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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

BROADCASTING (OWNERSHIP AND CONTROL) BILL (NO 3) 1987

EXPLANATORY MEMORANDUM

(Circulated by the Authority of the Minister
for Transport and Communications,
Senator the Hon Gareth Evans)

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OUTLINE

Division 2 of Part 111B of the Broadcasting Act 1942 (the Principal Act) provides for limitations on the ownership and control of commercial radio licences.

Section 90C of the Principal Act prohibits a person from holding a prescribed interest in:

- (a) each of 2 or more metropolitan commercial radio licences in the same State;
- (b) each of 5 or more metropolitan commercial radio licences;
- (c) each of 5 or more commercial radio licences in the same State; or
- (d) each of 9 or more commercial radio licences nationwide.

Section 90F of the Principal Act prohibits a person from being a director of two or more companies which are, between them, in a position to control commercial radio licences which would, if prescribed interests were held in those licences by a single person, contravene the corresponding prescribed interest limits in section 90C.

Division 3 of Part 111B of the Principal Act, inter alia, provides for limitations on the cross media interests which may be held by a person who holds a prescribed interest in a commercial television licence. Section 92FAB of the Principal Act prohibits a person who holds a prescribed interest in a commercial television licence from also holding a prescribed interest in:

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

Section 92FAD of the Principal Act contains corresponding limits on directorships.

The Broadcasting (Ownership and Control) Bill (No 3) 1987 (the Bill) has two main purposes. First, the Bill would replace the existing commercial radio limits in sections 90C and 90F of the Principal Act with:

- (a) a "one radio licence within a service area" limit, with allowance for up to 30% service area population overlap between relevant licences;

- (b) a limit of half the number of licences in a State (although two or more licences having the same service areas within a State would be treated as representing a single licence within that State); and
- (c) a nationwide limit of 16 licences.

Second, the Bill would:

- (a) introduce limits on the interests in a commercial radio licence that may be held by a person holding a prescribed interest in a newspaper that is associated with the service area of the radio licence; and
- (b) modify the existing limits on interests in a commercial television licence that may be held by a person holding a prescribed interest in a commercial radio licence where the two licences have a substantial market in common.

In relation to (a), above, the proposed limits on radio/associated newspaper cross media interests would be based on the existing limits on television/associated newspaper cross media interests in section 92FAB of the Principal Act. The Bill would also provide multiple directorship limits to reflect the new radio/newspaper cross media rule.

In relation to (b), above, the existing "monopoly radio" limit in section 92FAB would be replaced by a prohibition on a person holding prescribed interests in a commercial television licence and a commercial radio licence with overlapping service areas (although allowance would be made for up to 30% service area population overlap between relevant licences). The Bill would also provide multiple directorship limits to reflect the modified television/radio cross media rule.

Relevant prescribed interests or directorships held immediately before 29 October 1987 in contravention of the new radio and cross media ownership and control limits in the Bill will be exempted from the new limits. This "grandfathering" exemption is subject to the requirement that the prescribed interests or directorships did not contravene a corresponding existing limit immediately before 29 October 1987. The exemption is also subject to the requirement that there is no increase in the relevant interests after that date.

Other provisions in the Bill would:

- (a) provide for the application of relevant ownership and control limits between 29 October 1987 and the commencement of the Bill;

- (b) provide consequential supporting provisions for administration of the new ownership and control limits, eg:
 - (i) requirements for notifications by the Minister in the Gazette and for the establishment by the Australian Broadcasting Tribunal (the Tribunal) of a Radio Licence/Associated Newspaper Register; and
 - (ii) amendments of the miscellaneous enforcement provisions of the Principal Act; and
- (c) provide for the re-arrangement of the ownership and control provisions of the Principal Act for clarity and ease of reference. In particular, a new Part IIIA of the Principal Act, entitled "Ownership and Control", will contain:
 - (i) a new Division 1, "Preliminary", which will consolidate interpretative and supporting provisions and minimise duplication;
 - (ii) a new Division 3A, "Cross media rules", to contain the existing and new cross media limits; and
 - (iii) a new Division 7, "Grandfathering provisions", to consolidate grandfathering provisions for the new radio and cross media limits with grandfathering provisions in the Broadcasting (Ownership and Control) Act 1987 and the Broadcasting Amendment Act 1987.

Although policy neutral in their application, the structural drafting changes indicated above have greatly increased the bulk and apparent technical complexity of the Bill. For ease of reference, the following is a list of the key provisions in the Bill which give effect to the new radio and cross media rules:

(a) 16 radio licences limit

- (i) prescribed interests - subsection 90C(1): sub-clause 6(1) of the Bill;
- (ii) directorships - subsection 90F(1): sub-clause 7(1) of the Bill;

(b) Repeal of four metropolitan radio licences limit

Subclauses 6(1) and 7(1) of the Bill repeal all of the existing radio prescribed interest and directorship limits.

(c) Revised limit for radio licences in a State

- (i) prescribed interests - subsection 90C(2A): subclause 6(2)(a) of the Bill;
- (ii) directorships - subsection 90F (1AB): subclause 7(2) of the Bill;
- (iii) Gazette notices and determinations of maximum number of radio licences in each State - subsections 89U(1)-(4): clause 4 of the Bill.

(d) One radio licence in a service area limit

- (i) prescribed interests - subsection 90C(2): subclause 6(2)(a) of the Bill;
- (ii) directorships - subsection 90F(1AA): subclause 7(2) of the Bill;
- (iii) Gazettal Notices and determination of pairs of radio licences having substantial markets in common (30% population overlap) - subsections 89T(1)-(4): clause 4 of the Bill.

(e) Revised television/radio cross media limit

- (i) prescribed interests - subsection 92JB(1): clause 8 of the Bill;
- (ii) directorships - subsection 92JD(1): clause 8 of the Bill;
- (iii) Gazettal Notices and determinations of pairs of television/radio licences having a substantial market in common (30% population overlap) - subsections 89T(1)-(4): clause 4 of the Bill;
- (iv) prescribed interest level raised from 5% to 15% - subsection 92JB(4): clause 9 of the Bill.

(f) Radio/newspaper cross media limit

- (i) prescribed interests - subsection 92JB(3): clause 8 of the Bill;
- (ii) directorships - subsection 92JD(3): clause 8 of the Bill;
- (iii) Associated Newspaper Register - section 89S subsections (1)-(2): clause 4 of the Bill.

(g) New grandfathering rules

- (i) television/radio prescribed interests - section 92ZJ: clause 12 of the Bill;
- (ii) television/radio directorships - section 92ZK: clause 12 of the Bill;
- (iii) radio/newspaper prescribed interests - section 92ZL: clause 12 of the Bill;
- (iv) radio/newspaper directorships - section 92ZM: clause 12 of the Bill.

Financial Impact Statement

The new measures will place some additional administrative burden on the Department of Transport and Communications and on the Tribunal. These will mainly be in the short term. They will be absorbed within current resources, although some reordering of priorities may be necessary.

NOTES ON CLAUSES

Clause 1 - Short Title

Citation.

Clause 2 - Commencement

Clauses 1, 2, 3, 4, 5, 8, and 12, subclause 13(1) and clauses 14, 15, and 16 of the Bill will come into operation on Royal Assent. Subclauses 6(1) and 7(1) and clauses 9 and 10 will be deemed to operate from 29 October 1987 (see explanatory statements). The remaining provisions in the Bill will come into operation on a date or dates to be fixed by Proclamation.

Clause 3

Clause 3 repeals the heading of Division 1 of Part 111B of the Principal Act, which is rendered superfluous by clause 4.

Clause 4

Part IIIBA - Ownership and Control

Clause 4 creates a new Part IIIBA to the Principal Act, to contain the ownership and control provisions, and consolidates in a new Division dealing with preliminary matters those existing ownership and control provisions which are:

- . concerned with interpretation; or
- . supporting provisions and notices.

Interpretation

New section 89E contains definitions of expressions which are currently defined in sections 90 (radio) and 91 (television), as well as definitions of expressions used in new provisions inserted by the Bill.

Prescribed Interests

New section 89F consolidates definitions of "prescribed interest" currently contained in sections 90 (radio) and 91 (television) of the Principal Act.

Shareholding interests, voting interests and loan interests

New section 89G consolidates definitions of "shareholding interests", "voting interests" and "loan interests" currently contained in sections 90 (radio) and 91 (television) of the Principal Act.

Meaning of control of commercial licence

New section 89H consolidates definitions of control of a licence currently contained in sections 90AAA (radio) and 91AAA (television) of the Principal Act.

Meaning of control of a newspaper

New section 89J - formal. Relocation of section 91AAB of the Principal Act.

Meaning of control of a company

New section 89K consolidates definitions of control of a company currently contained in sections 90AAB (radio) and 91AAC (television) of the Principal Act.

Companies limited by guarantee

New section 89L consolidates the provisions of sections 90A (radio) and 91AA (television) of the Principal Act dealing with companies limited by guarantee.

Shares held by trustees of superannuation funds

New section 89M consolidates the provisions of section 90AA (radio) and 91AB (television) of the Principal Act dealing with shares held by the trustees of superannuation funds.

Tracing of shareholding interests through a series of companies

New section 89N consolidates the provisions of sections 90B (radio) and 91A (television) of the Principal Act dealing with the tracing through intermediary companies of shareholding interests in a company holding a commercial licence.

Indirect loan interests in licensee companies

New section 89P - formal. Relocation of section 91B of the Principal Act.

Registered lenders

New section 89Q - formal. Relocation of section 91C of the Principal Act.

Approved investments

New section 89R - formal. Relocation of section 91D of the Principal Act. The wording of paragraph 91D(4)(a) has been simplified in the new equivalent paragraph by the use of the expression "general meeting votes", which is defined in the new subsection 89E(11).

Newspapers associated with commercial licence service areas

New section 89S consolidates the existing television/associated newspaper register provisions in section 91AAE of the Principal Act with provisions for a register of newspapers associated with particular commercial radio licences for the purposes of the new radio/newspaper cross media limit.

New subsections 89S(3) and (4) provide that an entry in the Associated Newspaper Register will not take effect for six months with respect to interests or directorships held before the day the entry is made. This will apply in circumstances where the making of an entry would otherwise result in an immediate offence by virtue of contravening subsections 92JB(2), 92JB(3), 92JD(2) or 92JD(3). The effect of the subsections is to create a six month period of grace before pre-existing interests or directorships held by a person contravene the cross media limits in subsections 92JB(2) or (3) or the corresponding directorship limits in subsections 92JD(2) or (3) by virtue of the Tribunal making an entry pursuant to subsection 89S(2). In other circumstances, the entry will take effect from the date it is made.

New subsection 89S(8) is a technical provision which is intended to ensure that references to "interests" in subsection (4) mean the holding of any interest of a type which could amount to a "prescribed interest" for the purposes of proposed section 89F of the Principal Act. In particular, it ensures that for the purposes of subsection 89S(4) the term "interests" extends to operational control of a licence in new paragraph 89H(1)(c) of the Principal Act.

Licences having a substantial market in common

New section 89T provides that a commercial radio or television licence has a substantial market in common with another commercial licence if the Minister has made a declaration to that effect and notified it in the Gazette.

The circumstances in which a pair of licences can have a substantial market in common are set out in subsection 89T(3). The service areas of the licences must overlap and more than 30% of the population of at least one of the service areas must be within the overlap area. Subsection (4) obliges the Minister to declare all pairs of licences with a substantial market in common as soon as practicable after commencement of the section and to have regard to the latest available census figures.

Subsections 89T(5) and (6) provide that a declaration that a pair of licences has a substantial market in common will not take effect for 6 months with respect to interests or directorships held before the day on which the notice is published. This will apply in circumstances where publication would otherwise result

in an immediate offence by virtue of contravening subsections 90C(2), 90F(1AA), 92JB(1) or 92JD(1). The effect of the subsections is to create a six month period of grace before pre-existing interests or directorships held by a person contravene the one commercial radio licence within a service area rule. (Subsections 90C(2) and 90F(1AA)) or the television/radio cross media rule (subsections 92JB(1) and 92JD(1)) by virtue of the Minister making a declaration pursuant to subsection 89T(2). In other circumstances, the declaration will have effect from the date of publication of the notice.

Subsection 89T(7) excludes from the period of grace provision in subsection (6) directorships which, before the commencement of the new commercial radio licence directorship limits in clause 7(2) of the Bill, were held in contravention of the one commercial radio licence to a metropolitan area rule in section 92FAD(1AA).

New subsection 89T(8) is a technical provision which is identical in its manner of application to subsection 89S(8) (see explanatory statement).

New subsection 89T(9) provides that, for the purposes of this section, "commercial licence" includes a proposed licence for which applications have been invited pursuant to section 82. The purpose of including a proposed licence in the Gazette notice is to enable licence applicants and the Tribunal to determine whether the grant of a licence to a particular company would result in a contravention of subsections 90C(2), 90F(1AA), 92JB(1) or 92JD(1).

Maximum number of commercial licences in a State that a person may hold

For the purposes of the State commercial radio prescribed interest limit in subsection 90C(2A) (see explanatory note), new section 89U provides a mechanism for ascertaining the permitted maximum number of commercial radio licences in a State in which a person may hold a prescribed interest. Subsection 89U(2) provides that the maximum number for a particular State is the number calculated in accordance with subsection 89U(3) and published by the Minister in the Gazette.

The permitted maximum number for a State is calculated to represent not more than half of the total number of licences in that State, although, subject to subsection (8), two or more licences sharing the same service area (eg. metropolitan area licenses) are counted as only a single licence.

Subsection (5) obliges the Minister to publish a notice declaring the maximum number of licences permitted in each State as soon as practicable after commencement of the section.

Subsections (6) and (7) provide that a declaration of the maximum permitted number of commercial radio licences for a State will not take effect for six months with respect to interests or directorships held before the day on which a notice is published. This will apply in circumstances where the publication would otherwise result in an immediate offence by virtue of contravening subsection 90C(2A). The effect of the subsection is to create a six month period of grace before pre-existing interests or directorships held by a person contravene the radio prescribed interest limit for a State, in subsection 90C(2A), by virtue of the Minister making a declaration pursuant to subsection 89U(2). In other circumstances, the declaration will have effect from the date of publication of the notice.

Subsection 89U(8) provides that two licences shall be taken to have the same service area if the service area of one is wholly within the service area of the other and the Minister is satisfied that the two service areas are substantially co-extensive.

New subsection 89U(9) is a technical provision which is identical in its manner of operation to subsection 89S(8) (see explanatory statement).

Minister to keep notices current

New section 89V requires the Minister to update as soon as practicable any notices published under:

- . section 89T(2) - pairs of licences having a substantial market in common;
- . section 89U(2) - State commercial radio licence ownership and control limits; and
- . section 90(1B) - allocation of radio licences to a particular State where the service areas of those licences cross State boundaries

if any of the circumstances outlined at paragraphs 89V(a)-(e) would make it necessary to make, vary or revoke a notice.

The relevant circumstances are the grant or revocation of a commercial licence, the publication of a notice under section 82 of the Principal Act inviting applications for a new commercial licence, a change in the service area of a commercial licence or the publication of new official census figures.

Tribunal to act impartially etc.

New section 89W is a formal amendment applying the provisions of section 80A of the Principal Act to the new Part IIIA of the Principal Act dealing with ownership and control matters. Section 80A formerly applied to the ownership and control provisions by virtue of being in the same Part.

Tribunal may seek information

New section 89X consolidates the provisions of sections 90P (radio), 92JA (television) and 92V (remote licences) of the Principal Act. These provisions empower the Tribunal to require a person to provide information necessary to enable it to exercise any of its powers or perform any of its functions or duties under the ownership and control provisions.

Clause 5 - Interpretation

Clause 5 amends section 90 of the Principal Act to provide a mechanism for assigning to a particular State a commercial radio licence whose service area overlaps State boundaries.

Paragraph 90(1A)(b) of the Principal Act currently provides that a commercial radio licence whose service area overlaps State borders shall be taken to be in a State notified by the Minister by notice in the Gazette. Clause 5 repeals the paragraph and inserts a new paragraph 90(1A)(b) which provides that a commercial radio licence is located in the State containing the largest part of the population of its service area. New subsections 90(1B) and 90(1C) require the Minister, having regard to the most recent available census figures, to publish in the Gazette breakdowns by State of the populations of radio licence service areas which overlap State borders.

New subsections 90(1D) and (1E) provide that notification by the Minister of the State to which a commercial radio licence belongs will not take effect for six months with respect to interests or directorships held before the day on which the notice is published. This will apply in circumstances where the publication would otherwise result in an immediate offence by virtue of contravening subsections 90C(2A) or 90F(1AB). The effect of the subsections is to create a six month period of grace before pre-existing interests or directorships held by a person contravene the State radio prescribed interests limit in section 90C(2A) or the corresponding directorship limit in 90F(1AB) by virtue of the Minister publishing a Gazette notice pursuant to subsection 90(1B). In other circumstances, the determination will have effect from the date of publication of the notice.

Subsection 90(1F) is a technical provision which is identical in its manner of application to subsection 89S(8) (see explanatory statement).

Clause 6 - Limitation of interests in commercial radio licences

Clause 6 amends section 90C of the Principal Act to repeal the existing four metropolitan commercial radio licences prescribed interest limit and to amend the existing four licences in a State and eight licences in Australia prescribed interest limits for commercial radio licences. Subclauses 6(1) and 6(2) have

different commencement dates, by virtue of clause 2 of the Bill. Subclause 6(1) would be deemed to apply from 29 October 1987, the day after the Minister's announcement of the new prescribed interest limits. Subclause 6(2) would operate from a date fixed by Proclamation, after commencement of the Bill. The result is that subclause 6(2) contains the commercial radio prescribed interest limits that would apply after commencement and subclause 6(1) contains the prescribed interest limits that would be deemed to have applied in the transitional period between the date of the Minister's announcement and Proclamation of subclause 6(2).

With effect from 29 October 1987, subclause 6(1) would amend the Principal Act to repeal the existing radio prescribed interest limits in subsections 90C(1) and (2) and insert new subsections 90C(1) and (2). These subsections introduce the new 16 licence national limit and re-enact the one licence to a metropolitan area limit. These would be deemed to have been the only commercial radio prescribed interest limits which applied during the transitional period until subclause 6(2) is proclaimed.

Subclause 6(2) would amend the Principal Act by repealing the one licence to a metropolitan area rule in subsection 90C(2) and inserting the following subsections.

New subsection 90C(2) provides that a person may not hold a prescribed interest in two radio licences which have a "substantial market in common", as defined in section 89T (see explanatory statement). This is, in effect, a one radio licence to a service area rule with allowance for up to 30% service area population overlap between relevant licences.

New subsection 90C(2A) provides that a person may not hold a prescribed interest in more than the maximum number of radio licences permitted in a State. This will be the number which is notified by the Minister in the Gazette in accordance with subsection 89U(2) (see explanatory statement).

New subsection 90C(6) confirms that subsections (5B)-(5E) apply in relation to relevant transactions which occurred in the transition period before commencement.

New subsections 90C(7) and (8) modify the application of the period of grace provisions in subsections 90C(5B), (5C), (5D) and (5E). These modifications will apply to certain contraventions of the new radio prescribed interest limits which arise through the acquisition of prescribed interests during the transitional period between 29 October 1987 and commencement of subclause 6(2). The effect of the new subsections is that where a person has acquired excess prescribed interests as a consequence of a relevant transaction during the above transitional period, the transaction, and any offences which were committed through a breach of the procedural requirements for Tribunal approval of share transactions under sections 90J or 90JA of the Principal Act, will be deemed to have occurred on the date of

commencement. For example, a person who is a party to a relevant transaction which occurred in the transitional period (and who has complied with the transaction approval procedures in sections 90J and 90JA) would ordinarily have a minimum six months period of grace from the date of the transaction, or longer with Tribunal approval, under section 90C(5B) to remedy the contravention. New paragraph 90C(6)(e) would instead provide the person with a minimum six months period of grace running from commencement.

New subsection 90C(9) - formal. Relocation of existing subsection 90C(2).

New subsection 90C(10) contains a definition of the term "relevant transitional period" as used in section 90C. It is the period between 29 October 1987 and commencement of subclause 6(2).

Clause 7 - Directors

Clause 7 amends section 90F of the Principal Act. That section prohibits a person from being a director of two or more companies which are, between them, in a position to control commercial radio licences which would, if prescribed interests were held in these licences by a single person, contravene the corresponding prescribed interest limits in section 90C.

The amendments in clause 7 reflect the changes to the corresponding radio prescribed interest limits in section 90C made by clause 6.

Subclauses 7(1) and 7(2) have different commencement dates by virtue of clause 2 of the Bill. Their effect is the same as subclauses 6(1) and 6(2) (see the explanatory statement on clause 6); namely, that only the 16 licence national limit and the one licence to a metropolitan area limit will apply to directorships held between 29 October 1987 and commencement of subclause 7(2), and that subclause 7(2) will then delete the metropolitan area rule and apply the new limits in subclause 7(2) to multiple directorships.

Clause 8 - Minister may notify population figures

Clause 8 amends the Principal Act by repealing subsection 91AAD(8), which would be superseded by the relevant definition in section 89E(1), and inserting new subsections 91AAD(8), (9) and (10).

Section 91AAD of the Principal Act currently provides the mechanism for determining compliance with the 60% population reach rule for persons holding prescribed interests in commercial television licences. It requires the Minister to notify in the Gazette figures for the population of Australia, the population of television licence service areas and the percentage of the Australian population they represent.

New subsections 91AAD(8) and (9) provide that a Gazette notice under section 91AAD(1) will not take effect for six months with respect to interests or directorships held before the day on which the notice is published. This will apply in circumstances where the publication would otherwise result in an immediate offence by virtue of contravening paragraph 92(1)(a) or subsection 92C(1). The effect of the subsections is to create a six month period of grace before pre-existing interests or directorships held by a person contravene the 60% population reach rule in section 92, by virtue of the Minister publishing a Gazette notice pursuant to subsection 91AAD(1). In other circumstances, the determination will have effect from the date of publication of the notice.

New subsection 91AAD(10) is a technical provision which is identical in its manner of operation to subsection 89S(8) (see explanatory statement).

Clause 9 - Limitations on cross media interests that may be held by a person having a prescribed interest in a commercial television licence

Clause 9 would amend section 92FAB of the Principal Act, which contains the existing cross media prescribed interest limits. The amendment will operate from 29 October 1987 until commencement of section 92JB, which will supersede section 92FAB. Section 92FAB currently prohibits a person from holding of a prescribed interest in a commercial television licence if that person also holds:

- . a prescribed interest in a newspaper associated with the service area of the television licence (the television/associated newspaper rule); or
- . a prescribed interest in a radio licence which has an area of monopoly within the service area of the television licence (the television/monopoly radio rule).

As discussed in the Outline, the Bill retains the television/newspaper rule, but replaces the television/radio rule with a prohibition on a person holding prescribed interests in a commercial television licence and a commercial radio licence with overlapping service areas (although allowance would be made for an overlap between relevant licences where 30% or less of the population of either service area is within the overlap area). By virtue of subclause 13(2) of the Bill, section 92FAB would be repealed on the date, to be set by Proclamation, when new section 92JB comes into operation. The effect of clause 9 is to amend the application of section 92FAB to transactions which take place during the transitional period from 29 October 1987 until the date of repeal of the section. New subsection 92FAB(1A) would provide that the existing television/monopoly radio rule in subparagraph 92FAB(1)(b)(i) did not apply on or after 29 October 1987. The effect of the subsection is that only the television/newspaper cross media rule will be deemed to have been in operation during the transitional period until the new cross media limits commence.

Clause 10 - Limitations on cross media directorships

Clause 10 amends section 92FAD of the Principal Act. That section prohibits the director of a company which controls a commercial television licence from holding directorships in any other company which is in a position to control a monopoly radio licence or an associated newspaper, or being the publisher of an associated newspaper. These directorship limits support the cross media prescribed interest limits in section 92FAB of the Principal Act.

The amendments in clause 10 reflect the amendments to section section 92FAB contained in Clause 9. They will affect the operation of 92FAD during the transitional period between 29 October 1987 and commencement of new section 92JD, which contains the new cross media directorship limits.

92FAD(1A) would provide that the old television/monopoly radio directorship limit in subparagraph 92FAD(1)(b)(i) not apply after 29 October 1987. The effect of the subsection is that only the television/associated newspaper cross media directorship limit would be deemed to have been in operation during the transitional period until the new cross media limits commence.

Clause 11Cross media Rules

Clause 11 amends the Principal Act by inserting a new Division in Part IIIA concerned with cross media rules. By virtue of subclauses 2(3) and 13(2) of the Bill, the old Subdivision of the Principal Act dealing with cross media limitations will be repealed when the new Division commences. The new provisions are as follows.

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

New section 92JB would introduce new cross media prescribed interest limits and consolidate them with the existing television/associated newspaper cross media limit currently contained in subsection 92FAB(1) of the Principal Act. Subsection 92JB(1) would introduce prohibitions on a person holding prescribed interests in:

- . a commercial television licence and a commercial radio licence which have a substantial market in common; or
- . a commercial radio licence and a newspaper that is associated with the service area of the licence.

For the purposes of the subsection, licences would be taken to have a substantial market in common if the Minister has published a Gazette notice to that effect, pursuant to section 89K. A newspaper would be taken to be associated with the service area of a radio licence if it appears in the Associated Newspaper Register maintained by the Tribunal pursuant to section 89S.

For the purposes of the new television/radio cross media prescribed interest limits in subsection 92JB(1), subsection 92JB(4) amends the Principal Act to modify the definition of the holding of a "prescribed interest" in a commercial television licence. That definition is contained in subsection 89F(2) (clause 4 of the Bill). Under subsection 89F(2), a prescribed interest in a commercial television licence is attributed to a person who holds more than 5% of (direct and/or indirect) shareholding interests, voting rights or financial (shareholding plus loan) interests in the licensee company. For the purposes of the new television/radio cross media limit, however, a prescribed interests in a commercial television licence will be attributed where a person holds more than 15% of shareholding interests, voting rights or financial interests.

Subsections 92JB(5)-(14) contain supporting enforcement provisions dealing with contraventions and related periods of grace. These provisions are the equivalent of the existing cross media provisions in subsections 92FAB(3)-(10) of the Principal Act, with the exception of new subsections (7) and (10). These two new subsections confirm that subsections 90C(5B), (5C), (5D) and (5E) (radio) and the corresponding provisions in subsections 92(4B), (4C), (4D) and (4E) (television) apply in relation to relevant transactions which occurred in the transition period before commencement of section 92JB. They are subject to the detailed provisions dealing with the transitional period between 29 October 1987 and commencement.

Subsection 92JB(15) provides that if a person acquires a combination of radio, television or newspaper prescribed interests as a result of a single transaction then, for the purposes of the provisions in 92JB dealing with contraventions, the person shall be taken to have acquired the newspaper interest first, the radio interest second and the television interest third. This technical provision is necessary to indicate the order in which multiple contraventions through a single transaction will be deemed to have occurred and so that the provisions dealing with contraventions arising through radio (subsections 92JB(6)-(8)) and television (92JB(9)-(11)) transactions can be applied. These latter provisions, in turn, allow for contraventions of the cross media limits through radio or television transactions to be treated in the same way as contraventions of the existing radio (section 90C) and television (section 92) prescribed interest limits are treated under the Principal Act.

Subsection 92JB(16) provides that the television/associated newspaper cross media rule would be effective from the date that section 92FAB commenced operation by virtue of the Broadcasting (Ownership and Control) Act 1987, ie. 1 July 1987. However, the new cross media rules for television/radio and radio/newspaper would apply only from the date of commencement of section 92JB.

Person having a prescribed interest in commercial licence to notify Tribunal of prescribed interests in associated newspaper

New subsection 92JC(1) provides that a person contravening the new cross media limits through the acquisition of a prescribed interest in a newspaper must give the Tribunal notice of that acquisition. The subsection is the equivalent of existing subsection 92FAC(1) of the Principal Act, which applies only to the existing television/associated newspaper rule. New subsection 92JC(1) consolidates the existing requirement in 92FAC(1) with a corresponding notification requirement for the purposes of the new radio/associated newspaper rule.

Subsections 90JC(2), and (4) are the equivalent of subsection 90FAC(2) of the Principal Act. They provide the following deadlines for notifications under subsection 90JC(1):

- (a) where the holder of a prescribed interest in a television licence acquires a prescribed interest in a newspaper, and the transaction occurred between 28 November 1986 and 30 June 1987 - not more than 28 days after 30 June 1987;
- (b) where the holder of a prescribed interest in a television licence acquires a prescribed interest in a newspaper, and the transaction occurred after 30 June 1987 - not more than 28 days after the transaction occurred;
- (c) where the holder of a prescribed interest in a radio licence acquires a prescribed interest in a newspaper, and the transaction occurs between 29 October 1987 and the date of commencement of this section - not more than 28 days after the date of commencement of the section; and
- (d) where the holder of a prescribed interest in a radio licence acquires a prescribed interest in a newspaper, and the transaction occurs after the date of commencement of this section - not more than 28 days after the transaction occurred.

Subsection 92JC(3) is the same as the existing offence provision in section 92FAC(3) of the Principal Act.

Limitations on cross media directorships

New subsection 92JD(1) prohibits a person who is a director of a company that is in a position to control a commercial television licence from also being the director of a company that is in a position to control a commercial radio licence which has a substantial market in common (as defined in section 89T) with the television licence.

New subsection 92JD(2) is the equivalent of existing subparagraphs 92FAD(1)(b)(ii) and (iii) in the Principal Act. It 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 director of a company that is in a position to control a newspaper that is associated with the service area of the television licence, as defined in section 89S; or
- . a publisher of such a newspaper.

New subsection 92JD(3) prohibits a person who is a director of a company that is in a position to control a commercial radio licence from also being:

- . a director of a company that is in a position to control a newspaper that is associated with the service area of the radio licence, as defined in section 89S; or
- . the publisher of such a newspaper.

New subsection 92JD(4) is the same as the existing offence provision in subsection 92FAD(2) in the Principal Act.

Clause 12 - Grandfathering

Clause 12 amends the Principal Act by inserting a new Division 7 into Part IIIA dealing with the "grandfathering" (ie. exemption) of those prescribed interests or directorships which were held immediately before a specified date and which would otherwise have contravened particular radio, television or cross media ownership and control limits if they had been in force at that time. The Division introduces grandfathering provisions with respect to the new radio ownership and cross media rules. It also consolidates previous grandfathering rules contained in the transitional provisions of the Broadcasting Amendment Act 1987 (the Television Equalisation Act), the Broadcasting (Ownership and Control) Act 1987 (the First Ownership and Control Act) and the Broadcasting (Ownership and Control) Act (No 2) 1987 (the Second Ownership and Control Act).

This Bill relies on the prior enactment of the Second Ownership and Control Act, which was introduced in the Senate on 28 October 1987 as the Broadcasting (Ownership and Control) Bill

(No 2) 1987. That Bill clarified and refined the operation of relevant grandfathering provisions in the first Ownership and Control Act and in the Television Equalisation Act.

The grandfathering provisions in this Bill for the new radio and cross media rules are consistent with the related provisions in the first Ownership and Control Act, as amended by the Second Ownership and Control Act. Further references in this memorandum to the First Ownership and Control Act should be read as references to that Act as amended by the Second Ownership and Control Act.

Subdivision A - Preliminary

Interpretation

New section 92ZA deals with the application of expressions used in the new Division.

Subsections 92ZA(1)-(2) define the application of the concept of "shareholding interest percentage". This concept applies to those grandfathering provisions in the new Division which provide a mechanism for a person to regain protection where a new interest is indirectly acquired after the relevant date. (See, for example, explanatory statement in relation to new subsection 92ZB(5)).

Subsection 92ZA(4) clarifies the requirements in the new Division that an interest in a company holding a licence or publishing a newspaper was held before the relevant prescribed date. (See, for example, explanatory statement in relation to new subsection 92ZB(3).) The new subsection makes it clear that it is not necessary that the company, at that time, held that licence or published that newspaper. This clarification is subject to the overall requirement that the relevant interests would have otherwise contravened the particular prescribed interest limits. It is intended to confirm that grandfathered protection for a person having interests in a company which holds an "old system" licence is not lost by reason of the conversion of that licence to a "new system" licence held under the Principal Act. This is consistent with corresponding grandfathering provisions in the Bill which protect the holder of such an "old system" licence. (See for example, explanatory statement on subsection 92ZB(7).)

Subsection 92ZA(5) has the effect that, for the purposes of the grandfathering provisions, where a director of a company is immediately re-appointed to another term the second directorship shall be taken to be a continuation of the first and not to be a new appointment. The subsection is intended to ensure that the grandfathering exemption for directors continues to apply where, after the relevant date, a director is re-appointed on a continuous basis.

Subdivision B - Radio LimitsNew radio interest limits - introduced by Broadcasting (Ownership and Control) Act (No.3) 1987

The effect of new paragraphs 92ZB(1)(a) and (b) is to provide an exemption from certain contraventions of the new one radio licence to a service area rule in paragraph 90C(2)(a), as inserted by subclause 6(2) of the Bill. This exemption will apply only where prescribed interests were held in two commercial radio licences immediately before 29 October 1987, where those prescribed interests would have contravened the new limit if it had been in force before that date, and where those prescribed interests did not also at that time contravene the existing one radio licence to a metropolitan service area rule in paragraph 90C(1)(a) of the Principal Act. There is no allowance for a person to gain protection by taking action to remedy a contravention of the corresponding existing radio limit in paragraph 90C(1)(a). This is because the taking of such action would require the person to hold a prescribed interest in only one metropolitan licence in the same State. The person would then not be contravening the new one radio licence in a service area rule.

New paragraph 92ZB(1)(c) protects an additional interest acquired by a grandfathered person on or after 29 October 1987 only, where the new interest results from the allotment or issue of a class of shares or debentures in a company, in accordance with rights enjoyed before 29 October 1987 by that person in common with all holders of shares or debentures of that class.

Subsection 92ZB(2) provides protection for contraventions of the new maximum State limit in subsection 90C(2A), in the same manner as grandfathered protection is provided by subsection 92ZB(1). However, in this case the condition that the prescribed interests held by the person immediately before 29 October 1987 did not also, at that time, contravene the existing State limit in paragraph 90C(1)(c) is subject to a qualification which would allow a person to gain protection when action is taken to remedy that pre-existing contravention. The taking of such remedial action could be of benefit only in circumstances where the new State limit is more restrictive than the existing limit (ie. where the new limit in a particular State is less than four licences).

Subsection 92ZB(3) provides that protection is lost while a person holds additional contravening interests acquired on or after 29 October 1987. This does not apply to bonus share or debenture issues protected by paragraphs 92ZB(1)(c) or (2)(c). Protection lost by virtue of subsection 92ZB(3) can be regained if the additional interests are then divested. However, the

effect of subsection 92ZB(4) is that, where protected interests are reduced on or after 29 October 1987, then the re-acquisition of those interests will cause a loss of protection.

Subsection 92ZB(5) covers the circumstances where a person loses grandfathered protection through the operation of 92ZB(3) as a consequence of the direct acquisition on or after 29 October 1987 of an interest in the licensee company by another company (new paragraphs 92ZB(5)(a) and (b)). The effect of the new subsection is to allow a person who has indirectly acquired a new contravening interest in the above circumstances to regain protection by taking action to reduce the person's percentage shareholding interest in the licensee company to the level that was held immediately before 29 October 1987 (paragraph 92ZB(5)(e)(i)).

The provisions in subparagraph 92ZB(5)(e)(i) are subject to the requirement in subparagraph (e)(ii). The latter subparagraph provides that, if at any time on or after 29 October 1987 a person's percentage shareholding had been reduced to a level below that held immediately before that date, then the percentage shareholding interest sufficient to regain grandfathered protection will be the lowest such reduction in the person's percentage shareholding interest.

The provisions in new paragraph 92ZB(5)(e) are also subject to the further requirement in paragraph 92ZB(5)(f) that a person seeking to regain protection by reduction to the required level of percentage shareholding interest is also not in a position to exercise greater control of the licensee company than was the case immediately before 29 October 1987.

Subsection 92ZB(6) has the effect of providing protection under subsections 92ZB(1) or (2) to a person who held relevant prescribed interests immediately before 29 October 1987, but who would otherwise contravene the new radio limits in subsections 90C(2) or (2A) through a subsequent change in the service area of a commercial radio licence. Protection is provided by treating the change in the service area of the licence in these circumstances as if it had occurred immediately before 29 October 1987.

Subsection 92ZB(7) covers the circumstance where a person has protection under subsections 92ZB(1) or (2) by virtue of holding one or more "old system" commercial radio licences (ie. licences subject to the previous Broadcasting and Television Act 1942). Where, pursuant to sections 99 and 99A of the Broadcasting and Television Amendment Act 1985, the person is then granted a "new system licence" (ie. a licence subject to the Broadcasting Act 1942) in substitution for an "old system" licence, the person will retain grandfathered protection.

New radio directorship limits - introduced by Broadcasting (Ownership and Control) Act (No.3) 1987

New subsection 92ZC(1) protects directorships which were held immediately before 29 October 1987 where those directorships would have contravened the one radio licence to a service area rule in subsection 92F(1AA), as inserted by subclause 7(2) of the Bill, if it had been in force at that time. However, this protection will not apply where, immediately before 29 October 1987, the holding of those directorships contravened the existing one to a metropolitan area rule in paragraph 90F(1)(a) of the Principal Act.

New subsection 92ZC(2) protects directorships which were held immediately before 29 October 1987 where these directorships would have contravened the State directorship limit in new subsection 92F(1AB), if it had been in force at that time. This protection will not apply where, immediately before 29 October 1987, the holding of those directorships contravened the existing four licences State limit in paragraph 90F(1)(c). However, subparagraph 92ZC(2)(d)(ii) allows a person to gain protection at any time after 29 October 1987 by taking action to remedy a pre-existing contravention of the four licences State limit. If, for example, a person was a director of companies which were in a position to control five licences in a State immediately before 29 October 1987, and the new State limit was three licences, the person would be ineligible for protection because the directorships would have contravened the old four licences State limit. However, if the person's directorships were reduced so that they were held in relation to only four licences in the State, that person would then become eligible for grandfathering by virtue of 92ZC(2)(d)(ii).

New subsection 92ZC(3) provides an exemption in specified circumstances for a contravention of the directorship limits in subsection 92F(1AA) (one radio licence to a service area rule). The exemption applies where a person would otherwise contravene the directorship limit by reason of holding a directorship in a company which has protection under subsection 92ZB(1) of the Principal Act and also holding one or more directorships in any other company that is subsidiary of that grandfathered company. This new subsection would, for example, allow a grandfathered director holding multiple directorships within the same group of companies, which itself holds grandfathered commercial radio interests, to be replaced by another single person. The replacement director would then not contravene the one radio licence to a service area directorship rule.

New subsection 92ZC(4) has the effect of exempting a person from contravention of the directorship limits in subsection 92F(1AB) (maximum State limits for commercial radio) in the same fashion as subsection 90ZC(3).

New subsection 92ZC(5) has the effect of providing protection under subsections 92ZC(1) or (2) to a person who held relevant directorships immediately before 29 October 1987, but who would otherwise contravene the new radio limits in subsections 92F(1AA) or 92FC(1AB) through a subsequent change in the service area of a commercial radio licence.

Subdivision C - Television Limits

Section 92 MCS interest limit - introduced by Broadcasting (Ownership and Control) Act 1987

Section 92ZD - formal. Relocation of subsections 22(3), (4), (5), (5A), (5C), (6) and (7) of the First Ownership and Control Act.

Section 92C MCS directorship limit - introduced by Broadcasting (Ownership and Control) Act 1987

Section 92ZE - formal. Relocation of subsections 24(2) and (3) of the First Ownership and Control Act.

Subsection 92(1A) and (1B) interest limits - introduced by Broadcasting Amendment Act 1987

Section 92ZF - formal. Relocation of subsections 13(2), (3), (4) and (5) of the Television Equalisation Act. References in section 13 to "the commencement day" have been replaced by references to 4 August 1987, the date on which section 13 commenced.

Subdivision D - Cross media limits

Television/newspaper cross media interest limit - introduced by Broadcasting (Ownership and Control) Act 1987

New subsection 92ZG(1) - formal. Relocation of subsection 27(2) of the First Ownership and Control Act 1987, insofar as that section dealt with television/newspaper cross media interests. References to section 92FAB in subsection 22(2) have been amended to refer to section 92JB.

New subsections 92ZG (2), (3), (4), (5), (6), (7), (8) and (9) - formal. Relocation of subsections 27 (3), (4), (4A), (4C), (5), (6), (6A) and (7) of the First Ownership and Control Act respectively.

Television/newspaper cross media directorship limit - introduced by Broadcasting (Ownership and Control) Act 1987

New subsections 92ZH(1), (2), (3) and (4) - formal. Relocation of subsections 27(9), (10), (8A) and (10A) of the First Ownership and Control Act respectively.

Television/Radio cross media interest limit - introduced by Broadcasting (Ownership and Control) Act 1987 and modified by Broadcasting (Ownership and Control) Act (No.3) 1987

New subsection 92ZJ(1) defines those persons eligible for protection for contraventions of the new television/radio prescribed interest limits contained in subsection 92JB(1).

Paragraphs 92ZJ(1)(a) and 92ZJ(1)(b) have the effect that protection applies where relevant prescribed interests in a commercial television licence and a commercial radio licence were held by the person immediately before 29 October 1987 and where those prescribed interests would have contravened the new television/radio limit if it had been in force immediately before that date. However, this protection is subject to the condition that the holding by the person of those prescribed interests did not, at that time, also contravene the existing television/monopoly radio limit in paragraphs 92FAB(1)(a) and 92FAB(1)(b)(i) of the Principal Act.

Sub-paragraph 92ZJ(1)(b)(ii) allows a person who, immediately before 29 October 1987, held interests in a licensee company in contravention of the existing television/monopoly radio limit to gain protection under the new television/radio limit when subsequent action is taken to cause that pre-existing contravention to cease. This provision covers the situation where a person held television/monopoly radio prescribed interests which were protected under section 27(2) of the First Ownership and Control Act, but who, before 29 October 1987, lost that protection by acquiring a new relevant interest. Such a person would be ineligible for grandfathering under new section 92ZJ by virtue of contravening section 92FAB of the Principal Act immediately before 29 October 1987. However, paragraph 92ZJ(1)(b) would enable such a person to take remedial action (for example, the disposal of the new interest) which would have enabled the person to regain protection under the existing limit. In this case, the person would then be protected under the new television/radio limit.

New paragraph 92ZJ(1)(c) applies to the continued protection of television/radio cross media interests in respect of bonus share or debenture issues in the same manner as paragraph 92ZB(1)(b) applies in respect of radio prescribed interests (see explanatory statement).

New subsections 92ZJ(2) and (3) deal with the loss of protection through the acquisition of new interests and the effect of a reduction of grandfathered interests. These provisions are also identical in the manner of their operation to subsections 92ZB(3) and (4) respectively (see explanatory statements).

New subsection 92ZJ(4) covers the circumstance where a person, having protection by virtue of subsection 92ZJ(1), loses that protection through the operation of subsection 92ZJ(2) by indirectly acquiring a new interest on or after 29 October 1987

through the direct acquisition by another company of an interest in a licensee company. The subsection is identical in its manner of operation to new subsection 92ZB(5) (see explanatory statement).

New subsection 92ZJ(5) maintains grandfathered protection in the circumstance where a consolidated licence is granted in substitution for two or more commercial television licences. The new subsection is identical to subsection 22(5C) of the First Ownership and Control Act which is relocated in this Bill as subsection 92ZG(5).

New subsections 92ZJ(6) and (7) would provide an exemption from the requirement that no new "interest" is acquired after the prescribed date. This exemption covers the circumstances where a grandfathered holding company acquires a new loan interest in a subsidiary television licensee company on or after 29 October 1987. The exemption will therefore enable the continued provision of finance by the grandfathered company to its subsidiary in the normal course of business. The provisions are identical in the manner of their operation to proposed subsections 92ZG(6) and (7), which were originally contained in the first Ownership and Control Act (see explanatory statement).

New subsection 92ZJ(8) provides protection to a person who held relevant prescribed interests immediately before 29 October 1987 and who contravenes the new television/radio limit by virtue of a change in the service area of a licence. The new subsection is identical in the manner of its operation to proposed subsection 92ZB(6), which was originally contained in the First Ownership and Control Act (see explanatory statement).

New subsection 92ZJ(9) is intended to maintain protection in a situation where a "new system" licence is granted in place of an "old system" licence. The subsection is identical in its manner of operation to proposed subsection 92ZB(7) (see explanatory statement).

Television/Radio Cross media directorship limit - introduced by Broadcasting (Ownership and Control) Act 1987 and modified by Broadcasting (Ownership and Control) Act (No.3) 1987

New subsection 92ZK(1) protects directorships which were held immediately before 29 October 1987 where they would have contravened the television/radio cross media directorship limits in subsection 92JD(1), if they had been in force at that time. The new subsection is drafted in the same manner as subsection 22(9) of the First Ownership and Control Act.

New subsection 92ZK(2) has the effect of exempting a person from a contravention of subsection 92JB(1) which would otherwise arise by reason of a person holding a directorship in a company which has grandfathered protection under subsection 92JB(1) and also holding one or more directorships in any other company that is a subsidiary of that grandfathered company.

New subsection 92ZK(3) provides protection for a person who held relevant directorships immediately before 29 October 1987 and who contravenes the television/radio directorship rule by reason only of a change in the service area of a licence. The subsection is identical in the manner of its operation to subsection 92ZB(6) (see explanatory statement).

Radio/Newspaper cross media interest limit - introduced by Broadcasting (Ownership and Control) Act (No.3) 1987

The effect of new subsection 92ZL(1) is to exempt any contravention of the new radio/newspaper cross media prescribed interest limit in section 92JB where prescribed interests were held in a radio licence and a newspaper immediately before 29 October 1987 and where those prescribed interests would have contravened the new limit if it had been in force at that time. The subsection is identical in the manner of its operation to subsection 27(2) of the first Ownership and Control Act. That subsection provided protection under the television/newspaper prescribed interest limits in section 92FAB of the Principal Act. The latter subsection is re-located in this Bill as subsection 92ZG(1).

New subsections 92ZL(2) and (3) deal with loss of grandfathering by the acquisition of new interests on or after 29 October 1987 and with the effect of a reduction of interests after that date. The new subsections are identical in the manner of their operation to subsections 92ZB(3) and (4) respectively (see explanatory statement).

New subsection 92ZL(4) covers the circumstance where a person loses grandfathered protection through the operation of subsection 92ZL(2) on or after 29 October 1987 as a consequence of the direct acquisition by another company of an interest in the licensee company. The subsection is identical in its manner of operation to new subsection 92ZB(5) (see explanatory statement).

New subsection 92ZL(5) provides protection to a person who held relevant prescribed interests immediately before 29 October 1987 and who contravenes the new radio/newspaper limit by virtue of a change in the service area of a licence. The new subsection is identical in the manner of its operation to proposed subsection 92ZB(6), which was originally contained in the Ownership and Control Act (see explanatory statement).

New subsection 92ZL(6) is intended to maintain grandfathered protection in a situation where a "new system" licence is granted in place of an "old system" licence. The subsection is identical in its manner of operation to proposed subsection 92ZB(7) (see explanatory statement).

Radio/newspaper cross media directorship limit - introduced by
Broadcasting (Ownership and Control) Act (No.3) 1987

New subsection 92ZM(1) protects directorships which were held immediately before 29 October 1987, where those directorships would have contravened the new radio/newspaper cross media directorship limit in subsection 92JD(3) if it had been in force at that time. The subsection is identical in its manner of operation to subsection 27(9) of the First Ownership and Control Act 1987. The latter subsection is relocated in this Bill as new subsection 92ZH(1).

New subsection 92ZM(2) protects a person who is a publisher of a newspaper and a director of a company in a position to control a related commercial radio licence, where the person was the publisher of the newspaper and held the directorship immediately before 29 October 1987, and where the person would have contravened the radio/newspaper cross media directorship limit in subsection 92JD(3) if it had been in force at that time. The subsection is identical in its manner of operation to subsection 27(10) of the First Ownership and Control Act. The latter subsection is relocated in this Bill as new subsection 92ZH(2).

New subsection 92ZM(3) has the effect of exempting a person from a contravention of subsection 92JB(3) which would otherwise arise by reason of a person holding a directorship in a company which has grandfathered protection under subsection 92JB(3) and also holding one or more directorships in any other company that is a subsidiary of that grandfathered company. The subsection is identical in the manner of its operation to new subsection 92ZC(3) (see explanatory statement).

New subsection 92ZM(4) deals with the situation where a person who is otherwise entitled to protection contravenes the radio/newspaper directorship limit by virtue of a change in the service area of a commercial radio licence. The subsection is identical in its manner of operation to subsection 92ZB(6) (see explanatory statement).

Tribunal to make transitional notices

New section 92ZN requires the Tribunal, as soon as practicable after commencement, to specify by notice in the Gazette a list of those newspapers which, immediately before 29 October 1987, were associated with each commercial radio licence or commercial television licence. New subsections (1) and (2) are a relocation of the existing transitional provision in subsections 27(13) and (14) of the First Ownership and Control Act 1987 (which apply only to television/newspapers).

New subsections 92ZN(3) and (4), which apply to newspapers associated with commercial radio licences, are identical in their manner of operation to subsections (1) and (2). Consistent with proposed subsection 89R(2) (see explanatory statement) a newspaper will be taken to be associated with the service area of

a commercial radio licence immediately before 29 October 1987 where 50% or more of the circulation of the newspaper was, at that time, within the service area of the licence. The Gazette notice will enable identification of relevant newspapers for the purpose of the grandfathering provisions.

Clause 13 - Minor and consequential amendments of the Principal Act

Formal. By virtue of subclauses 2(1) and 2(3), subclause 9(1) would be deemed to have come into operation on 29 October 1987 and subclause 9(2) would come into operation on a date to be fixed by Proclamation. The result would be that the amendments in schedule 1 would take effect as from 29 October 1987 and those in schedule 2 at a later date.

Clause 14 - Consequential amendments of other Acts

Formal.

Clause 15 - References to provisions

Formal.

Clause 16 - Savings

Subclause 16(1) has the effect of preserving notices under subsections 90P(1) or 92JA(1) or section 92W of the Principal Act which were issued by the Tribunal for the purpose of requiring information relevant to its ownership and control functions. This is necessary because of the repeal of these provisions and their consolidation in the Bill in new section 89X.

Subclause 16(2) has the effect of preserving the existing Associated Newspaper Register, after the repeal of section 91AAE of the Principal Act, for the purposes of section 89S of the Principal Act as amended.

Subclause 16(3) has the effect of preserving registers, applications, registrations or notices kept, made, in force or lodged under the registered lender provisions of section 91C of the Principal Act. This is necessary because that section is repealed and relocated in the Bill as new section 89C.

Subclause 16(4) has the effect of preserving existing certificates under section 90D of the Principal Act. This is necessary because that section is repealed and relocated in this Bill as section 89R.

Subclause 16(5) - formal.



