

1992

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

SENATE

RADIOCOMMUNICATIONS (TRANSITIONAL PROVISIONS AND
CONSEQUENTIAL AMENDMENTS) BILL 1992

EXPLANATORY MEMORANDUM

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



RADIOCOMMUNICATIONS (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) BILL 1992

OUTLINE

This Bill repeals the *Radiocommunications Act 1983* and makes transitional arrangements and amends other Commonwealth legislation consequential upon the enactment of the new *Radiocommunications Act 1992*.

The transitional provisions included in the Bill will ensure that a large number of instruments made under the old Act will be taken to have been made under the new Act. For example, regulations, standards, frequency band plans, permits and certificates of various kinds made under the old Act will carry across to the new Act. Similarly, transmitter licences which have been granted under the old Act will continue in force under the new Act.

Consultation procedures which have been undertaken under the old Act for the purpose of making instruments, such as frequency band plans and standards, under that Act, will be taken to have been done under the corresponding provisions of the new Act.

The consequential amendments will update references to the old Act in other Commonwealth legislation and will make other changes consequential to the enactment of the new Act. One of those changes will ensure that AUSTEL technical standards for customer equipment can relate to interference.

FINANCIAL IMPACT STATEMENT

The amendments in this Bill are expected to have no significant impact on Commonwealth expenditure or revenue.

ABBREVIATIONS

In this Explanatory Memorandum, the following abbreviations are used:

new Act	<i>Radiocommunications Act 1992</i>
old Act	<i>Radiocommunications Act 1983</i>
Transitional Provisions Act	<i>Radiocommunications (Transitional Provisions and Consequential Amendments) Act 1992</i>
SMA	Spectrum Management Agency

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short title

This clause provides for the citation of the *Radiocommunications (Transitional Provisions and Consequential Amendments) Act 1992*.

Clause 2 - Commencement

This clause provides that the Transitional Provisions Act commences on 1 July 1993, the day on which the new Act commences.

PART 2 - TRANSITIONAL PROVISIONS

Clause 3 - Interpretation

This clause contains definitions of terms used in, and rules for the interpretation of, Part 2 of the Transitional Provisions Act.

The terms 'old Act' and 'new Act' are defined, and terms and expressions used in Part 2 are given the same meaning they have in the new Act, except where they relate to the old Act, in which case they have the meaning in that Act.

Clause 4 - Saving of instruments under the old Act

This clause saves a variety of instruments made by the Minister under the old Act and in force immediately before the commencement of the new Act.

The instruments continue in force as if they had been made in the same terms by the SMA under the corresponding provisions of the new Act and are taken to have been issued by the SMA as such instruments.

The list of instruments saved is contained in a table included in the section and includes frequency band plans, equipment standards, compliance statement certificates, transmitter licences, receiver licences and various permissions, orders and guidelines.

Clause 5 - Instruments subject to suspension

Some of the instruments which are saved under clause 4 are capable of being suspended under the old Act. This clause ensures that a compliance statement certificate or transmitter licence which is suspended immediately before the new Act commences is not saved by clause 4 until the suspension ceases to have effect.

The suspended certificate or licence is not saved by section 4 where the suspension ceases to have effect after commencement because of the expiry or cancellation of the certificate or licence, because the certificate or licence was not in force immediately before the commencement of the new Act as required by clause 4(b).

Clause 6 - Authorities under transmitter licences

Section 26 of the old Act enabled a person holding a transmitter licence, to give a written authority to another person to do anything for the person and on the person's behalf, that could be lawfully done under the licence.

This clause saves any such authority that was in force immediately before the commencement of the new Act and continues it in force as if it had been given under the corresponding provision of the new Act.

Clause 7 - Frequency reservation certificates

Under section 21 of the old Act, the Minister could grant a certificate to a person reserving an unallocated frequency. Where such a certificate was granted, the Minister was prevented from granting another person a test permit, transmitter licence or temporary permit inconsistent with the reservation. There is no corresponding provision providing for the issue of frequency reservation certificates included in the new Act.

Clause 7(1) provides that despite the repeal of the old Act, a frequency reservation certificate in force immediately before the commencement of the new Act continues in force for the remainder of its term.

Clause 7(2) prevents the SMA, while a frequency reservation certificate is in force, from issuing a permit or transmitter licence in a manner inconsistent with the reservation.

Clause 7(3) re-enacts a rule in subsection 21(6) of the old Act which ensures that a frequency reservation certificate does not prevent the issue of a short term transmitter licence or permit (ie for 14 days or less).

Clause 7(4) ensures that the SMA has the same power that the Minister had under the old Act to cancel frequency reservation certificates (see subsection 21(9) of the old Act).

Clause 8 - Consultation processes under the old Act

Section 20 of the old Act sets out consultation procedures that are to be followed when preparing a spectrum plan or frequency band plan.

Clause 8(1) ensures that where consultation procedures have been followed, but the plan has not yet been completed at the time of commencement, the procedures are taken to have been done under the corresponding provisions of the new Act.

Subsections 9(2) and (3) of the old Act set out consultation procedures that are to be followed when preparing a standard for devices.

Clause 8(2) ensures that where consultation procedures have been followed, but the standard has not yet been made at the time of commencement, the procedures are taken to have been followed under the corresponding provisions of the new Act.

Clause 9 - Evidentiary certificates

Section 84 of the old Act enables certain Commonwealth officers to issue evidentiary certificates in relation to their qualifications and their examination of a device.

The new Act contains a corresponding provision and this clause ensures that a certificate can be issued under the corresponding provision in the new Act in relation to an examination carried out for the purposes of the old Act.

Clause 10 - Forfeiture

Section 80 of the old Act enables a court to order forfeiture to the Commonwealth of articles involved in the commission of an offence and the Minister to direct that such an article be sold or otherwise disposed of.

The new Act contains a corresponding provision and this clause ensures that the SMA can make directions under the corresponding provision in relation to an article forfeited under the old Act before the commencement of the new Act which are not already subject to Ministerial directions for disposal.

Clause 11 - Regulations under the Radiocommunications Act

Clause 11(1) ensures that any regulations made under the old Act in force immediately before the commencement of the new Act continue in force as if made under the new Act.

Clause 11(2) ensures that any reference in a regulation so saved to a provision of the old Act is taken to be a reference to a corresponding provision in the new Act.

Clause 11(3) ensures that clause 11 does not apply to save a regulation which could not be made under the new Act.

Clause 12 - Determinations of types of apparatus licences

Section 98 of the new Act enables the SMA to determine the types of transmitter and receiver licences that the SMA may issue under the new Act.

This clause ensures that until the SMA makes such a determination, the types of transmitter and receiver licences that the SMA may issue are those set out respectively in Schedule 1 and regulation 7 of the Radiocommunications (Licensing and General) Regulations made under the old Act.

PART 3 - REPEAL AND CONSEQUENTIAL AMENDMENTS

Clause 13 - Repeal of Acts

This clause repeals the old Act and 2 related Acts which impose taxes in relation to a kind of certificate and a kind of permit which were granted under the old Act, but which will not be issued under the new Act.

Clause 14 - Consequential amendments of Acts

Clause 14(1) provides for the making of the consequential amendments to other Commonwealth legislation set out in the Schedule.

Clause 14(2) is a transitional provision which ensures that certain provisions of other Commonwealth Acts, to which consequential amendments are made in the Schedule, will continue to apply in relation to the old Act.

Clause 14(3) is a transitional provision which ensures that the amendments to the Copyright Act 1968 in the Schedule do not have the consequence of removing copyright protection for broadcasts made under licences under the old Act before the commencement of the new Act.

SCHEDULE

The Schedule contains amendments to other Commonwealth legislation consequential upon the enactment of the new Act.

Many of the amendments substitute references to the title of the new Act for references to the title of the old Act. Other amendments make minor changes to reflect differences in terminology and concepts in the new Act.

Two of the amendments in the Schedule are made to paragraph 243(b) and subsection 246(2) of the *Telecommunications Act 1991*. These amendments are made to provisions which enable AUSTEL to determine technical standards relating to customer equipment and customer cabling connected to a telecommunications network. The amendments will ensure that such standards can be made for the purpose of containing interference.

The reason for the amendment is to avoid the need for standards to be made under both the Radiocommunications act 1992 and the Telecommunications Act 1991 in relation to the same equipment. For example, when AUSTEL determines a standard about cordless telephone handsets to ensure interoperability with the telecommunications network, the standard will also be able to include measures to prevent interference to radiocommunications and to protect the device from interference.

