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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**BROADCASTING SERVICES AMENDMENT
(MEDIA OWNERSHIP) BILL 2006**

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments and New Clauses to be Moved on Behalf of the Government
(Sheet Number PZ245)

(Circulated by authority of Senator the Hon. Helen Coonan,
Minister for Communications, Information Technology and the Arts)

GOVERNMENT AMENDMENTS TO THE BROADCASTING SERVICES AMENDMENT (MEDIA OWNERSHIP) BILL 2006

OUTLINE

The Broadcasting Services Amendment (Media Ownership) Bill 2006 (the Bill) amends the *Broadcasting Services Act 1992* (the BSA) to reform the foreign and cross-media ownership regime in Australia.

The current foreign ownership and control restrictions relating to free-to-air commercial television broadcasting, and cross-media ownership restrictions in the BSA limit competition in the media sector and restrict access to capital, expertise and opportunities for growth. The proposed changes will encourage greater competition and allow media companies to achieve economies of scale and scope, while protecting the diversity of Australia's media.

Cross-media ownership

The Bill will permit cross-media mergers in radio licence areas where sufficient diversity of media groups remains following the merger. At least five separate media groups will be required to remain after any merger activity in mainland State capitals, and four groups in licence areas elsewhere, including regional areas. Any media merger, including one that is not a cross-media merger, will not be permitted if it would permanently reduce the number of media groups in a licence area below the minimum level.

To ensure compliance with the minimum number of separate media groups rule, the Bill provides that the Australian Communications and Media Authority (the ACMA) will maintain a Register of Controlled Media Groups (the Register) identifying the ownership and control of media groups in each licence area.

Amendments

The amendments and new clauses proposed to be moved by the Government address a number of topics in the Bill.

Prior approval of transactions that result in an unacceptable media diversity situation coming into existence

The Bill provides that, where a person proposes to enter into a transaction that would result in an unacceptable media diversity situation, or in a reduction in the number of points if an unacceptable media diversity situation already exists, that person may, before the transaction takes place, make an application to the ACMA for prior approval of the transaction. The ACMA may grant prior approval for such

transactions if it is satisfied that either the applicant or another person will take action within two years of the approval to ensure that the situation is remedied.

Amendments to the Bill make it clear that, where the ACMA grants an approval on the basis of the anticipated actions of a third party, the ACMA must make this fact known to the applicant.

Remedial directions

The Bill provides that, if the ACMA is satisfied that an unacceptable media diversity situation exists in relation to a regional radio licence area, the ACMA may give a person a remedial direction for the purpose of ensuring that the situation ceases to exist. The Bill also provides that the ACMA may not issue a remedial direction to a registered controller of a registered media group that would have the effect of requiring them to divest their controlling interest in any of the media operations in the group. The Bill is amended to ensure that the relevant provisions in the Bill operate as intended, and to provide that in certain limited circumstances the ACMA may issue a remedial direction that would have the effect of requiring a registered controller of a media group to divest control in a media operation in that group.

'Freezing' the Register while ACMA reconsideration or AAT/court proceedings are pending

The amendments provide for the Register to be 'frozen' while AAT or court proceedings are pending in relation to a decision of the ACMA in connection with a registrable media group, or while the ACMA is reconsidering a decision that it has made in connection with a registrable media group.

Notifications to be dealt with in order of receipt

Amendments to the Bill make it clear that, for the purpose of certain decisions required to be made by the ACMA in relation to the Register, the ACMA is to deal with notifications given under Division 6 of Part 5 of the BSA in the order in which it receives those notifications.

Timing of deemed decisions of the ACMA in relation to the Register

The Bill provides that in relation to certain decisions that the ACMA is required to make in connection with a registrable media group and the Register, if the ACMA does not make and notify a decision within 28 days, it is deemed to have made a particular decision. The amendments clarify that the ACMA, where the ACMA is deemed to have made a decision, it is taken to have made that decision at the end of the 28-day period.

Control of two or more licences

The BSA is amended to include further guidance on situations that may be relevant in determining whether a person is in a position to exercise control of two or more licences, for the purposes of the ownership and control provisions.

Objects of the BSA

Amendments to the Bill insert an additional item within the objects of the BSA, providing that it is an object of that Act to promote the availability to audiences throughout Australia of television and radio programs about matters of local significance

What is local?

The Bill provides that the ACMA may clarify the meaning of the term “local” for the purposes of new Division 5C of Part 5 of the BSA (which relates to local news and information requirements for regional commercial radio broadcasting licensees).

Amendments to the Bill ensure that the ACMA’s power to define the term “local” will not affect the Minister’s ability to issue directions to the ACMA in relation to the local news and information requirements.

Occurrence of trigger event when ACMA decision is pending

The Bill sets out a new requirement for a regional commercial radio broadcasting licensee to develop a Local Content Plans (LCP) if a “trigger event” occurs in relation to the licence. Licensees must submit draft LCPs to the ACMA, which must then consider whether to approve or refuse to approve the draft LCP.

The amendments clarify and streamline the process for approval by the ACMA of draft LCPs where a further trigger event occurs after the licensee has submitted a draft LCP (or a draft variation of an approved LCP) but before the ACMA has made a decision to approve or to refuse to approve the draft LCP (or the draft variation to the approved LCP).

Injunctions in relation to transactions that result in an unacceptable media diversity situation

Under amendments to the BSA made by the Communications Legislation Amendment (Enforcement Powers) Bill 2006 (CLAB), the ACMA will be granted a power to seek an order from the Federal Court to prevent unlicensed broadcasting. Injunctions to prevent unlicensed broadcasts are principally aimed at licensees outside commercial broadcasting categories, such as narrowcasters (which are licensed to provide only niche services) that provide commercial broadcasting services.

These amendments would amend the new provisions of the BSA inserted by the CLAB with the effect of enabling the ACMA to seek injunctions in the Federal Court in relation to transactions that are prohibited under Division 5A of Part 5 (which is inserted into the BSA by the Bill, and deals with media diversity).

Other amendments relating to local content requirements

Amendments to the Bill provide that the Minister may give the ACMA written directions requiring the ACMA to exercise its powers under section 43 of the BSA to impose licence conditions on regional commercial radio broadcasting licences requiring the relevant licensees to broadcast matters of local significance. Directions given by the Minister to the ACMA may be specific in nature.

Further amendments require the Minister to cause to be conducted regular reviews (at least every three years) of the local content requirements. The ACMA will be required to provide information for the purpose of the reviews. Reports of the reviews must be tabled in both Houses of Parliament.

FINANCIAL IMPACT

The amendments are not expected to have any significant impact on Commonwealth expenditure or revenue.

NOTES ON AMENDMENTS

Prior approval of transactions that result in an unacceptable media diversity situation coming into existence

Amendments (1)-(4)

New section 61AJ, inserted into the BSA by item 8 of Schedule 1 of the Bill, provides that a person may, before the transaction takes place, make an application to the ACMA for prior approval of a transaction that would result in an unacceptable media diversity situation, or a reduction in the number of points if an unacceptable media diversity situation already exists.

If the ACMA is satisfied that:

- the transaction would place the person in breach of new section 61AG or 61AH; and
- either the applicant or a third party will take action within 2 years to ensure that either the unacceptable media diversity situation does not eventuate, or the number of points in the licence area will not reduce if there is an existing unacceptable media diversity situation;

the ACMA may approve the transaction (new subsection 61AJ(4)).

Paragraph 61AJ(4)(d) currently provides that, if the ACMA approves a transaction on the basis that the applicant itself will take such action, the ACMA must specify a time period during which the action to prevent or alleviate the unacceptable media diversity situation must be taken. The period specified must be at least one month, and it can be no longer than two years (new subsection 61AJ(5)).

Amendment (1) makes a technical amendment as a result of amendment (2).

Amendment (2) inserts a new paragraph (e) into new subsection 61AJ(4) to clarify that, if the ACMA approves a transaction on the basis that a third party will take the necessary action, the ACMA must inform the applicant accordingly.

Amendment (3) makes a minor drafting correction to new subsection 61AJ(8).

Amendment (4) includes new subsections (9) and (10) in new section 61AJ. Those subsections specify that the ACMA must deal with applications for prior approval of transactions in the order in which it receives those applications, to enable orderly processing of two or more applications that affect the same licence area, should this be required, and that the ACMA must use its best endeavours to deal with an application it receives for prior approval within 45 days of receipt.

Remedial directions

Amendments (5) to (7) amend the provisions of the Bill that provide that if the ACMA is satisfied that an unacceptable media diversity situation exists in relation to a regional radio licence area, the ACMA may give a person a remedial direction for

the purpose of ensuring that the situation ceases to exist (see new subsection 61AN(1)).

Amendment (5)

Amendment (5) makes a minor correction to new subsection 61AN(4) of BSA. Section 61AN provides that if, on or after the commencement day, the ACMA is satisfied that an unacceptable media diversity situation exists in relation to a regional radio licence area, the ACMA may give a person a remedial direction for the purpose of ensuring that the situation ceases to exist (new subsection 61AN(1)). Such a notice must specify a particular timeframe within which the action must be taken (new subsection 61AN(5)).

New subsection 61AN(4) is intended to ensure that the ACMA may not issue a remedial direction to a registered controller of a registered media group that would have the effect of requiring that registered controller to divest their controlling interest in *any* of the media operations that are in the registered group.

The change made by amendment (5) ensures that new subsection 61AN(4) operates as intended.

Amendment (6)

Amendment (6) inserts new subsections (4A)-(4C) into new section 61AN of the BSA. New subsections 61AN(4A)-(4C) provide exceptions to the general rule in new subsection 61AN(4) that the ACMA must not issue a remedial direction to a registered controller of a registered media group that would have the effect of requiring that registered controller to divest their controlling interest in any of the media operations that are in the registered group. New subsections 61AN(4A)-(4C) provide that the ACMA may issue remedial directions that would have that effect in certain limited circumstances, as explained below.

The first circumstance (set out in new subsection 61AN(4A)) is where:

- the ACMA has given prior approval to the registered controller under section 61AJ for a transaction that would result in an unacceptable media diversity situation, or in a reduction in the number of points if an unacceptable media diversity situation already exists; and
- the ACMA's notice specified action that it required the registered controller to take to ensure within a specified time that the unacceptable media diversity situation ceases to exist or to ensure that there is not a reduction in the number of points; and
- the registered controller has failed to comply with that notice in the specified time.

The second circumstance (set out in new subsection 61AN(4B)) is where:

- the ACMA has given prior approval to the registered controller under section 61AJ for a transaction that would result in an unacceptable media diversity situation, or in a reduction in the number of points if an unacceptable media diversity situation already exists; and

- the ACMA gave approval under section 61AJ on the basis that third party would, within a specified period, take action that relates to the media operation (see new subsection 61AJ(4), as amended by amendment (2)); and
- that third party has failed to comply with that notice in the specified time.

These exceptions to the general rule in subsection 61AN(4) are intended to permit the ACMA to effectively implement its system of prior approvals under section 61AJ. Where the ACMA gives its prior approval on the basis of anticipated action by the registered controller of a third party, and those actions do not eventuate, it is appropriate that the ACMA should have the power to direct a person who has benefited from that prior approval to divest their controlling interest in a media operation in the relevant registered group.

The third circumstance is set out in new subsection 61AN(4C) and relates to reconsideration by the ACMA, or review by the Administrative Appeals Tribunal (AAT), or consideration by a court, of certain decisions that can be made by the ACMA relating to the entry of registrable media groups in the Register. The decisions to which subsection 61AN(4C) relates are listed at paragraphs 61AN(4C)(a)(i)-(iv) and are:

- (i) a decision to enter a registrable media group in the Register;
- (ii) a decision to confirm the entry of a registrable media group in the Register;
- (iii) a decision affirming a decision to confirm the entry of a registrable media group in the Register;
- (iv) a decision revoking a decision to cancel the entry of a registrable media group in the Register.

A person may apply to the ACMA for reconsideration of a decision of the type described at paragraph (ii) (see section 61AZF). A person may apply to the AAT for a review of a decision of the type described at paragraphs (iii) and (iv) (see section 204 as amended by item 18 of Schedule 1 of the Bill). In relation to any of the decisions described at paragraphs (i)-(iv), a person may apply to a court for an order of review, a writ of mandamus or prohibition, or an injunction (under section 39B of the *Judiciary Act 1903* and paragraph 75(v) of the *Constitution*).

Subsection 61AN(4C) deals with the situation where the ACMA has made a decision, and where a person has applied to the ACMA for reconsideration of the review, or has applied to the AAT for a review of the decision, or to a court for review or consideration of that decision, and as a result of that reconsideration or review the original decision is set aside, but is subsequently reinstated (eg. on further appeal).

During the intervening period (between the original decision being set aside and reinstated), the ACMA may make decisions in relation to the inclusion of other registrable media groups in the Register. Subsection 61AN(4C) provides an exception to the general rule in subsection 61AN(4) that the ACMA must not issue a remedial direction to a registered controller of a registered media group that would have the effect of requiring that registered controller to divest their controlling interest in any of the media operations that are in the registered group.

The effect of subsection 61AN(4C) is that where the ACMA has included another registrable media group in the Register (the second media group), and that media group relates to the same commercial radio broadcasting licence area as the media group to which the initial decision relates (the first media group)), the ACMA may issue a direction to a registered controller of the second media group that would have the effect of requiring that controller to cease to be in control of a media operation in the second media group.

This is intended to ensure that the Register operates effectively by ensuring that the first media group is not required to divest or otherwise take action to address an unacceptable media diversity situation because of transactions carried out by other parties during the period in which judicial review takes place. This amendment operates together with amendment (8), which provides for the Register to be ‘frozen’ while AAT or court proceedings are pending in relation to a decision of the ACMA in connection with a registrable media group.

Amendment (7)

Amendment (7) inserts a new subsection (6A) into new section 61AN.

Subsection 61AN(5) provides that the ACMA may specify a period within which a person must comply with a direction issued by the ACMA under new subsection 61AN(1), and subsection 61AN(6) provides that the period must not be longer than two years.

New subsection 61AN(6A) provides that where the ACMA issues a direction under new subsection 61AN(4C) (inserted by amendment (6)) that would have the effect of requiring the registered controller of a registered media group to divest control in a media operation in that group, the direction must provide that the registered controller has a period of two years within which to comply with the direction (unless the ACMA is satisfied that the registered controller acted flagrantly in breach of section 61AG or 61AH – see new subsection 61AN(8)).

New subsection 61AN(6A) mirrors new subsection 61AN(7) in relation to directions issued by the ACMA under new subsection 61AN(4C). New subsection 61AN(7) provides that where a person acted in good faith, took reasonable precautions and exercised due diligence to avoid an unacceptable media diversity situation developing or the number of points reducing, the person will be entitled to a two-year period.

New subsection 61AN(6A), like new subsection 61AN(7), is intended to ensure that a registered controller of a registrable media group that acts with in good faith, is included on the Register and is then directed by the ACMA to divest control of a media operation in that group is given the full two-year period to divest their interest as directed.

'Freezing' the Register while ACMA reconsideration or AAT/ court proceedings are pending

Amendment (8)

Amendment (8) inserts new subsections (5)-(12) into new section 61AZ.

The effect of these new subsections is to provide that the Register is to be 'frozen' while AAT or court proceedings are pending in relation to a decision of the ACMA in connection with a registrable media group, or while the ACMA is reconsidering a decision. The reason for this amendment is to ensure that, where the ACMA makes a decision in relation to a registrable media group, and because of reconsideration of that decision by the ACMA itself, or because of proceedings that are taken in the AAT or in a court, that decision is not finalised, another registrable media group does not have the opportunity to be included on the Register until that first decision is finalised if the inclusion of that second registrable media group would result in a new unacceptable media diversity situation in the relevant licence area, or a reduction in the number of points in the licence area if an unacceptable media diversity situation already exists.

A person may apply to the ACMA for reconsideration of a decision under new subsection 61AZE (1) (see section 61AZF). A person may apply to the AAT for a review of a decision made by the ACMA under new section 61AZF (see section 204 as amended by item 18 of Schedule 1 of the Bill). In relation to both these decisions and other decisions made by the ACMA in connection with a registrable media group, a person may apply to a court for an order of review, a writ of mandamus or prohibition, or an injunction (under section 39B of the *Judiciary Act 1903* and paragraph 75(v) of the *Constitution*).

New subsection 61AZ(5) provides that where the ACMA makes a decision in relation to a registrable media group (the first media group) and a person applies to the ACMA for reconsideration of the decision, or to the AAT for review of the decision, or to a court for review or consideration of the decision, then during the period when that application is not finalised the ACMA must not enter any other registrable media group (the second media group) in the Register, unless the ACMA is satisfied that, assuming the ACMA's original decision in relation to the first media group is upheld, the inclusion of the second media group in the Register would not have the result that:

- a new unacceptable media diversity situation comes into existence in the relevant licence area; or
- if an unacceptable media diversity situation already exists in that licence area, there would be a reduction in the number of points in the licence area.

In deciding whether to update the Register to reflect the creation of a new media group, the ACMA may rely solely upon notifications received in accordance with the reporting obligations in sections 62-64 of the BSA or the reporting obligations in new section 65 (Item 17 of Schedule 1 of the Bill). The ACMA need not investigate the notification (e.g. to confirm that control has shifted as reported) before entering the media group in the Register on an unconfirmed basis.

New subsection 61AZ(3) (currently in the Bill) provides that, where the ACMA relies upon a notification under Division 6 of Part 5, the ACMA must update the Register within two business days of receiving the notification. New subparagraph 61AZ(5)(d) (inserted by amendment (8)) deals with the operation of new subsection 61AZ(3) where the ACMA is satisfied that another media group has come into existence during the period ('the pending period') when that application has not been finalised. It provides that new subsection 61AZ(3) operates as if the notification were received on the first day after the pending period.

New subsections 61AZ(6)-(10) specify what is meant by "the period when that application has not been finalised" in new subsection 61AZ(5):

- Where a person applies to the ACMA for reconsideration of a decision under new subsection 61AZE(1), the application is taken not to have been finalised during the 28-day period beginning on the day when the decision on the reconsideration is notified, or the day when the decision is deemed to have been made under new subsection 61AZF(9) (new subsection 61AZ(6)). (Amendment (11) makes a change to new subsection 61AZF(9) to specify that where the ACMA has not made a decision on an application for reconsideration of a decision within 28 days of receiving the application, or within 28 days of receiving further information if it has asked for such, then the ACMA is taken to have made a decision at the end of that 28-day period affirming the original decision.)
- Where a person has applied to the AAT for a review of a decision, and the AAT makes a decision on the application, the application is taken not to have been finalised during the 28-day period beginning on the day on which the decision is made by the AAT (new subsection 61AZ(7)).
- Where a person has applied to the AAT for a review of a decision and the AAT has made a decision on the application, and the person appeals from the decision of the AAT to the Federal Court, and the Federal Court makes a decision on the appeal, the application is taken not to have been finalised during the 28-day period beginning on the day on which the decision is made by the Federal Court (new subsection 61AZ(8)).
- Where a person has applied to a court for an order of review, a writ of mandamus or prohibition, or an injunction, in relation to a decision made by the ACMA, and the court makes a decision on the application, the application is taken not to have been finalised during the 28-day period beginning on the day on which the decision is made by the court (new subsection 61AZ(9)).
- Where a person has applied to a court for an order of review, a writ of mandamus or prohibition, or an injunction, in relation to a decision made by the ACMA, and the court makes a decision on the application, and the decision made by the court becomes the subject of an appeal, and the court or another court makes a decision on the appeal, the application is taken not to have been finalised during the 28-day period beginning on the day on which the last-mentioned decision is made (new subsection 61AZ(10)).

The effect of these provisions is to provide that the Register is to be 'frozen' for the period that the ACMA takes to consider an application for reconsideration, or the period taken by the AAT or a court to consider an application, and that the Register is to remain 'frozen' for a period of 28 days after a decision is made on that application,

to enable the affected person to take further steps to appeal the decision should they wish to.

For instance, if a person makes an application to the AAT for a review of a decision made by the ACMA under new section 61AZF, the Register is to be ‘frozen’ while the AAT considers that application, and remains frozen for a period of 28 days after the AAT makes its decision on the application. During that 28-day period the person may wish to appeal from the decision of the AAT to the Federal Court. If they do so, the Register remains ‘frozen’ until the Federal Court makes a decision on the appeal, and then remains ‘frozen’ for a further period of 28 days after that.

In addition, new subsection 61AZ(11) provides that the regulations may further elaborate on when an application is taken not to have been finalised for the purposes of new subsection 61AZ(5). The regulations may also extend the 28-day period that is mentioned in new subsections 61AZ(6)-(10).

Notifications to be dealt with in order of receipt

Amendment (9)

Amendment (9) inserts new section 61AZCA into Subdivision E of New Division 5A of the BSA.

New section 61AZCA provides that for the purposes of certain provisions of the BSA, the ACMA must deal with notifications given under Division 6 of Part 5 of the BSA in order of receipt. Division 6 deals with requirements to notify the ACMA of matters such as control and directorships, changes in control, obtaining control of a licence, and newspaper interests. Division 6 is central to the operation of the Register.

The relevant provisions are:

- new section 61AY (which deals with the initial registration of media groups);
- new section 61AZ (which deals with the registration of newly-formed media groups);
- new section 61AZA (which deals with the deregistration of a media group that has ceased to exist);
- new section 61AZB (which deals with the registration of the change of controller of a registered media group);
- new section 61AZC (which deals with the registration of a change of composition of a registered media group).

In circumstances where two or more applications that affect the same licence area are notified to ACMA for registration, this provision will ensure that the transaction first notified to ACMA will be considered ahead of a later transaction, should both transactions lead to an unacceptable media diversity situation.

Timing of deemed decisions of the ACMA in relation to the Register

Amendment (10)

Amendment (10) makes a minor addition to new subsection 61AZE(10). New section 61AZE provides that the ACMA is required to review unconfirmed entries in the Register which:

- register a new media group on an unconfirmed basis;
- de-register a media group on an unconfirmed basis; or
- alter details of media group's controllers or composition (new subsection 61AZE(1)).

Upon reconsidering an entry, the ACMA may choose to either confirm the original decision or cancel the entry. If the ACMA confirms the entry, the ACMA must remove the note from the Register indicating that the entry is unconfirmed (new subsection 61AZE(2)). If the ACMA cancels an entry, the relevant entry or entries on the Register would be updated accordingly (new subsections 61AZE(3), (4) and (5)).

New subsection 61AZE(10) provides that, if the ACMA does not make a decision within 28 days of updating the Register on an unconfirmed basis, or of receiving additional information (if this was requested), the ACMA is deemed to have decided to confirm the entry, removal or alteration (as the case may be).

The change made to that subsection by amendment (5) clarifies the timing of that deemed decision by providing that, where the ACMA does not make a decision within that 28-day period, it is taken to have made a decision at the end of that 28-day period. The amendment is necessary to ensure that the provisions relating to freezing the Register pending the review of decisions (new subsection 61AZ(5), inserted by amendment (8) above) operate as intended.

Amendment (11)

Amendment (11) makes a similar change to new subsection 61AZF(9), clarifying that where the ACMA has not made a decision on an application for reconsideration of a decision within 28 days of receiving the application, or within 28 days of receiving further information if it has asked for such, then the ACMA is taken to have made a decision at the end of that 28-day period affirming the original decision. As with amendment (10), the amendment is necessary to ensure that the provisions relating to freezing the Register pending the review of decisions (new subsection 61AZ(5), inserted by amendment (8) above) operate as intended.

Injunctions in relation to transactions that result in an unacceptable media diversity situation / Control of two or more licences

Amendment (12) inserts new items into the Bill to make additional amendments to the BSA. These further amendments to the BSA will enable the ACMA to seek injunctions in the Federal Court in relation to transactions that are prohibited under New Division 5A of Part 5, and will provide guidance in determining when a person is in a position to exercise control of two or more licences.

Amendment (12)

Amendment (12) inserts items 18A, 18B and 18C into the Bill.

Items 18A and 18B

These items will amend new sections 205PA and 205PQ of the BSA, which are inserted into that Act by CLAB.

Those new sections enable the Federal Court to grant injunctions in relation to contraventions or proposed contraventions of the provisions in the BSA which deal with unlicensed broadcasting.

The amendments made by amendment (1) provide that the ACMA may also seek injunctions in the Federal Court where a person has engaged, is engaging or is proposing to engage in conduct in contravention of the prohibition on transactions that result in an unacceptable media diversity situation coming into existence.

New section 205PA provides a simplified outline of Part 5 to assist readers. This section is amended to reflect the amendment made to new section 205PQ.

New section 205Q provides that if a person has engaged, is engaging or is proposing to engage, in any conduct in contravention of new subsection 121FG(3) or new sections 136A, 136B, 136C, 136D or 136E of the BSA (the new civil prohibitions on providing unlicensed broadcasting services), the ACMA will be able to apply to the Federal Court for an injunction to restrain the person from engaging in the conduct. If, in the Federal Court's opinion, it is desirable to do so, the Court will also be able to require the person to do something (new paragraph (205Q(b))).

New section 205Q is amended to include reference to conduct in contravention of new section 61AH.

New section 61AG (inserted into the BSA by the Bill) provides that a person commits an offence if the person is party to one or more transactions, or was in a position to control the transactions, that occur after the commencement day, and the transactions either:

- cause an unacceptable media diversity situation to come into existence in the licence area; or
- if an unacceptable media diversity situation already exists; there is a reduction in the number of points in the licence area.

New section 61AH provides that the same conduct also constitutes a contravention of a civil penalty provision. The ACMA may apply to the Federal Court for a civil penalty order for a contravention of a civil penalty provision (new subsection 205F(1), Item 48 of CLAB).

Item 18C

Item 18C inserts a new subclause into clause 2 of Schedule 1 to the BSA, which relates to control and ownership of company interests. Clause 2 of that Schedule includes provisions that specify when a person is in a position to exercise control of a licensee or company, for the purposes of the provisions of the BSA that relate to ownership and control of commercial broadcasting licences, subscription broadcasting licences, international broadcasting licences, datacasting transmitter licences, associated newspapers and companies.

New subclause 2(5) of Schedule 1 (inserted by item 18C) provides a list of examples of situations that may be relevant (depending on the circumstances in an individual case) in determining whether a person is in a position to exercise control of two or more licences. Those examples are where:

- (a) the licensees share equipment, studios, other production facilities, transmission facilities, human resources or other resources; or
- (b) where the program content broadcast under one licence is substantially the same as the program content broadcast under the other licence or licences;
- (c) the licensees have financial relationships with each other;
- (d) the person is in a position to exercise control of one or more of the licences, and has a financial relationship with another person who is in a position to exercise control of one or more of the licences.

Objects of the BSA

Amendment (13)

Amendment (13) inserts a new paragraph (ea) into subsection 3(1) of the BSA, which provides for the objects of the Act. New paragraph 3(1)(ea) provides that it is an object of the BSA to promote the availability to audiences throughout Australia of television and radio programs about matters of local significance.

What is local?

New section 61CC (inserted into the BSA by the Bill) provides for the ACMA to define the term “local” by legislative instrument.

Amendments (14)-(16)

Amendments (14)-(16) make minor amendments to the references to the term “local” in new Division 5C to ensure that this provision works as intended and does not have any unintended consequences.

Amendment (14) amends the definition of “local” in new section 61CA to provide that in this Division “local” has a meaning affected by new section 61CC, except in sections 61CR and 61CS.

Amendments (15) and (16) make similar amendments to new subsection 61CC, with the effect that any definition of “local” that the ACMA includes in a legislative instrument it makes under that section does not apply to new sections 61CR or 61CS.

- New section 61CR is included in the BSA by the Bill. It provides that the Minister may give the ACMA a written direction requiring the ACMA to

conduct an investigation under section 170 into whether the ACMA should exercise its powers under section 43 to impose licence conditions on regional commercial radio broadcasting licences requiring the relevant licensees to broadcast matters of local significance, and if so, the content of those conditions.

- New section 61CS is included in the BSA by amendment (21). It provides that the Minister may give the ACMA a written direction requiring the ACMA to exercise its powers under section 43 to impose licence conditions on regional commercial radio broadcasting licences requiring the relevant licensees to broadcast matters of local significance.

As these sections relate to directions that the Minister would issue to the ACMA, the use of the term “local” in this section is not to be affected by an instrument made by the ACMA under new subsection 61CC.

Occurrence of trigger event when ACMA decision is pending

New Subdivision C of New Division 5C specifies obligations on regional commercial radio licensees in relation to LCPs. New subsection 61CF(1) provides that, each time a trigger event occurs, a licensee must submit an LCP, and a statement setting out additional information required by the ACMA, within 90 days after the trigger event.

Upon receipt of a draft LCP, the ACMA must either approve the plan or refuse to approve the plan (new subsection 61CH(1)).

Amendment (17)

Amendment (17) inserts a new subsection (7) into new section 61CH, to deal with the situation where a further trigger event occurs in relation to a licensee after the licensee has submitted a draft LCP but before the ACMA has had a chance to approve or refuse to approve it. New subsection 61CH(7) provides that where a licensee has given the ACMA a draft LCP after a trigger event occurs, and another trigger event occurs before the ACMA has made a decision under new subsection 61CH(1), the ACMA is taken to have refused to approve the plan. In this case the licensee would need to submit a new draft LCP (taking account of the new trigger event).

Subsections 61CH(5) and (6) provide that, where the ACMA has refused a draft LCP, the ACMA may determine an LCP for a licensee by legislative instrument, and must give the licensee a notice setting out the reasons for its refusal. It is not necessary or appropriate for those provisions to operate in relation to an automatic refusal (under new subsection 61CH(7)) in the case of a new, intervening trigger event. Therefore, new subsections 61CH(5) and (6) will not apply in the case of a refusal under new subsection 61CH(7).

This amendment is intended to streamline the process for ACMA to consider LCPs and to remove the need for the ACMA to consider an LCP which may already be redundant.

Amendment (18)

Amendment (18) makes a similar change to new section 61CM, to clarify that where a licensee submits a draft variation of an approved LCP, and another trigger event occurs before the ACMA has made a decision under new subsection 61CM(1) to approve or refuse to approve the draft variation, the ACMA is taken to have refused to approve the draft variation. In this case the licensee would need to submit a new draft LCP (see new section 61CF). This amendment will relieve the ACMA of the task of considering variations to approved LCPs when (as a result of another trigger event occurring) the relevant licensee will be obliged to submit a new draft LCP for the ACMA's consideration.

Other local content requirements

Amendments (19)-(21)

New Division 5C of Part 5 [?], included in the BSA by the Bill, includes a Subdivision D which contains only one provision—new section 61CR—which provides that the Minister may give the ACMA a written direction requiring the ACMA to conduct an investigation under section 170 into whether the ACMA should exercise its powers under section 43 to impose licence conditions on regional commercial radio broadcasting licences requiring the relevant licensees to broadcast matters of local significance, and if so, the content of those conditions.

Amendment (21) inserts two new provisions—new sections 61CS and 61CT—into this Subdivision.

- New section 61CS provides that the Minister may give the ACMA a written direction requiring the ACMA to exercise its powers under section 43 to impose licence conditions on regional commercial radio broadcasting licences requiring the relevant licensees to broadcast matters of local significance. New subsections 61CS(2)-(4) provide that the Minister may give the ACMA specific directions in this respect.
- New section 61CT provides that the Minister must cause to be conducted regular reviews of the local content requirements as specified in paragraphs 61CT(1)(a)-(f). The ACMA must make available information about regional commercial radio broadcasting licensees' compliance with licence conditions, as specified in paragraphs 61CT(2)(a)-(d). In addition, the Minister may direct the ACMA to make available additional specified information for them purposes of conducting the reviews (new subsection 61CT(3)). The reviews must be conducted at least every three years (new subsection 61CT(1)). The Minister must cause to be prepared a report of a review prepared in accordance with this new provision (new subsection 61CT(5)), and that report is required to be laid before each House of Parliament (new subsection 61CT(6)).

Amendment (19) makes a minor amendment to the title of Subdivision D of New Division 5C, necessary as a result of the addition of new sections 61CS and CT to that subdivision.

Amendment (20) inserts a new subsection (4) into new section 61CR, to make it clear that new section 61CR does not affect the powers conferred on the Minister by new section 61CS.