

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

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*(As read a first time)*

**BROADCASTING AMENDMENT BILL (No. 4) 1987**

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1987

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Presented and read a first time, 28 October 1987

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*(Minister representing the Minister for Transport and Communications)*

**A BILL**

FOR

**An Act to amend the *Broadcasting Act 1942*, and for related purposes**

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

**Short title etc.**

5     **1.** (1) This Act may be cited as the *Broadcasting Amendment Act (No. 4) 1987*.

      (2) In this Act, "Principal Act" means the *Broadcasting Act 1942*.

**Commencement**

**2.** This Act shall come into operation on the day on which it receives the Royal Assent.

10     **3.** After section 82 of the Principal Act the following section is inserted:

**Special notices in relation to new commercial radio licences**

      "82AA. (1) Where, on or after 1 March 1987, a notice in relation to a commercial radio licence was or is published in the *Gazette* under subsection 82 (1), the Minister, as soon as practicable after:

- (a) if the notice was published in the *Gazette* before the commencement of this section—the commencement of this section; or
- (b) if the notice is published in the *Gazette* after the commencement of this section—the day on which the notice is published in the *Gazette*;

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shall, by notice in writing published in the *Gazette*:

- (c) if there is no licence whose service area is substantially the same as that of the proposed licence specify:
  - (i) a number as the population of the service area of the proposed licence; and
  - (ii) the percentage (if any) of the population of that service area that is within the service area of at least one other licence;
- (d) if there is no licence whose service area is substantially the same as that of the proposed licence and the percentage specified under subparagraph (c) (ii) is equal to or greater than 70%—specify, in respect of each licence whose service area overlaps that of the proposed licence:
  - (i) a number as the population of the service area of the licence; and
  - (ii) the percentage of that population that is attributable to the area of overlap between the service area of the licence and the service area of the proposed licence; and
- (e) specify the amount of the fee that will be payable, under subsection 6 (1A) of the Licence Fees Act, on the grant of the proposed licence.

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“(2) The amount of the fee specified under paragraph (1) (e) shall be:

- (a) if there is one licence only whose service area is substantially the same as that of the proposed licence—an amount equal to the gross earnings in respect of that licence in respect of the relevant fee period for that licence;
- (b) if there are 2 or more licences whose service areas are substantially the same as that of the proposed licence—an amount equal to:

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$$\frac{G}{N}$$

where:

- G is the sum of the gross earnings in respect of those licences in respect of the relevant fee periods for those licences; and
- N is the number of those licences;

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- (c) if there is no licence whose service area is substantially the same as that of the proposed licence and the percentage specified under subparagraph (1) (c) (ii) in respect of the proposed licence is equal to or greater than 70%—an amount equal to the amount calculated in accordance with the following formula in respect of the licence whose service area overlaps that of the proposed licence, or equal

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to the sum of the amounts calculated in accordance with the following formula in respect of the licences whose service areas overlap that of the proposed licence:

$$G \times O$$

5 where:

**G**, in respect of a licence, is the gross earnings in respect of the licence in respect of the relevant fee period for the licence; and

**O**, in relation to a licence, is:

$$10 \quad \frac{\text{overlap area population}}{\text{service area population of the licence}}; \text{ or}$$

(d) in any other case—an amount equal to the amount calculated in accordance with the formula:

$$P \times D$$

where:

**P** is the service area population of the proposed licence; and

**D** is \$15, or such other amount as is fixed by the regulations.

“(3) Where the relevant fee period for a licence is not a period of 12 months, the amount of the gross earnings in respect of that licence in respect of that period shall, for the purposes of subsection (2), be taken to be the amount calculated in accordance with the formula:

$$20 \quad \frac{G \times 365}{N}$$

where:

**G** is the amount of the gross earnings in respect of the licence in respect of the relevant period; and

**N** is the number of days in the relevant period.

“(4) Where the holder of a licence whose service area overlaps that of the proposed licence fails to comply with paragraph 123 (1) (c) in relation to the relevant fee period for the licence, the gross earnings in respect of the licence shall, for the purposes of subsection (2), be taken to be the amount determined by the Minister, in writing, to be the amount of those gross earnings, having regard to the following:

(a) the gross earnings in respect of that licence in respect of the next most recent period in respect of which a fee was payable in respect of that licence under the Licence Fees Act;

(b) the gross earnings, in respect of any other licence whose service area overlaps that of the proposed licence, in respect of the relevant fee period for that other licence;

(c) if the holders of all the licences whose service areas overlap that of the proposed licence fail to comply with paragraph 123 (1) (c) in relation to the relevant fee periods for those licences—the gross

earnings in respect of each of those licences in respect of the next most recent period in respect of which a fee was payable in respect of the licence under the Licence Fees Act.

“(5) The Minister shall, in publishing a notice under subsection (1), have regard to the most recently available official census count results. 5

“(6) In this section:

‘gross earnings’ has the same meaning as in the Licence Fees Act;

‘licence’ means a commercial radio licence and includes a licence in respect of a commercial broadcasting station to which the *Broadcasting and Television Act 1942* as in force immediately before 1 January 1986 applies by virtue of section 98 of the *Broadcasting and Television Amendment Act 1985*; 10

‘Licence Fees Act’ means the *Radio Licence Fees Act 1964* and includes the *Broadcasting Stations Licence Fees Act 1964* as in force immediately before 1 January 1986 and as applied by virtue of section 11 of the *Broadcasting Stations Licence Fees Amendment Act 1985*; 15

‘most recently available official census count results’, in relation to a notice, means the results, as published by the Australian Statistician of the most recent census count of the Australian population: 20

(a) that has been taken; and

(b) whose results have been published by the Australian Statistician;

‘overlap area population’, in relation to the proposed commercial radio licence and a licence whose service area overlaps that of the proposed licence, means the population of the area of overlap between the 2 licences as ascertained from the notice under subsection (1) in relation to the proposed licence; 25

‘relevant fee period’, in relation to a licence whose service area overlaps that of the proposed commercial radio licence, means the most recent period that ended before the day on which the notice under subsection 82 (1) in relation to the proposed licence is or was published in the *Gazette* and in respect of which a fee was payable in respect of that licence under the Licence Fees Act; 30

‘service area population’, in relation to a licence whose service area overlaps that of the proposed commercial radio licence, means the number specified as the population of the service area of that licence in the notice under subsection (1) in relation to the proposed licence.”. 35

#### **Consideration of licence applications by Tribunal 40**

4. Section 83 of the Principal Act is amended:

(a) by omitting from subsection (9) “Where” and substituting “Subject to subsection (10), where”; and

(b) by adding at the end the following subsections:

“(10) Where the licence is a commercial radio licence, the following provisions have effect:

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- (a) the Tribunal shall give the eligible applicant who, in the opinion of the Tribunal, is the most suitable applicant notice in writing that the licence is available to that applicant;
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- (b) if an applicant who is given notice under paragraph (a) or (c) tenders to the Commonwealth, before the end of the relevant period, an amount equal to the amount of the establishment fee, the Tribunal shall grant the licence to that applicant;
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- (c) if an applicant who is given notice under paragraph (a) or this paragraph does not tender to the Commonwealth, before the end of the relevant period, an amount equal to the amount of the establishment fee and there is at least one other eligible applicant:
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- (i) the application by the applicant given that notice shall be deemed to have been withdrawn; and
- (ii) the Tribunal shall give the remaining eligible applicant, or the one of the remaining eligible applicants who, in the opinion of the Tribunal, is the most suitable applicant, notice in writing that the licence is available to that applicant;
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- (d) if an applicant who is given notice under paragraph (a) or (c) does not tender to the Commonwealth, before the end of the relevant period, an amount equal to the amount of the establishment fee, the Minister may:
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- (i) determine that, even though the relevant period has ended, the licence shall continue to be available to that applicant for such further period as is specified in the determination; or
- (ii) determine that a fresh notice under subsection 82 (1) should be published in relation to the proposed grant of the licence;
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- (e) if a determination is made under subparagraph (d) (i) in relation to an applicant and the applicant, before the end of the further period specified in the determination, tenders to the Commonwealth, an amount equal to the sum of:
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- (i) the amount of the establishment fee; and
- (ii) the amount of any late payment charge payable under paragraph (f);
- the Tribunal shall grant the licence to the applicant;
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- (f) where an applicant in relation to whom a determination under subparagraph (d) (i) has been made tenders to the Commonwealth, after the end of the relevant period, an amount in respect of the establishment fee, an additional fee

is due and payable by way of penalty by the applicant at the rate of 20% per annum on the amount tendered, computed from the end of the relevant period until the day on which the amount is tendered;

- (g) if a determination is made under subparagraph (d) (i) in relation to an applicant and the applicant does not tender to the Commonwealth, before the end of the further period specified in the determination, an amount equal to the sum of the amounts specified in subparagraphs (e) (i) and (ii), the Minister may determine that a fresh notice under subsection 82 (1) should be published in relation to the proposed grant of the licence. 5 10

“(11) In subsection (10):

‘eligible applicant’, in relation to the grant of a commercial radio licence, means a person to whom, but for subsection (9), the Tribunal would be required to grant the licence; 15

‘establishment fee’, in relation to the grant of a commercial radio licence, means the fee payable on the grant of the licence under subsection 6 (1A) of the *Radio Licence Fees Act 1964*;

‘relevant period’, in relation to an applicant who is given notice under paragraph (10) (a) or (c), means the period of 30 days commencing on the day on which the notice is given.”. 20

**Transfer of licences**

5. Section 89A of the Principal Act is amended by omitting from subsection (1) “section 89B” and substituting “sections 89B and 89C”. 25

6. (1) After section 89B of the Principal Act the following section is inserted:

**No transfer of commercial licence within 2 years of initial grant**

“89C. (1) A commercial licence shall not be transferred to a person, and a person shall not be admitted to participate in any of the benefits of a commercial licence or to exercise any of the powers or authorities granted by a commercial licence, before the end of the period of 2 years commencing on the day of commencement of the licence. 30

“(2) Subsection (1) does not apply to:

- (a) the grant of a commercial radio licence or a commercial television licence under section 99 or 99A of the *Broadcasting and Television Amendment Act 1985*; or 35
- (b) the grant of a commercial television licence under section 94ZC or 94ZG of this Act.”.

(2) The amendment made by subsection (1) does not apply in relation to a licence that was granted before the commencement of this section. 40

7. After section 90G of the Principal Act the following section is inserted:



**No “resale” of licence within 2 years of initial grant**

5 “90H. (1) Where a licence is granted (otherwise than by way of renewal) after the commencement of this section, a notifiable share transaction in respect of the licence shall not be entered into or conducted within 2 years after the day of commencement of the licence unless the Tribunal has, before the transaction is entered into or conducted, provisionally cleared the transaction under subsection (3).

“(2) A purported transaction that is entered into or conducted in contravention of subsection (1) is, subject to subsection (5), void.

10 “(3) Where a notifiable share transaction in respect of a licence is proposed, a person (whether a party to the transaction or not and whether a person to whom section 90J applies in relation to the transaction or not) may apply to the Tribunal for provisional clearance of the transaction and, where an application is made, the Tribunal shall:

15 (a) if satisfied that the transaction:

(i) would not effect a transfer of control of the licence; or

(ii) would effect a transfer of control of the licence but should be provisionally cleared because of exceptional circumstances; provisionally clear the transaction; or

20 (b) in any other case—refuse to provisionally clear the transaction.

“(4) Where:

(a) a purported transaction in respect of a licence is entered into or conducted in contravention of subsection (1); and

25 (b) the Tribunal has not refused to provisionally clear the transaction; a person may apply to the Tribunal for a declaration that subsection (2) not apply to the transaction and the Tribunal, if satisfied that:

(c) the transaction would not effect a transfer of control of the licence; or

30 (d) the transaction would effect a transfer of control of the licence but should be made the subject of a declaration under this subsection because of exceptional circumstances;

may declare subsection (2) not to apply to the transaction.

35 “(5) Where the Tribunal makes a declaration under subsection (4) in respect of a transaction, subsection (2) shall be taken never to have applied to the transaction.

“(6) Without limiting the generality of subparagraph (3) (a) (ii) and paragraph (4) (d), the Tribunal, in determining whether exceptional circumstances exist, may have regard to any of the following matters:

(a) the death, bankruptcy or insolvency of any person;

40 (b) the liquidation or winding up of any company;

(c) any order made by a court.

“(7) For the purposes of this section:

(a) a transaction shall be taken to effect a transfer of control of a licence if, and only if, as a direct or indirect consequence of the transaction:

(i) a person who was, at the time when the licence was granted, in a position to exercise control, directly or indirectly, of the licence ceases to be in a position to exercise control of the licence; or 5

(ii) a person who was not, at the time when the licence was granted, in a position to exercise control, directly or indirectly, of the licence is put in a position to exercise control of the licence; and 10

(b) in determining whether a person is in a position to exercise control of a licence, section 90AAA applies but sections 90AAB and 90B do not apply.

“(8) Nothing in this section (including a provisional clearance under subsection (3) or a declaration under subsection (4)) shall be taken, by implication, to affect the operation of section 90J in relation to a transaction. 15

“(9) Subsection (1) does not apply to the grant of a licence under section 99 or 99A of the *Broadcasting and Television Amendment Act 1985*.

“(10) A reference in this section to a notifiable share transaction in respect of a licence is a reference to a transaction in respect of shares in the company holding a licence, or shares in a company having an interest in the company holding the licence, that is a transaction in relation to which section 90J applies to a person.”. 20

8. After section 92D of the Principal Act the following section is inserted: 25

**No “resale” of licence within 2 years of initial grant**

“92E. (1) Where a licence is granted (otherwise than by way of renewal) after the commencement of this section, a notifiable share or debenture transaction in respect of the licence shall not be entered into or conducted within 2 years after the day of commencement of the licence unless the Tribunal has, before the transaction is entered into or conducted, provisionally cleared the transaction under subsection (3). 30

“(2) A purported transaction that is entered into or conducted in contravention of subsection (1) is, subject to subsection (5), void.

“(3) Where a notifiable share or debenture transaction in respect of a licence is proposed, a person (whether a party to the transaction or not and whether a person to whom section 92F applies in relation to the transaction or not) may apply to the Tribunal for provisional clearance of the transaction and, where an application is made, the Tribunal shall: 35

(a) if satisfied that the transaction: 40

(i) would not effect a transfer of control of the licence; or

(ii) would effect a transfer of control of the licence but should be provisionally cleared because of exceptional circumstances; provisionally clear the transaction; or

(b) in any other case—refuse to provisionally clear the transaction.

“(4) Where:

(a) a purported transaction is entered into or conducted in contravention of subsection (1); and

5 (b) the Tribunal has not refused to provisionally clear the transaction; a person may apply to the Tribunal for a declaration that subsection (2) not apply to the transaction and the Tribunal, if satisfied that:

(c) the transaction would not effect a transfer of control of the licence; or

10 (d) the transaction would effect a transfer of control of the licence but should be made the subject of a declaration under this subsection because of exceptional circumstances;

may declare subsection (2) not to apply to the transaction.

15 “(5) Where the Tribunal makes a declaration under subsection (4) in respect of a transaction, subsection (2) shall be taken never to have applied to the transaction.

“(6) Without limiting the generality of subparagraph (3) (a) (ii) and paragraph (4) (d), the Tribunal, in determining whether exceptional circumstances exist, may have regard to any of the following matters:

20 (a) the death, bankruptcy or insolvency of any person;

(b) the liquidation or winding up of any company;

(c) any order made by a court.

“(7) For the purposes of this section:

25 (a) a transaction shall be taken to effect a transfer of control of a licence if, and only if, as a direct or indirect consequence of the transaction:

30 (i) a person who was, at the time when the licence was granted, in a position to exercise control, directly or indirectly, of the licence ceases to be in a position to exercise control of the licence; or

(ii) a person who was not, at the time when the licence was granted, in a position to exercise control, directly or indirectly, of the licence is put in a position to exercise control of the licence; and

35 (b) in determining whether a person is in a position to exercise control of a licence, section 91AAA applies but sections 91AAC and 91A do not apply.

40 “(8) Nothing in this section (including a provisional clearance under subsection (3) or a declaration under subsection (4)) shall be taken, by implication, to affect the operation of section 92F in relation to a transaction.

“(9) Subsection (1) does not apply to the grant of a licence under:

- (a) section 99 or 99A of the *Broadcasting and Television Amendment Act 1985*; or  
 (b) section 94ZC or 94ZG of this Act.

“(10) A reference in this section to a notifiable share or debenture transaction in respect of a licence is a reference to a transaction in respect of shares or debentures in the company holding a licence, or shares in a company having an interest in the company holding the licence, that is a transaction in relation to which section 92F applies to a person.” 5

### **Review of decisions**

9. Section 119A of the Principal Act is amended by inserting after paragraph (1) (g) the following paragraph: 10

“(gaa) a refusal by the Tribunal to grant a provisional clearance or a declaration under section 90H or 92E;”.

### **Assembly of information**

10. Section 124 of the Principal Act is amended by adding at the end the following subsection: 15

“(6) Nothing in subsection (4) or (5) shall be taken to prevent the Tribunal from making information available to the Minister for the purposes of the calculation of the amount of a fee to be specified in a notice under subsection 82AA (1).” 20

### **NOTE**

1. No. 33, 1942, as amended. For previous amendments, see No. 39, 1946; No. 64, 1948; No. 80, 1950; No. 41, 1951; No. 12, 1953; No. 82, 1954; Nos. 33, 65 and 92, 1956; No. 36, 1960 (as amended by No. 32, 1961); No. 96, 1962; No. 82, 1963; Nos. 67 and 121, 1964; Nos. 38 and 120, 1965; No. 57, 1966; No. 47, 1967; No. 69, 1968; Nos. 21 and 31, 1969; Nos. 8, 72 and 136, 1971; No. 49, 1972; No. 50, 1973; No. 216, 1973 (as amended by No. 20, 1974); No. 55, 1974; No. 56, 1975; Nos. 89, 157 and 187, 1976; No. 160, 1977; Nos. 36, 52 and 210, 1978; Nos. 143 and 177, 1980; Nos. 61, 113 and 153, 1981; No. 154, 1982; Nos. 7, 37, 39, 91 and 136, 1983; Nos. 10, 63, 72, 163 and 165, 1984; Nos. 66 and 191, 1985; Nos. 2 and 76, 1986; and Nos. 68, 79 and 80, 1987.







