

# Overview of Australia's Media Ownership Laws

## Commercial Free-to-Air TV Broadcasting Licences

A person must not control (see 'Control' below):

- licences whose combined licence area populations exceed 75% of the population of Australia;
- more than one licence in the same licence area (though see exceptions below) (s. 53 *Broadcasting Services Act 1992* (BSA)).

Similar limits apply to directors of companies that control licences; a director of two or more companies that between them control licences; a person who controls a licence and who is a director of a company that controls another licence (s. 55 BSA).

Where a licence area is entirely within another licence area or where two licence areas overlap and more than 30% of the licence area population of a licence area is in the overlap area, the above rules apply to the two licence areas as if they were one licence area (s. 51 BSA).

Exceptions: Under s. 38A BSA an additional licence may be allocated to the holder of an existing licence in a single licence (solus) market. For the purposes of ownership limits both licences are treated as one licence (s.73 BSA). Section 38B BSA provides for the allocation of an additional licence where there are only two commercial TV broadcasting licences in force in a licence area to the existing licensee (either as a joint venture company or separately). The new service must be provided in digital mode. For the purposes of ownership limits the additional licence is disregarded (s.73A BSA).

A foreign person must not be in a position to control a commercial TV broadcasting licence (s. 57 BSA). Two or more foreign persons must not have company interests in a licensee that exceed 20% (s. 57 BSA). Not more than 20% of the directors of a licensee can be foreign persons (s. 58 BSA). In addition, all direct proposals for investment by foreign persons (along with proposals for portfolio investments of more than 5%) are subject to prior approval in accordance with foreign investment policy (referred to in 'Newspapers' below).

## Pay (Subscription) TV Broadcasting Licences

A foreign person must not have company interests of more than 20% in a licence (s. 109 BSA). Two or more foreign persons must not have company interests of more than 35% in a licence (s. 109 BSA).

## Commercial Radio Broadcasting Licences

A person must not control more than two licences in the same licence area (s. 54 BSA).

Similar limits apply to directors of companies that control licences; a director of two or more companies that between them control licences; a person who controls a licence and who is a director of a company that controls another licence (s. 56 BSA).

Where a licence area is entirely within another licence area or where two licence areas overlap and more than 30% of the licence area population of a licence area is in the overlap area, the above rules apply to the two licence areas as if they were one licence area (s. 51 BSA).

The BSA imposes no limits on foreign ownership or control, however the general rule under foreign investment policy for the media (prior approval of

all direct proposals and all portfolio proposals of more than 5%) applies (see above).

## Newspapers

There are no specific limitations in relation to newspapers contained in the BSA, other than the cross-media rules (refer 'Cross-Media Controls' next). *The Trade Practices Act 1974* (TPA) also applies (see 'Trade Practices Act 1974' below).

Foreign ownership of the print media has generally been regulated by way of a standard Government policy ('Summary of Australia's Foreign Investment Policy', The Treasury, January 2005, see <www.firb.gov.au> (General Policy Summary)). This policy relates to the administration of the *Foreign Acquisitions and Takeovers Act 1975* (FATA), which applies to all media. All direct proposals for foreign investment and proposals to establish a new newspaper are subject to case-by-case examination, as are proposals for portfolio shareholdings of more than 5%. Up to 25% foreign investment by a single shareholder in a mass circulation newspaper is permitted, with a maximum of 30% for all foreign interests. Aggregate investment in provincial and suburban newspapers is limited to 50%. A separate policy relates to foreign ownership of ethnic newspapers in Australia.

## Cross-Media Controls

A person must not control:

- a commercial TV broadcasting licence and a commercial radio broadcasting licence that have the same licence area; or
- a commercial TV broadcasting licence and a newspaper associated with that licence area (associated newspaper); or
- a commercial radio broadcasting licence and an associated newspaper (s. 60 BSA).

A person must not be a director of:

- a company in control of a commercial TV and a commercial radio broadcasting licence that have the same licence area; or
- a company in control of a commercial TV or commercial radio broadcasting licence and an associated newspaper (s. 61 BSA).

A person must not be in control of:

- a commercial TV broadcasting licence and be a director of a company in control of a commercial radio broadcasting licence with the same licence area or an associated newspaper;
- a commercial radio broadcasting licence and be a director of a company in control of a commercial TV broadcasting licence with the same licence area or an associated newspaper;
- a newspaper associated with the licence area of a commercial TV or radio broadcasting licence and be a director of a company in control of that commercial TV or radio broadcasting licence (s. 61 BSA).

Where a licence area is entirely within another licence area or where two licence areas overlap and more than 30% of the licence area population of a licence area is in the overlap area, the above rules apply to the two licence areas as if they were one licence area (s. 51 BSA).

A newspaper is associated with the licence area of a commercial TV broadcasting licence if at least 50% of its circulation is within the licence area (s. 59 BSA). A newspaper is associated with the licence area of a commercial radio broadcasting licence if at least 50% of its circulation is within the licence area and the circulation of the newspaper within the licence area is at least 2% of the licence area population (s. 59 BSA).

Newspapers covered by these provisions must be in the English language, published at least 4 days per week and receive 50% or more of their circulation by way of sale (s. 6 BSA).

## Control

A person who has company interests in a company which exceed 15% is regarded as being in a position to exercise control of the company ('deemed control' or the '15% rule') (cl. 6, Sch. 1, BSA). Company interests include shareholding, voting, dividend or winding-up interests (s. 6 BSA). Importantly, the 15% rule does not only apply to direct interests held in a company, it also applies to an interest of more than 15% which is carried through a chain of companies (cl. 7, Sch. 1, BSA). Minor company interests can also be traced through a chain of companies (fractional tracing method) and combined to determine a person's relevant interest in a company (cl. 8, Sch. 1, BSA).

The 15% rule is not the only determinant of control. The BSA states that "In some cases, it may be important to look at agreements and arrangements between people and at accustomed courses of conduct between people" (cl. 1, Sch. 1, BSA) and sets out rules to determine when a person is in a position to exercise control (cll. 2-3, Sch. 1, BSA).

## Trade Practices Act 1974

The TPA also regulates aspects of media ownership. Provisions in the TPA relate to mergers that are likely to have the effect of substantially reducing competition in a market, and the misuse of market power. The provisions of the TPA supplement the media-specific provisions of the BSA.

## How to Use Media Ownership Update

Major shareholders / significant individuals associated with major media companies detailed in each table are listed in Table 21.

All legislative references are to Commonwealth legislation.

Key, notes and sources appear at the end of each table.

### Key

ABA	Australian Broadcasting Authority
BSA	<i>Broadcasting Services Act 1992</i>
JV	joint venture
News Corp.	News Corporation (US)
PBL	Publishing and Broadcasting Ltd
SingTel	Singapore Telecommunications Ltd (SG)