



# Broadcasting Services Amendment Act (No. 2) 1993

No. 2 of 1993

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## **An Act to amend the *Broadcasting Services Act 1992***

[Assented to 14 May 1993]

The Parliament of Australia enacts:

### **Short title etc.**

**1.(1)** This Act may be cited as the *Broadcasting Services Amendment Act (No. 2) 1993*.

**(2)** In this Act, “**Principal Act**” means the *Broadcasting Services Act 1992*<sup>1</sup>.

### **Commencement**

**2.** This Act commences on the day on which it receives the Royal Assent.

### **Addition of new sections at end of Division 1 of Part 7**

**3.** After section 98 of the Principal Act the following sections are added to Division 1 of Part 7:

### **Certain applicants for licences A and B to pay deposits**

“98A.(1) In this section:

**‘allocation determination’** means the determination of a price-based allocation system for allocating subscription television broadcasting licences A and B made by the Minister on 19 January 1993 under subsection 93(1);

**‘business day’** means a day other than a Saturday, a Sunday or a public or bank holiday in any state, the Australian Capital Territory or the Northern Territory.

“(2) This section applies to any applicant for a subscription television broadcasting licence who is given notice by the Secretary under the allocation determination after the commencement of this section that:

- (a) subject to the Trade Practices Commission’s approval under subsection 93(7); and
- (b) unless the ABA decides that subsection 98(2) applies to the applicant; the applicant will be allocated licence A or licence B on payment of the price bid for that licence.

“(3) For the purpose of the operation of this section in relation to notices given under the allocation determination after this section commences, such notices are only taken to have been given to an applicant on the day when they are delivered by courier:

- (a) to the address of the applicant notified in the tender; or
- (b) if the applicant has notified in the tender an address other than the address of the applicant as the place for service of notices—to that place; or
- (c) if the courier is unable to effect delivery at the applicant’s address, or any other address, notified in the tender—to the registered office of the applicant within Australia.

“(4) An applicant to whom this section applies must, within 3 business days after the day on which notice is given to the applicant in respect either of licence A or licence B, pay to the Commonwealth a deposit of 5% of the price bid by the applicant in the tender for the licence.

“(5) For the purposes of the operation of the allocation determination in relation to an applicant to whom this section applies, the payment of the deposit counts towards the payment of the price bid by the applicant as required under that determination.

“(6) A deposit:

- (a) must be paid to the Collector of Public Money within the Department of Transport and Communications; and
- (b) must be paid in Australian dollars; and
- (c) must be in the form of a bank cheque issued by a bank licensed to operate in Australia.

“(7) If an applicant to whom this section applies fails to pay a deposit in accordance with this section in respect of a tender for licence A or licence B:

- (a) the applicant is taken for the purposes of the allocation determination, including the allocation determination as affected by this Act, not to have lodged a tender; and
- (b) the Secretary must inform the ABA, by notice in writing, of the failure to pay that deposit; and
- (c) the procedures set out in clause 8 of the allocation determination, including those procedures as affected by this Act, apply again in respect of the applicant bidding the next highest price for the licence.

“(8) If, under section 98C, an applicant to whom this section applies withdraws a tender for licence A or licence B:

- (a) the applicant is taken for the purposes of the allocation determination, including the allocation determination as affected by this Act, not to have lodged a tender; and
- (b) the Secretary must inform the ABA, by notice in writing, of the withdrawal of that tender; and
- (c) the procedures set out in clause 8 of the allocation determination, including those procedures as affected by this Act, apply again in respect of the applicant bidding the next highest price for the licence.

### **Repayment of deposit**

“98B.(1) If:

- (a) a deposit has been paid under section 98A by an applicant to whom that section applies; and
- (b) the applicant is not subsequently allocated a licence by the ABA because of the operation of subsection 93(7) in relation to a report of the Trade Practices Commission to the ABA;

the Commonwealth must repay the deposit and, in accordance with subsection (2), interest on the deposit, as soon as practicable after the receipt by the ABA of that report.

“(2) Interest on a deposit that is to be repaid is payable from and including the day on which the deposit was paid to and including the day on which the deposit is repaid.

“(3) Interest payable under subsection (2) is to be paid at a rate determined in accordance with the regulations.

“(4) The Consolidated Revenue Fund is appropriated to the extent necessary to make the repayment of a deposit, and of the interest payable on the deposit, in accordance with this section.

“(5) A deposit paid under section 98A is not repayable by the Commonwealth if:

- (a) the ABA decides that subsection 98(2) applies to the applicant; or
- (b) the applicant fails within the time required by the allocation determination to pay the balance of the price bid.

### **Withdrawal of tenders**

“98C.(1) Any applicant under section 93 for allocation of a subscription television broadcasting licence may withdraw the tender for that licence at any time before payment of the deposit required to be paid under section 98A.

“(2) If an applicant withdraws a tender under subsection (1), the Commonwealth will repay the applicant the application fee of \$500 paid in respect of that application.

“(3) Nothing in subsection (1) implies that this section only applies to an applicant to whom section 98A applies or might, in the future, apply.

### **Compensation**

“98D.(1) In this section:

‘**acquisition of property**’ has the same meaning as in paragraph 51(xxxi) of the Constitution;

‘**just terms**’ has the same meaning as in paragraph 51(xxxi) of the Constitution.

“(2) If the operation of this Act would result in the acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.

“(3) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the Court determines.”.

### **Amendment of Schedule 2**

4. Schedule 2, Standard Conditions, Part 6, Subscription Television Broadcasting Licences, clause 10, paragraph (1)(g) of the Principal Act is amended by omitting “and the ABA has approved the broadcast of such programs;” and substituting “and the ABA has recommended, and the Parliament has, by resolution of each House, approved, the broadcast of such programs;”.

*Broadcasting Services Amendment (No. 2) No. 2, 1993*

**NOTE**

1. No. 110, 1992, as amended. For previous amendments, see Nos. 167, 171, 216 and 218, 1992; and No. 1, 1993.

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*[Minister's second reading speech made in—  
House of Representatives on 6 May 1993  
Senate on 12 May 1993]*