Broadcasting Services Amendment (Media Ownership) Bill 2006

(Government)

(1) Schedule 1, item 8, page 13 (line 23), omit “concerned.”, substitute “concerned; and”.

(2) Schedule 1, item 8, page 13 (after line 23), at the end of subsection 61AJ(4), add:
   (e) if subparagraph (b)(ii) applies—inform the applicant accordingly.

(3) Schedule 1, item 8, page 14 (line 5), omit “under subsection (1)”.

(4) Schedule 1, item 8, page 14 (after line 6), at the end of section 61AJ, add:
   (9) The ACMA must deal with applications under subsection (1) in order of receipt.
   (10) If the ACMA receives an application under subsection (1), the ACMA must use its best
        endeavours to make a decision on the application within 45 days after receipt of the
        application.

(5) Schedule 1, item 8, page 16 (line 26), omit “each”, substitute “any”.

(6) Schedule 1, item 8, page 16 (after line 26), after subsection 61AN(4), insert:
   (4A) Subsection (4) does not prevent the ACMA from giving a direction under subsection (1)
        to a registered controller of a registered media group that would have the effect of
        requiring the registered controller to cease to be in a position to exercise control of a
        media operation in the group if:
        (a) the registered controller failed to comply with a notice under section 61AJ; and
(b) the notice related, to any extent, to the media operation.

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

(a) an approval under section 61AJ was given on the basis that the ACMA was satisfied that a person other than the registered controller would, within a particular period, take action that, to any extent, relates to the media operation; and

(b) the person failed to take the action within that period.

(4C) If:

(a) the ACMA made any of the following decisions (the original decision) in connection with a registrable media group in relation to the licence area of a commercial radio broadcasting licence:

(i) a decision to enter the media group in the Register under subsection 61AY(1) or 61AZ(1);

(ii) a decision under subsection 61AZE(1) confirming the entry of the media group in the Register;

(iii) a decision under section 61AZF affirming a decision under subsection 61AZE(1) to confirm the entry of the media group in the Register;

(iv) a decision under section 61AZF revoking a decision under subsection 61AZE(1) to cancel the entry of the media group in the Register; and

(b) any of the following subparagraphs applies:

(i) in the case of a decision under subsection 61AZE(1)—a person applied to the ACMA for a reconsideration of the original decision;

(ii) in the case of a decision under section 61AZF—a person applied to the Administrative Appeals Tribunal for a review of the original decision;

(iii) in any case—a person applied to a court for an order of review, a writ of mandamus or prohibition, or an injunction, in relation to the original decision; and

(c) the original decision was set aside or revoked; and

(d) after the original decision was set aside or revoked, the ACMA entered another registrable media group in relation to that licence area in the Register; and

(e) after that other group was entered in the Register, the Administrative Appeals Tribunal or a court made a decision the effect of which was to restore or affirm the original decision;

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

[remedial directions]

(7) Schedule 1, item 8, page 16 (after line 29), after subsection 61AN(6), insert:

(6A) If:

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

(b) subsection (8) does not apply;

the period specified in the direction must be 2 years.

[remedial directions]
Schedule 1, item 8, page 23 (after line 11), at the end of section 61AZ, add:

Register frozen while ACMA reconsideration is pending or AAT/court proceedings are pending

(5) If:
   (a) the ACMA makes a decision under this Subdivision in connection with a registrable media group in relation to the licence area of a commercial radio broadcasting licence; and
   (b) any of the following subparagraphs applies:
      (i) in the case of a decision under subsection 61AZE(1)—a person applies to the ACMA for a reconsideration of the decision;
      (ii) in the case of a decision under section 61AZF—a person applies to the Administrative Appeals Tribunal for a review of the decision;
      (iii) in any case—a person applies to a court for an order of review, a writ of mandamus or prohibition, or an injunction, in relation to the decision;
then:
   (c) despite subsection (1), the ACMA must not enter any other registrable media group in relation to that licence area in the Register under that subsection during the period (the pending period) when that application has not been finalised unless the ACMA is satisfied that, assuming that the decision were not to be set aside or revoked, the coming into existence of the media group does not have the result that:
       (i) an unacceptable media diversity situation comes into existence in relation to the licence area of a commercial radio broadcasting licence; or
       (ii) if an unacceptable media diversity situation already exists in relation to the licence area of a commercial radio broadcasting licence—there is a reduction in the number of points in the licence area; and
   (d) if the ACMA is satisfied that another registrable media group in relation to that licence area has come into existence during the pending period—subsection (3) has effect, in relation to the other registrable media group, as if the relevant notification, or the last of the relevant notifications, as the case may be, had been received on the first day after the end of the pending period.

(6) For the purposes of subsection (5), an application for reconsideration of a decision is taken not to have been finalised during the period of 28 days beginning on:
   (a) if, because of the operation of subsection 61AZF(9), the decision is taken to be affirmed—the day on which the decision is taken to have been affirmed; or
   (b) in any other case—the day on which the decision on the reconsideration is notified to the person concerned.

(7) For the purposes of subsection (5), if:
   (a) a person applied to the Administrative Appeals Tribunal for a review of a decision; and
   (b) the Administrative Appeals Tribunal makes a decision on the application; the application is taken not to have been finalised during the period of 28 days beginning on the day on which the decision mentioned in paragraph (b) is made.

(8) For the purposes of subsection (5), if:
   (a) a person applied to the Administrative Appeals Tribunal for a review of a decision; and
   (b) the Administrative Appeals Tribunal made a decision on the application; and
   (c) a person appeals from the decision to the Federal Court; and
(d) the Court makes a decision on the appeal;
the application is taken not to have been finalised during the period of 28 days beginning
on the day on which the decision mentioned in paragraph (d) is made.

(9) For the purposes of subsection (5), if:
(a) a person applied to a court for an order of review, a writ of mandamus or
prohibition, or an injunction, in relation to a decision; and
(b) the court makes a decision on the application;
the application is taken not to have been finalised during the period of 28 days beginning
on the day on which the decision mentioned in paragraph (b) is made.

(10) For the purposes of subsection (5), if:
(a) a person applied to a court for an order of review, a writ of mandamus or
prohibition, or an injunction, in relation to a decision; and
(b) the court made a decision on the application; and
(c) the decision became the subject of an appeal; and
(d) the court or another court makes a decision on the appeal; and
(e) the decision mentioned in paragraph (d) could be the subject of an appeal;
the application is taken not to have been finalised during the period of 28 days beginning
on the day on which the decision mentioned in paragraph (d) is made.

(11) The regulations may provide that, in specified circumstances, an application is taken, for
the purposes of subsection (5), not to have been finalised during a period ascertained in
accordance with the regulations.

(12) The regulations may extend the 28-day period referred to in subsection (6), (7), (8), (9) or
(10).

[registration of newly-formed media group]

(9) Schedule 1, item 8, page 24 (after line 34), after section 61AZC, insert:

61AZCA ACMA must deal with notifications in order of receipt

(1) For the purposes of sections 61AY, 61AZ, 61AZA, 61AZB and 61AZC, the ACMA must
deal with notifications given, or purportedly given, under Division 6 in order of receipt.

(2) Subsection (1) has effect subject to subsection 61AZ(5).

[notifications]

(10) Schedule 1, item 8, page 29 (line 10), after “subsection (1)”, insert “at the end of that 28-day
period”.

[register]

(11) Schedule 1, item 8, page 30 (line 20), after “subsection (5)”, insert “at the end of that 28-day
period”.

[register]

(12) Schedule 1, page 37 (before line 18), before item 19, insert:

18A At the end of section 205PA

Add:
• The Federal Court may also grant injunctions in relation to transactions that are prohibited under Division 5A of Part 5 (which deals with media diversity).

18B Section 205Q
After “contravention of”, insert “section 61AH or”.

18C At the end of clause 2 of Schedule 1
Add:

(5) The following are examples of situations that, depending on the circumstances, may be relevant in determining whether a person is in a position to exercise control of 2 or more licences:

(a) the licensees share any or all of the following:
   (i) equipment;
   (ii) studios;
   (iii) other production facilities;
   (iv) transmission facilities;
   (v) human resources;
   (vi) other resources;

(b) the program content of a substantial percentage of the total number of hours of programs broadcast under one of those licences is the same as the program content of a substantial percentage of the total number of hours of programs broadcast under the other licence or licences;

(c) the licensees have financial relationships with each other;

(d) both of the following subparagraphs apply:
   (i) the person is in a position to exercise control of one or more of the licences;
   (ii) the person has a financial relationship with another person who is in a position to exercise control of the other licence or one or more of the other licences.

[Injunctions; control test]

(13) Schedule 2, page 38 (after line 7), after item 1, insert:

1A After paragraph 3(1)(e)
Insert:

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

[Local content requirements]

(14) Schedule 2, item 7, page 51 (line 7), before “has”, insert “(except in sections 61CR and 61CS)”.

[Local content requirements]

(15) Schedule 2, item 7, page 52 (line 29), after “Division”, insert “(other than sections 61CR and 61CS)”.

[Local content requirements]

(16) Schedule 2, item 7, page 52 (line 30), after “Division”, insert “(other than sections 61CR and 61CS)”.

[Local content requirements]
(17) Schedule 2, item 7, page 56 (after line 29), at the end of section 61CH, add:

Occurrence of trigger event when ACMA’s decision is pending

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

[local content requirements]

(18) Schedule 2, item 7, page 58 (after line 21), at the end of section 61CM, add:

Occurrence of trigger event when ACMA’s decision is pending

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

[local content requirements]

(19) Schedule 2, item 7, page 59 (line 11), omit “Investigations about other”, substitute “Other”.

[local content requirements]

(20) Schedule 2, item 7, page 59 (after line 24), at the end of section 61CR, add:

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

[local content requirements]

(21) Schedule 2, item 7, page 59 (after line 24), at the end of Subdivision D, add:

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

   (1) The Minister may give the ACMA a written direction requiring the ACMA to exercise its powers under section 43 to impose conditions requiring regional commercial radio broadcasting licensees to broadcast programs about matters of local significance.

   (2) The Minister may give the ACMA a written direction requiring the ACMA to exercise its powers under section 43 to impose one or more specified conditions requiring regional commercial radio broadcasting licensees to broadcast programs about matters of local significance.
(3) The Minister may give the ACMA a written direction requiring the ACMA to exercise its powers under section 43 to impose conditions requiring a specified regional commercial radio broadcasting licensee to broadcast programs about matters of local significance.

(4) The Minister may give the ACMA a written direction requiring the ACMA to exercise its powers under section 43 to impose one or more specified conditions requiring a specified regional commercial radio broadcasting licensee to broadcast programs about matters of local significance.

(5) The ACMA must comply with a direction under subsection (1), (2), (3) or (4).

(6) This section does not limit the powers conferred on the ACMA by section 43.

61CT  Regular reviews of local content requirements

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

(2) For the purposes of facilitating the conduct of a review under subsection (1), the ACMA must make available information about regional commercial radio broadcasting licensees’ compliance with:
   (a) licence conditions imposed as a result of section 43B; and
   (b) licence conditions imposed as a result of an investigation directed under section 61CR; and
   (c) licence conditions imposed as a result of a direction under section 61CS; and
   (d) the licence condition set out in paragraph 8(2)(c) of Schedule 2.

(3) The Minister may give the ACMA a written direction requiring the ACMA to make available specified information for the purposes of facilitating the conduct of a review under subsection (1).

(4) The ACMA must comply with a direction under subsection (3).

(5) The Minister must cause to be prepared a report of a review under subsection (1).

(6) The Minister must cause copies of a report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the report.

[local content requirements]