

1987
THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES
COMMUNICATIONS LEGISLATION AMENDMENT BILL (NO 2) 1987

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Transport and
Communications, Senator the Hon Gareth Evans QC)

OUTLINE

The purpose of the Communications Legislation Amendment Bill (No 2) 1987 is to make a number of miscellaneous amendments to the Radiocommunications Act 1983, the Overseas Telecommunications Act 1946, the Telecommunications Act 1975, and the Postal Services Act 1975.

The Radiocommunications Act 1983 is amended to clarify the Minister's powers to test equipment in connection with the licensing process, and to provide a power to prohibit certain kinds of devices which would not under any circumstances be licensed. Certain other minor and consequential amendments are also made.

The Overseas Telecommunications Act 1946, the Postal Services Act 1975, and the Telecommunications Act 1975, are each amended in the following ways:

- . to permit the issue of prescribed securities without Commonwealth guarantee;
- . to permit the respective Commissions to enter into hedging contracts in advance of Ministerial approval of the contract to be hedged against.

The Postal Services Act 1975 is amended to tighten the existing offence provisions relating to the sending of explosives or other dangerous goods through the postal services, and to permit the making of Regulations prescribing goods which may be carried subject to conditions.

The Telecommunications Act 1975 is amended to give effect to recommendations of the Vincent Report into allegations against the Commission, that the amount which may be deducted from a Commission officer's salary for misconduct should be increased to \$500 from \$40.

The Overseas Telecommunications Act 1946 is amended to correct a minor drafting error, and the Postal Services Act 1975 and the Telecommunications Act 1975 are amended to render their language non-sexist.

Financial Impact Statement

The amendments to the Radiocommunications Act 1983 are expected to provide a very small increase in revenue through testing fees. All other amendments are expected to have no financial impact.

NOTES ON CLAUSES

PART I - PRELIMINARY

Clause 1 : Short title

The first clause provides for the short title of the Act. The Act will come into effect on the 28th day after the day on which it receives the Royal Assent.

Part II - Amendment of the Overseas Telecommunications Act 1946

Clause 2 : Principal Act

In Part II of the Bill, 'Principal Act' means the Overseas Telecommunications Act 1946.

Clause 3 : Hedging contracts, etc

The Commission has power, pursuant to section 38AAA of the Principal Act, to enter into contracts in respect of foreign currency or futures for the purpose of limiting its exposure to currency fluctuations. At present the Commission must obtain the approval of the Minister before entering into any contract involving the payment or receipt of more than \$2,000,000. The definition of 'proposed contract' in paragraph 5(a) of section 38AAA of the Principal Act means that the Commission must obtain Ministerial approval in relation to a proposed contract before entering into a hedging contract in relation to it. This requirement introduces an additional delay which is most undesirable under circumstances of rapid currency fluctuations.

The effect of the amendment is that the Commission may henceforth enter into hedging contracts in advance of obtaining Ministerial approval for the contract to be hedged against.

Clause 4 : Inspection of stations and services

This clause amends the Principal Act to correct a drafting error in the Radiocommunications (Transitional Provisions and Consequential Amendments) Act 1983, where a reference to the Wireless Telegraphy Act 1905 - 1936 should have been replaced by a reference to the Radiocommunications Act 1983.

Part III - Amendments of the Postal Services Act 1975

Clause 5 : Principal Act

In Part III of the Bill, 'Principal Act' means the Postal Services Act 1975.

Clause 6 : Guarantee of borrowings by the Commission

At present, where the Australian Postal Commission raises funds by the issue of prescribed securities, the money so borrowed and the interest on it are Commonwealth guaranteed by force of

subsection 75B(5) of the Principal Act. This requirement (that all prescribed securities carry a Commonwealth guarantee) is inconsistent with the general flexibility that exists with non-prescribed forms of borrowing, and is therefore to be removed.

Clause 7 : Hedging contracts, etc

This clause amends the Principal Act in the same way, and for the same reasons, as Clause 3 amends the Overseas Telecommunications Act 1946.

Clause 8 : Explosives etc

At present the Principal Act contains, in section 100, a prohibition on sending dangerous goods through the post. In the light of recent events, notably an explosion in the Brisbane Mail Centre, the provision is considered to be both undesirably vague and an insufficient deterrent. The proposed section 100 makes it clear that:

- . sending of explosives, or prescribed dangerous or deleterious substances, is absolutely prohibited; and
- . the Commission is prepared to carry less dangerous items, upon conditions, with its knowledge and consent.

The proposed section 100 provides for a penalty of a prison sentence of up to 10 years, with fines of \$20,000 in the case of a natural person or \$100,000 in the case of a body corporate, as an alternative or additional penalty. Regulations may be made for the prohibiting of the sending of particular types of articles within the general class of 'dangerous or deleterious articles'.

Part IV - Amendments of the Radiocommunications Act 1983

Clause 9 : Principal Act

In Part IV of the Bill, 'Principal Act' means the Radiocommunications Act 1983.

Clause 10 : Interpretation

This clause introduces two new definitions: 'prohibited device' and 'type approval certificate'. These two definitions are of terms introduced in other Clauses of the Bill, and are explained in the notes on Clauses 16 and 12 respectively.

Clause 11 : Standards

Section 9 of the Principal Act provides for the making of standards relating to the various classes of devices regulated under the Principal Act. At present the Minister may adopt, pursuant to subsection 9(11) of the Principal Act, matter contained in a standard promulgated by (inter alia) a prescribed body. Legal advice indicates that it is impossible to prescribe Departments of State, or Departments of a State or

Territory, or Commonwealth or State authorities, as prescribed bodies. The proposed amendment therefore specifically allows the prescription of such Departments or authorities as prescribed bodies.

Clause 12 : New Part IIA

The proposed new Part creates a certificate, to be called a 'type approval certificate', and specifies procedures for the issue of such a certificate. The purpose of the certificate is to enable the Minister to be satisfied for licensing purposes that the device in respect of which the certificate is issued does not have an adverse effect on radiocommunications. By paragraph 24(2) (d) of the Principal Act, the Minister is directed to take into account when considering whether to issue a licence to operate a transmitter the effect on radiocommunications of the proposed operation of that transmitter; paragraph 38(2)(b) of the Principal Act makes the like provision in respect of receivers.

The proposed new Part consists of one section only made up in turn of seven subsections.

Proposed subsection (1) authorises the issue of a type approval certificate in respect of a device, where the Minister forms the opinion that the operation of the device will not have an adverse effect on radiocommunications.

Proposed subsection (2) gives the Minister power to require an applicant for a certificate to submit the device in respect of which the certificate is applied for for testing, or to provide information in respect of the device.

Proposed subsection (3) authorises the refusal of a certificate if the Minister is satisfied that the operation of the device has an adverse effect on radiocommunications, and proposed subsection (4) requires the Minister to give written notice of such a refusal.

Proposed subsection (5) requires the Minister to return within a reasonable time any device submitted for testing pursuant to proposed subsection (2).

Proposed subsection (6) authorises the issue of a single certificate in respect of a device that is both a transmitter and a receiver.

Proposed subsection (7) restricts the meaning of 'device' for the purposes of proposed section 15A only to a device that is a radiocommunications transmitter or receiver or both.

Clause 13 - Transmitter licence

This clause amends section 24 of the Principal Act to make it clear that the Minister may require applicants for transmitter licences to submit their transmitters for testing so that the transmitters' effect on radiocommunications may be determined. As mentioned in the note to Clause 12, the Minister is, when considering the issue of a licence, required to consider the effect that the operation of the device will have on radiocommunications.

Clause 14 : Authorities under transmitter licences

At present, section 26 of the Principal Act permits the holder of a transmitter licence to authorise another person to operate his or her transmitter on his or her behalf under certain circumstances. Cases have arisen where persons who have held a transmitter licence which has been cancelled for misconduct are thought to have obtained access to other licensees' transmitters by means of an authority under section 26. The proposed new subsections provide that:

(a) a person who has previously held a transmitter licence which has been cancelled or suspended shall not be granted an authority in respect of a transmitter of the same class as the suspended or cancelled licence authorised the operation of, for 3 years after the suspension or cancellation.

(b) where a person holds a transmitter licence and is authorised to operate another person's transmitter, if the licence is suspended or cancelled the authority lapses also.

Clause 15 : Receiver licence

Clause 15 makes similar provision in relation to receivers as Clause 13 (previously discussed) does in relation to transmitters.

Clause 16 : Prohibited devices and operation of prohibited devices

This clause introduces two proposed sections, 66A and 66B, designed to prevent the possession, supply, or use of certain devices which are specifically designed to cause interference to legitimate users of the radio frequency spectrum or which the Minister is satisfied will have an adverse effect on radiocommunications in such a way as to endanger the safety of a person, or pose a risk of property damage.

Proposed subsection 66A(1) gives the Minister power to declare the operation, supply or possession for the purpose of operation or supply of such a device unlawful by notice in the Gazette; Proposed subsection (2) requires public consultation and the giving of reasons before a declaration is made; Proposed subsection (3) provides for representations to be made by interested persons in relation to a proposed declaration; Proposed subsection (4) permits declarations to be made without consultation in cases of urgency; Proposed subsections (5) and (6) provide that declarations are to be deemed to be statutory rules for purposes of publication, and are to be subject to the process of tabling as if they were regulations.

Proposed section 66B makes the operation, supply or possession for the purpose of operation or supply, of a prohibited device unlawful, and subject to a fine of, in the case of a natural person, \$1,000, or in the case of a body corporate, \$5,000.

Clause 17 : Review of decisions

This clause adds decisions pursuant to proposed subsections 15A(1) or (3) (i.e. decisions to issue or refuse to issue a type approval certificate) to the classes of decisions which are subject to internal review and subsequent review by the Administrative Appeals Tribunal.

Clause 18 : Regulations

This clause extends the regulation-making power under the Principal Act. There are five paragraphs:

- . paragraph (a) adds to the list of offences subject to fines in lieu of prosecution offences against subsection 65(9) of the Principal Act, - that is, offences in the nature of harassment or deliberate interference with radiocommunications; and paragraph (e) includes these offences among those for which an 'on the spot' penalty may be imposed equal to one-fifth of the penalty prescribed by the Act.
- . paragraph (b) adds a power to make regulations setting fees for the issue of type approval certificates;
- . paragraphs (c) and (d) add power to make regulations setting fees for tests pursuant to proposed section 15A or proposed subsections 24(2A) or 38(2A).

Clause 19 : Other amendments

This clause and Schedule 1 amend the Principal Act to remove the existing gender bias.

Part V - Amendments of the Telecommunications Act 1975Clause 20: Principal Act

In Part V of the Bill, "Principal Act" means the Telecommunications Act 1975.

Clause 21 : Disciplinary action

This clause gives effect to certain recommendations of the Vincent Report of an inquiry into certain allegations against the Commission. The effect of the clause is to increase from \$40 to \$500 the amount that may be deducted from the salary of a Commission officer where the officer has failed to fulfil his or her duty as an officer.

Clause 22 : Guarantee of borrowings by the Commission

This clause amends the Principal Act in the same way and for the same reasons as clause 6 amends the Overseas Telecommunications Act 1946, and the effect of the amendment is explained under clause 6.

Clause 23 : Hedging contracts etc.

This clause amends the Principal Act in the same way and for the same reasons as clause 3 amends the Overseas Telecommunications Act 1946, and the effect of the amendment is explained under clause 3.

Clause 24 : Other amendments

This clause and Schedule 2 amend the Principal Act to remove gender bias in its language.





