



ABA collects \$211.1m in TV and radio licence fees

The ABA has collected commercial broadcasting licence fees of \$211.1m. The fees are based on revenue earned by the commercial television and radio industries during the 1998–99 financial period.

'This is a 2.1 per cent increase on last year's figure of \$206.7m. This reflects a small increase in the number of both television and radio services and also lower rebates claimed by regional television services,' said Professor Flint.

The ABA collected \$198.4m from 48 commercial television services (compared to \$194.6m from 47 services in the previous year) and \$12.7m from 225 commercial radio services (compared to \$12.1m from 214 services in the previous year).

Annual licence fees are calculated on a percentage of gross earnings by the licensee for the previous financial period. Figures from licence fees paid by individual operators are not available in order to preserve confidentiality. A small number of services are yet to pay or have not paid the correct fee. Licence fees collected go to the Commonwealth's consolidated revenue.

A rebate scheme, which has been in operation since 1989, recognises the expenses incurred by regional television licensees in expanding their service areas under the Government's equalisation policy. The two licensees in Tasmania claimed rebates of \$800 000 each which reduced the amount of fees payable by them. Some regional services have also been able to offset the payment of their licence fees by using credits accrued over the period of the equalisation rebate scheme.

Rebates and use of unused credits for this year totalled \$2.5m (compared to \$5.7m in the previous year). The reduction is due to the fact that services in markets which first benefited from this policy in 1988–89 have now exhausted their right to a rebate.

No breach: Consolidated Press Holding's and FFX Management

The ABA is satisfied that Consolidated Press Holdings Limited (CPH), is not in breach of the cross-media provisions of the Broadcasting Services Act as a result of its acquisition of all

the shares in FFX Management Pty Limited, the managing company of the FFX Trust.

The ABA, in its March 1999 report on its investigation into control of John Fairfax Holdings Limited, concluded that CPH was in a position to exercise control of the FFX Trust, and that no breach arose as a result of this.

As a result of CPH's acquisition of the FFX Management Limited CPH's current interest in Fairfax is 14.99 per cent, CPH's deemed interests do not exceed the permitted level of 15 per cent and the FFX Trust does not control John Fairfax Holdings Limited.

The ABA has decided that there are no circumstances that have arisen that would require it to change its previous conclusion that Mr Kerry Packer, Mr James Packer, CPH or any of its associated companies are still not in breach of any of the provisions of part 5 of the Act.

The ABA is aware that if Mr Kerry Packer, Mr James Packer, CPH or any of its associated companies increase their shareholdings in John Fairfax Holdings Limited, it would be necessary to immediately investigate whether the Broadcasting Services Act had been breached.

The ABA will continue to monitor the situation to ensure that there are no breaches of the ownership and control provisions of the Act.

Recent amendments to the Broadcasting Services Act

Following the recent passing of two key amending Acts, significant changes have been made to the *Broadcasting Services Act 1992*. On 23 December 1999, both the *Broadcasting Services Amendment Act (No. 1) 1999*, and *Broadcasting Services Amendment Act (No. 3) 1999* received royal assent. Most of the amendments took effect on that date, with the exception of Part 2 of Schedule 3 of Amendment Act (No. 1) which further amends section 212 of the Broadcasting Services Act.

Amendment Act (No. 1) contains amendments to the operations of pay TV in regional areas: retransmission of services outside a licence area, community radio

To view the Act, as in force from 14 January 2000, go to the SCALEplus web site:
<http://scaleplus.law.gov.au/html/pasteact/0/136/top.htm>

The ABA expects to release aggregated financial results for commercial television and radio (including expenditure, revenue and profit figures) in March.



News Update

sponsorship arrangements and anti-hoarding provision for sports programs. The Amendment Act (No. 3) introduces amendments to provisions for expenditure on Australian drama content on subscription television.

Pay TV in regional areas (new Part 8A)

This amendment provides that unless the ABA gives permission, a subscription television licensee or a related body corporate must not provide a television service in regional areas if any three or more consecutive programs transmitted on the service are identical to any three or more programs transmitted by a metropolitan commercial television licensee, during prime viewing hours.

Part 8A of the new Act commenced on 20 January 2000.

Retransmission provisions

The amending Act confers a new power on the ABA in relation to transmission of services outside a licence area. The Act amends the standard licence conditions of commercial and community broadcasting services, by repealing the paragraphs relating to 'fortuitous reception' and replacing them with paragraphs which allow the ABA to permit out-of-area transmission of services by the licensee under certain circumstances. These conditions are:

- (i) that a person in another licence area is not receiving an adequate service within that licence area; and
- (ii) the out-of-area service is provided to that person only to the extent necessary to ensure adequate reception by that person.

The ABA must give permission in writing.

In addition, amendments have been made to the ABA's existing powers contained in section 212 of the Act. These amendments add a new subsection (3) which abolishes the right of licensees to 're-transmit' their own services outside the licence area, under section 212. Section 212 will now only be available to licensees to re-transmit another licensee's service and to non-licensees for the purposes of re-transmission of any services. Licensees who wish to transmit their own services outside the licence area for the service will now need to obtain permission from the ABA under the new regime established under the amended licence conditions in Schedule 2 of the Broadcasting Services Act.

Further amendments to section 212, relating

to copyright issues, will come into effect once the *Copyright Amendment (Digital Agenda) Act 2000* commences operation. These amendments are designed to limit the exemptions from copyright obligations to 'self-help operators' only. Self-help operators will be defined under these new amendments.

Community radio sponsorship arrangements

Community broadcasting services are now permitted to broadcast five minutes of sponsorship per hour (increased from four minutes).

Anti-hoarding rules (new Part 10A)

This amendment sets up a regime to discourage commercial television licensees, program suppliers and the national services from hoarding rights to live coverage of sporting events. The Minister for Communications, Information Technology and the Arts is empowered to make a legislative instrument designating events that are covered by these rules.

The purpose of the new anti-hoarding rules is to ensure that free-to-air television broadcasters with live rights to designated events or series of events on the anti-siphoning list, and who do not intend to televise a substantial portion, offer the unused rights, for a nominal charge, to the ABC and SBS.

The amendment places a condition on the licence of commercial television broadcasters, with the intention that the new rules will reform the anti-siphoning regime to, 'maximise opportunities for full and live free-to-air coverage of major events, particularly sporting events'.

The new sections discourage commercial television broadcasting licensees, program suppliers, the ABC and SBS from 'hoarding' rights to provide live television coverage of certain events and series of events.

Section 146C provides that the Minister may declare, in writing, a specified event or series as a 'designated event' for the purpose of the anti-hoarding rules. Section 146C(4) provides for there to be an 'offer time' 30 days or more before the event, while section 146CA provides that the Minister may declare events and series of events to be eligible for delayed televising in the Central-Western time zones.

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<http://scaleplus.law.gov.au/html/pasteact/0/136/top.htm>



Section 146S provides that there is to be a review within two years of the commencement of the new rules (i.e. before 23 December 2001).

New Australian content provisions for pay TV

These amendments require licensees and channel providers who provide a subscription TV drama service, to spend at least 10 per cent of their total program expenditure on new eligible drama programs each financial year. Any shortfall in the channel provider's expenditure by must be made up in the next financial year. Licensees and channel providers are required to lodge annual returns about their program expenditure.

New eligible drama programs are defined according to the revised Australian content standard and include programs that are Australian, Australian/New Zealand, New Zealand or an official Australian co-production. New Zealand drama programs are included to meet the requirements of the Protocol on Trade in Services to the Closer Economic Relations Agreement between Australia and New Zealand.

These amendments address shortcomings in the previous licence condition. The previous condition applied only to program expenditure by pay TV licensees, whereas, in practice, expenditure is made by channel providers. As these entities were outside the scope of the legislation, the ABA could not require them to meet the 10 per cent expenditure requirement.

The legislation also provides for a review, to be conducted before 31 March 2003, relating to the Australian and New Zealand content on subscription television broadcasting services.

Transitional arrangements apply for the financial year beginning 1 July 1999, with expenditure on new Australian drama being required. This makes the development of new annual returns and reporting processes a priority for the ABA's implementation of the scheme.

ABA to investigate:

expenditure rules for documentary channels and eligible development costs for drama channels

The Minister for Communications, Information Technology and the Arts has asked the ABA to investigate two issues. These issues arose during the course of the development of the

above legislation which implements enforceable arrangements in relation to expenditure on new Australian (and New Zealand) drama on subscription broadcasting television drama channels.

The first matter is whether a similar 10 per cent expenditure requirement, that currently only applies to predominantly drama channels, should be extended to documentary channels. Specifically, the Minister has directed the ABA to investigate 'whether subscription television broadcasting licensees who provide a subscription documentary service should be required to ensure the maintenance of minimum levels of expenditure on new eligible documentary programs'.

The second matter concerns the treatment of development expenses under the new legislation. Development expenses such as script development and pre-production costs incurred on an eligible drama program can only count towards the expenditure requirement when the project proceeds to production, defined as the commencement of principal photography. In the light of some concern expressed during industry consultation on the legislation, the Government wishes to give further consideration to whether the rule could be more flexible, allowing development costs on projects that do not proceed to production to count towards the expenditure requirement, and the test which might apply to such expenditure.

Accordingly the Minister has directed the ABA to investigate 'the extent to which pre-production expenditure should be able to be taken into account for the purposes of the eligible drama expenditure rules for subscription television broadcasting'.

The ABA intends to consult widely with interested parties in the course of its investigation and is required to provide a report to the Minister by 18 December 2000.

ABA to investigate:

the operation and impact of the minimum licence fee for Australian children's drama.

The ABA is seeking information from producers, networks and film funding agencies about the impact of the requirement in the Australian Content Standard which stipulates that a commercial television licensee must acquire Australian children's drama for a