

# Guidance notes for notification by a foreign stakeholder of interests in an Australian media company

These notes cover the following notifications under the [Broadcasting Services Act 1992](#):

- > Notification by a foreign person who becomes a foreign stakeholder (s74F).
- > Notification by a foreign person who ceases to be a foreign stakeholder (s74G).
- > Notification by a foreign person who is a foreign stakeholder at the commencement of Division 10A of the *Broadcasting Services Act 1992* (s74J).
- > Notification by a foreign person who is a foreign stakeholder at the end of the financial year (s74H).
- > Notification by a foreign person who is a foreign stakeholder in an Australian media company—requirement by ACMA (s74K).
- > Notification by the executor or administrator of a deceased person's estate or the liquidator of a corporation being wound up (s74L).

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# About this notification form

**Note: These guidance notes are not a substitute for legal advice**

This form is for notifications under Division 10A of the [Broadcasting Services Act 1992](#) (the BSA).

*This form supersedes all previous versions of the form.*

**Important note:** Excerpts from legislation and regulations reproduced on the foreign stakeholder notification form and in these Guidance Notes may not reflect current versions in operation. Persons accessing this document undertake responsibility for assessing the relevance and accuracy of its content. Current versions are available online at the Australian Government Federal Register of Legislation.

## Who should lodge this form?

- > A person who becomes a foreign stakeholder in an Australian media company (s74F).
- > A person who ceases being a foreign stakeholder in an Australian media company (s74G).
- > A person who is a foreign stakeholder at the commencement of Division 10A of the Broadcasting Services Act 1992 (s74J).
- > A person who is a foreign stakeholder at the end of the financial year (s74H).
- > If a person who is required to notify under subsections 74F(1), 74G(1), 74H(1) 74J(1) is deceased, the executor or administrator of the person's estate (s74L).
- > If the person is a corporation that is being wound up before notifying, the liquidator of the corporation (s74L).

# Lodgement information

## What notification is required under section 74F of the BSA?

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

Section 74F of the BSA provides that:

- (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).

#### *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.

## What notification is required under section 74G of the BSA?

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

Under section 74G of the BSA:

- (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.

#### *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.



## What notification is required under section 74H of the BSA?

### Annual notification by a foreign stakeholder

Under section 74H of the BSA:

- (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).

### *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.

## What notification is required under section 74J of the BSA?

### Notification by foreign stakeholder at commencement of Division 10A of the BSA

Under section 74J of the BSA:

- (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).

### *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.

The initial disclosure period is six months from the commencement of Division 10A of the BSA, which occurred on 1 September 2018.

## **What notification is required under section 74K of the BSA?**

### **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.

## **What notification is required under section 74L of the BSA?**

### **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.

## Who is a foreign stakeholder?

Under section 74C of the BSA if a foreign person has company interests in an Australian media company of 2.5 per cent or more, that person is a *foreign stakeholder* in that company.

## Who is a foreign person?

The term 'foreign person' is defined under the [Foreign Acquisitions and Takeovers Act 1975](#) and the [Foreign Acquisitions and Takeovers Regulation 2015](#). See definitions provided at the Appendix page.

## What is an Australian media company?

Under section 74B of the BSA an 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.

## Help with lodging a notification

An email address ([foreignmediaownership@acma.gov.au](mailto:foreignmediaownership@acma.gov.au)) is available for general queries and for contacting us should you need any assistance with the online lodgement system. If you have difficulty submitting the form, contact the Diversity, Localism and Accessibility Section in the ACMA Sydney Office during business hours, telephone 1800 226 667, or at any time via email at [foreignmediaownership@acma.gov.au](mailto:foreignmediaownership@acma.gov.au).

## When should a notification be lodged?

A notification pursuant to sections 74F or 74G must be given to the ACMA within 30 days of the foreign person becoming a foreign stakeholder, or ceasing to be a foreign stakeholder, respectively, in the Australian media company.

A notification pursuant to section 74H must be given to the ACMA within 30 days of the end of a financial year.

A notification pursuant to section 74J must be given to the ACMA within six months of the date of commencement of Division 10A of the BSA.

## Failure to lodge a notification

If your form is not completed correctly, it may not be a valid notification under the BSA and may not be processed. You have not complied with the obligation to notify until you have lodged a valid notification. Failure to lodge a valid notification as required by sections 74F, 74G, 74H and 74J of the BSA may constitute a contravention of subsections 74F(1), 74G(1), 74H(1) or 74J(1), of the BSA and may result in the payment of a penalty.

The ACMA has the power to issue an infringement notice to persons where it has reasonable grounds to believe the person has contravened the notification requirements under sections 74F, 74G, 74H or 74J of the BSA. Infringement notices

impose a pecuniary penalty to be paid in respect of a contravention. For further information, please refer to the '[Guidelines relating to ACMA's enforcement powers under the Broadcasting Services Act 1992](#)' which can be found on the ACMA website.

However, subsections 74F(6), 74G(5), 74H(6) and 74J(6) of the BSA provide that a person is not required to notify the 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.

## Notes on completing the form

Ensure all applicable parts are complete and correct. Parts that are not applicable to the type of notification will selected will not appear.

## 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 establish and maintain a register of foreign owners of media assets pursuant to section 74D of the BSA. This information is required under sections 74F, 74G, 74H and 74J of the BSA.

The ACMA is required to maintain a register of foreign owners of media assets by electronic means and to make the register available for inspection on the ACMA's website. The ACMA will update the register and the ACMA's database whenever new information is received.

The ACMA will not use the personal information for any other purpose, nor will we disclose it, other than as noted above, 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 mean the form is not a valid notification under sections 74F, 74G, 74H and 74J of the BSA and may not be processed.

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 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 telephone on 1800 226 667 or by email at [privacy@acma.gov.au](mailto:privacy@acma.gov.au).

# Guidance notes for notification form

Use the guidelines below to familiarise yourself with form navigation.

## Form navigation

The screenshot displays the 'Part C—Notification by a person of becoming a foreign stakeholder (s74F)' form. On the left is a dark sidebar with a list of sections: Introduction, Contact Details, Part A—Australian media company(s), Part B—Foreign stakeholder designated information, Part C—Notification by a person of becoming a foreign stakeholder (s74F) (highlighted in teal), Part C—Certification of notification, and Part H—Appendix. Each section has a small icon (a red 'x' for most, a teal arrow for Part C). The main content area has a light blue header with the title 'Part C—Notification by a person of becoming a foreign stakeholder (s74F)' and navigation icons (a document icon, a left arrow, and a right arrow). Below the header, the form is titled 'Part C—Notification by a person of becoming a foreign stakeholder (s74F)' and contains several fields: 'Provide details of the event resulting in the person(s) becoming a foreign stakeholder', 'Date the person(s) became a foreign stakeholder \*' (with a date picker), 'Individuals', 'Circumstances that resulted in person becoming a foreign stakeholder \*', 'The person's company interests in the Australian Media Company (%) \*', 'Method used to determine those company interests \*', and 'Reason why foreign stakeholder is a foreign person \*'. Each of these fields is represented by a large empty text box.

*Sample Page: Becoming a foreign stakeholder page*

### Screen notes:

- > The preview icon (📄) creates a document from a template containing data entry in progress.
- > Next and Back arrows (⏪ ⏩) control navigation. They appear at top right of the screen.
- > Mandatory fields have a red asterisk (\*). An error message displays in red if the user attempts to navigate forward or back without filling out mandatory fields.
- > Some fields have validation checks to maximise data accuracy. Edit checks are often invoked when the user navigates forward or back.
- > A red warning message displays under the applicable field if the entered text fails edit checks.
- > Date selection is also available on date/time fields.
- > Click the “+” and “-” icons (⊕ ⊖) to add or remove sub-records, e.g. on the Australian Media Company page to add more companies, or remove the companies already added.

- > Submit button is always on the final page.
- > Left hand navigation is specific to the form. The user can navigate directly to a page using the left hand navigation. Standard highlighting is applied to left hand navigation to indicate if more actions are required on the specific page.

## Accessing the form

The form can be accessed via 'Guest access'.

### How to access the form as a guest

1. Navigate to <https://complaint.acma.gov.au/Infiniti/Produce>. This is the ACMA Public Form Portal. You will be presented with a list of forms.
2. Click the 'Notification of foreign ownership' link to open a new form.

## Completing the form—section by section

The form is divided into pages, each capturing specific information pertaining to the event. Specific page-by-page instructions are detailed below.

A Certification of Notification must be attached with your submission. The form cannot be submitted without this attachment.

Please also attach a corporate structure chart on the Appendix Page.

## Introduction page

The Introduction displays when you first access the form. It contains some instructions to guide the user in filling out the form and relevant definitions. It also has links to some further information on the ACMA website.

**Please select the type(s) of notification you wish to perform:** Click one radio button to identify the type of notification being submitted.

**Please select the type(s) of notification you wish to perform \***

- Section 74F:** Notification by a person who becomes a foreign stakeholder (74F) in an Australian media company
- Section 74G:** Notification by a person who ceases to be a foreign stakeholder of an Australian media company
- Section 74H:** Notification by a person who is a foreign stakeholder in an Australian media company at the end of a financial year
- Section 74J:** Notification by foreign stakeholder at commencement of Division of company interests held in an Australian media company

**Are you an executor, administrator, or a liquidator on behalf of a foreign stakeholder that is deceased or wound up?** Click on the radio button on the Introduction page to indicate whether you are an executor, administrator, or a liquidator on behalf of a foreign stakeholder that is deceased or wound up. Please provide the name of the executor, administrator, or liquidator and a brief description of the circumstances of your role.

Once a notification type is selected the full left hand navigation displays. This may change based on your selection:

1. Introduction
2. Contact Details
3. Part A—Australian Media Companies
4. Part B1—Foreign stakeholder designated information (74F, 74H, 74J)

5. Part B2—Details of person(s) that has ceased being a foreign stakeholder (74G)
6. Part C—Notification by a person who becomes a foreign stakeholder (s74F)
7. Part D—Notification by a foreign person who ceases to be a foreign stakeholder (s74G); or
8. Part E—Notification by a foreign stakeholder of company interests held in an Australian media company at the end of a financial year (s74H); or
9. Part F—Notification by a foreign stakeholder of company interests held in an Australian media company at commencement of Division 10A of the BSA (s74J);
10. Part G—Notification by a person who is a foreign stakeholder—Requirement by the ACMA
11. Part H—Certification of notification
12. Part I—Appendix – Corporate Structure chart and other attachments
13. Finish

Once the Introduction Page is complete click the right arrow (→) to navigate to the Contact Details page.

## Contact details page

The person completing this form should be authorised by the foreign stakeholder(s) whose information is being provided. Enter the details of the person the ACMA should contact if any further information is required in respect of the form.

Once the Contact Details Page is complete click the right arrow (→) to navigate to Part A – Australian Media Companies.

## Part A—Australian media companies

You are required to provide information about the Australian media companies that are the subject of the notification. An Australian media company is:

- > the licensee of a commercial television broadcasting licence
- > the licensee of a commercial radio broadcasting licence
- > the publisher of an associated newspaper(s) which is a constitutional corporation.

This page captures details of the Australian media companies affected by the event.

1. Australian media companies are selected from lists sourced from internal ACMA systems;
2. Australian media companies can be selected by choosing:
  - > Australian media company(s) with broadcasting licences by network
  - > Australian media company(s) with associated newspaper network
  - > Individually select Australian media company(s).

The user can select Australian media company(s) using one or all three of the selection options. You may wish to search to the ACMA's [Media Control Database](#) to cross reference information as you complete your foreign stakeholder notification.

### **How to select Australian media companies with broadcasting licences by network**

1. Click the 'Australian media company(s) with broadcasting licences by network' checkbox. A Select Network field displays.
2. Click the Network down arrow. A dropdown list of existing networks displays.
3. Select a network from the list. The affiliated Australian media companies are displayed in the Australian media company dialogue box. The Australian company number(s), service licence number(s) and callsign(s) are populated. The checkbox on the left-hand side is checked.
4. To remove an Australian media company from the list, click the checkbox at the left-hand side then click the minus icon (⊖).

### **How to select Australian media companies by network with associated newspapers**

1. Click the 'Australian media company(s) with associated newspapers by network' checkbox. A Select Network field displays.
2. Click the Network down arrow. A dropdown list of existing networks displays.
3. Select a network from the list. The affiliated Australian media companies are displayed in the Australian media company dialogue box. The Australian media company, Australian company number(s) and associated newspaper name are populated. The checkbox on the left-hand side is checked.
4. To remove a publisher from the list, click the checkbox at the left-hand side then click the minus icon (⊖)

### **How to select Australian media companies individually**

1. Click the 'Individually Select Australian media company(s)' checkbox. An Australian media company dialogue box displays.
2. Click the down arrow. A dropdown list of Australian media companies displays (for commercial television broadcasting licences, commercial radio broadcasting licences and associated newspapers).
3. Select an Australian media company from the list. The Australian media company is added to the Australian media company dialogue box. The Australian media company, Australian company number, service licence number, callsign and/or associated newspaper name are populated.
4. To add more Australian media companies, click the plus icon (⊕) and repeat the steps.
5. To remove an Australian media company from the list, click the checkbox at the left-hand side then click the minus icon (⊖).

### **How to select Australian media companies which have ceased to exist**

1. Click the 'Individually Select Australian media company(s) (ceased)' checkbox. An Australian media company dialogue box displays.
2. Click the down arrow. A dropdown list of Australian media companies displays (for commercial television broadcasting licences, commercial radio broadcasting licences and associated newspapers).
3. Select an Australian media company from the list. The Australian media company is added to the Australian media company dialogue box. The Australian media company, Australian company number, service licence number, callsign and/or associated newspaper name are populated.
4. To add more Australian media companies, click the plus icon (⊕) and repeat the steps.



5. To remove an Australian media company from the list, click the checkbox at the left-hand side then click the minus icon (⊖).

Once the list of Australian media companies is complete click the right hand arrow to navigate to the foreign stakeholder designated information.

## **Part B1—Foreign stakeholder designated information**

The designated information page is where the user enters designated information about the foreign stakeholder. Persons notifying under sections 74F, 74H and 74J of the BSA are required to provide this information. The meaning of designated information is provided under section 74B of the BSA. See the definition of designated information at the Appendix page.

## **Part B2—Details of the person who has ceased being a foreign stakeholder (s74G)**

Only persons notifying under section 74G of the BSA are required to provide this information.

## **Part C—Notification by a person who becomes a foreign stakeholder (s74F)**

**Date person(s) became a foreign stakeholder:** Provide the date of the event resulting in the person(s) becoming a foreign stakeholder.

**Circumstances that resulted in person becoming a foreign stakeholder:** Provide details of the circumstances that resulted in the person becoming a foreign stakeholder in the Australian media company(s).

**The person's company interests in the Australian media company (%):** Provide the level of company interests, in terms of the BSA, held by the person in the Australian media company, expressed as a percentage. Do not enter a '%' sign after the number. Company interests include shareholding interests, voting interests, dividend interests and winding-up interests. Company interests can be direct or indirect and can be traced through a chain of companies. Clause 8 of Schedule 1 to the BSA provides a means of tracing company interests (fractional tracing method). A definition and interpretation of company interests is also provided under sections 6 and 8 of the BSA. The text of these provisions is provided at the Appendix.

**Method used to determine those company interests:** Provide a description of the method used to determine the company interests held by the foreign stakeholder in the Australian media company. For example, where the company interests are held indirectly, please indicate that the fractional tracing method under clause 8 under Schedule 1 to the BSA was used to determine the foreign stakeholder's company interests in the Australian media company and provide a brief description of the company structure between the foreign stakeholder and the Australian media company. If the company interests are held directly in the Australian media company describe the nature of the foreign stakeholder's shareholding in the Australian media company.

**Reason why foreign stakeholder is a foreign person:** Provide the reason why the foreign stakeholder is a foreign person. The term 'foreign person' under the BSA has the same meaning as in the *Foreign Acquisitions and Takeovers Act 1975* (FATA) and the Foreign Acquisitions and Takeovers Regulation 2015 (the Regulation).

A foreign person may include the following entity types:

- > an individual
- > a corporation
- > the trustee (corporation) of a trust
- > a foreign government (a foreign government investor)
- > a general partner of a limited partnership.

Under section 4 of the FATA a **foreign person** means:

- (a) an individual not ordinarily resident in Australia; or
- (b) corporation in which an individual not ordinarily resident in Australia, a foreign corporation or a foreign government holds a substantial interest; or
- (c) a corporation in which 2 or more persons, each of whom is an individual not ordinarily resident in Australia, a foreign corporation or a foreign government, hold an aggregate substantial interest; or
- (d) the trustee of a trust in which an individual not ordinarily resident in Australia, a foreign corporation or a foreign government holds a substantial interest; or
- (e) the trustee of a trust in which 2 or more persons, each of whom is an individual not ordinarily resident in Australia, a foreign corporation or a foreign government, hold an aggregate substantial interest; or
- (f) a foreign government; or
- (g) any other person, or any other person that meets the conditions, prescribed by the regulations.

Note: In certain circumstances, an associate of a foreign person may be taken to be a foreign person even if the associate is not a foreign person (see subsection 54(7)).

**Substantial interest** means:

A person holds a **substantial interest** in an entity or trust if:

- (a) for an entity—the person holds an interest of at least 20% in the entity; or
- (b) for a trust (including a unit trust)—the person, together with any one or more associates, holds a beneficial interest in at least 20% of the income or property of the trust.

Note 1: See also sections 17 (meanings of **interest** and **aggregate interest** of a specified percentage in an entity) and 18 (rules relating to determining percentages of interests in entities).

Note 2: For when a person **acquires** a substantial interest in an entity, see section 20.

Further provisions relevant to determining whether the person(s) is a foreign person are provided at the Annexure.

### **How to complete Part C – Notification by a person of becoming a foreign stakeholder**

1. Enter the date the person became a foreign stakeholder (mandatory).
2. Enter a description of the circumstances that resulted in the person becoming a foreign stakeholder (mandatory).

3. Enter the person's company interests in the Australian media company as a percentage (mandatory).
4. Enter a description of the method used to determine those company interests (mandatory).
5. Enter a description of the reason why the person is a foreign stakeholder (mandatory).
6. Click right hand arrow to navigate to Appendix page.

## **Part D—Notification by a person who ceases to be a foreign stakeholder (s74G)**

**Date person ceased to be a foreign stakeholder in an Australian media company:** Provide the date of the event resulting in the person(s) becoming a foreign stakeholder.

**Circumstances that resulted in the person ceasing to be a foreign stakeholder:** Provide details of the circumstances that resulted in the person ceasing to be a foreign stakeholder in the Australian media company(s).

**How to complete Part D – Notification by a person of becoming a foreign stakeholder**

1. Enter the date the person ceased being a foreign stakeholder (mandatory).
2. Enter a description of the circumstances that resulted in the person ceasing to be a foreign stakeholder (mandatory).
3. Click right hand arrow to navigate to Appendix page.

## **Part E—Notification by a person who is a foreign stakeholder in an Australian media company at the end of a financial year (s74H)**

**Circumstances that resulted in person becoming a foreign stakeholder:** Provide details of the circumstances that resulted in the person becoming a foreign stakeholder in the Australian media company(s).

**The persons' company interests in the Australian media company (%):** Provide the level of company interests, in terms of the BSA, held by the person in the Australian media company, expressed as a percentage.

**Method used to determine those company interests:** Provide a description of the method used to determine the company interests held by the foreign stakeholder in the Australian media company. For example, where the company interests are held indirectly, please indicate that the fractional tracing method under clause 8 under Schedule 1 to the BSA was used to determine the foreign stakeholder's company interests in the Australian media company and provide a brief description of the company structure between the foreign stakeholder and the Australian media company. If the company interests are held directly in the Australian media company describe the nature of the foreign stakeholder's shareholding in the Australian media company.

**Reason why foreign stakeholder is a foreign person:** Provide the reason why the foreign stakeholder is a foreign person. The term 'foreign person' under the BSA has the same meaning as in the *Foreign Acquisitions and Takeovers Act 1975* (the FATA) and the *Foreign Acquisitions and Takeovers Regulation 2015* (the Regulation).

## How to complete Notification by a person who was a foreign stakeholder at the end of a financial year

1. Enter the financial year (mandatory).
2. Enter the date of the person became a foreign stakeholder (mandatory).
3. Enter a description of the circumstances that resulted in the person becoming a foreign stakeholder (mandatory).
4. Enter the person's company interests in the Australian media company as a percentage (mandatory).
5. Enter a description of the method used to determine those company interests (mandatory).
6. Enter a description of the reason why the person is a foreign stakeholder (mandatory).
7. Click right hand arrow to navigate to Appendix page.

## Part F—Notification by a person by a person who is a foreign stakeholder in an Australian media company at the commencement of Division 10A of the BSA (s74J)

**Circumstances that resulted in person becoming a foreign stakeholder:** Provide details of the circumstances that resulted in the person becoming a foreign stakeholder in the Australian media company(s).

**The person's company interests in the Australian media company (%):** Provide the level of company interests, in terms of the BSA, held by the person in the Australian media company, expressed as a percentage.

**Method used to determine those company interests:** Provide a description of the method used to determine the company interests held by the foreign stakeholder in the Australian media company. For example, where the company interests are held indirectly, please indicate that the fractional tracing method under clause 8 under Schedule 1 to the BSA was used to determine the foreign stakeholder's company interests in the Australian media company and provide a brief description of the company structure between the foreign stakeholder and the Australian media company. If the company interests are held directly in the Australian media company describe the nature of the foreign stakeholder's shareholding in the Australian media company.

**Reason why foreign stakeholder is a foreign person:** Provide the reason why the foreign stakeholder is a foreign person. The term 'foreign person' under the BSA has the same meaning as in the *Foreign Acquisitions and Takeovers Act 1975* (the FATA) and the *Foreign Acquisitions and Takeovers Regulation 2015* (the Regulation).

### How to complete Notification by a person who was a foreign stakeholder at the commencement of Division 10A of the BSA

1. Enter a description of the circumstances that resulted in the person becoming a foreign stakeholder (mandatory).
2. Enter the person's company interests in the Australian media company as a percentage (mandatory).
3. Enter a description of the method used to determine those company interests (mandatory).
4. Enter a description of the reason why the person is a foreign stakeholder (mandatory).
5. Click right hand arrow to navigate to Appendix page.

## Part G—Certification of notification

**Certification of Notification:** Download signature block, sign and upload below. The certification may be completed by the person, an authorised agent or authorised officer of the person notifying.

### How to complete the Certification page

1. Attach a signed and scanned copy of the Certification of Notification (mandatory) by clicking the Upload New button under the Certification of Notification section. A link to the certificate template is also displayed under this section.
2. Click the right-hand arrow to navigate to the Appendix page.

## Part H—Appendix

**Attach Structure chart:** You are required to provide an ownership structure chart showing all persons with company interests in the Australian media company(s), indicating the relevant percentages.

**Other Attachments:** You can attach other supporting attachments as required.



### How to complete the Appendix page

1. Attach a corporate structure chart of persons with company interests in the Australian media company(s) by clicking the Upload New button (optional).
2. To upload additional attachments, click the checkbox under Other Attachments then click Upload New (optional). You can multiple upload supporting attachments as required.
3. Click the right-hand arrow to navigate to the Finish page.

### Submitting the form

Once all sections are completed. **Note:** The completed form cannot be re-accessed after submission. Please preview and save a local copy prior to submission if required.

### How to submit the form

1. Navigate to the Appendix page.
2. Make sure all the items on the left-hand navigation bar have a green tick (). A cross indicates that information is missing. Go back and complete the page then navigate back to the Appendix page.
3. Click Submit button ().
4. A success notification will display with a reference number in the format "ACMA-MOD-XXXXX9999". Use this reference in any future contact with ACMA relating to the B2/B3 submission.
5. A list of attachments also displays on the success notification page.
6. An email will be forwarded to the email address on the Contacts page including a formatted pdf attachment with the form contents.

# Contact information

For more information about the form contact the Diversity, Localism and Accessibility section on 1800 226 667.

Australian Communications and Media Authority  
PO Box Q500  
Queen Victoria Building NSW 1230  
Tel: 02 9334 7700  
Fax: 02 9334 7799  
Email enquiries: [foreignmediaownership@acma.gov.au](mailto:foreignmediaownership@acma.gov.au)  
Web: [acma.gov.au](http://acma.gov.au)

# Appendix

## Definitions

**Important note:** Excerpts from legislation and regulations reproduced on the foreign stakeholder notification form and in these Guidance Notes may not reflect current versions in operation. Persons accessing this document undertake responsibility for assessing the relevance and accuracy of its content. Current versions are available online at the Australian Government Federal Register of Legislation.

### (Section 74B of the BSA)

**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 the *Foreign Acquisitions and Takeovers Act 1975*.

**Foreign stakeholder**, in relation to an Australian media company, has the meaning given by section 74C of the BSA.

**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*.

#### (Section 74C of the BSA)

**Foreign stakeholder**—for the purposes of Division 10A of the BSA, 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.

#### (Section 4 of the FATA)

3. **Foreign person** means:

- (a) an individual not ordinarily resident in Australia; or
- (b) a corporation in which an individual not ordinarily resident in Australia, a foreign corporation or a foreign government holds a substantial interest; or
- (c) a corporation in which 2 or more persons, each of whom is an individual not ordinarily resident in Australia, a foreign corporation or a foreign government, hold an aggregate substantial interest; or
- (d) the trustee of a trust in which an individual not ordinarily resident in Australia, a foreign corporation or a foreign government holds a substantial interest; or
- (e) the trustee of a trust in which 2 or more persons, each of whom is an individual not ordinarily resident in Australia, a foreign corporation or a foreign government, hold an aggregate substantial interest; or
- (f) a foreign government; or
- (g) any other person, or any other person that meets the conditions, prescribed by the regulations.

Note: In certain circumstances, an associate of a foreign person may be taken to be a foreign person even if the associate is not a foreign person (see subsection 54(7)).

#### **Substantial interest:**

A person holds a **substantial interest** in an entity or trust if:

- (a) for an entity—the person holds an interest of at least 20% in the entity; or
- (b) for a trust (including a unit trust)—the person, together with any one or more associates, holds a beneficial interest in at least 20% of the income or property of the trust.

Note 1: See also sections 17 (meanings of **interest** and **aggregate interest** of a specified percentage in an entity) and 18 (rules relating to determining percentages of interests in entities).

Note 2: For when a person **acquires** a substantial interest in an entity, see section 20.



## (Section 19 of the FATA)

### Tracing of substantial interests in corporations and trusts

- (1) This section applies (subject to subsection (3)) if:
- (a) either:
    - (i) a person holds a substantial interest in a corporation or trust (the **higher entity**); or
    - (ii) 2 or more persons hold an aggregate substantial interest in a corporation (the **higher entity**); or
    - (iii) 2 or more persons hold an aggregate substantial interest in a trust (the trustee of which is a **higher entity**);including because of one or more applications of this section; and
  - (b) the higher entity:
    - (i) is in a position to control all or any of the voting power or potential voting power in a corporation (the **lower entity**); or
    - (ii) holds interests in all or any of the shares in a corporation (the **lower entity**); or
    - (iii) holds an interest in a trust (the **lower entity**).
- (2) For the purposes of this Act:
- (a) if subparagraph (1)(b)(i) applies—the person or persons are taken to be in a position to control the voting power or potential voting power of the lower entity that the higher entity is in a position to control; or
  - (b) if subparagraph (1)(b)(ii) applies—the person or persons are taken to hold the interests in the shares in the lower entity that the higher entity holds; or
  - (c) if subparagraph (1)(b)(iii) applies—the person or persons are taken to hold the interest in the lower entity that the higher entity holds.

## (Section 17 of the Foreign Acquisitions and Takeovers Regulation 2015 (the Regulation))

### **Foreign government investor:**

For the definition of **foreign government investor** in section 4 of the Act, a person is a **foreign government investor** if the person is:

- (a) a foreign government or separate government entity; or
- (b) a corporation in which:
  - (i) a foreign government or separate government entity, alone or together with one or more associates, holds a substantial interest; or
  - (ii) foreign governments or separate government entities of more than one foreign country (or parts of more than one foreign country), together with any one or more associates, hold an aggregate substantial interest; or
- (c) the trustee of a trust in which:
  - (i) a foreign government or separate government entity, alone or together with one or more associates, holds a substantial interest; or

- (ii) foreign governments or separate government entities of more than one foreign country (or parts of more than one foreign country), together with any one or more associates, hold an aggregate substantial interest; or
- (d) the general partner of a limited partnership in which:
  - (i) a foreign government or separate government entity, alone or together with one or more associates, holds an interest of at least 20%; or
  - (ii) foreign governments or separate government entities of more than one foreign country (or parts of more than one foreign country), together with any one or more associates, hold an aggregate interest of at least 40%; or
- (e) a corporation, trustee or partner of a kind described in paragraph (b), (c) or (d) assuming the references to foreign government (or foreign governments) in those paragraphs included references to a foreign government investor (or foreign government investors):
  - (i) within the meaning of those paragraphs; or
  - (ii) as a result of a previous application of this paragraph.

## (Section 18 of the Regulation)

### 18 Meaning of *foreign person*

#### *General partners of limited partnerships*

- (1) For paragraph (g) of the definition of **foreign person** in section 4 of the Act, a person is a **foreign person** if:
  - (a) the person is a general partner of a limited partnership; and
  - (b) either:
    - (i) an individual not ordinarily resident in Australia, a foreign corporation or a foreign government holds an interest of at least 20% in the limited partnership; or
    - (ii) 2 or more persons, each of whom is an individual not ordinarily resident in Australia, a foreign corporation or a foreign government hold an aggregate interest of at least 40% in the limited partnership.

#### *Certain foreign government investors*

- (2) For paragraph (g) of the definition of **foreign person** in section 4 of the Act, a person is a **foreign person** if:
  - (a) the person is a foreign government investor; and
  - (b) apart from this subsection, the person would not be a foreign person.

## (Section 6 of the BSA)

**Company interests**, in relation to 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 6 of the BSA).

## **(Section 8 of the BSA)**

### **Interpretation of shareholding interests, voting interests, dividend interests and winding-up interests (section 8 of the BSA)**

- (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.

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.

# Schedule 1 of the BSA - 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:

$$\text{Company Interest 1} \times \text{Company Interest 2}$$

where:

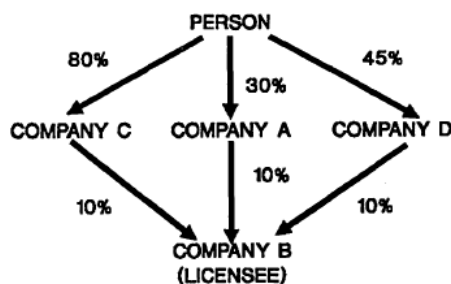
**Company Interest 1** is the company interest of the person, expressed as a fraction, in Company A.

**Company Interest 2** is the company interest of Company A, expressed as a fraction, in Company B.

In this case, the formula produces:  $3/10 \times 1/10$ , 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.