

1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

COMMUNICATIONS LEGISLATION AMENDMENT BILL 1985

EXPLANATORY MEMORANDUM

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



## OUTLINE

The Bill amends the

- . Overseas Telecommunications Act 1946 ("OTC Act");
- . Postal Services Act 1975 ("Post Act");
- . Radiocommunications Act 1983; and
- . Telecommunications Act 1975 ("Telecom Act").

General Amendments. The OTC, Post and Telecom Acts will be amended to require Commissioners to declare, and not to vote on, matters in which they have a direct or indirect pecuniary interest. This general requirement will not apply to matters relating to the provision of normal Commission services. Commissioners will, for example, be able to vote on the fixing of charges for normal services despite the fact that those charges directly affect them, as they do all Australians.

These amendments are being adopted in all Acts involving Statutory Authorities to implement decisions of the Government taken in pursuance of the recommendations of the Committee of Inquiry into Public Duty and Private Interest, 1979, chaired by Sir Nigel Bowen ("the Bowen Report").

The OTC and Telecom Acts will also be amended to allow the Commissions to enter into arrangements to provide against foreign exchange and interest rate fluctuations. These arrangements will not require Ministerial approval as they will be ancillary to other contracts or arrangements to which the requirement for Ministerial approval will apply. However, the Commissions will be required to comply with Ministerial guidelines.

The OTC, Post and Telecom Acts will be amended to delete the requirement that leases for periods exceeding 10 years require Ministerial approval regardless of their value. Long term leases will still require Ministerial approval if their value exceeds the normal threshold amount applicable to the Commissions (currently \$2,000,000.00 for Telecom, \$500,000.00 for OTC and Post).

OTC Act. Part time Commissioners will no longer be subject to the 65 years of age retirement limit applicable to the full time Managing Director.

Radiocommunications Act. The Act will now define "radio transmission" to include infra red transmissions. This will enable these new forms of communications to be regulated.

Telecom Act. Consistent with the recommendations of the report of the Review of Matters affecting the Australian Telecommunications Commission conducted by Mr F Vincent QC ("the Vincent Report"), a number of provisions in the By-laws and Regulations are being incorporated into the Act and the level of penalties reviewed. The Commission will be placed under a positive duty to use its best endeavours to avoid illegal use of its system. It will be assisted in this by two new offence sections, 86 and 94A, which will apply to abuse of the system and unauthorized alteration or modification of appliances attached to the system.

Attorney-General's Department has reviewed the levels of offences for both the new and existing provisions. The proposed monetary penalties reflect that Department's advice on appropriate maximum fines. The introduction of fines as an alternative to imprisonment reflects that Department's policy of extending judicial discretions in sentencing.

Proposed section 103A, clarifies the ownership of the Commission's installations erected on private land.

#### FINANCIAL IMPACT STATEMENT

The foreign currency and financial hedging contracts and lease of land amendments are aimed at reducing administrative requirements in relation to the seeking of Ministerial approval. As such, they should marginally reduce the workload of the Minister, the Commissions and the Department.

Monetary savings in administration would, however, be negligible.

The disclosure of interest provisions and the retiring age for OTC Commissioners provisions should not have any financial impact.

The revised Telecom offence provisions should improve the effectiveness of Telecom's regulatory efforts in controlling illegal use of the system. However, they will not reduce the effort required and will not, therefore, have any appreciable financial impact.

#### NOTES ON CLAUSES

##### PART I - PRELIMINARY

Clause 1 Fixes the citation of the Bill.

##### PART II - OVERSEAS TELECOMMUNICATIONS ACT 1946

Clause 2 Defines "Principal Act" for the purposes of the Part.

Clause 3 Removes the age 65 retirement requirement for part-time OTC Commissioners.

Clause 4 Makes an addition to sub-section 15(5) which will limit dispensation from the disclosure of pecuniary interests requirement to cases where the matter to be considered involves the provision of a service to a Commissioner in common with members of the public generally. (Bowen Report Amendment).

Clause 5 Removes the specific requirement for Ministerial approval of leases of land exceeding 10 years in duration, thereby placing them in the same position as every other class of contract.

Clause 6 Provides for foreign currency and financial hedging arrangements, subject to Ministerial guidelines, and excludes the requirement for Ministerial approval of foreign currency and financial hedging arrangements.

#### PART III - POSTAL SERVICES ACT 1975

Clause 7 Defines "Principal Act" for the purposes of the Part.

Clause 8 Requires disclosure of all pecuniary interests and prohibits voting on matters affected by those interests but does not require Commissioners to declare a pecuniary interest, and not vote on, matters relating to the provision of normal services of the Commission. (Bowen Report Amendment).

Clause 9 Removes the specific requirement for Ministerial approval of leases of land exceeding 10 years in duration, thereby placing them in the same position as every other class of contract.

#### PART IV - RADIOCOMMUNICATIONS ACT 1983

Clause 10 Defines "Principal Act" for the purposes of the Part.

Clause 11 Amends the definition of "radio transmission" to enable newly developed radio equipment working in the infra red band of the radio frequency spectrum to be licenced and regulated.

Clause 12 Removes the need to make regulations which would otherwise be necessary to protect Royal Flying Doctor Service radio services from interference.

#### PART V - TELECOMMUNICATIONS ACT 1975

Clause 13 Defines "Principal Act" for the purposes of the Part.

Clause 14 Imposes a duty on the Commission to take positive steps to ensure its telecommunications system is not used for an illegal purpose (Vincent Report Amendment).

Clause 15 Amends section 28 in line with the decisions to implement the Bowen Report (See clause 8).

Clause 16 Omits the special provision for Ministerial approval of leases of land exceeding 10 years and excludes the requirement for Ministerial approval of foreign currency and financial hedging arrangements conducted in accordance with proposed section 79A. (See clause 5). Provides (section 79A) for foreign currency and financial hedging arrangements, subject to Ministerial guidelines.

Clause 17 Prohibits use of the Telecom system to menace or harass another person, or for causing serious alarm or affront. Also prohibits sending false communications likely to result in serious personal or financial detriment to another person (Vincent Report Amendment).

Clause 18 Prohibits unauthorized modification or alteration of privately owned attachments to the Telecom system and unauthorized maintenance of Telecom facilities (Vincent Report Amendment).

Clause 19 Revises the procedural provisions for prosecution of indictable offences to bring them into line with current drafting practice (Vincent Report Amendment).

Clause 20 Confirms Telecom's ownership of facilities constructed by it on land owned by other persons (Vincent Report Amendment).

Clause 21 Removes a provision relating to attachment of salaries which makes it an offence for a judgement creditor to fail to notify the Commission when payment is made in satisfaction of the judgement.

Clause 22 Removes a regulation making power rendered redundant by specific provision (See proposed sub-paragraph 86(b)(ii) - Clause 17).

Clause 23 and Schedule Updates penalty provisions in accordance with advice from Attorney-General's Department and effects formal amendments consequential to changes in the Statutory Rules Publication Act 1903 and the repeal of the Officers' Rights Declaration Act 1928.



