

1987

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

BROADCASTING AMENDMENT BILL (No.2) 1987

EXPLANATORY MEMORANDUM

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

OUTLINE

The Broadcasting Amendment Bill (No.2) 1987 ("the Bill") is to make amendments to the Broadcasting Act 1942 to improve arrangements relating to the collection of licence fees from companies licensed to broadcast commercial (including remote) radio or television services. The amendments complement amendments in the Radio Licence Fees Amendment Bill 1987, the Television Licences Fees Amendment Bill 1987 (introduced as the Television Licence Fees Amendment Bill 1986 and passed by the House of Representatives in the Budget sittings 1986) and the Television Licence Fees Amendment Bill (No.2) 1987.

The Radio Licence Fees Act 1964 and Television Licence Fees Act 1964 provide for fees to be payable by companies licensed under the Broadcasting Act 1942 to broadcast commercial radio or television services. Provisions in the Broadcasting Act 1942 ("the Principal Act") support the collection of these fees. In particular, it is provided that failure to pay the fees is a ground for suspending, revoking or refusing to renew a licence.

The Bill provides for the following changes:

- provision is made for an additional penalty fee, computed at the rate of 20% p.a., to be imposed for late payment. The additional penalty can be remitted on broad grounds relating to fairness and reasonableness.
- the provisions relating to suspension, revocation and non-renewal of licences are changed so that the basis for action is "unreasonable or repeated delay" in paying fees rather than a "failure to pay" fees.

Financial Impact Statement

The amendments will provide for a small amount of additional revenue from penalty fees for late payment and will assist in ensuring collection of the full revenue due to the Commonwealth.

Complementary amendments in the Television Licence Fees Amendment Bill 1987 and Radio Licence Fees Amendment Bill related to defining "gross earnings" will result in a small loss in revenue arising from the narrower definition of assessable earnings (a few percent only).

NOTES ON CLAUSES

Clause 1 - Short Title, etc

Formal

Clause 2 - Commencement

Clause 2 provides that the provisions are to come into operation on a date fixed by Proclamation.

Clause 3 - Renewal of Licences

Clause 3 amends section 86 of the Principal Act which deals with renewal of licences. In relation to a licensee's obligation to pay fees, the amendment substitutes "unreasonably or repeatedly delayed paying" for "failed to pay" as a ground for non-renewal of the licence.

Clause 4 - Suspension and Revocation of Licences

Clause 4 amends section 88 of the Principal Act which deals with suspension or revocation of licences. In relation to a licensee's obligation to pay fees, the amendment substitutes "unreasonably or repeatedly delayed paying" for "failed to pay" as a ground for suspension or revocation of the licence.

Clause 5 - Penalty for Unpaid Licence Fees

Clause 5 inserts a new section 123 A in the Principal Act.

Sub-section 123 A(1) provides for the imposition of a penalty fee at the rate of 20% p.a. on overdue fees. The penalty provisions apply only where the fee becomes overdue by two months, but in those circumstances, the penalty fee is calculated from the due date.

Under sub-sections 123 A(5) and (6) special provision is made to set the due date for the purposes of the penalty fees.

Existing section 123 requires each licensee to provide (to the Australian Broadcasting Tribunal) audited accounts and a statutory declaration relating to gross earnings. That section allows six months from the end of the accounting period for the preparation of the accounts and documentation.

Consistent with that provision, the proposed sub-section 123 A(6) provides that payment of a fee in respect of an accounting period is not treated as due for the purposes of the penalty fee provisions until the expiry of the 6-month period provided for finalising the accounts and documentation.

Under sub-section 123 A(5) if the licence fee would normally only become due after the expiry of the 6-month period for finalising accounts documents, the normal due date is used.

Sub-section 123 A(2) provides that an authorised person (ie. the Minister or an officer authorised by him) may remit the penalty fee. The grounds for remission, which reflect those for remission of additional tax under section 207(1A) of the Income Tax Assessment Act 1936 are based on factors which might be broadly restated as:

- . whether the delay was the fault of the licensee,
- . whether the licensee has sought to minimise the delay,
- . whether it would be fair and reasonable to remit the fee in the circumstances.

Sub-sections 123 A(3) and (4) ensure that the additional penalty fee does not duplicate interest on a judgement debt for the overdue fee, but that otherwise the penalty fee provisions do not affect the right to take legal action for recovery of the fee.

Clause 6 - Amendments of the Broadcasting and Television Act 1942 in its continued application to old system licences.

Clause 6 is a consequential provision to ensure that the amendments outlined above apply equally to broadcasting and television station licences which have not yet been converted to the new service-based licensing system under the Broadcasting and Television Amendment Act 1985. By virtue of section 98 of the Broadcasting and Television Amendment Act 1985, the Broadcasting and Television Act 1942 (as it was before 1 January 1986) has continued application to such old system licences.

Clause 7 - Application

Clause 7 provides that the amendments in the Bill will apply to the assessment of fees at licence anniversaries occurring on or after the commencement of these provisions.