Broadcasting (Ownership and Control) Bill 1987

Date Introduced: 29 April 1987
House: House of Representatives
Presented by: Hon. M.J. Duffy, Minister for Communications

Digest of Bill

Purpose

To amend the Broadcasting Act 1942 (the Principal Act) to repeal the 'two station rule' governing the ownership of commercial television and replace it with a '60% reach rule' (the Bill originally proposed a '75% reach rule' but Senate amendments on 2 June 1987 reduced this to 60%) which will allow persons to hold prescribed interests in any number of commercial television licences so long as the combined population of their service areas does not exceed 60% of the Australian population (although exceptions will be allowed where a multi-channel service permit is granted under the Broadcasting Amendment Act 1987). The Bill also proposes to limit cross-ownership between television and newspapers, and television and radio, within the service area of the related commercial television licence.

Background

At present, section 92 of the Principal Act prevents any person from having certain 'prescribed interests' in more than one commercial television licence in the same Territory (paragraph 92(1)(b)) or in the same State (paragraph 92(1)(c)). Section 92 also prohibits interests in more than two commercial television licences (paragraph 92(1)(a)). These are known as the 'one to a market rule' and the 'two station rule'.

These rules were introduced by the Broadcasting and Television Act 1956 following the 1954 Report of the Royal Commission on Television, which recommended that the existing radio limits should apply to television.\(^1\)

On 28 August 1985, the Minister directed the Forward Development Unit (FDU) of the Department of Communications to undertake a study of ownership and control rules for commercial television. The FDU was directed to look, in particular, at 'defects in the two station rule' and to identify broad options for consideration.\(^2\)

On 27 November 1986 the Minister for Communications announced a proposal to amend the rules applying to the ownership of commercial television in Australia.

Main Provisions

Clauses 33 and 34 will be deemed to have operated from 1 January 1986 (sub-clause 2(2)), while clauses 35 and 36 shall become operative immediately after the commencement of the Broadcasting Amendment Act 1987 (sub-clause 2(3)). The remaining provisions will come into operation on a date to be fixed by Proclamation (sub-clause 2(4)).
Clause 8 relocates sections 90D and 90E (which deal with meaning of control of a licence) to become sections 90AAA and 90AAB respectively.

Clause 18 inserts definitions of particular terms such as ‘Associated Newspaper Register’, ‘newspaper’, ‘publisher’ and ‘service area population’ into section 91.

Clause 19 relocates sections 92A and 92B (which deal with control of a company and control of a licence respectively) to become sections 91AAA and 91AAC respectively. Clause 19 also inserts a new section 91AAB which provides that a person shall be deemed to be in a position to exercise control of a newspaper if that person is the publisher of the newspaper; is in a position to exercise control of the company; or has direct or indirect control of the operations of the publisher or the selection or provision of the material to be published in the newspaper. This reference to ‘control of a company’ attracts the method in the present section 92B (proposed section 91AAC) of tracing indirect interests.

In addition, clause 19 will insert a new section 92AAD which will enable the Minister to gazette the ‘declared population of Australia’ or the population of the service area of a licence for the purposes of Division IIIIB.

Proposed sub-section 91AAD(2) provides that, where the Minister specifies the service area population of a licence, the Minister is required to specify what percentage of the declared population of Australia is constituted by the service area population of the licence.

Proposed sub-section 91AAD(5) provides that, where a person has a prescribed interest in two or more licences and the service areas of those licences overlap, then to determine whether that person is contravening the new 60% reach rule any population in an area of overlap shall only be counted once in determining the aggregate of the service area populations of the licences.

Clause 19 will also insert a new section 91AAE which will require the Australian Broadcasting Tribunal (the Tribunal) to establish and maintain a register known as the Associated Newspaper Register which lists those newspapers which have not less than 50% of their circulation within the service area of the licence. The Tribunal is to review the register on a quarterly basis and update it.

Clause 22 will repeal the two station rule contained in sub-section 92(1) and insert the 60% reach rule which enables a person to hold a prescribed interest in any number of commercial television licences, provided the combined service area populations of these licences does not exceed 60% of the declared population of Australia.

Paragraph 22(1)(a) creates an exception to the 60% reach rule which relates to the aggregation of service areas and the designation of approved markets under the Broadcasting Amendment Act 1987.

Clause 24 will amend sub-section 92C(1) to align the limits on directorships with the new 60% reach rule. Clause 24 will prohibit a person from being a director of two or more companies that are, between them, in a position to exercise control of licences the aggregate of whose service area exceeds 60% of the declared population of Australia.

Clause 25 will insert a requirement that notice of an intended transaction given under paragraph 92F(3)(a) will include particulars of any prescribed interest in a newspaper associated with the service area of the licence and whether as a result
of the transaction the party will have a prescribed interest in contravention of the
cross-media directorship limits prescribed in proposed section 92FAD.

Clause 27 will insert a new Subdivision titled 'Cross Media Rules.' Proposed sec­
tion 92FAB will prohibit a person who has a prescribed interest in a commercial TV
licence from having a prescribed interest in a commercial radio licence that is an
area of monopoly within the service area of the commercial TV licence or a newspaper
associated with the service area of the commercial TV licence.

Proposed section 92FAD will place limits on cross media directorships by prohibiting
a person who is a director of a company that is in a position to exercise control of a
commercial TV licence from being

(a) a director of a company that is in a position to exercise control of a
commercial radio licence that has an area of monopoly within the
service area of the commercial TV licence; or

(b) either a publisher or director of a company that is in a position to
control a newspaper that is associated with the service area of the
commercial TV licence.

Clause 27 will also insert a new Subdivision D, titled Miscellaneous, into the Prin­
cipal Act. Sub-clauses 27(2)-27(10) provide for the 'grandfathering' (exemption) of
prescribed interests or directorships which would otherwise contravene the newcross-
media rules provided they were held on or before 27 November 1986 (the date the
Minister for Communications announced the proposed new media ownership rules).

Clause 28 will amend sub-paragraph 92G(1)(a)(i) to require that the articles of as­
sociation of a company holding a commercial TV licence must contain a provision
under which a person is not eligible to become or to continue to be the holder of
shares in the company in contravention of the new cross-media limits.

Clauses 30, 31 and 32 are consequential amendments extending the power of the
Federal Court, the availability of defences and the penalty provisions, to the proposed
sections.

References

1. M. Armstrong, Broadcasting Law and Policy in Australia, Butterworths,
Sydney, 1982, paragraphs 310 and 1002.
2. Ownership and Control of Commercial Television: Future Policy Direc­
tions, AGPS 1986, paragraph 1.1; House of Representatives, Hansard,
22 August 1986, p. 567.

For further information, if required, please contact the Law and Government Group.

12 June 1987

Bills Digest Service
Legislative Research Service

This Digest does not have any official legal status. Other sources should be consult­
ed to determine the subsequent official status of the Bill.