

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

(As read a first time)

BROADCASTING AND TELEVISION AMENDMENT BILL 1985

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1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Presented and read a first time, 15 May 1985

(Minister for Communications)

A BILL

FOR

An Act to amend the *Broadcasting and Television 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:

PART I—PRELIMINARY

Short title, &c.

1. (1) This Act may be cited as the *Broadcasting and Television Amendment Act 1985*.

(2) The *Broadcasting and Television Act 1942*¹ is in this Act referred to as the Principal Act.

Commencement

2. (1) Subject to sub-section (2), this Act shall come into operation on a day to be fixed by Proclamation.

(2) Sub-section 9 (2) and section 14 shall come into operation on the twenty-eighth day after the day on which this Act receives the Royal Assent.

PART II—AMENDMENTS

Title

3. The title of the Principal Act is amended by omitting “and Television”.

Short title

4. Section 1 of the Principal Act is amended by omitting “and Television”. 5

Interpretation

5. Section 4 of the Principal Act is amended—

- (a) by inserting after the definition of “associate member” in sub-section (1) the following definition:

“‘Aussat satellite’ has the same meaning as in the *Satellite Communications Act 1984*”; 10

- (b) by omitting from sub-section (1) the definitions of “broadcast receiver”, “broadcasting station”, “broadcasting translator station”, “broadcasting translator station licence”, “commercial broadcasting station”, “commercial broadcasting translator station”, “commercial television station” and “commercial television translator station” and substituting the following definitions: 15

“‘broadcast’ means broadcast by radio or televisé;

‘broadcast by radio’ means to operate a radiocommunications transmitter for the purpose of the transmission to the general public of radio programs; 20

‘category of licence’ means a category of licence referred to in any of the paragraphs of the definition of ‘licence’;

‘commercial licence’ means a commercial radio licence or commercial television licence; 24

‘commercial radio licence’ means—

- (a) a licence granted as a commercial radio licence under section 81; or

- (b) a licence deemed by section 86C to be a commercial radio licence, 30

including such a licence as renewed or further renewed;

‘commercial television licence’ means—

- (a) a licence granted as a commercial television licence under section 81; or

- (b) a licence deemed by section 86C to be a commercial television licence, 34

including such a licence as renewed or further renewed;”;

- (c) by omitting from sub-section (1) the definition of “licence” and substituting the following definitions:

“‘licence’ means— 4

- (a) a commercial radio licence;

- (b) a commercial television licence;
- (c) a supplementary radio licence;
- (d) a supplementary television licence;
- (e) a public radio licence;
- (f) a public television licence;
- (g) a remote radio licence;
- (h) a remote television licence;
- (j) a re-broadcasting licence; or
- (k) a re-transmission licence;

'licence warrant' means a licence warrant granted under section 89D;";

- (d) by omitting from sub-section (1) the definitions of "national broadcasting station", "national broadcasting translator station licence", "national television station", "national television translator station licence", "public broadcasting licence" or "public television licence", "public broadcasting station" or "public television station", "public broadcasting translator station" or "public television translator station" and "public broadcasting translator station licence" or "public television translator station licence" and substituting the following definitions:

"'metropolitan service area' means a service area in which is situated the General Post Office of the capital city of a State;

'metropolitan television area' means a metropolitan service area that is the service area of a commercial television licence;

'public licence' means a public radio licence or public television licence;

'public radio licence' means a licence granted as a public radio licence under section 81 including such a licence as renewed or further renewed;

'public television licence' means a licence granted as a public television licence under section 81 including such a licence as renewed or further renewed;

'radio licence' means a commercial radio licence, a supplementary radio licence, a public radio licence or a remote radio licence;

're-broadcasting licence' means a licence granted as a re-broadcasting licence under section 81 including such a licence as renewed or further renewed;

'remote licence' means a remote radio licence or remote television licence;

'remote radio licence' means a licence granted as a remote radio licence under section 81 including such a licence as renewed or further renewed;

'remote television licence' means a licence granted as a remote television licence under section 81 including such a licence as renewed or further renewed;

're-transmission licence' means a licence granted as a re-transmission licence under section 81 including such a licence as renewed or further renewed;";

- (e) by omitting from sub-section (1) the definitions of "supplementary broadcasting licence", "supplementary broadcasting station", "supplementary licence", "supplementary television licence", "supplementary television station", "telegraph line", "television receiver", "television repeater station", "television repeater station licence", "television station", "television translator station", "television translator station licence" and "the Board" and substituting the following definitions:

" 'service area' means—

- (a) in relation to a licence or the holder of a licence—the area to be served pursuant to the licence; or
- (b) in relation to the Corporation or the Service—an area in which the Corporation or Service, as the case may be, provides a broadcasting service, being an area determined by the Minister to be a service area for the purposes of this paragraph;

'supplementary licence' means a supplementary radio licence or supplementary television licence;

'supplementary radio licence' means a licence granted as a supplementary radio licence under section 81 including such a licence as renewed or further renewed;

'supplementary television licence' means a licence granted as a supplementary television licence under section 81 including such a licence as renewed or further renewed;

'telegraph line' means a line within the meaning of the *Telecommunications Act 1975*;

'televise' means to operate a radiocommunications transmitter for the purpose of the transmission to the general public of television programs;

'television licence' means a commercial television licence, a supplementary television licence, a public television licence or a remote television licence;";

- (f) by omitting from sub-section (1) the definition of "wireless telegraphy";

- (g) by omitting sub-section (2) and substituting the following sub-section:

"(2) In this Act, unless the contrary intention appears, an expression that is used in the definition of 'broadcast by radio' or 'televise' in sub-section (1) and is also used in the

Radiocommunications Act 1983 has the same meaning as in that Act.”; and

(h) by adding at the end the following sub-sections:

“(4) For the purposes of this Act, an area shall be taken to overlap another area if the first-mentioned area is wholly or partly co-extensive with, or is within, the other area.

“(5) A reference in this Act to the area served or to be served pursuant to a licence includes a reference to an area that consists of 2 or more separate areas served or to be served pursuant to the licence.

“(6) A reference in this Act (other than section 18A) to the provision by a licensee of an adequate and comprehensive service pursuant to a licence shall be read as a reference to the provision by the licensee of an adequate and comprehensive service, having regard to—

- (a) the technical conditions of the licence warrant;
- (b) the requirements of this Act and the regulations;
- (c) the nature of the community to be served pursuant to the licence;
- (d) the diversity of the interests of that community; and
- (e) the nature of any other broadcasting services (including broadcasting services provided by the Corporation or the Service) having service areas that overlap the service area of the licence.”.

Repeal of heading and substitution of new heading

6. The heading to Part IA is repealed and the following heading is substituted:

“PART IA—PROHIBITION ON USE OF CERTAIN FACILITIES IN CONNECTION WITH BROADCASTING”.

Unauthorized operation of certain radiocommunications transmitters prohibited

7. Section 6A of the Principal Act is amended—

- (a) by omitting from sub-section (1) “broadcasting programs or television programs except as authorized by or under this Act or the *Australian Broadcasting Corporation Act 1983*” and substituting “radio programs or television programs except as authorized by a licence warrant”; and
- (b) by inserting after sub-section (1) the following sub-section:

“(1A) For the purposes of sub-section (1), the operation of a radiocommunications transmitter shall not be taken to be authorized by a licence warrant unless the technical conditions of the licence warrant relating to the transmitter, or to other facilities (including studios) associated with the transmitter, are complied with.”.

8. After section 6A of the Principal Act the following sections are inserted in Part IA:

Unauthorized use of telegraph lines for re-transmission of programs

“6B. A person shall not use a telegraph line (not being a telegraph line erected upon private land or within a private building) for the purpose of transmitting a program, being a program broadcast or transmitted by the Corporation, the Service or a licensee, except in accordance with a re-transmission licence or for the purpose of the broadcasting of that program.” 5

Transmissions for broadcast by Aussat satellite

“6C. A person shall not transmit radio programs or television programs to an Aussat satellite (wherever it is) with a view to the programs being transmitted by a radiocommunications transmitter in the satellite to the general public unless the operation of the transmitter for the purpose of the transmission of those programs to the general public is authorized by a licence warrant.”. 10
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Divisions of Tribunal

9. (1) Section 15C of the Principal Act is amended by omitting paragraphs (1A) (a) and (b) and substituting the following paragraphs:

- “(a) the renewal of a commercial licence having a metropolitan service area; or 20
- (b) the suspension or revocation of a licence,”.

(2) Section 15C of the Principal Act is amended by inserting in paragraph (1) (a) “or section 18A” after “sub-section 18 (2)”.

Functions of Tribunal

10. Section 16 of the Principal Act is amended— 2

- (a) by omitting from paragraph (1) (a) “and revoke” and substituting “, revoke and accept the surrender of”; and
- (b) by omitting sub-sections (2) and (3) and substituting the following sub-section:

“(2) In performing its functions under paragraphs (1) (d), (e) and (f) in relation to the broadcasting of programs by licensees, the Tribunal shall consult representatives of those licensees.”. 3

11. After section 16 of the Principal Act the following section is inserted:

Approval of forms

“16A. Where a provision of this Act requires or permits a thing to be done in, or in accordance with, a form approved by the Tribunal or the Minister, the Tribunal or the Minister, as the case may be, may for the purposes of that provision approve different forms to be applicable in different circumstances.”. 3

12. Before section 18 of the Principal Act the following sections are inserted in Division 3 of Part II:

Interpretation

“17A. (1) In this Division, unless the contrary intention appears—

‘area inquiry’ means an inquiry under section 18A;

‘directed inquiry’ means an inquiry under section 18;

‘ordinary inquiry’ means an inquiry under section 17C.

“(2) A reference in this Division to a substantive power of the Tribunal is a reference to a power of the Tribunal—

(a) to determine standards under paragraph 16 (1) (d) or conditions under paragraph 16 (1) (e);

(b) to grant or renew a licence under sub-section 81 (1);

(c) to vary, revoke or impose a condition of a licence under section 85, otherwise than in accordance with sub-section 85 (4);

(d) to suspend or revoke a licence under sub-section 88 (1);

(e) to consent to a transfer or to the admission of a person under sub-section 89A (1);

(f) to approve a transaction or a part of a transaction under sub-section 90JA (1) or (2) or 92FAA (1) or (2);

(g) to register a person under sub-section 91C (2) or to cancel a registration under sub-section 91C (10);

(h) to issue or revoke a certificate under sub-section 91D (2) or (6) respectively;

(j) to give directions under sub-section 92N (1), 99 (2) or 119AB (4);

(k) to make orders for the purposes of section 92V;

(m) to grant permission under sub-section 99A (1) or (2);

(n) to determine conditions under sub-section 100 (5);

(o) to determine periods under sub-section 103;

(p) under sub-section 116 (4) to require licensees to refrain from broadcasting election advertisements;

(q) to make an order directing persons under sub-section 119 (2); or

(r) to give approval to the holders of supplementary licences under sub-section 119AA (2) or (3).

Applications requesting Tribunal to exercise certain substantive powers

“17B. (1) A person may at any time make an application under this section requesting the Tribunal to exercise any of its substantive powers, other than a substantive power in respect of the exercise of which an application is expressly permitted to be made under another provision of this Act.

“(2) An application under this section shall be made in accordance with the regulations.

Ordinary inquiries

“17C. (1) Where the Tribunal receives an application under this Act requesting the exercise of any of its substantive powers, or proposes to exercise any of its substantive powers otherwise than on such an application, the Tribunal shall hold an inquiry into the requested or proposed exercise of the power.

“(2) Where the Tribunal proposes, either on its own initiative or at the request of any person, to exercise any of its powers, other than a substantive power, under this Act or the regulations, the Tribunal may in its discretion hold an inquiry into the proposed exercise of the power.

“(3) The Tribunal may, in its discretion, hold an inquiry into—

- (a) any matter relating to the operation of this Act;
- (b) any matter relating to broadcasting services; or
- (c) any other matter, being a matter with respect to which the Parliament has power to make laws by virtue of paragraph 51 (v) of the Constitution, that, in the opinion of the Tribunal, relates directly or indirectly to a matter referred to in paragraph (a) or (b).

“(4) A reference in sub-section (3) to a matter shall be read as not including a reference to—

- (a) a matter relating to the Corporation or the Service or to the affairs or operations of the Corporation or the Service; or
- (b) a matter in respect of which the Tribunal is required or permitted to hold an inquiry by virtue of any provision of this Act (other than sub-section (3) or sub-section 18 (2)).

“(5) Subject to sub-section (6), an inquiry under sub-section (1) shall be held in accordance with this Division and the regulations.

“(6) Notwithstanding the preceding provisions of this section, regulations under section 134 may make provision for and in relation to—

- (a) the deferral, suspension or termination of ordinary inquiries; and
- (b) the holding of—
 - (i) joint ordinary inquiries into the exercise of 2 or more powers by the Tribunal;
 - (ii) separate ordinary inquiries into different aspects of the exercise of the same power by the Tribunal; and
 - (iii) ordinary inquiries into certain aspects only of the exercise of a power by the Tribunal.

“(7) Where the Tribunal determines that for reasons of urgency it is not practicable for the Tribunal or another person to comply with a particular requirement or particular requirements of the regulations or of this Division in relation to the holding of an inquiry under sub-section (1), the following provisions have effect:

- (a) the Tribunal, or that other person, as the case may be, is not required to comply with that requirement or those requirements, as the case may be, in relation to the holding of the inquiry; and
- (b) the Tribunal may in lieu of that requirement or those requirements, as the case may be, adopt any other procedure or procedures that it considers appropriate.

“(8) Subject to this Division and to the regulations, the conduct of an inquiry under sub-section (2) or (3) is within the discretion of the Tribunal.”.

Directed inquiries

13. Section 18 of the Principal Act is amended—

- (a) by omitting sub-section (1);
- (b) by omitting from paragraph (2A) (b) “other than sub-section (2)” and substituting “(other than sub-section 17C (3), sub-section (2) of this section or section 18A)”; and
- (c) by omitting sub-section (2D) and substituting the following sub-section:

“(2D) Subject to this Division and to the regulations, the conduct of inquiries held under this section is within the discretion of the Tribunal.”.

14. (1) After section 18 of the Principal Act the following section is inserted:

Area inquiries

“18A. (1) The Tribunal may, in relation to any area that the Tribunal considers appropriate, hold an inquiry into—

- (a) the adequacy and comprehensiveness of the broadcasting services provided by licensees to the community in that area; and
- (b) the extent to which the licensees providing those services encourage the broadcasting of programs wholly or substantially produced in Australia and use, and encourage the use of, Australian creative resources in and in connection with the provision of such programs.

“(2) Subject to this Division and to the regulations, the conduct of inquiries held under this section is within the discretion of the Tribunal.”.

(2) The Tribunal shall not hold inquiries under section 18A of the Principal Act as amended by this Act before a date to be fixed by Proclamation for the purposes of this sub-section.

Inquiries to be held in public except in special circumstances

15. Section 19 of the Principal Act is amended—

(a) by inserting after sub-section (2) the following sub-section:

“(2A) Without limiting the generality of sub-section (2), directions under paragraphs (2) (b) and (c) may be given in respect of an inquiry—

(a) at any time after—

(i) where the inquiry is held in consequence of the lodgment of an application under section 17B—the lodgment of the application; or

(ii) in any other case—the advertising by the Tribunal of its intention to hold the inquiry; and

(b) in relation to any proceeding (whether oral or otherwise) before the Tribunal at the inquiry.”; and

(b) by adding at the end the following sub-section:

“(4) Where proceedings before the Tribunal at an inquiry are held in public, the Tribunal shall, as far as practicable, provide adequate facilities to enable all parties to the proceedings to participate in the full view and hearing of the public.”.

Repeal of section 20

16. Section 20 of the Principal Act is repealed.

Refusal to be sworn or to answer questions

17. Section 21AB of the Principal Act is amended—

(a) by omitting from paragraphs (1) (b) and (c) “he” and substituting “the person”;

(b) by omitting from paragraph (1) (c) “him” and substituting “the person”;

(c) by omitting from sub-section (2) “he” (wherever occurring) and substituting “the person”;

(d) by omitting from sub-section (2) “him” (first occurring) and substituting “the person”; and

(e) by omitting from sub-section (2) “any matter contained in the document may tend to incriminate him” and substituting “the production of the document may tend to incriminate the person”.

Briefing of counsel to assist Tribunal

18. Section 21A of the Principal Act is amended by inserting in sub-section (2) “in pursuance of sub-section (1) or as a member of the staff of the Tribunal” after “inquiry”.

Representation before Tribunal

19. Section 22 of the Principal Act is amended—

- 5 (a) by omitting all the words from and including “inquiry” to and including “proceedings,” (second occurring) and substituting “ordinary inquiry, a party to the proceedings”; and
- (b) by adding at the end the following sub-section:

10 “(2) As far as practicable, the Tribunal shall ensure that no party to proceedings before the Tribunal at an ordinary inquiry suffers any detriment by reason that the party is not represented in those proceedings by a barrister, solicitor or agent.”.

20. Section 22AA of the Principal Act is repealed and the following section is substituted:

Parties to proceedings at ordinary inquiries

15 “22AA. (1) The following persons shall be parties to proceedings before the Tribunal at an ordinary inquiry:

- (a) where the inquiry is to be held on the application, or at the request, of a person—that person;
- (b) any other person who has, in accordance with this Act or the regulations, lodged a document in relation to the inquiry, being a document that the Tribunal considers relevant to the inquiry;
- 20 (c) where the Tribunal directs that, by reason of special circumstances, it is in the public interest to allow another person or persons to be party to the proceedings—that person or each of those persons, as the case may be.

5 “(2) Notwithstanding sub-section (1), the Tribunal, having regard to the area or areas of interest of any party to proceedings before the Tribunal at an ordinary inquiry, may direct that the participation of the party in those proceedings should be limited in accordance with the direction.”.

Reference of questions of law to Federal Court of Australia

0 21. Section 22B of the Principal Act is amended by omitting from sub-section (2) “person having an interest in” and substituting “party to”.

Procedure at inquiries

22. Section 25 of the Principal Act is amended by omitting sub-section (3) and substituting the following sub-section:

5 “(3) Subject to section 19, the Tribunal shall ensure that every party to proceedings before the Tribunal at an ordinary inquiry is given a reasonable opportunity to present his or her case.”.

23. Section 25AA of the Principal Act is repealed and the following section is substituted:

Investigation of, and comment upon, broadcasting practices

“25AA. Notwithstanding anything to the contrary either express or by way of implication in any provision of this Act, the Tribunal may, at an inquiry into the renewal of a licence or at an area inquiry, investigate or comment upon any matter connected with the past, present or future broadcasting practices of the licence holder or any licence holder in the area concerned, as the case may be.” 5

Reports on inquiries

24. Section 25B of the Principal Act is amended— 10

(a) by omitting sub-section (1) and substituting the following sub-section:

“(1) Subject to sub-section (2), where the Tribunal has held an inquiry, the Tribunal shall—

- (a) give to the Minister and to all parties to the proceedings; and
- (b) cause to be made available to the public in such manner as it thinks fits, 15

a report setting out—

- (c) a summary of the proceedings at the inquiry, including particulars of, and the reasons for—
 - (i) any direction given under section 22AA; and 20
 - (ii) any determination made, and any procedure adopted, under sub-section 17C (7),

other than a direction, determination or procedure that the Tribunal considers of insufficient importance to be included in the report; 24

- (d) the findings of the Tribunal and the reasons for those findings; and
- (e) the decision or recommendations (if any) made by the Tribunal in consequence of those findings, and the reasons for any such decision or recommendations.”; and 30

(b) by inserting in sub-sections (3) and (4) “or in pursuance of section 18A” after “section 18”.

Repeal of Division 5A of Part III

25. Division 5A of Part III of the Principal Act is repealed.

26. Section 79ZJ of the Principal Act is repealed and the following section is substituted: 3

Application of Act to the Service

“79ZJ. (1) Sections 60, 63, 64, 72, 73, 74 and 78A apply, with such exceptions and subject to such modifications and adaptations as are prescribed, to the Service, to programs broadcast by the Service under this Part and to 4

broadcasting facilities used by the Service as they applied immediately before the commencement of the *Australian Broadcasting Corporation (Transitional Provisions and Consequential Amendments) Act 1983* to the Commission, to programs broadcast by the Commission and to broadcasting facilities used by the Commission.

“(2) Sections 113, 113A, 115, 116 (other than sub-section (1)), 117, 117A, 118, 121 and 131 apply, with such exceptions and subject to such modifications and adaptations as are prescribed, to the Service, to programs broadcast by the Service under this Part and to broadcasting facilities used by the Service as they apply to the Corporation, to programs broadcast by the Corporation and to broadcasting facilities used by the Corporation.

“(3) Except where this Act otherwise expressly provides, this Act does not apply in relation to the broadcasting services provided by the Service.”.

Repeal of heading and substitution of new headings

27. The heading to Part IIIB of the Principal Act is repealed and the following headings are substituted:

“PART IIIB—LICENCES AND LICENCE WARRANTS

“Division 1—Grant, Renewal, Revocation, &c.”.

Interpretation

28. Section 80 of the Principal Act is amended—

- (a) by omitting from sub-section (1) the definitions of “commercial licence”, “commercial translator licence” and “licence” and substituting the following definition:

“‘government policy statement’ means a written statement of a policy of the Commonwealth Government that has been given to the Tribunal by the Minister for the purposes of this Division;”;

- (b) by omitting from sub-section (1) the definition of “specification” and substituting the following definitions:

“‘service specification’, in relation to a licence, means a specification of—

- (a) the service area of the licence;
- (b) in the case of a public licence—the special purpose for which the licence is granted;
- (c) in the case of a re-broadcasting licence—the broadcasting service or broadcasting services that may be re-broadcast pursuant to the licence; and
- (d) in the case of a re-transmission licence—the broadcasting service or broadcasting services that may, by the use of a telegraph line, be re-transmitted pursuant to the licence;

‘technical condition’, in relation to a licence warrant, means a condition relating to—

- (a) in the case of a licence warrant in respect of a licence other than a re-transmission licence—
 - (i) the design, siting, installation, maintenance or operation (including operating power, constancy and frequency) of the radiocommunications transmitter or transmitters to be used for the transmission of programs pursuant to the licence; 5
 - (ii) the design, siting, installation, maintenance or operation of facilities (not including studios or studio equipment or facilities) to be used in association with the radiocommunications transmitter or transmitters; or 10
 - (iii) the siting of the studio or studios to be used in connection with the transmission of programs pursuant to the licence; or 15
- (b) in the case of a licence warrant in respect of a re-transmission licence—the design, siting, installation, maintenance or operation of the telegraph lines and other equipment or facilities to be used for or in connection with the transmission of programs pursuant to the licence.”; 20
- (c) by omitting from sub-section (2) “station, service or aerial” and substituting “service”; and 25
- (d) by omitting sub-sections (2B) and (3).

Grant and renewal of licences

29. Section 81 of the Principal Act is amended—

- (a) by omitting from sub-section (2) “and television stations in the area served or to be served in pursuance” and substituting “services provided pursuant to other licences having service areas that overlap the service area”; 30
- (b) by omitting from sub-section (3) “licence for a commercial broadcasting station or for a commercial television station” and substituting “commercial licence”; 3
- (c) by omitting from sub-section (4) “broadcasting licence or public television”; and
- (d) by omitting sub-section (5) and substituting the following sub-sections: 4
 - “(4A) A remote licence shall not be granted except to—
 - (a) a company formed within the limits of the Commonwealth or a Territory and having a share capital; or
 - (b) a consortium of companies to which paragraph (a) applies.

“(5) Such fees as are prescribed are payable in respect of—

- (a) grants and renewals of public licences and re-broadcasting licences; and
- (b) grants, renewals and transfers of re-transmission licences.”; and
- (e) by inserting in sub-section (6) “a remote licence or” after “Where”.

Applications for grant of certain licences

30. Section 82 of the Principal Act is amended—

- (a) by omitting paragraph (1) (a) and substituting the following paragraph:

“(a) specifying the category of licence and setting out an outline of—

- (i) the service specifications to which it is proposed the licence is to be subject; and
- (ii) the technical conditions proposed to be included in the licence warrant; and”;

- (b) by omitting sub-paragraph (1) (b) (i) and substituting the following sub-paragraph:

“(i) lodge with the Tribunal not later than a specified date (not being a date earlier than 56 days after the date of publication of the notice in the *Gazette*) applications in accordance with the regulations for the grant of the licence; or”;

- (c) by omitting sub-sections (2) to (5) (inclusive).

Applications for grant of supplementary licences

31. Section 82A of the Principal Act is amended—

- (a) by omitting from sub-section (1) “licence for a commercial broadcasting station” and substituting “commercial radio licence”;
- (b) by omitting from sub-section (1) “broadcasting service” and substituting “radio service”;
- (c) by omitting from sub-section (1) “, by means of one broadcasting station and, if necessary, one or more broadcasting translator stations,”;
- (d) by omitting from sub-section (2) “licence for a commercial television station” and substituting “commercial television licence”;
- (e) by omitting from sub-section (2) “, by means of one television station and, if necessary, one or more television translator stations,”;
- (f) by omitting paragraph (3) (a) and substituting the following paragraph:

“(a) the holder of a commercial radio licence where the programs transmitted pursuant to the licence are transmitted solely by way of frequency modulation; or”;

- (g) by inserting in sub-paragraph (4) (a) (i) “the category of the licence and” before “the specification”;

- (h) by omitting sub-paragraph (4) (a) (ii) and substituting the following sub-paragraph:
 - “(ii) an outline of the technical conditions proposed to be included in the licence warrant; or”;
- (j) by omitting from paragraph (4) (b) “and television”; 5
- (k) by omitting from sub-section (5) “area served in pursuance” (wherever occurring) and substituting “service area”;
- (m) by omitting from sub-section (7) “area served in pursuance” and substituting “service area”;
- (n) by omitting from sub-section (7) “and any one or more commercial translator licences associated with that commercial licence”; 10
- (o) by inserting in paragraph (9) (e) “, in accordance with the regulations,” after “submission”; and
- (p) by omitting sub-sections (10), (11), (12) and (13).

Consideration of licence applications by Tribunal 15

32. Section 83 of the Principal Act is amended—

- (a) by omitting sub-sections (1) to (4) (inclusive);
- (b) by omitting from sub-section (5) all the words from and including “a licence” to and including “by the Tribunal” and substituting “the grant of a licence shall, before the licence is granted”; 20
- (c) by omitting from paragraph (5) (b) “if the licence is a licence referred to in paragraph (a), (b), (g), (h), (k), (ka) or (l) of the definition of ‘licence’ in sub-section 80 (1)” and substituting “in the case of a licence other than a re-broadcasting licence or a re-transmission licence”;
- (d) by omitting sub-paragraph (5) (b) (i) and substituting the following sub-paragraph: 21
 - “(i) provide an adequate and comprehensive service pursuant to the licence; and”;
- (e) by omitting from sub-section (6) “it has held an inquiry into the grant of the licence and”; 30
- (f) by inserting in paragraph (6) (c) “in the case of a licence other than a remote licence—” before “it appears”;
- (g) by omitting from sub-sub-paragraph (6) (c) (i) (B) “effectively to operate the relevant broadcasting station or television station, as the case may be” and substituting “to provide an adequate and comprehensive service pursuant to the licence or, in the case of a re-broadcasting licence or a re-transmission licence, to provide the service to which the licence relates”; 3
- (h) by omitting sub-sub-paragraphs (6) (c) (ii) (A) and (B) and substituting the following sub-sub-paragraphs: 4
 - “(A) the licence is a commercial licence whose service area is not a metropolitan service area; and

(B) the service area of the licence overlaps the service area of one or more licences of a kind to which sub-sub-paragraph (A) applies;”;

5 (j) by omitting sub-paragraph (6) (c) (iii) and substituting the following sub-paragraph:

“(iii) where the service area of the licence overlaps the service area of another licence or other licences—the need for the commercial viability of the service or services provided pursuant to the other licence or other licences;”;

10 (k) by inserting in paragraph (6) (d) “(other than the outline of the technical conditions proposed to be included in the licence warrant)” after “matters”;

(m) by inserting after paragraph (6) (d) the following paragraph:

15 “(da) where the licence is a remote licence, it appears to the Tribunal, having regard to the following matters or circumstances, that it is advisable in the public interest to refuse to grant the licence to the person:

(i) it is not satisfied that the person—

20 (A) is a fit and proper person to hold the licence;

(B) has the financial, technical and management capabilities necessary to provide an adequate and comprehensive service pursuant to the licence; and

25 (C) is otherwise capable of complying with the conditions of the licence;

(ii) where the service area of the licence overlaps the service area of another licence or other licences—the need for the commercial viability of the service or services provided pursuant to the other licence or other licences;

30 (iii) subject to the desirability of ensuring that, in all parts of Australia, there are available at least one service provided pursuant to a commercial radio licence or remote radio licence and one service provided pursuant to a commercial television licence or remote television licence, the need to avoid an undue concentration of the ownership or control, direct or indirect, of the media in the service area of the licence;

0 (iv) the likelihood that, if the Tribunal granted the licence, a person would, in relation to the licence or the holder of the licence, contravene an order of the Tribunal made for the purposes of section 92V;

(v) any relevant government policy statements;

5 (vi) any matters prescribed by regulations for the purposes of this paragraph;

- (vii) any other matters or circumstances that the Tribunal considers relevant;”;
- (n) by omitting from paragraph (6) (e) “the broadcasting stations and television stations in the area to be served pursuant to the licence” and substituting “broadcasting services provided pursuant to other licences having service areas that overlap the service area of the supplementary licence”; 5
- (o) by omitting sub-paragraph (6) (e) (i) and substituting the following sub-paragraph:
 “(i) that an additional radio service or an additional television service, as the case requires, provided pursuant to a commercial licence having the same service area as the supplementary licence is reasonably likely to be commercially viable during the period in which the supplementary licence, if granted, would be in force; and”; 10 15
- (p) by omitting from sub-sub-paragraph (6) (e) (ii) (A) “the licence for such an additional station” and substituting “such an additional licence”;
- (q) by omitting from sub-sub-paragraph (6) (e) (ii) (B) “area to be served pursuant to” and substituting “service area of”; 20
- (r) by omitting sub-section (6A) and substituting the following sub-section:
 “(6A) A reference in paragraph (6) (da) or (e) to the media in the service area of a licence includes a reference to—
 (a) newspapers, journals and the like available in that service area; and
 (b) any broadcasting service provided pursuant to another licence having a service area that overlaps the service area of the licence.”; 25
- (s) by omitting sub-section (8); and 30
- (t) by omitting paragraph (8A) (b) and substituting the following paragraph:
 “(b) make a recommendation in writing to the Minister that the Minister invite applications for a commercial radio licence or commercial television licence, as the case requires, to serve the area that would have been the service area of the supplementary licence.”. 35

Imposition of licence conditions

33. Section 84 of the Principal Act is amended—
- (a) by inserting in sub-section (1) “service” before “specifications”; 40
- (b) by omitting from sub-section (1) “, in the case of a matter referred to in paragraph (a), (b), (c) or (d) of the definition of ‘specification’ in sub-section 80 (1),”;

- (c) by omitting from paragraph (2) (b) “specification” and substituting “‘service specification’ or ‘technical condition’ ”; and
- (d) by omitting sub-section (3).

Variation of licence conditions

5 **34.** Section 85 of the Principal Act is amended—

(a) by omitting from sub-section (2) “the broadcasting and television stations in the area served in pursuance” and substituting “the broadcasting services provided pursuant to other licences having service areas that overlap the service area”;

10 (b) by omitting sub-section (3) and substituting the following sub-section:

“ (3) Subject to this section, the Tribunal shall not vary, revoke or impose a condition relating to a matter referred to in the definition of ‘service specification’ in sub-section 80 (1). ”;

15 (c) by omitting from sub-section (4) “specification” and substituting “service specification”;

(d) by omitting sub-section (5) and substituting the following sub-section:

“ (5) Before the Minister gives a direction to the Tribunal under sub-section (4)—

20 (a) the Minister, or an officer authorized by the Minister in writing for the purposes of this paragraph, shall give the licensee notice in writing—

(i) specifying the direction proposed to be given by the Minister; and

25 (ii) informing the licensee that the licensee may, not later than a specified date (being a date not earlier than 14 days after the date of the notice), make representations to the Minister relating to the proposed direction;

(b) in the case of a direction to vary the service area of the licence—the Minister, or an officer authorized by the Minister in writing for the purposes of this paragraph, shall also publish, in the *Gazette* and in a newspaper or newspapers (if any) circulating in the service area of the licence and in the proposed new service area, a notice—

5 (i) specifying the direction proposed to be given by the Minister; and

(ii) notifying interested persons that they may, not later than a specified date (being a date not earlier than 21 days after the date of publication of the notice in the *Gazette*), make representations to the Minister relating to the proposed direction; and

0 (c) the Minister shall have regard to any representations so made.”; and

(e) by adding at the end the following sub-section:

“(7) In this section, ‘condition’ does not include a condition relating to a matter referred to in the definition of ‘technical condition’ in sub-section 80 (1).”.

Renewal of licences

- 35. Section 86 of the Principal Act is amended—** 5
- (a) by omitting from sub-section (1) “a form approved by the Tribunal” and substituting “the regulations”;
 - (b) by omitting sub-sections (4) to (9) (inclusive);
 - (c) by omitting from sub-section (10) “The licensee shall, at the inquiry or before the consideration by the Tribunal of the application, as the case may be” and substituting “The licensee shall, before the licence is renewed”; 10
 - (d) by omitting sub-section (11);
 - (e) by omitting from sub-section (11B) “Subject to sub-section (11), the” and substituting “The”; 15
 - (f) by inserting in paragraph (11B) (c) “in the case of a licence other than a remote licence,” before “it appears”;
 - (g) by omitting from sub-sub-paragraph (11B) (c) (ii) (B) “effectively to operate the broadcasting station or television station, as the case may be, to which the licence relates” and substituting “to provide an adequate and comprehensive service pursuant to the licence or, in the case of a re-broadcasting licence or a re-transmission licence, to provide the service to which the licence relates”; 20
 - (h) by omitting sub-paragraph (11B) (c) (iv) and substituting the following sub-paragraph: 25
 - “(iv) except in the case of a re-broadcasting licence or a re-transmission licence, the need for the commercial viability of the service provided pursuant to the licence;”;
 - (j) by inserting after paragraph (11B) (c) the following paragraph: 30
 - “(ca) where the licence is a remote licence, it appears to the Tribunal, having regard to the following matters or circumstances, that it is advisable in the public interest to refuse to renew the licence:
 - (i) the Tribunal is satisfied that the licensee has failed to comply with the undertaking (if any) given under sub-section (10) or 83 (5), as the case may be, in relation to the licence to be renewed; 3:
 - (ii) the Tribunal is satisfied that the licensee—
 - (A) is no longer a fit and proper person to hold the licence; or 4
 - (B) no longer has the financial, technical and management capabilities necessary to provide an adequate and comprehensive service pursuant to the licence;

- (iii) the Tribunal is satisfied that a condition of the licence has not been complied with;
- (iv) the need for the commercial viability of the service provided pursuant to the licence;
- 5 (v) the likelihood that, if the Tribunal renewed the licence, a person would, in relation to the licence or the holder of the licence, contravene an order of the Tribunal made for the purposes of section 92V;
- (vi) any relevant government policy statements;
- 10 (vii) any matters prescribed by regulations for the purposes of this paragraph;
- (viii) any other matters or circumstances that the Tribunal considers relevant; or”;
- (k) by omitting sub-sections (11D) to (15) (inclusive) and substituting the following sub-sections:

15 “(11D) The Tribunal may refuse to renew a commercial licence, a remote licence or a supplementary licence if it is satisfied that the licensee has failed to pay an amount payable by the licensee under the *Radio Licence Fees Act 1964* or the *Television Licence Fees Act 1964*, as the case requires.

20 “(12) On the renewal of the licence, the Tribunal may vary or revoke any of the conditions of the licence or impose further conditions, but it shall not vary, revoke or impose a condition relating to a matter referred to in the definition of ‘service specification’ or ‘technical condition’ in sub-section 80 (1).”.

Renewal of certain supplementary licences

36. Section 86A of the Principal Act is amended—

- (a) by omitting from sub-section (4) “stations and television stations in the area served in pursuance” and substituting “services provided pursuant to licences having service areas that overlap the service area”;
- 30 (b) by omitting paragraph (4) (a) and substituting the following paragraph:
 - 35 “(a) an additional radio service or additional television service, as the case requires, provided pursuant to a commercial licence having the same service area as the supplementary licence is reasonably likely to be commercially viable after the expiration of the prescribed period;”;
- (c) by omitting from paragraph (4) (b) “in pursuance of a licence for such an additional station” and substituting “pursuant to such an additional licence”;
- 40 (d) by omitting sub-section (5);

- (e) by omitting paragraph (6) (b) and substituting the following paragraph:
- “(b) where it is of the opinion referred to in that sub-section and it grants a renewal of the supplementary licence, make a recommendation in writing to the Minister that the Minister invite applications for a commercial radio licence or commercial television licence, as the case requires, to serve, after the expiration of the prescribed period, an area that is substantially coextensive with the service area of the supplementary licence.”;
- (f) by omitting from sub-paragraph (10) (a) (i) “and all commercial translator licences (if any) associated with the related commercial licence”; and
- (g) by omitting from sub-paragraph (10) (a) (ii) “and all such commercial translator licences”.

Election to renew certain supplementary licences

37. Section 86B of the Principal Act is amended—

- (a) by omitting from paragraph (1) (b) “and all commercial translator licences (if any) associated with the related commercial licence”;
- (b) by omitting paragraph (1) (c) and substituting the following paragraph:
- “(c) in any other case—an application for renewal shall be lodged and dealt with in accordance with section 86 as an application for renewal of a commercial licence in respect of the broadcasting service provided pursuant to the supplementary licence.”;
- (c) by omitting from sub-section (2) “and all commercial translator licences (if any) associated with the related commercial licence”; and
- (d) by omitting from sub-section (2) “cease” and substituting “ceases”.

Election to transfer supplementary or other licence

38. Section 86C of the Principal Act is amended—

- (a) by omitting from sub-section (1) “, or to transfer a related commercial licence and all commercial translator licences (if any) associated with the related commercial licence” and substituting “or a related commercial licence”;
- (b) by omitting from sub-paragraph (1) (a) (ii) “licence for a commercial broadcasting station or for a commercial television station” and substituting “commercial licence”;
- (c) by omitting paragraph (1) (b) and substituting the following paragraph:
- “(b) where the licence is transferred as provided in paragraph (a), the licence shall be deemed, on and after the day of transfer, to be a commercial radio licence or a commercial television licence, as the case requires.”; and

- (d) by omitting from sub-section (2) “broadcasting services or television services, as the case requires, in the area served in pursuance” and substituting “radio services or television services, as the case requires, having service areas that overlap the service area”.

5 **Invitation of certain licence applications**

39. Section 86D of the Principal Act is amended—

- (a) by omitting from paragraph (1) (b) “and all commercial translator licences (if any) associated with the related commercial licence”;
- 10 (b) by omitting from paragraph (1) (d) “, or to transfer a related commercial licence and all commercial translator licences (if any) associated with the related commercial licence,” and substituting “or a related commercial licence”;
- 15 (c) by omitting from sub-section (1) “one commercial licence and, if necessary, one or more commercial translator licences,” and substituting “a commercial licence”;
- (d) by omitting from sub-section (1) “area served in pursuance” and substituting “service area”;
- 20 (e) by omitting from sub-section (2) “, the related commercial licence and all commercial translator licences (if any) associated with the related commercial licence” and substituting “and the related commercial licence”; and
- (f) by omitting from paragraph (3) (a) “and all commercial translator licences (if any) associated with the related commercial licence”.

25 **Suspension and revocation of licences**

40. Section 88 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “Subject to section 89, the” and substituting “The”;
- 10 (b) by inserting in paragraph (1) (a) “in the case of a licence other than a remote licence,” before “it appears”;
- 15 (c) by omitting from sub-sub-paragraph (1) (a) (ii) (B) “effectively to operate the broadcasting station or television station, as the case may be, to which the licence relates” and substituting “to provide an adequate and comprehensive service pursuant to the licence or, in the case of a re-broadcasting licence or a re-transmission licence, to provide the service to which the licence relates”;
- (d) by omitting from sub-paragraph (1) (a) (iii) “or”; and
- (e) by omitting paragraph (1) (b) and substituting the following paragraphs:
- 0 “(aa) in the case of a remote licence, it appears to the Tribunal that it is advisable in the public interest to do so, having regard to the following matters or circumstances:
- (i) the Tribunal is satisfied that the licensee has failed to comply with the undertaking given under sub-section

- 83 (5) or 86 (10), as the case may be, in relation to the licence;
- (ii) the Tribunal is satisfied that the licensee—
 - (A) is no longer a fit and proper person to hold the licence; or 5
 - (B) no longer has the financial, technical and management capabilities necessary to provide an adequate and comprehensive service pursuant to the licence;
 - (iii) the Tribunal is satisfied that a condition of the licence has not been complied with; 10
 - (iv) any other matters or circumstances that the Tribunal considers relevant; or
- (b) in the case of a commercial licence, remote licence or supplementary licence—the Tribunal is satisfied that the licensee has failed to pay an amount payable by the licensee under the *Radio Licence Fees Act 1964* or the *Television Licence Fees Act 1964*, as the case requires.” 15

41. Section 89 of the Principal Act is repealed and the following section is substituted: 20

Surrender of licences

“89. (1) A licensee may, by notice in writing to the Tribunal, request the Tribunal to accept the surrender of a licence.

“(2) Where a request is made in accordance with sub-section (1), the Tribunal shall, by notice in writing to the licensee, accept the surrender of the licence, and the licence ceases to have effect from the date specified for the purpose in the notice of the Tribunal. 25

“(3) Where the holder of a commercial licence is also the holder of a related supplementary licence, a request under sub-section (1) in relation to the commercial licence is of no effect unless, at the same time, the licensee also makes a request under that sub-section in relation to the related supplementary licence.” 30

Transfer of licences

42. Section 89A of the Principal Act is amended—

- (a) by omitting sub-section (1B); 35
- (b) by inserting in paragraph (1D) (c) “in the case of a licence other than a remote licence,” before “it appears”;
- (c) by omitting from sub-sub-paragraph (1D) (c) (i) (B) “effectively to operate the relevant broadcasting station or television station, as the case may be” and substituting “to provide an adequate and comprehensive service pursuant to the licence or, in the case of a 4C

re-broadcasting licence or a re-transmission licence, to provide the service to which the licence relates”;

- (d) by omitting sub-sub-paragraphs (1D) (c) (ii) (A) and (B) and substituting the following sub-sub-paragraphs:

5 “(A) the licence is a commercial licence whose service area is not a metropolitan service area; and

(B) the service area of the licence overlaps the service area of one or more licences of a kind to which sub-sub-paragraph (A) applies,”;

- 10 (e) by omitting from sub-paragraph (1D) (c) (ii) “or” (last occurring);

- (f) by inserting after paragraph (1D) (c) the following paragraph:

15 “(ca) where the licence is a remote licence, it appears to the Tribunal, having regard to the following matters or circumstances, that it is advisable in the public interest to refuse consent:

- (i) it is not satisfied that the person—

(A) is a fit and proper person to hold the licence;

20 (B) has the financial, technical and management capabilities necessary to provide an adequate and comprehensive service pursuant to the licence; and

(C) is otherwise capable of complying with the conditions of the licence;

- 25 (ii) subject to the desirability of ensuring that, in all parts of Australia, there are available at least one service provided pursuant to a commercial radio licence or remote radio licence and one service provided pursuant to a commercial television licence or remote television licence, the need to avoid an undue concentration of the ownership or control, direct or indirect, of the media in the service area of the licence;

- 30 (iii) the likelihood that, if the Tribunal gave consent, a person would, in relation to the licence or the holder of the licence, contravene an order of the Tribunal made for the purposes of section 92V;

- 35 (iv) any relevant government policy statements;

(v) any matters prescribed by regulations for the purposes of this paragraph;

- 40 (vi) any other matters or circumstances that the Tribunal considers relevant; or”;

- (g) by inserting after sub-section (1D) the following sub-section:

“(1DA) The reference in paragraph (1D) (ca) to the media in the service area of a licence includes a reference to—

- (a) newspapers, journals and the like available in that service area; and
- (b) any broadcasting service provided pursuant to another licence having a service area that overlaps the service area of the licence.”; 5
- (h) by omitting from sub-section (1F) all the words from and including “licence for a commercial” to the end of the sub-section and substituting “commercial radio licence or a commercial television licence, as the case requires, and the whole or a substantial part of the service area of that commercial licence is coextensive with the whole or a substantial part of the service area of the supplementary licence.”; and 10
- (j) by inserting in sub-section (5) “a remote licence or” after “relation to”. 15

Limitation on transfer of certain licences

43. Section 89B of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

“(1) This section applies to a commercial licence or a public licence.”.

44. Section 89C of the Principal Act is repealed and the following sections are substituted: 20

Commencement of service

“89C. (1) The holder of a licence other than a re-transmission licence—

- (a) shall commence the service in pursuance of the licence on such date as is determined by the Tribunal; and 25
- (b) where the technical conditions of the licence warrant are varied so as to authorize the use of an additional radiocommunications transmitter or additional radiocommunications transmitters to provide the service pursuant to the licence—shall commence to provide the service from that additional transmitter or those additional transmitters on such date as is determined by the Tribunal. 30

“(2) Notwithstanding sub-section (1), where the service pursuant to the licence is to be provided by means of 2 or more radiocommunications transmitters, or a variation of the technical conditions of a licence warrant authorizes the use of one or more additional radiocommunications transmitters to provide the service pursuant to the licence, the Tribunal may permit the transmission of programs by means of those transmitters to commence on such respective dates as are determined by the Tribunal. 35

“(3) The holder of a re-transmission licence shall commence to provide the service in pursuance of the licence in the service area, or a part of the service area, of the licence on such date as is determined by the Tribunal. 40

Licence warrants

“89D: (1) Before the grant of a licence, the Minister shall determine the technical conditions of the licence warrant.

5 “(2) Technical conditions determined under sub-section (1) may include conditions that are to be applicable only in specified circumstances.

“(3) Upon the grant of the licence, the Minister shall grant to the licensee a licence warrant in respect of the licence that—

10 (a) in the case of a licence other than a re-transmission licence or a remote licence—authorizes the operation, in accordance with the warrant and by a person or persons specified in the warrant, of a particular radiocommunications transmitter or transmitters (other than a transmitter in an Aussat satellite) for the purpose of the transmission to the general public of radio programs or television programs, as the case requires;

15 (b) in the case of a remote licence—authorizes the operation, in accordance with the warrant and by a person or persons specified in the warrant, of a particular radiocommunications transmitter or transmitters, being a transmitter that is in, or transmitters that include a transmitter that is in, an Aussat satellite, for the purpose of the transmission to the general public of radio programs or television programs, as the case requires;

20 (c) in the case of a re-transmission licence—authorizes the transmission, across telegraph lines, in accordance with the warrant and by a person or persons specified in the warrant, of programs broadcast by the Corporation, the Service or another licensee; and

25 (d) specifies the technical conditions that are to be complied with.

“(4) The authorizations under licence warrants in respect of 2 or more licences may relate to the same radiocommunications transmitter.

“(5) A licence warrant—

30 (a) subject to paragraph (b), continues in force while the licence (including any renewal) remains in force;

(b) does not have effect while the licence is suspended; and

(c) upon the transfer of the licence, passes to the new licensee.

15 “(6) Subject to sub-sections (7) and (8), the Minister may, during the currency of a licence warrant, by notice in writing to the licensee, vary or revoke any of the technical conditions of the licence warrant or determine further technical conditions to be applicable to the licence warrant.

0 “(7) The Minister, in a licence warrant, shall not, without the consent of the licensee, authorize the operation of a radiocommunications transmitter by a person other than the licensee.

“(8) Before the Minister varies or revokes a technical condition of a licence warrant, or determines that a further technical condition is to be applicable to a

licence warrant, the Minister, or an officer authorized by the Minister in writing for the purposes of this sub-section, shall give the licensee notice in writing specifying the proposed variation or revocation or the proposed new technical condition, as the case may be, and informing the licensee that the licensee may make representations to the Minister not later than a specified date (being a date not earlier than 14 days after the date of the notice), and the Minister shall have regard to any representations so made.” 5

Repeal of headings and substitution of new heading

45. The headings to Part IV and Division 2 of Part IV of the Principal Act are repealed and the following heading is substituted: 10

“Division 2—Limitation on Ownership and Control of Commercial Radio Licences”.

Interpretation

46. Section 90 of the Principal Act is amended—

(a) by omitting from sub-section (1) the definitions of “licence” and “metropolitan commercial broadcasting station” and substituting the following definitions: 15

“ ‘licence’ means a commercial radio licence;

‘metropolitan commercial radio licence’ means a commercial radio licence having a metropolitan service area; 20

‘non-metropolitan commercial licence’ means a commercial radio licence, or a commercial television licence, having a service area other than a metropolitan service area;

‘non-metropolitan commercial radio licence’ means a commercial radio licence other than a metropolitan commercial radio licence;” and 25

(b) by inserting after sub-section (1) the following sub-section:

“(1A) For the purposes of this Division—

(a) a licence whose service area is wholly within a particular State shall be taken to be in that State; and 30

(b) a licence whose service area include parts of 2 or more States shall be taken to be in the State notified by the Minister by notice published in the *Gazette*.”.

Limitation of interests in commercial radio licences

47. Section 90C of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section: 35

“(1) A person contravenes this section if, and so long as, the person has a prescribed interest in—

(a) each of 2 or more metropolitan commercial radio licences in the same State; 40

(b) each of 5 or more metropolitan commercial radio licences;

- (c) each of 5 or more commercial radio licences in the same State; or
- (d) each of 9 or more commercial radio licences.”.

Meaning of control of licence

48. Section 90D of the Principal Act is amended—

- 5 (a) by omitting paragraph (1) (c) and substituting the following paragraph:
 - “(c) that person is in a position to exercise control of—
 - (i) the operations of the licensee in providing the service pursuant to the licence; or
 - 10 (ii) the selection or provision of the programs to be broadcast pursuant to the licence.”;
- (b) by omitting from paragraph (2) (b) “broadcasting” and substituting “radio”; and
- 15 (c) by omitting from paragraph (2) (b) “by the station in respect of which the licence is in force” and substituting “pursuant to the licence”.

Directors

49. Section 90F of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

- 20 “(1) A person contravenes this section if, and so long as, the person is a director of 2 or more companies that are, between them, in a position to exercise control of—
 - (a) each of 2 or more metropolitan commercial radio licences in the same State;
 - (b) each of 5 or more metropolitan commercial radio licences;
 - 25 (c) each of 5 or more commercial radio licences in the same State; or
 - (d) each of 9 or more commercial radio licences.”.

Changes in ownership of shares, &c.

50. Section 90J of the Principal Act is amended—

- 30 (a) by omitting from sub-paragraph (3) (a) (iii) “licence for a commercial broadcasting station or for a commercial television station” and substituting “commercial radio licence or commercial television licence”;
- (b) by omitting from paragraph (3) (b) “form approved by the Tribunal” and substituting “regulations”;
- 35 (c) by omitting sub-section (7); and
- (d) by omitting from sub-section (7A) “form approved by the Tribunal” and substituting “regulations”.

Approval of transactions

51. Section 90JA of the Principal Act is amended—

- (a) by omitting from sub-sub-paragraph (2) (c) (ii) (B) “effectively to operate the broadcasting station to which the licence relates” and substituting “to provide an adequate and comprehensive service pursuant to the licence”; 5
- (b) by omitting sub-paragraph (2) (c) (iii) and substituting the following sub-paragraph:
 - “(iii) if the licence to which the transaction relates is a non-metropolitan commercial radio licence whose service area overlaps the service area of one or more non-metropolitan commercial licences—the Tribunal is satisfied, having regard to the need to avoid undue concentration of influence, whether direct or indirect, on the companies holding those licences, that approval of the transaction should be refused in whole or in part insofar as it affects the applicant,”; 10
- (c) by omitting from sub-section (2) “, by notice in writing served on the applicant”; 15
- (d) by omitting sub-section (3);
- (e) by omitting sub-sections (6), (7) and (8); 20
- (f) by inserting in sub-section (9) “in accordance with the regulations” after “joined”; and
- (g) by omitting paragraph (9) (c).

Repeal of heading and substitution of new heading

52. The heading to Division 3 of Part IV of the Principal Act is repealed and the following heading is substituted: 25

“Division 3—Limitation on Ownership and Control of Commercial Television Licences”.

Interpretation

53. Section 91 of the Principal Act is amended— 30

- (a) by omitting from sub-section (1) the definition of “licence” and substituting the following definitions:
 - “ ‘licence’ means a commercial television licence;
 - ‘metropolitan commercial television licence’ means a commercial television licence having a metropolitan service area; 35
 - ‘non-metropolitan commercial licence’ means a commercial radio licence, or a commercial television licence, having a service area other than a metropolitan service area;
 - ‘non-metropolitan commercial television licence’ means a commercial television licence other than a metropolitan commercial television licence;” 40
- (b) by inserting after sub-section (1) the following sub-sections:

“(1A) For the purposes of this Division—

- (a) a licence whose service area is wholly within a particular State shall be taken to be in that State; and
- (b) a licence whose service area include parts of 2 or more States shall be taken to be in the State notified by the Minister by notice published in the *Gazette*.

“(1B) In sub-section (1A), ‘State’ includes Territory.”; and

- (c) by omitting from paragraph (5) (b) “as part of, or in the operation of, a television station” and substituting “in providing the service pursuant to a licence”.

Registered lenders

54. Section 91C of the Principal Act is amended—

- (a) by omitting from sub-section (2) “form approved by the Tribunal” and substituting “regulations”;
- (b) by omitting from sub-section (10) “, subject to sub-section (11), ”; and
- (c) by omitting sub-section (11).

Approved investments

55. Section 91D of the Principal Act is amended—

- (a) by omitting from sub-section (1) “form approved by the Tribunal” and substituting “regulations”;
- (b) by omitting paragraph (3) (a) and substituting the following paragraph:
 - “(a) the licence is one of 2 or more licences having service areas that are coextensive or substantially coextensive; and”;
- (c) by omitting from sub-section (6) all the words after “those interests,” and substituting “the Tribunal shall, by notice in writing, revoke the certificate if it would be prohibited by sub-section (3) from issuing a certificate authorizing the person to hold the interests to which the first-mentioned certificate relates.”;
- (d) by omitting sub-section (7); and
- (e) by omitting from sub-section (8) “sub-section (7)” and substituting “sub-section (6)”.

Limitation of interests in commercial television licences

56. Section 92 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

“(1) A person contravenes this section if, and so long as, the person has a prescribed interest in—

- (a) each of 3 or more commercial television licences;
 - (b) each of 2 or more commercial television licences in the same Territory;
- or

- (c) each of 2 or more metropolitan commercial television licences in the same State.”.

Meaning of control of licence

57. Section 92A of the Principal Act is amended—

- (a) by omitting paragraph (1) (c) and substituting the following paragraph: 5
- “(c) that person is in a position to exercise control of—
- (i) the operations of the licensee in providing the service pursuant to the licence; or
- (ii) the selection or provision of the programs to be broadcast pursuant to the licence.”; and 10
- (b) by omitting from paragraph (2) (b) “by the station in respect of which the licence is in force” and substituting “pursuant to the licence”.

Changes in ownership of shares, &c.

58. Section 92F of the Principal Act is amended— 15

- (a) by omitting from sub-paragraph (3) (a) (iv) “licence for a commercial broadcasting station or for a commercial television station” and substituting “commercial radio licence or commercial television licence”;
- (b) by omitting from paragraph (3) (b) “form approved by the Tribunal” and substituting “regulations”;
- (c) by omitting sub-section (7); and
- (d) by omitting from sub-section (7A) “form approved by the Tribunal” and substituting “regulations”.

Approval of transactions

59. Section 92FAA of the Principal Act is amended— 25

- (a) by omitting from sub-sub-paragraph (2) (c) (ii) (B) “effectively to operate the television station to which the licence relates” and substituting “to provide an adequate and comprehensive service pursuant to the licence”; 30
- (b) by omitting sub-paragraph (2) (c) (iii) and substituting the following sub-paragraph:
- “(iii) if the licence to which the transaction relates is a non-metropolitan commercial television licence whose service area overlaps the service area of one or more non-metropolitan commercial licences—the Tribunal is satisfied, having regard to the need to avoid undue concentration of influence, whether direct or indirect, on the companies holding those licences, that approval of the transaction should be refused in whole or in part insofar as it affects the applicant,”; 35 40

- (c) by omitting from sub-section (2) “, by notice in writing served on the applicant”;
- (d) by omitting sub-section (3);
- (e) by omitting sub-sections (6), (7) and (8);
- 5 (f) by inserting in sub-section (9) “in accordance with the regulations” after “joined”; and
- (g) by omitting paragraph (9) (c).

Repeal of heading and substitution of new heading

10 **60.** The heading to Division 3A of Part IV of the Principal Act is repealed and the following heading is substituted:

“Division 4—Enforcement of Limitations on Ownership and Control of Commercial Licences”.

Directions to protect licensee

15 **61.** Section 92M of the Principal Act is amended by omitting paragraph (1) (e) and substituting the following paragraph:

“(e) the operations of the licensee in providing the service pursuant to the licence or the selection or provision of the programs to be broadcast pursuant to the licence.”.

20 Repeal of heading and sections and substitution of new Division, heading and section

62. The heading to Division 4 of Part IV and sections 93 to 96 (inclusive) of the Principal Act are repealed and the following Division, heading and section are substituted:

“Division 5—Ownership and Control of Remote Licences

25 Orders relating to ownership, control, &c.

“92V. (1) The Tribunal may make orders under section 17 for and in relation to—

- (a) the ownership of remote licences;
- (b) the holding of interests in the holders of remote licences; and
- 30 (c) the exercise of control of, or influence on, the holders, or the operations of the holders, of remote licences.

“(2) Without limiting the generality of sub-section (1), the Tribunal may make orders under section 17 with respect to—

- 35 (a) the number of remote licences, or of remote licences of a particular kind, that may be held by a person or in the holders of which a person may have an interest;
- (b) the interests that a person may have in the holder of a remote licence;
- (c) the number of directorships that a person may hold in companies having interests in the holder of a remote licence;

- (d) the approval by the Tribunal of transactions involving the acquisition of interests in the holder of a remote licence;
- (e) the provisions to be contained in the memorandum and articles of association of the holder of a remote licence; and
- (f) changes to the memorandum or articles of association of the holder of a remote licence. 5

“(3) In making orders for the purposes of this section, the Tribunal shall have regard to undesirability of the exercise of undue influence by foreign persons on the operations of the holders of remote licences.

“(4) In this section— 10

‘control’ includes direct or indirect control and control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights;

‘foreign person’ has the same meaning as in section 92D; 15

‘interest’ means an interest of any kind, whether direct or indirect, and includes a shareholding interest, a voting interest and a financial interest.

Tribunal may seek information

“92W. (1) Where the Tribunal has reason to believe that a person is capable of supplying information, or producing documents, considered by the Tribunal to be necessary to enable it to exercise any of its powers, or perform any of its functions or duties, under orders made for the purposes of section 92V, the Tribunal may, by notice in writing served on the person, require the person to supply any such information, or produce any such documents, within a specified period (not being less than 21 days after the date of service of the notice) or within such further period as the Tribunal, on application, allows by notice in writing served on the person within that specified period. 20
25

“(2) A person who fails to comply with a requirement in a notice served on the person under sub-section (1) is guilty of a separate offence in respect of each day (including a day of a conviction under this sub-section or any subsequent day) during which the failure continues. 30

“(3) A person shall be taken not to comply with a requirement made under sub-section (1) if, in purported compliance with the requirement, the person supplies information, or (except as provided in the requirement) produces a document, that— 35

- (a) is false or misleading in a material particular; or
- (b) is misleading in a material respect by reason of the omission of any matter or thing.

“(4) In this section, ‘document’ has the meaning defined by sub-section 125 (6). 40

“PART IV—BROADCASTING REQUIREMENTS

Application of Part

“95. This Part does not apply to, or in relation to, a re-broadcasting licence or a re-transmission licence.”.

5 Inspection

63. Section 98 of the Principal Act is amended by omitting “A commercial broadcasting station or a commercial television station” and substituting “The equipment and facilities used for or in connection with the broadcasting or transmission of programs pursuant to a licence”.

10 Repeal of heading

64. The heading to Division 5 of Part IV of the Principal Act is repealed.

65. (1) After section 99 of the Principal Act the following section is inserted:

Local programming

15 “99A. (1) In providing the service pursuant to a licence, the licensee shall not, except in accordance with the permission of the Tribunal, broadcast different programs from different radiocommunications transmitters.

20 “(2) The Tribunal may, subject to such conditions (if any) as it determines, permit a licensee, in providing the service pursuant to a licence, to broadcast different programs from different radiocommunications transmitters.”.

25 (2) The Tribunal shall not, under sub-section 99A (2) of the Principal Act as amended by this Act, grant permission to the holder of a licence before a date notified by the Minister, by notice published in the *Gazette*, as the date on which that sub-section commences to have effect in relation to the category of licence in which the licence concerned is included.

(3) Nothing in sub-section (2) prevents the Tribunal from holding an inquiry in relation to the exercise by the Tribunal of its powers under sub-section 99A (2) of the Principal Act as amended by this Act.

30 Particulars of programs to be made available

66. Section 105 of the Principal Act is amended—

(a) by omitting “or televised from his station” and substituting “by the licensee”; and

(b) by omitting “at the office of the station”.

35 Repeal of Divisions 5A and 5B of Part IV

67. Divisions 5A and 5B of Part IV of the Principal Act are repealed.

Repeal of heading and sections

68. The heading to Division 5C of Part IV and sections 105M to 105Q (inclusive) of the Principal Act are repealed.

Programs of holders of supplementary licences

69. Section 105R of the Principal Act is amended— 5

(a) by omitting from sub-section (1) the definition of “station program time” and substituting the following definition:

“ ‘original program time’, in relation to programs televised pursuant to a supplementary television licence, means the time during which programs produced or presented by the licensee are televised pursuant to the licence.”; 10

(b) by omitting sub-section (2) and substituting the following sub-section:

“(2) The holder of a supplementary radio licence may, with the approval of the Tribunal, but not otherwise, regularly broadcast pursuant to the licence radio programs broadcast pursuant to a related commercial radio licence.”; 15

(c) by omitting paragraphs (3) (a) and (b) and substituting the following paragraphs:

“(a) regularly televise pursuant to the licence television programs televised pursuant to a related commercial television licence; 20
or

(b) make arrangements for the regular televising pursuant to the licence of television programs televised by the Corporation or the Service or pursuant to a commercial television licence, a public television licence or a remote television licence.”; 25

(d) by omitting from sub-section (4) “station program” and substituting “original program”;

(e) by omitting from sub-section (4) “from the supplementary television station” and substituting “pursuant to the licence”;

(f) by omitting from sub-section (5) “area served in pursuance” and substituting “service area”; 30

(g) by omitting from sub-section (6) “by a television station operated by virtue of a related commercial” and substituting “pursuant to a related commercial television”; and

(h) by omitting from sub-section (6) “by the supplementary television station” and substituting “pursuant to the supplementary television licence”. 35

Repeal of heading

70. The heading to Division 6 of Part IV of the Principal Act is repealed.

Licensee to keep accounts, &c.

71. Section 106 of the Principal Act is amended—

(a) by omitting sub-sections (1), (1A) and (1AA) and substituting the following sub-sections:

5 “(1) The holder of a licence (other than a re-broadcasting licence or a re-transmission licence) shall—

(a) compile and maintain, in a recognized business or commercial form, financial accounts in respect of the service provided pursuant to the licence;

10 (b) make those accounts available for inspection by the Tribunal or an authorized officer as required;

(c) furnish to the Tribunal, within the 6 months after 30 June in each year—

15 (i) an audited balance-sheet and profit and loss account in respect of the service provided pursuant to the licence, in a form approved by the Tribunal, for the year ending on that 30 June; and

(ii) a statutory declaration stating the gross earnings in respect of the licence during that year; and

20 (d) keep such records in respect of the service provided pursuant to the licence as the Tribunal from time to time directs and supply copies of those records to the Tribunal as required.

“(1A) Where the holder of a commercial licence also holds, as a member of a consortium, a related supplementary licence—

25 (a) the audited balance-sheet and profit and loss account furnished under sub-paragraph (1) (c) (i) in relation to the commercial licence shall include a reference, of a kind and in a form approved by the Tribunal, to the interest of the holder of the commercial licence in the supplementary licence; and

30 (b) the statutory declaration furnished under sub-paragraph (1) (c) (ii) in relation to the commercial licence shall include a statement of the amount that bears to the total amount of the gross earnings in respect of the supplementary licence the same proportion as the amount of the profits arising out of the operations pursuant to the supplementary licence to which the licensee is entitled by virtue of its membership of the consortium bears to the total amount of the profits so arising.

35 “(1AA) Except as provided by sub-section (1A), where the holder of a commercial licence also holds a related supplementary licence, then, in addition to complying with sub-section (1) in respect of each of the licences, the holder of the licences shall furnish to the Tribunal, within 6 months after 30 June in each year—

40 (a) an audited consolidated balance-sheet and consolidated profit and loss account, in a form approved by the Tribunal, in respect

of the service provided pursuant to the commercial licence and the service provided pursuant to the supplementary licence, for the year that ended on that 30 June; and

(b) a statutory declaration stating the total gross earnings in respect of the commercial licence and the supplementary licence during that year.”; and 5

(b) by omitting the definitions of “gross earnings” and “supplementary service” in sub-section (5) and substituting the following definition:

“‘gross earnings’, in relation to a radio licence or television licence, has the same meaning as in the *Radio Licence Fees Act 1964* or the *Television Licence Fees Act 1964*, as the case may be.”. 10

Assembly of information

72. Section 106A of the Principal Act is amended by omitting from sub-section (2) “person who is the holder of a licence granted under Part IIIB” and substituting “licensee”. 15

Lights on masts

73. Section 110 of the Principal Act is amended by omitting “of his station” and substituting “used in the provision of the service pursuant to the licence”.

Repeal of Part IVA

74. Part IVA of the Principal Act is repealed. 20

Repeal of heading

75. The heading to Part V of the Principal Act is repealed.

Additional functions of Minister

76. Section 111C of the Principal Act is amended—

(a) by omitting paragraph (1) (c) and substituting the following paragraph: 25

“(c) to investigate and correct interference with—

(i) the transmission to the general public of radio and television programs; and

(ii) the reception, within the service area concerned, of radio and television programs; and”; and 30

(b) by omitting paragraph (2) (a) and substituting the following paragraph:

“(a) consult representatives of the Corporation, the Service and licensees in relation to matters affecting them; and”. 35

Repeal of section 111F

77. Section 111F of the Principal Act is repealed.

Corporation to make certain programs available to licensees

78. Section 113 of the Principal Act is amended—

(a) by omitting sub-section (1) and substituting the following sub-section:

5 “(1) The Managing Director of the Corporation shall make available to the holder of a television licence (other than a television re-transmission licence) having a service area that does not overlap the service area of any television service provided by the Corporation such programs of the Corporation as are specified by the Minister and the licensee shall broadcast the programs so specified.”; and

10 (b) by omitting from sub-section (3) “of the commercial television station”.

Corporation may make programs available to certain licensees

79. Section 113A of the Principal Act is amended by omitting “national broadcasting translator station licence, a national television translator station licence or a television repeater station” and substituting “re-broadcasting or re-transmission”.

Encouragement of Australian artists

80. Section 114 of the Principal Act is amended by omitting from sub-section (2) “of a commercial broadcasting station, in the broadcasting” and substituting “broadcast pursuant to a radio licence, in the broadcasting by radio”.

Televising of sporting events and entertainments

81. Section 115 of the Principal Act is amended by omitting “licence for a commercial television station” and substituting “television licence”.

Broadcasting of political matter or controversial matter

82. Section 116 of the Principal Act is amended—

(a) by omitting sub-section (4) and substituting the following sub-section:

“(4) Where—

(a) the writ for an election has been issued; and

(b) the service area of a licence overlaps the area of Australia to which the election relates,

the Tribunal shall, by notice in writing served on the licensee not later than 14 days before the commencement of the period that is the relevant period in relation to the election, require the licensee to refrain from broadcasting election advertisements in relation to that election during that relevant period.”;

(b) by omitting from sub-section (6) the definition of “broadcasting station”;

(c) by omitting “or televising of which the licensee that operates the relevant broadcasting or television station” from sub-paragraph

- (a) (ii) of the definition of “election advertisement” in sub-section (6) and substituting “of which the relevant licensee”; and
- (d) by omitting from sub-section (6) the definitions of “licensee” and “television station”.

Records of matter broadcast

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83. Section 117A of the Principal Act is amended—

- (a) by omitting sub-section (1) and substituting the following sub-section:

“(1) Where the Corporation or a licensee broadcasts matter relating to a political subject or current affairs, being matter that is in the form of news, an address, a statement, a commentary or a discussion, the Corporation or the licensee, as the case may be, shall cause a record of the matter to be made—

10

- (a) in the case of a radio broadcast—by means of a device for recording sound; or
- (b) in the case of a television broadcast—by means of a device for recording images and associated sound.”; and

15

- (b) by inserting after sub-section (7) the following sub-section:

“(7A) A licensee shall, without charge, make available to the Tribunal, upon request, any specified record made by the licensee pursuant to sub-section (1) that has been retained by the licensee (whether or not the licensee is, at the time of the request, under an obligation by virtue of this section to retain the record).”.

20

84. After section 119 of the Principal Act the following section and heading are inserted:

Special provisions relating to public licences

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“119AB. (1) It is a condition of a public licence that the service provided pursuant to the licence is in accordance with the special purpose specified in the licence.

“(2) Subject to this section, the holder of a public radio licence shall not broadcast advertisements.

30

“(3) Subject to sub-section (4), the holder of a public radio licence may, in respect of the broadcasting of a program sponsored by another person, broadcast announcements specifying only—

- (a) the name and address of the sponsor; and
- (b) a description, made in accordance with directions given by the Tribunal, of the business, undertaking or activity (if any) carried on by the sponsor.

35

“(4) The holder of a public radio licence shall comply with such directions as are given by the Tribunal in relation to the broadcasting of sponsorship announcements.

40

“PART V—GENERAL”.

Review of decisions

85. Section 119A of the Principal Act is amended—

5 (a) by omitting paragraphs (1) (h) and (j) and substituting the following paragraph:

“(h) a direction by the Minister under section 110 or sub-section 117A (7);”;

(b) by omitting sub-section (4).

10 86. Sections 120 to 125 (inclusive) of the Principal Act are repealed and the following sections are substituted:

Defamatory broadcast statements

“120. For the purposes of the law of defamation, the broadcasting of words or other matter shall be deemed to be publication in a permanent form.

Interference with broadcasting of programs, &c.

15 “121. A person shall not—

(a) knowingly prevent, obstruct or otherwise interfere with the broadcasting of programs by the Corporation or a licensee; or

20 (b) knowingly interfere with, or with the operation of, a radiocommunications transmitter, or associated facilities, used to provide such programs.

Protection of certain licensees against actions

25 “122. No action, suit or proceeding lies against a person who is the holder of a re-broadcasting licence or a re-transmission licence in respect of any matter transmitted by the person in accordance with the conditions of that licence unless, at the time of the transmission, that person is also the holder of another licence (other than a re-broadcasting licence or a re-transmission licence) in pursuance of which that matter is being broadcast.”.

Permits for test transmissions

87. Section 126 of the Principal Act is amended—

30 (a) by omitting from sub-section (1) “form approved by it” and substituting “regulations”; and

(b) by omitting sub-section (6A) and substituting the following sub-section:

“(6A) Sub-section (6) does not apply in relation to—

35 (a) a permit granted in relation to a proposed variation of a licence warrant; or

(b) a permit granted in relation to a proposed re-broadcasting licence.”.

Licences subject to Act

88. Section 129 of the Principal Act is amended by omitting sub-section (2).

Repeal of section 130A

89. Section 130A of the Principal Act is repealed. 5

Control of broadcasting in case of emergency

90. Section 131 of the Principal Act is amended by omitting “broadcast from broadcasting stations or televised from television stations (including television translator stations and television repeater stations),” and substituting “transmitted from broadcasting facilities”. 10

Offences

91. Section 132 of the Principal Act is amended—

(a) by omitting sub-sections (1) and (1A) and substituting the following sub-section:

“(1) A person who contravenes a provision of this Act is, unless otherwise provided by this Act, guilty of an offence against this Act by virtue of this section.”; 15

(b) by omitting from sub-section (3) “prepared” and substituting “proper”.

92. After section 133 of the Principal Act the following section is inserted: 20

Tabling of government policy statements

“133A. The Minister shall cause a copy of any government policy statement within the meaning of Part IIIB to be laid before each House of the Parliament within 15 sitting days of that House after that statement has been given to the Tribunal.”. 25

Regulations

93. Section 134 of the Principal Act is amended—

(a) by omitting paragraphs (1) (a) and (b) and substituting the following paragraphs:

“(a) prescribing matters relating to the making of, and the terms and conditions that may be included in, agreements or arrangements for or in connection with rights to the use of any material or matter in broadcast programs or for or in connection with the broadcasting of advertisements, being agreements or arrangements between persons each of whom is either a licensee or a person having a prescribed relationship with a licensee; 30
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- (b) regulating or restricting the relaying, by holders of licences of a particular category of licence, of programs of holders of other licences of the same category;”;
- 5 (b) by omitting from paragraph (1) (c) “of commercial broadcasting stations or commercial television stations”;
- (c) by omitting from paragraph (1) (c) “such” (wherever occurring);
- (d) by omitting from paragraph (1) (d) “licensee of a commercial television station” (wherever occurring) and substituting “holder of a television licence”;
- 10 (e) by inserting after sub-section (1) the following sub-section:

“(1A) The regulations may provide, in respect of an offence against the regulations, for the imposition of a fine not exceeding \$1,000.”;
- (f) by inserting after sub-section (2) the following sub-section:

“(2A) Without limiting the generality of sub-section (1), the regulations may make provision for and in relation to inquiries, or any matter relating to inquiries, and in particular for and in relation to—

 - (a) the extension of time limits under this Act for the lodgement of inquiry documents; and
 - (b) fees for the provision by the Tribunal of copies of inquiry documents.”; and
- 20 (g) by adding at the end the following sub-section:

“(4) In this section, a reference to an inquiry document is a reference to—

 - 25 (a) an application under this Act requesting the Tribunal to exercise any of its powers under this Act; or
 - (b) a submission or other document in relation to an application referred to in paragraph (a) or in connection with an inquiry.”.

Further amendments

94. The Principal Act is further amended as set out in the Schedule.

30 Relocation of sections, &c.

95. (1) Section 89C of the Principal Act as amended by this Act is relocated so that it appears after section 95 of the Principal Act as amended by this Act, and is renumbered as section 96.

35 (2) Section 98 of the Principal Act as amended by this Act is relocated so that it appears after section 131 of the Principal Act as amended by this Act, and is renumbered as section 131A.

(3) Section 105R of the Principal Act as amended by this Act is relocated so that it appears after section 119 of the Principal Act as amended by this Act, and is renumbered as section 119AA.

(4) Section 105S of the Principal Act as amended by this Act is relocated so that it appears after section 82A of the Principal Act as amended by this Act, and is renumbered as section 82B.

(5) Sections 106, 106A, 106B, 107, 110, 111, 111C, 111D and 111E of the Principal Act as amended by this Act are relocated so that they appear after section 122 of the Principal Act as amended by this Act, and are renumbered as sections 123, 124, 125, 125A, 125B, 125C, 125D, 125E and 125F respectively. 5

(6) A reference in a law of the Commonwealth or of a Territory, or in an instrument or document, to a Part, Division or section of the Principal Act that has been renumbered pursuant to this Act shall be read as a reference to that Part, Division or section as so renumbered. 10

PART III—TRANSITIONAL

Interpretation

96. (1) In this Part, unless the contrary intention appears—
- “amended Act” means the Principal Act as amended by this Act; 15
 - “broadcasting station” has the same meaning as in the previous Act;
 - “commencement date” means the day fixed by Proclamation for the purposes of sub-section 2 (1);
 - “commercial broadcasting station” has the same meaning as in the previous Act; 20
 - “commercial radio licence” has the same meaning as in the amended Act;
 - “commercial television licence” has the same meaning as in the amended Act;
 - “commercial television station” has the same meaning as in the previous Act; 25
 - “licence for a commercial broadcasting station” has the same meaning as in the previous Act;
 - “licence for a commercial television station” has the same meaning as in the previous Act;
 - “Licence Fees Acts” means the *Broadcasting Licence Fees Act 1964* and the *Television Licence Fees Act 1964*; 30
 - “licence warrant” has the same meaning as in the amended Act;
 - “main corresponding old system licence”, in relation to a new system licence, means—
 - (a) in a case to which paragraph (b) does not apply—the old system licence that corresponds to the new system licence; and 35
 - (b) where—
 - (i) a licence for a commercial broadcasting station, a licence for a commercial television station, a public broadcasting licence or an old public television licence; 40
 - and

(ii) a translator station licence or licences,

together correspond to a new system licence—the old system licence to which sub-paragraph (i) applies;

5 “national broadcasting translator station licence” has the same meaning as in the previous Act;

“national television translator station licence” has the same meaning as in the previous Act;

“new public television licence” means a public television licence within the meaning of the amended Act;

10 “new re-transmission licence” means a re-transmission licence within the meaning of the amended Act;

“new supplementary television licence” means a supplementary television licence within the meaning of the amended Act;

15 “new system licence” means a licence within the meaning of the amended Act;

“old public television licence” means a public television licence within the meaning of the previous Act;

“old re-transmission licence” means a licence to which section 130A of the previous Act applies;

20 “old specification” means a specification within the meaning of Part IIIB of the previous Act;

“old supplementary television licence” means a supplementary television licence within the meaning of the previous Act;

25 “old system licence” means a licence within the meaning of Part IIIB of the previous Act;

“previous Act” means the Principal Act as in force immediately before the commencement date;

“public broadcasting licence” has the same meaning as in the previous Act;

“public broadcasting station” has the same meaning as in the previous Act;

30 “public television station” has the same meaning as in the previous Act;

“re-broadcasting licence” has the same meaning as in the amended Act;

“service area” means—

(a) in relation to a new system licence—the area to be served pursuant to the licence;

35 (b) in the case of an old system licence in respect of which the specifications determined for the purposes of Part IIIB of the previous Act include a specification of the area served pursuant to the licence—that area; and

40 (c) in the case of an old system licence to which paragraph (b) does not apply—the area that the Minister intends to be served pursuant to the licence;

“service specification” has the same meaning as in Part IIIB of the amended Act;

- “supplementary broadcasting licence” has the same meaning as in the previous Act;
- “supplementary radio licence” has the same meaning as in the amended Act;
- “technical condition” has the same meaning as in Part IIIB of the amended Act; 5
- “television station” has the same meaning as in the previous Act;
- “translator station licence” means—
- (a) a commercial broadcasting translator station licence;
 - (b) a commercial television translator station licence; 10
 - (c) a public broadcasting translator station licence; or
 - (d) a public television translator station licence;
- “unrelated commercial broadcasting translator station licence” means a commercial broadcasting translator station licence that is not related to a licence for a commercial broadcasting station or to a supplementary broadcasting licence; 15
- “unrelated commercial television translator station licence” means a commercial television translator station licence that is not related to a licence for a commercial television station or to a supplementary television licence; 20
- “unrelated public broadcasting translator station licence” means a public broadcasting translator station licence that is not related to a public broadcasting licence;
- “unrelated public television translator station licence” means a public television translator station licence that is not related to an old public television licence. 25
- (2) For the purposes of this Part—
- (a) a commercial broadcasting translator station licence shall be taken to be related to a licence for a commercial broadcasting station if, and only if— 30
 - (i) one of the conditions of the commercial broadcasting translator station licence is that the station is operated only for the reception and re-transmission of the programs of a specified commercial broadcasting station; and
 - (ii) the holder of the commercial broadcasting translator station licence is also the holder of the licence for that specified commercial broadcasting station; 35
 - (b) a commercial television translator station licence shall be taken to be related to a licence for a commercial television station if, and only if— 40
 - (i) one of the conditions of the commercial television translator station licence is that the station is operated only for the reception and re-transmission of the programs of a specified commercial television station; and

- (ii) the holder of the commercial television translator station licence is also the holder of the licence for that specified commercial television station;
- 5 (c) a public broadcasting translator station licence shall be taken to be related to a public broadcasting licence if, and only if—
 - (i) one of the conditions of the public broadcasting translator station licence is that the station is operated only for the reception and re-transmission of the programs of a specified public broadcasting station; and
 - 10 (ii) the holder of the public broadcasting translator station licence is also the holder of the licence for that specified public broadcasting station; and
- (d) a public television translator station licence shall be taken to be related to a public television licence if, and only if—
 - 15 (i) one of the conditions of the public television translator station licence is that the station is operated only for the reception and re-transmission of the programs of a specified public television station; and
 - 20 (ii) the holder of the public television translator station licence is also the holder of the licence for that specified public television station.

Correspondence of licences

97. (1) For the purposes of this Part—
- 25 (a) a licence for a commercial broadcasting station corresponds to a commercial radio licence;
 - (b) a licence for a commercial television station corresponds to a commercial television licence;
 - 30 (c) an unrelated commercial broadcasting translator station licence, an unrelated commercial television translator station licence, an unrelated public broadcasting translator station licence, a national broadcasting translator station licence or a national television translator station licence corresponds to a re-broadcasting licence;
 - (d) a public broadcasting licence corresponds to a public radio licence;
 - 35 (e) an old public television licence corresponds to a new public television licence;
 - (f) an old re-transmission licence corresponds to a new re-transmission licence;
 - 40 (g) a supplementary broadcasting licence corresponds to a supplementary radio licence; and
 - (h) an old supplementary television licence corresponds to a new supplementary television licence,

and licences shall not be taken to correspond except as provided by this sub-section.

(2) Where a translator station licence is, or translator station licences are, related to a licence for a commercial broadcasting station, a licence for a commercial television station, a supplementary broadcasting licence or an old supplementary television licence, the reference in sub-section (1) to a licence for a commercial broadcasting station, a licence for a commercial television station, a supplementary broadcasting licence or an old supplementary television licence, as the case may be, shall be read as including a reference to the related translator station licence or licences. 5

Continued application of previous Act

98. The previous Act continues to apply— 10

- (a) subject to this Part, in relation to, and in relation to the holders of and stations operated pursuant to, old system licences that are in force (whether or not suspended) on the date of commencement of this Act including old system licences as renewed or further renewed under that Act; 15
- (b) in relation to the lodging of applications, submissions and replies, the holding of inquiries and the granting of licences, pursuant to notices that were published under sub-section 82 (1) of the previous Act before the commencement date;
- (c) in relation to applications, the lodging of submissions and replies and the holding of inquiries in relation to applications, and the granting of licences pursuant to applications, being applications that were lodged under sub-section 82A (2) of the previous Act before the commencement date; and 20
- (d) in relation to licences that are granted as a result of the application of the previous Act in accordance with paragraph (b) or (c). 25

Conversion of old system licences

99. (1) The Minister may, by notice in writing, direct the Tribunal to grant a new system licence in substitution for a corresponding old system licence or licences and the Tribunal shall, without holding an inquiry, comply with the direction. 30

(2) A direction by the Minister under sub-section (1) shall set out the service specifications, and an outline of the technical conditions, determined by the Minister under paragraph (3) (a).

(3) Before the Minister gives a direction to the Tribunal under sub-section (1)— 35

- (a) the Minister shall determine—
 - (i) the service specifications to which it is proposed that the new system licence is to be subject; and
 - (ii) the technical conditions proposed to be included in the licence warrant in respect of the new system licence; 40

(b) the Minister, or an officer authorized by the Minister in writing for the purposes of this paragraph, shall give the licensee notice in writing—

(i) specifying the direction proposed to be given by the Minister; and

(ii) informing the licensee that the licensee may, not later than a specified date (being a date not earlier than 14 days after the date of the notice), make representations to the Minister relating to the proposed direction;

(c) if the service area determined by the Minister in respect of the new system licence is not substantially coextensive with the service area or service areas of the old system licence or licences in substitution for which the new system licence is proposed to be granted—the Minister, or an officer authorized by the Minister in writing for the purposes of this paragraph, shall also publish, in the *Gazette* and in a newspaper or newspapers (if any) circulating in the service area or service areas of that old system licence or those old system licences and in the proposed service area of the new system licence, a notice—

(i) specifying the direction proposed to be given by the Minister; and

(ii) notifying interested persons that they may, not later than a specified date (being a date not earlier than 21 days after the date of publication of the notice in the *Gazette*), make representations to the Minister relating to the proposed direction; and

(d) the Minister shall have regard to any representations so made.

(4) Service specifications determined by the Minister under paragraph

(3) (a) shall—

(a) in relation to a public radio licence or a new public television licence, include, as the special purpose for which the licence is granted, the special purpose for which the main corresponding old system licence was granted; and

(b) in relation to a re-broadcasting licence or re-transmission licence, specify, as the service or services that may be re-broadcast or re-transmitted, the service or services that was or were permitted to be re-broadcast or re-transmitted pursuant to the corresponding old system licence.

(5) Upon the grant of a licence under sub-section (1)—

(a) the conditions of the licence are—

(i) the service specifications determined by the Minister under paragraph (3) (a), including any variations determined by the Minister after having had regard to any representations made pursuant to paragraph (3) (b) or (c); and

(ii) the conditions that were imposed by the Tribunal in respect of the corresponding old system licence or licences; and

(b) the corresponding old system licence or licences cease to have effect.

(6) Upon the grant of a licence under sub-section (1), the Minister shall, under section 89D of the amended Act, grant a licence warrant to the licensee in respect of the licence.

(7) The technical conditions of a licence warrant granted as mentioned in sub-section (6) are the technical conditions determined by the Minister under paragraph (3) (a), including any variations determined by the Minister after having had regard to any representations made under paragraph (3) (b) or (c). 5

(8) A licence granted by the Tribunal under sub-section (1)—

(a) shall be deemed to have been granted under section 81 of the amended Act; and 10

(b) subject to the amended Act, continues in force until the date that would have been the expiry date of the main corresponding old system licence.

(9) For the purposes of the Licence Fees Acts—

(a) no fee is payable under those Acts in respect of the grant of a licence under sub-section (1); and 15

(b) in determining the date that is an anniversary of the date of commencement of a licence granted under sub-section (1), the date of commencement of the licence shall be deemed to be the same as the date that was the date of commencement of the main corresponding old system licence. 20

Application of licensing provisions

100. (1) Where, for the purposes of the application of section 81, 83, 86, 86A or 89 of the amended Act to a new system licence, regard is to be had to the services provided pursuant to, or the service areas of, other new system licences, regard shall be had in like manner to the services provided pursuant to, and the service areas of, old system licences. 25

(2) Where, for the purposes of the application of section 81, 83, 86, 86A or 89 of the previous Act to an old system licence, regard is to be had to broadcasting stations or television stations for, and services provided pursuant to, other old system licences, regard shall be had in like manner to new system licences and services provided pursuant to new system licences. 30

Ownership and control

101. (1) Divisions 2, 3 and 4 of Part IIIB of the amended Act have effect as if— 35

(a) a reference to a commercial radio licence included a reference to a licence for a commercial broadcasting station;

(b) a reference to a commercial television licence included a reference to a licence for a commercial television station; and

(c) the service area of a licence for a commercial radio station or a licence for a commercial television station were the area that is the service area 40

of that licence determined in accordance with the definition of “service area” in section 96 of this Act.

5 (2) Where, under sub-section 99 (1) of this Act, a new system licence is granted in substitution for an old system licence that, immediately before the grant of the new system licence, was a licence for a metropolitan commercial broadcasting station within the meaning of Division 2 of Part IV of the previous Act, the new system licence shall, during the period of 12 months after the commencement date, be regarded as a metropolitan commercial radio licence within the meaning of Division 2 of Part IIIB of the amended Act but nothing in 10 this sub-section shall be taken to imply that the new system licence shall, on the expiration of that period, cease to be regarded as a metropolitan commercial radio licence within the meaning of Division 2 of Part IIIB of the amended Act.

Remote licences

15 102. (1) Subject to sub-section (2), where, in its report for the purposes of the inquiry directed by the Minister on 7 October 1984, the Tribunal recommended that a remote radio licence or remote television licence be granted to a particular person, the Tribunal shall, as soon as practicable after the commencement date and without holding an inquiry, grant such a licence to the person under section 81 of the amended Act.

20 (2) Sub-section (1) does not require the Tribunal to grant a remote radio licence or remote television licence to a person where, if the licence were to be granted, a person would, in relation to the proposed licence or proposed licensee, contravene an order of the Tribunal made under section 92V of the amended Act.

25 (3) In this section, “person” includes an association of companies.

Savings

103. Subject to this Part and to such modifications and adaptations (if any) as are prescribed, where this Act—

- 30 (a) amends a provision of the Principal Act; or
(b) repeals and re-enacts (with or without modifications) a provision of the Principal Act,

any act done or decision made under or pursuant to the provision amended or repealed has effect after the amendment or repeal as if it had been done or made under or pursuant to the provision as so amended or re-enacted.

35 Regulations

104. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
(b) necessary or convenient to be prescribed for giving effect to this Act.
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SCHEDULE

Section 94

FURTHER AMENDMENTS OF PRINCIPAL ACT**Paragraph 16 (1) (c)—**

Omit “Part IV”, substitute “Part IIIB”.

Paragraph 16 (1) (d)—

Omit “or televising”.

Paragraph 16 (1) (e)—

Omit “or televised”.

Paragraph 16 (1) (f)—

Omit “or televised”.

Paragraph 16 (1) (h)—

Omit “and television in Australia under section 106A”, substitute “in Australia under section 124”.

Paragraph 18 (2) (b)—

Omit “or television services or both”.

Paragraph 24 (b)—

Omit “or television”.

Section 79B (definition of “program”)—

Omit “broadcasting”, substitute “radio”.

Paragraph 79D (a)—

Omit “broadcasting”, substitute “radio”.

Paragraph 79D (b)—

Omit “and television”.

Sub-section 79E (2)—

Omit “or television”.

Paragraph 83 (7) (b)—

Omit “of Part IV,”.

Paragraph 86 (11C) (b)—

Omit “of Part IV,”.

Paragraph 89A (1E) (b)—

Omit “of Part IV,”.

Sub-section 90P (4)—

Omit “106B”, substitute “125”.

Sub-section 92JA (4)—

Omit “106B”, substitute “125”.

SCHEDULE—continued

Section 97—

Omit “or televise”.

Sub-section 99 (1)—

Omit “or televising of programs from his station”, substitute “of programs”.

Sub-section 99 (2)—

Omit “from a commercial broadcasting station or televised from a commercial television station”, substitute “by a licensee”.

Sub-section 99 (3)—

Omit “or televising” (wherever occurring).

Sub-section 100 (1)—

Omit “or televise”.

Sub-section 100 (2)—

Omit “or televise”.

Sub-section 100 (4)—

Omit “or televising”.

Sub-section 100 (5)—

Omit “or televise”.

Sub-section 100 (5A)—

Omit “or televise”.

Sub-section 100 (6)—

Omit “or televise”.

Sub-section 100 (10)—

Omit “or televising” (wherever occurring).

Section 101—

Omit “or televise”.

Paragraph 102 (b)—

Omit “or televise”.

Section 103—

Omit “or televise from his station”.

Section 104—

(a) Omit “or televise from his station”.

(b) Omit “or televising”.

Section 105A—

Omit “or televising”.

Paragraph 106 (4) (a)—

Omit “or television”.

SCHEDULE—continued**Paragraph 106 (4) (b)—**

Omit “or television”.

Sub-section 106A (1)—

(a) Omit “and television”, substitute “services”.

(b) Omit “106”, substitute “123”.

Sub-section 106A (3)—

Omit “106B”, substitute “125”.

Section 111—

Omit “Part”, substitute “Act”.

Paragraph 111C (1) (a)—

Omit “and television”.

Paragraph 111C (1) (b)—

Omit “and television”.

Paragraph 111C (2) (b)—

Omit “and television”.

Sub-section 111D (1)—

Omit “111C”, substitute “125D”.

Sub-section 114 (1)—

Omit “broadcasting”, substitute “radio”.

Sub-section 116 (1)—

Omit “or televised”.

Sub-section 116 (2)—

Omit “or televise”.

Sub-section 116 (3)—

Omit “or televises” and “or televising”.

Sub-section 116 (4A)—

Omit “or televise”.

Sub-section 116 (5)—

Omit “or televise”.

Sub-section 116 (6) (definition of “election advertisement”)—

Omit “or televised” (wherever occurring).

Sub-section 117 (1)—

Omit “or televising”.

Sub-section 117A (2)—

Omit “or televised”.

SCHEDULE—continued**Sub-section 118 (1)—**

Omit “or televise”.

Sub-section 118 (2)—

Omit “or televising” (wherever occurring).

Sub-section 119 (1)—

- (a) Omit “or televising” (wherever occurring).
- (b) Omit “broadcast or televised from a broadcasting station or a television station, as the case may be”, substitute “that has been broadcast”.

Sub-section 119 (2)—

Omit “or televising” (wherever occurring).

Sub-section 126 (1)—

Omit “broadcasting”, substitute “radio”.

Sub-section 126 (6)—

Omit “or televise”.

Paragraph 134 (1) (ba)—

Omit “111c”, substitute “125D”.

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; and Nos. 10, 63 and 72, 1984.

NOTES ABOUT SECTION HEADINGS

1. The headings to sections 103 and 118 of the *Broadcasting Act 1942* are altered by omitting “or televising”.
2. The heading to section 119 of the *Broadcasting Act 1942* is altered by omitting “or television”.

