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THE PARLIAMENT OF THE COMMONWEALTH

OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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

EXPLANATORY MEMORANDUM

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

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE SENATE TO THE BILL AS INTRODUCED

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

OUTLINE

This Bill makes amendments to 11 Acts administered within the Transport and Communications portfolio:

Australian National Railways Commission Act 1983;
Australian Broadcasting Corporation Act 1983;
Broadcasting Services Act 1992;
Civil Aviation Act 1988;
Federal Airports Corporation Act 1986;
Protection of the Sea (Prevention of Pollution from Ships) Act 1983;
Radiocommunications Act 1983;
Special Broadcasting Service Act 1991;
Telecommunications Act 1991;
Telecommunications (Transitional Provisions and Consequential Amendments) Act 1991; and
Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992.

The amendments do not introduce substantial new policy schemes, but contain provisions aimed at enhancing existing schemes, improving mechanisms for implementing them, or removing drafting problems, as summarised below.

Australian Broadcasting Corporation Act 1983

The Bill amends the *Australian Broadcasting Corporation Act 1983* to facilitate the introduction of an international television service which the ABC proposes to provide to South-East Asian countries. The proposed service is intended to carry corporate sponsorship and promotional programming and the amendments will remove existing restrictions in the Act which would prevent it from doing so.

Australian National Railways Commission Act 1983

The Bill amends the *Australian National Railways Commission Act 1983* to:

. make it clear that the Australian National Railways Commission has a duty to co-operate with the National Rail Corporation in the transfer of functions and assets to the Corporation; and

. allow the Minister to request the Commission to take specific action within a specified period if the Minister considers that the Commission has not fulfilled its obligations in this regard.

Broadcasting Services Act 1992

The Bill amends the *Broadcasting Services Act 1992* to:

- make it a reasonable excuse for a journalist to refuse to answer a question from, or to produce a document to, the Australian Broadcasting Authority if to do so would tend to disclose the identity of a confidential source of information;

- 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;

- ensure that the codes of practice adopted by commercial and community television broadcasters adopt the Office of Film and Literature Classification guidelines, consumer advice and criteria and classification symbol system for broadcast films, matching the system which broadcasters have indicated will be adopted for other programs;

- require the codes to limit the broadcasting of "M" classified films by those broadcasters to between the hours of 8:30 pm and 5 am and, in addition, on school days between noon and 3 pm. These time limits reflect the current standards applied by the ABA for "AO" classified material, which are intended to remain in force until replaced by codes or ABA standards;

- require films with the new classification of "MA", (ie. the more extreme part of the current "AO" classification), to only be shown between 9 pm and 5 am;

- require the codes to provide for the methods of modification of material both within the applicable classification and to conform to a different classification;

- prohibit the relevant broadcasters from showing "R" classified films unless they are modified, in accordance with the codes, to a classification suitable for broadcasting, or broadcasting at particular times;

- modify the appointment provisions for members of the ABA to deem any appointment as Chairperson or Deputy Chairperson for a period not exceeding that of the balance of the member's original appointment not to be a re-appointment for the purposes of subsection 157(2) (which allows only a single re-appointment);

- 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

- make some minor amendments to remove an unnecessary definition, make a consequential change to another definition and correct some cross-references.

Civil Aviation Act 1988

The Bill amends the *Civil Aviation Act 1988* to provide a greater flexibility in the method of determining charges under the Act and to provide a mechanism under which charges can be waived or remitted in appropriate cases. It also amends the Act's regulation-making provision to expressly provide that regulations can be made under the Act which deal with the design and manufacture of aircraft.

Federal Airports Corporation Act 1986

The Bill corrects a defect in one of the transitional tax provisions in the *Federal Airports Corporation Act 1986*.

Protection of the Sea (Prevention of Pollution from Ships) Act 1983

The Bill amends the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* to place more stringent controls on the discharge into the sea of oil and oily mixtures from ships.

Radiocommunications Act 1983

The Bill amends the *Radiocommunications Act 1983* to:

- correct a drafting error in section 24B which was inserted in the Act consequential upon the enactment of the *Broadcasting Services Act 1992*; and

- ensure that licences can be granted under the *Radiocommunications Act 1983* for transmitters used by national broadcasting services in those parts of the broadcasting services bands that have been reserved for those services.

Special Broadcasting Service Act 1991

The Bill amends 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.

Telecommunications Act 1991

The Bill amends the *Telecommunications Act 1991* to:

- remove any doubt that agreements between carriers about the interconnection of their networks and the supply of services amongst them can be made between more than two carriers;

- ensure that AUSTEL's functions include implementing industry policies relating to the development of an internationally competitive telecommunications industry:

  - this together with other amendments will clarify AUSTEL's authority to make decisions about customer equipment permits in accordance with the Industry Development Arrangements for Customer Equipment (IDA's);

- expand the scope of section 88 which prohibits disclosure of the contents of telecommunications so that the prohibition applies not only to employees of carriers, but also to suppliers of eligible services and their employees;

- facilitate the creation of the Telecommunications Industry Ombudsman by:

  - enabling AUSTEL to refer complaints to the Telecommunications Industry Ombudsman;

  - protecting a person who makes a complaint in good faith to the Telecommunications Industry Ombudsman from civil actions in relation to the complaint; and

  - enabling information to be supplied by carriers and suppliers of eligible services to the Telecommunications Industry Ombudsman for the consideration of a complaint; and

- clarify the rules which establish the extent of the general carriers' reserved rights by:

  - requiring a property to be defined by reference to geographical coordinates and thereby ensuring that the carriers retain, subject to certain exceptions, the reserved right to install or maintain line links on a property which is not so defined; and

  - ensuring that line links, whose installation or maintenance would otherwise be within the general carriers' reserved rights and which are excepted from those rights for particular purposes, which become vested in, or are transferred to, another

person, remain subject to the restrictions originally imposed in relation to them.

The Bill also contains a provision which clarifies that previous notifications to AUSTEL of Industry Development Arrangements are valid. This will ensure that persons who connected customer equipment to networks are not placed in jeopardy of having committed an offence because of a possibly invalid approval issued under the IDA's.

Telecommunications (Transitional Provisions and Consequential Amendments) Act 1991

The Bill amends the *Telecommunications (Transitional Provisions and Consequential Amendments) Act 1991* to correct a minor transitional problem with the status of pre-existing carriers until the granting of their carrier licences under the *Telecommunications Act 1991*.

Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992

The Bill amends 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.

FINANCIAL IMPACT STATEMENT

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

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short title

This clause provides for the proposed Act to be cited as the *Transport and Communications Legislation Amendment Act (No. 3) 1992*.

Clause 2 - Commencement

This clause provides that, with certain exceptions, the amending provisions will commence on the day the proposed Act receives the Royal Assent. The provisions which commence on other dates, and the reasons for this, are explained in the notes on the relevant clauses.

PART 2 - AMENDMENTS OF THE AUSTRALIAN BROADCASTING CORPORATION ACT 1983

Clause 3 - Principal Act

This clause provides that, in this Part, "Principal Act" means the *Australian Broadcasting Corporation Act 1983*.

Clause 4 - General powers of Corporation

The ABC is proposing to provide an international television service to South-East Asian countries. The service is to be provided by means of the Indonesian PALAPA satellite and will reach a large number of Asian nations. The service is intended to be free-to-air for the first year or two while a market for the service is being established, but will subsequently be encrypted and only be available on a subscription basis. The proposed television service will provide some associated audio channels which can be heard on the television sets which display the service or radios linked to the satellite dish.

Section 25 of the Principal Act sets out the general powers of the ABC. Subsection 25(3) of the Act prevents the ABC from accepting any payment or other consideration for the broadcasting or televising of any announcement, program or other matter.

Subsection 25(5) provides exceptions to, amongst other things, the rule in subsection 25(3). This clause amends subsection 25(5) to include a further exception which will enable the ABC to accept any payment or other consideration in relation to any announcement, program or other matter provided by the Corporation's international television service and associated audio channels outside Australia.

Clause 5 - Advertisements

The international television service proposed by the ABC is intended to provide for corporate sponsorship and promotional programming on the service.

Subsection 31(1) of the Act prevents the ABC broadcasting or televising advertisements. Although the ABC is only proposing to proceed with corporate sponsorship and promotional programming, it is sometimes difficult to draw a distinction at the margin between a sponsorship announcement and an advertisement.

This clause includes a new subsection (3) in section 31 to exclude from the prohibition in section 31 the televising or broadcasting of any matter by the Corporation's international television service and its associated audio channels outside Australia.

This exemption is also extended to incidental broadcasting of the service inside Australia. This is needed because although the ABC service will not be marketed within Australia, the transmission footprint for the Indonesian PALAPA satellite will cover some parts of northern Queensland and the Northern Territory.

The amendments will not enable the ABC to broadcast advertisements or sponsorship announcements on its domestic services or Radio Australia.

PART 3 - AMENDMENTS OF THE AUSTRALIAN NATIONAL RAILWAYS COMMISSION ACT 1983

The *Australian National Railways Commission Act 1983* (ANRC Act) provides for the operation of the Australian National Railways Commission (AN) and sets out its functions and powers (sections 5 and 6). Section 18 requires the Commission to conduct its operations in accord with sound commercial practice. Section 19 provides that the Minister may give AN a direction where he considers it is in the public interest, but otherwise AN is not subject to the Minister's direction.

The *National Rail Corporation Agreement Act 1992* approves an agreement made on 30 July 1991 between the Commonwealth and the states of New South Wales, Victoria, Queensland and Western Australia to establish a company, the National Rail Corporation (NR), to carry out interstate rail freight operations. The Agreement forms a schedule to the Act.

Clauses 2 and 5 of the Agreement provide for the transfer of certain functions and assets from AN and the state rail authorities to NR once the Commonwealth and the relevant states have approved the Agreement. However, the obligation to ensure that this occurs at the appropriate

time lies with Governments, which are required to 'cause' these transfers to take place; the agreement places no obligations directly on the rail authorities in this matter.

At this stage, the relevant states have approved the agreement, except that Western Australia has passed but not yet proclaimed the relevant legislation. This is expected shortly.

The establishment of NR involves a fundamental change in the role of AN which, in time, will become responsible for a much more limited range of operations.

The establishment of NR will require AN's full co-operation and is likely to require of AN actions which it considers are not in its own commercial interests and therefore contrary to its obligations under section 18 of the ANRC Act. The proposed provisions remove any potential for co-operation to be inconsistent with the requirements imposed on AN by its existing legislation.

Clause 6 - Principal Act

This clause provides that, in this Part, 'Principal Act' means the *Australian National Railways Commission Act 1983*.

Clause 7 - Interpretation

This clause inserts definitions of two terms in subsection 3(1) of the Principal Act.

Clause 8 - General Powers of the Commission

This clause amends section 6 of the Principal Act to make it clear that the general powers of the Commission include all things necessary for the performance of its duties as well as its functions.

Clause 9 - Insertion of new section

This clause inserts a new section 6A in the Principal Act.

Commission must take action to facilitate National Rail Corporation agreement etc.

New section 6A spells out the further duty of the Commission to co-operate in the establishment of NR and provides for the Minister to require the Commission to take specified actions promptly.

PART 4 - AMENDMENTS OF THE BROADCASTING SERVICES ACT 1992

Clause 10 - Principal Act

This clause provides that, in this Part, "Principal Act" means the *Broadcasting Services Act 1992*.

Clause 11 - Interpretation

Subsection 6(1) of the Principal Act contains definitions of terms used in the Principal Act.

Clause 11(a) omits the definition of 'initial satellite licence' in subsection 6(1) of the Principal Act as the definition is unnecessary as a consequence of the amendments contained in the new Part 7 of the Principal Act to be inserted by the Broadcasting Services (Subscription Television Broadcasting) Amendment Bill 1992.

Paragraph (g) of the definition of 'associate' in subsection 6(1) of the Principal Act contains a rule which exempts persons from being associates because of an association relating to the initial satellite licence.

Clause 11(b) omits paragraphs (f) and (g) of the definition of 'associate' and substitutes words which have the same effect as paragraph (f). Paragraph (g) is omitted as a consequence of the amendments contained in the new Part 7 of the Principal Act to be inserted by the Broadcasting Services (Subscription Television Broadcasting) Amendment Bill 1992.

Clause 12 - Subscription narrowcasting services
Clause 13 - Open narrowcasting services

These clauses will amend subparagraphs 17(a)(iii) and 18(a)(iii) of the Broadcasting Services Act respectively. Those 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.

Clause 14 - Development of codes of practice

Subsection 123(2) of the *Broadcasting Services Act 1992* (the Act) provides for broadcasters to develop codes of practice relating, amongst other things, to:

"(a) preventing the broadcasting of programs that, in accordance with community standards, are not suitable to be broadcast by [the relevant] section of the industry; and

(b) methods of ensuring that the protection of children from exposure to program material which may be harmful to them is a high priority; and

(c) methods of classifying programs that reflect community standards;"

the intention being that a readily understood and consistent method of classification of programs, and strict rules about what constitutes material suitable to be broadcast and what time limits should be placed on adult material, should be developed.

Under subsection 123(4) of the Act, if a code fails to satisfy the Australian Broadcasting Authority (ABA) that it "provides appropriate community safeguards", is "endorsed by the majority of the providers of broadcasting services" in the relevant section of the industry and that "members of the public have had an adequate opportunity to comment on the code", the ABA may refuse to register the code. The ABA may develop its own mandatory program standards under section 125 of the Act. The Act has also recently been amended to give the Parliament the power to amend codes of practice and standards. These measures ensure appropriate protection of the public on programming classification and display times, but special concern has been expressed about films.

This clause inserts new subsections 123(3A) and (3B) in the Principal Act. New subsection 123(3A) will ensure that the codes of practice adopted by commercial and community television broadcasters specifically require adoption of the Office of Film and Literature Classification (OFLC)

guidelines, consumer advice and classification symbol system for broadcast films, matching the system which broadcasters have indicated will be adopted for other programs.

In addition, the codes must limit the broadcasting of "M" classified films by those broadcasters to the between the hours of 8:30 pm and 5 am and, in addition, on school days between noon and 3 pm. These time limits reflect the current standards applied by the ABA for "AO" classified material, which are intended to remain in force until replace by codes or ABA standards.

Films with the new classification of "MA", basically the more extreme part of the current "AO" classification, will only be shown between 9 pm and 5 am.

The relevant time will measured at the transmitter site, as provided for in the current standard.

The codes will allow modification of material both within the applicable classification and to conform to a different classification. Material modified to conform to another classification will reflect the rules applicable to that other classification.

Specific provision will be made to ensure that the relevant broadcasters do not show "R" classified films unless they are modified, in accordance with the codes, to a classification suitable for broadcasting, or broadcasting at particular times (see the amendment proposed to insert new paragraphs 7(1)(ga) and 9(1)(ga) in Schedule 2 of the Principal Act).

New subsection 123(3A) will require commercial television broadcasting licensees and community television broadcasting licensees, in developing codes of practice under section 123 in relation to films, to ensure that those codes:

(a) apply the guidelines, consumer information and criteria and the classification symbols of the system administered by the Office of Film and Literature Classification;

(b) ban the broadcast of "M" films, except between 8.30 pm and 5.00 am, and noon and 3.00 pm on school days, and of "MA" films except between 9.00 pm and 5.00 am (the relevant time measured at the transmitter site);

(c) provide for the methods of modification of films in accordance with the guidelines, criteria, etc. applied under paragraph (a) above either within an applicable classification or to comply with a different classification -

This allows broadcasters to remove material which, although complying with the relevant criteria, is seen as unacceptable for broadcast. It also allows films classified as "R" or lower (but not "X") to be modified to conform to the criteria for another classification and displayed at the relevant times for that other classification. This supports a common practice among broadcasters of modifying material for television so that it complies with prevailing community expectations of broadcasters (generally of a higher standard than for cinema operators because of the greater audience reach and the difficulty of confining viewing to target audiences.); and

(d) provide for advice to consumers on the reasons for films receiving a particular classification.

New subsection 123(3B) requires industry groups representing commercial and community television broadcasting licensees, when developing codes of practice under paragraphs 123(2)(a), (b) or (c), to ensure that films classified as 'M' or 'MA' do not portray material that goes beyond the previous 'AO' classification criteria.

Clauses 2(6) and 2(10) provide for the commencement of clauses 14 and 19 of the Bill on Proclamation or, if not Proclaimed within 6 months after the date of Royal Assent, on the expiration of that period.

A late commencement is needed because the "MA" classification, recently agreed to by State and Territory heads of Government, will be introduced by Australian Capital Territory Ordinance. Until that occurs, the broadcasting legislation adopting the classification cannot commence.

Clause 15 - Insertion of new section

This clause inserts a new section 123A in the Broadcasting Services Act. The new section:

- requires the ABA to periodically conduct a review of the operation of new subsection 123(3A) to see whether that subsection is in accordance with prevailing community standards (new subsection 123A(1));

- requires the ABA to recommend appropriate amendments to the Act if after conducting a review, the ABA concludes that subsection 123(3A) is not in accordance with prevailing community standards (new subsection 123A(2)); and

- requires the Minister to table such a recommendation in each House of the Parliament within 15 sitting days of receiving it (new subsection 123A(3)).

Clause 16 - Non-compliance with requirement to give evidence

Part 13 of the Principal Act enables the Australian Broadcasting Authority (ABA) to conduct investigations and hold hearings when performing its functions and exercising its powers.

When conducting investigations and hearings, the ABA has the power to require a person to answer questions, give evidence and produce documents. Subsection 202(2) of the Act makes it an offence to refuse to answer a question or produce a document without reasonable excuse.

A concern has been raised that this power could be used by the ABA to require a journalist to disclose the identity of a person who disclosed information in confidence to the journalist for the purpose of a story.

This clause amends section 202 to include two new subsections which:

- make it a reasonable excuse for a journalist to refuse to answer a question or produce a document if doing so would tend to disclose the identity of a confidential informant used for a program; and

- provide a definition of the term 'journalist' for the purpose of the provision.

Clause 17 - Period of appointment of members and associate members

This clause amends section 157 of the Principal Act to modify the appointment provisions for members of the ABA. Currently, members are allowed to serve for up to 5 years and, with one renewal, for up to another 5 years. However, appointment of an ordinary member to the position of Chairperson or Deputy Chairperson has effect as a "re-appointment" for the purposes of subsection 157(2) of the Act. Since that subsection allows only one re-appointment, such a member may be able to serve for less than the intended maximum of 10 years and ordinary members who have been re-appointed will be debarred from appointment as Chairperson or Deputy Chairperson. This would deprive the ABA of the services of its most experienced members in its leading positions without serving the policy objective of ensuring that members do not serve for more than 10 years.

This clause inserts new subsections 157(2A) and (2B) in the Broadcasting Services Act.

New subsections 157(2A) and (2B) will deem any appointment as Chairperson or Deputy Chairperson, for a period not exceeding that of the balance of the member's original

appointment, not to be a re-appointment for the purposes of subsection 157(2).

Clause 18 - Appeals to the Administrative Appeals Tribunal

Section 204 of the Principal Act enables applications to be made to the Administrative Appeals Tribunal for the review of certain decisions under the Act.

This clause amends section 204 to correct the references to certain provisions. The new references will correspond to provisions inserted in the Act by amendments contained in the *Broadcasting Services (Subscription Television Broadcasting) Amendment Act 1992*.

Clause 19 - Schedule 2

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

This clause inserts a new paragraph 7(1)(ga) and 9(1)(ga) in Schedule 2 to place a further condition on commercial television broadcasting and community broadcasting licences.

The new paragraph will ban broadcasting of unmodified films classified as "R". Those films will be able to be broadcast, but only if modified to comply with the "MA" classification, at the highest. "X" rated material cannot be modified for broadcasting.

Clause 2(6) and (10) provide for automatic commencement of clauses 14 and 19, 6 months after Royal Assent, if those clauses have not been proclaimed to commence upon an earlier date. The reasons for this are explained in the notes on clause 14.

Clause 20 - Schedule 2

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

Clause 20(a) inserts a new clause 3A in Schedule 2 which sets out a special condition in relation to broadcasting of election advertisements and clauses 20(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.

PART 5 - AMENDMENTS OF THE CIVIL AVIATION ACT 1988

The purpose of the amendments proposed to the *Civil Aviation Act 1988* is to:

- amend section 66 of the Act to provide greater flexibility in the method of determining charges under the Act and to provide a mechanism under which charges can be waived or remitted in appropriate cases. Currently there is no such mechanism in the Act, although waivers and refunds have been granted in appropriate cases; and

- amend section 98 of the Act to remove any doubt that may exist in relation to regulations, made under the Act, which deal with the design or manufacture of aircraft.

Since both amendments would effectively regularise the Authority's previous activity, the provisions are proposed to be retrospective to the date of commencement of the provisions being amended (ie, 15 June 1988 in the case of section 66 and 1 July 1988 in the case of section 98). Such retrospectivity will not trespass unduly on personal rights or liberties as persons have ordered their affairs on the basis of the current practice. The retrospectivity will, in particular, legitimate waivers and refunds of charges previously given by the Authority.

Clause 21 - Principal Act

This clause provides that, in this Part, "Principal Act" means the *Civil Aviation Act 1988*.

Clause 22 - Charges for services and facilities

Clause 22(a) replaces subsection 66(2) with a provision which authorises the Board to determine charges by a variety of means. The provision will allow the Authority to specify an actual amount of charge or set out a method by which an amount of charge can be worked out (eg., by means of a formula or in accordance with an hourly rate). This allows greater flexibility in determining charges in cases where it is not possible to accurately fix a specific amount for a particular service because the time taken to perform the service may vary considerably depending upon the complexity of the service provided and the circumstances in which the service is provided.

As with the existing subsection 66(2), the Board retains the ability to make a determination for the purpose of fixing penalties for the purpose of subsection 66(8).

The clause also provides that a determination must specify the person by whom, and times when, the amount of charges are payable.

Clause 22(b) replaces paragraphs 66(3)(b) and (c) of the Act with new paragraphs. The new paragraphs are consequential upon amendments made by clause 22(a) and provide that, before making a determination, the Board shall give the Minister notice in writing of the following matters:

- if it fixes an amount of charge, sets out a method by which an amount of charge may be worked out or fixes a penalty - the basis of the amount, method or penalty; and

- if it varies a charge, method or penalty - the reasons for the variation.

Clause 22(c) provides for the waiver or remission of charges. Specifically, it provides that the Board, or an officer authorised by it, may, on a written application of a person by whom a charge has been incurred, remit, refund or waive the charge (or part of the charge) if the Board or the officer is satisfied that it should do so because of exceptional circumstances or because of circumstances beyond the control of the person.

Clause 23 - Regulations etc.

This clause inserts a new paragraph into the Act's regulation-making provision. This amendment will ensure

that regulations can be made under the Act which deal with the design and manufacture of aircraft.

PART 6 - AMENDMENTS OF THE FEDERAL AIRPORTS CORPORATION ACT 1986

Clause 24 - Principal Act

This clause provides that in this Part, the "Principal Act" means the *Federal Airports Corporation Act 1986*.

Clause 25 - Land and buildings etc.

This clause amends subsection 57E(2) of the Principal Act to provide that if a Federal airport, or part of it, or a Federal airport development site, or part of it, consists of or includes land that is owned by the Commonwealth, and any of that land is leased by the Commonwealth to the Federal Airports Corporation, buildings and any other fixtures on the leased land are taken, for the purposes of the *Income Tax Assessment Act 1936*, to be owned by the Corporation. (This clause rectifies an omission in the *Transport and Communications Legislation Amendment Act (No.2) 1992*: subsection 57E(2), as it currently stands, allows the Corporation to depreciate for the purposes of the Income Tax Assessment Act in relation to Federal airport development sites only.)

The clause will be taken to have commenced on 1 July 1991, which was the day on which the Corporation became liable to pay income tax.

PART 7 - AMENDMENTS OF THE PROTECTION OF THE SEA (PREVENTION OF POLLUTION FROM SHIPS) ACT 1983

The purpose of this Part of the Bill is to amend the *Protection of the Sea (Prevention of Pollution From Ships) Act 1983* (the Pollution Act) to implement resolutions of 6 March 1992 of the Marine Environment Protection Committee of the International Maritime Organization to amend Annex I (Regulations for the Prevention of Pollution by Oil) to the International Convention for the Prevention of Pollution from Ships. Those amendments place more stringent controls on the discharge into the sea of oil or oily mixtures from ships.

In accordance with the resolutions of the Marine Environment Protection Committee, the amendments to Annex I will enter into force on 6 July 1993 unless, prior to 6 January 1993, "one third or more of the Parties, or the Parties the combined merchant fleets of which constitute fifty per cent or more of the gross tonnage of the world's merchant fleet, have communicated to the Organization their objections to the amendments". The amendments to the

Pollution Act are therefore expressed to commence on a date to be proclaimed. If there are no objections as referred to above, the proclamation date will be 6 July 1993. If the commencement date for the amendments is not fixed by proclamation prior to 1 August 1993, the amendments will be repealed on that day by clause 2(9).

Clause 26 - Principal Act

This clause identifies the Pollution Act as the Principal Act for the purposes of this Part of the Bill.

Clause 27 - Interpretation

This clause amends the definition of "the 1978 Protocol" in subsection 3(1) of the Pollution Act. That term is defined to mean the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships 1973, as affected by a number of amendments adopted by the International Maritime Organization. The amendments add 2 new subparagraphs to the definition to refer to the amendments adopted on 6 March 1992.

Clause 28 - Prohibition of discharge of oil or oily mixtures into sea

This clause amends subsection 9(4) of the Pollution Act which provides exemptions to the general prohibition on the discharge into the sea of oil or oily mixtures from a ship. The clause also adds a new subsection 9(4A).

Subparagraph 9(4)(a)(iii) is amended to replace the existing condition that the discharge into the sea of oil or an oily mixture from an oil tanker is prohibited except where the instantaneous rate of discharge does not exceed 60 litres per nautical mile. The new condition is that the instantaneous rate of discharge does not exceed 30 litres per nautical mile.

Subparagraph 9(4)(b) provides conditions under which oil or an oily mixture may be discharged from a ship that is not an oil tanker. The condition that the ship be more than 12 nautical miles from the nearest land has been deleted. The condition that the oil content is less than 100 parts in 1,000,000 parts has been changed to less than 15 parts in 1,000,000 parts. The specification of the equipment to be required by the regulations has been simplified but this will not affect the equipment actually required.

The existing conditions in paragraphs 9(4)(e) and (f) which allow discharge of certain processed oily mixtures will no longer apply and those paragraphs are being deleted.

A new paragraph 9(4)(e) provides conditions under which oil or an oily mixture from a machinery space bilge may be

discharged from a ship which has a gross tonnage of 400 or more. Those conditions are:

(i) the ship was delivered before 6 July 1993 (that is, before these amendments to the Pollution Act come into operation);

(ii) the oil or oily mixture did not originate from a cargo pump-room bilge;

(iii) the oil or oily mixture is not mixed with oil cargo residues;

(iv) the ship is not within a special area (Because of their oceanographical and ecological conditions, or the particular character of the traffic through them, special areas require special methods for the prevention of oil pollution. Eight special areas are defined for purposes of Annex I of the International Convention. They are the Mediterranean Sea area, the Baltic Sea area, the Black Sea area, the Red Sea area, the Gulfs area, the Gulf of Aden area and the Antarctic area.);

(v) the ship is more than 12 nautical miles from the nearest land;

(vi) the ship is proceeding *en route*;

(vii) the oil content of the effluent is less than 100 parts per 1,000,000 parts; and

(viii) the ship has in operation oily-water separating equipment as required by regulations made by virtue of section 267A of the *Navigation Act 1912* (Section 267A simply provides that regulations may be made under the Navigation Act to give effect to certain parts of Annex I to the International Convention).

New paragraph 9(4)(e) is to be subject to new subsection 9(4A) (referred to below).

Paragraph 9(4)(h) is amended to remove some of the conditions which allow the discharge in a special area of oil or oily mixtures from a ship that is not an oil tanker and has a gross tonnage less than 400.

New subsection 9(4A) provides that paragraph 9(4)(e) does not apply to any ship after 6 July 1998. It will cease to apply to any ship which, before that date, is fitted with the equipment described in the amended Regulation 16 of the Annex to the International Convention, as set out in new Schedule 13.

Clause 29 - New Schedules 13 and 14

This clause adds new Schedules 13 and 14 to the Pollution Act. Those Schedules set out the resolutions of 6 March 1992 of the Marine Environment Protection Committee of the International Maritime Organization.

PART 8 - AMENDMENTS OF THE RADIOCOMMUNICATIONS ACT 1983

Clause 30 - Principal Act

This clause provides that, in this Part, "Principal Act" means the *Radiocommunications Act 1983*.

Clause 31 - Transmitter licence

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.

This clause inserts a new subsection 24(1B) to ensure 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.

Clause 32 - Broadcasting service transmitter licence

Section 24B of the Principal Act was inserted in the Principal Act as an amendment consequential to the enactment of the *Broadcasting Services Act 1992* (the BSA).

Subsection 24B(1) provides for the automatic grant of a radiocommunications transmitter licence if a commercial broadcasting, community broadcasting or subscription television broadcasting licence is allocated under Part 4 or 6 of the BSA (regardless of whether the broadcasting licence is a broadcasting services bands licence), or Part 7 of the BSA.

This clause omits subsection 24B(1) and substitutes a new section which provides for the automatic grant of a radiocommunications transmitter licence if a broadcasting services bands licence is allocated to a person under Part 4 or 6 of the BSA.

The amended clause is confined to the grant of broadcasting services bands licences, reflecting the original intention that only those types of broadcasting services licences carry with them guaranteed access to the radiofrequency bands which are designated as being primarily for broadcasting purposes and which are assigned to the Australian Broadcasting Authority for planning.

PART 9 - AMENDMENTS OF THE SPECIAL BROADCASTING SERVICE ACT 1991

Clause 33 - Principal Act

This clause provides that, in this Part, "Principal Act" means the *Special Broadcasting Service Act 1991*.

Clause 34 - Advertising and sponsorship

This clause 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.

Clause 35 - Insertion of new section

This clause 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.

PART 10 - AMENDMENTS OF THE TELECOMMUNICATIONS ACT 1991

Clause 36 - Principal Act

This clause provides that, in this Part, "Principal Act" means the *Telecommunications Act 1991*.

Clause 37 - Definitions

Certain clauses of the Bill amend the Principal Act to remove any doubt that agreements between carriers about the interconnection of their networks and the supply of services amongst them can be made between more than two carriers.

Section 5 of the Principal Act contains definitions of terms used in the Principal Act.

Clause 37(a) omits the definition of 'access agreement' in section 5 of the Act and substitutes a new definition to make it clear that an access agreement can be made between more than 2 carriers and can relate to supplementary access conditions of more than one carrier licence.

This clause commences retrospectively for the reasons explained in the notes on clause 46.

Clauses 59 and 60 provide for amendments to allow for the referral of complaints to the Telecommunications Industry Ombudsman and other related matters.

The Telecommunications Industry Ombudsman (TIO) is being established under a scheme set up by the carriers in accordance with requirements in their licence conditions.

Clause 37(b) amends section 5 of the Principal Act to insert a new definition which defines the term "Telecommunications Industry Ombudsman" for the purposes of the Act to mean the Telecommunications Industry Ombudsman appointed under an Ombudsman scheme entered into by the carriers in accordance with the conditions of their licences.

Clause 38 - Properties

Division 2 of Part 6 of the *Telecommunications Act 1991* sets out the reserved rights of the carriers. Subsection 90(1) prohibits a person from installing or maintaining a reserved line link. Subsection 90(2) allows a general carrier to do so.

A reserved line link is defined in section 24. Paragraph 24(1)(a) provides that a reserved line link is a line link between distinct places within Australia.

Section 12 sets out the basic rules for determining when places are distinct. Under subsection 12(1), places are distinct unless they are all in the same area because of subsections 12(2), (3) or (4).

Subsection 12(2) provides that places are in the same area if they are all situated in the same property as defined in section 13. Subsection 13(3) provides that an area of land is not a property except as provided in section 13.

Subsection 13(1) makes an area of land a property if there is a single freehold or leasehold title in relation to that area and no part of the area is subject to a lease.

Clause 38(a) of the Bill adds a further paragraph 13(1)(c) to subsection 13(1) of the Act to further require the freehold or leasehold title to be defined by reference to geographical coordinates if the area of land is to be a property.

Clause 38(b) of the Bill inserts two further subsections in section 13 to enable regulations to:

- prescribe further circumstances in which an area of land is not to constitute a property; and

. enable regulations to ameliorate the effect of paragraph (1)(c) by prescribing circumstances in which an area of land is a property despite that paragraph.

New subsection 13(3A) has been included as a reserve power in case it becomes apparent that there are further circumstances in which an area of land should not be taken to be a property. It is envisaged that this power would be used if it became apparent that, if the areas of land involved were taken to be properties for the purposes of section 13, it would result in an undue erosion of the practical value of the carriers' rights.

New subsection 13(3B) has been included in case it becomes apparent over time that the effect of the new paragraph 13(1)(c) is too stringent and that exceptions should be made to deal with particular kinds of cases. However, because the making of any such regulation may impact on the extent of the carriers' reserved rights, the new subsection requires, before the making of such a regulation, that the Minister consult each general carrier which may be affected and that the Minister be of the opinion that the regulation not erode unduly the practical value of the general carriers' rights.

Clause 39 - General functions - overall responsibilities of AUSTEL

Paragraph 36(a) of the Telecommunications Act sets out some of the general functions of AUSTEL.

This clause omits paragraph 36(a) and substitutes a new paragraph in similar terms, but which clarifies that AUSTEL's responsibility for the implementation of the Commonwealth Government's industry policies relating to telecommunications includes such policies which relate to the development of an internationally competitive telecommunications industry.

This change ensures that any such industry policies, to be valid, do not need to be directed at domestic industry goals. The IDA's have been developed with the goal of assisting the telecommunications equipment manufacturing industry to become internationally competitive.

Clause 40 - General functions - protection of public interest and consumers

Subsection 38(2) of the Principal Act gives AUSTEL the function, inter alia, of protecting consumers from unfair practices of carriers in the supply of telecommunications services.

This clause amends section 38 of the Principal Act by making a minor amendment to paragraph (2)(d) to provide that, for the purpose of its function under subsection

38(2), AUSTEL may refer consumer complaints to the Telecommunications Industry Ombudsman (TIO).

The TIO is being established under a scheme set up by the carriers in accordance with requirements in their licence conditions.

Clause 41 - General governmental obligations of AUSTEL
Clause 42 - Minister may notify AUSTEL of policies of Commonwealth Government

Clause 41 makes a minor amendment to paragraph 48(a) of the Telecommunications Act consequential upon the amendment in clause 42.

Section 49 of the Telecommunications Act enables the Minister to notify AUSTEL of general policies of the Commonwealth Government that are to apply in relation to AUSTEL. It is uncertain whether the industry development arrangements, which are in effect policies developed in the portfolio of Industry, Technology and Commerce, are sufficiently general in character to be notified as 'general policies'.

Clause 42(a) removes any doubt on this point by inserting a new subsection 49(1A) which specifically enables the Minister to notify AUSTEL of policies of the Commonwealth Government relating to the development of an internationally competitive customer equipment industry.

Clause 42(b) makes a minor consequential amendment to subsection 49(3) of the Telecommunications Act.

Clause 43 - Insertion of heading

This clause repeals the Heading to Division 6 of Part 5 of the Act which concerns protection of communications and re-enacts the heading as a new Part 5A as a consequence of the proposed changes to section 88 in the following clause of the Bill.

Clause 44 - Carriers, suppliers and their employees not to disclose or use contents of communications etc.

Section 88 of the Principal Act protects the confidentiality of telecommunications by prohibiting employees and former employees of carriers from disclosing or using facts or documents which relate to:

- the contents of communications carried by the carrier;
- telecommunications services supplied by the carrier; and
- personal particulars of other persons;

which come to their knowledge through their employment.

This clause amends section 88 of the Principal Act to extend the prohibition on such disclosure and use to persons who supply eligible services under a class licence and their employees.

The amendments achieve this object by, inter alia, replacing references to 'an employee of a carrier' throughout the section with references to a 'prescribed person', which is defined to mean an employee of a carrier, a supplier of an eligible service under a class licence or an employee of the supplier.

Paragraphs 88(3)(h) and (i) and 88(4)(f) and (g) currently provide exceptions to the prohibition on disclosure and use for facts or documents necessary to be passed from carriers to eligible service suppliers so that services can be supplied to customers. As a consequence of the prohibition now applying to those suppliers, clauses 44(g) and (k) omit these paragraphs and substitute new paragraphs which extend the exception to facts or documents which need to be passed from the suppliers to the carriers for the same reason.

Section 88 is also amended by clause 44(i) to enable the disclosure of facts or documents to the Telecommunications Industry Ombudsman or his or her employees if the fact or document may assist the Telecommunications Industry Ombudsman in the investigation of a complaint.

Clause 45 - Restriction on use or disposal of certain reserved line links

Division 4 of Part 6 of the Principal Act sets out exceptions to the carriers reserved rights to install and maintain line links. These include:

- transport authorities (section 98);
- broadcasters (section 99);
- facilities authorised by Telecom under paragraph 13(1)(a) of the *Telecommunications Act 1975* (subsection 100(1));
- earth based facilities incidental to satellite services maintained and operated under section 45 of the *Telecommunications Act 1989* (subsection 100(2));
- facilities authorised by AUSTEL under section 46 of the *Telecommunications Act 1989* (subsection 100(3)); and
- defence line links (section 101).

Each of the above exceptions, some of which relate to maintaining existing line links and some of which enable line links to be installed as well as maintained, is limited to installing or maintaining the line links for a specific purpose mentioned or in accordance with a pre-existing authorisation, or for the subsidiary purpose of supply of services to or by a general carrier (see subsection 97(2) and section 102).

Section 102 of the Act limits the use of line links within the above exceptions and also limits the disposal of such line links by prohibiting disposal to a person other than a general carrier.

However, situations may arise where a person who has an excepted right to install or maintain a reserved line link does not actually 'dispose' of the line link, but the line link is removed from the person in some other way, for example, by operation of law.

This clause amends section 102 of the Principal Act to ensure that where such a reserved line link is vested in, transferred to, or otherwise acquired by another person by operation of law or otherwise, the same restrictions apply in relation to the person who acquires the line link.

An example of the operation of the provision would be in relation to a Commonwealth or State transport authority able to install or maintain a reserved line link under section 98 of the Act. Where, by operation of law, the line link was vested in another body, that body could not use that line link except for the purpose of the transport services set out in section 98 or in relation to the supply of a telecommunications service to or by a general carrier. That body would also be subject to the prohibition on disposal to a person other than a general carrier.

Clause 46 - Carriers' rights to interconnection to networks of, and supply of telecommunications services by, other carriers

Certain clauses amend Part 8 of the Principal Act to remove any doubt that agreements can be made between more than two carriers about:

- the interconnection of their networks;
- the supply of telecommunications services between them; and
- obtaining access to other services supplied by other carriers (such as customer billing, operator assistance and services directories).

An access agreement has been entered into between the Australian and Overseas Telecommunications Corporation

Limited and Optus Communications. However, late in the process of finalising the agreement, doubts were raised as to whether the agreement would be able to be registered by AUSTEL because Optus Communications is not a legal entity which holds a licence under the Telecommunications Act. The Optus licences are held by 2 subsidiaries of Optus Communications, AUSSAT Pty Ltd which holds a general telecommunications licence and Optus Mobile Pty Ltd which holds a public mobile licence.

The agreement setting out the access arrangements was in fact entered into between 3 carriers. Since a doubt was raised as to whether such an agreement could be registered by AUSTEL, this Bill amends the Act to ensure that such an agreement is fully contemplated by Part 8 of the Act. The amendments will also ensure that other agreements can be entered into involving more than 2 carriers, for example, if it were contemplated that the third mobile carrier (whose licence is yet to be granted) would enter into a single access agreement with the other 3 carriers.

As the proposed amendments will clarify the situation in relation to an existing multi-carrier agreement, the amendments commence retrospectively to ensure that there is no question about the validity of actions which have been already taken in relation to the access agreement provisions of the Act. Such actions include the negotiation of the agreement, any arbitration by AUSTEL in relation to the agreement and the determination of relevant charging principles by the Minister which affected the agreement.

The date of commencement (ie. immediately after the commencement of Part 8 of the *Transport and Communications Legislation Amendment Act 1991* on 25 November 1991) is designed to ensure that the amendments interact correctly with other amendments to the Principal Act which occurred on that day and remove any doubts about the validity of any actions taken on and from that day.

This clause amends section 137 of the Act to change a number of references to a singular "carrier" and a singular "network" to the plural as a consequence of changes to section 154 which will ensure that there is no doubt that AUSTEL can make determinations in relation to multi-party access rights.

Clause 47 - AUSTEL's role in negotiations for access agreements

This clause amends subsection 139(1) of the Principal Act to ensure that any party to a proposed multi-party access agreement or variation of such an agreement can request AUSTEL to attend negotiations.

Clause 48 - Minister may determine principles to govern charging for access

This clause inserts "or carriers" after various references to "carrier" in section 140 of the Principal Act and makes other minor textual changes to put it beyond doubt that any principles determined by the Minister to be applied in relation to the charges payable for access arrangements between carriers can apply to access by more than one carrier to more than one other carrier.

Clause 49 - Access agreements must comply with charging principles

This clause makes minor amendments to section 141 of the Principal Act to make it clear that multi-party access agreements must comply with the charging principles in force under a determination made under subsection 140(1).

The amendment to paragraph 141(1)(b) in clause 38(c) is made in recognition that although Ministerial charging principles may apply to a number of different carriers, not all of those carriers may propose to enter into the same agreement. Different agreements may be entered into by different groups of carriers, but still be affected by the same charging principles.

The amendments to subsections 141(2), (3), (4) and (7) made by clause 48(a) affect provisions which require a notification to AUSTEL by a carrier to whom charges are payable under a proposed access agreement or a variation to such an agreement and notifications in return by AUSTEL to that carrier.

The proposed amendments to those subsections will have the effect of changing references to 'the other carrier' to 'the other carrier or carriers'. In the context of section 141 read as a whole, the changes to subsection 141(1) made by the Bill and the other amendments in the Bill, these references should be read as references to the carrier or carriers:

- who are proposing to make or vary the access agreement concerned; and

- to whom charges in relation to which the determination under section 140 applies will be payable under the agreement as made or varied.

Clause 50 - Application for registration

This clause substitutes a new paragraph (2)(b) in section 146 in recognition that a multi-party access agreement can be made for the purpose of supplementary access conditions of more than one licence.

Clause 51 - Decision on request

This clause corrects a minor typographical error by replacing "person" with "party".

Clause 52 - Arbitration by AUSTEL of terms of access

This clause makes a number of minor amendments to section 154 of the Principal Act to make it clear that:

- AUSTEL can arbitrate where two or more carriers cannot agree on the terms and conditions of an access agreement; and

- a determination made by AUSTEL in relation to an arbitration can relate to multi-party access arrangements.

Section 156 of the Principal Act provides that a determination made by AUSTEL as a result of the arbitration is taken to be an access agreement between the parties and may be varied or enforced by the parties as if it were a contract between them.

Clause 53 - Arbitration where carriers cannot agree on variation of access agreement

This clause amends section 157 of the Principal Act to make it clear that AUSTEL can arbitrate where any party to an access agreement made between two or more carriers cannot agree on whether to vary the agreement or how to vary it.

A determination made by AUSTEL as a result of the arbitration has effect as if it were a variation made by a contract between the carriers who were parties to the arbitration.

Clause 54 - Steps to be taken in the arbitration

This clause makes some minor amendments to paragraphs 166(1)(b) and (c) of the Principal Act to take into account a situation where there are more than 2 parties involved in an arbitration.

Clause 55 - Party may request AUSTEL to treat material as confidential

Section 167 of the Principal Act enables a party to an arbitration to request AUSTEL not to give a copy of material which contains confidential commercial information to the other party to the arbitration.

This clause makes a number of minor amendments to section 167 of the Principal Act to take into account a situation where there are more than 2 parties to an arbitration.

Clause 56 - Issue of permits
Clause 57 - Variation of permits
Clause 58 - Cancellation of permits

Clauses 56, 57 and 58 respectively amend sections 258, 260 and 263 of the Telecommunications Act to make it clear that AUSTEL must comply with IDA's notified under new subsection 49(1A) when making decisions to issue, vary or cancel customer equipment permits.

Clause 59 - Reference of matters to Ombudsman or Telecommunications Industry Ombudsman

Section 339 of the Principal Act enables complaints to be transferred to the Commonwealth Ombudsman.

This clause amends section 339 of the Principal Act to specifically provide that AUSTEL may refer matters to the Telecommunications Industry Ombudsman.

AUSTEL will retain its power to refer matters to the Commonwealth Ombudsman in relation to the Australian and Overseas Telecommunications Corporation Limited (AOTC). In practice, it is expected that AUSTEL would only refer such complaints to the Commonwealth Ombudsman where the complaints involve matters which fall outside the scope of the TIO scheme, such as matters concerning the administration of AOTC.

Clause 60 - Protection from civil actions

Section 345 of the Principal Act protects a person from civil proceedings where the person, acting in good faith, makes a complaint or makes a statement or gives information to AUSTEL in connection with an investigation.

This clause is amended by inserting new provisions which extend the protection to a person, acting in good faith, who makes a complaint or makes a statement or gives information to the Telecommunications Industry Ombudsman in connection with the consideration of a complaint.

The protection does not extend to a carrier, or a person who supplies eligible services who is participating in the scheme. As with the banking ombudsman scheme, the carriers and other participants will be able to protect themselves from such liability through insurance.

PART 11 - VALIDATION OF CERTAIN NOTIFICATIONS UNDER THE TELECOMMUNICATIONS ACT 1989

This Part makes certain that the notifications of the Industry Development Arrangements under section 28 of the *Telecommunications Act 1989* are taken to have been valid.

The first notification occurred under section 28 of the *Telecommunications Act 1989* on 1 December 1989. Decisions were made to issue customer equipment permits to persons on the basis of those IDA's and those IDA's as later amended.

Clause 61 - Validation of certain notifications under the Telecommunications Act 1989

Clause 61(1) provides that that notification of policies and any notification of an amendment of the policies or notification of an amended version of the policies are taken to have been valid notifications under section 28 of the 1989 Act.

Clause 61(2) ensures that AUSTEL is taken to have had all the powers necessary to give effect to the notifications of policies in issuing, varying or cancelling permits under the customer equipment provisions of the 1989 Act.

PART 12 - AMENDMENT OF THE TELECOMMUNICATIONS (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) ACT 1991

Clause 62 - Principal Act

This clause provides that, in this Part, "Principal Act" means the *Telecommunications (Transitional Provisions and Consequential Amendments) Act 1991*.

Clause 63 - Existing carriers may continue to operate pending grant of licence.

This clause amends section 7 of the Principal Act to deem AUSSAT Pty Ltd, the Australian Telecommunications Corporation and OTC Limited to be general carriers within the meaning of the Telecommunications Act 1991 for the period from 1 July 1991, the date on which the Telecommunications Act 1991 commenced, until the date on which each of the respective bodies was licensed as a general carrier under that Act (the relevant period).

The necessity for the amendment arises as a consequence of the delay in finalising the carrier licences which resulted in there being no carriers within the meaning of the Telecommunications Act for the relevant period.

Little difficulty has been occasioned in practice, as the carriers considered themselves to be subject to the Act during that period. However, the amendment will clarify the legal situation in relation to the carriers through that period by ensuring that, subject to certain exceptions, the carriers were general carriers within the meaning of the Act for all purposes.

The specific exceptions are:

- Divisions 2 and 3 of Part 5 of the Act as these Divisions relate to the actual licensing of the carriers; and

- Parts 8 and 9 of the Act which create specific obligations on the carriers which it would be inappropriate to seek to have apply to them after the relevant period has elapsed.

These exceptions aside, one of the effects of the amendment will be to ensure that any law which refers to a general carrier, or a carrier, within the meaning of the *Telecommunications Act 1991*, in relation to the relevant period, will be referring to the corporations to which section 7 applies.

PART 13 - AMENDMENTS OF THE BROADCASTING SERVICES (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) ACT 1992

Clause 64 - Principal Act

This clause provides that, in this Part, "Principal Act" means the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992*.

Clause 65 - 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.

This clause 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.

Clause 66 - 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.

This clause 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.

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