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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TRANSPORT AND COMMUNICATIONS LEGISLATION AMENDMENT BILL
(No. 2) 1992

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments and New Clauses to be Moved on Behalf of the
Government

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

**TRANSPORT AND COMMUNICATIONS LEGISLATION AMENDMENT BILL
(No. 2) 1992**

OUTLINE

The proposed amendments to the Transport and Communications Legislation Amendment Bill (No. 2) 1992 will:

- . include 2 new clauses which will make some minor technical amendments to the *Civil Aviation Act 1988*;
- . include 4 new clauses which will amend the *Telecommunications Act 1991* to enable a fee to be charged for the grant of the third public mobile licence - these amendments should be read together with the proposed Telecommunications (Public Mobile Licence Charge) Bill 1992; and
- . amend the proposed new paragraph 183(3)(b) of the *Telecommunications Act 1991*, to be inserted by clause 45 of the Bill, to correct a technical defect in the amendment.

FINANCIAL IMPACT

Most of the proposed amendments are expected to have no significant financial impact. The amendments to enable a fee to be charged for the grant of the third public mobile licence, together with the proposed Telecommunications (Public Mobile Licence Charge) Bill 1992, are expected to result in a significant contribution to Commonwealth revenue. It is not possible to estimate the extent of the likely contribution given that the amount obtained will depend on the result of the process for granting the licence.

NOTES ON AMENDMENTS

Amendment (1)

This amendment will insert 2 new clauses in Part 5 of the Bill, which amends the *Civil Aviation Act 1988* (the Principal Act).

New clause 13A - Flying unregistered aircraft etc.

New clause 13A makes two minor amendments to section 20AA of the *Civil Aviation Act* which creates a number of offences in relation to the operation of aircraft.

The first of these amendments capitalises the word "Regulations" in paragraph 20AA(1)(a) to ensure consistency within the Act.

The second amendment clarifies the intent of paragraph 20AA(4)(a). As that provision is currently worded, it is an offence to commence a flight without a current maintenance release but not an offence to continue the flight after the release has expired. This is anomalous from a safety view point, because the purpose of the maintenance release is to ensure that an aircraft is fit to fly for the duration of a flight, not just at the commencement of the flight. The amendment corrects this anomaly and clarifies that it is an offence for an aircraft to commence a flight unless it has a maintenance release that is valid for the duration of the flight.

New clause 13B - Offence related warrants

Clause 13B corrects a minor typographical error in paragraph 32AF(4)(b) of the *Civil Aviation Act* which deals with the issue of offence related warrants. The amendment will ensure that a magistrate has flexibility in relation to the time during which entry to premises is authorised under the warrant. The amendment will make the provision consistent with the other warrant provision under the Act, paragraph 32AD(4)(b), as was originally intended.

Amendment (2)

Part 10 of the Bill amends the *Telecommunications Act 1991*. This amendment inserts 4 new clauses in Part 10 which, together with the proposed *Telecommunications (Public Mobile Licence Charge) Bill 1992*, will enable a fee to be charged for the grant of the third public mobile licence.

New clause 43A - Applications for general telecommunications licences and certain public mobile licences

Subsection 56(1) of the Telecommunications Act currently provides for applications for a general telecommunications or public mobile licence.

New section 57A of the Telecommunications Act, to be inserted by new clause 43B of the Bill, will provide for a new allocation system for granting public mobile licences.

New clause 43A will omit subsection 56(1) and insert new subsections 56(1) and (1A) to prevent applications for public mobile licences being processed under the pre-existing licensing provisions unless the applicant is an existing licence holder seeking a renewal of the licence or is seeking the transfer of a licence under section 59 of the Act.

New subsection 56(1) re-enacts part of the effect of the current subsection 56(1) to enable applications to be made for a general telecommunications licence.

New subsection 56(1A) re-enacts part of the effect of the current subsection 56(1) to enable applications to be made for a public mobile licence by an existing licensee seeking to renew its licence or an eligible corporation seeking the transfer of a licence from an existing licensee.

New clause 43B - Allocation system for certain public mobile licences

New section 57A of the Telecommunications Act, to be inserted by new clause 43B of the Bill, will provide for a new allocation system for granting public mobile licences.

New subsection 57A(1) will enable the Minister to determine an allocation system for the purpose of granting public mobile licences to eligible corporations, other than those eligible to apply under new subsection 56(1A).

The Government has announced that the allocation system for the granting of the third public mobile licence will be based on criteria including the bid price, industry experience and financial strength, industry development commitments and Australian equity participation.

New subsection 57A(2) ensures that the allocation system will be able to require the new licensee chosen under the system to pay for the licence and will be able to set out the criteria to be taken into account in deciding on the licensee. The charge for the licence will be imposed under clause 4 of the proposed Telecommunications (Public Mobile Licence Charge) Bill 1992 - see also the Explanatory Memorandum for that Bill.

New subsection 57A(3) will enable the determination of the allocation system to be revoked or varied. It is not envisaged that the allocation system would be revoked or varied during the process, due to the commercial uncertainty that could result if such actions occurred. However, the Government has announced that the number of public mobile licences will be reviewed in 1995. If there is a decision to allocate further licences after that review, a different process may be determined. If a new system is put in place at such a time and it is not tender based, paragraph 5(b) of the proposed Telecommunications (Public Mobile Licence Charge) Bill 1992 requires the amount of the charge to be calculated in accordance with regulations.

New subsection 57A(4) will enable the grant and refusal of public mobile licences in accordance with the allocation system that has been determined.

New subsection 57A(5) applies the same rule found in subsection 57(3) of the Act, which requires the Minister to table in each House of the Parliament a copy of each licence granted, to a licence granted under the new section 57A.

New clause 43C - Agreement with carrier about licences

This new clause amends section 70 of the Telecommunications Act to make a minor amendment consequential upon the insertion of new clause 57A in that Act.

New clause 43D - Division 5A - Collection and recovery of public mobile licence charge

This clause inserts a new Division 5A in Part 5 of the Telecommunications Act, which contains 3 new sections providing for the collection and recovery of the public mobile licence charge.

New Section 87A - Definition

This section contains a definition of the term 'charge' for the purposes of the new Division 5A.

New section 87B - When charge is payable

New subsection 87(1) will make the charge imposed on the grant of a public mobile licence payable at the time the licence is granted.

New subsection 87(2) will enable the Minister to determine that the charge is payable on a different day or in instalments. This is done in recognition that the actual payment arrangements will be determined during the

commercial negotiations concerning the grant of the licence.

New subsection 87(3) will enable the determination to be varied, if it were to become necessary to do so.

New section 87C - Unpaid charge is a debt due to the Commonwealth

This section will enable the Commonwealth to recover an amount of charge that is payable but which has not been paid.

Amendment (3)

Clause 45 of the Bill will enable AOTC to implement its decision to offer concessions to certain low income and other disadvantaged customers by inserting a new subsection 183(3) of the Telecommunications Act to allow a dominant carrier to discriminate in favour of such customers.

A technical defect has been discovered in the amendment, which was intended to ensure that the concessions could be offered to all beneficiaries of the current Telephone Rental Concession Scheme. Paragraphs (a) and (b) of the proposed subsection 183(3) do not cover certain persons who receive pensions or allowances under certain provisions of the *Veterans' Entitlements Act 1986* and the *Seamen's War Pensions and Allowances Act 1940* and who are currently beneficiaries of the Telephone Rental Concession Scheme.

Accordingly, this amendment will ensure that a dominant carrier can discriminate in favour of a person to whom, or in respect of whom, a pension or allowance is being paid under the *Veterans' Entitlements Act 1986* or the *Seamen's War Pensions and Allowances Act 1940* to ensure that concessions can be offered to those persons.

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