

1988

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

BROADCASTING (OWNERSHIP AND CONTROL) BILL (NO. 2) 1988

EXPLANATORY MEMORANDUM

(Circulated by the Authority of the Minister for Transport and  
Communications, the Hon. Ralph Willis MP.)

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## BROADCASTING (OWNERSHIP AND CONTROL) BILL

(NO. 2) 1988

### OUTLINE

The principal purpose of this Bill is to clarify and refine the technical operation of "grandfathering" and related provisions that were introduced in the Broadcasting Act 1942 (the Principal Act) by the Broadcasting (Ownership and Control) Act 1988.

In summary, the technical amendments in this Bill will:

- (a) ensure continuity in the application of the grandfathering rules and associated provisions to "old system" and related "new system" commercial radio and television licences [clauses 3, 4 and 6];
- (b) ensure that a person who held a combination of prescribed interests or directorships in breach of a pre-existing radio or cross-media limit cannot rely on the fact that they were held before the date that administrative mechanisms were put in place for enforcement of the corresponding new radio or cross-media limit to obtain grandfathered protection [clauses 7, 8, 10 and subclause 11(c)];
- (c) consistent with the grandfathering rules for the 60% population reach television prescribed interest limit, provide for loss of protection under the grandfathering rules for the corresponding directorship limit where the service areas of relevant commercial television licences are aggregated [clause 9]; and
- (d) consistent with the grandfathering rules for the television/radio cross-media prescribed interest limit, provide for loss of protection under the grandfathering rules for the corresponding directorship limit where relevant directorships were held in breach of the previous television/radio directorship limit [sub clause 11(b)].

Clause 12 of the Bill will allow the Minister to delegate to the Department the power to make determinations of populations within the service areas of commercial radio or television licences. These determinations are necessary for enforcement of relevant radio, television and cross-media limits. They are based on Census Count results published by the Australian Statistician.

### Financial Impact Statement

There will be no additional costs to the Commonwealth in the administration of provisions in this Bill.

## NOTES ON CLAUSES

Clause 1: Short title etc

Formal. 'Principal Act' means the Broadcasting Act 1942.

Clause 2: Commencement

The provisions of the Bill will commence on the day the Bill receives Royal Assent.

Clause 3: Licences having a substantial market in common

New subsection 89T(8A) of the Principal Act will ensure continuity in the application of relevant radio and cross-media grandfathering rules to "old system" and related "new system" commercial radio or television licences. These grandfathering rules are contained in sub-sections 92ZB(3), 92ZC(3), 92ZK(2) and 92ZL(2).

Subsection 89T(8) requires the Minister, in making an initial declaration pursuant to subsection 89T(2) that a pair of commercial licences (radio/radio or television/radio) have a substantial market in common (ie have more than a 30% service area population overlap) to also specify the period, between 29 October 1987 and the date of formal declaration, when the licences actually had a substantial market in common.

New subsection 89T(8A) would apply in circumstances where one licence (or both licences) in a pair of licences declared under subsection 89T(2) has been granted in substitution for a related "old system" licence and where the "old system" licence actually had a substantial market in common with another licence on or after 29 October 1987, but before the date of formal declaration under subsection 89T(2). New subsection 89T(8A) deems the "new system" licence to have been in force immediately before 29 October 1987 and to have had the same service area at the relevant time as the related "old system" licence. This will allow correct specifications under subsection 89T(8) of the period prior to formal declaration under subsection 89T(2) when the licence actually had a substantial market in common with another licence.

Clause 4: Minister may notify population figures

Section 91AAD of the Principal Act requires the Minister to notify in the Gazette figures for the population of Australia, the population within the service area of each commercial television licence and the percentage of the total Australian population each service area population figure represents.

New 91AAD(7A) has the effect that, where a new system commercial television licence is granted and a new notice is not published in respect of that licence, the population figures for the related old system commercial television station licence are deemed to apply to the new system licence.

Clause 5: Penalties

Formal.

Clause 6: Interpretation

Existing subsection 92ZA(4) of the Principal Act contains the same interpretative provisions as in proposed new paragraphs 92ZA(4)(a) and (b).

Paragraph 92ZA(4)(a) ensures maintenance of protection under the grandfathering rules (Division 7 of PART III BA) where a "new system" licence is granted in substitution for one or more related "old system" licences pursuant to sections 99 or 99A of the Broadcasting and Television Amendment Act 1985.

Paragraph 92ZA(4)(b) ensures continuity in the application of the grandfathering rules in subsections 92ZD(1) and 92ZE(1) where the population reach of an "old system" licence is specified in a notice pursuant to section 91AAD and where that licence is then converted to a "new system" licence.

New paragraph 92ZA(4)(c) is intended to ensure continuity in the application of relevant grandfathering rules where a declaration is in force pursuant to subsection 89T(2) in respect of a pair of commercial licences that includes an "old system" licence, where that licence has been converted to a "new system" licence and where a new declaration is then made pursuant to subsection 89T(2). The grandfathering rules to which new paragraph 92ZA(4)(c) is intended to apply are contained in subsections 92ZB(3), 92ZC(3), 92ZK(2) and 92ZL(2).

The effect of new paragraph 92ZA(4)(c) is to deem a "second declaration" (ie in respect of a pair of licences that includes a converted "new system" licence) to have been in force since the original declaration was made in respect of the corresponding "old system" licence. Any person who, for example, acquired prescribed interests in "old system" commercial radio station licence X and commercial radio licence Y after the date these licences became paired under subsection 89T(2) could not, in order to obtain grandfathered protection under subsection 92ZB(3), rely on the fact that relevant prescribed interests were held in converted "new system" licence Z and licence Y before the date on which they became paired pursuant to subsection 89T(2).

New subsection 92ZA(4A) ensures that new paragraph 92ZA(4)(c) can also apply in the situation where a pair of licences in respect of which a declaration is in force pursuant to subsection 89T(2) consists of two "new system" licences which have been granted in substitution for corresponding "old system" licences that were previously paired pursuant to subsection 89T(2).

Clause 7: New radio interest limits introduced by Broadcasting (Ownership and Control) Act 1988

Subsection 92ZB(3) of the Principal Act provides grandfathered protection against the operation of the one radio licence to a market limit in subsection 90C(2). This protection applies only where a person held relevant prescribed interests immediately before the day on which those licences were deemed to have had a substantial market in common in terms of subsection 89T(2).

The combined operation of subsections 89T(8) and 92ZB(4) means that, where two licences were deemed to have been paired on 29 October 1987 and prescribed interests were held in those licences before that date, there is a potential entitlement to protection under both subsection 92ZB(3) and subsection 92ZB(1). Subsection 92ZB(1) requires that prescribed interests held before that date did not breach the pre-existing one licence in a metropolitan area limit in subsection 90C(2).

New subsection 92ZB(3A) applies to a person who, before 29 October 1987, held prescribed interests in two commercial radio licences in the same metropolitan area in breach of former subsection 90C(2) and who would therefore not be eligible for protection under subsection 92ZB(1). It ensures that such a person cannot rely on the fact that the prescribed interests were held before the date the licences were deemed to have been paired under subsection 89T(2) to obtain protection under subsection 92ZB(3).

Clause 8: New radio directorship limits - introduced by Broadcasting (Ownership and Control) Act 1988

New subsection 92ZC(3A) of the Principal Act applies to directorships in the same way that new subsection 92ZB(3A) [Clause 7] applies to prescribed interests. It ensures that a person who, before 29 October 1987, held directorships in relation to two commercial radio licences in the same metropolitan area in breach of former paragraph 90F(1)(a), and who would therefore be ineligible for protection under subsection 92ZC(1), cannot rely on the fact that the directorships were held before the date the licences were deemed to have been paired under subsection 89T(2) to obtain protection under subsection 92ZC(3).

Clause 9: Section 92C 60% directorship limit - introduced by Broadcasting (Ownership and Control) Act 1987

Subsection 92ZD(5) of the Principal Act provides for loss of grandfathered protection under subsection 92ZD(1) where relevant commercial television licences are affected by service area aggregation. New subsection 92ZE(2A) provides an equivalent provision to the prescribed interest provisions in subsection 92ZD(5). It ensures that grandfathered protection for directorships under subsection 92ZE(1) is lost where relevant commercial television licences are affected by service area aggregation.

Clause 10: Television/radio cross media interest limit - introduced by Broadcasting (Ownership and Control) Act 1987 and modified by Broadcasting (Ownership and Control) Act 1988

Subsection 92ZK(2) of the Principal Act provides grandfathered protection against the operation of the television/radio cross-media limit in section 92JB. This protection applies only where a person held relevant prescribed interests in a pair of licences immediately before the day on which those licences were deemed to have had a substantial market in common in terms of subsection 89T(2).

The combined operation of subsections 89T(8) and 92ZK(4) means that, where two licences were deemed to have been paired on 29 October 1987 and prescribed interests were held in those licences before that date, there is a potential entitlement to protection under both subsection 92ZK(2) and subsection 92ZK(1).

Subsection 92ZK(1) requires that prescribed interests held before that date did not breach the pre-existing television/radio cross-media prescribed interest limit in former section 92FAB.

New subsection 92ZK(2A) applies to a person who, before 29 October 1987, held a prescribed interest in a commercial television licence and a commercial radio licence in breach of former section 92FAB and who would therefore not be eligible for protection under subsection 92ZK(1). It ensures that such a person cannot rely on the fact that the prescribed interests were held before the date the licences were deemed to have been paired under subsection 89T(2) to obtain protection under subsection 92ZK(2).

Clause 11: Television/radio cross media directorship limit - introduced by Broadcasting (Ownership and Control) Act 1987 and modified by Broadcasting (Ownership and Control) Act 1988

Subsection 92ZK(1) of the Principal Act provides grandfathered protection under the television/radio cross-media prescribed interest limit in section 92JB if relevant prescribed interests held before 29 October 1987 did not then contravene the previous television/radio cross-media prescribed interest limit in former section 92FAB; or if subsequent action has been taken to cause that former contravention to cease.

The proposed amendments of subsection 92ZL(1) of the Principal Act [subclause 11(b)] will make the requirements for protection under the television/radio cross-media directorship limit in section 92JD consistent with the requirements in subsection 92ZK(1) for protection under the corresponding prescribed interest limit in section 92JB.

New subsection 92ZL(2A) of the Principal Act [subclause 11(c)] applies to directorships in the same way that new subsection 92ZK(2A) applies to prescribed interests. It ensures that a person who, before 29 October 1987, held directorships in relation to a commercial television licence and a commercial radio licence in breach of former section 92FAD, and who would therefore be ineligible for protection under subsection 92ZK(1), cannot rely on the fact that the directorships were held before the date the licences were deemed to have been paired under subsection 89T(2) to claim protection under subsection 92ZK(2).

Clause 12: Delegation by Minister

Sections 89T and 89U, subsection 90(IB) and section 91AAD of the Principal Act require the Minister to make initial determinations for the purpose of the publication of notices in the Gazette that are necessary for the enforcement of relevant radio and cross-media ownership and control limits. These sections also require that new determinations be made, or existing determinations varied or revoked, in specified circumstances. The Minister is also under an obligation to update notices on a regular basis [section 89V and subsection 91AAD(6)].

The above determinations relate to service area populations, as measured by Census Count results published by the Australian Statistician and, in the case of section 89U, to the calculation of the number of commercial radio licences in each State.

Clause 12 has been drafted on the assumption that new section 125G, as proposed to be introduced in the Principal Act by clause 46 of the Broadcasting Legislation Amendment Bill 1988, will have come into operation before commencement of this Bill. The effect of clause 12 would be to allow the Minister to delegate to an authorised officer in the Department his powers under sections 89T and 89U, subsection 90(IB) and section 91AAD.