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|  | **Form ACMA B21**  Effective from January 2016 |

Guidance notes

Request in relation to a conditional transaction

**WHEN SHOULD AN ACMA B21 REQUEST FORM BE LODGED?**

An ACMA B21 form should be used to make a request under section 61AZD of the *Broadcasting Services Act 1992* (**BSA**) (**Request**). This Request can be made only where the person making the Request is a party to a proposed transaction, and:

* the proposed [transaction](http://www.austlii.edu.au/au/legis/cth/consol_act/bsa1992214/s6.html#transaction) is subject to the condition that [the ACMA](http://www.austlii.edu.au/au/legis/cth/consol_act/bsa1992214/s6.html#acma) enters a proposed [media group](http://www.austlii.edu.au/au/legis/cth/consol_act/bsa1992214/s61aa.html#media_group) in the [Register](http://www.austlii.edu.au/au/legis/cth/consol_act/bsa1992214/s61aa.html#register) of Controlled Media Groups maintained by the ACMA under section 61AU of the BSA (**Register**); or
* the proposed [transaction](http://www.austlii.edu.au/au/legis/cth/consol_act/bsa1992214/s6.html#transaction) is subject to the condition that [the ACMA](http://www.austlii.edu.au/au/legis/cth/consol_act/bsa1992214/s6.html#acma) removes a [media group](http://www.austlii.edu.au/au/legis/cth/consol_act/bsa1992214/s61aa.html#media_group)'s entry from the [Register](http://www.austlii.edu.au/au/legis/cth/consol_act/bsa1992214/s61aa.html#register); or
* the proposed [transaction](http://www.austlii.edu.au/au/legis/cth/consol_act/bsa1992214/s6.html#transaction) is subject to the condition that [the ACMA](http://www.austlii.edu.au/au/legis/cth/consol_act/bsa1992214/s6.html#acma) alters a [media group](http://www.austlii.edu.au/au/legis/cth/consol_act/bsa1992214/s61aa.html#media_group)'s entry in the [Register](http://www.austlii.edu.au/au/legis/cth/consol_act/bsa1992214/s61aa.html#register).

The ACMA expects to be able to respond to most Requests within 21 days. However, this will depend on the nature and circumstances of the Request, the complexity of the transaction and any further information received by the ACMA after the Request has been lodged.

If your Request is urgent please contact the ACMA to discuss. In these circumstances the ACMA will require an explanation as to why the request was not made earlier. The ACMA cannot guarantee that it will be able to deal with requests in shorter periods.

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| **Collection, use and disclosure of personal information**  The *Privacy Act 1988* (Cth) (the Privacy Act) imposes obligations on the ACMA in relation to the collection, security, quality, access, use and disclosure of personal information. These obligations are detailed in the **Australian Privacy Principles**.  The ACMA may only collect personal information if it is reasonably necessary for, or directly related to, one or more of the ACMA’s functions or activities.  The purpose of the collection of information on this form, including personal information, is to assess a request that the ACMA assume a transaction has been completed in relation to adding, removal or altering a media group’s entry in the Register of Controlled Media Groups. This information is required under section 61AZD of the BSA.  The ACMA will not use the personal information for any other purpose, nor will we disclose it, unless we have the individual’s consent or we are otherwise permitted to do so under the Privacy Act.  If the personal information is not provided it may not be a valid application and you may be contacted and asked to submit a new form, as noted above.  Further information on the Privacy Act and the ACMA’s Privacy Policy is available [www.acma.gov.au/privacypolicy](http://www.acma.gov.au/privacypolicy). The Privacy Policy contains details about how you may access personal information about you that is held by the ACMA, and seek the correction of such information. It also explains how you may complain about a breach of the [Privacy Act](http://www.comlaw.gov.au/Series/C2004A03712) and how we will deal with such a complaint.  Should you have any questions in this regard please contact the ACMA’s privacy contact officer on 1800 226 667 or by email at [privacy@acma.gov.au](mailto:privacy@acma.gov.au). |

PART A

1. In your response to 1, the details of all persons making the Request must be provided. Each person making the Request must be a party to the proposed transaction.
2. In your response to 2, provide the name and contact details of the person or persons the ACMA may contact if further information or clarification is required in relation to the Request. This person (or these persons) must also be responsible for advising the ACMA of the matters in 3. Please also indicate which persons the contact person is representing and may speak on behalf of. If it is necessary to add further contact persons please do so by inserting an additional table.

### Forms ACMA B2/B3

1. Unsigned Form ACMA B2/B3 must be included with the Request. These forms should be filled out *as though the proposed transaction has been completed* (but not be signed or dated). These draft forms will provide details of the changes to be made to the Register if the ACMA accedes to the Request.
2. Electronic versions of Form ACMA B2/B3 are available from the ACMA website at [B2/B3 Forms](https://eport.acma.gov.au/MOD/Lodgement)
3. If the proposed transaction proceeds, signed and dated Form ACMA B2/B3 must be lodged within 10 business days of completion, as required by sections 63 and 64 of the BSA.

PART B

**Request to the ACMA**

1. The Request is for the ACMA to assume, for the purposes of Subdivision E of Division 5A of Part 5 of the BSA, that the proposed transaction has been completed; and is not subject to a condition of the type specified in paragraph (1)(b), (2)(b) or (3)(b) of section 61AZD of the BSA.
2. In your response to 7, state the date on which it is requested that the ACMA make this assumption (and thus make/remove or alter the media group’s entry in the Register). The proposed transaction must be completed within 5 business days after the making of the change to the Register. Persons making a Request should contact the ACMA if there are any issues relating to timing.

**The Proposed Transaction**

1. Your response to 8 must provide a detailed description of the proposed transaction. (It may be helpful to include ‘before’ and ‘after’ company structure diagrams). The response must include (without limitation):
   * 1. details of all parties to the proposed transaction and their roles in the proposed transaction (eg ‘seller’, ‘financier’, ‘buyer’);
     2. details of the subject matter of the proposed transaction (including the subject assets or businesses);
     3. details of the means by which the transaction will be entered into; and
     4. the proposed date of completion of the proposed transaction.

Where relevant, your response to 8 should also include reference to any documents created to carry out the transaction so far, such as tender documents or letters of offer (full copies of these documents should be attached to this Request).

1. Your response to 9 must include copies of all contract(s), deed(s), or other agreement(s) documenting the proposed transaction as they stand on the day of the Request. The copies should be as complete as possible and *include all schedules and annexures*. If the contract(s), deed(s), or agreement(s) refer to other documents these should also be attached with the relevant sections flagged. The statement regarding the status of a document need not be long; statements such as ‘completed’, ‘agreed to by all parties, awaiting satisfaction of conditions’, ‘clauses 3, 5, 6 agreed to, other clauses under negotiation’ or ‘agreed to by party X and party Y but not by party Z’ would suffice.
2. In relation to 10, the ACMA cannot grant a Request under section 61AZD of the BSA unless the proposed transaction is subject to a condition of the type noted in section 61AZD(1)(b), 61AZD (2)(b) or 61AZD (3)(b). This question requires evidence of this condition.
3. In relation to 11, the ACMA cannot grant the Request unless it is satisfied that the proposed transaction will be completed within 5 business days after the ACMA makes the relevant entry in, removal from or alteration to the Register. Persons making the Request must thus provide the ACMA with information upon which the ACMA can be so satisfied. In the absence of agreed conditional contracts relating to the proposed transaction being provided to the ACMA, the ACMA would require substantial alternative evidence that the proposed transaction could be completed within 5 business days from the making of the change to the Register.

**Timetable for completion of proposed transaction**

1. Your response to 12 should detail each task which is required to be done in order to complete the proposed transaction, and the persons responsible for carrying out that task.
2. Responses to 13 should include without limitation:
   1. details of any matters which may cause delay or prevent completion;
   2. details of any actions by third parties on which completion of the proposed transaction is dependent and which have not already been done (for example the securing of finance, the gaining of consent from any shareholders or creditors or the delivery up of relevant assets held by third parties); and
   3. details of any pre-conditions to completion of the transaction which have not yet been met.

**Parties Acting in Good Faith**

1. ACMA may make the assumption referred to in section 61AZD only where it is satisfied that ‘the parties to the proposed transaction are acting in good faith’. Your response to 14 should provide the ACMA with information on which it can assess the reasons for the parties entering into the transaction. If there are confidentiality concerns around disclosing any documents or information in this section of the form, please contact the ACMA to discuss.
2. Documents provided in response to 15 may include business plans, reports on the proposed transaction provided to shareholders and financiers, and board or management meeting minutes (where the meeting discussed the reasons for entering into the proposed transaction).
3. In responses to 16, you should explain if the proposed transaction is part of a larger deal, as one of a sequence of linked transactions, or in order to permit another transaction to occur.
4. Where a party to the transaction is a company, the statutory declaration required by 18 must contain a declaration that the person making the statutory declaration is authorised to do so on behalf of the company.

**ACMA’s discretion**

1. The most relevant objects of the BSA for the purposes of the Request are likely to be those at s 3(1)(a),(b),(c),(e),(ea) and (f).

PART C

**Certification of the Request**

1. The Request must be certified and dated by or on behalf of those making the Request. Giving false or misleading information is a serious offence.
2. The person certifying the form must complete their contact details.