

On 1 June, the ABA announced that Mr Kerry Stokes was not in position to exercise control of Sunraysia Television Limited. This had the effect of narrowing the focus of the Seven investigation to the terms set out below.

## Seven investigation update

Mr Kerry Stokes is not in breach of the 'one station to a market' limit under the *Broadcasting Services Act 1992* because he does not control Sunraysia Television Limited, the ABA announced on 1 June.

Mr Stokes has holdings in the Seven network and in Sunraysia Television Limited (which through its subsidiary Swan Television and Radio Broadcasters Pty Ltd, holds the licence of the Channel Nine affiliate in Perth, STW Perth). Both Seven and Sunraysia broadcast to the Perth television market.

Although Mr Stokes' holdings in Sunraysia were at 19.4 per cent as of 22 May 1995 (which exceeds the 15 per cent limit above which a person is deemed to be in control), there is proof which has satisfied the ABA that he is not in control.

Mr Stokes was required to give the ABA evidence on oath, as well as submit sworn documentary evidence in order to support his claim that he is not in control of Sunraysia (see summary of evidence). Ms Eva Presser (the largest shareholder in Sunraysia Television Ltd at 45.84 per cent), also submitted sworn documentary evidence that Mr Stokes does not control Sunraysia. The ABA has found no other evidence to contradict that provided by Mr Stokes and Ms Presser in relation to this issue.

The ABA made its decision as part of its ongoing inquiry into control of the Seven Network.

The ABA will continue to investigate whether News Ltd, Mr Stokes and/or Telstra, are associates in relation to control of the Seven Network Ltd. The length of the procedure will depend on the full extent of matters which require the ABA's consideration.

### Summary of evidence from Mr Kerry Stokes that he is not in control or in a position to exercise control of Sunraysia Television Limited

1. Garden Park Pty Limited ('Garden Park'), a wholly owned subsidiary of Australian Capital Equity Pty Limited ('ACE') the company of which Mr Stokes is Chairman, is the registered holder of 19.34 per cent of Sunraysia Television Limited ('Sunraysia') which through its subsidiary Swan Television & Radio

Broadcasters Pty Limited ('Swan Television') holds a television licence in Perth, Western Australia.

2. Garden Park's shares in Sunraysia were acquired as a result of a failed and hostile takeover bid.

3. Two other shareholders of Sunraysia each have a larger shareholding in Sunraysia than Garden Park. Companies controlled by Ms Eva Presser ('Presser') hold 45.837 per cent of the shares. WIN Television NSW Pty Limited and its associates ('WIN') hold 21.8 per cent of Sunraysia.

### Section 170 BROADCASTING SERVICES ACT 1992

#### Investigation into control of Seven Network Limited - Terms of Reference

The Australian Broadcasting Authority (ABA) has decided to conduct an investigation into whether News Limited, either alone or together with an associate, has breached any provision of the *Broadcasting Services Act 1992* (the Act) since 1 January 1995:

In particular, the ABA has decided to investigate:

- whether News Limited, either alone or together with an associate, is in a position to exercise control of Seven Network Limited and/or any commercial television broadcasting licence controlled by Seven Network Limited;
- whether News Limited, either alone or together with an associate, has breached paragraph 60(b) of the Act which prohibits a person from being in a position to exercise control of a commercial television broadcasting licence and a newspaper that is associated with the licence area of the licence and accordingly whether News Limited, either alone or together with an associate, has committed an offence pursuant to section 66 of the Act in respect of any such breach;
- whether News Limited, either alone or together with an associate, has breached subsection 57(1) of the Act which prohibits a foreign person from being in a position to exercise control of a commercial television broadcasting licence and accordingly whether News Limited, either alone or together with an associate, has committed an offence pursuant to section 66 of the Act in respect of any such breach;
- whether News Limited, or an associate of News Limited, has breached subsection 64(1) of the Act, which requires a person who becomes aware that he or she is in a position to exercise control of a licence to notify the ABA in writing of that position;
- whether News Limited has provided a commercial television broadcasting service without being licensed to do so in breach of section 131 of the Act.

(1 June 1995)

4. Neither Garden Park nor ACE has any contract, arrangement or understanding (whether formal or informal) with either Presser or with WIN.
5. Neither Mr Stokes nor any person associated with Garden Park or ACE holds the position of director of either Swan Television or Sunraysia.
6. Neither Garden Park nor ACE is in a position to exercise control of Sunraysia. Neither Garden Park nor ACE is, with any associate, in a position to exercise control of Sunraysia.
7. Neither Garden Park nor ACE is in a position (whether directly or indirectly and including with any associate) to exercise control of the selection or provision of any proportion of the programs broadcast by Swan Television.
8. Neither Garden Park nor ACE is in a position (whether directly or indirectly and including with any associate) to

11. None of Sunraysia, Swan Television and their respective directors acts, or is accustomed to act, or under a contract or an arrangement or understanding (whether formal or informal) is intended or expected to act in accordance with the directions, instructions or wishes of, or in concert with, any or one or more of Garden Park, an associate of Garden Park or the directors of Garden Park.
12. Neither Garden Park nor ACE is in a position, either alone or with an associate, to veto any action taken by the boards of Swan Television or Sunraysia or to appoint or secure the appointment of, or veto the appointment of, any member of the boards of Swan Television or Sunraysia.
- Neither Sunraysia nor Swan Television, nor more than 50 per cent of its directors are accustomed to act, nor, pursuant to any contract, arrangement or understanding (either formal or infor-

by Mr K M Stokes, Garden Park Pty Ltd and interests associated with Mr Stokes ('the Stokes interests') do not enable him to exercise control of Sunraysia Television Limited ('the company') or the commercial television licence held by Swan Television and Radio Broadcasters Pty Limited ('the licensee').

2. To the best of Ms Presser's knowledge and belief:

2.1 Neither Mr Stokes nor the Stokes interests acting either alone or with an associate, is in a position to exercise control of the licensee or the company;

- Mr Stokes is not the licensee;
- Neither Mr Stokes or the Stokes interests, either alone or together with an associate of Mr Stokes or the Stokes interests, is in a position to exercise, directly or indirectly, control of the selection or provision of a significant proportion of the programs broadcast by the licensee.

Neither Mr Stokes or the Stokes interests, either alone or together with an associate of Mr Stokes or the Stokes interests, is in a position to exercise, directly or indirectly, control of a significant proportion of the operations of the licensee in providing broadcasting services under the licence.

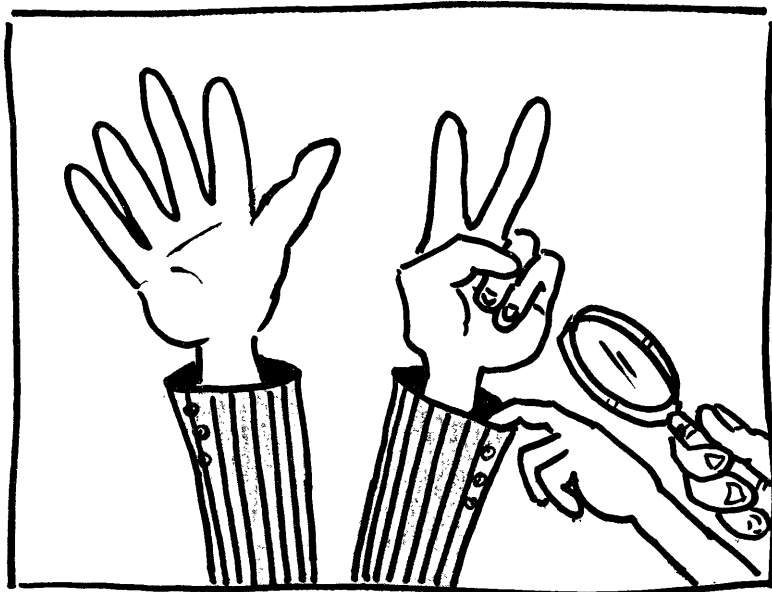
2.2 Neither Mr Stokes or the Stokes interests, either alone or together with an associate of Mr Stokes or the Stokes interests, is in a position to:

- veto any action taken by the board of directors of the licensee or company;
- appoint or secure appointment of, or veto the appointment of, at least half of the board of directors of the licence or the company;

exercise in any other manner, whether directly or indirectly, direction or restraint over any substantial issue affecting the management or affairs of the licensee or the company.

2.3 Neither Mr Stokes or the Stokes interests, either alone or together with an associate of Mr Stokes or the Stokes interests, is in a position to exercise control of:

- the licensee or the company or more than 50 per cent of its directors;
- the licensee or the company under a formal or informal contract, arrangement or understanding. ☐



exercise control of any proportion of the operations of Swan Television.

9. Neither Garden Park nor ACE is in a position (whether directly or indirectly and including with an associate) to exercise control of any proportion of the operations of Sunraysia.

10. Neither Garden Park nor ACE is in a position, including with any associate, to exercise, in any manner whatsoever, whether directly or indirectly, direction or restraint over any substantial issue affecting the management or affairs of Sunraysia or of Swan Television.

mal) are they intended to act in accordance with the directions, instructions or wishes of, or in concert with, Garden Park or ACE either acting individually or together.

**Summary of evidence from Ms Eva Presser that Mr Kerry Stokes is not in control or in a position to exercise control of Sunraysia Limited**

1. To the best of Ms Presser's knowledge and belief the shareholding interests in Sunraysia Television Limited held