

1992

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

SENATE

TRANSPORT AND COMMUNICATIONS LEGISLATION AMENDMENT BILL
(No. 3) 1992

See replacement E.M.

SUPPLEMENTARY EXPLANATORY MEMORANDUM

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

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



**TRANSPORT AND COMMUNICATIONS LEGISLATION AMENDMENT BILL
(No. 3) 1992**

Amendments and new clauses to be moved on behalf of
the Government

OUTLINE

The proposed Government amendments to the Transport and
Communications Legislation Amendment Bill (No. 3) 1992
will:

- . insert a new Part in the Bill to correct errors in the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992* to:
 - ensure that changes made to the *Broadcasting Act 1942* in legislation passed in Budget sittings 1991 to enable self-assessment of licence fees will operate in relation to licensees whose licences continue in force under the *Broadcasting Services Act 1992*;
 - remove the right former commercial licensees had to require dormant supplementary licence applications under the *Broadcasting Act 1942* to be processed;
- . insert new clauses in the Bill to amend the *Broadcasting Services Act 1992* to:
 - re-impose the 3 day blackout on broadcasting of political advertisements before elections which was formerly imposed under section 116 of the *Broadcasting Act 1942*; and
 - change the criteria for narrowcasting services to ensure that such services can include any service which is provided during a limited period, not just a service provided during a limited period to cover a special event;
- . insert a new Part in the Bill to amend the *Special Broadcasting Service Act 1991* to impose on the SBS the same 3 day blackout on broadcasting of political advertisements before elections which applies to other broadcasters; and
- . insert a new clause in the Bill to amend the *Radiocommunications Act 1983* to ensure that licences can be granted under that Act for transmitters used by national broadcasting services in those parts of the broadcasting services bands that have been reserved for those services.

FINANCIAL IMPACT STATEMENT

There will be no significant effect on Commonwealth expenditure or revenue resulting from the proposed amendments.

NOTES ON AMENDMENTS

Amendment (1)

Part 3 of the Transport and Communications Legislation Amendment Bill (No. 3) 1992 amends the *Broadcasting Services Act 1992*.

Amendment (1) will insert new clauses 7A and 7B in Part 3 of the Bill.

New clauses 7A and 7B will amend subparagraphs 17(a)(iii) and 18(a)(iii) of the Broadcasting Services Act respectively. These subparagraphs set out one of the criteria for subscription narrowcasting and open narrowcasting services respectively, namely that the reception of the service is limited by its being provided during a limited period to cover a special event.

The requirement that a narrowcasting service which is provided for a limited period must be for the purpose of covering a special event has caused an unnecessary limitation to the scope of the definition. Narrowcasting services should be able to encompass services that are limited in time, but which are established for purposes other than special events. The amendments will ensure that narrowcasting services can have their reception limited by being provided during a limited period or to cover a special event.

An example where a problem has arisen in relation to the operation of the definition of an open narrowcasting service, is with aspirant community broadcasters. During the period when an aspiring community broadcaster is developing a proposal for a full time community broadcasting service, it is commonly desired to provide short term transmissions on an ad hoc basis unrelated to any special event. For example, the community group may propose to broadcast several times during a year for a limited period of several weeks on each occasion. It is considered desirable that in such circumstances, the community group should be able to broadcast under a class licence as an open narrowcasting service.

Amendment (2)

Amendment (2) will insert a new clause 9A in Part 3 of the Bill.

New clause 9A amends Schedule 2 of the Broadcasting Services Act, which contains conditions which are imposed on various kinds of broadcasting services provided under the Act.

New clause 9A(a) inserts a new clause 3A in Schedule 2 which sets out a special condition in relation to broadcasting of election advertisements and new clauses 9A(b) to (f) amend other clauses of that Schedule to apply that special condition to the various kinds of broadcasting services provided under the Act.

New clause 3A will ensure that a broadcaster cannot broadcast election advertisements on a service that is normally received by persons in an area in which a Commonwealth, State or Territory election is being held during the relevant period. The relevant period is defined in clause 1 of Schedule 2 to mean the period that commences at the end of the Wednesday before the polling day for the election and ends at the close of the poll on that polling day.

In effect, the amendment will re-enact the substance of the rule in subsections 116(4) and (4A) of the Broadcasting Act 1942 which imposed the 3 day election advertising blackout in relation to Commonwealth, State and Territory elections.

Provisions for a political advertisement election blackout have been in place for some 50 years. Their purpose was to provide a "cooling off period" for electors to consider their stance on the issues without the influences of electronic media advertising.

The provisions were not included in the Broadcasting Services Act because they were unnecessary, due to the complete ban on political advertising during election periods contained in Part IIID of the *Broadcasting Act 1942*, which continued to have effect in relation to the new Act. Part IIID has since been declared invalid by the High Court. Accordingly, the amendment re-enacts the pre-existing blackout period.

Amendment (3)

Part 7 of the Transport and Communications Legislation Amendment Bill (No. 3) 1992 amends the *Radiocommunications Act 1983*.

Amendment (3) will insert a new clause 19A in Part 7 of the Bill.

Paragraph 31(1)(a) of the *Broadcasting Services Act 1992* enables the Minister to notify the Australian Broadcasting Authority that capacity in the broadcasting services bands is to be reserved for national broadcasting services.

Subsection 24(1A) of the Radiocommunications Act prevents the Minister from granting a licence under that section that uses a frequency within the broadcasting services bands.

New clause 19A ensures that licences can be granted under section 24 of the Radiocommunications Act for transmitters used by national broadcasting services in those parts of the broadcasting services bands that have been reserved for those services.

Amendment (4)

Amendment (4) will insert a new Part 7A in the Bill which will provide for amendments of the *Special Broadcasting Service Act 1991*. The amendments will ensure that the 3 day election advertising blackout which applies to other broadcasting services will also apply to the SBS.

Principal Act

New clause 20A provides that in Part 7A, 'Principal Act' means the *Special Broadcasting Service Act 1991*.

Advertising and sponsorship

New clause 20B makes a minor amendment to section 45 of the Principal Act to make the SBS's power to advertise subject to the rule in new section 70C.

Insertion of new section

New clause 20C inserts a new section 70C in the Principal Act.

New section 70C prevents the SBS broadcasting election advertisements during the relevant period on a radio or television service which would normally be received in the area of Australia in which the election is being held. The relevant period is defined in new subsection 70C(2) to mean the period that commences at the end of the Wednesday before the polling day for the election and ends at the close of the poll on that polling day.

Amendment (5)

Amendment (5) will insert a new Part 10 in the Bill which will provide for amendments of the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992*.

Principal Act

New clause 42 provides that in Part 10, 'Principal Act' means the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992*.

Pending applications for grant of licences under the Broadcasting Act

Subsection 12(2) of the Principal Act contains a savings provision which ensures that at the time the Broadcasting Services Act commenced, any pending applications for the grant of a supplementary radio licence may proceed as if the Broadcasting Act continued on foot with the ABA taking over the role of the ABT.

New clause 43 inserts a new subsection 12(2A) in the Principal Act to end the application of subsection 12(2) from the date of Royal Assent of the Bill if an application has not been referred to the Tribunal or the ABA before that date.

When the supplementary licence scheme was introduced in 1981, a number of eligible licensees put in applications to protect their position without any intention that they should be processed. All the applications for supplementary licences that are being actively pursued have been either already referred to the ABA or will have been already dealt with, by the time the amendment commences.

The amendment will ensure that the dormant applications will no longer taken to be on foot.

Application of provisions of the Broadcasting Act in relation to keeping accounts and unpaid licence fees

Section 22 of the Principal Act is a transitional provision which ensures that notwithstanding the repeal of the Broadcasting Act, the provisions relating to the keeping of accounts and unpaid licence fees continue to apply in relation to certain former licences continued in force under the new Act.

Sections 19, 20 and 21 of the *Broadcasting Amendment Act (No. 2) 1991* are intended to modify the provisions of the Broadcasting Act which provided for the keeping of accounts and unpaid licence fees, and introduced a new provision to provide for licensee self-assessment of licence fees. These provisions are to commence upon 31 December 1992.

New clause 44 inserts 2 new subsections in section 22 and makes some minor consequential amendments to ensure that the amendments made by sections 19, 20 and 21 will have their original intended effect in relation to the former licences continued in force under the new Act.