

1987-88-89

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 1 November 1989

(Minister for Transport and Communications)

A BILL

FOR

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

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

Short title etc.

1. (1) This Act may be cited as the *Broadcasting Amendment Act 1989*.

5 (2) In this Act, “Principal Act” means the *Broadcasting Act 1942*’.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

Interpretation

10 3. Section 4 of the Principal Act is amended:

(a) by inserting in subsection (1) the following definition:

“‘suitability requirements’ has the meaning given by subsections (18) and (19);”;

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

“(18) For the purposes of this Act, the holder of a commercial licence fails to meet the suitability requirements that apply to the licence if 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.

“(19) For the purposes of this Act, an applicant under section 90J or 92F for approval of a transaction in relation to a licence fails to meet the suitability requirements that apply to the licence if: 10

- (a) the Tribunal is satisfied, for the purposes of subparagraph 90JA (2) (c) (ii) or 92FAA (2) (c) (ii), that the applicant:
 - (i) is not a fit and proper person to hold the interests to which the transaction relates; or 15
 - (ii) does not have the financial, technical or management capabilities to provide an adequate and comprehensive service pursuant to the licence; or
- (b) had the application been an application for the Tribunal’s consent to the transfer to the applicant of the licence to which the transaction relates, the Tribunal would, for the purposes of sub-subparagraph 89A (8) (c) (i) (A) or (B) (as applied by paragraph 90JA (2) (a) or 92FAA (2) (a)), not have been satisfied that the person: 20
 - (i) is a fit and proper person to hold the licence; or 25
 - (ii) has the financial, technical and management capabilities necessary to provide an adequate and comprehensive service pursuant to the licence.”.

Ordinary inquiries

4. Section 17C of the Principal Act is amended by inserting after subsection (6) the following subsection: 30

“(6A) Without limiting subsection (6), the reference in paragraph (6) (b) to the exercise of 2 or more powers includes a reference to the exercise of:

- (a) the power to grant a supplementary radio licence; and
- (b) the power to grant a commercial radio licence that has a service area overlapping the service area proposed for the supplementary radio licence.”. 35

5. After section 82A of the Principal Act the following section is inserted:

Simultaneous commercial radio licence and supplementary radio licence inquiries 40

“82AAA. (1) The Minister may:

- (a) publish a notice under subsection 82 (1) in relation to a commercial radio licence even though:
 - (i) an application has been lodged under section 82A for the

grant of a supplementary radio licence that would have a service area overlapping the service area proposed for the commercial radio licence; and

5 (ii) the Minister has not, at the time when the notice is published, determined whether to refer the application to the Tribunal under paragraph 82A (4) (a) or dismiss the application under paragraph 82A (4) (b) or subsection (5); and

(b) publish a notice under subsection 82 (1) in relation to a commercial radio licence even though:

10 (i) the Minister has, under paragraph 82A (4) (a), referred to the Tribunal an application under section 82A for the grant of a supplementary radio licence that would have a service area overlapping the service area proposed for the commercial radio licence; and

15 (ii) the Tribunal has not, at the time when the notice is published, determined whether or not to grant a supplementary radio licence pursuant to the reference.

“(2) Where:

20 (a) an application is lodged under section 82A for the grant of a supplementary radio licence and is referred to the Tribunal under paragraph 82A (4) (a); and

25 (b) the Minister, in accordance with paragraph (1) (a) or (b) of this section, has published or publishes a notice under subsection 82 (1) in relation to a commercial radio licence that would have a service area overlapping the service area proposed for the supplementary radio licence;

the following provisions have effect:

30 (c) the Tribunal may consider simultaneously the application for the grant of the supplementary radio licence and applications for the commercial radio licence;

(d) the Tribunal may determine the matters that arise out of the application under section 82A and the applications for the commercial radio licence in the order that the Tribunal thinks most appropriate in the circumstances;

35 (e) the Tribunal may, in accordance with regulations made for the purposes of section 17C, hold a joint inquiry into the exercise of the power to grant the supplementary radio licence and the exercise of the power to grant the commercial radio licence.

“(3) Nothing in this section is to be taken to imply:

40 (a) that a power expressly conferred on the Minister or the Tribunal under this section was not possessed by the Minister or the Tribunal before the commencement of this section; or

(b) that a procedure expressly authorised by this section was not authorised before the commencement of this section.”.

Criteria for grant of supplementary radio licence

6. Section 83B of the Principal Act is amended:

(a) by omitting from paragraph (7) (b) “applications for such a commercial radio licence should be invited” and substituting “such a commercial radio licence should be granted”;

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(b) by omitting subsection (8) and substituting the following subsections:

“(8) Where the Tribunal makes a determination under subsection (7), the Tribunal must, as soon as practicable after making the determination, give the applicant and the Minister written notice of the determination and the reasons for the determination.

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“(9) If, at the time when the Tribunal makes a determination under subsection (7), the process leading to the grant of the commercial radio licence referred to in that subsection is not already underway, the Tribunal must, as soon as practicable after making the determination, make a written recommendation to the Minister that the Minister invite applications for that commercial licence.

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“(10) For the purposes of subsection (9), the process leading to the grant of a commercial radio licence is already underway if a notice has been published under subsection 82 (1) in relation to the licence and:

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(a) the Tribunal has not yet determined the applications made in response to the notice; or

(b) the Tribunal has determined those applications but the licence has not yet been granted.”.

Renewal of commercial licence

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7. Section 86AA of the Principal Act is amended by inserting after subsection (4) the following subsection:

“(4A) In determining whether it is advisable in the public interest to refuse to renew a commercial licence under paragraph (4) (b), the Tribunal is to have regard to:

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(a) the existence of the powers referred to in section 86AAA; and

(b) such other matters as the Tribunal considers relevant.”.

8. After section 86AA of the Principal Act the following section is inserted:

Powers of the Tribunal where licensee fails to meet suitability requirements that apply to a commercial licence

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“86AAA. (1) Where the Tribunal is satisfied, for the purposes of paragraph 86AA (4) (b), that the holder of a commercial licence has failed to meet the suitability requirements that apply to the licence, the Tribunal may do any one or more of the following:

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(a) revoke, vary or impose conditions on the licence under subsection 85 (1) or 86 (6);

- (b) give directions under subsection 92M (1A);
- (c) give directions under subsection 92N (2A).

5 “(2) The powers referred to in subsection (1) are in addition to, and are not intended to limit, any other power that the Tribunal has to deal with the licensee’s failure.”.

Suspension and revocation of commercial licence

9. Section 88 of the Principal Act is amended by inserting after subsection (2) the following subsection:

10 “(2A) In determining whether it is advisable in the public interest to suspend or revoke a commercial licence under paragraph (2) (b), the Tribunal is to have regard to:

- (a) the existence of the powers referred to in section 88AA; and
- (b) such other matters as the Tribunal considers relevant.”.

10. After section 88 of the Principal Act the following section is inserted:

15 Powers of the Tribunal where licensee fails to meet suitability requirements that apply to a commercial licence

20 “88AA. (1) Where the Tribunal is satisfied, for the purposes of paragraph 88 (2) (b), that the holder of a commercial licence has failed to meet the suitability requirements that apply to the licence, the Tribunal may do any one or more of the following:

- (a) revoke, vary or impose conditions on the licence under subsection 85 (1) or 86 (6);
- (b) give directions under subsection 92M (1A);
- (c) give directions under subsection 92N (2A).

25 “(2) The powers referred to in subsection (1) are in addition to, and are not intended to limit, any other power that the Tribunal has to deal with the licensee’s failure.”.

Advertising not allowed pursuant to temporary transmission permit

11. Section 89DH of the Principal Act is amended:

- 30 (a) by omitting from subsection (1) “subsection (2)” and substituting “subsections (2) and (3)”;
- (b) by adding at the end the following subsections:

“(3) Subsection (1) does not apply to a temporary transmission permit granted to a person to whom subsection (4) applies.

35 “(4) This subsection applies to a person if:

- (a) a temporary transmission permit is granted to the person; and
- (b) the person is:
 - (i) the holder of a public licence; or

- (ii) an applicant or potential applicant for a public licence; and
 - (c) the permit is granted for the purposes of conducting broadcasts connected with the public licence or an application or intended application for the public licence. 5
- “(5) Where a temporary transmission permit is granted to a person to whom subsection (4) applies:
- (a) subsection 119AB (2) applies to the person; and
 - (b) subsections 119AB (3), (3A) and (3B) apply to the person subject to any conditions imposed under subsection 89DF (9); 10
- as if references in those subsections to a public radio licence were references to the temporary transmission permit.
- “(6) It is a condition of a temporary transmission permit granted to a person to whom subsection (4) applies that any money derived by the person from broadcasting activities conducted pursuant to the permit is not to be spent otherwise than: 15
- (a) for or in connection with the conduct of broadcasting activities pursuant to the temporary transmission permit; or
 - (b) if the person is the holder of a public licence—for or in connection with the provision, maintenance or improvement of the broadcasting services provided pursuant to the licence; 20
 - or
 - (c) if the person is an applicant or potential applicant for a public licence—for or in connection with the preparation or making of an application for the licence; or 25
 - (d) for the benefit of public broadcasting generally.
- “(7) For the purposes of this section:
- (a) a person is an applicant for a public licence if:
 - (i) the Minister has published a notice under subsection 82 (1) inviting applications for the grant of a public licence; and 30
 - (ii) the person has applied for the grant of the licence; and
 - (b) a person is a potential applicant for a public licence if the Minister is satisfied, on reasonable grounds, that: 35
 - (i) the person intends to apply for a public licence; or
 - (ii) the person is a member of a body which intends to form a corporation to apply for the grant of a public licence.”.

Approval of transactions 40

12. Section 90JA of the Principal Act is amended:

- (a) by omitting from paragraph (11) (c) “or such longer period as the Tribunal, on application, allows by notice in writing served on the person within that period of 6 months”;

(b) by inserting after subsection (11) the following subsections:

“(11A) Subject to subsections (11B), (11C) and (11D), the Tribunal may extend the period of 6 months referred to in paragraph (11) (c).

5 “(11B) The Tribunal is not to grant an extension under subsection (11A) if the Tribunal refused to approve the transaction concerned because the applicant failed to meet the suitability requirements that apply to the licence concerned.

10 “(11C) The Tribunal may only grant an extension under subsection (11A):

(a) on an application for the extension by the person who applied for approval under section 90J; and

(b) within the period of 6 months after the day on which the notice under subsection (2) is served.

15 “(11D) An extension under subsection (11A) is to be granted by written notice served on the applicant.”.

13. After section 90JA of the Principal Act the following section is inserted in Subdivision B of Division 2 of Part IIIBA:

20 **Powers of Tribunal where approval of transaction refused under section 90JA**

“90JAA. (1) Where:

(a) the Tribunal refuses to approve a transaction in so far as it affects an applicant (either in whole or in part) under subsection 90JA (2); and

25 (b) the Tribunal refuses to approve the transaction because the applicant for approval failed to meet the suitability requirements that apply to the licence;

the Tribunal may do any one or more of the following:

30 (c) revoke, vary or impose conditions on the licence under subsection 85 (1) or 86 (6);

(d) give directions under subsection 92M (1B);

(e) give directions under subsection 92N (2B).

35 “(2) The powers referred to in subsection (1) are in addition to, and are not intended to limit, any other power that the Tribunal has to deal with the applicant’s failure.”.

Approval of transactions

14. Section 92FAA of the Principal Act is amended:

40 (a) by omitting from paragraph (11) (c) “or such longer period as the Tribunal, on application, allows by notice in writing served on the person within that period of 6 months”;

(b) by inserting after subsection (11) the following subsections:

“(11A) Subject to subsections (11B), (11C) and (11D), the Tribunal may extend the period of 6 months referred to in paragraph (11) (c).

“(11B) The Tribunal is not to grant an extension under subsection (11A) if the Tribunal refused to approve the transaction concerned because the applicant failed to meet the suitability requirements that apply to the licence concerned. 5

“(11C) The Tribunal may only grant an extension under subsection (11A):

- (a) on an application for the extension by the person who applied for approval under section 92F; and 10
- (b) within the period of 6 months after the day on which the notice under subsection (2) is served.

“(11D) An extension under subsection (11A) is to be granted by written notice served on the applicant.”. 15

15. After section 92FAA of the Principal Act the following section is inserted in Subdivision B of Division 3 of Part IIIBA:

Powers of Tribunal where approval of transaction refused under section 92FAA

“92FAAA. (1) Where: 20

- (a) the Tribunal refuses to approve a transaction in so far as it affects an applicant (either in whole or in part) under subsection 92FAA (2); and
- (b) the Tribunal refuses to approve the transaction because the applicant for approval failed to meet the suitability requirements that apply to the licence; 25

the Tribunal may do any one or more of the following:

- (c) revoke, vary or impose conditions on the licence under subsection 85 (1) or 86 (6);
- (d) give directions under subsection 92M (1B); 30
- (e) give directions under subsection 92N (2B).

“(2) The powers referred to in subsection (1) are in addition to, and are not intended to limit, any other power that the Tribunal has to deal with the applicant’s failure.”.

Directions to enforce ownership and control or licensing provisions or to protect licensee 35

16. Section 92M of the Principal Act is amended by inserting after subsection (1) the following subsections:

“(1A) Where section 86AAA or 88AA applies to a licence, the Tribunal may give a person directions for the purposes of: 40

- (a) enabling or requiring the licensee to meet the suitability requirements that apply to the licence; or

(b) preventing the person from doing an act or thing that is likely to have an adverse effect on:

- (i) the licensee's ability to comply with the conditions of the licence; or
- 5 (ii) the licensee's operations in providing the service pursuant to the licence; or
- (iii) the selection or provision of programs to be broadcast pursuant to the licence.

10 “(1B) Where section 90JAA or 92FAAA applies to a licence, the Tribunal may give a person directions for the purpose of preventing the person from doing an act or thing that is likely to have an adverse effect on:

- (a) the licensee's ability to comply with the conditions of the licence; or
- 15 (b) the licensee's operations in providing the service pursuant to the licence; or
- (c) the selection or provision of programs to be broadcast pursuant to the licence.

20 “(1C) Without limiting subsection (1A) or (1B), directions under that subsection may be given to:

- (a) the licensee or the applicant under section 90J or 92F; or
- (b) a person who is in a position to exercise control of the licence; or
- (c) a person whose conduct, character or capacity gives rise to, or contributes to, the licensee's or the applicant's failure to meet the suitability requirements that apply to the licence; or
- 25 (d) a servant or agent of a person referred to in paragraph (a), (b) or (c); or
- (e) where a person referred to in paragraph (a), (b), (c) or (d) is a company—a director of the company.

30 “(1D) A direction under subsection (1A) or (1B) must be in writing and must be served on the person to whom it is given.

“(1E) A reference in subsection (1A) or (1B) to preventing a person from doing an act or thing includes a reference to preventing a servant or agent of the person from doing that act or thing.”

Directions for divestiture

35 17. Section 92N of the Principal Act is amended by inserting after subsection (2) the following subsections:

“(2A) Where:

- (a) section 86AAA or 88AA applies to a licence; and
- 40 (b) the Tribunal is satisfied that the holding by a person of particular interests in a company gives rise to, or contributes to, the licensee's failure to meet the suitability requirements that apply to the licence;

the Tribunal:

(c) may give such directions as it thinks necessary to ensure that the person ceases, before the end of the period of 6 months commencing on the day on which the direction is given, to hold specified interests in the company to enable or require the licensee to meet the suitability requirements that apply to the licence; and 5

(d) may give such directions as it thinks necessary to prohibit the person from disposing of the person's interests in that company, or any interests derived from or related to those interests, to a specified person or persons included in a specified class of persons. 10

“(2B) Where:

(a) section 90JAA or 92FAAA applies to a licence; and

(b) a person has interests referred to in paragraph 90JA (11) (c) or 92FAA (11) (c);

the Tribunal may give such directions as it thinks necessary to prohibit the person from disposing of those interests, or any interests derived from or related to those interests, to a specified person or persons included in a specified class of persons.”. 15

Special provisions relating to public licences

18. Section 119AB of the Principal Act is amended: 20

(a) by inserting in paragraph (3) (a) “or community promotional material” after “community information”;

(b) by inserting in subsection (3A) “, or material is community promotional material,” after “community information”;

(c) by adding at the end of subsection (3A) “or material”. 25

Minor and consequential amendments

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

Application of amendments

20. The amendments made by sections 3, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17 and 19 and the Schedule apply to a failure by the licensee, or by an applicant under section 90J or 92F, to meet the suitability requirements that apply to a licence where: 30

(a) the Tribunal has, before the commencement of this section, found that the failure has occurred; or

(b) the Tribunal finds, after the commencement of this section, that the failure has occurred (whether the facts or circumstances on which the Tribunal makes that finding occurred before or after the commencement of this section). 35

Amendment of *Broadcasting and Television Act 1942* as in force immediately before 1 January 1986 for the purposes of its continued application to old system licences

5 **21.** For the purposes of the continued application, by virtue of section 98 of the *Broadcasting and Television Amendment Act 1985* of the *Broadcasting and Television Act 1942* as in force immediately before 1 January 1986, the *Broadcasting and Television Act 1942* as in force immediately before 1 January 1986, is amended:

- 10 (a) by inserting in paragraph 111BA (3) (a) “or community promotional material” after “community information”;
- (b) by inserting in subsection 111BA (3A) “, or material is community promotional material,” after “community information”;
- (c) by adding at the end of subsection 111BA (3A) “or material”.
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SCHEDULE

Section 19

MINOR AND CONSEQUENTIAL AMENDMENTS

Paragraph 17A (2) (j):

After “92N (1)”, insert “, (2A) or (2B)”.

Subsection 90JA (2):

Insert “, by notice in writing served on the applicant” after “then, subject to this section, the Tribunal”.

Subsection 92FAA (2):

Insert “, by notice in writing served on the applicant” after “then, subject to this section, the Tribunal”.

Heading to Division 4 of Part IIIA:

Omit the heading, substitute the following heading:

“Division 4—Enforcement of ownership and control and licensing provisions in relation to commercial licences”

Subsection 92M (2):

After “subsection (1)”, insert “, (1A) or (1B)”.

Subsection 92N (3):

After “paragraph (1) (a)”, insert “or (2A) (c)”.

Subsection 92N (4):

After “paragraph (1) (b)”, insert “or (2A) (d) or subsection (2B)”.

After paragraph 119A (1) (gaa):

Insert the following paragraph:

“(gaaa) a direction by the Tribunal under subsection 92N (2A) or (2B);”.

NOTE

1. No. 33, 1942, as amended. For previous amendments, see No. 39, 1946; No. 64, 1948; No. 80, 1950; No. 41, 1951; No. 12, 1953; No. 82, 1954; Nos. 33, 65 and 92, 1956; No. 36, 1960 (as amended by No. 32, 1961); No. 96, 1962; No. 82, 1963; Nos. 67 and 121, 1964; Nos. 38 and 120, 1965; No. 57, 1966; No. 47, 1967; No. 69, 1968; Nos. 21 and 31, 1969; Nos. 8, 72 and 136, 1971; No. 49, 1972; No. 50, 1973; No. 216, 1973 (as amended by No. 20, 1974); No. 55, 1974; No. 56, 1975; Nos. 89, 157 and 187, 1976; No. 160, 1977; Nos. 36, 52 and 210, 1978; Nos. 143 and 177, 1980; Nos. 61, 113 and 153, 1981; No. 154, 1982; Nos. 7, 37, 39, 91 and 136, 1983; Nos. 10, 63, 72, 163 and 165, 1984; Nos. 66 and 191, 1985; Nos. 2 and 76, 1986; Nos. 68, 79, 80, 134 and 184, 1987; Nos. 56, 99, 109, 146 and 147, 1988; and Nos. 29, 31 and 63, 1989.

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