

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

**BROADCASTING AND TELEVISION LEGISLATION AMENDMENT
BILL (No. 2) 1985**

TABLE OF PROVISIONS

PART I—PRELIMINARY

Clause

1. Short title
2. Commencement

**PART II—AMENDMENTS OF THE BROADCASTING AND TELEVISION
ACT 1942**

3. Principal Act
4. Interpretation
5. Divisions of Tribunal
6. Functions of Tribunal
7. Interpretation
8. Programs
9. Special provisions relating to advertisements
10. Repeal of section 101 and substitution of new section—
101. Reprimands and admonishments
11. Sponsorship announcements
12. Repeal of section 119 and substitution of new section—
119. Restrictions on participation in broadcasts
13. Special provisions relating to public licences
14. Review of decisions
15. Offences
16. Savings

**PART III—AMENDMENTS OF THE BROADCASTING AND TELEVISION
AMENDMENT ACT 1985**

17. Principal Act
18. Relocation of sections, &c.
19. Continued application of previous Act
20. Remote licences
21. Schedule

1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 9 October 1985

(Minister for Communications)

A BILL

FOR

**An Act to amend the *Broadcasting and Television Act 1942*
and the *Broadcasting and Television Amendment Act 1985*,
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

5 1. This Act may be cited as the *Broadcasting and Television
Legislation Amendment Act (No. 2) 1985*.

Commencement

2. (1) Subject to sub-section (2), this Act shall come into operation
immediately before 1 January 1986.

(2) Sub-sections 4 (2) and 6 (2), sections 7 and 13, sub-section 15 (2) and Part III shall come into operation immediately after the commencement of section 4 of the *Broadcasting and Television Amendment Act 1985*.

PART II—AMENDMENTS OF THE BROADCASTING AND TELEVISION ACT 1942

Principal Act

3. The *Broadcasting and Television Act 1942*¹ is in this Part referred to as the Principal Act.

Interpretation

4. (1) Section 4 of the Principal Act is amended by inserting after the definition of “national television translator station licence” in sub-section (1) the following definitions: 10

“‘program’ includes advertisement and any other matter;

‘program standard’ means a standard or condition determined by the Tribunal in the performance of its function under paragraph 16 (1) (d);” 15

(2) Section 4 of the Principal Act is amended—

(a) by omitting from sub-section (1) the definitions of “program” and “program standard”; and

(b) by inserting after the definition of “metropolitan television area” in sub-section (1) the following definitions: 20

“‘program’ includes advertisement and any other matter;

‘program standard’ means a standard or condition determined by the Tribunal in the performance of its function under paragraph 16 (1) (d);” 25

Divisions of Tribunal

5. Section 15C of the Principal Act is amended by omitting from paragraph (11) (b) “standards under section 99 or 100” and substituting “program standards”.

Functions of Tribunal

6. (1) Section 16 of the Principal Act is amended— 30

(a) by omitting paragraphs (1) (d) and (e) and substituting the following paragraph:

“(d) by instrument in writing, to determine the standards to be observed by licensees in respect of the broadcasting of programs and in respect of programs to be broadcast;” 35

- (b) by omitting from sub-section (2) “, (e)”; and
(c) by adding at the end the following sub-sections:

5 “(4) Nothing in this Act shall be taken, by implication, to limit the function of the Tribunal under paragraph (1) (d) of this section.

10 “(5) Without limiting the generality of paragraph (1) (d), the function of the Tribunal under that paragraph extends to determining standards requiring, before children’s television programs are televised, that the programs, or a sample of the programs, have been approved by the Tribunal as complying with the requirements of this Act and of the other standards determined under that paragraph.

15 “(6) Except as provided by sub-section (5), the function of the Tribunal under paragraph (1) (d) does not extend to determining standards requiring that, before programs are broadcast, the programs, or a sample of the programs, have been approved by the Tribunal or by a person or body appointed by the Tribunal.

20 “(7) In this section—

‘children’ means persons who have not attained the age of 14 years;

‘children’s television program’ means a program (other than an advertisement) that—

(a) is to be televised during a children’s viewing period;

25 (b) is to be televised during a period that is not a children’s viewing period but is required to comply with the program standards as to content that apply to programs that are to be televised during a children’s viewing period (whether or not the program is also required to comply with other program standards); or

30 (c) is to be advertised or presented in a manner that suggests that, in respect of the program, the program standards as to content that apply to programs that are to be televised during a children’s viewing period have been complied with;

35 ‘children’s viewing period’ means a period during which a program standard prohibits the televising of programs other than programs designed for children;

‘standard’ includes condition.”.

40 (2) Section 16 of the Principal Act is amended by omitting from sub-section (2) “, (e)”.

Interpretation

7. Section 17A of the Principal Act is amended—

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

“(a) to determine program standards;” 5

(b) by omitting from paragraph (2) (j) “119AB (4)” and substituting “119 (1)”;

(c) by omitting paragraph (2) (n) and substituting the following paragraph:

“(n) to issue a reprimand or admonishment under sub-section 101 (1) or give a direction under sub-section 101 (2);” 10

(d) by adding at the end of paragraph (2) (o) “or”; and

(e) by omitting paragraphs (2) (p) and (q).

Programs

8. Section 99 of the Principal Act is amended by omitting sub-sections (1) and (2) and substituting the following sub-sections: 15

“(1) A licensee—

(a) shall provide programs (other than programs to which paragraph (b) applies); and

(b) may provide programs being advertisements. 20

“(1A) A licensee shall supervise the broadcasting of the licensee’s programs in such manner as to ensure that the program standards are complied with.

“(1B) A failure by a licensee to comply with sub-section (1A) does not constitute a contravention of that sub-section if— 25

(a) the failure was due to reasonable mistake;

(b) the failure was due to reasonable reliance on information supplied by another person; or

(c) the failure was due to an act or default of another person, to an accident or to some other cause beyond the licensee’s control and the licensee took reasonable precautions and exercised due diligence to avoid the failure. 30

“(2) The Tribunal may give directions to a licensee for the purpose of ensuring that the program standards are complied with in relation to the broadcasting of programs by the licensee and in relation to the programs to be broadcast by the licensee, and the licensee shall comply with any such directions. 35

“(2A) The Tribunal is not empowered by sub-section (2) to direct that, before programs are broadcast, the programs, or a sample of the programs, have been approved by the Tribunal or by a person or body appointed by the Tribunal.” 40

Special provisions relating to advertisements

9. Section 100 of the Principal Act is amended—

- (a) by omitting sub-sections (1), (4) and (5); and
- (b) by omitting from sub-section (10) “(5),”.

5 10. Section 101 of the Principal Act is repealed and the following section is substituted:

Reprimands and admonishments

10 “101. (1) Where a licensee has contravened sub-section 99 (1A) in relation to the broadcasting of programs, or the programs broadcast by a licensee, the Tribunal may issue to the licensee in writing a reprimand or admonishment.

15 “(2) The Tribunal may, in addition to issuing a reprimand or admonishment to a licensee under sub-section (1), direct the licensee in writing to publish the reprimand or admonishment in such form and manner as is specified by the Tribunal in the direction, and the licensee shall comply with the direction.

20 “(3) The issue of a reprimand or admonishment or the giving of a direction under this section in relation to a contravention of sub-section 99 (1A) does not affect any other action that the Tribunal may, apart from this section, take under this Act in relation to the contravention.”.

Sponsorship announcements

11. Section 111BA of the Principal Act is amended—

- (a) by omitting from paragraph (3) (b) “directions given by the Tribunal” and substituting “any applicable program standards”; and
- (b) by omitting sub-section (4).

12. Section 119 of the Principal Act is repealed and the following section is substituted:

Restrictions on participation in broadcasts

30 “119. (1) Where a person has—

- (a) presented in a live broadcast the whole or a part of a program; or
- (b) passed or selected for broadcasting the whole or a part of a program (being a program that was subsequently broadcast),

35 in respect of which, or in respect of the broadcasting of which, the program standards were not complied with or this Act was contravened, the Tribunal may, by direction having effect either indefinitely or for a period determined by the Tribunal—

- (c) prohibit the person from presenting programs in live broadcasts or passing or selecting programs for broadcasting; or

- (d) impose restrictions on the presenting by the person of programs in live broadcasts or on the passing or selecting by the person of programs for broadcasting.

“(2) The Tribunal shall not give a direction to a person under sub-section (1) unless it has, by notice in writing served on the person, called upon the person to show cause, within a period specified by the Tribunal, why the direction should not be given. 5

“(3) A person shall not contravene a direction of the Tribunal under this section.”.

Special provisions relating to public licences 10

13. (1) Section 119AB of the Principal Act is amended—

- (a) by omitting from paragraph (3) (b) “directions given by the Tribunal” and substituting “any applicable program standards”; and
 (b) by omitting sub-section (4).

(2) Notwithstanding the amendments made by sub-section (1), until the Tribunal determines program standards for the purposes of section 119AB of the Principal Act as amended by this Act— 15

- (a) section 119AB of the Principal Act continues to have effect; and
 (b) a reference in Division 3 of Part II of the Principal Act as amended by this Act to a substantive power of the Tribunal shall be read as including a reference to the power of the Tribunal to give directions under section 119AB of the Principal Act as it continues to have effect by virtue of paragraph (a). 20

Review of decisions

14. (1) Section 119A of the Principal Act is amended by omitting from paragraph (1) (k) “(2)” and substituting “(1)”. 25

(2) The amendment made by sub-section (1) does not apply to decisions made before 1 January 1986.

Offences

15. (1) Section 132 of the Principal Act is amended by inserting in sub-section (1) “other than sub-section 99 (1A)” after “of this Act”. 30

(2) Section 132 of the Principal Act is amended by inserting in sub-section (1) “other than sub-section 99 (1A)” after “of this Act”.

Savings

16. Notwithstanding the amendments made by this Part— 35

- (a) standards determined by the Tribunal under the Principal Act in relation to programs (including advertisements); and
 (b) conditions determined by the Tribunal for the purposes of paragraph 16 (1) (e) or sub-section 100 (5) of the Principal Act,

that are in force immediately before 1 January 1986 continue in force on and after that date as if they had been determined as program standards under the Principal Act as amended by this Part.

5 **PART III—AMENDMENTS OF THE BROADCASTING AND
TELEVISION AMENDMENT ACT 1985**

Principal Act

17. The *Broadcasting and Television Amendment Act 1985*² is in this Part referred to as the Principal Act.

Relocation of sections, &c.

10 18. Section 95 of the Principal Act is amended by omitting from sub-section (3) “after section 119” and substituting “before section 119AB”.

Continued application of previous Act

19. Section 98 of the Principal Act is amended—

15 (a) by omitting “The previous Act continues” and substituting “Subject to sub-section (2), the previous Act continues”;

 (b) by omitting from paragraph (c) “82A (2)” and substituting “82A (1) or (2)”; and

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

20 “(2) The regulations may make provision for and in relation to the application of Division 3 of Part II of the amended Act in relation to inquiries that would, but for this sub-section, be required to be conducted in accordance with the previous Act.

25 “(3) For the purposes of this section, references to broadcasting in paragraph 16 (1) (d), sub-sections 16 (6), 99 (1), (1A), (2) and (2A) and sections 101 and 119 of the previous Act shall be read as including references to televising.

30 “(4) Notwithstanding sub-section (1), until the Tribunal determines program standards for the purposes of section 111BA of the previous Act as continued to be applied by virtue of sub-section (1) of this section, section 111BA of the previous Act continues to apply by virtue of that sub-section as if the amendments made by section 11 of the *Broadcasting and Television Legislation Amendment Act (No. 2) 1985* had not been made.”.

Remote licences

35 20 Section 102 of the Principal Act is amended by omitting from sub-section (1) “7 October” and substituting “31 October”.

Schedule

40 21. The Schedule to the Principal Act is amended by omitting the amendments of paragraphs 16 (1) (d) and (e), sub-sections 99 (1) and (2) and 100 (1), (4) and (5) and sections 101 and 119.

NOTES

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

