Amendments and New Clauses to be Moved on Behalf of the Government
(Sheet Number QS393)
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 proposed to be moved by the Government relate to local content requirements for regional commercial radio broadcasting licensees.

Part 4 of the BSA deals with commercial television broadcasting licences and commercial radio broadcasting licences. Section 43 in that Part provides that the ACMA may impose additional conditions on a commercial television or commercial radio broadcasting licence by notice in writing given to the licensee.

Item 3 of Schedule 2 of the Bill inserts new sections 43A and 43B after section 43 of the BSA. New section 43A provides that ACMA will be required to impose licence conditions under section 43, with effect from 1 January 2008, on commercial television licensees in regional Queensland, NSW, Victoria and Tasmania to provide minimum levels of content on matters of local significance. New section 43B
provides that the ACMA will be required to impose a licence condition under section 43, with effect from the date of commencement of new section 43B, on a regional commercial radio licensee requiring it to maintain existing levels of local presence if a “trigger event” occurs in relation to that licensee’s licence.

The amendment will include new section 43C in Part 4 of the BSA. That new section will require the ACMA to impose a licence condition on regional commercial radio broadcasting licensees, with effect from 1 January 2008, that requires the licensee to broadcast a minimum level of material of local significance during daytime hours on business days.

**FINANCIAL IMPACT**

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

Amendment (1)

Amendment (1) amends Schedule 2 of the Bill to insert new section 43C into Part 4 of the BSA.

New section 43C requires the ACMA to ensure that at all times on and after 1 January 2008 there is in force under section 43 of the BSA a licence condition that requires the licensee of a regional commercial radio broadcasting licence to broadcast a minimum level of material of local significance during daytime hours on business days.

A “regional commercial radio broadcasting licence” is a commercial radio broadcasting licence that has a regional licence area. A regional licence area is a licence area that is not a metropolitan licence area (see new subsection 43C(8)). The effect of the definitions of “regional licence area” and “metropolitan licence area” is that the requirements of new section 43C will apply to all radio broadcasting licensees other than those in the mainland state capital cities.

The minimum level of material of local significance to be broadcast by regional commercial radio broadcasting licensees is set at 4.5 hours (see new subsection 43C(3)). The Minister for Communications, Information Technology and the Arts may increase or decrease this figure by specifying a new minimum level in a disallowable instrument (new paragraph 43C(3)(b)).

The Minister may also specify that differing minimum levels of material of local significance apply to differing classes of regional commercial radio broadcasting licensees (new paragraph 43C(3)(c)). This is intended to recognise the diversity in regional commercial radio broadcasting, and to provide suitable flexibility in the requirement for regional radio broadcasters to provide a minimum level of material of local significance. The effect of this provision is to permit the Minister to specify differing minimum levels of material of local significance for differing types of licensees, so that, for instance, one minimum level may apply to those licensees with a small licence area, and another minimum level may apply to other licensees.

New subsection 43C(4) provides that the Minister must not specify a figure lower than 4.5 hours under either of new paragraphs 43C(3)(b) or (c) unless:

(a) the Minister has caused to be conducted a review into:
   (i) whether the Minister should decrease the minimum level of material of local significance required to be broadcast by regional commercial radio broadcasting licensees under this provisions; and
   (ii) what the new minimum level should be of this legislative requirement; and
(b) the Minister causes a report of the review to be prepared; and
(c) the reduction in the minimum level is in line with the recommendations of that report.
This is intended to ensure that the legislated minimum of 4.5 hours of material of local significance per day may only be reduced where there has been an investigation into the need to do so.

New subsection 43C(1) requires the ACMA to have licence conditions in force on and after 1 January 2008. This date has been chosen because this amendment is made to Schedule 2 of the Bill, which commences on 1 January 2008, or earlier if an earlier date is fixed by Proclamation.

New subsection 43C(2) provide that the ACMA will be required to define the term “material of local significance” for the purposes of the licence condition to be imposed on a licensee as a result of new subsection 43C(1). This is intended to permit ACMA to exercise judgment in the scope of material that may be broadcast by a regional commercial radio broadcasting licensee in order to satisfy the requirement of the licence condition, and mirrors the operation of new subsection 43A.

New subsection 43C(2) clarifies that the definition of the term “material of local significance” must be broad enough to cover material that is broadcast by a licensee in order to comply with any obligation to which the licensee is subject under new section 61CD (inserted into the BSA by the Bill). That section (as amended) requires that, where a “trigger event” occurs in relation to a regional commercial radio broadcasting licensee, the licensee to meet minimum service standards for local news, local weather, local community service announcements, emergency warnings, and designated local content programs. As a result of new subsection 43C(2), where a licensee is subject to the requirements of new section 61CD the material that the licensee broadcasts to comply with that section will count towards the minimum level of material of local significance required to be broadcast by that licensee under new section 43C.

“Daytime hours” is defined in new subsection 43C. The effect of this definition is that the broadcast of material of local significance must occur between 6.00am and 6.00pm each business day, or between such other times as are prescribed in the Regulations for the purpose of this provision.

A definition of the term “business day” is inserted into subsection 6(1) of the BSA by item 1 of Schedule 1 of the Bill. That term is defined to mean a day that is not a Saturday, Sunday or a public holiday in the place concerned. For the purpose of this amendment, a regional commercial radio broadcasting licensee will be required to broadcast a minimum level of material of local significance on each weekday, except those days that are public holidays within the licensee’s licence area.

New section 43C includes subsections to clarify the interaction of this new section with the existing provisions of section 43 of the BSA:

- New subsection 43C(5) clarifies that, to avoid doubt, new section 43C does not create any obligations under subsection 43(2) that would not exist apart from this new section. Subsection 43(2) requires the ACMA to give licensees notice of its intention to vary or revoke a condition, or to impose a new condition, to permit the licensee to make representations to the ACMA, and to publish the proposed changes in the Gazette.
- New subsection 43C(6) provides that subsection 43(5) does not apply to conditions made as a result of new section 43C. Subsection 43(5) provides that conditions made by the ACMA under subsection 43(1) must not be inconsistent with determinations made under section 19 or with conditions set out in Part 3 or 4 of Schedule 2.
- New subsection 43C(7) provides that new section 43C does not limit the powers conferred on the ACMA by section 43 to impose, revoke or vary other conditions.