# **Broadcasting and Television Amendment** Act 1980

#### No. 143 of 1980

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# Broadcasting and Television Amendment Act 1980

No. 143 of 1980

# An Act to amend the *Broadcasting and Television Act* 1942 and for related purposes

[Assented to 19 September 1980.]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

#### Short title, &c.

1. (1) This Act may be cited as the Broadcasting and Television Amendment Act 1980.

(2) The Broadcasting and Television Act 1942<sup>1</sup> is in this Act referred to as the Principal Act.

#### Commencement

2. (1) Subject to sub-section (2), the provisions of this Act shall come into operation on such date as is, or such respective dates as are, fixed by Proclamation.

(2) Paragraph 19 (a) shall be deemed to have come into operation on 1 January 1978.

#### Interpretation

3. Section 4 of the Principal Act is amended—

(a) by inserting before the definition of "approved bank" in sub-section(1) the following definition:

" 'appoint' includes re-appoint;";

- (b) by adding at the end of the definition of "broadcasting station" in subsection (1)", but does not include a broadcasting translator station";
- (c) by omitting the definition of "broadcasting translator station" from sub-section (1) and substituting the following definition:
  - " 'broadcasting translator station' means a station of low operating power designed for the reception by wireless telegraphy or telegraph line of the broadcasting programs of a broadcasting station (whether transmitted by that broadcasting station or by

another broadcasting translator station) and the immediate retransmission of those programs to broadcast receivers by wireless telegraphy and, where applicable, to another broadcasting translator station by wireless telegraphy or telegraph line;";

- (d) by omitting from the definition of "commercial broadcasting station" in sub-section (1) "or a public broadcasting station" and substituting ", a public broadcasting station or a broadcasting station operated on behalf of the Service";
- (e) by inserting after the definition of "commercial broadcasting station" in sub-section (1) the following definition:
  - " 'commercial broadcasting translator station' means a broadcasting translator station operated for the reception and retransmission of the programs of one or more commercial broadcasting stations;";
- (f) by omitting from the definition of "commercial television station" in sub-section (1) "or a public television station" and substituting ", a public television station or a television station operated on behalf of the Service";
- (g) by inserting after the definition of "commercial television station" in sub-section (1) the following definition:
  - " 'commercial television translator station' means a television translator station operated for the reception and re-transmission of the programs of one or more commercial television stations;";
- (h) by inserting after the definition of "national broadcasting station" in sub-section (1) the following definition:
  - " 'national broadcasting translator station licence' means a licence for a broadcasting translator station operated (otherwise than on behalf of the Commission) for the reception and retransmission of the programs of one or more national broadcasting stations;";
- (i) by inserting after the definition of "national television station" in subsection (1) the following definition:
  - " 'national television translator station licence' means a licence for a television translator station operated (otherwise than on behalf of the Commission) for the reception and re-transmission of the programs of one or more national television stations";
- (j) by inserting after the definitions of "public broadcasting station" and "public television station" in sub-section (1) the following definitions:
  - " 'public broadcasting translator station' or 'public television translator station' means a broadcasting translator station or television translator station operated for the reception and retransmission of the programs of one or more public broadcasting stations or public television stations, as the case may be;

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- " 'public broadcasting translator station licence' or 'public television translator station licence' means a licence for the operation of a public broadcasting translator station or a public television translator station, as the case may be;";
- (k) by omitting the definition of "television translator station" from subsection (1) and substituting the following definition:
  - " 'television translator station' means a station of low operating' power designed for the reception by wireless telegraphy or telegraph line of the television programs of a television station (whether transmitted by that television station, by another television translator station or by a television repeater station) and the immediate re-transmission of those programs to television receivers by wireless telegraphy and, where applicable, to another television translator station by wireless telegraphy or telegraph line;";
- by omitting the definition of "wireless telegraphy" from sub<sub>s</sub> section
  and substitute the following definition:
  - " 'wireless telegraphy' means the emitting or receiving of electromagnetic energy otherwise than by means of a continuous connection between the transmitter and the receiver provided by a material substance constructed or arranged for that purpose."; and
- (m) by inserting in sub-section (2)", the Service" after "Commission".

#### Associate members

4. Section 11 of the Principal Act is amended by adding at the end thereof the following sub-sections:

"(6) A person appointed as an associate member for the purposes of an inquiry has, and may exercise, all the powers, and shall perform all the functions, of a member, and shall be deemed to be a member for the purposes of section 15B, in relation to the making by the Tribunal of a decision, recommendation or report on the matter or matters the subject of the inquiry.

"(7) For the purposes of this section, an inquiry shall not be taken to be completed until after the completion of the report of the Tribunal in relation to the inquiry.".

#### **Functions of Tribunal**

5. Section 16 of the Principal Act is amended by omitting from sub-section (2) "the Broadcasting Council or, if there is no Broadcasting Council, it shall consult".

#### Holding of inquiries

6. Section 18 of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-sections:

"(2) The Minister may direct the Tribunal to hold an inquiry in accordance with this Division into—

- (a) any matter relating to the operation of this Act;
- (b) any matter relating to broadcasting services or television services or both; or
- (c) any other matter, being a matter with respect to which the Parliament has power to make laws by virtue of paragraph 51 (v) of the Constitution, that, in the opinion of the Minister, relates directly or indirectly to a matter referred to in paragraph (a) or (b),

and may direct the tribunal to make recommendations in relation to that matter following the inquiry.

"(2A) A reference in sub-section (2) to a matter shall be read as not including a reference to—

- (a) a matter relating to the Commission or the Service or to the affairs or operations of the Commission or the Service; or
- (b) a matter in respect of which the Tribunal is required or permitted to hold an inquiry by virtue of any provision of this Act other than subsection (2) or by virtue of section 33 of the *Broadcasting and Television Amendment Act* 1977.

"(2B) Where the Tribunal is directed under sub-section (2) to hold an inquiry into a matter, the Tribunal shall, by notice in the *Gazette* and in such newspaper or newspapers as the Tribunal thinks appropriate, invite members of the public to lodge with the Tribunal, not later than a specified date (not being earlier than 21 days after the date of publication of the notice in the *Gazette*), written submissions relating to that matter.

"(2C) The Tribunal shall, at an inquiry referred to in sub-section (2B), have regard to any submissions lodged in accordance with that sub-section.

"(2D) In proceedings at an inquiry held by the Tribunal by virtue of a direction under sub-section (2)—

- (a) sections 22 and 22AA, sub-section (3) of section 25 and section 25AA do not apply; and
- (b) the persons who appear before the Tribunal, the persons (if any) by whom any or all such persons may be represented, the persons (if any) by whom any or all of the witnesses may be examined, and (subject to section 21AB) the manner and extent to which any or all of the witnesses may be examined, are within the absolute discretion of the Tribunal.".

7. Section 27A of the Principal Act is repealed and the following sections are substituted:

## Application of moneys

"27A. The moneys of the Tribunal shall be applied only—

- (a) in payment of amounts properly payable in the performance of its functions; and
- (b) in payment of remuneration or allowances payable to members and associate members and persons acting as members or associate members.

#### Estimates

"27AA. (1) The Tribunal shall prepare estimates, in such form as the Minister directs, of its receipts and expenditure for each financial year and, if the Minister so directs, for any other period specified by the Minister, and the Tribunal shall submit estimates so prepared to the Minister not later than such date as the Minister directs.

"(2) The moneys of the Tribunal shall not be expended otherwise than in accordance with estimates of expenditure approved by the Minister.

#### Limitation on contracts

"27AB. The Tribunal shall not, without the approval of the Minister, enter into a contract involving the payment or receipt of an amount exceeding \$250,000 or, if a higher amount is prescribed, that higher amount.".

#### Particulars of proposed expenditure

8. Section 27C of the Principal Act is repealed.

9. After section 27D of the Principal Act the following section is inserted in Division 4 of Part II:

### Taxation

"27E. The Tribunal is not subject to taxation under any law of the Commonwealth or of a State or Territory.".

#### **Functions of Commission**

10. Section 59 of the Principal Act is amended by omitting all the words after "public entertainment" in sub-section (2).

### Power to purchase and dispose of assets

11. Section 61 of the Prinicipal Act is amended by omitting sub-section (2).

#### Agreements to receive approval in certain cases

12. Section 62 of the Principal Act is repealed.

13. Section 70 of the Principal Act is repealed and the following sections are substituted:

#### **Application of moneys**

"70. The moneys of the Commission shall be applied only—

(a) in payment of amounts properly payable in the performance of its functions; and

(b) in payment of remuneration or allowances payable to Commissioners.

### Estimates

"70A. (1) The Commission shall prepare estimates, in such form as the Minister directs, of its receipts and expenditure for each financial year and, if the Minister so directs, for any other period specified by the Minister, and the Commission shall submit estimates so prepared to the Minister not later than such date as the Minister directs.

"(2) The moneys of the Commission shall not be expended otherwise than in accordance with estimates of expenditure approved by the Minister.

# Limitation on contracts

"70B. The Commission shall not, without the approval of the Minister, enter into a contract involving the payment or receipt of an amount exceeding \$250,000 or, if a higher amount is prescribed, that higher amount."

### Particulars of proposed expenditure

14. Section 71A of the Principal Act is repealed.

15. Section 72 of the Principal Act is repealed and the following section is substituted:

### Taxation

"72. The Commission is not subject to taxation under any law of the Commonwealth or of a State or Territory."

# Provision and operation of studios, transmitting stations, &c.

16. Section 73 of the Principal Act is amended-

- (a) by omitting from sub-section (1) "sub-section (2)" and substituting "this section"; and
- (b) by adding at the end thereof the following sub-section:

"(4) This section does not apply in relation to the provision and operation of broadcasting translator stations and television translator stations operated, or to be operated, by virtue of national broadcasting translator station licences and national television translator station licences."

17. After Division 5 of Part III of the Principal Act the following Division is inserted:

### "Division 5A—National Translator Station Licences

#### National broadcasting translator station licences

"75. (1) Subject to sub-section (2), the Tribunal shall not grant or renew a national broadcasting translator station licence if, in the opinion of the Tribunal, satisfactory reception of the broadcasting programs of the Commission is being obtained in the area in which the signals from the station to be operated by virtue of the licence are designed to be satisfactorily received.

"(2) The Tribunal shall not form an opinion for the purposes of subsection (1) except after obtaining and considering the comments of the Minister.

"(3) One of the conditions of a national broadcasting translator station licence shall be that the station is operated only for the reception and retransmission of the programs of national broadcasting stations and that those programs are re-transmitted without alteration.

#### National television translator station licences

"76. (1) Subject to sub-section (2), the Tribunal shall not grant or renew a national television translator station licence if, in the opinion of the Tribunal, satisfactory reception of the television programs of the Commission is being obtained in the area in which the signals from the station to be operated by virtue of the licence are designed to be satisfactorily received.

"(2) The Tribunal shall not form an opinion for the purposes of subsection (1) except after obtaining and considering the comments of the Minister.

"(3) One of the conditions of a national television translator station licence shall be that the station is operated only for the reception and re-transmission of the programs of national television stations and that those programs are retransmitted without alteration.

#### **Technical matters**

"76A. The provisions of Division 4 of Part IV and of sections 107, 110 and 111-

- (a) apply in relation to a broadcasting translator station operated by virtue of a national broadcasting translator station licence and the holder of such a licence as they apply in relation to a commercial broadcasting station and the holder of a licence for a commercial broadcasting station; and
- (b) apply in relation to a television translator station operated by virtue of a national television translator station licence and the holder of such a licence as they apply in relation to a commercial television station and the holder of a licence for a commercial television station.".

#### Interpretation

18. Section 80 of the Principal Act is amended by omitting the definition of "licence" in sub-section (1) and substituting the following definition:

" 'licence' means-

- (a) a licence for a commercial broadcasting station;
- (b) a licence for a commercial television station;
- (c) a commercial broadcasting translator station licence;

- (d) a commercial television translator station licence;
- (e) a national broadcasting translator station licence;
- (f) a national television translator station licence;
- (g) a public broadcasting licence;
- (h) a public television licence;
- (i) a public broadcasting translator station licence;
- (j) a public television translator station licence;
- (k) a television repeater station licence; or
- (1) a licence to which section 130A applies;".

#### **Imposition of conditions**

19. Section 84 of the Principal Act is amended—

- (a) by inserting in sub-section (1) ", in the case of a matter referred to in paragraph (a), (b), (c) or (d) of the definition of 'specification' in sub-section (1) of section 80," after "which"; and
- (b) by adding at the end thereof the following sub-section:

"(3) Notwithstanding paragraph (b) of sub-section (2), where the Minister has not specified in relation to a licence a matter referred to in sub-section (7) of section 105AD, sub-section (3) of section 105B, sub-section (4) of section 111BB, sub-section (4) of section 111BC or sub-section (2) of section 130A, whichever is applicable, the Tribunal shall impose a condition specifying that matter."

#### Variation of conditions

20. Section 85 of the Principal Act is amended by omitting sub-section (5) and substituting the following sub-section:

"(5) Before the Minister gives a direction to the Tribunal under subsection (4), the Minister, or an officer authorized by the Minister in writing for the purposes of this sub-section, shall give the licensee notice in writing specifying the direction proposed to be given by the Minister and informing the licensee that he may make representations to the Minister not later than a specified date (being a date not earlier than 14 days after the date of the notice), and the Minister shall have regard to any representations so made.".

#### Heading to Division 5A of Part IV

21. The heading to Division 5A of Part IV is omitted and the following heading is substituted:

#### "Division 5A—Commercial Translator Station Licences".

#### **Commercial broadcasting translator station licences**

22. Section 105AD of the Principal Act is amended by inserting "commercial" before "broadcasting translator" (wherever occurring).

#### **Commercial television translator station licences**

23. Section 105B of the Principal Act is amended by inserting "commercial" before "television translator" (wherever occurring).

#### Application of Act in relation to commercial translator stations

24. Section 105F of the Principal Act is amended—

- (a) by inserting in paragraph (a) "commercial" before "broadcasting translator" (wherever occurring); and
- (b) by inserting in paragraph (b) "commercial" before "television translator" (wherever occurring).

#### Application of Act in relation to television repeater stations

**25.** Section 105L of the Principal Act is amended by omitting ", sections 116 to 118 (inclusive) and section 121" and substituting "and sections 116 to 118 (inclusive)".

#### **Application of Act in relation to Part IVA**

26. Section 111B is amended—

- (a) by omitting from sub-section (1) "section 111A" and substituting "sections 111A and 111BA"; and
- (b) by omitting from sub-section (1) "station" before "licences" (first and second occurring).

27. After section 111B of the Principal Act the following sections are inserted in Part IVA:

#### Sponsorship announcements

"111BA. (1) In this section, 'licensee' means the holder of a public broadcasting licence.

"(2) Subject to this section, a licensee shall not broadcast advertisements.

"(3) Subject to this section, a licensee may, in respect of the broadcasting of a program sponsored by another person, broadcast announcements specifying only—

- (a) the name and address of the sponsor; and
- (b) a description, made in accordance with directions given by the Tribunal, of the business, undertaking or activity (if any) carried on by the sponsor.

"(4) A licensee shall comply with such directions as are given by the Tribunal in relation to the broadcasting of sponsorship announcements.

#### Public broadcasting translator station licences

"111BB. (1) Subject to sub-sections (2) and (3), the Tribunal shall not grant or renew a licence for a public broadcasting translator station if, in the opinion of the Tribunal, satisfactory reception of broadcasting programs of a

public broadcasting station is being obtained in the area in which the signals from that translator station are designed to be satisfactorily received.

"(2) The Tribunal shall not form an opinion for the purposes of subsection (1) except after obtaining and considering the comments of the Minister.

"(3) Where the Tribunal is of the opinion that satisfactory reception of broadcasting programs of a public broadcasting station or public broadcasting stations is being obtained in an area, but the Tribunal is also of the opinion that those programs do not adequately serve the interests of the community in that area or of a section or sections of that community by reason of the fact that they are designed to serve primarily the different interests of a community in another area or of another section or other sections of the first-mentioned community, the Tribunal may grant or renew a licence for a public broadcasting translator station to serve the needs of the first-mentioned community or of that section or those sections of that community.

"(4) One of the conditions of the licence for a public broadcasting translator station shall be that the station is operated only for the reception and retransmission of the programs of a specified public broadcasting station or of specified public broadcasting stations and that those programs are retransmitted without alteration.

#### **Public television translator station licences**

"111BC. (1) Subject to sub-sections (2) and (3), the Tribunal shall not grant or renew a licence for a public television translator station if, in the opinion of the Tribunal, satisfactory reception of television programs of a public television station is being obtained in the area in which the signals from that translator station are designed to be satisfactorily received.

"(2) The Tribunal shall not form an opinion for the purposes of subsection (1) except after obtaining and considering the comments of the Minister.

"(3) Where the Tribunal is of the opinion that satisfactory reception of television programs of a public television station or public television stations is being obtained in an area, but the Tribunal is also of the opinion that those programs do not adequately serve the interests of the community in that area or of a section or sections of that community by reason of the fact that they are designed to serve primarily the different interests of a community in another area or of another section or other sections of the first-mentioned community, the Tribunal may grant or renew a licence for a public television translator station to serve the needs of the first-mentioned community or of that section or those sections of that community.

"(4) One of the conditions of the licence for a public television translator station shall be that the station is operated only for the reception and retransmission of the programs of a specified public television station or of specified public television stations and that those programs are re-transmitted without alteration.

#### **Technical matters**

"111BD. The provisions of Division 4 of Part IV and of sections 107, 110 and 111---

- (a) apply in relation to a public broadcasting translator station and the holder of a public broadcasting translator station licence as they apply in relation to a commercial broadcasting station and the holder of a licence for a commercial broadcasting station; and
- (b) apply in relation to a public television translator station and the holder of a public television translator station licence as they apply in relation to a commercial television station and the holder of a licence for a commercial television station.".

# Additional functions of Minister

28. Section 111C of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-section:

"(2) In discharging his responsibilities under paragraph (a) of sub-section (1), the Minister shall—

- (a) consult representatives of broadcasting stations and television stations in relation to matters affecting those stations; and
- (b) if there is a Broadcasting Council—consult with that Council in relation to matters generally affecting broadcasting and television in Australia.".

**29.** Section 113A of the Principal Act is repealed and the following section is substituted:

#### Commission may make programs available to certain licensees

"113A. The Commission may make available to the holder of a national broadcasting translator station licence, a national television translator station licence or a television repeater station licence, on such terms and conditions as are agreed upon between the Commission and the holder of the licence, such programs of the Commission as the Commission thinks fit.".

30. After section 124A of the Principal Act the following sections are inserted:

#### Protection of translator stations against actions

"125. No action, suit or proceeding lies against a person who is the holder of a broadcasting translator station licence or a television translator station licence in respect of any matter transmitted by that station in accordance with the conditions of that licence unless, at the time of the transmission, that person is also the holder of a licence for the broadcasting station or television station, as the case may be, by which that matter is being broadcast or televised.

#### Permits for test transmissions

"126. (1) A person who wishes to make test transmissions for purposes connected with the transmission of broadcasting programs or television

programs and who is not authorized to make such transmissions by any other provision of this Act or by any other Act may apply to the Tribunal, in accordance with the form approved by it, for a permit under this section.

"(2) On receipt of an application made under sub-section (1), the Tribunal may grant to the applicant a permit in writing authorizing the holder of the permit to conduct test transmissions.

"(3) A permit granted under this section shall continue in force for such period, not exceeding 7 days, as is specified in the permit, and is subject to such conditions as are imposed by the Tribunal.

"(4) Transmissions shall not be made by virtue of a permit granted under this section except in accordance with such technical specifications as are determined by the Minister.

"(5) The Tribunal may, at any time, cancel a permit granted under this section by notice given to the holder of the permit, or to such other person as the Tribunal thinks appropriate, by any means the Tribunal thinks appropriate.

"(6) The holder of a permit granted under this section shall not broadcast or televise advertisements.

"(7) Anything done in pursuance of a permit granted under this section shall be deemed not to be in contravention of the *Wireless Telegraphy Act* 1905 or the regulations under that Act.".

#### **Application of Wireless Telegraphy Act**

**31.** Section 130 of the Principal Act is amended by inserting at the end of sub-section (1) "or for which a permit may be granted under section 126".

#### **Community television aerials**

**32.** Section 130A of the Principal Act is amended—

(a) by omitting sub-section (2) and substituting the following sub-sections:

"(1) This section applies to a licence that entitles the holder to use an aerial and associated equipment solely for the purpose of the reception by wireless telegraphy of television programs (whether transmitted by a television station, a television translator station or a television repeater station) and the immediate re-transmission of those programs by means of a telegraph line to television receivers situated in an area specified in the licence.

"(2) It shall be a condition of a licence to which this section applies that the aerial and equipment to which the licence relates are operated only for the purpose of the reception and re-transmission of the programs of a specified television station or of specified television stations and that those programs are re-transmitted without alteration."; and (b) by inserting after sub-section (3) the following sub-section:

"(3A) In sub-section (3), 'television station' includes a television translator station or a television repeater station.".

#### Regulations

**33.** Section 134 of the Principal Act is amended by omitting from paragraph (ba) of sub-section (1) "sub-section (2) of section 16 and ".

# Amendment of *Broadcasting and Television Amendment Act* 1977—renewal of licences

**34.** Section 33 of the *Broadcasting and Television Amendment Act* 1977<sup>2</sup> is amended by adding at the end thereof the following sub-section:

"(13) The provisions of Division 3 of Part II of the Principal Act as amended and in force from time to time apply, and shall be deemed at all times to have applied, in relation to an inquiry held under this section in like manner as they apply in relation to an inquiry held under that Division.".

#### Application of amendments-associate members

**35.** The amendments of section 11 of the Principal Act made by section 4 extend to an inquiry the report in relation to which has not been completed before the commencement of that section.

#### Transitional

**36.** A broadcasting translator station licence or television translator station licence (in this sub-section referred to as the "existing licence") in force immediately before the commencement of the amendment of section 80 of the Principal Act by this Act continues in force, but subject to the Principal Act as amended by this Act, as if it were a commercial broadcasting translator station licence or a commercial television translator station licence, as the case may be, and any reference to the existing licence in any instrument or document made or issued by virtue of that Act, that Act as so amended or section 33 of the *Broadcasting and Television Amendment Act* 1977 shall be deemed to be altered accordingly.

#### NOTES

2. No. 160, 1977, as amended. For previous amendments, see Nos. 52 and 210, 1978.

No. 33, 1942, as amended. For previous amendments, see No. 39, 1946; No. 64, 1948; No. 80, 1950; No. 41, 1951; No. 12, 1953; No. 82, 1954; Nos. 33, 65 and 92, 1956; No. 36, 1960 (as amended by No. 32, 1961); No. 96, 1962; No. 82, 1963; Nos. 67 and 121, 1964; Nos. 38 and 120, 1965; No. 57, 1966; No. 47, 1967; No. 69, 1968; Nos. 21 and 31, 1969; Nos. 8, 72 and 136, 1971; No. 49, 1972; No. 50, 1973; No. 216, 1973 (as amended by No. 20, 1974); No. 55, 1974; Nos. 89, 157 and 187, 1976; No. 160, 1977 (as amended by No. 52, 1978); and No. 210, 1978.