



Broadcasting Amendment Act 1987

No. 79 of 1987

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SCHEDULE

MINOR AMENDMENTS OF BROADCASTING ACT 1942



Broadcasting Amendment Act 1987

No. 79 of 1987

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

[Assented to 5 June 1987]

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

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Broadcasting Amendment Act 1987*.

Commencement

2. This Act shall come into operation on the sixtieth day after the day on which it receives the Royal Assent.

PART II—AMENDMENTS OF BROADCASTING ACT 1942

Principal Act

3. The *Broadcasting Act 1942*¹ is in this Part referred to as the Principal Act.

Interpretation

4. Section 4 of the Principal Act is amended—

- (a) by inserting before the definition of “appoint” in sub-section (1) the following definitions:
 - “‘aggregation area’, in relation to a licence, means the area that, in accordance with the Indicative Plan, is the aggregation area in relation to the licence;
 - ‘aggregation completion date’, in relation to an approved market, means—
 - (a) 31 December 1996; or
 - (b) if the Minister, pursuant to sub-section 94F (5), specifies a later date in relation to the approved market—that later date;”;
- (b) by inserting after the definition of “approved bank” in sub-section (1) the following definition:
 - “‘approved market’ means an area that, in accordance with the Indicative Plan, is an approved market for the purposes of Part IIIC;”;
- (c) by inserting after the definition of “commercial television licence” in sub-section (1) the following definitions:
 - “‘implementation plan’, in relation to a licensee in relation to a licence, means the implementation plan that is applicable to the licensee in respect of the licence in accordance with Part IIIC;
 - ‘Indicative Plan’ means the plan in force under Division 2 of Part IIIC;”;
- (d) by inserting after the definition of “licence warrant” in sub-section (1) the following definitions:
 - “‘MCS permit’ means a multi-channel service permit described in section 94T;
 - ‘MCS permit warrant’ means an MCS permit warrant granted under section 94ZB;”;
- (e) by inserting after the definition of “re-broadcasting licence” in sub-section (1) the following definitions:
 - “‘regional licence’ means a licence that, in accordance with the Indicative Plan, is a regional licence for the purposes of Part IIIC;
 - ‘regional licensee’ means a licensee who holds a regional licence;”;
- (f) by omitting from sub-section (1) the definition of “supplementary television licence” and substituting the following definition:
 - “‘technical condition’, in relation to an MCS permit warrant, means a technical condition relating to—
 - (a) the design, siting, installation, maintenance or operation (including operating power, constancy and frequency)

- of the radiocommunications transmitter or transmitters to be used for the transmission of programs pursuant to the MCS permit;
- (b) the design, siting, installation, maintenance or operation of facilities (not including studios or studio equipment or facilities) to be used in association with the radiocommunications transmitter or transmitters; or
- (c) the siting of the studio or studios to be used in connection with the transmission of programs pursuant to the MCS permit;”;
- (g) by inserting in sub-section (5) “or MCS permit” after “licence” (wherever occurring); and
- (h) by adding at the end the following sub-sections:

“(7) A reference in this Act to the provision by a licensee of an adequate and comprehensive service pursuant to the MCS permit held by the licensee shall be read as a reference to the provision by the licensee of an adequate and comprehensive service pursuant to the permit, having regard to—

- (a) the technical conditions of the MCS permit warrant;
- (b) the requirements of this Act and the regulations;
- (c) the nature of the community to be served pursuant to the permit;
- (d) the diversity of interests of that community;
- (e) the nature of any other broadcasting services (including broadcasting services provided by the Corporation) having service areas that overlap the service area of the permit; and
- (f) the implementation plan applicable to the licensee in respect of the licence in respect of which the permit is granted.

“(8) A reference in this Act to a licence in an approved market is a reference to a licence whose service area is within the approved market.

“(9) A reference in this Act to a licensee in an approved market is a reference to the holder of a licence in the approved market.

“(10) A reference in this Act to the implementation plan applicable to a licensee in respect of a licence is a reference to—

- (a) in a case where the Minister approves, under sub-section 94N (1), (3) or (6) or section 94P, an implementation plan submitted by the licensee in respect of the licence—the implementation plan so approved; or
- (b) in a case where the Minister determines, under sub-section 94N (4) or (5) or 94R (2), the terms of the implementation plan that is to be applicable to the licensee in respect of the

licence for the purposes of this Act—the implementation plan so determined,
and includes a reference to such an implementation plan as varied under section 94Q.

“(11) A reference in this Act to the renewal of an MCS permit (in this sub-section referred to as the ‘original permit’) is a reference to the grant of an MCS permit (in this sub-section referred to as the ‘renewed permit’) in respect of the service to which the original permit related so that the renewed permit commences—

- (a) on the day after the expiration of the original permit;
- (b) on the day after the expiration of the permit granted upon the previous renewal of the original permit; or
- (c) if there have been 2 or more renewals of the original permit—on the day after the expiration of the last previous renewal of the original permit.”.

Unauthorised operation of certain transmitters prohibited

5. Section 6A of the Principal Act is amended by adding at the end the following sub-section:

“(5) A reference in this section to a licence warrant includes a reference to an MCS permit warrant.”.

Functions of Tribunal

6. Section 16 of the Principal Act is amended by inserting after sub-section (6) the following sub-section:

“(6A) A reference in paragraph 16 (1) (d) or (f) or sub-section (2) to a licensee includes a reference to the holder of an MCS permit.”.

Interpretation

7. Section 17A of the Principal Act is amended—

- (a) by inserting in paragraph (2) (d) “, (1B) or (1C)” after “88 (1)”; and
- (b) by inserting after paragraph (2) (k) the following paragraphs:
 - “(ka) to make a recommendation under sub-section 94W (4);
 - (kb) to make a recommendation under sub-section 94Y (2);
 - (kc) to give approval to the holders of MCS permits under sub-section 94ZA (3);”.

Area inquiries

8. Section 18A of the Principal Act is amended by adding at the end the following sub-section:

“(3) A reference in this section to a licensee includes a reference to the holder of an MCS permit.”.

Investigation of, and comment on, broadcasting practices

9. Section 25AA of the Principal Act is amended by adding at the end the following sub-section:

“(2) A reference in this section to a licence holder includes a reference to the holder of an MCS permit.”.

Applications for grant of supplementary radio licences

10. Section 82A of the Principal Act is amended—

- (a) by omitting sub-section (2);
- (b) by omitting from sub-section (4) “or (2)”;
- (c) by omitting sub-paragraph (4) (a) (i) and substituting the following sub-paragraph:
 - “(i) the specification of the area determined by the Minister to be served in pursuance of the supplementary radio licence; and”;
- (d) by omitting from sub-section (5) “or (2)”;
- (e) by inserting in sub-section (5) “radio” after “commercial” (wherever occurring);
- (f) by inserting in sub-section (7) “radio” after “supplementary” (wherever occurring);
- (g) by inserting in sub-section (7) “radio” after “commercial”;
- (h) by omitting sub-section (8);
- (j) by inserting in sub-section (9) “radio” after “supplementary”; and
- (k) by omitting from paragraph (9) (a) “or (2), as the case may be”.

Renewal of licences

11. Section 86 of the Principal Act is amended—

- (a) by omitting from sub-section (11A) “and (11D)” and substituting “, (11D), (11E) and (11F)”;
- (b) by inserting after sub-section (11B) the following sub-section:

“(11BA) Where an implementation plan is applicable to a licensee in respect of a licence, the Tribunal shall, in determining for the purposes of paragraph (11B) (c) whether the licensee has failed to comply with the undertaking (if any) given under sub-section (10) or 83 (5) in relation to the licence, have regard to the terms of the implementation plan.”; and

- (c) by inserting after sub-section (11D) the following sub-sections:

“(11E) Where an MCS permit has been granted in respect of a licence, the Tribunal may refuse to renew the licence if the Tribunal is satisfied that—

- (a) the licensee has failed to comply with—
 - (i) a condition of the permit; or

- (ii) an undertaking given under sub-section 94V (5) or 94X (3) in relation to the permit; and
- (b) it is advisable in the public interest, having regard to that failure, that the licence not be renewed.

“(11F) Where an implementation plan is applicable to a licensee in respect of a licence, the Tribunal may refuse to renew the licence if the Tribunal is satisfied that—

- (a) the licensee has failed to a significant extent to comply with the implementation plan; and
- (b) it is advisable in the public interest, having regard to that failure, that the licence not be renewed.

“(11G) Before the Tribunal refuses to renew a licence under sub-section (11F)—

- (a) the Chairman of the Tribunal shall give the Minister notice in writing that the Tribunal is satisfied as to the matters referred to in paragraphs (11F) (a) and (b) in relation to the licence; and
- (b) the Tribunal shall have regard to any representations made by the Minister.

“(11H) Without limiting the generality of sub-section (11G), the Minister may include, in representations made pursuant to that sub-section in relation to a licence, details of any proposed variations of the implementation plan applicable to the licensee in respect of the licence.”.

Suspension and revocation of licences

12. Section 88 of the Principal Act is amended by inserting after sub-section (1) the following sub-sections:

“(1A) Where an implementation plan is applicable to a licensee in respect of a licence, the Tribunal shall, in determining for the purposes of paragraph (1) (a) whether the licensee has failed to comply with the undertaking given under sub-section 83 (5) or 86 (10) in relation to the licence, have regard to the terms of the implementation plan.

“(1B) Where an MCS permit has been granted in respect of a licence, the Tribunal may, by notice in writing to the licensee, suspend or revoke the licence if the Tribunal is satisfied that—

- (a) the licensee has failed to comply with—
 - (i) a condition of the permit; or
 - (ii) an undertaking given under sub-section 94V (5) or 94X (3) in relation to the permit; and
- (b) it is advisable in the public interest, having regard to that failure, that the licence be suspended or revoked.

“(1C) Where an implementation plan is applicable to a licensee in respect of a licence, the Tribunal may, by notice in writing to the licensee, suspend or revoke the licence if the Tribunal is satisfied that—

- (a) the licensee has failed to a significant extent to comply with the implementation plan; and
- (b) it is advisable in the public interest, having regard to that failure, that the licence be suspended or revoked.

“(1D) Before the Tribunal suspends or revokes a licence under sub-section (1C)—

- (a) the Chairman of the Tribunal shall give the Minister notice in writing that the Tribunal is satisfied as to the matters referred to in paragraphs (1C) (a) and (b) in relation to the licence; and
- (b) the Tribunal shall have regard to any representations made by the Minister.

“(1E) Without limiting the generality of sub-section (1D), the Minister may include, in representations made pursuant to that sub-section in relation to a licence, details of any proposed variations of the implementation plan applicable to the licensee in respect of the licence.”.

Limitation of interests in commercial television licences

13. (1) Section 92 of the Principal Act is amended by inserting after sub-section (1) the following sub-sections:

“(1A) A person contravenes this section if, and so long as, the person has a prescribed interest in each of 2 or more commercial television licences in the same approved market.

“(1B) A person contravenes this section if, and so long as, the person has a prescribed interest in each of 2 or more commercial television licences whose service areas are in Tasmania.”.

(2) A person shall not be taken to be in contravention of section 92 of the Principal Act (being a contravention by virtue of the operation of sub-section 92 (1A) or (1B) of that Act) in relation to any licences by reason only of one or more of the following:

- (a) if the person held any of the licences immediately before the commencement day and the holding of that licence did not, immediately before that day, result in a contravention by that person of section 92 of the Principal Act—the holding by the person of that licence (including that licence as renewed);
- (b) the holding by the person of interests in any of the companies holding the licences, being interests of which the person became the holder before the commencement day, or other circumstances that came into existence before that day, where—
 - (i) the holding of those interests or the existence of those circumstances did not, immediately before that day, result in

a contravention by that person of section 92 of the Principal Act; or

- (ii) on or after that day action has been taken which, if it had been taken before that day, would have caused the holding of those interests or the existence of those other circumstances not to result in such a contravention;
- (c) the holding by the person of interests in any of the companies holding the licences, being interests resulting from the allotment or issue, on or after the commencement day, of shares in, or debentures of, a company to a person who, immediately before that day, held shares in, or debentures of, that company, where that person received or receives the shares or debentures so allotted or issued in accordance with rights of a kind enjoyed by the person in common with other holders of shares or debentures of the same class as the shares or debentures that were so held.

(3) Sub-section (2) does not apply in relation to a person at any time when that person is the holder of any interest (other than an interest referred to in paragraph (2) (c)) in the company holding any of the licences concerned if the person became the holder of the interest on or after the commencement day.

(4) The operation of sub-section (3) is not affected by the fact that, on or after the commencement day and before the person became the holder of the interest, there had been a reduction in the amount of the interest held by the person in the company.

(5) Where—

- (a) a licence (in this sub-section referred to as the “new system licence”) is granted, pursuant to section 99 or 99A of the *Broadcasting and Television Amendment Act 1985*, in substitution for another licence or licences (in this sub-section referred to as the “old system licence or licences”); and
- (b) but for sub-section (2), a person would, immediately before the grant of the new system licence, have been in contravention of section 92 of the Principal Act as a result of being the holder of the old system licence or licences,

sub-section (2) applies in relation to the holding by the person of the new system licence as if the person had held that licence immediately before the commencement day.

(6) In this section, “commencement day” means the day on which this section comes into operation.

Meaning of control of licence

14. Section 91AAA of the Principal Act is amended by adding at the end the following sub-section:

“(3) In this section—

- (a) a reference to the operations of a licensee in providing a service pursuant to a licence includes a reference to the operations of the licensee in providing a service pursuant to an MCS permit held by the licensee in respect of the licence; and
- (b) a reference to programs to be broadcast pursuant to a licence includes a reference to programs to be broadcast pursuant to an MCS permit held by the licensee in respect of the licence.”.

Directions to protect licensee

15. Section 92M of the Principal Act is amended by adding at the end the following sub-section:

“(4) In this section—

- (a) a reference to the ability of the company holding a licence to comply with the conditions of the licence includes a reference to the ability of the company to comply with the conditions of an MCS permit held by the company in respect of the licence;
- (b) a reference to the operations of a licensee in providing a service pursuant to a licence includes a reference to the operations of the licensee in providing a service pursuant to an MCS permit held by the licensee in respect of the licence; and
- (c) a reference to the selection or provision of the programs to be broadcast pursuant to a licence includes a reference to the selection or provision of the programs to be broadcast pursuant to an MCS permit held by the licensee in respect of the licence.”.

16. After Part IIIB of the Principal Act the following Part is inserted:

“PART IIIC—EQUALISATION OF REGIONAL COMMERCIAL TELEVISION

“Division 1—Preliminary

Interpretation

“93. (1) In this Part, unless the contrary intention appears—

‘existing licence in Tasmania’ means a licence—

- (a) whose service area is in Tasmania; and
- (b) that was in force immediately before the commencement of this Part,

and includes such a licence as renewed;

‘licence’ means a commercial television licence and includes an old system commercial television licence;

‘licensee’ means the holder of a licence;

‘old system commercial television licence’ has the same meaning as ‘licence for a commercial television station’ had in the previous Act;

'old system commercial television translator station licence' has the same meaning as 'commercial television translator station licence' had in the previous Act;

'previous Act' means this Act as in force immediately before 1 January 1986;

'regional area' means an area outside the metropolitan service areas, and includes an area in Tasmania but does not include an area within the service area of a remote licence;

'service area'—

(a) in relation to an old system commercial translator television licence—means—

(i) in the case of a licence in respect of which the specifications determined for the purposes of Part IIIB of the previous Act include a specification of the area served pursuant to the licence—that area; and

(ii) in the case of a licence to which sub-paragraph (i) does not apply—the area intended by the Minister to be served pursuant to the licence; and

(b) in relation to an MCS permit—means the area to be served pursuant to the permit.

“(2) For the purposes of this Part, the service area of an old system commercial television licence shall be taken to include the service area of any old system commercial television translator station licence related to that old system commercial television licence.

“(3) For the purposes of sub-section (2), an old system commercial television translator station licence shall be taken to be related to an old system commercial television licence if, and only if—

(a) one of the conditions of the old system commercial television translator station licence is that the station is operated only for the reception and re-transmission of the programs of a specified old system commercial television licence; and

(b) both licences are held by the same person.

Objects of Part

“94. The objects of this Part are that—

(a) persons living in regional areas of Australia have, as soon as practicable, access to 3 commercial television services; and

(b) commercial television stations in regional areas of Australia—

(i) serve larger and commercially more viable markets; and

(ii) provide television services on a competitive basis.

Minister may make guidelines for implementation plans

“94A. (1) The Minister may, by notice in writing published in the *Gazette*, make guidelines to be complied with by licensees in preparing and submitting implementation plans.

“(2) Without limiting the generality of sub-section (1), guidelines made under that sub-section may make provision in respect of—

- (a) the proposals that may be included in implementation plans;
- (b) the information that is to be included in, or to accompany, implementation plans; and
- (c) the form of implementation plans.

“Division 2—Indicative Plan

Preparation of Indicative Plan

“94B. The Minister shall prepare a written plan (to be known as the ‘Equalisation of Regional Commercial Television Indicative Plan’) specifying—

- (a) the licences that are to be regional licences for the purposes of this Part;
- (b) the areas that are to be approved markets for the purposes of this Part;
- (c) the area that is to be the aggregation area for each licence that is to be in an approved market;
- (d) the regional licences that are to be eligible for consolidation with one another in accordance with Division 6;
- (e) if licences in an approved market are to be eligible for consolidation with one another—the area that is to be the aggregation area for the licence that may be granted pursuant to Division 6 in respect of those licences; and
- (f) the approved markets (if any) that are to be eligible for an additional licence for the purposes of this Part.

Approved markets

“94C. (1) Each area that is an approved market for the purposes of this Part shall consist of the combined service areas of 2 or more regional licences.

“(2) In determining the areas that are to be approved markets for the purposes of this Part, the Minister shall have regard to—

- (a) the objects of this Part;
- (b) the desirability of an approved market consisting of service areas that are as close to one another as practicable;
- (c) the desirability of an approved market reflecting, as far as practicable, community of interests within the area of the approved market;
- (d) the desirability of an approved market being able to support, as soon as practicable and in any case not later than the aggregation completion date for the approved market, the provision of 3 competitive commercial television services to the whole of the approved market;

- (e) the desirability of an approved market being wholly within the one State;
- (f) the desirability of an approved market being wholly within the one time zone; and
- (g) such other matters as the Minister considers appropriate.

“(3) A reference in this section to a service area is a reference to a service area as it exists from time to time.

Aggregation areas

“94D. (1) The aggregation area of a licence in an approved market may consist of the whole or a part of the approved market.

“(2) In determining aggregation areas of licences in an approved market, the Minister shall ensure that the aggregation areas will enable the provision of 3 commercial television services to the whole of the approved market.

“(3) Where 2 or more licences in an approved market are eligible for consolidation with one another in accordance with Division 6, the aggregation area of any one of those licences shall not include the existing service area of another of those licences.

Publication of Indicative Plan

“94E. (1) The Minister shall, by notice in writing in the *Gazette*, publish the plan prepared under section 94B.

“(2) The Indicative Plan comes into force on the day on which it is published under sub-section (1).

Variation of the Indicative Plan

“94F. (1) The Minister may, by notice in writing in the *Gazette*, vary the Indicative Plan.

“(2) A notice under sub-section (1) comes into force on the day on which it is published under sub-section (1) or on such later day as is specified in the notice.

“(3) The Minister shall not vary the Indicative Plan so as to—

- (a) alter the area of an approved market; or
- (b) alter the aggregation area of a licence in an approved market.

“(4) Without limiting the generality of sub-section (1), the Minister may vary the Indicative Plan so as to—

- (a) specify an area that is to be a new approved market for the purposes of this Part;
- (b) specify the area that is to be the aggregation area for each licence in a new approved market;
- (c) specify regional licences that are to be eligible for consolidation with one another in accordance with Division 6;

- (d) if licences in a new approved market are to be eligible for consolidation with one another—specify the area that is to be the aggregation area for the licence that may be granted pursuant to Division 6 in respect of those licences;
- (e) specify a new approved market as an approved market that is, for the purposes of this Part, to be eligible for an additional licence; and
- (f) make changes that are necessary to give effect to a consolidation of licences in accordance with Division 6.

“(5) Where the Minister varies the Indicative Plan so as to specify an area as a new approved market for the purposes of this Part, the Minister shall also vary the Indicative Plan so as to specify a date (not earlier than 31 December 1996) as the aggregation completion date for that approved market.

“(6) Before the Minister varies the Indicative Plan under sub-section (1)—

- (a) the Minister shall publish, in the *Gazette*, a notice—
 - (i) specifying the variation proposed to be made by the Minister; and
 - (ii) notifying interested persons that they may, not later than a specified day (not less than 21 days after the day on which the notice is published in the *Gazette*), make representations to the Minister relating to the proposed variation; and
- (b) the Minister shall have regard to any representations so made.

“(7) Before the Minister varies the Indicative Plan under sub-section (1) so as to specify an area that is to be a new approved market for the purposes of this Part, the Minister shall, in addition to publishing a notice under sub-section (6)—

- (a) give each licensee in the area notice in writing—
 - (i) specifying the variation proposed to be made by the Minister; and
 - (ii) stating that the licensee may, not later than a specified day (not less than 21 days after the day on which notice is given), make representations to the Minister relating to the proposed variation; and
- (b) the Minister shall have regard to any representations so made.

“(8) A reference in this section to a licensee in an area is a reference to the holder of a licence whose service area is within that first-mentioned area.

“Division 3—Election by licensees for immediate aggregation or aggregation via multi-channel services

Election by licensees in approved market

“94G. (1) Subject to sub-section (3), each licensee in an approved market specified in the Indicative Plan published under section 94E may,

before the end of the period of 28 days commencing on the day on which the Indicative Plan is published, give the Minister—

- (a) notice that the licensee wishes to proceed immediately towards aggregation in the approved market; or
- (b) notice that the licensee wishes to provide multi-channel services in the licensee's existing service area before proceeding towards aggregation in the approved market.

“(2) Subject to sub-section (3), where the Indicative Plan is varied to specify a new area as an approved market for the purposes of this Part, each licensee in the approved market may, before the end of the period of 28 days commencing on the day on which the variation is published under section 94F, give the Minister—

- (a) notice that the licensee wishes to proceed immediately towards aggregation in the approved market; or
- (b) notice that the licensee wishes to provide multi-channel services in the licensee's existing service area before proceeding towards aggregation in the approved market.

“(3) If the Indicative Plan—

- (a) specifies as an approved market an area that includes a metropolitan service area; or
- (b) specifies that an approved market is eligible for an additional licence,

the following provisions have effect:

- (c) sub-sections (1) and (2) do not apply to the approved market;
- (d) the approved market shall be taken to be proceeding immediately towards aggregation.

“(4) Where a licensee in an approved market fails to give notice under sub-section (1) or (2) before the end of the period referred to in that sub-section, the licensee shall be taken to have given the Minister notice under that sub-section that the licensee wishes to proceed immediately towards aggregation in the approved market.

“(5) A notice under sub-section (1) or (2) shall be in writing in accordance with the form approved by the Minister.

Effect of elections on approved market

“94H. (1) An approved market shall be taken—

- (a) if 2 or more of the licensees in the approved market give notice to the Minister under section 94G that they wish to proceed immediately towards aggregation in the approved market—to be proceeding immediately towards aggregation; or
- (b) if paragraph (a) does not apply—to be proceeding towards aggregation via multi-channel services.

“(2) For the purposes of sub-section (1), where—

- (a) 2 or more of the licences in an approved market are specified in the Indicative Plan as being eligible for consolidation with one another; and
- (b) the licensees of those licences give notices to the Minister under section 94G that they wish to proceed immediately towards aggregation in the approved market;

those notices shall be deemed to be a single notice under that section given jointly by those licensees.

Minister to give notice of effect of elections

“94J. As soon as practicable after the end of the period referred to in sub-section 94G (1) or (2), the Minister shall give each person who holds a licence in the approved market notice in writing—

- (a) stating whether the market is proceeding immediately towards aggregation or is proceeding towards aggregation via multi-channel services; and
- (b) requiring the licensee to submit to the Minister an implementation plan in respect of the licence in accordance with section 94L before the end of the period of 3 months commencing on the day on which the notice is given to the licensee.

“Division 4—Implementation plans

Submission of implementation plans

“94K. (1) Where the Minister gives a person who holds a licence notice under section 94J, the person shall, before the end of the period of 3 months commencing on the day on which the notice is given, submit to the Minister an implementation plan in respect of the licence.

“(2) Where the Indicative Plan published under section 94E—

- (a) specifies as an approved market an area that includes a metropolitan service area; or
- (b) specifies that an approved market is eligible for an additional licence,

each person who holds a licence in the approved market shall, before the end of the period of 3 months commencing on the day on which the Indicative Plan is published, submit to the Minister an implementation plan in respect of the licence.

“(3) Where the Indicative Plan is varied to—

- (a) specify as a new approved market an area that includes a metropolitan service area; or
- (b) specify that a new approved market is eligible for an additional licence,

each person who holds a licence in the approved market shall, before the end of the period of 3 months commencing on the day on which the

variation comes into force pursuant to sub-section 94F (2), submit to the Minister an implementation plan in respect of the licence.

“(4) Where the Minister gives a person who holds a licence notice under section 94ZD, the person shall, before the end of the period of 28 days commencing on the day on which the notice is given, submit to the Minister an implementation plan in respect of the licence.

“(5) Where—

(a) a licence is granted (otherwise than by way of renewal); and

(b) the licence is in an approved market,

the licensee shall, before the end of the period of 3 months commencing on the day on which the licence is granted, submit to the Minister an implementation plan in respect of the licence.

“(6) Where a regional licensee who is not in an approved market proposes to apply under sub-section 94V (1) for the grant of an MCS permit in respect of a licence, the licensee may submit to the Minister an implementation plan in respect of the licence.

Implementation plans

“94L. (1) The implementation plan submitted, pursuant to sub-section 94K (1), (2), (3), (4) or (5) or 94N (2), (4) or (5) or section 94ZE, in respect of a licence in an approved market shall contain details of—

(a) if the approved market is proceeding immediately towards aggregation—the stages and timetable proposed by the licensee for the extension of services into the aggregation area of the licence before the aggregation completion date for the approved market; or

(b) if the approved market is proceeding towards aggregation via multi-channel services—

(i) the stages and timetable proposed by the licensee for the provision of multi-channel services in the existing service area of the licence (including the timetable proposed by the licensee for ceasing to provide such multi-channel services); and

(ii) the stages and timetable proposed by the licensee for the extension of services into the aggregation area of the licence before the aggregation completion date for the approved market.

“(2) An implementation plan submitted pursuant to sub-section 94K (6) in respect of a licence that is not in an approved market shall contain details of the stages and timetable proposed by the licensee for the provision of multi-channel services in the existing service area of the licence.

“(3) The implementation plan in respect of a licence in an approved market shall not propose the provision of multi-channel services beyond the aggregation completion date for the approved market.

“(4) If the Indicative Plan specifies that a licence is eligible for consolidation with another licence or other licences, any implementation plan in respect of the licence shall also contain—

- (a) a statement whether or not the licensee proposes to consolidate the licence with that other licence or those other licences; and
- (b) if the licensee proposes to consolidate—
 - (i) a statement of the timetable according to which the consolidation is proposed to be completed; and
 - (ii) an indication of the implementation plan that would be likely to be submitted by the licensee of the consolidated licence.

“(5) An implementation plan shall be in writing and shall be in accordance with any guidelines made by the Minister under section 94A.

Criteria for approval of implementation plan

“94M. (1) In determining whether to approve an implementation plan submitted by a licensee in respect of a licence and in determining whether to vary the implementation plan applicable to a licensee in respect of a licence, the Minister shall have regard to—

- (a) the objects of this Part;
- (b) the guidelines made under section 94A;
- (c) whether the technical aspects of the proposed implementation plan, or the implementation plan as proposed to be varied, are acceptable, having regard to the Minister’s planning responsibilities;
- (d) if—
 - (i) the implementation plan is submitted by a licensee in respect of a licence in an approved market;
 - (ii) the implementation plan includes a proposed timetable for ceasing to provide multi-channel services; and
 - (iii) each of the implementation plans submitted by the other licensees in the approved market includes a proposed timetable for ceasing to provide multi-channel services that is the same as, or substantially the same as, the proposed timetable referred to in sub-paragraph (ii),the desirability of the implementation plan that is to be applicable to the licensee in respect of the licence including the proposed timetable referred to in sub-paragraph (ii);
- (e) if the implementation plan is submitted by, or applicable to, a licensee in respect of a licence in an approved market—the desirability of co-ordinating the activities of the licensees in the approved market; and
- (f) any other matters that the Minister considers relevant.

“(2) Where 2 or more licences in an approved market are specified in the Indicative Plan as eligible for consolidation with one another, the Minister shall not approve an implementation plan submitted in respect of

one of those licences if the implementation plan would involve an extension of the service area of that licence into the service area, or proposed service area, of the other licence or another of those licences.

Minister's powers in relation to implementation plans of licensees in approved markets

“94N. (1) Where a licensee in an approved market submits an implementation plan pursuant to sub-section 94K (1), (2), (3), (4) or (5) or section 94ZE in respect of a licence, the Minister shall, by notice in writing to the licensee—

- (a) approve the implementation plan; or
- (b) refuse to approve the implementation plan and require the licensee to submit to the Minister, within such period (ending not less than 28 days after the day on which the notice is given) as is specified in the notice, another implementation plan in respect of the licence.

“(2) Where notice is given to a licensee under paragraph (1) (b), the licensee shall submit to the Minister another implementation plan in respect of the licence within the period specified in the notice.

“(3) Where a licensee submits an implementation plan under sub-section (2) in respect of a licence, the Minister shall, by notice in writing to the licensee—

- (a) approve the implementation plan; or
- (b) refuse to approve the implementation plan.

“(4) Where the Minister refuses under sub-section (3) or (6) to approve an implementation plan in respect of a licence, the Minister may do any one or more of the following:

- (a) direct the Tribunal under sub-section 18 (2) to hold an inquiry into such matters relating to the implementation plan to be submitted by the licensee in respect of the licence as the Minister specifies in the direction;
- (b) direct the licensee under section 125E to submit to the Minister, within such period (ending not less than 28 days after the day on which the direction is given) as is specified in the direction, another implementation plan in respect of the licence in accordance with such principles and requirements as the Minister specifies in the direction;
- (c) determine, in writing, the terms of the implementation plan that is to be applicable to the licensee in respect of the licence for the purposes of this Act.

“(5) Where a licensee in an approved market fails to submit to the Minister an implementation plan in respect of a licence in accordance with this Division, the Minister may do any one or more of the following:

- (a) direct the Tribunal under sub-section 18 (2) to hold an inquiry into such matters relating to the implementation plan to be submitted

by the licensee in respect of the licence as the Minister specifies in the direction;

- (b) direct the licensee under section 125E to submit to the Minister, within such period (ending not less than 28 days after the day on which the direction is given) as is specified in the direction, an implementation plan in respect of the licence in accordance with such principles and requirements as the Minister specifies in the direction;
- (c) determine, in writing, the terms of the implementation plan that is to be applicable to the licensee in respect of the licence for the purposes of this Act.

“(6) Where a licensee in an approved market submits an implementation plan to the Minister pursuant to a direction given by the Minister under section 125E, the Minister shall, by notice in writing to the licensee—

- (a) approve the implementation plan; or
- (b) refuse to approve the implementation plan.

“(7) Where the Minister, pursuant to paragraph (4) (a) or (5) (a), directs the Tribunal to hold an inquiry, the Minister may specify in the direction the day before which the Tribunal is to make its recommendations to the Minister and the Tribunal shall make its recommendations to the Minister before that day.

“(8) Where the Minister receives recommendations from the Tribunal in relation to the implementation plan to be submitted by a licensee in respect of a licence, the Minister shall have regard to those recommendations in exercising the Minister’s powers under paragraphs (4) (b) and (c) and (5) (b) and (c) in relation to the licensee in respect of the licence.

“(9) Where the Minister approves an implementation plan, or determines the terms of an implementation plan, under this section, the Minister shall give a copy of the implementation plan to—

- (a) the Tribunal; and
- (b) each of the other licensees in the approved market concerned.

Minister’s powers in relation to implementation plans of licensees not in approved markets

“94P. (1) Where a licensee who is not in an approved market submits an implementation plan under sub-section 94K (6), the Minister shall, by notice in writing to the licensee—

- (a) approve the implementation plan; or
- (b) refuse to approve the implementation plan.

“(2) Where the Minister approves an implementation plan under this section, the Minister shall give a copy of the implementation plan to the Tribunal.

Variation of implementation plan

“94Q. (1) Subject to sub-sections (3), (4) and (5), the Minister may, by notice in writing to a licensee, vary the implementation plan applicable to the licensee in respect of a licence.

“(2) The power under sub-section (1) may be exercised on application in writing by the licensee concerned or on the Minister’s own initiative.

“(3) The Minister shall not vary an implementation plan applicable to a licensee in respect of a licence in an approved market so as to vary the period during which the licensee is to provide a multi-channel service unless the licensee and the other licensees in the approved market have consented, in writing, to the variation.

“(4) Nothing in sub-section (3) shall be read as limiting, by implication, the powers of the Minister or the Tribunal under sections 94X and 94Y.

“(5) Before the Minister varies an implementation plan applicable to a licensee in respect of a licence in an approved market on application by the licensee—

- (a) the Minister shall give each other licensee in the approved market notice in writing—
 - (i) specifying the variation proposed to be made by the Minister; and
 - (ii) stating that that other licensee may, not later than such day (not earlier than 14 days after the day on which the notice is given) as is specified in the notice, make representations to the Minister relating to the proposed variation; and
- (b) the Minister shall have regard to any representations so made.

“(6) Before the Minister varies an implementation plan applicable to a licensee in respect of a licence in an approved market on the Minister’s own initiative—

- (a) the Minister shall give each licensee in the approved market notice in writing—
 - (i) specifying the variation proposed to be made by the Minister; and
 - (ii) stating that the licensee may, not later than such day (not earlier than 14 days after the day on which the notice is given) as is specified in the notice, make representations to the Minister relating to the proposed variation; and
- (b) the Minister shall have regard to any representations so made.

“(7) Where the Minister varies the implementation plan applicable to a licensee in respect of a licence, the Minister shall, as soon as practicable, give notice in writing of the variation to—

- (a) the Tribunal; and
- (b) if the licence is in an approved market—the other licensees in the approved market.

“(8) Where—

- (a) a licensee (not being a licensee in an approved market) holds an MCS permit in respect of the licence in accordance with an implementation plan applicable to the licensee in respect of the licence;
- (b) the Indicative Plan is varied to specify a new area as an approved market for the purposes of this Part; and
- (c) the service area of the licence is within the approved market,

then—

- (d) subject to Division 5, the MCS permit continues in force; and
- (e) the implementation plan ceases to have effect when the variation of the Indicative Plan comes into force.

Effect of transfer of licence on implementation plan

“94R. (1) Subject to sub-section (2), where an implementation plan is applicable to a licensee in respect of a licence and the licence is transferred to another person, the Minister shall determine, in writing, the terms of the implementation plan that is to be applicable to the new licensee in respect of the licence for the purposes of this Act.

“(2) Where—

- (a) an implementation plan is applicable to a licensee in respect of a licence; and
- (b) the licensee transfers the licence to another person,

the terms of the implementation plan determined by the Minister under sub-section (1) in relation to the new licensee in respect of the licence shall be substantially the same as the terms of the implementation plan referred to in paragraph (a) of this sub-section.

“(3) Where the Minister determines under sub-section (1) the terms of an implementation plan applicable to a licensee in respect of a licence, the Minister shall give a copy of the implementation plan to—

- (a) the Tribunal; and
- (b) if the licence is in an approved market—each of the other licensees in the approved market.

“Division 5—Aggregation and multi-channel services

Aggregation

“94S. (1) Where—

- (a) a licence in an approved market (in this sub-section referred to as the ‘relevant licence’) is eligible for consolidation with another licence; and
- (b) the Minister is satisfied that the extension of the service area of the relevant licence to include the whole or a part of the aggregation area of the relevant licence is consistent with the implementation plan applicable to the licensee in respect of the relevant licence,

the Minister may, by notice in writing, direct the Tribunal, as specified in the notice, to extend the service area of the relevant licence accordingly and the Tribunal shall comply with the direction.

“(2) Where—

- (a) paragraph (1) (a) does not apply in relation to a licence in an approved market; and
- (b) the Minister is satisfied that the extension of the service area of the licence to include the whole of the aggregation area of the licence is consistent with the implementation plan applicable to the licensee in respect of the licence,

the Minister may, by notice in writing, direct the Tribunal, as specified in the notice, to extend the service area of the licence accordingly and the Tribunal shall comply with the direction.

“(3) Where the service area of a licence has been extended in accordance with sub-section (1) or (2), the Minister may, pursuant to sub-section 89D (6)—

- (a) vary or revoke any of the technical conditions of the licence warrant in relation to the licence; or
- (b) determine further technical conditions to be applicable to that licence warrant.

“(4) The Minister may exercise the powers under this section either upon application by the licensee concerned or on the Minister’s own initiative.

“(5) Sub-section 85 (5) does not apply in relation to a direction given by the Minister under sub-section (1) or (2).

Multi-channel service permits

“94T. (1) A multi-channel service permit is a permit granted by the Minister and authorising the licensee to whom it is granted to transmit television programs to the general public within the service area of the permit by way of a service that is additional to—

- (a) the service provided pursuant to the licence; and
- (b) the service provided pursuant to any other multi-channel service permit granted in respect of the licence.

“(2) A multi-channel service permit shall specify—

- (a) the licence in respect of which the permit is granted; and
- (b) the area to be served pursuant to the permit.

“(3) Subject to sub-section (4) and sub-sections 94U (1) and 94Y (5), a multi-channel service permit (including such a permit granted by way of renewal) continues in force for such period (not exceeding 12 months) as is specified in the permit.

“(4) Where—

- (a) a licensee to whom a multi-channel service permit is granted applies for renewal of the permit; and

- (b) the period for which the permit is in force would, but for this sub-section, expire before the Minister has renewed, or refused to renew, the permit,

the permit continues in force, subject to sub-sections 94U (1) and 94Y (5), by virtue of this sub-section until the Minister renews, or refuses to renew, the permit.

Relationship of MCS permit to head licence

“94U. (1) An MCS permit granted in respect of a licence—

- (a) ceases to be in force during any period during which the licence (including the licence as renewed) is not in force; and
- (b) upon the transfer of the licence (including the licence as renewed), passes to the new licensee.

“(2) Where, pursuant to sub-section (1), an MCS permit is transferred to a person, the person shall be deemed to have given an undertaking to the Minister in the same terms as the undertaking that was applicable in relation to the permit immediately before the transfer.

Grant of MCS permit

“94v. (1) A regional licensee may apply to the Minister, in writing, for the grant of an MCS permit in respect of the licence.

“(2) Where—

- (a) a licensee makes an application under sub-section (1) for the grant of an MCS permit in respect of a licence; and
- (b) the Minister is satisfied that the grant of the permit is consistent with the implementation plan applicable to the licensee in respect of the licence,

the Minister may grant an MCS permit to the licensee in respect of the licence.

“(3) Where—

- (a) a licence (in this sub-section referred to as the ‘new licence’) is granted pursuant to section 94ZC;
- (b) an MCS permit had been granted in respect of a licence (in this sub-section referred to as the ‘old licence’) that the new licence replaces; and
- (c) the permit is in force immediately before the old licence is revoked pursuant to section 94ZC,

the Minister may, notwithstanding that there is no implementation plan applicable to the new licence, grant an MCS permit having the same service area as the permit referred to in paragraph (b) in relation to the new licence if the Minister is satisfied that the grant of the permit is consistent with the objects of this Part.

“(4) The Minister shall not grant more than 2 MCS permits in respect of a particular licence.

“(5) An applicant for the grant of an MCS permit shall, before the permit is granted, give an undertaking in writing to the Minister that the licensee will, if the permit is granted—

- (a) comply with the conditions of the permit;
- (b) provide an adequate and comprehensive service pursuant to the permit; and
- (c) 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 pursuant to the permit.

Conditions applicable to MCS permit

“94W. (1) Upon the grant of an MCS permit (including a grant by way of renewal) in respect of a licence, the conditions of the permit are—

- (a) the service area of the permit;
- (b) the condition that the licensee will comply with the implementation plan applicable to the licensee in respect of the licence; and
- (c) such other conditions as the Minister specifies in the permit.

“(2) The Minister may, during the currency of an MCS permit, by notice in writing to the permit holder, vary or revoke any of the conditions of the permit or impose further conditions.

“(3) The Minister shall exercise the power under sub-section (1) or (2) in relation to a licensee in relation to an MCS permit granted in respect of a licence in a manner that is consistent with the implementation plan applicable to the licensee in respect of the licence.

“(4) The Tribunal may make recommendations to the Minister in relation to the exercise by the Minister of powers under this section in relation to an MCS permit and, where the Tribunal makes such recommendations, the Minister shall have regard to those recommendations in exercising those powers.

Renewal of MCS permits

“94X. (1) The holder of an MCS permit may, not less than 10 weeks before the expiration of the permit, apply to the Minister, in writing, for renewal of the permit.

“(2) The Minister may, before or after the expiration of the permit referred to in sub-section (1), extend the period within which the holder of an MCS permit may apply for renewal of the permit.

“(3) The holder of an MCS permit shall, before the permit is renewed, give a fresh undertaking in writing to the Minister in the same terms as an undertaking required to be given under sub-section 94V (5).

“(4) The Minister shall not renew an MCS permit granted to a licensee in respect of a licence unless the renewal is consistent with the implementation plan applicable to the licensee in respect of the licence.

“(5) The Minister may refuse to renew an MCS permit if—

- (a) the permit holder has failed to give an undertaking under sub-section (3);
- (b) the Minister is satisfied that the renewal of the permit would be contrary to a provision of this Act; or
- (c) the Minister is satisfied that—
 - (i) the permit holder has failed to comply with a condition of the permit; and
 - (ii) it is advisable in the public interest, having regard to that failure, that the permit not be renewed.

Suspension and revocation of MCS permit

“94Y. (1) The Minister may, by notice in writing to the holder of an MCS permit, suspend or revoke the permit.

“(2) The Tribunal may recommend to the Minister, in writing, that an MCS permit granted in respect of a licence be suspended or revoked if the Tribunal is satisfied that—

- (a) the permit holder has failed to a significant extent to comply with the implementation plan applicable to the permit holder in respect of the licence;
- (b) the permit holder has failed to comply with an undertaking given under sub-section 94V (5) or 94X (3); or
- (c) the permit holder has failed to comply with a condition of the permit (other than a condition that the permit holder will comply with an implementation plan applicable to the permit holder in respect of the licence).

“(3) Where—

- (a) the Tribunal, under sub-section (2), recommends to the Minister that an MCS permit be suspended or revoked; and
- (b) the grounds on which the Tribunal makes the recommendation do not include the ground that the permit holder has failed to a significant extent to comply with an implementation plan applicable to the permit holder,

the Minister shall suspend or revoke the permit in accordance with the recommendation of the Tribunal.

“(4) Where the Tribunal recommends to the Minister that an MCS permit be suspended, the Tribunal shall include in the recommendation—

- (a) a statement of the period for which the suspension should have effect; and
- (b) the conditions (if any) subject to which the suspension should have effect.

“(5) During the period of suspension of an MCS permit, the permit has no force or effect, but the period of currency of the permit continues to run.

Separate transfer of permit not permitted

“94Z. Subject to paragraph 94U (1) (b), an MCS permit holder shall not transfer the permit or admit another person to participate in any of the benefits of the permit or to exercise any of the powers or authorities granted by the permit.

Broadcasting requirements

“94ZA. (1) Part IV (other than section 96) applies in relation to an MCS permit and an MCS permit holder in the same manner as it applies to a commercial television licence and the licensee of a commercial television licence.

“(2) The holder of an MCS permit shall commence the service pursuant to the permit on such date as is determined by the Minister.

“(3) The holder of an MCS permit granted in respect of a licence shall not, without the approval of the Tribunal, regularly engage in repetitive broadcasting.

“(4) For the purposes of sub-section (3), the holder of an MCS permit granted in respect of a licence shall be taken to engage in repetitive broadcasting if and only if the permit holder—

- (a) televises pursuant to the permit a program that is being simultaneously televised pursuant to the licence or another MCS permit granted in respect of the licence;
- (b) televises pursuant to the permit a program that has been televised within the preceding 24 hours pursuant to the licence or another MCS permit granted in respect of the licence; or
- (c) televises pursuant to the licence or another MCS permit granted in respect of the licence a program that has been televised within the preceding 24 hours pursuant to the permit.

“(5) In sub-section (4)—

‘program’ does not include an advertisement;

‘televises’, in relation to a program, includes a reception and re-transmission of the program.

Permit warrants

“94ZB. (1) Before the grant of an MCS permit, the Minister shall determine the technical conditions of the MCS permit warrant.

“(2) Technical conditions determined under sub-section (1) may include conditions that are to be applicable only in specified circumstances.

“(3) Upon the grant of the MCS permit, the Minister shall grant to the permit holder an MCS permit warrant that—

- (a) authorises the operation, in accordance with the MCS permit warrant and by the person or persons specified in the warrant, of a radiocommunications transmitter or transmitters specified in the

warrant (other than a transmitter in an Aussat satellite) for the purpose of transmission to the general public of television programs; and

(b) specifies the technical conditions that are to be complied with.

“(4) The authorisations under—

(a) an MCS permit warrant or MCS permit warrants and a licence warrant or licence warrants; or

(b) 2 or more MCS permit warrants,

may relate to the same radiocommunications transmitter.

“(5) An MCS permit warrant—

(a) subject to paragraph (b), continues in force while the MCS permit (including any renewal) remains in force; and

(b) upon the transfer of the MCS permit under paragraph 94U (1) (c), passes to the new MCS permit holder.

“(6) Subject to sub-sections (7) and (8), the Minister may, during the currency of an MCS permit warrant, by notice in writing to the permit holder, vary or revoke any of the technical conditions of the warrant or determine further technical conditions to be applicable to the warrant.

“(7) The Minister, in an MCS permit warrant, shall not, without the consent of the permit holder, authorise the operation of a radiocommunications transmitter by a person other than the permit holder.

“(8) Before the Minister varies or revokes a technical condition of an MCS permit warrant, or determines that a further technical condition is to be applicable to an MCS permit warrant, the Minister shall give the permit holder notice in writing specifying the proposed variation or revocation or the proposed new technical condition, as the case may be, and informing the permit holder that the permit holder may make representations to the Minister not later than a specified day (not less than 14 days after the date of the notice), and the Minister shall have regard to any representations so made.

“Division 6—Consolidation of licences

Consolidation of licences

“94ZC. (1) Where—

(a) 2 or more licences are specified in the Indicative Plan as being eligible for consolidation with one another;

(b) the same licensee holds each of the licences;

(c) the licensee applies to the Minister, in writing, for consolidation of the licences in the name of the licensee; and

(d) the Minister approves the service specifications and technical conditions proposed for the consolidated licence,

the Minister may direct the Tribunal, in writing, to—

- (e) revoke the licences; and
- (f) grant a new licence to the licensee under section 81.

“(2) Where—

- (a) 2 or more licences are specified in the Indicative Plan as being eligible for consolidation with one another;
- (b) the licences are not held by the same licensee;
- (c) the licensees apply to the Minister, in writing, for consolidation of the licences in the name of a person specified in the application; and
- (d) the Minister approves the service specifications and technical conditions proposed for the consolidated licence,

the Minister may direct the Tribunal, in writing, to—

- (e) revoke the licences; and
- (f) grant a new licence to the proposed licensee under section 81.

“(3) An application under sub-section (1) or (2) shall contain—

- (a) details of the service specifications and technical conditions proposed for the consolidated licence; and
- (b) a proposed implementation plan for the proposed licensee in respect of the consolidated licence.

“(4) Where the Minister directs the Tribunal, under sub-section (1) or (2), to grant a licence, the Minister shall specify in the direction—

- (a) the service specifications for the licence; and
- (b) the technical conditions to be included in the licence warrant to be granted in respect of the licence.

“(5) The service area of a licence granted pursuant to this section shall consist of the combined service areas of the licences that it replaces.

“(6) The aggregation area in respect of a licence granted pursuant to this section in respect of licences in an approved market shall be the area specified in the Indicative Plan as the aggregation area for the licence that may be granted pursuant to this Division in respect of those licences.

“(7) Where the Tribunal is directed under this section to grant a licence to a person, the Tribunal shall, subject to sub-sections (8) and (10), grant the licence to the person under section 81 without holding an inquiry.

“(8) Before a licence is granted pursuant to this section, the proposed licensee shall give an undertaking in writing to the Tribunal that the proposed licensee will, if the licence is granted—

- (a) comply with the conditions of the licence;
- (b) provide an adequate and comprehensive service pursuant to the licence; and
- (c) 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.

“(9) An undertaking given under sub-section (8) shall be deemed, for the purposes of this Act, to have been given under sub-section 83 (5).

“(10) Where the Tribunal is directed under sub-section (2) to grant a licence to a person, the Tribunal shall not grant the licence to the person unless—

- (a) the person is a licensee holding one of the licences referred to in paragraph (2) (a); or
- (b) the Tribunal is satisfied that—
 - (i) granting the licence to the person would not be contrary to a provision of this Act; and
 - (ii) the person—
 - (A) is a fit and proper person to hold the licence;
 - (B) has the financial, technical and management capabilities necessary to provide an adequate and comprehensive service pursuant to the licence; and
 - (C) is otherwise capable of complying with the conditions of the licence.

Effect of consolidation of licences on implementation plans

“94ZD. Where—

- (a) a licence is granted to a person pursuant to section 94ZC; and
- (b) the licence is in an approved market,

the Minister shall, by notice in writing to the person, require the person to submit to the Minister, before the end of the period of 28 days commencing on the day on which the notice is given, an implementation plan in respect of the licence.

“Division 7—Grant of additional licences in approved markets

Grant of additional licences in approved markets

“94ZE. Where the Indicative Plan specifies that an approved market is eligible for an additional licence for the purposes of this Part, an additional licence having the approved market as its service area may be granted in accordance with sections 82 and 83 but section 83 applies in relation to the grant of the licence as if sub-paragraph 83 (6) (c) (iii) and paragraph 83 (6) (d) were omitted.

“Division 8—Special provisions in relation to Tasmania

Additional licence in Tasmania

“94ZF. An additional licence having as its service area the combined service areas of the existing licences in Tasmania may be granted in accordance with sections 82 and 83 but section 83 applies in relation to the grant of the licence as if sub-paragraph 83 (6) (c) (iii) and paragraph 83 (6) (d) were omitted.

Consolidation of existing licences in Tasmania

“94ZG. Section 94ZC (other than paragraph 94ZC (3) (b)) applies in relation to the existing licences in Tasmania as if the Indicative Plan specified that those licences were eligible for consolidation with one another.

Aggregation of service areas of existing licences in Tasmania

“94ZH. (1) Upon application by a licensee who holds an existing licence in Tasmania, the Minister, in his or her discretion, may, by notice in writing, direct the Tribunal, as specified in the notice, to extend the service area of the licence to include the combined service areas of the existing licences in Tasmania and the Tribunal shall comply with the direction.

“(2) Where the service area of a licence has been extended in accordance with sub-section (1), the Minister may, by notice in writing to the licensee—

- (a) vary or revoke any of the technical conditions of the licence warrant in relation to the licence; or
- (b) determine further technical conditions to be applicable to that licence warrant.

“(3) Sub-section 85 (5) does not apply in relation to a direction given by the Minister under sub-section (1).

“Division 9—Miscellaneous

Minister may require information from licensees

“94ZJ. (1) The Minister may, by notice in writing to a licensee, require the licensee to give the Minister, within such period (ending not less than 7 days after the day on which the notice is given) as the Minister specifies in the notice, such information relating to—

- (a) an implementation plan submitted to the Minister by the licensee;
- (b) an implementation plan applicable to the licensee;
- (c) a proposed determination pursuant to paragraph 94N (4) (c) or (5) (c);
- (d) a proposed variation of an implementation plan applicable to the licensee;
- (e) an application by the licensee for the grant or renewal of an MCS permit or the grant of an MCS permit warrant;
- (f) a proposed variation of the conditions of an MCS permit or MCS permit warrant held by the licensee; or
- (g) a proposed consolidation of licences in accordance with section 94ZC,

as the Minister specifies in the notice.

“(2) A licensee who is given notice under sub-section (1) shall comply with the notice.

“(3) The Minister shall ensure that information given to the Minister under sub-section (2) is not made available to any person in such a manner,

or in such circumstances, as, in the opinion of the Minister, would be prejudicial to the interests of the licensee.

Minister to notify Tribunal

“94ZK. (1) Where the Minister—

- (a) grants an MCS permit or MCS permit warrant;
- (b) renews an MCS permit;
- (c) varies the conditions applicable to an MCS permit or MCS permit warrant;
- (d) revokes or suspends an MCS permit; or
- (e) receives an undertaking in relation to an MCS permit,

the Minister shall give notice in writing to the Tribunal of the grant, renewal, variation, revocation, suspension or undertaking.

No compensation

“94ZL. A person is not entitled to compensation from the Commonwealth by reason of the suspension or revocation of an MCS permit.

Delegation of Minister’s powers

“94ZM. (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Minister, delegate to a person holding or performing the duties of an office in the Department any of the Minister’s powers under sub-sections 94N (1), (2) and (3) and section 94P.

“(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Part, be deemed to have been exercised by the Minister.

“(3) A delegate is, in the exercise of a power so delegated, subject to the directions of the Minister.

“(4) A delegation under sub-section (1) does not prevent the exercise of a power by the Minister.”.

Review of decisions

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

(a) by inserting after paragraph (1) (g) the following paragraph:

“(ga) a recommendation by the Tribunal under sub-section 94Y (2) (being a recommendation to which sub-section 94Y (3) applies);”;

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

“(2A) Notwithstanding section 27 of the *Administrative Appeals Tribunal Act 1975*, an application in pursuance of paragraph (1) (ga) may be made only by or on behalf of the MCS permit holder.”.

Interference with broadcasting of programs, &c.

18. Section 121 of the Principal Act is amended by adding at the end the following sub-section:

“(2) The reference in sub-section (1) to a licensee includes a reference to the holder of an MCS permit.”.

19. Section 122 of the Principal Act is repealed and the following section is substituted:

Protection of certain licensees against actions

“122. No action, suit or proceeding lies against a person who is the holder of a re-broadcasting licence or a re-transmission licence in respect of any matter transmitted by the person in accordance with the conditions of that licence unless, at the time of the transmission, that person is also—

- (a) the holder of another licence (other than a re-broadcasting licence or a re-transmission licence); or
- (b) the holder of an MCS permit, pursuant to which that matter is being broadcast.”.

Licensee to keep accounts, &c.

20. Section 123 of the Principal Act is amended—

- (a) by adding at the end of paragraph (4) (b) “, the *Radio Licence Fees Act 1964* or the *Television Licence Fees Act 1964*”; and
- (b) by inserting after sub-section (4) the following sub-section:

“(4A) A reference in sub-section (1) to a licence includes a reference to any MCS permit granted in respect of the licence.”.

Indemnification of Minister against claim for royalty, &c.

21. Section 125A of the Principal Act is amended by adding at the end the following sub-section:

“(2) In this section—

- (a) a reference to a licensee includes a reference to the holder of a MCS permit; and
- (b) a reference to equipment operated under a licence includes a reference to equipment operated under an MCS permit.”.

Lights on masts

22. Section 125B of the Principal Act is amended by adding at the end the following sub-section:

“(2) In this section—

- (a) a reference to a licensee includes a reference to the holder of an MCS permit; and
- (b) a reference to a licence includes a reference to an MCS permit.”.

Additional functions of Minister

23. Section 125D of the Principal Act is amended by adding at the end the following sub-section:

“(3) Without limiting the generality of paragraph (1) (a), it shall be the responsibility of the Minister to ensure that the objects of Part IIIC are achieved and, in particular, to ensure that licensees have appropriate implementation plans and carry out those implementation plans.”.

Permits for test transmissions

24. Section 126 of the Principal Act is amended by inserting after sub-section (6A) the following sub-section:

“(6B) The reference in sub-section (6A) to a licence warrant includes a reference to an MCS permit warrant.”.

Licensees subject to Act

25. Section 129 of the Principal Act is amended by adding at the end the following sub-section:

“(2) A reference in this section to a licence includes a reference to an MCS permit.”.

Control of broadcasting and television in case of emergency

26. Section 131 of the Principal Act is amended by adding at the end the following sub-section:

“(2) A reference in this section to a licensee includes a reference to the holder of an MCS permit.”.

Inspection

27. Section 131A of the Principal Act is amended by adding at the end the following sub-section:

“(2) In this section—

- (a) a reference to a licence includes a reference to an MCS permit; and
- (b) a reference to a licensee includes a reference to the holder of an MCS permit.”.

Regulations

28. Section 134 of the Principal Act is amended by omitting sub-section (4) and substituting the following sub-section:

“(4) In this section—

- (a) a reference to an inquiry document is a reference to—
 - (i) an application under this Act requesting the Tribunal to exercise any of its powers under this Act; or
 - (ii) a submission or other document in relation to an application referred to in sub-paragraph (i) or in connection with an inquiry;

- (b) a reference to a licensee includes a reference to the holder of an MCS permit; and
- (c) a reference to a licence includes a reference to an MCS permit.”.

Minor amendments of Principal Act

29. The Principal Act is amended as set out in the Schedule to this Act.

**PART III—AMENDMENTS OF BROADCASTING AND
TELEVISION AMENDMENT ACT 1985**

Principal Act

30. The *Broadcasting and Television Amendment Act 1985*² is in this Part referred to as the Principal Act.

Continued application of previous Act

31. Section 98 of the Principal Act is amended by omitting paragraph (1) (c) and substituting the following paragraph:

- “(c) in relation to applications for the grant of supplementary radio licences that were lodged under sub-section 82A (1) of the previous Act before the commencement date, the lodging of submissions and replies and the holding of inquiries in relation to such applications and the granting of licences pursuant to such applications; and”.

32. After section 99 of the Principal Act the following section is inserted:

Conversion of old system licences where no substantial change to service area or conditions

“99A. (1) Subject to sub-section (2), the Minister may, by notice in writing, direct the Tribunal to grant a new system licence in substitution for a corresponding old system licence or licences and the Tribunal shall, without holding an inquiry, comply with the direction.

“(2) The Minister shall not give a direction under sub-section (1) for the grant of a new system licence in substitution for a corresponding old system licence or licences unless the Minister is satisfied that—

- (a) the service area of the new system licence will not be substantially different from the service area of the corresponding old system licence or the combined service areas of the corresponding old system licences, as the case requires; and
- (b) the obligations of the licensee under the new system licence will not be substantially different from the obligations of the licensee under the corresponding old system licence or licences.

“(3) A direction by the Minister under sub-section (1) shall set out the service specifications, and an outline of the technical conditions, determined by the Minister under sub-section (4).

“(4) Before the Minister gives a direction to the Tribunal under sub-section (1), the Minister shall determine—

- (a) the service specifications to which it is proposed that the new system licence is to be subject; and
- (b) the technical conditions proposed to be included in the licence warrant in respect of the new system licence.

“(5) Upon the grant of a licence under sub-section (1)—

- (a) the conditions of the licence are—
 - (i) the service specifications determined by the Minister under sub-section (4); and
 - (ii) conditions that were imposed by the Tribunal in respect of the corresponding old system licence or licences; and
- (b) the corresponding old system licence or licences cease to have effect.

“(6) Upon the grant of a licence under sub-section (1) the Minister shall, under section 89D of the amended Act, grant a licence warrant to the licensee in respect of the licence.

“(7) The technical conditions of a licence warrant granted as mentioned in sub-section (6) are the technical conditions determined by the Minister under sub-section (4).

“(8) A licence granted by the Tribunal under sub-section (1)—

- (a) shall be deemed to have been granted under section 81 of the amended Act; and
- (b) subject to the amended Act, continues in force until the date that would have been the expiry date of the main corresponding old system licence.

“(9) For the purposes of the Licence Fees Acts—

- (a) no fee is payable under these Acts in respect of the grant of a licence under sub-section (1); and
- (b) in determining the date that is an anniversary of the date of commencement of a licence granted under sub-section (1), the date of commencement of the licence shall be deemed to be the same as the date that was the date of commencement of the main corresponding old system licence.

“(10) Where—

- (a) a new system licence is granted in substitution for a corresponding old system licence or licences pursuant to this section; and
- (b) immediately before the grant of the new system licence, an implementation plan (within the meaning of the *Broadcasting Act 1942*) was in force in respect of the old system licence or one of the old system licences,

the implementation plan shall, upon the grant of the new system licence, apply in relation to the licensee in respect of the licence.

“(11) This section shall not be read as limiting, by implication, the operation of section 99.”.

PART IV—MISCELLANEOUS

Amendment of the *Broadcasting and Television Act 1942* as in force immediately before 1 January 1986 for the purposes of its continued application to old system licences

33. For the purposes of the continued application, by virtue of section 98 of the *Broadcasting and Television Amendment Act 1985*, of the *Broadcasting and Television Act 1942* as in force immediately before 1 January 1986, section 106 of the *Broadcasting and Television Act 1942* as in force immediately before 1 January 1986 is amended by adding at the end of paragraph (4) (b) “, the *Broadcasting Stations Licence Fees Act 1964* or the *Television Stations Licence Fees Act 1964*”.

SCHEDULE

Section 29

MINOR AMENDMENTS OF BROADCASTING ACT 1942

Sub-section 4 (1) (definition of “commercial television licence”)—

Omit the definition, substitute the following definition:

“‘commercial television licence’ means a licence granted as a commercial television licence under section 81;”.

Sub-section 4 (1) (paragraph (d) of the definition of “licence”)—

Omit the paragraph.

Sub-section 4 (1) (definition of “television licence”)—

Omit “a supplementary television licence”.

Paragraph 17A (1) (r)—

Omit the paragraph, substitute the following paragraph:

“(r) to give approval to the holders of supplementary radio licences under sub-section 119AA (2).”.

Sub-section 80 (1) (definition of “applicant”)—

Omit “or (2), as the case requires”.

Sub-section 80 (2A)—

(a) Omit “or (2)”.

(b) Insert “radio” after “commercial” (wherever occurring).

Sub-section 81 (6)—

Insert “radio” after “supplementary”.

Sub-section 82 (6)—

Omit “or (2)”.

Section 82B—

Omit the section, substitute the following section:

Limitation on number of supplementary radio licences related to a commercial radio licence

“82B. There shall not at any one time be more than one supplementary radio licence related to a particular commercial radio licence.”.

SCHEDULE—continued

Paragraph 83 (6) (e)—

- (a) Insert “radio” after “supplementary” (wherever occurring).
- (b) Omit “broadcasting”, substitute “radio”.

Sub-paragraph 83 (6) (e) (i)—

- (a) Omit “or an additional television service, as the case requires,”.
- (b) Insert “radio” after “commercial”.

Paragraph 83 (8A) (b)—

Omit the paragraph, substitute the following paragraph:

- “(b) make a recommendation in writing to the Minister that the Minister invite applications for a commercial radio licence to serve the area that would have been the service area of the supplementary radio licence.”.

Sub-section 86 (11D)—

Insert “radio” after “supplementary”.

Section 86A—

Insert “radio” after “supplementary” (wherever occurring).

Sub-section 86A (4)—

Omit “broadcasting”, substitute “radio”.

Paragraph 86A (4) (a)—

- (a) Omit “or additional television service, as the case requires,”.
- (b) Insert “radio” after “commercial”.

Paragraph 86A (6) (b)—

Omit “or commercial television licence, as the case requires,”.

Sub-paragraph 86A (7) (b) (i)—

Insert “radio” after “commercial”.

Paragraph 86A (10) (a)—

Insert “radio” after “commercial” (wherever occurring).

Section 86B—

- (a) Insert “radio” after “supplementary” (wherever occurring).
- (b) Insert “radio” after “commercial” (wherever occurring).

Paragraph 86B (1) (c)—

Omit “broadcasting”, substitute “radio”.

Section 86C—

Insert “radio” after “supplementary” (wherever occurring).

Sub-section 86C (1)—

Insert “radio” after “commercial” (first occurring).

Paragraph 86C (1) (b)—

Omit “or a commercial television licence, as the case requires”.

Sub-section 86C (2)—

Omit “or television services, as the case requires,”.

SCHEDULE—continued

Section 86D—

- (a) Insert “radio” after “commercial” (wherever occurring).
- (b) Insert “radio” after “supplementary” (wherever occurring).

Paragraph 88 (1) (b)—

Insert “radio” after “supplementary”.

Sub-section 89 (3)—

- (a) Insert “radio” after “commercial” (wherever occurring).
- (b) Insert “radio” after “supplementary” (wherever occurring).

Sub-section 89A (1F)—

- (a) Insert “radio” after “supplementary” (wherever occurring).
- (b) Omit “commercial licence” (wherever occurring), substitute “commercial radio licence”.
- (c) Omit “or a commercial television licence, as the case requires,”.

Sub-section 89A (5)—

Insert “radio” after “supplementary”.

Sub-section 119AA (1) (definition of “broadcast” or “televisé”)—

Omit “or ‘televisé’”.

Sub-section 119AA (1) (definition of “original program time”)—

Omit the definition.

Sub-sections 119AA (3), (4), (5) and (6)—

Omit the sub-sections.

Section 123—

- (a) Insert “radio” after “commercial” (wherever occurring).
- (b) Insert “radio” after “supplementary” (wherever occurring).

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, 157 and 187, 1976; No. 160, 1977; Nos. 36, 52 and 210, 1978; Nos. 143 and 177, 1980; Nos. 61, 113 and 153, 1981; No. 154, 1982; Nos. 7, 37, 39, 91 and 136, 1983; Nos. 10, 63, 72, 163 and 165, 1984; Nos. 66 and 191, 1985; No. 2, 1986; and No. 68, 1987.
2. No. 66, 1985, as amended. For previous amendments, see No. 191, 1985; and No. 68, 1987.

*[Minister's second reading speech made in—
House of Representatives on 12 November 1986
Senate on 20 November 1986]*