



Radio Licence Fees Amendment Act 1991

No. 184 of 1991

**An Act to amend the *Radio Licence Fees Act 1964*,
and for related purposes**

[Assented to 6 December 1991]

The Parliament of Australia enacts:

Short title etc.

1.(1) This Act may be cited as the *Radio Licence Fees Amendment Act 1991*.

(2) In this Act, “**Principal Act**” means the *Radio Licence Fees Act 1964*¹.

Commencement

2.(1) Subject to subsections (2) and (3), this Act commences 28 days after the day on which it receives the Royal Assent.

(2) Sections 3, 6 and 8 commence or are taken to have commenced on 1 January 1992.

(3) Sections 7 and 9 commence on 31 December 1992.

Application

3. The amendments:

- (a) of section 6 of the Principal Act made by section 6 of this Act; and
- (b) of section 6A of the Principal Act made by section 8 of this Act;

apply to all licence fees payable under subsection 6(2) of the Principal Act that are due on or after 1 January 1992.

Interpretation

4. Section 4 of the Principal Act is amended:

- (a) by inserting in subsection (1) “, unless the contrary intention appears,” after “Act” (first occurring);
- (b) by inserting in subsection (1) the following definition:
“‘FM access fee’ means the fee payable in respect of a licence under section 6B;”.

Amount of fees

5. Section 6 of the Principal Act is amended by omitting subsections (1A) and (1B).

Amount of fees

6. Section 6 of the Principal Act is amended:

- (a) by omitting from paragraph (2A)(a) “0.5” and substituting “0.25”;
- (b) by omitting from paragraph (2A)(a) “0.6” and substituting “0.3”;
- (c) by omitting from paragraph (2A)(b) “3.5” and substituting “1.75”;
- (d) by omitting from paragraph (2A)(b) “0.9” and substituting “0.45”;
- (e) by omitting from paragraph (2A)(c) “4.4” and substituting “2.2”;
- (f) by omitting from paragraph (2A)(c) “0.8” and substituting “0.4”;
- (g) by omitting from paragraph (2A)(d) “5.3” and substituting “2.65”;
- (h) by omitting from paragraph (2A)(d) “0.3” and substituting “0.15”;
- (i) by omitting from paragraph (2A)(e) “6.2” and substituting “3.1”;
- (j) by omitting from paragraph (2A)(e) “0.2” and substituting “0.1”.

Amount of fees

7. Section 6 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

“(2) Subject to section 6A, there is payable by a licensee:

(a) on each 31 December that occurs during the period of the licence; and

(b) on:

(i) if the licence's period ends on a 31 December or a day within the first 6 months of a calendar year—the first 31 December after the licence's period; or

(ii) if the licence's period ends on any other day in a calendar year—each 31 December that occurs during the 18 months immediately following the licence's period;

a fee of an amount equal to the relevant percentage of the gross earnings in respect of the licence during the period of one year ending on the 30 June last preceding the 31 December.”.

Changes of accounting period—effect on fees payable

8. Section 6A of the Principal Act is amended:

(a) by omitting from the substituted paragraph 6(2A)(a) in paragraph (e) “0.5” and substituting “0.25”;

(b) by omitting from the substituted paragraph 6(2A)(a) in paragraph (e) “0.6” and substituting “0.3”;

(c) by omitting from the substituted paragraph 6(2A)(b) in paragraph (e) “3.5” and substituting “1.75”;

(d) by omitting from the substituted paragraph 6(2A)(b) in paragraph (e) “0.9” and substituting “0.45”;

(e) by omitting from the substituted paragraph 6(2A)(c) in paragraph (e) “4.4” and substituting “2.2”;

(f) by omitting from the substituted paragraph 6(2A)(c) in paragraph (e) “0.8” and substituting “0.4”;

(g) by omitting from the substituted paragraph 6(2A)(d) in paragraph (e) “5.3” and substituting “2.65”;

(h) by omitting from the substituted paragraph 6(2A)(d) in paragraph (e) “0.3” and substituting “0.15”;

(i) by omitting from the substituted paragraph 6(2A)(e) in paragraph (e) “6.2” and substituting “3.1”;

(j) by omitting from the substituted paragraph 6(2A)(e) in paragraph (e) “0.2” and substituting “0.1”.

Changes of accounting period—effect on fees payable

9. Section 6A of the Principal Act is amended:

(a) by omitting from paragraph (a) “this Act on an anniversary of the date of commencement of the licence, being a fee that is calculated by reference to” and substituting “subsection 6(2) on a 31 December in respect of”;

(b) by omitting from paragraph (b) “this Act on the next anniversary of the date of commencement of the licence, being a fee

calculated by reference to” and substituting “that subsection on the next 31 December in respect of”.

10. Section 6B of the Principal Act is repealed and the following sections are substituted:

FM access fees

“6B. If a person is given:

- (a) a notice under section 83G of the Broadcasting Act in respect of the granting of a non-metropolitan FM commercial radio licence within the meaning of Part IIIB of the Broadcasting Act; or
- (b) a notice under section 83H of that Act in respect of the granting of a non-metropolitan supplementary radio licence within the meaning of that Part; or
- (c) a notice under section 83J of that Act in respect of the conversion to FM of a non-metropolitan AM commercial radio licence within the meaning of that Part;

then, on the day the notice is given, there is payable to the Commonwealth by that person, by way of tax in respect of the licence, a fee, to be known as an FM access fee, of an amount determined under section 6BA and specified in the notice.

Amount of FM access fee

“6BA.(1) In this section:

‘**area licence**’, in relation to a proposed licence, means a commercial radio licence, or a supplementary radio licence, whose service area is substantially the same as the service area of the proposed licence and, if the proposed licence is a converted licence, includes the proposed licence;

‘**commencement day**’ means:

- (a) in relation to a licence or proposed licence, other than a converted licence—the day on which the service provided under the licence commences in accordance with a determination made under section 96 of the Broadcasting Act; or
- (b) in relation to a converted licence—the day on which the service authorised by the licence’s varied licence warrant commences in accordance with a determination made under section 96 of the Broadcasting Act;

‘**converted licence**’ means a licence described in paragraph 6B(c);

‘**declared gross earnings**’, in relation to a licence, means the amount of annual gross earnings for that licence stated in an earnings declaration;

‘**declared most recent gross earnings**’, in relation to a licence, means the declared gross earnings for the licence in respect of the most recent 12 months for which the holder of the licence is required to give an earnings declaration;

‘declared next most recent gross earnings’, in relation to a licence, means the declared gross earnings for the licence in respect of the 12 months immediately before the most recent 12 months for which the holder of the licence is required to give an earnings declaration;

‘earnings declaration’ means a statutory declaration given to the Tribunal under paragraph 123(1)(c) of the Broadcasting Act;

‘existing licence’, in relation to a proposed licence, means an area licence, other than an area licence whose commencement date, in the opinion of the Tribunal, is likely to be within the 28 days immediately before the proposed licence’s commencement day;

‘most recent census results’ means the results of the most recent census count of the Australian population taken and published by the Australian Statistician;

‘new licence’ means a licence described in paragraph 6B(a);

‘prescribed time’ means:

- (a) in relation to a proposed licence that is a new licence—the time at which a notice under subsection 82(1) of the Broadcasting Act was published in the *Gazette* to invite interested persons to apply for the grant of the licence; or
- (b) in relation to a proposed licence that is a supplementary licence—the time at which the Minister referred the application for the licence to the Tribunal under paragraph 82A(4)(a) of the Broadcasting Act; or
- (c) in relation to a proposed licence that is a converted licence—the time at which the Minister gave a notice to the Tribunal in respect of the conversion under subsection 89D(6A) of the Broadcasting Act;

‘proposed licence’ means a licence in respect of which an FM access fee is to be payable;

‘supplementary licence’ means a licence referred to in paragraph 6B(b).

“(2) For the purposes of this section, the service area of a supplementary radio licence is taken to be substantially the same as another licence’s service area if it is smaller than, but wholly within the other licence’s service area.

“(3) The Tribunal must determine, in writing, the amount of FM access fee in respect of a proposed licence in accordance with the formula:

$$\left\{ \frac{\text{AGE}}{20} + \left[\left(\frac{\text{AGE}}{200,000} \right)^2 \times 1,000 \right] \right\} \times \frac{\text{NPL}}{\text{NCL}}$$

where:

'AGE' [Average Gross Earnings] is the amount determined under subsection (4) or (7);

'NPL' [Number of Pre-commencement Licences] is:

- (a) if, in the Tribunal's opinion, there is at least one existing licence under which service will be provided immediately before the day that, in the Tribunal's opinion, is likely to be the proposed licence's commencement day—the number of those existing licences; or
- (b) if there are no such existing licences—1;

'NCL' [Number of Commencement Licences] is:

- (a) if the proposed licence is not a converted licence—the sum of 1 plus the number that, in the Tribunal's opinion, is likely to be the number of area licences under which services will be provided on, or within 28 days after, the day that, in the Tribunal's opinion, is likely to be the proposed licence's commencement day; or
- (b) if the proposed licence is a converted licence—subject to subsection (6), the number that, in the Tribunal's opinion, is likely to be the number of area licences under which services will be provided on, or within 28 days after, the day that, in the Tribunal's opinion, is likely to be the proposed licence's commencement day.

“(4) If, at the prescribed time for the proposed licence, there is at least one area licence, AGE is the amount determined by the Tribunal in accordance with the formula:

$$\frac{\text{TGE}}{\text{NPL}}$$

where:

'TGE' [Total Gross Earnings] is the sum of the calculation gross earnings of the area licences;

'NPL' [Number of Pre-commencement Licences] has the same meaning as in subsection (3).

“(5) In subsection (4):

'calculation gross earnings', in relation to an area licence, means:

- (a) if there are declared most recent gross earnings for the licence—the amount of those earnings; or
- (b) if there are no such earnings—an amount determined by the Tribunal to be the likely amount of the declared most recent gross earnings for the licence, having regard to either or both of the following:
 - (i) any declared next most recent gross earnings for the licence;
 - (ii) any declared most recent gross earnings, or any declared

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next most recent gross earnings, for any other area licences.

“(6) For the purposes of subsection (3), if:

- (a) the proposed licence is a converted licence; and
- (b) the Tribunal is satisfied that, but for this subsection, NCL should be 1; and
- (c) there is at least one commercial FM radio licence or supplementary radio licence whose service area overlaps the proposed licence’s service area (in this subsection called an ‘overlapping licence’);

NCL is to be 1 plus, in respect of each overlapping licence, a number that is determined by the Tribunal in accordance with the formula:

$$\frac{OP}{TP}$$

where:

‘OP’ [Overlapping Population] is the population, in the Tribunal’s opinion, of the proposed licence’s service area that is overlapped by the service area of the overlapping licence, having regard to the most recent census results; and

‘TP’ [Total Population] is the population, in the Tribunal’s opinion, of the proposed licence’s service area, having regard to the most recent census results.

“(7) If, at the prescribed time for the proposed licence, there is no area licence, AGE is the amount determined by the Tribunal in accordance with the formula:

$$\frac{NGE}{NPL}$$

where:

‘NGE’ [Notional Gross Earnings] is the amount determined by the Tribunal as what, if there had been an area licence, would have been the amount of the declared most recent gross earnings for the area licence, having regard to:

- (a) the declared most recent gross earnings, or declared next most recent gross earnings, for any radio licences whose service areas overlap the proposed licence’s service area; and
- (b) the declared most recent gross earnings, or declared next most recent gross earnings, for any radio licence whose service area is of a similar size, or has a similar level of population, as that of the proposed licence’s service area; and
- (c) such other matters as the Tribunal considers relevant;

‘NPL’ [Number of Pre-commencement Licences] has the same meaning as in subsection (3).

“(8) In deciding NPL or NCL for the purposes of this section, the Tribunal may have regard to the following matters:

- (a) the number of existing area licences;
- (b) the likely grant by the Tribunal of any area licences;
- (c) the likely commencement date of the proposed licence and licences mentioned in paragraph (b);
- (d) any other matters that the Tribunal considers relevant.

“(9) Nothing in this section empowers the Tribunal to make a determination amending or in substitution for a determination made under subsection (3).”.

Transitional and savings

11.(1) In this section:

“**Amendment Act**” means the *Broadcasting Amendment Act (No. 2) 1991*.

(2) If subsection 23(2) of the Amendment Act applies to a commercial radio licence:

- (a) subsection 6(1A) of the Principal Act as in force immediately before the commencement of this section continues to apply in relation to that licence; and
- (b) the amendment of the Principal Act made by section 10 of this Act does not apply in relation to that licence.

(3) If subsection 25(1) of the Amendment Act applies in relation to the conversion to FM (within the meaning of the *Broadcasting Act 1942*) of a commercial radio licence:

- (a) section 6B of the Principal Act as in force immediately before the commencement of this section does not apply in relation to that conversion; and
- (b) the amendment of the Principal Act made by section 10 of this Act applies in relation to that conversion.

(4) If subsection 25(2) of the Amendment Act applies to the conversion to FM (within the meaning of the *Broadcasting Act 1942*) of a commercial radio licence:

- (a) section 6B of the Principal Act as in force immediately before the commencement of this section continues to apply in relation to that conversion; and
- (b) the amendment of the Principal Act made by section 10 of this Act does not apply in relation to that conversion.

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NOTE

1. No. 119, 1964, as amended. For previous amendments, see No. 93, 1966; No. 148, 1973; No. 188, 1976; No. 94, 1977; No. 50, 1978; Nos. 114 and 168, 1981; No. 155, 1982; No. 58, 1983; No. 68, 1985; Nos. 66 and 116, 1987; and Nos. 144 and 146, 1988.

*[Minister's second reading speech made in—
House of Representatives on 6 November 1991
Senate on 26 November 1991]*