

1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
THE SENATE

Presented and read a first time

(Communications and the Arts)
(Tourism)

A BILL

FOR

An Act to amend legislation relating to Communications and Tourism, and for related purposes

The Parliament of Australia enacts:

Short title

1. This Act may be cited as the *Communications and Tourism Legislation Amendment Act 1995*.

Commencement

2. Sections 1, 2 and 8 commence on the day on which this Act receives the Royal Assent.

Transitional—application for permission to operate a second commercial television broadcasting service in a licence area

5

3. If, before the commencement of items 3 to 8 of the Schedule:

- (a) an application has been made to the Australian Broadcasting Authority ('ABA') under subsection 73(1) or (3) of the *Broadcasting Services Act 1992*; but
- (b) the ABA has not, by notice in writing given to the existing licensee, informed the licensee of the outcome of the application;

10

the application is taken to have been made on the day of commencement of items 3 to 8 of the Schedule.

Conditions imposed under the *Radiocommunications Act 1992*

4. If, before the commencement of items 9 to 14 of the Schedule, the SMA has purported to exercise a power under section 111 of the *Radiocommunications Act 1992*, ("**1992 Radcom Act**") to:

15

- (a) impose a further condition on a licence; or
- (b) vary or revoke a condition of a licence;

that, under subsection 10(1), (3) or (5) of the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992*, ("**Transitional Act**") is taken to be a transmitter licence under section 100 or 102 of the 1992 Radcom Act, the purported exercise of the power is taken to be a valid exercise of power by the Minister under subsection 10(10) of the Transitional Act.

20

25

Conditions imposed under the *Radiocommunications Act 1983*

5. If, between 5 October 1992 and 1 July 1993:

- (a) the Minister purported to exercise a power under subsection 24B(5) of the *Radiocommunications Act 1983* ("**1983 Radcom Act**") to:

- (i) impose a further condition on a licence; or
- (ii) vary or revoke a condition on a licence;

30

that, under subsection 10(1) of the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992*, ("**Transitional Act**") is taken to be a transmitter licence under section 24B of the 1983 Radcom Act; or

35

- (b) the Minister purported to exercise a power under subsection 25(3) of the 1983 Radcom Act to:

- (i) impose a further condition on a licence; or

(ii) to vary or revoke a condition on a licence;
that, under subsection 10(3) or (5) of the Transitional Act is taken to
be a transmitter licence under section 24 of the 1983 Radcom Act;
the purported exercise of the power is taken to be a valid exercise of power
by the Minister under subsection 10(10) of the Transitional Act.

Conditions imposed under the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992*

6.(1) If:

(a) under subsection 10(10) of the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992*, (“**Transitional Act**”) the Minister:

(i) has imposed, or, under section 4 or 5, is taken to have imposed, a further condition on a licence; or

(ii) has varied, or, under section 4 or 5, is taken to have varied, a condition of a licence;

that, under subsection 10(1) of that Act, is taken to be a transmitter licence under section 102 of the *Radiocommunications Act 1992*; and

(b) the further condition or condition as varied is still in force immediately before the twenty-eighth day after the day on which this Act receives the Royal Assent;

the further condition or condition as varied has effect in relation to that licence, on and after that twenty-eighth day, as if the further condition was imposed, or the condition was varied, by the Australian Broadcasting Authority under subsection 10(10) of the Transitional Act, as amended by this Act.

(2) If:

(a) under subsection 10(10) of the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992*, (“**Transitional Act**”) the Minister:

(i) has imposed, or, under section 4 or 5, is taken to have imposed, a further condition on a licence; or

(ii) has varied, or, under section 4 or 5, is taken to have varied, a condition of a licence;

that, under subsection 10(3) or (5) of that Act, is taken to be a transmitter licence under section 100 of the *Radiocommunications Act 1992*; and

(b) the further condition or condition as varied is still in force immediately before the twenty-eighth day after the day on which this Act receives the Royal Assent;

the further condition or condition as varied has effect in relation to that licence, on and after that twenty-eighth day, as if the further condition was imposed, or the condition was varied, by the Spectrum Management Agency under subsection 10(10A) of the Transitional Act, as amended by this Act.

Amendment of Acts

5

7. The Acts specified in the Schedule are amended as set out in the Schedule.

Repeal

8. The *Australian Tourist Commission (Transitional Provisions) Act 1987* is repealed.

10

SCHEDULE

Section 5

Australian Tourist Commission Act 1987

- 1. Subsection 14(3):**
Omit the subsection.
- 2. Subsection 42(3):**
Omit the subsection.

Broadcasting Services Act 1992

- 3. Paragraph 38(1)(a):**
Omit “date before”, substitute “day by”.
- 4. After section 38:**
Insert:

Additional commercial television licences in single markets

“38A.(1) If, after the commencement of this section, the ABA gives a commercial television broadcasting licensee permission under subsection 73(2) to operate a second service in a licence area:

- (a) the ABA must, subject to section 37 and despite subsection 53(2) and section 55, allocate an additional licence for that area to the licensee; and
- (b) for the period that the permission is in force, the licensee may, despite subsection 53(2) and section 55, provide services under both the additional licence and the licensee’s other licence.

“(2) The licensee must pay to the ABA, on the allocation of an additional licence, a fee determined by the ABA, which must not exceed the amount that, in the opinion of the ABA, represents the costs, including the planning costs, incurred by the ABA in allocating the additional licence.

“(3) It is a condition of a licence allocated under this section for a licence area that the licensee will continue to provide services under that licence and the licensee’s other licence for that area for not less than 2 years after the allocation of the additional licence.”.

- 5. Subsection 73(2):**
After “period of not” insert “less than 2 years and not”.
- 6. Subsections 73(4) and (5):**
Omit the subsections, substitute:

SCHEDULE—continued

“(4) Subject to subsections (5), (6) and (8) if:

- (a) an application is made to the ABA under subsection (1) or (3); and
- (b) the ABA does not, within 45 days after receiving the application:
 - (i) make a decision whether or not to grant the permission or extend the period; and
 - (ii) by notice in writing given to the existing licensee inform the licensee of that decision;

the ABA is taken, at the end of that period of 45 days, to have given the permission for, or to have extended the period by, 5 years.

“(5) If:

- (a) an application is made to the ABA under subsection (1) or (3) (the ‘**section 73 application**’); but
- (b) at the time of the section 73 application, one or more applications under Part 4 for the allocation of commercial television licences for the licence area are outstanding;

then:

- (c) the ABA is not required to consider the section 73 application while any of the applications under Part 4 are pending; and
- (d) the period starting with the making of the section 73 application and ending:
 - (i) in the case of one application under Part 4—with the determination of that application; or
 - (ii) in the case of more than one application under Part 4—when all of those applications have been determined;

does not count in working out the period of 45 days referred to in subsection (4).

“(6) If:

- (a) an application is made to the ABA under subsection (1) or (3) (the ‘**section 73 application**’); but
- (b) before the section 73 application is determined, one or more applications under Part 4 for the allocation of commercial television licences in the licence area are made;

then:

- (c) the ABA is not required to consider the section 73 application while any of the applications under Part 4 are pending; and
- (d) the period:

SCHEDULE—continued

- (i) in the case of one application under Part 4—starting with the making of that application and ending with the determination of that application; or
 - (ii) in the case of more than one application under Part 4—starting with the making of the first of those applications and ending when all of those applications have been determined;
- does not count in working out the period of 45 days referred to in subsection (4).

“(7) If one or more of the applications under Part 4 referred to in subsections (5) and (6) are successful, the section 73 application referred to in those subsections is taken to have been withdrawn.

“(8) If:

- (a) an application is made to the ABA under subsection (1) or (3) (the **‘section 73 application’**); but
- (b) before the section 73 application is determined, the ABA advertises under section 38 for applications for one or more additional commercial television licences for the licence area;

then:

- (c) the ABA is not required to consider the section 73 application until the end of the allocation period; and
- (d) the allocation period does not count in working out the period of 45 days referred to in subsection (4).

“(9) If at the end of the allocation period one or more additional commercial television licences are allocated for the licence area, the section 73 application referred to in subsection (8) is taken to have been withdrawn.

“(10) In this section:

‘allocation period’ means the period starting on the day that the ABA advertises under section 38 for applications for one or more commercial television licences for a licence area and ending:

- (a) if no applications are received by the ABA by the day specified in the advertisements—on that day; or
- (b) if one application is received by the ABA by the day specified in the advertisements—on the day that the application is determined; or
- (c) if more than one application is received by the ABA by the day specified in the advertisements—on the day that the last of those applications is determined.”.

SCHEDULE—continued

7. After section 73:

Insert:

When permission to operate a second commercial television broadcasting service ends

“73A. If a commercial television broadcasting licensee is:

- (a) denied an additional licence under section 38A for a licence area; or
- (b) allocated an additional licence under section 38A for a licence area and the licensee:
 - (i) transfers that licence, or the licensee’s other licence for that area, to another person; or
 - (ii) by notice in writing, given to the ABA surrenders that licence or the licensee’s other licence for that area; or
 - (iii) has that licence, or the licensee’s other licence for that area, cancelled by the ABA under section 143;

the permission given to the licensee under section 73 immediately ends.”.

8. Section 131:

Add at the end:

“(2) For the purposes of subsection (1), a permission granted to a licensee under section 73 to operate a second commercial television broadcasting service in a licence area is not a licence to provide that service.”.

Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992

9. Section 4:

Insert the following definition:

“**Spectrum Manager**’ means the Spectrum Manager referred to in section 239 of the *Radiocommunications Act 1992*;”.

10. Subsection 10(7):

Omit “subsection (10)”, substitute “subsections (10) and (10A)”.

11. Subsection 10(8):

Omit “(10)”, substitute “(10A)”.

12. Subsection 10(10):

Omit the subsection, substitute:

“(10) The ABA may, by notice in writing given to the holder of a transmitter licence referred to in subsection (1):

SCHEDULE—continued

- (a) impose one or more further conditions to which the licence is subject;
or
- (b) revoke or vary any condition of the licence, other than the condition specified in paragraph (7)(b).

“(10A) The SMA may, by notice in writing given to the holder of a transmitter licence referred to in subsection (3) or (5):

- (a) impose one or more further conditions to which the licence is subject;
or
- (b) revoke or vary any condition of the licence, other than the condition specified in paragraph (7)(b) or (8)(b).

“(10B) the ABA may, under the *Broadcasting Services Act 1992*, delegate its powers under subsection (10), as if they were powers of the ABA under that Act.

“(10C) The Spectrum Manager may delegate to the ABA the SMA’s powers under subsection (10A).

“(10D) If the SMA’s powers under subsection (10A) are delegated to the ABA under subsection (10C), the SMA’s powers may be further delegated by the ABA under the *Broadcasting Services Act 1992* as if they were powers of the ABA under that Act.”.

13. Subsection 10(11):

Omit “The Minister must not impose a condition”, substitute “The ABA must not impose a condition under subsection 10(10), nor the SMA under subsection 10(10A),”.

14. Subsection 16(2):

Omit “Minister”, substitute “ABA”.

15. Subsection 28(1):

Omit all the words after “repealed”.

16. Subsections 28(2) and (3):

Omit the subsections.

Radiocommunications Act 1992

17. After subsection 106(1):

Insert:

SCHEDULE—continued

“(1A) If:

- (a) a transmitter licence of a kind specified for the purposes of subsection (1) would authorise a person to operate a radiocommunications transmitter; and
- (b) this Act or any other law requires that a person operating a transmitter:
 - (i) of that kind; or
 - (ii) for a purpose for which the transmitter is to be used;
 - be within a specified class of persons;

the SMA may, in determining a price-based allocation system, limit the persons eligible to apply for such a transmitter licence to:

- (c) persons within that specified class; or
- (d) persons not within, but eligible to be within, that class; or
- (e) persons within that class and persons not within, but eligible to be within, that class.”.

18. Paragraph 277(1)(a):

Omit the paragraph, substitute:

“(a) a transmitter is operating on any land, or on or in any premises, vessel, aircraft or vehicle; and”.

19. Paragraph 277(1)(c):

Omit the paragraph, substitute:

“(c) the operation of the transmitter is:

- (i) interfering with radiocommunications that are essential to the safety of human life; or
- (ii) interfering substantially with the operation of an organisation specified in the regulations for the purposes of paragraph 193(1)(a); or
- (iii) interfering substantially with the operation of an organisation referred to in paragraph 193(1)(b) or (c); or
- (iv) causing substantial loss or damage;”.

20. Paragraph 277(1)(e):

Omit the paragraph, substitute:

“(e) subject to subsection (2), take such action as the inspector considers necessary to cause the transmitter to:

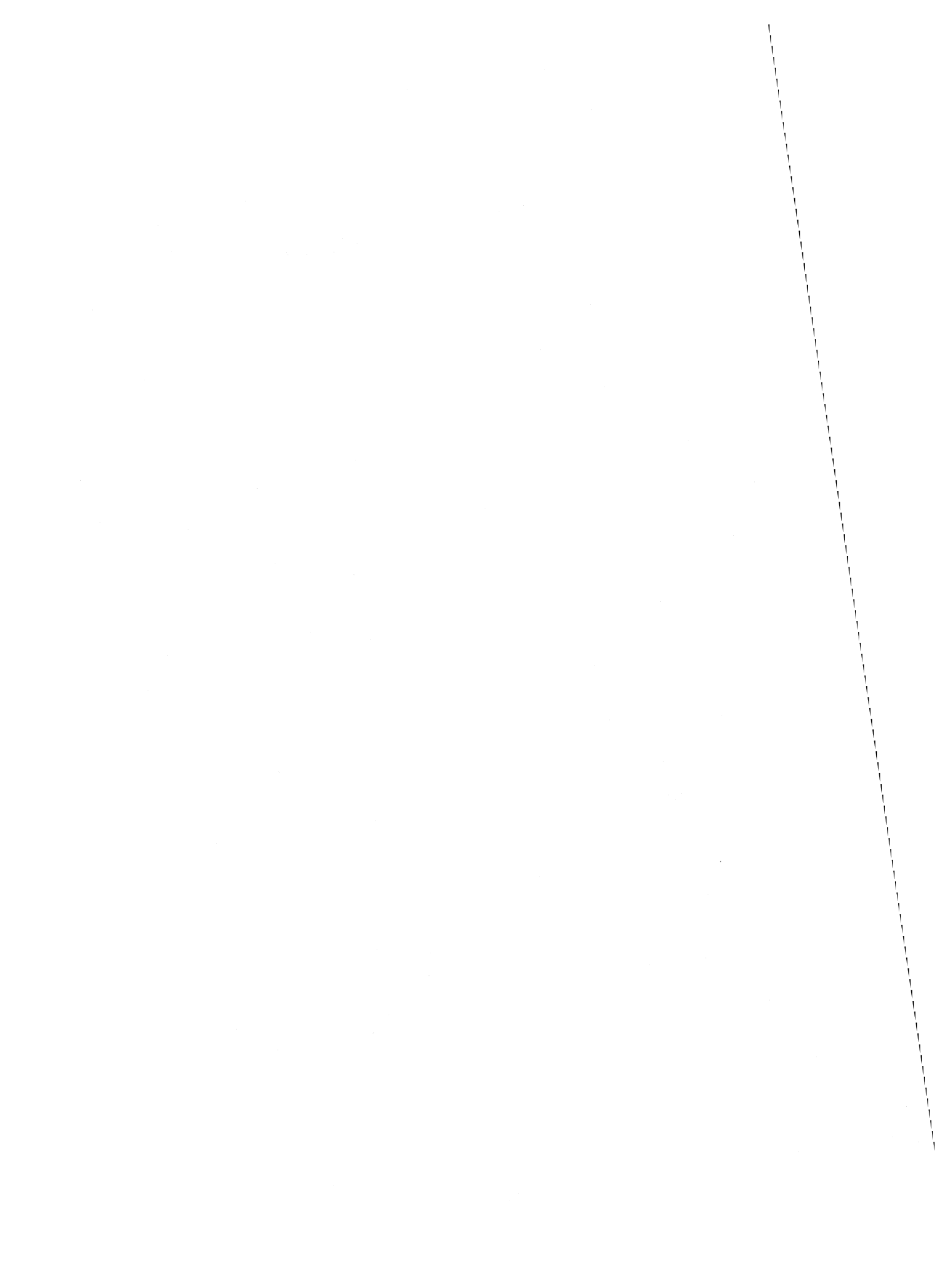
- (i) cease operating; or
- (ii) operate in such a way that no longer gives rise to one or more of the consequences set out in paragraph (c).”.

SCHEDULE—continued

21. Subsection 277(2):

Omit “prevent the interference with radiocommunications as mentioned in paragraph (1)(c)”, substitute “ensure that none of the consequences set out in paragraph (1)(c) continues to occur”.









9 780644 441056