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**Communications Legislation Amendment Act 1988**

**No. 36 of 1988**

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**Communications Legislation Amendment Act 1988**

**No. 36 of 1988**

**An Act to amend the law relating to communications**

[*Assented to 22 May 1988*]

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 *Communications Legislation Amendment Act 1988.*

**PART II—AMENDMENTS OF THE OVERSEAS TELECOMMUNICATIONS ACT 1946**

**Principal Act**

**2.** In this Part, “Principal Act” means the *Overseas Telecommunications Act 1946*1*.*

**Hedging contracts etc.**

**3.** Section 38aaa of the Principal Act is amended by omitting from subsection (5) the definition of “proposed contract”.

**Inspection of stations and services**

**4.** Section 79 of the Principal Act is amended by omitting “*Wireless Telegraphy Act* 1905-1936” and substituting “*Radiocommunications Act 1983*”*.*

**PART III—AMENDMENTS OF THE POSTAL SERVICES ACT 1975**

**Principal Act**

**5.** In this Part, “Principal Act” means the *Postal Services Act 1975*2.

**Guarantee of borrowings by Commission**

**6.** Section 75b of the Principal Act is amended by omitting subsection (5).

**Hedging contracts etc.**

**7.** Section 82a of the Principal Act is amended by omitting from subsection (5) the definition of “proposed contract”.

**8.** Section 100 of the Principal Act is repealed and the following section is substituted:

**Explosives etc.**

“100. (1) A person shall not send by post, by courier service or by electronic mail service a postal article that consists of, encloses or contains:

(a) an explosive; or

(b) any prescribed dangerous or deleterious article or substance.

“(2) A person shall not, except with the approval of the Commission and upon compliance with such conditions (if any) as are determined by the Commission, send by post, by courier service or by electronic mail service a postal article that consists of, encloses or contains a dangerous or deleterious article or substance, other than an explosive or an article or substance prescribed under paragraph (1) (b).

Penalty:

(a) in the case of a natural person—$20,000 or imprisonment for 10 years, or both; or

(b) in the case of a body corporate—$100,000.”.

**PART IV—AMENDMENTS OF THE RADIOCOMMUNICATIONS ACT 1983**

**Principal Act**

**9.** In this Part, “Principal Act” means the *Radiocommunications Act 1983*3*.*

**Interpretation**

**10.** Section 3 of the Principal Act is amended by inserting in subsection (1) the following definitions:

“prohibited device’ means a device in respect of which there is in force a declaration by the Minister under section 66a;

‘type approval certificate’ means a certificate issued under subsection 15a (1);”.

**Standards**

**11.** Section 9 of the Principal Act is amended by inserting in subsection (11) “a Department of State of the Commonwealth or of a State or Territory, an authority established under a law of the Commonwealth or of a State or Territory” after “Australia,”.

**12.** After Part II of the Principal Act the following Part is inserted:

**“PART IIa—TYPE APPROVAL CERTIFICATES**

**Type approval certificates**

“15a. (1) Subject to this section, upon application in accordance with the appropriate approved form, the Minister shall issue to the applicant a type approval certificate authorising the applicant and, if the certificate so specifies, his or her agents, to apply, in a specified manner, to a specified device a statement in accordance with the appropriate approved form certifying that the operation of the device does not have an adverse effect on radiocommunications.

“(2) For the purposes of this section, the Minister may, if the Minister considers it necessary to do so, by notice in writing served on the applicant, request the applicant to:

(a) submit the device to the Minister, at a place and time specified in the notice, for the purpose of testing the device;

(b) permit the Minister to test the device; or

(c) give the Minister such information in relation to the device, or the operation of the device, as is specified in the notice.

“(3) Where:

(a) the Minister is satisfied that the operation of a device has an adverse effect on radiocommunications; or

(b) the applicant refuses or fails to comply with a request under subsection (2);

the Minister shall refuse to issue a certificate in relation to the device.

“(4) Where the Minister makes a decision refusing to issue a certificate, the Minister shall cause to be served on the applicant a notice in writing of the making of the decision.

“(5) A device submitted under paragraph (2) (a) shall be returned to the applicant within a reasonable time.

“(6) Nothing in this section shall be taken, by implication, to prevent the issue of a single certificate authorising the application of a single statement to a device that is both a receiver and a transmitter for the purposes of this Act.

“(7) In this section:

‘device’ means a device that is a radiocommunications transmitter or receiver, or both.”.

**Transmitter licence**

**13.** Section 24 of the Principal Act is amended by inserting after subsection (2) the following subsections:

“(2a) For the purposes of paragraph (2) (d), the Minister may, if the Minister considers it necessary to do so, by notice in writing served on the applicant, request the applicant to:

(a) submit the transmitter to the Minister, at a place and time specified in the notice, for the purpose of testing the transmitter; or

(b) permit the Minister to test the transmitter.

“(2b) A transmitter submitted for testing under subsection (2a) shall be returned to the applicant within a reasonable time.”.

**Authorities under transmitter licences**

**14.** Section 26 of the Principal Act is amended:

(a) by omitting from subsection (1) “subsection (6)” and substituting “subsections (1a) and (6)”;

(b) by inserting after subsection (1) the following subsections:

“(1a) The holder of a transmitter licence (in this subsection called ‘the principal licence’) shall not give an authority to a person if:

(a) the person has been granted a transmitter licence to operate and possess radiocommunications transmitters of the same kind as those to which the principal licence relates; and

(b) the person’s transmitter licence:

(i) is suspended; or

(ii) has been cancelled within the last 3 years and the person has not been granted another licence of the same kind.

“(1b) Where:

(a) a person has been given an authority;

(b) at the time the authority was given, the person was the holder of a transmitter licence to operate and possess

radiocommunications transmitters of the same kind as those to which the authority relates; and

(c) the licence is suspended or cancelled;

the authority shall be deemed to have been revoked on the day on which the licence is suspended or cancelled, as the case may be.”.

**Receiver licence**

**15.** Section 38 of the Principal Act is amended by inserting after subsection (2) the following subsections:

“(2a) For the purposes of paragraph (2) (b), the Minister may, if the Minister considers it necessary to do so, by notice in writing served on the applicant, request the applicant to:

(a) submit the receiver to the Minister, at a place and time specified in the notice, for the purpose of testing the receiver; or

(b) permit the Minister to test the receiver.

“(2b) A receiver submitted for testing under subsection (2a) shall be returned to the applicant within a reasonable time.”.

**16.** After section 66 of the Principal Act the following sections are inserted:

**Prohibited devices**

“66a. (1) Subject to this section, the Minister may, by notice published in the *Gazette*,declare that the operation, supply, or possession for the purpose of the operation or supply, of a specified device, being a device that:

(a) is designed to have an adverse effect on radiocommunications; or

(b) would be likely to interfere substantially with radiocommunications, or otherwise substantially to disrupt or disturb radiocommunications, in a manner likely to endanger the safety of another person or to cause another person to suffer substantial loss or damage;

is prohibited, for the reasons set out in the notice.

“(2) Before making a declaration, the Minister shall, by notice published in accordance with the regulations:

(a) describe the device in relation to which the Minister proposes to make the declaration;

(b) specify the reasons why the Minister proposes to make the declaration;

(c) invite interested persons to make representations in connection with the proposed declaration within such period, being not less than one month after the date of publication of the notice, as is specified in the notice; and

(d) specify an address or addresses to which representations in connection with the proposed declaration may be forwarded.

“(3) A person may, before the expiration of the period specified in the notice, make representations to the Minister in connection with the proposed declaration and the Minister shall give due consideration to any representations so made.

“(4) Subsections (2) and (3) do not apply if the Minister is satisfied that the making of the declaration is a matter of urgency.

“(5) Sections 48, 49 and 50 of the *Acts Interpretation Act 1901* apply in relation to declarations as if, in those sections, references to regulations were references to declarations, references to a regulation were references to a provision of a declaration and references to repeal were references to revocation.

“(6) Declarations shall be deemed to be statutory rules within the meaning of the *Statutory Rules Publication Act 1903.*

**Operation etc. of a prohibited device**

“66b. A person shall not, without reasonable excuse, operate or supply (whether by way of sale or otherwise) a prohibited device or have a prohibited device in his or her possession for the purpose of operating or supplying that device.

Penalty:

(a) in the case of a natural person—$1,000; or

(b) in the case of a body corporate—$5,000.”.

**Review of decisions**

**17.** Section 86 of the Principal Act is amended by omitting “subsection 21 (1)” from the definition of “reviewable decision” in subsection (1) and substituting “subsection 15a (1) or (3) or 21 (1)”.

**Regulations**

**18.** Section 93 of the Principal Act is amended:

(a) by omitting from paragraph (2) (d) “65 (17)” and substituting “65 (9) or (17)”;

(b) by inserting after subparagraph (2) (h) (i) the following subparagraph:

“(ia) the issue and variation of type approval certificates;”;

(c) by omitting from subparagraph (2) (h) (iii) “and” (last occurring);

(d) by inserting after subparagraph (2) (h) (iii) the following subparagraph:

“(iiia) tests conducted under section 15a, 24 or 38; and”;

(e) by omitting from paragraph (2a) (a) “65 (17)” and substituting “65 (9) or (17)”.

**Other amendments**

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

**PART V—AMENDMENTS OF THE TELECOMMUNICATIONS ACT 1975**

**Principal Act**

**20.** In this Part, “Principal Act” means the *Telecommunications Act 1975*4*.*

**Disciplinary action**

**21.** Section 58 of the Principal Act is amended:

(a) by omitting from paragraph (9) (b) “$40” and substituting “$500”;

(b) by omitting from subsection (12) “$40” and substituting “$500”.

**Guarantee of borrowings by Commission**

**22.** Section 72b of the Principal Act is amended by omitting subsection (5).

**Hedging contracts etc.**

**23.** Section 79a of the Principal Act is amended by omitting from subsection (5) the definition of “proposed contract”.

**Other amendments**

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

**SCHEDULE 1** Section 19

OTHER AMENDMENTS OF THE RADIOCOMMUNICATIONS ACT 1983

**Paragraph 9 (2) (a):**

After “he”, insert “or she”.

**Subsection 9 (3):**

After “he”, insert “or she”.

**Subsection 24 (1):**

After “his”, insert “or her”.

**Subsection 24 (2):**

(a) After “his”, insert “or her”.

(b) After “he”, insert “or she”.

**Subparagraph 24 (2) (a) (ii):**

After “his”, insert “or her”.

**Subsection 24 (3):**

After “he”, insert “or she”.

**Subsection 26 (1):**

(a) After “him”, insert “or her”.

(b) After “his”, insert “or her”.

**Subsection 26 (5):**

After “he”, insert “or she”.

**Subsection 38 (1):**

After “his”, insert “or her”.

**Subsection 38 (2):**

(a) After “his”, insert “or her”.

(b) After “he”, insert “or she”.

**Subsection 38 (3):**

After “he”, insert “or she”.

**Subparagraph 38 (7) (b) (ii):**

Omit “by him”.

**Subsection 38 (9):**

After “his”, insert “or her”.

**SCHEDULE 1—continued**

**Subsection 38 (11):**

(a) After “his”, insert “or her”.

(b) After “he”, insert “or she”.

**Subsection 86 (4):**

After “he”, insert “or she”.

**Subsection 86 (5):**

(a) Omit “he”, substitute “the Minister”.

(b) After “his” (first occurring), insert “or her”.

(c) Omit “his” (second occurring).

**SCHEDULE 2** Section 24

OTHER AMENDMENTS OF THE TELECOMMUNICATIONS ACT 1975

**Subsection 58 (1):**

(a) After “his”, insert “or her”.

(b) Omit “only if—”, substitute “only if the officer:”.

**Paragraph 58 (1) (a):**

(a) Omit “he”.

(b) After “him”, insert “or her”.

**Paragraph 58 (1) (b):**

(a) Omit “he”.

(b) After “his”, insert “or her”.

**Paragraph 58 (1) (c):**

(a) Omit “he”.

(b) After “his”, insert “or her”.

**Paragraph 58 (1) (d):**

Omit “he”.

**Paragraph 58 (1) (e):**

(a) Omit “he”.

(b) After “his”, insert “or her”.

**Paragraph 58 (1) (f):**

(a) Omit “he”.

(b) After “him”, insert “or her”.

(c) Omit “he”, substitute “the officer”.

**SCHEDULE 2—**continued

**Paragraph 58 (1) (g):**

(a) Omit “he”.

(b) Omit “to an officer”, substitute “to another officer”.

(c) After “his”, insert “or her”.

**Subsection 58 (2):**

(a) After “his” (wherever occurring), insert “or her”.

(b) Omit “he”, substitute “the supervisor”.

(c) After “him”, insert “or her”.

**Subsection 58 (3):**

(a) Omit “his” (first occurring), substitute “the”.

(b) After “his” (second occurring), insert “or her”.

(c) Omit “he”, substitute “the officer”.

(d) Omit “and—”, substitute “and if the authorised officer decides:”.

**Paragraph 58 (3) (a):**

Omit “if he decides”.

**Paragraph 58 (3) (b):**

(a) Omit “if he decides”.

(b) After “his”, insert “or her”.

**Subsection 58 (6):**

(a) After “him”, insert “or her”.

(b) Omit “he”, substitute “the officer”.

**Subsection 58 (7):**

(a) After “he” (wherever occurring), insert “or she”.

(b) Omit “his”, substitute “that”.

**Subsection 58 (9):**

(a) After “his”, insert “or her”.

(b) Omit “he” (wherever occurring), substitute “the first-mentioned officer”.

(c) After “him”, insert “or her”.

**Paragraph 58 (9) (c):**

Omit “his”, substitute “the officer’s”.

**Subparagraph 58 (9) (d) (i):**

Omit “he”, substitute “the officer”.

**SCHEDULE 2—**continued

**Subparagraph 58 (9) (a) (ii):**

Omit “he”, substitute “the officer”.

**Subsection 58 (10):**

(a) After “he”, insert “that officer”.

(b) After “his” (wherever occurring), insert “or her”.

**Subsection 58 (12):**

(a) Omit “him” (first occurring), substitute “the officer”.

(b) After “he”, insert “or she”.

(c) After “him” (second occurring), insert “or her”.

**Subsection 58 (13):**

After “him”, insert “or her”.

**NOTES**

1. No. 23, 1946, as amended. For previous amendments, see No. 69, 1952; No. 26, 1958; No. 85, 1963; No. 93, 1966; Nos. 31 and 139, 1968; No. 9, 1971; No. 216, 1973 (as amended by No. 20, 1974); No. 56, 1975; No. 36, 1978; No. 19, 1979; No. 177, 1980; Nos. 61 and 115, 1981; Nos. 66 and 80, 1982; Nos. 39, 92 and 136, 1983 (as amended by No. 121, 1984); Nos. 18, 63, 72 and 165, 1984; Nos. 65 and 119, 1985; No. 76, 1986; and No. 69, 1987.

2. No. 54, 1975, as amended. For previous amendments, see Nos. 36 and 170, 1978; No. 7, 1979; No. 177, 1980; Nos. 61 and 74, 1981; No. 80, 1982; Nos. 39, 92, 115 and 147, 1983; Nos. 18, 72 and 165, 1984; Nos. 65, 119 and 193, 1985; Nos. 76 and 168, 1986; and No. 69, 1987.

3. No. 130, 1983, as amended. For previous amendments, see No. 165, 1984; Nos. 65, 67 and 119, 1985; No. 76, 1986; and No. 69, 1987.

4. No. 55, 1975, as amended. For previous amendments, see No. 94, 1976; No. 160, 1977; Nos. 36 and 170, 1978; No. 115, 1979; No. 177, 1980; No. 61, 1981; No. 80, 1982; Nos. 7, 91, 92, 115, 136 and 147, 1983; Nos. 18 and 165, 1984; Nos. 67, 119 and 193, 1985; No. 76, 1986; and No. 69, 1987.

[*Minister’s second reading speech made in—*

*House of Representatives on 10 December 1987*

*Senate on 23 February 1988*]