



Broadcasting and Television Amendment Act 1981

No. 113 of 1981

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Broadcasting and Television Amendment Act 1981

No. 113 of 1981

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

[Assented to 24 June 1981]

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 1981*.

(2) The *Broadcasting and Television Act 1942*¹ is in this Act referred to as the Principal Act.

Commencement

2. (1) Subject to sub-section (2), this Act shall come into operation on the day on which it receives the Royal Assent.

(2) Section 30 shall come into operation on such date as is fixed by Proclamation.

Interpretation

3. Section 4 of the Principal Act is amended—

- (a) by inserting in the definition of “commercial broadcasting station” in sub-section (1) “, a supplementary broadcasting station” after “public broadcasting station”;
- (b) by adding at the end of the definition of “commercial broadcasting translator station” in sub-section (1) “or supplementary broadcasting stations”;
- (c) by inserting after the definition of “Service” in sub-section (1) the following definitions:
 - “ ‘supplementary licence’ means a licence granted in pursuance of an application under sub-section 82A (1), including such a licence as renewed or further renewed;
 - ‘supplementary broadcasting station’ means a broadcasting station operated by virtue of a supplementary licence;”; and
- (d) by adding at the end thereof the following sub-section:
 - “(3) A reference in this Act to the contravention of a condition includes a reference to a failure to comply with the condition.”.

Evidence

4. Section 21 of the Principal Act is amended by omitting from sub-section (5) all the words after “Tribunal”.

5. After section 22A of the Principal Act the following sections are inserted:

Reference of questions of law to Federal Court of Australia

“22B. (1) The Tribunal may refer to the Federal Court of Australia for decision a question of law in a matter arising under this Act in or in connection with proceedings before the Tribunal at an inquiry.

“(2) A question may be so referred by the Tribunal of its own motion or at the request of a person having an interest in the proceedings.

“(3) The Federal Court of Australia has jurisdiction to hear and determine a question referred to it under this section, and that jurisdiction shall be exercised by that Court constituted as a Full Court.

“(4) Where a question concerning a matter arising in or in connection with any proceedings has been referred to the Federal Court of Australia under this section, the Tribunal shall not, in those proceedings—

- (a) give a decision to which the question is relevant while the reference is pending; or

- (b) proceed in a manner, or make a decision, that is inconsistent with the opinion of that Court on the question.

Documents to be sent to Federal Court of Australia

“22C. Where a question of law is referred to the Federal Court of Australia in accordance with section 22B—

- (a) the Tribunal shall cause to be sent to that Court all documents and other records relating to the proceedings before the Tribunal to which the reference relates; and
- (b) at the conclusion of the proceedings before that Court with respect to the reference, that Court shall cause the documents and other records to be returned to the Tribunal.”.

Notice of decision

6. Section 25AA of the Principal Act is amended by omitting “90J or 92F” and substituting “89A, 90JA or 92FAA”.

Publication of journals, &c., and making, &c., of sound recordings, &c.

7. Section 60 of the Principal Act is repealed and the following section is substituted:

“60. (1) For the purpose of the exercise of its powers and the performance of its functions under this Act, the Commission may, in such manner as it thinks fit—

- (a) compile, prepare, issue, circulate and distribute such papers, magazines, periodicals, books, pamphlets, circulars and other literary matter as it thinks fit (including the program schedules of national broadcasting stations, national television stations and other broadcasting and television stations); and
- (b) make, promote, circulate and distribute—
 - (i) cinematograph films and sound recordings of, or relating to—
 - (A) programs of the Commission (whether or not broadcast or televised); and
 - (B) public concerts and other public entertainment referred to in sub-section 59 (2); and
 - (ii) any article or thing bearing a mark that is associated with any matter referred to in sub-sub-paragraph (i) (A) or (B).

“(2) The Commission may, if it thinks fit, from time to time determine charges payable in respect of any matter or activity referred to in sub-section (1), with a view to raising as much net revenue as is practicable, having regard to the proper performance of its functions and to the matter or activity concerned.

“(3) A program schedule referred to in paragraph (1) (a) shall be made available at an office of the Commission on equal terms to the publishers of any newspaper, magazine or journal published in Australia prior to the publication of the program schedule in pursuance of sub-section (1).

“(4) In this section—

‘cinematograph film’ and ‘sound recording’ have the same respective meanings as in the *Copyright Act* 1968;

‘mark’ includes a symbol, design, colour, device, brand, heading, label, sign, ticket, name, signature, word, letter, numeral, drawing or picture, or any combination of the foregoing.”.

Limitation on contracts

8. Section 70B of the Principal Act is amended by adding at the end thereof the following sub-section:

“(2) Sub-section (1) does not apply to the receipt by the Commission of an amount for the sale of broadcasting or television programs.”.

Interpretation

9. Section 80 of the Principal Act is amended—

(a) by adding at the end of the definition of “applicant” in sub-section (1) “or sub-section 82A (1) or (6), as the case requires, and includes, in the case of an application in accordance with sub-section 82A (1) or (6), a consortium”;

(b) by inserting after the definition of “applicant” in sub-section (1) the following definitions:

“‘commercial licence’ means a licence referred to in paragraph (a) or (b) of the definition of ‘licence’ in this sub-section, as the case requires;

‘commercial translator licence’ means a licence referred to in paragraph (c) of the definition of ‘licence’ in this sub-section;”;

(c) by omitting paragraphs (k) and (l) of the definition of “licence” in sub-section (1) and substituting the following paragraphs:

“(k) a supplementary licence;

(l) a television repeater station licence; or

(m) a licence to which section 130A applies;”;

(d) by inserting after the definition of “licence” in sub-section (1) the following definitions:

“‘metropolitan broadcasting area’ has the same meaning as in Division 5A of Part IV;

‘person’ includes a consortium;”;

(e) by inserting after sub-section (2) the following sub-sections:

“(2A) Where a licence is granted in pursuance of an application lodged in accordance with sub-section 82A (1), that licence and—

- (a) a licence for a commercial broadcasting station referred to in that sub-section in relation to the application; or
- (b) if the first-mentioned licence is transferred to a person in accordance with section 89A, or, where that licence is held by 2 or more persons as co-owners as described in sub-section 81 (6), if the whole of the interest of any of those persons is transferred to a person in accordance with section 89A—the commercial licence referred to in paragraph 89A (1F) (b) held by the person to whom the licence or the interest, as the case may be, is transferred,

shall be deemed, for the purposes of this Act, to be related to each other and to continue to be so related, notwithstanding the renewal of either or both of those licences.

“(2B) For the purposes of this Act—

- (a) a commercial translator licence; and
- (b) a commercial licence or a supplementary licence,

shall be deemed to be associated if the translator station operated by virtue of the commercial translator licence is required by a condition of the licence to receive and re-transmit, without alteration, the programs of the station operated by virtue of the commercial licence or supplementary licence, as the case requires.

“(2C) A reference in this Part to a consortium shall be read as a reference to an association of companies.”.

Grant and renewal

10. Section 81 of the Principal Act is amended—

- (a) by omitting from sub-section (2) “deciding whether to grant or renew a licence and in”;
- (b) by omitting from sub-section (2) “commercial” (second occurring);
- (c) by omitting from paragraph (5) (a) “or commercial television stations” and substituting “, commercial television stations or supplementary broadcasting stations”; and
- (d) by adding at the end thereof the following sub-section:

“(6) Where a supplementary licence or an associated commercial translator licence is granted to the members of a consortium—

- (a) the persons to whom the licence is granted take the licence in equal undivided shares as owners in common;
- (b) references in the licence, in this Act and in any other law to the licensee or to the holder of the licence shall be read as references to each co-owner of the licence; and
- (c) the performance by a co-owner of the licence of an obligation imposed by the licence, by this Act or by any other law on the licensee or the holder of the licence shall, to the extent of that performance, be deemed to release that co-owner and each other co-owner of the licence from that obligation.”.

Applications

11. Section 82 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(6) This section does not apply to a licence in respect of the grant of which an application may be lodged under sub-section 82A (1) or is lodged under sub-section 82A (6).”.

12. After section 82 of the Principal Act the following section is inserted:

Applications for supplementary licences and associated commercial translator licences

“82A. (1) Subject to sub-section (2), the holder of a licence for a commercial broadcasting station or a consortium each member of which is the holder of such a licence may lodge with the Minister, in accordance with a form approved by the Minister, an application for the grant of a licence for a broadcasting station, being a station whose programs are to be transmitted solely by way of frequency modulation, for the purpose of serving an area the specification of which is to be determined by the Minister in accordance with sub-section (10).

“(2) An application shall not be lodged under sub-section (1) by—

- (a) the holder of a licence for a commercial broadcasting station whose programs are transmitted solely by way of frequency modulation; or
- (b) a consortium of which any member is a person referred to in paragraph (a).

“(3) Where an application (other than an application to which sub-section (4) applies) is lodged in accordance with sub-section (1) for the grant of a licence, the Minister may—

- (a) refer the application to the Tribunal, together with a notice in writing setting out—
 - (i) the specification of the area determined by the Minister to be served in pursuance of the supplementary licence, if granted; and
 - (ii) an outline of the other specifications to which it is proposed the supplementary licence, if granted, is to be subject; or
- (b) dismiss the application for a reason relating to technical matters or to the planning or development of broadcasting and television services.

“(4) The Minister shall dismiss an application lodged under sub-section (1) by a consortium if, in the opinion of the Minister, the whole or a substantial part of the area served in pursuance of the commercial licence referred to in that sub-section held by a member of the consortium is not coextensive with the whole or a substantial part of the area served in pursuance of the commercial licence so referred to held by the other member, or each of the other members, as the case requires.

“(5) The Minister shall, as soon as practicable but in any case within 21 days, inform an applicant, by notice in writing, of his decision under sub-section (3) or (4) and—

- (a) where paragraph (3) (a) applies—of the matters set out in the notice referred to in that paragraph; or
- (b) where paragraph (3) (b) applies—of the reason or reasons for his decision.

“(6) Where paragraph (3) (a) applies and—

- (a) the area specified in a notice under that paragraph to be served in pursuance of the supplementary licence does not occupy the whole of the area served in pursuance of the commercial licence, or, if the application for the supplementary licence is lodged by a consortium, the aggregate of the areas served in pursuance of the commercial licences, to which the supplementary licence would, if granted, be related; or
- (b) the supplementary licence referred to in that paragraph would, if granted, be related to one or more commercial licences associated with one or more commercial translator licences,

the Minister may, in his discretion, in the notice referred to in sub-section (5), include a statement that the applicant for the supplementary licence may lodge with the Tribunal, not later than a specified date (not being earlier than 21 days after the date of service of the notice), an application or applications, in accordance with a form approved by the Minister, for the grant of such number of commercial translator licences as is specified in the statement.

“(7) A statement referred to in sub-section (6) shall set out, in relation to the licence, or each of the licences, as the case may be, to which the statement relates—

- (a) the specification of the area determined by the Minister to be served in pursuance of the licence, if granted; and
- (b) an outline of the other specifications to which it is proposed the licence, if granted, is to be subject.

“(8) The Minister shall cause a copy of a notice containing a statement referred to in sub-section (6) to be given to the Tribunal.

“(9) The Minister shall not, in pursuance of sub-paragraph (3) (a) (i) or paragraph (7) (a), specify as the area to be served in pursuance of a supplementary licence, or in pursuance of a commercial translator licence associated with such a licence, an area of which the whole or a substantial part is coextensive with, or is within, a metropolitan broadcasting area that is not in Tasmania.

“(10) Subject to sub-section (9), the Minister shall—

- (a) in determining the specification of the area to be served in pursuance of a supplementary licence; and
- (b) in deciding whether to make a statement under sub-section (6), and, where he decides to do so, in determining the specification of the area

to be served in pursuance of a commercial translator licence to which the statement relates,

endeavour to ensure that, so far as practicable, the whole of the area served in pursuance of a commercial licence to which the supplementary licence would, if granted, be related and any one or more commercial translator licences associated with that commercial licence shall be served in pursuance of the supplementary licence and, if necessary, one or more commercial translator licences associated with the supplementary licence.

“(11) Where the Minister refers an application for the grant of a supplementary licence to the Tribunal under sub-section (3), the Tribunal shall—

- (a) as soon as practicable after it receives the application; or
- (b) if the notice under sub-section (5) includes a statement referred to in sub-section (6) and the applicant for the supplementary licence lodges an application or applications in accordance with sub-section (6)—as soon as practicable after the date specified in the statement,

publish, in the *Gazette* and in a newspaper or newspapers, if any, circulating in the area concerned, a notice—

- (c) stating that—
 - (i) an application has been lodged with the Minister under sub-section (1) and has been referred by him to the Tribunal; and
 - (ii) where paragraph (b) applies—an application has, or applications have, as the case may be, been lodged with the Tribunal under sub-section (6),

and specifying, in the case of each application, the kind of licence applied for;

- (d) specifying the name and address of the applicant for the licence or licences or, in the case of an application by a consortium, the name and address of each member of the consortium;
- (e) setting out the matters set out in the notice referred to in paragraph (3) (a) and, where applicable, in the statement referred to in sub-section (6), in relation to the licence or each of the licences; and
- (f) stating that any interested person may, not later than a specified date (not being earlier than 21 days after the date of publication of the notice in the *Gazette*), lodge with the Tribunal a written submission relating to the grant of the licence, or of any one or more of the licences, to which the notice in the *Gazette* relates.

“(12) The Tribunal shall, within the period of 21 days after the date specified under paragraph (11) (f), serve on the person who lodged an application in accordance with sub-section (1) copies of all submissions lodged by virtue of that paragraph.

“(13) A person on whom a copy of a submission is served under sub-section (12) may, within the period of 21 days after the expiration of the period

referred to in that sub-section, lodge with the Tribunal his reply to the submission.

“(14) Notwithstanding the preceding provisions of this section, where the Tribunal is satisfied that the circumstances justify its so doing, it may, of its own motion or at the request of any interested person—

- (a) grant an extension of the time for the lodgment of a particular application, submission, or reply by virtue of those provisions, whether or not that time has expired; and
- (b) give such directions, and do such things, in consequence of the grant of the extension as it considers necessary or expedient for the just and proper consideration of an application for the grant of the licence concerned.”.

Consideration of applications by Tribunal

13. Section 83 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “(4) of section 82” and substituting “82 (4) or 82A (13), as the case requires,”;
- (b) by omitting sub-section (2) and substituting the following sub-sections:

“(2) Where—

- (a) in respect of the grant of any of the following licences for which there is only one applicant:

- (i) a broadcasting translator station licence (other than such a licence for which an application has been lodged under sub-section 82A (6)) or a television translator station licence;

- (ii) a television repeater station licence;

- (iii) a licence to which section 130A applies,

no submissions (other than submissions that, in the opinion of the Tribunal, are frivolous, vexatious or not made in good faith) have been lodged by virtue of sub-paragraph 82 (1) (b) (ii) objecting to the grant of the licence or to the grant of the licence to the applicant; or

- (b) in respect of the grant of a supplementary licence, or a commercial translator licence for which an application has been lodged under sub-section 82A (6), no submissions (other than submissions that, in the opinion of the Tribunal, are frivolous, vexatious or not made in good faith) have been lodged by virtue of paragraph 82A (11) (f) objecting to the grant of the licence,

the Tribunal shall, as soon as practicable after the expiration of the period first referred to in sub-section 82 (4) or 82A (13), as the case requires, hold an inquiry into the grant of the licence or, if it thinks fit, consider the application without holding an inquiry.

“(2A) Where an applicant for a supplementary licence has lodged an application or applications under sub-section 82A (6) for the grant of a commercial translator licence or commercial translator licences, the Tribunal may, if it thinks fit, hold a joint inquiry into the grant of the supplementary licence and that commercial translator licence or any one or more of those commercial translator licences.”;

- (c) by adding at the end of sub-section (3) “or 82A, as the case requires.”;
- (d) by omitting sub-section (5) and substituting the following sub-sections:

“(5) An applicant for a licence shall, at the inquiry into the grant of the licence or, if the Tribunal, in accordance with sub-section (2), considers the application without holding an inquiry, before the consideration by the Tribunal, give an undertaking in writing to the Tribunal that he will, if the licence is granted to him—

- (a) comply with the conditions of the licence; and
- (b) if the licence is a licence referred to in paragraph (a), (b), (g), (h), (k), (l) or (m) of the definition of ‘licence’ in sub-section 80 (1)—
 - (i) provide an adequate and comprehensive service in pursuance of the licence, having regard to—
 - (A) the nature of the community to be served in pursuance of the licence;
 - (B) the diversity of the interests of that community; and
 - (C) the nature of the other broadcasting and television services (if any) of which satisfactory reception is being obtained by that community; and
 - (ii) encourage the provision of programs wholly or substantially produced in Australia and use, and encourage the use of, Australian creative resources in and in connection with the provision of programs.

“(6) The Tribunal shall not refuse to grant a licence to a person unless it has held an inquiry into the grant of the licence and—

- (a) the person has failed to give an undertaking in accordance with sub-section (5);
- (b) the Tribunal is satisfied that the grant of the licence would be contrary to a provision of this Act;
- (c) it appears to the Tribunal, having regard only to the following matters or circumstances, that it is advisable in the public interest to refuse to grant the licence to the person:
 - (i) it is not satisfied that the person—
 - (A) is a fit and proper person to hold the licence;
 - (B) has the financial, technical and management capabilities necessary effectively to operate the

relevant broadcasting station or television station, as the case may be; and

(C) is otherwise capable of complying with the conditions of the licence;

(ii) where—

(A) the licence is a commercial licence (other than a licence for a metropolitan commercial broadcasting station as defined by sub-section 90 (1) or a licence referred to in paragraph 92 (1) (c)) or a supplementary licence; and

(B) in the opinion of the Tribunal, in the area to be served in pursuance of the licence, satisfactory reception is being obtained of programs from one or more broadcasting or television stations operated by virtue of a licence or licences of a kind to which sub-sub-paragraph (A) applies,

the need to avoid undue concentration of influence, whether direct or indirect, on the person and on the company or companies holding the other licence or licences;

(iii) where, in the opinion of the Tribunal, in the area to be served in pursuance of the licence, satisfactory reception is being obtained of programs from one or more broadcasting or television stations—the need for the commercial viability of that station or those stations;

(d) it appears to the Tribunal that a licence of the kind contemplated by the matters set out in a notice under paragraph 82 (1) (a) or 82A (3) (a) or in a statement referred to in sub-section 82A (6) should not be granted;

(e) where the licence is a supplementary licence, the Tribunal, having due regard to the need for the commercial viability of the broadcasting stations and television stations in the area to be served in pursuance of the licence, if granted, determines that an additional commercial broadcasting station to serve that area is reasonably likely to be commercially viable during the period in which the licence, if granted, would be in force; or

(f) the circumstances are such that, if it granted the licence to the person—

(i) the Tribunal would have reasonable grounds for believing that a person would be contravening section 90C or 92 in circumstances that would constitute an offence against that section;

(ii) a person would be contravening section 90F or 92C; or

(iii) a condition specified in section 90G or 92D would be contravened.

“(7) For the purposes of paragraph (6) (f), the Tribunal may disregard a contravention of section 90C or 92 by a person if it is satisfied that—

- (a) as soon as practicable after the grant of the licence the person will take all reasonable steps with a view to causing the contravention to cease; or
- (b) the contravention will not result in the person being, within the meaning of Division 2 or 3, as the case requires, of Part IV, in a position to control the company to which the licence is to be granted.

“(8) Where the Tribunal makes a determination in accordance with paragraph (6) (e), it shall, by notice in writing, inform the Minister of the determination and the reasons for the determination.

“(9) Where there are 2 or more applicants for a licence, each of whom is a person to whom, but for this sub-section, the Tribunal would be required to grant the licence, the Tribunal shall grant the licence to the most suitable applicant.”.

Imposition of conditions

14. Section 84 of the Principal Act is amended by omitting from sub-section (1) all the words after “substantially consistent with” and substituting “the matters set out in a notice under paragraph 82 (1) (a) or 82A (3) (a) or in a statement referred to in sub-section 82A (6), as the case may be, and notify the Tribunal accordingly”.

Variation of conditions

15. Section 85 of the Principal Act is amended by omitting from sub-section (2) “commercial” (second occurring).

Renewal

16. Section 86 of the Principal Act is amended—

- (a) by adding at the end of sub-section (4) “and, in the case of a renewal to which section 86A applies, relating to the matter concerning which the Tribunal is required to make a determination under sub-section 86A (2)”;
- (b) by omitting sub-sections (10) and (11) and substituting the following sub-sections:

“(10) The licensee shall, at the inquiry or before the consideration by the Tribunal of the application, as the case may be, give a fresh undertaking in writing to the Tribunal in the same terms as an undertaking required to be given under sub-section 83 (5).

“(11) The Tribunal shall not refuse to renew the licence unless it has held an inquiry into the renewal of the licence.

“(11A) Except as provided in sub-sections (11B) and (11D) and section 86A, the Tribunal shall not refuse to renew the licence.

“(11B) Subject to sub-section (11), the Tribunal shall refuse to renew the licence if—

- (a) the licensee has failed to give an undertaking under sub-section (10);
- (b) the Tribunal is satisfied that the renewal of the licence would be contrary to a provision of this Act;
- (c) it appears to the Tribunal, having regard only to the following matters or circumstances, that it is advisable in the public interest to refuse to renew the licence:
 - (i) the Tribunal is satisfied that the licensee has failed to comply with the undertaking (if any) given under sub-section (10) or 83 (5), as the case may be, in relation to the licence to be renewed;
 - (ii) the Tribunal is satisfied that the licensee—
 - (A) is no longer a fit and proper person to hold the licence; or
 - (B) no longer has the financial, technical and management capabilities necessary effectively to operate the broadcasting station or television station, as the case may be, to which the licence relates;
 - (iii) the Tribunal is satisfied that a condition of the licence has not been complied with;
 - (iv) the need for the commercial viability of the station operated by virtue of the licence; or
- (d) the circumstances are such that, if the Tribunal renewed the licence—
 - (i) the Tribunal would have reasonable grounds for believing that a person would be contravening section 90C or 92 in circumstances that would constitute an offence against that section;
 - (ii) a person would be contravening section 90F or 92C; or
 - (iii) a condition specified in section 90G or 92D would be contravened.

“(11C) For the purposes of paragraph (11B) (d), the Tribunal may disregard a contravention of section 90C or 92 by a person if it is satisfied that—

- (a) as soon as practicable after the renewal of the licence concerned, the person will take all reasonable steps with a view to causing the contravention to cease; or
- (b) the contravention will not result in the person being, within the meaning of Division 2 or 3, as the case requires, of Part IV, in a position to control the company holding the licence.

“(11D) Subject to sub-section (11), the Tribunal may refuse to renew a licence for a commercial broadcasting station or commercial

television station or a supplementary licence if it is satisfied that the licensee has failed to pay an amount payable by him under the *Broadcasting Stations Licence Fees Act 1964* or the *Television Stations Licence Fees Act 1964*, as the case requires.”; and

- (c) by adding at the end thereof the following sub-sections:

“(14) Where a supplementary licence and a related commercial licence expire on or about the same date, the Tribunal may, if it thinks fit, hold a joint inquiry into the renewal of—

- (a) the supplementary licence and the commercial licence; and
- (b) if a commercial translator licence associated with either licence expires on or about that date—that translator licence.

“(15) Nothing in sub-section (14) shall be taken to affect the application of the preceding provisions of this section in relation to each licence referred to in that sub-section.”.

17. After section 86 of the Principal Act the following section is inserted:

Renewal of certain supplementary licences

“86A. (1) This section applies in relation to a renewal of a supplementary licence, other than—

- (a) a renewal of such a licence occurring less than 8 years after the grant of the licence under section 83; or
- (b) a renewal referred to in sub-section (3).

“(2) The Tribunal shall, at the inquiry into the renewal of a supplementary licence in relation to which this section applies, or, if the Tribunal considers an application for such a renewal without holding an inquiry, during its consideration, determine whether or not, having due regard to the need for the commercial viability of the broadcasting stations and television stations in the area served in pursuance of the licence, it is of the opinion that—

- (a) an additional commercial broadcasting station to serve that area is reasonably likely to be commercially viable after the expiration of the period of 3 years (in this section referred to, in relation to the licence, as the ‘prescribed period’) commencing on the renewal of the licence; and
- (b) having considered the need for an adequate and comprehensive service to be provided in pursuance of a licence for such an additional station, having regard only to—
 - (i) the nature of the community to be served in pursuance of such a licence;
 - (ii) the diversity of the interests of that community; and
 - (iii) the nature of the broadcasting and television services of which satisfactory reception is being obtained by that community,
 it is advisable in the public interest that applications for such a licence be invited.

“(3) Where the Tribunal has made a determination under sub-section (2) in relation to a supplementary licence, it shall not make a further determination under that sub-section in relation to that licence at any further renewal of the licence during the prescribed period.

“(4) The Tribunal shall, as soon as practicable after making a determination under sub-section (2) in relation to a supplementary licence—

- (a) inform the holder of the licence, by notice in writing, of the determination; and
- (b) where the Tribunal makes a determination that it is of the opinion referred to in that sub-section—make a recommendation in writing to the Minister that he invite applications for a licence for a commercial broadcasting station to serve, after the expiration of the prescribed period, an area that is substantially coextensive with the area served in pursuance of the supplementary licence.

“(5) The Tribunal shall, in its decision with respect to an inquiry into the renewal of a supplementary licence or in the report of its consideration referred to in sub-section 86 (13), as the case may be, include a statement of the reasons for the determination made by the Tribunal under sub-section (2).

“(6) Subject to this section, where the Tribunal makes a determination under sub-section (2) in relation to a supplementary licence that it is of the opinion referred to in that sub-section, and the Tribunal grants a renewal of the licence, the Tribunal shall not—

- (a) if the period of renewal of the licence is less than 3 years—grant a further renewal of the licence to expire after the expiration of the prescribed period; or
- (b) grant a renewal of the supplementary licence at the expiration of the prescribed period unless—
 - (i) on or before the expiration of that period, the related commercial licence ceases to be in force and is not renewed; and
 - (ii) the supplementary licence is not held by 2 or more co-owners as described in sub-section 81 (6).

“(7) Where the Tribunal makes a determination under sub-section (2) in relation to a supplementary licence that it is of the opinion referred to in that sub-section and a notice is served on the holder of the licence accordingly under sub-section (4), that person shall, within the period of 12 weeks after the date of service of the notice or such further period as the Tribunal, on application made within that period of 12 weeks, allows, lodge with the Tribunal a notice in writing stating whether or not he proposes to apply for the renewal of the supplementary licence at the expiration of the prescribed period.

“(8) Where a commercial translator licence is associated with a supplementary licence referred to in sub-section (7), or with the commercial licence related to the supplementary licence, and is held by a person other than the holder of the supplementary licence, the Tribunal shall, as soon as practicable after the expiration of the period of 12 weeks, or further period, as the case may be, referred to in that sub-section, by notice in writing served on

the person, inform the person of the contents of any notice lodged with the Tribunal under that sub-section.

“(9) Subject to this section, where a notice under sub-section (7) lodged with the Tribunal by the holder of a supplementary licence states that the holder proposes to apply for the renewal of the licence at the expiration of the prescribed period—

- (a) the related commercial licence ceases; and
- (b) any commercial translator licence associated with the commercial licence ceases,

to be in force upon the expiration of that period and shall not be renewed.

“(10) Subject to this section, where a notice under sub-section (7) lodged with the Tribunal by the holder of a supplementary licence states that the holder does not propose to apply for the renewal of the licence at the expiration of the prescribed period, any commercial translator licence associated with that licence ceases to be in force upon the expiration of that period and shall not be renewed.

“(11) Where an application under section 86 for the renewal of a supplementary licence in accordance with a statement made by the holder of the licence in a notice under sub-section (7) is lodged with the Tribunal before the expiration of the prescribed period, the following provisions apply:

- (a) the Tribunal shall, in the notice published under sub-section 86 (4), include a statement that the application shall, by reason of the operation of paragraph (d), be treated as an application for the renewal of a licence for a commercial broadcasting station;
- (b) sub-section 86 (8), and the provisions of section 86 relating to the consideration of an application without holding an inquiry, have no effect;
- (c) the inquiry under section 86 into the renewal of the licence has effect as if it were an inquiry into the renewal of a licence for a commercial broadcasting station;
- (d) if the licence is renewed—
 - (i) it shall be deemed for all purposes, on and after the day on which it commences, to be a licence for a commercial broadcasting station and to have ceased, on the day immediately preceding the first-mentioned day, to be a supplementary licence; and
 - (ii) the station operated by virtue of the licence shall be deemed for all purposes, on and after the day on which the licence commences, to be a commercial broadcasting station and to have ceased, on the day immediately preceding the first-mentioned day, to be a supplementary broadcasting station.

“(12) Where a recommendation is made by the Tribunal to the Minister under paragraph (4) (b), sub-sections (13), (14) and (15) apply.

“(13) Where—

- (a) the Minister does not, within 6 months after the commencement of the prescribed period in relation to the supplementary licence referred to in the recommendation, publish a notice in accordance with sub-section 82 (1) notifying interested persons that they may lodge applications for the grant of a licence for a commercial broadcasting station to serve an area that is substantially coextensive with the area served in pursuance of the supplementary licence; or
- (b) the Minister publishes such a notice within that period and no application is lodged for the grant of the commercial licence to which the notice relates,

the following provisions apply:

- (c) paragraph (6) (a) has no effect in relation to the further renewal (if any) of the supplementary licence;
- (d) paragraph (6) (b) and sub-sections (9), (10) and (11) are of no effect in relation to the supplementary licence, the related commercial licence or any commercial translator licence associated with either licence.

“(14) Where the Minister, within 6 months after the commencement of the prescribed period in relation to the supplementary licence referred to in the recommendation, publishes a notice in accordance with sub-section 82 (1) notifying interested persons that they may lodge applications for the grant of a licence for a commercial broadcasting station to serve an area that is substantially coextensive with the area served in pursuance of the supplementary licence, and an application is, or applications are, lodged for the grant of the commercial licence—

- (a) if the Tribunal refuses, during the prescribed period, to grant the commercial licence for which application is made—paragraphs (13) (c) and (d) apply; or
- (b) if the Tribunal grants the commercial licence to an applicant and the licence commences on any day after the day after the expiration of the prescribed period in relation to the supplementary licence —
 - (i) sub-sections (9) and (10) have effect as if the references in those sub-sections to the prescribed period were references to the period expiring on the day immediately preceding the day on which the commercial licence commences; and
 - (ii) the supplementary licence shall be deemed not to expire before that day.

“(15) Where—

- (a) the holder of a supplementary licence lodges with the Tribunal a notice under sub-section (7); and
- (b) the licence is subsequently transferred in accordance with section 89A,

the statement made in the notice has, for the purposes of the application of this section in relation to the licence, the same effect as if it had been made by the holder of the licence for the time being.”.

Suspension and revocation

18. Section 88 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

“(1) Subject to section 89, the Tribunal may, by notice in writing to the licensee, suspend or revoke a licence where—

- (a) it appears to the Tribunal that it is advisable in the public interest to do so, having regard only to the following matters or circumstances:
 - (i) the Tribunal is satisfied that the licensee has failed to comply with the undertaking given under sub-section 86 (10) or 83 (5), as the case may be, in relation to the licence;
 - (ii) the Tribunal is satisfied that the licensee—
 - (A) is no longer a fit and proper person to hold the licence; or
 - (B) no longer has the financial, technical and management capabilities necessary effectively to operate the broadcasting station or television station, as the case may be, to which the licence relates; or
 - (iii) the Tribunal is satisfied that a condition of the licence has not been complied with; or
- (b) in the case of a licence for a commercial broadcasting station or a commercial television station or a supplementary licence—the Tribunal is satisfied that the licensee has failed to pay an amount payable by him under the *Broadcasting Stations Licence Fees Act 1964* or the *Television Stations Licence Fees Act 1964*, as the case requires.”.

Transfers

19. Section 89A of the Principal Act is amended—

- (a) by inserting after sub-section (1) the following sub-sections:

“(1A) A person to whom a licensee proposes to transfer the licence shall give an undertaking in writing to the Tribunal in the same terms as an undertaking required to be given under sub-section 83 (5).

“(1B) Except where sub-section (1F) applies, the Tribunal shall not refuse to give consent to the transfer of a licence unless it has held an inquiry into the transfer of the licence.

“(1C) Except as provided in sub-sections (1D) and (1F), the Tribunal shall not refuse to give consent to the transfer of a licence.

“(1D) Subject to sub-section (1B), the Tribunal shall refuse to give consent to the transfer of a licence to a person if—

- (a) the person has failed to give an undertaking under sub-section (1A);

- (b) the Tribunal is satisfied that the giving of the consent would be contrary to a provision of this Act;
- (c) it appears to the Tribunal, having regard only to the following matters or circumstances, that it is advisable in the public interest to refuse consent:

- (i) it is not satisfied that the person—

- (A) is a fit and proper person to hold the licence;
 - (B) has the financial, technical and management capabilities necessary effectively to operate the relevant broadcasting station or television station, as the case may be; and
 - (C) is otherwise capable of complying with the conditions of the licence;

- (ii) where—

- (A) the licence is a commercial licence (other than a licence for a metropolitan commercial broadcasting station as defined by sub-section 90 (1) or a licence referred to in paragraph 92 (1) (c)); and
 - (B) in the opinion of the Tribunal, in the area to be served in pursuance of the licence, satisfactory reception is being obtained of programs from one or more broadcasting or television stations operated by virtue of a licence or licences to which sub-sub-paragraph (A) applies,

the need to avoid undue concentration of influence, whether direct or indirect, on the person and on the company or companies holding the other licence or licences; or

- (d) the circumstances are such that, if the Tribunal gave consent—
 - (i) the Tribunal would have reasonable grounds for believing that a person would be contravening section 90C or 92 in circumstances that would constitute an offence against that section;
 - (ii) a person would be contravening section 90F or 92C; or
 - (iii) a condition specified in section 90G or 92D would be contravened.

“(1E) For the purposes of paragraph (1D) (d), the Tribunal may disregard a contravention of section 90C or 92 by a person if it is satisfied that—

- (a) as soon as practicable after the transfer of the licence the person will take all reasonable steps with a view to causing the contravention to cease; or

- (b) in the case of a contravention by a person other than the transferee—the contravention will not result in the person being, within the meaning of Division 2 or 3, as the case requires, of Part IV, in a position to control the transferee.

“(1F) The Tribunal shall refuse—

- (a) to give consent to the transfer of a commercial licence related to a supplementary licence by the licensee to another person unless the supplementary licence is transferred at the same time to that other person; or
- (b) to give consent to—
 - (i) the transfer of a supplementary licence by the licensee to another person; or
 - (ii) the admission by the licensee of a supplementary licence or, if the licence is held by 2 or more persons as co-owners, by any of those persons, of another person to participate in any of the benefits of the licence or to exercise any of the powers or authorities granted by the licence,

unless that other person is the holder of a licence for a commercial broadcasting station and the whole or a substantial part of the area served in pursuance of that commercial licence, or that commercial licence and any one or more commercial translator licences associated with that commercial licence, is coextensive with the whole or a substantial part of the area served in pursuance of either the supplementary licence or the supplementary licence and any one or more commercial translator licences associated with the supplementary licence.”; and

- (b) by adding at the end thereof the following sub-section:

“(5) In relation to a supplementary licence held by 2 or more persons as co-owners, the references in this section to the transfer by the licensee of his licence shall be read as references to the transfer by any of those persons of the whole of his interest in the licence.”.

Service of documents

- 20. Section 89E of the Principal Act is repealed.

Tracing of shareholding interests through a series of companies

- 21. Section 90B of the Principal Act is amended by inserting in sub-section (1) “and sub-sections 90G (2), (5) and (6)” after “90E”.

Limitation of interests in commercial broadcasting stations

- 22. Section 90C of the Principal Act is amended—

- (a) by omitting sub-section (3); and
- (b) by inserting after sub-section (5) the following sub-sections:

“(5A) A person who contravenes this section otherwise than as described in sub-section (5B) or (5C) is guilty of an offence in respect

of each day (including the day of a conviction under this sub-section or any subsequent day) during which the contravention continues.

“(5B) Where a person contravenes this section as a result of a transaction that takes place after the commencement of this sub-section, being a transaction to which the person is a party and in relation to which section 90J applies to the person, the person is guilty of a separate offence in respect of each day (including the day of a conviction under this sub-section or any subsequent day) during which the contravention continues—

- (a) if the person is guilty of an offence or offences against sub-section 90J (7E) in relation to the transaction—after the day on which the transaction takes place and before the day in respect of which he ceases to be guilty of any further offence against that sub-section;
- (b) if the person is guilty of an offence or offences against sub-section 90J (7F) or 90JA (10) in relation to the transaction—after the day in respect of which the offence, or the first such offence, is committed; or
- (c) in any other case (including a case where the person is guilty of an offence or offences against sub-section 90J (7E) in relation to the transaction but has subsequently ceased to be guilty of any further offence against that sub-section)—after the expiration of the period of 6 months after the transaction takes place or such further period as the Tribunal, on application, allows by notice in writing served on the person within that period of six months.

“(5C) Where—

- (a) a transaction in relation to which section 90J applies takes place after the commencement of this sub-section;
- (b) a person (in this sub-section referred to as the ‘prescribed person’), not being a party to the transaction, is a person to whom section 90J applies in relation to the transaction by reason of another person being a party to the transaction;
- (c) the Tribunal approves the transaction in whole or in part under section 90JA in so far as it affects that other person; and
- (d) the prescribed person contravenes this section by reason that he is the holder of interests attributable to so much of the transaction as is so approved,

the prescribed person is guilty of a separate offence in respect of each day (including the day of a conviction under this sub-section or any subsequent day) during which he contravenes this section by reason that he is the holder of those interests, or any other interests attributable to so much of the transaction as is so approved, after the expiration of the period of 6 months after the day on which the approval or, where there are 2 or more such approvals, the later or

latest approval, is given or such further period as the Tribunal, on application, allows by notice in writing served on the prescribed person within that period of 6 months.

“(5D) Where—

- (a) a transaction, being a transaction in relation to which section 90J applies to a person who is not a party to the transaction, takes place after the commencement of this sub-section; and
- (b) the person does not contravene this section as described in sub-section (5C),

in ascertaining whether or not the person is contravening this section otherwise than as described in sub-section (5C), any interests of the person attributable to the transaction shall be disregarded.”

Meaning of control of a company

23. Section 90E of the Principal Act is amended by inserting in sub-section (1) “other than sub-sections 90G (2), (5) and (6),” after “Division,”.

Directors

24. Section 90F of the Principal Act is amended—

- (a) by omitting from sub-section (1) “shall not be” and substituting “contravenes this section if, and so long as, he is”;
- (b) by omitting the penalty set out at the foot of sub-section (1);
- (c) by inserting after sub-section (1) the following sub-section:
 “(1A) A person who contravenes this section is guilty of a separate offence in respect of each day (including a day of a conviction under this sub-section or any subsequent day) during which the contravention continues.”; and
- (d) by omitting sub-section (5).

25. Section 90G of the Principal Act is repealed and the following section is substituted:

Foreign shareholdings, &c.

“90G. (1) A licence is subject to a condition that a foreign person shall not at any time during the currency of the licence be in a position to exercise control, either directly or indirectly, of the company holding the licence.

“(2) A licence is subject to a further condition that 2 or more foreign persons shall not at any time during the currency of the licence—

- (a) be in a position to exercise control of more than 20% of the maximum number of votes that could be cast on a poll at, or arising out of, a general meeting of the company holding the licence, whether as regards all questions that could be submitted to such a poll or as regards one or more only of those questions;
- (b) hold shareholding interests in the company holding the licence, being shareholding interests in respect of shares of a kind carrying voting

rights on all questions at general meetings of the company, exceeding in amount 20% of the total of the amounts paid on all shares in the company of a kind carrying such voting rights; or

- (c) hold shareholding interests in the company holding the licence exceeding in amount 20% of the total of the amounts paid on all shares in the company.

“(3) A reference in this section to a foreign person shall be read as a reference to—

- (a) a natural person who is not an Australian citizen; or
- (b) a company, wherever incorporated, that is controlled by a person or persons referred to in paragraph (a).

“(4) For the purposes of paragraph (3) (b), a company shall be deemed to be controlled by a person or persons if, and only if—

- (a) the person is, or persons are, in a position to exercise control of more than 50% of the maximum number of votes that could be cast on a poll at, or arising out of, a general meeting of the company, whether as regards all questions that could be submitted to such a poll or as regards one or more only of those questions;
- (b) the person holds, or persons hold, shareholding interests in the company, being shareholding interests in respect of shares of a kind carrying voting rights on all questions at general meetings of the company, exceeding in amount 50% of the total of the amounts paid on all shares in the company of a kind carrying such voting rights; or
- (c) the person holds, or persons hold, shareholding interests in the company exceeding in amount 50% of the total of the amounts paid on all shares in the company.

“(5) For the purposes of this section, where a person is, or persons are, by virtue of sub-section (4), deemed to control a company (including a person or persons deemed to control a company by virtue of another application or other applications of this sub-section) and the company is in a position to exercise control of any votes in respect of, or holds a shareholding interest in, another company, the person or persons shall be deemed to be in a position to exercise control of those votes or to hold that shareholding interest, as the case may be.

“(6) For the purposes of this section, 2 or more persons shall be taken to be in a position to exercise control of any votes in respect of, or to hold shareholding interests in, a company notwithstanding that they are not acting in concert or otherwise associated.”.

Changes in ownership of shares, &c.

26. Section 90J of the Principal Act is amended by omitting sub-sections (2) to (7) (inclusive) and substituting the following sub-sections:

“(2) Except in so far as the contrary intention appears, in the succeeding provisions of this section—

- (a) a reference to a transaction shall be read as a reference to a transaction in relation to which this section applies to a person; and
- (b) a reference to a prescribed party, in relation to a transaction, shall be read as a reference to a person to whom this section applies in relation to the transaction, being a person who is a party to the transaction or, in the case of a proposed transaction, would be a party to the transaction if the transaction were in effect.

“(3) Where a transaction is proposed, the prescribed party to the transaction or, where there are 2 or more prescribed parties to the transaction, each prescribed party, may—

- (a) give the Tribunal a notice in writing, stating—
 - (i) the number, or, if the prescribed party so desires, the maximum number, of shares that will be concerned in the transaction;
 - (ii) the name of the company the shares in which will be concerned in the transaction;
 - (iii) whether or not the prescribed party has a prescribed interest in a licence for a commercial broadcasting station or for a commercial television station (which may include the licence to which the transaction relates) and, if so, setting out particulars of each such prescribed interest;
 - (iv) whether or not, by reason of the shareholding interests to be held as a result of the transaction, together with any other shareholding interests, the prescribed party will have a prescribed interest in a licence referred to in sub-paragraph (iii) and, if so, setting out particulars of each such prescribed interest;
 - (v) whether or not those shareholding interests will result in a contravention of section 90F and, if so, setting out particulars of the contravention; and
 - (vi) whether or not those shareholding interests will result in a contravention of, or failure to comply with, a condition of the licence to which the transaction relates; or
- (b) lodge an application with the Tribunal, in accordance with the form approved by the Tribunal, for approval of the transaction in so far as it affects the prescribed party.

“(4) For the purposes of paragraph (3) (a), a notice may be given to the Tribunal by lodging it with the Tribunal or by sending it to the Tribunal by post or by telegram or in any other manner.

“(5) Nothing in sub-section (3) prevents—

- (a) both a notice being given and an application being lodged by the same person in relation to the same transaction; or
- (b) the giving of a notice in the manner provided by paragraph (7E) (c) after the transaction to which the notice relates has taken place.

“(6) A notice given under paragraph (3) (a) ceases to have effect on the expiration of 30 days after it is so given, but nothing prevents the giving of a further notice under that paragraph.

“(7) Where an application has been lodged with the Tribunal by a person in accordance with paragraph (3) (b) in relation to a transaction and—

- (a) a particular that was omitted from the application because it was not known by the person at the time the application was lodged subsequently becomes known to the person;
- (b) a particular set out in the application (not being an increase in the number of shares to be concerned in the proposed transaction) becomes incorrect; or
- (c) the transaction takes place,

the person shall, within the period of 28 days after the particular so omitted became known to the person, the particular became incorrect, or the transaction took place, as the case may be, or within such longer period as the Tribunal, on application, allows by notice in writing served on the person within that period of 28 days, lodge with the Tribunal notice in writing of the particular so omitted, of the correct particular, or of the transaction having taken place, as the case may be.

“(7A) Each person to whom this section applies in relation to a transaction (other than a prescribed party who has lodged an application in relation to the transaction in accordance with paragraph (3) (b)) shall, not later than the 28th day after the transaction takes place or such later day as the Tribunal, on application, allows by notice in writing served on the person before that 28th day, lodge with the Tribunal, in accordance with the form approved by the Tribunal, an application for approval of the transaction in so far as it affects the person.

“(7B) An application lodged in pursuance of paragraph (3) (b) or sub-section (7A) or a notice lodged in pursuance of sub-section (7) shall be taken not to be lodged in accordance with that paragraph or sub-section unless it is accompanied by a statutory declaration made—

- (a) where the person required to lodge the application or notice is a natural person—by that person; or
- (b) where the person required to lodge the application or notice is a company—by a director, secretary or executive officer of the company or by a person authorized by the company in writing to make such a declaration on its behalf,

verifying the statements made in the application or notice, other than statements as to future events.

“(7C) A notice given to the Tribunal in pursuance of paragraph (3) (a) shall be taken not to be given in accordance with that paragraph, and a statutory declaration shall be taken not to accompany an application or notice for the purposes of sub-section (7B), if the notice or statutory declaration, as

the case may be, contains a statement (not being a statement as to future events) that—

- (a) is false or misleading in a material particular; or
- (b) is misleading in a material respect by reason of the omission of any matter or thing.

“(7D) On receipt of a notice or application given to or lodged with the Tribunal by a person in pursuance of sub-section (3) or (7A), the Chairman shall—

- (a) if the notice or application does not comply with the requirements of this section—reject the notice or application and give the person such directions as are necessary to ensure that it complies with those requirements; or
- (b) in any other case—accept the notice or application,

and, for the purposes of this Act, the notice or application shall be taken not to be given to or lodged with the Tribunal until it has been so accepted.

“(7E) Where a transaction takes place at a particular time and a person is a prescribed party to the transaction, then, unless—

- (a) immediately before that time, there was in effect a notice given by the person in accordance with paragraph (3) (a) in relation to the transaction; or
- (b) before that time, an application was lodged by the person in accordance with paragraph (3) (b) in relation to the transaction,

the person is guilty of a separate offence in respect of each day (including the day of a conviction under this sub-section or any subsequent day) after that time until—

- (c) the day on which he gives a notice in relation to the transaction in accordance with paragraph (3) (a) (modified so far as is necessary to take account of the fact that the transaction has taken place); or
- (d) the day on which he lodges an application in relation to the transaction in accordance with sub-section (7A).

“(7F) A person who fails to comply with sub-section (7) or (7A) is guilty of a separate offence in respect of each day (including the day of a conviction under this sub-section or any subsequent day) during which the failure continues.

“(7G) In relation to a notice given in relation to a transaction under paragraph (3) (a) that states the maximum number of shares that will be concerned in the transaction, a reference in this section to the transaction includes a reference to any transaction that differs from that transaction by reason only that it concerns a lesser number of shares.”.

27. After section 90J of the Principal Act the following section is inserted:

Approval of transactions

“90JA. (1) Subject to sub-section (2), where an application in relation to a transaction is made in accordance with section 90J, the Tribunal shall, by notice in writing served on the applicant, approve the transaction in so far as it affects the applicant.

“(2) Where an application in relation to a transaction is so made and—

- (a) where sub-section (4) applies to the applicant—the Tribunal, if the application were an application for the consent of the Tribunal under section 89A to the transfer to the applicant of the licence to which the transaction relates, would be required or empowered to refuse the application;
- (b) where the applicant is a prescribed party, within the meaning of section 90J, to the transaction—the licence to which the transaction relates was granted (otherwise than by way of renewal) within 2 years before the date on which the application was so lodged with the Tribunal; or
- (c) where sub-section (4) does not apply to the applicant—it appears to the Tribunal that it is advisable in the public interest that approval of the transaction should be refused in whole or in part in so far as it affects the applicant, having regard only to the following matters or circumstances:
 - (i) the effect, if any, that the transaction will have, or has had, as the case requires, on the capacity of the holder of the licence to which the transaction relates to comply with the conditions of the licence or any undertaking given under sub-section 83 (5), 86 (10) or 89A (1A) in relation to the licence;
 - (ii) if the applicant is a prescribed party, within the meaning of section 90J, to the transaction—the Tribunal is satisfied that approval of the transaction should be refused in whole or in part in so far as it affects the applicant by reason that the applicant—
 - (A) is not a fit and proper person to hold the interests to which the transaction relates; or
 - (B) does not have the financial, technical or management capabilities necessary effectively to operate the broadcasting station to which the licence relates;
 - (iii) if—
 - (A) the licence to which the transaction relates is not a licence for a metropolitan commercial broadcasting station; and
 - (B) in the opinion of the Tribunal, in the area served in pursuance of that licence, satisfactory reception is being obtained of programs of one or more broadcasting or television stations operated by virtue of another licence or licences,

the Tribunal is satisfied, having regard to the need to avoid undue concentration of influence, whether direct or indirect, on the companies holding those licences, that approval of the transaction should be refused in whole or in part in so far as it affects the applicant,

then, subject to this section, the Tribunal, by notice in writing served on the applicant—

- (d) where paragraph (a) applies by reason that, if the application were an application of a kind referred to in that paragraph, the Tribunal would be required to refuse the application by reason of the operation of sub-paragraph 89A (1D) (d) (ii) or (iii)—shall refuse approval of the whole transaction in so far as it affects the applicant;
- (e) where paragraph (a) applies otherwise than as described in paragraph (d) or where paragraph (b) applies—may refuse approval of the whole transaction in so far as it affects the applicant; or
- (f) where paragraph (c) applies—shall, as the case requires—
 - (i) refuse approval of the transaction, in so far as it affects the applicant, to the extent that it relates to specified interests or interests of a specified amount, and approve the remainder of the transaction in so far as it affects the applicant; or
 - (ii) refuse approval of the whole transaction in so far as it affects the applicant.

“(3) In sub-paragraph (2) (c) (iii) (except in sub-sub-paragraph (A)), ‘licence’ means—

- (a) a licence for a commercial broadcasting station other than a metropolitan commercial broadcasting station; or
- (b) a licence for a commercial television station, other than a licence referred to in paragraph 92 (1) (c).

“(4) This sub-section applies in relation to a person, in relation to a transaction, if—

- (a) the person is a prescribed party, within the meaning of section 90J, to the transaction;
- (b) as a result of the transaction, the person will become, or has become, as the case requires, the legal owner of shares in—
 - (i) the company holding the licence to which the transaction relates (in this sub-section referred to as the ‘licensee’); or
 - (ii) another company that is the legal owner of shares in the licensee and is, by reason only of that shareholding, deemed, by virtue of sub-section 90E (1), to be in a position to exercise control of the licensee; and
- (c) by reason only of his being the holder of the first-mentioned shares, together with any other shares in the licensee or in that other company of which he is the legal owner, the person will be, or is, as the case

requires, deemed, by virtue of sub-section 90E (1), to be in a position to exercise control of the licensee or of that other company.

“(5) Where the Tribunal grants approval in relation to a transaction under sub-section (1) or sub-paragraph (2) (f) (i) in pursuance of an application lodged in accordance with paragraph 90J (3) (b), the approval may be made subject to the condition that, if the transaction does not take place before a specified date, the approval ceases to have effect on that date.

“(6) The Tribunal shall not refuse to approve a transaction either in whole or in part unless it has, in accordance with this section, held an inquiry into such matters as are determined by the Tribunal to be relevant to the transaction.

“(7) Where—

- (a) an inquiry is required by sub-section (6) to be held in relation to a transaction in pursuance of an application lodged in accordance with paragraph 90J (3) (b) or sub-section 90J (7A) by a person who is a prescribed party, within the meaning of section 90J, to the transaction; and
- (b) the person included in the application a request that any inquiry in relation to the transaction shall commence within 3 months after the lodgment of the application,

the Tribunal shall take all reasonable steps to commence the inquiry within that period and to complete the inquiry within 3 months thereafter, but, if the Tribunal does not so commence the inquiry within the first-mentioned period, the Tribunal shall, at the expiration of that period, be deemed to approve the transaction in so far as it affects the person.

“(8) An inquiry required by sub-section (6) to be held in relation to a transaction may, if the Tribunal thinks fit, be joined with an inquiry into the renewal of the licence to which the transaction relates.

“(9) Where an inquiry held in relation to a transaction is joined with an inquiry into a renewal of a licence, the following provisions have effect in relation to the inquiry to the extent that it relates to the renewal of the licence:

- (a) if an application for renewal of the licence has not been lodged with the Tribunal under sub-section 86 (1), the Tribunal shall, by notice in writing served on the licensee, require the licensee to lodge an application under that sub-section within the period specified in the notice, not being less than 21 days after the service of the notice, and the licensee shall comply with the requirement;
- (b) if the licence is due to expire before the completion of the inquiry, the Tribunal may, without holding an inquiry for the purpose, renew the licence, pending the completion of the inquiry, for a period not exceeding 12 months, but the licence shall not be so renewed more than once in relation to that inquiry;
- (c) sub-section 86 (8), and the provisions of section 86 relating to the consideration of an application without holding an inquiry, have no effect;

- (d) if the licence is renewed in pursuance of the inquiry, so much of the period of currency of the licence as in force before the renewal as, but for this paragraph, would be unexpired immediately before the date of commencement of the licence as so renewed shall be deemed to expire on that date; and
- (e) in determining whether the circumstances justify the Tribunal in specifying a period of less than 3 years for the purposes of sub-section 87 (2), the Tribunal may take into account the effect that the transaction will have, or has had, as the case requires, or the effect that any other transaction that the Tribunal has reason to believe is likely to take place will have, on the ownership or control, whether direct or indirect, of the licensee.

“(10) Where a transaction, being a transaction in relation to which section 90J applies to a person who is a party to the transaction, takes place—

- (a) after notice is served on the person under sub-section (2) refusing approval of the transaction in whole or in part; or
- (b) after approval of the transaction in whole or in part ceases to have effect in pursuance of a condition imposed under sub-section (5),

the person is guilty of a separate offence in respect of each day (including the day of a conviction under this sub-section or any subsequent day) during which he holds shareholding interests (not being, in a case to which paragraph (a) applies, interests in respect of which approval has been granted under this section) in the company to which the transaction relates exceeding in amount or proportion the shareholding interests that he had in that company immediately before the transaction took place.

“(11) Where—

- (a) an application is lodged by a person under sub-section 90J (7A) in relation to a transaction;
- (b) a notice is served on the person under sub-section (2) refusing approval of the transaction in whole or in part; and
- (c) after the expiration of the period of 6 months after the date of service of the notice or such longer period as the Tribunal, on application, allows by notice in writing served on the person within that period of 6 months, the person holds shareholding interests in the company to which the transaction relates exceeding in amount or proportion—
 - (i) where approval of the whole transaction is refused—the shareholding interests that he had in that company immediately before the transaction took place; or
 - (ii) where approval of part of the transaction is refused—the shareholding interests that he had in that company immediately before the transaction took place together with the shareholding interests in respect of which approval is granted,

the person is guilty of a separate offence in respect of each day (including the day of a conviction under this sub-section or a subsequent day) during which he so holds those interests.

“(12) A reference in this section to the proportion of a person’s shareholding interests in a company has the same meaning as in section 90J.

“(13) The Tribunal shall not approve a transaction in relation to which section 90J applies except as provided by this section.”.

28. Section 90P of the Principal Act is repealed and the following section is substituted:

Tribunal may seek information

“90P. (1) Where the Tribunal has reason to believe that a person is capable of supplying information, or producing documents, considered by the Tribunal to be necessary to enable it to exercise any of its powers, or perform any of its functions or duties, under this Division, the Tribunal may, by notice in writing served on the person, require the person to supply any such information, or produce any such documents, within a specified period (not being less than 21 days after the date of service of the notice) or within such further period as the Tribunal, on application, allows by notice in writing served on the person within that specified period.

“(2) A person who fails to comply with a requirement in a notice served on him under sub-section (1) is guilty of a separate offence in respect of each day (including a day of a conviction under this sub-section or any subsequent day) during which the failure continues.

“(3) A person shall be taken not to comply with a requirement made under sub-section (1) if, in purported compliance with the requirement, he supplies information, or (except as provided in the requirement) produces a document, that—

- (a) is false or misleading in a material particular; or
- (b) is misleading in a material respect by reason of the omission of any matter or thing.

“(4) In this section, ‘document’ has the meaning defined by sub-section 106B (6).”.

Tracing of shareholding interests through a series of companies

29. Section 91A of the Principal Act is amended by inserting in sub-section (1) “and sub-sections 92D (2), (5) and (6)” after “92B”.

30. After section 91B of the Principal Act the following sections are inserted:

Registered lenders

“91C. (1) The Tribunal shall keep a register for the purposes of this section.

“(2) The Tribunal may, in its discretion, but subject to sub-section (3), upon application by a person in accordance with the form approved by the Tribunal, register the person for the purposes of this section.

“(3) The Tribunal shall not register a person for the purposes of this section unless it is satisfied that the person is not, and is not likely to be, whether alone or in association with any other person or persons, in a position to exercise, either directly or indirectly, a significant influence on any company holding a licence.

“(4) The Tribunal shall register a person by entering in the register—

(a) particulars of—

- (i) the name and address of the person;
- (ii) where the person is a body corporate—the names of the directors and secretary of the body corporate; and
- (iii) if the person has a loan interest in a company holding a licence—the name of the company and the amount of the loan interest;

(b) the date of the entry; and

(c) such other matters as the Tribunal thinks fit.

“(5) A registration under sub-section (2) remains in force until the registration is cancelled by the Tribunal under this section.

“(6) Where—

- (a) a registered lender who is not the holder of a loan interest in a company holding a licence becomes the holder of such an interest;
- (b) there is an increase or decrease in the proportion that the amount of the loan interests held by a registered lender in a company holding a licence bears to the total of the amounts of all the loan interests in that company that would exist if section 91B had not been enacted;
- (c) the amount of the loan interests held by a registered lender in a company holding a licence increases or decreases;
- (d) a registered lender ceases to have a loan interest in a company holding a licence; or
- (e) a change occurs in the particulars referred to in sub-paragraph (4) (a) (i) or (ii) entered in the register,

the registered lender shall, not later than 21 days after the occurrence of the event concerned, or within 5 business days after the lender becomes aware of the occurrence of the event concerned, whichever is the later, lodge with the Tribunal a notice in writing setting out particulars of that event.

“(7) A person who fails to comply with sub-section (6) is guilty of a separate offence in respect of each day (including the day of a conviction under this sub-section or any subsequent day) during which the failure continues.

“(8) The Tribunal shall enter in the register the information set out in a notice lodged under sub-section (6) and may at any time correct any error in, or omission from, the register.

“(9) So long as a person is a registered lender, in ascertaining for the purposes of this Division (other than this section) the interest held by the person in a company holding a licence, there shall be disregarded any loan

interest of the person in the company, including any loan interest that, but for this sub-section, the person would be deemed to have in the company by the application of section 91B.

“(10) The Tribunal may at any time, in its discretion, upon application by the registered lender or, subject to sub-section (11), of its own motion, by notice in writing served on the person concerned, cancel the registration of a registered lender.

“(11) Where the Tribunal proposes to cancel the registration of a registered lender of its own motion, it shall serve a notice in writing on the registered lender stating its intention and inviting him to lodge with the Tribunal within a specified period, being not less than 14 days after the date of service of the notice, a submission in writing stating why the registration should not be cancelled, and the Tribunal shall not cancel the registration until after the expiration of that period and after considering any submission lodged in response to the notice.

“(12) The Tribunal shall maintain the register in the prescribed manner at such place or places as the Tribunal determines.

“(13) A person may inspect and make copies of, or take extracts from, the register.

“(14) In this section—

‘business day’, in relation to the lodgment of a notice by a person, means a day that is not—

- (a) a Saturday or a Sunday; or
- (b) a public holiday in the place where the principal office of the Tribunal is situated;

‘registered lender’ means a person who is registered under this section.

Approved investments

“91D. (1) A person may apply to the Tribunal, in accordance with the form approved by the Tribunal, for a certificate under this section authorizing him to hold interests in a company holding a licence.

“(2) On receipt of an application under this section relating to interests in a company, the Tribunal may, in its discretion, but subject to sub-sections (3) and (4), issue a written certificate to the applicant authorizing him to hold either or both of the following, as specified in the certificate, namely—

- (a) shareholding interests in the company amounting to a specified amount;
- (b) loan interests in the company amounting to a specified amount.

“(3) A certificate under this section shall not authorize a person to hold interests in a company holding a licence unless—

- (a) the commercial television station operated by virtue of the licence is one of 2 or more such stations the programs of which are designed to be

satisfactorily received in the same area or substantially the same area;
and

- (b) the Tribunal is satisfied that the person is not, and is not likely to be, whether alone or in association with any other person or persons, in a position to exercise, either directly or indirectly, a significant influence on that company.

“(4) A certificate under this section shall not authorize a person to hold interests in a company such that, if the person were the holder of those interests, or of those interests together with any interests for the time being authorized by another certificate or other certificates issued under this section to the person, the person would be—

- (a) in a position to exercise control of more than 10% of the maximum number of votes that could be cast on a poll at, or arising out of, a general meeting of the company, whether as regards all questions that could be submitted to such a poll or as regards one or more only of such questions;
- (b) the holder of interests in the company exceeding in amount 10% of the total of the amounts of all the interests in the company that would exist if sections 91A and 91B had not been enacted; or
- (c) the holder of shareholding interests in the company exceeding in amount 10% of the total of the amounts paid on all shares of the company.

“(5) A certificate under this section may be made subject to the condition that it ceases to have effect on a specified date, being not less than 12 months after the date on which the certificate is issued.

“(6) If, at any time after a certificate has been issued authorizing a person to hold interests in a company, the Tribunal becomes aware of circumstances by reason of which it would be prohibited by sub-section (3) from issuing a certificate authorizing the person to hold those interests, the Tribunal shall serve a notice in writing on the person setting out particulars of the circumstances and inviting him to lodge with the Tribunal, within a specified period, being not less than 14 days after the service of the notice, a submission in writing stating why the certificate should not be revoked.

“(7) After the expiration of the period specified in a notice served on a person under sub-section (6) and after considering any submission lodged in response to the notice, the Tribunal shall, by notice in writing, revoke the certificate concerned if it would be prohibited by sub-section (3) from issuing a certificate authorizing the person to hold the interests to which the first-mentioned certificate relates.

“(8) The revocation of a certificate under sub-section (7) takes effect at the expiration of the period of 6 months after the date of service of the notice of revocation or such further period as the Tribunal, on application, allows by notice in writing served on the holder of the certificate within that period of 6 months.

“(9) So long as a person—

- (a) holds interests in the company holding a licence as authorized by a certificate in effect under this section; and
- (b) does not hold any interest in the company otherwise than as so authorized,

then, for the purposes of this Division, the person shall not be taken, by reason only of the application of paragraph 91 (2) (c), (d) or (e), to have a prescribed interest in the licence.

“(10) The Tribunal shall make available for public inspection copies of all certificates issued under this section.”.

Limitation of interests in commercial television stations

31. Section 92 of the Principal Act is amended—

- (a) by omitting sub-section (2); and
- (b) by inserting after sub-section (4) the following sub-sections:

“(4A) A person who contravenes this section otherwise than as described in sub-section (4B) or (4C) is guilty of a separate offence in respect of each day (including the day of a conviction under this sub-section or any subsequent day) during which the contravention continues.

“(4B) Where a person contravenes this section as a result of a transaction that takes place after the commencement of this sub-section, being a transaction to which the person is a party and in relation to which section 92F applies to the person, the person is guilty of a separate offence in respect of each day (including the day of a conviction under this sub-section or any subsequent day) during which the contravention continues—

- (a) if the person is guilty of an offence or offences against sub-section 92F (7E) in relation to the transaction—after the day on which the transaction takes place and before the day in respect of which he ceases to be guilty of any further offence against that sub-section;
- (b) if the person is guilty of an offence or offences against sub-section 92F (7F) or 92FAA (10) or section 92FAB in relation to the transaction—after the day in respect of which the offence, or the first such offence, is committed; or
- (c) in any other case (including a case where the person is guilty of an offence or offences against sub-section 92F (7E) in relation to the transaction but has subsequently ceased to be guilty of any further offence against that sub-section)—after the expiration of the period of 6 months after the transaction takes place or such further period as the Tribunal, on application, allows by notice in writing served on the person within that period of 6 months.

“(4C) Where—

- (a) a transaction in relation to which section 92F applies takes place after the commencement of this sub-section;
- (b) a person (in this sub-section referred to as the ‘prescribed person’), not being a party to the transaction, is a person to whom section 92F applies in relation to the transaction by reason of another person being a party to the transaction;
- (c) the Tribunal approves the transaction in whole or in part under section 92FAA in so far as it affects that other person; and
- (d) the prescribed person contravenes this section by reason that he is the holder of interests attributable to so much of the transaction as is so approved,

the prescribed person is guilty of a separate offence in respect of each day (including the day of a conviction under this sub-section or any subsequent day) during which he contravenes this section by reason that he is the holder of those interests, or any other interests attributable to so much of the transaction as is so approved, after the expiration of the period of 6 months after the day on which the approval or, where there are 2 or more such approvals, the later or latest approval, is given or such further period as the Tribunal, on application, allows by notice in writing served on the prescribed person within that period of 6 months.

“(4D) Where—

- (a) a transaction, being a transaction in relation to which section 92F applies to a person who is not a party to the transaction, takes place after the commencement of this sub-section; and
- (b) the person does not contravene this section as described in sub-section (4C),

in ascertaining whether or not the person is contravening this section otherwise than as described in sub-section (4C), any interests of the person attributable to the transaction shall be disregarded.”.

Meaning of control of a company

32. Section 92B of the Principal Act is amended by inserting in sub-section (1) “other than sub-sections 92D (2), (5) and (6)” after “Division,”.

Directors

33. Section 92C of the Principal Act is amended—

- (a) by omitting sub-section (1) and substituting the following sub-sections:

“(1) Subject to this section, a person contravenes this section if, and so long as, he is a director of 2 or more companies that are, between them, in a position to exercise control of 3 or more licences.

“(1A) A person who contravenes this section is guilty of a separate offence in respect of each day (including a day of a conviction under this sub-section or any subsequent day) during which the contravention continues.”; and

- (b) by omitting sub-section (4).

34. Section 92D of the Principal Act is repealed and the following section is substituted:

Foreign shareholdings, &c.

"92D. (1) A licence is subject to a condition that a foreign person shall not at any time during the currency of the licence be in a position to exercise control, either directly or indirectly, of the company holding the licence.

"(2) A licence is subject to a further condition that 2 or more foreign persons shall not at any time during the currency of the licence—

- (a) be in a position to exercise control of more than 20% of the maximum number of votes that could be cast on a poll at, or arising out of, a general meeting of the company holding the licence, whether as regards all questions that could be submitted to such a poll or as regards one or more only of those questions;
- (b) hold shareholding interests in the company holding the licence, being shareholding interests in respect of shares of a kind carrying voting rights on all questions at general meetings of the company, exceeding in amount 20% of the total of the amounts paid on all shares in the company of a kind carrying such voting rights; or
- (c) hold shareholding interests in the company holding the licence exceeding in amount 20% of the total of the amounts paid on all shares in the company.

"(3) A reference in this section to a foreign person shall be read as a reference to—

- (a) a natural person who is not an Australian citizen; or
- (b) a company, wherever incorporated, that is controlled by a person or persons referred to in paragraph (a).

"(4) For the purposes of paragraph (3) (b), a company shall be deemed to be controlled by a person or persons if, and only if—

- (a) the person is, or persons are, in a position to exercise control of more than 50% of the maximum number of votes that could be cast on a poll at, or arising out of, a general meeting of the company, whether as regards all questions that could be submitted to such a poll or as regards one or more only of those questions;
- (b) the person holds, or persons hold, shareholding interests in the company, being shareholding interests in respect of shares of a kind carrying voting rights on all questions at general meetings of the company, exceeding in amount 50% of the total of the amounts paid on all shares in the company of a kind carrying such voting rights; or
- (c) the person holds, or persons hold, shareholding interests in the company exceeding in amount 50% of the total of the amounts paid on all shares in the company.

“(5) For the purposes of this section, where a person is, or persons are, by virtue of sub-section (4), deemed to control a company (including a person or persons deemed to control a company by virtue of another application or other applications of this sub-section) and the company is in a position to exercise control of any votes in respect of, or holds a shareholding interest in, another company, the person or persons shall be deemed to be in a position to exercise control of those votes or to hold that shareholding interest, as the case may be.

“(6) For the purposes of this section, 2 or more persons shall be taken to be in a position to exercise control of any votes in respect of, or to hold shareholding interests in, a company notwithstanding that they are not acting in concert or otherwise associated.”.

Changes in ownership of shares, &c.

35. Section 92F of the Principal Act is amended by omitting sub-sections (2) to (7) (inclusive) and substituting the following sub-sections:

“(2) Except in so far as the contrary intention appears, in the succeeding provisions of this section—

- (a) a reference to a transaction shall be read as a reference to a transaction in relation to which this section applies to a person; and
- (b) a reference to a prescribed party, in relation to a transaction, shall be read as a reference to a person to whom this section applies in relation to the transaction, being a person who is a party to the transaction or, in the case of a proposed transaction, would be a party to the transaction if the transaction were in effect.

“(3) Where a transaction is proposed, the prescribed party to the transaction or, where there are 2 or more prescribed parties to the transaction, each prescribed party, may—

- (a) give the Tribunal a notice in writing, stating—
 - (i) the number, or, if the prescribed party so desires, the maximum number, of shares that will be concerned in the transaction;
 - (ii) the amount, or, if the prescribed party so desires, the maximum amount, of moneys secured by debentures that will be concerned in the transaction;
 - (iii) the name of the company the shares in which, or debentures of which, will be concerned in the transaction;
 - (iv) whether or not the prescribed party has a prescribed interest in a licence for a commercial broadcasting station or for a commercial television station (which may include the licence to which the transaction relates) and, if so, setting out particulars of each such prescribed interest;
 - (v) whether or not, by reason of the interests to be held as a result of the transaction, together with any other interests, the prescribed party will have a prescribed interest in a licence referred to in sub-paragraph (iii) and, if so, setting out particulars of each such prescribed interest;

- (vi) whether or not those interests will result in a contravention of section 92C and, if so, setting out particulars of the contravention; and
- (vii) whether or not those interests will result in a contravention of, or failure to comply with a condition of the licence to which the transaction relates; or
- (b) lodge an application with the Tribunal, in accordance with the form approved by the Tribunal, for approval of the transaction in so far as it affects the prescribed party.

“(4) For the purposes of paragraph (3) (a), a notice may be given to the Tribunal by lodging it with the Tribunal or by sending it to the Tribunal by post or by telegram or in any other manner.

“(5) Nothing in sub-section (3) prevents—

- (a) both a notice being given and an application being lodged by the same person in relation to the same transaction; or
- (b) the giving of a notice in the manner provided by paragraph (7E) (c) after the transaction to which the notice relates has taken place.

“(6) A notice given under paragraph (3) (a) ceases to have effect on the expiration of 30 days after it is so given, but nothing prevents the giving of a further notice under that paragraph.

“(7) Where an application has been lodged with the Tribunal by a person in accordance with paragraph (3) (b) in relation to a transaction and—

- (a) a particular that was omitted from the application because it was not known by the person at the time the application was lodged subsequently becomes known to the person;
- (b) a particular set out in the application (not being an increase in the number of shares, or in the amount of moneys secured by debentures, to be concerned in the proposed transaction) becomes incorrect; or
- (c) the transaction takes place,

the person shall, within the period of 28 days after the particular so omitted became known to the person, the particular became incorrect, or the transaction took place, as the case may be, or within such longer period as the Tribunal, on application, allows by notice in writing served on the person within that period of 28 days, lodge with the Tribunal notice in writing of the particular so omitted, of the correct particular, or of the transaction having taken place, as the case may be.

“(7A) Each person to whom this section applies in relation to a transaction (other than a prescribed party who has lodged an application in relation to the transaction in accordance with paragraph (3) (b)) shall, not later than the 28th day after the transaction takes place or such later day as the Tribunal, on application, allows by notice in writing served on the person before that 28th day, lodge with the Tribunal, in accordance with the form approved by the Tribunal, an application for approval of the transaction in so far as it affects the person.

“(7B) An application lodged in pursuance of paragraph (3) (b) or sub-section (7A) or a notice lodged in pursuance of sub-section (7) shall be taken not to be lodged in accordance with that paragraph or sub-section unless it is accompanied by a statutory declaration made—

- (a) where the person required to lodge the application or notice is a natural person—by that person; or
- (b) where the person required to lodge the application or notice is a company—by a director, secretary or executive officer of the company or by a person authorized by the company in writing to make such a declaration on its behalf,

verifying the statements made in the application or notice, other than statements as to future events.

“(7C) A notice given to the Tribunal in pursuance of paragraph (3) (a) shall be taken not to be given in accordance with that paragraph and a statutory declaration shall be taken not to accompany an application or notice for the purposes of sub-section (7B), if the notice or statutory declaration, as the case may be, contains a statement (not being a statement as to future events) that—

- (a) is false or misleading in a material particular; or
- (b) is misleading in a material respect by reason of the omission of any matter or thing.

“(7D) On receipt of a notice or application given to or lodged with the Tribunal by a person in pursuance of sub-section (3) or (7A), the Chairman shall—

- (a) if the notice or application does not comply with the requirements of this section—reject the notice or application and give the person such directions as are necessary to ensure that it complies with those requirements; or
- (b) in any other case—accept the notice or application,

and, for the purposes of this Act, the notice or application shall be taken not to be given to or lodged with the Tribunal until it has been so accepted.

“(7E) Where a transaction takes place at a particular time and a person is a prescribed party to the transaction, then, unless—

- (a) immediately before that time, there was in effect a notice given by the person in accordance with paragraph (3) (a) in relation to the transaction; or
- (b) before that time, an application was lodged by the person in accordance with paragraph (3) (b) in relation to the transaction,

the person is guilty of a separate offence in respect of each day (including the day of a conviction under this sub-section or any subsequent day) after that time until—

- (c) the day on which he gives a notice in relation to the transaction in accordance with paragraph (3) (a) (modified so far as is necessary to take account of the fact that the transaction has taken place); or

- (d) the day on which he lodges an application in relation to the transaction in accordance with sub-section (7A).

“(7F) A person who fails to comply with sub-section (7) or (7A) is guilty of a separate offence in respect of each day (including the day of a conviction under this sub-section or any subsequent day) during which the failure continues.

“(7G) In relation to a notice given in relation to a transaction under paragraph (3) (a) that states the maximum number of shares, or the maximum amount of moneys secured by debentures, that will be concerned in the transaction, a reference in this section to the transaction includes a reference to any transaction that differs from that transaction by reason only that it concerns a lesser number of shares or amount of moneys so secured, as the case may be.”.

36. After section 92F of the Principal Act the following sections are inserted:

Approval of transactions

“92FAA. (1) Subject to sub-section (2), where an application in relation to a transaction is made in accordance with section 92F, the Tribunal shall, by notice in writing served on the applicant, approve the transaction in so far as it affects the applicant.

“(2) Where an application in relation to a transaction is so made and—

- (a) where sub-section (4) applies to the applicant—the Tribunal, if the application were an application for the consent of the Tribunal under section 89A to the transfer to the applicant of the licence to which the transaction relates, would be required or empowered to refuse the application;
- (b) where the applicant is a prescribed party, within the meaning of section 92F, to the transaction—the licence to which the transaction relates was granted (otherwise than by way of renewal) within 2 years before the date on which the notice or application was so given to or lodged with the Tribunal; or
- (c) where sub-section (4) does not apply to the applicant—it appears to the Tribunal that it is advisable in the public interest that approval of the transaction should be refused in whole or in part in so far as it affects the applicant, having regard only to the following matters or circumstances:
 - (i) the effect, if any, that the transaction will have, or has had, as the case requires, on the capacity of the holder of the licence to which the transaction relates to comply with the conditions of the licence or any undertaking given under sub-section 83 (5), 86 (10) or 89A (1A) in relation to the licence;
 - (ii) if the applicant is a prescribed party, within the meaning of section 92F, to the transaction—the Tribunal is satisfied that approval of the transaction should be refused in whole or in

part in so far as it affects the applicant by reason that the applicant—

- (A) is not a fit and proper person to hold the interests to which the transaction relates; or
- (B) does not have the financial, technical or management capabilities necessary effectively to operate the television station to which the licence relates;

(iii) if—

- (A) the licence to which the transaction relates is not a licence referred to in paragraph 92 (1) (c); and
- (B) in the opinion of the Tribunal, in the area served in pursuance of that licence, satisfactory reception is being obtained of programs from one or more broadcasting or television stations operated by virtue of another licence or licences,

the Tribunal is satisfied, having regard to the need to avoid undue concentration of influence, whether direct or indirect, on the companies holding those licences, that approval of the transaction should be refused in whole or in part in so far as it affects the applicant,

then, subject to this section, the Tribunal, by notice in writing served on the applicant—

- (d) where paragraph (a) applies by reason that, if the application were an application of a kind referred to in that paragraph, the Tribunal would be required to refuse the application by reason of the operation of sub-paragraph 89A (1D) (d) (ii) or (iii)—shall refuse approval of the whole transaction in so far as it affects the applicant;
- (e) where paragraph (a) applies otherwise than as described in paragraph (d) or where paragraph (b) applies—may refuse approval of the whole transaction in so far as it affects the applicant; or
- (f) where paragraph (c) applies—shall, as the case requires—
 - (i) refuse approval of the transaction, in so far as it affects the applicant, to the extent that it relates to specified interests or interests of a specified amount, and approve the remainder of the transaction in so far as it affects the applicant; or
 - (ii) refuse approval of the whole transaction in so far as it affects the applicant.

“(3) In sub-paragraph (2) (c) (iii) (except in sub-sub-paragraph (A)), ‘licence’ means—

- (a) a licence for a commercial television station, other than a licence referred to in paragraph 92 (1) (c); or
- (b) a licence for a commercial broadcasting station, other than a metropolitan commercial broadcasting station as defined by sub-section 90 (1).

“(4) This sub-section applies in relation to a person, in relation to a transaction, if—

- (a) the person is a prescribed party, within the meaning of section 92F, to the transaction;
- (b) as a result of the transaction, the person will become, or has become, as the case requires, the legal owner of shares in—
 - (i) the company holding the licence to which the transaction relates (in this sub-section referred to as the ‘licensee’); or
 - (ii) another company that is the legal owner of shares in the licensee and is, by reason only of that shareholding, deemed, by virtue of sub-section 92B (1), to be in a position to exercise control of the licensee; and
- (c) by reason only of his being the holder of the first-mentioned shares, together with any other shares in the licensee or in that other company of which he is the legal owner, the person will be, or is, as the case requires, deemed, by virtue of sub-section 92B (1), to be in a position to exercise control of the licensee or of that other company.

“(5) Where the Tribunal grants approval in relation to a transaction under sub-section (1) or sub-paragraph (2) (f) (i) in pursuance of an application lodged in accordance with paragraph 92F (3) (b), the approval may be made subject to the condition that, if the transaction does not take place before a specified date, the approval ceases to have effect on that date.

“(6) The Tribunal shall not refuse to approve a transaction either in whole or in part unless it has, in accordance with this section, held an inquiry into such matters as are determined by the Tribunal to be relevant to the transaction.

“(7) Where—

- (a) an inquiry is required by sub-section (6) to be held in relation to a transaction in pursuance of an application lodged in accordance with paragraph 92F (3) (b) or sub-section 92F (7A) by a person who is a prescribed party, within the meaning of section 92F, to the transaction; and
- (b) the person included in the application a request that any inquiry in relation to the transaction shall commence within 3 months after the lodgment of the application,

the Tribunal shall take all reasonable steps to commence the inquiry within that period and to complete the inquiry within 3 months thereafter, but, if the Tribunal does not so commence the inquiry within the first-mentioned period, the Tribunal shall, at the expiration of that period, be deemed to approve the transaction in so far as it affects the person.

“(8) An inquiry required by sub-section (6) to be held in relation to a transaction may, if the Tribunal thinks fit, be joined with an inquiry into the renewal of the licence to which the transaction relates.

“(9) Where an inquiry held in relation to a transaction is joined with an inquiry into a renewal of a licence, the following provisions have effect in relation to the inquiry to the extent that it relates to the renewal of the licence:

- (a) if an application for renewal of the licence has not been lodged with the Tribunal under sub-section 86 (1), the Tribunal shall, by notice in writing served on the licensee, require the licensee to lodge an application under that sub-section within the period specified in the notice, not being less than 21 days after the service of the notice, and the licensee shall comply with the requirement;
- (b) if the licence is due to expire before the completion of the inquiry, the Tribunal may, without holding an inquiry for the purpose, renew the licence, pending the completion of the inquiry, for a period not exceeding 12 months, but the licence shall not be so renewed more than once in relation to that inquiry;
- (c) sub-section 86 (8), and the provisions of section 86 relating to the consideration of an application without holding an inquiry, have no effect;
- (d) if the licence is renewed in pursuance of the inquiry, so much of the period of currency of the licence as in force before the renewal as, but for this paragraph, would be unexpired immediately before the date of commencement of the licence as so renewed shall be deemed to expire on that date; and
- (e) in determining whether the circumstances justify the Tribunal in specifying a period of less than 3 years for the purposes of sub-section 87 (2), the Tribunal may take into account the effect that the transaction will have, or has had, as the case requires, or the effect that any other transaction that the Tribunal has reason to believe is likely to take place will have, on the ownership or control, whether direct or indirect, of the licensee.

“(10) Where a transaction, being a transaction in relation to which section 92F applies to a person who is a party to the transaction, takes place—

- (a) after notice is served on the person under sub-section (2) refusing approval of the transaction in whole or in part; or
- (b) after approval of the transaction in whole or in part ceases to have effect in pursuance of a condition imposed under sub-section (5),

the person is guilty of a separate offence in respect of each day (including the day of a conviction under this sub-section or any subsequent day) during which he holds shareholding interests, or interests, (not being, in a case to which paragraph (a) applies, shareholding interests, or interests, in respect of which approval has been granted under this section) in the company to which the transaction relates exceeding in amount or proportion the shareholding interests, or the interests, that he had in that company immediately before the transaction took place.

“(11) Where—

- (a) an application is lodged by a person under sub-section 92F (7A) in relation to a transaction;
- (b) a notice is served on the person under sub-section (2) refusing approval of the transaction in whole or in part; and
- (c) after the expiration of the period of 6 months after the date of service of the notice or such longer period as the Tribunal, on application, allows by notice in writing served on the person within that period of 6 months, the person holds shareholding interests, or interests, in the company to which the transaction relates exceeding in amount or proportion—
 - (i) where approval of the whole of the transaction is refused—the shareholding interests, or the interests, that he had in that company immediately before the transaction took place; or
 - (ii) where approval of part of the transaction is refused—the shareholding interests, or the interests, that he had in that company immediately before the transaction took place together with the shareholding interests, or the interests, in respect of which approval is granted,

the person is guilty of a separate offence in respect of each day (including the day of a conviction under this sub-section or a subsequent day) during which he so holds those shareholding interests or interests.

“(12) The references in this section to the proportion of a person’s shareholding interests in a company and the proportion of a person’s interests in a company have the same respective meanings as in section 92F.

“(13) The Tribunal shall not approve a transaction in relation to which section 92F applies except as provided by this section.

Certain transactions to require prior approval

“92FAB. (1) In this section—

‘prescribed company’ means a company that, but for the operation of sub-section (3) of section 92, would be in contravention of that section;

‘transaction’ means a transaction in relation to which section 92F applies, being a transaction in respect of shares in a prescribed company.

“(2) A reference in this section to the proportion of a person’s shareholding interests in a company has the same meaning as in section 92F.

“(3) For the purposes of this section, the following persons are associates of a person:

- (a) a partner of the person;
- (b) where the person is a company—
 - (i) a director or secretary of the company;
 - (ii) a company that is related to the first-mentioned company;

- (iii) a director or secretary of a company that is related to the first-mentioned company;
- (c) a director or secretary of a company of which the person is a director or secretary;
- (d) a company whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person or, where the person is a company, of the directors of the person;
- (e) a company in accordance with the directions, instructions or wishes of which, or of the directors of which, the person is accustomed or under an obligation, whether formal or informal, to act;
- (f) a company of which the person is in a position to exercise control;
- (g) a person with whom the person is acting in concert in relation to the transaction concerned;
- (h) a person with whom the person is associated, whether formally or informally, in any other way in relation to the transaction concerned;
- (j) if the person has entered into a transaction (including any transaction as defined by section 91), or has done any other act or thing, with a view to becoming an associate of a person as mentioned in paragraph (g) or (h)—that last-mentioned person;
- (k) a person who is, by virtue of the regulations, to be regarded as an associate of the person;
- (m) a person who is, by virtue of paragraph (g), (h), (j) or (k), an associate of any other person who is an associate of the person by virtue of any of those paragraphs or by virtue of another application or other applications of this paragraph.

“(4) For the purposes of sub-section (3), the question whether companies are related to each other shall be determined in the same manner as the question whether corporations are related to each other would be determined under the *Companies Ordinance* 1962 of the Australian Capital Territory as amended and in force for the time being.

“(5) A person shall not be taken to be an associate of another person by virtue of paragraph (3) (g), (h), (j) or (k) by reason only that the person furnishes advice to, or acts on behalf of, that other person in the proper performance of the functions attaching to his professional capacity.

“(6) This section applies to a person in relation to a transaction if, and only if—

- (a) the person is a party to the transaction;
- (b) as a result of the transaction, the person becomes the holder of shareholding interests in a prescribed company; and
- (c) by reason of the person being the holder of those shareholding interests (together with any other shareholding interests of which he is the holder) the person—
 - (i) is in a position to exercise control of that company; or

- (ii) would be in such a position if he were also the holder of the total shareholding interests in that company held, whether or not as a result of the transaction, by any associate or associates of the person.

“(7) Where—

- (a) this section applies to a person in relation to a transaction; and
- (b) the transaction takes place without the Tribunal first having approved the transaction in whole or in part in so far as it affects the person,

the person is guilty of a separate offence in respect of each day (including the day of a conviction under this sub-section or any subsequent day) during which he holds shareholding interests in the prescribed company to which the transaction relates exceeding in amount or proportion the shareholding interests that he had in that company immediately before the transaction took place.

“(8) Where a transaction in relation to which this section applies to a person takes place as described in paragraph (7) (b)—

- (a) notwithstanding anything in section 92F or 92FAA, the Tribunal shall not approve the transaction in whole or in part in so far as it affects the person; and
- (b) sub-section 92F (7A) does not apply to the person in relation to the transaction.

“(9) This section does not apply in relation to a transaction that takes place on or after 1 July 1983.”

37. Section 92JA of the Principal Act is repealed and the following section is substituted:

Tribunal may seek information

“92JA. (1) Where the Tribunal has reason to believe that a person is capable of supplying information, or producing documents, considered by the Tribunal to be necessary to enable it to exercise any of its powers, or perform any of its functions or duties, under this Division, the Tribunal may, by notice in writing served on the person, require the person to supply any such information, or produce any such documents, within a specified period (not being less than 21 days after the date of service of the notice) or within such further period as the Tribunal, on application, allows by notice in writing served on the person within that specified period.

“(2) A person who fails to comply with a requirement in a notice served on him under sub-section (1) is guilty of a separate offence in respect of each day (including a day of a conviction under this sub-section or any subsequent day) during which the failure continues.

“(3) A person shall be taken not to comply with a requirement made under sub-section (1) if, in purported compliance with the requirement, he supplies

information, or (except as provided in the requirement) produces a document, that—

- (a) is false or misleading in a material particular; or
- (b) is misleading in a material respect by reason of the omission of any matter or thing.

“(4) In this section, ‘document’ has the meaning defined by sub-section 106B (6).”.

38. After section 92KA of the Principal Act the following Division is inserted:

“Division 3A—Provisions relating to Enforcement

Interpretation

“92L. In this Division—

‘interest’ means—

- (a) a shareholding interest within the meaning of Division 2 or 3; or
 - (b) a loan interest within the meaning of Division 3,
- as the case requires;

‘transaction’ has the same meaning as in Division 2 or 3, as the case requires.

Directions to protect licensee

“92M. (1) At any time after a transaction takes place, being a transaction in relation to which section 90J or 92F applies, the Tribunal may, by notice in writing served on—

- (a) a person who is a prescribed party to the transaction within the meaning of that section;
 - (b) a person, being the company holding the licence to which the transaction relates; or
 - (c) a person who is in a position to control that company,
- give such directions to the person as it thinks fit for the purpose of preventing the person or any servant or agent of the person from doing any act or thing likely to have an adverse effect on—
- (d) the ability of the company holding the licence to comply with the conditions of the licence; or
 - (e) the operations conducted under or by virtue of the licence, the management of the station in respect of which the licence is in force or the selection or provision of the programs to be broadcast or televised by that station.

“(2) A person who contravenes or fails to comply with a direction served on him under sub-section (1) is guilty of a separate offence in respect of each day (including the day of a conviction under this sub-section or any subsequent day) during which the contravention or failure continues.

“(3) The powers to give directions under this section include the power to direct a person to do or refrain from doing a specified act.

Directions for divestiture

“92N. (1) Subject to sub-section (2), where the Tribunal is satisfied that a person is the holder of interests in a company in contravention of section 90C, 90JA, 92, 92FAA or 92FAB, it may, by notice in writing served on the person, do either or both of the following:

- (a) give such directions as it thinks necessary to ensure that the person ceases to hold interests in that company in contravention of that section;
- (b) give such directions as it thinks necessary to prohibit the person from disposing of those interests, or any interests derived from or related to those interests, to a specified person or persons included in a specified class of persons.

“(2) Directions given under paragraph (1) (a) do not take effect during any period during which the contravention referred to in sub-section (1) cannot constitute an offence.

“(3) A person who contravenes or fails to comply with a direction made under paragraph (1) (a) is guilty of a separate offence in respect of each day (including the day of a conviction under this sub-section or any subsequent day) during which the contravention or failure continues.

“(4) A person who contravenes a direction made under paragraph (1) (b) is guilty of an offence.

“(5) The powers to give directions under this section include the power to direct a person to do or refrain from doing a specified act.

Powers of Federal Court of Australia

“92P. (1) On the application of the Tribunal, the Federal Court of Australia may make such order or orders as it thinks necessary or expedient—

- (a) for the purpose of preventing, or of preventing a continuation of, a contravention of section 90C, 90JA, 92, 92FAA or 92FAB arising out of a transaction referred to in that section; or
- (b) for the purpose of the enforcement of a direction of the Tribunal made under section 92M or 92N.

“(2) A reference in paragraph (1) (a) to a contravention of a particular section does not include a reference to a contravention of that section during any period during which the contravention cannot constitute an offence.

“(3) Orders may be made under sub-section (1) whether or not any other proceedings have been or are to be instituted.

“(4) Without limiting the generality of sub-section (1), orders made for the purpose referred to in paragraph (1) (a) may include—

- (a) orders directing the disposal of any interest in a company;

- (b) orders prohibiting the acquisition of, or the creation of, an interest in a company; and
- (c) orders prohibiting the disposal of an interest in a company to a specified person or to a person included in a specified class of persons.

“(5) Without limiting the generality of sub-section (1), orders made for the purposes of paragraph (1) (b), where a person has contravened or failed to comply with a direction of the Tribunal made under section 92M, may include—

- (a) orders directing the person, or any other person, to do or refrain from doing specified acts, for the purpose of preventing, remedying or ameliorating any circumstances arising out of the contravention or failure; and
- (b) orders directing that, where a person other than the first-mentioned person does or refrains from doing an act in accordance with an order referred to in paragraph (a), the first-mentioned person is to pay, or reimburse that other person, as the case may be, the whole or a specified part of the cost incurred by that other person.

“(6) Where in the opinion of the Court it is desirable to do so, the Court may grant an interim order pending determination of an application under sub-section (1).

“(7) In addition to any other powers conferred by this section, the Court—

- (a) has power, for the purpose of securing compliance with any other order made under this section, to make an order directing any person to do or refrain from doing a specified act; and
- (b) has power to make an order containing such ancillary or consequential provisions as the Court thinks just.

“(8) The Court may by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

Defences

“92Q. It is a defence to a prosecution for a contravention of section 90C, 90F, 90J, 90JA, 92, 92C, 92F, 92FAA or 92FAB if the defendant satisfies the Court that—

- (a) the contravention arose by reason of circumstances beyond his control or through inadvertence; and
- (b) as soon as practicable after becoming aware of the contravention, he took all reasonable steps with a view to causing the contravention to cease.

Prosecutions

“92R. (1) An offence against a provision of Division 2 or 3 or this Division may be prosecuted at any time.

“(2) A prosecution for such an offence shall be brought only in the Federal Court of Australia.

“(3) Jurisdiction is conferred on the Federal Court of Australia to hear and determine prosecutions so brought.

“(4) Proceedings in the Federal Court of Australia in accordance with this section shall not be instituted except with the consent in writing of the Attorney-General or of a person authorized by the Attorney-General, by writing signed by him, to give such consents.

Penalties

“92S. (1) An offence against section 90C or 92 is punishable on conviction—

- (a) if the offender is a natural person—by a fine not exceeding \$1,000; or
- (b) if the offender is a body corporate—by a fine not exceeding \$5,000.

“(2) An offence against section 90F, 90J, 90JA or 90P, sub-section 91C (6) or section 92C, 92F, 92FAA, 92FAB, 92JA or 92M or sub-section 92N (3) is punishable on conviction—

- (a) if the offender is a natural person—by a fine not exceeding \$1,000; or
- (b) if the offender is a body corporate—by a fine not exceeding \$2,000.

Joinder of charges and penalties for certain offences

“92T. (1) Charges against the same person for any number of offences against a provision of Division 2 or 3 or this Division may be joined in the same summons if those offences relate to doing or failing to do the same act or thing.

“(2) If a person is convicted of 2 or more offences referred to in sub-section (1), being offences related to doing or failing to do the same act or thing, the Court may impose one penalty in respect of both or all of those offences, but that penalty shall not exceed the sum of the maximum penalties that could be imposed if a penalty were imposed in respect of each offence separately.

Continuing obligations

“92U. Where, by or under a provision of Division 2 or 3 or this Division, an act or thing is required to be done within a particular period, the obligation to do that act or thing continues, notwithstanding that that period has expired, until that act or thing is done.”.

Items of national interest

39. Section 104 of the Principal Act is amended by inserting “given by telegram or otherwise” after “notice”.

Commercial broadcasting translator station licences

40. Section 105AD of the Principal Act is amended—

- (a) by omitting from sub-section (2) “sub-sections (2A) and (3)” and substituting “this section”; and
- (b) by omitting sub-section (7) and substituting the following sub-sections:

“(5) Sub-sections (2) and (4) do not apply in relation to the grant or renewal of a licence for a commercial broadcasting translator station for the sole purpose of the re-transmission of the programs of a specified supplementary broadcasting station or specified supplementary broadcasting stations.

“(6) One of the conditions of the licence for a commercial broadcasting translator station shall be that the station is operated only for the reception and re-transmission, without alteration, of the programs of any one or more of the following:

- (a) a specified commercial broadcasting station;
- (b) a specified supplementary broadcasting station;
- (c) specified commercial broadcasting stations;
- (d) specified supplementary broadcasting stations.”.

41. After Division 5B of Part IV of the Principal Act the following Division is inserted:

“Division 5C—Supplementary Licences

Interpretation

“105M. Except in so far as the contrary intention appears, an expression that is used in this Division and in Part IIIB has, in this Division, the same meaning as in that Part.

Application of Division

“105N. This Division applies to a supplementary licence.

Application of Act

“105P. (1) The provisions of this Act apply, except in so far as the contrary intention appears and with such exceptions and subject to such modifications and adaptations as are prescribed, in relation to supplementary broadcasting stations, supplementary licences and the holders of such licences as they apply in relation to commercial broadcasting stations, licences for commercial broadcasting stations and the holders of such licences.

“(2) Nothing in sub-section (1) enables regulations to be made that would affect the application of any provision of this Act to the extent that it requires the holding of an inquiry.

Use of facilities of commercial stations by supplementary licensees

“105Q. For the purposes of this Act, the holder of a supplementary licence shall not be taken not to operate a broadcasting station by virtue of the licence by reason only that any or all of the facilities (other than the transmitter) of a commercial broadcasting station are used in the provision of a broadcasting service in pursuance of the licence.

Programs of supplementary stations

“105R. (1) The holder of a supplementary licence may, with the approval of the Tribunal, but not otherwise—

- (a) regularly broadcast from the supplementary broadcasting station programs of a broadcasting station operated by virtue of a related commercial licence; or
- (b) make arrangements for the regular broadcasting from the supplementary broadcasting station of programs of a broadcasting station used by the Commission or the Service or operated by virtue of a commercial licence or a public broadcasting licence.

“(2) The conditions of a supplementary licence may include a condition specifying, in relation to a specified period of days, weeks or months, a minimum percentage of the time occupied during that period by programs of the station operated by virtue of the licence that is to be occupied by programs produced or presented by the station.

“(3) The holder of a supplementary licence shall, in the broadcasting of advertisements, encourage as far as practicable advertisements that are produced, or relate to businesses, undertakings, activities or other matters, in the area served in pursuance of the licence and of any associated commercial translator licence, and, to the extent of his compliance with this sub-section, that licensee shall not be taken to contravene sub-section 100 (3).

“(4) Paragraph 121(1)(b) does not apply by virtue of section 105P in relation to the holder of a supplementary licence.

“(5) In this section, ‘broadcasting’, in relation to a program, includes broadcasting by way of the reception and re-transmission of the program.

Limitation on number of supplementary licences related to a commercial licence

“105S. There shall not at any one time be more than one supplementary licence related to a particular commercial licence.”.

Secrecy

42. Section 106B of the Principal Act is amended by inserting after sub-section (2) the following sub-section:

“(2A) Without limiting the generality of sub-section (2), the reference in paragraph (2) (a) to information concerning the affairs of a person includes a reference to information contained in a notice or application given to or lodged with the Tribunal under sub-section 90J (3) or 92F (3).”.

Review of decisions

43. Section 119A of the Principal Act is amended—

- (a) by inserting in paragraph (1) (b) “, other than a refusal in accordance with section 86A” after “86”; and

- (b) by omitting from paragraph (1) (g) “90J or 92F” and substituting “90JA or 92FAA”.

Prosecution of offences

44. Section 132 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “shall be guilty of an offence against this Act” and substituting “, unless otherwise provided by this Act, is guilty of an offence against this Act by virtue of this section”; and
- (b) by omitting sub-sections (2), (3) and (4) and substituting the following sub-sections:

“(2) An offence against this Act, other than an offence for which a penalty is provided by a provision of this Act other than this section, is an indictable offence, punishable on conviction—

- (a) if the offender is a natural person—by a fine not exceeding \$5,000; or
- (b) if the offender is a body corporate—by a fine not exceeding \$10,000.

“(3) Notwithstanding that an offence to which sub-section (2) applies is expressed by that sub-section to be an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is prepared to do so and the defendant and the prosecutor consent.

“(4) Where, in accordance with sub-section (3), a court of summary jurisdiction convicts a person of an offence, the penalty that the court may impose is—

- (a) if the offender is a natural person—a fine not exceeding \$1,000; or
- (b) if the offender is a body corporate—a fine not exceeding \$2,000.”.

45. After section 132 of the Principal Act the following section is inserted:

Service, &c., of documents

“133. (1) Subject to this section, for the purposes of this Act, a document may be served on or given to—

- (a) a natural person—
 - (i) by delivering it to the person personally;
 - (ii) by leaving it at, or sending it by post to, the address of the place of residence or business of the person last known to the person serving or giving the document; or
 - (iii) in such other manner as is prescribed;
- (b) on a body corporate—
 - (i) by leaving it at, or sending it by post to, the registered office or a principal office of the body corporate; or
 - (ii) in such other manner as is prescribed; or

- (c) on a consortium as defined by section 80—by serving it on or giving it to any member of the consortium in accordance with paragraph (b).

“(2) For the purposes of sub-section 99 (3) or section 104, a notice by telegram may be given by properly addressing, prepaying and sending the telegram to—

- (a) if the addressee is a natural person—the address of the place of residence or business of the person last known to the person sending the telegram; or
- (b) if the addressee is a body corporate—the registered office or a principal office of the body corporate,

and, unless the contrary is established, shall be deemed to have been given at the time when the telegram is received at that address or office, as the case may be.

“(3) Nothing in sub-section (1) affects the power of the Tribunal to authorize the service or giving of a document for the purposes of Division 3 of Part II otherwise than as provided in that sub-section.”.

Minor and consequential amendments

46. The Principal Act is amended as set out in Schedule 1.

Formal amendments

47. The Principal Act is amended as set out in Schedule 2.

Application of amendments

48. (1) In sub-section (2), “transaction” has the same meaning as in Division 2 or 3 of Part IV of the Principal Act.

(2) In relation to—

- (a) any proceedings before the Tribunal instituted before, on or after the date of commencement of this section in which approval by the Tribunal of a transaction entered into before that date was or is sought; or
- (b) any application made before, on or after that date to the Administrative Appeals Tribunal for the review of a decision of the Tribunal in any such proceedings,

the Principal Act applies as if this Act had not been enacted.

(3) In determining whether the Principal Act as amended by this Act applies in relation to matters other than those referred to in sub-section (2), that sub-section shall be disregarded.

Amendment of *Broadcasting and Television Amendment Act 1977*

49. Section 33 of the *Broadcasting and Television Amendment Act 1977*² is amended by omitting sub-sections (9) and (10) and substituting the following sub-section:

“(9) Sub-sections (10), (11), (11A), (11B), (11C) and (11D) of section 86 of the Principal Act apply in relation to the renewal of a licence under this section as if it were the renewal of a licence under that section.”.

Amendment of *Copyright Act 1968*

50. Section 10 of the *Copyright Act 1968*³ is amended by inserting in the definition of “holder of a licence for a broadcasting station” in sub-section (1) “, a supplementary broadcasting station” after “commercial broadcasting station”.

Transitional provision—non-resident shareholdings

51. (1) In this section—

“licence” means a licence for a commercial broadcasting station or for a commercial television station;

“prescribed day” means the day on which this section comes into operation;

“share” and “shareholding interest”, in relation to a company, have the same respective meanings as in Division 2 or 3 of Part IV of the Principal Act, whichever is applicable.

(2) A condition constituted by section 90G or 92D of the Principal Act as amended by sections 25 and 34 of this Act in relation to a licence held by a company shall not be taken to be contravened by reason only of one or more of the following:

- (a) the holding by a person of shareholding interests in the company, being interests of which he became the holder before the prescribed day, or other circumstances that came into existence before that day, where the holding of those interests or the existence of those circumstances did not, immediately before that day, result in a contravention of the condition constituted by section 90G or 92D, as the case may be, of the Principal Act as in force immediately before that day;
- (b) the holding by a person of shareholding interests in the company, being interests resulting from the allotment or issue, on or after the prescribed day, of shares in a company to a person who, immediately before that day, held shares in the last-mentioned company, where that person received or receives the shares so allotted or issued in accordance with rights of a kind enjoyed by him in common with other holders of shares of the same class as the shares that were so held;
- (c) the holding by a person of shareholding interests in the company as a result of—
 - (i) the division by a company of shares in the last-mentioned company, being shares in respect of which he held shareholding interests immediately before the prescribed day, into shares of different classes, where the shares in the last-mentioned company were not so divided before that day; or
 - (ii) the conversion by a company of shares in the last-mentioned company of a particular class, being shares in respect of which

he held shareholding interests immediately before that day, into shares of a different class,

unless the holding by the person of those interests results in the acquisition by him of any voting rights on any particular question or questions, or on all questions, that could be submitted to a poll at, or arising out of, a general meeting of the company holding the licence, being rights not held by him before the prescribed day, or results in the increase in any such voting rights held by him before that day.

(3) For the purposes of sub-section (2), a shareholding interest that came into existence before the prescribed day shall be deemed to have continued as the same interest notwithstanding a variation of the amount of the interest resulting from the payment of calls on shares on or after the prescribed day.”.

Transitional provision—supplementary licences

52. Notwithstanding the amendments of the Principal Act made by this Act, an application for a supplementary licence shall not be made under section 82A of that Act as so amended until such date as is fixed by Proclamation.

SCHEDULE 1

Section 46

MINOR AND CONSEQUENTIAL AMENDMENTS

Provision	Amendment
Section 17 (8)	Omit "personally (or, in the case of a corporation, by leaving it at the registered office of the corporation) or by post".
Sub-section 44 (11)	(a) Omit "employee—forms", substitute "employee forms". (b) Omit "service of", substitute "service or".
Paragraph 44A (2) (b)	Omit "41B (1)", substitute "41A (1)".
Sub-paragraph 82 (1) (b) (i)	Omit "supplied", substitute "approved".
Sub-section 86 (1)	Omit "supplied", substitute "approved".
Section 90H	Repeal the section.
Sub-paragraph 90L (1) (a) (ii)	Omit "the condition", substitute "a condition".
Paragraph 90M (c)	Omit "the condition specified in section 90G has", substitute "the conditions specified in section 90G have".
Section 90Q	Repeal the section.
Section 90R	Repeal the section.
Section 92E	Repeal the section.
Sub-paragraph 92G (1) (a) (ii)	Omit "the condition", substitute "a condition".
Paragraph 92H (c)	Omit "the condition specified in section 90G has", substitute "the conditions specified in section 90G have".
Section 92K	Repeal the section.
Section 92KA	Repeal the section.
Sub-section 99 (3)	After "telegram or" insert "otherwise".
Sub-section 106A (2)	After "possession", insert "or control".
Sub-section 106A (3)	After "(5)", insert "or section 106B".
Section 111	Omit all the words after "officer".
Sub-section 111D (8)	Omit "personally (or, in the case of a corporation, by leaving it at the registered office of the corporation) or by post".
Sub-section 116 (4A)	Omit "or sent by post to".
Section 117 (1)	Omit "true".

SCHEDULE 2

Section 47

FORMAL AMENDMENTS

1. The following provisions of the Principal Act are amended by omitting any number expressed in words (other than the number "one") and substituting that number expressed in figures:

15C (4), 17 (7), 28 (3), 37 (1) (c), 38 (1), 39 (1), 44 (8), 48 (1), 48A (3), 51 (1), (2) and (3), 54, 78 (1), 78A, 80 (2), 90C (1) (b), (c) and (d), 90F (1), (1) (b), (c) and (d), (3), (3) (a) (ii), (iii) and (iv), 90M, 90N (1), 92 (1) (a), (b) and (c), 92C (2), 92H, 92J (1), 104, 105A, 106 (1) and (2), 116 (2), 117 (4), 117A (2) and (5)

2. The Principal Act is further amended as set out in the following table:

Provision	Omit	Substitute
Section 4 (1) (definition of "the Broadcasting Council")	(ba) of sub-section (1) of section 134	134 (1) (ba)
Section 15C (2)	(1) of section 10	10 (1)
Section 15E (3)	(5) and (6) of section 25	25 (5) and (6)
Section 15E (4)	(5) of section 25	25 (5)
Section 16 (2)	(d), (e) and (f) of sub-section (1)	(1) (d), (e) and (f)
Section 18 (2D) (a)	(3) of section 25	25 (3)
Section 22	(1) of section 25	25 (1)
Section 26 (2)	the last preceding sub-section	sub-section (1)
Section 27D (2)	the last preceding sub-section	sub-section (1)
Section 27D (7)	the last preceding sub-section Two hundred dollars	sub-section (6) \$200
Section 37 (1) (ba)	(a) of sub-section (1) of section 31	31 (1) (a)
Section 37 (1) (d)	the next succeeding section	section 38
Section 38 (2)	the last preceding sub-section	sub-section (1)
Section 40 (3)	either of the last two preceding sub-sections	sub-section (1) or (2)
Section 46 (1)	the next succeeding section	section 46A
Section 46 (3)	the last preceding sub-section	sub-section (2)
Section 46 (4) (b)	the last preceding sub-section	sub-section (3)
Section 48A (2)	(b) of the last preceding sub-section	(1) (b)
Section 48A (3)	the last preceding sub-section the last preceding section	sub-section (2) section 48
Section 48A (5)	the next succeeding section	section 49
Section 49 (8)	the last preceding sub-section	sub-section (7)
Section 56 (2) (b)	Forty dollars	\$40
Section 57 (1)	Four dollars either of the last two preceding sections	\$4 section 55 or 56
Section 58 (6)	the next succeeding sub-section	sub-section (7)
Section 63 (1)	(2) of section 73	73 (2)
Section 65 (2)	the last preceding section	section 64
Section 68 (2)	the last preceding sub-section	sub-section (1)
Section 71B (2)	the last preceding sub-section	sub-section (1)
Section 71B (7)	the last preceding sub-section Two hundred dollars	sub-section (6) \$200

SCHEDULE 2—continued

Provision	Omit	Substitute
Section 74 (3)	(a) of sub-section (1)	(1) (a)
Section 78 (3) (b)	the last preceding section	section 77
Section 79K (2)	(b) of sub-section (1)	(1) (b)
Section 79T (2)	(b) of sub-section (1)	(1) (b)
Section 79X (1)	(1) of section 79Y	79Y (1)
Section 79Y (5)	(5) and (6) of section 25	25 (5) and (6)
Section 82 (2)	(i) of paragraph (b) of sub-section (1)	(1) (b) (i)
Section 82 (3)	(ii) of paragraph (b) of sub-section (1)	(1) (b) (ii)
Section 84 (1)	(1) of section 80	80 (1)
Section 84 (2) (b)	(1) of section 80	80 (1)
Section 84 (3)	(b) of sub-section (2) (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	(2) (b) 105AD (7), 105B (3), 111BB (4), 111BC (4) or 130A (2)
Section 85 (3)	(1) of section 80	80 (1)
Section 85 (4)	(1) of section 80	80 (1)
Section 86 (12)	(1) of section 80	80 (1)
Section 89B (2)	(3) or (4), as the case may be, of section 81	81 (3) or (4), as the case may be,
Section 90 (2) (c)	fifteen per centum	15%
Section 90AA (2)	The last preceding sub-section	Sub-section (1)
Section 90B (2)	the last preceding sub-section	sub-section (1)
Section 90C (2)	the last preceding sub-section	sub-section (1)
Section 90C (5)	The last preceding sub-section (b) of that sub-section	Sub-section (4) (4) (b)
Section 90D (2)	(c) of the last preceding sub-section	(1) (c)
Section 90E (1) (a), (b) and (c)	fifteen per centum	15%
Section 90F (2)	the last preceding sub-section	sub-section (1)
Section 90F (3) (b)	(4) of section 90C	90C (4)
Section 90F (4)	the last preceding sub-section	sub-section (3)
Section 90K (4)	the next succeeding section	section 90L
Section 90L (1) (b)	the last preceding paragraph	paragraph (a)
Section 90N (2)	the last preceding sub-section	sub-section (1)
Section 91 (2) (c), (d) and (e)	five per centum	5%
Section 91 (4)	the next succeeding sub-section	sub-section (5)
Section 91 (5)	the last preceding sub-section	sub-section (4)
Section 91AB (2)	The last preceding sub-section	Sub-section (1)
Section 91A (2)	the last preceding sub-section	sub-section (1)
Section 92 (4)	The last preceding sub-section (b) or (c) of that sub-section	Sub-section (3) (3) (b) or (c)
Section 92A (2)	(c) of the last preceding sub-section	(1) (c)
Section 92B (1) (a), (b) and (c)	fifteen per centum	15%

SCHEDULE 2—continued

Provision	Omit	Substitute
Section 92C (2)	(3) of section 92 that section	92 (3) section 92
Section 92C (3)	the last preceding sub-section	sub-section (2)
Section 92E	the last preceding section	section 92D
Section 92FA (4)	the next succeeding section	section 92G
Section 92G (1) (b)	the last preceding paragraph	paragraph (a)
Section 92J (2)	the last preceding sub-section	sub-section (1)
Section 105A	(3) of section 99	99 (3)
Section 105AA—(definition of "metropolitan broad- casting area")	(1) of section 105AB	105AB (1)
(definition of "metropoli- tan television area")	(2) of section 105AB	105AB (2)
Section 106 (2)	(c) of the last preceding sub-section	(1) (c)
Section 106B (4)	(a) of sub-section (2) (b) of sub-section (2)	(2) (a) (2) (b)
Section 106B (5)	(a) of sub-section (2) (b) of sub-section (2)	(2) (a) (2) (b)
Section 111C (2)	(a) of sub-section (1)	(1) (a)
Section 114 (2)	five per centum (wherever occurring)	5%
Section 116 (4)	the next succeeding sub-section	sub-section (4A)
Section 116 (4A)	the last preceding sub-section	sub-section (4)
Section 117A (2)	the last preceding sub-section	sub-section (1)
Section 117A (3)	the last preceding sub-section	sub-section (2)
Section 117A (4)	the last preceding sub-section	sub-section (3)
Section 117A (5)	the last preceding sub-section	sub-section (4)
Section 119 (1) (a)	the last preceding section	section 118
Section 119A (1) (a)	(4) of that section	85 (4)
Section 119A (1) (ba)	(6A) of section 86 (1) of that section (6) of that section	86 (6A) 86 (1) 86 (6)
Section 119A (1) (c)	(12) of section 86	86 (12)
Section 119A (1) (d)	(2) of section 87	87 (2)
Section 119A (1) (k)	(2) of section 119	119 (2)
Section 119A (2) (a)	(a), (b), (ba), (c), (d), (e) or (f) of sub-section (1)	(1) (a), (b), (ba), (c), (d), (e) or (f)
Section 119A (2) (b)	(g) of sub-section (1)	(1) (g)
Section 130A (4) (a)	(a), (b) or (d) of sub-section (3)	(3) (a), (b) or (d)
Section 130A (4) (b)	(c) of sub-section (3) (i) or (ii) of that paragraph	(3) (c) (3) (c) (i) or (ii)
Section 132 (4)	The last preceding sub-section	Sub-section (3)
Section 134 (1)	(2) of section 111C	111C (2)
Section 134 (2)	(d) of the last preceding sub-section	(1) (d)

NOTES

1. 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; No. 56, 1975; Nos. 89 and 187, 1976; No. 160, 1977; Nos. 52 and 210, 1978; and No. 143, 1980.
2. No. 160, 1977, as amended. For previous amendments, see Nos. 52 and 210, 1978.
3. No. 63, 1968, as amended. For previous amendments, see No. 216, 1973; No. 91, 1976; No. 160, 1977; and No. 154, 1980.