



ABA finds Packer not in breach

The ABA has found Mr Kerry Packer's company interests in the Fairfax newspaper group has not put him in breach of the *Broadcasting Services Act 1992*.

The Act says a person must not be in a position to exercise control of a commercial television licence and a newspaper associated with the same licence area.

The Nine Network services TCN Sydney and GTV Melbourne and the Fairfax newspapers (the *Sydney Morning Herald* and the *Age*) are associated with the same licence areas. Mr Packer controls the Nine Network.

In its report, the ABA said as of Friday 21 April Mr Packer held company interests in Fairfax of 17.17 per cent. Despite this holding, the ABA found Mr Packer did not have control of Fairfax.

If a person has company interests exceeding 15 per cent they are regarded as being in a position to exercise control of a company, unless there is proof to the contrary.

'Having examined the evidence, it is clear to the ABA that no breaches of the Act have occurred,' said Mr Peter Webb, ABA Chairman.

'As well as investigating the level of company interests, we have explored several allegations about control of Fairfax. The allegations have not been substantiated.'

In particular, the ABA found that:

■ Neither Mr Packer nor Consolidated Press Holdings Ltd (CPH) nor any associate of either is in a position to exercise control of the operations of Fairfax or the publishing companies.

■ Neither Mr Packer nor CPH nor any associate of either is in a position to exercise control of the selection and/or provision of a significant proportion of the material to be published by the *Sydney Morning Herald* and the *Age*.

■ Neither Mr Packer nor CPH nor any associate of either exercises in any manner, whether directly or indirectly, direction or restraint over any substantial issue affecting the management or affairs of Fairfax or the publishing companies.

■ Neither Mr Packer nor CPH nor any associate of either has the right to appoint a director to the board of Fairfax or the

publishing companies, to veto the appointment of other directors nor the right to veto any action taken by the board of directors of Fairfax or the publishing companies.

■ The boards of Fairfax and the publishing companies neither act nor are accustomed to act, in accordance with the directions, instructions or wishes of, or in concert with, Mr Packer, CPH or any associates of either Mr Packer or CPH.

These findings are based on evidence collected from Fairfax directors and others. Mr Webb said the ABA would not be making the detail of the evidence public due to the need to protect sources.

'Breaching confidentiality could jeopardise further investigations should they be necessary,' he said.

'The ABA will continue to closely monitor developments regarding the ownership and control of Fairfax to ensure continued compliance with cross-media rules under the Act, and to ensure the rules operate in accordance with Parliament's intention.' The ABA will report to the Minister as appropriate.

Contact the ABA on (02) 334 7881 for copies of its report, *Investigation into Control* (Fairfax Report), for \$10.00. □

Page 4► Broadcasting legislation; Relevant parts of the Act.

ABA inquiries

The ABA's inquiries were wide-ranging.

Confidential information was collected from the following parties:

Publishing and Broadcasting Limited and associated companies

Consolidated Press Holdings Limited and associated companies:

- **John Fairfax Holdings Limited**
- **Directors of Fairfax:** Mr Daniel Colson; Sir Laurence Street; Mr Matthew Barger; Sir Roderick Carnegie; Rt Hon Sir; Zelman Cowen; Mr David Gonski; Mr Douglas Halley; Mr Michael Hoy; Mr Stephen Mulholland; Mr Andrew Turnbull; Mr Dean Wills AO; Mr Conrad Black
- **Editor of *The Sydney Morning Herald*:** Mr John Lyons
- **Co-Secretary and Legal Counsel, Fairfax:** Ms Gail Hambly,

Directors of PBL and CPH: Mr Kerry Packer; Mr James Packer; Mr Brian Powers