

1989

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TELECOMMUNICATIONS AND POSTAL SERVICES
(TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS)
BILL 1989

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Transport and
Communications, the Hon Ralph Willis M.P.)

TELECOMMUNICATIONS AND POSTAL SERVICES
(TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS)
BILL 1989

OUTLINE

This Bill is related to the Telecommunications Bill 1989, the Australian Telecommunications Corporation Bill 1989 and the Australian Postal Corporation Bill 1989. The aim of the Bill is to:

repeal the Telecommunications Act 1975; to be replaced by the Telecommunications Act 1989 (the new Telecommunications Act) and the Australian Telecommunications Corporation Act 1989 (the Telecom Act);

repeal the Postal Services Act 1975; to be replaced by the Australian Postal Corporation Act 1989 (the Australia Post Act);

amend the Crimes Act 1914, to provide for offences relating to postal services and telecommunications services;

amend the Telecommunications (Interception) Act 1979, in line with the changes made to telecommunications legislation;

make consequential amendments to the OTC Act 1946 and the Satellite Communications Act 1984 (renamed the AUSSAT Act 1984);

make consequential amendments to other Acts;

make transitional provisions relating to the imposition of income tax and State and Territory taxes and charges, and for other purposes.

The main amendments are set out below.

PART 2 - AMENDMENTS OF THE CRIMES ACT 1914

The Telecommunications Act 1975 and the Postal Services Act 1975 provide for offences (directed to the privacy of communications, interference with the provision of services, improper use of services, fraud, obstructing employees, damage to property used in the delivery of services, etc). The OTC Act 1946 and the Satellite Communications Act 1984 cover some of these offences.

Telecom and Australia Post are also covered by provisions in the Crimes Act 1914 (directed to the protection of property of the Commonwealth and public authorities, offences by officers of the Commonwealth and public authorities, protection of such officers, etc). These Crimes Act offences do not currently apply in relation to OTC property or employees. The position of AUSSAT is not beyond doubt but it is probably not covered by the Act.

The Bill inserts new Parts VIIA and VIIB in the Crimes Act dealing with postal offences and telecommunications offences, and are based on the offences in the current legislation. However, the opportunity has been taken to revise the offences, taking into account developments since 1975 and treating Australia Post and the three carriers (Telecom, OTC and AUSSAT) consistently.

In some cases the existing Telecom and Australia Post offences are adequately covered by general Crimes Act provisions and have not been repeated. The consistent treatment of the three carriers is desirable because of the national importance of the telecommunications network and services. OTC and AUSSAT will be deemed to be public authorities for all purposes under the Crimes Act, and their employees, including people who perform services for and on behalf of AUSSAT and OTC and their employees, will be treated in the same way as Commonwealth officers.

This inclusion of OTC and AUSSAT within the Crimes Act umbrella is a temporary measure only and is subject to the Government's decision about which, if any, of its business enterprises should be so protected.

PART 3 - AMENDMENTS OF THE OMBUDSMAN ACT 1976

AUSTEL, established by the new Telecommunications Act, will investigate complaints about failure to provide telecommunications services, connect customer equipment or perform cabling work. The Bill amends the Ombudsman Act 1976 to give the Ombudsman a discretion not to investigate such complaints where AUSTEL would deal with them more effectively, and for the transfer of the complaints.

PARTS 4 AND 7 - AMENDMENTS OF THE OTC ACT 1946 AND THE SATELLITE COMMUNICATIONS ACT 1984

The Bill repeals redundant provisions in the OTC Act 1946 and the Satellite Communications Act 1984, to be covered in the new Telecommunications Act and makes consequential amendments to bring the language into line with the language in the Telecom and Australia Post Acts. The Satellite Communications Act is renamed the AUSSAT Act.

PART 6 - AMENDMENTS OF THE RADIOCOMMUNICATIONS ACT 1983

In deciding whether or not to issue licences and permits under the Radiocommunications Act 1983 and when imposing conditions on such licences and permits, the Minister for Transport and Communications will now be able to take into account the policy for the regulation of telecommunications networks stated in Division 1 of Part 3 of the new Telecommunications Act.

PART 8 - AMENDMENTS OF THE TELECOMMUNICATIONS (INTERCEPTION ACT) 1979

Amendments to the Telecommunications (Interception) Act 1979 (the Interception Act) are required to preserve the ambit of its operation following the changes to the telecommunications industry which will flow from the enacting of the new Telecommunications Act.

Currently the Interception Act, in affording protection from interception to communications passing over telecommunications systems provided by or with the authority of Telecom, effectively covers almost all domestic telecommunications systems. Under the new Telecommunications Act, both OTC and AUSSAT will be able to supply domestic telecommunications services. In order to preserve the protection from interception of the public's use of telecommunications services, the Interception Act is being amended to extend this protection to cover domestic telecommunications services to be provided by the other carriers.

To that end, the amendments extend the prohibition on interception to cover services provided by other carriers. The provisions of the Act allowing for the interception of communications by ASIO, and law enforcement agencies under judicial warrant, are also extended so that the prohibition and warrant provisions remain co-extensive.

PARTS 9 AND 10 - TRANSITIONAL PROVISIONS AND REPEALS RELATING TO AUSTRALIA POST AND TELECOM

Australia Post and Telecom will be subjected to State taxes and charges from commencement, planned for 1 July 1989. The Bill provides that the enterprises will not be subject to stamp duty or similar duties on property acquired, transactions entered into or securities issued, before the commencing day.

The transitional taxation provisions in the Bill complement the details of the imposition of income tax on Australia Post and Telecom from the 1990/91 year of income, and provide for arrangements to apply in respect of valuation of trading stock, capital gains tax and depreciation.

FINANCIAL IMPACT

As noted in the Explanatory Memoranda to the Telecom and Australia Post Bills, the removal of the existing exemptions from income tax will increase Commonwealth taxation revenue after the 1990/91 income year in those years that Telecom and Australia Post make a profit. These amounts cannot be accurately quantified at this stage.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 Short title

Provides for the citation of the Act.

Clause 2 Commencement

Subclause 2(1) provides for the Act to commence on a day or days to be fixed by Proclamation.

Sections 1 and 2 operate from Royal Assent.

Any provision not proclaimed within a period of six months from Royal Assent, commences on the day after the end of that period. This provision has been inserted to overcome concerns at delays in commencement of legislation.

This does not apply to sections 1 or 2, or Part 5, which makes a minor amendment to the Postal Services Amendment Act 1988 is linked to the commencement of section 12 of that Act.

PART 2 - AMENDMENTS OF THE CRIMES ACT 1914

Clause 3 Principal Act

The Crimes Act 1914 is the Principal Act in Part 2.

Clause 4 Interpretation

Amends section 3 of the Crimes Act:

to include employees of Australia Post, Telecom AUSSAT and OTC, persons who perform services on their behalf, and employees of such persons, within the definition of Commonwealth officer for the purposes of offences relating to covering officers; some examples of offences are, disclosure of information (section 70), false returns or certificates by officers (section 74), resisting or obstructing Commonwealth officers (section 76);

although Telecom and Australia Post employees are currently covered by the definition of "Commonwealth officer", the commencement of new employment provisions, following proclamation of provisions in the Telecommunications Amendment Act 1988 and the Postal Services Amendment Act 1988, may mean that they fall outside the definition for technical reasons;

to include OTC and AUSSAT within the definition of "public authority".

Clause 5 Inserts new Parts VIIA and VIIB in the Crimes Act

Note - Section 4D of the Crimes Act provides that the penalty set out for an offence is the maximum penalty that can be imposed. Section 4B includes a scale for calculating fines where the penalty set out for an offence is a term of imprisonment only, and for imposing higher penalties where a corporation is convicted.

Part VIIA - Offences Relating to Postal Services

Proposed section 85E - Interpretation

Defines expressions used in the Part, including:

"article in the course of post" does not cover a "postal message";

"postal message" is a hard copy of an unwritten communication - for example, a lettergram.

Offences involving activity in relation to articles in the course of post are handled separately from similar activity in relation to postal messages.

Proposed section 85F - incorporates interpretation provisions from the Australia Post Act.

Proposed section 85G - Forgery of postage stamps etc.

Under proposed subsections (1) and (2) it is an offence to forge or utter a postage stamp. The definition of "postage stamp" in the Australia Post Act includes marks, labels or designs authorised by Australia Post for the purposes of paying postage.

Penalty: 10 years.

There are lesser offences created by proposed subsections (3), (4) and (5) related to making, using, possessing, selling or otherwise disposing of, certain articles without lawful authority or excuse, including:

paper or articles which resemble postage stamps;

articles which resemble envelopes, letter-cards etc with a postage stamp printed or affixed to them by Australia Post;

dies, plates or instruments able to make marks, labels etc, resembling postage stamps.

In each case an element of knowledge or recklessness is required about the genuineness of the article or the capacity of the instrument.

Penalty: 5 years

Proposed section 85H - Special paper for postage stamps

The offences relate to special paper on which postage stamps are printed and any instruments to produce designs, watermarks etc on such paper. The offences contain the requirement that the person deal with the articles without lawful authority or excuse, and an element of knowledge is also required.

Penalty: 5 years.

Proposed section 85J - Fraudulently removing postage stamps

The offence relates to removal of new or used stamps and the use of used stamps, with intent to defraud.

Penalty: 1 year

Proposed section 85K - Stealing articles in the course of post etc.

Proposed subsection (1) relates to various fraudulent dealings with mailbags (including empty mailbags or where it is not known whether there are any articles in the mailbag) and articles in the course of post. Proposed subsection (2) deals with receiving a mailbag, knowing it has been stolen etc.

Penalty: 5 years

Proposed section 85L - Tampering with mail-bags etc.

Proposed subsection (1) deals with fraudulently opening or tampering with mailbags or articles in the course of post.

Penalty: 5 years

Proposed subsection (2) prohibits opening mailbags without the consent of Australia Post, and opening articles in the course of post, without the consent of Australia Post or the addressee.

Penalty: 2 years.

Proposed section 85M - Improperly obtaining articles in the course of post

The offence deals with receipt of articles in the course of post directed to another person, by a false pretences or false statement.

Penalty: 5 years

Proposed section 85N - Wrongful delivery of postal article etc.

It is an offence, knowingly or recklessly, to cause an article in the course of post to be delivered to or received by a person other than the addressee or the addressee's authorised agent.

Penalty: 1 year

Proposed section 85P - Stealing postal messages

Proposed subsection (1) relates to various fraudulent dealings with postal messages.

Proposed subsection (2) deals with receiving a postal message knowing it has been stolen.

Penalty: 5 years

Proposed section 85Q - Forgery of postal messages etc.

It is an offence to forge or utter a postal message

Penalty: 10 years

Proposed section 85R - Wrongful delivery of postal messages

It is an offence to knowingly or recklessly cause a postal message to be delivered to or received by a person other than the addressee or the addressee's authorised agent.

Penalty: 1 year

Proposed section 85S - Improper use of postal services

It is an offence to use a postal or telecommunications service supplied by Australia Post to menace or harass a person.

It is an offence to use such a service in such a way as would be regarded by reasonable persons as being, in all the circumstances, offensive.

Penalty: 1 year

This offence replaces offences currently in Regulations 53 and 53A of the Postal Services Regulations.

Regulation 53 covers sending by post or courier service, unsolicited material which advertises the existence or availability of matter of an indecent, obscene or offensive nature.

Regulation 53A covers sending by post an unsolicited article containing or displaying on the outside of the envelope, wrapping or cover, matter which is indecent or obscene or offensive.

The penalty for regulations 53 and 53A is \$200 or imprisonment for six months or both.

Proposed section 85T - Sending false postal messages

These offences cover various dealings in relation to postal messages, including:

intentionally and without a person's authority, submitting to Australia Post, a postal message signed or to be sent by a person, which is not so signed or to be sent;

intentionally and without the authority of a person, altering a postal message

Penalty: 1 year

Proposed section 85U - Obstructing carriage of articles by post

It is an offence to knowingly or recklessly obstruct or hinder the carriage by post of any article

Penalty: 2 years

Proposed section 85V - Interference with property of Australia Post

It is an offence to tamper or interfere with post-boxes, stamp vending machines and other property of Australia Post.

Penalty: 1 year

It is also an offence to interfere with notices and writing attached to property belonging to Australia Post.

Penalty: \$3000

Both these offences require an element of knowledge or recklessness and lack of authority from Australia Post.

Proposed section 85W - Causing narcotic substances to be carried by post

The offence deals with carriage by post, without lawful authority or excuse, and knowingly and recklessly, of narcotic substances within the meaning of the Customs Act 1901.

Penalty: 2 years (this offence is not intended to limit the application of any other relevant State or Territory laws)

Proposed section 85X - Causing explosives to be carried by post etc.

It is an offence, knowingly or recklessly, to cause explosives to be carried by post, or dangerous or deleterious substances which have been prescribed by regulation.

Penalty: 10 years

It is also an offence, knowingly or recklessly, to send by post dangerous or deleterious substances, which are not explosives and which have not been prescribed, except with the approval of Australia Post, and in accordance with any terms and conditions determined by Australia Post.

Penalty: 5 years

Proposed section 85Y - Hoax explosives

It is an offence to cause an article to be carried by post with the intention of inducing a false belief, that the articles contain explosives etc, or that explosives etc are or will be left in any place.

Penalty: 5 years

Proposed section 85Z - Articles carried by post to be taken to be Australia Post's property

For prosecutions of offences relating to an article carried by or under the control of Australia Post, the article shall be taken to be the property of Australia Post.

Proposed section 85ZA - Postage stamps to be valuable securities etc.

For the purposes of the law relating to larceny, postage stamps and documents issued by Australia Post relating to the carriage by post of money, are valuable securities.

Part VIIB - Offences Relating to Telecommunications Services

Proposed section 85ZB - Interpretation

Defines expressions used in the Part, including:

"carrier" means Telecom, OTC and AUSSAT;

"communication in the course of telecommunications carriage" includes a communication collected or received by the carrier for carriage.

Proposed section 85ZC - incorporates interpretation provisions from the new Telecommunications Act.

Proposed section 85ZD - Wrongful delivery of communications

It is an offence to knowingly or recklessly cause a communication in the course of carriage to be delivered to or received by a person other than the person or service to whom it is directed.

Penalty: 1 year

Proposed section 85ZE - Improper use of telecommunications services

It is an offence knowingly or recklessly to use a telecommunications service provided by a carrier to menace or harass a person or in such a way as would be regarded by reasonable people as being in all the circumstances offensive.

Penalty: 1 year

Proposed section 85ZF - Fraudulent representations and devices

It is an offence to use an apparatus or device to defraud a carrier of any rental or fee properly payable, or knowingly or recklessly to cause a carrier to provide a service to another person without payment of the proper amount.

Penalty: 5 years

Proposed section 85ZG - Interference with telecommunications services

It is an offence knowingly or recklessly to manipulate, tamper or interfere with a facility operated by a carrier to hinder the normal operation of a telecommunications service supplied by the carrier.

It is an offence knowingly or recklessly to operate an apparatus or device, whether linked to the network or not, to hinder the normal operation of a telecommunications service supplied by a carrier.

Penalty: 2 years

Proposed section 85ZH - Sending signals to satellite

It is an offence, without lawful authority or excuse, knowingly or recklessly to transmit a signal to a satellite operated by a carrier.

Penalty: \$10,000

Proposed section 85ZJ - Interference with carrier facilities

It is an offence knowingly or recklessly to tamper or interfere with facilities belonging to a carrier.

The definition of "facility" in the new Telecommunications Act means any part of the infrastructure of a telecommunications network, including such things as lines, towers, tunnels etc.

Penalty: 1 year

Proposed section 85ZK - Equipment used for unlawful purposes etc.

It is an offence to connect equipment to a telecommunications network with the intention of using it in or in relation to the commission of a criminal offence, or to use equipment connected to a network in or in relation to the commission of an offence.

This does not apply where AUSTEL has issued a permit under, Division 4 of Part 5 of the new Telecommunications Act.

Penalty: 5 years

PART 3 - AMENDMENTS OF THE OMBUDSMAN ACT 1976

Clause 6

Principal Act

The Ombudsman Act 1976 is the Principal Act in Part 3.

Clause 7 Discretion not to investigate certain complaints

Inserts new subsection 6(4D) in the Ombudsman Act which provides that the Ombudsman has a discretion not to investigate a complaint about a carrier where the Ombudsman forms the opinion that the complaint can be more effectively dealt with by AUSTEL in accordance with its powers under Part 6 of the new Telecommunications Act.

New subsection 6(4E) provides for the transfer of the complaint any relevant information and documents, to AUSTEL, and notification of the complainant.

Section 152 in the new Telecommunications Act will deal with the transfer of complaints from AUSTEL to the Ombudsman.

Clause 8 Officers to observe confidentiality

Amends section 35 of the Ombudsman Act so that information provided to AUSTEL by the Ombudsman or officers does not infringe a duty not to disclose information.

PART 4 - AMENDMENTS OF THE OTC ACT 1946

Clause 9 Principal Act

The OTC Act 1946 is the Principal Act in Part 4.

Clause 10 Interpretation

Substitutes a revised definition of Australia in section 3 of the OTC Act: when used in a geographical sense Australia includes all the external territories, including Norfolk Island, Christmas Island and Cocos (Keeling) Islands.

Omits redundant definitions from section 3 of the OTC Act.

Clause 11 Interpretation - Telecommunications Act

Inserts proposed section 3A in the OTC Act which incorporates interpretation provisions used in the new Telecommunications Act.

Clause 12 Repeals sections 6 and 6A of the OTC Act and substitutes proposed sections 5, 6 and 7.

Proposed section 5 - Extraterritorial operation

The Act applies within and outside Australia.

Proposed section 6 - Extension of Act to external territories

The Act extends to all the external territories, including Norfolk Island, Christmas Island and Cocos (Keeling) Islands.

Proposed section 7 - Extension of Act to adjacent areas

Provides for the application of the OTC Act in areas adjacent to the States and Territories.

Clause 13 **Repeal of Part II**

Repeals Part II of the OTC Act - the only provision, the offence of disclosing the contents of communications, is now to be covered by section 70 of the Crimes Act and proposed new section 75.

Clause 14 **Repeal of Part III**

Repeals Part III of the OTC Act - the provisions deal with regulatory issues and are covered in the new Telecommunications Act.

Clause 15 **Repeals sections 75, 76 and 78 and inserts:**

Proposed section 74 - International obligations

OTC is to exercise its powers consistent with Australia's obligations under any convention. Telecom, Australia Post and AUSSAT have the same obligation.

Proposed section 75 - Duty of OTC's employees not to divulge contents of communications etc.

It is the duty of an employee of OTC not to disclose any facts relating to the carriage of a communication, services supplied or intended to be supplied by OTC to another person, or the affairs of other persons, coming to the employee's knowledge or possession because the person is an employee of OTC.

This does not apply where the employee discloses information in specified circumstances, for example in performing duties as an employee or giving evidence in a court of law.

This duty is relevant to section 70 of the Crimes Act under which it is an offence for a Commonwealth officer to publish or communicate, (coming into the employee's notice by virtue of employment with OTC) except where authorised, any fact or document which came to the officer's knowledge by virtue of holding the office, and which it is the officer's duty not to disclose.

"employee" has an extended definition and covers people who perform services for and on behalf of OTC and their employees.

Proposed section 76 - Immunity from certain actions

OTC and any other person is not liable for loss or damage because of any act or omission by or on behalf of OTC (whether negligent or not) in relation to the supply of a reserved service - as defined in the new Telecommunications Act. This does not apply to acts or omissions resulting in death or personal injury.

Clause 16 Renumbering of the OTC Act

Renumbers Parts and sections in the OTC Act and provides for interpretation of references in other legislation and documents.

PART 5 - AMENDMENTS OF THE POSTAL SERVICES AMENDMENT ACT 1988

Clause 17 Principal Act

The Postal Services Amendment Act 1988 is the Principal Act in Part 5.

Clause 18 Schedule 2

The Postal Services Amendment Act amended the Postal Services Act 1975, by omitting Part V which created the "Service" of Australia Post and substituted new employment provisions. Part II of Schedule 2 made a number of consequential amendments omitting "officer" and substituting "employee" where references were made in other Acts to officers of Australia Post.

The amendments to section 27 of the Australian Security Intelligence Organisation Act 1979 included one reference to an officer of ASIO. This clause corrects the error. The amendment is to commence on the day proclaimed for the purposes of the relevant provisions in the Postal Services Amendment Act.

PART 6 - AMENDMENTS OF THE RADIOCOMMUNICATIONS ACT 1983

Clause 19 Principal Act

The Radiocommunications Act 1983 is the Principal Act in Part 6.

Clause 20 Interpretation

Amends the definition of "radiocommunications transmitter" to alter a reference to the Telecommunications Act 1975.

Clause 21 Transmitter licence

Amends section 24 of the Radiocommunications Act to provide that the policies specified in Division 1 of Part 3 of the new Telecommunications Act can be taken into account in decisions about whether or not to issue a transmitter licence.

Clause 22 Conditions to which the transmitter licence is subject

Amends section 25 of the Radiocommunications Act to provide that telecommunications policies can be taken into account in relation to imposing conditions on transmitter licences.

Clause 23 Temporary permits for non-resident aliens

Amends section 35 of the Radiocommunications Act to allow telecommunications policies to be taken into account for the purposes of imposing conditions on temporary permits for non-resident aliens.

Clause 24 Receiver licence

Amends section 38 of the Principal Act to provide that telecommunications policies can be taken into account in deciding whether or not to grant a receiver licence and in imposing conditions on such a licence.

PART 7 - AMENDMENTS OF THE SATELLITE COMMUNICATIONS ACT 1984

Clause 25 Principal Act

The Satellite Communications Act 1984 is the Principal Act in Part 7.

Clause 26 Short title

Renames the Satellite Communications Act the AUSSAT Act 1984.

Clause 27 Interpretation

Substitutes a revised definition of Australia, which when used in a geographical sense includes all the external territories, including Norfolk Island, Christmas Island and Cocos (Keeling) Islands.

Omits some redundant definitions.

Clause 28 Interpretation - Expressions used in the Telecommunications Act

Inserts new section 3A in the OTC Act, which incorporates interpretation provisions of the new Telecommunications Act.

- Clause 29 Repeals section 4 in the Satellite Communications Act and substitutes proposed sections 4, 4A and 4B.

Proposed section 4 - Extraterritorial operation of Act

The Act applies within and outside Australia.

Proposed section 4A - Extension of Act to external territories

The Act extends to all the external territories, including Norfolk Island, Christmas Island and Cocos (Keeling) Islands.

Proposed section 4B - Extension of Act to adjacent areas

Provides for the application of the Act in areas adjacent to the States and Territories.

- Clause 30 Repeals section 7 which makes provisions about the Australian telecommunications network, now covered in the new Telecommunications Act and inserts:

Proposed section 7 - International obligations

AUSSAT shall exercise its international obligations consistent with obligations under a convention. The same obligation applies to Telecom, Australia Post and OTC. This provision is currently contained in paragraph 8(2)(b) which is to be repealed.

- Clause 31 Obligations of directors of AUSSAT

Repeals subsection 8(2) of the Radiocommunications Act. The provision will be redundant following the enactment of the new Telecommunications Act.

- Clause 32 Repeals sections 14 to 18 of the Radiocommunications Act, which are catered for elsewhere, and inserts:

Proposed section 14 - Duty of AUSSAT's employees not to disclose contents of communications etc

It is the duty of an employee of AUSSAT not to disclose any facts relating to the carriage of a communication, services supplied or intended to be supplied by AUSSAT to another person, or the affairs of other persons, coming to the employee's knowledge or possession because the person is an employee of AUSSAT.

This does not apply where the employee discloses information in specified circumstances, for example in performing duties as an employee or giving evidence in a court of law.

This duty is relevant to section 70 of the Crimes Act under which it is an offence for a Commonwealth officer to publish or communicate, except where authorised, any fact or document which came to the officer's knowledge by virtue of holding the office, and which it is the officer's duty not to disclose.

"employee" has an extended definition and covers people who perform services for and on behalf of AUSSAT and their employees.

Clause 33 Regulations

Omits redundant regulation-making powers from section 19 of the Principal Act.

Clause 34 Minor amendments

Changes "Aussat" to "AUSSAT" throughout.

Clause 35 Makes consequential amendments to the Acts set out in Part 1 of the Schedule, related to the change of name to the "AUSSAT Act 1984" and the change from "Aussat" to "AUSSAT".

Clause 36 Renumbering of the Satellite Communications Act

Renumbers Parts and sections in the OTC Act and provides for interpretation of references in other legislation and documents.

PART 8 - AMENDMENTS OF THE TELECOMMUNICATIONS (INTERCEPTION) ACT 1979

Clause 37 Principal Act

Formal clause that identifies the Telecommunications (Interception) Act 1979 as the Principal Act being amended.

Clause 38 Interpretation

This clause amends subsection 5(1) of the Principal Act by -

consequentially amending the definition of "employee of the Corporation" following the enacting of the Australian Postal Corporation Act 1989;

amending the definition of "subscriber" to omit the reference to the subscriber being "authorized" by the Australian Telecommunications Corporation;

amending the definition of "communication" to more closely reflect the definition in the Telecommunications Act 1989;

replacing the definition of "Managing Director" to ensure that the chief executives of all 3 carriers - Telecom, OTC and AUSSAT - are covered;

replacing the definition of "telecommunications service" so that it covers a service within the meaning of the Telecommunications Act 1989 that is situated in Australia that allows communications to be carried over a telecommunications system operated by a carrier;

replacing the definition of "telecommunications system" so that it picks up only that part of a "telecommunications network" as defined in the Telecommunications Act 1989 that is within Australia. The expression "network within Australia" is defined in proposed subsection 5(5);

adding the definition of "carrier" to refer to the Australian Telecommunications Corporation, OTC Limited and AUSSAT Pty Ltd which, under the Telecommunications Act 1989, will all have a right to install, maintain and operate telecommunications networks within Australia;

adding the definitions of "carry", "equipment", "facility", "line", "maintain" and "telecommunications network" that are contained in the Telecommunications Act 1989;

defining the phrase "passing over" used in subsection 7(1) of the Principal Act which prohibits interception of communications passing over a telecommunications system to include communications being "carried over" such a system.

Consequential amendments are made by the clause to subsection 5(2) to cover all carriers.

The clause also adds new subsections (3) and (5) to describe the phrase "connected to a telecommunications network" used in the definition of "telecommunications system", and the concept of "network within Australia" used in the definition of "telecommunications system", respectively.

Clause 39 Interception of communication

Consistent with the extension of the Act to cover OTC and AUSSAT, this amendment substitutes the expression "carrier" for the reference to the Corporation.

Clause 40 Telecommunications not to be intercepted

This clause amends subsection 7(2) of the Principal Act to exclude from the prohibition on interception contained in subsection 7(1) acts of an employee of the other carriers done in the course of his or her duties for the purposes of maintaining or operating a telecommunications service or system. The reference to "apparatus" is removed from subparagraph 7(2)(a)(i) as a consequential amendment to the inclusion of the definition of "equipment" (which includes apparatus) in section 5. Consequential amendments are made to subparagraph 7(2)(a)(ii) to reflect the relocation of "telecommunications" offences into Part VIIB of the Crimes Act 1914 which is inserted in that Act by this Bill. The exclusion in paragraph 7(2)(aa) from the prohibition on interception of persons lawfully engaged in duties relating to the installation or maintenance of PABX equipment is extended to cover equipment and lines. Subsection 7(3) is repealed as a consequential amendment to the inclusion of the definition of "line" in section 5.

Clause 41 Issue of warrants by Attorney-General for Organization to intercept telecommunications

This clause makes a consequential amendment to subparagraph 9(2)(a)(ii) to change the reference to "the Corporation" to "a carrier".

Clause 42 Issue of warrants for Organization to intercept telegrams

This amendment ensures that the reference to the "Managing Director" in subsection 11(8) is to the Managing Director of the Australian Telecommunications Corporation. It also makes a consequential amendment to subsection 11(9) to refer to Part VIIB of the Crimes Act 1914 which is inserted in that Act by this Bill.

Clause 43 Warrants for the performance of functions under paragraph 17(1)(e) of the ASIO Act

This clause makes a consequential amendment to subparagraph 11A(2)(a)(ii) to change the reference to "the Corporation" to "the carrier", and to subsection 11A(6) to refer to the Managing Director of the Australian Telecommunications Corporation. This clause also amends subsection 11A(7) to refer to Part VIIB of the Crimes Act 1914 which is inserted in that Act by this Bill.

Clause 44 How warrants etc. to be dealt with

As the result of the removal of the reference to the "Managing Director" in subsection 15(1) of the Principal Act by this clause and the insertion of a new subsection 15(1A) and (1B), the Attorney-General will only be obliged to inform the Director-General of Security of the issue or revocation of Part III warrants. However, where action under the authority of a warrant issued by the Attorney-General will result in the interception of communications to or from a telecommunications service while passing over a telecommunications system operated by a particular carrier, the Director-General will be obliged to inform the Managing Director of the relevant carrier of the issue and revocation of the warrant forthwith. Similarly subsection (4) is amended to ensure that the Managing Director of the carrier over the telecommunications system of which communications are passing that are being intercepted under the warrant is informed of the issue of the warrant. The remaining amendments are consequential on those amendments.

Clause 45 Warrants under this Part

The amendment to subsection 21(6) of the Principal Act made by this clause ensures that the reference to "Managing Director" is to the Managing Director of the Australian Telecommunications Corporation. It also makes a consequential amendment to subsection 21(7) to refer to Part VIIB of the Crimes Act 1914 which is inserted in that Act by this Bill.

Clause 46 How warrants etc. to be dealt with

Again, the amendment to section 25 of the Principal Act made by this clause ensures that the reference to the "Managing Director" refers to the Managing Director of the Australian Telecommunications Corporation.

Clause 47 Emergency requests

The amendments to section 30 of the Principal Act made by this clause have the effect of applying the section (which allows the tracing of calls by Australian Telecommunications Corporation officers where requested to do so by a police officer who is satisfied that a life-threatening emergency exists) to employees of the other carriers so they can perform the same function.

Clause 48 Preconditions for declaration

The clause removes from paragraph 35(2)(b) the reference to the Australian Telecommunications Corporation. A State seeking the declaration of an "eligible authority" under section 35 will still have to come to an arrangement with a carrier for the recovery of expenses incurred by that carrier for the purposes of the execution of a warrant issued to the authority.

Clause 49 Limit on authority conferred by warrant under section 45 or 46

This clause inserts a new section 47 so that, in a case where action under a section 45 or 46 warrant involves the interception of communications to or from a telecommunications service while they pass over a telecommunications system operated by a particular carrier, the authority of that warrant does not authorise interception unless notification of the issue of the warrant has been received by or on behalf of the Managing Director of that carrier under subsection 60(1). Further, in such a case, the proposed section limits the authority of the warrant to interceptions taking place as a result of action of employees of that carrier.

Clause 50 Issue of warrant for entry on premises

The amendments to paragraph 48(3)(d) of the Principal Act made by this clause extend the grounds on which a Judge may be satisfied that it would be impracticable or inappropriate to intercept under a warrant otherwise than by entry on premises to cover "technical reasons" connected with the "nature" of a telecommunications service or system of which the service forms a part. This will allow the entry into premises to access new types of systems and hardware that have been and are being developed. The other amendment relates to the grounds set out in paragraph 48(3)(d)(ii) relating to the possible threat to the security of an investigation of an offence if execution of the warrant involved action taken by employees of the Australian Telecommunications Corporation and provides for the Judge to consider only the employees of the carrier over the telecommunications system of which communications would otherwise be intercepted under the warrant.

Clause 51 Managing Directors to be informed of issue or revocation of certain warrants

This clause amends section 60 to alter the obligation on the chief officer of an agency to which a warrant has been issued. If it is proposed under a warrant to intercept communications to or from a telecommunications service while passing over a telecommunications system operated by a particular carrier, the chief officer shall cause the Managing Director of that carrier to be informed of the issue and any subsequent revocation. Subsection 60(2) has been redrafted to ensure that the Managing Director of the appropriate carrier receives a copy of a notification made to the Commissioner of the AFP of the issue of a warrant to such an agency.

Clause 52 Evidentiary certificates

Section 61 of the Principal Act is amended so that it refers to the Managing Directors of each carrier as appropriate.

Clause 53 No dealing in intercepted information

This amendment to section 63 of the Principal Act is consequential on the insertion of section 63B by clause 54.

Clause 54 Communication of information relating to business of carriers

The proposed section 63B inserted by this clause will allow an employee of a carrier, in the performance of his or her duties, to communicate or cause to be communicated, to made use of, or make a record of, intercepted information that relates to the operation or maintenance of a telecommunications network operated by that carrier or the supply of services by that carrier. It will also allow employees of a carrier to communicate or cause to be communicated to another carrier, intercepted information that relates to the operation or maintenance of a telecommunications network operated by that other carrier or to the supply of services by that other carrier where it is communicated for that purpose. Under this provision a carrier will be able to provide information obtained by interception to another carrier for the purpose of the operation of the latter's networks, for example, for charging and network planning purposes.

Clause 55 Carrier may communicate to Australian Federal Police or Authority

This clause amends section 65A of the Principal Act to cover all the carriers.

Clause 56 Making record for purpose of permitted communication

The inclusion of a reference in section 72 of the Principal Act to proposed section 63B will allow employees of a carrier who are permitted under section 63B to communicate, or cause to be communicated, information, to make a record of it for that purpose.

Clause 57 Further dealing by recipient of certain information

The inclusion of a reference in section 73 of the Principal Act to proposed subsection 63B(2) will allow employees of a carrier to whom information is communicated under subsection 63B(2) for a particular purpose to communicate it or make a record of it for that purpose.

Clause 58 Annual reports to Minister about interceptions under Part V

This clause amends section 93 of the Principal Act to require the Managing Director of each carrier to give a written report to the Minister about interceptions carried out under the "emergency" provisions in section 30 of the Act by employees of that carrier.

Clause 59 Reports by Managing Directors about the acts done in connection with certain warrants under Part IV or VI

This clause amends section 97 of the Principal Act to require the Managing Director of each carrier to give a written report about acts or things done by employees of that carrier in relation to the execution of warrants.

**PART 9 - TRANSITIONAL PROVISIONS AND REPEALS
RELATING TO AUSTRALIA POST**

Division 1 - Interpretation

Clause 60 Interpretation - definitions

Definitions used in Part 9:

"commencing day is the day the Australia Post Act commences;

"new Act" means the Australia Post Act;

"previous Act" - the Postal Services Act 1975.

Clause 61 Interpretation - expressions used in new Act

Incorporates interpretation provisions from the Australia Post Act.

Division 2 - Taxation matters

Clause 62 Stamp duty not payable in relation to certain property etc.

Provides that Australia Post is not liable, under either Commonwealth, State or Territory law, for any stamp duty or similar tax in relation to property acquired or constructed before the commencing day of this Act.

Subclause (2) is specifically inserted to cover the situation in respect of the large motor vehicle fleet already owned by Australia Post. It is designed to avoid the possibility of windfall gains to those States seeking to apply such stamp duties and taxes to Australia Post's existing fleet. All acquisitions after 1 July 1989 will be subject to normal stamp duties and similar taxes.

Clause 63 Stamp duty not payable in relation to certain transactions

This provision is inserted to ensure that Australia Post's liability for such stamp duties or similar taxes only commences from the commencement date of this Act (expected to be 1 July 1989). Australia Post is not liable in respect of property owned, acquired or constructed before 1 July 1989.

Clause 64 Stamp duty not payable in relation to certain securities etc.

This clause provides that Australia Post's existing exemption from Commonwealth, State and Territory stamp duty or similar tax for the issue, redemption, transfer, sale or purchase of Australia Post's securities or documents executed in relation to borrowings continues in respect of transactions issued prior to the commencing day of this Act. New securities issued or new borrowings entered into after the commencing day of this Act will become liable stamp duties and similar taxes.

Clause 65 Commencement of Australia Post's liability to pay income tax

This clause provides that Australia Post only becomes liable for income tax for the year of income commencing on 1 July 1990 (the financial year 1990/91), and not for income earned before that date.

Clause 66 Value of trading stock for income tax purposes

This clause proposes transitional measures in respect of trading stock of Australia Post, the profits from which first become liable to tax in the year of income commencing on 1 July 1990.

Subclause 66(1) provides that the value of Australia Post's opening trading stock on 1 July 1990, for the purposes of the Income Tax Assessment Act 1936 (Subdivision B Division 2 of Part III), is to be at the option of Australia Post.

Subclause (2) requires any option or notice under subclause (1) to be exercised by notice in writing, lodged with the Commissioner of Taxation on or before the day of lodgement of Australia Post's income tax return for the year commencing 1 July 1990 or such later date as the Commissioner of Taxation allows.

Subclause (3) provides that if Australia Post does not exercise an option under subclause (1) in relation to particular trading stock, the cost price shall be the value of that stock.

Subclause (4) is concerned with the situation where Australia Post exercises a further option in relation to the value of trading stock on hand at the end of the first taxable year. Where Australia Post adopts cost price as the basis of determining such a valuation, the value at which that trading stock was taken into account under subclause (1) at the beginning of that year will be treated as the cost price of that trading stock.

Clause 67 Accelerated depreciation not available for income tax purposes

This clause proposes that section 57AL of the Income Tax Assessment Act 1936 as in force immediately after the commencement of section 38 of the Taxation Laws Amendment Act (No 4) 1988 does not apply to a unit of property owned by Australia Post.

Section 57AL authorises accelerated depreciation allowances for most new and second hand plant used for the purpose of producing assessable income. The deduction is allowed over 5 years if the effective life of the plant is longer than 5 years; otherwise a 3 year write-off applies.

Section 38 and subsection 54(7) of the Taxation Law Amendment Act (No 4) 1988 terminated this special accelerated depreciation deduction broadly for plant contracted for after 25 May 1988 or other plant not used or installed for use before 1 July 1991.

This clause has the effect that the accelerated depreciation allowances will not be available in respect of plant owned by Australia Post even where that plant was contracted for on or before 25 May 1988.

Clause 68 Transitional provisions for capital gains tax

This clause provides for the treatment of capital gains and losses on Australia Post's assets acquired after 19 September 1985 and disposed of after 30 June 1990, the day before the commencement of the income year in which Australia Post becomes liable for income tax. The cost base for the relevant asset for determining capital gains will be determined by the greater of its indexed cost base or market value as at the end of 30 June 1990.

If the market value of the asset as at the end of 30 June 1990 is less than the reduced cost base of the asset at that date, market value will be used for the purpose of determining capital losses.

Subclause (1) in effect, provides that, where:

an asset is owned by Australia Post at the end of 30 June 1990 ("the changeover date"); and

the market value of the asset at the end of 30 June 1990 is greater than the indexed cost base of the asset to Australia Post if it were disposed of at that time,

only the gain which accrues after 30 June 1990 on the market value of the asset will be subject to capital gains tax under Part IIIA of the Income Tax Assessment Act 1936.

Subclause (2) denies indexation to relevant assets which are disposed of within 12 months of acquisition.

Subclause (3) in effect, provides that, where:

an asset is owned by Australia Post at the end of 30 June 1990 ("the changeover date"); and

the market value of the asset at the end of 30 June 1990 is less than the reduced cost base of the asset to Australia Post if it were disposed of at that time,

any capital loss for the purposes of Part IIIA of the Income Tax Assessment Act incurred by Australia Post through subsequent disposal will be calculated on the market value of the asset.

Division 3 - Non-taxation matters

- Clause 69** **Certain existing liabilities to the Commonwealth**
- Subject to regulations, provisions in section 76 of the previous Act in force immediately before the commencing day continue to have effect. This preserves Australia Post's liabilities to the Commonwealth.
- Clause 70** **Existing Directors other than the Managing Director**
- Directors other than the Managing Director appointed and holding office immediately before the commencing day continue to hold office for the remainder of their terms (if any), without the need for re-appointment.
- Clause 71** **Existing Managing Director**
- The Managing Director immediately before the commencing day continues to hold office, without the need for re-appointment.
- Clause 72** **Employment of staff members to continue**
- Saves the employment of employees immediately before the commencing day.
- Clause 73** **Unclaimed amounts**
- Preserves the funds in the Unclaimed Moneys Fund under repealed section 106 in a similar fund under clause 91.
- Preserves the operation of repealed section 107 in relation to funds in the Consolidated Revenue Fund immediately before the commencing day.
- Clause 74** **Consequential amendments**
- Amends Acts set out in the Schedule to deal with the transfer of offences currently in the previous Act to the Crimes Act, and to account for the citation of the new Act.
- Clause 75** **Repeals**
- Repeals the previous Act and amending Acts.

PART 10 - TRANSITIONAL PROVISIONS AND REPEALS
RELATING TO TELECOM

Division 1 - Interpretation

Clause 76 Interpretation - definitions

Definitions used in Part 10, including:

"commencing day" is the day the Telecom Act commences;

"new Act" means the Telecom Act;

"previous Act" - the Telecommunications Act 1975.

Clause 77 Interpretation - expressions used in new ActI

ncorporates interpretation provisions from the Telecom Act.

Division 2 - Taxation matters

Clause 78 Stamp duty not payable in relation to certain property etc.

Provides that Telecom is not liable, under either Commonwealth, State or Territory law, for any stamp duty or similar tax in relation to property acquired or constructed before the commencing day of this Act.

Subclause (2) is specifically inserted to cover the situation in respect of the large motor vehicle fleet already owned by Telecom. It is designed to avoid the possibility of windfall gains to those States seeking to apply such stamp duties and taxes to Telecom's existing fleet. All acquisitions after 1 July 1989 will be subject to normal stamp duties and similar taxes.

Clause 79 Stamp duty not payable in relation to certain transactions

This provision is inserted to ensure that Telecom's liability for such stamp duties or similar taxes only commences from the commencement date of this Act (expected to be 1 July 1989). Telecom is not liable in respect of property owned, acquired or constructed before 1 July 1989.

Clause 80 Stamp duty not payable in relation to certain securities etc.

This clause provides that Telecom's existing exemption from Commonwealth, State and Territory stamp duty or similar tax for the issue, redemption, transfer, sale or purchase of Telecom's securities or documents executed in relation to borrowings

continues in respect of transactions issued prior to the commencing day of this Act. New securities issued or new borrowings entered into after the commencing day will become liable stamp duties and similar taxes.

Clause 81 Commencement of Telecom's liability to pay income tax

This clause provides that Telecom only becomes liable for income tax for the year of income commencing on 1 July 1990 (the financial year 1990/91), and not for income earned before that date.

Clause 82 Value of trading stock for income tax purposes

This clause proposes transitional measures in respect of trading stock of Telecom, the profits from which first become liable to tax in the year of income commencing on 1 July 1990.

Subclause (1) provides that the value of Telecom's opening trading stock on 1 July 1990, for the purposes of the Income Tax Assessment Act 1936 (Subdivision B, Division 2 of Part III), is to be at the option of Telecom.

Subclause (2) requires any option or notice under subclause (1) to be exercised by notice in writing, lodged with the Commissioner of Taxation on or before the day of lodgement of Telecom's income tax return for the year commencing 1 July 1990 or such later date as the Commissioner of Taxation allows.

Subclause (3) provides that if Telecom does not exercise an option under subclause (1) in relation to particular trading stock, the cost price shall be the value of that stock.

Subclause (4) is concerned with the situation where Telecom exercises a further option in relation to the value of trading stock on hand at the end of the first taxable year. Where Telecom adopts cost price as the basis of determining such a valuation, the value at which that trading stock was taken into account under subclause (1) at the beginning of that year will be treated as the cost price of that trading stock.

Clause 83 Accelerated depreciation not available for income tax purposes

This clause proposes that section 57AL of the Income Tax Assessment Act 1936 as in force immediately after the commencement of section 38 of the Taxation Laws Amendment Act (No 4) 1988 does not apply to a unit of property owned by Telecom.

Section 57AL authorises accelerated depreciation allowances for most new and second hand plant used for the purpose of producing assessable income. The deduction is allowed over 5 years if the effective life of the plant is longer than 5 years; otherwise a 3 year write-off applies.

Section 38 and subsection 54(7) of the Taxation Law Amendment Act (No 4) 1988 terminated this special accelerated depreciation deduction broadly for plant contracted for after 25 May 1988 or other plant not used or installed for use before 1 July 1991.

This clause has the effect that the accelerated depreciation allowances will not be available in respect of plant owned by Telecom even where that plant was contracted for on or before 25 May 1988.

Clause 84 Transitional Provisions for capital gains tax

This clause provides for the treatment of capital gains and losses on Telecom's assets acquired after 19 September 1985 and disposed of after 30 June 1990, the day before the commencement of the income year in which Telecom becomes liable for income tax. The cost base for the relevant asset for determining capital gains will be determined by the greater of its indexed cost base or market value as at the end of 30 June 1990.

If the market value of the asset as at the end of 30 June 1990 is less than the reduced cost base of the asset at that date, market value will be used for the purpose of determining capital losses.

Subclause (1) in effect, provides that, where:

an asset is owned by Telecom at the end of 30 June 1990 ("the changeover date"); and

the market value of the asset at the end of 30 June 1990 is greater than the indexed cost base of the asset to Telecom if it were disposed of at that time,

only the gain which accrues after 30 June 1990 on the market value of the asset will be subject to capital gains tax under Part IIIA of the Income Tax Assessment Act 1936.

Subclause (2) denies indexation to relevant assets which are disposed of within 12 months of acquisition.

Subclause (3) in effect, provides that, where:

an asset is owned by Telecom at the end of 30 June 1990 ("the changeover date"), and

the market value of the asset at the end of 30 June 1990 is less than the reduced cost base of the asset to Telecom if it were disposed of at that time,

any capital loss for the purposes of Part IIIA of the Income Tax Assessment Act incurred by Telecom through subsequent disposal will be calculated on the market value of the asset.

Division 3 - Non-taxation matters

Clause 85 Certain existing liabilities to the Commonwealth

Subject to regulations, provisions in section 71 of the previous Act in force immediately before the commencing day continue to have effect. This preserves Telecom's liabilities to the Commonwealth.

Clause 86 Existing Directors other than the Managing Director

Directors other than the Managing Director appointed and holding office immediately before the commencing day continue to hold office for the remainder of their terms (if any), without the need for re-appointment.

Clause 87 Existing Managing Director

The Managing Director immediately before the commencing day continues to hold office, without the need for re-appointment.

Subclause (2) provides that if the current Managing Director continues to hold office, without reappointment, at the commencing day, transitional provisions under section 30 of the Telecommunications Amendment Act 1988 continue to apply to him.

Clause 88 Employment of staff members to continue

Saves the employment of employees immediately before the commencing day.

Clause 89 Consequential amendments

Amends Acts set out in the Schedule, to deal with the citation of the new Act.

Clause 90 Repeals

Repeals the previous Act and amending Acts.

