

1987

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

COMMUNICATIONS LEGISLATION AMENDMENT BILL 1987

EXPLANATORY MEMORANDUM

(circulated by the Authority of the Minister for Communications,
the Hon Michael Duffy MP)

OUTLINE

The purpose of the Communications Legislation Amendment Bill is to make miscellaneous amendments to four Acts, namely the Overseas Telecommunications Act 1946, the Postal Services Act 1975, the Radiocommunications Act 1983, and the Telecommunications Act 1975.

The most significant provisions of the Bill have the following objects:

- . to enable the Overseas Telecommunications Commission ('OTC') with the approval of the Minister for Communications, to engage in activities in Australia relating to telecommunications other than the actual provision of domestic telecommunications carriage;
- . to enable OTC to provide, with the Minister's approval, domestic and international telecommunications services for foreign countries;
- . to put in place a moratorium on the issuing under the Radiocommunications Act of transmitter licences where the transmitter is to be used to provide domestic pay-television; and
- . to make a number of improvements to administrative arrangements under the Radiocommunications Act.

Financial impact statement

The provisions of the Bill will have no adverse financial impact. The expansion of OTC's domestic powers and its power to provide telecommunications services for foreign countries will enable the Commission to better exploit its expertise in telecommunications and has the potential to increase the Commission's profit and consequent dividend payments to the Commonwealth. The vesting of a power in Australia Post to enter into currency and financial futures 'hedging contracts' provides an avenue for potential savings by the Commission.

NOTES ON CLAUSES

PART I - PRELIMINARY

Clauses 1 and 2 : Short title and Commencement

The first two clauses provide for the short title and commencement of the legislation. Clause 8 and Part V, which rectify minor drafting errors in the hedging contract provisions in the Overseas Telecommunications and Telecommunications Acts will be deemed to have come into operation on 24 June 1986 - the date on which the hedging contract provisions in those Acts came into operation. The remainder of the provisions will come into operation 28 days after Royal Assent.

PART II - AMENDMENT OF THE OVERSEAS TELECOMMUNICATIONS ACT 1946

Clause 3 : Principal Act

The Overseas Telecommunications Act 1946 is referred to as the Principal Act in Part II of the Bill.

Clause 4 : Commission may, with approval of Minister, engage in other activities relating to telecommunications

Clause 4 inserts a new section 34AA into the Principal Act. The proposed subsection 34AA (2) provides that the Commission may, with the approval of the Minister, engage in activities in Australia relating to telecommunications (other than the establishment, operation, provision or maintenance of telecommunications services) in which it would not otherwise be authorised to engage.

Proposed subsection (1) provides that the expression "telecommunications service" in the proposed section 34AA has the same meaning as in the Telecommunications Act 1975.

Proposed subsection (3) provides that where the Minister authorises the Commission to engage in activities under proposed subsection (2) the Commission has all the incidental powers that are needed for the undertaking of those activities.

Clause 5 : Commission's powers exercisable outside Australia

Clause 5 amends section 34A of the Principal Act by omitting the existing subsection (1) and substituting a new subsection. The proposed subsection provides that, subject to the need to abide by the laws of foreign countries in which it is engaging in activities, the powers of the Commission as conferred by section 34 and the proposed subsection 34AA(3) may be exercised within or outside Australia. The effect of the amendment is to remove the need for ministerial approval for the exercise of such powers overseas.

Clause 6 : Commission may enter into consultancy agreements

Clause 6 amends section 34B of the Principal Act by removing the need for the Commission to obtain ministerial approval before entering into agreements to provide consultancy services outside Australia.

Clause 7 : Commission may establish etc. telecommunications services for foreign countries

Clause 7 inserts a new section 34C into the Principal Act. Proposed subsection (1) provides that, with the approval of the Minister, the Commission may provide domestic or international telecommunications services in or for a foreign country.

Proposed subsection (2) endows the Commission with the powers incidental to engagement in such activities and subsection (3) provides that such powers may be exercised in the foreign country or in any other place including Australia or another country.

Proposed subsection (4) provides that while acting in foreign countries the Commission must comply with the law of those countries.

Clause 8 : Hedging contracts etc

Clause 8 corrects a drafting error in section 38AAA of the Principal Act by omitting the reference to section 45 and substituting a reference to section 45A.

Clause 9 : Policy of the Commission

Clause 9 amends section 38A of the Principal Act to exempt services made available in foreign countries pursuant to the proposed section 34C from the obligation on the part of the Commission to, amongst other things, make its services available at the lowest possible rates.

Clause 10 : Alteration of rates, services etc

Clause 10 amends section 75 so that ministerial approval will be required only in relation to changes to rates charged for overseas telephone calls or telegrams, the withdrawal of any category of overseas telephone call or telegram, the discontinuation of any overseas telephone or telegram service or the institution of any new overseas telephone or telegram service. At present approval is required in relation to changes to any kind of overseas message or communication and not only changes affecting telephone and telegram services.

PART III - AMENDMENT OF THE POSTAL SERVICES ACT 1975Clause 11 : Principal Act

The Postal Services Act 1975 is referred to as the Principal Act in Part III of the Bill.

Clause 12 : Hedging contracts etc

Clause 12 inserts a new section 82A into the Principal Act. The proposed subsection (1) will enable the Commission to enter into contracts and arrangements designed to reduce or eliminate the risk of financial loss to the Commission caused by the impact of interest rate or currency exchange rate fluctuations on contracts or the borrowing or raising of moneys.

The proposed subsection (2) enables the Minister to make (and revoke) guidelines for the Commission in relation to the exercise of its powers under the proposed subsection (1). The proposed subsection (3) provides that the Commission must exercise its powers under proposed subsection (1) in accordance with ministerial guidelines.

The proposed subsection (4) provides that a contract, dealing or other arrangement under proposed subsection (1) does not require the approval of the Minister under section 82. The proposed subsection (5) defines expressions used in proposed section 82A.

PART IV - AMENDMENTS OF THE RADIOCOMMUNICATIONS ACT 1983Clause 13 : Principal Act

The Radiocommunications Act 1983 is referred to as the Principal Act in Part IV of the Bill.

Clause 14 : Standards

Clause 14 amends section 9 of the Principal Act by omitting subsection (4) and by making a consequential amendment to subsection 9(9). The purpose of the proposed amendments is to remove the need to recommence the public consultation process which is required in the making of standards where a draft standard is amended by the Minister following initial public consultation.

Clause 15 : Spectrum Plans

Clause 15 amends section 18 of the Principal Act to enable the Minister to adopt or incorporate other documents into a spectrum plan. Where the Minister incorporates a document into a spectrum plan relevant parts of the document are to be attached to the spectrum plan and the attached document thereby becomes part of the plan.

Clause 16 - Frequency band plans

Clause 16 amends section 19 of the Principal Act to enable the Minister to adopt or incorporate other documents into a frequency band plan. Where the Minister incorporates a document into a frequency band plan the relevant parts of the documents are to be attached to the frequency band plan and the attached documents thereby become part of the plan.

Clause 17 - Publication and tabling of plans

Clause 17 amends section 20 of the Principal Act by omitting subsection (3) and making a consequential amendment to subsection (4). The purpose of the proposed amendments is to remove the need to recommence the public consultation process which is required in the making of spectrum plans and frequency band plans where a draft plan is amended by the Minister following initial public consultation.

Clause 18 - Transmitter licence

Clause 18 amends section 24 of the Principal Act. Section 24 is the Minister's power to grant transmitter licences. The proposed amendment draws attention to the fact that the power to grant licences will be limited partially by the proposed moratorium on the granting of licences to operate pay-television services which is contained in clause 19.

Clause 19 - Transmitter licences not to permit transmission of certain pay-television programs etc

Clause 19 inserts a new section 24A into the Principal Act. The proposed clause 24A prohibits the Minister from granting a transmitter licence that would permit the holder to operate a transmitter for the purpose of providing pay-television to domestic premises.

The proposed moratorium will not apply to services available only to non-domestic premises such as the video entertainment services which are currently delivered directly to hotels, motels, clubs and licensed premises or to information and text services such as 'teletext'.

The proposed subsection 24A(3) provides that the Governor-General may by Proclamation determine that the moratorium shall end on a specific day not before 1 September 1990. (This represents a minimum period of four years from the day the Government announced the moratorium on pay-television).

Clause 20 : Evidentiary certificates

Clause 20 amends section 84 of the Principal Act by adding three subsections to the existing provisions. The effect of the proposed amendments is to enable the Minister or a person authorised by the Minister to issue a certificate stating that at a time or during a period a specified person was or was not the holder of an instrument issued under the Principal Act. Such instruments include test permits, compliance statement certificates, licences, frequency reservation certificates, certificates of proficiency and temporary permits.

When such a certificate is issued by the Minister or an authorised person it will be prima facie evidence of the facts stated in it in proceedings under or arising out of the Principal Act.

PART V - AMENDMENTS OF THE TELECOMMUNICATIONS ACT 1975

Clause 21 - Principal Act

The Telecommunications Act 1975 is referred to as the Principal Act in Part V of the Bill.

Clause 22 - hedging contracts etc

Clause 22 corrects a drafting error in section 79A of the Principal Act by omitting the reference to section 72 and substituting a reference to section 72A.