



## What the Broadcasting Services Act says about ownership

The following Broadcasting Services Act excerpts are those which deal specifically with ownership and control of the Australian media.

### Relevant parts of Schedule 1 of the Act

#### Control and ownership of company interests

1.(1) This Schedule is intended to provide a means of finding out who is in a position to exercise control of commercial television broadcasting licences, commercial radio broadcasting licences, newspapers and companies and a means of tracing company interests.

This Schedule recognises that the concept of control of a commercial broadcasting licence, a newspaper or a company can be a complex one.

The holding of company interests is not the only way to be in a position to exercise control. Clauses 2 and 3 set out the rules for deciding when a position to exercise control exists. While company interests may be important in deciding that question, they are only one issue. In some cases, it may be important to look at agreements and arrangements between people and at accustomed courses of conduct between people. In this respect, the definition of 'associate' in section 6 of this Act is important...

#### When person is in a position to exercise control of a newspaper

3.(1) For the purposes of this Schedule, a person is in a position to exercise control of a newspaper if:

- (a) the person is the publisher of the newspaper; or
- (b) the person is in a position, either alone or together with an associate of the person and whether directly or indirectly:
  - (i) to exercise control of a significant proportion of the operations of the publisher in publishing the newspaper; or
  - (ii) to exercise control of the selection or provision of a significant proportion of the material to be published in the newspaper; or
- (c) if the newspaper is published by a company:
  - (i) the person is in a position, either alone or together with an associate of the person, to exercise control of the company; or
  - (ii) the person, either alone or together with an associate of the person, is in a position to veto any action taken by the board of directors of the company; or

### Broadcasting legislation

Company interests are defined in section 6 of the Broadcasting Services Act 1992 as:  
'Company interests', in relation to a person who has a shareholding interest, a voting interest, a dividend interest or a winding-up interest in a company, means the percentage of that interest or, if the person has 2 or more of those interests, whichever of those interests has the greater or greatest percentage;

- (iii) the person, either alone or together with an associate of the person, is in a position to appoint or secure the appointment of, or veto the appointment of, at least half of the board of directors of the company; or
- (iv) the person, either alone or together with an associate of the person, is in a position to exercise, in any other manner, whether directly or indirectly, direction or restraint over any substantial issue affecting the management or affairs of the company; or
- (v) the company or more than 50 per cent of its directors:

- (A) act, or are accustomed to act; or
- (B) under a contract or an arrangement or understanding (whether formal or informal) are intended or expected to act;

in accordance with the directions, instructions or wishes of, or in concert with, the person or of the person and an associate of the person acting together or, if the person is a company, of the directors of the person.

(2) Subparagraph (1)(b)(ii) does not apply to the provision of material by a person to a newspaper under an agreement for the supply of material of that kind if the conditions of the agreement relate only to the material so supplied.

(3) An employee of the publisher of a newspaper is not, except through an association with another person, to be regarded as being in a position to control the newspaper under subclause (1) purely because of being an employee...

#### Deemed control—the 15 per cent rule

6.(1) If a person has company interests in a company exceeding 15 per cent, the person is, in the absence of proof to the contrary, to be regarded as being in a position to exercise control of the company.

(2) If another person who is not an associate has company interests in the company exceeding 50 per cent, the person referred to in subclause (1) is not to be regarded as being in a position to exercise control of the company only by the operation of this rule. ▣