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THE PARLIAMENT OF THE COMMONWEALTH  
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HOUSE OF REPRESENTATIVES

BROADCASTING AMENDMENT BILL (No. 2) 1991  
RADIO LICENCE FEES AMENDMENT BILL 1991  
TELEVISION LICENCE FEES AMENDMENT BILL 1991

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Transport and  
Communications, the Hon Kim C Beazley MP)



**BROADCASTING AMENDMENT BILL (No. 2) 1991**

**RADIO LICENCE FEES AMENDMENT BILL 1991**

**TELEVISION LICENCE FEES AMENDMENT BILL 1991**

**OUTLINE**

These Bills amend the *Broadcasting Act 1942* and related taxing legislation to implement reforms which will:

- . enable new FM commercial and supplementary radio services to become available to regional listeners more quickly under the Regional Radio Program; and
- . implement measures announced in the Budget to halve the current level of annual commercial, supplementary and remote radio licence fees and streamline the taxation arrangements for broadcasting licensees.

Regional Radio Program Amendments

The Broadcasting Amendment Bill (No. 2) 1991 and the Radio Licence Fees Amendment Bill 1991 amend the *Broadcasting Act 1942* and the *Radio Licence Fees Act 1964* respectively. The main measures which relate to the Regional Radio Program in these Bills will:

- . abolish current establishment and AM/FM conversion fees and replace them with an FM access fee to be paid by all commercial and supplementary non-metropolitan radio licensees before they commence service on the FM band;
- . define the term 'commercial viability' for the purposes of the licensing provisions of the *Broadcasting Act* and limit the circumstances in which commercial viability is considered by the Australian Broadcasting Tribunal when conducting certain licence grant inquiries;
- . enable a supplementary radio licence to serve an area smaller than that served by the related commercial radio licence; and
- . enable a supplementary radio licence to be separated from the related commercial radio licence two years after the commencement of the supplementary service.

Annual Licence Fees Amendments

The Broadcasting Amendment Bill (No. 2) 1991, the Radio Licence Fees Amendment Bill 1991 and the Television Licence Fees Amendment Bill 1991 amend the *Broadcasting Act 1942*, the *Radio Licence Fees Act 1964* and the *Television Licence Fees Act 1964* respectively to make changes to the annual

licence fees arrangements for broadcasting services. The main changes are:

- . amendments of the *Radio Licence Fees Act 1964* to halve the annual licence fees payable for commercial, supplementary and remote radio licences;
- . amendments of the *Broadcasting Act 1942* to establish a procedure for self-assessment by licensees of annual licence fees; and
- . amendments of the *Broadcasting Act 1942*, *Radio Licence Fees Act 1964* and the *Television Licence Fees Act 1964* to require the payment of all annual licence fees on 31 December each year for commercial, supplementary and remote radio services and commercial and remote television services.

The Broadcasting Amendment Bill (No. 2) also makes minor amendments to the *Broadcasting Act 1942* to:

- . enable public radio licensees in isolated areas to broadcast sponsorship announcements which promote products and services; and
- . restrict the amount of sponsorship announcements which can be broadcast by such licensees to a total of 4 minutes per hour of broadcasting.

### FINANCIAL IMPACT

#### Regional Radio Program Amendments

These amendments are expected to have no significant impact on Commonwealth expenditure or revenue. Commonwealth revenue in the way of licence fees for individual new commercial services and AM/FM conversions will be reduced as a result of the introduction of the FM access fee to replace the current establishment fee and the AM/FM conversion fee.

This reduction in revenue should be offset by new revenue obtained because the FM access fee applies to new non-metropolitan supplementary services and all non-metropolitan FM conversions (the current AM/FM conversion fee does not apply to all such conversions).

The changes to the statutory licensing criteria are not expected to have a significant impact on expenditure or revenue but should enable the Tribunal to make more efficient use of its resources.

### Annual Licence Fees Amendments

Halving the annual licence fees payable for commercial, supplementary and remote radio licences is expected to result in a decrease in Commonwealth revenue of \$8 million in the 1991-92 financial year and \$8.5 million in the 1992-93 financial year.

The introduction of licensee self-assessment of annual licence fees and the requirement for radio and television annual licence fees to be paid on 31 December each year is not expected to have a significant financial impact on Commonwealth expenditure or revenue.

Licensee self-assessment is expected to simplify the administration of the current licence fee scheme and should enable the Tribunal to make more efficient use of its resources.

Although the requirement for annual licence fees to be paid on 31 December each year will not significantly impact on revenue, it will bring forward the collection of revenue from some licensees by up to 6 months. The amendments will remove the inequity in the current scheme which allows some licensees up to 6 months longer than other licensees to pay fees relating to the same financial year.

The other amendments in the Bills have no financial impact.

### ABBREVIATIONS

The following abbreviations are used in this Explanatory Memorandum -

amending Act	<i>Broadcasting Amendment Act (No. 2) 1991, Radio Licence Fees Amendment Act 1991 or Television Licence Fees Amendment Act 1991, depending on the context of the reference</i>
Broadcasting Act	<i>Broadcasting Act 1942</i>
Principal Act	<i>Broadcasting Act 1942, Radio Licence Fees Act 1964 or Television Licence Fees Act 1964, depending on the context of the reference</i>
Radio Licence Fees Act	<i>Radio Licence Fees Act 1964</i>
Television Licence Fees Act	<i>Television Licence Fees Act 1964</i>
Tribunal	<i>Australian Broadcasting Tribunal</i>

## NOTES ON CLAUSES

### BROADCASTING AMENDMENT BILL (NO. 2) 1991

#### PART 1 - PRELIMINARY

##### Clause 1 - Short title etc.

Clause 1(1) provides for the citation of the *Broadcasting Amendment Act (No. 2) 1991*.

Clause 1(2) provides that in the amending Act, the term 'Principal Act' means the *Broadcasting Act 1942*.

##### Clause 2 - Commencement

This clause provides for the commencement of the amending Act.

Clause 2(1) provides for most of the Act to commence 28 days after Royal Assent.

Clause 2(2) provides for sections 19, 20 and 21 to commence on 31 December 1992. Those sections make amendments which establish a procedure for self-assessment by licensees of licence fees payable and which make changes related to the amendments in the Radio Licence Fees Amendment Bill and the Television Licence Fees Amendment Bill which will require the payment of all annual licence fees on 31 December each year for commercial, supplementary and remote radio services and commercial and remote television services. The amendments commence on 31 December 1992 to give licensees 12 months notice of the changes so that they have time to arrange their financial affairs to ensure that payment can be made on that date.

#### PART 2 - AMENDMENTS OF THE PRINCIPAL ACT

##### Clause 3 - Interpretation

Section 4 of the *Broadcasting Act* contains definitions of terms used in, and rules for the interpretation of, the Act.

This clause makes a minor amendment to an interpretive rule in subsection 4(15) to remove a reference to subsection 6B(2) of the *Radio Licence Fees Act* consequential upon the repeal of section 6B of that Act by clause 10 of the *Radio Licence Fees Amendment Bill*.

#### Clause 4 - Interpretation

Section 80 of the Broadcasting Act contains definitions of terms used in, and rules for the interpretation of, Part IIIB of that Act. Part IIIB contains the rules for licensing broadcasting services.

This clause amends section 80 to insert definitions of 3 new terms for the purposes of Part IIIB. The new terms are used in the new sections 83G, 83H and 83J, inserted by clause 13, which create an obligation on the Tribunal to notify a person granted a new non-metropolitan FM commercial or supplementary radio licence, or who has a non-metropolitan AM commercial radio licence converted to FM, of the amount of FM access fee payable. The FM access fee only becomes payable when a notice is given under one of those new sections. (See new section 6B of the Radio Licence Fees Act to be inserted by clause 10 of the Radio Licence Fees Amendment Bill.)

'Non-metropolitan AM commercial radio licence' is defined to mean an AM commercial radio licence that is not in a large city or town. Subsection 4(16) of the Broadcasting Act contains a rule for interpreting when an AM commercial radio licence is in a large city or town. The Broadcasting Act provides special rules for the conversion to FM of AM commercial radio licences which are in a large city or town (see Division 1A of Part IIIB relating to the National Metropolitan Radio Plan).

'Non-metropolitan FM commercial radio licence' is defined to mean a commercial radio licence whose licence warrant authorises very high frequency (ie FM) transmission and whose service area is not a metropolitan service area. 'Metropolitan service area' is defined in subsection 4(1) of the Broadcasting Act to mean a service area in which is situated the General Post Office of a State capital city.

'Non-metropolitan supplementary radio licence' is defined to mean a supplementary radio licence whose service area is not a metropolitan service area.

#### Clause 5 - Insertion of new section

This clause inserts a new section 80B in the Broadcasting Act. The new section contains an interpretive rule which restricts the meaning of the term 'commercial viability' for the purposes of the licensing provisions of the Act.

The Tribunal, when making decisions to grant non-limited licences under the Act, has regard to the need for commercial viability of other services licensed to serve all or part of the same area (ss. 83A(4)(c), 83B(4)(b), 83C(4)(b) and 83D(4)(b)).

The Tribunal must have regard to the same need when imposing, varying or revoking licence conditions (ss. 81(2) and 85(2)).

Upon renewal of a non-limited licence, the Tribunal must have regard to the need for commercial viability of the service provided pursuant to the licence (ss. 86AA(4)(d), 86AB(4)(d)), 86E(4)(d) and 86F(4)(d)).

New subsection 80B(1) narrows the meaning of the term 'commercial viability' by providing that a service is commercially viable if, and only if, the Tribunal is satisfied that, on the balance of probabilities, the service will continue to be provided under the licence until its expiration. The rules concerning the duration of a licence are set out in section 87 of the Act.

The policy objective for including this definition is to limit the scope for the Tribunal, during licence grant inquiries, to be caught up in exhaustive inquiries into the commercial viability of competitors to proposed new services.

New subsection 80B(2) requires the Tribunal to disregard certain matters when considering whether it is satisfied that the service will continue to be provided until the expiration of the licence.

These matters are the effect of the need to comply with any special conditions that the Tribunal has imposed on the licence, or any undertakings given by the licensee other than those required by the Act itself. The Tribunal may, in a particular case, impose conditions or require undertakings that place a financial burden on a licensee. Any such condition or undertaking should not be used as a basis for refusing to grant another licence, as the public interest requires listeners to have access to the largest number of services as is reasonably practicable. Instead, it would be expected that the existing licensee would approach the Tribunal to seek a review of the condition or undertaking in the light of the grant of the new licence.

New subsection 80B(3) ensures that when the Tribunal looks at the probability of the service continuing to be provided until the licence expires, the possibility of a suspension of the licence is not taken into account. This is because a suspension can occur for matters unrelated to commercial viability, such as lack of fitness and propriety.

#### Clause 6 - Applications for grant of certain licences

Section 82 of the Broadcasting Act sets out a mechanism for the Minister to invite applications for new commercial, remote and public licences. Subsection 82(1) requires the

Minister to publish in the Gazette and relevant newspapers a notice setting out the service specifications and technical conditions of the proposed licence and inviting interested persons to apply to the Tribunal for the grant of the licence.

This clause amends subsection 82(1) to add a new paragraph (d) which requires the notice, in the case of a proposed non-metropolitan FM commercial radio licence, to notify interested persons of the requirements in relation to the FM access fee under this Act and the Radio Licence Fees Act.

This additional requirement is included consequential to the abolition of the establishment fee for new commercial radio licences and the creation of the new FM access fee.

It is not intended that the notice would set out all the requirements in relation to the FM access fee in full detail. Instead, it would identify the relevant provisions of each Act which apply and summarise the requirements placed on the licensee for payment of the fee and the penalties applying for late payment.

#### **Clause 7 - Repeal of section 82AA**

Section 82AA sets out a formula for calculating the establishment fee for a new commercial radio licence and requires a Gazette notice, specifying the amount of the fee that will be payable, to be published as soon as practicable after publication of a Gazette notice under subsection 82(1).

This clause repeals section 82AA to abolish the establishment fee.

#### **Clause 8 - Applications for grant of supplementary radio licences**

Section 82A of the Broadcasting Act enables applications to be made by holders of commercial AM radio licences for supplementary licences, and for the applications to be referred to the Tribunal with a notice setting out service specifications and technical conditions or to be dismissed on technical or planning grounds.

Subsection 82A(6) requires the Minister to inform the applicant after making a decision to refer the application to the Tribunal or dismiss the application.

This clause amends subsection 82A(6) to require the Minister, when notifying the applicant of a decision to refer the application to the Tribunal, to also inform the applicant of the requirements in relation to the FM access

fee where the licence is to be a non-metropolitan supplementary radio licence.

This requirement is included because non-metropolitan supplementary licences will now also be subject to an FM access fee.

It is not intended that the notice would set out all the requirements in relation to the FM access fee in full detail. Instead, it would identify the relevant provisions of each Act which apply and summarise the requirements placed on the licensee for payment of the fee and the penalties applying for late payment.

#### **Clause 9 - Simultaneous commercial radio licence and supplementary radio licence inquiries**

Subsection 82AAA(2) of the Broadcasting Act provides that where an application for a supplementary licence has been lodged and the Minister has published a notice under subsection 82(1) inviting applications for a commercial radio licence with an overlapping service area, the Tribunal can consider the supplementary licence application and any commercial licence applications simultaneously, that the Tribunal may determine the matters arising out of the applications in the order it thinks fit and that it may hold a joint inquiry.

There is currently no specific guidance in the Act to indicate a preference for an independent service over a supplementary service when conducting a joint inquiry in the above circumstances. It would be clearly consistent with the principle of encouraging diversity of media ownership in particular markets to give preference to new commercial services over supplementary services.

This clause amends section 82AAA to create a clear preference, when the Tribunal is considering applications for a commercial radio licence and a supplementary licence simultaneously and determines that the market can support only one additional licence, for the grant of the commercial licence.

#### **Clause 10 - Criteria for grant of commercial licence**

Section 83A of the Broadcasting Act sets out the criteria for the grant of a commercial licence.

Clause 10(a) makes a minor amendment to subsection 83A(1) consequential upon the repeal of subsection 83A(10) by clause 10(f).

Paragraph 83A(4)(c) of the Broadcasting Act requires the Tribunal, when considering whether it is advisable in the

public interest to refuse to grant a commercial licence, to have regard to the need for the commercial viability of services provided under other non-limited licences with service areas which overlap the new licence's service area.

Clause 10(b) amends paragraph 83A(4)(c) to make this rule subject to the new rule to be inserted by clause 10(d).

Clause 10(c) inserts a new paragraph (d) in subsection 83A(4) to require the Tribunal to consider a new criterion when considering whether it is advisable in the public interest to refuse to grant a commercial licence. That criterion is the policy that, whenever practicable, the number of broadcasting services provided to the public should be increased.

The above criterion is included in subsection 83A(4) because of a concern that in the past, too much emphasis has been placed on the commercial viability criteria at the expense of the need for more services which would give the public more listening and viewing choice.

Clause 10(d) inserts a new subsection 83A(4A) which limits the circumstances in which the commercial viability of overlapping non-limited services can be taken into account when the Tribunal is considering whether it is advisable in the public interest to grant a commercial licence.

The new rule in subsection 83A(4A) requires the Tribunal to ignore the need for the commercial viability of the service provided under an overlapping non-limited licence unless the licensee satisfies the Tribunal that the service would not be commercially viable after the grant of the proposed licence.

The new rule should not be confused with a reversal of the onus of proof. In an inquiry into the grant of a licence, there are many conflicting criteria which are taken into account and must be balanced by the Tribunal in the public interest. Parties with conflicting interests may seek to persuade the Tribunal that different criteria should be given greater weight. It is entirely appropriate that a party seeking to rely on one of the criteria should have the burden of establishing that that criteria should apply.

The new rule is included in an attempt to streamline the process of granting new licences by removing the requirement for the Tribunal to consider the need for the commercial viability of overlapping services unless one of the affected licensees can establish that there are real problems which require the Tribunal to consider the issue.

Clause 10(e) makes a minor amendment to subsection 83A(9) consequential upon the repeal of subsection 83A(10) by clause 10(f).

Clause 10(f) repeals subsections 83A(10) and (11) consequential upon the abolition of the establishment fee and the inclusion of new procedures for the FM access fee.

**Clause 11 - Criteria for grant of supplementary radio licence**

Section 83B of the Broadcasting Act sets out the criteria for the grant of a supplementary radio licence.

Paragraph 83B(4)(b) of the Broadcasting Act requires the Tribunal, when considering whether it is advisable in the public interest to refuse to grant a supplementary radio licence, to have regard to the need for the commercial viability of services provided under other non-limited licences with service areas which overlap the new licence's service area.

Clause 11(a) omits paragraph 83B(4)(b) and substitutes new paragraphs 83B(4)(b) and (c).

New paragraph 83B(4)(b) requires the Tribunal to have regard to the need for commercial viability of a service if it is required to do so by new subsections 83B(4A) or (4B) (see clause 11(b)).

New paragraph 83B(4)(c) requires the Tribunal to consider a new criterion when considering whether it is advisable in the public interest to refuse to grant a supplementary radio licence. That criterion is the policy that, whenever practicable, the number of broadcasting services provided to the public should be increased. The reasons for including this requirement are explained in the notes on clause 10(c).

Clause 11(b) inserts new subsections 83B(4A) and (4B), which set out the circumstances where the Tribunal can take into account the need for the commercial viability of overlapping services when considering the grant of a supplementary licence.

The rule is different, depending on whether the Tribunal is considering only an application for a supplementary licence in that service area, or whether at the same time it is considering an application for the grant of a non-limited licence whose service area overlaps that of the supplementary licence.

New subsection 83B(4A) deals with the latter situation, in which case the Tribunal can have regard to the need for the commercial viability of services provided under existing non-limited licences, but only if the licensee satisfies the Tribunal that the service would not be commercially viable after the grant of the supplementary radio licence.

The reasons for requiring the licensee to so satisfy the Tribunal are explained in the notes on clause 10(d).

New subsection 83B(4B) deals with the situation where the inquiry into the grant of the supplementary licence is the only inquiry being held in relation to that licence's service area. In this case, the Tribunal can only have regard to the need for the commercial viability of services provided under existing commercial radio licences, and only if the licensee satisfies the Tribunal that the service would not be commercially viable after the grant of the supplementary radio licence.

Clause 11(c) makes a minor amendment to subsection 83B(6) consequential upon the insertion of a new subsection 83F(1A) by clause 12(b).

Subsection 83B(7) of the Broadcasting Act requires the Tribunal to refuse the grant of a supplementary licence if it determines that a new commercial radio licence with the same service area is reasonably likely to be commercially viable and it is in the public interest that such a licence should be granted. Subsections 83B(9) and (10) require the Tribunal, if the process leading to the grant of a commercial radio licence is not under way, to recommend to the Minister that invitations for such a licence be invited.

Clause 11(d) omits subsection 83B(7) and substitutes a new section. The current subsection is omitted to remove the requirement for the Tribunal, when considering only the grant of a supplementary licence for a particular market, to consider whether a new commercial licence should be granted. This will streamline such inquiries and enable new services to commence in such markets more quickly.

New subsection 83B(7) requires the Tribunal to refuse to grant a supplementary licence if it is simultaneously considering the grant of the supplementary licence and a commercial radio licence, determines that only one additional licence should be granted and decides to grant the commercial licence.

Clause 11(e) repeals subsections 83B(8), (9) and (10) consequential upon the repeal of subsection 83B(7) by clause 11(d).

**Clause 12 - Minister may revise service specifications  
before grant of licence**

Subsection 83F(1) of the Broadcasting Act permits the Minister, at any time before the grant of a licence, to revoke the service specifications determined in relation to the licence and determine new specifications.

Subsection 83F(2) requires any redetermination of service specifications to be substantially consistent with the earlier specifications.

Subsection 82A(7) requires the Minister, in determining the service specifications for a supplementary radio licence, to ensure as far as practicable that the area to be served is the same as that served by the related commercial radio licence.

This clause amends section 83F to enable the Tribunal to recommend before the grant of a supplementary licence that the service area be smaller than, but wholly within the service area of the related commercial licence, and for the Minister to redetermine the service specifications accordingly. This change is made in recognition that in some cases, a supplementary licence may not be viable if it has to serve the whole service area of the related commercial licence, but it could be viable if it only served part of the area. This would increase the chances of a second service being licensed in such circumstances.

Any such supplementary service which has a smaller service area will not be able to be split from the related licence in accordance with the changes in clauses 14 and 15 of the Bill. However, there will be nothing to prevent the licensee for such a service seeking at some stage after the grant of the licence to have the service area expanded in accordance with subsections 85(4) and (5) of the Act.

#### Clause 13 - Insertion of new sections

This clause inserts new sections 83G, 83H, 83J and 83K in the Broadcasting Act. The new sections relate to requirements for the FM access fee which will be imposed under new section 6B of the Radio Licence Fees Act.

The new fee will apply to all new non-metropolitan FM commercial and supplementary radio licences and AM/FM conversions before the services commence broadcasting on the FM band.

New sections 83G, 83H and 83J provide a mechanism for the Tribunal, if it grants such a licence or the Minister makes such a conversion, to give the licensee a notice specifying the amount of the FM access fee determined under section 6BA of the Radio Licence Fees Act and informing the person of the requirements under both Acts in relation to the fee.

New subsection 83K(1) requires an amount of FM access fee payable under section 6B of the Radio Licence Fees Act to be paid within 28 days of the issue of the notice under new section 83G, 83H or 83J.

New subsection 83K(2) gives the Tribunal a discretion to extend, or further extend, the period in which the fee is to be paid. It should be noted, however, that despite the ability for the Tribunal to grant extensions, penalties accrue from the date on which the new section 83G, 83H or 83J notice was issued if the licence fee remains unpaid after 2 months (see subsection 123A(1)).

New subsection 83K(2) also signposts the Tribunal's powers under subsections 88(4) and 88A(3) to suspend or revoke a licence if satisfied that a person has unreasonably or repeatedly delayed paying an amount of FM access fee.

New subsection 83K(3) gives the Tribunal a discretion, if a commercial radio licence is revoked because of the licensee's failure to pay an FM access fee, to:

- . grant the licence to the next most suitable applicant who is still available to be granted the licence; or
- . recommend to the Minister that a fresh notice should be published inviting applications for the licence.

#### **Clause 14 - Transfer of commercial licences**

Section 89A of the Broadcasting Act provides for the transfer of commercial licences, and the admission of other persons to participate in the benefits of, and to exercise the powers and authorities granted by, a commercial licence, with the consent of the Tribunal.

Subsection 89A(10) requires the Tribunal to refuse to consent to the transfer of a commercial radio licence that is related to a supplementary radio licence unless the supplementary radio licence is transferred to the person at the same time.

This clause amends section 89A to enable a commercial radio licence to be transferred separately to a supplementary licence after 2 years beginning on the day of commencement of the service under the supplementary licence. The supplementary licence would thereupon become, for the purposes of the Broadcasting Act, a commercial licence in its own right for the balance of the original term of the supplementary licence.

Clause 14(a) makes a minor amendment to subsection 89A(1) consequential upon the insertion of a new subsection 89A(5A) by clause 14(c).

Clause 14(b) makes a minor amendment to subsection 89A(4) to ensure consistency with new subsection 89A(5A) by clarifying that a commercial licence cannot be transferred or a person admitted to participate in the benefits or exercise the powers of the licence, once it has been

granted, before the end of the period of 2 years commencing on the day on which the service provided under the licence commences.

Clause 14(c) inserts new subsections 89A(5A), (5B) and (5C).

New subsection 89A(5A) prevents a commercial radio licence being transferred to a person if the licence is related to a supplementary licence and the supplementary licence is not also transferred to the person. The prohibition is intended to apply from the grant of the supplementary licence until 2 years after the service provided under the supplementary licence commences.

New subsection 89A(5B) is an interpretive rule which defines commencement of service for the purposes of subsection 89A(4) and new subsection 89A(5A).

New subsection 89A(5C) ensures that a supplementary licence which is separated from the related commercial licence is taken, for the purposes of the Broadcasting Act, to be a commercial radio licence until its expiration (ie. the balance of the original term of the supplementary licence). The licence would be subject to the usual rules in the Broadcasting Act relating to matters such as suspension and revocation and ownership and control, and could be renewed as a commercial licence.

Clause 14(d) repeals subsection 89A(10) to remove the blanket prohibition on splitting a supplementary licence from a related commercial licence and substitutes a new subsection 89A(10).

New subsection 89A(10) prohibits the transfer of a commercial radio licence if it has a related supplementary licence which has a service area that is not substantially the same and the supplementary licence is not transferred to the same person. (Clause 12 inserts a new subsection 83F(1A) which will enable a supplementary licence to have a smaller service area than the related commercial licence.)

#### Clause 15 - Transfer of supplementary radio licences

Section 89B of the Broadcasting Act provides for the transfer of supplementary radio licences, and the admission of other persons to participate in the benefits of, and to exercise the powers and authorities granted by, such licences, with the consent of the Tribunal.

This clause amends section 89B to enable a supplementary radio licence to be transferred separately to a commercial radio licence after 2 years beginning on the day of commencement of the service under the supplementary licence. The supplementary licence would thereupon become

a commercial licence in its own right for the balance of the original term of the supplementary licence (unless it is earlier revoked in accordance with the Act). The amendments are reciprocal to amendments made by clause 14.

Clause 15(a) makes a minor amendment to subsection 89B(1) consequential upon the insertion of new subsection 89B(4A) by clause 15(b).

Clause 15(b) inserts a new subsection 89B(4A) which prohibits the transfer of a supplementary radio licence if it has a related commercial radio licence which has a service area that is not substantially the same and the commercial licence is not also transferred to the same person. (Clause 12 inserts a new subsection 83F(1A) which will enable a supplementary licence to have a smaller service area than the related commercial licence.) This provision corresponds to the new subsection 89A(10) inserted by the amendment in clause 14(d).

Subsection 89B(5) of the Broadcasting Act prohibits the transfer of a supplementary radio licence, or the admission of another person to participate in the benefits of, or to exercise the powers or authorities granted by, a supplementary radio licence, unless the transferee or the other person holds a commercial radio licence with a service area substantially co-extensive with that of the supplementary licence.

Clause 15(c) repeals subsection 89B(5) and substitutes new subsections 89B(5), (5A) and (5B).

New subsection 89B(5) prevents a supplementary radio licence being transferred to a person if the licence is related to a commercial radio licence and the commercial licence is not also transferred to the person. The prohibition is intended to apply from the grant of the supplementary licence until 2 years after the service provided under the supplementary licence commences.

New subsection 89B(5A) is an interpretive rule which defines commencement of service for the purposes of new subsection 89B(5).

New subsection 89B(5B) ensures that a supplementary radio licence separated from its related commercial licence by a transfer is taken to be a commercial radio licence on and from the day of its transfer until its expiration. It is intended that the licence would continue as a commercial radio licence for the balance of the original term of the supplementary licence (unless earlier revoked under the Act, see also the rule in subsection 87(3) which enables a licence to continue in force for a longer period while a renewal inquiry is being held). The licence would be able to be renewed in accordance with the provisions of the Act which provide for renewal of commercial licences.

### Clause 16 - Licence warrants

Section 89D of the Broadcasting Act sets out a mechanism for the Minister, after the Tribunal has decided to grant a licence to a person, to grant a licence warrant which authorises the operation of radiocommunications transmitters and specifies technical conditions.

An AM/FM conversion occurs when the Minister varies the technical conditions of a licence warrant under subsection 89D(6) of the Broadcasting Act to authorise very high frequency transmission.

This clause amends section 89D to include new provisions which relate to the FM access fee which will apply to conversions of non-metropolitan AM commercial radio licences.

Clause 16(a) inserts new subsections 89D(5A) and (5B) which enable a non-metropolitan AM commercial radio licensee to apply for conversion and the Minister to exercise the power to convert or dismiss the application.

Clause 16(b) inserts new subsection 89D(6A) which requires the Minister to inform the Tribunal if he varies the technical conditions after such an application. The Tribunal will then be required under new section 83J to give the licensee a notice specifying the FM access fee payable.

Subsection 89D(8) of the Broadcasting Act requires a notice to be given to a licensee, before the Minister varies or revokes a technical condition of a licence warrant, specifying the proposed change and giving the licensee an opportunity to make representations.

Clause 16(c) inserts a new subsection 89D(9) which requires a notice under subsection 89D(8) in relation to an application under the new subsection 89A(5A) to inform the applicant of the requirements under the Broadcasting Act and the Radio Licence Fees Act in relation to the FM access fee.

It is not intended that the notice would set out all the requirements in relation to the FM access fee in full detail. Instead, it would identify the relevant provisions of each Act which apply and summarise the requirements placed on the licensee for payment of the fee and the penalties applying for late payment.

### Clause 17 - Commencement of service

Section 96 of the Broadcasting Act requires a licensee to commence the service under the licence, or to commence to provide the service from additional transmitters, on a date determined by the Tribunal.

This clause inserts a new subsection 96(3) which prevents the Tribunal determining a commencement of service in relation to which an FM access fee is payable until the fee is paid.

### Clause 18 - Special provisions relating to public licensees

Paragraph 119AB(3)(c) of the Broadcasting Act enables public licensees to broadcast sponsorship announcements. Paragraph 119AB(3B)(a) prohibits such announcements from promoting activities, events, products, services and programs unrelated to the licensee's service.

Clause 18(a) amends paragraph 119AB(3B)(a) to enable public radio licensees to broadcast sponsorship announcements which promote unrelated activities, events, products, services and programs where there is no commercial radio licence with an overlapping service area.

The requirement for there to be no overlapping commercial radio services will have the effect of restricting the relaxation of the limitations on sponsorship announcements to public radio services in isolated areas.

Paragraphs 119AB(3B)(b) and (c) enable sponsorship announcements to acknowledge the support of sponsors for the licensee's programs or its service and to specify the sponsor's name and address and a concise description of the sponsor's general business. These paragraphs are in permissive terms, and are not intended to restrict the kinds of promotional sponsorship announcements that isolated public radio services will now be able to broadcast as a result of the amendment to paragraph 119AB(3B)(a).

Clause 18(b) inserts a new subsection 119AB(3C) which will restrict the amount of sponsorship announcements which can be broadcast by licensees who are able to broadcast promotional sponsorship announcements to a total of 4 minutes per hour of broadcasting. Community promotional material (paragraph 119AB(3)(a)) and material promoting the licensee's service, activities or programs (paragraph 119AB(3)(b)) would not be counted within the 4 minutes limitation.

#### Clause 19 - Licensee to keep accounts etc.

Section 123 of the Broadcasting Act requires licensees to keep proper financial accounts and furnish to the Tribunal within 6 months after the end of the financial year an audited balance sheet and profit and loss account in respect of the licensee's service and a statutory declaration stating the gross earnings in respect of the licence.

Subsection 123(2) enables the licensee to adopt a different accounting period with the leave of the Tribunal, in which case the required documents do not need to be lodged until 6 months after the end of the different accounting period.

Under the new licence fees arrangements in the Radio Licence Fees Bill, annual fees will be payable on 31 December each year.

This clause repeals subsection 123(2) and substitutes new subsections 123(2) and (2A) which still enable a licensee to adopt a different accounting period with the leave of the Tribunal, but which require the required documents to be lodged within the earlier of the 6 months after the end of the accounting period or 31 December.

#### Clause 20 - Insertion of new section

This clause inserts a new section 123AA in the Broadcasting Act to provide a basis for licensee self-assessment of annual licence fees imposed under subsection 6(2) of the Radio Licence Fees Act and the Television Licence Fees Act.

New subsection 123AA(1) contains definitions of terms used in new section 123AA.

New subsection 123AA(2) requires a licensee who pays an amount of annual licence fee to give the Tribunal details of the licensee's calculation of the full amount of the licence fee using the required method of calculation.

The 'required method of calculation' is defined in new subsection 123AA(1) to mean the application of the appropriate formula in the relevant Licence Fees Act, having regard to the gross earnings in respect of the licence during the period for which the fee is payable.

The Tribunal will be expected to check the licensee's calculation.

New subsection 123AA(3) requires the Tribunal, if it calculates that a different amount is payable, to notify the licensee setting out details such as the amount calculated, details of the calculation, the amount of

licence fee unpaid or overpaid and if it is satisfied there has been a deliberate miscalculation.

The latter requirement is included to prevent licensees deliberately miscalculating licence fees payable to delay payment of substantial amounts of licence fees owing. The effect of including in the notice a statement that the Tribunal is satisfied that the licensee deliberately miscalculated the full amount of the licence fee, is to make a penalty of 20% per annum, computed from the date the fee became payable (ie 31 December), apply to the unpaid amount. (See the amendments in clause 21(b)).

New subsection 123AA(4) requires the Tribunal to refund, within 21 days of the Tribunal notifying the licensee of the recalculation, any amount overpaid by the licensee.

#### **Clause 21 - Penalty for unpaid licence fees**

Subsection 123A(1) of the Broadcasting Act creates a penalty for licence fees unpaid 2 months after they were due, computed from the due date.

This clause changes the penalty for annual radio and television licence fees, which will now be required to be paid on 31 December in each year.

Clause 21(a) amends the existing penalty in subsection 123A(1) to prevent it from applying to annual licence fees.

Clause 21(b) inserts new subsections 123A(1A), (1B), and (1C).

New subsection 123A(1A) creates a penalty for an amount of annual licence fee remaining unpaid after the due date (ie 31 December), computed from that day at the rate of 20% per annum. This penalty does not apply in relation to amounts identified by the Tribunal and notified to the licensee after it recalculates an assessment, unless new subsection 123A(1C) applies.

New subsection 123A(1B) creates a similar penalty for an amount specified as unpaid in a notice following recalculation by the Tribunal of the licensee's self-assessed fee. This penalty is calculated from the date the notice is issued, but only becomes payable if the licensee does not pay the amount within 21 days (the same period within which the Tribunal is required to refund overpayments).

New subsection 123A(1C) prevents new subsection 123A(1B) from applying to an amount which the Tribunal specifies is unpaid if the notice contains a statement that the Tribunal is satisfied that the licensee deliberately miscalculated the fee. This would mean that the full penalty, computed

from the due date (31 December), would apply to the unpaid amount under new subsection 123A(1A).

Clause 21(c) omits:

- . subsection 123A(5) which contains a definition of 'due date' as a consequence of the inclusion of a definition of that term in subsection 123A(7) - see clause 21(d); and
- . subsection 123A(6) as a consequence of the new requirement for annual licence fees to be paid on 31 December in each year.

Clause 21(d) amends subsection 123A(7) to include new definitions of the terms 'annual licence fee' and 'due date'.

### **PART 3 - AMENDMENTS OF THE BROADCASTING AND TELEVISION AMENDMENT ACT 1985**

#### **Clause 22 - Amendments of the Broadcasting and Television Amendment Act 1985**

Section 98 of the *Broadcasting and Television Amendment Act 1985* is a transitional provision which continues to apply the old *Broadcasting and Television Act 1942* for certain purposes, despite the amendments which created the *Broadcasting Act 1942*. One of those purposes is in relation to applications for supplementary licences lodged before 1 January 1986.

It is intended that as a result of the amendments in this Bill, applications for supplementary licences which have been received by the Minister will be referred to the Tribunal. Some of those applications were received before 1 January 1986. It is intended that in considering those applications, the current rules under the *Broadcasting Act* should apply, rather than the rules which applied before 1986. This will give applicants the benefit of the changes to the rules about commercial viability.

This clause omits paragraph 98(1)(c) which applied the previous Act to supplementary licence applications lodged before 1 January 1986. This clause also omits subsection 98(8) which enabled licences granted as a result of those applications to be granted under the *Broadcasting Act*. The savings provision in clause 26 ensures that the *Broadcasting Act* will now apply to the consideration of such applications and the subsequent grant of any licence.

**PART 4 - TRANSITIONAL AND SAVINGS ETC.**

**Clause 23 - Transitional and savings etc. - commercial radio licences**

This clause sets out transitional and savings provisions in relation to the grant of commercial licences following from the introduction of the FM access fee.

The introduction of the new FM access fee was announced on 23 July 1991.

Clause 23(1) ensures that the new FM access fee provisions inserted by clauses 13 and 17 apply to the grant of any new non-metropolitan FM commercial radio licence after the commencement of the amending Act, other than in the circumstances in clause 23(2).

Clause 23(2) provides that where the Tribunal notified a person before 23 July 1991 that a commercial radio licence is available and at the time of commencement the establishment fee has not yet been paid, the current establishment fee provisions continue to apply (see clause 21(2)).

Clause 23(3) ensures that clause 23(2) ceases to have effect where new applications for the licence are invited.

Clause 23(4) ensures that where the Tribunal notified a person after 23 July 1991 that a commercial radio licence is available and at the time of commencement the fee has not yet been paid, the new FM access fee provisions inserted by clauses 13 and 17 apply. This will give the applicant the benefit of a smaller fee and a longer time before the fee has to be paid.

Clause 23(5) ensures that the notice setting out the establishment fee ceases to have effect in relation to all commercial radio licences granted after the commencement of this section, except where clause 23(2) applies.

Clause 23(6) contains definitions of 2 terms for the purposes of this clause.

**Clause 24 - Application - supplementary radio licences**

This clause is an application provision which ensures that the new FM access fee provisions do not apply to the grant of a non-metropolitan supplementary radio licence if the application was referred to the Tribunal before 23 July 1991, the date of the announcement that the FM access fee was to be created.

**Clause 25 - Transitional and savings - FM conversion**

Clause 25(1) is a transitional provision which ensures that the new FM access fee applies to the conversion of a non-metropolitan commercial radio licence to FM which occurs after commencement of the amendments, even if an application for the conversion was made before the commencement.

Clause 25(2) is a savings provision which ensures that the new FM access fee does not apply in relation to an AM/FM conversion that occurs before the commencement of this clause and the existing penalty provisions that apply to late payment of the current AM/FM conversion fee will continue to apply to that conversion.

**Clause 26 - Savings - certain applications made under the Broadcasting and Television Act 1942**

This clause is a savings provision which ensures that the Broadcasting Act applies in relation to applications for the grant of supplementary broadcasting licences made under the *Broadcasting and Television Act 1942* prior to 1 January 1986, by deeming them to be applications for the grant of supplementary radio licences made under the Broadcasting Act on that date.

**NOTES ON CLAUSES**

**RADIO LICENCE FEES AMENDMENT BILL 1991**

**Clause 1 - Short title etc.**

Clause 1(1) provides for the citation of the *Radio Licence Fees Amendment Act 1991*.

Clause 1(2) provides that in this Bill, the term 'Principal Act' means the *Radio Licence Fees Act 1964*.

**Clause 2 - Commencement**

This clause provides for the commencement of the amending Act.

Clause 2(1) provides for the Act to commence 28 days after the day on which it receives the Royal Assent, subject to the exceptions in clauses 2(2) and (3). This will ensure that sections 5 and 10 commence 28 days after the Act receives the Royal Assent. Those sections make amendments which repeal the establishment fee and the current conversion fee and create the FM access fee. They are

given the same commencement as the corresponding amendments in the Broadcasting Amendment Bill (No. 2).

Clause 2(2) provides for sections 3, 6 and 8 to commence on 1 January 1992. Those sections make amendments which halve the annual licence fees payable by commercial, supplementary and remote radio licensees. Licence fees in relation to earnings during the 1990/91 financial year become due on 1 January 1992 for licensees that have the anniversary of the commencement of their licences in the first half of the financial year, and become due for other licensees on the anniversary of the commencement of their licence. The amendments must commence or be taken to have commenced on 1 January to ensure that all affected licensees are treated equally and obtain the benefit of the halving of the fee in relation to the same period of earnings.

Clause 2(3) provides for sections 7 and 9 to commence on 31 December 1992. Those sections make amendments which will require the payment of all annual licence fees on 31 December each year for commercial, supplementary and remote radio licences. The amendments commence on 31 December 1992 to give licensees 12 months notice of the changes so that they have time to arrange their financial affairs to ensure that payment can be made on that date.

#### Clause 3 - Application

This clause is an application provision which makes the amendments of section 6 and 6A of the Principal Act in clauses 6 and 8 apply to all annual licence fees due on or after 1 January 1992. The reasons for their application in this way is explained in the notes on clause 2(2).

#### Clause 4 - Interpretation

Section 4 of the Principal Act contains definitions of terms used in, and a rule for the interpretation of, the Principal Act.

This clause amends subsection 4(1) to make a minor drafting amendment and to include a definition of the term 'FM access fee'.

#### Clause 5 - Amount of fees

This clause repeals subsection 6(1A) of the Principal Act, which imposes the establishment fee for new commercial radio licences, as a consequence of the creation of the new FM access fee.

This clause also repeals subsection 6(1B) as a consequence of the repeal of subsection 6(1A) and because it is unnecessary to specifically provide that the FM access fee is an additional fee to the fee payable under subsection 6(1), now that the FM access fee is to be included in a different section.

#### **Clause 6 - Amount of fees**

Subsection 6(2A) of the Principal Act sets out the formulae for calculating the annual licence fee payable in respect of a commercial, remote or supplementary radio licence.

This clause amends the formulae in subsection 6(2A) to halve the percentage of gross earnings payable annually in respect of such a licence.

This amendment commences on 1 January 1992 for the reasons explained in the notes on clause 2(2).

#### **Clause 7 - Amount of fees**

Subsection 6(2) of the Principal Act makes the annual licence fee in respect of a commercial, remote or supplementary radio licence payable on each anniversary of the date of commencement of the licence.

This clause repeals subsection 6(2) and substitutes a new subsection 6(2) which makes the annual licence fee payable on each 31 December.

This amendment commences on 31 December 1992 for the reasons explained in the notes on clause 2(3).

#### **Clause 8 - Changes of accounting period - effect on fees payable**

Section 6A of the Principal Act prevents any possible loss of revenue to the Commonwealth by a licensee artificially manipulating its revenue receipts in combination with adopting a new accounting period in accordance with subsection 123(2) of the Broadcasting Act.

This clause makes the same changes to the formulae set out in section 6A as are made to the formulae in subsection 6(2A) by clause 6 to maintain consistency between the formulae in the 2 sections.

**Clause 9 - Changes of accounting period - effect on fees payable**

This clause amends section 6A of the Principal Act to make changes consequential to the amendments in clause 7 which will make annual licence fees payable on 31 December each year.

This amendment commences on 31 December 1992 for the reasons explained in the notes on clause 2(3).

**Clause 10 - Repeal of section 6B and substitution of new sections**

Section 6B of the Principal Act imposes a licence fee for an AM/FM conversion in certain circumstances. This clause repeals section 6B and substitutes new sections 6B and 6C which impose and provide the method of calculating the FM access fee.

New section 6B provides that there is payable to the Commonwealth by a person given a notice under new sections 83G, 83H or 83J of the Broadcasting Act, an FM access fee of an amount determined under new section 6BA and specified in the notice.

Under those sections of the Broadcasting Act, a person can be given a notice in relation to the grant of a non-metropolitan FM commercial or supplementary radio licence or the conversion to FM of a non-metropolitan AM commercial radio service. Definitions of these terms can be found in clause 4 of the Broadcasting Amendment Bill (No. 2) 1991.

New section 6BA sets out the formula for calculating the FM access fee. At the end of the explanatory memorandum is a list of examples of different situations in which the formula would apply and details of the value that would be given to significant elements of the formula in each of those situations.

New subsection 6BA(1) contains definitions of terms used in the formula.

New subsection 6BA(2) contains an interpretive rule for the purposes of calculating the FM access fee. Under the new formula, the amount of the fee payable will partly depend on the number of area licences before and after the service under the new licence commences.

'Area licence' is defined in subsection 6BA(1), and the definition includes supplementary radio licences with a service area substantially the same as that of the proposed licence. The amendments to section 83F of the Broadcasting Act made by clause 12 of the Broadcasting Amendment Bill (No. 2) will enable supplementary licences to have smaller

service areas than the related commercial radio licence. The rule in new subsection 6BA(2) ensures that such supplementary licences will continue to be counted as area licences. This rule also ensures that where a proposed licence is a supplementary licence with a service area that is smaller than, but wholly within the service area of other licences, those other licences will be counted as area licences.

New subsection 6BA(3) requires the Tribunal to determine the amount of FM access fee in respect of a proposed licence in accordance with the formula set out in the subsection.

'Proposed licence' is defined in subsection 6BA(1) to mean a licence in respect of which an FM access fee is to be payable - new section 6B makes the fee payable when a person is given a notice under new section 83G, 83H or 83J of the Broadcasting Act.

#### Average Gross Earnings

The formula makes use of average gross earnings, which is calculated according to new subsection 6BA(4) or (7). Subsection (4) is used where there is at least one area licence at the prescribed time and subsection (7) is used where there are no area licences at that time.

'Area licence' is defined in subsection 6BA(1) to mean a commercial or supplementary radio licence which has a service area substantially the same as the service area for the proposed licence. In the case of a non-metropolitan AM commercial radio licence which is to be converted to FM, the proposed licence is included as an area licence. (This is because the licence remains the same, it is the technical conditions of the licence warrant which are changed to create the conversion.)

The 'prescribed time' is also defined in subsection 6BA(1). The time is different in relation to each of the 3 situations in which the FM fee is payable. The difference reflects the different mechanisms under the Act for the grant of a new commercial or supplementary radio licence or the conversion of an AM commercial radio licence to FM.

In the case of a new non-metropolitan FM commercial radio licence, it is the time at which the notice inviting applications for the grant of the licence was published in the Gazette (paragraph (a) of the definition).

In the case of a new non-metropolitan supplementary radio licence, it is the time at which the Minister referred the application for the licence to the Tribunal (paragraph (b) of the definition).

In the case of the conversion to FM of a non-metropolitan AM commercial radio licence, it is the time at which the Minister gives the Tribunal the notice informing it that the Minister has varied the technical conditions of the licence warrant (paragraph (c) of the definition). Once the Tribunal has received this notice, it can notify the licensee of the FM access fee payable under new section 83J.

Average gross earnings where there is at least one area licence at the prescribed time

New subsection 6BA(4) provides that if there is at least one area licence at the prescribed time for the proposed licence, 'average gross earnings' is the amount determined by the Tribunal in accordance with the formula set out in the subsection.

The formula has 2 elements - 'total gross earnings', which is divided by the 'number of pre-commencement licences'.

'Total gross earnings' is the sum of the calculation gross earnings of the area licences.

New subsection 6BA(5) defines 'calculation gross earnings', in relation to an area licence, to mean the amount of annual gross earnings for that licence stated in a statutory declaration given to the Tribunal under paragraph 123(1)(c) of the Broadcasting Act in respect of the most recent 12 months for which a declaration is required.

If no declaration has been lodged, the Tribunal can determine an amount to be the likely amount of such annual gross earnings, having regard to the previous annual gross earnings for the licence and the most recent or previous annual gross earnings for other licences in the same market.

The 'number of pre-commencement licences' is defined in new subsection 6BA(3) and, where there is at least one existing licence under which a service will be provided immediately before the day which is likely to be the proposed licence's commencement day, means the number of those existing licences.

'Existing licence' is defined in new subsection 6BA(1) to mean, in relation to a proposed licence, an area licence other than an area licence whose commencement date is likely to be within the 28 days before the proposed licence's commencement date. The reason for not counting area licences which commence within the previous 28 days is because there is little commercial advantage to the licence which commences first in such a short period. However, if one licence is to commence on the FM band more than 28 days before another licence, there is a commercial advantage to the first licensee in getting the service established in

the market. In such circumstances, the existence of the extra operating licence in the market will be taken into account by being included in 'NPL' and the fee payable by the second commencing licensee will be reduced accordingly.

Average gross earnings where there is no area licence at the prescribed time

New subsection 6BA(7) provides that if there is no area licence at the prescribed time for the proposed licence, 'average gross earnings' is the amount determined by the Tribunal in accordance with the formula set out in the subsection.

The formula has 2 elements - 'notional gross earnings', which is divided by the 'number of pre-commencement licences'.

'Notional gross earnings' is defined to mean the amount determined by the Tribunal as what would have been the amount of annual gross earnings for an area licence if one had existed, having regard to relevant matters.

The 'number of pre-commencement licences' is defined in new subsection 6BA(3) and, where there are no existing licences under which a service will be provided immediately before the day which is likely to be the proposed licence's commencement day, is taken to be one.

Number of Pre-commencement Licences divided by the Number of Commencement Licences

The formula for determining the FM access fee in subsection 6BA(3) also makes use of the 'Number of Pre-commencement Licences' divided by the 'Number of Commencement Licences'.

'Number of Pre-commencement Licences' is defined in subsection 6BA(3). Where there are no existing licences in the market, the number is taken to be one. If there is at least one existing licence under which a service will be provided immediately prior to the day likely to be the licence's commencement day, it is the number of those existing licences.

'Commencement day' is defined in subsection 6BA(1). In relation to a licence or proposed licence other than a converted licence, it is the day on which the service provided under the licence commences in accordance with a determination under section 96 of the Broadcasting Act.

In relation to a converted licence, the 'commencement day' is the day the service commences on FM in accordance with such a determination.

'Number of Commencement Licences' is defined in subsection 6BA(3).

In the case of a new non-metropolitan FM commercial or supplementary radio licence, it is the sum of 1 plus the number that, in the Tribunal's opinion, is likely to be the number of area licences under which services will be provided on, or within 28 days after the day that, in the Tribunal's opinion, is likely to be the commencement day.

In the case of the conversion of a non-metropolitan commercial radio station to FM, it is the number that, in the Tribunal's opinion, is likely to be the number of area licences under which services will be provided on, or within 28 days after the day that, in the Tribunal's opinion, is likely to be the commencement day. In this case, the number one does not need to be added as the definition of an 'area licence' includes a converted licence in recognition that there is no additional licence in the case of a conversion.

The reason for including area licences that are likely to commence within 28 days for the purposes of this definition is explained in the notes on the definition of 'existing licence' on page 28. In essence, it ensures that the formula will apply in a similar way to 2 new licences in the same market that will commence operating on the FM band within 28 days of one another.

New subsection 6BA(6) creates a special rule for the case of an AM/FM conversion in a solus market where the converting licence has its service area overlapped by a commercial FM radio service or supplementary radio service. In these circumstances, the overall fee is reduced by making the 'number of commencement licences' - 'one' plus each fraction of the converting licensee's service area population which is overlapped by another commercial or supplementary radio licence service area.

New subsection 6BA(8) creates rules to assist the Tribunal in deciding NPL and NCL for the purposes of new section 6BA. The new subsection enables the Tribunal to have regard to the number of existing area licences, the likely grant of other area licences, their likely commencement and any other relevant matters.

New subsection 6BA(9) prevents the Tribunal making a determination amending or in substitution for a determination under subsection 6BA(3). This rule is included because a fee is determined on the basis of events that are likely to happen and must be paid before those events can happen (ie. the Tribunal's determination that the service is to commence). This requirement is included to create an incentive for early commencement of service after payment of the fee. If the fee could be recalculated, it may be in the interests of a service provider to delay action to commence the service to take

advantage of the lower fee which would become payable after a recalculation.

#### Clause 11 - Transitional and savings

This clause contains transitional and savings provisions which prevent the FM access fee applying, and continue the application of the establishment fee and the current AM/FM conversion fee, in the same circumstances where those fees continue to apply under subsections 23(2) and 25(2) of the Broadcasting Amendment Bill (No. 2). This clause also ensures that the FM access fee applies in situations where subsection 25(1) of the Broadcasting Amendment Bill (No. 2) applies.

#### NOTES ON CLAUSES

##### TELEVISION LICENCE FEES AMENDMENT BILL 1991

#### Clause 1 - Short title etc.

Clause 1(1) provides for the citation of the *Television Licence Fees Amendment Act 1991*.

Clause 1(2) provides that in this Bill, the term 'Principal Act' means the *Television Licence Fees Act 1964*.

#### Clause 2 - Commencement

This clause provides for the amending Act to commence on 31 December 1992.

The Bill makes amendments which will require the payment of all annual licence fees on 31 December each year for commercial and remote television licences. The amendments commence on 31 December 1992 to give licensees 12 months notice of the changes so that they have time to arrange their financial affairs to ensure that payment can be made on that date.

#### Clause 3 - Interpretation

Section 4 of the Principal Act contains definitions of terms used in, and a rule for the interpretation of, the Principal Act.

This clause amends the definition of 'licence' in subsection 4(1) to remove a spent reference to a 'supplementary television licence'. Licences of that kind no longer exist under the Broadcasting Act.

**Clause 4 - Amount of fees**

Subsection 6(2) of the Principal Act makes the annual licence fee in respect of a commercial or remote television licence payable on each anniversary of the date of commencement of the licence.

This clause repeals subsection 6(2) and substitutes a new subsection 6(2) which makes the annual licence fee payable on each 31 December.

**Clause 5 - Change of accounting period - effect on fees payable**

Section 6A of the Principal Act prevents any possible loss of revenue to the Commonwealth by a licensee artificially manipulating its revenue receipts in combination with adopting a new accounting period in accordance with subsection 123(2) of the Broadcasting Act.

This clause amends section 6A of the Principal Act to make changes consequential to the amendments in clause 4 which will make annual licence fees payable on 31 December each year.

EXAMPLES OF THE INTENDED APPLICATION OF THE FORMULA IN NEW SECTION 6BA OF THE RADIO LICENCE FEES ACT 1964 IN DIFFERENT SITUATIONS

A Market with one service - new commercial service to commence and AM/FM conversion to occur

1. Commercial FM service and Converted service commence operating within 28 days of one another

Fee for Commercial

$$\begin{array}{ll} \text{NPL} = 1 & \text{AGE} = \frac{\text{TGE}}{1} \\ \text{NCL} = 2 & \end{array}$$

Fee for Conversion

$$\begin{array}{ll} \text{NPL} = 1 & \text{AGE} = \frac{\text{TGE}}{1} \\ \text{NCL} = 2 & \end{array}$$

2. Converted service commences operating more than 28 days after Commercial FM service

Fee for Commercial

$$\begin{array}{ll} \text{NPL} = 1 & \text{AGE} = \frac{\text{TGE}}{1} \\ \text{NCL} = 2 & \end{array}$$

Fee for Conversion

$$\begin{array}{ll} \text{NPL} = 2 & \text{AGE} = \frac{\text{TGE}}{2} \\ \text{NCL} = 2 & \end{array}$$

3. Commercial FM service commences operating more than 28 days after Converted service

Fee for Conversion

$$\begin{array}{ll} \text{NPL} = 1 & \text{AGE} = \frac{\text{TGE}}{1} \\ \text{NCL} = 1 & \end{array}$$

Fee for Commercial

$$\begin{array}{ll} \text{NPL} = 1 & \text{AGE} = \frac{\text{TGE}}{1} \\ \text{NCL} = 2 & \end{array}$$













