

1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 17 October 1990

(Minister for Transport and Communications)

A BILL

FOR

**An Act relating to foreign ownership and control of
companies holding licences under the *Broadcasting Act*
1942, and for related purposes**

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title etc.

5 **1. (1)** This Act may be cited as the *Broadcasting (Foreign Ownership) Amendment Act 1990*.

(2) In this Act, “**Principal Act**” means the *Broadcasting Act 1942*¹.

Commencement

2. (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.

10 **(2)** Sections 3, 4, 5, 6 and 9 commence on 22 May 1991.

Criteria for grant of commercial licence

3. Section 83A of the Principal Act is amended by omitting from paragraph (7) (c) “90G” and substituting “90FA, 90G, 92CA”.

Renewal of commercial licence

4. Section 86AA of the Principal Act is amended by omitting from paragraph (5) (c) “90G” and substituting “90FA, 90G, 92CA”. 5

Transfer of commercial licences

5. Section 89A of the Principal Act is amended by omitting from subparagraph (8) (d) (iii) “90G” and substituting “90FA, 90G, 92CA”.

6. After section 90F of the Principal Act the following section is inserted: 10

Foreign directors

“90FA. (1) A licence is subject to a condition that, at all times while the licence is in force, at least 80% of the directors of the company that holds the licence must be Australian citizens. 15

“(2) For the purposes of this Act, the condition to which a licence is subject under subsection (1) is not contravened where:

- (a) the situation arises in which less than 80% of the directors of the company that holds the licence are Australian citizens; and
- (b) the situation does not continue for longer than the period of 28 days beginning immediately after whichever is the earlier of: 20
 - (i) the day on which the licensee became aware of the situation; or
 - (ii) the day on which the licensee should have become aware of the situation. 25

“(3) Subject to subsections (4) and (5), the Tribunal may extend the period in relation to a particular instance of the situation in respect of a particular licensee.

“(4) The Tribunal may only grant an extension:

- (a) on the application of a person made within the period that is being extended; and 30
- (b) by written notice served on the applicant.

“(5) The Tribunal must not grant an extension unless it is satisfied that it is in the public interest to do so having regard to:

- (a) the desirability of at least 80% of the directors of the licensee being Australian citizens; and 35
- (b) any other matters or circumstances that the Tribunal considers relevant.”.

Foreign shareholdings etc.

7. Section 90G of the Principal Act is amended:

(a) by inserting in subsection (5) “, other than paragraphs (2) (b) and (c)” after “section”;

5 (b) by adding at the end the following subsections:

10 “(7) For the purposes of this Act, where, because of a change of circumstances or other event, a situation arises in which a condition to which a licence is subject under this section is not complied with, that situation so created is taken not to exist, and not to cause a contravention of the condition, during the period of 28 days beginning immediately after whichever is the earlier of:

(a) the day on which the licensee became aware of the situation; or

15 (b) the day on which the licensee should have become aware of the situation.

“(8) Subject to subsections (9) and (10), the Tribunal may extend the period in relation to a particular event and a particular licensee.

20 “(9) The Tribunal may only grant an extension:

(a) on the application of a person made within the period or the period as extended earlier; and

(b) by written notice served on the applicant.

25 “(10) The Tribunal must not grant an extension unless it is satisfied that it is in the public interest to do so having regard to:

(a) the desirability of the condition being complied with; and

30 (b) any other matters or circumstances that the Tribunal considers relevant.

“(11) The Tribunal must not grant an extension unless it is satisfied that the licensee made reasonable efforts to ensure that the condition would be complied with at the end of the period or of the period as last extended, as the case requires.”.

35 8. After section 90G of the Principal Act the following sections are inserted:

Tracing foreign interests in voting shares through series of companies

“90GA. (1) In this section:

‘Australian company’ means a company that is not a foreign person;

40 ‘foreign person’ has the same meaning as in section 90G;

‘licensee’ means a company holding a licence;

'minor interests' means shareholding interests in a licensee that are held by a foreign person in accordance with subsection (2) because of the person's shareholding interests in an Australian company whose shareholding interests in the licensee do not exceed in amount 2% of the total of the amounts paid on all voting shares in the licensee; 5

'shareholding interests', in relation to a company, means shareholding interests in respect of voting shares in the company;

'voting share', in relation to a company, means a share in the company that carries voting rights on all questions at general meetings of the company. 10

“(2) For the purposes of paragraph 90G (2) (b), where:

(a) a foreign person holds shareholding interests in an Australian company (in this subsection called the **'first company'**); and

(b) the first company holds shareholding interests in another Australian company (in this subsection called the **'second company'**); 15

the foreign person holds shareholding interests in the second company (in addition to any other shareholding interests) of an amount calculated using the formula:

$$\text{Inter-company interests} \times \frac{\text{Actual interests}}{\text{First company interests}} \quad 20$$

where:

'Inter-company interests' means the amount of the first company's shareholding interests in the second company;

'Actual interests' means the amount of the foreign person's shareholding interests in the first company; 25

'First company interests' means the total of the amounts paid on all voting shares in the first company.

“(3) For the purposes of subsection (2), a foreign person's shareholding interests in an Australian company include interests that exist because of any other application or applications of this section. 30

“(4) For the purposes of subsection (2), an Australian company's shareholding interests in another Australian company include interests that exist because of any application or applications of subsection (5).

“(5) For the purposes of subsection (2), where:

(a) an Australian company (in this subsection called the **'first company'**) holds shareholding interests in another Australian company (in this subsection called the **'second company'**); and 35

(b) the second company holds shareholding interests in a third Australian company;

the first company holds shareholding interests in the third company (in addition to any other shareholding interests) of an amount calculated using the formula: 40

$$\text{Inter-company interests} \times \frac{\text{Actual interests}}{\text{Second company interests}}$$

where:

'Inter-company interests' means the amount of the second company's shareholding interests in the third company;

5 **'Actual interests'** means the amount of the first company's shareholding interests in the second company;

'Second company interests' means the total of the amounts paid on all voting shares in the second company.

10 “(6) In finding out for the purposes of paragraph 90G (2) (b) the shareholding interests in a licensee held by foreign persons in accordance with subsection (2):

(a) subject to paragraph (b)—minor interests in the licensee may be disregarded; or

15 (b) if the Tribunal requires the minor interests or a class of them to be taken into account because the Tribunal suspects that, if the minor interests or that class were taken into account, the shareholding interests in the licensee known to be held by foreign persons would exceed in amount 20% of the total of the amounts paid on all voting shares in the licensee—the requirement must be complied with but any minor interests to which the requirement does not apply may be disregarded.

20 “(7) Without limiting subsection (6), a class of minor interests referred to in that subsection may be all, or a class of, minor interests in a licensee that foreign persons have because of shareholding interests in Australian companies each of which is a company whose shareholding interests in the licensee do not exceed in amount a particular percentage of the total of the amounts paid on all voting shares in the licensee.

Tracing foreign interests in shares through series of companies

“90GB. (1) In this section:

30 **'Australian company'** means a company that is not a foreign person;

'foreign person' has the same meaning as in section 90G;

'licensee' means a company holding a licence;

35 **'minor interests'** means shareholding interests in a licensee that are held by a foreign person in accordance with subsection (2) because of the person's shareholding interests in an Australian company whose shareholding interests in the licensee do not exceed in amount 2% of the total of the amounts paid on all shares in the licensee.

“(2) For the purposes of paragraph 90G (2) (c), where:

40 (a) a foreign person holds shareholding interests in an Australian company (in this subsection called the **'first company'**); and

(b) the first company holds shareholding interests in another

Australian company (in this subsection called the **'second company'**);

the foreign person holds shareholding interests in the second company (in addition to any other shareholding interests) of an amount calculated using the formula:

$$\text{Inter-company interests} \times \frac{\text{Actual interests}}{\text{First company interests}}$$

where:

'Inter-company interests' means the amount of the first company's shareholding interests in the second company;

'Actual interests' means the amount of the foreign person's shareholding interests in the first company;

'First company interests' means the total of the amounts paid on all shares in the first company.

“(3) For the purposes of subsection (2), a foreign person's shareholding interests in an Australian company include interests that exist because of any other application or applications of this section.

“(4) For the purposes of subsection (2), an Australian company's shareholding interests in another Australian company include interests that exist because of any application or applications of subsection (5).

“(5) For the purposes of subsection (2), where:

(a) an Australian company (in this subsection called the **'first company'**) holds shareholding interests in another Australian company (in this subsection called the **'second company'**); and

(b) the second company holds shareholding interests in a third Australian company;

the first company holds shareholding interests in the third company (in addition to any other shareholding interests) of an amount calculated using the formula:

$$\text{Inter-company interests} \times \frac{\text{Actual interests}}{\text{Second company interests}}$$

where:

'Inter-company interests' means the amount of the second company's shareholding interests in the third company;

'Actual interests' means the amount of the first company's shareholding interests in the second company;

'Second company interests' means the total of the amounts paid on all shares in the second company.

“(6) In finding out for the purposes of paragraph 90G (2) (c) the shareholding interests in a licensee held by foreign persons in accordance with subsection (2):

- (a) subject to paragraph (b)—minor interests in the licensee may be disregarded; or
- (b) if the Tribunal requires the minor interests or a class of them to be taken into account because the Tribunal suspects that, if the minor interests or that class were taken into account, the shareholding interests in the licensee known to be held by foreign persons would exceed in amount 20% of the total of the amounts paid on all shares in the licensee—the requirement must be complied with but any minor interests to which the requirement does not apply may be disregarded.

“(7) Without limiting subsection (6), a class of minor interests referred to in that subsection may be all, or a class of, minor interests in a licensee that foreign persons have because of shareholding interests in Australian companies each of which is a company whose shareholding interests in the licensee do not exceed in amount a particular percentage of the total of the amounts paid on all shares in the licensee.”

9. After section 92C of the Principal Act the following section is inserted:

Foreign directors

“92CA. (1) A licence is subject to a condition that, at all times while the licence is in force, at least 80% of the directors of the company that holds the licence must be Australian citizens.

“(2) For the purposes of this Act, the condition to which a licence is subject under subsection (1) is not contravened where:

- (a) the situation arises in which less than 80% of the directors of the company that holds the licence are Australian citizens; and
- (b) the situation does not continue for longer than the period of 28 days beginning immediately after whichever is the earlier of:
- (i) the day on which the licensee became aware of the situation; or
- (ii) the day on which the licensee should have become aware of the situation.

“(3) Subject to subsections (4) and (5), the Tribunal may extend the period in relation to a particular instance of the situation in respect of a particular licensee.

“(4) The Tribunal may only grant an extension:

- (a) on the application of a person made within the period that is being extended; and
- (b) by written notice served on the applicant.

“(5) The Tribunal must not grant an extension unless it is satisfied that it is in the public interest to do so having regard to:

- (a) the desirability of at least 80% of the directors of the licensee being Australian citizens; and
- (b) any other matters or circumstances that the Tribunal considers relevant.”.

Foreign shareholdings etc.

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10. Section 92D of the Principal Act is amended:

- (a) by inserting in subsection (5) “, other than paragraphs (2) (b) and (c)” after “section”;
- (b) by adding at the end the following subsections:

“(7) For the purposes of this Act, where, because of a change of circumstances or other event, a situation arises in which a condition to which a licence is subject under this section is not complied with, that situation so created is taken not to exist, and not to cause a contravention of the condition, during the period of 28 days beginning immediately after whichever is the earlier of: 10
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- (a) the day on which the licensee became aware of the situation; or
- (b) the day on which the licensee should have become aware of the situation. 20

“(8) Subject to subsections (9) and (10), the Tribunal may extend the period in relation to a particular event and a particular licensee.

“(9) The Tribunal may only grant an extension:

- (a) on the application of a person made within the period or the period as extended earlier; and 25
- (b) by written notice served on the applicant.

“(10) The Tribunal must not grant an extension unless it is satisfied that it is in the public interest to do so having regard to: 30

- (a) the desirability of the condition being complied with; and
- (b) any other matters or circumstances that the Tribunal considers relevant.

“(11) The Tribunal must not grant an extension unless it is satisfied that the licensee made reasonable efforts to ensure that the condition would be complied with at the end of the period or of the period as last extended, as the case requires.”. 35

11. After section 92D of the Principal Act the following sections are inserted: 40

Tracing foreign interests in voting shares through series of companies

“92DA. (1) In this section:

‘**Australian company**’ means a company that is not a foreign person;

‘**foreign person**’ has the same meaning as in section 92D;

5 ‘**licensee**’ means a company holding a licence;

‘**minor interests**’ means shareholding interests in a licensee that are held by a foreign person in accordance with subsection (2) because of the person’s shareholding interests in an Australian company whose shareholding interests in the licensee do not exceed in amount 2% of the total of the amounts paid on all voting shares in the licence;

10 ‘**shareholding interests**’, in relation to a company, means shareholding interests in respect of voting shares in the company;

15 ‘**voting share**’, in relation to a company, means a share in the company that carries voting rights on all questions at general meetings of the company.

“(2) For the purposes of paragraph 92D (2) (b), where:

(a) a foreign person holds shareholding interests in an Australian company (in this subsection called the ‘**first company**’); and

20 (b) the first company holds shareholding interests in another Australian company (in this subsection called the ‘**second company**’);

the foreign person holds shareholding interests in the second company (in addition to any other shareholding interests) of an amount calculated using the formula:

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$$\text{Inter-company interests} \times \frac{\text{Actual interests}}{\text{First company interests}}$$

where:

‘**Inter-company interests**’ means the amount of the first company’s shareholding interests in the second company;

30 ‘**Actual interests**’ means the amount of the foreign person’s shareholding interests in the first company;

‘**First company interests**’ means the total of the amounts paid on all voting shares in the first company.

35 “(3) For the purposes of subsection (2), a foreign person’s shareholding interests in an Australian company include interests that exist because of any other application or applications of this section.

“(4) For the purposes of subsection (2), an Australian company’s shareholding interests in another Australian company include interests that exist because of any application or applications of subsection (5).

“(5) For the purposes of subsection (2), where:

40 (a) an Australian company (in this subsection called the ‘**first company**’) holds shareholding interests in another Australian company (in this subsection called the ‘**second company**’); and

(b) the second company holds shareholding interests in a third Australian company;

the first company holds shareholding interests in the third company (in addition to any other shareholding interests) of an amount calculated using the formula:

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$$\text{Inter-company interests} \times \frac{\text{Actual interests}}{\text{Second company interests}}$$

where:

'Inter-company interests' means the amount of the second company's shareholding interests in the third company;

'Actual interests' means the amount of the first company's shareholding interests in the second company; 10

'Second company interests' means the total of the amounts paid on all voting shares in the second company.

“(6) In finding out for the purposes of paragraph 92D (2) (b) the shareholding interests in a licensee held by foreign persons in accordance with subsection (2): 15

(a) subject to paragraph (b)—minor interests in the licensee may be disregarded; or

(b) if the Tribunal requires the minor interests or a class of them to be taken into account because the Tribunal suspects that, if the minor interests or that class were taken into account, the shareholding interests in the licensee known to be held by foreign persons would exceed in amount 20% of the total of the amounts paid on all voting shares in the licensee—the requirement must be complied with but any minor interests to which the requirement does not apply may be disregarded. 20 25

“(7) Without limiting subsection (6), a class of minor interests referred to in that subsection may be all, or a class of, minor interests in a licensee that foreign persons have because of shareholding interests in Australian companies each of which is a company whose shareholding interests in the licensee do not exceed in amount a particular percentage of the total of the amounts paid on all voting shares in the licensee. 30

Tracing foreign interests in shares through series of companies

“92DB. (1) In this section:

'Australian company' means a company that is not a foreign person; 35

'foreign person' has the same meaning as in section 92D;

'licensee' means a company holding a licence;

'minor interests' means shareholding interests in a licensee that are held by a foreign person in accordance with subsection (2) because of the person's shareholding interests in an Australian company whose shareholding interests in the licensee do not exceed in amount 2% of the total of the amounts paid on all shares in the licensee. 40

“(2) For the purposes of paragraph 92D (2) (c), where:

- (a) a foreign person holds shareholding interests in an Australian company (in this subsection called the ‘**first company**’); and
- (b) the first company holds shareholding interests in another Australian company (in this subsection called the ‘**second company**’);

the foreign person holds shareholding interests in the second company (in addition to any other shareholding interests) of an amount calculated using the formula:

$$10 \quad \text{Inter-company interests} \times \frac{\text{Actual interests}}{\text{First company interests}}$$

where:

‘**Inter-company interests**’ means the amount of the first company’s shareholding interests in the second company;

15 ‘**Actual interests**’ means the amount of the foreign person’s shareholding interests in the first company;

‘**First company interests**’ means the total of the amounts paid on all shares in the first company.

20 “(3) For the purposes of subsection (2), a foreign person’s shareholding interests in an Australian company include interests that exist because of any other application or applications of this section.

“(4) For the purposes of subsection (2), an Australian company’s shareholding interests in another Australian company include interests that exist because of any application or applications of subsection (5).

“(5) For the purposes of subsection (2), where:

25 (a) an Australian company (in this subsection called the ‘**first company**’) holds shareholding interests in another Australian company (in this subsection called the ‘**second company**’); and

(b) the second company holds shareholding interests in a third Australian company;

30 the first company holds shareholding interests in the third company (in addition to any other shareholding interests) of an amount calculated using the formula:

$$\text{Inter-company interests} \times \frac{\text{Actual interests}}{\text{Second company interests}}$$

where:

35 ‘**Inter-company interests**’ means the amount of the second company’s shareholding interests in the third company;

‘**Actual interests**’ means the amount of the first company’s shareholding interests in the second company;

40 ‘**Second company interests**’ means the total of the amounts paid on all shares in the second company.

“(6) In finding out for the purposes of paragraph 92D (2) (c) the shareholding interests in a licensee held by foreign persons in accordance with subsection (2):

- (a) subject to paragraph (b)—minor interests in the licensee may be disregarded; or
- (b) if the Tribunal requires the minor interests or a class of them to be taken into account because the Tribunal suspects that, if the minor interests or that class were taken into account, the shareholding interests in the licensee known to be held by foreign persons would exceed in amount 20% of the total of the amounts paid on all shares in the licensee—the requirement must be complied with but any minor interests to which the requirement does not apply may be disregarded.

“(7) Without limiting subsection (6), a class of minor interests referred to in that subsection may be all, or a class of, minor interests in a licensee that foreign persons have because of shareholding interests in Australian companies each of which is a company whose shareholding interests in the licensee do not exceed in amount a particular percentage of the total of the amounts paid on all shares in the licensee.”.

Transitional—disregard of interests

12. (1) Where:

- (a) a company holding a licence was complying on 22 May 1990 with a condition imposed on it by subsection 90G (2) or 92D (2) of the Principal Act; and
- (b) if the amendments made by sections 7 and 8 or 10 and 11, as the case may be, had been in force on that day, the company would not have so complied because of shareholding interests that, because of the amendments, would have been taken to be interests in the company;

then, for the purposes of the condition, those interests are to be disregarded for the period beginning on the commencement of those sections and ending on 22 May 1993.

(2) Subject to subsections (3), (4) and (5), the Australian Broadcasting Tribunal may extend the period in relation to a particular licence.

(3) The Tribunal may only grant an extension:

- (a) on the application of a person made within the period or the period as extended earlier; and
- (b) by written notice served on the applicant.

(4) The Tribunal must not grant an extension unless it is satisfied that it is in the public interest to do so having regard to:

- (a) the need to ensure that the licensee is able to provide an

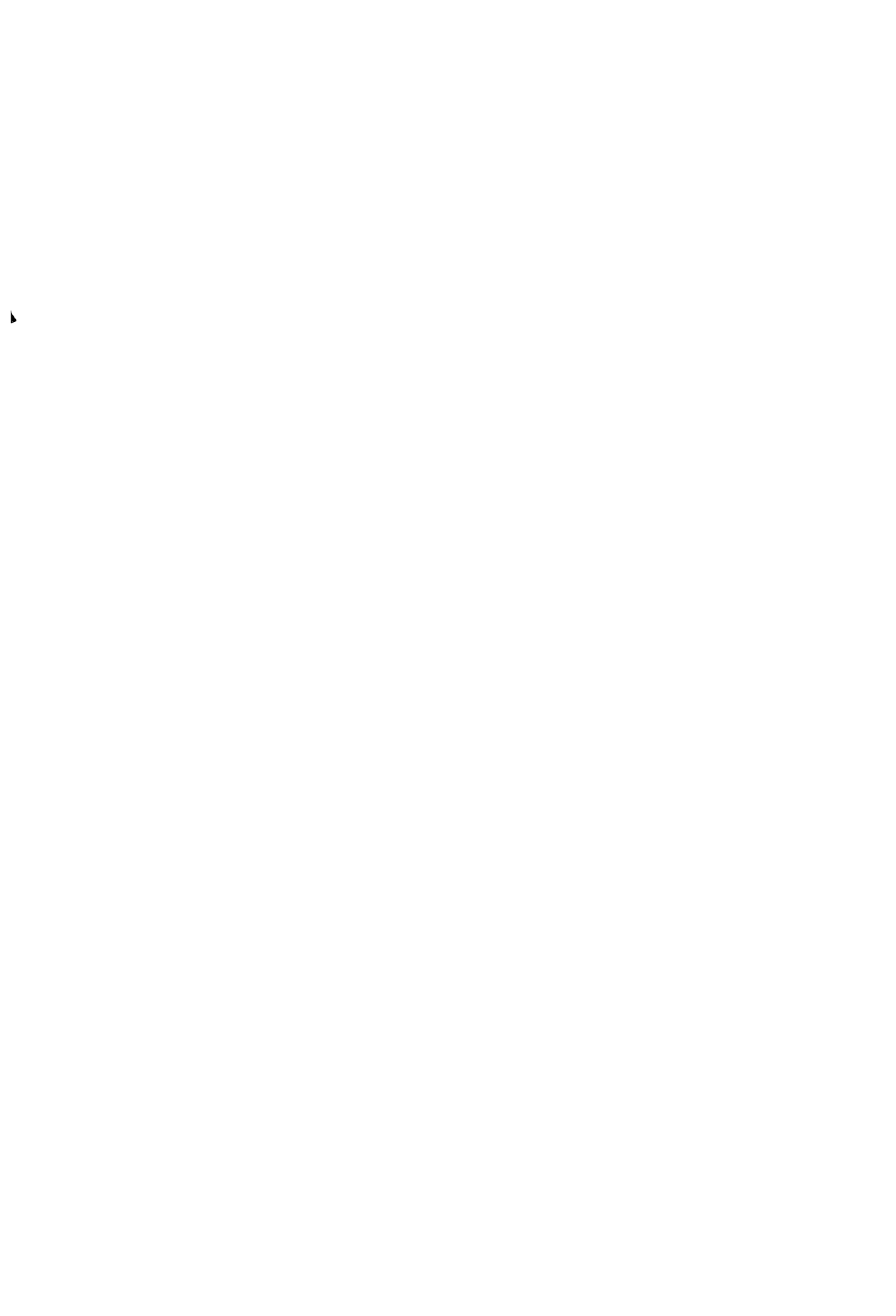
adequate and comprehensive service in accordance with the Principal Act and the other conditions of the licence; and

- 5 (b) the desirability of the disregarded interests being taken into account for the purposes of the condition as soon as possible; and
- (c) any relevant government policy statements of which the Tribunal has been notified by the Minister; and
- (d) any other matters or circumstances that the Tribunal considers relevant.

- 10 (5) The Tribunal must not grant an extension unless it is satisfied that the licensee made reasonable efforts to ensure that the condition would be complied with at the end of the period or of the period as last extended, as the case requires.

NOTE

1. No. 33, 1942, as amended. For previous amendments, see No. 39, 1946; No. 64, 1948; No. 80, 1950; No. 41, 1951; No. 12, 1953; No. 82, 1954; Nos. 33, 65 and 92, 1956; No. 36, 1960 (as amended by No. 32, 1961); No. 96, 1962; No. 82, 1963; Nos. 67 and 121, 1964; Nos. 38 and 120, 1965; No. 57, 1966; No. 47, 1967; No. 69, 1968; Nos. 21 and 31, 1969; Nos. 8, 72 and 136, 1971; No. 49, 1972; No. 50, 1973; No. 216, 1973 (as amended by No. 20, 1974); No. 55, 1974; No. 56, 1975; Nos. 89, 157 and 187, 1976; No. 160, 1977; Nos. 36, 52 and 210, 1978; Nos. 143 and 177, 1980; Nos. 61, 113 and 153, 1981; No. 154, 1982; Nos. 7, 37, 39, 91 and 136, 1983; Nos. 10, 63, 72, 163 and 165, 1984; Nos. 66 and 191, 1985; Nos. 2 and 76, 1986; Nos. 68, 79, 80, 134 and 184, 1987; Nos. 56, 146 and 147, 1988; Nos. 29 and 31, 1989; and Nos. and , 1990.





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