

1987

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

BROADCASTING (OWNERSHIP AND CONTROL) BILL 1987

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Minister for Communication
the Hon. Michael Duffy MP)

BROADCASTING (OWNERSHIP AND CONTROL) BILL 1987

OUTLINE

Division 3 of Part IIIB of the Broadcasting Act 1942 (the Principal Act) provides for limitations on the ownership and control of commercial television licences. Section 92 of the Principal Act prohibits, inter alia, a person from holding a prescribed interest in more than two commercial television licences (the "two station rule").

The Broadcasting (Ownership and Control) Bill 1987 (the Bill) has two main purposes:

- . to replace the "two station rule" with a new "75% reach rule" based on the population of Australia and the service area population for each commercial television licence; and
- . to provide certain limits on the cross-media interests that may be held by a person holding a prescribed interest in a commercial television licence where those cross-media interests are within the service area of the commercial television licence.

The new "75% reach rule" will enable persons to hold prescribed interests in any number of commercial television licences, provided the combined population served by those licences does not exceed 75% of the Australian population.

However, the "two station rule" will be maintained where a person has a prescribed interest in a commercial television licence that is in an approved market and in respect of which a multi channel service (MCS) permit is in force under the Broadcasting Amendment Act 1987 (at the date of introduction of this Bill the above Act has not been passed but is before the Senate as the Broadcasting Amendment Bill 1987). There is an exemption from this "MCS permit rule" for prescribed interests held in a licence to which an MCS permit is attached, where that MCS permit was obtained before the approved market was declared. This exemption is subject to a requirement that there is no increase in relevant interests on or after the day on which the approved market is declared.

The Bill provides for new cross-media interest limits which have the effect of prohibiting a person from holding a prescribed interest in a commercial television licence if that person also holds a prescribed interest in:

- . a commercial radio licence that has an area of monopoly within the service area of that commercial television licence; or
- . a newspaper that is associated with the service area of the commercial television licence.

A commercial radio licence in which a person has a prescribed interest will have an area of monopoly within the service area of a commercial television licence if the service areas of the two licences overlap and:

- . the overlap area is not within the service area of any other commercial radio licence; or
- . the overlap area is within the service area of another commercial radio licence or licences in each of which the person also has a prescribed interest.

A newspaper will be taken to be associated with the service area of a commercial television licence if not less than 50% of its circulation is within the service area of that commercial television licence.

Cross-media interests which were held by a person within the service area of commercial television licences before 28 November 1986 will be exempted from the operation of the new cross-media limits. This exemption is subject to the requirement that there is no increase in relevant interests after that date.

Other provisions of the Bill support the new "75% reach rule" and cross-media interest limits including:

- . provisions which provide for the gazettal of population figures for Australia and for the service area of each commercial television licence for the purpose of the "75% reach rule";
- . provisions to enable the identification of newspaper interests to which the cross-media limits will apply;
- . provisions creating new limits on the directorships that a person may hold to reflect the new "75% reach rule" and the new cross-media interest limits;

. consequential changes to the licence grant, renewal, transfer and share transaction provisions to reflect the new cross-media rules; and

. consequential changes to the enforcement provisions of the Act.

Financial Impact Statement

There will be some additional costs to the Commonwealth in the administration of these new provisions. It will be necessary for the Department of Communications to arrange for the initial gazettal of population figures and for gazettal of variations to these figures for the purposes of administering the "75% reach rule". There may need to be one or two extra staff within the Department to arrange these gazettals. The Tribunal will be required to compile and maintain data on newspapers for the purposes of administering the new cross-media interest limits and will initially be involved in additional share transaction inquiries flowing from the new "75% reach rule". Although it is not possible to provide precise estimates, it is not expected that the Tribunal will require any more than ten additional staff to administer the amended legislation.

NOTES ON CLAUSES

PART I - PRELIMINARY

Clause 1 - Short Title

Citation.

Clause 2 - Commencement

All parts of the Bill will come into operation on a day or days fixed by Proclamation, except for those clauses which amend the Broadcasting and Television Amendment Act 1985 (clauses 33-34) and the Broadcasting Amendment Act 1987 (clauses 35-36). The amendments in clauses 33-34 are deemed to have come into operation on 1 January 1986. The amendments in clauses 35-36 are deemed to have come into operation immediately after commencement of the Broadcasting Amendment Act 1987.

PART II - AMENDMENTS OF THE BROADCASTING ACT 1942

Clause 3 - Principal Act

Formal.

Clause 4-6 - Consideration of licence applications by Tribunal, renewal of licences and transfer of licences

Clauses 4-6 extend the grounds upon which the Australian Broadcasting Tribunal can refuse to grant, renew or approve the transfer of a licence to include contraventions of the new cross-media directorship limits (see clause 27, new section 92FAD) and the new limits on the cross-media interests that may be held by a person having a prescribed interest in a commercial television licence (see clause 27, new section 92FAB).

These clauses provide that contraventions of the new cross-media interest limits may be disregarded by the Tribunal on the same basis as contraventions of the existing multiple interest limits for commercial radio licences (section 90C) and commercial television licences (section 92).

Clause 7 - Subdivision heading

Formal.

Clause 8

Formal. As part of a consequential re-structuring of the order of relevant provisions and the introduction of new Subdivisions, sections 90D and 90E of the Principal Act have been relocated so they become sections 90AAA and 90AAB respectively. The relocation is effected by repealing sections 90D and 90E (see clause 11) and re-enacting them in this clause. The opportunity has also been taken to remove sexist language from these provisions by the addition of the words "or her" after "his" wherever occurring.

Clause 9 - Tracing of shareholding interests through a series of companies

Formal, to reflect the relocation of section 90E (see clause 8).

Clause 10 - Subdivision heading

Formal.

Clause 11 - Repeal of sections

Formal, to reflect the relocation of sections 90D and 90E (see clause 8).

Clause 12 - Changes in ownership of shares, etc

Paragraph 12(a) provides that notice of an intended transaction given under paragraph 90J(3)(a) of the Principal Act is to include particulars of any contravention of the new cross-media directorship limits (see clause 27, new section 92FAD). This is consistent with the existing requirement that a notice under this paragraph of the Act include particulars of any contravention of the radio directorship limits (section 90F).

Paragraph 12(b) is a formal provision to reflect the relocation of section 90E (see clause 8).

Clause 13 - Approval of transactions

Formal, to reflect the relocation of section 90E (see clause 8).

Clause 14 - Subdivision heading

Formal.

Clause 15 - Articles to contain certain provisions

Clause 15 amends paragraph 90L(1)(a)(i) of the Principal Act to require that the articles of association of a company holding a commercial radio licence are to contain a provision to render a person ineligible to hold shares in that company in contravention of the new cross-media interest limits (see clause 27, new section 92FAB). This is an extension of the existing requirement under this paragraph that the articles contain such a provision in relation to contraventions of the multiple interest limits for radio (section 90C).

Clause 16 - Condition as to statutory declarations

Existing section 90M of the Principal Act requires that certain information be provided annually to the Tribunal in the form of statutory declarations by specified officers of a company holding a commercial radio licence. Clause 16 extends this obligation to require that these declarations also state whether there has been a contravention of the new cross-media interest limits (see clause 27, new section 92FAB) through a person holding both a prescribed interest in that commercial radio licence and a prescribed interest in a commercial television licence.

Clause 17 - Subdivision heading

Formal.

Clause 18 - Interpretation

Several new definitions have been inserted in section 91 of the Principal Act. Those definitions relating to the 75% reach rule are dealt with below in the notes on the clauses where the newly defined expressions apply.

For the purpose of the new cross-media interest limits in new section 92FAB (see clause 27), paragraph 18(g) inserts a new subsection 91(2A) which provides that a person has a prescribed interest in a newspaper if the person is:

- . the publisher of the newspaper; or
- . in a position to exercise control, either directly or indirectly, of the newspaper; or
- . in control of more than 15% of the voting interests in the company which publishes the newspaper; or
- . the holder of more than 15% of the shareholding interests in the company which publishes the newspaper.

Reference in the prescribed interest definition to "control" of more than 15% of the voting interests attracts the "control of a company" tracing formulae for indirect interests in section 92B (relocated by clause 19 to become section 91AAC). The reference to "shareholding interests" attracts the formulae in section 91A for tracing shareholding interests through a series of companies. The reference to direct or indirect "control" of a newspaper applies the definition of control of a newspaper found in new section 91AAB (see clause 19).

A newspaper is defined in paragraph 18(d) as a publication that is in the English language, is published on at least 4 days in each week and is sold as a newspaper. However, paragraph 18(j) provides that where less than 50% of the circulation of a publication is by way of sale the publication will not be treated as a newspaper. This will be a benchmark, for example, in determining whether a publication is sold as a newspaper where the publication is sold in a newsagency and also disseminated free of charge to particular households.

Paragraph 18(j) further provides that where it is reasonable to conclude that 2 or more publications should be treated as a single publication having regard to their ownership, editorial control and style they will be so treated. This provision is intended to catch artificial schemes attempting to exploit the definitional requirement in paragraph 18(d) that the publication be published on at least 4 days in each week to be a newspaper.

Paragraph 18(e) defines a publisher of a newspaper. A publisher can be a company, a member of a partnership, a joint venturer or a natural person. Paragraph 18(c) defines a joint venture and joint venturer.

Clause 19 - Insertion of new sections

Clause 19 relocates sections 92A and 92B so they become sections 91AAA and 91AAC respectively. The relocation is effected by repealing sections 92A and 92B (see clause 23) and re-enacting them in this clause. The opportunity has also been taken to remove sexist language from these provisions by the addition of the words "or her" after "his" wherever occurring.

Clause 19 also inserts a number of new sections into the Principal Act. These are dealt with below.

Meaning of control of a newspaper

For the purpose of the new cross-media rules, clause 19 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, or is in a position to exercise control of either the operations of the publisher in publishing the newspaper or the selection or provision of the material to be published in the newspaper. In addition, where the publisher is a company, a person in a position to exercise control of that company will be deemed to be in a position to exercise control of the newspaper. The reference to "control of the company" attracts the "control of a company" tracing formulae for indirect interests in section 92B (relocated by clause 19 to become section 91AAC).

Clause 19 has been drafted to parallel existing provisions which deal with deemed control of a commercial radio licence (section 90D relocated by clause 8 to become section 90AAA) and of a commercial television licence (section 92A relocated by clause 19 to become section 91AAA).

Minister may notify population figures

Clause 19 inserts a new section 91AAD which will enable population measurement of the service areas of commercial television licences for the purpose of applying the new 75% reach rule. Subsection 91AAD(1) provides that the Minister may gazette the "declared population of Australia" (as defined in paragraph 18(b)) and the service area population (as defined in paragraph 18(f)) for each commercial television licence. Paragraphs 91AAD(6)(a) and (e) provide that the Minister is to gazette these population figures as soon as practicable after the commencement of the section, having regard to the most recently available official census count results (as defined in sub-section 91AAD(8)).

Paragraph 91AAD(6)(b) provides that, whenever a census count is taken of the Australian population, the Minister is to gazette revised population figures as soon as practicable after the Australian statistician publishes the results of that census count. Similarly, paragraphs 91AAD(6)(c) and (d) provide that the Minister is to gazette a new population figure whenever the service area of a licence is varied or a licence is granted. However, the gazettal requirement in relation to the grant of a licence does not apply where the grant is by way of renewal or as a consequence of licence conversion (provided the service area of the converted new system licence is substantially coextensive with the service area of the corresponding old system licence(s) - see subsection 91AAD(7)).

Subsection 91AAD(2) provides that, where the Minister specifies the service area population, the Minister is also to specify the percentage of the declared population of Australia constituted by the service area population of the licence. Subsection 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 the population in the area of overlap is to be counted only once for the purpose of determining whether there has been a contravention of the new 75% reach rule. Subsections 91AAD(3) and (4) enable population measurement of the area of overlap between the service areas of two or more commercial television licences.

Newspapers associated with commercial television licence service areas

Clause 19 also inserts a new section 91AAE which provides that the Tribunal is to establish and maintain a register which lists those newspapers which have not less than 50% of their circulation within the service area of a commercial television licence. This register, to be known as the Associated Newspaper Register, is to be reviewed by the Tribunal on a quarterly basis and up-dated accordingly. On the payment of a prescribed fee, if any, a person may inspect and obtain a copy of any entry in the Associated Newspaper Register.

Paragraph 18(h) provides that a newspaper will be taken to be associated with the service area of a commercial television licence if the name of the newspaper is so entered in the Associated Newspaper Register.

Clause 20 - Tracing of shareholding interests through a series of companies

Formal, to reflect the relocation of 92B (see clause 19).

Clause 21 - Subdivision heading

Formal.

Clause 22 - Limitation of interests in commercial television licence

Paragraph 22(1)(a) substitutes a 75% reach rule for the existing two station rule in subsection 92(1) of the Principal Act. This will enable 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 75% of the declared population of Australia (see clause 19).

Paragraph 22(1)(a) also inserts a new subsection 92(1AA) which provides an exception to the 75% reach rule where a person has a prescribed interest in a commercial television licence that is in an approved market and in respect of which an MCS permit is in force. Such a person will be limited to holding a prescribed interest in only one other commercial television licence. In effect, the existing two station rule will be maintained for persons caught by the operation of new subsection 92(1AA).

(This exception is related to the provisions of the Broadcasting Amendment Act 1987 which provide for the aggregation of service areas and the designation of approved markets in which three competitive services are to be provided. Where an approved market is declared, licensees may elect to provide additional services in their original service areas, through MCS permits, before proceeding to aggregation and competition with the other licensees in the approved market.)

Paragraph 22(1)(a) provides in new subsections 92(1AB)-(1AD) that a person will be exempted from the operation of subsection 92(1AA) if before the approved market was declared the person held a prescribed interest in the licence concerned and an MCS permit had also been granted in respect of that licence. This exemption is subject to the requirement that there is no relevant increase in the interest so held on or after the day on which the approved market is declared.

"Paragraph 22(2) of the Bill provides that paragraph 92(1)(a) of the existing Principal Act (which contains the two station rule) is not to apply in relation to the holding of prescribed interests in commercial television licences on or after 28 November 1986 and before commencement of the 75% reach rule."

Clause 23 - Repeal of sections

Formal, to reflect the relocation of sections 92A and 92B (see clause 19).

Clause 24 - Directors

Section 92C of the Principal Act establishes limits on the number of directorships a person can hold - these limits are currently aligned with the two station rule. Clause 24 amends section 92C to reflect the new 75% reach rule. New subsection 92C(1) prohibits a person from being a director of two or more companies that are, between them, in a position to exercise control of commercial television licences the aggregate of whose service area populations exceeds 75% of the declared population of Australia (see clause 19, new section 91AAD).

Clause 24 also inserts a new subsection 92C(1AA) which provides an exception to the operation of subsection 92C(1) above in the case where a person is a director of a company in a position to control a licence that is in an approved market and in respect of which an MCS permit is in force. In such a case, that person is prohibited from being a director of two or more companies that are, between them, in a position to exercise control of three or more licences. In effect, the existing directorship limits will be retained for those persons caught by the operation of new subsection 92C(1AA). This is consistent with the retention of the two station rule for persons caught by the operation of new subsection 92(1AA) (see clause 22).

Clause 24 provides in new subsection 92C(1AB) that a person will be exempted from the operation of subsection 92C(1AA) where the directorship involved was held immediately before the approved market was declared. New subsection 92C(1AC) ensures that this exemption for persons holding directorships before an approved market is declared only continues to apply where those persons are then re-appointed as directors on a continuous basis.

Clause 25 - Changes in ownership of shares, etc

Paragraphs 25(a)-(b) provide that notice of an intended transaction given under paragraph 92F(3)(a) of the Principal Act is to include particulars of:

- . any prescribed interest in a newspaper associated with the service area of the commercial television licence; and
- . any contravention of the new cross-media directorship limits under the proposed new section 92FAD.

This is consistent with the existing requirement that a notice under this paragraph of the Act include particulars of any prescribed interests held in a commercial television or radio licence (see paragraph 92F(3)(a)(iv)-(v)) and of any contravention of the television directorship limits in section 92C (see paragraph 92F(3)(a)(vi)).

Paragraph 25(c) inserts a new subsection 92F(10) which provides that, where between 28 November 1986 and the commencement of the subsection a person acquires a prescribed interest in a commercial television licence while already holding a prescribed interest in a newspaper associated with the service area of that licence, that person is to provide to the Tribunal, within 28 days after the commencement of the subsection, a notice setting out particulars of the person's prescribed interest in the newspaper.

Clause 26 - Approval of transactions

Formal, to reflect the relocation of section 92B (see clause 19).

Clause 27 - Insertion of Subdivision

Clause 27 inserts in the Principal Act a new Subdivision: Subdivision C - Cross media rules. The new provisions are as follows.

Limitations on cross media interests that may be held by a person having prescribed interest in a commercial television licence

New section 92FAB provides for limitations on cross media interests that may be held by a person having a prescribed interest in a commercial television licence. Such a person is prohibited from holding a prescribed interest in a commercial radio licence that has an area of monopoly within the service area of the commercial television licence (see new subsection 92FAB(2) below) or a prescribed interest in a newspaper that is associated with the service area of the commercial television licence (see clause 19).

Subsection 92FAB(2) provides that a commercial radio licence in which a person has a prescribed interest will have an area of monopoly within the service area of a commercial television licence if the service areas of the two licences overlap and:

- . the overlap area is not within the service area of any other commercial radio licence; or
- . the overlap area is within the service area of another commercial radio licence(s) and the person has a prescribed interest in each of those other licences.

Subsections 92FAB(3)-(11) are intended, as far as practicable, to apply the existing contravention and related period of grace provisions in the Principal Act (which are currently used for breaches of the existing multiple interest limits for radio (section 90C) and television (section 91)) to breaches of the new cross-media interest limits.

Subsection 92FAB(3) provides that a contravention of the new cross-media interest limits arising other than through a share or debenture transaction constitutes a continuing offence from the date of the transaction. This is consistent with existing subsections 90C(5A) and 92(4A) which deal with contraventions of the television and radio multiple interest limits arising other than through a share or debenture transaction.

Subsection 92FAB(4) applies the existing offence and related provisions in section 90C (in respect of contraventions of the radio multiple interest limits) to contraventions of the new cross-media interest limits arising from a share transaction.

Subsections 92FAB(5) and (7) have the effect that, for the purpose of the application of the contravention and related provisions in section 90C or section 92, contraventions of the cross-media interest limits arising from transactions between 28 November 1986 and commencement of the section will be deemed to have occurred from the commencement date.

Subsection 92FAB(6) applies the existing offence and related provisions in section 92 (in respect of contraventions of the television multiple interest limits) to contraventions of the new cross-media interest limits arising from a transaction involving shares or debentures resulting in the acquisition of a prescribed interest in a commercial television licence.

Subsection 92FAB(8) applies to share transactions involving the acquisition by a person of a prescribed interest in a newspaper where that person is required to give notice under new section 92FAC.

Subsection 92FAB(9) provides that a person who contravenes the cross-media interest limits through a transaction to which 92FAB(8) applies will have a six months period of grace or such longer period as is allowed by the Tribunal to cure the contravention, provided that person complies with the notice requirements under new subsection 92FAC(1).

Paragraph 92FAB(10)(a) provides that parties to a transaction under sub-section 92FAB(9) must lodge any application to the Tribunal for an extension of the minimum six months period of grace within that period. Paragraph 92FAB(10)(b) provides that persons not a party to a transaction under sub-section 92FAB(9) may lodge an application for extension of the minimum six months period of grace outside that period, if the Tribunal is satisfied in the circumstances that it is reasonable to accept the late application.

Subsection 92FAD(11) provides that, in the case of a single transaction involving the acquisition of a prescribed interest in a commercial television licence and in a related commercial radio licence or in an associated newspaper, a person is taken to have acquired the television interest after the radio or newspaper interest. The effect of this provision is that for the purpose of the contravention and related period of grace provisions the person will be taken to have contravened the cross-media interest limits through the acquisition of the television interest.

Persons having prescribed interest in commercial television licence to notify Tribunal of prescribed interest in associated newspaper

New subsection 92FAC(1) provides that a person contravening the new cross-media interest limits through the acquisition of a prescribed interest in a newspaper must give the Tribunal notice of that acquisition. New subsection 92FAC(2) provides that, where the acquisition occurs between 28 November and the commencement of the section, the notice must be given within 28 days of commencement. Where the acquisition occurs after the commencement of the section, the notice is to be given within 28 days of the acquisition. New subsection 92FAC(3) provides that a person who fails to comply with new subsection 92FAC(1) is guilty of an offence for each day the failure continues.

Limitations on cross media directorships

New section 92FAD prohibits a person who is a director of a company that is in a position to control a commercial television licence from also being:

- (a) a director of a company that is in a position to control a commercial radio licence that has an area of monopoly within the service area of the commercial television licence (as defined in sub-section 92FAD(2)); or
- (b) either a publisher of, or a director of, a company that is in a position to control a newspaper that is associated with the service area of the commercial television licence.

"It is intended that the cross-media directorship limits in new section 92FAD are to apply only where a person holds directorships in two or more companies which together hold relevant cross-media interests. It is not intended that the cross-media directorship limits apply where a person only holds a directorship in a single company which has relevant cross-media interests. In this situation, the company itself would be held to be in contravention of the cross-media limits in new section 92FAD."

Paragraphs 27(2)-(10) provide for the "grandfathering" (ie exemption) of relevant interests or directorships which would otherwise contravene the new cross-media rules provided they were held on or before 27 November 1986 (being the date of the announcement by the Minister for Communications of the Government's intention to replace the two station rule with a 75% reach rule and to introduce new cross-media rules).

The intention of paragraphs 27(2)-(10) is to:

- . exempt combinations of interests or directorships, held before 28 November 1986, which would otherwise contravene the new cross-media rules; and
- . ensure that these exemptions cease to apply where, after 27 November 1986, the relevant interests are increased or further relevant cross-media directorships are acquired.

Paragraph 27(2) protects direct and indirect (traced) interests held by a person before 28 November 1986 in a commercial television licence and in a related commercial radio licence or an associated newspaper which would otherwise contravene the new cross-media interest limits in section 92FAB. Paragraph 27(2) also protects share or debenture interests acquired after 28 November 1986 by a class of share or debenture holders as a result of a bonus share or debenture issue, where the rights to the bonus issue existed for that class of share or debenture holders before 28 November 1986.

Paragraph 27(3) provides that the protection which would otherwise be afforded interests under paragraph 27(2) is lost where those interests increase after 28 November 1987. Paragraph 27(4) provides that paragraph 27(3) will apply even where an increase in interests held has been preceded, after 28 November 1986, by a reduction in those interests.

Paragraph 27(5). Formal. This paragraph ensures that the grandfathering exemption under paragraph 27(2) can apply to a person who before 28 November 1986 holds an old system commercial television station licence under the previous Broadcasting and Television Act 1942.

Paragraph 27(6). Formal. This paragraph ensures that the grandfathering provisions under paragraphs 27(2)-(4) apply to indirect traced interests as well as to direct interests in a company holding a licence.

Paragraph 27(7) protects directorships which were held immediately before 28 November 1987 if they would otherwise contravene the cross media directorship limits in section 92FAD after that date.

Paragraph 27(8) protects a person who would otherwise contravene the cross-media directorship limits in section 92FAD by virtue of being a publisher of a newspaper and a director of a company in a position to control a related commercial television licence if the person was the publisher of the newspaper and held the directorship before 28 November 1986.

Paragraph 27(9) is intended to ensure that the exemption for directors under paragraphs 27(7)-(8) only continues to apply where, after 28 November 1986, the directors are re-appointed on a continuous basis.

Paragraph 27(10) provides a six month period of grace from commencement for persons contravening the cross-media directorship limits in section 92FAD if the directorships were acquired between 28 November 1986 and commencement.

Paragraphs 27(11)-(13) require the Tribunal, as soon as practicable, to specify by notice in writing in the Commonwealth of Australia Gazette a list of newspapers which immediately before 28 November 1986 were associated with each commercial television licence. Consistent with new subsection 91AAE(2) (see clause 19) a newspaper will be taken to be associated with the service area of a commercial television licence immediately before 28 November 1986 if more than 50% of the circulation of the newspaper was within the service area of the licence. The Gazette notice will enable identification of relevant newspapers for the purpose of the grandfathering provisions in paragraphs 27(2)-(10).

Clause 28 - Articles to contain certain provisions

Clause 28 amends paragraph 92G(1)(a)(i) of the Principal Act to require that the articles of association of a company holding a commercial television licence are to contain a provision to render a person ineligible to hold shares in that company in contravention of the new cross-media limits (see clause 27, new section 92FAB). This is an extension of the existing requirement under this paragraph of the Principal Act that the articles contain such a provision in relation to contraventions of the multiple interest limits for television (subsection 92(1)).

Clause 29 - Condition as to statutory declarations

Existing section 92H provides that information must be provided annually to the Tribunal in the form of statutory declarations by specified officers of a company holding a commercial radio licence. Clause 29 extends this obligation to require that these declarations also state whether there has been a contravention of the new cross-media limits (see clause 27, new section 92FAB); ie whether a person holds both a prescribed interest in that commercial television licence and a prescribed interest in a related commercial radio licence or associated newspaper.

Clause 30 - Powers of Federal Court of Australia

Clause 30 is a consequential amendment which extends the operation of existing section 92P to provide that, on application by the Tribunal, the Federal Court may make order(s) to prevent a continuation of any contravention of new section 92FAB.

Clause 31 - Defences

Clause 31 is a consequential amendment which extends the defences to prosecution contained in existing section 92Q to contraventions of new sections 92FAB, 92FAC and 92FAD.

Clause 32 - Penalties

Clause 32 is a consequential amendment which applies the existing penalty provisions for persons and companies to offences against new sections 92FAB, 92FAC and 92FAD.

PART III - AMENDMENTS TO THE BROADCASTING AND
TELEVISION AMENDMENT ACT 1985

Clause 33 - Principal Act

Formal.

Clause 34 - Interpretation

Formal. Makes it clear that section 101 of the Broadcasting and Television Amendment Act 1985 (the 1985 Amendment Act), which applies the ownership and control provisions of the Principal Act to old system licences, also applies these provisions as they are amended from time to time. This clarification is achieved by amending the definition of "Amended Act" in section 96 of the 1985 Amendment Act.

PART IV - AMENDMENTS OF THE BROADCASTING
AMENDMENT ACT 1987

Clause 35 - Principal Act

Formal.

Clause 36 - Limitation of interests in commercial television
licences

Formal. Ensures that the grandfathering provisions in section 13 of the Broadcasting Amendment Act 1987 apply to indirect traced interests as well as direct interests in a company holding a licence; in line with paragraph 27(6) of this Bill.

