply with the notice;
- but the ACMA must not have regard to any financial disadvantage that compliance with the notice may cause.
- (6) If the ACMA does not, within 45 days after:
- (a) receiving the application; or
 - (b) if the ACMA has requested further information—receiving that further information;
- extend the period or refuse to extend the period originally specified in the notice, the ACMA is to be taken to have extended that period by:
- (c) the period originally specified in the notice; or
 - (d) one year;
- whichever is the lesser period.
- (7) If the ACMA refuses to approve an application made under subsection (1), the ACMA must give written notice of the refusal to the applicant.

61AL Breach of prior approval notice—offence

- (1) A person commits an offence if:
- (a) the person has been given a notice under section 61AJ; and
 - (b) the person engages in conduct; and

(c) the person's conduct contravenes a requirement in the notice.

Penalty: 20,000 penalty units.

- (2) A person who contravenes subsection (1) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

61AM Breach of prior approval notice—civil penalty

- (1) A person must comply with a notice under section 61AJ.
- (2) Subsection (1) is a civil penalty provision.
- (3) A person who contravenes subsection (1) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any later day) during which the contravention continues.

Subdivision BA—Prohibition of transactions that result in an unacceptable 3-way control situation coming into existence etc.

61AMA Prohibition of transactions that result in an unacceptable 3-way control situation coming into existence—offence

A person commits an offence if:

- (a) one or more transactions take place on or after the commencement day; and
- (b) the transactions have the result that an unacceptable 3-way control situation comes into existence in relation to the licence area of a commercial radio broadcasting licence; and
- (c) the person was:
- (i) a party to the transactions; or
 - (ii) in a position to prevent the transactions taking place; and
- (d) the ACMA has not approved the transactions under section 61AMC.

Penalty: 20,000 penalty units.

61AMB Prohibition of transactions that result in an unacceptable 3-way control situation coming into existence—civil penalty

- (1) This section applies if:
 - (a) one or more transactions take place on or after the commencement day; and
 - (b) the transactions have the result that an unacceptable 3-way control situation comes into existence in relation to the licence area of a commercial radio broadcasting licence; and
 - (c) the ACMA has not approved the transactions under section 61AMC.
- (2) A person must not be:
 - (a) a party to the transactions; or
 - (b) in a position to prevent the transactions taking place.
- (3) Subsection (2) is a civil penalty provision.

61AMC Prior approval of transactions that result in an unacceptable 3-way control situation coming into existence etc.

- (1) A person may, before a transaction takes place that would place a person in breach of section 61AMA or 61AMB, make an application to the ACMA for an approval of the transaction.
- (2) An application is to be made in accordance with a form approved in writing by the ACMA.
- (3) If the ACMA considers that additional information is required before the ACMA can make a decision on an application, the ACMA may, by written notice given to the applicant within 30 days after receiving the application, request the applicant to provide that information.
- (4) If, after receiving an application, the ACMA is satisfied that:
 - (a) if the transaction took place, it would place a person in breach of section 61AMA or 61AMB; and
 - (b) either:
 - (i) the applicant; or
 - (ii) another person;

will take action, within a period of not longer than 12 months, to ensure that an unacceptable 3-way control situation does not exist in relation to the licence area concerned;

the ACMA may, by written notice given to the applicant:

- (c) approve the transaction; and
 - (d) if subparagraph (b)(i) applies—specify a period within which action must be taken by the applicant to ensure that an unacceptable 3-way control situation does not exist in relation to the licence area concerned; and
 - (e) if subparagraph (b)(ii) applies—inform the applicant accordingly.
- (5) The period specified in the notice must be at least one month, but not longer than 12 months.
- (6) The ACMA may specify in a notice given to an applicant the action that the ACMA considers the applicant must take to ensure that an unacceptable 3-way control situation does not exist in relation to the licence area concerned.
- (7) In deciding whether to approve a transaction, the ACMA may have regard to:
- (a) any relevant undertakings that:
 - (i) have been accepted by the ACMA under section 61AS; and
 - (ii) have not been withdrawn or cancelled; and
 - (b) such other matters (if any) as the ACMA considers relevant.
- (8) If the ACMA refuses to approve a transaction, the ACMA must give written notice of the refusal to the applicant.
- (9) The ACMA must deal with applications under subsection (1) in order of receipt.
- (10) If the ACMA receives an application under subsection (1), the ACMA must use its best endeavours to make a decision on the application within 45 days after receipt of the application.

61AMD Extension of time for compliance with prior approval notice

- (1) A person who has been given a notice under section 61AMC may, within 3 months before the end of the period specified in the notice but not less than one month before the end of that period, apply in writing to the ACMA for an extension of that period.
- (2) The ACMA may grant an extension if it is of the opinion that an extension is appropriate in all the circumstances.
- (3) If the ACMA considers that additional information is required before the ACMA can make a decision on an application, the ACMA may, by written notice given to the applicant within 30 days after receiving the application, request the applicant to provide that information.
- (4) The ACMA must not grant more than one extension, and the period of any extension must not exceed:
 - (a) the period originally specified in the notice; or
 - (b) 6 months;whichever is the lesser period.
- (5) In deciding whether to grant an extension to an applicant, the ACMA is to have regard to:
 - (a) the endeavours that the applicant made in attempting to comply with the notice; and
 - (b) the difficulties that the applicant experienced in attempting to comply with the notice;but the ACMA must not have regard to any financial disadvantage that compliance with the notice may cause.
- (6) If the ACMA does not, within 45 days after:
 - (a) receiving the application; or
 - (b) if the ACMA has requested further information—receiving that further information;extend the period or refuse to extend the period originally specified in the notice, the ACMA is to be taken to have extended that period by:
 - (c) the period originally specified in the notice; or
 - (d) 6 months;whichever is the lesser period.

- (7) If the ACMA refuses to approve an application made under subsection (1), the ACMA must give written notice of the refusal to the applicant.

61AME Breach of prior approval notice—offence

- (1) A person commits an offence if:
- (a) the person has been given a notice under section 61AMC; and
 - (b) the person engages in conduct; and
 - (c) the person's conduct contravenes a requirement in the notice.

Penalty: 20,000 penalty units.

- (2) A person who contravenes subsection (1) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

61AMF Breach of prior approval notice—civil penalty

- (1) A person must comply with a notice under section 61AMC.
- (2) Subsection (1) is a civil penalty provision.
- (3) A person who contravenes subsection (1) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any later day) during which the contravention continues.

Subdivision C—Remedial directions

61AN Remedial directions—unacceptable media diversity situation

- (1) If, on or after the commencement day, the ACMA is satisfied that an unacceptable media diversity situation exists in relation to the licence area of a commercial radio broadcasting licence, the ACMA may give a person such written directions as the ACMA considers appropriate for the purpose of ensuring that that situation ceases to exist.
- (2) The ACMA's directions may include:

- (a) a direction requiring the disposal of shares or interests in shares; or
 - (b) a direction restraining the exercise of any rights attached to:
 - (i) shares; or
 - (ii) interests in shares; or
 - (c) a direction prohibiting or deferring the payment of any sums due to a person in respect of shares, or interests in shares, held by the person; or
 - (d) a direction that any exercise of rights attached to:
 - (i) shares; or
 - (ii) interests in shares;be disregarded.
- (3) Subsection (2) does not limit subsection (1).
- (4) The ACMA must not give a direction under subsection (1) if the direction would have the effect of requiring a registered controller of a registered media group to cease to be in a position to exercise control of any of the media operations in the group.
- (4A) Subsection (4) does not prevent the ACMA from giving a direction under subsection (1) to a registered controller of a registered media group that would have the effect of requiring the registered controller to cease to be in a position to exercise control of a media operation in the group if:
- (a) the registered controller failed to comply with a notice under section 61AJ; and
 - (b) the notice related, to any extent, to the media operation.
- (4B) Subsection (4) does not prevent the ACMA from giving a direction under subsection (1) to a registered controller of a registered media group that would have the effect of requiring the registered controller to cease to be in a position to exercise control of a media operation in the group if:
- (a) an approval under section 61AJ was given on the basis that the ACMA was satisfied that a person other than the registered controller would, within a particular period, take action that, to any extent, relates to the media operation; and
 - (b) the person failed to take the action within that period.
- (4C) If:

- (a) the ACMA made any of the following decisions (the *original decision*) in connection with a registrable media group in relation to the licence area of a commercial radio broadcasting licence:
 - (i) a decision to enter the media group in the Register under subsection 61AY(1) or 61AZ(1);
 - (ii) a decision under subsection 61AZE(1) confirming the entry of the media group in the Register;
 - (iii) a decision under section 61AZF affirming a decision under subsection 61AZE(1) to confirm the entry of the media group in the Register;
 - (iv) a decision under section 61AZF revoking a decision under subsection 61AZE(1) to cancel the entry of the media group in the Register; and
- (b) any of the following subparagraphs applies:
 - (i) in the case of a decision under subsection 61AZE(1)—a person applied to the ACMA for a reconsideration of the original decision;
 - (ii) in the case of a decision under section 61AZF—a person applied to the Administrative Appeals Tribunal for a review of the original decision;
 - (iii) in any case—a person applied to a court for an order of review, a writ of mandamus or prohibition, or an injunction, in relation to the original decision; and
- (c) the original decision was set aside or revoked; and
- (d) after the original decision was set aside or revoked, the ACMA entered another registrable media group in relation to that licence area in the Register; and
- (e) after that other group was entered in the Register, the Administrative Appeals Tribunal or a court made a decision the effect of which was to restore or affirm the original decision;

subsection (4) does not prevent the ACMA from giving a direction under subsection (1) to a registered controller of that other group that would have the effect of requiring the registered controller to cease to be in a position to exercise control of any media operation in that other group.

- (5) A direction under subsection (1) must specify a period within which the person must comply with the direction.

(6) The period must not be longer than 2 years.

(6A) If:

(a) the ACMA gives a direction under subsection (1) in the circumstances referred to in subsection (4C); and

(b) subsection (8) does not apply;

the period specified in the direction must be 2 years.

(7) If the ACMA is satisfied that the person:

(a) acted in good faith; and

(b) took reasonable precautions, and exercised due diligence, to avoid:

(i) the unacceptable media diversity situation coming into existence; or

(ii) if the unacceptable media diversity situation already existed—a reduction in the number of points in the licence area concerned;

the period specified in the direction must be 2 years.

(8) If the ACMA is satisfied that the person acted flagrantly in breach of section 61AG or 61AH, the period specified in the direction must be one month.

(9) The Parliament recognises that, if a period of one month is specified in a direction, the person to whom the direction is given or another person may be required to dispose of shares or interests in shares in a way, or otherwise make arrangements, that could cause the person a considerable financial disadvantage. Such a result is seen as necessary in order to discourage flagrant breaches of sections 61AG and 61AH.

61ANA Remedial directions—unacceptable 3-way control situation

(1) If, on or after the commencement day, the ACMA is satisfied that an unacceptable 3-way control situation exists in relation to the licence area of a commercial radio broadcasting licence, the ACMA may give a person such written directions as the ACMA considers appropriate for the purpose of ensuring that that situation ceases to exist.

(2) The ACMA's directions may include:

- (a) a direction requiring the disposal of shares or interests in shares; or
 - (b) a direction restraining the exercise of any rights attached to:
 - (i) shares; or
 - (ii) interests in shares; or
 - (c) a direction prohibiting or deferring the payment of any sums due to a person in respect of shares, or interests in shares, held by the person; or
 - (d) a direction that any exercise of rights attached to:
 - (i) shares; or
 - (ii) interests in shares;be disregarded.
- (3) Subsection (2) does not limit subsection (1).
- (4) A direction under subsection (1) must specify a period within which the person must comply with the direction.
- (5) The period must not be longer than 12 months.
- (6) If the ACMA is satisfied that the person:
- (a) acted in good faith; and
 - (b) took reasonable precautions, and exercised due diligence, to avoid the unacceptable 3-way control situation coming into existence;
- the period specified in the direction must be 12 months.
- (7) If the ACMA is satisfied that the person acted flagrantly in breach of section 61AMA or 61AMB, the period specified in the direction must be one month.
- (8) The Parliament recognises that, if a period of one month is specified in a direction, the person to whom the direction is given or another person may be required to dispose of shares or interests in shares in a way, or otherwise make arrangements, that could cause the person a considerable financial disadvantage. Such a result is seen as necessary in order to discourage flagrant breaches of sections 61AMA and 61AMB.

61AP Extension of time for compliance with remedial direction

- (1) A person who has been given a direction under section 61AN or 61ANA may, within 3 months before the end of the period specified in the direction but not less than one month before the end of that period, apply in writing to the ACMA for an extension of that period.
- (2) An application for an extension cannot be made if the period specified in the direction was one month.
- (3) In the case of a direction under section 61AN, the ACMA may grant an extension if it is of the opinion that:
 - (a) an unacceptable media diversity situation is likely to cease to exist in the licence area concerned within 3 months after the end of the period specified in the direction under section 61AN; and
 - (b) the applicant acted in good faith; and
 - (c) an extension is appropriate in all the circumstances.
- (3A) In the case of a direction under section 61ANA, the ACMA may grant an extension if it is of the opinion that:
 - (a) an unacceptable 3-way control situation is likely to cease to exist in the licence area concerned within 3 months after the end of the period specified in the direction under section 61ANA; and
 - (b) the applicant acted in good faith; and
 - (c) an extension is appropriate in all the circumstances.
- (4) If the ACMA considers that additional information is required before the ACMA can make a decision on an application, the ACMA may, by written notice given to the applicant within 30 days after receiving the application, request the applicant to provide that information.
- (5) The ACMA must not grant more than one extension, and the period of any extension must not exceed 3 months.
- (6) In deciding whether to grant an extension to a person, the ACMA is to have regard to:
 - (a) the endeavours that the applicant made in attempting to comply with the direction; and

- (b) the difficulties experienced by the applicant in attempting to comply with the direction; and
 - (c) the seriousness of the situation that led to the giving of the direction under section 61AN or 61ANA, as the case may be; but the ACMA must not have regard to any financial disadvantage that compliance with the direction may cause.
- (7) If the ACMA does not, within 45 days after:
- (a) receiving the application; or
 - (b) if the ACMA has requested further information—receiving that further information;
- extend the period or refuse to extend the period originally specified in the direction, the ACMA is to be taken to have extended that period by 3 months.
- (8) If the ACMA refuses to approve an application made under subsection (1), the ACMA must give written notice of the refusal to the applicant.

61AQ Breach of remedial direction—offence

- (1) A person commits an offence if:
- (a) the person has been given a direction under section 61AN or 61ANA; and
 - (b) the person engages in conduct; and
 - (c) the person's conduct contravenes a requirement in the direction.

Penalty: 20,000 penalty units.

- (2) A person who contravenes subsection (1) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

61AR Breach of remedial direction—civil penalty

- (1) A person must comply with a direction under section 61AN or 61ANA.
- (2) Subsection (1) is a civil penalty provision.

- (3) A person who contravenes subsection (1) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any later day) during which the contravention continues.

Subdivision D—Enforceable undertakings

61AS Acceptance of undertakings

- (1) The ACMA may accept any of the following undertakings:
- (a) a written undertaking given by a person that the person will take specified action to ensure that an unacceptable media diversity situation does not exist in relation to the licence area of a commercial radio broadcasting licence;
 - (b) if an unacceptable media diversity situation already exists in relation to the licence area of a commercial radio broadcasting licence—a written undertaking given by a person that the person will take specified action to ensure that there is not a reduction in the number of points in the licence area;
 - (c) a written undertaking given by a person that the person will take specified action to ensure that an unacceptable 3-way control situation does not exist in relation to the licence area of a commercial radio broadcasting licence.
- (2) The undertaking must be expressed to be an undertaking under this section.
- (3) The person may withdraw or vary the undertaking at any time, but only with the consent of the ACMA.
- (4) The ACMA may, by written notice given to the person, cancel the undertaking.
- (5) The ACMA may publish the undertaking on its Internet site.

61AT Enforcement of undertakings

- (1) If:
- (a) a person has given an undertaking under section 61AS; and
 - (b) the undertaking has not been withdrawn or cancelled; and

- (c) the ACMA considers that the person has breached the undertaking;
the ACMA may apply to the Federal Court for an order under subsection (2).
- (2) If the Federal Court is satisfied that the person has breached the undertaking, the court may make any or all of the following orders:
 - (a) an order directing the person to comply with the undertaking;
 - (b) an order directing the person to pay to the ACMA, on behalf of the Commonwealth, an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
 - (c) any order that the court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
 - (d) any other order that the court considers appropriate.

Subdivision E—Register of Controlled Media Groups

61AU Register of Controlled Media Groups

- (1) The ACMA is to maintain a register, to be known as the Register of Controlled Media Groups.
- (2) The Register is to be maintained by electronic means.
- (3) The Register is to be made available for inspection on the Internet.
- (4) The Register is not a legislative instrument.
- (5) The ACMA must begin to comply with subsection (1) as soon as practicable after the start of 1 February 2007.

61AV How a media group is to be entered in the Register

- (1) For the purposes of this Subdivision, the ACMA is to enter a media group in the Register by entering in the Register, under a heading for the group:
 - (a) the names of the media operations in the group; and
 - (b) the name of the controller, or the names of each of the controllers, of the media operations in the group.

- (2) A media group is to be identified in the Register by a unique number assigned by the ACMA.

61AW Explanatory notes may be included in the Register

- (1) The ACMA may include explanatory notes in the Register.
- (2) Explanatory notes do not form part of a media group's entry in the Register.

61AX Continuity of media group

- (1) For the purposes of this Subdivision, a change in the controller, or any of the controllers, of a media group does not affect the continuity of the group.
- (2) For the purposes of this Subdivision, a change in the composition of the media operations in a media group results in the group ceasing to exist.
- (3) However, the rule in subsection (2) does not apply to a change in the composition of the media operations in a media group if:
 - (a) one or more media operations cease to be in the group; and
 - (b) at least 2 media operations remain in the group; and
 - (c) there is no increase in the number of media operations that remain in the group.

61AY Initial registration of media groups

- (1) If the ACMA is satisfied that a particular media group was a registrable media group in relation to the licence area of a commercial radio broadcasting licence at the start of 1 February 2007, the ACMA must enter the group in the Register.
- (2) For the purposes of subsection (1), the ACMA may rely on one or more notifications given, or purportedly given, under Division 6 on or after 1 February 2007.
- (3) If the ACMA relies on a notification or notifications given, or purportedly given, under Division 6, the ACMA must make the relevant entry within 2 business days after receiving the notification or the last of the notifications.

- (4) If the ACMA makes an entry under subsection (1), the ACMA is to include in the Register a note to the effect that the entry is unconfirmed.
- (5) An entry under subsection (1) is taken to have been made at the start of 1 February 2007.

61AZ Registration of newly-formed media group

- (1) If:
 - (a) the ACMA is satisfied that:
 - (i) a registrable media group has come into existence on or after 1 February 2007; and
 - (ii) the media group is not already entered in the Register; and
 - (b) the ACMA is satisfied that the coming into existence of the media group does not have the result that:
 - (i) an unacceptable media diversity situation comes into existence in relation to the licence area of a commercial radio broadcasting licence; or
 - (ii) if an unacceptable media diversity situation already exists in relation to the licence area of a commercial radio broadcasting licence—there is a reduction in the number of points in the licence area; and
 - (c) the ACMA is satisfied that the coming into existence of the media group does not have the result that an unacceptable 3-way control situation comes into existence in relation to the licence area of a commercial radio broadcasting licence;the ACMA must enter the group in the Register.
 - (2) For the purposes of subsection (1), the ACMA may rely on one or more notifications given, or purportedly given, under Division 6 on or after 1 February 2007.
 - (3) If the ACMA relies on a notification or notifications given, or purportedly given, under Division 6, the ACMA must make the relevant entry within 2 business days after receiving the notification or the last of the notifications.
 - (4) If the ACMA makes an entry under subsection (1), the ACMA is to include in the Register a note to the effect that the entry is unconfirmed.
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*Register frozen while ACMA reconsideration is pending or
AAT/court proceedings are pending*

(5) If:

- (a) the ACMA makes a decision under this Subdivision in connection with a registrable media group in relation to the licence area of a commercial radio broadcasting licence; and
- (b) any of the following subparagraphs applies:
 - (i) in the case of a decision under subsection 61AZE(1)—a person applies to the ACMA for a reconsideration of the decision;
 - (ii) in the case of a decision under section 61AZF—a person applies to the Administrative Appeals Tribunal for a review of the decision;
 - (iii) in any case—a person applies to a court for an order of review, a writ of mandamus or prohibition, or an injunction, in relation to the decision;

then:

- (c) despite subsection (1), the ACMA must not enter any other registrable media group in relation to that licence area in the Register under that subsection during the period (the *pending period*) when that application has not been finalised unless the ACMA is satisfied that, assuming that the decision were not to be set aside or revoked, the coming into existence of the media group does not have the result that:
 - (i) an unacceptable media diversity situation comes into existence in relation to the licence area of a commercial radio broadcasting licence; or
 - (ii) if an unacceptable media diversity situation already exists in relation to the licence area of a commercial radio broadcasting licence—there is a reduction in the number of points in the licence area; and
- (d) if the ACMA is satisfied that another registrable media group in relation to that licence area has come into existence during the pending period—subsection (3) has effect, in relation to the other registrable media group, as if the relevant notification, or the last of the relevant notifications, as the case may be, had been received on the first day after the end of the pending period.

- (6) For the purposes of subsection (5), an application for reconsideration of a decision is taken not to have been finalised during the period of 28 days beginning on:
- (a) if, because of the operation of subsection 61AZF(9), the decision is taken to be affirmed—the day on which the decision is taken to have been affirmed; or
 - (b) in any other case—the day on which the decision on the reconsideration is notified to the person concerned.
- (7) For the purposes of subsection (5), if:
- (a) a person applied to the Administrative Appeals Tribunal for a review of a decision; and
 - (b) the Administrative Appeals Tribunal makes a decision on the application;
- the application is taken not to have been finalised during the period of 28 days beginning on the day on which the decision mentioned in paragraph (b) is made.
- (8) For the purposes of subsection (5), if:
- (a) a person applied to the Administrative Appeals Tribunal for a review of a decision; and
 - (b) the Administrative Appeals Tribunal made a decision on the application; and
 - (c) a person appeals from the decision to the Federal Court; and
 - (d) the Court makes a decision on the appeal;
- the application is taken not to have been finalised during the period of 28 days beginning on the day on which the decision mentioned in paragraph (d) is made.
- (9) For the purposes of subsection (5), if:
- (a) a person applied to a court for an order of review, a writ of mandamus or prohibition, or an injunction, in relation to a decision; and
 - (b) the court makes a decision on the application;
- the application is taken not to have been finalised during the period of 28 days beginning on the day on which the decision mentioned in paragraph (b) is made.
- (10) For the purposes of subsection (5), if:
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- (a) a person applied to a court for an order of review, a writ of mandamus or prohibition, or an injunction, in relation to a decision; and
 - (b) the court made a decision on the application; and
 - (c) the decision became the subject of an appeal; and
 - (d) the court or another court makes a decision on the appeal; and
 - (e) the decision mentioned in paragraph (d) could be the subject of an appeal;
- the application is taken not to have been finalised during the period of 28 days beginning on the day on which the decision mentioned in paragraph (d) is made.
- (11) The regulations may provide that, in specified circumstances, an application is taken, for the purposes of subsection (5), not to have been finalised during a period ascertained in accordance with the regulations.
 - (12) The regulations may extend the 28-day period referred to in subsection (6), (7), (8), (9) or (10).

61AZA De-registration of media group that has ceased to exist

- (1) If the ACMA is satisfied that a registered media group has ceased to exist on or after 1 February 2007, the ACMA must remove the group's entry from the Register.
- (2) For the purposes of subsection (1), the ACMA may rely on one or more notifications given, or purportedly given, under Division 6 on or after 1 February 2007.
- (3) If the ACMA relies on a notification or notifications given, or purportedly given, under Division 6, the ACMA must remove the relevant entry within 2 business days after receiving the notification or the last of the notifications.
- (4) If, under subsection (1), the ACMA removes a group's entry from the Register, the ACMA must include in the Register a note to the effect that the removal is unconfirmed.

61AZB Registration of change of controller of registered media group

- (1) If the ACMA is satisfied that:
 - (a) a person who is not a registered controller of a registered media group has become a controller of the group on or after 1 February 2007; or
 - (b) a registered controller of a registered media group has ceased to be a controller of the group on or after 1 February 2007;the ACMA must:
 - (c) if paragraph (a) applies—alter the group’s entry in the Register by adding the name of the controller concerned; or
 - (d) if paragraph (b) applies—alter the group’s entry in the Register by omitting the name of the controller concerned.
- (2) For the purposes of subsection (1), the ACMA may rely on one or more notifications given, or purportedly given, under Division 6 on or after 1 February 2007.
- (3) If the ACMA relies on a notification or notifications given, or purportedly given, under Division 6, the ACMA must make the relevant alteration within 2 business days after receiving the notification or the last of the notifications.
- (4) If the ACMA makes an alteration under subsection (1), the ACMA must include in the Register a note to the effect that the alteration is unconfirmed.

61AZC Registration of change of composition of media group

- (1) If the ACMA is satisfied that:
 - (a) one or more of the media operations in a registered media group have ceased to be in that group on or after 1 February 2007; and
 - (b) the group continues in existence;the ACMA must alter the group’s entry in the Register by omitting the name or names of the media operations referred to in paragraph (a).
- (2) For the purposes of subsection (1), the ACMA may rely on one or more notifications given, or purportedly given, under Division 6 on or after 1 February 2007.

- (3) If the ACMA relies on a notification or notifications given, or purportedly given, under Division 6, the ACMA must make the relevant alteration within 2 business days after receiving the notification or the last of the notifications.
- (4) If the ACMA makes an alteration under subsection (1), the ACMA is to include in the Register a note to the effect that the alteration is unconfirmed.

61AZCA ACMA must deal with notifications in order of receipt

- (1) For the purposes of sections 61AY, 61AZ, 61AZA, 61AZB and 61AZC, the ACMA must deal with notifications given, or purportedly given, under Division 6 in order of receipt.
- (2) Subsection (1) has effect subject to subsection 61AZ(5).

61AZD Conditional transactions

Entry of media group

- (1) If:
 - (a) a person is a party to a proposed transaction; and
 - (b) the proposed transaction is subject to the condition that the ACMA enters a proposed media group in the Register; and
 - (c) the person requests the ACMA to assume, for the purposes of this Subdivision, that the proposed transaction:
 - (i) had been completed; and
 - (ii) were not subject to that condition; and
 - (d) the ACMA is satisfied that:
 - (i) the parties to the proposed transaction are acting in good faith; and
 - (ii) if the media group were to be entered in the Register on the basis of the assumption mentioned in paragraph (c)—the proposed transaction will be completed within 5 business days after the making of the relevant entry in the Register;then, for the purposes of this Subdivision, the ACMA may make the assumption mentioned in paragraph (c).

Removal of entry of media group

(2) If:

- (a) a person is a party to a proposed transaction; and
- (b) the proposed transaction is subject to the condition that the ACMA removes a media group's entry from the Register; and
- (c) the person requests the ACMA to assume, for the purposes of this Subdivision, that the proposed transaction:
 - (i) had been completed; and
 - (ii) were not subject to that condition; and
- (d) the ACMA is satisfied that:
 - (i) the parties to the proposed transaction are acting in good faith; and
 - (ii) if the media group's entry were to be removed from the Register on the basis of the assumption mentioned in paragraph (c)—the proposed transaction will be completed within 5 business days after the removal of the relevant entry from the Register;

then, for the purposes of this Subdivision, the ACMA may make the assumption mentioned in paragraph (c).

Alteration of entry of media group

(3) If:

- (a) a person is a party to a proposed transaction; and
- (b) the proposed transaction is subject to the condition that the ACMA alters a media group's entry in the Register; and
- (c) the person requests the ACMA to assume, for the purposes of this Subdivision, that the proposed transaction:
 - (i) had been completed; and
 - (ii) were not subject to that condition; and
- (d) the ACMA is satisfied that:
 - (i) the parties to the proposed transaction are acting in good faith; and
 - (ii) if the media group's entry in the Register were to be altered on the basis of the assumption mentioned in paragraph (c)—the proposed transaction will be completed within 5 business days after the making of the relevant alteration in the Register;

then, for the purposes of this Subdivision, the ACMA may make the assumption mentioned in paragraph (c).

Requests

- (4) A request under subsection (1), (2) or (3) must be:
 - (a) in a form approved in writing by the ACMA; and
 - (b) accompanied by such information as the ACMA requires.
- (5) An approved form of a request may provide for verification by statutory declaration of information accompanying requests.

61AZE Review and confirmation of entries and alterations etc.

Review

- (1) If the ACMA:
 - (a) enters a media group in the Register under subsection 61AY(1) or 61AZ(1); or
 - (b) removes a media group's entry from the Register under subsection 61AZA(1); or
 - (c) makes an alteration to a media group's entry in the Register under subsection 61AZB(1) or 61AZC(1);the ACMA must review the entry, removal or alteration, and make a decision:
 - (d) confirming the relevant entry, removal or alteration; or
 - (e) cancelling the relevant entry, removal or alteration.

Confirmation

- (2) If the ACMA confirms the relevant entry, removal or alteration, the ACMA must remove from the Register the note stating that the entry, removal or alteration is unconfirmed.

Cancellation

- (3) If the ACMA cancels an entry, the ACMA must:
 - (a) remove the entry from the Register; and
 - (b) remove from the Register the note stating that the entry is unconfirmed.
- (4) If the ACMA cancels the removal of an entry, the ACMA must:

- (a) restore the entry to the Register; and
 - (b) remove from the Register the note stating that the removal is unconfirmed.
- (5) If the ACMA cancels an alteration, the ACMA must:
- (a) reverse the alteration; and
 - (b) remove from the Register the note stating that the alteration is unconfirmed.

ACMA not required to rely on notifications

- (6) To avoid doubt, in exercising its powers under subsection (1), the ACMA is not required to rely on a notification given, or purportedly given, under Division 6.

Conditional transactions

- (7) If:
- (a) under subsection (1), the ACMA reviews an entry or alteration; and
 - (b) the entry or alteration was made on the assumption that a proposed transaction had been completed (see section 61AZD); and
 - (c) the ACMA is not satisfied that the proposed transaction was completed within 5 business days after the making of the entry or alteration;
- the ACMA must make a decision under subsection (1) cancelling the entry or alteration.

- (8) If:
- (a) under subsection (1), the ACMA reviews a removal of an entry; and
 - (b) the removal was done on the assumption that a proposed transaction had been completed (see section 61AZD); and
 - (c) the ACMA is not satisfied that the proposed transaction was completed within 5 business days after the removal;
- the ACMA must make a decision under subsection (1) to cancel the removal.

ACMA may request additional information

- (9) If:
-

- (a) under subsection (1), the ACMA reviews an entry, removal or alteration; and
- (b) the ACMA considers that additional information is required before the ACMA can make a decision under subsection (1); the ACMA may, within 14 days after the relevant entry, removal or alteration, by written notice given to a person, request the person to provide that information.

Deadline

- (10) If the ACMA does not, within 28 days after:
 - (a) doing whichever of the following is applicable:
 - (i) entering a media group in the Register under subsection 61AY(1) or 61AZ(1);
 - (ii) removing a media group's entry from the Register under subsection 61AZA(1);
 - (iii) making an alteration to a media group's entry in the Register under subsection 61AZB(1) or 61AZC(1); or
 - (b) if the ACMA has requested further information—receiving that further information;make a decision under subsection (1):
 - (c) confirming the relevant entry, removal or alteration; or
 - (d) cancelling the relevant entry, removal or alteration;the ACMA is taken to have made a decision under subsection (1) at the end of that 28-day period confirming the relevant entry, removal or alteration.

61AZF Reconsideration of decisions

Applications for reconsideration of decisions

- (1) A person:
 - (a) whose interests are affected by a decision under subsection 61AZE(1); and
 - (b) who is dissatisfied with the decision;may apply to the ACMA for the ACMA to reconsider the decision.
- (2) The application must:
 - (a) be in a form approved in writing by the ACMA; and
 - (b) set out the reasons for the application.

- (3) The application must be made within 7 days after the taking of the action required by subsection 61AZE(2), (3), (4) or (5) to give effect to the decision.
- (4) An approved form of an application may provide for verification by statutory declaration of statements in applications.

Reconsideration of decisions—application

- (5) Upon receiving an application under subsection (1), the ACMA must:
 - (a) reconsider the decision; and
 - (b) affirm or revoke the decision.
- (6) The ACMA's decision on reconsideration of a decision has effect as if it had been made under subsection 61AZE(1).
- (7) The ACMA must give to the applicant a notice stating its decision on the reconsideration.

ACMA may request additional information

- (8) If:
 - (a) an application is made under subsection (1); and
 - (b) the ACMA considers that additional information is required before the ACMA can make a decision under subsection (5);the ACMA may, within 14 days after receiving the application, by written notice given to:
 - (c) the applicant; or
 - (d) any other person;request the applicant or other person to provide that information.
- (9) If the ACMA does not, within 28 days after:
 - (a) receiving an application under subsection (1); or
 - (b) if the ACMA has requested further information—receiving that further information;make a decision under subsection (5), the ACMA is taken to have made a decision under subsection (5) at the end of that 28-day period affirming the original decision.

Reconsideration of decisions—ACMA's own initiative

- (10) The ACMA may, at any time:
 - (a) reconsider a decision made under subsection 61AZE(1); and
 - (b) affirm or revoke the decision.
- (11) The ACMA's decision on reconsideration of a decision has effect as if it had been made under subsection 61AZE(1).

61AZG Corrections of clerical errors or obvious defects

The ACMA may alter the Register for the purposes of correcting a clerical error or an obvious defect in the Register.

61AZH Regulations

The regulations may make further provision about the operation of the Register.

9 Section 62 (penalty)

Repeal the penalty.

10 At the end of section 62

Add:

Notification by publisher of newspaper

- (3) Each publisher of a newspaper that is associated with the licence area of a commercial television broadcasting licence or a commercial radio broadcasting licence must, within 3 months after the end of each financial year, give to the ACMA in writing:
 - (a) details of the persons who, to the knowledge of the publisher, were in a position to exercise control of the newspaper at the end of that financial year; and
 - (b) if the publisher is a company—the name of each person who was a director of the company at the end of that financial year.
- (4) The details are to be provided in a form approved in writing by the ACMA.

Offence

- (5) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1) or (3); and
 - (b) the person omits to do an act; and
 - (c) the omission breaches the requirement.

Penalty for contravention of this subsection:

- (a) if the breach relates to a commercial television broadcasting licence, a datacasting transmitter licence or a newspaper—500 penalty units; or
- (b) otherwise—50 penalty units.

Note 1: The heading to section 62 is altered by omitting “on licensees”.

Note 2: The following heading to subsection 62(1) is inserted “*Notification by licensee*”.

11 Subsection 63(1)

Omit “7 days”, substitute “5 days”.

12 Section 63 (penalty)

Repeal the penalty.

13 At the end of section 63

Add:

Notification by publisher of newspaper

- (3) If the publisher of a newspaper that is associated with the licence area of a commercial television broadcasting licence or a commercial radio broadcasting licence becomes aware that:
- (a) a person who was not in a position to exercise control of the newspaper has become in a position to exercise control of the newspaper; or
 - (b) a person who was in a position to control the newspaper has ceased to be in that position;
- the publisher of the newspaper must, within 5 days after becoming so aware, notify the ACMA in writing of that event.

- (4) The details are to be provided in a form approved in writing by the ACMA.

Offence

- (5) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1) or (3); and
 - (b) the person omits to do an act; and
 - (c) the omission breaches the requirement.

Penalty for contravention of this subsection:

- (a) if the breach relates to a commercial television broadcasting licence, a datacasting transmitter licence or a newspaper—500 penalty units; or
- (b) otherwise—50 penalty units.

Note: The following heading to subsection 63(1) is inserted “*Notification by licensee*”.

14 Subsection 64(1)

Omit “7 days”, substitute “5 days”.

15 Section 64 (penalty)

Repeal the penalty.

16 At the end of section 64

Add:

Notification by controller of newspaper

- (3) If a person who was not in a position to exercise control of a newspaper that is associated with the licence area of a commercial television broadcasting licence or a commercial radio broadcasting licence becomes aware that the person is in a position to exercise control of the newspaper, the person must, within 5 days after becoming so aware, notify the ACMA in writing of that position.
- (4) The details are to be provided in a form approved in writing by the ACMA.

Offence

- (5) A person commits an offence if:
-

- (a) the person is subject to a requirement under subsection (1) or (3); and
- (b) the person omits to do an act; and
- (c) the omission breaches the requirement.

Penalty for contravention of this subsection:

- (a) if the breach relates to a commercial television broadcasting licence, a datacasting transmitter licence or a newspaper—500 penalty units; or
- (b) otherwise—50 penalty units.

Note 1: The heading to section 64 is altered by inserting “**or newspaper**” after “**licence**”.

Note 2: The following heading to subsection 64(1) is inserted “*Notification by controller of licence*”.

17 Section 65

Repeal the section, substitute:

65 Requirement to notify control and directorships as at 1 February 2007

Notification by licensee

- (1) Each commercial television broadcasting licensee and commercial radio broadcasting licensee must, within 5 days after 1 February 2007, give to the ACMA in writing:
 - (a) details of the persons who, to the knowledge of the licensee, were in a position to exercise control of the licence at the start of 1 February 2007; and
 - (b) the name of each person who was a director of the licensee at the start of 1 February 2007.
- (2) The details are to be provided in a form approved in writing by the ACMA.

Notification by publisher of newspaper

- (3) If, at the start of 1 February 2007, a newspaper is associated with the licence area of a commercial television broadcasting licence or a commercial radio broadcasting licence, the publisher of the newspaper must, within 5 days after 1 February 2007, give to the ACMA in writing:

- (a) details of the persons who, to the knowledge of the publisher, were in a position to exercise control of the newspaper at the start of 1 February 2007; and
 - (b) if the publisher is a company—the name of each person who was a director of the company at the start of 1 February 2007.
- (4) The details are to be provided in a form approved in writing by the ACMA.

Notification by controller

- (5) If, at the start of 1 February 2007, a person is in a position to exercise control of:
- (a) a commercial television broadcasting licence; or
 - (b) a commercial radio broadcasting licence; or
 - (c) a newspaper that is associated with the licence area of a commercial television broadcasting licence or a commercial radio broadcasting licence;
- the person must, within 5 days after 1 February 2007, notify the ACMA in writing of that position.
- (6) The details are to be provided in a form approved in writing by the ACMA.

Offence

- (7) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1), (3) or (5); and
 - (b) the person omits to do an act; and
 - (c) the omission breaches the requirement.

Penalty for contravention of this subsection:

- (a) if the breach relates to a commercial television broadcasting licence or a newspaper—500 penalty units; or
- (b) otherwise—50 penalty units.

18 Section 204 (after table item dealing with subsection 59(4B))

Insert:

Refusal to approve transaction or determination of period of approval	Section 61AJ or 61AMC	The applicant for approval
Refusal to extend time for compliance	Section 61AK or 61AMD	The applicant
Refusal to extend time for compliance	Section 61AP	The applicant
To affirm or revoke a decision made under subsection 61AZE(1)	Section 61AZF	A person whose interests are affected by the decision made under subsection 61AZE(1)

18A At the end of section 205PA

Add:

- | |
|--|
| <ul style="list-style-type: none">• The Federal Court may also grant injunctions in relation to transactions that are prohibited under Division 5A of Part 5 (which deals with media diversity). |
|--|

18B Section 205Q

After “contravention of”, insert “section 61AH or”.

18BA Section 205Q

Before “subsection”, insert “61AMB or”.

18C At the end of clause 2 of Schedule 1

Add:

- (5) The following are examples of situations that, depending on the circumstances, may be relevant in determining whether a person is in a position to exercise control of 2 or more licences:
- (a) the licensees share any or all of the following:
- (i) equipment;
 - (ii) studios;
 - (iii) other production facilities;
 - (iv) transmission facilities;
 - (v) human resources;
 - (vi) other resources;

- (b) the program content of a substantial percentage of the total number of hours of programs broadcast under one of those licences is the same as the program content of a substantial percentage of the total number of hours of programs broadcast under the other licence or licences;
- (c) the licensees have financial relationships with each other;
- (d) both of the following subparagraphs apply:
 - (i) the person is in a position to exercise control of one or more of the licences;
 - (ii) the person has a financial relationship with another person who is in a position to exercise control of the other licence or one or more of the other licences.

19 Clause 43 of Schedule 4 (definition of *business day*)

Repeal the definition.

20 Clause 3 of Schedule 5 (definition of *business day*)

Repeal the definition.

Schedule 2—Amendments commencing on Proclamation

Broadcasting Services Act 1992

1 Paragraph 3(1)(d)

Repeal the paragraph.

1A After paragraph 3(1)(e)

Insert:

- (ea) to promote the availability to audiences throughout Australia of television and radio programs about matters of local significance; and

2 Subsection 6(1) (definition of *foreign person*)

Repeal the definition.

3 After section 43

Insert:

43A Material of local significance—regional aggregated commercial television broadcasting licences

- (1) The ACMA must ensure that, at all times on and after 1 January 2008, there is in force under section 43 a condition that has the effect of requiring the licensee of a regional aggregated commercial television broadcasting licence to broadcast to each local area, during such periods as are specified in the condition, at least a minimum level of material of local significance.
- (2) For the purposes of subsection (1), a *regional aggregated commercial television broadcasting licence* is a commercial television broadcasting licence for any of the following licence areas:
 - (a) Northern New South Wales;
 - (b) Southern New South Wales;
 - (c) Regional Victoria;
 - (d) Eastern Victoria;

- (e) Western Victoria;
 - (f) Regional Queensland;
 - (g) Tasmania.
- (3) The condition must define *local area* and *material of local significance* for the purposes of the condition. The definition of *material of local significance* must be broad enough to cover news that relates directly to the local area concerned.
- (4) To avoid doubt, this section does not:
- (a) prevent the condition from setting out different requirements for different types of material; or
 - (b) prevent the condition from specifying periods that recur (for example, the hours between 7 am and 10 am Monday to Friday); or
 - (c) prevent the condition from setting out different requirements for different periods; or
 - (d) create any obligations under subsection 43(2) that would not exist apart from this section.
- (5) Subsection 43(5) does not apply to the condition.
- (6) This section does not limit the powers conferred on the ACMA by section 43 to impose, vary or revoke other conditions.

43B Local presence—regional commercial radio broadcasting licences

- (1) The ACMA must ensure that, at all times after the commencement of this section, there is in force under section 43 a condition that has the effect of requiring that, if a trigger event for a regional commercial radio broadcasting licence occurs, then, after the occurrence of the event, the licensee must maintain at least the existing level of local presence.
- (2) The condition must define *existing level of local presence* for the purposes of the condition.
- (3) The definition must deal with:
- (a) staffing levels; and
 - (b) studios and other production facilities.
- (4) Subsection (3) does not limit subsection (2).

- (5) To avoid doubt, this section does not create any obligations under subsection 43(2) that would not exist apart from this section.
- (6) Subsection 43(5) does not apply to the condition.
- (7) This section does not limit the powers conferred on the ACMA by section 43 to impose, vary or revoke other conditions.
- (8) The Minister may give the ACMA a written direction about the fulfilment of the obligation imposed on the ACMA by this section.
- (9) The ACMA must comply with a direction under subsection (8).
- (10) In this section:
 - regional commercial radio broadcasting licence* has the same meaning as in Division 5C of Part 5.
 - staff* includes individuals engaged as independent contractors.
 - trigger event* has the same meaning as in Division 5C of Part 5.

43C Local content—regional commercial radio broadcasting licences

- (1) The ACMA must ensure that, at all times on and after 1 January 2008, there is in force under section 43 a condition that has the effect of requiring the licensee of a regional commercial radio broadcasting licence to broadcast, during daytime hours each business day, at least the applicable number of hours of material of local significance.

Material of local significance

- (2) The condition must define *material of local significance* for the purposes of the condition. If a regional commercial radio broadcasting licensee is required to comply with section 61CD, the definition of *material of local significance* must be broad enough to cover material that the licensee must broadcast in order to comply with that section.

Applicable number

- (3) For the purposes of the application of subsection (1) to a regional commercial radio broadcasting licence, the *applicable number* is:

- (a) 4.5; or
 - (b) if the Minister, by legislative instrument, declares that another number is the applicable number for regional commercial radio broadcasting licences generally—the other number; or
 - (c) if:
 - (i) the Minister, by legislative instrument, declares that another number is the applicable number for a specified class of regional commercial radio broadcasting licences; and
 - (ii) the regional commercial radio broadcasting licence is included in that class;the other number.
- (4) Before 30 June 2007, the Minister must cause to be conducted a review of:
- (a) whether:
 - (i) a declaration should be made under paragraph (3)(b); or
 - (ii) one or more declarations should be made under subparagraph (3)(c)(i); and
 - (b) the number or numbers that should be specified in the declaration or declarations concerned; and
 - (c) in the case of a declaration or declarations under subparagraph (3)(c)(i)—the class or classes that should be specified in the declaration or declarations concerned.
- (4A) The Minister must cause to be prepared a report of a review under subsection (4).
- (4B) The Minister must cause copies of a report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the report.
- (4C) Before the end of whichever of the following periods ends first:
- (a) the period of 15 sitting days of the House of Representatives after the completion of the report;
 - (b) the period of 15 sitting days of the Senate after the completion of the report;
- the Minister must:
- (c) either:
 - (i) make a declaration under paragraph (3)(b); or

- (ii) make one or more declarations under subparagraph (3)(c)(i); and
- (d) cause a copy of each such declaration to be laid before each House of the Parliament in accordance with section 38 of the *Legislative Instruments Act 2003*.

Section 43 powers etc.

- (5) To avoid doubt, this section does not create any obligations under subsection 43(2) that would not exist apart from this section.
- (6) Subsection 43(5) does not apply to the condition.
- (7) This section does not limit the powers conferred on the ACMA by section 43 to impose, vary or revoke other conditions.

Definitions

- (8) In this section:

daytime hours means the hours:

- (a) beginning at 6 am each day or, if another time is prescribed, beginning at that prescribed time each day; and
- (b) ending at 6 pm on the same day or, if another time is prescribed, ending at that prescribed time on the same day.

metropolitan licence area means:

- (a) a licence area in which is situated the General Post Office of the capital city of:
 - (i) New South Wales; or
 - (ii) Victoria; or
 - (iii) Queensland; or
 - (iv) Western Australia; or
 - (v) South Australia; or
- (b) the licence area known as Western Suburbs Sydney RA1.

regional commercial radio broadcasting licence means a commercial radio broadcasting licence that has a regional licence area.

regional licence area means a licence area that is not a metropolitan licence area.

4 Division 4 of Part 5

Repeal the Division.

5 Division 5 of Part 5 (heading)

Repeal the heading, substitute:

Division 5—Newspapers associated with licence areas

6 Sections 60 and 61

Repeal the sections.

7 After Division 5A of Part 5

Insert:

Division 5B—Disclosure of cross-media relationships

61BA Definitions

In this Division:

media operation means:

- (a) a commercial television broadcasting licence; or
- (b) a commercial radio broadcasting licence; or
- (c) a newspaper that is associated with the licence area of a commercial television broadcasting licence or a commercial radio broadcasting licence.

prime-time hours means the hours:

- (a) beginning at 6 am each day or, if another time is prescribed, beginning at that prescribed time each day; and
- (b) ending at 10 am on the same day or, if another time is prescribed, ending at that prescribed time on the same day.

set of media operations means:

- (a) a commercial television broadcasting licence and a commercial radio broadcasting licence that have the same licence area; or
- (b) a commercial television broadcasting licence and a newspaper that is associated with the licence area of the licence; or

- (c) a commercial radio broadcasting licence and a newspaper that is associated with the licence area of the licence.

61BB Disclosure of cross-media relationship by commercial television broadcasting licensee

Scope

- (1) This section applies if:
 - (a) a person is in a position to exercise control of each media operation in a set of media operations; and
 - (b) a commercial television broadcasting licence is in the set; and
 - (c) the licensee broadcasts matter that is wholly or partly about:
 - (i) the business affairs of a commercial radio broadcasting licensee whose licence is in the set; or
 - (ii) the business affairs of the publisher of a newspaper that is in the set.

Note: For *business affairs*, see section 61BH.

Requirement to disclose cross-media relationship

- (2) If subparagraph (1)(c)(i) applies, the commercial television broadcasting licensee must also broadcast a statement describing (whether in summary form or otherwise) the relationship between the commercial television broadcasting licensee and the commercial radio broadcasting licensee.
- (3) It is sufficient if the statement under subsection (2) is to the effect that there is a cross-media relationship between the commercial television broadcasting licensee and the commercial radio broadcasting licensee.
- (4) If subparagraph (1)(c)(ii) applies, the commercial television broadcasting licensee must also broadcast a statement describing (whether in summary form or otherwise) the relationship between the commercial television broadcasting licensee and the publisher of the newspaper.
- (5) It is sufficient if the statement under subsection (4) is to the effect that there is a cross-media relationship between the commercial television broadcasting licensee and the publisher of the newspaper.

How statement is to be broadcast

- (6) A statement under subsection (2) or (4) must be broadcast in a way that will adequately bring it to the attention of a reasonable person who may have viewed the broadcast mentioned in paragraph (1)(c).
- (7) The regulations may provide that subsection (6) is taken to have been complied with if the statement is broadcast in the manner, and at the time, specified in, or ascertained in accordance with, the regulations.

61BC Choice of disclosure method—commercial radio broadcasting licensee

Notice of choice may be given to the ACMA

- (1) A commercial radio broadcasting licensee may give the ACMA a written notice making a choice that section 61BE apply to the licensee with effect from a Sunday specified in the notice.

Note: If a notice is not given, section 61BD applies to the licensee.

When notice must be given

- (2) A notice under subsection (1) must be given at least 5 business days before the Sunday specified in the notice.

Duration of notice

- (3) A notice under subsection (1):
 - (a) comes into force at the beginning of the Sunday specified in the notice; and
 - (b) unless sooner revoked, remains in force indefinitely.

Revocation of notice

- (4) If a notice under subsection (1) is in force in relation to a commercial radio broadcasting licensee, the licensee may, by written notice given to the ACMA, revoke the subsection (1) notice with effect from the end of a Saturday specified in the revocation notice.
- (5) A notice under subsection (4) must be given at least 5 business days before the Saturday specified in the notice.

Notices to be available on the Internet

- (6) If a notice is in force under subsection (1), the ACMA must make a copy of the notice available on the Internet.

61BD Disclosure of cross-media relationship by commercial radio broadcasting licensee—business affairs disclosure method

Scope

- (1) This section applies if:
- (a) a person is in a position to exercise control of each media operation in a set of media operations; and
 - (b) a commercial radio broadcasting licence is in the set; and
 - (c) the licensee broadcasts matter that is wholly or partly about:
 - (i) the business affairs of a commercial television broadcasting licensee whose licence is in the set; or
 - (ii) the business affairs of the publisher of a newspaper that is in the set; and
 - (d) a notice under subsection 61BC(1) is not in force in relation to the commercial radio broadcasting licensee.

Note: For *business affairs*, see section 61BH.

Requirement to disclose cross-media relationship

- (2) If subparagraph (1)(c)(i) applies, the commercial radio broadcasting licensee must also broadcast a statement describing (whether in summary form or otherwise) the relationship between the commercial radio broadcasting licensee and the commercial television broadcasting licensee.
- (3) It is sufficient if the statement under subsection (2) is to the effect that there is a cross-media relationship between the commercial radio broadcasting licensee and the commercial television broadcasting licensee.
- (4) If subparagraph (1)(c)(ii) applies, the commercial radio broadcasting licensee must also broadcast a statement describing (whether in summary form or otherwise) the relationship between the commercial radio broadcasting licensee and the publisher of the newspaper.

- (5) It is sufficient if the statement under subsection (4) is to the effect that there is a cross-media relationship between the commercial radio broadcasting licensee and the publisher of the newspaper.

How statement is to be broadcast

- (6) A statement under subsection (2) or (4) must be broadcast in a way that will adequately bring it to the attention of a reasonable person who may have listened to the broadcast mentioned in paragraph (1)(c).
- (7) The regulations may provide that subsection (6) is taken to have been complied with if the statement is broadcast in the manner, and at the time, specified in, or ascertained in accordance with, the regulations.

61BE Disclosure of cross-media relationship by commercial radio broadcasting licensee—regular disclosure method

Scope

- (1) This section applies if:
- (a) a person is in a position to exercise control of each media operation in a set of media operations; and
 - (b) a commercial radio broadcasting licence is in the set; and
 - (c) a notice under subsection 61BC(1) is in force in relation to the commercial radio broadcasting licensee.

Requirement to disclose cross-media relationship

- (2) If a commercial television broadcasting licence is in the set, the commercial radio broadcasting licensee must regularly broadcast a statement describing (whether in summary form or otherwise) the relationship between the commercial radio broadcasting licensee and the commercial television broadcasting licensee.
- (3) It is sufficient if the statement under subsection (2) is to the effect that there is a cross-media relationship between the commercial radio broadcasting licensee and the commercial television broadcasting licensee.
- (4) If a newspaper is in the set, the commercial radio broadcasting licensee must regularly broadcast a statement describing (whether

in summary form or otherwise) the relationship between the commercial radio broadcasting licensee and the publisher of the newspaper.

- (5) It is sufficient if the statement under subsection (4) is to the effect that there is a cross-media relationship between the commercial radio broadcasting licensee and the publisher of the newspaper.

How statement is to be broadcast

- (6) Statements under subsection (2) or (4) are to be broadcast in a way, and with a frequency, that is reasonably likely to ensure that the audience of the commercial radio broadcasting service during prime-time hours is aware that:
- (a) in the case of statements under subsection (2)—there is a relationship between the commercial radio broadcasting licensee and the commercial television broadcasting licensee; or
 - (b) in the case of statements under subsection (4)—there is a relationship between the commercial radio broadcasting licensee and the publisher of the newspaper.
- (7) A commercial radio broadcasting licensee is taken to have complied with subsection (6) if:
- (a) the statement is broadcast at least once each day during prime-time hours; and
 - (b) the statement is broadcast in a way that will adequately bring it to the attention of a reasonable person who may have listened to the broadcast of the statement.
- (8) The regulations may provide that a commercial radio broadcasting licensee is taken to have complied with subsection (6) if the statement is broadcast in the manner, and at the times, ascertained in accordance with the regulations.

61BF Disclosure of cross-media relationship by publisher of newspaper

Scope

- (1) This section applies if:
-

- (a) a person is in a position to exercise control of each media operation in a set of media operations; and
- (b) a newspaper is in the set; and
- (c) material published in a particular edition of the newspaper is wholly or partly about:
 - (i) the business affairs of a commercial television broadcasting licensee whose licence is in the set; or
 - (ii) the business affairs of a commercial radio broadcasting licensee whose licence is in the set.

Note: For *business affairs*, see section 61BH.

Requirement to disclose cross-media relationship

- (2) If subparagraph (1)(c)(i) applies, the publisher of the newspaper must cause to be published in the same edition of the newspaper a statement describing (whether in summary form or otherwise) the relationship between the publisher and the commercial television broadcasting licensee.
- (3) It is sufficient if the statement under subsection (2) is to the effect that there is a cross-media relationship between the publisher and the commercial television broadcasting licensee.
- (4) If subparagraph (1)(c)(ii) applies, the publisher of the newspaper must cause to be published in the same edition of the newspaper a statement describing (whether in summary form or otherwise) the relationship between the publisher and the commercial radio broadcasting licensee.
- (5) It is sufficient if the statement under subsection (4) is to the effect that there is a cross-media relationship between the publisher and the commercial radio broadcasting licensee.

How statement is to be published

- (6) A statement under subsection (2) or (4) must be published in a way that will adequately bring it to the attention of a reasonable person who may have read the material mentioned in paragraph (1)(c).
- (7) The regulations may provide that subsection (6) is taken to have been complied with if the statement is published in the manner specified in, or ascertained in accordance with, the regulations.

Offence

- (8) A person is guilty of an offence if:
- (a) the person is subject to a requirement under this section; and
 - (b) the person omits to do an act; and
 - (c) the omission breaches the requirement.

Penalty for contravention of this subsection: 2,000 penalty units.

61BG Exception—political communication

Sections 61BB, 61BD, 61BE and 61BF do not apply to the extent (if any) that they would infringe any constitutional doctrine of implied freedom of political communication.

61BH Matter or material about the business affairs of a broadcasting licensee or newspaper publisher

Matter or material about business affairs—what is included and excluded

- (1) A reference in this Division to *matter or material that is wholly or partly about the business affairs* of a commercial television broadcasting licensee, a commercial radio broadcasting licensee or a newspaper publisher:
- (a) includes a reference to matter or material, where, having regard to:
 - (i) the nature of the matter or material; and
 - (ii) the way in which the matter or material is presented; it would be reasonable to conclude that the object, or one of the objects, of the broadcast of the matter or the publication of the material, as the case may be, was to:
 - (iii) promote; or
 - (iv) otherwise influence members of the public, or of a section of the public, to view, to listen to, or to read; matter broadcast, or to be broadcast, by the licensee, or material published, or to be published, in the newspaper, as the case may be; and
 - (b) does not include a reference to:
 - (i) a journalistic acknowledgment of a program or article as being the source of particular information; or

- (ii) advertising matter or advertising material, where a reasonable person would be able to distinguish the advertising matter or advertising material from other matter or material; or
- (iii) a program guide (see subsection (2)); or
- (iv) exempt matter or exempt material (see subsection (4)).

Program guide

- (2) For the purposes of this section, a **program guide** is matter or material that consists of no more than:
 - (a) a schedule of:
 - (i) the television programs provided by 2 or more television broadcasting services; or
 - (ii) the radio programs provided by 2 or more radio broadcasting services; or
 - (b) a combination of:
 - (i) a schedule covered by paragraph (a); and
 - (ii) items of factual information, and/or items of comment, about some or all of the programs in the schedule, where each item is brief;where the matter or material does not single out one of those services for special promotion.
- (3) For the purposes of subsection (2):
 - (a) a **television broadcasting service** is:
 - (i) a commercial broadcasting service that provides television programs; or
 - (ii) a national broadcasting service that provides television programs; and
 - (b) a **radio broadcasting service** is:
 - (i) a commercial broadcasting service that provides radio programs; or
 - (ii) a national broadcasting service that provides radio programs.

Exempt matter or exempt material

- (4) The Minister may, by legislative instrument, determine that:

- (a) matter included in a specified class of matter is *exempt matter* for the purposes of this section; and
 - (b) material included in a specified class of material is *exempt material* for the purposes of this section.
- (5) A determination under subsection (4) has effect accordingly.

Advertising

- (6) This section does not, by implication, affect the meaning of the expression *advertising* when used in any other provision of this Act.

Division 5C—Local news and information requirements for regional commercial radio broadcasting licensees

Subdivision A—Introduction

61CA Definitions

In this Division:

approved local content plan means an approved local content plan under Subdivision C.

benchmark year means:

- (a) in relation to a regional commercial radio broadcasting licence where a single trigger event has occurred—the 52-week period ending on the Saturday before the day on which the trigger event occurred; and
- (b) in relation to a regional commercial radio broadcasting licence where 2 or more trigger events have occurred—the 52-week period ending on the Saturday before the day on which the most recent trigger event occurred.

community service announcement means community information, or community promotional material, for the broadcast of which the licensee does not receive any consideration in cash or in kind.

controller has the same meaning as in Division 5A.

designated local content program means a program about matters of local significance, other than:

- (a) a news bulletin; or
- (aa) a weather bulletin; or
- (b) a community service announcement; or
- (c) an emergency warning.

draft local content plan means a draft local content plan under Subdivision C.

eligible local news bulletins means local news bulletins that meet the following requirements:

- (a) the bulletins are broadcast on at least 5 days during the week;
- (b) the bulletins broadcast on each of those days have a total duration of at least 12.5 minutes;
- (c) the bulletins are broadcast during prime-time hours;
- (d) the bulletins adequately reflect matters of local significance;
- (e) none of the bulletins consists wholly of material that has previously been broadcast in the licence area concerned.

eligible local weather bulletins means local weather bulletins that meet the following requirements:

- (a) the bulletins are broadcast on at least 5 days during the week;
- (b) the bulletins are broadcast during prime-time hours.

emergency service agency means:

- (a) a police force or service; or
- (b) a fire service; or
- (c) a body that runs an emergency service specified in the regulations.

local (except in sections 61CR and 61CS) has a meaning affected by section 61CC.

metropolitan licence area means:

- (a) a licence area in which is situated the General Post Office of the capital city of:
 - (i) New South Wales; or
 - (ii) Victoria; or
 - (iii) Queensland; or
 - (iv) Western Australia; or

- (v) South Australia; or
- (b) the licence area known as Western Suburbs Sydney RA1.

news bulletin means a regularly scheduled news bulletin.

prime-time hours means the hours:

- (a) beginning at 6 am each day or, if another time is prescribed, beginning at that prescribed time each day; and
- (b) ending at 10 am on the same day or, if another time is prescribed, ending at that prescribed time on the same day.

regional commercial radio broadcasting licence means a commercial radio broadcasting licence that has a regional licence area.

regional licence area means a licence area that is not a metropolitan licence area.

Register has the same meaning as in Division 5A.

registrable media group has the same meaning as in Division 5A.

trigger event has the meaning given by section 61CB.

weather bulletin means a regularly scheduled weather bulletin that is transmitted:

- (a) as a stand-alone bulletin; or
- (b) in conjunction with a news bulletin.

week means a 7-day period that begins on a Sunday.

61CB Trigger event

Transfer of licence

- (1) For the purposes of this Division, if:
 - (a) a regional commercial radio broadcasting licence is held by a person; and
 - (b) the person transfers the licence to another person;the transfer of the licence is a **trigger event** for the licence.

Formation of new registrable media group

- (2) For the purposes of this Division, if:
-

- (a) a registrable media group comes into existence; and
- (b) the media group is not already entered in the Register; and
- (c) a regional commercial radio broadcasting licence is in the group;

the coming into existence of the group is a **trigger event** for the licence.

Change of controller of registrable media group

- (3) For the purposes of this Division, if:
 - (a) either:
 - (i) a person who is not a controller of a registrable media group becomes a controller of the group; or
 - (ii) a controller of a registrable media group ceases to be a controller of the group; and
 - (b) a regional commercial radio broadcasting licence is in the group;
- the change of controller is a **trigger event** for the licence.

61CC What is local?

- (1) The ACMA may, by legislative instrument, define what is meant by the expression **local** for the purposes of the application of:
 - (a) this Division (other than sections 61CR and 61CS); or
 - (b) a specified provision of this Division (other than sections 61CR and 61CS);to a specified licence area.
- (2) In making an instrument under subsection (1), the ACMA must have regard to:
 - (a) the areas where separate programming is provided; and
 - (b) such other matters (if any) as the ACMA considers relevant.

Note: Program includes advertising or sponsorship matter—see the definition of **program** in subsection 6(1).

Subdivision B—Minimum service standards for local news and information

61CD Licensee must meet minimum service standards for local news and information

If a trigger event for a regional commercial radio broadcasting licence occurs, then, after the occurrence of the trigger event, the licensee must meet:

- (a) minimum service standards for local news; and
- (aa) minimum service standards for local weather; and
- (b) minimum service standards for local community service announcements; and
- (c) minimum service standards for emergency warnings; and
- (d) if a declaration is in force under subsection 61CE(6)—minimum service standards for designated local content programs.

61CE Minimum service standards for local news and information

Local news

- (1) For the purposes of this Subdivision, a commercial radio broadcasting licensee meets the *minimum service standards for local news* during a particular week if, during that week, the number of eligible local news bulletins broadcast by the licensee is at least:
 - (a) the local news target number; or
 - (b) if the average weekly number of eligible local news bulletins broadcast under the licence during the benchmark year is a number greater than the local news target number—the greater number.
- (2) For the purposes of subsection (1), the *local news target number* is:
 - (a) 5; or
 - (b) if the Minister, by legislative instrument, declares that a greater number is the local news target number—the greater number.

Local weather

- (2A) For the purposes of this Subdivision, a commercial radio broadcasting licensee meets the ***minimum service standards for local weather*** during a particular week if, during that week, the number of eligible local weather bulletins broadcast by the licensee is at least the local weather target number.
- (2B) For the purposes of subsection (2A), the ***local weather target number*** is:
 - (a) 5; or
 - (b) if the Minister, by legislative instrument, declares that a greater number is the local weather target number—the greater number.

Local community service announcements

- (3) For the purposes of this Subdivision, a commercial radio broadcasting licensee meets the ***minimum service standards for local community service announcements*** during a particular week if, during that week, the number of local community service announcements broadcast by the licensee is at least the community service target number.
- (4) For the purposes of subsection (3), the ***community service target number*** is:
 - (a) 1; or
 - (b) if the Minister, by legislative instrument, declares that a greater number is the local community service target number—the greater number.

Emergency warnings

- (5) For the purposes of this Subdivision, a commercial radio broadcasting licensee meets the ***minimum service standards for emergency warnings*** during a particular week if:
 - (a) on one or more occasions during the week, one or more emergency service agencies asked the licensee to broadcast emergency warnings, and the licensee broadcast those warnings as and when asked to do so by those emergency service agencies; or

- (b) there was no occasion during the week when an emergency service agency asked the licensee to broadcast an emergency warning.

Designated local content programs

- (6) For the purposes of this Subdivision, the Minister may, by legislative instrument, declare that a regional commercial radio broadcasting licence meets the *minimum service standards for designated local content programs* during a particular week if, during that week, the licensee meets such requirements in relation to designated local content programs as are specified in the declaration.

Subdivision C—Local content plans

61CF Licensee must submit draft local content plan to the ACMA

- (1) If a trigger event for a regional commercial radio broadcasting licence occurs, the licensee must give the ACMA:
 - (a) a draft local content plan for the licence; and
 - (b) a statement setting out such information about the licensee's broadcasting operations as the ACMA requires;within 90 days after the day on which the trigger event occurs.
- (2) If the licensee does not comply with subsection (1), the ACMA may, by legislative instrument, determine that a plan in the terms specified in the determination is the approved local content plan for the licence.

Replacement of approved local content plan

- (3) If an approved local content plan (the *original plan*) for a commercial radio broadcasting licence is in force:
 - (a) a draft local content plan given under subsection (1) for the licence must be expressed to replace the original plan; and
 - (b) if the draft local content plan becomes an approved local content plan for the licence—the original plan ceases to be in force.
- (4) If:

- (a) the ACMA makes a determination under subsection (2) in relation to a commercial radio broadcasting licence; and
- (b) an approved local content plan (the *original plan*) for the licence was in force immediately before the determination takes effect;

then:

- (c) the approved local content plan as determined by the ACMA replaces the original plan; and
- (d) the original plan ceases to be in force.

61CG Content of draft or approved local content plan

A draft or approved local content plan for a regional commercial radio broadcasting licence must set out how the licensee will comply with section 61CD.

61CH Approval of draft local content plan

- (1) If a commercial radio broadcasting licensee gives the ACMA a draft local content plan under section 61CF, the ACMA must:
 - (a) approve the plan; or
 - (b) refuse to approve the plan.

Approval of plan

- (2) In deciding whether to approve a draft local content plan, the ACMA must have regard to:
 - (a) whether the plan is adequate; and
 - (b) whether the plan is sufficiently detailed; and
 - (c) any relevant information set out in the paragraph 61CF(1)(b) statement; and
 - (d) such other matters (if any) as the ACMA considers relevant.
- (3) If the ACMA approves the draft local content plan, the plan becomes an approved local content plan for the licence.
- (4) If the ACMA approves the draft local content plan, the ACMA must give the licensee a written notice setting out the decision.

Refusal to approve plan

- (5) If the ACMA refuses to approve the draft local content plan, the ACMA may, by legislative instrument, determine that a plan in the terms specified in the determination is the approved local content plan for the licence.
- (6) If the ACMA refuses to approve the draft local content plan, the ACMA must give the licensee a written notice setting out the reasons for the refusal.

Occurrence of trigger event when ACMA's decision is pending

- (7) If:
 - (a) a commercial radio broadcasting licensee gives the ACMA a draft local content plan under section 61CF as the result of the occurrence of a trigger event for the licence; and
 - (b) another trigger event for the licence occurs before the ACMA makes a decision under subsection (1) in relation to the plan;then:
 - (c) the ACMA is taken to have refused to approve the plan; and
 - (d) subsections (5) and (6) do not apply to that refusal.

61CJ Register of approved local content plans

- (1) The ACMA is to maintain a Register in which the ACMA includes approved local content plans as in force from time to time.
- (2) The Register is to be maintained by electronic means.
- (3) The Register is to be made available for inspection on the Internet.

61CK Approved local content plan must be varied if minimum service standards are imposed or increased

- (1) This section applies if:
 - (a) an approved local content plan (the *current plan*) for a regional commercial radio broadcasting licence is in force; and
 - (b) the Minister makes a declaration under:
 - (i) paragraph 61CE(2)(b); or
 - (ia) paragraph 61CE(2B)(b); or

- (ii) paragraph 61CE(4)(b); or
 - (iii) subsection 61CE(6); and
 - (c) in the case of a declaration under paragraph 61CE(2)(b)—the effect of the declaration is to raise the licensee’s minimum service standards for local news.
- (2) The licensee must give the ACMA:
- (a) a draft variation of the current plan; and
 - (b) a statement setting out such information about the licensee’s broadcasting operations as the ACMA requires;
- within 90 days after the day on which the declaration is made.
- (3) If the licensee does not comply with subsection (2), the ACMA may, by legislative instrument, vary the current plan.

61CL Approved local content plan may be varied by the licensee

If an approved local content plan (the *current plan*) for a regional commercial radio broadcasting licence is in force, the licensee may give the ACMA:

- (a) a draft variation of the current plan; and
- (b) a statement setting out such information about the licensee’s broadcasting operations as the ACMA requires.

61CM Approval of draft variation

- (1) If, under section 61CK or 61CL, a commercial radio broadcasting licensee gives the ACMA a draft variation of an approved local content plan (the *current plan*), the ACMA must:
- (a) approve the variation; or
 - (b) refuse to approve the variation.

Approval of variation

- (2) The ACMA must not approve the variation unless the ACMA is satisfied that, if the licensee were to give the ACMA a draft local content plan in the same terms as the current plan as proposed to be varied, the ACMA would approve that draft.
- (3) If the ACMA approves the variation, the current plan is varied accordingly.

- (4) If the ACMA approves the variation, the ACMA must give the licensee a written notice setting out the decision.

Refusal to approve variation

- (5) If the ACMA refuses to approve the variation, the ACMA must give the licensee a written notice setting out the reasons for the refusal.
- (6) If the ACMA refuses to approve the variation, the ACMA may, by legislative instrument, vary the current plan.

Occurrence of trigger event when ACMA's decision is pending

- (7) If:
- (a) under section 61CK or 61CL, a commercial radio broadcasting licensee gives the ACMA a draft variation of an approved local content plan; and
 - (b) a trigger event for the licence occurs after the receipt of the variation but before the ACMA makes a decision under subsection (1) in relation to the variation;
- then:
- (c) the ACMA is taken to have refused to approve the variation; and
 - (d) subsections (5) and (6) do not apply to that refusal.

61CN ACMA may review approved local content plan

- (1) If an approved local content plan for a regional commercial radio broadcasting licence is in force, the ACMA must review the plan at least once every 3 years.
- (2) If, after such a review, the ACMA considers that the approved local content plan should be varied, the ACMA may, by legislative instrument, vary the plan.

61CP Compliance with approved local content plan

If an approved local content plan for a regional commercial radio broadcasting licence is in force, the licensee must take all reasonable steps to ensure that the plan is complied with.

61CPA Licensee must submit annual compliance report

- (1) This section applies if an approved local content plan for a regional commercial radio broadcasting licence was in force during the whole or a part of a financial year.
- (2) The regional commercial radio broadcasting licensee must, within 3 months after the end of the financial year, give the ACMA a report about the licensee's compliance with the approved local content plan during the whole or the part, as the case may be, of the financial year.
- (3) A report under subsection (2) must:
 - (a) be in a form approved in writing by the ACMA; and
 - (b) set out such information as the ACMA requires.

61CQ Minister may direct the ACMA about the exercise of its powers

- (1) The Minister may give the ACMA a written direction about the exercise of the powers conferred on the ACMA by this Subdivision.
- (2) The ACMA must comply with a direction under subsection (1).

Subdivision D—Other local content requirements

61CR Minister may direct the ACMA to conduct an investigation about other local content requirements

- (1) The Minister may give the ACMA a written direction requiring the ACMA to conduct an investigation under section 170 into:
 - (a) whether the ACMA should exercise its powers under section 43 to impose conditions requiring regional commercial radio broadcasting licensees to broadcast programs about matters of local significance; and
 - (b) if so, the content of those conditions.
- (2) The ACMA must comply with a direction under subsection (1).
- (3) This section does not limit the powers conferred on the ACMA by section 43 or 170.

- (4) This section does not limit the powers conferred on the Minister by section 61CS.

61CS Minister may direct the ACMA to impose licence conditions relating to local content

- (1) The Minister may give the ACMA a written direction requiring the ACMA to exercise its powers under section 43 to impose conditions requiring regional commercial radio broadcasting licensees to broadcast programs about matters of local significance.
- (2) The Minister may give the ACMA a written direction requiring the ACMA to exercise its powers under section 43 to impose one or more specified conditions requiring regional commercial radio broadcasting licensees to broadcast programs about matters of local significance.
- (3) The Minister may give the ACMA a written direction requiring the ACMA to exercise its powers under section 43 to impose conditions requiring a specified regional commercial radio broadcasting licensee to broadcast programs about matters of local significance.
- (4) The Minister may give the ACMA a written direction requiring the ACMA to exercise its powers under section 43 to impose one or more specified conditions requiring a specified regional commercial radio broadcasting licensee to broadcast programs about matters of local significance.
- (5) The ACMA must comply with a direction under subsection (1), (2), (3) or (4).
- (6) This section does not limit the powers conferred on the ACMA by section 43.

61CT Regular reviews of local content requirements

- (1) At least once every 3 years, the Minister must cause to be conducted a review of the following matters:
- (a) the operation of sections 43B and 43C;
 - (b) the operation of this Division;
 - (c) the operation of paragraph 8(2)(c) of Schedule 2;
 - (d) whether sections 43B and 43C should be amended;

- (e) whether this Division should be amended;
 - (f) whether paragraph 8(2)(c) of Schedule 2 should be amended.
- (2) For the purposes of facilitating the conduct of a review under subsection (1), the ACMA must make available information about regional commercial radio broadcasting licensees' compliance with:
- (a) licence conditions imposed as a result of section 43B or 43C; and
 - (b) licence conditions imposed as a result of an investigation directed under section 61CR; and
 - (c) licence conditions imposed as a result of a direction under section 61CS; and
 - (d) the licence condition set out in paragraph 8(2)(c) of Schedule 2.
- (3) The Minister may give the ACMA a written direction requiring the ACMA to make available specified information for the purposes of facilitating the conduct of a review under subsection (1).
- (4) The ACMA must comply with a direction under subsection (3).
- (5) The Minister must cause to be prepared a report of a review under subsection (1).
- (6) The Minister must cause copies of a report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the report.

8 Paragraph 62(1)(b)

Omit "year; and", substitute "year."

9 Paragraph 62(1)(c)

Repeal the paragraph.

10 Paragraphs 66(1)(a) and (b)

Omit ", 3, 4 or 5", substitute "or 3".

11 Paragraph 66(1)(d)

Omit "subsection 58(2) or".

12 Subsections 66(1A) and (2)

Omit “, 3, 4 or 5”, substitute “or 3”.

13 Subsection 67(1)

Omit “2, 3 or 5”, substitute “2 or 3”.

14 Paragraph 67(4)(a)

Omit “2, 3 or 5”, substitute “2 or 3”.

15 Subsection 70(1)

Omit “, 3, 4 or 5”, substitute “or 3”.

16 Section 96A

Repeal the section.

17 Divisions 3, 4 and 5 of Part 7

Repeal the Divisions.

18 Section 204 (table item dealing with subsection 58(2))

Repeal the item.

19 Section 204 (table item dealing with subsection 105(2))

Repeal the item.

20 Section 204 (table item dealing with subsection 105(3))

Repeal the item.

21 Subparagraph 7(1)(c)(iv) of Schedule 2

Omit “Act; and”, substitute “Act;”.

22 Subparagraph 7(1)(c)(v) of Schedule 2

Repeal the subparagraph.

23 At the end of subclause 7(1) of Schedule 2

Add:

; (q) the licensee will comply with a requirement that is applicable to the licensee under section 61BB (which deals with the disclosure of cross-media relationships).

24 At the end of subclause 8(1) of Schedule 2

Add:

- ; (j) the licensee will comply with a requirement that is applicable to the licensee under section 61BD or 61BE (which deal with the disclosure of cross-media relationships).

25 At the end of subclause 8(2) of Schedule 2

Add:

- (c) if a requirement under Division 5C of Part 5 (which sets out local news and information requirements) applies to the licensee—the licensee will comply with that requirement.

26 Paragraph 10(1)(c) of Schedule 2

Repeal the paragraph.

Schedule 3—Amendments commencing on 1 January 2009

Broadcasting Services Act 1992

1 Section 61AA

Insert:

core/primary commercial television broadcasting service, in relation to a commercial television broadcasting licence, means:

- (a) if a core commercial television broadcasting service is provided under the licence—that service; or
- (b) if a primary commercial television broadcasting service is provided under the licence—that service.

2 Section 61AA

Insert:

primary commercial television broadcasting service has the same meaning as in Schedule 4.

3 Subsection 61AC(1) (paragraph (c) of item 4 of the table)

Omit “core”, substitute “core/primary”.

[*Minister’s second reading speech made in—
Senate on 14 September 2006
House of Representatives on 16 October 2006*]

(132/06)
