



**Submission by
Free TV Australia**

Senate Finance and Public Administration
Legislation Committee

Omnibus Repeal Day (Autumn 2014) Bill 2014

11 April 2014

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EXECUTIVE SUMMARY

- Free TV is supportive of the government's de-regulation agenda. The *Omnibus Repeal Day (Autumn 2014) Bill 2014* (Omnibus Bill) is a positive first step to reducing the levels of regulation that apply to media and telecommunications industries, who are among the most heavily regulated in the economy.
- A number of the provisions directly relate to commercial free-to-air television broadcasters. Free TV generally support these provisions, however there are some improvements that can be made to the reporting requirements which will further reduce the administrative burden on broadcasters.
- Free TV supports the provisions of the Omnibus Bill that will give the ACMA discretion over which complaints it will investigate. This will result in savings for both the government and industry, while still allowing serious and material complaints to be addressed.
- Free TV recommends some changes to Items 208 – 221 of Schedule 2 to the Omnibus Bill. These Items relate to the notification and control provisions of the *Broadcasting Services Act 1992* (BSA). While the changes in the Omnibus Bill are an improvement on the current rules in the BSA, there are further enhancements that can be made to reduce administrative duplication and red tape for industry. These include removing a requirement for more than one party to notify the ACMA about changes in control, and removing the requirement to provide an annual report to the ACMA about directorships.
- The period for notification about control arrangements under the BSA should be extended to 10 business days. The Omnibus Bill extends the period of notification about control from 5 calendar days to 10 calendar days. While this is an improvement, it still provides insufficient time for notification to be made, particularly given the complexity of the relevant corporate structures and the serious consequences that flow from a breach of the provisions.
- Item 223 of Schedule 2 to the Omnibus Bill makes some changes to the requirements for the provision of audited accounts by licensees under the BSA. The proposed clauses will give the ACMA discretion to exclude certain classes of licences from this requirement. For certain classes of licence, the cost of audited accounts is excessive and prohibitive. It is our view that the Omnibus Bill should be amended to exclude these licensees from the requirement altogether.

Introduction

Free TV Australia (Free TV) represents all of Australia's commercial free-to-air television broadcasters. At no cost to the public, our members provide nine channels of content across a broad range of genres, as well as rich online and mobile offerings. The value of commercial free-to-air television to the Australian public remains high. On any given day, free-to-air television is watched by more than 14 million Australians.

Free TV supports the Government's de-regulation agenda and these initial moves to reduce the amount of red tape for businesses in our industry.

Commercial free-to-air television broadcasters support the provisions of the Omnibus Bill regarding discretion for the ACMA in the investigation of complaints (Item 6 of Schedule 2), and the provisions relating to spent reviews (Part 10 of Schedule 2). This submission does not deal with those matters in detail.

There are a number of other measures contained in the Omnibus Bill which could be improved to further reduce the administrative burden on commercial free-to-air broadcasters, without reducing or diminishing the substantive regulatory obligations.

The proposed changes are discussed below and suggested amendments to the Omnibus Bill are marked up at Appendix A to this submission.

Schedule 2 clauses

Free TV Australia welcomes the opportunity to make a submission to the Committee on the provisions of the Bill which affect its members.

1. Control notification provisions (Items 208-221 of Schedule 2)

Free TV supports the proposal to remove the requirement to report annually on persons in a position to exercise control of a broadcasting or datacasting transmitter licence.

However, there are a number of improvements that could be made to the Bill to further reduce red tape and administrative costs to broadcasters.

Reporting annually on directorships

The Omnibus Bill should be amended to repeal section 62, which requires annual reporting on directorship of broadcasting licensees, datacasting licensees, and publishers of associated newspapers.

Information on directorships of broadcasting licensees is already reported to ASIC. It is unnecessary duplication for broadcasters to have to report this information annually to a separate government regulator, particularly if there is no change. The ACMA can gain information about directors simply by accessing the ASIC register. This is a clear example of unnecessary red tape for industry.

Dual notification of controllers

The Bill should be amended to remove the duplication of both the controller and the licensee notifying the ACMA about control changes. This will involve the repeal of section 63 and consequential amendments to section 64.

Often a licensee will not know if there has been a control change for some time due to the complexity of the relevant transactions and corporate structures, and technical reports on company structures can take a number of days to receive. The licensee may be reliant on the controller to provide information about their activities.

Hence the person entering the position of control or alternatively, leaving the position of control should be the one to notify the ACMA in both instances, rather than the licensee. This will reduce duplication.

Notification period

Under the BSA, notifications about control must be made within 5 days. The Bill extends this notification period to 10 days.

Free TV welcomes the extension of the timeframe for notification. However, it is our view that the relevant period for notification should be 10 *business* days (rather than 10 calendar days).

Controller/shareholder arrangements can be very complex and it can often take some time to determine whether there has been a change in control.

ASX listed companies do not receive notification of changes of substantial shareholdings for up to 3 days after shares are traded. Once notified (by lodgement on the ASX), it can, in some cases, be difficult to ascertain ownership and control of such shares. ASX listed companies therefore must engage third parties to undertake an analysis of the share holdings and these reports are not compiled or delivered in less than 7 days after making a formal request for such information.

Five consecutive days is a clear example of an unreasonable and disproportionately burdensome obligation, particularly given the serious consequences that flow from breaching

these notification provisions. While ten consecutive days is an improvement, it is still an unreasonably short timeframe, given the complexity of control arrangements.

Extending the timeframe will not impact at all on the effective operation of the Register of Controlled Media Groups. By way of comparison, companies have 28 days to notify ASIC when a director or secretary is appointed.¹

The amendments to the existing notification periods should be clarified by the inclusion of the word “business” before the word “days” at Items 215 and 217 of Schedule 2 to the Omnibus Bill.

2. Audited accounts

Item 223 of the Omnibus Bill will amend the BSA to allow the ACMA discretion to exclude certain licensees from the requirement to produce audited accounts.

There are a number of small joint ventures holding broadcasting licences issued under section 38B and 38C of the BSA. These are very small licences and the cost of audited accounts separately for these entities is prohibitive.

Free TV requested that the legislation be amended to remove the requirement for audited accounts for section 38B and 38C licensees in its submission to Minister Turnbull in December 2013. Removal of this requirement is expected to save more than \$220,000 per annum.

While we appreciate the moves to allow the ACMA discretion to exclude certain licensees, Free TV does not support the proposal in its current form, particularly in the absence of any criteria or information about how the ACMA would exercise the discretion.

The change proposed by Free TV at Appendix A to this submission would exclude section 38B and 38C licensees from the requirement to produce audited accounts, with the ACMA retaining discretion in relation to other classes of licences.

An alternative approach could be to amend the BSA so that section 38B and 38C licensees are not required to provide audited accounts unless requested to so by the ACMA and only in respect of the most recent financial year.

This will still provide relief to the licensees while empowering the ACMA to require audited accounts if it is deemed necessary. The shifting of the onus from industry to the ACMA will still provide significant savings to licensees.

¹ *Corporations Act 2001*, s 205B(1)

APPENDIX A**Omnibus Bill, Schedule 2, Part 14—Other amendments*****Broadcasting Services Act 1992*****208 ~~Subsection 62(1)~~**

Repeal the ~~subsection, substitute:~~

~~Notification by licensee—general~~

- ~~— (1) Each commercial television broadcasting licensee, commercial radio broadcasting licensee and datacasting transmitter licensee must, within 3 months after the end of each financial year, give to the ACMA written notice of the name of each person who was a director of the licensee at the end of that financial year.~~

209 ~~Subsection 62(2)~~

Omit “The details are to be provided”, substitute “The notice is to be”.

210 ~~Subsection 62(2A)~~

Repeal the subsection, substitute:

~~Notification by restricted datacasting licensee~~

- ~~— (2A) Each restricted datacasting licensee must, within 3 months after the end of each financial year that ends during the digital radio moratorium period for the licence area of a commercial radio broadcasting licence, give to the ACMA written notice of the name of each person who was a director of the restricted datacasting licensee at the end of that financial year.~~

211 ~~Subsection 62(2B)~~

Omit “The details are to be provided”, substitute “The notice is to be”.

212 ~~Subsection 62(3)~~

Repeal the subsection, substitute:

~~Notification by publisher of newspaper~~

- ~~— (3) If:~~
- ~~— (a) a newspaper is associated with the licence area of a commercial television broadcasting licence or a commercial radio broadcasting licence; and~~
- ~~— (b) the publisher of the newspaper is a company;~~
- ~~the publisher must, within 3 months after the end of each financial year, give to the ACMA written notice of the name of each person who was a director of the company at the end of that financial year.~~

213 ~~Subsection 62(4)~~

Omit “The details are to be provided”, substitute “The notice is to be”.

214 Application of amendments—section 62 of the *Broadcasting Services Act 1992*

The ~~amendments repeal~~ of section 62 of the *Broadcasting Services Act 1992* ~~made by this Part~~ applies in relation to a financial year that ends after the commencement of this item.

215 Subsections 63(1), (2A) and (3)

~~Repeal the section.—Omit “5 days”, substitute “10 days”.~~

216 Application of amendments—section 63 of the *Broadcasting Services Act 1992*

The ~~amendments repeal~~ of section 63 of the *Broadcasting Services Act 1992* made by this Part applies in relation to the notification by a person of an event, if the person becomes aware of the event after the commencement of this item.

217 Subsections 64(1)

Repeal the subsection, substitute:

(1) If a person who was not in a position to exercise control of a commercial television broadcasting licence, a commercial radio broadcasting licence or a datacasting transmitter licence becomes aware that that person has become in a position to exercise control of the relevant licence, then that person must, within 10 business days after becoming so aware, notify the ACMA in writing of that position.

(1A) If a person who was in a position to exercise control of a commercial television broadcasting licence, a commercial radio broadcasting licence or a datacasting transmitter licence becomes aware that that person has ceased to be in a position to exercise control of the relevant licence, then that person must, within 10 business days after becoming so aware, notify the ACMA in writing of that position.

Subsection 64, (2A) and

Repeal the subsection, substitute:

(1) If, during the digital radio moratorium period for the licence area of a commercial radio broadcasting licence, a person who was not in a position to exercise control of restricted datacasting licence becomes aware that that person has become in a position to exercise control of the relevant licence, then that person must, within 10 business days after becoming so aware, notify the ACMA in writing of that position.

(1A) If, during the digital radio moratorium period for the licence area of a commercial radio broadcasting licence, a person who was in a position to exercise control of a restricted datacasting licence becomes aware that that person has ceased to be in a position to exercise control of the relevant licence, then that person must, within 10 business days after becoming so aware, notify the ACMA in writing of that position.

Subsection 64(3)

Repeal the subsection, substitute:

(1) If a person who was not in a position to exercise control of a newspaper that is associated with the licence area of a commercial television broadcasting licence or a commercial radio broadcasting licence becomes aware that that person has become in a position to exercise control of the relevant newspaper, then that person must, within 10 business days after becoming so aware, notify the ACMA in writing of that position.

(1A) If a person who was not in a position to exercise control of a newspaper that is associated with the licence area of a commercial television broadcasting licence or a commercial radio broadcasting licence becomes aware that that person has ceased to be in a position to exercise control of the relevant newspaper, then that person must, within 10 business days after becoming so aware, notify the ACMA in writing of that position.

~~Omit “5 days”, substitute “10 days”.~~

218 Application of amendments—section 64 of the *Broadcasting Services Act 1992*

The amendments of section 64 of the *Broadcasting Services Act 1992* made by this Part apply in relation to the notification by a person of a position, if the person becomes aware of the position after the commencement of this item.

219 Section 65

Repeal the section.

220 Section 65A

Omit “~~62, 63~~, 64 or 65”, substitute “~~or~~ 64”.

221 Section 65B

Omit “~~62, 63~~, 64 and 65”, substitute “~~and~~ 64”.

222 Subparagraph 205B(1)(c)(i)

Omit “an audited balance-sheet and an audited profit and loss account”, substitute “a balance-sheet and a profit and loss account”.

223 After subsection 205B(4)

Insert:

- (4A) For the purposes of the application of subparagraph (1)(c)(i) to a licensee:
- (a) a balance-sheet must be an audited balance-sheet; and
 - (b) a profit and loss account must be an audited profit and loss account;
- unless the licensee is included in a class of licensees specified by the ACMA in a legislative instrument, ~~or the information relates to a licence issued under section 38B or 38C of the Act.~~