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The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

**Broadcasting Services Amendment
(Media Ownership) Bill 2006**

No. , 2006

(Communications, Information Technology and the Arts)

**A Bill for an Act to amend the *Broadcasting
Services Act 1992*, and for other purposes**

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1 **A Bill for an Act to amend the *Broadcasting***
2 ***Services Act 1992*, and for other purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

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

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

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.	
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. Schedule 3	1 January 2009.	1 January 2009

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

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

7 **3 Schedule(s)**

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9 repealed as set out in the applicable items in the Schedule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

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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:

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

7 **5 After subsection 59(4B)**

8 Insert:

9 (4C) Despite subsections (3) and (4A), if the ACMA is satisfied that:

- 10 (a) a person (either alone or together with one or more other
11 persons) has entered into, begun to carry out or carried out a
12 scheme to publish a newspaper; and
13 (b) the person did so for the sole or dominant purpose of
14 ensuring that the number of points in the licence area of a
15 commercial radio broadcasting licence would be increased or
16 maintained;

17 the ACMA may refuse to enter the name of the newspaper in the
18 Register.

19 (4D) If:

- 20 (a) a newspaper is entered in the Register; and
21 (b) the ACMA is satisfied that:
22 (i) a person (either alone or together with one or more other
23 persons) entered into, began to carry out or carried out a
24 scheme to publish the newspaper; and
25 (ii) the person did so for the sole or dominant purpose of
26 ensuring that the number of points in the licence area of
27 a commercial radio broadcasting licence would be
28 increased or maintained;

29 the ACMA may remove the name of the newspaper from the
30 Register.

31 **6 Subsections 59(5) and (6)**

32 Repeal the subsections, substitute:

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

1 **7 At the end of section 59**

2 Add:

3 (8) In this section:

4 *points* has the same meaning as in Division 5A.

5 *scheme* has the same meaning as in Division 5A.

6 **8 After Division 5 of Part 5**

7 Insert:

8 **Division 5A—Media diversity**

9 **Subdivision A—Introduction**

10 **61AA Definitions**

11 In this Division:

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

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

17 *daytime/evening hours* means the hours:

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

20 *engage in conduct* means:

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

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

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

25 *media operation* means:

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

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

4 **metropolitan licence area** means a licence area in which is situated
5 the General Post Office of the capital city of:

- 6 (a) New South Wales; or
7 (b) Victoria; or
8 (c) Queensland; or
9 (d) Western Australia; or
10 (e) South Australia.

11 **name** of a commercial television broadcasting licence or a
12 commercial radio broadcasting licence means the service licence
13 number of the licence.

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

16 **regional licence area** means a licence area that is not a
17 metropolitan licence area.

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

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

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

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

30 **scheme** means:

- 31 (a) any agreement, arrangement, understanding, promise or
32 undertaking, whether express or implied and whether or not
33 enforceable, or intended to be enforceable, by legal
34 proceedings; and

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

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

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

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

7 **61AB Unacceptable media diversity situation**

8 *Metropolitan licence area*

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

13 *Regional licence area*

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

18 **61AC Points**

19 (1) Use the table to work out the number of points in the licence area
20 of a commercial radio broadcasting licence (the *first radio licence*
21 *area*):
22

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.
1	(2) If, apart from this subsection, all the media operations in a group of	
2	media operations mentioned in an item of the table are also in one	
3	or more other groups mentioned in an item of the table, then, for	
4	the purposes of subsection (1), ignore the existence of:	
5	(a) if one of the groups has the highest number of media	
6	operations—the remaining group or groups; or	

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

8 **61AD Statutory control rules**

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

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

16 Note: Section 67 is about approval of temporary breaches.

17 **61AE Shared content test**

18 (1) For the purposes of this Division, a commercial television
19 broadcasting service *passes the shared content test* at a particular
20 time in relation to another commercial television broadcasting
21 service if:

- 22 (a) the program content of at least 50% of the total number of
23 hours of programs broadcast by the first-mentioned service
24 during daytime/evening hours during the 6-month period
25 ending at that time;

26 were the same as:

- 27 (b) the program content of at least 50% of the total number of
28 hours of programs broadcast by the other service during
29 daytime/evening hours during the 6-month period ending at
30 that time.

31 (2) For the purposes of subsection (1), ignore the following:

- 32 (a) advertising or sponsorship material (whether or not of a
33 commercial kind);
34 (b) a promotion for a television program or a television
35 broadcasting service;

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

7 **61AF Overlapping licence areas**

8 Section 51 does not apply to this Division.

9 Note: Section 51 is about overlapping licence areas.

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

13 **61AG Prohibition of transactions that result in an unacceptable**
14 **media diversity situation coming into existence—offence**

15 A person commits an offence if:

- 16 (a) one or more transactions take place on or after the
17 commencement day; and
18 (b) the transactions have the result that:
19 (i) an unacceptable media diversity situation comes into
20 existence in relation to the licence area of a commercial
21 radio broadcasting licence; or
22 (ii) if an unacceptable media diversity situation already
23 exists in relation to the licence area of a commercial
24 radio broadcasting licence—there is a reduction in the
25 number of points in the licence area; and
26 (c) the person was:
27 (i) a party to the transactions; or
28 (ii) in a position to prevent the transactions taking place;
29 and
30 (d) the ACMA has not approved the transactions under
31 section 61AJ.

32 Penalty: 20,000 penalty units.

1 **61AH Prohibition of transactions that result in an unacceptable**
2 **media diversity situation coming into existence—civil**
3 **penalty**

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

21 **61AJ Prior approval of transactions that result in an unacceptable**
22 **media diversity situation coming into existence etc.**

- 23 (1) A person may, before a transaction takes place that would place a
24 person in breach of section 61AG or 61AH, make an application to
25 the ACMA for an approval of the transaction.
- 26 (2) An application is to be made in accordance with a form approved
27 in writing by the ACMA.
- 28 (3) If the ACMA considers that additional information is required
29 before the ACMA can make a decision on an application, the
30 ACMA may, by written notice given to the applicant within 30
31 days after receiving the application, request the applicant to
32 provide that information.
- 33 (4) If, after receiving an application, the ACMA is satisfied that:

- 1 (a) if the transaction took place, it would place a person in
2 breach of section 61AG or 61AH; and
3 (b) either:
4 (i) the applicant; or
5 (ii) another person;
6 will take action, within a period of not longer than 2 years, to
7 ensure that:
8 (iii) an unacceptable media diversity situation does not exist
9 in relation to the licence area concerned; or
10 (iv) if an unacceptable media diversity situation already
11 exists in relation to the licence area concerned—there is
12 not a reduction in the number of points in the licence
13 area concerned;
14 the ACMA may, by written notice given to the applicant:
15 (c) approve the transaction; and
16 (d) if subparagraph (b)(i) applies—specify a period within which
17 action must be taken by the applicant to ensure that:
18 (i) an unacceptable media diversity situation does not exist
19 in relation to the licence area concerned; or
20 (ii) if an unacceptable media diversity situation already
21 exists in relation to the licence area concerned—there is
22 not a reduction in the number of points in the licence
23 area concerned.
- 24 (5) The period specified in the notice must be at least one month, but
25 not longer than 2 years.
- 26 (6) The ACMA may specify in a notice given to an applicant the
27 action that the ACMA considers the applicant must take to ensure
28 that:
29 (a) an unacceptable media diversity situation does not exist in
30 relation to the licence area concerned; or
31 (b) if an unacceptable media diversity situation already exists in
32 relation to the licence area concerned—there is not a
33 reduction in the number of points in the licence area
34 concerned.
- 35 (7) In deciding whether to approve a transaction, the ACMA may have
36 regard to:
37 (a) any relevant undertakings that:

- 1 (i) have been accepted by the ACMA under section 61AS;
2 and
3 (ii) have not been withdrawn or cancelled; and
4 (b) such other matters (if any) as the ACMA considers relevant.
- 5 (8) If the ACMA refuses to approve a transaction under subsection (1),
6 the ACMA must give written notice of the refusal to the applicant.

7 **61AK Extension of time for compliance with prior approval notice**

- 8 (1) A person who has been given a notice under section 61AJ may,
9 within 3 months before the end of the period specified in the notice
10 but not less than one month before the end of that period, apply in
11 writing to the ACMA for an extension of that period.
- 12 (2) The ACMA may grant an extension if it is of the opinion that an
13 extension is appropriate in all the circumstances.
- 14 (3) If the ACMA considers that additional information is required
15 before the ACMA can make a decision on an application, the
16 ACMA may, by written notice given to the applicant within 30
17 days after receiving the application, request the applicant to
18 provide that information.
- 19 (4) The ACMA must not grant more than one extension, and the
20 period of any extension must not exceed:
21 (a) the period originally specified in the notice; or
22 (b) one year;
23 whichever is the lesser period.
- 24 (5) In deciding whether to grant an extension to an applicant, the
25 ACMA is to have regard to:
26 (a) the endeavours that the applicant made in attempting to
27 comply with the notice; and
28 (b) the difficulties that the applicant experienced in attempting to
29 comply with the notice;
30 but the ACMA must not have regard to any financial disadvantage
31 that compliance with the notice may cause.
- 32 (6) If the ACMA does not, within 45 days after:
33 (a) receiving the application; or

- 1 (b) if the ACMA has requested further information—receiving
2 that further information;
3 extend the period or refuse to extend the period originally specified
4 in the notice, the ACMA is to be taken to have extended that period
5 by:
6 (c) the period originally specified in the notice; or
7 (d) one year;
8 whichever is the lesser period.
- 9 (7) If the ACMA refuses to approve an application made under
10 subsection (1), the ACMA must give written notice of the refusal
11 to the applicant.

12 **61AL Breach of prior approval notice—offence**

- 13 (1) A person commits an offence if:
14 (a) the person has been given a notice under section 61AJ; and
15 (b) the person engages in conduct; and
16 (c) the person's conduct contravenes a requirement in the notice.
- 17 Penalty: 20,000 penalty units.
- 18 (2) A person who contravenes subsection (1) commits a separate
19 offence in respect of each day (including a day of a conviction for
20 the offence or any later day) during which the contravention
21 continues.

22 **61AM Breach of prior approval notice—civil penalty**

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

1 **Subdivision C—Remedial directions**

2 **61AN Remedial directions**

- 3 (1) If, on or after the commencement day, the ACMA is satisfied that
4 an unacceptable media diversity situation exists in relation to the
5 licence area of a commercial radio broadcasting licence, the
6 ACMA may give a person such written directions as the ACMA
7 considers appropriate for the purpose of ensuring that that situation
8 ceases to exist.
- 9 (2) The ACMA's directions may include:
- 10 (a) a direction requiring the disposal of shares or interests in
11 shares; or
- 12 (b) a direction restraining the exercise of any rights attached to:
- 13 (i) shares; or
14 (ii) interests in shares; or
- 15 (c) a direction prohibiting or deferring the payment of any sums
16 due to a person in respect of shares, or interests in shares,
17 held by the person; or
- 18 (d) a direction that any exercise of rights attached to:
- 19 (i) shares; or
20 (ii) interests in shares;
21 be disregarded.
- 22 (3) Subsection (2) does not limit subsection (1).
- 23 (4) The ACMA must not give a direction under subsection (1) if the
24 direction would have the effect of requiring a registered controller
25 of a registered media group to cease to be in a position to exercise
26 control of each of the media operations in the group.
- 27 (5) A direction under subsection (1) must specify a period within
28 which the person must comply with the direction.
- 29 (6) The period must not be longer than 2 years.
- 30 (7) If the ACMA is satisfied that the person:
- 31 (a) acted in good faith; and
32 (b) took reasonable precautions, and exercised due diligence, to
33 avoid:

- 1 (i) the unacceptable media diversity situation coming into
2 existence; or
3 (ii) if the unacceptable media diversity situation already
4 existed—a reduction in the number of points in the
5 licence area concerned;
6 the period specified in the direction must be 2 years.
- 7 (8) If the ACMA is satisfied that the person acted flagrantly in breach
8 of section 61AG or 61AH, the period specified in the direction
9 must be one month.
- 10 (9) The Parliament recognises that, if a period of one month is
11 specified in a direction, the person to whom the direction is given
12 or another person may be required to dispose of shares or interests
13 in shares in a way, or otherwise make arrangements, that could
14 cause the person a considerable financial disadvantage. Such a
15 result is seen as necessary in order to discourage flagrant breaches
16 of sections 61AG and 61AH.

17 **61AP Extension of time for compliance with remedial direction**

- 18 (1) A person who has been given a direction under section 61AN may,
19 within 3 months before the end of the period specified in the
20 direction but not less than one month before the end of that period,
21 apply in writing to the ACMA for an extension of that period.
- 22 (2) An application for an extension cannot be made if the period
23 specified in the direction was one month.
- 24 (3) The ACMA may grant an extension if it is of the opinion that:
25 (a) an unacceptable media diversity situation is likely to cease to
26 exist in the licence area concerned within 3 months after the
27 end of the period specified in the direction under
28 section 61AN; and
29 (b) the applicant acted in good faith; and
30 (c) an extension is appropriate in all the circumstances.
- 31 (4) If the ACMA considers that additional information is required
32 before the ACMA can make a decision on an application, the
33 ACMA may, by written notice given to the applicant within 30
34 days after receiving the application, request the applicant to
35 provide that information.

- 1 (5) The ACMA must not grant more than one extension, and the
2 period of any extension must not exceed 3 months.
- 3 (6) In deciding whether to grant an extension to a person, the ACMA
4 is to have regard to:
- 5 (a) the endeavours that the applicant made in attempting to
6 comply with the direction; and
- 7 (b) the difficulties experienced by the applicant in attempting to
8 comply with the direction; and
- 9 (c) the seriousness of the situation that led to the giving of the
10 direction under section 61AN;
- 11 but the ACMA must not have regard to any financial disadvantage
12 that compliance with the direction may cause.
- 13 (7) If the ACMA does not, within 45 days after:
- 14 (a) receiving the application; or
15 (b) if the ACMA has requested further information—receiving
16 that further information;
- 17 extend the period or refuse to extend the period originally specified
18 in the direction, the ACMA is to be taken to have extended that
19 period by 3 months.
- 20 (8) If the ACMA refuses to approve an application made under
21 subsection (1), the ACMA must give written notice of the refusal
22 to the applicant.

23 **61AQ Breach of remedial direction—offence**

- 24 (1) A person commits an offence if:
- 25 (a) the person has been given a direction under section 61AN;
26 and
- 27 (b) the person engages in conduct; and
- 28 (c) the person's conduct contravenes a requirement in the
29 direction.
- 30 Penalty: 20,000 penalty units.
- 31 (2) A person who contravenes subsection (1) commits a separate
32 offence in respect of each day (including a day of a conviction for
33 the offence or any later day) during which the contravention
34 continues.

1 **61AR Breach of remedial direction—civil penalty**

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

8 **Subdivision D—Enforceable undertakings**

9 **61AS Acceptance of undertakings**

- 10 (1) The ACMA may accept either of the following undertakings:
- 11 (a) a written undertaking given by a person that the person will
12 take specified action to ensure that an unacceptable media
13 diversity situation does not exist in relation to the licence
14 area of a commercial radio broadcasting licence;
- 15 (b) if an unacceptable media diversity situation already exists in
16 relation to the licence area of a commercial radio
17 broadcasting licence—a written undertaking given by a
18 person that the person will take specified action to ensure that
19 there is not a reduction in the number of points in the licence
20 area.
- 21 (2) The undertaking must be expressed to be an undertaking under this
22 section.
- 23 (3) The person may withdraw or vary the undertaking at any time, but
24 only with the consent of the ACMA.
- 25 (4) The ACMA may, by written notice given to the person, cancel the
26 undertaking.
- 27 (5) The ACMA may publish the undertaking on its Internet site.

28 **61AT Enforcement of undertakings**

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

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

16 Subdivision E—Register of Controlled Media Groups

17 61AU Register of Controlled Media Groups

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

25 61AV How a media group is to be entered in the Register

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

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

3 **61AW Explanatory notes may be included in the Register**

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

7 **61AX Continuity of media group**

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

20 **61AY Initial registration of media groups**

- 21 (1) If the ACMA is satisfied that a particular media group was a
22 registrable media group in relation to the licence area of a
23 commercial radio broadcasting licence at the start of 1 February
24 2007, the ACMA must enter the group in the Register.
25 (2) For the purposes of subsection (1), the ACMA may rely on one or
26 more notifications given, or purportedly given, under Division 6 on
27 or after 1 February 2007.
28 (3) If the ACMA relies on a notification or notifications given, or
29 purportedly given, under Division 6, the ACMA must make the
30 relevant entry within 2 business days after receiving the
31 notification or the last of the notifications.

1 (4) If the ACMA makes an entry under subsection (1), the ACMA is to
2 include in the Register a note to the effect that the entry is
3 unconfirmed.

4 (5) An entry under subsection (1) is taken to have been made at the
5 start of 1 February 2007.

6 **61AZ Registration of newly-formed media group**

7 (1) If:

8 (a) the ACMA is satisfied that:

9 (i) a registrable media group has come into existence on or
10 after 1 February 2007; and

11 (ii) the media group is not already entered in the Register;
12 and

13 (b) the ACMA is satisfied that the coming into existence of the
14 media group does not have the result that:

15 (i) an unacceptable media diversity situation comes into
16 existence in relation to the licence area of a commercial
17 radio broadcasting licence; or

18 (ii) if an unacceptable media diversity situation already
19 exists in relation to the licence area of a commercial
20 radio broadcasting licence—there is a reduction in the
21 number of points in the licence area; and

22 (c) if the media group includes:

23 (i) at least one commercial television broadcasting licence
24 that has a regional licence area; and

25 (ii) at least one commercial radio broadcasting licence that
26 has a regional licence area; and

27 (iii) at least one newspaper that is associated with the licence
28 area of a commercial television broadcasting licence
29 that has a regional licence area or a commercial radio
30 broadcasting licence that has a regional licence area;

31 the ACMA is satisfied that, before the media group came into
32 existence, a person obtained a written statement from the
33 Australian Competition and Consumer Commission to the
34 effect that the Commission is of the opinion that the
35 transaction or transactions that resulted in the group coming
36 into existence would not constitute a contravention of
37 section 50 of the *Trade Practices Act 1974*;

- 1 the ACMA must enter the group in the Register.
- 2 (2) For the purposes of subsection (1), the ACMA may rely on one or
3 more notifications given, or purportedly given, under Division 6 on
4 or after 1 February 2007.
- 5 (3) If the ACMA relies on a notification or notifications given, or
6 purportedly given, under Division 6, the ACMA must make the
7 relevant entry within 2 business days after receiving the
8 notification or the last of the notifications.
- 9 (4) If the ACMA makes an entry under subsection (1), the ACMA is to
10 include in the Register a note to the effect that the entry is
11 unconfirmed.

12 **61AZA De-registration of media group that has ceased to exist**

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

26 **61AZB Registration of change of controller of registered media**
27 **group**

- 28 (1) If the ACMA is satisfied that:
29 (a) a person who is not a registered controller of a registered
30 media group has become a controller of the group on or after
31 1 February 2007; or
32 (b) a registered controller of a registered media group has ceased
33 to be a controller of the group on or after 1 February 2007;

- 1 the ACMA must:
- 2 (c) if paragraph (a) applies—alter the group’s entry in the
- 3 Register by adding the name of the controller concerned; or
- 4 (d) if paragraph (b) applies—alter the group’s entry in the
- 5 Register by omitting the name of the controller concerned.
- 6 (2) For the purposes of subsection (1), the ACMA may rely on one or
- 7 more notifications given, or purportedly given, under Division 6 on
- 8 or after 1 February 2007.
- 9 (3) If the ACMA relies on a notification or notifications given, or
- 10 purportedly given, under Division 6, the ACMA must make the
- 11 relevant alteration within 2 business days after receiving the
- 12 notification or the last of the notifications.
- 13 (4) If the ACMA makes an alteration under subsection (1), the ACMA
- 14 must include in the Register a note to the effect that the alteration
- 15 is unconfirmed.

16 **61AZC Registration of change of composition of media group**

- 17 (1) If the ACMA is satisfied that:
- 18 (a) one or more of the media operations in a registered media
- 19 group have ceased to be in that group on or after 1 February
- 20 2007; and
- 21 (b) the group continues in existence;
- 22 the ACMA must alter the group’s entry in the Register by omitting
- 23 the name or names of the media operations referred to in
- 24 paragraph (a).
- 25 (2) For the purposes of subsection (1), the ACMA may rely on one or
- 26 more notifications given, or purportedly given, under Division 6 on
- 27 or after 1 February 2007.
- 28 (3) If the ACMA relies on a notification or notifications given, or
- 29 purportedly given, under Division 6, the ACMA must make the
- 30 relevant alteration within 2 business days after receiving the
- 31 notification or the last of the notifications.
- 32 (4) If the ACMA makes an alteration under subsection (1), the ACMA
- 33 is to include in the Register a note to the effect that the alteration is
- 34 unconfirmed.

1 **61AZD Conditional transactions**

2 *Entry of media group*

3 (1) If:

- 4 (a) a person is a party to a proposed transaction; and
5 (b) the proposed transaction is subject to the condition that the
6 ACMA enters a proposed media group in the Register; and
7 (c) the person requests the ACMA to assume, for the purposes of
8 this Subdivision, that the proposed transaction:
9 (i) had been completed; and
10 (ii) were not subject to that condition; and
11 (d) the ACMA is satisfied that:
12 (i) the parties to the proposed transaction are acting in good
13 faith; and
14 (ii) if the media group were to be entered in the Register on
15 the basis of the assumption mentioned in
16 paragraph (c)—the proposed transaction will be
17 completed within 5 business days after the making of
18 the relevant entry in the Register;

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

21 *Removal of entry of media group*

22 (2) If:

- 23 (a) a person is a party to a proposed transaction; and
24 (b) the proposed transaction is subject to the condition that the
25 ACMA removes a media group's entry from the Register;
26 and
27 (c) the person requests the ACMA to assume, for the purposes of
28 this Subdivision, that the proposed transaction:
29 (i) had been completed; and
30 (ii) were not subject to that condition; and
31 (d) the ACMA is satisfied that:
32 (i) the parties to the proposed transaction are acting in good
33 faith; and
34 (ii) if the media group's entry were to be removed from the
35 Register on the basis of the assumption mentioned in
36 paragraph (c)—the proposed transaction will be

1 completed within 5 business days after the removal of
2 the relevant entry from the Register;
3 then, for the purposes of this Subdivision, the ACMA may make
4 the assumption mentioned in paragraph (c).

5 *Alteration of entry of media group*

- 6 (3) If:
- 7 (a) a person is a party to a proposed transaction; and
 - 8 (b) the proposed transaction is subject to the condition that the
9 ACMA alters a media group's entry in the Register; and
 - 10 (c) the person requests the ACMA to assume, for the purposes of
11 this Subdivision, that the proposed transaction:
 - 12 (i) had been completed; and
 - 13 (ii) were not subject to that condition; and
 - 14 (d) the ACMA is satisfied that:
 - 15 (i) the parties to the proposed transaction are acting in good
16 faith; and
 - 17 (ii) if the media group's entry in the Register were to be
18 altered on the basis of the assumption mentioned in
19 paragraph (c)—the proposed transaction will be
20 completed within 5 business days after the making of
21 the relevant alteration in the Register;
- 22 then, for the purposes of this Subdivision, the ACMA may make
23 the assumption mentioned in paragraph (c).

24 *Requests*

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

30 **61AZE Review and confirmation of entries and alterations etc.**

31 *Review*

- 32 (1) If the ACMA:
-

- 1 (a) enters a media group in the Register under subsection
2 61AY(1) or 61AZ(1); or
3 (b) removes a media group's entry from the Register under
4 subsection 61AZA(1); or
5 (c) makes an alteration to a media group's entry in the Register
6 under subsection 61AZB(1) or 61AZC(1);
7 the ACMA must review the entry, removal or alteration, and make
8 a decision:
9 (d) confirming the relevant entry, removal or alteration; or
10 (e) cancelling the relevant entry, removal or alteration.

11 *Confirmation*

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

15 *Cancellation*

- 16 (3) If the ACMA cancels an entry, the ACMA must:
17 (a) remove the entry from the Register; and
18 (b) remove from the Register the note stating that the entry is
19 unconfirmed.
- 20 (4) If the ACMA cancels the removal of an entry, the ACMA must:
21 (a) restore the entry to the Register; and
22 (b) remove from the Register the note stating that the removal is
23 unconfirmed.
- 24 (5) If the ACMA cancels an alteration, the ACMA must:
25 (a) reverse the alteration; and
26 (b) remove from the Register the note stating that the alteration
27 is unconfirmed.

28 *ACMA not required to rely on notifications*

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

Conditional transactions

1
2 (7) If:

- 3 (a) under subsection (1), the ACMA reviews an entry or
4 alteration; and
5 (b) the entry or alteration was made on the assumption that a
6 proposed transaction had been completed (see
7 section 61AZD); and
8 (c) the ACMA is not satisfied that the proposed transaction was
9 completed within 5 business days after the making of the
10 entry or alteration;

11 the ACMA must make a decision under subsection (1) cancelling
12 the entry or alteration.

13 (8) If:

- 14 (a) under subsection (1), the ACMA reviews a removal of an
15 entry; and
16 (b) the removal was done on the assumption that a proposed
17 transaction had been completed (see section 61AZD); and
18 (c) the ACMA is not satisfied that the proposed transaction was
19 completed within 5 business days after the removal;

20 the ACMA must make a decision under subsection (1) to cancel
21 the removal.

22 *ACMA may request additional information*

23 (9) If:

- 24 (a) under subsection (1), the ACMA reviews an entry, removal
25 or alteration; and
26 (b) the ACMA considers that additional information is required
27 before the ACMA can make a decision under subsection (1);

28 the ACMA may, within 14 days after the relevant entry, removal or
29 alteration, by written notice given to a person, request the person to
30 provide that information.

31 *Deadline*

32 (10) If the ACMA does not, within 28 days after:

- 33 (a) doing whichever of the following is applicable:
34 (i) entering a media group in the Register under subsection
35 61AY(1) or 61AZ(1);
-

- 1 (ii) removing a media group's entry from the Register under
2 subsection 61AZA(1);
3 (iii) making an alteration to a media group's entry in the
4 Register under subsection 61AZB(1) or 61AZC(1); or
5 (b) if the ACMA has requested further information—receiving
6 that further information;
7 make a decision under subsection (1):
8 (c) confirming the relevant entry, removal or alteration; or
9 (d) cancelling the relevant entry, removal or alteration;
10 the ACMA is taken to have made a decision under subsection (1)
11 confirming the relevant entry, removal or alteration.

12 **61AZF Reconsideration of decisions**

13 *Applications for reconsideration of decisions*

- 14 (1) A person:
15 (a) whose interests are affected by a decision under subsection
16 61AZE(1); and
17 (b) who is dissatisfied with the decision;
18 may apply to the ACMA for the ACMA to reconsider the decision.
- 19 (2) The application must:
20 (a) be in a form approved in writing by the ACMA; and
21 (b) set out the reasons for the application.
- 22 (3) The application must be made within 7 days after the taking of the
23 action required by subsection 61AZE(2), (3), (4) or (5) to give
24 effect to the decision.
- 25 (4) An approved form of an application may provide for verification
26 by statutory declaration of statements in applications.

27 *Reconsideration of decisions—application*

- 28 (5) Upon receiving an application under subsection (1), the ACMA
29 must:
30 (a) reconsider the decision; and
31 (b) affirm or revoke the decision.

1 (6) The ACMA's decision on reconsideration of a decision has effect
2 as if it had been made under subsection 61AZE(1).

3 (7) The ACMA must give to the applicant a notice stating its decision
4 on the reconsideration.

5 *ACMA may request additional information*

6 (8) If:

7 (a) an application is made under subsection (1); and

8 (b) the ACMA considers that additional information is required
9 before the ACMA can make a decision under subsection (5);

10 the ACMA may, within 14 days after receiving the application, by
11 written notice given to:

12 (c) the applicant; or

13 (d) any other person;

14 request the applicant or other person to provide that information.

15 (9) If the ACMA does not, within 28 days after:

16 (a) receiving an application under subsection (1); or

17 (b) if the ACMA has requested further information—receiving
18 that further information;

19 make a decision under subsection (5), the ACMA is taken to have
20 made a decision under subsection (5) affirming the original
21 decision.

22 *Reconsideration of decisions—ACMA's own initiative*

23 (10) The ACMA may, at any time:

24 (a) reconsider a decision made under subsection 61AZE(1); and

25 (b) affirm or revoke the decision.

26 (11) The ACMA's decision on reconsideration of a decision has effect
27 as if it had been made under subsection 61AZE(1).

28 **61AZG Corrections of clerical errors or obvious defects**

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

1 **61AZH Regulations**

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

4 **Subdivision F—ACCC clearance required for transactions**
5 **involving television, radio and newspapers in**
6 **regional licence areas**

7 **61AZJ ACCC clearance required for transactions involving**
8 **television, radio and newspapers in regional licence**
9 **areas—offence**

10 A person commits an offence if:

- 11 (a) one or more transactions take place on or after the
12 commencement day; and
13 (b) the transactions involve:
14 (i) the acquisition of shares; or
15 (ii) the acquisition of any other asset; and
16 (c) the transactions have the result that:
17 (i) a registrable media group comes into existence in
18 relation to a regional licence area of a commercial radio
19 broadcasting licence; or
20 (ii) there is a change in the identity of the controller, or the
21 identities of any of the controllers, of a registrable
22 media group in relation to a regional licence area of a
23 commercial radio broadcasting licence; and
24 (d) the registrable media group includes:
25 (i) at least one commercial television broadcasting licence;
26 and
27 (ii) at least one commercial radio broadcasting licence; and
28 (iii) at least one newspaper that is associated with the licence
29 area of a commercial television broadcasting licence or
30 a commercial radio broadcasting licence; and
31 (e) the person was:
32 (i) a party to the transactions; or
33 (ii) in a position to prevent the transactions taking place;
34 and

- 1 (f) before the transactions took place, the person did not obtain a
2 written statement from the Australian Competition and
3 Consumer Commission to the effect that the Commission is
4 of the opinion that the transactions would not constitute a
5 contravention of section 50 of the *Trade Practices Act 1974*.

6 Penalty: 20,000 penalty units.

7 **61AZK ACCC clearance required for transactions involving**
8 **television, radio and newspapers in regional licence**
9 **areas—civil penalty**

- 10 (1) This section applies if:
- 11 (a) one or more transactions take place on or after the
12 commencement day; and
- 13 (b) the transactions involve:
- 14 (i) the acquisition of shares; or
15 (ii) the acquisition of any other asset; and
- 16 (c) the transactions have the result that:
- 17 (i) a registrable media group comes into existence in
18 relation to a regional licence area of a commercial radio
19 broadcasting licence; or
- 20 (ii) there is a change in the identity of the controller, or the
21 identities of any of the controllers, of a registrable
22 media group in relation to a regional licence area of a
23 commercial radio broadcasting licence; and
- 24 (d) the registrable media group includes:
- 25 (i) at least one commercial television broadcasting licence;
26 and
27 (ii) at least one commercial radio broadcasting licence; and
28 (iii) at least one newspaper that is associated with the licence
29 area of a commercial television broadcasting licence or
30 a commercial radio broadcasting licence.
- 31 (2) A person must not be:
- 32 (a) a party to the transactions; or
33 (b) in a position to prevent the transactions taking place;
- 34 if, before the transactions took place, the person did not obtain a
35 written statement from the Australian Competition and Consumer
36 Commission to the effect that the Commission is of the opinion

1 that the transactions would not constitute a contravention of
2 section 50 of the *Trade Practices Act 1974*.

3 (3) Subsection (2) is a civil penalty provision.

4 **9 Section 62 (penalty)**

5 Repeal the penalty.

6 **10 At the end of section 62**

7 Add:

8 *Notification by publisher of newspaper*

9 (3) Each publisher of a newspaper that is associated with the licence
10 area of a commercial television broadcasting licence or a
11 commercial radio broadcasting licence must, within 3 months after
12 the end of each financial year, give to the ACMA in writing:

13 (a) details of the persons who, to the knowledge of the publisher,
14 were in a position to exercise control of the newspaper at the
15 end of that financial year; and

16 (b) if the publisher is a company—the name of each person who
17 was a director of the company at the end of that financial
18 year.

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

21 *Offence*

22 (5) A person commits an offence if:

23 (a) the person is subject to a requirement under subsection (1) or
24 (3); and

25 (b) the person omits to do an act; and

26 (c) the omission breaches the requirement.

27 Penalty for contravention of this subsection:

28 (a) if the breach relates to a commercial television broadcasting
29 licence, a datacasting transmitter licence or a newspaper—
30 500 penalty units; or

31 (b) otherwise—50 penalty units.

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

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

2 **11 Subsection 63(1)**

3 Omit “7 days”, substitute “5 days”.

4 **12 Section 63 (penalty)**

5 Repeal the penalty.

6 **13 At the end of section 63**

7 Add:

8 *Notification by publisher of newspaper*

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

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

21 *Offence*

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

27 Penalty for contravention of this subsection:

- 28 (a) if the breach relates to a commercial television broadcasting
29 licence, a datacasting transmitter licence or a newspaper—
30 500 penalty units; or
31 (b) otherwise—50 penalty units.

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

1 **14 Subsection 64(1)**

2 Omit “7 days”, substitute “5 days”.

3 **15 Section 64 (penalty)**

4 Repeal the penalty.

5 **16 At the end of section 64**

6 Add:

7 *Notification by controller of newspaper*

8 (3) If a person who was not in a position to exercise control of a
9 newspaper that is associated with the licence area of a commercial
10 television broadcasting licence or a commercial radio broadcasting
11 licence becomes aware that the person is in a position to exercise
12 control of the newspaper, the person must, within 5 days after
13 becoming so aware, notify the ACMA in writing of that position.

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

16 *Offence*

17 (5) A person commits an offence if:

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

22 Penalty for contravention of this subsection:

- 23 (a) if the breach relates to a commercial television broadcasting
24 licence, a datacasting transmitter licence or a newspaper—
25 500 penalty units; or
26 (b) otherwise—50 penalty units.

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

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

30 **17 Section 65**

31 Repeal the section, substitute:

1 **65 Requirement to notify control and directorships as at 1 February**
2 **2007**

3 *Notification by licensee*

- 4 (1) Each commercial television broadcasting licensee and commercial
5 radio broadcasting licensee must, within 5 days after 1 February
6 2007, give to the ACMA in writing:
7 (a) details of the persons who, to the knowledge of the licensee,
8 were in a position to exercise control of the licence at the
9 start of 1 February 2007; and
10 (b) the name of each person who was a director of the licensee at
11 the start of 1 February 2007.
- 12 (2) The details are to be provided in a form approved in writing by the
13 ACMA.

14 *Notification by publisher of newspaper*

- 15 (3) If, at the start of 1 February 2007, a newspaper is associated with
16 the licence area of a commercial television broadcasting licence or
17 a commercial radio broadcasting licence, the publisher of the
18 newspaper must, within 5 days after 1 February 2007, give to the
19 ACMA in writing:
20 (a) details of the persons who, to the knowledge of the publisher,
21 were in a position to exercise control of the newspaper at the
22 start of 1 February 2007; and
23 (b) if the publisher is a company—the name of each person who
24 was a director of the company at the start of 1 February 2007.
- 25 (4) The details are to be provided in a form approved in writing by the
26 ACMA.

27 *Notification by controller*

- 28 (5) If, at the start of 1 February 2007, a person is in a position to
29 exercise control of:
30 (a) a commercial television broadcasting licence; or
31 (b) a commercial radio broadcasting licence; or
32 (c) a newspaper that is associated with the licence area of a
33 commercial television broadcasting licence or a commercial
34 radio broadcasting licence;

1 the person must, within 5 days after 1 February 2007, notify the
 2 ACMA in writing of that position.

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

5 *Offence*

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

11 Penalty for contravention of this subsection:

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

15 **18 Section 204 (after table item dealing with subsection**
 16 **59(4B))**

17 Insert:

Refusal to approve transaction or determination of period of approval	Section 61AJ	The applicant for approval
Refusal to extend time for compliance	Section 61AK	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)

18 **19 Clause 43 of Schedule 4 (definition of *business day*)**

19 Repeal the definition.

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

21 Repeal the definition.

1
2 **Schedule 2—Amendments commencing on**
3 **Proclamation**
4

5 ***Broadcasting Services Act 1992***

6 **1 Paragraph 3(1)(d)**

7 Repeal the paragraph.

8 **2 Subsection 6(1) (definition of *foreign person*)**

9 Repeal the definition.

10 **3 After section 43**

11 Insert:

12 **43A Material of local significance—regional aggregated commercial**
13 **television broadcasting licences**

- 14 (1) The ACMA must ensure that, at all times on and after 1 January
15 2008, there is in force under section 43 a condition that has the
16 effect of requiring the licensee of a regional aggregated
17 commercial television broadcasting licence to broadcast to each
18 local area, during such periods as are specified in the condition, at
19 least a minimum level of material of local significance.
- 20 (2) For the purposes of subsection (1), a ***regional aggregated***
21 ***commercial television broadcasting licence*** is a commercial
22 television broadcasting licence for any of the following licence
23 areas:
24 (a) Northern New South Wales;
25 (b) Southern New South Wales;
26 (c) Regional Victoria;
27 (d) Eastern Victoria;
28 (e) Western Victoria;
29 (f) Regional Queensland;
30 (g) Tasmania.
- 31 (3) The condition must define ***local area*** and ***material of local***
32 ***significance*** for the purposes of the condition. The definition of

1 *material of local significance* must be broad enough to cover news
2 that relates directly to the local area concerned.

- 3 (4) To avoid doubt, this section does not:
- 4 (a) prevent the condition from setting out different requirements
 - 5 for different types of material; or
 - 6 (b) prevent the condition from specifying periods that recur (for
 - 7 example, the hours between 7 am and 10 am Monday to
 - 8 Friday); or
 - 9 (c) prevent the condition from setting out different requirements
 - 10 for different periods; or
 - 11 (d) create any obligations under subsection 43(2) that would not
 - 12 exist apart from this section.
- 13 (5) Subsection 43(5) does not apply to the condition.
- 14 (6) This section does not limit the powers conferred on the ACMA by
- 15 section 43 to impose, vary or revoke other conditions.

16 **43B Local presence—regional commercial radio broadcasting**
17 **licences**

- 18 (1) The ACMA must ensure that, at all times after the commencement
- 19 of this section, there is in force under section 43 a condition that
- 20 has the effect of requiring that, if a trigger event for a regional
- 21 commercial radio broadcasting licence occurs, then, after the
- 22 occurrence of the event, the licensee must maintain at least the
- 23 existing level of local presence.
- 24 (2) The condition must define *existing level of local presence* for the
- 25 purposes of the condition.
- 26 (3) The definition must deal with:
- 27 (a) staffing levels; and
 - 28 (b) studios and other production facilities.
- 29 (4) Subsection (3) does not limit subsection (2).
- 30 (5) To avoid doubt, this section does not create any obligations under
- 31 subsection 43(2) that would not exist apart from this section.
- 32 (6) Subsection 43(5) does not apply to the condition.

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

11 **4 Division 4 of Part 5**

12 Repeal the Division.

13 **5 Division 5 of Part 5 (heading)**

14 Repeal the heading, substitute:

15 **Division 5—Newspapers associated with licence areas**

16 **6 Sections 60 and 61**

17 Repeal the sections.

18 **7 After Division 5A of Part 5**

19 Insert:

20 **Division 5B—Disclosure of cross-media relationships**

21 **61BA Definitions**

22 In this Division:

23 *media operation* means:

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

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

4 ***prime-time hours*** means the hours:

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

9 ***set of media operations*** means:

- 10 (a) a commercial television broadcasting licence and a
11 commercial radio broadcasting licence that have the same
12 licence area; or
13 (b) a commercial television broadcasting licence and a
14 newspaper that is associated with the licence area of the
15 licence; or
16 (c) a commercial radio broadcasting licence and a newspaper
17 that is associated with the licence area of the licence.

18 **61BB Disclosure of cross-media relationship by commercial**
19 **television broadcasting licensee**

20 *Scope*

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

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

31 *Requirement to disclose cross-media relationship*

- 32 (2) If subparagraph (1)(c)(i) applies, the commercial television
33 broadcasting licensee must also broadcast a statement describing
34 (whether in summary form or otherwise) the relationship between

1 the commercial television broadcasting licensee and the
2 commercial radio broadcasting licensee.

3 (3) It is sufficient if the statement under subsection (2) is to the effect
4 that there is a cross-media relationship between the commercial
5 television broadcasting licensee and the commercial radio
6 broadcasting licensee.

7 (4) If subparagraph (1)(c)(ii) applies, the commercial television
8 broadcasting licensee must also broadcast a statement describing
9 (whether in summary form or otherwise) the relationship between
10 the commercial television broadcasting licensee and the publisher
11 of the newspaper.

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

16 *How statement is to be broadcast*

17 (6) A statement under subsection (2) or (4) must be broadcast in a way
18 that will adequately bring it to the attention of a reasonable person
19 who may have viewed the broadcast mentioned in paragraph (1)(c).

20 (7) The regulations may provide that subsection (6) is taken to have
21 been complied with if the statement is broadcast in the manner, and
22 at the time, specified in, or ascertained in accordance with, the
23 regulations.

24 **61BC Choice of disclosure method—commercial radio broadcasting**
25 **licensee**

26 *Notice of choice may be given to the ACMA*

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

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

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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

1 (d) a notice under subsection 61BC(1) is not in force in relation
2 to the commercial radio broadcasting licensee.

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

4 *Requirement to disclose cross-media relationship*

5 (2) If subparagraph (1)(c)(i) applies, the commercial radio
6 broadcasting licensee must also broadcast a statement describing
7 (whether in summary form or otherwise) the relationship between
8 the commercial radio broadcasting licensee and the commercial
9 television broadcasting licensee.

10 (3) It is sufficient if the statement under subsection (2) is to the effect
11 that there is a cross-media relationship between the commercial
12 radio broadcasting licensee and the commercial television
13 broadcasting licensee.

14 (4) If subparagraph (1)(c)(ii) applies, the commercial radio
15 broadcasting licensee must also broadcast a statement describing
16 (whether in summary form or otherwise) the relationship between
17 the commercial radio broadcasting licensee and the publisher of the
18 newspaper.

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

22 *How statement is to be broadcast*

23 (6) A statement under subsection (2) or (4) must be broadcast in a way
24 that will adequately bring it to the attention of a reasonable person
25 who may have listened to the broadcast mentioned in
26 paragraph (1)(c).

27 (7) The regulations may provide that subsection (6) is taken to have
28 been complied with if the statement is broadcast in the manner, and
29 at the time, specified in, or ascertained in accordance with, the
30 regulations.

1 **61BE Disclosure of cross-media relationship by commercial radio**
2 **broadcasting licensee—regular disclosure method**

3 *Scope*

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

10 *Requirement to disclose cross-media relationship*

- 11 (2) If a commercial television broadcasting licence is in the set, the
12 commercial radio broadcasting licensee must regularly broadcast a
13 statement describing (whether in summary form or otherwise) the
14 relationship between the commercial radio broadcasting licensee
15 and the commercial television broadcasting licensee.
- 16 (3) It is sufficient if the statement under subsection (2) is to the effect
17 that there is a cross-media relationship between the commercial
18 radio broadcasting licensee and the commercial television
19 broadcasting licensee.
- 20 (4) If a newspaper is in the set, the commercial radio broadcasting
21 licensee must regularly broadcast a statement describing (whether
22 in summary form or otherwise) the relationship between the
23 commercial radio broadcasting licensee and the publisher of the
24 newspaper.
- 25 (5) It is sufficient if the statement under subsection (4) is to the effect
26 that there is a cross-media relationship between the commercial
27 radio broadcasting licensee and the publisher of the newspaper.

28 *How statement is to be broadcast*

- 29 (6) Statements under subsection (2) or (4) are to be broadcast in a way,
30 and with a frequency, that is reasonably likely to ensure that the
31 audience of the commercial radio broadcasting service during
32 prime-time hours is aware that:
33 (a) in the case of statements under subsection (2)—there is a
34 relationship between the commercial radio broadcasting

- 1 licensee and the commercial television broadcasting licensee;
2 or
3 (b) in the case of statements under subsection (4)—there is a
4 relationship between the commercial radio broadcasting
5 licensee and the publisher of the newspaper.
- 6 (7) A commercial radio broadcasting licensee is taken to have
7 complied with subsection (6) if:
8 (a) the statement is broadcast at least once each day during
9 prime-time hours; and
10 (b) the statement is broadcast in a way that will adequately bring
11 it to the attention of a reasonable person who may have
12 listened to the broadcast of the statement.
- 13 (8) The regulations may provide that a commercial radio broadcasting
14 licensee is taken to have complied with subsection (6) if the
15 statement is broadcast in the manner, and at the times, ascertained
16 in accordance with the regulations.

17 **61BF Disclosure of cross-media relationship by publisher of**
18 **newspaper**

19 *Scope*

- 20 (1) This section applies if:
21 (a) a person is in a position to exercise control of each media
22 operation in a set of media operations; and
23 (b) a newspaper is in the set; and
24 (c) material published in a particular edition of the newspaper is
25 wholly or partly about:
26 (i) the business affairs of a commercial television
27 broadcasting licensee whose licence is in the set; or
28 (ii) the business affairs of a commercial radio broadcasting
29 licensee whose licence is in the set.

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

31 *Requirement to disclose cross-media relationship*

- 32 (2) If subparagraph (1)(c)(i) applies, the publisher of the newspaper
33 must cause to be published in the same edition of the newspaper a
34 statement describing (whether in summary form or otherwise) the

1 relationship between the publisher and the commercial television
2 broadcasting licensee.

3 (3) It is sufficient if the statement under subsection (2) is to the effect
4 that there is a cross-media relationship between the publisher and
5 the commercial television broadcasting licensee.

6 (4) If subparagraph (1)(c)(ii) applies, the publisher of the newspaper
7 must cause to be published in the same edition of the newspaper a
8 statement describing (whether in summary form or otherwise) the
9 relationship between the publisher and the commercial radio
10 broadcasting licensee.

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

14 *How statement is to be published*

15 (6) A statement under subsection (2) or (4) must be published in a way
16 that will adequately bring it to the attention of a reasonable person
17 who may have read the material mentioned in paragraph (1)(c).

18 (7) The regulations may provide that subsection (6) is taken to have
19 been complied with if the statement is published in the manner
20 specified in, or ascertained in accordance with, the regulations.

21 *Offence*

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

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

27 **61BG Exception—political communication**

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

1 **61BH Matter or material about the business affairs of a**
2 **broadcasting licensee or newspaper publisher**

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

5 (1) A reference in this Division to *matter or material that is wholly or*
6 *partly about the business affairs* of a commercial television
7 broadcasting licensee, a commercial radio broadcasting licensee or
8 a newspaper publisher:

9 (a) includes a reference to matter or material, where, having
10 regard to:

11 (i) the nature of the matter or material; and

12 (ii) the way in which the matter or material is presented;

13 it would be reasonable to conclude that the object, or one of
14 the objects, of the broadcast of the matter or the publication
15 of the material, as the case may be, was to:

16 (iii) promote; or

17 (iv) otherwise influence members of the public, or of a
18 section of the public, to view, to listen to, or to read;

19 matter broadcast, or to be broadcast, by the licensee, or
20 material published, or to be published, in the newspaper, as
21 the case may be; and

22 (b) does not include a reference to:

23 (i) a journalistic acknowledgment of a program or article as
24 being the source of particular information; or

25 (ii) advertising matter or advertising material, where a
26 reasonable person would be able to distinguish the
27 advertising matter or advertising material from other
28 matter or material; or

29 (iii) a program guide (see subsection (2)); or

30 (iv) exempt matter or exempt material (see subsection (4)).

31 *Program guide*

32 (2) For the purposes of this section, a *program guide* is matter or
33 material that consists of no more than:

34 (a) a schedule of:

35 (i) the television programs provided by 2 or more
36 television broadcasting services; or

- 1 (ii) the radio programs provided by 2 or more radio
2 broadcasting services; or
3 (b) a combination of:
4 (i) a schedule covered by paragraph (a); and
5 (ii) items of factual information, and/or items of comment,
6 about some or all of the programs in the schedule,
7 where each item is brief;
8 where the matter or material does not single out one of those
9 services for special promotion.

- 10 (3) For the purposes of subsection (2):
11 (a) a **television broadcasting service** is:
12 (i) a commercial broadcasting service that provides
13 television programs; or
14 (ii) a national broadcasting service that provides television
15 programs; and
16 (b) a **radio broadcasting service** is:
17 (i) a commercial broadcasting service that provides radio
18 programs; or
19 (ii) a national broadcasting service that provides radio
20 programs.

21 *Exempt matter or exempt material*

- 22 (4) The Minister may, by legislative instrument, determine that:
23 (a) matter included in a specified class of matter is **exempt**
24 **matter** for the purposes of this section; and
25 (b) material included in a specified class of material is **exempt**
26 **material** for the purposes of this section.
27 (5) A determination under subsection (4) has effect accordingly.

28 *Advertising*

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

1 **Division 5C—Local news and information requirements**
2 **for regional commercial radio broadcasting**
3 **licensees**

4 **Subdivision A—Introduction**

5 **61CA Definitions**

6 In this Division:

7 ***approved local content plan*** means an approved local content plan
8 under Subdivision C.

9 ***benchmark year*** means:

- 10 (a) in relation to a regional commercial radio broadcasting
11 licence where a single trigger event has occurred—the
12 52-week period ending on the Saturday before the day on
13 which the trigger event occurred; and
14 (b) in relation to a regional commercial radio broadcasting
15 licence where 2 or more trigger events have occurred—the
16 52-week period ending on the Saturday before the day on
17 which the most recent trigger event occurred.

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

21 ***controller*** has the same meaning as in Division 5A.

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

- 24 (a) a news and weather bulletin; or
25 (b) a community service announcement; or
26 (c) an emergency warning.

27 ***draft local content plan*** means a draft local content plan under
28 Subdivision C.

29 ***eligible local news and weather bulletins*** means local news and
30 weather bulletins that meet the following requirements:

- 31 (a) the bulletins are broadcast on different days during the week;
32 (b) the bulletins are broadcast during prime-time hours;

1 (c) the bulletins adequately reflect matters of local significance.

2 **emergency service agency** means:

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

7 **local** has a meaning affected by section 61CC.

8 **metropolitan licence area** means a licence area in which is situated
9 the General Post Office of the capital city of:

- 10 (a) New South Wales; or
11 (b) Victoria; or
12 (c) Queensland; or
13 (d) Western Australia; or
14 (e) South Australia.

15 **news and weather bulletin** means a regularly scheduled news and
16 weather bulletin.

17 **prime-time hours** means the hours:

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

22 **regional commercial radio broadcasting licence** means a
23 commercial radio broadcasting licence that has a regional licence
24 area.

25 **regional licence area** means a licence area that is not a
26 metropolitan licence area.

27 **Register** has the same meaning as in Division 5A.

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

29 **trigger event** has the meaning given by section 61CB.

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

1 **61CB Trigger event**

2 *Transfer of licence*

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

8 *Formation of new registrable media group*

- 9 (2) For the purposes of this Division, if:
10 (a) a registrable media group comes into existence; and
11 (b) the media group is not already entered in the Register; and
12 (c) a regional commercial radio broadcasting licence is in the
13 group;
14 the coming into existence of the group is a **trigger event** for the
15 licence.

16 *Change of controller of registrable media group*

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

26 **61CC What is local?**

- 27 (1) The ACMA may, by legislative instrument, define what is meant
28 by the expression **local** for the purposes of the application of:
29 (a) this Division; or
30 (b) a specified provision of this Division;
31 to a specified licence area.

- 1 (2) In making an instrument under subsection (1), the ACMA must
2 have regard to:
3 (a) the areas where separate programming is provided; and
4 (b) such other matters (if any) as the ACMA considers relevant.

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

7 **Subdivision B—Minimum service standards for local news and**
8 **information**

9 **61CD Licensee must meet minimum service standards for local news**
10 **and information**

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

- 14 (a) minimum service standards for local news; and
15 (b) minimum service standards for local community service
16 announcements; and
17 (c) minimum service standards for emergency warnings; and
18 (d) if a declaration is in force under subsection 61CE(6)—
19 minimum service standards for designated local content
20 programs.

21 **61CE Minimum service standards for local news and information**

22 *Local news*

- 23 (1) For the purposes of this Subdivision, a commercial radio
24 broadcasting licensee meets the *minimum service standards for*
25 *local news* during a particular week if, during that week, the
26 number of eligible local news and weather bulletins broadcast by
27 the licensee is at least:
28 (a) the local news target number; or
29 (b) if the average weekly number of eligible local news and
30 weather bulletins broadcast under the licence during the
31 benchmark year is a number greater than the local news
32 target number—the greater number.
- 33 (2) For the purposes of subsection (1), the *local news target number*
34 is:

- 1 (a) 5; or
2 (b) if the Minister, by legislative instrument, declares that a
3 greater number is the local news target number—the greater
4 number.

5 *Local community service announcements*

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

18 *Emergency warnings*

- 19 (5) For the purposes of this Subdivision, a commercial radio
20 broadcasting licensee meets the *minimum service standards for*
21 *emergency warnings* during a particular week if:
22 (a) on one or more occasions during the week, one or more
23 emergency service agencies asked the licensee to broadcast
24 emergency warnings, and the licensee broadcast those
25 warnings as and when asked to do so by those emergency
26 service agencies; or
27 (b) there was no occasion during the week when an emergency
28 service agency asked the licensee to broadcast an emergency
29 warning.

30 *Designated local content programs*

- 31 (6) For the purposes of this Subdivision, the Minister may, by
32 legislative instrument, declare that a regional commercial radio
33 broadcasting licence meets the *minimum service standards for*
34 *designated local content programs* during a particular week if,
35 during that week, the licensee meets such requirements in relation

1 to designated local content programs as are specified in the
2 declaration.

3 **Subdivision C—Local content plans**

4 **61CF Licensee must submit draft local content plan to the ACMA**

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

15 *Replacement of approved local content plan*

- 16 (3) If an approved local content plan (the *original plan*) for a
17 commercial radio broadcasting licence is in force:
18 (a) a draft local content plan given under subsection (1) for the
19 licence must be expressed to replace the original plan; and
20 (b) if the draft local content plan becomes an approved local
21 content plan for the licence—the original plan ceases to be in
22 force.
- 23 (4) If:
24 (a) the ACMA makes a determination under subsection (2) in
25 relation to a commercial radio broadcasting licence; and
26 (b) an approved local content plan (the *original plan*) for the
27 licence was in force immediately before the determination
28 takes effect;
29 then:
30 (c) the approved local content plan as determined by the ACMA
31 replaces the original plan; and
32 (d) the original plan ceases to be in force.

1 **61CG Content of draft or approved local content plan**

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

5 **61CH Approval of draft local content plan**

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

10 *Approval of plan*

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

22 *Refusal to approve plan*

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

1 **61CJ Register of approved local content plans**

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

6 **61CK Approved local content plan must be varied if minimum**
7 **service standards are imposed or increased**

- 8 (1) This section applies if:
- 9 (a) an approved local content plan (the *current plan*) for a
10 regional commercial radio broadcasting licence is in force;
11 and
- 12 (b) the Minister makes a declaration under:
- 13 (i) paragraph 61CE(2)(b); or
14 (ii) paragraph 61CE(4)(b); or
15 (iii) subsection 61CE(6); and
- 16 (c) in the case of a declaration under paragraph 61CE(2)(b)—the
17 effect of the declaration is to raise the licensee’s minimum
18 service standards for local news.
- 19 (2) The licensee must give the ACMA:
- 20 (a) a draft variation of the current plan; and
21 (b) a statement setting out such information about the licensee’s
22 broadcasting operations as the ACMA requires;
23 within 90 days after the day on which the declaration is made.
- 24 (3) If the licensee does not comply with subsection (2), the ACMA
25 may, by legislative instrument, vary the current plan.

26 **61CL Approved local content plan may be varied by the licensee**

- 27 If an approved local content plan (the *current plan*) for a regional
28 commercial radio broadcasting licence is in force, the licensee may
29 give the ACMA:
- 30 (a) a draft variation of the current plan; and
31 (b) a statement setting out such information about the licensee’s
32 broadcasting operations as the ACMA requires.

1 **61CM Approval of draft variation**

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

7 *Approval of variation*

- 8 (2) The ACMA must not approve the variation unless the ACMA is
9 satisfied that, if the licensee were to give the ACMA a draft local
10 content plan in the same terms as the current plan as proposed to be
11 varied, the ACMA would approve that draft.
- 12 (3) If the ACMA approves the variation, the current plan is varied
13 accordingly.
- 14 (4) If the ACMA approves the variation, the ACMA must give the
15 licensee a written notice setting out the decision.

16 *Refusal to approve variation*

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

22 **61CN ACMA may review approved local content plan**

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

1 **61CP Compliance with approved local content plan**

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

5 **61CQ Minister may direct the ACMA about the exercise of its**
6 **powers**

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

11 **Subdivision D—Investigations about other local content**
12 **requirements**

13 **61CR Minister may direct the ACMA to conduct an investigation**
14 **about other local content requirements**

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

25 **8 Paragraph 62(1)(b)**

26 Omit “year; and”, substitute “year.”.

27 **9 Paragraph 62(1)(c)**

28 Repeal the paragraph.

29 **10 Paragraphs 66(1)(a) and (b)**

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

1 **11 Paragraph 66(1)(d)**

2 Omit “subsection 58(2) or”.

3 **12 Subsections 66(1A) and (2)**

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

5 **13 Subsection 67(1)**

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

7 **14 Paragraph 67(4)(a)**

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

9 **15 Subsection 70(1)**

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

11 **16 Section 96A**

12 Repeal the section.

13 **17 Divisions 3, 4 and 5 of Part 7**

14 Repeal the Divisions.

15 **18 Section 204 (table item dealing with subsection 58(2))**

16 Repeal the item.

17 **19 Section 204 (table item dealing with subsection 105(2))**

18 Repeal the item.

19 **20 Section 204 (table item dealing with subsection 105(3))**

20 Repeal the item.

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

22 Omit “Act; and”, substitute “Act;”.

23 **22 Subparagraph 7(1)(c)(v) of Schedule 2**

24 Repeal the subparagraph.

25 **23 At the end of subclause 7(1) of Schedule 2**

26 Add:

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

4 **24 At the end of subclause 8(1) of Schedule 2**

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

9 **25 At the end of subclause 8(2) of Schedule 2**

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

14 **26 Paragraph 10(1)(c) of Schedule 2**

15 Repeal the paragraph.

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4

Schedule 3—Amendments commencing on 1 January 2009

Broadcasting Services Act 1992

1 Section 61AA

7 Insert:

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

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

2 Section 61AA

15 Insert:

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

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

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