Date Introduced: 3 October 1984
House: House of Representatives
Presented by: Hon. M.J. Duffy, M.P., Minister for Communications

Short Digest of Bill

Purpose

To amend the Broadcasting and Television Act 1942 (the Principal Act) in order

(1) to implement certain recommendations of the Administrative Review Council's 1981 report on the hearing procedures of the Australian Broadcasting Tribunal (the Tribunal);

(2) to require the Tribunal to take account of local concentration of media ownership in determining whether to grant a supplementary licence or a second independent licence;

(3) to correct certain other procedural deficiencies in the supplementary licensing provisions;

(4) to close some more loopholes in the ownership and control provisions.

Background

1. With one exception, the amendments contained in this Bill are essentially detail, "machinery" amendments arising out of the normal process of Departmental review of the operation of the Principal Act. They are not connected with the recent reports on localism and satellite program services, nor with the omnibus review of broadcasting policy that has been undertaken by the Department of Communications during 1984. The Government has not yet announced its policy on these latter issues.
2. The report of the Administrative Review Council on Australian Broadcasting Tribunal Procedures was presented to the Attorney-General on 6 February 1981. Although certain of its recommendations which could be implemented by administrative action have been put into effect, this Bill represents the first attempt to give legislative effect to any of the recommendations.

3. The only amendment with any significant policy implications is the provision (clause 5) that in circumstances where it appears that a second independent service would be commercially viable, the Tribunal must take account of concentration of local media ownership when deciding whether to grant a supplementary licence or a second independent licence. In one sense, this merely brings the supplementary licence provisions into line with the existing takeover provisions, which provide (s.92FAA (2)(c)(iii)) that in regional markets only, a transaction may be refused on the grounds of "concentration of influence". However, the amendment is also significant in view of the Government's previously expressed policy that a competing independent licence should be granted in preference to a supplementary licence wherever it is practical to do so.

4. The provision (clause 3) for a wider range of matters to be heard by a Division of the Tribunal reflects a steady increase in the number of inquiries which the Tribunal is required to conduct. Tribunal staff recently calculated that 36 inquiries would need to be held between September 1984 and April 1985. The Tribunal was recently forced to defer further consideration of its most important outstanding policy reference, the Australian content inquiry, because of pressure of routine work.

Outline

Clause 3 amends S.15C of the Principal Act to allow hearings on the renewal of a metropolitan commercial licence, or on the suspension or revocation of a commercial licence, to be carried out by a Division consisting of not fewer than three members or associate members of the Tribunal, of whom at least one must be a full member. Paragraph 3(1)(b), subclause 3(2) and clause (4) represent consequential amendments to related sections of the Principal Act.

Clause 5 amends S.83 of the Principal Act to include concentration of ownership or control of the media in the service area among the "public interest" considerations which the Tribunal must take into account in deciding whether to award a supplementary licence or call
applications for a competing independent licence. Paragraph (b) further specifies that the definition of "media" for the purposes of this section includes print media. Note that this applies only where the Tribunal is satisfied that two competing independent services would both be commercially viable.

(Note that the relevant passages of S.83 do not appear in the current consolidation of the Principal Act. They were inserted by the Broadcasting and Television Amendment Act 1982, which postdates the consolidation).

Clause 6 provides for the term of a licence to be extended automatically until such time as the Tribunal has reached a decision on whether or not it should be renewed.

Clause 7 amends S.89E of the Principal Act to permit the holder of a supplementary licence to extend the service gradually to all parts of the designated service area over the initial term of the licence. This provision is necessary because the majority of supplementary services will operate on UHF frequencies, and hence will generally require the construction of several translators in addition to the main transmitter.

Clause 8 amends S.90 of the Principal Act to include voting interests in the definition of a "prescribed interest" for the purposes of the ownership and control limits. Clauses 11, 12, 13, 14, 15, 17, 18 and 19 extend this provision to other relevant sections of the Principal Act.

Clauses 9 and 15 cover a situation in which a company acquires an interest in a licensee company which does not represent a prescribed interest, and therefore does not require Tribunal approval, but where as a result of that transaction a third party (being a person holding an interest in the company first mentioned) indirectly increases his total interests in the licensee company to a level representing a prescribed interest (i.e. exceeding 5 per cent). In such cases, the third party will now be required to divest himself of interests in excess of the maximum permitted under Ss.90C and 92 of the Principal Act within six months of notification by the Tribunal. This amendment is intended to prevent a company from using subsidiaries to acquire indirect interests in excess of the maximum which that company would be permitted to hold if it acquired those interests through direct transactions affecting licensee companies. It does not represent new policy, but simply clarifies an ambiguity in the existing wording of the Act.
Clause 10 and 16 amend Ss.90G and 92D of the Principal Act to provide that control of a licence by foreign persons does not exclude any other person from being deemed also to hold a controlling interest in that licence.

Clause 20 amends S.106 of the Principal Act to require the licensee of a commercial station who also holds a supplementary licence to provide the Tribunal with separate statements covering both the trading performance of each service, and the aggregate earnings of both services. This provision is inserted to allow calculation of the licence fees payable under the Broadcasting Stations Licence Fees Amendment Bill 1984 and the Television Stations Licence Fees Amendment Bill 1984 when enacted.

Clause 21 amends S.111B of the Principal Act to provide that applications concerning the licence of a metropolitan public station may continue, as at present, to be heard by a single member of the Tribunal.

Clause 22 provides that the amended ownership and control provisions shall have effect retrospectively to 18 July 1984, the date on which the Minister announced the Government's intention of closing these loopholes.

Comments

1. The amendments to the ownership and control provisions represent a further stage in the process of piecemeal and reactive amendment to which the Principal Act has been continuously subject since 1956. As a result of these incremental changes, the ownership and control provisions in particular have become increasingly complicated, confusing and difficult to implement. It is questionable how much longer the Act can continue to be amended in this fashion before a more thorough revision becomes necessary.

2. The amended provisions of clause 5 indicate a further departure from the original concept of the supplementary licensing scheme, and appear to provide further evidence of the present Government's ambivalent attitude towards the scheme as introduced in the 1981 and 1982 Amendment Acts. In view of this evidence and the reservations expressed by the Tribunal in its Satellite Program Services report, there is an arguable case for Parliament to review the scheme in a more comprehensive manner before any further action is taken on applications for supplementary licences.

For further information, if required, contact:

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