

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

COMMUNICATIONS AND THE ARTS LEGISLATION AMENDMENT BILL
1994

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Communications and the Arts,
the Hon Michael Lee MP)

COMMUNICATIONS AND THE ARTS LEGISLATION AMENDMENT BILL 1994

OUTLINE

This Bill amends the following 6 Acts administered within the Communications and the Arts portfolio:

Australian Broadcasting Corporation Act 1983
Australian Film, Television and Radio School Act 1973
Broadcasting Services Act 1992
Radiocommunications Act 1992
Special Broadcasting Service Act 1991
Telecommunications Act 1991.

The main amendments are to the Radiocommunications Act and will assist the implementation of a new apparatus licensing scheme. The other amendments make minor policy changes to enhance existing schemes, improve mechanisms for implementing them, and make minor drafting changes as described below.

Australian Broadcasting Corporation Act 1983

The Bill repeals section 70 of the *Australian Broadcasting Corporation Act 1983* to remove the requirement for the ABC to obtain Ministerial approval prior to entering into contracts above a set threshold (currently set by Regulation at \$2,000,000) and lease back arrangements. The Government considers that responsibility for determining contract and lease back arrangements should be a matter for the Board and management of the ABC consistent with their overall responsibility for the financial management of the ABC.

Australian Film, Television and Radio School Act 1973

The Bill amends the *Australian Film, Television and Radio School Act 1973* to make minor changes relating to the operation of the School. The amendments extend participation in the management of the School by enabling part-time staff who have been employed with the School for more than 12 months or who have a 12 month contract of employment to vote for, and stand for election for, the staff-elected position on the School's Council. The Bill also reduces the number of Council members required to form a quorum at Council meetings from 6 to 5.

Broadcasting Services Act 1992

The Bill amends the *Broadcasting Services Act 1992* to clarify a number of drafting anomalies and to adopt current Commonwealth practice of expressing maximum financial penalties in terms of "penalty units", in accordance with

section 4AA of the *Crimes Act 1914*. Minor technical amendments are made to certain definitions to clarify that Australian drama content requirements placed on subscription television broadcasting licences are not confined to satellite services, but apply to all subscription television broadcasting services devoted primarily to drama (as specified in section 102 of the Act). The amendments also clarify that the penalty provisions and enforcement powers of the Australian Broadcasting Authority relating to breaches of the ownership and control rules also apply to subscription television broadcasting licences, as originally intended.

Radiocommunications Act 1992

The Bill amends the *Radiocommunications Act 1992* to assist the implementation of a new apparatus licensing regime and make other improvements in relation to various operational matters identified since the Spectrum Management Agency (SMA) commenced operations on 1 July 1993. Some amendments correct minor technical or drafting errors.

The amendments insert a new Division 8 in Part 3.3 of the Act to provide a mechanism to allow a licensee to transfer an apparatus licence to another person. When an apparatus licence is transferred, it will remain in force for the balance of the original term of the licence, subject to any later administrative action to suspend or cancel the licence. The transferred licence will also be subject to the same conditions as applied to the licence immediately before the transfer. The amendments give the SMA the power to make a disallowable determination that certain types of licences are not to be transferred, or specifying circumstances in which a licence may not be transferred.

The amendments will enable the SMA to accredit persons to issue frequency assignment certificates and take into account such certificates in its licensing decisions. A frequency assignment certificate will certify that the operation of a device will not unacceptably interfere with radiocommunications.

The Act currently provides that licences, including short-term licences, may be issued only in compliance with the spectrum plan or relevant frequency band plans. This provision restricts the flexibility of the SMA to deal with major public events such as the Australian Grand Prix. An amendment is proposed to enable the SMA to issue short-term licences to deal with such events. These short-term licences will be limited to terms of 30 days and may be renewed only once.

The Bill inserts new provisions intended to improve the scheme under Part 4.1 of the Act which requires compliance of radiocommunications equipment with standards, technical licence specifications and class licences. These new provisions reflect schemes in Europe for the monitoring of compliance with quality assurance programs in the manufacture or importation of radiocommunications devices, and will allow the SMA to publish a notice in the

Gazette requiring manufacturers or importers of devices to conduct quality assurance programs or ensure that such programs are conducted in relation to the devices they are manufacturing or importing.

The amendments extend the scheme which allows penalties to be paid by persons in lieu of prosecution under the Act. The amendments will allow for the payment of a fine in lieu of prosecution for offences relating to class licences. Such a provision applies in respect of other licence types and this amendment will correct an anomaly in the current provisions.

The Bill contains various other minor amendments to the Radiocommunications Act and these are explained in the notes on clauses.

Special Broadcasting Service Act 1991

The Bill repeals section 67 of the *Special Broadcasting Services Act 1991* to remove the requirement for the SBS to obtain Ministerial approval prior to entering into contracts above a set threshold, currently \$2,000,000. The Government considers that responsibility for entering into contracts should be a matter for the Board and management of the SBS, consistent with their overall responsibility for the financial management of the SBS.

Telecommunications Act 1991

The Bill amends the *Telecommunications Act 1991* to adopt current Commonwealth practice of expressing maximum financial penalties in terms of "penalty units", in accordance with section 4AA of the *Crimes Act 1914*.

FINANCIAL IMPACT STATEMENT

It is not possible to make a firm estimate of the financial impact of the proposed amendments to the Radiocommunications Act. The proposed provision for the transfer of apparatus licences will involve a transfer fee which is currently proposed by the SMA to be \$30 to reflect the cost of administration involved. Payment of such fees should therefore offset any direct administrative costs. There is otherwise no direct cost or revenue benefit to the Commonwealth. Transferability of licences is likely to result in a secondary market for exchange of licences. This is seen to have positive effects for the economy through facilitation of provision of services but the financial effects cannot be quantified.

The provision to require quality assurance programs to be conducted for equipment will improve overall quality of Australian manufactured, or imported, products and will produce a source of further work for providers of quality assurance certification in Australia.

The other amendments in the Bill are not expected to have a significant impact on Commonwealth expenditure or revenue.

NOTES ON CLAUSES

Clause 1 - Short title

Clause 1 provides for the citation of the *Communications and the Arts Legislation Amendment Act 1994*.

Clause 2 - Commencement

Clause 2 provides for the Bill, apart from items 67 and 68 of the Schedule, to commence on Royal Assent.

Items 67 and 68, which enable the SMA to determine, by disallowable instrument, "generic" conditions for apparatus licence types, will commence on a day to be fixed by Proclamation or, failing this, within 6 months after Royal Assent.

Clause 3 - Amendment of Acts

Clause 3 provides that the Acts specified in the Schedule are amended as set out in the Schedule and in accordance with clause 2. Those amendments are as follows.

SCHEDULE

Australian Broadcasting Corporation Act 1983

Item 1 - Section 70

This item repeals section 70 of the *Australian Broadcasting Corporation Act 1983* to remove the obligation on the ABC to obtain Ministerial approval before entering into contracts above a threshold (currently \$2,000,000) or lease back arrangements.

The ABC Board should be fully and clearly accountable for ABC activities under the ABC Act. The requirements of section 70 run contrary to this intention and fail to operate as an effective prudential control as Ministers do not have access to commercial information which would enable them to make informed decisions on contracts. By repealing the section, the ABC Board is made clearly accountable as it will have full responsibility for ensuring appropriate contract and lease back arrangements for the ABC.

Australian Film, Television and Radio School Act 1973

Item 2 - Paragraph 8(1)(b)

Items 2 and 3 amend section 8 of the *Australian Film, Television and Radio School Act 1973* to enable part-time staff of the school to vote for, and be elected to, a Council position.

Item 2 substitutes a new paragraph 8(1)(b) which permits "staff members" to elect a staff member to the Council of the Australian Film, Television and Radio School. A definition of the term "staff member" for the purposes of this provision is inserted by item 3.

Item 3 - Section 8

This item includes a new definition, for the purposes of section 8, of "staff member". The term is defined to be a person who has been employed by the School full-time or part-time for at least 12 months, or has a term of employment which is at least 12 months.

Item 4 - Paragraph 20(7)(a) and (b)

This item reduces the quorum for meetings of the Council from 6 members to 5.

Item 5 - Paragraph 51(f)

This item amends a provision to express the amount of a fine in terms of penalty units, in accordance with section 4AA of the *Crimes Act 1914*.

Broadcasting Services Act 1992

Item 6 - Subsection (6)(1) (definition of "Australian drama program")

Section 102 of the *Broadcasting Services Act 1992* provides that each subscription television broadcasting licence is subject to the condition that, if the licensee provides a service devoted predominantly to drama programs, the licensee will ensure that at least 10% of the licensee's program expenditure in relation to that service is spent on new Australian drama programs.

The definition of "drama program" and "Australian drama program" in subsection 6(1) of the Act are specified to relate to satellite subscription television broadcasting licences.

Item 6 removes the word "satellite" from the definition of "Australian drama program" so that the definition applies to all subscription television broadcasting licences, whether satellite or otherwise.

Item 7 - Subsection 6(1) (paragraph (a) of the definition of "Australian drama program")

Subsection 6(3) of the Act is intended to enable the Australian Broadcasting Authority (the ABA) to declare that although a drama program that is made wholly or substantially in Australia or in an external Territory and has a significant Australian content, it is not an "Australian drama program". The ABA has this discretion if satisfied that the drama program has non-Australian content of such significance that it should not be treated as an Australian drama program.

There are several minor drafting anomalies in the definition of "Australian drama program" and subsection 6(3) which make the operation of the provision unclear.

Items 7, 8 and 10 amend the definition of "Australian drama program" and subsection 6(3) to clarify the operation of the provisions. In particular, the amendments ensure that the ABA's power to make declarations under subsection 6(3) that specified programs should not be treated as Australian relates only to programs which come within paragraph (a) of the definition, and not programs which come within that definition under another paragraph of that definition.

Item 8 - Subsection 6(1) (definition of "Australian drama program")

This item is consequential to item 7. The amendment assists in clarifying the operation of the ABA's power in subsection 6(3) of the Act.

Item 9 - Subsection 6(1) (definition of "drama program")

This item removes the word "satellite" from the definition of "drama program" so that the definition applies to all subscription television broadcasting licences, whether satellite or otherwise (see the notes on item 6).

Item 10 - Subsection 6(3)

This item is a consequential amendment to item 7. The amendment assists in clarifying the operation of the ABA's power in subsection 6(3) of the Act.

Item 11 - Subsection 6(3)

This item corrects a minor cross-referencing error. Subsection 6(3) should refer to paragraph (a) of the definition of "Australian drama program", rather than that paragraph of the definition of "drama program".

Items 12 to 25

These items amend various provisions to express amounts of fines in terms of penalty units, in accordance with section 4AA of the *Crimes Act 1914*.

Item 26 - Paragraph 111(a)

This item corrects a minor drafting anomaly to apply the powers of the ABA to issue notices directing remedy of a breach to the ownership and cross-media restrictions which apply to satellite subscription television licences A and B.

Item 27 Paragraph 111(c)

This item corrects a minor drafting anomaly by adopting certain ownership and control offences and ABA corrective powers which are expressed to apply to commercial television broadcasting licences and applies them to all subscription television broadcasting licences, not simply satellite subscription television licences A and B.

Items 28 to 46

These items amend various provisions to express amounts of fines in terms of penalty units, in accordance with section 4AA of the *Crimes Act 1914*.

Item 47 -Subsection 156(1)

Section 156 of the *Broadcasting Services Act 1992* provides for the appointment of associate members of the Australian Broadcasting Authority to assist with the work of the Authority.

Subsection 156(1) of that Act currently allows associate members to be appointed only for the purposes of a particular investigation or hearing, or for investigations or hearings of a particular type. It does not allow associate members to be appointed generally for the purposes of the ABA's functions.

The amendment will allow associate members to be appointed to the ABA generally in addition to appointments for particular purposes.

Item 48 - Subparagraph 157(2A)(a)

This item corrects a typographical error in the Act.

Items 49 to 51

These items amend various provisions to express amounts of fines in terms of penalty units, in accordance with section 4AA of the *Crimes Act 1914*.

Radiocommunications Act 1992**Item 52 - Section 5 (definition of "certificate")**

Items 52, 63, 106 and 107 amend the *Radiocommunications Act 1992* to enable the SMA to accredit persons to issue frequency assignment certificates and take into account such certificates in its licensing decisions. A frequency assignment certificate will certify that the operation of a device will not unacceptably interfere with radiocommunications.

This item amends the definition of "certificate" consequential upon the new subsection 100(4) inserted by item 63 to include references to "frequency assignment certificates" and any other kind of certificate that may be issued under the Act.

Item 53 - Paragraph 11(2)(b)

This item corrects a minor typographical error.

Items 54 to 57

These items amend various provisions to express amounts of fines in terms of penalty units, in accordance with section 4AA of the *Crimes Act 1914*.

Item 58 - Paragraph 82(1)(a)

This item corrects a minor typographical error.

Item 59 - Subsection 86(1)

Subsection 86(1) of the Act requires the parties to the assignment of whole or part of a spectrum licence to give to the SMA such information as it requires to amend the Register of Radiocommunications Licences.

Subsection 86(2) prevents the assignment taking effect before the Register is amended.

Items 59 and 61 amend subsections 86(1) and (2) to make it clear that the parties are only required to give information if the assignment will result in a change of

licensee, the issue of a spectrum licence, the variation of the conditions of such a licence or the cancellation of such a licence.

The purpose of this amendment is to make it clear that information for the purpose of amending the Register is only required to be given to the SMA if the information on the Register is affected.

Item 60 - Subsection 86(1)

This item inserts into the subsection the words "if any" to put beyond doubt that the SMA may not require parties to an assignment to provide information to the SMA regarding an assignment of interests in a spectrum licence.

Item 61 - Subsection 86(2)

This item amends subsection 86(2) to make it clear that an assignment of a spectrum licence will not take effect until the Register is amended if the assignment involves a change covered by subsection (1).

Item 62 - Subsection 89(2)

This item corrects a minor drafting error.

Item 63 - After subsection 100(4)

Items 52, 63, 106 and 107 amend the *Radiocommunications Act 1992* to enable the SMA to accredit persons to issue frequency assignment certificates and take into account such certificates in its licensing decisions.

Item 63 inserts new subsections 100(4A) and (4B) in the Act.

New subsection 100(4A) will enable the SMA, in deciding whether to issue an apparatus licence, to have regard to a frequency assignment certificate issued by an accredited person.

A frequency assignment certificate will state that the operation of a device on specified frequencies or a specified frequency channel, at a specified constancy, at a specified location and subject to specified technical conditions will not cause an unacceptable level of interference to the operation of radiocommunications.

New subsection 100(4B) will enable the SMA to determine what are unacceptable levels of interference for the purpose of section 100. Such a determination would provide guidance to accredited persons issuing certificates for the purposes of the section.

Item 64 - Subsection 100(5)

This item substitutes a new subsection 100(5) to allow the SMA to take into account, when deciding whether to issue an apparatus licence, whether an applicant for a licence had an apparatus licence cancelled in the 2 years prior to the most recent application.

Currently, subsection 100(5) does not allow the SMA to issue a licence to an applicant who has had an apparatus licence cancelled in the 2 years prior to the application. The current provision could result in major difficulties, particularly in relation to organisations or corporations that hold a large number of licences. For example, the provision would prevent the SMA from issuing the corporation with any licences, which includes renewing existing licences, for a 2 year period from the cancellation of a licence. It is considered that this may constitute a penalty which far outweighs the seriousness of the circumstances resulting in the cancellation of a single licence.

Item 65 - Section 104

This item substitutes a new section 104 to enable the SMA to issue short-term apparatus licences that are inconsistent with the spectrum plan or any relevant frequency band plan to allow the flexibility to deal with major public events such as the Australian Grand Prix. Criteria will be developed to ensure that the temporary licences will not become a means of avoiding the normal licensing requirements, and to minimise the potential for interference from devices licensed under the new section 104.

These short-term licences will have a maximum term of 30 days (subsection (2)) and may be renewed under section 130 on one occasion only (subsection (3)). Restriction to one renewal emphasises the special nature of these licences. If a licensee who has had one renewal were to apply to the SMA for a fresh licence relating to the same service, there would need to be a strong justification before another short-term licence could be issued, given the purpose of this provision.

Item 66 - Paragraph 106(2)(a)

This item corrects a minor drafting error.

Item 67 - Paragraph 107(1)(f)

Paragraph 107(1)(f) of the Act enables generic licence conditions applying to all, or a class of, radiocommunications licences to be specified in regulations.

Item 67 substitutes a new paragraph 107(1)(f) to enable the SMA to determine, by disallowable instrument, "generic" conditions for apparatus licence types.

The apparatus licensing scheme under this Part of the Act is structured upon disallowable instruments determined by the SMA (see section 98).

The SMA requires flexibility to quickly determine and vary "generic" licence conditions, rather than having to rely on the more drawn out process of making regulations. It is considered appropriate that the SMA should have this more flexible power as it is consistent with the SMA's responsibilities for administering the licensing of radiocommunications operations under the Act.

It is considered desirable that the SMA be able to use the same mechanism to create generic conditions for a licence type when determining the licence type. Item 68 amends section 107 to make a determination under the new paragraph 107(1)(f) a disallowable instrument.

Item 68 - Section 107

This item inserts a new subsection 107(4) which makes a determination under the new paragraph 107(1)(f) a disallowable instrument.

Item 69 - Subparagraph 108(2)(d)(ii)

This item corrects a minor typographical error.

Item 70 - Section 111

This item inserts new subsections 111(2) to (4) to require a notification given to a licensee about an SMA decision to change the conditions of a licence to specify that the licensee may request a statement of reasons from the SMA in relation to the decision (new paragraph 111(2)(a)). The notice must specify that the request must be made within 28 days of being notified of the decision (new paragraph 111(2)(b)). A person receiving such a notice may request a statement of reasons for the SMA's decision within 28 days (new subsection 111(3)). If the SMA receives such a request, it is required to provide a statement within 28 days of receiving the request (new subsection 111(4)).

Items 71 to 73

These items amend various provisions to express amounts of fines in terms of penalty units, in accordance with section 4AA of the *Crimes Act 1914*.

Item 74 - Section 124

This item inserts a new subsection 124(4) to require a person who has had a certificate of proficiency cancelled by the SMA to return that certificate to the SMA within 7 days of being notified of the cancellation. The certificate must be returned by hand or certified mail. It will be an offence not to comply with this new subsection, attracting a penalty of 20 penalty units, currently \$2 000.

This new subsection is intended to prevent persons who have had their certificates cancelled from continuing to use the certificate document to operate radiocommunications devices, for example as a marine radio operator, when they are no longer qualified to do so.

Item 75 - Subsection 130(3)

This amendment substitutes a new subsection 130(3) in the Act consequential to the amendment at Item 64. When the SMA is deciding whether to renew a licence, the new subsection requires it to have regard to the same matters to which it must have regard under subsections 100(4) and (6) when issuing a licence, and enables it to have regard to the same matters to which it may have regard under subsection 100(5) when issuing a licence.

Item 76 - Subsection 130(5)

This amendment is consequential to the amendment at Item 77.

Item 77 - Section 130

This item inserts new subsections 130(6) to (8) to enable a licensee to request a statement of reasons from the SMA in relation to a decision to refuse to renew a licensee's licence. When the SMA notifies a licensee of such a decision, the notice must specify that the licensee may request a statement of reasons from the SMA in relation to the decision (new paragraph 130(6)(a)). The notice must specify that the request must be made within 28 days of being notified of the decision (new paragraph 130(6)(b)). A person receiving such a notice may request a statement of reasons for the SMA's decision within 28 days (new subsection 130(7)). If the SMA receives such a request, it is required to provide the statement within 28 days of receiving the request (new subsection 130(8)).

Subsection 130(5) currently requires a statement of reasons whenever there is a change to licence conditions on renewal. This creates an unnecessary administrative burden as many changes are of a minor technical nature and are non-contentious.

Item 78 - After section 131

This item inserts new sections 131AA - 131AC to enable the transfer of apparatus licences.

The SMA has completed an inquiry into the apparatus licence system and reported on its proposals to the Minister for Communications and the Arts. The inquiry considered, amongst other things, the opportunities for increasing operational flexibility for apparatus licensees, including facilitating the transfer

of licences between spectrum users. Submissions to the inquiry generally supported a proposal to allow transfer of an apparatus licence with no change to the terms and conditions applying to the licence.

With the commissioning of its new licensing computer system (RADCOM) in March 1995, the SMA proposes to allow transfers of most apparatus licences where requested by licensees.

New section 131AA allows a licensee to make a written application to the SMA for his or her licence to be transferred to another person (subsection (1)). The application must be signed by both the licensee and the proposed transferee (subsection (2)). The SMA may require different application forms in relation to different licence types (subsection (3)).

New section 131AB allows the SMA to transfer an apparatus licence upon application (subsection (1)). When the SMA is deciding whether to renew a licence, new subsection (2) requires it to have regard to the same matters to which it must have regard under subsections 100(4) and (6) when issuing a licence, and enables it to have regard to the same matters to which it may have regard under subsection 100(5) when issuing a licence.

When the licence is transferred, it will remain in force for the same period as it would have for the initial licensee, subject to any decision to suspend or cancel the licence - in other words, the transferee gets the residue of the term of the licence (paragraph (3)(a)). The transferred licence will also be subject to the same conditions as applied to the licence immediately before the transfer, subject to any decision to change those conditions (paragraph (3)(b)).

New section 131AC allows the SMA to make a determination that particular types of licences are not transferable (paragraph (1)(a)) - (for example, it is intended that amateur licences will not be transferable), or specifying circumstances in which a licence may not be transferred (paragraph (1)(b)). Determinations will be disallowable instruments (subsection (2)).

The amendments in items 79, 112 and 113 are related to this amendment.

Item 79 - Section 148

This amendment is consequential to the amendments at Item 78, and inserts a new paragraph 148(d) to require the SMA to change the Register of Radiocommunications Licences to take account of any transfers of apparatus licences.

Item 80 - Paragraph 153(4)(c)

Paragraph 153(4)(c) of the Act requires the SMA, on making a correction to the Register, to notify, in addition to the licensee and the applicant for the

correction, "any other person whose interests are likely to be affected". There is uncertainty about the scope of this obligation as the SMA has no reliable way of determining who such persons are.

Item 80 substitutes a new paragraph 153(4)(c) to provide that the only additional persons to be notified are those who have asked the SMA to be advised of corrections to the Register in relation to the affected licences.

A related amendment is at item 81.

Item 81 - Section 153

This amendment is related to the amendment at Item 80, and inserts a new subsection 153(6) to allow persons to notify the SMA that they wish to be notified of corrections to the Register in relation to particular licences.

Items 82 to 88

These items amend various provisions to express amounts of fines in terms of penalty units, in accordance with section 4AA of the *Crimes Act 1914*.

Item 89 - After subsection 182(1)

This item inserts new subsections 182(1A) and (1B) to improve the scheme under Part 4.1 of the Act which requires compliance of radiocommunications equipment with standards, technical licence specifications and class licences.

Subsection 182(1) of the Act enables the SMA to publish a notice requiring manufacturers and importers of devices which make radio emissions or which can be interfered with by radio emissions to affix labels to the devices indicating whether the device complies with specified standards, technical licence specifications or class licences.

New subsection 182(1A) will enable the SMA, in its notice under subsection 182(1), to require manufacturers or importers of devices included in a specified class of devices to conduct quality assurance programs, or to satisfy themselves that quality assurance programs have been conducted, in relation to the devices.

New subsection 182(1B) will enable such a notice to require the manufacturers or importers, having regard to the results of the quality assurance programs, to affix labels to such devices stating whether or not the devices comply with the relevant standards, technical licence specifications and class licences.

These new subsections will reflect schemes in Europe for the monitoring of compliance with quality assurance programs in the manufacture or importation of radiocommunications devices.

Related amendments are at items 90, 92 and 110.

Item 90 - After subsection 182(4)

This amendment is related to the amendment at Item 89, and inserts a new subsection 182(4A) to allow a notice published under subsection 182(1) to specify requirements that must be met after affixing a label to a device, including a requirement to retain for inspection, records relating to quality assurance programs conducted in accordance with the notice, or the results of tests for compliance with relevant standards, technical licence specifications and class licences.

Item 91

This item amends a provision to express the amount of a fine in terms of penalty units, in accordance with section 4AA of the *Crimes Act 1914*.

Item 92 - After section 187

This amendment is related to the amendment at Item 90, and inserts a new section 187A to make it an offence not to comply with the requirements to be met after a label has been affixed as specified in a notice published under subsection 182(1). The penalty for such an offence is 20 penalty units, currently \$2 000.

Items 93 to 98

These items amend various provisions to express amounts of fines in terms of penalty units, in accordance with section 4AA of the *Crimes Act 1914*.

Item 99 - Section 199

Section 199 of the Act creates an offence where a person uses a transmitter in a manner that the person knows is likely to cause an explosion.

This amendment creates an exception to the offence to recognise that a person may have a reasonable excuse for causing an explosion by the operation of a radiocommunications device. An example where a reasonable excuse would apply would be those mining operations which are authorised to detonate mining charges by the operation of remote control radio.

Items 100 - 102

These items amend various provisions to express amounts of fines in terms of penalty units, in accordance with section 4AA of the *Crimes Act 1914*.

Item 103 - Subsection 237(1)

This amendment corrects a typographical error.

Item 104 - Subsection 238(2)

This item amends subsection 238(2) to enable the SMA to delegate to an authority of the Commonwealth its power to issue or cancel certificates of proficiency. For example, it may be desirable for the Australian Maritime Safety Authority to be able to issue or cancel such certificates in relation to the operation of marine transmitters.

Item 105 - Subsection 238(3)

Subsection 238(3) of the Act enables the Spectrum Manager to delegate to the ABA the SMA's powers to issue:

- licences authorising operation of radiocommunications devices using broadcasting services bands spectrum; and
- certificates of proficiency relating to the operation of such devices.

Item 105 substitutes a new subsection (3) to allow the SMA to delegate to the ABA its power to issue, renew, suspend or cancel licences using the broadcasting services bands, and to impose one or more further conditions, or vary or revoke any condition, applying to such a licence.

The power to issue certificates of proficiency will be able to be delegated to the ABA under subsection 238(2), as amended by item 104.

Item 106 - After subsection 263(2)

Section 263 of the Act enables the SMA to accredit persons to issue particular kinds of certificates under the Act.

Items 52 and 63 amend the *Radiocommunications Act 1992* to enable the SMA to accredit persons to issue frequency assignment certificates and take into account such certificates in its licensing decisions. A frequency assignment certificate will certify that the operation of a device will not unacceptably interfere with radiocommunications.

As a consequence of these changes, it is desirable that the SMA be able to determine conditions of a person's accreditation that are to apply in relation to the issuing of certificates. Under paragraph 264(b) of the Act, accreditation can be withdrawn where a person has been incorrectly issuing certificates under the Act. It is intended that where a person did not comply with the conditions relating to the issuing of certificates, action could be taken under

paragraph 264(b). Any decision to withdraw a person's accreditation will be subject to review rights (see paragraph 285(w)).

Item 106 inserts a new subsection 263(2A) to provide that an instrument of accreditation given to a person by the SMA is subject to any conditions determined by the SMA under new section 266A (see item 107) or specified in the instrument.

Item 107 - After section 266

This item inserts a new section 266A in the Act to enable the SMA to determine the conditions that are to apply to issuing of certificates under the Act.

Under new subsection 266A(2), such a determination will be a disallowable instrument.

Item 108 and 109

These items amend various provisions to express amounts of fines in terms of penalty units, in accordance with section 4AA of the *Crimes Act 1914*.

Item 110 - Subsection 279(1)

Section 279 of the Act sets out the general powers of inspectors under the Act.

The amendment made by Item 110 is related to the amendments at Items 89, 90 and 92. Item 110 inserts a new paragraph 279(1)(e) to enable inspectors to require a person who has been required to retain certain records by a notice under subsection 182(1) to produce such records (see new subsection 182(4A)).

Item 111 - Subsection 279(2) (penalty)

This item amends a provision to express the amount of a fine in terms of penalty units, in accordance with section 4AA of the *Crimes Act 1914*.

Item 112 - After paragraph 285(m)

This item is consequential upon Item 78 and gives administrative review rights in relation to decisions to refuse to transfer an apparatus licence made under new section 131AB.

Item 113 - Subparagraph 293(b)(i)

This amendment is related to the amendments at Item 78, and allows the SMA to make charges for recovering its costs relating to the transfer of apparatus licences.

Items 114-116

These items amend various provisions to express amounts of fines in terms of penalty units, in accordance with section 4AA of the *Crimes Act 1914*.

Item 117- Paragraph 314(2)(d)

This item makes a minor amendment consequential upon item 121.

Item 118 - Subsection 314(5)

This item amends a provision to express the amount of a fine in terms of penalty units, in accordance with section 4AA of the *Crimes Act 1914*.

Item 119 - After section 314

This item inserts a new section 314A in the Act to enable instruments made under the Act to adopt by reference any matter in other instruments or documents as in force at a particular time or from time to time.

Currently, the operation of paragraph 46A(1)(b) and section 49A of the *Acts Interpretation Act 1901* ensures that disallowable instruments made under the Act that adopt any material in a disallowable instrument made under a different provision of the Act can only adopt it as it appears at a particular time - any subsequent change to that material must be adopted by making a further instrument.

This requirement has proved to be a heavy administrative burden as the many determinations made under the Act are not made under a single enabling provision so that whenever any determination is amended, every other determination that refers to that determination must also be amended.

The new section overcomes this difficulty and specifically provides that section 49A of the *Acts Interpretation Act* does not apply to instruments made under the Act.

Item 120- Section 315 (penalty)

This item amends a provision to express the amount of a fine in terms of penalty units, in accordance with section 4AA of the *Crimes Act 1914*.

Item 121 - After paragraph 315(c)

Paragraph 314(2)(d) and section 315 of the Act enable regulations to set out a scheme for penalties to be paid by persons in lieu of prosecution under the Act.

Part 5 of the Radiocommunications Regulations sets out the details of the infringement notice scheme for payment of penalties.

Section 315 sets out the amount of penalty in relation to various offences under the Act for the purposes of the scheme.

Item 121 inserts a new paragraph 315(ca) which provides for the calculation of the amount of a penalty in lieu of prosecution for an offence in relation to the operation of radiocommunications devices or the possession of such devices except as authorised by a class licence.

Special Broadcasting Service Act 1991

Item 122 - Section 67

This item repeals section 67 of the SBS Act which requires the SBS to obtain Ministerial approval prior to entering into contracts above a threshold, currently \$2 000 000.

The SBS Board should be fully and clearly accountable for SBS activities under the SBS Act. The requirements of section 67 run contrary to this intention and fail to operate as an effective prudential control as Ministers do not have access to commercial information which would enable them to make informed decisions on contracts. By repealing the section, the SBS Board is made clearly accountable as it will have full responsibility for ensuring appropriate contract arrangements for the SBS.

Telecommunications Act 1991

Items 123 to 128

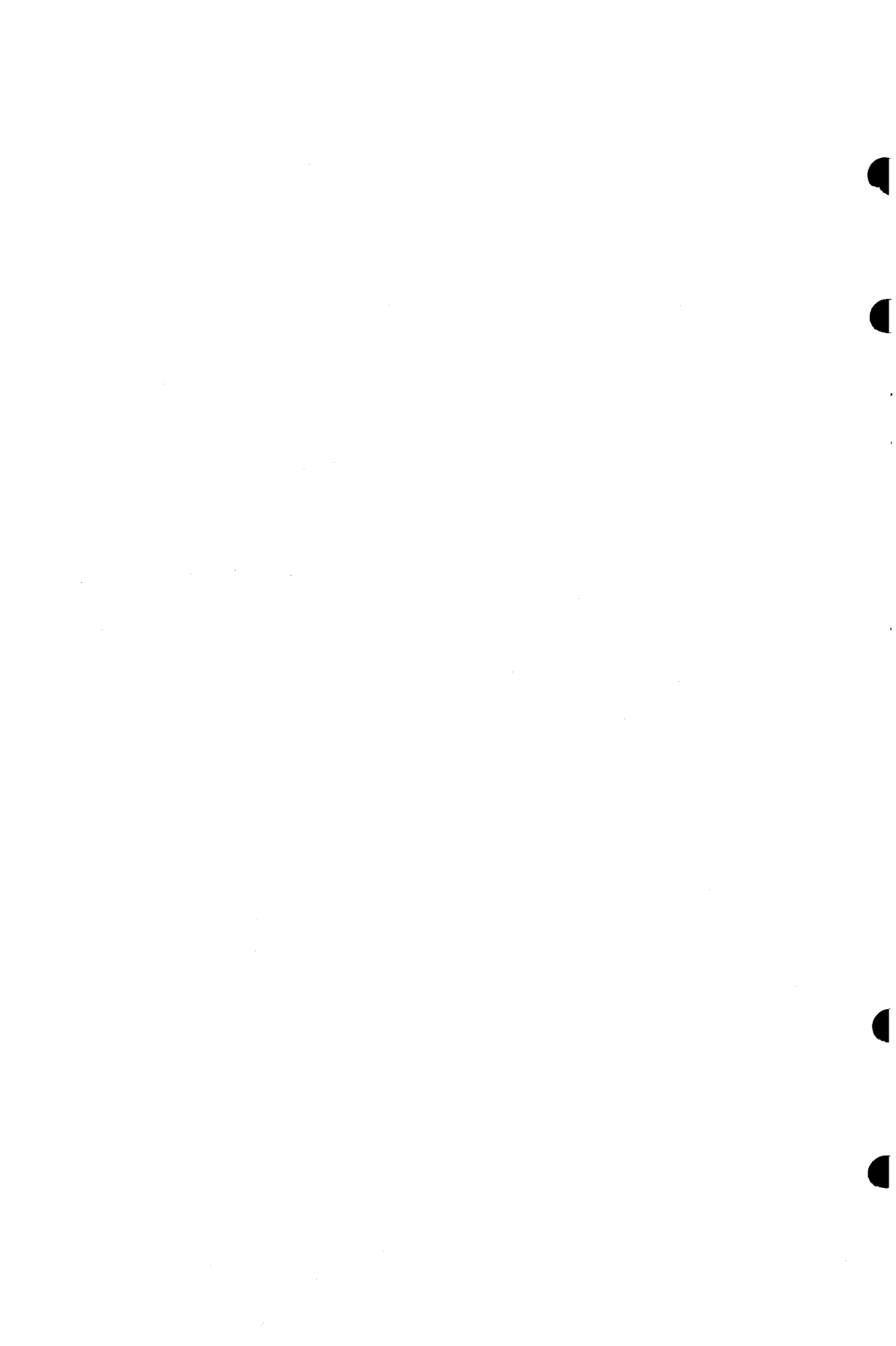
These items amend various provisions to express amounts of fines in terms of penalty units, in accordance with section 4AA of the *Crimes Act 1914*.

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