

# Media Ownership Bill Jumps First Hurdle

**Raani Costelloe comments on the progress of proposed changes to cross-media and foreign ownership restrictions.**

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The Federal Government has been successful in making the first step towards its goal of repealing the cross-media and foreign ownership restrictions, following the passing of a bill to amend the *Broadcasting Services Act 1992*. The second step is more difficult.

The successful passage of the Broadcasting Services Amendment (Media Ownership) Bill 2002 (the **Bill**) through the Commonwealth House of Representatives on 15 October 2002 is the farthest that the Coalition Government has gone towards its long-held goal of repealing the cross-media and foreign ownership restrictions in the *Broadcasting Services Act 1992 (BSA)*. In previous attempts to pass similar legislation, the Government failed to gain the support of its own party members in the lower house.

For the Bill to become law, the Government must persuade independent Senators to support it because the Government does not have an upper house majority and the Australian Labor Party, the Australian Greens and the Australian Democrats have, up until now, opposed the Bill.

Prior to its passage through the lower house, the Bill (first tabled in March 2002) was amended following a Senate Committee Report of June 2002 in which Government members of the committee recommended a number of changes to the first draft. The changes reflect concern from Government members regarding the need for disclosure of cross-media holdings and maintaining diversity of news and local news content in regional Australia.

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## THE BILL

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The Bill proposes to amend the BSA by repealing media-specific **foreign ownership** restrictions and creating an exemption to the **cross-media ownership** restrictions that would allow a person or company to control:

- a commercial radio licence, a commercial television licence and/ or a major newspaper in the same **metropolitan licence area** (each a **media operation**); and
  - two separate media operations in a **regional licence area** - any two of a commercial television licence, a commercial radio licence or a major newspaper, but not all three,
- provided that separate editorial processes are maintained between the individual media operations.

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## CURRENT CROSS-MEDIA AND FOREIGN OWNERSHIP RESTRICTIONS

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The BSA presently prevents any one person controlling more than one of the following in any geographic licence area:

- a commercial free-to-air television licence;
- a commercial radio licence; or
- a major newspaper.

The BSA contains specific foreign ownership restrictions with respect to free-to-air and pay television licences, including:

- **free-to-air television**: foreign persons must not be in a position to **control** a free-to-air television licence and the total of foreign interests must not exceed **20%**;

- **pay television**: foreign interests are limited to a **20%** company interest in a pay television licence for an individual and a **35%** company interest in aggregate.

A person is regarded to be in a position to exercise control of a licence, company or newspaper if the person has company interests exceeding **15%**. Company interests can be shareholding, voting, dividend or winding-up interests. The Australian Broadcasting Authority (ABA) may also have regard to other non-company interest factors in determining the issue of control.

In addition to the BSA, there are controls on foreign investment in the media under the *Foreign Acquisitions and Takeovers Act 1975 (Cth) (FATA)*. In summary:

- **all media**: all **direct** (ie non-portfolio) proposals by foreign interests to invest in the media sector, irrespective of size, are subject to prior approval under the Government's foreign investment policy on a **national interest** basis. Proposals involving **portfolio** share holdings of **5%** or more must also be approved;
- **newspapers**: the maximum permitted aggregate foreign (non-portfolio) interests in **national** and

metropolitan newspapers is **30%**, with a **25%** limit on any single foreign shareholder. The aggregate non-portfolio limit for **provincial and suburban** newspapers is **50%**.

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### **ABOLITION OF MEDIA SPECIFIC FOREIGN OWNERSHIP RESTRICTIONS**

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The Bill proposes to **repeal the media-specific foreign ownership restrictions** in the BSA with the effect that all foreign ownership investment in media will be subject only to the general foreign ownership laws under FATA that take account of national interest concerns. The Government's rationale is that the current restrictions impede investment in Australia and that the repeal of the restrictions would result in a more competitive media sector.

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### **CROSS-MEDIA OWNERSHIP EXEMPTION CERTIFICATES**

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The Bill does not propose to repeal the cross-media ownership restrictions. Instead, it creates a regime whereby an entity seeking to take control of a set of media operations (in circumstances where control would breach the BSA) may apply to the ABA for an **exemption certificate**. The holder of an exemption certificate will not be in breach of the cross-media rules, provided that the conditions of the certificate are met.

Amendments to the Bill that give effect to the Senate Committee recommendations only allow cross-ownership of two of the three types of relevant media (television, radio and newspapers) in **regional** (ie non-metropolitan) areas, based on the rationale that regional areas have fewer choices of media outlets than in metropolitan areas. By contrast, a media proprietor could control all three in a metropolitan area subject to compliance with conditions.

The application must identify the set of operations currently controlled and proposed to be controlled, and include proposed organisational charts and editorial policies that show how each media operation will achieve separate:

- editorial policies;
- editorial decision-making; and
- editorial news management, news compilation processes, and news gathering and interpretation capabilities. Provided that separation is maintained in these areas, the relevant media operations may share resources and co-operate.

The rationale behind the exemption certificate regime is that it protects diversity of news sources and opinions while allowing for common control of media operations.

The ABA must issue an exemption certificate if it is satisfied that the conditions included in the application are sufficiently specific and detailed to meet the objective of editorial separation for the relevant set of media operations.

The observance of the objectives is a condition of the entity's relevant commercial television or radio broadcasting licence. The ABA's enforcement powers include notification of a licensee to rectify a breach and the suspension or cancellation of a licence.

Amendments made to the Bill following Senate Committee recommendations require a media company that holds a cross-media exemption certificate to disclose a cross-media holding in certain circumstances.

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### **REGIONAL NEWS**

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The Bill also provides for new licence conditions on regional commercial

television and radio broadcasting licensees that are subject to an exemption certificate to **maintain existing or minimum levels of local news and information**.

Critics of the Bill argue that this requirement would impact unfairly on cross-media owners because other regional media operators that do not have cross-media holdings would not have the same obligations. The ABA's August 2002 report, following its investigation into the adequacy of local news and information programs on regional television, recommended that a licence condition be imposed on **all** regional commercial television operators in certain parts of Queensland, New South Wales and Victoria in respect of local news requirements.

The Government has not addressed this recommendation in the Bill, stating that it intends to give further consideration to the issues following the ABA's final determination on its investigation.

### **Other amendments**

The Bill was also amended to prohibit contracts and arrangements that restrict the **program format** of commercial broadcasting radio services.

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### **CONCLUSION**

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The Government now faces its second hurdle – the passage of the Bill through the Senate. This requires the Government to obtain the support of independent Senators or Senators who have previously been opposed to the Bill.

This is an important piece of legislation and enactment of the Bill would result in fundamental changes to the Australian media landscape.

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