



Broadcasting Legislation Amendment (Foreign Media Ownership, Community Radio and Other Measures) Act 2018

No. 95, 2018

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

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

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No. 95, 2018

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

[Assented to 31 August 2018]

The Parliament of Australia enacts:

1 Short title

This Act is the *Broadcasting Legislation Amendment (Foreign Media Ownership, Community Radio and Other Measures) Act 2018*.

No. 95, 2018

*Broadcasting Legislation Amendment (Foreign Media Ownership,
Community Radio and Other Measures) Act 2018*

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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
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	1 September 2018

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Australian Communications and Media Authority Act 2005

1 Paragraph 53(2)(k)

After “other than”, insert “a notice under Division 10A of Part 5 of that Act or”.

Broadcasting Services Act 1992

2 Subsection 52A(1)

After “this Act”, insert “(other than Division 10A)”.

3 Subsection 52A(2)

After “This Act”, insert “(other than Division 10A)”.

4 Subsection 52A(2)

After “this Part”, insert “(other than Division 10A)”.

5 After Division 10 of Part 5

Insert:

Division 10A—Register of Foreign Owners of Media Assets

Subdivision A—Introduction

74A Simplified outline of this Division

- | |
|---|
| <ul style="list-style-type: none">• The ACMA must maintain a Register of Foreign Owners of Media Assets.• The Register of Foreign Owners of Media Assets must set out, for each Australian media company, information about each foreign stakeholder in the company. |
|---|

- Foreign stakeholders must notify the ACMA of their company interests in Australian media companies.

Note: For *company interests*, see section 6.

74B Definitions

In this Division:

ACMA official has the same meaning as in the *Australian Communications and Media Authority Act 2005*.

Australia, when used in a geographical sense, includes all the external Territories.

Australian media company means:

- (a) a company that holds a commercial television broadcasting licence; or
- (b) a company that holds a commercial radio broadcasting licence; or
- (c) a company that is:
 - (i) the publisher of a newspaper that is associated with the licence area of a commercial television broadcasting licence or a commercial radio broadcasting licence; and
 - (ii) a constitutional corporation.

designated information, in relation to a person, means:

- (a) if the person is an individual:
 - (i) the person's date of birth; and
 - (ii) the country in which the person is ordinarily resident; and
- (b) if the person is a corporation—the country in which the corporation was formed; and
- (c) if the person is a trustee of a trust:
 - (i) the name of the trust; and
 - (ii) the country in which the trust was established; and
- (d) if the person is a foreign government investor as the result of the application of paragraph 17(a) of the *Foreign Acquisitions and Takeovers Regulation 2015* to a separate

government entity of a foreign country or a part of a foreign country—the foreign country or the part of the foreign country, as the case may be; and

- (e) if the person is a foreign government investor wholly or partly as the result of the application of paragraph 17(b), (c), (d) or (e) of the *Foreign Acquisitions and Takeovers Regulation 2015* to a foreign government—the foreign government; and
- (f) if the person is a foreign government investor wholly or partly as the result of the application of paragraph 17(b), (c), (d) or (e) of the *Foreign Acquisitions and Takeovers Regulation 2015* to a separate government entity of a foreign country or a part of a foreign country—the foreign country or the part of the foreign country, as the case may be; and
- (g) the following contact details:
 - (i) the person’s address;
 - (ii) the person’s email address (if any);
 - (iii) the person’s telephone number (if any).

foreign government has the same meaning as in the *Foreign Acquisitions and Takeovers Act 1975*.

foreign government investor has the same meaning as in the *Foreign Acquisitions and Takeovers Act 1975*.

foreign person has the same meaning as in the *Foreign Acquisitions and Takeovers Act 1975*.

foreign stakeholder, in relation to an Australian media company, has the meaning given by section 74C.

initial disclosure period means the period of 6 months beginning at the commencement of this Division.

person includes a foreign person.

separate government entity has the same meaning as in the *Foreign Acquisitions and Takeovers Act 1975*.

74C Foreign stakeholder

For the purposes of this Division, if a foreign person has company interests in an Australian media company of 2.5% or more, that person is a *foreign stakeholder* in that company.

Subdivision B—Register of Foreign Owners of Media Assets

74D Register of Foreign Owners of Media Assets

- (1) After the end of the initial disclosure period, the ACMA is to maintain a register, to be known as the Register of Foreign Owners of Media Assets.
- (2) The Register of Foreign Owners of Media Assets is to be maintained by electronic means.
- (3) The Register of Foreign Owners of Media Assets is to be made available for inspection on the internet.
- (4) The Register of Foreign Owners of Media Assets is not a legislative instrument.

74E Information to be set out in the Register of Foreign Owners of Media Assets

- (1) The Register of Foreign Owners of Media Assets must set out, for each Australian media company, the following information about each foreign stakeholder in the company:
 - (a) the name of the foreign stakeholder;
 - (b) the foreign stakeholder's company interests in the company;
 - (c) the method used to determine those company interests;
 - (d) the reason why the foreign stakeholder is a foreign person;
 - (e) if the foreign stakeholder is an individual—the country in which the foreign stakeholder is ordinarily resident;
 - (f) if the foreign stakeholder is a corporation—the country in which the corporation was formed;
 - (g) if the foreign stakeholder is a trustee of a trust:
 - (i) the name of the trust; and
 - (ii) the country in which the trust was established;

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- (h) if the foreign stakeholder is a foreign government investor as the result of the application of paragraph 17(a) of the *Foreign Acquisitions and Takeovers Regulation 2015* to a separate government entity of a foreign country or a part of a foreign country—the foreign country or the part of the foreign country, as the case may be;
 - (i) if the foreign stakeholder is a foreign government investor wholly or partly as the result of the application of paragraph 17(b), (c), (d) or (e) of the *Foreign Acquisitions and Takeovers Regulation 2015* to a foreign government—the foreign government;
 - (j) if the foreign stakeholder is a foreign government investor wholly or partly as the result of the application of paragraph 17(b), (c), (d) or (e) of the *Foreign Acquisitions and Takeovers Regulation 2015* to a separate government entity of a foreign country or a part of a foreign country—the foreign country or the part of the foreign country, as the case may be.
- (2) Despite subsection (1), the Register of Foreign Owners of Media Assets must not set out particular information if the ACMA is satisfied that disclosure of the information could reasonably be expected to prejudice materially the commercial interests of a person.

Subdivision C—Notification

74F Notification by a person who becomes a foreign stakeholder in an Australian media company

- (1) If a person who was not a foreign stakeholder in a particular Australian media company becomes a foreign stakeholder in the company at a particular time, the person must, within 30 days after that time, notify the ACMA in writing of:
- (a) the person's name; and
 - (b) the circumstances that resulted in the person becoming a foreign stakeholder in the company; and
 - (c) the person's company interests in the company; and
 - (d) the method used to determine those company interests; and
 - (e) the reason why the person is a foreign person; and

- (f) the designated information relating to the person; and
 - (g) such other information (if any) relating to the person as is specified under subsection (2).
- (2) The ACMA may, by legislative instrument, specify information for the purposes of paragraph (1)(g).

Civil penalty provision

- (3) Subsection (1) is a civil penalty provision.
- (4) 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 subsequent day) during which the contravention continues.

Designated infringement notice provision

- (5) Subsection (1) is a designated infringement notice provision.

Self-incrimination

- (6) A person is not required to notify information under subsection (1) if the information might tend to incriminate the person or expose the person to a penalty.

74G Notification by a person who ceases to be a foreign stakeholder in an Australian media company

- (1) If a person who was a foreign stakeholder in an Australian media company has ceased to be a foreign stakeholder in the company, the person must, within 30 days after the cessation, notify the ACMA in writing of:
- (a) the cessation; and
 - (b) the circumstances that resulted in the cessation.

Civil penalty provision

- (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
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day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

Designated infringement notice provision

- (4) Subsection (1) is a designated infringement notice provision.

Self-incrimination

- (5) A person is not required to notify information under subsection (1) if the information might tend to incriminate the person or expose the person to a penalty.

74H Notification by a person who is a foreign stakeholder in an Australian media company at the end of a financial year

- (1) If, at the end of a financial year, a person is a foreign stakeholder in an Australian media company, the person must, within 30 days after the end of the financial year, notify the ACMA in writing of:
- (a) the person's name; and
 - (b) the circumstances that resulted in the person being a foreign stakeholder in the company at the end of the financial year; and
 - (c) the person's company interests in the company at the end of the financial year; and
 - (d) the method used to determine those company interests; and
 - (e) the reason why the person was a foreign person at the end of the financial year; and
 - (f) the designated information relating to the person; and
 - (g) such other information (if any) relating to the person as is specified under subsection (2).
- (2) The ACMA may, by legislative instrument, specify information for the purposes of paragraph (1)(g).

Civil penalty provision

- (3) Subsection (1) is a civil penalty provision.
- (4) 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 subsequent day) during which the contravention continues.

Designated infringement notice provision

- (5) Subsection (1) is a designated infringement notice provision.

Self-incrimination

- (6) A person is not required to notify information under subsection (1) if the information might tend to incriminate the person or expose the person to a penalty.

74J Notification by a person who is a foreign stakeholder in an Australian media company at the commencement of this Division

- (1) If, at the commencement of this Division, a person is a foreign stakeholder in an Australian media company, the person must, within the initial disclosure period, notify the ACMA in writing of:
- (a) the person's name; and
 - (b) the circumstances that resulted in the person being a foreign stakeholder in the company at the commencement of this Division; and
 - (c) the person's company interests in the company at the commencement of this Division; and
 - (d) the method used to determine those company interests; and
 - (e) the reason why the person was a foreign person at the commencement of this Division; and
 - (f) the designated information relating to the person; and
 - (g) such other information (if any) relating to the person as is specified under subsection (2).
- (2) The ACMA may, by legislative instrument, specify information for the purposes of paragraph (1)(g).

Civil penalty provision

- (3) Subsection (1) is a civil penalty provision.
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- (4) 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 subsequent day) during which the contravention continues.

Designated infringement notice provision

- (5) Subsection (1) is a designated infringement notice provision.

Self-incrimination

- (6) A person is not required to notify information under subsection (1) if the information might tend to incriminate the person or expose the person to a penalty.

74K Notification by a person who is a foreign stakeholder in an Australian media company—requirement by the ACMA

- (1) The ACMA may, by written notice given to a foreign stakeholder in an Australian media company, require the foreign stakeholder to:
- (a) notify the ACMA of:
 - (i) the foreign stakeholder's company interests in the company; and
 - (ii) the method used to determine those company interests; and
 - (iii) such other information (if any) relating to the foreign stakeholder as is specified under subsection (2); and
 - (b) do so within the period specified in the notice.
- (2) The ACMA may, by legislative instrument, specify information for the purposes of subparagraph (1)(a)(iii).
- (3) A period specified under paragraph (1)(b) must not be shorter than 14 days after the notice is given.

Civil penalty provision

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

Designated infringement notice provision

- (6) Subsection (1) is a designated infringement notice provision.

Self-incrimination

- (7) A person is not required to notify information under subsection (1) if the information might tend to incriminate the person or expose the person to a penalty.

74L Requirement for executors, administrators and liquidators to give notification

- (1) If a person who is required by subsection 74F(1), 74G(1), 74H(1), 74J(1) or 74K(1) to notify information dies before notifying the information, the executor or administrator of the person's estate must notify the information in accordance with the subsection concerned.
- (2) If a person who is required by subsection 74F(1), 74G(1), 74H(1), 74J(1) or 74K(1) to notify information is a corporation and is wound up before notifying the information, the liquidator of the corporation must notify the information in accordance with the subsection concerned.

74M Person may give the ACMA relevant information

- (1) A person may give the ACMA information that is relevant to the performance of the ACMA's functions under this Division.
- (2) The information may consist of, or include, personal information (within the meaning of the *Privacy Act 1988*).

Subdivision D—Miscellaneous**74N Minister may direct the ACMA about the performance of its functions or the exercise of its powers**

- (1) The Minister may, by legislative instrument, give the ACMA a direction about the performance of the functions, or the exercise of the powers, conferred on the ACMA by this Division (other than section 74U).

Note: Section 74U requires the ACMA to conduct a review of this Division.

- (2) The ACMA must comply with a direction under subsection (1).

74P Service of summons, process or notice on corporations incorporated outside Australia*Scope*

- (1) This section applies to:
 - (a) a summons or process in any proceedings under, or connected with, this Division; or
 - (b) a notice under any other provision of this Act, so far as that provision relates to this Division;

where:

- (c) the summons, process or notice, as the case may be, is required to be served on, or given to, a body corporate incorporated outside Australia; and
- (d) the body corporate does not have a registered office or a principal office in Australia; and
- (e) the body corporate has an agent in Australia.

Service

- (2) The summons, process or notice, as the case may be, is taken to have been served on, or given to, the body corporate if it is served on, or given to, the agent.
- (3) Subsection (2) has effect in addition to section 28A of the *Acts Interpretation Act 1901*.

Note: Section 28A of the *Acts Interpretation Act 1901* deals with the service of documents.

74Q Extra-territorial application

This Division extends to acts, omissions, matters and things outside Australia.

74R Annual report

- (1) As soon as practicable after 30 July next following a financial year, the ACMA must:
 - (a) prepare a report about the company interests in Australian media companies that were held by foreign stakeholders at the end of the financial year; and
 - (b) give the report to the Minister.
- (2) A report under subsection (1) may include the ACMA's observations about trends relating to the company interests in Australian media companies that are held by foreign stakeholders.
- (3) The Minister may cause a copy of a report under subsection (1) to be published on the Department's website.

74S Part 13 not limited

This Division does not limit the operation of Part 13 (which confers certain investigative powers on the ACMA).

74T Liability for damages

The Commonwealth, the ACMA, or an ACMA official, is not liable to an action or other proceeding for damages for, or in relation to, an act or matter in good faith done or omitted to be done:

- (a) in the performance or purported performance of any function; or
- (b) in the exercise or purported exercise of any power; conferred on the ACMA by Subdivision B.

74U Review of this Division etc.

- (1) The ACMA must:
 - (a) conduct a review of the following matters:
 - (i) the operation of this Division;
 - (ii) the operation of the remaining provisions of this Act to the extent to which they relate to this Division;
 - (iii) whether this Division should be amended;
 - (iv) whether the remaining provisions of this Act, to the extent to which they relate to this Division, should be amended; and
 - (b) do so as soon as practicable after the end of the 3-year period that began at the end of the initial disclosure period.
- (2) The ACMA must prepare a report of the review under subsection (1).
- (3) The ACMA must give the report to the Minister.
- (4) The Minister must cause copies of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

6 Subsection 205F(4)

After “other than subsection”, insert “74F(1), 74G(1), 74H(1), 74J(1), 74K(1),”.

7 Subsection 205F(5)

After “other than subsection”, insert “74F(1), 74G(1), 74H(1), 74J(1), 74K(1) or”.

8 After subsection 205F(5)

Insert:

- (5AA) The pecuniary penalty payable by a person in respect of:
- (a) a contravention of subsection 74F(1), 74G(1), 74H(1), 74J(1) or 74K(1); or
 - (b) a contravention of section 205E that relates to a contravention of subsection 74F(1), 74G(1), 74H(1), 74J(1) or 74K(1);

must not exceed:

- (c) if the person is a body corporate—300 penalty units; or
- (d) if the person is not a body corporate—60 penalty units.

9 Section 205ZA

Before “The penalty”, insert “(1)”.

10 At the end of section 205ZA

Add:

- (2) Subsection (1) does not apply to an infringement notice that relates to subsection 74F(1), 74G(1), 74H(1), 74J(1) or 74K(1).
- (3) If an infringement notice given to a person relates to subsection 74F(1), 74G(1), 74H(1), 74J(1) or 74K(1), the penalty to be specified in the infringement notice must be a pecuniary penalty equal to:
 - (a) if the person is a body corporate—60 penalty units; or
 - (b) in any other case—10 penalty units.

Schedule 2—Community radio

Broadcasting Services Act 1992

1 After paragraph 84(2)(b)

Insert:

- (ba) in the case of a community radio broadcasting licence—the extent to which the proposed service or services would provide material of local significance; and

2 At the end of section 84

Add:

- (3) For the purposes of paragraph (2)(ba), material is of *local significance* if:
 - (a) it is hosted in the licence area of the proposed licence; or
 - (b) it is produced in the licence area of the proposed licence; or
 - (c) it relates to the licence area of the proposed licence.

3 Application of amendments

Allocation

- (1) Paragraph 84(2)(ba) of the *Broadcasting Services Act 1992* (as amended by this Schedule), so far as it relates to a decision whether to allocate a licence, applies in relation to such a decision if the application or applications for the licence were made in response to an advertisement published under section 80 of that Act after the commencement of this item.

Renewal

- (2) Paragraph 84(2)(ba) of the *Broadcasting Services Act 1992* (as amended by this Schedule), so far as it relates to a decision under subsection 91(2A) of that Act to refuse to renew a licence, applies in relation to such a decision if the application for renewal of the licence was made under section 90 of that Act after the commencement of this item.

Schedule 3—Local programming requirements for regional commercial television broadcasting licensees

Broadcasting Services Act 1992

1 Section 61CU

Insert:

combined designated Western Australian commercial television broadcasting licence area means the area that consists of the licence areas of the designated Western Australian commercial television broadcasting licences.

combined designated Western Australian commercial television broadcasting local area means the area that consists of the local areas of the designated Western Australian commercial television broadcasting licences.

designated Western Australian commercial television broadcasting licence means a commercial television broadcasting licence for any of the following licence areas:

- (a) Geraldton TV1;
- (b) Kalgoorlie TV1;
- (c) South West and Great Southern TV1.

2 Section 61CU (at the end of the definition of *local area*)

Add:

Note: See also section 61CYA (modifications relating to designated Western Australian commercial television broadcasting licences).

3 Section 61CU (at the end of the definition of *material of local significance*)

Add:

Note: See also section 61CYA (modifications relating to designated Western Australian commercial television broadcasting licences).

4 At the end of subsection 61CX(1)

Add:

Note: See also section 61CYA (modifications relating to designated Western Australian commercial television broadcasting licences).

5 At the end of subsection 61CY(3)

Add:

Note: See also section 61CYA (modifications relating to designated Western Australian commercial television broadcasting licences).

6 At the end of subsection 61CY(5)

Add:

Note: See also section 61CYA (modifications relating to designated Western Australian commercial television broadcasting licences).

7 At the end of subsection 61CY(7)

Add:

Note: See also section 61CYA (modifications relating to designated Western Australian commercial television broadcasting licences).

8 After section 61CY

Insert:

61CYA Modifications relating to designated Western Australian commercial television broadcasting licences

Scope

- (1) This section applies if:
- (a) a trigger event for a designated Western Australian commercial television broadcasting licence (the ***relevant licence***) occurs on a particular day; and
 - (b) that event is the first or only trigger event for the relevant licence; and
 - (c) immediately before that event, the designated Western Australian commercial television broadcasting licences were under common control; and

- (d) a period (the *relevant period*) satisfies the following conditions:
 - (i) the period began at the time of that event;
 - (ii) at all times during the period, the designated Western Australian commercial television broadcasting licences are under common control.

Note: Section 61CYB defines when licences are under common control.

Material of local significance

- (2) During the relevant period, in determining, for the purposes of this Division, whether material is material of local significance in relation to the local area of the relevant licence:
 - (a) material that relates directly to the combined designated Western Australian commercial television broadcasting local area is taken to be material that relates directly to the local area of the relevant licence; and
 - (b) material that relates directly to the combined designated Western Australian commercial television broadcasting licence area is taken to be material that relates directly to the licence area of the relevant licence.

Points system

- (3) During the relevant period, the table in subsection 61CY(3) has effect, in relation to the relevant licence, as if:
 - (a) a reference in the table to the local area were a reference to the combined designated Western Australian commercial television broadcasting local area; and
 - (b) a reference in the table to the licensee's licence area were a reference to the combined designated Western Australian commercial television broadcasting licence area.
- (4) During the relevant period, the provision of the local programming determination that was made for the purposes of paragraph (d) of item 1 of the table in subsection 61CY(3) has effect, in relation to the relevant licence, as if a reference in that provision to the local area were a reference to the combined designated Western Australian commercial television broadcasting local area.

- (5) During the relevant period, subsection 61CY(5) has effect, in relation to the relevant licence, as if a reference in that subsection to the licensee's licence area were a reference to the combined designated Western Australian commercial television broadcasting licence area.
- (6) During the relevant period, paragraphs 61CY(7)(a) and (b) have effect, in relation to the relevant licence, as if a reference in those paragraphs to the area were a reference to the combined designated Western Australian commercial television broadcasting local area.

61CYB When designated Western Australian commercial television broadcasting licences are under common control

- (1) For the purposes of section 61CYA, if, at a particular time, a person controls each designated Western Australian commercial television broadcasting licence, the designated Western Australian commercial television broadcasting licences are ***under common control*** at that time.
- (2) For the purposes of subsection (1), a person ***controls*** a designated Western Australian commercial television broadcasting licence if, and only if, the person:
 - (a) holds the licence; or
 - (b) is in a position to exercise control of the licence.

*[Minister's second reading speech made in—
Senate on 6 December 2017
House of Representatives on 20 August 2018]*

(265/17)
