Australian Government

Australian Communications and Media Authority

Foreign ownership of Australian media assets: review of legislative requirements

Report

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Glossary

Abbreviation	Meaning
ACMA	Australian Communications and Media Authority
AMC	An Australian media company, as defined in section 74B of the BSA
Amendment Act	*Broadcasting Legislation Amendment (Foreign Media Ownership, Community Radio and Other Measures) Act 2018*
ARN	Australian Radio Network Pty Limited
ASIC	Australian Securities and Investments Commission
Associated newspaper	A newspaper that is associated with the licence area of a commercial television licence or a commercial radio broadcasting licence and which has been included by the ACMA on the Associated Newspaper Register, in accordance with section 59 of the BSA
ATO	Australian Taxation Office
BlackRock	BlackRock Investment Management (Australia) Limited
BSA	*Broadcasting Services Act 1992*
Department	Department of Infrastructure, Transport, Regional Development, Communications and the Arts
Division 10A	Division 10A of Part 5 of the BSA
EM	The explanatory memorandum to the Amendment Act
FATA	*Foreign Acquisitions and Takeovers Act 1975*
FATA Regulation	*Foreign Acquisitions and Takeovers Regulation 2015*
FIRB	Foreign Investment Review Board
FOMA scheme	The legislative framework for the Register, set out in Division 10A
Foreign person	A foreign person, as defined in section 74B of the BSA
Foreign stakeholder	A foreign stakeholder, as defined in section 74B of the BSA
Foreign stakeholder threshold	In relation to an AMC, the threshold of company interests (2.5%), specified in section 74C of the BSA, at which a foreign person is a foreign stakeholder in that company
Free TV	Free TV Australia
Minister	Minister for Communications
Register	Register of Foreign Owners of Media Assets, maintained and published by the ACMA in accordance with section 74D of the BSA
Review	The review of the Register and Division 10A that the ACMA must conduct in accordance with section 74U of the BSA
RFOAA	Register of Foreign Owners of Australian Assets, required to be kept in accordance with section 130S of the FATA

Executive summary

The Review of the foreign ownership of media assets FOMA scheme and the Register has found that it is only partly meeting its objectives. Consequently, the report makes a number of recommendations aimed at improving effectiveness and thereby enhancing the longer-term utility of the information it generates.

The establishment of the FOMA scheme is well adapted to the key policy objectives but there is little evidence that the information has been of significant utility

The implementation of the FOMA scheme and the publication of the Register have enabled transparency of, and accessibility to, information about the foreign ownership of Australian media companies. However, the information on the Register does not appear to be frequently accessed by members of the public and there is no clear evidence that government policy makers have found the Register helpful in informing the development of media or other policy.

There is an opportunity for government to consolidate multiple reporting requirements to increase effectiveness

The FOMA scheme is one of several regulatory regimes that impose reporting or disclosure requirements onto foreign persons investing in Australian businesses, including media businesses. There is some overlap between co-existing schemes, and some entities have multiple reporting requirements. This adds a layer of complexity and cost to reporting entities.

The ACMA is of the view that the FOMA scheme and the Register are likely to be effectively superseded by a new register, the RFOAA, which is expected to commence in 2024[1].

The RFOAA will record direct company interests of 10% or more, held by foreign persons in a broad range of Australian media assets, including, but not limited to, AMCs. While there are some distinctions between the two schemes, because of the RFOAA's broader scope and its establishment under the legislative framework of the FATA, the RFOAA will be more likely to maintain its relevance over time and will be better known to foreign investors than the FOMA scheme and the Register. In particular, the ACMA notes that the RFOAA will include a broader scope of media assets than is currently captured by the FOMA scheme.

As a result, the ACMA is recommending that Government consider consolidating the various reporting requirements and their associated registers.

In the short term, the government should consider amendments to the existing FOMA scheme

The Review also identified some administrative burdens and uncertainties in the FOMA scheme. Accordingly, the ACMA is recommending that consideration be given to amending some aspects of the legislation underpinning the FOMA scheme. These recommendations relate to the threshold level for reporting, the existing definition of a 'foreign person' and an exemption for subsidiary companies where a parent company has already made a notification. These could be pursued in the short term, while consideration is given to the overarching foreign investment framework and opportunities for consolidation.

The ACMA's view is that a notification or disclosure threshold of 2.5% company interests is significantly below a level where a foreign stakeholder would likely be in a position to exercise influence over an AMC.

[1] The RFOAA will be established by the Australian Taxation Office in accordance with provisions of the *Foreign Acquisitions and Takeovers Act 1975* and the *Foreign Acquisitions and Takeover Regulation 2015* that were enacted after the Register was put in place.

An increase of the foreign stakeholder threshold from 2.5% to 10% could reduce the reporting burden on foreign stakeholders, whilst not materially reducing overall transparency about foreign persons who are in a position to influence the operations of AMCs.

The existing definition of a 'foreign person' includes Australian citizens who ordinarily reside overseas and there is no objective test for when an Australian citizen returning to reside in Australia ceases to be a 'foreign person' for the purposes of the FOMA scheme. This can lead to some uncertainty about notification requirements. Adjustments to the definition of 'foreign person' would help to clarify these requirements.

An amendment to exempt a foreign stakeholder from making a notification if it is a subsidiary company for which a parent company has already made a notification would also reduce the complexity and regulatory burden of the FOMA scheme.

Recommendations

The Review makes the following 4 recommendations. These are intended to address the findings that the FOMA scheme is only partly meeting its policy objectives and will likely become increasingly redundant, particularly after the RFOAA commences in 2024.

Recommendations have also been made to reduce the difficulties in complying with the FOMA scheme and, therefore, the costs to stakeholders (being foreign persons investing in AMCs). In the ACMA's view, these would not materially impact upon the policy objectives of the FOMA scheme.

A. Government should review of all the current reporting and disclosure requirements that apply to foreign persons who invest in Australia's media sector, with a view to consolidating those requirements as far as possible and minimising the number of regulatory frameworks and Government agencies with which foreign investors are required to engage.

B. The foreign stakeholder notification threshold should be increased from 2.5% to 10%. This will reduce the associated costs and legal risks associated with the FOMA scheme by reducing the number of foreign persons required to comply, while still requiring compliance from those foreign persons who are more likely to have the potential to exert influence over the operations of one or more AMCs.

C. The definition of 'foreign person' in the BSA should be amended to either exclude Australian citizens residing overseas or to provide clarification about when Australian citizens who have resided overseas, and are now returning to Australia, cease being foreign persons for the purposes of the FOMA scheme.

D. A foreign stakeholder should be exempt from being required to notify the ACMA if it is a subsidiary company, and a parent company has made a notification on its behalf.

Introduction

Background

Introduction of requirements for foreign owners of media assets

On 1 September 2018, the Amendment Act introduced Division 10A the BSA. Division 10A is the legislative basis for the FOMA scheme which sets out the requirements for:

- foreign stakeholders to notify the ACMA about the company interests held in AMCs
- the ACMA to maintain the Register.

An 'Australian media company' is defined in section 74B of the BSA as a company that holds a commercial television or commercial radio broadcasting licence, or a company that is a constitutional corporation and which publishes an associated newspaper. As at the finalisation of this Report, there are 231 AMCs, which are all listed on the ACMA's Media Control Database.

Australian companies that operate other types of media services, such as subscription broadcasting services, streaming television services or online-only news publications are not covered by the FOMA scheme unless they also hold one or more commercial television or commercial radio licences or are a publisher of one or more associated newspapers.

Policy objectives

According to the EM, the purpose of the FOMA scheme was to improve transparency about the levels and sources of foreign investment in AMCs. The Regulation Impact Statement in the EM notes that:

> The lack of transparency about foreign investment in the media industry is a significant issue. The media holds an important position in Australian society due to its ability to set news agendas and the context in which public policy issues are analysed and discussed. In turn, this allows the media to inform and shape community views on a number of critical social, economic, and political issues. While there may be additional means by which community views can be guided and influenced, the media still retains a unique ability to inform and shape such views. There is a strong policy case to ensure that the levels and sources of foreign investment in the Australian media are broadly understood and known.[2]

To address this lack of transparency, the EM states that the Register was intended to meet the following policy objectives:

- the Australian public is easily able to access information about the levels and sources of foreign investment in mainstream media outlets
- government consideration of media policy issues is informed by an accurate and up-to-date assessment of the levels and sources of foreign ownership of Australian media.[3]

The EM also states that the establishment of the Register:

> would provide the community with increased levels of transparency as to the level and source of foreign investment in Australian media companies, meet the Government's policy objectives … and assist in eliminating the information gap that currently exists.[4]

[2] EM, p. 8.
[3] Ibid.
[4] Ibid, p. 10.

Obligations for foreign owners of media assets under the BSA

The obligations for foreign owners of media assets are set out in full at **Appendix A**. A 'foreign stakeholder' is defined as a 'foreign person' who has company interests of 2.5% or more in an AMC (i.e. the 'foreign stakeholder threshold').[5]

The EM posits that 'interests of less than five per cent can still be material [in] assessing the extent to which foreign persons may have the capacity to influence or affect the operations of Australian media companies.'[6]

In accordance with relevant provisions in the BSA, foreign stakeholders are required to notify the ACMA about their interests in an AMC within 30 days after:

- they become a foreign stakeholder in an AMC (section 74F)
- they cease to be a foreign stakeholder in an AMC (section 74G)
- the end of a financial year if, at the end of that financial year, they are foreign stakeholders in an AMC (section 74H).[7]

A foreign stakeholder may also be required to notify the ACMA about its interests in an AMC within a specified period if required to do so by the ACMA under subsection 74K(1) of the BSA.

A person is not required to notify relevant information to the ACMA if the information might tend to incriminate the person or expose the person to a penalty.[8]

Civil penalties apply to foreign stakeholders for failing to comply. The maximum civil penalty payable for a contravention of a notification provision is 300 penalty units for a body corporate and 60 penalty units for other entities.[9]

Alternatively, infringement notices that impose 60 penalty units for bodies corporate and 10 penalty units for other entities may be issued.[10] A foreign person commits a separate contravention of the relevant notification provision for each day during which the contravention continues.

ACMA must maintain a public register

The ACMA is required to maintain the information it receives from foreign stakeholders in the Register, which is to be made available for inspection on the ACMA website after the end of the 6-month 'initial disclosure period' that commenced on 1 September 2018 (section 74D of the BSA). In accordance with section 74D, the Register has been available on the ACMA website since 1 March 2019.

Requirement to provide an annual report to the Minister

Subsection 74R of the BSA states that, as soon as practicable after 30 July following a financial year, the ACMA must:

- prepare a report about foreign stakeholders' company interests in AMCs at the end of that financial year
- give the report to the Minister.

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[5] See section 74C of the BSA. Certain key terms, such as 'foreign government', 'foreign government investor', 'foreign person' and 'separate government entity' are defined in section 74B of the BSA to have the same meaning as in the FATA. 'Company interests' is defined in section 6 of the BSA.

[6] EM, p. 7.

[7] A foreign person who was a foreign stakeholder in an AMC at the commencement of the FOMA scheme was also required to submit a notification under section 74J of the BSA by 1 March 2019.

[8] Subsections 74F(6), 74G(5), 74H(6) and 74K(7) of the BSA.

[9] Paragraphs 205F(5AA)(c) and (d) of the BSA. The value of a penalty unit is currently $222 for offences committed after 1 July 2020, and will increase from $222 to $275 from 1 January 2023.

[10] See footnote 9 – the value of a penalty unit is currently $222.

The Minister may publish the report on the website of the Department. The reports for the 2018–19, 2019–20 and 2020-21 financial years have been published on the Department's website.

Related provisions of the BSA

The concept of 'company interests' is relevant when assessing reporting requirements under the FOMA scheme. It is defined in section 6 of the BSA:

> ***company interests***, in relation to a person who has a shareholding interest, a voting interest, a dividend interest or a winding-up interest in a company, means the percentage of that interest or, if the person has 2 or more of those interests, whichever of those interests has the greater or greatest percentage.

Section 8 of the BSA defines these different types of 'company interests'.

The provisions relating to tracing of ownership of company interests are set out in clause 8 of Schedule 1 to the BSA. Under these provisions, company interests can be traced through a chain of companies, using the fractional tracing method. Foreign stakeholders must apply these tracing provisions when determining their company interests.

The effect of these provisions is that company interests can be traced through corporate groups. For example, while a company interest in an AMC may be held by the Australian-based subsidiary of a foreign person, all entities in the corporate group with traced interests exceeding 2.5% would also be considered foreign stakeholders in the AMC, consistent with the definition of foreign stakeholder in section 74C of the BSA.

Other provisions in the BSA that are relevant to this Review are in **Appendix B**.

Statutory review

Section 74U of the BSA requires the ACMA to conduct a review of the operation of the Register and the operation of the FOMA scheme and associated legislation.

Subsection 74U(1) requires the ACMA to conduct the Review as soon as practicable after 28 February 2022, and to prepare a report of the Review for the Minister.

The Minister must table the report in each House of Parliament within 15 sitting days of that house after the day on which the Minister receives the report.

Approach to the Review

Subsection 74U(1) requires the ACMA to review the following matters:

- the operation of the FOMA scheme and whether it should be amended
- the operation of the remaining provisions in the BSA, to the extent to which they relate to the FOMA scheme, and whether those provisions should be amended.

The EM indicates that the Review is to assess the operation of the Register and its effectiveness in achieving its objectives, and to provide clear direction on the ongoing utility of the Register.

To this end, the scope of the Review is limited to the operation of the FOMA scheme and other related provisions in the BSA.

Undertaking the Review

When undertaking the Review, we had regard to:

- information currently in the Register
- information from annual reports prepared by the ACMA and given to the Minister in accordance with subsection 74R(1) of the BSA
- other information available to the ACMA relevant to the Register or the FOMA scheme

- submissions made to the ACMA in response to the consultation paper (see below).

Consultation

As part of the Review, on 14 July 2022, we released a consultation paper[11] and invited submissions about the operation of the FOMA scheme requirements for foreign owners of media assets under the BSA and the operation of the Register. The consultation paper sought specific responses to 17 questions, which are provided at **Appendix C**.

In particular, we expressly invited submissions from:

- foreign stakeholders who have lodged notifications in relation to the Register, in accordance with the FOMA scheme
- Australian media companies
- Australian Government agencies that maintain registers of, or otherwise record information on, foreign owners of Australian assets.

The ACMA received 8 submissions, listed at **Appendix D**: 4 were from foreign stakeholders (all of whom were financial or investment companies), 1 from an AMC and 3 from other entities, including industry associations representing foreign stakeholders (the Australian Financial Markets Association) and AMCs (Free TV Australia). No submissions were received from Government entities.

[11] ACMA Consultation 24/2022, *Foreign ownership of Australian media assets: review of legislative requirements – Consultation paper*, 14 July 2022.

Operation of Division 10A

The Register as at 30 June 2022

The Register shows that, as at 30 June 2022, 67 foreign stakeholders held an interest of at least 2.5% in 147 AMCs. This equates to 63.7% of 231 AMCs having at least one foreign stakeholder.

Table 1 shows the percentage interests in AMCs held by foreign stakeholders, as at 30 June 2022, noting that the Register shows that some AMCs have multiple foreign stakeholders, including foreign stakeholders from different (and unrelated) corporate groups. The majority of the AMCs listed on the Register have foreign stakeholders holding combined interests of less than 50% (138 out of 147 AMCs).

Table 1. Distribution of AMCs by size of foreign interests as at 30 June 2022[12]

	Total %age size of foreign-held company interests				
	2.5 - 9.99%	10 - 19.99%	20 - 49.99%	50 - 99.99%	100%
Number of AMCs	17	22	99	0	9

Table 2 shows that most foreign stakeholders hold company interests of at least 2.5% in a plurality of AMCs. Only 5 foreign stakeholders hold company interests in a single AMC, whereas 62 out of 67 hold company interests of at least 2.5% in 3 or more AMCs. This reflects the fact that foreign stakeholders typically invest in parent companies of media groups, rather than in an individual AMC. These parent companies themselves hold interests in (or own outright) multiple AMCs.

Table 2. Distribution of foreign stakeholders by number of AMCs as at 30 June 2022

	Number of AMCs					
	1	2	3	4	5 or more	Total
Number of foreign stakeholders	5	0	9	0	53	67

According to information on the Register, foreign stakeholders in AMCs mostly comprise media groups and financial groups. Media groups (for example, News Corporation and Paramount Global) are involved in publishing or the provision of television and/or radio services and make up 40.3% of foreign stakeholders. Financial groups (for example, UBS Group, BlackRock Inc and Mitsubishi UFJ Financial Group) are financial and fund management entities that are involved in the investment management sector and make up 56.7%. Two foreign stakeholders (3%) are passive investors in an AMC and are not part of a media group or a financial group.

While financial groups make up the largest segment of foreign stakeholders, media groups typically hold higher levels of company interests in AMCs than financial groups. No foreign stakeholder that is part of a media group holds company interests of less than 4.5% in an AMC; no financial group holds more than 13.52% in an AMC.

Division 10A policy objectives

The establishment of the Register, in accordance with the FOMA scheme requirements, was to address a perceived lack of transparency about foreign investment in Australia's

[12] Table 1 shows the combined company interests held by foreign stakeholder corporate groups in AMCs, potentially from multiple foreign stakeholder corporate groups.

media industry.[13] As indicated in the EM, the FOMA scheme and the Register were established to address this lack of transparency by allowing the Australian public to easily access information about foreign investment in 'mainstream media outlets', and by allowing the Australian Government, when considering media policy issues, to inform itself with accurate and up-to-date information about foreign ownership of Australian media.

The EM notes that, although there may be additional means by which community views can be guided and influenced, the media outlets covered by the FOMA scheme still retain 'a unique ability to inform and shape such views'[14]. The ACMA further notes that these outlets, owned by AMCs, are the same entities that are subject to the media control and diversity rules elsewhere in Part 5 of the BSA, and include what the BSA describes as 'the more influential broadcasting services'[15].

From information considered by the ACMA, including information provided in submissions to the Review, the FOMA scheme appears to be meeting its policy objectives only in part. The establishment of the Register means that from 1 March 2019, both members of the public and government policymakers have been able to access information about foreign investment in AMCs. However, the Review has found that few members of the public have accessed information in the Register and the ACMA has seen no clear evidence that the Register is being used by government policymakers to inform themselves with accurate and up-to-date information about foreign ownership of Australian media.

In addition, the ACMA notes that commercial television services, commercial radio services and associated newspapers remain influential in their capacity to shape community views on social, economic and political issues, as argued in the EM. However, research conducted by the ACMA into Australian media consumption (discussed below) shows that the popularity of these forms of media as a source of news and information has been gradually declining since the FOMA scheme was introduced, especially when compared to online media.

Accessing the Register

The ACMA maintains the Register on its website, which is available to the public, subject to Terms of Use that users are required to accept. Consistent with the policy objectives of the FOMA scheme, the purpose of the Register is to make accessible meaningful information about the levels and sources of foreign investment in AMCs.

The Register may be searched by several variables, including a foreign stakeholder's name, the AMC, the broadcasting licence number (if applicable), and media network.

Information on the Register displays in a table, showing relevant information such as the identity of the AMC, the media service or services or outputs licensed to or published by the AMC, and details about each related foreign stakeholder, such as its name and the level of interest held. The specific information shown, and its format, will depend on how the search is undertaken (for example, a search by AMC will display information slightly differently to a search by foreign stakeholder). The search results may be downloaded as a pdf document.

The ACMA has concluded that public interest in the Register appears to be relatively low. This is because:

- ACMA website analytics show that the Register landing page on the ACMA website averages approximately one unique page view per day, with the average duration on the page being 2.5 minutes. It follows that, given the average duration of access, not all page views necessarily translate into searches of the Register.
- Since 1 March 2019 when the Register commenced, the ACMA has not received any enquiries from members of the public about accessing the Register or about information contained in it.

[13] EM, p. 8.
[14] Ibid.
[15] See paragraph 3(1)(c) of the *Broadcasting Services Act 1992*.

- the ACMA could not identify any references to the Register, or to information contained in the Register, published in the media from the 6 months prior to the commencement of the Review.
- Other than foreign stakeholders (and their representatives), no members of the public who had accessed the Register responded to the consultation paper.

Two suggestions to improve the accessibility of information on the Register were made by submitters responding to the consultation paper. Baker McKenzie and the Australian Financial Markets Association both suggested that the Register should allow users to better filter information, for example, by allowing users to sort by corporate group, so that aggregated information about all of the foreign stakeholders in that group can be displayed together. One suggested way to provide this flexibility is to allow users to extract information to an Excel format or equivalent.

The Australian Financial Markets Association also suggested that additional identifying information about AMCs should be included on the Register, such as the Reuters Instrument Code or the International Securities Identification Number, as this would better allow foreign persons to identify AMCs and therefore comply with the notification requirements.

The ACMA has noted these suggestions and will consider their utility and the feasibility of implementing them in future updates of the Register.

In general, the ACMA is of the view that the design and format of the Register is reasonably adapted to the purpose of allowing the Australian public to easily access information about the levels and sources of foreign investment in mainstream media outlets.

Informing Government

Since the Register commenced on 1 March 2019, the ACMA has been contacted by Government agencies on 2 occasions, in both instances with specific questions about information on the Register. The Review conducted a search for Government publications where information from the Register has been cited but did not identify any. In addition, none of the Government agencies contacted by the ACMA during the consultation phase of the Review indicated that they had accessed information on the Register.

Consequently, the ACMA has concluded that, at the present time, interest in the Register from Government agencies is low.

Mainstream media outlets

As noted above, the FOMA scheme was designed to cover foreign ownership in so-called 'mainstream media outlets' – commercial television services, commercial radio services and associated newspapers. These align exactly with the media outlets that are already covered by the media ownership and diversity rules in Part 5 of the BSA.

The Regulatory Impact Statement of the EM explained that this approach would allow the Register to be established using the legislative framework in the BSA, as opposed to a separate legislative framework or through the FATA (which, at the time when the FOMA scheme was introduced, did not have a framework for Australian media businesses). The EM concluded that the BSA model, administered by the ACMA would incur the lowest estimated costs of all of the options considered. The EM stated:

> This reflects the fact that the ACMA already has in place systems that collate information disclosed to them regarding the control of regulated media assets under Part 5 of the BSA. This includes the legislated requirement to establish and maintain a Register of Controlled Media Groups. In contrast, the implementation of a register through a stand-alone legislative framework, or through the FATA, are expected to be somewhat higher costs, reflecting the fact that the ATO and Treasury / FIRB have no direct experience with regulated media assets, or with establishing and maintaining registers involving these media outlets.[16]

[16] EM, p. 12.

Since the FOMA scheme was introduced, however, data collected by the ACMA indicates that Australians' use of other media outlets has increased and reliance on other media sources for news has grown exponentially compared to media services and publications covered by the FOMA scheme:

- between 2018 and 2022, the proportion of Australians who reported viewing content on Australian free-to-air television or free-to-air catch-up services (including national television services) increased marginally from 67% to 70%.
- between 2018 and 2022, the proportion of Australians who reported listening to Australian radio services (AM, FM and DAB+) declined from 83% to 72%
- by comparison, between 2018 and 2022, the proportion of Australians who reported viewing content on other forms of media, e.g. online or pay TV services, increased from 38% to 60%.[17]

Other data collected by the ACMA indicates that, as a news destination, 'online' sources (e.g. news websites, social media and search engines) are Australians' main sources of news: 81% of Australians access those sources for news, compared to 59% who access free-to-air television, 39% who access radio and 23% who access print media such as newspapers.[18]

The ACMA is aware that in many cases, AMCs (as defined in Division 10A) are also owners of other media outlets, such as online news providers and/or or non-commercial television services. On that basis, it is likely that, as a side-effect of its stated function under the BSA to record foreign stakeholders of AMCs, the Register lists some foreign persons who also hold an interest in other media outlets, but those outlets are not listed in the Register.

Over time, as Australians rely less on traditional media outlets compared to online and streaming sources, there is a risk that the Register, by recording foreign stakeholders in commercial television, commercial radio licensees and some newspaper publishers, will become less representative of all foreign owners of Australian media outlets that have the capacity to influence public opinion, in contrast to the policy objectives.

In the ACMA's view, if the Government were to amend the FOMA scheme to broaden the coverage of the Register by including other types of outlets, it should examine the feasibility of doing so under a different legislative framework than the BSA. The ACMA notes that, since the establishment of the RFOAA, the FATA would be an appropriate framework in which to house an expanded FOMA Register (possibly consolidated with the RFOAA).

Accordingly, the ACMA recommends that the Government evaluates whether the RFOAA would be a preferred vehicle to achieve the policy objectives of the FOMA scheme.

Findings

1. The information in the Register does not appear to be frequently accessed by members of the public. There is no clear evidence that Government policymakers have found the information in the Register helpful in informing the development of media policy.
2. The design and format of the Register is reasonably adapted to the policy objective of allowing the Australian public and the Government to easily access information about the levels and sources of foreign investment in mainstream media outlets.
3. Australians are becoming comparatively less reliant on commercial television, commercial radio and print newspapers owned by AMCs, for their news and information. As this continues, the FOMA scheme will become less representative of the range of Australian media outlets available.

[17] *ACMA annual consumer survey 2022*, 'Viewing behaviours in past 7 days'; 'Listening to radio, among all'.
[18] *ACMA annual consumer survey 2022*, 'Accessing news'.

Other government registers and notification requirements

One of the justifications set out in the EM for establishing the Register within the BSA as opposed to implementing it through stand-alone legislation or the FATA was because no agency other than the ACMA had systems in place to collate information disclosed by third parties about media interests.[19]

That does not mean, however, that foreign stakeholders in Australian media assets were not already subject to various other, more general, disclosure requirements. In addition to the Register, there are several other notification and registration requirements that apply to foreign investors acquiring interests in Australian businesses (which include AMCs), each triggered by its own percentage threshold. For example:

- Substantial holding notice – a person acquiring a direct interest of 5% or more in a listed entity (i.e. a 'substantial holding'), or moving a substantial holding by at least 1%, must submit a substantial holding notice to the relevant market operator, such as the ASX (Chapter 6C of the *Corporations Act 2001*).
- Foreign Investment Review Board (FIRB) – an acquisition of a direct interest of 10% or more in an Australian media business by a foreign person requires FIRB approval (Part 4 of the FATA and Part 5 of the FATA Regulation)[20].
- Notification of a change in control – the licensee for a commercial television licence or a commercial radio licence or the publisher of an associated newspaper must notify the ACMA when a person begins or ceases to be in a position to exercise control of that licence or newspaper for inclusion in the Media Control Database.

In addition, since the introduction of the FOMA scheme and the establishment of the Register, the FATA was amended to establish the RFOAA,[21] which will be administered by the ATO and come into operation by 2024. These amendments established a new legislative framework for the collection of information disclosed by media businesses.

Once the RFOAA is in place, a foreign person will be required to notify the ATO about any acquisition of a direct interest of 10% or more in an entity which wholly or partly carries out an 'Australian media business' (defined in section 13A of the FATA regulation as a business involved with publishing daily newspapers and/or broadcasting television or radio in Australia, and/or operating an electronic service that delivers news content over the internet wholly or partly to a daily Australian audience of at least 10,000 people).

Several submissions noted that, to a certain extent, information on the Register is available from other sources. BlackRock noted that the share registries of listed companies are publicly available, as are substantial holdings notifications. BlackRock also noted that the Government is also made aware of foreign acquisitions in the media sector of 10% through the FIRB notification and approval process.

Free TV submitted that, in principle, a disclosure regime should avoid duplication with other transparency measures. It recommended that Division 10A should be amended so that it applies only to media entities that will not have disclosure obligations under the RFOAA. As noted above, Free TV also recommended that the foreign stakeholder threshold should be lifted to 15%; as this would be the same as the threshold for change of control notifications, it would mean that foreign stakeholder information would already be collected and published by the ACMA when it receives change of control notifications.

In undertaking the Review, the ACMA has considered the extent to which other notification and registration requirements overlap with the notification requirements for the Register. The ACMA notes that multiple disclosure requirements present additional costs for foreign persons, and additional legal risks. However, although the FOMA scheme represents an

[19] EM, p. 12.
[20] Note that when Division 10A was enacted, the requirement for FIRB approval was a direct interest of at least 5%. This was subsequently increased to 10% on 1 April 2022.
[21] Part 7A of the *Foreign Acquisitions and Takeovers Act 1975*.

additional regulatory burden on foreign persons investing in AMCs, the ACMA has concluded that, with the exception of the RFOAA (discussed below), the various regulatory frameworks serve different purposes.

With respect to media operations in Australia, the policy objective of the RFOAA is similar to that of the FOMA scheme, being to increase visibility of foreign ownership in Australia, including visibility of interests held by foreign persons in the Australian media sector. However, the RFOAA will differ from the Register in the following ways:

- information disclosed to the ATO for inclusion on the RFOAA will not be made available to the general public
- the RFOAA will include a larger number of media entities, as an 'Australian media business' will include non-commercial television and radio businesses, newspapers that are not 'associated' newspapers for the purposes of the BSA, and electronic media, such as digital media operations
- the disclosure threshold for the RFOAA will be a direct company interest of 10%.

Consequently, the RFOAA will capture investors with a higher level of interest in, and a broader range of Australian media businesses. As the RFOAA will not be publicly available, it will not provide transparency to the community or media about foreign investment in Australian media businesses. The ACMA expects that, as the disclosure threshold is 10%, the RFOAA will be less likely to capture information from financial groups, and that information on the RFOAA will be more highly weighted to foreign media entities investing for the purposes of operating and controlling Australian media businesses.

The ACMA notes that there will be a reasonable amount of overlap between the Register and the RFOAA, once it commences operation in 2024. Although there are differences between the regulatory regimes, in general, the ACMA is of the view that these differences mean that the RFOAA improves upon the Register and will provide a more detailed view of foreign control over a greater range of Australian media businesses. While the information on the RFOAA will not be made available to the public, as the Review has found, public interest in this kind of material is low.

Consequently, the ACMA is of the view that once the RFOAA is in place, it will be likely to effectively supersede the FOMA scheme and the Register as the most useful record of foreign influence in the Australian media industry. This is because the RFOAA will record foreign interests in a broader range of Australian media entities than the Register, and at a more appropriate threshold of company interests. Additionally, the RFOAA sits within FATA, which is likely to be more familiar to foreign persons and will lead to greater awareness of the disclosure obligations among foreign investors. Noting the costs of compliance by foreign persons, and the legal risks, the ACMA is of the view that the relative value of having both the Register and the RFOAA will become increasingly less clear.

The ACMA therefore considers that with a view to streamlining the increasing reporting obligations and reducing the consequential compliance costs to stakeholders and administering agencies, there would be merit in a whole-of-government review of the different registers and disclosure obligations relating to the foreign ownership of Australian businesses, including AMCs, that evaluates the various and overlapping costs and benefits.

Findings

4. The FOMA scheme is one of several regulatory frameworks that impose reporting or disclosure obligations on foreign persons investing in Australian media businesses, thus adding to their compliance costs.
5. While the stated policy intent of the FOMA scheme does not overlap with the policy objectives of most of the other regulatory frameworks examined by the ACMA, there will be some common ground between the purpose and operation of the Register and the RFOAA to the extent that, once it is in effect, the RFOAA will be likely to effectively supersede the FOMA scheme and the Register as a useful record of foreign influence in the Australian media industry.

Notifications

Notification requirements

The foreign stakeholder notification requirements under the FOMA scheme fall into one of 2 broad categories:

- a requirement to notify the ACMA in writing about certain events, within 30 days after that event occurring, including:
  - when a person becomes or ceases to be a foreign stakeholder
  - when a foreign stakeholder is required by the ACMA to give a notification
- an annual requirement for a foreign stakeholder to notify the ACMA about the interests held in an AMC within 30 days after the end of a financial year.

The annual notification requirement was included in preference to a continuous notification obligation (for example, similar to the disclosure requirement set out in Part 6C.1 of the *Corporations Act 2001*, where shareholders with substantial holdings in a publicly listed company are required to make a new disclosure whenever their holdings change by at least 1%). The EM noted that a continuous notification obligation would be likely to impose the highest regulatory burden on foreign persons (and the ACMA) due to the costs involved in reporting company interests and updating the Register.[22] As the FOMA scheme included a foreign stakeholder threshold of 2.5%, the EM noted that the impact of this threshold would be counter-balanced by an annual reporting obligation rather than a continuous obligation.[23]

Where a foreign stakeholder dies (or in the case of a corporation, is wound up) before making a notification required by the FOMA scheme, the executor or administrator of the person's estate (or the liquidator of the corporation) is required to notify the information in accordance with the relevant provision.

Making a notification

Notifications are made to the Register by an online form that the ACMA maintains on its website. The form has been designed to allow foreign stakeholders (including persons who have recently ceased being foreign stakeholders) to make notifications in accordance with the FOMA scheme and provide all of the information required in sections 74F, 74G, 74H and 74J of the BSA, which includes 'designated information' set out in section 74B of the BSA[24].

The form is designed so that a single notification can be made on behalf of more than one foreign stakeholder (for example, where multiple foreign stakeholders are related entities in a corporate group) and can be used to report on company interests in more than one AMC.

The form requires notifiers to enter contact details and to declare the legislative provision under which the notification is being made (i.e. section 74F, 74G, 74H or 74J of the BSA). The notifier is then required to include pertinent information about the foreign stakeholder, the AMC and the level of company interest, depending on the relevant notification provision.

The form also requests a corporate chart. This is to assist the ACMA to corroborate the foreign stakeholder's company interests in the AMC, and the method used to determine those interests. In practice, the inclusion of a corporate chart allows the ACMA to identify other foreign stakeholders in a corporate structure who have not provided notifications, as required, and to advise those foreign stakeholders about the requirement.

The form also includes explanatory text to ensure that the notifier completing the form understands the key elements of the notification requirements, such as when a notification is required and how company interests in an AMC are calculated.

[22] EM, p. 16.
[23] EM, p. 16.
[24] Subsections 74F(2), 74H(2) and 74J(2) of the BSA allow the ACMA to specify additional information required in a notification by making a legislative instruments. No such instruments are currently in force.

Since the form was first developed in 2018, it has been modified on 2 occasions, once in response to stakeholder feedback, and once where the ACMA had identified an ongoing problem, leading to some invalid notifications being made.

Notifications made to the Register

From 1 September 2018 until 30 June 2022, the ACMA received 1119 notifications from foreign stakeholders. The ACMA considers that this indicates a high level of compliance by foreign stakeholders with the notification requirements in the FOMA scheme. These notifications consist of:

- 135 notifications made under subsection 74J(1) of the BSA (see **Table 3**)[25]
- 982 notifications made since 1 March 2019 under subsections 74F(1), 74G(1) and 74H(1) of the BSA (see **Table 4**).

In some cases, a foreign stakeholder submits an invalid notification (for example, due to an error in the notification) which must be resubmitted. Invalid notifications are not included in the figures shown above. Since the 2018-19 financial year, the number of notification errors leading to invalid notifications has reduced[26]. This has been due to increased familiarity with the online notification process, and improvements made by the ACMA to the design of the form to reduce errors.

Table 3. Foreign stakeholders at commencement

s74J(1) notifications	Foreign stakeholders	AMCs with foreign stakeholders
135	68	147

Table 4. FOMA Register – Notifications, foreign stakeholders and AMCs

Financial year	Notifications[27]					As at 30 June –	
	s74F(1)	s74G(1)	s74H(1)	Total	Avg per foreign stake-holder corporate group[28]	AMCs with foreign stakeholders	
2018-19	50	52	131	233	11.70	101	145
2019-20	93	75	130	298	12.42	94	139
2020-21	47	76	89	212	10.6	71	126
2021-22	72	81	86	239	14.94	67	147
Total	262	284	436	982			

Analysis of notifications shows that, in each financial year, the majority are submitted by financial groups who purchase shares in AMCs for investment purposes. For example, in 2021-22, 92.47% of notifications were submitted by financial groups, compared to 6.69% that were submitted by media groups.

Financial groups are more likely to make multiple notifications each year as they buy and sell shares in an AMC, or a company that holds an interest in an AMC, based on their particular investment strategies. Each time that their interest in an AMC moves above or

[25] This includes subsection 74J(1) notifications received during the initial disclosure period prior to the launch of the Register on 1 March 2019, and late submissions received after this date.
[26] In 2018-19, around 27% of the notifications submitted were determined by the ACMA to be invalid and required re-submission, compared to around 10% in 2019-20, around 2% in 2020-21 and around 4% in 2021-22.
[27] Notifications received do not include those requiring resubmission or that were otherwise invalid.
[28] Includes foreign persons who ceased to be foreign stakeholders before 30 June in a financial year.

below 2.5%, they must make a new notification to the ACMA. By contrast, media operators typically hold larger shareholdings in AMCs and hold these for longer periods.

In the submissions received, financial groups identified that the majority of their compliance costs come from the monitoring and information gathering necessary to comply with the notification requirements of the FOMA scheme, rather than the notifications themselves.

No submissions were received about the notification form itself, although the Australian Financial Markets Association, an industry association that represents financial groups, suggested that a corporate structure chart should not be required for notification forms submitted under section 74G of the BSA by a foreign person who has ceased to be a foreign stakeholder in an AMC. Baker McKenzie, submitting on behalf of Mitsubishi UFJ Financial Group, Inc and Mitsubishi UFJ Trust and Banking Corporation, suggested that a corporate structure chart should not be required for any of the notification forms.

The ACMA notes that, to date, the availability of a corporate chart has facilitated compliance, as it has allowed the ACMA to identify other foreign stakeholders in a corporate structure who have not provided notifications and to advise them of the requirement.

Finding

6. There is a high level of compliance by foreign stakeholders with the notification requirements. The majority of notifications are made by financial groups, which are also more likely to make multiple notifications each year. The online notification form is suitably adapted for the purpose of facilitating the lodgement of notifications by foreign stakeholders.

Foreign persons and the 2.5% foreign stakeholder threshold

Section 74C of the BSA defines a 'foreign stakeholder' in an AMC (a person to whom the notification requirements in the FOMA scheme apply) as being a foreign person who has company interests of 2.5% or more in an AMC. Company interests held by a foreign person are calculated using the fractional tracing method in clause 8 of Schedule 1 to the BSA.

Foreign persons

The EM explains that the adoption of the FATA definition of 'foreign person' was decided by the then Minister for Communications, who referred to it when announcing the Government's decision to implement the Register on 15 August 2017.

The ACMA notes that the FATA meaning of 'foreign person' would have had the advantage of being an already established definition that was reasonably well-known and understood by foreign investors. However, the ACMA also notes that the BSA has previously included rules limiting the foreign ownership of AMCs,[29] which included a definition of 'foreign person'.

Gilbert + Tobin submitted that the FATA definition of 'foreign person' may include Australian citizens who are 'not ordinarily resident in Australia', and that the FATA and the BSA do not provide guidance for determining when an Australian citizen is 'ordinarily resident in Australia' and therefore would be covered by the FOMA scheme.

Gilbert + Tobin concluded that, as the notification requirements for becoming and ceasing to be a foreign stakeholder are both civil penalty provisions, there will be times when Australian citizens who are moving overseas or returning to Australia are unable to discern whether or not they are committing a civil penalty offence under the BSA. Gilbert + Tobin submitted that this uncertainty should be resolved by modifying the definition of foreign person so that an Australian citizen is always taken to be ordinarily resident in Australia.

In enforcing the notification requirements in the FOMA scheme, the ACMA has taken the view that the definition of 'foreign person' in the BSA can include Australian citizens who do

[29] Division 4 of the BSA, repealed on 4 April 2007 by the *Broadcasting Services Amendment (Media Ownership) Act 2006*.

not ordinarily reside in Australia. In cases where an Australian citizen has returned to Australia, the ACMA has made a decision on the facts of each case as to the point at which a person then ordinarily resides in Australia. The ACMA accepts that there is no objective test to determine when an Australian citizen is taken to ordinarily reside in Australia (and therefore ceases to be a foreign person). The ACMA acknowledges that this may lead to uncertainty about the date when an Australian citizen not ordinarily resident in Australia is returning to reside in Australia and the notifications under the FOMA scheme are required.

In the absence of an explanation about why the FATA definition of 'foreign person' was adopted for the FOMA scheme, it is not clear to the ACMA that the application of the FOMA scheme to Australian citizens residing overseas is necessary to meet the policy objectives. The ACMA notes that, prior to 2007, the BSA included a meaning for 'foreign person' which did not include Australian citizens, so this is not a new concept for media regulation.[30]

The ACMA is of the view that the operation of the FOMA scheme could be simplified, without significantly affecting its policy objectives, if Australian citizens residing overseas were not required to make notifications. This change could be achieved by amending Division 10A so that the definition of 'foreign person' that is drawn from the FATA is not taken to include Australian citizens (for example, in the manner suggested by Gilbert + Tobin).

Alternatively, the uncertainty about whether an Australian citizen remains a foreign person, and the point at which they cease to be a foreign person, when they return to Australia after residing overseas could be addressed by amending Division 10A to include clear rules about when a person is 'ordinarily resident in Australia' for the purposes of the FOMA scheme.

The foreign stakeholder threshold

According to the EM, one of the concerns that the then Government was seeking to address when establishing the 2.5% foreign stakeholder threshold was the capacity of foreign persons to influence AMCs. The EM states:

> [T]here is no public source of information for foreign investment in media assets below the five per cent reporting threshold under the ASX or the FATA. This represents a significant information gap … interests of less than five per cent can still be material [in] assessing the extent to which foreign persons may have the capacity to influence or affect the operations of Australian media companies.[31]

The EM indicates that various threshold percentages were considered by the then Government (2.5%, 5% and 15%), but that the 2.5% threshold was chosen because 'it represents the lowest of the reporting thresholds considered, and would provide the highest level of disclosure, and therefore the greatest degree of transparency, regarding foreign ownership of regulated Australian media assets.'[32] The EM also states that:

> While resulting in a higher burden on foreign persons, the value of a reporting threshold of two and a half per cent will maximise the transparency of foreign investment in the Australian media.
> […]
> The two and a half per cent reporting threshold will also support the achievement of the ancillary objective of ensuring that consideration of media policy issues by Government is

[30] Prior to its repeal in 2007, the meaning of 'foreign person' in subsection 6(1) of the BSA was:
(a) a natural person who is not an Australian citizen; or
(b) a company, wherever incorporated, where natural persons who are not Australian citizens hold company interests in the company exceeding 50%; or
(c) a company, wherever incorporated, where:
(i) a company referred to in paragraph (b); or
(ii) natural persons who are not Australian citizens and a company or companies referred to in paragraph (b);
hold company interests in the company exceeding 50%.

[31] EM, p. 7.

[32] Ibid, p. 12.

> informed by an accurate and up-to-date assessment of the levels and sources of foreign ownership of the Australian media.[33]

The EM estimated that if the foreign stakeholder threshold was set at 2.5%, around 60 foreign persons would be affected, compared to 45 foreign persons at a threshold of 5% and 20 foreign persons at a threshold of 15%. Additionally, a threshold of 5% or less (i.e. including the 2.5% threshold) would mean that each foreign investor would hold company interests in an average of 3 AMCs, while at 15% each foreign investor would hold company interests in an average of 2 AMCs.[34]

Table 5. FOMA Register – foreign stakeholders by threshold (as at 30 June 2022)

Foreign stakeholder threshold (%)		As at 30 June 2022	
		Foreign stakeholders	AMCs
1	**2.5% to 100%**	67	147
2	**5% to 100%**	47	126
3	**10% to 100%**	27	51

Table 5 sets out the number of individual foreign stakeholders and AMCs that would have been on the Register as at 30 June 2022, if a foreign stakeholder threshold other than 2.5% had been in place. Row 1 shows the actual numbers with the 2.5% threshold (as reported above, 67 foreign stakeholders with company interests in 147 AMCs). Predictably, rows 2 and 3 show that these numbers would decline if the threshold was increased to 5% or 10%. In those cases, the majority of foreign persons who would no longer be considered foreign stakeholders would be financial groups that have acquired company interests in AMCs for investment purposes.

There is consensus in the submissions that the 2.5% foreign stakeholder threshold is too low, for the following reasons:

- the current threshold captures foreign persons who are not able to exert any influence over an AMC or the content it produces
- information about company interests (including in AMCs) of less than 5% is not readily available to the public, meaning that it can be difficult for foreign persons to ascertain or even become aware of a 2.5% company interest, particularly where this is held indirectly and must be calculated through the fractional tracing method.

For example, BlackRock Investment Management (Australia) Limited (BlackRock), a foreign stakeholder for the purposes of the FOMA scheme, argued that 'a 2.5% disclosure threshold does not signify any influence or control over the holding in any company', stating:

> Even with a robust compliance and monitoring framework, there is frequently insufficient publicly available information to meet the BSA reporting requirement (such as knowledge of the corporate structure or changes to a corporate structure). Fund managers who buy and sell listed stocks are not able to undertake the level of due diligence required under the BSA. The timing and tracing requirements also materially add to the reporting requirements.

The Australian Financial Markets Association indicated that the 2.5% threshold is poorly suited to financial groups:

> The 2.5% notification threshold does not support meaningful disclosure. For financial market intermediaries, which are facilitating hundreds of millions of dollars' worth of trading in listed securities on a daily basis, notifying ACMA that they hold company interests of 2.5% does not

[33] Ibid, p. 16.
[34] EM, p. 14.

provide meaningful information, as their holding does not equate to any control or influence over a particular company or its respective management. Where a person (including a foreign person) is in a position to exercise control of certain media assets, they must notify ACMA under s63 of the BSA. It would therefore better support the key purpose of ACMA's register of providing transparency about media control and ownership if ACMA were to make the disclosures under that section of the BSA public rather than require disclosure at 2.5%.

A common suggestion arising from the submissions is for the 2.5% foreign stakeholder threshold to be raised. ARN, which is the owner of a number of AMCs (but not a foreign stakeholder), suggested that the threshold be raised to 5% which would mean that the FOMA threshold would be consistent with the threshold for:

- ASIC Substantial Shareholder Notices for listed entities
- FIRB approval of investments in an Australian media business by a foreign person.

ARN claimed that increasing the threshold to 5% would lead to a broader base of potential investors in listed AMCs, increasing the availability of investment capital. ARN stated that it would not expect to be influenced by any shareholder holding a company interest of less than 5% so there would be minimal risk of undue foreign influence from such a change.

Free TV, the peak industry body for Australia's free-to-air commercial television broadcasters, suggested that the threshold be increased to 15%, consistent with the control threshold in the BSA. Free TV is of the view that this would ensure that there is a consistent threshold for media ownership that applies to the control of media assets.

The ACMA considers that the 2.5% foreign stakeholder threshold is low and is unaware of another government ownership register or disclosure requirement with a 2.5% threshold. The ACMA notes the submission from BlackRock, which stated that 'As a global asset manager, we cannot find a similar obligation anywhere else in the world that imposes a disclosure obligation on foreign persons holding media companies at 2.5%.'

One effect of this is to lessen the ACMA's capacity to detect non-compliance by foreign stakeholders that have company interests of less than 5% in an AMC. As this level of shareholding is not collected and published by other government agencies and is not otherwise publicly available, it may not be apparent to the ACMA if a foreign stakeholder failed to make a notification when required to do so.

The ACMA notes that there was no support for the current threshold in the submissions received and that some submissions expressed a view about the costs and difficulties of complying with the FOMA scheme because of the low threshold.

Noting Government's interest in identifying where there is a potential for a foreign person to influence an AMC, the ACMA is of the view that entities holding a 2.5% company interest in an AMC are unlikely to be in a position to exert any influence over its operations. For example, they would be unlikely to determine the outcome of a vote at a general meeting or to appoint a director to a Board. Further, as no other Government register of ownership of company interests requires a 2.5% reporting threshold, this indicates that holding a 2.5% interest in a company is not generally regarded as a position of influence.

The ACMA notes that the likelihood of a foreign person exerting influence over the operations of an AMC will increase as the level of company interests increase, to the point that when a person holds company interests in an AMC in excess of 15% they are deemed under the BSA to be in a position to exercise control.[35] The ACMA notes that:

- a threshold of 5% would mean that notifiable company interests would be equivalent to a 'substantial holding', as defined in section 9 of the *Corporations Act 2001.* Based on submissions received, an increase to 5% would appreciably reduce the time and

[35] The 'deemed control' rules in Part 3 of Schedule 1 to the BSA set out the conditions where a person is deemed to be in control of a company. Clause 3 of Schedule 1 specifies that if a person has company interests in a company exceeding 15%, the person is to be regarded as being in a position to exercise control of the company.

expense required to lodge notifications by making it easier for foreign persons to detect whether the threshold has been met.

- under the disclosure rules for the RFOAA, the threshold at which a foreign person is considered to be sufficiently influential within an Australian media business to require to the disclosure of its interests is a direct shareholding of 10%.

In the ACMA's view, the foreign stakeholder threshold should be increased to 10%, being equivalent to the level of ownership that is considered to be influential in the RFOAA. Although higher than the 5% suggested in submissions, it would achieve the same outcomes that are being sought by financial groups and would not meaningfully reduce the capacity of the Government or public to identify foreign persons who may have the potential to exert influence over the operations of one or more AMCs. As shown in **Table 5**, such a change would also significantly reduce the number of foreign persons subject to the cost and legal risk of the notification provisions in the FOMA scheme.

The ACMA notes Free TV's suggestion to raise the threshold to 15%. The Review considered this proposal, but it is not supported. In most cases, this would mean that a foreign stakeholder would also be a person who is in a position to control an AMC, for the purposes of the BSA, by holding company interests in excess of 15%. The ACMA notes that commercial television broadcasting licensees, commercial radio broadcasting licensees and newspaper publishers are already required to notify the ACMA in accordance with section 63 of the BSA when a person comes into a position to exercise control of the licensee company or the publisher (i.e. an AMC), which would include where the person holds company interests in excess of 15%. This would mean that if the Free TV suggestion were adopted, the Register would be entirely overlapped by the ACMA's Media Control Database.

Additionally, a 15% threshold would also exclude foreign persons who, if not actually in a position to exercise control, might nonetheless be in a position to exercise influence over an AMC. This would not be consistent with the current policy position, set out in the EM, that even low levels of company interests in an AMC could still be material in assessing the extent to which foreign persons have the capacity to influence AMCs.

If Free TV's proposal was adopted, a more straight-forward way to implement it would be to repeal Division 10A and amend section 63 of the BSA to require licensees or publishers to declare the nationality of any new controllers when making a section 63 notification.

Findings

7. The existing definition of 'foreign person' includes Australian citizens who ordinarily reside overseas, and there is no objective test to determine when an Australian citizen who is returning to reside in Australia ceases to be a foreign person for the purposes of the FOMA scheme. This can lead to some uncertainty about the notification requirements for Australian citizens who are foreign persons.
8. There is no other Australian government ownership register that sets a notification or disclosure threshold at a 2.5% company interest in a company. An increase of the foreign stakeholder threshold from 2.5% to 10% would improve the capacity of foreign persons to comply with their notification obligations and reduce the burden of the requirements of the FOMA scheme on foreign investors, while not substantively reducing the transparency of foreign persons who are in a position to influence the operations of AMCs.

Costs of complying with the Register requirements

The EM acknowledged that the establishment of the Register would result in the imposition of costs on foreign stakeholders which, if the foreign stakeholder threshold was set at 2.5%, were estimated to be $24,700 for all foreign stakeholders which, with the estimate that there would be 60 foreign stakeholders, equated to around $400 per stakeholder.[36]

[36] EM, p. 16.

These costs were expected to comprise:

- initial compliance costs for a foreign person – both to ascertain whether they are a foreign stakeholder required to make a notification, and then to make the notification
- ongoing compliance costs for foreign stakeholders to update their details on the Register.

Since the FOMA scheme commenced on 1 September 2018, foreign stakeholders have advised that reporting costs of complying with the regulatory obligations for foreign persons investing in AMCs have increased markedly. Consistent with this, submissions from foreign stakeholders responding to the consultation paper (which were all financial groups) have generally indicated that compliance costs have presented a significant burden.

Baker McKenzie estimated that its annual external costs to comply with the notification requirements is between $30,000 to $40,000, which is in addition to the internal resources needed to comply.

In general, financial groups submitted that the notification process is labour intensive and, in addition to making notifications, compliance costs are attributable to the monitoring of holdings and gathering the necessary data (including by conducting fractional tracing, as required by the BSA to determine the size of holdings) to establish whether a notification obligation would be triggered by a transaction. It was noted in some submissions that there are no effective third-party systems that can be engaged to manage this monitoring for a minimal cost. For example, ASIC alerts do not cover every type of circumstance that may lead to a notification obligation under the FOMA scheme.

Accordingly, foreign stakeholders have advised the ACMA about a range of pressure points around the cost of complying with the FOMA scheme requirements, including the costs of:

- providing notifications for multiple foreign stakeholders following a transaction because, due to the operation of the BSA fractional tracing method, all of the entities in a corporate chain acquire a 2.5% interest in an AMC
- providing multiple notifications for foreign stakeholders with company interests in AMCs close to 2.5%, due to multiple small fluctuations in company interests above and below 2.5% as they (or a company in which they have an interest, but do not control) adjust their levels of exposure, based on market decisions that are not connected to a desire to exercise influence over the AMC.

BlackRock submitted that '[f]ull compliance with the BSA regime is costly, difficult and at times impossible', and noted that in its case, compliance costs are passed on to its investor clients, the majority of whom are Australian, and that this is a cost that clients of Australian fund managers do not have to bear.

APAC Regulatory Reporting, submitting on behalf of Fidelity International Ltd, an investment management company, noted the significant manual effort that it undertakes to calculate its company interests using the fractional tracing method, and that the requirement for each entity in a corporate chain to notify the ACMA added to the compliance burden.

The ACMA is aware that foreign stakeholders typically employ Australian legal counsel to assist them in preparing notifications and that some foreign persons investing in the Australian media sector will also be required to undertake this process, even if they subsequently establish that they are not required to make a notification.

Based on an analysis of foreign stakeholder notifications, the ACMA estimates that, on average, each foreign stakeholder corporate group is required to give 14.94 notifications to the ACMA each year and that, including the time required to gather the necessary data, each notification takes around 3 hours to complete, of which only 15-30 minutes would comprise the completion of the form.

The ACMA is unable to estimate specific costs that would be incurred by a foreign stakeholder when gathering the necessary data to make a notification, and therefore

cannot confirm the validity of the estimate provided by Baker McKenzie. However, based on information provided during the consultation process and its own information, the ACMA considers that the annual compliance costs for foreign stakeholders would be higher than the estimate provided in the EM because:

- the number of foreign stakeholders affected by the 2.5% threshold is greater than originally estimated
- the cost in 2021-22 of each corporate group of foreign stakeholders making around 15 notifications[37] (including the cost of monitoring and data gathering) is unlikely to be as low as $400 per foreign stakeholder
- some foreign persons who are not foreign stakeholders will also incur compliance costs.

The ACMA is of the view that the following amendments to Division 10A would reduce the costs of compliance to individual stakeholders and to the industry in general:

- increase the foreign stakeholder threshold from 2.5% because –
  - any meaningful increase would reduce the likelihood of a foreign person becoming a foreign stakeholder and being required to report and would reduce the likelihood of financial groups crossing over the 2.5% threshold
  - an increase to 10% would appreciably reduce the complexity for foreign persons to determine whether the threshold has been met and therefore reduce the time and expense required to lodge a notification
- require only parent companies to make notifications rather than every foreign person in a corporate chain who is currently categorised as a foreign stakeholder.

The suggestion made in some submissions, for the Government to reduce costs on industry by replacing the existing fractional tracing method used to calculate company interests with a direct ownership model, is not supported by the ACMA.

The ACMA notes that FOMA scheme compliance costs could also be reduced by consolidating the reporting requirements for foreign investors in the Australian media sector so that they are required to make only one notification, and to a single agency.

Baker McKenzie made an additional suggestion to reduce notification costs: replace the annual notification obligation with a continuous disclosure obligation, similar to the obligation in the substantial shareholder regime in section 671B of the *Corporations Act 2001*.

The ACMA does not support such a proposal because, based on submissions from financial groups, a continuous notification obligation would increase the number of times foreign stakeholders would be required to make a notification, therefore increasing the cost of monitoring holdings and data gathering.

Findings

9. Compliance costs arise from identifying whether the FOMA scheme applies, and the making of notifications. They include the cost of monitoring holdings and gathering the necessary data to calculate company interests using the fractional tracing method. Consequently, any meaningful reduction of the costs of compliance with the FOMA scheme would require a reduction of the requirement to make notifications.
10. Financial groups will experience a higher cost burden under the FOMA scheme than media groups because financial groups hold smaller levels of company interests in AMCs that are around the 2.5% foreign stakeholder threshold and change their company interests more often, resulting in more notifications and the need to constantly monitor their interests in AMCs.

[37] See Table 4. which shows that on average each corporate group of foreign stakeholders made 14.94 notifications in 2021-22.

Operation of other BSA provisions

Compliance and enforcement

Part 14B and Part 14E of the BSA

Requirements for a person to make a notification to the ACMA are imposed under subsections 74F(1), 74G(1), 74H(1) and 74K(1) of the BSA, which are both civil penalty provisions and designated infringement notice provisions. Consequently, where the ACMA becomes aware of non-compliance with a notification provision, the ACMA can choose to:

- give a formal warning to a person, which may be followed up with an infringement notice
- commence civil proceedings in the Federal Court to obtain a civil penalty order.

The FOMA scheme at Division 10A extends to acts, omissions, matters and things outside of Australia.

The ACMA's power to commence civil proceedings or to give an infringement notice are set out in Part 14B and Part 14E of the BSA, respectively.

Consistent with the ACMA's Compliance and enforcement policy and its graduated and strategic risk-based approach to compliance and enforcement, it is also open to the ACMA to take informal action in response to any non-compliance. Informal action can include an initial contact with a foreign person or foreign stakeholder to advise them that they have not complied with a notification requirement in the FOMA scheme.

Enforcing compliance

The ACMA detects non-compliance with the FOMA scheme by reviewing the notifications received under the FOMA scheme and by monitoring publicly available information about foreign acquisitions, such as newspaper reports and public statements made to ASIC or market operators such as the ASX. The ACMA also engages with other government agencies who collect information about foreign investment activity, such as FIRB.

The ACMA notes that, as there is limited public information about investors who have a company interest of less than 5% in an AMC, and there are no other government agencies which collect this information, it is correspondingly limited in its capacity to detect non-compliance by a foreign stakeholder who has less than a 5% company interest in an AMC.

In general, the ACMA has found that while foreign stakeholders object to the costs of complying with the notification requirements of the FOMA scheme, there has been little resistance by foreign stakeholders to the publication of their interests in AMCs on the Register. In general, the ACMA has found a willingness by foreign stakeholders to comply with the notification requirements of the FOMA scheme and high levels of compliance.

There have been instances where foreign stakeholders have failed to provide the required notification within the specified timeframe[38], either because they were unaware of the obligation, unaware that they were a foreign stakeholder, or as a result of an administrative error leading to a notification being submitted incorrectly (for example, where a notification was submitted relating to several foreign stakeholders and/or several AMCs, but one or more foreign stakeholders or AMCs were unintentionally omitted).

During an initial period from the introduction of the FOMA scheme until the end of the 2018-19 financial year, when the ACMA undertook an education campaign to familiarise foreign stakeholders with the notification process and their obligations, the ACMA made no

[38] Notifications made under subsection 74J(1) of the BSA were required before 1 March 2019. Notifications made under subsections 74F(1) and 74G(1) are required within 30 days after the date when a person became a foreign stakeholder or ceased to become a foreign stakeholder, respectively. Notifications made under subsection 74H(1) are required within 30 days after the end of a financial year.

findings of non-compliance. The subsequent number of late notifications received by the ACMA for each financial year from 1 July 2019 until 30 June 2022 is set out in **Table 6**.

Table 6. Notifications made to the ACMA outside of the prescribed timeframe

Financial year	Total notifications	Late notifications[39]
2019-20*	298	64
2020-21	212	45
2021-22	239	50
Total	**749**	**159**

The ACMA is not aware of any deliberate or sustained attempts by foreign stakeholders to avoid complying with the FOMA scheme. In most cases where non-compliance has been identified, the ACMA has achieved compliance by writing to the non-complying entity and advising them of the need to comply, which occurred promptly in all instances.

In response to an episode of non-compliance, the ACMA has decided to issue formal warnings to 2 foreign stakeholders that did not comply with several notification requirements in the FOMA scheme over an extended period of 1298 days, starting from 1 March 2019. The non-compliance continued until it was detected by the ACMA and then rectified by the foreign stakeholders in August and September 2022. As in most other cases, the non-compliance occurred because the foreign stakeholders were unaware of their various notification obligations. The ACMA decided to take formal action due to the lengthy period of non-compliance.

Finding

11. The ACMA is not aware of any foreign stakeholder who has deliberately sought to avoid complying with the FOMA scheme. However, the ACMA's visibility of non-compliance is limited and largely reliant on AMCs (which are not the regulated entity for the purpose of the scheme) becoming aware of their investors and their obligations. In a majority of instances where non-compliance has been identified, the ACMA has achieved practical compliance outcomes by using informal measures.

Company Interests and the fractional tracing method

The FOMA scheme relies on 'company interests' to determine the percentage interest that a foreign person has in an AMC, and therefore whether that person is a foreign stakeholder. Company interests are defined in section 6 of the BSA (i.e. not in Division 10A) as follows:

> ***company interests***, in relation to a person who has a shareholding interest, a voting interest, a dividend interest or a winding-up interest in a company, means the percentage of that interest, or, if the person has 2 or more of those interests, whichever of those interests has the greater or greatest percentage.[40]

The BSA specifies that company interests can be traced through a chain of companies through the 'fractional tracing method', set out in clause 8 of Schedule 1 to the BSA. This method uses a formula to determine how company interests are held by an entity through a chain of companies and, for the purpose of the FOMA scheme, is part of the process for determining whether a foreign person is a foreign stakeholder.

[39] Figure excludes notifications that were re-submitted.

[40] Instructions for interpreting the meaning of 'shareholding interests', 'voting interests', 'dividend interests' and 'winding-up interests' are set out in section 8 of the BSA.

For example, if ‘Company A’ holds a 10% company interest in ‘Company B’ and a foreign person holds a 30% interest in Company A, then the fractional tracing method will determine that the foreign person has a 3% company interest in Company B.

Both company interests and the fractional tracing method were established for the purposes of the media control and diversity rules in Part 5 of the BSA to determine whether a person is in a position to exercise control of a commercial television licence, a commercial radio licence or an associated newspaper (i.e. the media assets owned by an AMC).

The effect of applying company interests and the fractional tracing method to the notification requirements in the FOMA scheme is that, depending on the size of that interest and the rate of dilution of ownership, where a foreign person at the end of a chain of companies acquires a company interest in an AMC, parent companies in the corporate group, and non-company shareholders, may also automatically become foreign stakeholders. As the 2.5 % foreign stakeholder threshold is low, this can occur even if those parent entities are unaware of the acquisition or had no involvement in the first company’s decision to acquire the interest.

Several entities indicated that fractional tracing should not be used to calculate whether a foreign person is a foreign stakeholder and instead direct interests should be used. The primary reason given for this is the compliance cost of calculating company interests using the fractional tracing method. APAC Regulatory Reporting submitted that Fidelity International undertakes ‘significant manual efforts [to comply with the FOMA scheme] … gathering and grooming the extra data to facilitate “fractional tracing”’ and suggests that if fractional tracing was substituted with a direct holding, the compliance cost could be significantly reduced.

Baker McKenzie observed that the calculation of company interests using fractional tracing also introduces additional risks of inaccuracies in the Register. Baker McKenzie stated:

> the current definition of 'company interests' and the requirement to trace company interests using the fractional tracing method [mean that] the foreign stakeholder is likely to encounter a number of practical issues when attempting to report its 'company interests' in an AMC, the result being that the information reported to ACMA may not be an accurate reflection of the actual 'company interests' held by that particular stakeholder in the relevant AMC.

The ACMA acknowledges that for some foreign persons, the cost of calculating company interests is a significant contributor to the overall cost of complying with the FOMA scheme. Further, the fractional tracing method is an artefact of the BSA and therefore may not be widely known, or familiar to foreign persons, which can add to the complexity and the cost of compliance.

However, the ACMA has not seen any evidence that the fractional tracing method of calculating company interests has led to widespread inaccuracies in the Register. The ACMA accepts that inaccuracy is a risk in any register that requires self-reporting from stakeholders and takes steps to cross-check information provided in notifications (for example, by referring to corporate structure charts that are provided). The ACMA is not aware of any systemic issues with accuracy of the Register.

The ACMA has considered how the FOMA scheme would operate if the fractional tracing method of calculating company interests were to be replaced by a notification requirement only for foreign persons with direct holdings in an AMC. Such a change could mean that where one or more foreign persons collectively hold less than 20% of the holding company of an AMC, they would not be recorded as foreign stakeholders under the Register, even if their company interests were calculated as being greater than the 2.5% threshold.

The ACMA notes that the direct holdings method would reduce the number of foreign persons required to provide notifications under the FOMA scheme and could also reduce the overall cost to, and burden on, individual foreign persons. However, such a reduction would also reduce the transparency of foreign holdings in AMCs – in some cases,

persons holding company interests of up to 15% might not be registered[41] – which would be inconsistent with the policy intent of the FOMA scheme.

Additionally, the ACMA notes that the Government of the day considered it to be cost-effective to implement the FOMA scheme within the company interest framework in the BSA. If Government were to decide to adopt a different method for calculating foreign ownership of AMCs, one option may be to transfer the FOMA scheme requirements from the BSA to other legislation. This could be a matter for a whole-of-government review of the different registers and disclosure obligations relating to the foreign ownership of Australian media businesses.

Finding

12. Foreign investors may be unfamiliar with the concept of fractional tracing. For some foreign persons, the cost of calculating company interests using the fractional tracing method is a significant component of their compliance costs. Although company interests and the fractional tracing method may not necessarily familiar to many foreign persons, the ACMA considers them to be reasonable and efficient measures of ownership under the BSA.

[41] Holders of company interests in excess of 15%, as calculated by the fractional tracing method, would be captured by reports made in accordance with section 63 of the BSA.

Appendices

Appendix A: Division 10A of Part 5 of the BSA

Subdivision A—Introduction

74A Simplified outline of this Division

- The ACMA must maintain a Register of Foreign Owners of Media Assets.
- The Register of Foreign Owners of Media Assets must set out, for each Australian media company, information about each foreign stakeholder in the company.
- Foreign stakeholders must notify the ACMA of their company interests in Australian media companies.

Note: For ***company interests***, see section 6.

74B Definitions

In this Division:

ACMA official has the same meaning as in the *Australian Communications and Media Authority Act 2005*.

Australia, when used in a geographical sense, includes all the external Territories.

Australian media company means:

(a) a company that holds a commercial television broadcasting licence; or

(b) a company that holds a commercial radio broadcasting licence; or

(c) a company that is:

(i) the publisher of a newspaper that is associated with the licence area of a commercial television broadcasting licence or a commercial radio broadcasting licence; and

(ii) a constitutional corporation.

designated information, in relation to a person, means:

(a) if the person is an individual:

(i) the person's date of birth; and

(ii) the country in which the person is ordinarily resident; and

(b) if the person is a corporation—the country in which the corporation was formed; and

(c) if the person is a trustee of a trust:

(i) the name of the trust; and

(ii) the country in which the trust was established; and

(d) if the person is a foreign government investor as the result of the application of paragraph 17(a) of the *Foreign Acquisitions and Takeovers Regulation 2015* to a separate government entity of a foreign country or a part of a foreign country—the foreign country or the part of the foreign country, as the case may be; and

(e) if the person is a foreign government investor wholly or partly as the result of the application of paragraph 17(b), (c), (d) or (e) of the *Foreign Acquisitions and Takeovers Regulation 2015* to a foreign government—the foreign government; and

(f) if the person is a foreign government investor wholly or partly as the result of the application of paragraph 17(b), (c), (d) or (e) of the *Foreign Acquisitions and Takeovers Regulation 2015* to a separate

government entity of a foreign country or a part of a foreign country—the foreign country or the part of the foreign country, as the case may be; and

(g) the following contact details:

(i) the person's address;

(ii) the person's email address (if any);

(iii) the person's telephone number (if any).

foreign government has the same meaning as in the *Foreign Acquisitions and Takeovers Act 1975*.

foreign government investor has the same meaning as in the *Foreign Acquisitions and Takeovers Act 1975*.

foreign person has the same meaning as in the *Foreign Acquisitions and Takeovers Act 1975*.

foreign stakeholder, in relation to an Australian media company, has the meaning given by section 74C.

initial disclosure period means the period of 6 months beginning at the commencement of this Division.

person includes a foreign person.

separate government entity has the same meaning as in the *Foreign Acquisitions and Takeovers Act 1975*.

74C Foreign stakeholder

For the purposes of this Division, if a foreign person has company interests in an Australian media company of 2.5% or more, that person is a ***foreign stakeholder*** in that company.

Subdivision B—Register of Foreign Owners of Media Assets

74D Register of Foreign Owners of Media Assets

(1) After the end of the initial disclosure period, the ACMA is to maintain a register, to be known as the Register of Foreign Owners of Media Assets.

(2) The Register of Foreign Owners of Media Assets is to be maintained by electronic means.

(3) The Register of Foreign Owners of Media Assets is to be made available for inspection on the internet.

(4) The Register of Foreign Owners of Media Assets is not a legislative instrument.

74E Information to be set out in the Register of Foreign Owners of Media Assets

(1) The Register of Foreign Owners of Media Assets must set out, for each Australian media company, the following information about each foreign stakeholder in the company:

(a) the name of the foreign stakeholder;

(b) the foreign stakeholder's company interests in the company;

(c) the method used to determine those company interests;

(d) the reason why the foreign stakeholder is a foreign person;

(e) if the foreign stakeholder is an individual—the country in which the foreign stakeholder is ordinarily resident;

(f) if the foreign stakeholder is a corporation—the country in which the corporation was formed;

(g) if the foreign stakeholder is a trustee of a trust:

(i) the name of the trust; and

(ii) the country in which the trust was established;

(h) if the foreign stakeholder is a foreign government investor as the result of the application of paragraph 17(a) of the *Foreign Acquisitions and Takeovers Regulation 2015* to a separate government entity of a foreign country or a part of a foreign country—the foreign country or the part of the foreign country, as the case may be;

(i) if the foreign stakeholder is a foreign government investor wholly or partly as the result of the application of paragraph 17(b), (c), (d) or (e) of the *Foreign Acquisitions and Takeovers Regulation 2015* to a foreign government—the foreign government;

(j) if the foreign stakeholder is a foreign government investor wholly or partly as the result of the application of paragraph 17(b), (c), (d) or (e) of the *Foreign Acquisitions and Takeovers Regulation 2015* to a separate government entity of a foreign country or a part of a foreign country—the foreign country or the part of the foreign country, as the case may be.

(2) Despite subsection (1), the Register of Foreign Owners of Media Assets must not set out particular information if the ACMA is satisfied that disclosure of the information could reasonably be expected to prejudice materially the commercial interests of a person.

Subdivision C—Notification

74F Notification by a person who becomes a foreign stakeholder in an Australian media company

(1) If a person who was not a foreign stakeholder in a particular Australian media company becomes a foreign stakeholder in the company at a particular time, the person must, within 30 days after that time, notify the ACMA in writing of:

(a) the person's name; and

(b) the circumstances that resulted in the person becoming a foreign stakeholder in the company; and

(c) the person's company interests in the company; and

(d) the method used to determine those company interests; and

(e) the reason why the person is a foreign person; and

(f) the designated information relating to the person; and

(g) such other information (if any) relating to the person as is specified under subsection (2).

(2) The ACMA may, by legislative instrument, specify information for the purposes of paragraph (1)(g).

Civil penalty provision

(3) Subsection (1) is a civil penalty provision.

(4) A person who contravenes subsection (1) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

Designated infringement notice provision

(5) Subsection (1) is a designated infringement notice provision.

Self-incrimination

(6) A person is not required to notify information under subsection (1) if the information might tend to incriminate the person or expose the person to a penalty.

74G Notification by a person who ceases to be a foreign stakeholder in an Australian media company

(1) If a person who was a foreign stakeholder in an Australian media company has ceased to be a foreign stakeholder in the company, the person must, within 30 days after the cessation, notify the ACMA in writing of:

(a) the cessation; and

(b) the circumstances that resulted in the cessation.

Civil penalty provision

(2) Subsection (1) is a civil penalty provision.

(3) A person who contravenes subsection (1) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

Designated infringement notice provision

(4) Subsection (1) is a designated infringement notice provision.

Self-incrimination

(5) A person is not required to notify information under subsection (1) if the information might tend to incriminate the person or expose the person to a penalty.

74H Notification by a person who is a foreign stakeholder in an Australian media company at the end of a financial year

(1) If, at the end of a financial year, a person is a foreign stakeholder in an Australian media company, the person must, within 30 days after the end of the financial year, notify the ACMA in writing of:

(a) the person's name; and

(b) the circumstances that resulted in the person being a foreign stakeholder in the company at the end of the financial year; and

(c) the person's company interests in the company at the end of the financial year; and

(d) the method used to determine those company interests; and

(e) the reason why the person was a foreign person at the end of the financial year; and

(f) the designated information relating to the person; and

(g) such other information (if any) relating to the person as is specified under subsection (2).

(2) The ACMA may, by legislative instrument, specify information for the purposes of paragraph (1)(g).

Civil penalty provision

(3) Subsection (1) is a civil penalty provision.

(4) A person who contravenes subsection (1) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

Designated infringement notice provision

(5) Subsection (1) is a designated infringement notice provision.

Self-incrimination

(6) A person is not required to notify information under subsection (1) if the information might tend to incriminate the person or expose the person to a penalty.

74J Notification by a person who is a foreign stakeholder in an Australian media company at the commencement of this Division

(1) If, at the commencement of this Division, a person is a foreign stakeholder in an Australian media company, the person must, within the initial disclosure period, notify the ACMA in writing of:

(a) the person's name; and

(b) the circumstances that resulted in the person being a foreign stakeholder in the company at the commencement of this Division; and

(c) the person's company interests in the company at the commencement of this Division; and

(d) the method used to determine those company interests; and

(e) the reason why the person was a foreign person at the commencement of this Division; and

(f) the designated information relating to the person; and

(g) such other information (if any) relating to the person as is specified under subsection (2).

(2) The ACMA may, by legislative instrument, specify information for the purposes of paragraph (1)(g).

Civil penalty provision

(3) Subsection (1) is a civil penalty provision.

(4) A person who contravenes subsection (1) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

Designated infringement notice provision

(5) Subsection (1) is a designated infringement notice provision.

Self-incrimination

(6) A person is not required to notify information under subsection (1) if the information might tend to incriminate the person or expose the person to a penalty.

74K Notification by a person who is a foreign stakeholder in an Australian media company—requirement by the ACMA

(1) The ACMA may, by written notice given to a foreign stakeholder in an Australian media company, require the foreign stakeholder to:

(a) notify the ACMA of:

(i) the foreign stakeholder's company interests in the company; and

(ii) the method used to determine those company interests; and

(iii) such other information (if any) relating to the foreign stakeholder as is specified under subsection (2); and

(b) do so within the period specified in the notice.

(2) The ACMA may, by legislative instrument, specify information for the purposes of subparagraph (1)(a)(iii).

(3) A period specified under paragraph (1)(b) must not be shorter than 14 days after the notice is given.

Civil penalty provision

(4) Subsection (1) is a civil penalty provision.

(5) A person who contravenes subsection (1) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

Designated infringement notice provision

(6) Subsection (1) is a designated infringement notice provision.

Self-incrimination

(7) A person is not required to notify information under subsection (1) if the information might tend to incriminate the person or expose the person to a penalty.

74L Requirement for executors, administrators and liquidators to give notification

(1) If a person who is required by subsection 74F(1), 74G(1), 74H(1), 74J(1) or 74K(1) to notify information dies before notifying the information, the executor or administrator of the person's estate must notify the information in accordance with the subsection concerned.

(2) If a person who is required by subsection 74F(1), 74G(1), 74H(1), 74J(1) or 74K(1) to notify information is a corporation and is wound up before notifying the information, the liquidator of the corporation must notify the information in accordance with the subsection concerned.

74M Person may give the ACMA relevant information

(1) A person may give the ACMA information that is relevant to the performance of the ACMA's functions under this Division.

(2) The information may consist of, or include, personal information (within the meaning of the *Privacy Act 1988*).

Subdivision D—Miscellaneous

74N Minister may direct the ACMA about the performance of its functions or the exercise of its powers

(1) The Minister may, by legislative instrument, give the ACMA a direction about the performance of the functions, or the exercise of the powers, conferred on the ACMA by this Division (other than section 74U).

Note: Section 74U requires the ACMA to conduct a review of this Division.

(2) The ACMA must comply with a direction under subsection (1).

74P Service of summons, process or notice on corporations incorporated outside Australia

Scope

(1) This section applies to:

(a) a summons or process in any proceedings under, or connected with, this Division; or

(b) a notice under any other provision of this Act, so far as that provision relates to this Division;

where:

(c) the summons, process or notice, as the case may be, is required to be served on, or given to, a body corporate incorporated outside Australia; and

(d) the body corporate does not have a registered office or a principal office in Australia; and

(e) the body corporate has an agent in Australia.

Service

(2) The summons, process or notice, as the case may be, is taken to have been served on, or given to, the body corporate if it is served on, or given to, the agent.

(3) Subsection (2) has effect in addition to section 28A of the *Acts Interpretation Act 1901*.

Note: Section 28A of the *Acts Interpretation Act 1901* deals with the service of documents.

74Q Extra-territorial application

This Division extends to acts, omissions, matters and things outside Australia.

74R Annual report

(1) As soon as practicable after 30 July next following a financial year, the ACMA must:

(a) prepare a report about the company interests in Australian media companies that were held by foreign stakeholders at the end of the financial year; and

(b) give the report to the Minister.

(2) A report under subsection (1) may include the ACMA's observations about trends relating to the company interests in Australian media companies that are held by foreign stakeholders.

(3) The Minister may cause a copy of a report under subsection (1) to be published on the Department's website.

74S Part 13 not limited

This Division does not limit the operation of Part 13 (which confers certain investigative powers on the ACMA).

74T Liability for damages

The Commonwealth, the ACMA, or an ACMA official, is not liable to an action or other proceeding for damages for, or in relation to, an act or matter in good faith done or omitted to be done:

(a) in the performance or purported performance of any function; or

(b) in the exercise or purported exercise of any power;

conferred on the ACMA by Subdivision B.

74U Review of this Division etc.

(1) The ACMA must:

(a) conduct a review of the following matters:

(i) the operation of this Division;

(ii) the operation of the remaining provisions of this Act to the extent to which they relate to this Division;

(iii) whether this Division should be amended;

(iv) whether the remaining provisions of this Act, to the extent to which they relate to this Division, should be amended; and

(b) do so as soon as practicable after the end of the 3-year period that began at the end of the initial disclosure period.

(2) The ACMA must prepare a report of the review under subsection (1).

(3) The ACMA must give the report to the Minister.

(4) The Minister must cause copies of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

Appendix B: Other BSA provisions relevant to Review

Part 1—Preliminary

6 Interpretation

[…]

company interests, in relation to a person who has a shareholding interest, a voting interest, a dividend interest or a winding-up interest in a company, means the percentage of that interest or, if the person has 2 or more of those interests, whichever of those interests has the greater or greatest percentage.

[…]

8 Interpretation—shareholding interests, voting interests, dividend interests and winding-up interests

(1) For the purposes of this Act:

(a) a person has a shareholding interest in a company if the person is beneficially entitled to, or to an interest in, shares in the company, whether or not any part of the legal ownership of the shares is vested in the person; and

(b) the percentage of the interest is the value of the shares, or of the interest in the shares, as the case may be, on the basis that the value of the shares is equal to the amount paid on the shares, expressed as a percentage of the total of all amounts paid on shares in the company.

(2) For the purposes of this Act:

(a) a person has a voting interest in a company if the person is in a position to exercise control of votes cast on a poll at a meeting of the company; and

(b) the percentage of the interest is the greatest percentage of the number of votes, expressed as a percentage of the total number of votes that could be cast on any issue at a meeting of the company, the casting of which the person is in a position to control.

(3) For the purposes of this Act:

(a) a person has a dividend interest in a company if:

(i) the person is, or would become if a dividend were declared, beneficially entitled to be paid or credited a dividend by the company; or

(ii) under the memorandum and articles of association of the company, a share of any profits of the company is to be, or may be, paid or credited to the person otherwise than as dividends on shares; and

(b) the percentage of the interest is:

(i) if subparagraph (a)(i) applies—the amount of the dividend to which the person is beneficially entitled or will become beneficially entitled expressed as a percentage of the total of all dividends to which members of the company become entitled at that time; or

(ii) if subparagraph (a)(ii) applies—the amount of the maximum share of any profits of the company that could be paid or credited to the person at a particular time expressed as a percentage of the total of all shares of profits that could be paid or credited to all members of the company at that time.

(4) For the purposes of this Act:

(a) a person has a winding-up interest in a company if the person would be entitled to a share of the property of the company that could be distributed among members of the company if property of the company were distributed among members, whether as a result of a winding-up or otherwise; and

(b) the percentage of the interest is the percentage that the value of that part of the property of the company to which the person would be so entitled bears to the total value of the property of the company.

(5) A person may have a voting interest, a dividend interest or a winding-up interest in a company even if the person does not have a beneficial entitlement to, or to an interest in, shares in the company.

[…]

Part 14B—Civil penalties

Division 1—Ancillary contravention of civil penalty provision

205E Ancillary contravention of civil penalty provision

(1) A person must not:

(a) attempt to contravene a civil penalty provision (other than this subsection); or

(b) aid, abet, counsel or procure a contravention of a civil penalty provision (other than this subsection); or

(c) induce, whether by threats or promises or otherwise, a contravention of a civil penalty provision (other than this subsection); or

(d) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision (other than this subsection); or

(e) conspire with others to effect a contravention of a civil penalty provision (other than this subsection).

(2) Subsection (1) is a civil penalty provision.

Division 2—Civil penalty orders

205EA Simplified outline

The following is a simplified outline of this Division:

- Pecuniary penalties are payable for contraventions of civil penalty provisions.

205F Civil penalty orders

(1) If the Federal Court is satisfied that a person has contravened a civil penalty provision, the Federal Court may order the person to pay the Commonwealth a pecuniary penalty.

(2) An order under subsection (1) is to be known as a ***civil penalty order***.

Determining amount of pecuniary penalty

(3) In determining the pecuniary penalty, the Federal Court must have regard to all relevant matters, including:

(a) the nature and extent of the contravention; and

(b) the nature and extent of any loss or damage suffered as a result of the contravention; and

(c) the circumstances in which the contravention took place; and

(d) whether the person has previously been found by a court in proceedings under this Act to have engaged in any similar conduct.

Maximum pecuniary penalty

(4) The pecuniary penalty payable by a person in respect of a contravention of a civil penalty provision (other than subsection 74F(1), 74G(1), 74H(1), 74J(1), 74K(1), 205AG(1) or 205E(1) or subclause 25(1) or 26(4) of Schedule 8) must not exceed the maximum pecuniary penalty that could have been imposed on the person if the person had been convicted of an offence against the provision of this Act that corresponds to the civil penalty provision.

(5) The pecuniary penalty payable by a person in respect of a contravention of subsection 205E(1) that relates to another civil penalty provision (other than subsection 74F(1), 74G(1), 74H(1), 74J(1), 74K(1) or 205AG(1) or subclause 25(1) or 26(4) of Schedule 8) must not exceed the maximum pecuniary penalty that could have been imposed on the person if the person had been convicted of an offence against the provision of this Act that corresponds to the other civil penalty provision.

(5AA) The pecuniary penalty payable by a person in respect of:

(a) a contravention of subsection 74F(1), 74G(1), 74H(1), 74J(1) or 74K(1); or

(b) a contravention of section 205E that relates to a contravention of subsection 74F(1), 74G(1), 74H(1), 74J(1) or 74K(1);

must not exceed:

(c) if the person is a body corporate—300 penalty units; or

(d) if the person is not a body corporate—60 penalty units.

(5A) The pecuniary penalty payable by a person in respect of a contravention of subsection 205AG(1) must not exceed the sum of:

(a) whichever of the following is applicable:

(i) if the person is a body corporate—2,000 penalty units;

(ii) if the person is not a body corporate—400 penalty units; and

(b) if the Federal Court is satisfied that, as a result of the scheme to which the contravention relates, the person or another person has avoided becoming liable to pay an amount of interim tax—200% of the amount of interim tax avoided.

(5B) The pecuniary penalty payable by a person in respect of a contravention of subsection 205E(1) that relates to subsection 205AG(1) must not exceed the sum of:

(a) whichever of the following is applicable:

(i) if the person is a body corporate—2,000 penalty units;

(ii) if the person is not a body corporate—400 penalty units; and

(b) if the Federal Court is satisfied that, as a result of the scheme to which the contravention of subsection 205AG(1) relates, the person or another person has avoided becoming liable to pay an amount of interim tax—200% of the amount of interim tax avoided.

(5C) The pecuniary penalty payable by a person in respect of:

(a) a contravention of subclause 25(1) of Schedule 8; or

(b) a contravention of section 205E that relates to a contravention of subclause 25(1) of Schedule 8;

must not exceed:

(c) if the person is a body corporate—300 penalty units; or

(d) if the person is not a body corporate—60 penalty units.

(5D) The pecuniary penalty payable by a person in respect of:

(a) a contravention of subclause 26(4) of Schedule 8; or

(b) a contravention of section 205E that relates to a contravention of subclause 26(4) of Schedule 8;

must not exceed:

(c) if the person is a body corporate—2,000 penalty units; or

(d) if the person is not a body corporate—400 penalty units.

Penalties for continuing contraventions

(6) If:

(a) subsection 121FG(5), 121FHB(3), 121FJA(3) or 121FJD(3), section 136F or subsection 138A(3), 140A(8) or 142A(3) applies to a contravention of a civil penalty provision; and

(b) civil penalty orders are made against a person in respect of 2 or more contraventions of such a provision;

the court may impose one penalty in respect of both or all of those contraventions, but that penalty must not exceed the sum of the maximum penalties that could be imposed if a separate penalty were imposed in respect of each contravention.

Conduct contravening more than one civil penalty provision

(7) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this section against a person in relation to the contravention of any one or more of those provisions. However, the person is not liable to more than one pecuniary penalty under this section in respect of the same conduct.

Civil enforcement of penalty

(8) A pecuniary penalty is a civil debt payable to the Commonwealth. The Commonwealth may enforce the civil penalty order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.

205G Who may apply for a civil penalty order

(1) Only the ACMA may apply for a civil penalty order.

(2) Subsection (1) does not exclude the operation of the *Director of Public Prosecutions Act 1983*.

205H 2 or more proceedings may be heard together

The Federal Court may direct that 2 or more proceedings for civil penalty orders are to be heard together.

205J Time limit for application for an order

Proceedings for a civil penalty order may be started no later than 6 years after the contravention.

205K Civil evidence and procedure rules for civil penalty orders

The Federal Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order.

205L Civil proceedings after criminal proceedings

The Federal Court must not make a civil penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

205M Criminal proceedings during civil proceedings

(1) Proceedings for a civil penalty order against a person for a contravention of a civil penalty provision are stayed if:

(a) criminal proceedings are started or have already been started against the person for an offence; and

(b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.

(2) The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

205N Criminal proceedings after civil proceedings

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether a civil penalty order has been made against the person.

205P Evidence given in proceedings for a civil penalty order not admissible in criminal proceedings

Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual if:

(a) the individual previously gave the evidence or produced the documents in proceedings for a civil penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and

(b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the civil penalty order.

205PAA Mistake of fact

(1) A person is not liable to have a civil penalty order made against the person for a contravention of a civil penalty provision (other than subsection 202(1A) or (2AA)) if:

(a) at or before the time of the conduct constituting the contravention, the person:

(i) considered whether or not facts existed; and

(ii) was under a mistaken but reasonable belief about those facts; and

(b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.

(2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:

(a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and

(b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.

(3) A person who wishes to rely on subsection (1) or (2) in proceedings for a civil penalty order bears an evidential burden in relation to that matter.

[…]

Part 14E—Infringement notices

205XAA Simplified outline

The following is a simplified outline of this Part:

- This Part sets up a system of infringement notices for contraventions of a designated infringement notice provision as an alternative to the institution of court proceedings.

205XA Formal warning

If an authorised infringement notice officer has reasonable grounds to believe that a person has contravened a designated infringement notice provision, the officer may, by written notice given to the person:

(a) inform the person accordingly; and

(b) warn the person that the officer, or another authorised infringement notice officer, may be entitled to give the person an infringement notice relating to the contravention.

Note: See subsection 205Y(4).

205Y When an infringement notice can be given

(1) If an authorised infringement notice officer has reasonable grounds to believe that a person has contravened a designated infringement notice provision, the officer may give the person an infringement notice relating to the contravention.

(2) The infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.

(3) Subsection (1) has effect subject to subsection (4).

(4) An authorised infringement notice officer must not give a person an infringement notice relating to a contravention of a designated infringement notice provision unless the officer, or another authorised infringement notice officer, has previously given a notice to the person under section 205XA in relation to:

(a) the contravention; or

(b) a similar contravention.

205Z Matters to be included in an infringement notice

An infringement notice must:

(a) set out the name of the person to whom the notice is given; and

(b) set out the name of the person who gave the notice; and

(c) set out brief details relating to the alleged contravention of a designated infringement notice provision, including the date of the alleged contravention; and

(d) contain a statement to the effect that proceedings will not be brought in relation to the alleged contravention if the penalty specified in the notice is paid to the ACMA, on behalf of the Commonwealth, within:

(i) 28 days after the notice is given; or

(ii) if the ACMA allows a longer period—that longer period; and

(e) give an explanation of how payment of the penalty is to be made; and

(f) set out the effect of section 205ZB; and

(g) set out such other matters (if any) as are specified in the regulations.

205ZA Amount of penalty

(1) The penalty to be specified in an infringement notice given to a person must be a pecuniary penalty equal to:

(aa) if the infringement notice relates to subclause 25(1) of Schedule 8 and the person is a body corporate—60 penalty units; or

(a) if the infringement notice does not relate to subclause 25(1) of Schedule 8 and the person is a commercial television broadcasting licensee or a subscription television broadcasting licensee—60 penalty units; or

(b) in any other case—10 penalty units.

(2) Subsection (1) does not apply to an infringement notice that relates to subsection 74F(1), 74G(1), 74H(1), 74J(1) or 74K(1).

(3) If an infringement notice given to a person relates to subsection 74F(1), 74G(1), 74H(1), 74J(1) or 74K(1), the penalty to be specified in the infringement notice must be a pecuniary penalty equal to:

(a) if the person is a body corporate—60 penalty units; or

(b) in any other case—10 penalty units.

205ZB Withdrawal of an infringement notice

(1) This section applies if an infringement notice is given to a person.

(2) An authorised infringement notice officer may, by written notice (the ***withdrawal notice***) given to the person, withdraw the infringement notice.

(3) To be effective, the withdrawal notice must be given to the person within 28 days after the infringement notice was given.

Refund of penalty if infringement notice withdrawn

(4) If:
(a) the penalty specified in the infringement notice is paid; and
(b) the infringement notice is withdrawn after the penalty is paid;
the Commonwealth is liable to refund the penalty.

205ZC What happens if the penalty is paid

(1) This section applies if:
(a) an infringement notice relating to an alleged contravention of a designated infringement notice provision is given to a person; and
(b) the penalty is paid in accordance with the infringement notice; and
(c) the infringement notice is not withdrawn.

(2) Any liability of the person for the alleged contravention is discharged.

(3) Proceedings may not be brought against the person for the alleged contravention.

205ZD Effect of this Part on criminal proceedings

This Part does not:
(a) require an infringement notice to be given in relation to an alleged contravention of a designated infringement notice provision; or
(b) affect the liability of a person to have proceedings brought against the person for an alleged contravention of a designated infringement notice provision if:
(i) the person does not comply with an infringement notice relating to the contravention; or
(ii) an infringement notice relating to the contravention is not given to the person; or
(iii) an infringement notice relating to the contravention is given to the person and subsequently withdrawn; or
(c) limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found in proceedings to have contravened a designated infringement notice provision.

205ZE Appointment of authorised infringement notice officer

The ACMA may, by writing, appoint a member of the staff of the ACMA as an authorised infringement notice officer for the purposes of this Act.

205ZF Regulations

The regulations may make further provision in relation to infringement notices.

[…]

Schedule 1—Control and ownership of company interests

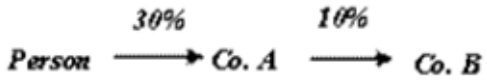
Part 4—Tracing of ownership

8 Tracing of ownership

Company interests can be traced through a chain of companies using a method known as the fractional tracing method. This method applies a formula to decide what company interest a person has.

This method is best demonstrated by an example.

Example:



The person's company interest in Company B is worked out using the formula:

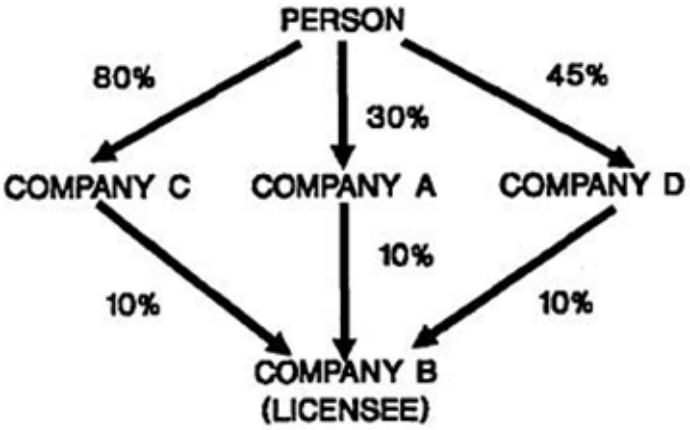
Company Interest 1 × Company Interest 2

where:

Company Interest 1 *is the company interest of the person, expressed as a fraction, in Company A.*

Company Interest 2 *is the company interest of Company A, expressed as a fraction, in Company B.*
In this case, the formula produces: 3/10 X 1/10, which means that the person has a 3% company interest in Company B.
Interests traced in this way can be added. If Company B is a licensee and the person had, through other chains of companies, a further 12.5% company interest in Company B, the person would be regarded as being in a position to exercise control of Company B under Part 3 of this Schedule because the person would have company interests exceeding 15% in Company B.

Example:



In this example, the person has a 15.5% company interest in Company B. This is made up of 3% (through Company A), 8% (through Company C) and 4.5% (through Company D).

This method of tracing ownership may be used through any number of companies. However, the ACMA is not required to trace every minor company interest.

Appendix C: 17 questions in consultation paper

1. Does the operation of Division 10A, address the stated policy objectives set out by the government and are there other processes that would facilitate these better?

2. What amendments, if any, could be made to Division 10A so that the statutory mechanisms, once implemented, could better meet the policy objectives?

3. We invite comments on the definition of a Foreign Stakeholder and the current notification threshold of 2.5% company interests, including whether or not the threshold remains appropriate or, if not, what that threshold should be.

4. How often have you accessed the Register?

5. For what purpose did you access the Register, and did you need to also access other foreign ownership registers to find the information you needed?

6. Is information on the Register easily accessible and comprehensible? If not, why not, and how could it be improved?

7. Does information accessed from the Register provide visibility about the levels and sources of foreign investment in mainstream media outlets?

8. Is the information appropriate and relevant? Should additional or different information be shown?

9. To what extent does the information on the Register meet the government's stated policy objectives?

10. Have you found that any of the information in the Register is also available through other sources? If yes, what are the other sources and what is the information that they contain?

11. Should any information that is available only through other sources also be recorded on the Register? If yes, what is that information and where is it available?

12. Do you have any suggestions for improvements on how to streamline the notification process while still achieving the intended policy objective?

13. What are the costs to business of complying with the notification provisions to meet FOMA obligations? To what extent can these costs be reduced (for example, by removing duplication with other reporting/notification requirements and/or by streamlining Division 10A)? If you are a foreign stakeholder, you may include specific costs that you have incurred when making notifications.

14. Are the circumstances when a foreign person is required to notify the ACMA (sections 74F to 74L of the BSA) appropriately designed? Should notifications be required in other circumstances, or should fewer notifications be required? If the latter, how might a scenario for fewer notifications be achieved?

15. Is the information that is required to be provided in the notifications (sections 74F to 74L of the BSA) appropriate? If not, what information is essential? What information is less essential and why?

16. Is the scope of the FOMA framework suitable to achieve its stated policy outcomes, including the types of media entities covered, the meaning of key terms such as ‘foreign stakeholder’ and ‘foreign person’ and the size of the minimum interest that triggers a notification requirement?

17. Are there additional circumstances relating to interests held in AMCs by foreign stakeholders that should be notified by foreign stakeholders and recorded on the Register?

Appendix D: List of submitters

1. APAC Regulatory Reporting on behalf of FIL Limited, FIL Asia Holdings Pte Limited and subsidiaries
2. Australian Financial Markets Association
3. Australian Radio Network Pty Limited and ASX listed parent company HT&E Limited
4. Baker McKenzie
5. BlackRock Investment Management (Australia) Limited
6. DFA Australia Limited (Dimensional Australia)
7. Free TV Australia
8. Gilbert + Tobin