

1983

PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

RADIOCOMMUNICATIONS BILL 1983

EXPLANATORY MEMORANDUM

(Circulated by the Minister for Communications,
the Honourable Michael Duffy, MP)

RADIOCOMMUNICATIONS BILL 1983

OUTLINE OF BILL

This Bill, which will replace the Wireless Telegraphy Act 1905, is intended to control the use of the Australian radio frequency spectrum at a time of rapidly developing technical change.

The Bill, which is expressed to bind the Crown, makes provision for common standards for radiocommunications receivers and transmitters and for offences with respect to sub-standard equipment. The Bill makes provision for compliance statements and compliance certificates with respect to such equipment.

Advisory guidelines with respect to radio transmission may be made by the Minister and, if made, must be laid before each House of Parliament.

Radio frequency planning matters include provision for a spectrum plan and frequency band plans and for transmitter and receiver licences.

A Part of the Bill is devoted to the settlement of disputes with respect to interference to radiocommunications.

Enforcement and procedural matters are also dealt with.

NOTES ON THE CLAUSES OF THE BILL

PART 1 - PRELIMINARY

Clause 1 - Short title

Citation

Clause 2 - Commencement

Clause 2 provides that the general scheme of the Bill shall come into operation upon proclamation.

Clause 3 - Interpretation

Clause 3 sets out definitions of a number of words and expressions.

Clause 4 - Crown to be bound

Clause 4 provides that the Crown is bound by the Bill, but that the Crown may not be prosecuted for any offence under the Bill.

Clause 5 - Additional operation in relation to radar, radio astronomy, etc

Clause 5 extends the operation of the Act to certain transmitters not used for the purpose of radiocommunications.

Clause 6 - Application

Clause 6 extends the application of the Bill to every external Territory and to places outside Australia in relation to Australian aircraft, satellites, vessels and their crews. The Bill does not extend to foreign satellites, nor to foreign aircraft or ships travelling to or from Australia.

Clause 7 - International agreements, etc.

Clause 7 provides that in exercising his powers under the Bill, the Minister shall have regard to any relevant international agreement.

Clause 8 - Further provision with respect to certain persons.

Clause 8 provides that Regulations may exempt certain defence, police, civil defence, etc. personnel from the operation of some provisions of the Bill.

PART II - STANDARDS

DIVISION 1 - Making of, and compliance with, Standards

Clause 9 - Standards

Clause 9 provides that the Minister may make standards for devices, after specified public consultation and participation. Such standards shall relate only to the operation of devices and the prevention of interference to radiocommunications, and may relate to standards of the Standards Association of Australia. Such standards are deemed to be regulations for the purposes of certain provisions of the Acts Interpretation Act 1901 and the Statutory Rules Publication Act 1903.

Clause 10 - Test permits

Clause 10 provides that the Minister may permit on conditions the use of sub-standard transmitters, in particular for education or research, testing or defence demonstrations. Any contravention of such a permit is punishable by a fine of up to \$1,000.

Clause 11 - Offences relating to sub-standard devices

Clause 11 provides that a person who, without reasonable excuse, transmits from, supplies, or possesses, a sub-standard transmitter, is liable to punishment of a fine up to \$10,000, or 5 years imprisonment or both. Reasonable excuse may include the safety of a vessel or aircraft, a serious threat to the environment, or a risk of injury or death or damage to property. This clause generally does not apply to devices which are intended for export or for use outside Australia.

Division 2 - Compliance statements and compliance statement certificates

Clause 12 - Compliance statements and compliance statement certificates

Clause 12 provides for the issue or variation by the Minister of a certificate authorizing the application of a statement to a specified device, certifying that it complies with a standard in force. The Minister may request the submission to him of devices for examination.

Clause 13 - Suspension of compliance statement certificates

Clause 13 provides that the Minister may, in his discretion, suspend a compliance statement certificate. Such suspension may be revoked by the Minister and ceases in any case upon certain events.

Clause 14 - Cancellation of compliance statement certificates

Clause 14 provides that the Minister may, in his discretion, cancel a compliance statement certificate, after having regard to all matters he considers relevant.

Clause 15 - Offences relating to compliance statements, etc

Clause 15 provides for a penalty of \$1,000 for misuse of the compliance statement provisions.

PART III - ADVISORY GUIDELINES

Clause 16 - Advisory guidelines

Clause 16 provides the Minister may make advisory guidelines relating to radio transmission or its reception, particularly with respect to standards, and to the use, construction, design or performance of any thing or structure. Such guidelines shall be published and laid before each House within 15 sitting days of making.

PART IV - RADIO FREQUENCY PLANNING

Clause 17 - Interpretation

Clause 17 defines certain words and expressions for this Part.

Clause 18 - Spectrum plan

Clause 18 provides that the Minister may prepare a spectrum plan, dividing and designating the spectrum into frequency bands and specifying the purposes for which each band may be used.

Clause 19 - Frequency band plans

Clause 19 provides that the Minister may prepare a plan for each frequency band within the spectrum plan, including the purposes for which any part of the band (including any particular frequency channel) may be used. The frequency band plan may be with respect to a particular area or period.

Clause 20 - Publication and tabling of plans

Clause 20 provides for public consultation in preparing a spectrum plan and a frequency band plan and that such plans shall be deemed to be regulations for the purposes of certain provisions of the Acts Interpretation Act 1901 and the Statutory Rules Publication Act 1903.

PART V - FREQUENCY RESERVATION CERTIFICATES

Clause 21 - Frequency reservation certificates

Clause 21 provides that the Minister may, in his discretion, grant to an applicant a certificate reserving to them an unallocated frequency.

PART V1 - TRANSMITTER LICENCES AND TEMPORARY PERMITSClause 22 - Interpretation

Clause 22 defines "radiocommunications transmitter" in this Part as not including a broadcasting or television station or a transmitter included in a prescribed class of transmitters.

Clause 23 - Radiocommunications transmitter not to be operated without transmitter licence or temporary permit

Clause 23 provides that a person shall not operate, or have in his possession for the purpose of operation, a transmitter, without reasonable excuse, except under a transmitter licence or temporary permit, penalty \$2,000 or 12 months. Reasonable excuse includes the safety of a vessel or aircraft, a serious threat to the environment or risk of death or injury or damage to property.

Clause 24 - Transmitter Licence

Clause 24 provides that the Minister may, in his discretion, grant licences to operate transmitters. In exercising his powers under this clause, the Minister shall have regard to all relevant matters, whether the purpose of the operation of the transmitter may be otherwise effected, the operation is in accordance with the appropriate frequency band plan, the effect on radio-communications of the operation and the likelihood of death or injury or damage to property. Such licences come into force when granted and are valid for up to 12 months or such longer period as is prescribed.

Clause 25 - Conditions to which transmitter licence is subject

Clause 25 provides that a licence to operate a radio-communications transmitter is subject to certain conditions; including that the operation shall be in accordance with the specifications in the licence, shall not cause alarm, affront or harassment, shall be by a qualified operator and shall comply with specified directions by a member of a Commonwealth or State police force or an officer of the Defence Force. The Minister may vary the conditions of a licence.

Clause 26 - Authorities under transmitter licences

Clause 26 provides that the holder of a transmitter licence may give to a person written authority to operate on his behalf. Where the Minister is satisfied that the holder of an authority has breached a condition of the licence, he may instruct the holder to revoke that authority. A person who gives such an authority shall keep a copy for a year after it ceases to be in force, penalty \$200.

Clause 27 - Contravening conditions of transmitter licences

Clause 27 provides that a person, who, without reasonable excuse, contravenes a condition of a transmitter licence, is liable to a penalty of up to \$1,000.

Clause 28 - Suspension of transmitter licences

Clause 28 provides that the Minister may, in his discretion, suspend a licence for a specified period, and similarly revoke such a suspension, which ceases in any case upon certain events.

Clause 29 - Cancellation of transmitter licences

Clause 29 provides that the Minister may, in his discretion, cancel a licence having had regard to all matters he considers relevant.

Clause 30 - Notice to holder of authority under section 26

Clause 30 provides that the holder of such an authority shall be informed as soon as practicable by the licence holder of certain matters, penalty \$500.

Clause 31 - Certificates of proficiency

Clause 31 provides for the issue by the Minister of certificates of proficiency that the holder is a qualified operator of specified transmitters. The Minister must be satisfied that applicants are of a certain age, medically fit, have passed the relevant examinations and have not misconducted themselves in relation to radiocommunications.

Clause 32 - Re-examination of qualified operators

Clause 32 provides that the Minister may request a qualified operator to submit himself to an examination or further examination.

Clause 33 - Cancellation of certificates of proficiency

Clause 33 provides that the Minister may, in his discretion, cancel the certificate of proficiency of a qualified operator. In exercising the powers under this Clause the Minister shall have regard to all matters he considers relevant, including several specified matters.

Clause 34 - Certain persons deemed to be qualified operators

Clause 34 provides that the Minister may, by notice in the Gazette declare that a person or class of person shall be deemed to be a qualified operator in relation to certain transmitter licences. The Minister may revoke such a declaration in respect of an individual operator.

Clause 35 - Temporary permits for non-resident aliens, etc

Clause 35 provides that the Minister may, in his discretion, grant a temporary permit to the holder of a temporary entry permit or a member of the crew of a foreign aircraft or vessel to operate specified transmitters. Such temporary permits are valid for up to 12 months and may be varied or cancelled. Contravention of a condition of such a permit is punishable by a fine of up to \$1,000.

PART VII - RECEIVER LICENCESClause 36 - Interpretation

Clause 36 defines certain words and expressions in this Part; in particular "receiver" excludes ordinary radio and television receivers.

Clause 37 - Receiver not to be operated without receiver licence

Clause 37 provides that a person shall not, without reasonable excuse, operate, or have in his possession for the purpose of operation, a receiver except with a receiver licence, penalty \$2,000 or 12 months. Reasonable excuse includes the safety of a vessel or aircraft, a serious threat to the environment or risk of death or injury or damage to property.

Clause 38 - Receiver licence

Clause 38 provides that the Minister may, in his discretion, grant a licence to operate a specified receiver or class of receivers. The Minister in exercising his powers under this Clause shall have regard to all matters he considers relevant, including whether the operation of the receiver(s) is in accordance with the appropriate frequency band plan and the effect on radiocommunications of the operation. Such licences are for a period of up to 12 months, or such longer period as is prescribed, are subject to conditions and may be varied or cancelled. Contravention of a condition of a licence is punishable by a fine of up to \$1,000.

PART VIII - RESTRICTED USE ZONESClause 39 - Interpretation

Clause 39 defines "order" in this Part as an order under clause 41.

Clause 40 - Declaration of radiocommunications emergency

Clause 40 provides that the Governor-General may, by proclamation, declare a radiocommunications emergency for a period of up to 3 months, if he is satisfied that it is necessary in the public interest by reason of prejudice to the security or defence of Australia, a serious threat to the environment or risk of death or injury or damage to property. He may also revoke such a declaration.

Clause 41 - Orders

Clause 41 provides that during such an emergency the Minister may by order prohibit or regulate the operation of transmitters, provided the guidelines are in force and have been published. Such orders are deemed to be regulations under certain provisions of the Acts Interpretation Act 1901, although they are deemed not to be statutory rules under the Statutory Rules Publication Act 1903.

Clause 42 - Guidelines for making orders

Clause 42 provides that the Minister may make guidelines with respect to his powers under clause 41. Such guidelines shall be published in the Gazette and laid before each House of Parliament, where they may be disallowed. Such guidelines are deemed statutory rules under the Statutory Rules Publication Act 1903.

Clause 43 - Offence of contravening an order

Clause 43 provides that a person, who, without reasonable excuse, contravenes an order is punishable by a fine of up to \$5,000. Reasonable excuse includes the safety of a vessel or aircraft, a serious threat to the environment or the risk of death or injury or damage to property.

Clause 44 - Orders to prevail over inconsistent laws

Clause 44 provides that an order has effect notwithstanding any inconsistent Commonwealth, State or Territory law.

PART IX - SETTLEMENT OF INTERFERENCE DISPUTES

Clause 45 - Interpretation

Clause 45 provides that a reference in the Part to engaging in conduct is a reference to doing or refusing to do any Act.

Clause 46 - Reference of matters to conciliator

Clause 46 provides that where a complaint has been made to the Minister that a person is causing interference to radiocommunications in such a way as to affect the interests of the complainant, or, if it appears to the Minister that the interests of another person have been affected by that conduct, the Minister may refer the matter to a conciliator.

Clause 47 - Functions of conciliator

Clause 47 provides that a conciliator shall inquire into the conduct, endeavour to effect a settlement of the matter, and report to the Minister. The conciliator need not inquire into the conduct if it is trivial or the person affected does not wish the inquiry to be made. In the case of a complaint to the Minister there need be no inquiry if the complaint is frivolous, vexatious or not made in good faith, the interests of the complainant are not being affected or there is some other remedy reasonably available to the complainant.

Clause 48 - Compulsory conferences

Clause 48 provides for the purpose of an inquiry under clause 46 a conciliator may require a person to attend a compulsory conference. Such a person shall be paid expenses as are prescribed. A person required to attend shall not fail to do so, penalty \$500.

Clause 49 - Conciliators

Clause 49 provides that the Minister may appoint a person to be a conciliator, on a full or part time basis, on terms and conditions and may terminate such an appointment at any time.

Clause 50 - Remuneration and allowances

Clause 50 provides that a conciliator (not being a person under the Public Service Act 1922) shall be paid remuneration as determined by the Remuneration Tribunal and such allowances as are prescribed.

Clause 51 - Offences relating to administration of Part

Clause 51 provides that a person shall not hinder, etc, a conciliator, nor prejudice, etc a person in his employment or coerce, etc, a person because he has taken action under this Part, penalty \$1,000 or 6 months imprisonment, or both.

Clause 52 - Operation of State and Territory laws

Clause 52 provides that this Part is not intended to affect the operation of a State or Territory law to the extent that it can operate concurrently with this Part.

Clause 53 - Report by Minister

Clause 53 provides that each year the Minister shall prepare a report on the administration of this Part and cause a copy to be laid before each House of the Parliament.

PART X - PUBLIC INQUIRIES

Clause 54 - Interpretation

Clause 54 defines certain words and expressions in this Part.

Clause 55 - Inquiries by Commissioner

Clause 55 provides that the Minister may appoint a Commissioner, with persons to advise the Commissioner, to conduct an inquiry into any radiocommunications matter, although not a matter that generally relates to broadcasting and television.

Clause 56 - Remuneration and Allowances

Clause 56 provides that a Commissioner and advisers shall be paid remuneration determined by the Remuneration Tribunal and such allowances as are prescribed.

Clause 57 - Notice of Inquiries

Clause 57 provides that before a Commissioner commences an inquiry he shall publicise the subject matter and the time and place.

Clause 58 - Procedure at Inquiries etc

Clause 58 provides that, in general, inquiries shall be in public, although the Commissioner has a discretion to direct private hearings. No person may be compelled to attend or produce evidence.

Clause 59 - Power to administer oath or affirmation

Clause 59 provides that a commissioner may administer an oath or affirmation to a witness.

Clause 60 - Protection of Commissioner and Witness

Clause 60 provides that a Commissioner and a witness have, respectively, the same protection and immunities as a Justice of the High Court or a witness in that Court.

Clause 61 - Contempt

Clause 61 forbids behaviour that would be contempt of a court of record, penalty \$1,00 on 6 months.

Clause 62 - Allowances to Witness

Clause 62 provides that a witness may be paid travelling and other expenses.

Clause 63 - Witness not to be prejudiced

Clause 63 provides that a witness shall not be intimidated, etc, penalty \$1,000 or 6 months.

Clause 64 - Report by Minister

Clause 64 provides that the Minister shall annually, or from time to time for a particular inquiry, prepare a report on the operation of this Part and lay it before each House of Parliament.

PART XI - MISCELLANEOUSClause 65 - Offences

Clause 65 provides for various offences-

Sub-sections (1) to (3) forbid the use of a transmitter in a manner likely to prejudice the safety of an aircraft or vessel, penalty \$10,000 or 5 years.

Sub-sections (4) to (5) forbid the use of a transmitter to interfere with a fire-fighting, civil defence, rescue or ambulance service, etc, or a police force, penalty \$10,000 or 5 years.

Sub-sections (6) to (8) forbid interference with communications in such a way to endanger the safety of a person or cause loss or damage, penalty \$2,000 or 12 months or both.

Sub-section (9) forbids interference with communications in such a way to harass another person, penalty \$500.

Sub-section (10) forbids false information in a transmission that a person is dead or injured or that property has been damaged, penalty \$10,000 or 5 years.

Sub-sections (11) and (12) forbid the transmission of radio or television programs or interference with radiocommunications, by a person outside Australia on board a foreign vessel aircraft, penalty \$10,000 or 5 years.

Sub-section (13) requires the Minister to state his reasons in writing for certain of his decisions.

Sub-section (14) forbids the use of a transmitter, without reasonable excuse, to cause an explosion, penalty \$10,000 or 5 years.

Sub-sections (15) to (17) forbid a dealer from supplying a prescribed class of transmitter, penalty \$2,000.

Clause 66 - Delegation

Clause 66 provides that the Minister may generally delegate his powers under this Act, apart from specified matters.

Clause 67 - Register of test permits, frequency reservation certificates, licences and temporary permits

Clause 67 provides that the Minister shall keep a register of the holders of test permits, frequency reservation certificates, licences and temporary permits.

Clause 68 - Identity cards

Clause 68 provides that the Minister may cause identity cards to be issued to inspectors, other than members of a police force.

Clause 69 - Powers of arrest

Clause 69 provides that an inspector, without warrant, may arrest any person he believes on reasonable grounds to have committed an offence under this Act and where proceedings by summons would not be effective.

Clause 70 - Search warrants

Clause 70 provides that where an information on oath is laid before a Magistrate alleging that there are reasonable grounds to suspect a thing connected with an offence under this Act is on any land, premises, vehicle, vessel or aircraft, the Magistrate may issue a search warrant authorising a named inspector to enter, search and seize any such thing.

Clause 71 - Search warrants may be granted by telephone

Clause 71 provides that in circumstances of urgency a search warrant may be granted by telephone by a Magistrate, upon being satisfied of various matters. The documentation for such a procedure is required to be completed by specified times.

Clause 72 - Searches in emergencies

Clause 72 provides that in circumstances of such seriousness and urgency as would require immediate search and entry, or in the case of the more important offences, an Inspector may enter and search without a warrant.

Clause 73 - Goods seized under sections 70 and 72

Clause 73 provides that a thing seized under sections 70 or 72 may be retained for 60 days or until proceedings commenced within that 60 days are terminated. The Minister, however, may authorise the thing seized to be released to the owner either unconditionally or upon conditions.

Clause 74 - General powers of inspectors

Clause 74 provides that an inspector may require any person reasonably suspected of an offence to state his name and address and may require any person reasonably suspected of being required to hold a licence, etc, to produce it.

Clause 75 - Act not to affect performance of duties by inspectors

Clause 75 provides that nothing in Part II, VI, VII or VIII prevents the doing of any act by an inspector under this Act.

Clause 76 - Personation of inspectors

Clause 76 provides that it is an offence to falsely represent oneself as an inspector, penalty up to \$5,000 or 2 years or both.

Clause 77 - Officers and employees of governments and authorities

Clause 77 provides that the Governor-General may make arrangements with a State Governor or Territory Administrator for the performance of functions under this Act by State or Territory employees.

Clause 78 - Programs, etc. relating to radiocommunications and other matters

Clause 78 provides that the Minister may arrange or co-operate with, any government, organisation or person in relation to programs, research or publication relating to devices, radio frequencies, interference, reception and the environmental effects of radio transmission.

Clause 79 - Surrender of permits, certificates and licences

Clause 79 provides that where the holder of a licence, etc. surrenders such a licence, it shall be deemed to have been cancelled upon acceptance of the surrender by the Minister.

Clause 80 - Forfeiture

Clause 80 provides that where a Court convicts a person under this Act or makes an order under section 19B of the Crimes Act, the Court may order the forfeiture to the Commonwealth of any article involved in the offence. Forfeited equipment may be kept, sold or otherwise disposed of as directed by the Minister.

Clause 81 - False Statements

Clause 81 provides that a person shall not, in relation to this Act, make a false statement or omit a material matter, penalty \$1,000.

Clause 82 - Prosecution of offences

Clause 82 provides that notwithstanding that this Act expresses that an act is an indictable offence it may be heard by a court of summary jurisdiction if the court thinks it proper to do so and if the defendant and prosecutor agree. In such a case the maximum penalty is \$2,000 or 12 months, or both.

Clause 83 - Penalties for Corporations

Clause 83 provides that where a corporation is convicted under the Bill, the fine may be 5 times the maximum amount specified for that offence.

Clause 84 - Evidentiary certificates

Clause 84 provides for the issue of evidentiary certificates in respect of the Customs Act 1901.

Clause 85 - Conduct by servants or agents of body corporate

Clause 85 provides that any conduct on behalf of a body corporate by a director, agent or servant shall be deemed to have been engaged in by the body corporate.

Clause 86 - Review of decisions

Clause 86 provides that decisions of the Minister with respect to various matters shall be reviewed by the Minister upon request, with a further review available through the Administrative Appeals Tribunal.

Clause 87 - Statements to accompany notification of decisions

Clause 87 requires certain matters to be supplied to applicants after the Minister has made a review of a matter.

Clause 88 - Service of notices

Clause 88 provides that where a notice is required to be served by or on behalf of the Minister, that notice may be served personally, by post or as prescribed.

Clause 89 - Operation of this Act in relation to Broadcasting and Television Act

Clause 89 provides that regulations under this Act have effect notwithstanding any instrument relating to broadcasting or television, but that this Act is not intended to limit or exclude the operation of any such instrument that is capable of operating concurrently with this Act.

Clause 90 - No compensation from Commonwealth

Clause 90 provides that a person is not entitled to compensation from the Commonwealth by reason only of the suspension or cancellation of a licence, etc.

Clause 91 - Act not to affect performance of State, Norfolk Island or Northern Territory functions.

Clause 91 provides that the Minister shall not exercise his functions under Part VI or Part VII in such a manner to prevent the exercise of the powers of a State or Territory government. A Part VIII order has no effect to the extent that it would prevent the exercise of the powers of a State or Territory government.

Clause 92 - Legislation of the Australian Antarctic Territory

Clause 92 provides that notwithstanding anything in this Act, the power of the Governor-General to make Ordinances under the Australian Antarctic Territory Act 1954 shall not be taken not to extend to the making of Ordinances regulating the use of certain transmitters.

Clause 93 - Regulations

Clause 93 provides that the Governor-General may make regulations with respect to matters under the Act.

