



It's grandfather time

If they ever build a clock on the top of the IBM tower at Sydney's Darling Harbour where the Australian Broadcasting Authority lives, it'll be set at 30 November 1995.

It's what broadcasting lawyers will come to know as 'Grandfather Time', if the Communications Legislation Amendment Bill 1995 ever passes into law.

This Bill, introduced into the Parliament in the final sittings for 1995, would make a number of changes to the ownership and control provisions in the Broadcasting Services Act, mainly to toughen these provisions. Amongst other amendments, the definition of 'company interests' would be widened to include 'performance-linked investments' which provide a return which depends on the financial performance of the company.

It would also be widened to include potential or contingent voting rights. A person would be taken to control a company if they could appoint a third of the directors (currently, it's half the directors). The company interests of a person's associates would be able to be aggregated with other company interests held by the person, for the purposes of deeming that person to be in a position to control a company.

Some of these amendments have been introduced to target mechanisms popularised by Canwest in structuring its relationship with the Ten Network.

But Ten will not have to reorganise itself or get new owners. The 'grandfathering' provisions will protect its existing interests. Indeed, the draft legislation goes to considerable lengths to allow some restructuring of existing interests without falling foul of the new rules.

This grandfathering is actually 'prospective' grandfathering. If you do certain things today they will be deemed to have happened yesterday

- or at least, before 30 November 1995.

'New circumstances' which, amongst other possibilities, are outside the control of a 'protected person', or which result from a general share issue or from a reorganisation of a company group, will generally be regarded as having existed at the 'grandfather time'. That is, the new circumstances will not give rise to a loss of grandfathering protection, and the 'protected person' will be able to keep the 'new' interests.

In a September 1988 issue of the Communications Law Bulletin, Leo Grey begged that the 38 pages of grandfathering provisions in the Broadcasting Act be 'prepared for a dignified but definite end'. This was a complete Division of the old Broadcasting Act, introduced as part of the major changes to the ownership and control limits which included the introduction of cross-media rules.

Four years later, the Broadcasting Services Act, to a large extent, answered his call. With the huge shake-out in media ownership which followed the 1987 changes, few of the original owners who might have benefited from 'grandfathering' were left. What grandfathers were needed were shunted off to the retirement home of the Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992 - the kind of place even the most devoted relatives would only visit once a year.

After three years where the country's broadcasting legislation has had hardly a grandfather to speak of, 1995's Communications Legislation Amendment Bill brings them back - smaller, neater and with many fewer birthdays. Where the 1987 legislation made nine different days relevant for the purposes of grandfathering, the 1995 Bill has just one - 30 November 1995. Grandfather Time.

It's got to be Christmas. □ Jock Given

Broadcasting Services Amendment Bill 1994

This Bill was passed by the Parliament late in the 1995 sittings and is expected to receive Royal Assent before the end of the year. It covers a range of discrete issues and represents a substantially amended version of a Bill introduced into the Parliament last year.

Key amendments include:

- ◆ simplified arrangements for the granting of second commercial radio and TV licences in solus markets;
- ◆ broadening the coverage of the Ministerial review of Australian content on subscription television services, required to occur before 1 July 1997;
- ◆ re-establishing 15% as the threshold beyond which a person will be deemed to control a company (removing the need for an inquiry into the person's capacity to exercise control), subject to the grandfathering of existing interests (which will permit PBL to retain its interest, currently above 15%, in Fairfax);
- ◆ amending the anti-siphoning provisions to prevent various forms of 'hoarding' of rights to events by free-to-air broadcasters;
- ◆ enabling satellite subscription broadcasters to co-operate in the use of facilities etc without breaching relevant control limits; and
- ◆ confirming that various provisions relating to control and tracing of company interests apply both to subscription TV broadcasting licences and commercial licences.