

1986

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

BROADCASTING AMENDMENT BILL 1986

EXPLANATORY MEMORANDUM

(Circulated by the Authority of the  
Minister for Communications,  
the Hon. Michael Duffy, MP)



## OUTLINE

The purpose of the Broadcasting Amendment Act is to provide mechanisms for achieving the following objectives:

- . To provide three commercial television services in regional areas of Australia as soon as practicable.
- . To bring regional commercial television licensees to serve larger and more viable markets; and
- . To bring regional licensees to provide services on a competitive basis.

The main provisions are contained in the new part III C (sections 94 to 94 ZM) to be inserted in the Broadcasting Act 1942 by clause 16 of the Bill. The key aspects of the new provisions are as follows:

The Minister is empowered to publish the "Equalisation of Regional Commercial Television Indicative Plan" which sets basic parameters for the scheme, in particular: The licences to which the equalisation processes can apply, the licensees who will be required to start moving immediately towards equalisation and to achieve the objective of 3 competitive services by 1996 and the expanded markets in which those licensees will compete. Subsequent variations of the Indicative Plan can bring further regional licences into the equalisation processes and set new deadlines for completion of the process.

The major means of achieving the above objectives is aggregation - the expansion of service areas so that licensees who previously had monopolies in their service areas are brought to compete in expanded service areas ("aggregation areas") against other licensees from a group identified as being within an "approved market".

In most approved markets, the licensees may elect as an interim step to provide additional services in their original service areas before proceeding to aggregation. Provision is made for "Multi-Channel Service (MCS) permits" to cover such extra services. If any licensee in an approved market elects to proceed direct to aggregation however, all licensees in the approved market must do so.

All licensees in approved markets are required to submit implementation plans to the Minister. When approved, the implementation plan will set the timetable for the stages leading to completion of aggregation and will provide a yardstick against which each licensee's progress can be measured.

Special provision is made for avenues of providing extra services in Tasmania.

Provision is also made for identified pairs or groups of licences to be consolidated into a single licence.

Other provisions of the Bill make supporting amendments to the Act including:

- . Changes to licensing provisions to allow for sanctions against the head licence where a licensee breaches conditions of an MCS permit or fails to comply with an implementation plan;
- . Provisions to apply many provisions which affect licences to MCS permits as well;
- . Repeal of provisions relating to supplementary television licences; and
- . Changes to ownership and control provisions to prohibit a person from acquiring prescribed interests in more than one licence in a single approved market.

The sequence of amending provisions in the Bill follows the order of the provisions in the Act which are affected rather than any strict division by subject matter.

A Bill to amend the Television Licence Fees Act 1964 is to be introduced in conjunction with this Bill.

#### Financial Impact Statement

Total costs to the Commonwealth are estimated to be \$60 million, payable over the period until 1996. This includes the capital cost of upgrading of Commonwealth transmitting stations (recoverable from rentals), revenue foregone from proposed licence fee rebates and sales tax exemptions and the cost of additional resource requirements for the Department and the Australian Broadcasting Tribunal.

Expansion of services will lead to increased revenue to licensees and hence increased licence fee revenue to the Commonwealth; however, at this stage it is difficult to quantify the amounts involved.

Capital investment by regional licensees is estimated at \$184 million over the five year period 1988-1993. However, most stations are projected to be in profit over a 12 year period 1985/86 to 1997/98 and to have reached a higher level of profits in 1997/98 than in 1985/86.

## NOTES ON CLAUSES

### PART 1 - PRELIMINARY

#### Clauses 1 and 2 : Short Title and Commencement

The first two clauses provide for the short title and commencement of the legislation. The Amendment Act will come into operation on the day it receives Royal Assent.

### PART II - AMENDMENT OF BROADCASTING ACT 1942

#### Clause 3 : Principal Act

The Broadcasting Act 1942 is referred to as the Principal Act in Part II of the Bill.

#### Clause 4 : Interpretation

Several new definitions have been inserted in sub-section 4(1) of the Principal Act. The most significant of these are dealt with below in the notes on clauses where the newly defined expressions apply.

Clause 4 also inserts new sub-sections 4(7)-(11) which clarify certain references inserted by the Bill.

#### Clause 5 : Unauthorised operation of certain transmitters Prohibited

Sub-section 6A (1) of the Principal Act provides that a person shall not, without reasonable excuse, operate a radiocommunications transmitter for the purpose of the transmission to the general public of radio programs or television programs except as authorised by a licence warrant.

Clause 5 of the Bill amends section 6A of the Principal Act by adding a new sub-section (5) which provides that a reference in sub-section 6A (1) to a licence warrant includes a reference to an MCS permit warrant.

#### Clause 6 : Functions of Tribunal

Section 16 of the Principal Act deals with the powers and functions of the Tribunal. Paragraphs 16 (1) (d) and (f) and sub-section 16 (2) deal with programming requirements for licensees, including hours of transmissions and compliance with standards.

Clause 6 inserts a new sub-section (6A) which applies those provisions to MCS permits as well as licences.

### Clause 7 : Interpretation

Section 17A of the Principal Act is amended by the insertion of references to new sub-sections: 88(1B) & (1C) (revocation or suspension of a licence for breach of an Implementation Plan or conditions of an MCS permit), 94 W(4) (recommendation to impose extra conditions on an MCS permit), 94Y(2) (recommendation to revoke or suspend an MCS permit) and 94ZA(3) (approval of regular arrangements for televising under an MCS permit programs which are televised under another service provided by the licensee).

These powers thus become substantive powers of the Tribunal. The significance of this is that they can be exercised only after an inquiry under Division 3 of the Principal Act. Further, any person may apply to the Tribunal seeking the exercise of such a power.

### Clause 8 : Area Inquiries

Section 18A of the Principal Act provides for area inquiries. This allows the Tribunal to hold a single inquiry to examine general broadcasting issues in an area, which issues may be relevant to a number of inquiries on specific licensing questions.

Clause 8 of the Bill amends Section 18A of the Principal Act by adding a new sub-section to provide that a reference in the section to a licensee includes a reference to the holder of an MCS permit. This means that in an area inquiry, issues relating to MCS permits can be examined as well.

### Clause 9 : Investigation of, and Comment on, Broadcasting Practices

Section 25AA of the Principal Act provides that 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 broadcasting practices of the licence holder or any licence holder in the area concerned as the case may be.

Clause 8 inserts a new sub-section 25AA(2) which provides that a reference to a licence holder includes a reference to the holder of an MCS permit.

### Clause 10 : Application for Grant of Supplementary Radio Licences

Formal - this clause provides for changes to Section 82A of the Principal Act which have the effect of removing provisions for supplementary television licences. Existing provisions for supplementary radio licences are not affected.

### Clause 11 : Renewal of Licences

This clause in conjunction with clause 12 provides in effect for two new statutory conditions to apply to licences:

- . That the licensee will comply with any approved implementation plan applicable to the licence; and
- . That where an MCS permit is granted in conjunction with the licence, the licensee will comply with the conditions of the permit.

In the event of breach of these conditions, the sanctions available under the Act include non-renewal of the head licence (Clause 11(c)) and suspension or revocation of the head licence (Clause 12).

As compliance with implementation plans is primarily a planning matter within the Minister's responsibilities under section 125D of the Act, the new provisions require the Tribunal to consult with the Minister before taking action on the basis of a failure to comply with an implementation plan.

Clauses 11 and 12 also insert important new provisions which clarify how a licensee's compliance with the requirement to provide an adequate and comprehensive service is to be assessed when the licensee is progressively extending services into his aggregation area. Although a licensee's service area will be extended to reflect the specified aggregation area as soon as aggregation commences, it may be some time before the licensee actually extends the coverage of his signals to serve the extended area adequately. The intention is that the licensee should not be expected to extend signal coverage any sooner than the stages set out in the applicable implementation plan. Provision is therefore included to require that when the Tribunal is assessing whether a licensee is providing an adequate and comprehensive service, regard is to be had to the applicable implementation plan.

Paragraph 11(a) is a formal provision, consequential upon 11(c),

Paragraph 11(b) inserts a new sub-section 86 (11BA) which provides that in relation to renewal of a licence, the Tribunal shall have regard to any applicable implementation plan when assessing whether the licensee has complied with the undertaking under sub-section 83(5) or 86(10). (See general notes on Clause 11 above).

Paragraph 11(c) inserts new sub-sections 86(11E) to (11H). Sub-section 86(11E) and (11F) provide that renewal of a licence may be refused where the licensee has failed to comply with the applicable implementation plan, if any, (11E) or has breached obligations under an MCS permit (11F).

New sub-section 86(11G) provides for the Tribunal to seek representations from the Minister before proceeding under sub-section 86(11E) and to have regard to such representations. Under new sub-section 86(11H) the Ministers representations may include advice as to any proposed variation of the implementation plan.

#### Clause 12 : Suspension and Revocation of Licences

The general notes on Clause 11 also apply to Clause 12.

Clause 12 inserts new sub-sections 88(1A), (1B), (1C), (1D), and (1E) which are identical to new sub-sections 86(11BA), (11E), (11F), (11G) and (11H) respectively, except that provisions in section 88 deal with suspension or revocation rather than non-renewal of licences.

#### Clause 13 : Limitation of Interests

Clause 13 inserts new sub-sections 92(1A) and 92(1B). New sub-section 92(1A) prohibits the holding of a prescribed interest in more than one commercial television licence in the same approved market. New sub-section 92(1B) prohibits the holding of a prescribed interest in more than one commercial television licence in Tasmania.

In broad terms, a prescribed interest is acquired by:

- (a) holding the licence;
- (b) holding more than a 5% direct and/or indirect shareholding, voting or financial interest in the licensee company;
- (c) by otherwise being in a position to exercise control of activities of the licensee company.

The broad effect of sub-clause 13(2) is that the proposed new sub-sections 92(1A) and 92(1B) do not apply to a prescribed interest held prior to the commencement date.

The protection is subject to the following requirements:

- (a) The holding of the prescribed interest did not constitute a contravention of section 92 as it existed prior to the commencement date (principally the "two station rule"); or
- (b) action is taken after the commencement date (for example the disposition of interests or the termination of arrangements) so that there would no longer be a contravention of section 92 as it existed prior to the commencement date.



Sub-clause 13(2)(c) provides a further exemption for further interests which are acquired in a licensee company after the commencement where these interests are acquired merely as a consequence of the allotment of further shares or debentures to all of a class of shareholders.

Sub-clause 13(3) provides that the protection of sub-clause 13(2) does not apply to any person who acquires a further interest in a licensee company after the commencement date (unless it is an interest exempted under sub-clause 13(2)(c)). Hence a person who would otherwise gain protection under sub-clause 13(2) will lose that protection if he acquires further interests in the company.

Sub-clause 13(4) provides that the provisions outlined in sub-clause 13(3) will apply even where the acquisition of a new interest is accompanied or preceded by disposal of some existing interest.

Sub-clause 13(5) provides that the protection provided by sub-clause 13(2) is not prejudiced by conversion of a licence from old system to new system.

#### Clause 14 : Meaning of Control of a Licence

Clause 14 inserts a new sub-section 92A(3) which makes it clear that a person will be considered to be in a position to control a commercial television licence if he is in a position to control the operations of a licensee in providing an MCS service.

#### Clause 15 : Directions to Protect Licensee

Clause 15 inserts a new sub-section 92M(4) which makes it clear that the Tribunal's power to intervene in share or loan transactions which require approval under section 92FAA and give Directions to protect the licensee extend to Directions to prevent those transactions which would have an adverse effect on the ability of the licensee company to comply with the conditions of an MCS permit, or on the operations of the licensee under an MCS permit.

#### Clause 16

Clause 16 inserts in the Principal Act a new part : PART III C - EQUALISATION OF REGIONAL COMMERCIAL TELEVISION. The new provisions are as follows.

#### Division 1 - Preliminary

##### Interpretation

New sub-section 93(1) provides a number of definitions for expressions used in the part. New sub-sections 93(2) and (3) are technical amendments which reflect the approach in the Broadcasting and Television Amendment Act 1985 ("the 1985 Act")

that a new system commercial licence will replace not only the corresponding old system commercial licence but also any related translator licences.

### Objects of Part

New section 94 sets out the objects of the part, being in broad terms:

- the provision of 3 commercial television services in regional areas as soon as practicable.
- a move to larger and commercially more viable markets in regional areas, and
- the provision of commercial television services in non-metropolitan areas on a competitive basis.

The objects provide a guide to the exercise of administrative discretions under the new part. This is strengthened by the new sub-section 125 B (3) inserted by clause 23.

### Minister may make guidelines for implementation plans

New section 94A empowers the Minister to make guidelines relating to the form and content of the implementation plans which are to be submitted by licencees under Division 4 of the new part (New section 94L, which sets out the basic requirements for implementation plans, provides that they must comply with any guidelines made by the Minister under section 94A). Section 94A provides that guidelines have to be published in the Gazette.

### Division 2 - Indicative Plan

#### Preparation of Indicative Plan

New section 94B requires the Minister to prepare the Indicative Plan and sets out the matters which are to be specified in the Indicative Plan. These are as follows:-

- a) the licences which are to be regional licences for the purposes of the new Part - that is, the licences to which the equalisation processes can apply, whether immediately or at some later date;
- b) the areas that are to be approved markets;
- c) the aggregation area for each licence in an approved market;
- d) the licences which can be consolidated under the process outlined in the new Division 6.

- e) the aggregation area for any consolidated licence that should be granted in substitution for licences in approved markets.
- f) the approved markets (if any) where an additional licence is to be called to allow for three competitive services.

The new provisions set a deadline of 31 December 1996 for aggregation in the approved markets specified in the initial Indicative Plan (see the definition of 'aggregation completion date' inserted by Clause 4).

#### Approved Markets

New section 94C provides in sub-section 94C(1) that each approved market will be made up of a combination of the service areas of two or more existing regional licences.

Sub section 94C(2) sets out a list indicating criteria to which the Minister is to have regard in determining approved markets. The list consists of:

- a) the objects of the new Part III C (see new section 94);
- b) the desirability of markets consisting of service areas as close together as practicable (rather than widely scattered across regional Australia);
- c) the desirability of grouping service areas into approved markets so as to reflect as far as practicable community of interests (that is, broadly speaking, similar requirements in terms of programming);
- d) the desirability of each market being able to support three competitive commercial television services as soon as practicable;
- e) the desirability of each approved market falling within a single state;
- f) the desirability of each approved market falling within a single time zone; and
- g) such other matters as the Minister considers appropriate.

Sub-section 94C(3) provides that a reference in section 94(C) to a service area is a reference to that service area as it exists from time to time. This provision reflects the fact that 'housekeeping' changes to the boundaries of service areas are made from time to time to reflect factors such as quality of reception or the growth of a new community. By virtue of sub-section 94C(3) any such changes to a service area will automatically flow through to the Indicative Plan.

### Aggregation areas

New section 94D provides that the aggregation area specified for a licence in an approved market may be the whole or part of the approved market. Sub section 94C(2) provides that the aggregation areas must be specified so that each part of the approved market will end up with three competitive services. Sub-section 94D(3) deals with aggregation areas of licences identified as eligible for consolidation (see notes on Division 6).

### Publication of Indicative Plan

New section 94E provides that the Indicative Plan is to be published in the Gazette and comes into effect on the day it is published.

### Variation of the Indicative Plan

New section 94F deals with variation of the Indicative Plan. Sub-section 94F(1) confers power to vary the Indicative Plan by notice in the Gazette. The variation takes effect on the date of publication or such later date as is specified (sub-section 94F(2)). Under sub-section 94F(6) the proposed variation must be published in the Gazette for comment by interested person before any variation is made.

Variation of the Indicative Plan is to serve two purposes:-

- a) to alter arrangements in a pre-existing Indicative Plan. Under sub-section 94F(3) the Minister's powers in this respect are severely limited in that he cannot
  - alter the area of an approved market that has been specified; or
  - alter the aggregation area that has been specified for a licence in an approved market.
- b) to provide for additional approved markets so that more regional licensees are brought under the equalisation processes. Sub-section 94F(4) provides for the identification of new approved markets and for the Minister to make the same sort of specifications of aggregation areas, licences eligible for consolidation etc as were made under the initial Indicative Plan for approved markets. Sub-section 94F(5) provides that the Minister shall set a new deadline for aggregation in each new approved market, which deadline is not to be earlier than 31 December 1996, the deadline for the approved markets identified in the initial Indicative Plan.

Division 3 - Election by licensees for immediate aggregation or aggregation via MCS

### Election by licensees in approved markets

Where a licence is within an approved market specified in the initial Indicative Plan (sub-section 94G(1)) or a variation of the Indicative Plan (sub-section 94G(2)), section 94G provides that the licensee may lodge with the Minister notice of whether the licensee would prefer to proceed straight to aggregation or to provide MCS as an interim alternative before proceeding to aggregation.

Sub-section 94G(3) provides for exceptions in the case of

- a) licensees in an approved market which includes the capital city of a state; or
- b) licensees in an approved market where applications for a new licence are to be called.

These approved markets are to proceed immediately to aggregation.

Notice of a licensee's election is to be given within 28 days of publication of the Indicative Plan (or publication of the variation of the Indicative Plan which specifies the approved market) and is to be in accordance with a form approved by the Minister (sub-section 94G(5)).

Under sub-section 94G(4), a failure to lodge an election is treated as an election to proceed directly to aggregation.

### Effect of Elections on approved market

New section 94H provides that an approved market will proceed directly to aggregation unless all licensees in the approved market lodge notices electing to provide MCS as an interim alternative.

### Minister to give notice of effect of elections

New section 94J requires the Minister to notify licensees in the approved market of the result of the election process and request lodgement of an implementation plan within 3 months.

## Division 4 - Implementation Plans

### Submission of implementation plans

New section 94K sets out the classes of licensees who are required to lodge implementation plans:

- . licensees who are given notice under 94J of the outcome of the election process under sub section 94K(1);
- . licensees in an approved market which is to proceed straight to aggregation without an election process (sub sections 94K(2) and (3));

. the licensee of a consolidated licence issued in substitution for licences in an approved market.

. the licensee of a new independent licence granted in an approved market.

A basic period of 3 months is allowed for lodgement of implementation plans from the date at which it is made clear whether the approved market is proceeding direct to aggregation or initially to MCS. In the case of consolidation of a license, a period of 28 days only is allowed on the basis that Implementation Plans would already have been required in relation to each of the licences consolidated.

Sub-section 94K(6) also provides that a regional licensee who is outside the approved market but who wishes to provide an additional service under an MCS permit may submit an implementation plan. See notes on new Section 94P.

#### Implementation Plans

New section 94L sets out the basic requirements for Implementation Plans. Sub-section 94L(1) provides that an implementation plan will set out the proposed stages and timetable for the provision of additional services and/or the extension of the coverage of existing services under aggregation or under MCS and aggregation.

Sub-section 94L(2) sets out the requirements of implementation plans lodged by licensees outside approved markets.

Sub-section 94L(3) provides that MCS services cannot continue beyond the aggregation completion date for the approved market (ie 31 December 1996 or a later date set under sub-section 94F(5)).

Sub section 94L(4) applies to each licensee identified as eligible for consolidation and requires that the implementation plan for each such licence give an indication of the timetable for any consolidation and for the expansion of services after consolidation.

Sub-section 94L(5) requires that implementation plans be in writing and comply with any guidelines made by the Minister (see notes on new section 94A).

#### Criteria for approval of implementation plans

New section 94M sets criteria for the Minister in relation to approval of implementation plans.

The criteria include:

- . the objects of the new Part IIIC;
- . technical aspects of the proposals set out in the Implementation Plan;
- . any guidelines made under new section 94A; and

- . the need to co-ordinate the activities of all licensees in an approved market.  
(An example would be that one licensee phases out MCS transmissions in a service area as another licensee extends transmissions into that service area.

Sub section 94M(2) provides a special requirement for the implementation plans of licensees who are identified as eligible for consolidation but do not consolidate (see notes on new Division 6).

New section 94N provides processes to be followed after the lodgement of an implementation plan by a licensee in an approved market.

Sub sections 94N(1) and (2) provide that if an initial Implementation Plan is not approved, the Minister shall require the licensee to submit a further implementation plan and that the licensee shall comply.

Sub sections 94N(3) and (4) provide that where a second implementation plan is refused, the Minister has three options:

- . to direct the Tribunal to inquire into specified matters relating to the licensee's implementation plan;
- . to direct the lodgement of another implementation plan in accordance with specified principles and requirements; and/or
- . to determine the terms of the implementation plan that is to apply to the licensee.

Under sub-section 94N(5) the same options are available to the Minister where a licensee fails to submit an implementation plan when required to do so.

Sub-sections 94N(7) and 94N(8) deal with Tribunal inquiries directed by the Minister under this section. Sub-section 94N(7) provides that the Minister may set a time limit on the Tribunal's inquiry and sub-section 94N(8) provides that the Minister shall have regard to the Tribunal's recommendations when exercising his powers in relation to the licensee's implementation plan.

Sub-section 94N(9) requires the Minister to give notice of the terms of an approved implementation plan to all licensees in the approved market and to the Tribunal.

#### Ministers powers in relation to implementation plans of licensees not in approved markets

New Section 94P deals with implementation plans lodged by regional licensees outside approved markets, providing simply that the Minister may approve or refuse to approve such an implementation plan. Note that under new section 94V(2) the grant of an MCS permit must be in accordance with an

implementation plan, so the licensee will have to have an implementation plan approved before exercising the option to provide additional services by MCS outside an approved market. Under sub-section 94P(2) a copy of the approved implementation plan is to be forwarded to the Tribunal.

#### Variation of implementation plan

New section 94Q deals with variation of implementation plans. The power to vary implementation plans is conferred by sub-section 94Q(1) and sub-section 94Q(2) further provides that it may be exercised on application by the licensee or at the Ministers own initiative.

Sub-section 94Q(3) (5) and (6) provide significant constraints on the power to vary implementation plans. Sub-section 94Q(3) requires the consent of all licensees in an approved market before a change is made to the provisions of an implementation plan setting the duration of an MCS service. Sub-sections 94Q(5) and (6) provide a process for consulting other licensees on all other variations and require the Minister to have regard to representations made on the proposed variations by those licensees.

Sub section 94Q(7) provides for notice of a variation to the Tribunal and, where applicable, to other licensees in the approved market.

Sub-section 94Q(8) covers the situation where a licensee outside an approved market elects to provide MCS services and subsequently the licence is specified as part of a new approved market. By virtue of this sub-section the existing implementation plan will cease to have effect (under sub-section 94K(3) a fresh implementation must be lodged), but the MCS permit continues in force. Hence the additional service is preserved at least until decisions are made as to if and when the new approved market is proceeding to aggregation.

#### Effect of transfer of licence on implementation plan

Sub-sections 94R(1) and (2) require the Minister, upon transfer of a licence, to determine the terms of a new implementation plan which substantially reflect the terms of the previous approved implementation plan.

Sub-section 94R(3) provides for notice of the new terms to be given to the Tribunal and if applicable other licensees in the approved market.

#### Division 5 - Aggregation and Multi-channel services

New section 94S provides for the Minister to extend service areas for the purposes of aggregation.

Sub-section 94S(2) empowers the Minister to extend a licence's service area to cover its specified aggregation area when the implementation plan provides for the move to aggregation. Under



sub-section 94(4) the power may be exercised on application by the licensee or on the Ministers own motion. The variation is not subject to the normal processes for varying service areas set out in section 85(new sub-section 94S(5)).

Sub section 94S(3) provides the power to make necessary changes to technical conditions as the coverage of services is extended in the new service area.

Sub-section 94S(1) provides for variation of service areas in relation to licensees eligible for consolidation (see notes on new Division 6).

### MCS Permits

New section 94T sets the basic character of MCS permits. Under sub-section 94T (1) an MCS permit authorises a licensee to provide an additional service. Sub-section 94T(2) provides that an MCS permit is to set out a service area for the additional service and identify the head licence to which it relates. Under sub-section 94T(3) the term of an MCS permit is set as 12 months, but sub-section 94T(4) provides that a permit does not lapse after the 12-month period if an application for renewal has been lodged but not yet decided.

### Relationship of MCS permit to head licence

New section 94U provides that an MCS permit is dependent on the head licence. That is to say, the MCS permit can only be in force while the head licence is in force (paragraph 94 U(1)(a)) and an MCS permit is automatically transferred on transfer of the head licence (paragraph 94U(1)(b)).

Under sub-section 94U(2) the transferee of an MCS permit takes on the same obligations to provide an adequate and comprehensive service and encourage the use of Australian programs and resources. (see notes of new sub-section 94V(5))

Section 94U is complemented by section 94Z which provides that apart from transfer of the head licence under section 94U, an MCS permit cannot be transferred, nor can another person be admitted to participate in the benefits of the permit.

### Grant of MCS permit

New section 94V provides for the grant of MCS permits.

MCS permits are granted on application by the licensee (sub-section 94V(1)) and can only be granted where the grant accords with the licensee's approved implementation plan (paragraph 94V(2)(b)). Sub section 94V (4) provides that no more than two MCS permits can be granted for any head licence.

Sub-section 94V(5) requires the licensee to give, before the grant of an MCS permit, an undertaking reflecting that given by licensees under section 83(5) of the Principal Act. The undertaking required is to:-

- . comply with the conditions of the permit;
- . provide an adequate and comprehensive service under the permit; and
- . encourage the provision of Australian programs and use of Australian creative resources in connection with programs.

Sub section 94V(3) provides for the carryover of existing MCS services where licensees consolidate under new Division 6 (see notes on new Division 6).

#### Conditions applicable to MCS permit

New section 94W provides for the conditions applicable to MCS permits. Sub-section 94W(1) requires that the permit holder comply with the service area specification and with his implementation plan as well as such conditions specified in the permit. Sub-section 94W(2) provides for variation and revocation of conditions by the Minister while the permit is in force. Sub-section 94W(3) provides that the Minister's powers in relation to conditions must be exercised in a manner consistent with the implementation plan.

Sub-section 94W(4) provides a power for the Tribunal to recommend conditions for inclusion in a permit. This allows the Tribunal to inject programming controls on permit holders if necessary. The Tribunal's power to recommend conditions is a substantive power (see notes on clause 7).

#### Renewal of MCS permit

New section 94X provides for the renewal of MCS permits. Sub sections 94X(1) (2) and (3) deal with formalities of renewals. Sub section 94X(4) prohibits the Minister from renewing a permit where renewal would be inconsistent with the implementation plan. Sub-section 94X(5) sets out the grounds on which renewal may be refused, being:

- . because the licensee has failed to renew the undertaking under new section 94V(5);
- . because renewal would be contrary to the Act; and
- . because it is in the public interest to refuse to renew the licence by reason of a breach of conditions of the permit.

### Suspension and revocation of MCS permit

New section 94Y deals with suspension and revocation of MCS permits. Sub section 94Y(1) gives the Minister a broader power to suspend or revoke permits, reflecting the transient nature of MCS permit as an interim step only in achievement of the objects of the new Part IIIC.

Under sub-section 94Y(2) the Tribunal is also empowered to examine suspension or revocation of an MCS permit. Where the Tribunal recommends that a permit be revoked or suspended because of breach of the implementation plan, the Minister makes the final decision. This reflects the underlying principle of the Act that planning matters, as embodied in an implementation plan, are primarily the Ministers responsibility. Where the Tribunal recommends on other grounds that a permit be revoked (eg. breach of programming requirements) the recommendation is binding on the Minister. (sub-section 94Y(3))

A recommendation under sub-section 94Y(2) is a substantive power of the Tribunal (see notes on clause 7). A binding recommendation (ie one to which subsection 94Y(3) applies) is subject to review by the Administrative Appeals Tribunal (AAT) under clause 17.

### Separate transfer of permit not permitted

New section 94Z prohibits transfer of an MCS permit except where the permit is transferred automatically with transfer of the head licence under new section 94U. Another person cannot be admitted to participate in the benefits or exercise the powers of an MCS permit.

### Broadcasting requirements

New section 94ZA deals with programming requirements in relation to MCS permits. Under sub-section 94ZA(1) permit holders are subject to the same requirements under Part IV of the Act as licence holders. The one exception is that the date for commencement of transmissions is determined by the Minister under new sub-section 94ZA(2) rather than the Tribunal under section 96 of the Principal Act.

Under sub-section 94ZA(3) a licensee must obtain the Tribunal's approval before regularly televising programs under the permit which are also televised on the head licence or the licensee's other MCS permit. This is a substantive power of the Tribunal; see notes on clause 7. Sub-section 94ZA(3) does not apply to advertisements.

### Permit warrants

New Section 94ZB provides for a permit warrant to be issued by the Minister in conjunction with the grant of an MCS permit. The warrant will provide authorisation and conditions for technical aspects of the transmissions to be made under the permit. The new provision follows the scheme of section 89D of the Principal Act, which deals with licence warrants.

### Division 6 - Consolidation of licences

#### Consolidation of licences

New section 94ZC provides the mechanism for consolidating licenses which have been identified as eligible for consolidation. Where licences have been identified as eligible for consolidation in the Indicative Plan and application is made for consolidation, the Minister is empowered to direct the Tribunal to issue the new consolidated licence. Sub-section 94ZC(1) is the empowering provision where the licences to be consolidated are held by the same company and 94ZC(2) where the licences are held by different companies. Where more than one licensee is involved, each must apply before consolidation proceeds. Sub-section 94ZC(3) deals with the formalities of an application for consolidation.

The Tribunal is required under sub-section 94ZC(9) to grant a consolidated licence without an inquiry. Sub-section 94ZC(10) provides that where a new licensee company is to hold the consolidated licence, the Tribunal must first be satisfied that the new licensee is a suitable person to hold the licence.

Sub-sections 94ZC(5) and (6) provide that the service area and aggregation area for the consolidated licence reflect the combined service areas and aggregation areas respectively of the pre-existing licences.

#### Effect of consolidation of licences on implementation plans

Where licences in an approved market are consolidated, new section 94ZD provides for lodgement of a fresh implementation plan in respect of the new consolidated licence.

Special provision is made in new sub-section 94V(3) to provide for carryover of MCS services which are operating when a new consolidated licence is issued. The sub-section empowers the Minister to immediately grant corresponding MCS permits to the new licensee in advance of consideration of a new implementation plan.

The scheme of allowing for consolidation of certain licences without compelling it adds a number of complications to the processes provided for aggregation.

The provisions cover both the process if licensees elect to consolidate and the process if they do not. In relation to the latter, the aim is to identify the area into which the licensees of the group will between them provide one extra service but to leave to those licensees the flexibility to decide which of them extends coverage into each part of that area.

The specific new provisions dealing with the process for licensees who may consolidate but do not are as follows:

94D(3) - the licensees in a group are allocated aggregation areas which do not include the existing service areas of other licences in the group. The aggregation areas may overlap substantially.

94M(2) - the Minister when considering proposed implementation plans lodged by members of the group is required to refuse implementation plans which involve 2 licensees of the group extending their services into the same area.

94S(1) empowers the Minister to vary the service area to reflect only part of the aggregation area. (In all other cases the service area is varied to reflect the whole aggregation area). The new service areas will reflect the proposed extensions arrived at under the process in Section 94M(2).

#### Division 7 - Grant of Additional Licences in Approved Markets

New section 94ZE provides for special provisions to apply to the grant of an additional licence where that is required under the Indicative Plan to make up the three services in an approved market. In such cases, the Tribunal is to grant the licence without addressing whether the grant of the licence is appropriate in the circumstances (paragraph 83(6)(d) of the Principal Act) and whether the grant would prejudice the viability of existing services sub-paragraph (83(6)(c)(iii)).

#### Division 8 - Special provisions in relation to Tasmania

##### Additional licence in Tasmania

New section 94ZF provides that the Minister may proceed to call applications for an additional licence in Tasmania and the Tribunal's inquiry into such a grant is limited as described under new section 94ZE.

##### Consolidation of existing licences in Tasmania

New Section 94ZG provides that the existing licences in Tasmania may be consolidated in accordance with the process set out in new section 94ZC.

### Aggregation of service areas of existing licences in Tasmania

New section 94ZH empowers the Minister to direct the Tribunal to extend the service area of a licence in Tasmania and to make changes to the licence warrant to reflect the extended service area. This would allow the Minister, in his discretion, to institute a limited form of aggregation with two licensees providing two competitive services across an expanded service area.

### Division 9 - Miscellaneous

#### Minister may require information from licensees

New section 94ZJ empowers the Minister to require a licensee to produce information relating to specific aspects of the equalisation process. Sub-section 94ZJ(1) sets out the specific purposes (relating to the processing of implementation plans, MCS permits or consolidation of licences) for which the power may be used. Sub-section 94ZJ(2) requires licensees to comply. Sub-section 94ZJ(3) requires the Minister to ensure that information gathered under the section is not released so as to prejudice the interests of the licensee.

#### Minister to notify Tribunal

New section 94ZK requires the Minister to notify the Tribunal of certain decisions he makes in relation to MCS permits. This reflects the position that the Tribunal also has important functions in relation to MCS permits and to the head licences.

#### No compensation

New section 94ZL provides that no compensation is payable to a licensee for suspension or revocation of an MCS permit. This provision reflects sub-section 88(3) in the provisions of the Principal Act dealing with suspension and revocation of licences. It is not intended to give rise to any inference that other decisions under the Act could give rise to a right to compensation.

#### Delegation of Ministers powers

New section 94ZM provides for delegation of certain powers of the Minister in relation to the approval or refusal of implementation plans and variation of implementation plans. The Minister also retains the power to exercise these powers and can give directions to his delegate. Note that under section 125C of the Principal Act, notices to be given by the Minister may be given by an authorised officer.

Clause 17 : Review of Decisions

The following decisions under provisions in the new Part III C are included in section 119A of the Principal Act as decisions which can be taken on appeal to the Administrative Appeals Tribunal (AAT).

- recommendations under 94Y(2) which are recommendations to which 94Y(3) applies. (These are those recommendations for revocation or suspension of an MCS permit which are binding on the Minister. Recommendations based on breach of an implementation plan, a planning matter, are not binding and are not to be made subject to AAT review).

Other relevant decisions which will be reviewable by the AAT under the existing section 119A are as follows:

- . refusal to renew a licence for failure to comply with the implementation plan or breach of MCS permit obligations (section 86).
- . suspension or revocation of a licence on those grounds (section 88).
- . a decision relating to an MCS permit holder under 119(1).

The new sub-section 119A(2A) inserted by paragraph 17(b) reflects the approach in existing section 119A(2).

Clause 18 : Interference with Broadcasting of Programs etc

Clause 18 inserts a new sub-section 121(2) which extends the same protection from interference with broadcasting operations or facilities to MCS permit holders as licensees.

Clause 19 : Protection of Certain Licensees Against Actions

Clause 19 substitutes a new section 112 which differs from the old section only in that it treats the holder of an MCS permit like a licensee. (The section provides the holder of a rebroadcasting or retransmission licence with immunity from suit in some circumstances).

Clause 20 : Licensee to keep Accounts

Under clause 20, a licensee who has been granted an MCS permit or permits is required to keep accounts reflecting a consolidated picture of the activities under the licence and the permit(s). Separate accounts are not envisaged for each service. However, pursuant to existing section 123(4)(b) of the Act the Tribunal would be able to request information about the activities under each service separately if such information was required.

Clause 20 also adds to paragraphs 123 (4)(b) a reference to the Radio Licence Fees Act 1964 and the Television Licence Fees Act 1964. This makes it clear that information can be sought under 123(4)(b) where that information would be relevant to the collection of fees under those Acts.

Clause 21 : Indemnification of Minister

Clause 22 : Lights on Masts

These clauses simply amend existing provisions so that MCS permits and permit holders are treated as if licences and licensees respectively.

Clause 23 : Additional Functions of Minister

Clause 23 adds a new function to the functions of the Minister as set out in section 125D. The Minister is made responsible for giving effect to the objects of new Part IIIC, in particular in relation to enforcing implementation plans. See notes on new Section 94, clause 16.

Clause 24 : Permits for Test Transmissions

Clause 25 : Licensees Subject to Act

Clause 26 : Control of Broadcasting and Television in Case of Emergency

Clause 27 : Inspection

Clause 28 : Regulations

Clauses 24, 25, 26, 27 and 28 amend sections 126, 129, 131, 131A and 134 of the Act respectively. The amendments made are purely to apply existing provisions affecting licences and licensees to MCS permits and permit holders as well. These provisions and other similar provisions noted in earlier clause notes are necessary because an MCS permit is not strictly a licence in the scheme of the Act even though it is in most respects like a short-term licence.

Clause 29 : Minor Amendments of Principal Act

Clause 29 provides for a number of minor amendments set out in the Schedule. The amendments all deal with the deletion of provisions relating to supplementary television licences, or the changing of general references to supplementary licences so that they refer to supplementary radio licences only.



PART 3 - AMENDMENT OF BROADCASTING AND TELEVISION AMENDMENT ACT  
1985 ("THE 1985 ACT")

Clause 30 : Principal Act

Formal

Clause 31 : Continued Application of Previous Act

Clause 31 inserts a new paragraph 98(c) in the 1985 Act. The new paragraph refers only to supplementary radio licences, reflecting the repeal of provisions relating to supplementary television licences.

Clause 32 : Conversion of Old System Licences where no  
substantial change to Service Area or Conditions

Clause 32 inserts a new section 99A in the 1985 Act. The new section contains a streamlined process for converting old system licences (station based) to new system licences (service based). The new process provides a more direct process of conversion than the existing process in section 99 of the 1985 Act, in that consultation processes are avoided. However, the new process is available only where the new licence is the same as the old licence except for the formal changes necessary to reflect conversion from old to new system.

The new process will allow expedited conversion of commercial television licences for equalisation purposes and may be applied to all other categories of licence as well.

New sub-section 99A(1) provides for the Tribunal to issue the new system licence in substitution for the old system licence on direction from the Minister.

Sub-section 99A(2) provides that a direction shall not be given under sub-section 99A(1) unless the Minister is satisfied that the obligations of the licensee and the service area will not be changed substantially.

Sub-sections 99A(3)(4) and (5) deal with formalities of conversion.

Under sub-section 99A(6) and (7) the Minister is to issue a licence warrant (which deals with technical aspects of transmissions) for the new licence.

Sub-sections 99A(8), (9) and (10) provide that for the purposes of:

- the term of the licence;
- the fees payable under the Licence Fees Acts; and
- the application of an implementation plan;

the new licence is treated as it was in effect a continuation of the old licence.

New sub-section 99(11) - formal.

PART 4 - MISCELLANEOUS

Clause 33 : Amendment of the Broadcasting and Television Act 1942 as in force immediately before 1 November 1986 for the purpose of its continued application to old system licences

Under section 98 of the 1985 Act, the Broadcasting and Television Act 1942 as in force before 1 January 1986 (the previous Act) continues to have application in relation to old licences until they are converted. Clause 33 amends section 106 of the previous Act, which corresponds to section 123 of the Principal Act, so that the change noted in clause 20(b) applies also to the continued application of the previous Act.









