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THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

SENATE

BROADCASTING SERVICES BILL 1992

SUPPLEMENTARY EXPLANATORY MEMORANDUM
AND CORRECTIONS

Amendments to be Moved on Behalf of the Government

(Circulated by the authority of the Minister for Transport
and Communications, Senator the Hon. Bob Collins)



BROADCASTING SERVICES BILL 1992

OUTLINE

The Government is proposing to move a number of minor miscellaneous amendments to the Broadcasting Services Bill 1992 to: facilitate the continuation of the assessment phase for the allocation of satellite subscription television broadcasting licences; correct a minor technical drafting error; reconcile an inconsistency between clauses 14 and 16 of the Bill; remove an unintended prohibition in clause 96 on the ABA allocating satellite subscription television broadcasting licences after 1 July 1997 for services using a subscription television satellite (that is, one operated by AUSSAT); and prevent the ABA from delegating its principle planning powers.

FINANCIAL IMPACT

The proposed amendments will have no financial impact.

NOTES ON CLAUSES

Proposed amendment 1

The first proposed amendment would allow earlier commencement of clauses 1, 2, 3, 6, 93(1) and (3) and 95 upon Royal Assent to allow the selection process for the four-transponder satellite subscription television broadcasting licence to proceed during the period leading up to the commencement of the rest of the legislation, and the establishment of the ABA.

Proposed amendment 2

This proposed amendment would amend subclause 6(3) so that declarations by the ABA that a drama program is not an Australian program can only be made in relation to a program of the type referred to in paragraph (a) of the definition of "Australian drama program" in subclause 6(1), that is, a program that has been made wholly or substantially in Australia or in an external Territory and has a significant Australian content.

Proposed amendment 3

This proposed amendment would insert two new subclauses into clause 13 to enable the Minister to specify, by notice in the Gazette, services provided by a national broadcaster to which subclause 13(2) is not to apply. The effect of this amendment would be that the Minister may specify that certain subscription broadcasting or subscription or open

narrowcasting services provided by a national broadcaster are to come within the ambit of the definition of "national broadcasting services" in subclause 13(1) so that, except as expressly provided by the Bill, the regulatory regime established by the Bill will not apply to those services.

All ministerial specifications under this clause are to be subject to parliamentary oversight as disallowable instruments.

Proposed amendment 4

This proposed amendment is a minor technical drafting amendment.

Proposed amendment 5

This proposed amendment is a tidying up exercise which would make the reference to the (wide) appeal of subscription broadcasting service programs in paragraph 16(a) of the Bill consistent with a similar reference in paragraph 14(a) to the (wide) appeal of commercial broadcasting service programs.

Proposed amendments 6, 7 and 8

These proposed amendments would apply to satellite subscription television broadcasting licences those provisions in clause 74 which enable a person to seek an ABA opinion on whether that person is, or would be if a transaction took place, in a position to exercise control.

Proposed amendment 9

This proposed amendment is to correct a problem with clause 96 of the Bill. Currently, that clause would have the effect of preventing the ABA from allocating a licence after 1 July 1997 to provide a subscription television broadcasting service with the use of a subscription television satellite (ie. an OPTUS satellite). The proposed amendment would give the ABA a general power to allocate subscription television broadcasting licences (in proposed new clause 96(1)), but would prevent the ABA from allocating such a licence before 1 July 1997 where the service uses a satellite. This prohibition is subject to clause 93 of the Bill which allows: the price based allocation system for the four-transponder and single-transponder licences to provide for the ABA to allocate a licence for a service which uses a subscription television satellite (clause 93(3)); or the Minister to direct the ABA to allocate such a licence to an applicant (clause 93(4)).

Proposed amendment 10

This proposed amendment would substitute a new subparagraph 121(4)(b)(i) in the Bill to make it clear that the ABA does not have to register a code of practice unless it is satisfied that the code provides appropriate safeguards in relation to the matters covered by the code. The current wording of that subparagraph, ie that the code "deals adequately" with the subject of the code, is ambiguous and may allow an argument that the ABA must register a code which, eg provided for 30 minutes of advertising per hour, so long as the code otherwise is "adequate" or comprehensive in the manner in which it deals with that subject.

Proposed amendment 11

This proposed amendment is to amend clause 18(2) of Schedule 3 to prevent the ABA delegating its planning powers at clauses 24, 25 and 26. It is not considered appropriate that such planning powers be exercised other than by the ABA given the major impact that such decisions will have on the development of the broadcasting industry and the provision of broadcasting services.

CORRECTIONS

The following corrections are made to the Explanatory Memorandum for the Broadcasting Services Bill 1992, introduced into the Senate on 4 June 1992.

Correction 1

Page 26, clause 21, first paragraph, delete "Any opinion given will be binding on both the ABA and the person requesting the opinion;" and substitute "Any opinion given will be binding on the ABA and other Commonwealth agencies only;".

Correction 2

Page 61, Subdivision B, at the title, delete "and Control".

Correction 3

Page 76, clause 145, first line, delete "written".