

This issue of the Media Ownership Update marks the return of *Communications Update*, emerging from a period of transition for the Communications Law Centre.

Following a change in Director at the end of 2000, the Centre's new internet law practice, Oz NetLaw, was launched early last year. A second edition of *Australian Telecommunications Regulation: the Communications Law Centre Guide* was published in October last year, and other research reports have been issued since the last Media Ownership Update.

A future issue of *Communications Update* will provide further information of the Centre's activities, along with commentary and analysis on media, communications, and online law and policy issues.

This issue is designed as a presentation of data on media ownership in Australia. It is not designed as a forum for analysis of the current debate. However, in order to assist readers to follow the developments in media regulation, in this issue we supplement existing tables with an outline of current media ownership laws. And below we present a summary of the major provisions of the new media ownership bill, tabled in Parliament on Thursday 21 March, 2002.

Derek Wilding
Director

Broadcasting Services Amendment (Media Ownership) Bill 2002

Foreign Ownership Rules

The Bill repeals the provisions in the *Broadcasting Services Act 1992* relating to foreign ownership of commercial TV licences and subscription TV licences, with the exception that overseas investors in commercial TV or subscription TV would still need to establish an Australian subsidiary to be the licensee company. The Explanatory Memorandum (EM) to the Bill indicates the Government's intention to remove the current limits on newspaper ownership that exist as part of the Foreign Investment Guidelines. The *Foreign Acquisitions and Takeovers Act 1975* would continue to apply.

Cross-Media Rules

There are 4 core aspects to the changes to the cross-media rules proposed in the Bill:

1. The cross-media rules are retained, but there is a system of exemptions to those rules for a "set of media operations" which includes holdings of commercial TV and commercial radio in the same licence areas and a newspaper associated with those areas.
2. In order not to breach the cross-media rules, the licensee must hold a Cross-Media Exemption Certificate issued by the Australian Broadcasting Authority (ABA).
3. The ABA will issue an Exemption Certificate where two conditions are satisfied: the licensee meets certain requirements in relation to editorial separation between media organisations; and, if the licence concerns a regional TV or radio service, the licensee gives undertakings to maintain levels of local content in news and information services.
4. These two conditions become conditions on the licence.

Editorial Separation

The objective of the certificate system is for "the entities or parts of entities that run the media operations" to maintain "separate editorial decision-making responsibilities" in relation to each of those media operations. This objective applies in relation to the issue of the certificate and in relation to ongoing operations.

The scheme is designed so that a licensee can apply for an exemption certificate ahead of any proposed merger. A certificate is "in force"

when issued by the ABA, but only becomes "active" when there are cross-media holdings to which it would apply.

On applying for a certificate, an applicant would need to nominate the set of media operations to which the certificate would apply, and provide organisational charts in connection with editorial decision-making responsibilities.

The applicant would also need to provide a set of conditions relating to the objective of editorial separation and provide an undertaking that the conditions will be satisfied if the certificate becomes active.

The ABA will issue a certificate (that is, a certificate will be "in force") if these conditions are sufficiently detailed and specific, and the ABA is satisfied that they will be an adequate means of continuously meeting the objective of editorial separation. The ABA can allow the applicant up to 60 days to meet those obligations from the time that the certificate becomes active.

That objective of editorial separation will be met if there are separate editorial policies and organisational charts made publicly available, and if the following three requirements are met:

- Separate editorial news management;
- Separate news compilation processes;
- Separate news gathering and news interpretation capabilities.

The Bill permits the "sharing of resources or other forms of co-operation" provided that the capabilities and processes mentioned above exist. The EM notes that "co-operation should be encouraged as owners seek to realise efficiencies from co-owned organisations".

If the conditions are not met, the exemption to the existing cross-media rules ceases and ABA enforcement mechanisms apply.

Certificates will automatically continue to apply if a radio or TV licence is renewed. The ABA must retain a register of certificates and make this publicly available except where that could reasonably be expected to substantially prejudice the commercial interests of a person.

Local News and Information Requirements

Where cross-media holdings are acquired by way of an Exemption Certificate, and where those holdings include a commercial radio or TV service in a regional area (that is, any area apart from Sydney, Melbourne, Brisbane, Adelaide, Perth), further conditions apply.

These conditions apply to a licensee of a commercial TV or commercial radio service in a regional area from the time that an Exemption Certificate becomes active.

These conditions require the licensee to report on and then to maintain current levels of local news ("applicable benchmark numbers"), or to meet new "minimum service standards". The benchmark number will apply where, in the year preceding the application for the Cross-Media Exemption Certificate, the licensee exceeded the new minimum standards.

The minimum weekly standard for local news and weather bulletins is 5 bulletins in prime time, broadcast on different days.

In addition, there is a "local significance" test, so that one of the following standards must be satisfied:

- each bulletin must adequately reflect matters of local significance; or
- at least one additional bulletin must be provided each week, and all the bulletins, taken together, must adequately reflect matters of local significance.

There are also requirements for making local community service announcements and emergency warnings.

All requirements operate following the issue of a notice from the ABA regarding the relevant levels of local content and continue to operate for every week that the Cross-Media Exemption Certificate is active.

Where the licensee exceeded the minimum levels in the year before the application for the certificate was made, the notice will contain requirements in relation to local news and weather bulletins, setting a requirement for the number of minutes of local news and weather within and outside prime time.

In both cases of licensees meeting minimum standards or meeting benchmark standards, the notice from the ABA will contain ongoing reporting requirements. The ABA may issue notices concerning compliance.

In relation to both processes for editorial separation and local content, complaints can be made about breaches, but the ABA can decide investigation is not warranted in the circumstances. Details of an investigation can be withheld from public record if they could be expected to prejudice substantially the commercial interests of a person.