

1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

BROADCASTING AND TELEVISION AMENDMENT BILL 1985

EXPLANATORY MEMORANDUM

(Circulated by the authority of the

Minister for Communications,

The Hon. Michael Duffy MP)

OUTLINE

General

1. The Broadcasting and Television Amendment Bill 1985 (the Bill) amends the Broadcasting and Television Act 1942 (the Principal Act). The Bill has four main purposes:

- to convert the Act from "station based" to "service-based" licensing arrangements;
- to provide for the licensing of commercial radio and television services transmitted to remote areas by the Australian Satellite (AUSSAT);
- to provide uniform procedures for the conduct of Australian Broadcasting Tribunal (Tribunal) inquiries, as well as related amendments; and
- to provide for certain minor amendments.

2. The amendments contained in this Bill would not greatly alter either the costs or revenues of the Commonwealth. The Tribunal would have to meet additional costs in establishing new inquiry procedures and in complying with the new "public access" requirements. However, in the longer term, it would be able to use its limited resources in a more efficient and effective manner. The "service-based" amendments would obviate the need to licence translator stations although again the reduced workload for the Department and the Tribunal is difficult to quantify. There is expected to be an increase in Commonwealth revenue arising from the remote radio and television licensing provisions through consequential amendments of the Licence Fees Acts. However, it is not possible to provide a realistic estimate of the extra revenue which may be obtained as the future revenue of remote radio and television services, which would determine the amount of fees payable, is unknown. The minor amendments in this Bill would not result in any significant costs, revenue or savings for the Commonwealth.

3. Service-based Amendments: The Bill provides for extensive amendments of the Principal Act to incorporate the "service-based" concept and associated terminology. The Act is presently based upon the licensing of different classes of "stations" defined by their technical characteristics; eg main transmitting stations and translator (re-broadcasting) stations. As a consequence, separate licences are required for a licensee to establish translator stations within the service area of the main transmitting station licence.

4. Under the "service-based" licensing arrangements proposed by this Bill licensees would be authorised to provide a radio or television service within defined service areas. The transmitting facilities needed to provide adequate reception within the service area of the licence would be largely irrelevant from the licensing viewpoint. Broadcasting transmitters would be authorised by the Minister under a related licence warrant.

5. In summary, application of the "service-based" concept involves the following key amendments:

- replacement of existing "station" licences with licence categories relating to the nature of the service provided - eg "commercial radio licence" would be substituted for "commercial broadcasting station licence";
- repeal of translator and television repeater station provisions;
- provision for technical operating conditions of broadcasting transmitters associated with a licence to be incorporated in a related licence warrant;
- consequential amendment of public interest licensing criteria to reflect the requirement that all radio and television services will have defined service areas;

- use of modern terminology (eg "broadcasting" to cover both radio and television transmissions, "radio" in place of existing "broadcasting" references, "radiocommunications" in place of references to "wireless telegraphy");
- special provision for re-broadcasting (translator) and re-transmission (cable distribution) licences to enable "self-help" organisations to improve or obtain reception of radio and television services; and
- transitional provisions to provide for the progressive conversion of existing station licences to licences to which the amended Act would apply.

6. In association with the application of the "service-based" concept, this Bill also provides for the Tribunal, upon application by a licensee, to approve the injection of local programming and advertisements on subsidiary transmitters specified on a licence warrant.

7. Remote Licences: This Bill provides for the licensing of remote radio and television services to be broadcast from an AUSSAT satellite to a defined service area. Within that area, the service will either be received direct or, in specified communities, from "ground-based" transmitters. The Bill also includes special licensing criteria for remote licences and would empower the Tribunal to determine a special code for the ownership or control conditions for remote licences.

8. Uniform Inquiry Procedures: The Administrative Review Council (ARC) recommended changes to simplify the inquiry procedures of the Tribunal and to clarify rights of public access to Tribunal proceedings, both as parties and as spectators. This Bill gives effect to the Government's decision in respect of those recommendations. The amendments are intended to:

4.

- remove the requirement that powers of the Tribunal can only be exercised after a formal public inquiry ("substantive powers" as defined in new sub-section 17A(2) - Clause 12 - would still normally require a public inquiry; these represent the powers likely to have public impact);
- allow public inquiries to be held regarding non-substantive powers, if circumstances warrant;
- give the Tribunal more discretion in relation to procedural matters;
- clarify the rights of persons to be heard as parties to inquiries; and
- introduce the concept of a general "Area" inquiry to determine questions of common concern to licensed broadcasting services in an area (intended to reduce the workload at individual licence grant or renewal inquiries).

9. Regulations under the Bill and administrative actions by the Tribunal will be used to implement many of the ARC recommendations concerning detailed procedural requirements.

10. Minor Amendments: This Bill also provides for minor amendments of the Principal Act to:

- repeal certain obsolete provisions, unrelated to the service-based concept;
- provide for appeal to the Administrative Appeals Tribunal in relation to certain Ministerial decisions; and
- provide for the surrender of licences by application to the Tribunal.

NOTES ON CLAUSES

CLAUSES 1-8: PRELIMINARY

Clause 1: Title of Amendment Act

11. Formal.

Clause 2: Commencement

12. Provides for the Amendment Act to come into operation on a day fixed by Proclamation, except in relation to the provisions for Area inquiries (see Clause 14) which would come into operation 28 days after Royal Assent.

Clause 3 and 4: Title and Short Title

13. These clauses amend the title and short title of the Principal Act to accord with the decision to define "broadcasting" to include both radio and television.

Clause 5: Interpretation

14. Clause 5 deletes from the Principal Act all "station" and "licence" definitions which are made obsolete by application of the "service-based" concept.

15. Clause 5 (c) defines the different classes of radio and television licences to which the amended Act would apply. This definition incorporates all of the licences which are provided for under the existing Act, except television repeater station licences (see paragraph 67 of this memorandum). The definition also introduces remote radio and television licences (see paragraph 77 of this memorandum).

16. The definitions of "broadcast" and "broadcast by radio" (Clause 5 (b)) and "televisé" (Clause 5 (e)) introduce the generic term "broadcast" to cover both the transmission of radio (sound) programs and television (visual images and associated sound) programs to the general public. These definitions enable the deletion of dual references such as "broadcast or televisé" in the existing Act and adoption of the common usage of the term "radio" to mean sound programs.

17. The new sub-section 4(2), to be introduced by Clause 5(g), preserves the present relationship between the Principal Act and the Radiocommunications Act 1983 whereby the latter Act applies to all radiocommunications transmissions, except the transmission of radio and television programs to the general public. The term "radiocommunications" is, through the operation of the new sub-section 4(2), defined to have the same meaning as in the Radiocommunications Act. "Radiocommunications" replaces the term "wireless telegraphy" (deleted by Clause 5) which is not consistent with modern usage.

18. The definition of "service area" in Clause 5(e) includes reference to Australian Broadcasting Corporation (ABC) and Special Broadcasting Service (SBS) broadcasting services, for the purpose of those provisions in the Bill which require the Tribunal to have regard to ABC and SBS services in its licensing decisions (see paragraph 50 of this memorandum).

19. The concept of "service area overlap" is defined in Clause 5(h). Some licensing provisions in the Bill require the Tribunal, in making a decision in respect of a particular licence, to have regard to other licensed, ABC or SBS broadcasting services which have overlapping service areas (see paragraph 50 of this memorandum).

20. The proposed sub-section 4(5) (Clause 5(h)) will enable a service area to be comprised of separate sub-areas where a licensee is authorised to serve discrete communities.

21. The proposed sub-section 4(6) (Clause 5 (h)) defines those matters to which the Tribunal would be required to have regard in considering the adequacy and comprehensiveness of licensed broadcasting services as part of the Tribunal's licensing decisions (see paragraph 50 of this memorandum). This definition retains all those matters identified for this purpose under the Principal Act at present, but specifically requires that regard be had to ABC and SBS broadcasting services, technical conditions determined by the Minister and requirements imposed by the Act or regulations. The reference to technical conditions is included to ensure that the service provided by a licensee would not be considered by the Tribunal to be inadequate in a technical sense if the Minister's technical conditions are complied with.

Clauses 6-8: Unauthorised Broadcasting

22. Clause 6 - Formal.

23. Clause 7 - The effect of the proposed amendments of section 6A is that a person is protected from the offence provision of that section if the person is authorised by a licence warrant to operate a broadcasting transmitter (see paragraphs 61-64 of this memorandum) and operates that transmitter in compliance with the warrant's technical conditions.

24. Clause 7(a) - Includes formal amendments to substitute "radio" for "broadcasting" and to make it clear that the operation of ABC broadcasting transmitters is governed by the Australian Broadcasting Corporation Act 1983 (the ABC Act), rather than by the Principal Act.

25. Clause 8 - The new section 6B would make it an offence for a person who is not the holder of a re-transmission licence (see paragraph 55-58 of this memorandum) to use a telegraph line (cable distribution system) to transmit broadcasting programs, except where the system is confined to private property boundaries or for the purpose of broadcasting. This provision is similar to sub-section 130A(8) of the Principal Act, which is to be repealed by Clause 89 of this Bill.

26. The new section 6C provides an offence for direct broadcasting from an "AUSSAT Satellite" (as defined in the Satellite Communications Act 1984) unless authorised by a licence warrant (see paragraph 62 of this memorandum).

CLAUSES 9-24: AUSTRALIAN BROADCASTING TRIBUNAL

Clause 9: Divisions of the Tribunal

27. Formal. Takes account of amended licence definitions and consequential on introduction of Area inquiries (see Clause 14).

Clause 10: Functions of the Tribunal

28. Formal. Takes account of amended licence definitions and consequential on "surrender of licence" provisions (see Clause 41).

Clause 11: Approval of Forms

29. Allows the Tribunal or Minister, where empowered to approve forms, to approve different forms for different purposes.

Clause 12: Interpretation, Applications to Tribunal, Ordinary Inquiries

30. Inserts new sections 17A, 17B and 17C.

Section 17A - Formal. Interpretation. Sub-section 17A(2) defines the Tribunal's substantive powers.

Section 17B - Any person may, in accordance with the procedures to be prescribed, apply to the Tribunal for the exercise of its substantive powers, subject to specific provisions in the Act.

Section 17C - Provides the basis for normal Tribunal inquiries, defining their scope and providing for the procedures. Enables the Tribunal to conduct general inquiries and regulations to provide for the consolidation of inquiries or aspects of inquiries.

Clause 13: Directed Inquiries

31. Consequential amendments of provisions enabling the Minister to direct that the Tribunal inquire into, and report on, matters relevant to the Minister's functions. Allows the Tribunal to determine its procedures for such an inquiry.

Clause 14: Area Inquiries

32. Introduces the concept of a general "Area" inquiry into licensed broadcasting services in an area. Enables the Tribunal to determine matters of general concern in an area, thereby reducing the issues to be considered at inquiries into specific licences. Clause 14(2) provides for a separate date to be fixed by Proclamation to allow the Tribunal to hold Area inquiries.

Clause 15: Inquiries in Public

33. Clarifies the time at which the Tribunal may give Directions for confidentiality of material and obliges the Tribunal, as far as practicable, to provide adequate facilities for parties and for the public at inquiries.

Clause 16: Repeal of Section 20

34. Repeals a provision to be replaced by the procedure regulations.

Clause 17: Refusal to be Sworn

35. Removes sexist language.

Clause 18: Briefing of Counsel to Assist Tribunal

36. Allows legally qualified Tribunal officers assisting at inquiries to question witnesses.

Clause 19: Representations Before Tribunal

37. Allows all parties to an inquiry to be legally represented and requires the Tribunal to take steps to avoid detriment to a party who is not legally represented.

Clause 20: Parties to Proceedings at Ordinary Inquiries

38. Defines who will be parties at proceedings before the Tribunal at an ordinary inquiry and allows the Tribunal to give Directions limiting participation to matters of concern to the relevant party.

Clause 21: Reference of Questions of Law to the Federal Court

39. Consequential on Clause 20.

Clause 22: Procedures at Inquiries

40. Requires the Tribunal to give parties a reasonable opportunity to present their cases.

Clause 23: Broadcasting Practices

41. Clarifies the right of the Tribunal, at licence renewal inquiries or Area inquiries, to investigate the broadcasting practices of relevant licensees.

Clause 24: Reports on Inquiries

42. Extends the "report on inquiry" provision to require a report to be:

- given to the Minister and the parties to the inquiry; and
- made public.

Clause 25: Repeal of Division

43. Repeals National translator station licence provisions in section 75-76A of the Principal Act at present. The sections provide for the grant of translator station licences to re-broadcast ABC programs. The re-broadcasting of ABC programs would be authorised under the proposed re-broadcasting licence provisions (see paragraph 55 of this memorandum).

Clause 26: Application to the Special Broadcasting Service

44. The new sub-sections 79ZJ(1) and (2) have the same effect as the corresponding sub-sections in the existing Act, except for formal amendments to terminology.

45. The new sub-section 79ZJ(3) adopts the wording of section 79 of the ABC Act in order to make it clear that the Principal Act only applies to the SBS by express provision.

CLAUSES 27-44: LICENCES AND LICENCE WARRANTS

Service Specifications

46. The matters identified in the definition of "service specification" (Clause 25) would be outlined in the Minister's Notice inviting licence applications under section 82 of the Act, as proposed to be amended by Clause 30.

47. Service specifications would be incorporated as licence conditions by Direction from the Minister to the Tribunal under sub-section 84(1) (Clauses 33(a) and (b)). Service specifications would include those "specifications" defined under section 80 of the Principal Act at present, other than:-
- technical specifications, which would be incorporated within the licence warrant (see paragraphs 61-64 of this memorandum); and
 - specifications relating to the "nature" and "purpose" of a licence, which would simply be incorporated within the category of licence invited by the Minister under section 82.
48. The definition of "service specification" also provides for specification by the Minister of those licensed, ABC or SBS broadcasting services which the holder of a re-broadcasting licence or re-transmission licence (see paragraph 55 of this memorandum) is authorised to re-broadcast or re-transmit.
49. Service specifications could be varied by a Ministerial Direction to the Tribunal pursuant to the proposed sub-section 85(4), as amended by Clause 34(c). As under the Principal Act at present, any such variation would need to be preceded by consultation with the affected licensee. The Minister would also be required to publish a notice of any proposed variation of a service area, to invite public representations and have regard to any representations made, before giving the Tribunal a Direction to vary the service area of a licence (Clause 34(d)).

The Service Area Overlap Concept

50. Clauses 29(a), 32(d), 32(h), 32(j), 32(k), 32(m), 32(o), 32(r), 34(a), 36(a), 36(d), 38(d) and 42(d) substitute the "service area overlap" concept for references in corresponding provisions in the existing Act which require the Tribunal, as part of its licensing decisions, to form an opinion as to whether the programs of a licensed station and, in some cases, ABC or SBS programs are satisfactorily received. For example:-

- The amendments proposed of sub-section 81(2) by Clause 29(a) would require the Tribunal, in determining conditions upon which a licence is to be granted or renewed, to have regard to the commercial viability of services provided pursuant to other licences having service areas which overlap (include part or all of) the service area of the licence to be granted or renewed;
- The new sub-paragraph 83(5)(b)(i) (Clause 32(d)) in conjunction with the new sub-section 4(6) (Clause 5(h)) would require a licence applicant to undertake to provide an adequate and comprehensive service in pursuance of the licence having regard, among other things, to the nature of other licensed, ABC or SBS broadcasting services having service areas that overlap the proposed service area of the licence.

Remote Licences

51. Clause 29(d) of this Bill introduces a new sub-section 81(4) which provides that remote (radio or television) licensees must be Australian companies limited by shares, or a consortium of such companies.

52. Clauses 32(m) (consideration of licence applications under section 83), 35(j) (renewal of licences under section 86), 40(d) (suspension or revocation of licences under section 88) and 42(f) (transfer of licences under section 89A) provide special public interest interest licensing criteria in respect of remote licences. These criteria depart from those for commercial licences in that the Tribunal would have regard:

- (except to the extent necessary to give effect to the policy that at least one commercial or remote radio and television service should be available to all Australians) to the need to avoid undue media concentration in the service area of the remote licence (in relation to grant and transfer);
- to any relevant Government policy statements provided to the Tribunal by the Minister and tabled before both Houses of Parliament (Clauses 28 and 92);
- to any matters prescribed by regulations;
- to breaches of its ownership or control orders (see paragraph 68-70 of this memorandum); and
- to any other matters or circumstances it considers relevant.

53. Clauses 32(q) and 42(g) of this Bill apply the definition of "media" contained in sub-section 83(6A) of the Principal Act to remote licences. This definition covers press, as well as radio and television interests.

54. Clause 35(k), in relation to licence renewal under section 36 and 40(f), in relation to suspension or revocation of a licence under section 88, would require the Tribunal to have regard to whether a licensee has failed to pay amounts payable under the Radio Licence Fees Act 1964 or the Television Licence Fees Act

1964 (as proposed to be amended by the Broadcasting Stations Licence Fees Amendment Bill 1985 and the Television Stations Licence Fees Amendment Bill 1985 respectively).

Re-broadcasting Licences and Re-transmission Licences

55. Paragraphs (c) and (d) of the definition of "service specification" in sub-section 80(1) of the Principal Act (Clause 28(b)) provide for the Ministerial specification of those licensed, ABC or SBS radio or television services which the holder of a re-broadcast licence or re-transmission licence is authorised to re-broadcast (by means of radiocommunications) or re-transmit (by means of cable distribution). Through the operation of section 84 (Clause 33) these specifications would be incorporated as a licence condition.
56. Separate re-broadcasting licences would not be required to re-broadcast each authorised radio or television service. After a licence is granted, the service specifications could also be varied pursuant to sub-section 85(4), as proposed to be amended by Clause 34(c), to allow for other broadcasting services to be re-broadcast. Similarly, a single re-transmission licence could authorise the re-transmission of more than one radio or television service.
57. Provision for re-transmission licences replaces section 130A of the Principal Act (repealed by Clause 89). The authority to operate cable distribution systems has, however, been extended to cover the distribution of radio programs, as well as television programs.
58. The amended definition of "licence" in sub-section 4(1) of the Principal Act (Clause 5(c)) includes both re-broadcasting and re-transmission licences. As a result, these licences would be subject to the licence invitation and application procedures and to those licensing powers

of the Tribunal which are common to all licences. Because the holders of re-broadcasting and re-transmission licences would not be authorised to originate programs, much of the licensing criteria applicable to other licences would not apply. The Tribunal would, however, be required to have regard to whether the licensee (or prospective licensee) is a fit and proper person to hold the re-broadcasting licence or re-transmission licence, has the technical, financial and management capacity to provide the service and is otherwise capable of complying with licence conditions. This criteria applies to:

- licence grant; sub-paragraph 83(6) (c), as amended by Clause 32(g));
- licence renewal; sub-paragraph 86(11B)(c), as amended by Clause 35(c));
- suspension or revocation of licence; paragraph 88(1)(a), as amended by Clause 40(b)); and
- licence transfer; paragraph 89A(1D)(c), as amended by Clause 42(b)).

Surrender of Licences

59. Clause 41 introduces a new section 89D of the Principal Act which allows licensees to surrender licences by written notice to the Tribunal. However, the proposed sub-section 89D(3) would prevent the holder of a commercial licence and a related supplementary licence from surrendering the commercial licence unless the related supplementary licence is also surrendered.

Commencement of Service

60. Clause 44 of the Bill introduces a new section 89C of the Principal Act. Sub-sections 89D(2) and (3) of the Principal Act at present allow a supplementary licensee to "phase in" the operation of translator stations associated with the supplementary licence, with approval of the Tribunal. The existing provisions only apply to supplementary licences because separate translator station licences are presently required to operate translator facilities associated with commercial and public licences. The new section 89C would enable the Tribunal to determine separate commencement dates for the operation of broadcasting transmitters authorised under a licence warrant. In the case of re-transmission licences, a similar provision in sub-section 89C(3) would allow the Tribunal to authorise the progressive extension of the cable system within the service area of the licence.

Licence Warrants

61. Clause 31(h) introduces a new sub-paragraph 82A (4) (a) (ii) of the Principal Act which would require the Minister, when inviting licence applications, to provide an outline of technical conditions proposed to be included in a licence warrant. The definition of "technical conditions" in the new sub-section 80(1) of the Principal Act (Clause 29(b)) replaces the technical matters presently covered by sections 93-96 of the Principal Act. These latter sections would be repealed by Clause 62. The proposed sub-paragraph 82A (4) (a) (iii) has the same effect as the corresponding provision in the Principal Act at present, except that technical conditions are to be incorporated within a licence warrant rather than as part of licence specifications.

62. The proposed sub-section 89D(1) (Clause 44) would require the Minister to determine the technical conditions of the licence warrant before grant of the licence. The proposed sub-section 89D(2) would then require the Minister to grant the warrant upon grant of the licence by the Tribunal. The proposed sub-section 89D(3) identifies three forms of licence warrant:

- licence warrants for licences, other than remote licences and re-transmission licences;
- licence warrants for remote licences, which have the exclusive feature of authorising broadcasts from an AUSSAT satellite; and
- licence warrants for re-transmission licences, which authorise transmission by telegraph line (cable distribution).

63. The licence warrant concept differs from technical licence specifications under the Principal Act at present in the following respects:-

- First, technical conditions determined by the Minister would not form part of licence conditions and, although a breach of warrant conditions would result in a contravention of sections 6A, 6B or 6C of the Principal Act, such a breach would not of itself result in a breach of licence conditions.
- Second, the licence warrant would authorise the operation of more than one broadcasting transmitter and associated facilities. As a consequence, separate licences would not be required for commercial, supplementary, remote or public licensees to operate subsidiary transmitters (ie. translator stations) and the holders of re-broadcasting licences would be authorised to operate multiple transmitters to re-

broadcast licensed, ABC or SBS broadcasting services specified as part of service specifications for the licence.

- Third, the proposed sub-section 89D(2) would enable the authorisation of technical conditions applicable only in "specified circumstances". Such circumstances could include emergency situations where a stand-by transmitter and/or special technical conditions are authorised.
- Fourth, the Minister's technical conditions would no longer extend to studio equipment, although the Minister's power to approve the siting of studios would be retained.

64. The proposed section 89D also provides expressly for:

- the same broadcasting transmitter to be authorised under separate licence warrants - enabling the sharing of a common transmitter providing separately licensed broadcasting services during common time periods; and
- persons other than the licensee to be responsible for the operation of one or more broadcasting transmitters, with the consent of the licensee (proposed sub-section 89D (7)); this shifts criminal responsibility from the licensee to a contractor, who is not subject to control by the licensee and who operates a broadcasting transmitter in contravention of the warrant's technical conditions.

Formal Amendments

65. Clauses 28 to 44 of the Bill incorporate a number of formal amendments of terminology to convert licensing provisions from a "station base" to a "service base" and

to accord with the new licence definitions in sub-section 4(1). In particular:-

- References to translator stations operated by virtue of a supplementary licence would be repealed; eg. sub-section 82A (1) and (2) - Clauses 31(c) and (e);
- References to "metropolitan station" would be replaced by references to licences having a "metropolitan service area" (defined in the new sub-section 4(1) as a service area including the General Post Office of a State Capital City); eg. sub-section 83A(6)(c)(ii)(A) in relation to licence grant (Clause 32(h)).
- References to "effectively operate the station" in the public interest licensing criteria would be amended to refer to the provision of an adequate and comprehensive service in pursuance of the licence eg. sub-sub paragraphs 83(6)(c)(i)(B), 83(6)(da)(i)(B) in relation to licence grant (Clauses 32(g), 32(m)).

CLAUSES 45-62: OWNERSHIP OR CONTROL

Clauses 45-61: Ownership or Control of Commercial Radio and Television Licences

66. The amendments proposed by Clauses 45-61 are consequential upon application of the service-based concept and the amended licence definitions in sub-section 4(1). In particular:-

- The definitions of "metropolitan broadcasting station" in sub-section 90(1) of the Principal Act and the corresponding television reference in paragraph 92(1)(c) of the Principal Act would be replaced by the definition of "metropolitan licence" (Clauses 46(a) - radio and 53(a) - television). "Metropolitan licence", in conjunction with the definition of "metropolitan service area" in the new sub-section 4(1) (Clause 5(d)), would be defined as a

commercial licence having a service area including the General Post Office of a State Capital City. The effect of these amended definitions is that a metropolitan licence, for the purpose of the provisions which limit the number of licences in which a person may have a prescribed interest (sub-sections 90C(1) and 90F(1) -radio (Clauses 47 and 49) and sub-section 92(1) -television (Clause 56)), would be defined by reference to service areas rather than by reference to the location of transmitting stations. (See also paragraph 128 of this memorandum in relation to transitional provisions.)

- Proposed new sub-sections 90(1A) - radio and 91(1A) - television, as amended by Clauses 46(b) and 53(b), provide that a licence is in a particular State if the service area of the licence is in that State or, if the service area of the licence includes parts of two or more States, the licence would be taken to be in the State notified by the Minister by a Gazette notice. These sub-sections would replace existing references to transmitting stations situated in a State.
- References to the operations of the "licensee" or to provision of an "adequate and comprehensive service" would replace existing references to operations of the "station"; sub-paragraphs 90D(1)(c) (Clause 48(a)), 90JA(2)(c)(ii)(B) (Clause 51(a)) and 90JA(2)(c)(iii) (Clause 51(b) - radio and paragraphs 91(5)(b)(Clause 53(c)), 92A(1)(c)(Clause 57(a)), 92FAA(2)(c)(ii)(B)(Clause 59(a)) and 92M(1)(e)(Clause 60) - television.
- Reference to "service area overlap" (ie the service area of another licence including part or all of the service area of the licence under consideration) would replace existing references to "satisfactory reception"; paragraphs 90JA(2)(c)(iii) (Clause 51(b)) - radio and 92FAA(2)(c)(iii) (Clause 59(a)) - television.

67. The amendments proposed by Clauses 50-59 also include formal amendments relating to uniform inquiry procedures; Clauses 50(b), 50(d), 51(f), 55(a), 55(c), 58(b), 58(d) and 59(c)-(g).

Clause 62: Ownership or Control of Remote Licences

68. Remote (radio or television) licences would not be subject to the ownership or control provisions governing commercial licences. The proposed new sub-section 92V (1) would empower the Tribunal to make orders under section 17 in relation to the ownership or control of remote licences. The proposed sub-section 92V(2), without limiting the powers of the Tribunal under sub-section 92V(1), specifies certain matters in respect of which orders may be made. The proposed sub-section 92V(3) requires the Tribunal, in making orders, to have regard to the undesirability of undue foreign influence on remote licences. The proposed sub-section 92V(4) defines the terms "control", "foreign person" and "interest" to have the same meaning as in corresponding definitions in the commercial ownership or control provisions.

69. Because orders for the purposes of section 92V would be made under section 17 of the Principal Act:

- the orders would need to be tabled in both Houses of Parliament and would be subject to disallowance (sub-sections 17 (2) and (3) of the Principal Act); and
- any contravention of the orders would be an offence under section 132 of the Principal Act.

70. The proposed new section 92W would grant the Tribunal powers to seek information from persons for the purposes of section 92V. It would also create an offence not to comply with a Tribunal notice seeking information.

CLAUSES 63-85: BROADCASTING REQUIREMENTS

Clause 63: Inspection

71. Formal amendment to substitute "service-based" terminology for "station" references.

Clause 64 - Repeal of Heading

72. Formal.

Clause 65: Local Programming

73. The proposed new sub-section 99A(2) would enable a licensee (other than a re-broadcasting or re-transmission licensee) to inject local programming and advertisements on subsidiary broadcasting transmitters, upon approval of the Tribunal and subject to any conditions the Tribunal may determine. Clause 65(2) would prevent the Tribunal from granting approval under sub-section 99A(2) in relation to a category of licence before a date notified by the Minister in the Gazette.

74. Clause 65(3) would enable the Tribunal before it is authorised to grant approval by virtue of Clause 65(2), to hold a general inquiry into the exercise of its powers under sub-section 99A(2).

Clause 66: Particulars of Programs to be Made Available

75. Formal ("service-based" amendments).

Clause 67: Repeal of Divisions 5A and 5B of Part IV

76. The commercial translator station provisions would be repealed as obsolete under "service-based" licensing arrangements. Commercial licensees would no longer need a separate licence to establish translator stations to provide a broadcasting service within their service area. Other

organisations would be authorised to re-broadcast commercial programs under the proposed re-broadcasting licence provisions (see paragraphs 55-58 of this memorandum).

77. The television repeater station provisions would also be repealed as obsolete under "service-based" licensing arrangements. (However, see also paragraph 122 of this memorandum in relation to transitional provisions.)

Clause 68: Supplementary Licences - Repeal of Heading and Sections

78. Sections 105M - 105Q would be repealed as obsolete under the service-based licensing arrangements. Sections 105M, 105N and 105P would be rendered obsolete by the new legislative arrangement proposed by this Bill. Section 105Q provides for the licensee of a commercial station to use common transmitting facilities pursuant to a supplementary licence and is rendered obsolete by the new sub-section 89D(4) proposed by Clause 44.

Clause 69: Programs of Holders of Supplementary Licences

79. Formal ("service-based" amendment).

Clause 70: Repeal of Heading

80. Formal.

Clause 71: Licensee to keep Accounts etc

81. Formal terminology amendments. Also applies Section 106 to remote licences and refers to the amended Licence Fees Acts (see paragraph 64 of this memorandum).

Clause 72: Assembly of Information

82. Formal.

Clause 73: Lights on Masts

83. Formal ("service-based" amendment).

Clause 74: Public Licences - Repeal of Part IVA

84. Sections 111A - 111BD would be repealed and, except for those "station based" provisions made obsolete by application of the "service-based" concept, these sections would be incorporated in the proposed new section 119AB (see paragraph 94 of this memorandum).

Clause 75: Repeal of Heading

85. Formal.

Clause 76: Additional Functions of the Minister

86. Section 111C would be amended to employ "service-based" terminology; in particular, the proposed new sub-paragraph 111C(1)(c)(ii) provides expressly that the Minister's responsibility to investigate and correct interference to the reception of radio and television programs applies to reception within relevant service areas.

Clause 77: Repeal of Section 111F

87. This section is obsolete because the Officers Rights Declaration Act 1928 has been repealed.

Clause 78: Corporation to Make Programs Available to Certain Licensees

88. Formal "service-based" amendments of section 113, deleting "station" references and substituting reference to service areas for the existing references in sub-section 113(1) of the Principal Act to "a locality at which there is not a national television station".

Clause 79: Corporation to Make Programs Available to Certain Licensees

89. Section 113A would be amended by deleting references to "national broadcasting station licence", "national television station licence" (repealed by Clause 25) and to "television repeater station licence" (repealed by Clause 67) and by substituting references to re-broadcasting licences and to re-transmission licences (see paragraphs 55-58).

Clause 80: Encouragement of Australian Artists

90. Formal ("service-based" amendment).

Clause 81: Televising of Sporting Events and Entertainments

91. Formal ("service-based" amendment).

Clause 82: Broadcasting of Political Matter or Controversial Matter

92. The proposed new sub-section 116(4) (Clause 82(a)) incorporates formal "service-based" amendments by deleting "station" references, employing the term broadcasting to mean both radio and television transmissions and replacing references to "satisfactory reception" of programs by reference to service areas which overlap (include part or all of) the area to which an election relates. Clauses 82(b) - (d) would delete "station" references.

Clause 83: Records of Matter Broadcast

93. Amends section 117A which relates to the maintenance of records of political or current affairs material. The ABC, SBS and licensees will now be required to maintain, for 6 weeks after broadcast, sound and video records of material broadcast. In addition to the present requirement allowing public access to

those records, licensees will have to make the material available to the Tribunal to allow the Tribunal to monitor compliance with program standards.

Clause 84: Special Provisions Relating to Public Licences

94. The proposed new section 119AB incorporates relevant provisions of sections 111A-111B of the Principal Act (repealed by Clause 74).

CLAUSES 83-95: GENERAL

Clause 85: Review of Decisions

95. Paragraphs 119A(1)(h) and (j) and sub-section 119A(4) would be repealed because they relate to decisions repealed by Clause 67.

96. The proposed new paragraph 119A(1)(h) would provide for appeal to the Administrative Appeals Tribunal against a Direction by the Minister in relation to:

- the installation and maintenance of beacon lights and the painting of masts forming part of the licensee's transmitting facilities (section 110 as proposed to be amended by Clause 73); and
- a direction by the Minister concerning the custody of records and claims for fair compensation (sub-section 117A(7) of the Principal Act).

Clause 86: Repeal of Sections

97. Sections 120, 121 and 123 of the Principal Act would be repealed. Section 120 prohibits the publication of matter transmitted by a "broadcasting" (radio) station or television station where knowledge of the matter was obtained by reception of transmissions from those stations. Section 121 prohibits the

"broadcasting" (by radio) of the programs of other "broadcasting" stations except with consent of the owner or licensee of the "broadcasting" station and, in the case of a re-broadcast, with consent of the Tribunal. Section 123 prohibits "broadcasting" or televising in code.

98. Section 124, 124A and 125 of the Principal Act would be repealed and substituted in the new sections 120, 121 and 125 which employ "service-based" terminology.

Clause 87 - Permits for Test Transmissions

99. Clause 87(a) - Formal "uniform inquiry procedure" amendment of sub-section 126(1).

100. Clause 87(b) - The proposed new sub-section 126(6A) would reflect the "service-based" licensing arrangements provided in the Bill whereby the testing of new translator stations could either precede the authorisation of a new transmitter on a licence warrant or the invitation of applications for a re-broadcasting licence.

Clause 88: Licences Subject to Act

101. Formal.

Clause 89: Repeal of Section 130A

102. Section 130A provides for the grant of licences to r - transmit television programs by means of cable distribution. This Bill provides for the grant of licences for the cable re-transmission of radio or television programs. (See paragraphs 55-58 of this memorandum.)

Clause 90: Control of Broadcasting in Case of Emergency

103. Formal (service-based amendment).

Clause 91: Offences

104. This clause, and Clause 93(e), remove from the Act the provision for offences against the regulations and provides for the regulations themselves to create offences.

Clause 92: Tabling of Government Policy Statements

105. The proposed new section 133A would require the Minister to table a copy of any Government policy statement before both Houses of Parliament within 15 sitting days after it has been given to the Tribunal. Any such Government policy statement would be relevant to the Tribunal's consideration of the grant, renewal, suspension, revocation or transfer of a remote licence (see paragraphs 51-54 of this memorandum).

Clause 93: Regulations

106. Clauses 93(a)-(d) - Formal ("service-based" amendments).

107. Clause 93(e) - Allows the regulations to create offences (see Clause 91).

108. Clause 93(f) - Provides for regulations relating to extension of time for lodgement of inquiry documents and fees for copies of those documents.

109. Clause 93(g) - Defines "inquiry document" for the purposes of Clause 93(f).

Clause 94: Further Amendments

110. The Schedule to this Bill sets out formal amendments of terminology in certain provisions of the Principal Act. These proposed amendments include the deletion of duplicate television references where the existing "broadcasting" reference would, on the basis of the new definitions proposed under this Bill, cover both radio and television.

Clause 95: Relocation of Sections

111. Formal.

CLAUSES 96-104: TRANSITIONAL PROVISIONS

Clause 96: Interpretation

112. The terms and concepts used in Clauses 96-104 are defined in Clause 96. These terms and concepts relate to the conversion of existing licences held under the Principal Act at present to licences to which the amended Act would apply.

Clause 97: Correspondence of Licences

113. Clause 97(1) - This proposed sub-section identifies existing "station" licences (eg commercial broadcasting station licence) and the corresponding "service-based" category of licence (eg commercial radio licence) to which existing licences would be converted under the amended Act.

114. Clause 97(2) - In accordance with the "service-based" concept, this proposed sub-section allows for existing translator station licences held by the licensee of a parent transmitting station to be subsumed under the parent licence. Such translator facilities would, upon conversion of the licence, simply be authorised under the licence warrant.

Clause 98: Continued Application of Previous Act

115. This proposed section would preserve the application of the Principal Act to existing licences until those licences are converted. The existing Act would continue to apply to inquiries commenced before Commencement of this Amendment Act.

Clause 99: Conversion of Old System Licences

116. The proposed section sets out the process whereby existing licences would be converted to licences to which the amended Act would apply. This process reflects the fundamental requirement that each licence which is to be subject to the amended Act would be required to have a defined service area.

117. Clause 99(1) would enable the Minister to direct the Tribunal to grant a new licence, in substitution for an existing licence, without the need for Tribunal inquiry.

118. Clause 99(2) would require the Minister, in giving such a Direction to set out the service specifications applicable to the "new" licence and to outline the technical conditions proposed to be incorporated in the licence warrant.

119. Clause 99(3) would require the Minister to determine service specifications and technical conditions and to consult with the affected licensee before giving the Tribunal a Direction to convert. If the service area proposed to be included in the Direction is not substantially co-extensive with the existing service area (including the service areas of any associated translator stations) the Minister would be required to publish a Gazette Notice of the proposed service area variation, invite public representations and have regard to any representations so made.

120. The definition of "service area" in Clause 96, in conjunction with Clause 99(3), would require the Minister to publish a Gazette notice of proposed service area variation unless:

- in the case of a existing "station" licence which has a defined service area, the Direction to convert includes a service area specification which is substantially co-extensive with the service area of the existing station licence; or

- in the case of an existing "station" licence which has no defined service area, the Direction to convert includes a service area which is substantially co-extensive with the area determined by the Minister, in the process of conversion, as intended to be served by the existing station.

121. Clause 99(4) provides for the service specifications in the Minister's Direction to include the special purpose of a public licence and, in the case of a re-broadcasting or re-transmission licence, the broadcasting services which the licensee is authorised to re-broadcast or re-transmit.

122. Clause 99, in conjunction with Clauses 96 and 97, provide for the conversion of all classes of "station" licence held under the Principal Act at present, except for television repeater station licences. Existing repeater licences would continue to have effect under the existing Act as continued in force by Clause 98.

123. Clause 99(3) would provide for service specifications included in the Minister's Direction to be incorporated as part of the conditions of the new licence and for existing licence conditions determined by the Tribunal to be carried over to the new licence.

124. Clause 99(8)(b) would provide for the licence periods of existing licences to continue over as if the licence had not been converted. Clause 99(9) preserves the application of the Licence Fees Acts, when the existing licences are converted.

Clause 100: Application of Licensing Provisions

125. Clause 100(1) would require the Tribunal, in considering public interest licensing criteria in relation to other licences, to have regard to any existing station licences as if they were licences to which the amended Act applied. For example, where

the Tribunal would be required to have regard to other licences which have service areas overlapping (including part or all of) the service area in question, the Tribunal would also be required to have regard to existing "station" licences which have overlapping service areas. By virtue of the definition of "service area" in Clause 100, where an existing "station" licence has no determined service area, the service area of an adjacent station would be that area determined by the Minister as the area intended to be served by the station.

126. Clause 100(2) would require the Tribunal, in its consideration of public interest licensing criteria for "station" licences held under the Principal Act at present, to have regard to licences held under the amended Act as if they were licences to which the existing Act applied. For example, where the Tribunal would, in respect of an existing "station" licence, be required to have regard to other stations whose programs are satisfactorily received, it would also be required to have regard to new licences held under the amended Act where programs broadcast pursuant to such licences were satisfactorily received.

Clause 101: Ownership or Control

127. Clause 101(1) would ensure that the ownership or control provisions of both the existing Act and the amended Act operate in tandem during the transitional phase in which existing licences are converted over to the amended Act.

128. Clause 101(2) would, for a period of 12 months, deem existing "metropolitan stations" (for the purpose of the commercial ownership and control provisions of the Principal Act at present) to be "metropolitan licences" (for the purposes of the commercial ownership or control provisions under the amended Act) when existing "station" licences are made subject to the amended Act.

Clause 102: Remote Licences

129. Clause 102(1) would require the Tribunal to grant a remote licence to persons recommended by the Tribunal pursuant to the inquiry directed by the Minister on 7 October 1984.

130. Clause 102(3) would empower the Tribunal to refuse to grant a remote licence if a person contravenes an order made by the Tribunal under the proposed section 92V of the amended Act.

Clause 103: Savings

131. Formal.

Clause 104: Regulations

132. This proposed section of the Amendment Act would enable regulations to be made to give effect to the transitional provisions.

