

1990-91-92

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

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*(Presented and read a first time, 12 November 1992)*

(MINISTER FOR TRANSPORT AND COMMUNICATIONS, SENATOR COLLINS)

## A BILL

FOR

**An Act to repeal the *Radiocommunications Act 1983* and certain related Acts, and to make transitional provisions and certain amendments consequential upon the enactment of the *Radiocommunications Act 1992***

The Parliament of Australia enacts:

### PART 1—PRELIMINARY

#### Short title

- 5     **1.** This Act may be cited as the *Radiocommunications (Transitional Provisions and Consquential Amendments) Act 1992*.

#### Commencement

- 2.** This Act commences on 1 July 1993.

## PART 2—TRANSITIONAL PROVISIONS

### Interpretation

3.(1) In this Part, unless the contrary intention appears:

“old Act” means the *Radiocommunications Act 1983*;

“new Act” means the *Radiocommunications Act 1992*. 5

(2) Subject to subsection (3), terms and expressions used in this Part have the same meaning as they have in the new Act.

(3) Terms and expressions used in this Part that relate to the old Act or anything done under the old Act have the same meaning as they have in the old Act. 10

### Saving of instruments under the old Act

4. Subject to section 5, if an instrument is made by the Minister that:

(a) is an instrument of a kind referred to in column 2 of the following table; and 15

(b) was in force immediately before the commencement of this Act;

then the instrument:

(c) continues in force immediately after that commencement as if, at the time it had been made, it had been made, in the same terms, by the SMA as an instrument of the kind referred to in the corresponding item in column 3 of the following table; and 20

(d) is taken, for all purposes, to have been issued by the SMA as such an instrument.

**TABLE**

Column 1 Item No.	Column 2 Instrument made under the old Act	Column 3 Instrument made under the new Act
1.	Appointment of a person under paragraph 3(5)(a) or (b) to be an inspector.	Appointment of a person under paragraph 267(1)(a) or (b) to be an inspector.
2.	A standard made under subsection 9(1).	A standard made under section 162.
3.	A test permit granted under section 10.	A permit issued under section 167.
4.	A permission given under subparagraph 11(2)(b)(i).	A permission given under subsection 174(1).
5.	A compliance statement certificate issued under subsection 12(1).	A compliance certificate issued under section 184.

<b>Column 1</b> <b>Item No.</b>	<b>Column 2</b> <b>Instrument made under the old Act</b>	<b>Column 3</b> <b>Instrument made under the new Act</b>
6.	An advisory guideline made under subsection 16(1).	An advisory guideline made under section 262.
7.	An assignment of a part of the spectrum to the ABA under subsection 18(3)	A referral of that part of the spectrum to the ABA under section 31.
8.	A frequency band plan prepared under section 19.	A frequency band plan prepared under section 32.
9.	A transmitter licence granted under section 24.	A transmitter licence issued under section 100.
10.	A transmitter licence granted under section 24B.	A transmitter licence issued under section 102.
11.	A certificate of proficiency issued under section 31.	A certificate of proficiency issued under section 121.
12.	An approval of an examination under subsection 31(4).	An approval of an examination under section 122.
13.	A declaration, under subsection 31(4), of a prescribed age for the purposes of section 31 in relation to a class of certificates of proficiency.	A declaration, under subsection 122(2), of a minimum age for the purposes of section 122 in relation to that class of certificates of proficiency.
14.	A notice under subsection 32(1).	A request under subsection 123(1).
15.	A temporary permit granted under section 35.	A transmitter licence issued under section 100.
16.	A receiver licence granted under section 38.	A receiver licence issued under section 100.
17.	A declaration of a period of emergency under section 40.	A declaration of a period of emergency under section 219.
18.	An order made under section 41.	A restrictive order made under section 222.
19.	Guidelines made under section 42.	Guidelines made under section 230.
20.	A permission given under paragraph 65(5)(a).	A permission given under subsection 193(1).
21.	A permission given under paragraph 65(12)(a).	A permission given under subsection 195(1).

Column 1 Item No.	Column 2 Instrument made under the old Act	Column 3 Instrument made under the new Act
22.	A declaration under section 66A in relation to a device.	A declaration under subsection 190(1) in relation to the device.
23.	An identity card issued under section 68.	An identity card issued under section 268.
24.	A determination of a price-based allocation system under section 92A.	A determination of a price-based allocation system under section 106.

### **Instruments subject to suspension**

5. If, immediately before the commencement of this Act:

- (a) a compliance statement certificate issued under section 12 of the old Act is the subject of suspension under section 13 of the old Act; or
- (b) a transmitter licence granted under section 24 or 24B of the old Act is the subject of suspension under section 28 of the old Act;

section 4 of this Act does not apply to the certificate or licence until the suspension ceases to have effect (otherwise than because of the expiry or cancellation of the certificate or licence). 10

### **Authorities under transmitter licences**

6. An authority given by a person, under section 26 of the old Act, that was in force immediately before the commencement of this Act continues in force immediately after that commencement as if it had been an authorisation given by that person under section 114 of the new Act. 15

### **Frequency reservation certificates**

7.(1) Subject to subsection (4), despite the repeal of the old Act by section 13 of this Act, a frequency reservation certificate granted under section 21 of the old Act that was in force immediately before the commencement of this Act remains in force after that commencement for the period for which it would have remained in force if the old Act were not repealed. 20

(2) If an unallocated frequency is reserved in the name of a person in accordance with a frequency reservation certificate in force under subsection (1), the SMA must not issue to a person other than that person a permit or transmitter licence authorising the operation of a transmitter in a manner inconsistent with that reservation. 25

(3) For the purposes of subsection (2), issuing a permit or transmitter licence that authorises the operation of a transmitter for a period not exceeding 14 days is taken to be not inconsistent with a reservation.

5 (4) The SMA has the same power to cancel a frequency reservation certificate to which subsection (1) applies as the Minister had, immediately before the commencement of this Act, to cancel frequency reservation certificates.

#### **Consultation processes under the old Act**

8.(1) If:

- 10 (a) anything, before the commencement of this Act, was done under section 20 of the old Act prior to preparation of a spectrum plan or frequency band plan under the old Act; and  
(b) the plan was not prepared under the old Act before that commencement;

15 the thing done is taken, for all purposes, to have been done under the corresponding provision of section 33 of the new Act.

(2) If:

- 20 (a) anything, before the commencement of this Act, was done under subsection 9(2) or (3) of the old Act prior to the making of a standard under the old Act; and  
(b) the standard was not made under the old Act before the commencement;

the thing done is taken, for all purposes, to have been done under the corresponding provision of section 163 of the new Act.

#### **25 Evidentiary certificates**

9. If a Commonwealth officer issues a certificate under subsection 305(1) of the new Act relating to an examination carried out, whether before or after the commencement of this Act, for the purposes of the old Act, section 305 of the new Act applies in relation to the certificate  
30 as if:

- (a) references in that section to the new Act included references to the old Act; and  
(b) the reference in subsection (5) of that section to section 174 of the new Act included a reference to subparagraph 11(2)(b)(i) of  
35 the old Act.

#### **Forfeiture**

10. The SMA's power to make directions under section 281 of the new Act relating to things forfeited under section 280 of that Act extends to making directions relating to things that:

- 40 (a) were forfeited under subsection 80(1) of the old Act before the commencement of this Act; and

- (b) immediately before that commencement were not subject to directions by the Minister under subsection 80(2) of the old Act.

### **Regulations under the Radiocommunications Act**

**11.(1)** Subject to subsection (3), any regulations made under the old Act and in force immediately before the commencement of this Act continue in force as if made under the new Act. 5

(2) A reference in a regulation so continued in force to a provision of the old Act is taken to be a reference to the corresponding provision in the new Act. 10

(3) This section does not apply to a regulation the making of which would not be authorised by the new Act.

### **Determinations of types of apparatus licences**

**12.(1)** Until the SMA makes a determination under section 98 of the new Act, the types of transmitter licences that the SMA may issue under Part 3.3 of the new Act are taken to be the types of licences set out in Schedule 1 to the Radiocommunications (Licensing and General) Regulations made under the old Act. 15

(2) Until the SMA makes a determination under section 98 of the new Act, the types of receiver licences that the SMA may issue under Part 3.3 of the new Act are taken to be the types of licences set out in regulation 7 of the Radiocommunications (Licensing and General) Regulations made under the old Act. 20

## **PART 3—REPEAL AND CONSEQUENTIAL AMENDMENTS**

### **Repeal of Acts** 25

**13.** The following Acts are repealed:

*Radiocommunications Act 1983;*

*Radiocommunications (Frequency Reservation Certificate Tax) Act 1983;*

*Radiocommunications (Temporary Permit Tax) Act 1983.* 30

### **Consequential amendments of Acts**

**14.(1)** The Acts specified in the Schedule are amended as set out in the Schedule.

(2) References in subsection 362(4) of the *Commonwealth Electoral Act 1918* as amended by this Act, and in section 108A of the *Referendum (Machinery Provisions) Act 1984* as so amended, to contraventions of the *Radiocommunications Act 1992* are taken to include references to contraventions of the *Radiocommunications Act 1983* that took place before the commencement of this Act. 35

(3) Without limiting the application of section 4 of this Act:

(a) a reference in subparagraphs 91(a)(iii) and (c)(iii) of the *Copyright Act 1968*, as amended by this Act, to a transmitter licence issued under the *Radiocommunications Act 1992*;

5 is taken to include:

(b) a reference to a transmitter licence or a temporary permit that, although not in force immediately before the commencement of this Act, was in force at the time when the broadcast in question was made.

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**SCHEDULE**

Section 14

**CONSEQUENTIAL AMENDMENTS OF ACTS**

***Australian Postal Corporation Act 1989***

**Section 11:**

Omit “*Radiocommunications Act 1983*”, substitute “*Radiocommunications Act 1992*”.

***Broadcasting Services Act 1992***

**Subsection 6(1) (paragraph (a) of the definition of “broadcasting services bands”):**

Omit “the *Radiocommunications Act 1983*”, substitute “section 31 of the *Radiocommunications Act 1992*”.

**Subsection 6(1) (paragraph (b) of the definition of “broadcasting services bands”):**

- (a) Omit “assigned”, substitute “referred”;
- (b) Omit “Act”, substitute “section”.

**Subsection 6(1):**

Insert:

“‘SMA’ means the Spectrum Management Agency established under section 232 of the *Radiocommunications Act 1992*;”.

**Subsection 25(1):**

Omit “the *Radiocommunications Act 1983*, assigned”, substitute “section 31 of the *Radiocommunications Act 1992*, referred”.

**Paragraph 158(a):**

Omit the paragraph, substitute:

- “(a) to provide advice to the SMA in relation to:
- (i) the spectrum plan and frequency band plans under the *Radiocommunications Act 1992*; and
  - (ii) the designation under section 31 of that Act of parts of the radiofrequency spectrum as being primarily for broadcasting purposes; and”.

**Clause 1 of Schedule 2:**

Insert:

“‘radiocommunications device’ has the same meaning as in the *Radiocommunications Act 1992*;”.



**SCHEDULE—continued**

**Paragraph 7(1)(f) of Schedule 2:**

Omit the paragraph, substitute:

“(f) if the licence is a broadcasting services bands licence—the licensee will keep in force a licence under the *Radiocommunications Act 1992* that authorises operation by the licensee of the radiocommunications devices used to provide the broadcasting service;”.

**Paragraph 8(1)(f) of Schedule 2:**

Omit the paragraph, substitute:

“(f) if the licence is a broadcasting services bands licence—the licensee will keep in force a licence under the *Radiocommunications Act 1992* that authorises operation by the licensee of the radiocommunications devices used to provide the broadcasting service;”.

***Broadcasting Services (Transitional Provisions and Consequential  
Amendments) Act 1992***

**Section 4 (definition of “Radcom Act”):**

Omit “*Radiocommunications Act 1983*”, substitute “*Radiocommunications Act 1992*”.

**Subsection 10(1):**

Omit “section 24B”, substitute “section 102”.

**Subsections 10(3) and (5):**

Omit “section 24”, substitute “section 100”.

**Subsection 10(9):**

Omit “section 24B”, substitute “section 102”.

**Section 10:**

Add at the end:

“(15) Subsections (1), (3), (5) and (9) do not apply in relation to an instrument that is no longer in force immediately before 1 July 1993.”.

**Section 27:**

Omit “subsection 9(1)”, substitute “section 162”.

***Commonwealth Electoral Act 1918***

**Subsection 362(4):**

Omit “*Radiocommunications Act 1983*”, substitute “*Radiocommunications Act 1992*”.

**SCHEDULE—continued*****Copyright Act 1968*****Paragraph 47A(11)(b):**

Omit “*Radiocommunications Act 1983*”, substitute  
“*Radiocommunications Act 1992*”.

**Subparagraphs 91(a)(iii) and (c)(iii):**

Omit “the holder of a transmitter licence or a temporary permit in force under the *Radiocommunications Act 1983*”, substitute “authorised under a licence issued under the *Radiocommunications Act 1992*”.

***Development Allowance Authority Act 1992*****Section 6 (definition of “Australian satellite”):**

Omit “*Radiocommunications Act 1983*”, substitute  
“*Radiocommunications Act 1992*”.

***Income Tax Assessment Act 1936*****Subsection 82AQ(1) (definition of “Australian satellite”):**

Omit “*Radiocommunications Act 1983*”, substitute  
“*Radiocommunications Act 1992*”.

***Navigation Act 1912*****Subsection 269A(2):**

Omit “transmitter licence or a temporary permit granted under the *Radiocommunications Act 1983*”, substitute “licence issued under the *Radiocommunications Act 1992*”.

***Referendum (Machinery Provisions) Act 1984*****Section 108A:**

Omit “*Radiocommunications Act 1983*”, substitute  
“*Radiocommunications Act 1992*”.

***Sales Tax (Exemptions and Classifications) Act 1935*****Sub-item 81(2) in the First Schedule:**

- (a) Omit “the holder of”, substitute “a person authorised to conduct the service under”;
- (b) Omit “*Radiocommunications Act 1983*”, substitute  
“*Radiocommunications Act 1992*”.

**SCHEDULE—continued**

**Item 105 in the First Schedule (definition of “radiotransmission”):**

Omit the definition, substitute:

“‘**radio transmission**’ means a radio emission within the meaning of the *Radiocommunications Act 1992*”.

***Sales Tax (Exemptions and Classifications) Act 1992***

**Sub-item 169(2) in Schedule 1:**

(a) Omit “the holder of”, substitute “a person authorised to conduct the service under”;

(b) Omit “*Radiocommunications Act 1983*”, substitute “*Radiocommunications Act 1992*”.

***Sea Installations Act 1987***

**Schedule:**

Omit “*Radiocommunications Act 1983*”, substitute “*Radiocommunications Act 1992*”.

***Special Broadcasting Service Act 1991***

**Section 3 (definition of “transmission facilities”):**

Omit “*Radiocommunications Act 1983*”, substitute “*Radiocommunications Act 1992*”.

***Telecommunications Act 1991***

**Section 5 (definition of “radiocommunication”):**

Omit “*Radiocommunications Act 1983*”, substitute “*Radiocommunications Act 1992*”.

**Section 5 (definition of “radiocommunications transmitter”):**

Omit “*Radiocommunications Act 1983*”, substitute “*Radiocommunications Act 1992*”.

**Section 5 (definition of “receiver”):**

Omit the definition, substitute:

“‘**receiver**’ means a radiocommunications receiver within the meaning of the *Radiocommunications Act 1992*”.

**Section 5:**

Insert:

“‘**device**’ has the same meaning as in the *Radiocommunications Act 1992*;

**SCHEDULE—continued**

‘interference’ has the same meaning as in the *Radiocommunications Act 1992*;

**Subsection 33(1):**

Omit “*Radiocommunications Act 1983*”, substitute “*Radiocommunications Act 1992*”.

**Subsection 33(2):**

Omit the subsection, substitute:

“(2) However, to avoid doubt, the fact that a person is authorised to do something under a licence under the *Radiocommunications Act 1992* does not entitle the person to do that thing if he or she is prohibited by or under this Act from doing it, unless a condition of the licence requires the person to do it.”.

**Subsection 63(2):**

Omit the subsection, substitute:

“(2) A condition of a licence held by a carrier has effect subject to the provisions of a licence under the *Radiocommunications Act 1992* under which the carrier is authorised to do something.”.

**Paragraph 99(1)(b):**

- (a) Omit “in relation to which the broadcaster holds”, substitute “that the broadcaster is authorised to operate under”;
- (b) Omit “*Radiocommunications Act 1983*”, substitute “*Radiocommunications Act 1992*”.

**Paragraphs 103(1)(a) and (2)(a):**

Omit “the holder of a licence under the *Radiocommunications Act 1983*”, substitute “authorised under a licence under the *Radiocommunications Act 1992*”.

**Paragraph 243(b):**

Add at the end:

- “(v) containing interference to radiocommunications and to any uses or functions of devices; and
- (vi) establishing for the uses and functions of devices an adequate level of immunity from electromagnetic disturbance; and”.

**SCHEDULE—continued**

**Subsection 246(2):**

Add at the end:

- “; or (e) contain interference to radiocommunications or to any uses or functions of devices; or
- (f) establish for the uses or functions of devices an adequate level of immunity from electromagnetic disturbance.”.







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