

whether a person is in a position to exercise control of a licence, a newspaper or a related company.

On application, the ABA may give prior approval to temporary breaches for specified periods of all of the control and directorship limits outlined above except the limits on foreign control of commercial

television broadcasting licences.

The ABA may give a notice to persons in breach of any of the ownership and control provisions of the Act specifying the time in which the breach must be remedied. Under certain circumstances the ABA may grant one extension of time to comply with such a notice.

The ABA must keep a register containing much of the information it acquires (including all annual notifications of control and notifications of changes to control of licences) and certain kinds of decisions it makes in monitoring the ownership and control of commercial broadcasting.

NOTIFICATION OBLIGATIONS OF COMMERCIAL LICENSEES AND CONTROLLERS

This leaflet is designed to explain the reporting requirements that the Act places on commercial television and radio broadcasting licensees and persons in a position to control such licences.

These notification requirements replace the detailed notification and application processes which were part and parcel of the previous Act, the *Broadcasting Act 1942*. The rationalisation and simplification of the ownership and control reporting requirements is consistent with the Act's regulatory policy of minimising financial and administrative burdens on providers of broadcasting services.

WHO HAS TO NOTIFY THE ABA AND WHEN?

Annual notifications:

Within three months of the end of each financial year, each commercial television broadcasting licensee and each commercial radio broadcasting licensee must provide the ABA with the following information:

- details of persons who were in a position to exercise control of the licence;
- the name of each person who was a director of the licensee; and
- the name of each foreign person who was a director of the licensee at the end of that financial year.

Within three months of the end of each financial year, each person who is in a position to exercise control of a commercial television broadcasting licence or a commercial radio broadcasting licence must provide the ABA with details of any company interests that the person had at the end of the financial year in a newspaper that is associated with the licence area of the

licence. Note that the Act defines 'newspaper' to mean a newspaper that is in the English language, is published on at least four days each week and whose circulation is at least 50% by way of sale.

Notifications of changes in control:

Each commercial licensee must notify the ABA that a person has come to be, or ceased to be, in a position to exercise control of the licence within seven days of the licensee becoming aware of the event.

Similarly, a person who has come to be, or ceased to be, in a position to exercise control of a commercial licence must notify the ABA within seven days of the licensee becoming aware of the event.

All notifications should be in writing in a form approved by the ABA.

Note that ABA approval is not required for changes in control.

WHAT WILL THE ABA DO WITH THIS INFORMATION?

These reporting requirements have been designed to provide the ABA with the information it needs to monitor and enforce the ownership and control limits which the Act defines (see above).

The ABA maintains a register of all notifications provided by licensees and controllers.

The register is open for public inspection and a person is entitled to be given a copy of, or an extract from, any entry in the register. The ABA may charge fees for these services.

WHAT IS CONTROL?

The phrase 'in a position to exercise control' is peppered through the ownership and control provisions of the Act. Fundamental to the operation of these provisions is a wide ranging definition of control.

Control is intended to cover various formal and informal arrangements, including trusts, agreements, understandings and practices under which a person comes to be in a position to exercise control over a broadcasting service licence, a newspaper or a company. Schedule 1 to the Act contains a legislative essay entitled 'Control and Ownership of Company Interests' which provides a more detailed discussion of the definition of control.

Company interests are not restricted to shareholding and share voting interests but include dividend interests and winding-up interests.

WHAT ARE SOME EXAMPLES OF CONTROL?

This summary does not take the place of Schedule 1 to the Act to which you are referred for more information.

Normally, if a person has company interests exceeding 15%, the person is regarded as being in a position to exercise control of the company, unless there is proof to the contrary. This rule does not apply if another unrelated person (i.e., a person who is not an 'associate') has company interests in the same company exceeding 50%. A detailed definition of 'associate' can be found in section 6 of the Act.

Holding company interests is not the only way to be in a position to exercise control. Some other examples are where the person:

- is the licensee;
- can control the licensee;
- can control the selection or provision of a significant proportion of the programs broadcast by the licensee (program supply agreements are exempted);
- in the case of a non-licensee company

- can control a significant proportion of the operations of the company;
- can veto any action taken by the board of directors;
- can appoint, secure or veto the appointment of at least half of the board of directors;
- can exercise direction or restraint over any substantial issue affecting the management or affairs of the licensee or company.

Similar criteria apply to newspapers, their publishers and persons exercising

control of them. More than one person may be in a position to exercise control of a licence, a company or a newspaper. In general, an employee is not regarded as being in a position to exercise control. If you are in doubt about whether you are regarded as controlling a licence you are entitled to request an ABA opinion (see below).

WHAT ARE THE PENALTIES FOR FAILING TO LODGE A NOTIFICATION?

Failure to lodge a required notification

constitutes a breach of the Act.

If a breach relates to a commercial television broadcasting licence, the ABA can refer the matter to the Director of Public Prosecutions. If an offence is proven, a court can impose a fine of \$50 000. Similarly, for a commercial radio broadcasting licence a fine of \$5000 can be imposed for an offence.

REQUESTS FOR ABA OPINIONS CONCERNING CONTROL OF LICENCES

This leaflet is designed to explain the operation of provisions of the Act under which anyone may request a written opinion from the ABA about whether they are in a position to control a licence, a newspaper or a company.

ABA opinions provide persons affected or potentially affected by the ownership and control provisions of the Act a degree of regulatory certainty given the high penalties applying to breaches of those provisions.

WHAT ARE ABA OPINIONS?

People affected or potentially affected by the control provisions of the Act may apply to the ABA for a written opinion as to whether the control provisions apply to them in the circumstances they have outlined (see above for examples of control).

For example someone may wish to know whether a commercial opportunity can be acted on in a particular set of circumstances and may request a prior ABA opinion before proceeding further.

Opinions may be requested in advance of a proposed transaction, contract, agreement or other arrangement, or to confirm an applicant's understanding of an existing situation.

Once the ABA has given an opinion, the ABA and other Commonwealth agencies will be bound by the opinion. If the ABA gives an opinion that a person is not in a position to exercise control of a licence or newspaper then no action can be taken subsequently against the person under the Act on the basis that the person is in a position to exercise control of the licence or newspaper, providing that the circumstances advised to the ABA in the application remain substantially the same.

HOW DO I REQUEST AN ABA OPINION?

You should obtain an application form from one of the ABA's offices.

Your completed form may be lodged in person or by post or courier. You will be sent a confirmation of receipt of your application.

Your completed form must include a statement of your own opinion as to whether the person or company about whom the opinion is sought is, or would be, in a position to exercise control of the licence, newspaper or company in question.

The ABA may charge a fee for providing an opinion.

WHAT ARE THE ABA'S OBLIGATIONS?

The ABA may consider that additional information is required before an opinion can be given. If so, the ABA must make a written request for that information within 30 days of receiving your application.

The ABA is obliged to give you its opinion in writing as soon as practicable. In any case, it must provide its opinion within 45 days of receiving the application or the further information or else it is taken to have given an opinion at the end of that period that accords with your own opinion.

