

1988

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

BROADCASTING (NATIONAL METROPOLITAN RADIO PLAN) BILL 1988

EXPLANATORY MEMORANDUM

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

OUTLINE

The Bill makes amendments to the Broadcasting Act 1942 to implement the first stage of a program of reform of metropolitan radio services announced by the Minister for Transport and Communications, Senator Evans, on 9 August 1988.

The National Radio Plan will provide more commercial FM radio licences in all mainland state capital cities (Brisbane, Sydney, Melbourne, Adelaide and Perth) and establish AM networks for Parliamentary and Radio for the Print Handicapped broadcasting.

Under the first stage of the Plan, covered by this Bill, eligible commercial AM licensees will be invited to lodge bids for the right to convert from their existing AM frequencies to FM frequencies. The two highest bidders in each capital city will be selected to convert to the FM frequencies. This tender process corresponds to the conversion fee payable on conversion in regional areas introduced in the Radio Licence Fees Bill (No 2) 1987. A condition of eligibility for the tender process will be that the successful bidders must transfer their AM facilities and sites to the Commonwealth for use by the Australian Broadcasting Corporation, for Parliamentary broadcasts, and by public licensees for Radio for Print Handicapped purposes. The Minister will invite applications for a public radio licence (special interest - RPH) for the first vacated AM channel in each mainland state capital.

FINANCIAL IMPACT STATEMENT

This Bill has no direct financial consequences because the formal obligation to pay the fees it introduces will be imposed under the Radio Licence Fees Act 1964 through amendments introduced in the accompanying Radio Licence Fees (National Metropolitan Radio Plan) Bill 1988.

NOTES ON CLAUSES

PART I - PRELIMINARY

Clause 1: Short title etc

Formal. 'Principal Act' means the Broadcasting Act 1942.

Clause 2: Commencement

The provisions of the Bill will commence on the day on which the Bill receives Royal Assent.

Clause 3: Interpretation

Defines a number of terms which are used in the proposed Division 1A of Part IIIB of the Principal Act.

Clause 4: Division 1A - Conversion of AM commercial radio licences to FM as part of the National Metropolitan Radio Plan

Clause 4 provides for the insertion of the proposed Division 1A into Part IIIB of the Principal Act. The proposed Division has sixteen sections.

Proposed section 89DAA: National Metropolitan Radio Plan objectives

The objectives of Division 1A are as follows:

- (a) to convert to FM 2 AM commercial radio licences in each large city or town;
 - a large city or town is one whose statistical district or division has a population exceeding 800,000 or such higher figure as is prescribed for the purposes of subsection 6B(2) of the Radio Licence Fees Act 1964 (see proposed subsection 4(15) of the Principal Act)
- (b) to allow the determination of which licences are to be converted to be made on the basis of competitive bids; and

(c) to allow a successful bid to be satisfied in part by the transfer to the Commonwealth of transmission facilities to be used for radio services for the print handicapped or Parliamentary broadcasts

- 'transmission facilities' means transmission equipment (a radiocommunications transmitter or transmitters together with any associated mast or masts) and the transmission site or sites on which such equipment is located, including any associated transmitter hut (see clause 3)
- 'transfer to the Commonwealth', in relation to a transmission site, means make available an interest in the transmission site that is acceptable to the Secretary, having regard to the objectives of Division 1A (see clause 3). Such an interest may include, for example, a leasehold or a licence.

Proposed section 89DAB: The Minister may publish a notice inviting applications for conversion to FM

Provides that the Minister may publish a notice in the Gazette that invites licensees who hold AM commercial radio licences in a large city or town to lodge applications with the Tender Board (established under proposed Section 89DAF) for conversion of their licences to FM. A licence is an AM commercial radio licence in a large city or town if it meets the requirements of the proposed subsections 4(14), (15) and (16) of the Principal Act (see clause 3).

The notice will (among other things) inform licensees of the formal requirements for applications, and of the technical conditions proposed for the new frequency or frequencies to be allocated. It will specify the amount of deposit to be paid when an application is lodged. It will also set out the principles to be applied when the technical adequacy of the transmission equipment and the value of the transmission facilities are assessed, and according to which an interest in a transmission site will be determined to be acceptable. The necessary preconditions for conversion to FM are also to be specified: proposed subsection (2).

The notice may specify that, prior to lodgement of an application, a licensee must notify the Minister of the transmission facilities which it would transfer if its bid was successful, and must allow inspection of those facilities so that they can be valued and transmission equipment can be assessed for technical adequacy: proposed subsection (5).

Proposed section 89DAC: Application of the principles etc specified in a section 89DAB notice

Provides that the principles set out by the Minister in the notice inviting applications for FM conversion, relating to the assessment of the technical adequacy of equipment, the acceptability of an interest in a site and the value of transmission facilities, are to be applied by those persons who make that assessment in each case.

Proposed section 89DAD: Extension of the period for lodging applications

The period for lodgement of applications specified in the section 89DAB notice (not less than 90 days: see subsection 89DAB(3)) may be extended by the Minister provided that the extension is made at least 14 days prior to the expiry of the period or of any extended period.

Proposed section 89DAE: Applications for conversion to FM

Proposed subsection 89DAE(1) provides for the submission of applications by AM licensees in response to notices published under section 89DAB.

Proposed subsections 89DAE(2) to (7) set out the requirements for applications. Proposed subsection 89DAE(7) provides that the value of an applicant's transmission facilities is to be included in the amount of the applicant's bid. A deposit of an amount specified in the notice inviting applications must be paid by the time applications close: proposed subsection (8).

The application must be accompanied by written statements by the Secretary concerning the technical adequacy of the transmission equipment, the acceptability of the interest in the transmission site which the licensee proposes to make available, and the value of the transmission facilities: proposed paragraphs (2)(d), (e) and (f). Where a value for the transmission facilities (site or equipment or both) cannot be agreed, the question of their value can be submitted to arbitration. In that event, a written determination by an arbitrator may be lodged with the application in lieu of the Secretary's statement agreeing to a value. If, in the case of a dispute, no arbitrator's decision is obtained, the licensee will be unable to lodge an application which complies with the formal requirements set out in this section.

The arbitration procedure used will be that normally employed for commercial disputes under State laws: see clause 3 (definition of 'arbitrator').

Proposed section 89DAF: Establishment of the Tender Board

Provides for the establishment, by the Secretary to the Department, of a Tender Board to process applications and for the appointment of a Chairperson.

Proposed section 89DAG: Determination of the reserve

Provides that the Minister will determine a reserve and inform the Tender Board of the amount of that reserve prior to the expiry of the period for lodgement of applications.

Proposed section 89DAH: Processing applications for conversion to FM

Provides for the processing of applications by the Tender Board. Having rejected any application which is formally defective, or which includes a bid which is below the reserve, the Board is to list the remaining licensees and the amounts of their bids in descending order according to the amounts of the bids (the tender list - see clause 3). Where the bids of two or more of these licensees are the same, order is to be determined by lot in accordance with the regulations. The Tender Board is to provide the tender list to the Minister. Any licensee whose application is rejected by the Tender Board will be informed of the grounds for its rejection: proposed subsection (7).

Proposed section 89DAI: Report to the Minister on the processing of applications

The Minister is to be provided with a report by the Tender Board relating to the assessment process, which will inform him or her of (among other things) the names and the amounts of the bids of all applicants whose bids are opened: proposed subsection (1). If all applications for FM conversion in a particular city or town are rejected by the Tender Board, or if two frequencies are available but only one licensee appears on the tender list, the Minister may publish a fresh section 89DAB notice inviting applications for FM conversion: proposed subsections (2) and (3).

Proposed section 89DAJ: The Minister to publish a notice about the licensees on the tender list

Provides that the Minister will publish in the Gazette the names of the licensees on the list and the amounts of the bids of the highest ranked licensee (or licensees, if more than one FM frequency is to be allocated).

Proposed section 89DAK: Meaning of offer of FM conversion to a licensee

Provides that the Minister will be taken to make an offer of FM conversion to a licensee if he gives the licensee written notice, which will also specify the period within which the licensee is to meet the necessary preconditions for conversion (as defined in clause 3).

Proposed section 89DAL: Initial offers

Provides that where the Minister receives a tender list from the Tender Board he will make offers to licensees, and sets out the procedure for making initial offers. Offers will be made to the licensee or licensees (depending on the number of frequencies to be allocated) appearing first (or first and second) on the list.

Proposed section 89DAM: What happens if a successful licensee defaults?

Where a licensee who has been offered FM conversion defaults (by not meeting the necessary preconditions for conversion, or by notifying the Minister that it does not wish to proceed with conversion), proposed section 89DAM makes provision for either the publication of a fresh section 89DAB notice (where there is no licensee to whom an offer of FM conversion can be made remaining on the tender list) or the making of an offer to the licensee next appearing on the tender list who has not yet been made an offer. The name of the defaulting licensee will be deleted from the tender list.

The name and amount of the bid of a licensee who is offered FM conversion under this section shall be published in the Gazette by the Minister: proposed subsection (3).

Proposed section 89DAN: The Minister may publish a fresh section 89DAB notice if satisfied of collusion between licensees

Provides that the Minister may determine to restart the bidding and publish a fresh section 89DAB notice in the event that he or she is satisfied that any of the licensees' bids have been affected by collusion among licensees.

Proposed section 89DAO: How are deposits dealt with?

Provides for the return of a deposit paid by a licensee whose application is rejected (because its application was formally defective or its bid was below the reserve determined by the Minister) within 14 days of the rejection of the licensee's application: proposed subsection (1).

The deposit paid by a licensee whose application is not rejected but who is not offered conversion to FM will be returned, with interest, within 14 days of the conversion of the licence (or conversion of the second of the licences) of another licensee (or licensees): proposed subsections (2) and (3). The rate of interest is to be determined in accordance with regulations. Defaulting licensees will forfeit their deposits.

Proposed section 89DAP: Conversion to FM

Provides that where a licensee is offered FM conversion and meets the necessary preconditions within the specified time, the Minister is to convert the licensee's licence to FM (as defined in clause 3).

Where there are two FM frequencies available for allocation, the Minister is to have regard to the desirability, subject to planning considerations, of allowing the licensee appearing highest on the list to have its choice of frequency: proposed subsection (2). The reference to planning considerations recognises the fact that, in some cases, the licensee's preferred frequency may not be compatible with its preferred FM transmission site, and either a new site may have to be obtained or the licence may have to be converted to the less favoured FM frequency.

