

1987-88

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

BROADCASTING LEGISLATION AMENDMENT BILL 1988

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Transport and Communications, the Hon. Ralph Willis MP).



## OUTLINE

The Broadcasting Legislation Bill 1988 amends:

- (a) the Australian Broadcasting Corporation Act 1983;  
and
- (b) the Broadcasting Act 1942

as well as making a number of consequential and minor amendments to other Acts.

### AUSTRALIAN BROADCASTING CORPORATION ACT 1983

The amendments relate to the Corporation's financial and staffing powers.

Clauses 8 and 11 replace the extensive Corporation staffing provisions with a scheme similar to others now applied to statutory authorities with non public service staffing arrangements. The Corporation will have the responsibility for employment, and for the terms and conditions of employment, of its employees. The employment responsibility will operate pursuant to agreements and to awards of the Australian Conciliation and Arbitration Commission. These provisions will commence on a date to be fixed by Proclamation to allow appropriate arrangements to be developed.

Clause 9 allows money of the Corporation not immediately required to be invested in bank fixed deposit, Commonwealth securities or in any other manner approved by the Treasurer.

Clause 10 deals with the Corporation's power to borrow from the Commonwealth or, with the approval of the Treasurer, to borrow from any other person or to raise moneys in any other manner (proposed section 70A and 70B). The Commonwealth is to be given a power to guarantee Corporation borrowings from other sources (proposed section 70C) and the Corporation a power to offer any of its assets as security (proposed section 70D).

The Treasurer's powers of approval may be exercised by a delegate from the Department of Treasury.

The Corporation is debarred from borrowing, or otherwise raising, money except in accordance with proposed section 70A and 70B (clause 10). This bar replaces the present ban on borrowing (subsection 25(2) - Clause 5).

As a result of the newly created power of the Corporation to borrow or otherwise raise money, provision common to Government business enterprises such as OTC(A) and Telecom has been introduced allowing the Corporation, in accordance with Ministerial guidelines, to enter into "hedging contracts". These contracts provide against loss caused by severe fluctuations in the value of financial futures or foreign currency.

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These provisions are intended to allow the Corporation to apply modern financial techniques in financing its commercial activities while maintaining safeguards against an undue emphasis on commercial vis-a-vis charter activities.

#### BROADCASTING ACT 1942

The Bill also introduces the concept of "limited licences" into the Broadcasting Act 1942. This class of broadcasting licences will be granted for the following purposes:

- (a) local information (eg. tourist or traffic information);
- (b) special events (ie. granted for purposes associated with a specific event such as Scout Jamborees, major sporting or cultural events);
- (c) remote Aboriginal communities (ie. to implement the announced policy on BRACS - Broadcasting for Remote Aboriginal Communities - Aboriginal and Islander communities will be able to control material broadcast to them by omitting certain material and including material of special interest to the community);
- (d) special interest (ie. use by licensees of ABC/SBS facilities with the agreement of the ABC or SBS);
- (e) additional purposes identified by regulation.

Limited licences will be granted by the Australian Broadcasting Tribunal (Tribunal) but service providers will have the option of initiating proposals to the Minister or responding to a call by the Minister for applications. The Minister will retain control over technical and planning aspects of the licences.

Provision is also made for limited licensees, by agreement, to use ABC or SBS facilities. Because of the charter obligations of the ABC and the functions of the SBS, limited licensees will only gain access to facilities when not required for normal ABC/SBS services.

The Bill also replaces the concept of re-broadcasting and retransmission licences with that of retransmission permits.

The new permits (note clause 36) will be granted by the Minister, rather than the Tribunal, and will allow a broadcasting service to be relayed by transmitter or by cable to a permit service area which may, or may not, be included in the service area of the original service provider. Where the permit serves an area outside the original service providers service area, the Minister is required to consider the desirability of the permit service being provided by a licensee in the area to be served by the permit.

Test transmission permits granted by the Tribunal are to be replaced by temporary transmission permits granted by the Minister.

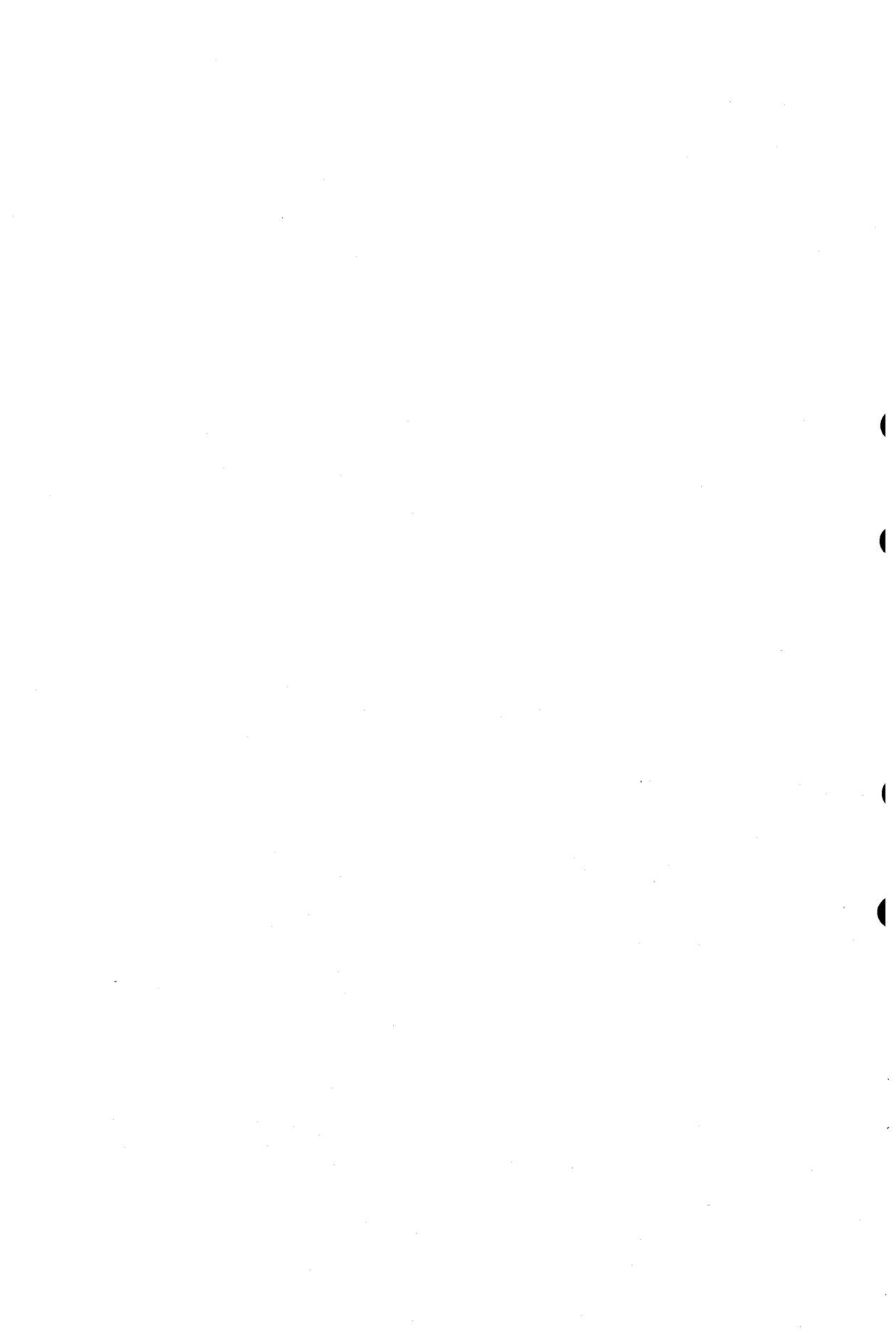
These permits will be granted to existing licensees for testing new technical equipment, to new licensees prior to the formal grant of the licence and to aspirant broadcasters who wish to test public reaction to program formats, or for the provision of temporary services to communities in the aftermath of natural or other disasters. They, therefore, relate primarily to planning and technical issues which are the function of the Minister. The Minister, however, will have a power to seek recommendations from the Tribunal. This power will be relevant if wider public policy issues become apparent in respect of a particular application.

Clause 14 extends the ban on advertising cigarettes and cigarette tobacco or their use to include all tobacco products and their use.

The opportunity has also been taken to redraft many of the provisions relating to grant, renewal, suspension, revocation and transfer of licences to simplify the language used and make the act more comprehensible. No policy initiatives are involved.

#### Financial Impact Statement

There is expected to be some increase in the administrative workload of the Department and the Tribunal resulting from the planning and licensing of new limited services. In the Department, this will be added to by the assumption of responsibility for temporary transmission and retransmission permits, partially offset by savings from simplified planning and technical procedures. Any additional workload will be absorbed within existing resources. The net effect in the Tribunal will be small but useful administrative savings. These also can be expected in the ABC with simplified staffing provisions and more efficient cash management.



## NOTES ON CLAUSES

### PART I - PRELIMINARY

- Clause 1 Short Title - Formal
- Clause 2 Commencement -The ABC staffing provisions will commence on proclamation. Matters relevant to retransmission or temporary transmission permits will commence on 1 March 1989. Amendments of the Radio Licence Fees Act 1964 will be deemed to have come into operation on 16 December 1987, the date on which the Radio Licence Fees Amendment Act (No.2) 1987 came into operation. All other provisions commence on the twenty eighth day after the day on which the Bill receives Royal Assent.

### PART II - AMENDMENTS OF THE AUSTRALIAN BROADCASTING ACT 1983

- Clause 3 "Principal Act", in Part II of the Bill, means the Australian Broadcasting Act 1983.
- Clause 4 Defines a number of terms for the purposes of the borrowing and financial provisions.
- Clause 5 Consequential on clause 11, removes the present restriction on the Corporation's power to borrow (now to be dealt with under clause 11 - proposed sections 70A to 70F).
- Clause 6 Power to enter into hedging contracts (see Outline).
- Clause 7 Proposed section 29A empowers, but does not oblige, the ABC to make broadcasting facilities and staff available to limited licensees for the purposes of the limited licence service. The limited licensee will be the broadcaster of the resulting service for all legal purposes.
- Clause 8 Proposed new Part V empowers the Corporation to employ, and fix the terms and conditions of service of, employees of the Corporation. This power will operate subject to the Australian Conciliation and Arbitration Commission's power to make awards. Sub-clauses 8(2) to (5) preserve the terms and conditions currently applicable to ABC staff.
- Clause 9 Amends section 68 of the Principal Act to allow surplus money of the Corporation to be invested in bank fixed deposits, Commonwealth securities or other investments approved by the Treasurer or his delegate (see Clause 10 - proposed section 70F).

- Clause 10 Confers powers to borrow or otherwise raise money on the Corporation in accordance only with proposed sections 70A and 70B. Allows the Commonwealth to guarantee Corporation borrowing and the Corporation to offer its assets as security.
- Clause 11 Schedule 1 makes amendments consequential on the and repeal of sections 32 to 66B of the Principal Act schedule 1 and the enactment of proposed Part V.
- Clause 12 Preserves delegations of power and election of staff elected Director.

**PART III - AMENDMENTS OF THE BROADCASTING ACT 1942**

- Clause 13 "Principal Act", in Part III of the Bill, means the Broadcasting Act 1942.
- Clause 14 Interpretation - Amends the Interpretation Section of the Principal Act to
- (a) allow local origination of programs by enabling different programs to be broadcast from different transmitters as part of the service (definition of "adequate and comprehensive service" (subsection 4(6) and (7));
  - (b) define terms used in the revised licensing provisions.
- Clause 15 Amends section 6A of the Principal Act, which prohibits unauthorized use of a radiocommunications transmitter for broadcasting. Authorization for that purpose will now be given by whichever of the following instruments is appropriate:
- (a) a licence warrant;
  - (b) an MCS permit warrant ("multi channel service" - where a licensee provides a number of television services in the one service area under the equalisation of television services scheme);
  - (c) a retransmission permit;
  - (d) a temporary transmission permit.

- Clause 16 Consequential on Clause 36 - Revises the prohibition on distribution by cable to an audience of broadcast material. Reflects the incorporation of the rebroadcasting and retransmission licence concepts into that of retransmission permits.
- Clause 17 Empowers the Tribunal to offer a range of information and related services and to charge for those services, if not otherwise required to provide them by the legislation.
- Clauses 18 and 19 Consequential on clause 17 - allows moneys raised by the Tribunal from publishing information to be applied to the purposes of the Tribunal.
- Clause 20 Allows, but does not oblige, the Special Broadcasting Service to make facilities available to a limited licensee for the purposes of that limited licence.
- Clause 21 The limited licensee will be the broadcaster of the resulting service for all legal purposes.
- Clause 22 Collects eligibility requirements for grant of licences under the Act into one provision and makes provision for limited licences. Limited licences will only be granted to corporations formed within the Commonwealth or a Territory. Also repositions and simplifies the provision for remote (ie. satellite) and supplementary radio licences held by members of a consortium.
- Clause 23 Inserts new provisions which
- (a) define the purposes for which limited licences may be granted; and
  - (b) allow new categories limited licences to be added by regulation.
- Clause 24 The Minister's notice inviting applications for licences is now required to set out the service specifications to be applied to the licence rather than an outline. Any alteration will be achieved by the Minister's power to vary those specifications. (Note clause 27, proposed section 83F). This amendment will ensure that, after a licence has been granted by the Tribunal, the Minister is no longer required to formally determine service specifications. The Minister will only be involved in the unusual circumstances where a variation of the service specifications originally proposed is required. This provision will only apply to licences called after the date of commencement of the provision.

- Clause 25 Removes a specific requirement for the Tribunal to notify, and call for submissions, an inquiry into grant of a supplementary licence. Covered by amendments to section 82.
- Clause 26 Provides for applications procedures for grant of limited licences. Licence aspirants may either respond to a call for applications by the Minister or may initiate the process. The Minister may reject or defer applications on technical or planning grounds or refer the application to the Tribunal (proposed section 82AB). Where applications are referred to the Tribunal, it may require an outline of program content and format (proposed section 82AC). Evidence of incorporation, powers and functions etc of an applicant for a limited licence may be required by the Tribunal (proposed section 82AD).
- Clause 27 Remakes and clarifies the provisions relating to undertakings on the nature of services given by licensees before grant of a licence. These provisions do not apply to limited licences. An undertaking to provide, for example, "an adequate and comprehensive service" would be inappropriate given the specialised nature of limited licence services.
- Restates the criteria for consideration of licence applications by the Tribunal. Criteria for different classes of licence are separated into sections relevant to each class of licence to make the Act more comprehensible. Criteria for the grant of limited licences, in terms similar to those for remote licences, are included in proposed section 83E. A power for the Minister to revise service specifications before grant of a licence is consequential on clause 24.
- Clause 28 Restates the provisions for imposition of licence conditions. Provision for conditions on limited licences is included.
- Clause 29 Requires the Minister to notify the Tribunal of any proposed variation of the purpose of a limited licence and to invite the Tribunal to make representations.
- Clauses 30 and 31 Restates the criteria for renewal of licences. Provision for renewal of limited licences is included in proposed section 86G. The Minister will have a power under section 86H to recommend to the Tribunal on technical or planning grounds, that a limited licence not be renewed.

- Clause 32 Fixes a maximum term for limited licences not exceeding 5 years on initial grant or 3 years on renewal, consistent with the provision for other classes of licence. Special event limited licences are further limited to substantially the same period as the special event to which they relate and a power exists for the maximum licence period periods to be further limited by regulation.
- Clause 33 Restates the provisions relating to suspension and revocation of licences. Provision for suspension and revocation of limited licences is included in proposed section 88D.
- Clause 34 Restates the provisions relating to transfer of licences and provides for a simplified procedure for transferring limited licences.
- Clause 35 Provides for the grant of licence warrants (which enable the use of transmitters for the purpose of services authorized under the Act) in respect of limited licences and allows all warrants to be granted in advance of the licence grant, but to take effect from the grant of the licence. This will simplify the process of determining technical conditions.
- Clause 36 Retransmission permits replace the current rebroadcasting and retransmission licences. The permits are confined to relaying existing broadcasting services and, therefore, give rise to planning and technical conditions only. As these are Ministerial functions, grant of retransmission permits is to be a function of the Minister (proposed section 89DA).

The permit does not confer on the holder a right to take a broadcast service without the consent of the licensee. Broadcasting signals are copyright and the permit holder would need to negotiate with the broadcaster for the use of those signals.

Proposed section 89DB fixes the maximum duration of a retransmission permit at 5 years on grant or 3 years on renewal. Because of the need for consent by the broadcasting service licensee, the duration of retransmission licences will normally co-incide with the terms of the broadcast licence.

The Minister has the power to determine technical conditions (proposed section 89DC) or to vary, suspend or cancel (89DD, 89DE) retransmission permits.

Proposed section 89DF redesignates the present test transmission permits as temporary transmission permits and transfers prime responsibility for their grant from the Tribunal to the Minister. The Minister may refer applications to the Tribunal for advice. The maximum period will be increased from 7 to 14 days (proposed section 89DG).

Advertising will not be broadcast pursuant to a temporary transmission permit except in the unusual case where the permit covers temporary arrangements for commercial services (proposed section 89DH).

- Clauses 37 and 38 Relocates definitions at the commencement of Division 5 of Part III BA of the Act.
- Clause 39 Empowers the Tribunal to make orders relating to ownership or control of limited licences, along the lines of similar provision made in respect of remote licences. Orders under section 17 of the Principal Act must be tabled, and are subject to disallowance, by either House of the Parliament.
- Clause 40 Repeals section 99A (Local Programming). This issue is now addressed in clause 14.
- Clause 41 Extends the ban on broadcast advertising of cigarettes and cigarette tobacco to all tobacco products.
- Clause 42 Rectifies a drafting defect in the provision extending the electoral blackout provisions to Northern Territory Legislative Assembly elections.
- Clause 43 Proposed section 119AC limits limited licence services to the purpose for which the licence is granted. Subsection (2), (3), (4), (5) and (6) ban paid advertising on all but text services. Sponsorship is permitted on "special limited licences" as defined. These provisions are based on those applicable to public radio broadcasting.

- Clause 44 Extends the obligation of licensees to keep accounts and furnish information to include all activities or affairs relevant to the Act or the Fees Acts. Proposed subsection 123(4AA) extends the obligations of licensee corporations to associated corporations (ie. Holding companies, subsidiaries and other subsidiaries of the holding company of the licensee).
- Clause 45 Restricts application of section 123A(6) to those licensees required to submit annual financial information to the Tribunal.
- Clause 46 Revises the provision for delegation of powers by the Minister to reflect recent amendments to the Acts Interpretation Act 1901 relating to delegations generally. Extends the application of the provision to some powers relating to limited licences and to the determination of technical conditions and revises references to other provisions in line with drafting changes in the Bill.
- Clause 47 The proposed Schedule to the Principal Act will give examples of the operation of the limited Schedule 2 licence concept.
- Clause 48 Provide for consequential and minor amendments of and Schedule 3 and 4 the Principal Act.
- Clause 49 Provide for consequential and minor amendments to and Schedule 5 the Copyright and Telecommunications Acts.
- Clause 50 Provides for the conversion of rebroadcasting and retransmission licences to retransmission permits. Consequential on clause 36.

#### PART IV - AMENDMENTS OF THE RADIO LICENCE FEES ACT 1964

- Clause 52 "Principal Act", in Part V of the Bill, means the Radio Licence Fees Act 1964.
- Clause 52 Defines "Broadcasting Act" for the purposes of the Principal Act.

#### PART V - AMENDMENTS OF TRANSITIONAL LEGISLATION

- Clause 53 Applies the proposed obligations on associated corporations (Clause 44) to corporations associated with "old system" licensees under the Broadcasting Act 1942, ie. those not yet converted to the "service-based" concept of licensing introduced in 1985.

Clauses 54 Update cross-reference to provisions in the  
and 55 Broadcasting Act.

Proposed subsection 98(8) allows applications for supplementary broadcasting licences made under the pre 1985 Act to be granted, if appropriate, as supplementary radio licences under the Act as proposed to be amended.

