

media law

Bang! and the winning cowboy rides
away
as virtue and the sponsor have their say.
Thus, every night man's brain betrays
for fee
his million years of ingenuity.

LH Collinson, 'Four Epigrams:
After an evening spent watching
commercial television'

The legislation providing for equalisation of regional television services (that is, giving regional areas access to three commercial television stations) and changes to the rules affecting the ownership of television stations has been passed by the federal Parliament. However, the majority in the Senate required for passage of the legislation was not achieved quickly or easily. It had appeared that the Liberal Party, which had decided to support the replacement of the 'two station' rule (which forbids a person from having a 'prescribed interest' in more than two television licences) with a rule allowing owners of television stations to reach 75% of the national audience, would support the legislation (see [1987] *Reform* 63). In fact, they opposed it. It was passed with the support of the National Party Senators and Independent Tasmanian Senator Brian Harradine.

liberal policy. The Liberal Party did, in fact, vote to accept not only the new ownership provisions but also the restrictions on cross-media ownership. However, its acceptance was conditional on the introduction of an extra commercial television licence in Sydney and Melbourne within two years and in other State capitals within five years (*Sydney Morning Herald*, 12 May 1987). The rationale for this policy was that the proposed 75% national

audience limit was too generous unless new entrants were to be allowed into the market (*Australian Financial Review*, 7 May 1987). The Party's acceptance of cross-media ownership restrictions was a victory for those Liberals who favoured greater regulation of the media. The Opposition spokesman on Communications, Mr Julian Beale, unsuccessfully argued that cross-media ownership should be dealt with under the Trade Practices Act.

criticism of liberal policy. The decision reached by the Liberals, in effect, committed them to opposing the legislation since the Minister for Communications, Mr Michael Duffy, rejected the idea of additional licences as 'preposterous nonsense' (*Sydney Morning Herald*, 12 May 1987). Not surprisingly, the reaction from the major media companies was adverse. The Managing Director of Bond Media, Mr Warren Jones, described the decision as 'ad hoc', 'reactionary' and 'ridiculous' (*Australian Financial Review*, 13 May 1987). As mentioned in the previous issue of *Reform* ([1987] *Reform* 65), the purchase of the Channel 9 Stations in Sydney and Melbourne resulted in Mr Bond's ownership of four television stations, a clear breach of the Broadcasting Act at the time. Another media proprietor, Mr Kerry Stokes, (whose company, BDC Investments Limited, was also in breach of the Broadcasting Act by reason of its ownership of stations in Canberra and Perth and its recent acquisition of a station in Adelaide) said that, if changes to media ownership laws were not passed, sale of stations was only one option to rectify breaches of the law. He said:

Another alternative would be to turn off transmission — switch off the stations. I am surprised that nobody has mentioned that as an option, because there is no precedent. Imagine if the Bond Corp switched off the Nine network (*Australian Financial Review*, 14 May 1987).

This was not an option which Mr Stokes proposed that BDC Investments should exercise.

tender for licences. A further factor was briefly introduced into the media debate by Mr Beale who suggested that new licences to run television stations might be assigned by tender (*Sydney Morning Herald*, 25 May 1987). He suggested that the Liberals were considering a proposal to grant licences for only three years, but he also recognised the need for stability of tenure (*Australian Financial Review*, 26 May 1987). The Leader of the Opposition, Mr Howard, subsequently assured the Party that there was no suggestion in the Liberal Party draft policy of introducing a tender system for existing licences. He warned of the dangers of talking about policy before it had been approved by the Shadow Cabinet (*Australian Financial Review*, 27 May 1987).

negotiations. Following the Liberals' decision, attention shifted to the National Party as the party most likely to provide the necessary votes in the Senate. The Nationals had decided to oppose the Broadcasting (Ownership and Control) Bill 1987. They supported a limit of 43% of the total national audience and opposed cross-media rules if this lower limit were adopted. However, they decided to support the Broadcasting Amendment Bill 1986 containing the Government's proposals for equalisation if the 'one-in-all-in' rule was altered. The effect of such a rule would be that a decision by a broadcaster in one region to broadcast programs into the two adjoining regions (a process known as 'aggregation') would force the other licensees in the region to aggregate rather than obtain 'multi-channel service permits' which would permit licensees to trans-

mit additional programs within the area in which they are already entitled to operate. The Nationals preferred a 'two-in-all-in' rule (*Australian Financial Review*, 13 May 1987). The Leader of the National Party, Mr Ian Sinclair, indicated that the Nationals were willing to compromise. The Queensland Premier, Sir Joh Bjelke-Petersen, spoke of the extra services equalisation would make available to country viewers and said that he had asked Queensland National Party Senators not to block the media legislation (*Australian Financial Review*, 14 May 1987).

At first, the Government refused to compromise. A motion to restore the equalisation legislation to the Senate Notice Paper, where it could be called for further debate, was defeated (*Canberra Times*, 14 May 1987). The Bill had already been defeated in the Senate on 28 April. However, despite the early inauspicious signs, negotiations with the Nationals and Senator Harradine produced the necessary agreement to have the equalisation legislation restored to the Senate Notice Paper (*Australian*, 2 June 1987) and both the ownership legislation and the equalisation legislation passed by the Senate (*Age*, 3 June 1987).

the compromise. The legislation, which represents a retreat from the preferred positions of both the Government and the National Party, has the following features.

- The 'two station' rule has been abolished and replaced with a restriction limiting interests in licences to licences which give a licensee access to no more than 60% of the population. The percentage of the population living in the area to be served by particular licences is to be determined by the Minis-

ter having regard to the most recently available official census figures.

- The original Bill proposed by the Government would have retained the 'two station' rule for proprietors who opted for multi-channel services. The amended legislation passed by the Senate allows such operators to buy in other competitive market areas up to the 60% limit.
- Aggregation is to be conducted on a 'two-in-all-in' basis. The National Party believed that this would make it easier for some stations to opt for multi-channel service permits and will be less likely to lead to a deterioration in local services (*Age*, 3 June 1987).
- It introduces, for the first time, cross-media ownership restrictions.

cross-media restrictions. The cross-media ownership restrictions prevent a television proprietor from having a 'prescribed interest' in a commercial radio licence covering the same area as the television licence, where the radio station has a monopoly, or a newspaper which is associated with the service area of the television licence. A person has a 'prescribed interest' in a radio licence if, for example, that person is the holder of the radio licence or in a position to control more than 15% of the shares of the company which holds the licence. A person has a prescribed interest in a newspaper if, for example, the person is the publisher of the newspaper or in a position to control more than 15% of the shares in the company publishing the newspaper. The Australian Broadcasting Tribunal is required to keep an Associated Newspa-

per Register to contain the names of newspapers which have at least 50% of their circulation in the service area of the television licence. A newspaper is defined as a publication that is in English and is published on at least four days a week.

senator harradine's concerns. In the course of the negotiations, Senator Harradine had expressed concern about the lack of external mechanisms for complaints about the Australian Broadcasting Corporation and the inadequacy of penalties which the Australian Broadcasting Tribunal could impose for breaches of broadcasting laws. The Minister for Communications, Mr Duffy, has denied that any agreement relating to these concerns was reached with Senator Harradine in return for his support for the legislation (*Canberra Times*, 4 June 1987). The Government is, however, examining external mechanisms for complaints about the ABC as part of a continuing review.

passage of the legislation. The media legislation was swiftly returned to the House of Representatives for approval of the amendments made by the Senate. The Opposition co-operated in enabling it to be swiftly approved by the House, although the former Liberal Party spokesman on Communications, Mr Ian Macphee, criticised the lack of debate (*Canberra Times*, 5 June 1987).

commercial consequences. The passage of the legislation has already resulted in the sale of the 7 network (comprising stations in Sydney, Melbourne and Brisbane) to Mr Christopher Skase's company United Telecasters by John Fairfax Limited (*Australian Financial Review*, 27 July 1987). The Fairfax organisation was in breach of the legislation due to its

common ownership of the *Age* newspaper and Station HSV 7 in Melbourne. Fairfax acquired HSV 7 after the proposed changes to the legislation were announced and was therefore not protected as having an existing interest. United Telecasters will have to sell the Brisbane station TV 0 since the Broadcasting Act does not permit it to own two stations in Brisbane. It will also be necessary for Mr Robert Holmes a Court's Bell group to sell its Perth television station TVW 7 or the *West Australian* newspaper unless a special amendment to the law is made, as has been suggested by 'government sources' (*National Times on Sunday*, 9 August 1987). The legislation has also caused changes in ownership for economic rather than strictly legal reasons. Mr Stokes and his companies have sold the Perth, Adelaide and Canberra stations which formed part of the 10 network to Westfield Capital Corporation's Northern Star Holdings which already owned Channel 10 in Sydney and Melbourne. Mr Stokes commented:

In my opinion it was always a matter of getting big or getting out. And, I suppose, we didn't get big enough quick enough (*National Times on Sunday*, 9 August 1987).

Northern Star Holdings, for its part, will have to sell the Western Australian regional network, Golden West, also acquired from Mr Stokes, in order not to breach the 60% audience reach rule (*Weekend Australian*, 8-9 August 1987).

further reform. The Government is proposing to introduce further legislation to reform the Broadcasting Act. One important matter to be addressed is the difference between prescribed interests for newspapers and radio stations and those for television stations

(*Sydney Morning Herald*, 4 June 1987). In the former case, the prescribed interest is 15% while in the latter case it is 5%. Prior to the recent election, the Labor Party also promised substantially to reform the Broadcasting Act, to simplify it and make it easier to administer while lightening the burdens to which licensees are currently subject (*Australian Financial Review*, 24 June 1987). The proposal to simplify the Broadcasting Act will be welcomed by all who have had occasion to read it. Future amendments to the Act may also reform radio ownership laws along the same lines as the changes to the television ownership laws. At present, licensees are limited to one radio station in a capital city, four capital city licences nationally, four licences in any one State and a total of eight licences nationally. The managing director of Hoyts Media, Mr Glenn Wheatley has called for changes to the radio ownership rules along the same lines as the reform to the television rules — a percentage of the overall market rather than the eight station limit (*Australian Financial Review*, 5 June 1987).

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sentencing of young offenders

And therefore I summon age
To grant youth's heritage.

Robert Browning, *Rabbi ben Ezra*

young offender law reforms. The law and practice relating to young offenders has received considerable attention in the last decade. The ALRC's *Child Welfare* Report, released in 1981, was a major contributor to debate. Many legislative proposals and initiatives have followed. The ALRC's recommendations were largely adopted in