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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

BROADCASTING SERVICES (TRANSITIONAL PROVISIONS AND  
CONSEQUENTIAL AMENDMENTS) BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Transport and  
Communications, Senator the Hon Bob Collins)



**BROADCASTING SERVICES (TRANSITIONAL PROVISIONS AND  
CONSEQUENTIAL AMENDMENTS) BILL 1992**

**OUTLINE**

This Bill will make necessary transitional and consequential provisions pursuant to the proposed replacement of the regulatory scheme for broadcasting services under the *Broadcasting Act 1942* (Broadcasting Act) with a new scheme under the *Broadcasting Services Bill 1992* (Broadcasting Services Bill).

The new scheme will cover a wider range of developing services which do not fall within the traditional definition of broadcasting, but which, nevertheless, will have substantial potential to influence public thought and attitudes. This ensures that appropriate controls can be placed on all services of this nature to protect the public interest.

However, in line with the Government's philosophy, every effort has been made to avoid unnecessary regulatory intrusion into the proper functioning of the broadcasting industry or any measures that would improperly limit competition in the delivery of broadcasting services. Many of the new services, for example, will not be individually licensed. They will be covered by "class licences", general instruments which permit services of a particular type to be provided as long as specified conditions are met.

The scheme must also accommodate the recent rapid expansion of technical options for delivery of those services, a trend likely to accelerate in the foreseeable future.

These factors of widened application, minimisation of regulation consistent with protection of the public interest and exploding technical capability dictate that the new scheme will differ substantially from the old. The highly detailed, inflexible and intrusive rules and mechanisms of the current Act must give way to regulation with a much lighter and more flexible touch. The new scheme must also be more focussed and directed to addressing real needs and achieving realistic objectives.

This has led not only to a new regulatory regime, but to a new body to administer that regime. The Australian Broadcasting Authority (ABA) will replace the current Australian Broadcasting Tribunal (ABT) in this role and will also assume some of the planning functions for broadcasting services currently performed by the Department of Transport and Communications.

This Bill has the task of bridging the gaps between two entirely different regulatory bodies and two entirely different regulatory regimes. It must ensure that the new arrangements come into effect smoothly and operate efficiently, pick up references in other legislation to the old scheme and ensure that the new scheme will interact appropriately with that other legislation.

The main features of the Bill are:

- (a) **Clauses 5, 6, 7, 8 and 9** place current services into the appropriate category of Broadcasting Services Act licence and fix their licence areas and conditions of operation, subject to specific decisions made in due course by the new ABA;
- (b) **Clause 10 and consequential amendments to the Radiocommunications Act 1983 (the Radcom Act)** will provide the basis for technical licensing and regulation of use of the radiocommunications spectrum by broadcasting services (other means of delivery, particularly cable distribution, will be authorized under other legislation or by direct negotiation between the broadcaster and the technology supplier);
- (c) **Clauses 11, 12 and 13** deal with licensing action by the ABT not complete at the time of commencement of the Bill - unfinalised renewals will be deemed to be effective from the date of commencement, while new services will be licensed by the ABA applying the conditions of the scheme under which the applications were made, unless the services are now covered by a "class licence", in which case the applications will be treated as applications for any necessary technical licence under the Radcom Act);
- (d) **Clauses 14 and 15** provide for the completion of current Government policies relating to conversion of AM radio services to FM and to equalization of commercial television services in Tasmania;
- (e) **Clauses 16, 17, 18 and 19** will address the possibility that some people who do not breach the rules of the Broadcasting Act may breach the slightly different provisions of the Broadcasting Services Bill - the Broadcasting Services Bill offences will not apply until a person could have been prosecuted under the Broadcasting Act;
- (f) **Clause 20** will preserve the program standards of the ABT for 2 years or until new industry codes of practice are developed, except for the standards for children's programming and Australian content which will remain until the ABA develops new standards;

- (g) Clause 21 and consequential amendments to the *Radio Licence Fees Act 1964* and the *Television Licence Fees Act 1964* provide that existing commercial radio and television services will continue to pay annual, income based licence fees (these provisions will apply pending a review of the fees regime to apply to broadcasting services);
- (h) Clauses 22, 23, 24, 25 and 26 carry over into the new scheme certain obligations under the Broadcasting Act to provide information, maintain secrecy or comply with directions;
- (g) Clause 27 repeals the Broadcasting Act, except for provisions relating to material transmitted during elections that are currently subject to a challenge to the High Court; and
- (h) Clauses 28 and 29 and the Schedules provide for necessary consequential repeals and amendments to other Acts.

The Radcom Act will also be amended (Clause 29 and Schedule 2 - proposed section 92A) to allow price based allocation systems to be adopted for radiocommunications licences. This will provide a mechanism for allocation of scarce frequencies, particularly those involved in the provision of narrowcasting services.

#### FINANCIAL IMPACT

The Bill will continue the current licence fees regime for commercial broadcasters and thus will have no direct impact on revenue or expenses. It is likely that new services, particularly services provided under "class licences", will be licensed under the Radcom Act as a result of the new scheme and the consequential amendments made to the Act under this Bill. This should increase revenues from licence fees from those services. The extent of those additional revenues will depend on demand, a factor which will be hard to predict accurately until some experience of the scheme is built up.

## NOTES ON CLAUSES

### PART 1 - PRELIMINARY

#### Clause 1 - Short title

Fixes the citation of the Bill.

#### Clause 2 - Commencement

The Bill will commence on the same day as the Broadcasting Services Bill, being a day fixed either by Proclamation under clause 2 of that latter Bill or 6 months after Royal Assent, whichever is the earlier.

#### Clause 3 - Interpretation - expressions used in the Broadcasting Services Act

This clause applies definitions in the Broadcasting Services Bill where the same terms are used in this Bill.

### PART 2 - TRANSITIONAL PROVISIONS

#### Division 1 - Preliminary

#### Clause 4 - Interpretation

Defines a number of terms used in the Bill. Most relate to the classes of licence currently granted under section 81 of the Broadcasting Act and are necessary primarily for the purpose of clause 5, where those licences are deemed to be licences allotted in the appropriate category under the Broadcasting Services Act.

#### Division 2 - Licences

#### Clause 5 - Preservation of certain licences

The repeal of the licensing provisions of the Broadcasting Act would cause any licences granted under that Act to lapse unless special provision were made.

Subclause 5(1) will deem current licences under the Broadcasting Act to be licences of the closest equivalent class of licence under the Broadcasting Services Bill and to be allocated to the holder under that Bill. This ensures that the licences continue to have effect and that the ABA can exercise all of its powers in relation to those licences, including the powers to renew, impose conditions and require the supply of information.

Commercial radio licences, supplementary radio licences

and remote radio licences will become commercial radio broadcasting licences Paragraphs 5(1)(a), (d) & (f):

- Supplementary licences allow a commercial radio licensee to provide a second service in its service area without breaching the "one to a market" requirement of the Broadcasting Act. [Second commercial radio services will be allowed under the Broadcasting Services Bill].

- Remote radio licences use satellites for distribution and are confined to remote areas not served by other commercial radio services.

Commercial television licences and remote television licences will become commercial television broadcasting licences Paragraphs 5(1)(b) & (e):

- Remote television services use satellites for distribution and are confined to remote areas.

Public radio licences will become community broadcasting licences Paragraph 5(1)(c).

- The term "public broadcaster" was derived from American practice. Local broadcasters in that category have used the term "community broadcasting" for some years both because it is more descriptive of the nature of their programming and because it avoids confusion, in the Australian context, with ABC and SBS services, the publicly owned and funded broadcasters.

Subclause 5(2) deems limited licences granted under the Broadcasting Act to be open narrowcasting services.

- Limited licences cover services of a restricted nature, either by reference to the events covered, the audience, the time frame or the geographical coverage of the service.

- Open narrowcasting services are free to air (ie not subscription) services of limited audience appeal. Most, if not all, limited licences which will be in force on commencement will fall into this category. They are provided under "class licences" and need no individual licence from the ABA. However, the ABA can, if appropriate, require the service provider to obtain the appropriate licence. The ABA will monitor these services and, if necessary, use its powers to ensure that the service has the appropriate licence.

Subclause 5(3) deems certain radio services still provided under transitional provisions of the *Broadcasting and*

**Television Amendment Act 1985** to be commercial radio broadcasting licences granted under the Broadcasting Services Bill. Subclause 8(3) allows the ABA to determine a licence area for those services.

#### **Clause 6 - Remote Aboriginal community services**

Subclause (1) treats services provided for remote Aboriginal community purposes as community broadcasting

services. If they were treated as open narrowcasting services, as is the case with limited licences, the services would have no guarantee of spectrum availability.

Subclause (2) allocates the licences to the relevant incorporated media association for the community or, if there is no such body, to the community council.

#### **Clause 7 - Terms of preserved licences**

The Broadcasting Act licences preserved under subclause 5(1) will remain in force until their current term expires. The ABA may then renew the licences as if they had been allocated by the Authority. The renewal procedures are the relevant procedures under the Broadcasting Services Bill.

#### **Clause 8 - Licence areas of preserved licences**

Under the Broadcasting Act, "service areas" are allocated to all licences. The service area of a licence is, as the name implies, the area in which the service is required to be provided. Practical affairs, such as the propagation characteristics of radio waves which vary with the weather, the time of day and a host of other factors, often mean that the service can be received outside that area. However, because a number of legal obligations attach to the provision of the service in an area (in terms of, for example, limits on cross media interests within that area), there is a need for the areas to be specifically defined to avoid uncertainty for licensees, regulators and the community alike.

The same arguments apply to commercial and community broadcasting licences under the Broadcasting Services Bill. That Bill provides for "licence areas" in respect of those services.

This clause deems the "service area" of relevant Broadcasting Act licences preserved under subclause 5(1) to be the "licence area" of the continued operation of those licences under the Broadcasting Services Bill.



Subclause (2) requires the ABA to take the "carry over" licence areas into account when determining a licence area plan under the *Broadcasting Services Bill*.

Subclause (3) relates to "old system" licences in force under transitional provisions of the *Broadcasting and Television Amendment Act 1985*. Those services did not have service areas and the subclause gives the ABA the absolute discretion to determine one so that they will comply with the requirements of the *Broadcasting Services Bill*.

#### Clause 9 - Conditions of licences

The ABA will have extensive powers to determine the conditions applicable to licences, but, in the case of the *Broadcasting Act* licences preserved under clause 5, there is a need for conditions to be applicable from the commencement date. This clause adopts the basic conditions applicable to the relevant class of licence under Schedule 2 of the *Broadcasting Services Bill* and retains conditions specifically imposed by the ABT (Paragraph 9(1)(c)) that were in force immediately before commencement and are not inconsistent with the Bill or with conditions imposed by the ABA.

In the specific case of public licences, paragraph 9(1)(b) and subclause 9(2) continue the "purpose" condition (imposed on public licensees as part of their "service specifications" to indicate the purpose for which the service is licensed eg ethnic services, community services) and precludes the ABA from varying that condition. The purpose is to ensure that community services do not depart from the original purpose for which they were licensed. Similar requirements will apply to new community services.

Paragraph 9(1)(d) will also require commercial television broadcasting services which were, immediately before the date of commencement, under obligations to provide additional television services pursuant to the Government's Equalization of Television Services policy to continue to comply with implementation plans approved by the Minister in respect of the licensees. Implementation plans give details of how and when those additional services will be introduced. Subclause (3) will preserve the Minister's right to approve variations of the implementation plans.

Clause 15 provides for implementation of the equalization policy in Tasmania, where it has not yet commenced.

#### Clause 10 - Authority to operate radiocommunications transmitters

Under the *Broadcasting Act*, licensees receive a "licence warrant" which authorises them to operate

radiocommunications transmitters (the broadcast transmitters) for the purposes of providing the licensed service. The licence warrant sets out what transmitters can be used and gives the applicable technical conditions - power, frequency, etc.

One of the aims of the Broadcasting Services Bill is to accommodate means other than use of the radiofrequency spectrum, which is a scarce natural resource, for the delivery of services. It seeks to give the service provider the choice. As radio transmission will no longer have a practical monopoly in the means of broadcasting service delivery, it is inappropriate for it to be given the prominence it currently enjoys under the Broadcasting Act, even if it is likely to be the dominant form of service delivery for some years.

The provisions for authorizing the use of transmitters have, therefore, been removed to the Radcom Act which has, to date, dealt with the licensing of all radiocommunications services, other than broadcasting. Licences under that Act are granted by the Minister for Transport and Communications.

"Broadcasting services bands licences" within the meaning of the Broadcasting Services Bill (Commercial, national or community broadcasting licences) will be eligible to hold a "broadcasting service transmitter licence" under proposed section 24B of the Radcom Act, which will be inserted by clause 29 and Schedule 2 of this Bill.

Broadcasting service providers operating under a class licence will have to obtain a transmitter licence under the existing section 24 of the Radcom Act.

Subclauses (1) and (2) deem the licence warrant for a preserved Broadcasting Act licence referred to in subclause 5(1) (former commercial, remote or supplementary licences) to be a transmitter licence under proposed section 24B of the Radcom Act.

Similarly, the holder of a current limited licence will be deemed to be granted a section 24 Radcom Act licence pursuant to subclause 10(3), which will, under subclause (13), last for the remainder of the term of the original limited licence. The licensee will then simply apply for a normal Radcom Act licence. Subclause (4) provides that the holder of the Radcom Act licence is to provide the same service as previously provided pursuant to the limited licence.

Subclauses 9(5) and (6) deem the holders of retransmission permits (which allow the holder to rebroadcast existing services) to hold a section 24 Radcom Act licence for the

remainder of the term of their retransmission licence. The licensee will then simply apply for a normal Radcom Act licence.

Section 25 of the Radcom Act (general conditions of licence) will not apply to Radcom licences granted pursuant to this clause. Subclauses (7) and (8) are intended to cover the field as far as conditions for those licences are concerned. The subclauses provide for the initial conditions applicable to those licences (the technical operating conditions of an "old system" licence, the conditions of the original licence warrant of a "new system" licence or the conditions of the retransmission permit, as the case requires, and a general condition that the licensee will comply with the provisions of the Radcom Act ie the substantive requirements, not the licensing provisions).

Subclause (9) provides for the deemed grant of a section 24B Radcom Act licence to a remote Aboriginal community service operating as a community broadcasting licensee under clause 6.

Subclause (10) allows the Minister to vary or revoke the deemed conditions of Radcom Act licences and also to impose new conditions, but, by virtue of subclause (11), no exercise of those powers should result in an inconsistency with the relevant Broadcasting Services Act licence or class licence.

The Radcom Act licences granted in respect of commercial, remote or community licences pursuant to this clause remain in force, by virtue of subclause (12), while a relevant Broadcasting Services Act licence continues in force, but has no effect at any time when the latter licence is suspended. That subclause also deems the Radcom licence to be granted to any transferee of a related Broadcasting Services Bill licence.

Subclause (13) provides that Radcom Act licences deemed to be granted in respect of former limited licences or retransmission permits remain in force for the remainder of the former licence or permit.

Subclause (14) will result in the holders of "old system" licences (referred to in subclause 5(3)) being granted a section 24B Radcom Act licence based on the technical operating conditions of their original licences.

#### **Clause 11 - Applications for renewal not dealt with under Broadcasting Act**

Broadcasting Act licences are only renewed when the ABT, after inquiry, so decides (Section 81). However, by virtue

of subsection 87(3) of that Act, licences subject to a renewal inquiry continue in force until the ABT renews, or refuses to renew, the licence. Consequently, there is a need to provide for renewal of both old and new system Broadcasting Act licences which are, immediately before the commencement date, in force by virtue of subsection 87(3) and which will fall into the commercial or community categories under the new Act. (The class licence services only require Radcom Act licences. These are dealt with under clause 10).

This clause will deem those licences to have been renewed immediately before the date of commencement. This will not prevent the ABA continuing any investigation into the suitability of a licensee or the adequacy of its programming under the Broadcasting Services Bill.

#### **Clause 12 - Pending applications for grant of licences under Broadcasting Act**

This clause provides that, where the ABT has not finalised applications for the grant of a commercial or public radio licence (there are no applications being processed for commercial or public television) or a remote (satellite provided - radio or television) licence, the ABA can finalise the applications and grant a licence as if they were the ABT operating under the repealed Broadcasting Act. The licence conversion provisions of subclause 5(1) will then apply to that licence as if the licence had been in force immediately before the commencement of the BSB.

For example, if the Minister has called for a public radio licence for community purposes in town A, and corporations B and C have applied, the ABA will process the application as if it were the ABT, applying the provisions of the Broadcasting Act. An inquiry will be held and, once the ABA has selected the most suitable applicant and the Minister has settled the licence warrant provisions, the ABA will then grant a public radio licence which will then automatically become a community radio broadcasting licence under the Broadcasting Services Act, with an associated section 24B Radcom Act licence.

Nothing under this clause will prevent an applicant who wishes to withdraw an application under the old Act from doing so. This will allow the simpler allocation provisions of the Broadcasting Services Bill to be used if preferred.

Subclause (1) gives the ABA the power to deal with the applications while subclause (2) allows all actions of the ABT (ie the ABT inquiry to date and any related exercise of its powers) to be incorporated into the subsequent ABA "inquiry". Subclause (3) attracts the operation of

subclause 5(1) and subclause (4) adopts current Broadcasting Act definitions for terms used in the clause.

Applications for Broadcasting Act services which will become class licences, eg for limited licences, will be dealt with under the Radcom Act (Clause 13).

**Clause 13 - Pending applications for grant of licences under Broadcasting Act not requiring licences under Broadcasting Services Act**

This clause provides that applications for the grant of certain licences under the Broadcasting Act (those which, if granted, would become class licenses under the Broadcasting Services Bill and which have not been finalised by the ABT before the commencement date) are simply treated as being applications for the relevant Radcom Act licence. No ABA licence is required.

**Clause 14 - AM/FM conversion arrangements**

This clause preserves the application of the current Broadcasting Act provisions in relation to the National Metropolitan Radio Plan, which provides for conversion of certain metropolitan AM commercial radio services to FM frequencies.

This clause will allow conversions to be finalised.

**Clause 15 - Aggregation of licence areas of existing licences in Tasmania**

The equalisation of regional commercial television scheme aims at introducing additional commercial television services by extending the services provided by neighbouring commercial TV services into each other's service areas, thereby providing up to three commercial TV services in a number of regional areas. Implementation of the scheme is well advanced in the Eastern mainland states (paragraph 9(1)(d) preserves the currently unfulfilled obligations of those licensees as conditions of their licences), but the smaller market in Tasmania is treated as a special case under the Broadcasting Act. The current provisions contemplate two services in Tasmania, based on the current licensees in Hobart and Launceston. However, the formal processes have not yet commenced.

This clause preserves the operation of the current scheme for Tasmania, allowing the Minister to require the licence areas of the two licensees to become co-extensive and for "implementation plans" (which provide the timetable for

extension of the licensee's service into the new parts of the licence area) to be submitted for approval and to become, as in force from time to time, conditions of licence of the licensee.

Subclause (1) allows the Minister to direct that the licence areas be combined. Subclause (2) ensures that the Minister has adequate powers to make necessary variations to the licensee's section 24B Radcom Act licences. Subclauses (3) and (4) prevent the Minister from making those changes in respect of either or both of the licensees until the Minister is satisfied with implementation plans submitted by the licensee. Under subclause (5), the Minister can, with the licensee's agreement, vary those plans and, under subclause (6), compliance with the plans, as in force, is a condition of the relevant licence.

### ***Division 3 - Directorships and Control***

This Division will ensure that a person who would not have been in breach of the Broadcasting Act, if it had continued, would not be in breach of the Broadcasting Services Bill in the same circumstances.

#### **Clause 16- Special provision for certain directorships**

The rules relating to directorships prohibited under the ownership and control provisions of the Broadcasting Services Bill will be slightly more restrictive than those under the Broadcasting Act. This clause deems anyone who could have held a directorship in a broadcasting licensee, newspaper or related company under the Act, but who would otherwise be prohibited from doing so under the Bill, to continue to hold that directorship and to be re-elected.

#### **Clause 17 - Periods of grace for compliance with ownership and control provisions**

The Broadcasting Act allows, in certain cases, periods of grace (usually 6 months, with provision for extension) for persons who have contravened the ownership and control rules of the Act. No prosecution can be mounted during those periods. This allows time to rectify the breach.

This clause allows those periods of grace to continue if the circumstances to which they relate remain unchanged (subclause (2)). Subclauses (3) and (4) give the ABA the same power to grant extensions of the periods of grace (whether the application was made to the ABT before commencement of the Bill or to the ABA after that commencement) as the ABT would have had if the relevant provisions of the Broadcasting Act were not repealed.

Any substantive change in the circumstances of a person will deprive that person of the protection of these provisions. What amounts to a "substantive change" will be a matter of fact to be determined on a case by case basis. However, clearly the nature of that change would have to involve some real change to the circumstances, not something purely formal in nature.

#### **Clause 18 - Grandfathering of existing interests relevant to control**

This clause ensures that a person who legally had a relationship to, or held interests in relation to, a broadcasting service, newspaper or related company under the current scheme will not, while the circumstances remain unchanged, be taken to "control" (the basic factor under the new scheme) that service, newspaper or company under the new ownership regime.

An example would be where a lender has valid loan arrangements with broadcasting services and newspapers in one area under the current Act. The changes to the loan provisions under the Broadcasting Services Bill might mean that the lender is deemed to have "control" of the services and newspapers, resulting in a breach of the cross media rules of the Bill. This clause means that the current arrangements can continue until they expire without the lender being forced to withdraw or re-negotiate the loans.

#### **Clause 19 - Protection for persons having interests in former supplementary licences**

Supplementary licences will, under clause 5, become commercial radio broadcasting services. This may mean that certain persons could breach the limitation of control (Division 2 of Part 5) or limitation on directorship (Division 3 of Part 5) provisions of the Broadcasting Services Bill by virtue of controlling both the original supplementary licence and its related commercial licence or of holding directorships that straddle both licences. Typically, the changed status of the supplementary licence to a commercial licence might give a person unacceptable levels of media control of commercial radio interests in an area.

This clause protects any person who would not have been in breach if the supplementary licence had not been treated as a commercial licence. It applies for 11 years after the original grant of the supplementary licence, the normal period for which supplementary licences remain in force without the requirement for the licensee to elect whether to dispose of one or other licence under the Broadcasting Act.

**Division 4 - Program standards****Clause 20 - Program standards**

Under paragraph 16(1)(d) of the Broadcasting Act, the ABT has developed an extensive series of mandatory program standards that licensees are required to comply with. The Broadcasting Services Bill seeks to minimise imposing conditions in respect of the services provided by broadcasters and will do so only on critical issues, such as children's programming and Australian content, or when it has been demonstrated that broadcasters have failed to provide adequate community safeguards.

Part 9 of the Broadcasting Services Bill will require the ABA to make mandatory standards for children's programming and Australian content, but will otherwise rely on industry developed codes of practice, unless those codes are not made or fail to provide adequate community safeguards. In the latter case, the ABA will have the right to impose mandatory standards.

It will be some time before the ABA is able to develop standards or the industry codes of practice and is undesirable for the industry to be operating without measures to protect the community in the meantime.

This clause adopts the program standards of the ABT and applies them as if they were ABA standards. For this purpose, section 114 of the Broadcasting Act (which deals with the encouragement of Australian artists) is deemed to be an ABT standard dealing with Australian content.

Those relevant to children's programming and Australian content (including section 114) are treated as standards determined under paragraph 121(1)(b) of the Broadcasting Services Bill. The others have effect pursuant to this clause. They can be amended by the ABA, but remain in force for 2 years after commencement or until:

- (a) in the case of children's programming or Australian content standards (which the ABA must have in place) - replaced by ABA developed standards; and
- (b) in any other case - until an industry code of practice on the topic is registered by the ABA.

If industry codes are not registered within that 2 year period, the ABA would be entitled to infer that the industry has failed to provide adequate community safeguards. The ABA would then be entitled to determine its own standards under the Broadcasting Services Bill.



### **Division 5 - Licence Fees**

Currently, commercial broadcasting licensees pay a range of fees for the grant of licences and annual fees, based on income from broadcasting. This clause and the related amendments in Schedule 2 to the Radio Licence Fees Act 1964 and the Television Licence Fees Act 1964 will ensure that these requirements continue to apply to commercial broadcasters, pending a review of the appropriate level and method of levying fees for the provision of broadcasting services.

Class licensees will, when the time comes to renew their Radcom Act licences, pay the prescribed fees under that Act.

### **Division 6 - Miscellaneous**

#### **Clause 22- Vesting of property, rights and liabilities of the Australian Broadcasting Tribunal**

This clause transfers all property, rights and liabilities of the ABT to the ABA. Transfer of staff, however, will be handled under the *Public Service Act 1922*.

#### **Clause 23 - Effect of directions and orders under Division 4 of Part IIIBA of the Broadcasting Act**

Division 4 of Part IIIBA of the Broadcasting Act gives the ABT certain powers of direction, and to apply to the Federal Court of Australia for certain orders, in respect of certain breaches or prospective breaches of the ownership or control provisions of the Act. This clause preserves the effect of those directions or of any order of the Federal Court and allows the ABA to also apply to the Federal Court for orders to enforce ABT directions.

#### **Clause 24 - Continuation of secrecy provision**

Members and staff, and former members and staff, of the ABT are under obligations to maintain the secrecy of information acquired in their official capacities. This clause preserves those obligations and ensures that disclosure would not be required under the *Freedom of Information Act 1976*. The clause also applies those obligations to ABA members and staff in respect of documents of the ABT which pass to the possession of the ABA under subclause (1).

Breach of the obligation will be punishable as an offence against the Broadcasting Act.

**Clause 25 - Obligations to provide information or produce documents under Broadcasting Act**

A person required to provide information, or produce documents, to the ABT by direction under section 89X of the Broadcasting Act will have to provide that material to the ABA and Federal Court orders to enforce those directions will continue to apply.

The ABA, however, may indicate that it does not require the information or document. It would do so if the information or document was not relevant to the ABA's functions.

**Clause 26 - Technical standards relating to broadcasting equipment**

Paragraph 125D(1)(b) of the Broadcasting Act allows the Minister "to determine standards and practices in relation to the technical equipment used for broadcasting services and the operation of such equipment". Since technical regulation will now be a matter for the Radcom Act, this clause deems those standards to be standards made under the relevant provision of the Radcom Act. This will enable them to be enforced and, if necessary, to be revoked or varied in accordance with the procedures of the Radcom Act.

**PART 3 - REPEALS AND CONSEQUENTIAL AMENDMENTS**

**Clause 27 - Repeal of Broadcasting Act**

The Broadcasting Act would normally be repealed outright on commencement of the Broadcasting Services Act. However, certain provisions relating to political broadcasting inserted by the *Political Broadcasts and Political Disclosures Act 1991* are the subject of a challenge to the High Court of Australia. Pending determination of that challenge, the provisions are to be preserved.

**Clause 28 - Other repeals - and Schedule 1**

These provide for the repeal of the *Broadcasting (Limited Licence) Fees Act 1988* and the *Broadcasting (Retransmission Permits and Temporary Transmission Permits) Fees Act 1988*. Those Acts relate to fees for instruments not found under the Broadcasting Services Bill.

**Clause 29 - Consequential amendments - and Schedule 2**

These provisions amend a number of other Acts to ensure that relevant references in those other Acts to broadcasting issues continue to be relevant.

**Affirmative Action (Equal Employment Opportunity for Women) Act 1986** This Act makes provision in respect of

discrimination against women in employment situations to which Commonwealth law may apply. The amendments will include certain of the larger class licensees in the operation of the Act.

**Australian Broadcasting Corporation Act 1983** This Act provides for the ABC and for its broadcasting and other services.

- . The ABC is required, under its Charter, to take into account the broadcasting services provided by other sectors of the broadcasting industry in relation to its own services. The amendment to section 6 simply changes references to the "public" broadcasting sector to its new name under the BSB: the "community" broadcasting sector.
- . Proposed paragraph 8(1)(b) obliges the ABC Board to ensure the ABC develops program codes of practice and notifies them to the ABA.
- . Subsection 25(3) of this Act precludes the ABC from accepting payment in respect of broadcasting services, except in the circumstances specified in subsection 25(5). By inference, this also limits the powers of the ABC to establish subsidiary companies or enter into joint ventures which involve payment for broadcasting services. The amendment to subsection 25(5) will ensure that the ABC is not constrained in participation in certain pay television services and, more importantly from a practical perspective, that it will not be constrained in establishing subsidiary companies or entering into joint ventures which participate in those pay services.
- . Replacement section 29A continues the ABC's current power to make facilities and staff available to assist licensees channel sharing with the ABC and makes it more general in nature.
- . Section 30 of this Act relates to children's television program classification by the ABT. The ABA will have no comparable function.
- . The amendment to section 73 (definition of "transmitting station") deletes references to obsolete terminology.
- . The amendment to section 79 is formal.
- . The new section 79A and 79B incorporate the current sections 117 and 117A of the Broadcasting Act, which already apply to the ABC and SBS, as well as to licensees. They relate to the identification of

political matter broadcast (the "written and authorised by" announcements that follow political advertising) and the maintenance of records of material broadcast. The treatment of the ABC and SBS in relation to holding records is slightly different to that applicable to licensees because of the different record keeping procedures of the national broadcasters. In particular, they are subject to the *Archives Act 1983*, which imposes specific obligations for the retention and disposal of records.

**Commonwealth Electoral Act 1901** This Act regulates the conduct of Commonwealth elections.

- . Subsection 287(1) (definition of "broadcaster") will now include class licensees.
- . Subsection 310(3) refers to returns to the ABT and subsection 310(4) refers to a repealed provision of the Broadcasting Act. The proposed subsections 310 (4), (5) and (6) reproduce the effect of the former subsection.

**Copyright Act 1968** This Act gives copyright protection to "works", including broadcasting programs, and to broadcasting services themselves.

- . The amendment to subsection 10(1) (definition of "the Special Broadcasting Service") is formal.
- . The amendment to paragraph 47A(11)(b) (definition of "print-handicapped radio licence") is also formal. It recognises that none of these services are currently provided under the repealed *Wireless Telegraphy Act 1905*.

**Parliamentary Proceedings Broadcasting Act 1946** This Act authorizes the broadcasting of Parliamentary proceedings.

- . The amendment to subsection 3(1) (definition of "national broadcasting transmitter") is formal.
- . The amendment to section 16 is also formal.

**Radio Licence Fees Act 1964** This Act provide for fees for the grant of commercial radio licences and for annual fees, based on income, in respect of those licences.

- . The amendment to section 3 is formal (The BSB, rather than the Broadcasting Act, will now be read as one with this Act).
- . The amendments to section 4 merely remove superfluous material and provide cross references to this Bill.

- . The amendment to subsection 6(3) refers to subclause 21(1), which preserves the current right of licensees to select, with approval by the regulatory authority (presently ABT, in future ABA), different accounting periods for licence fees purposes.

**Radiocommunications Act 1983** This Act provides the basic planning and licensing regime for radio transmissions.

- . Subsection 3(1) (definition of "broadcasting station") will now include class licensees
- . Subsection 3(1) (definition of "television station") is unnecessary. The term "broadcasting" will now include both radio and television broadcasting.
- . Subsection 3(1) (definition of "transmitter licence") will now include reference to licences for broadcasting stations.

Proposed subsection 3(1A) will import definition relating to broadcasting services from the Broadcasting Services Bill.

- . Proposed subsection 18(3) reflects the BSB, which allows the ABA to plan broadcasting services bands assigned to it by the Minister. The provision allows formal assignments to be made.
- . The amendment to subsection 19(1) precludes the Minister from making a frequency band plan in respect of a broadcasting services band. Those bands will be planned by the ABA under the BSB.
- . Proposed section 20A will require the Minister to consider the ABA's advice in preparing a spectrum plan, the basic division of the electromagnetic spectrum for planning purposes.

The proposed subsection 21(1A) prevents a frequency reservation certificate (which allows frequencies to be reserved by the applicant for later use) being issued in respect of the broadcasting services bands.

- . The amendment to subsection 21(8) is formal.
- . The amendment to section 22 removes the current prohibition on granting Radcom Act licences for broadcasting services.
- . The amendment to subsection 24(1) is formal.
- . Proposed section 24B provides for the grant of Radcom Act licences for the operation of broadcasting

transmitters for national, commercial and community broadcasters. Class licensees obtain ordinary section 24 transmitter licences. Licences under this clause will remain in force while the related broadcasting licence remains in force, but have no effect while that related licence is suspended and is deemed to be granted to any transferee of the related broadcasting licence. The conditions of the licence are those imposed under proposed subsections 24B(4) and (5). The general licence condition provisions (sections 25, 28 and 29) do not apply to these licences. The licence must not be inconsistent with the related broadcasting licence (proposed subsection 24B(6)).

- . The amendment to subsection 25(1) is formal.
- . Proposed subsection 25(8) will make it indisputable that the Minister may require a class licensee or ordinary radiocommunications licensee opening a service in an area to rectify interference problems initiated by the service and to advertise, at their own cost, to invite persons affected to approach them for that purpose.
- . The amendments to subsections 28(1) and 29(1) are formal.
- . The amendment to section 36 (definition of "operate") ensures that a Radcom Act licence is not required simply for the purpose of receiving broadcast services.
- . The other amendments to section 36, and those to subsections 41(3) and 55(2) and section 89, are formal.
- . The proposed section 92A will allow price based allocation systems to be determined in respect of the grant of Radcom Act transmitter or receiver licences. The system may apply generally, or in respect of specified areas or frequencies to licences of a kind identified for the purpose in the regulations. However, it will not apply to the broadcasting services bands except in respect of frequencies which the ABA has "dropped through" under subsection 34(1) of the *Broadcasting Services Bill 1992*, ie indicated that it is not required for broadcasting purposes, thus allowing it to be used for radiocommunications purposes. The draft follows the BSB precedent by requiring details of successful applicants and the amount agreed to be paid to be published in the *Gazette*.

**Referendum (Machinery Provisions) Act 1984** This Act prescribes the machinery arrangements for the conduct of referenda.

- . The amendment to section 110 (definition of "broadcaster") will extend that term to class licence services in Part IX of this Act (Returns by Broadcasters, Publishers and Printers).
- . The amendments to subsection 111(4) reflect the current requirements for broadcasters to maintain records of political broadcast matter and make necessary consequential amendments.

**Sea Installations Act** This Act provides for the application of Australian law to offshore structures, like drilling rigs, outside Australian territorial waters. This amendment will change the reference to the Broadcasting Act to the Broadcasting Services Bill.

**Special Broadcasting Service Act 1991** This Act provides for the SBS and for its broadcasting and other services.

- . The SBS is required, under its Charter, to take into account the broadcasting services provided by other sectors of the broadcasting industry in relation to its own services. The amendment to section 6 simply changes references to the "public" broadcasting sector to its new name under the BSB: "community" broadcasting sector.
- . Proposed paragraph 10(1)(j) obliges the SBS Board to ensure the SBS develops program codes of practice and notifies them to the ABA.
- . Subsection 45(7) refers to a provision of the Broadcasting Act that has no equivalent in the Broadcasting Services Bill. The subsection is superfluous.
- . The amendment to section 70 is formal.
- . The new sections 70A and 70B incorporate the current sections 117 and 117A of the Broadcasting Act, which already apply to the ABC and SBS, as well as to licensees. They relate to the identification of political matter broadcast (the "written and authorised by" announcements that follow political advertising) and the maintenance of records of material broadcast. The treatment of the ABC and SBS in relation to holding records is slightly different to that of licensees because of the different record keeping procedures of the national broadcasters. In particular, they are subject to the *Archives Act 1983*, which imposes

specific obligations for the retention and disposal of records.

**Telecommunications Act 1991** This Act provides for the regulation of telecommunications services in Australia.

- . Section 99 allows broadcasters to install reserved line links relating to their services. Subsection (2) defines "broadcaster" for that purpose. This amendment will apply the exemption to all broadcasting services, including class licences, under the Broadcasting Services Act and to permitted retransmission of broadcasting services.

**Television Licence Fees Act 1964** This Act provide for fees for the grant of commercial television licences and for annual fees, based on income, in respect of those licences.

- . The amendment to section 3 is formal (The BSB, rather than the Broadcasting Act, will now be read as one with this Act).
- . The amendments to section 4 merely remove superfluous material and provide cross references to this Bill.
- . The amendment to subsection 6(3) refers to subclause 21(1), which preserves the current right of licensees to select, with approval by the regulatory authority (presently ABT, in future ABA), different accounting periods for licence fees purposes.

**Trade Practices Act 1974** This Act deals with competition policy issues.

- . Section 65A of this Act applies Division 1 (Unfair practices) of Part V (Consumer Protection) of the Act to "prescribed information providers". These 2 amendments redefine the broadcasting services to which that Division applies by:
  - (a) omitting a definition of "consortium" that will be superfluous on commencement of the Broadcasting Services Bill; and
  - (b) providing that all broadcasting service suppliers, including class licensees, are included in the definition.

