
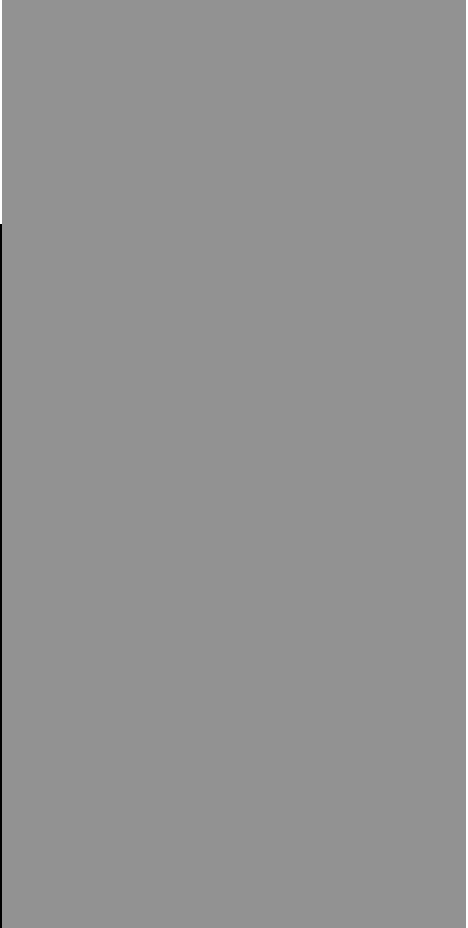
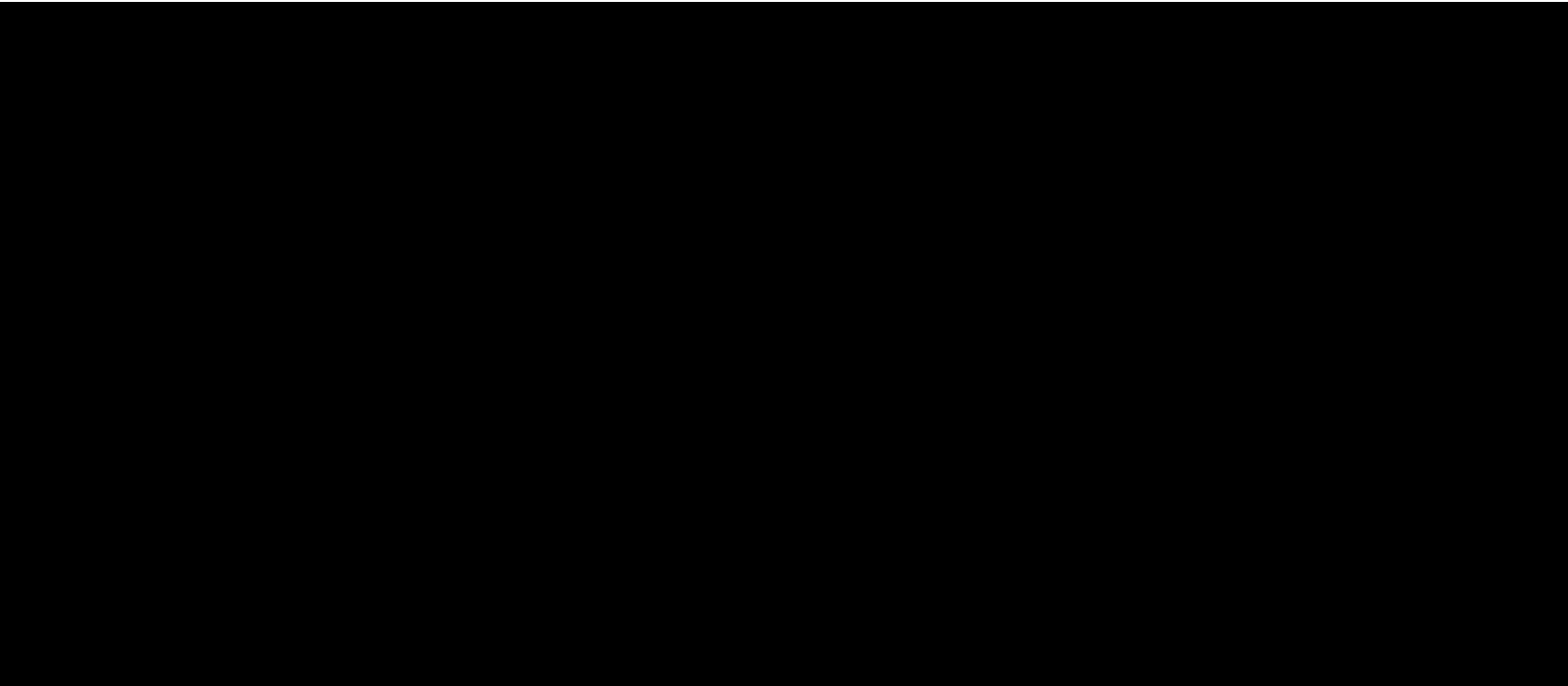


Allens Arthur Robinson 



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**New Media Ownership Laws: The Framework**

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# Coverage: Media ownership law changes

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- Timing: uncertain
- Constitutional basis
- Structure of changes
  - Cross media rules / 5/4 test
  - Foreign ownership rules / repeal
- Register of controlled media groups the “race to the threshold”

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**Timing:** repeal of cross and foreign depends upon finalisation of the process for allocation of datacasting transmitter licences to authorise new digital services: **commencement date is uncertain.**

**Implication:** no cross media or foreign mergers until repeal occurs, and that date is uncertain but commencement date is probably sometime after 1 February 2007 but prior to 1 February 2008.

**Constitutional basis:** communications power (51(v)) but to cover regulation of newspapers (particularly new notification requirements for newspaper of controllers and directors), use of the corporations power, the trade and commerce power, the Territories power and the external affairs power.

# Understanding the new rules: some key terms

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**Basic prohibition:** transactions occurring that result in an **unacceptable media diversity situation**.

**Unacceptable media diversity situation:** less than 5 **points** in a commercial radio broadcasting licence area or less than 4 **points** in a regional licence area.

**Points:** worked out by radio licence area and is broadly a separately controlled **media group** and a separately owned "single traditional media" company not part of a media group.

**Media group:** means a group of 2 or more media operations where there is at least one person (the **registered controller**) who controls the group and the group complies with the **statutory control rules**.

**Statutory control rules:** means rules such as two to a market for commercial radio and the 75% audience reach rule for tv

**Registered controller** of a registered media group means a person who is entered on the Register as the controller of the media group.

**Register** is the **Register of Controlled Media Groups:** compiled by ACMA as soon as possible after 1 February 2007, based on control notifications to be made by 6 February 2007.

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**Cross media transactions and foreign investment transactions in commercial television and newspapers:**

- Prior to the commencement date are prohibited by existing law.
- After the commencement date are permitted if:
  - no unacceptable media diversity situation (or if one already exists, no reduction in points); or
  - results in unacceptable media diversity situation (or, if one already exists, and points are reduced) and ACMA has given prior approval to the transaction;
  - for foreign investors, if FIRB has approved; and
  - for 3 way cross media mergers in regional areas, if the ACCC has approved
- ACMA prior approval, subject to divestment, can result in an unacceptable media diversity situation existing for up to 3 years (theoretical maximum).
- ACMA may give remedial directions: up to 2 years to fix unacceptable media diversity situation: note one month to divest if breach is flagrant i.e. ignored the Register.

# The Register of Controlled Media Groups

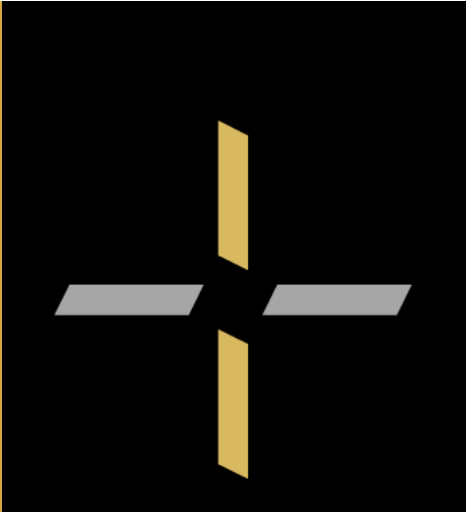
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- Register is a tool for industry to ensure compliance with the new media diversity rules.
- Compiled and maintained by ACMA: initial formulation is that all radio licences, commercial TV licences and associated newspapers need to notify ACMA of controllers and directors by 6 February 2007.
- Initial compilation of the Register: ACMA can ignore an unacceptable media diversity situation.
- New post 1 February media groups: ACMA must be satisfied that no unacceptable media diversity situation exists, plus written statement from ACCC for regional licence areas for 3 way mergers.
- Shows media groups in each licence area and registered controllers: media groups will have a unique number assigned by ACMA.
- May include explanatory notes.
- Grandfathering of registered controllers: change of controller or method of achieving control doesn't affect continuity of the group, but change of composition does.

# Regulation of the "race to the threshold"

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- Generally only completed transactions will be entered on the Register.
- Provision made for conditional transactions to be entered, where the last remaining condition that can be satisfied is that ACMA enters the new media group in the Register
- ACMA must enter conditional transactions on the Register if it is satisfied that the transaction will complete within 5 days of entry in the Register
- Competing transactions problem: limited number of possible transactions in particular radio licence areas.
- Party A relies on Register and enters into an unconditional transaction; Party B completes first in a market and notifies ACMA; Party A completes and unacceptable media diversity situation results: Party A is subject to remedial directions to divest.
- Party A's conduct is subject to examination: if it ignored the Register, the breach is flagrant and it must divest within one month.
- If Party A acted in good faith and took reasonable precautions: it has 2 years to divest.
- Party A could have relied on the conditional transactions provision.



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