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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

BROADCASTING SERVICES LEGISLATION AMENDMENT BILL 1997

TELEVISION LICENCE FEES AMENDMENT BILL 1997

RADIO LICENCE FEES AMENDMENT BILL 1997

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Communications and the Arts,
Senator the Hon Richard Alston)



BROADCASTING SERVICES LEGISLATION AMENDMENT BILL 1997

TELEVISION LICENCE FEES AMENDMENT BILL 1997

RADIO LICENCE FEES AMENDMENT BILL 1997

OUTLINE

The Broadcasting Services Legislation Amendment Bill 1997 amends the *Broadcasting Services Act 1992* (the Broadcasting Services Act) and the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992* (the Transitional Provisions Act) so that:

- provisions relating to the administration of the annual licence fees in the former *Broadcasting Act 1942* (the former Act), as kept in force by provisions of the Transitional Provisions Act, are re-located in the Broadcasting Services Act;
- newspapers whose circulation within a commercial radio licence area is only a small proportion (not more than 2%) of the total licence area population are not entered in the Associated Newspaper Register under section 59 of the Broadcasting Services Act as being associated with the licence area of that licence; and
- there are consequential provisions enabling appeals on the merits to the Administrative Appeals Tribunal in respect of relevant decisions relating to the administration of licence fees and entries in the Associated Newspaper Register.

The amendments in the Broadcasting Services Legislation Amendment Bill relating to the administration of licence fees are consequential on the provisions in the Television Licence Fees Amendment Bill 1997 and the Radio Licence Fees Amendment Bill 1997. These Bills amend the *Television Licence Fees Act 1964* (the Television Licence Fees Act) and the *Radio Licence Fees Act 1964* (the Radio Licence Fees Act) respectively so that commercial radio and television broadcasting licences allocated under the Broadcasting Services Act are subject to the annual licence fees regime that currently applies to commercial radio and television broadcasting licences granted under the former Act.

Licence Fees

The existing Licence Fees Acts do not apply to commercial broadcasting licences allocated since commencement of the Broadcasting Services Act in 1992. The Government has decided the same licence fee regime should apply to all commercial broadcasting licences. This is to ensure:

- fair treatment between commercial broadcasters whose licences were granted under the former Act and commercial broadcasters who have been, or will be, allocated licences under the Broadcasting Services Act, and

- that the Commonwealth receives economic returns for allowing commercial broadcasters access to the broadcasting spectrum and for allocating licences in a restricted market.

Associated Newspaper Register

The Broadcasting Services Legislation Amendment Bill 1997 amends section 59 of the Broadcasting Services Act so that a newspaper whose circulation within a commercial radio broadcasting licence area does not exceed 2% of the licence area population is not entered by the Australian Broadcasting Authority (ABA) in the Associated Newspaper Register as being associated with that commercial radio broadcasting licence. This amendment will remove an unintended consequence of the current provisions whereby newspapers are taken to be associated with the licence area of a particular commercial radio broadcasting licence even if they have very limited circulations in comparison with the total population of the commercial radio broadcasting licence area.

FINANCIAL IMPACT STATEMENT

It is difficult to predict accurately the financial impact of the proposed amendments to make commercial radio and television broadcasting licences allocated under the Broadcasting Services Act subject to annual licence fees. This is because it is uncertain how many new licences will be made available, how many will be taken up, what the gross earnings of new licences might be - and therefore what additional revenue might accrue to the Commonwealth from the extension of the licence fees regime. The amendments are expected to have a progressively increasing positive net effect on the budget, levelling out at about \$0.134m per annum after 1998-99. However, should discounting at auction occur there may be an initial negative net effect.

The other amendments in the Bills are expected to have no significant impact on Commonwealth expenditure or revenue.

NOTES ON CLAUSES

BROADCASTING SERVICES LEGISLATION AMENDMENT BILL 1997

Clause 1 - Short title

This clause provides for the citation of the amending Act.

Clause 2 - Commencement

This clause provides for the amending Act to commence on Royal Assent.

Clause 3 - Schedule(s)

This clause makes the amendments set out in the Schedules to the Acts specified in the Schedules and gives force to the other provisions in the Schedules.

SCHEDULE 1 - AMENDMENT OF THE BROADCASTING SERVICES ACT 1992

Item 1 - Subsections 59(3) and (4)

Item 2 - After subsection 59(4)

Section 59 of the *Broadcasting Services Act 1992* (the Broadcasting Services Act) requires the ABA to maintain an Associated Newspaper Register which contains the names of newspapers associated with the licence areas of particular commercial radio or commercial television broadcasting licences. The effect of such an entry in the Register is that there will be a breach of the cross-media ownership and control limits if a person is in a position to control both the licence and the newspaper (section 60), or is a director of companies that are in a position to control both the licence and the newspaper, or holds a combination of directorships / controlling company interests in both the licence and the newspaper (section 61).

Subsection 59(3) requires the ABA to enter the name of a newspaper in the Register as being associated with the licence area of a particular licence if it is satisfied that at least 50% of the circulation of the newspaper is within the licence area of the licence. Subsection 59(4) requires the ABA to remove the name of a newspaper from the Register if it is satisfied that less than 50% of the circulation of the newspaper is within the licence area of the licence.

The ABA has a function under section 30 of determining the "licence area populations" of commercial radio and television licences, having regard to the most recently published census count prepared by the Australian Statistician.

Item 1 omits from subsections 59(3) and (4) references to “commercial radio broadcasting licences”. The effect of this amendment is that the existing provisions in section 59 in relation to entering newspapers on the Associated Newspaper Register and their removal from the Register will apply only to the association of newspapers with commercial television broadcasting licences.

Item 2 introduces new subsections 59(4A) and (4B) which deal with the entry of newspapers on the Register and their removal from the Register in respect of their association with commercial radio broadcasting licences. The effect of these provisions is that a newspaper would not appear on the Register as being associated with the licence area of a particular commercial radio broadcasting licence unless:

- (a) the newspaper meets the 50% circulation test currently provided in subsections 59(3) and (4); and
- (b) the circulation of the newspaper within the licence area exceeds 2% of the licence area population.

The inclusion of the additional legislative criterion at (b) above will remove an unintended consequence of the existing provisions whereby newspapers are taken to be associated with the licence areas of particular commercial radio broadcasting licences even if they have very limited circulations in comparison with the total population of the commercial radio broadcasting licence area. This is particularly the case in regional areas where newspapers serve small population centres within commercial radio licence areas.

It is not proposed that the additional test at (b) above apply to the association of newspapers with commercial television licence areas. This is because commercial television licensees in regional areas serve much larger markets than are served by commercial radio licensees; and a newspaper that was circulated to only a small proportion of a television licence area could still serve a significant regional population centre.

Item 3 - Section 204 (after table row relating to decision to remove newspaper from the Register)

Section 204 of the Broadcasting Services Act sets out a table of decisions in respect of which appeals on the merits may be made to the Administrative Appeals Tribunal (AAT). Among the decisions which are subject to AAT appeal are a decision by the ABA under subsection 59(3) to enter a newspaper in the Associated Newspaper Register and a decision by the ABA under subsection 59(4) to refuse to remove a newspaper from the Register. Section 204 currently confers this right of appeal on the publisher of a newspaper and on a commercial television broadcasting licensee in the relevant licence area.

This item amends section 204 to ensure that the right of AAT appeal in respect of ABA decisions under section 59 extends to a commercial radio broadcasting licensee in the relevant licence area, as well as the publisher of an affected newspaper and a

commercial television broadcasting licensee in the relevant licence area. The item amends the table in section 204 to make separate reference to decisions made under new subsections 59(4A) and (4B) in respect of the association of newspapers with particular commercial radio licences (see explanatory notes on Item 2).

Item 4 - Section 204 (at the end of the table)

This item amends section 204 to extend the range of decisions in respect of which an appeal on the merits may be made to the AAT, to include an appeal by a commercial radio broadcasting licensee or a commercial television broadcasting licensee against the following decisions which may be made under proposed Part 14A of the Broadcasting Services Act (see explanatory notes on Item 5):

- a decision by the ABA to refuse to permit an accounting period ending on a day other than 30 June (see new subsection 205B(2));
- a decision by the ABA to issue a notice relating to the amount of licence fee paid (see new subsection 205C(2)); and
- a decision by an authorised person that no additional fee be remitted or that part only of the additional fee be remitted (see new subsection 205D(4)).

As these decisions may adversely affect the interests of licensees, it is appropriate that they be subject to review by the AAT.

Item 5 - After Part 14

Part 14A - Accounts and payment of licence fees

Paragraph 6(2)(a) of the *Television Licence Fees Act 1964* (the Television Licence Fees Act) and paragraph 6(2)(a) of the *Radio Licence Fees Act 1964* (the Radio Licence Fees Act) require an annual licence fee to be paid on 31 December in each year. The amount of the annual fee is calculated in accordance with subsections 6(2) and 6(2A) of the Licence Fees Acts, and is based on gross earnings in respect of the licence during the previous financial year. The Licence Fees Acts, however, apply only to commercial broadcasting licences which were granted under the former *Broadcasting Act 1942* (the former Act) and were continued in force by section 5 of the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992* (the Transitional Provisions Act).

The amendments of the Licence Fees Acts made by the Television Licence Fees Amendment Bill 1997 and by the Radio Licence Fees Amendment Bill 1997 will make commercial broadcasting licences allocated under the Broadcasting Services Act also subject to the licence fees regime.

As a consequence of these amendments of the Licence Fees Acts, this item inserts a new Part 14A in the Broadcasting Services Act which sets out provisions governing the administration of the annual licence fee payable by commercial broadcasting licensees.

The new Part is modelled on the provisions in sections 123, 123AA and 123A of the former Act. Section 22 of the Transitional Provisions Act presently applies those provisions to commercial broadcasting licences which were granted under the former Act and which have been continued in force as commercial licences under the Broadcasting Services Act.

New section 205A - Definitions

This section defines the terms “gross earnings” and “licence fee” to have the same meaning as in the Licence Fees Acts. This is to ensure that the requirements of this Part apply to fees imposed by the Licence Fees Acts.

New section 205B - Licensees to keep accounts

New section 205B requires commercial broadcasting licensees to keep financial accounts and makes provision for licensees to adopt non-financial year accounting periods. The section re-enacts the provisions in section 123 of the former Act, with some minor drafting changes but no change to the substance of the provisions.

Subsection 205B(1) requires commercial radio and television licensees to:

- keep and maintain financial accounts in relation to the service provided under the licence;
- make the accounts available for inspection by the ABA or an authorised officer when requested;
- give the ABA an audited balance-sheet and profit and loss account, and a statutory declaration as to gross earnings, within 6 months of the end of the financial year; and
- keep such records in respect of the service provided under the licence as the ABA directs and give the ABA copies when requested.

Subsection 205B(2) enables a licensee to adopt a non-financial year accounting period, with the permission of the ABA. Proposed subsection 6(3) of the Licence Fees Acts allows any accounting period adopted with the permission of the ABA to be used for the purposes of calculating the licence fee (see explanatory notes on item 6 of Schedule 1 of the Television Licence Fees Amendment Bill 1997 and the item 8 of Schedule 1 of the Radio Licence Fees Amendment Bill 1997).

Subsection 205B(3)

New paragraph 205B(1)(c) requires licensees to give certain audited accounts and a statutory declaration stating the gross earnings for the accounting period within 6 months after 30 June (ie by 31 December) in each year.

New subsection 205B(3) sets out different deadlines for the provision of these documents for licensees who have adopted a non-financial year accounting period in accordance with new subsection 205B(2). If this accounting period ends in the first half of the calendar year, the documents must be provided within 6 months after the

end of the accounting period. If the accounting period ends in the second half of the calendar year, the documents must be provided by 31 December.

Subsection 205B(4) requires the statutory declaration as to gross earnings under subparagraph 205B(1)(c)(ii) to be made by the chief executive officer or secretary of the licensee.

Subsection 205B(5) defines “authorised officer” for the purposes of proposed paragraph 205B(1)(b), which requires commercial radio and television broadcasting licensees to make financial accounts available for inspection to the ABA or an authorised officer when requested to do so.

The definition of “authorised officer” requires the ABA to make any authorisations in writing, and limits the range of persons who can be authorised to members, associate members and members of staff of the ABA.

New section 205C - Payment of licence fees

New section 205C provides a basis for self-assessment of annual licence fees by commercial broadcasting licensees. The section re-enacts the provisions in section 123AA of the former Act, with some minor drafting changes but no change to the substance of the provisions.

Subsection 205C(1) requires a licensee who pays an amount that it believes is the licence fee payable to inform the ABA of the method used to calculate that amount.

Subsection 205C(2) requires the ABA to notify the licensee if it determines that a different amount is payable to the amount the licensee has paid. This notice must set out:

- the amount worked out;
- details of how this amount was worked out;
- the amount of the licence fee that is either unpaid or overpaid; and
- if it is satisfied that there has been a deliberate miscalculation of the amount of the licence fee, a statement to this effect.

The latter requirement ensures that a deliberate miscalculation of licence fees payable does not delay payment of fees owing. The effect of the ABA including a statement in the notice that there has been a deliberate miscalculation is to make the licensee liable to pay a penalty on the unpaid amount (see explanatory notes on proposed subsections 205D(1) - (2) below).

Subsection 205C(3) requires the ABA to arrange for a refund to the licensee of any overpaid amount, within 21 days of the issue of a notice under proposed subsection 205C(2).

New section 205D - Penalty for unpaid licence fees

New section 205D sets out the circumstances in which penalties are to be paid in respect of an amount of licence fees that remains payable after the due date. The section re-enacts the provisions in section 123A of the former Act, with some minor drafting changes but no change to the substance of the provisions.

Subsection 205D(1) creates a penalty for an amount of licence fee remaining unpaid after the due date (ie 31 December), computed from that day at the rate of 20% per annum, unless subsections 205D(2) or (3) apply. This has the effect that the penalty imposed by this subsection only applies in relation to unpaid amounts if the notice issued by the ABA under subsection 205C(2) following its re-working of the licensee's self-assessed fee includes a statement by the ABA that there has been a deliberate miscalculation of licence fees payable.

Subsection 205D(2) provides for a penalty to be paid by a licensee in respect of an amount of licence fee that is specified as unpaid in a notice issued by the ABA under subsection 205C(2) where that notice does not include a statement that the ABA is satisfied that there has been a deliberate miscalculation, but the licensee does not pay the specified amount within 21 days (the same period within which the ABA is required to refund overpayments). In this case, the penalty is calculated from the date the notice is issued by the ABA.

Subsection 205D(3) makes it clear that no penalty fee is payable where an amount of licence fee is specified as unpaid in a notice issued by the ABA under subsection 205C(2) if the notice does not include a statement that the ABA is satisfied that there has been a deliberate miscalculation and the licensee pays the amount within 21 days of the notice being issued.

Subsection 205D(4) enables an authorised person to remit all or part of a penalty for late payment where the licensee has taken reasonable action to mitigate the circumstances leading to the delay in payment and, having regard to those circumstances, it would be reasonable to remit the penalty or part of the penalty. "Authorised person" is defined in proposed subsection 205D(9) to mean the Minister or an officer authorised by the Minister for the purpose of this section.

Subsection 205D(5) requires an authorised person who has remitted all or part of a late payment penalty which has been paid by the licensee to arrange within 21 days for the refund to be paid to the licensee.

Subsection 205D(6) ensures that an amount of unpaid licence fee can be recovered immediately after the due date in a court of competent jurisdiction as a debt due to the Commonwealth, regardless of whether a penalty is payable under subsections 205D(1) or (2).

Subsection 205D(7) provides for the reduction of the amount of the penalty for late payment imposed by this section where interest is payable on a judgment debt for an

amount of licence fee. The penalty is reduced by the amount of interest payable on the judgment debt.

Subsection 205D(8) provides for the reduction of the amount of the penalty for late payment where interest is payable on a judgment debt for an amount which includes an amount of licence fee. The amount of penalty for late payment is reduced on a proportional basis reflecting the proportion of the judgment debt that relates to the amount of licence fee unpaid.

Subsection 205D(9) defines terms used in new section 205D.

Item 6 - After paragraph 7(1)(i) of Schedule 2

Clause 7 of Schedule 2 to the Broadcasting Services Act sets out standard conditions applying to commercial television broadcasting licences.

This item inserts a new paragraph (ia) in clause 7(1) to make it a condition of these licences that the licensee comply with the requirements set out in proposed subsection 205B(1) relating to the keeping of financial accounts (see explanatory notes on Item 5 above).

This item reflects previous arrangements under the former Act which made the requirements to keep accounts a condition of commercial television broadcasting licences (by the operation of section 129 of that Act).

Item 7 - After paragraphs 8(1)(h) of Schedule 2

Clause 8 of Schedule 2 to the Broadcasting Services Act sets out standard conditions applying to commercial radio broadcasting licences.

This item inserts a new paragraph (ha) in clause 8(1) to make it a condition of these licences that the licensee comply with the requirements set out in proposed subsection 205B(1) relating to the keeping of financial accounts (see explanatory notes on Item 5 above).

This item reflects previous arrangements under the former Act which made the requirements to keep accounts a condition of commercial radio broadcasting licences (by the operation of section 129 of that Act).

Item 8 - Application

This item ensures that the amendments to clauses 7 and 8 of Schedule 2 (relating to the requirements under proposed section 205B that licensees keep accounts) extend to all commercial radio and television broadcasting licences, including:

- commercial radio and television licences granted under the former Act and still in force by virtue of section 7 of the Transitional Provisions Act;
- commercial radio and television licences granted under the former Act that have been renewed under the Broadcasting Services Act; and

- commercial radio and television broadcasting licences allocated under the Broadcasting Services Act prior to commencement of the *Broadcasting Services Legislation Amendment Act 1997*.

Item 9 - Transitional

Items 9(1) and (2) ensure that the amendments of section 59 of the *Broadcasting Services Act* made by Item 2 in relation to entries in the Associated Newspaper Register of newspapers associated with the licence areas of particular commercial radio broadcasting licences do not affect the validity of decisions made under section 59 prior to commencement.

Item 9(1) has the effect of deeming decisions made by the ABA under subsection 59(3) to enter a newspaper in the Register as being associated with the licence area of a particular commercial radio broadcasting licence, which is in force immediately prior to commencement, to have been made under the provisions in new subsection 59(4A) which are inserted by Item 2.

Item 9(2) has the effect of deeming decisions made by the ABA under subsection 59(4) to remove a newspaper from the Register because it is no longer associated with the licence area of a particular commercial radio broadcasting licence, which is in force immediately prior to commencement, to have been made under the provisions in new subsection 59(4B) which are inserted by Item 2.

Items 9(3) - (9) contain transitional provisions intended to ensure that licence fee arrangements are not disrupted by the transfer of the relevant administrative provisions to the Broadcasting Services Act (see explanatory notes on Item 5).

Item 9(3) continues in force any direction, requirement, approval or leave given, or taken to have been given, by the ABA under a continued section of the former Act and which is in force immediately before commencement, as if it were made under the corresponding provision of new Part 14A of the Broadcasting Services Act.

Item 9(4) deems any request made, or taken to have been made, by the ABA under the continued subsection 123(4) of the former Act which has not been complied with immediately before commencement to have been made under the corresponding provision of new Part 14A of the Broadcasting Services Act.

Item 9(5) deems any request made, or taken to have been made, by the ABA under the continued subsection 123(4AA) of the former Act which has not been complied with immediately before commencement to have effect as if it were a notice in writing made under the corresponding provision of new Part 14A of the Broadcasting Services Act.

Item 9(6) deems any notice of a reassessed licence fee given by the ABA under the continued subsection 123AA(3) of the former Act before commencement to have been given under the corresponding provision of new Part 14A of the Broadcasting Services Act.

Item 9(7) ensures that any late payment penalty payable under the continued subsections 123A(1A) and (1B) of the former Act at the time of commencement continue to be payable under the corresponding provisions of new Part 14A of the Broadcasting Services Act.

Item 9(8) deems any action taken by a licensee before the commencement day under a continued provision of the former Act to have effect on or after commencement as if it had been taken under the corresponding provision of new Part 14A of the Broadcasting Service Act.

Item 9(9) deems any action taken by a corporation related to a licensee in response to a request for information under subsection 123(4AA) of the former Act to have effect after commencement as if it had been taken in response to a corresponding notice under section 173 of the Broadcasting Services Act.

Item 9(10) contains definitions of terms used in Schedule 1.

SCHEDULE 2 - AMENDMENT OF THE BROADCASTING SERVICES (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) ACT 1992

Item 1 - Sections 14, 15 and 22

This item repeals sections 14, 15 and 22 of the Transitional Provisions Act.

Sections 14 and 15 of the Transitional Provisions Act relate to AM/FM conversion arrangements and are now spent (see explanatory notes on Item 9 of the Radio Licence Fees Amendment Bill 1997).

Section 22 of the Transitional Provisions Act continues in force sections 123 and 123A of the former Act, relating to the administration of licence fees for commercial radio and television broadcasting licences. These licences are preserved by section 5 of the Transitional Provisions Act.

The repeal of section 22 is consequential upon the amendments in Schedule 1 bringing the provisions relating to the administration of the annual licence fees for commercial broadcasting services into the Broadcasting Services Act.

TELEVISION LICENCE FEES AMENDMENT BILL 1997

Clause 1 - Short title

This clause provides for the citation of the amending Act.

Clause 2 - Commencement

This clause provides for the amending Act to commence on Royal Assent.

Clause 3 - Schedule(s)

The amendments to the *Television Licence Fees Act 1964* (the Television Licence Fees Act) are set out in Schedule 1.

SCHEDULE 1 - AMENDMENT OF THE TELEVISION LICENCE FEES ACT 1964

Section 5 of the Television Licence Fees Act provides that licence fees are payable by a licensee. The amount of the annual fee is calculated in accordance with subsections 6(2) and 6(2A) of the Television Licence Fees Act, and is based on gross earnings in respect of the licence during the previous financial year.

At present, only commercial television broadcasting licences which were granted under the former *Broadcasting Act 1942* (the former Act) and which were continued in force by section 5 of the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992* (the Transitional Provisions Act) are subject to annual licence fees. The amendments in Schedule 1 provide for annual licence fees also to be payable in respect of commercial television broadcasting licences allocated under the *Broadcasting Services Act 1992* (the Broadcasting Services Act), including licences renewed under that Act.

Item 1 - Subsection 4(1) (definition of ABA)

Subsection 4(1) of the Television Licence Fees Act contains definitions of terms used in that Act.

This item inserts a definition of "ABA" in subsection 4(1) of the Television Licence Fees Act. The "ABA" is defined as the Australian Broadcasting Authority. (Item 7 amends section 7 of the Television Licence Fees Act to confer a power on the ABA.)

Item 2 - Subsection 4(1) (definition of *gross earnings*)

This item amends the definition of “gross earnings” in subsection 4(1) of the Television Licence Fees Act so that the language used in the provision is consistent with that used in the Broadcasting Services Act.

Item 3 - Subsection 4(1) (definition of *licence*)

This item substitutes a new definition of “licence” in subsection 4(1) of the Television Licence Fees Act to make commercial television broadcasting licences allocated under the Broadcasting Services Act also subject to annual licence fees.

Section 5 of the Television Licence Fees Act provides that fees are payable by a licensee in respect of a licence. Subsection 4(1) of the Television Licence Fees Act defines “licence” as a commercial television broadcasting licence referred to in paragraph 5(1)(b) or (e) of the Transitional Provisions Act.

Paragraphs 5(1)(b) and (e) of the Transitional Provisions Act preserve licences granted under the former Act so that they continue in force as if they had been allocated under the Broadcasting Services Act. Section 7 of the Transitional Provisions Act ensures that a licence preserved under section 5 continues for the unexpired term of the licence, but enables the licence to be renewed under the Broadcasting Services Act.

This item substitutes a new definition of “licence” in subsection 4(1). “Licence” is defined as a commercial television broadcasting licence referred to in paragraph 5(1)(b) or (e) of the Transitional Provisions Act, or a commercial television broadcasting licence allocated or renewed under the Broadcasting Services Act.

Commercial television broadcasting licences allocated under the Broadcasting Services Act are licences allocated under Part 4 of the Broadcasting Services Act, namely:

- commercial television broadcasting licences allocated under section 36;
- additional commercial television broadcasting licences in single markets allocated under section 38A; and
- other commercial television broadcasting licences that are allocated under section 40 (ie non-broadcasting services bands licences).

Item 4 - Section 5

This item amends section 5 of the Television Licence Fees Act to replace the gender specific term “his” with a non-gender specific term “the”.

Item 5 - Subsection 6(1)

This item repeals subsection 6(1) of the Television Licence Fees Act, which provides for a \$500 fee payable on the grant of a commercial television broadcasting licence. This fee is considered unnecessary, given that the provisions of Part 4 of the

Broadcasting Services Act allow the ABA to determine application fees or fees representing the administrative costs of allocating a licence, in respect of commercial television broadcasting licences.

Item 6 - Paragraph 6(3)(b)

This item amends subsection 6(3) of the Television Licence Fees Act to ensure that licensees who adopt a different accounting period under the Broadcasting Services Act after it is amended have their annual licence fee calculated by reference to any different accounting period they may adopt.

Under the former Act, licensees could adopt an accounting period ending on a date other than 30 June. This mechanism has been kept in force by the operation of section 22 of the Transitional Provisions Act.

The proposed amendments in the Broadcasting Services Legislation Amendment Bill 1997 will transfer the mechanism for adopting a different accounting period to the Broadcasting Services Act. Proposed section 205B of the Broadcasting Services Act provides that a licensee may adopt a different accounting period with the permission of the ABA (see explanatory notes on Item 5 of Schedule 1 of the Broadcasting Services Legislation Amendment Bill 1997).

Subsection 6(3) of the Television Licence Fees Act allows the amount of the annual fee to be calculated by reference to any different accounting period adopted by licensees under the Broadcasting Act or the Transitional Provisions Act.

This item will allow the amount of the annual licence fee to be calculated by reference to any different accounting period licensees may adopt under the Broadcasting Services Act.

Item 7 - Section 7

Section 7 of the Television Licence Fees Act is an anti-avoidance provision which gives the Minister a discretion to treat the earnings of associates as the earnings of a licensee for the purposes of the licence fee provisions.

This item amends section 7 to transfer this power from the Minister to the ABA in recognition that the ABA administers the licence fee provisions and is therefore the appropriate body to hold this power.

RADIO LICENCE FEES AMENDMENT BILL 1997

Clause 1 - Short title

This clause provides for the citation of the amending Act.

Clause 2 - Commencement

Clause 2(1) provides for the amending Act, other than item 2 of the Schedule, to commence on Royal Assent.

Item 2 of the Schedule corrects a typographical error in the definition of "licence" in subsection 4(1) of the Radio Licence Fees Act 1964 (the Radio Licence Fees Act).

Clause 2(2) makes the amendment in Item 2 retrospective to the time that subsection 4(1) of the Radio Licence Fees Act commenced (5 October 1992), in order to remove any uncertainty caused by the typographical error.

Clause 3 - Schedule(s)

The amendments to the Radio Licence Fees Act are set out in Schedule 1.

SCHEDULE 1 - AMENDMENT OF THE RADIO LICENCE FEES ACT 1964

Section 5 of the Radio Licence Fees Act provides that licence fees are payable by a licensee. The amount of the annual fee is calculated in accordance with subsections 6(2) and 6(2A) of the Radio Licence Fees Act, and is based on gross earnings in respect of the licence during the previous financial year.

At present, only commercial radio licences which were granted under the former *Broadcasting Act 1942* (the former Act) and have been continued in force by section 5 of the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992* (the Transitional Provisions Act) are subject to annual licence fees. The amendments in Schedule 1 provide for annual licence fees also to be payable in respect of commercial radio broadcasting licences allocated under the *Broadcasting Services Act 1992* (the Broadcasting Services Act), including licences renewed under that Act.

Item 1 - Subsection 4(1) (definition of *ABA*)

Subsection 4(1) of the Radio Licence Fees Act contains definitions of terms used in that Act.

This item inserts a definition of "ABA" in subsection 4(1) of the Radio Licence Fees Act. The "ABA" is defined as the Australian Broadcasting Authority. (Item 10 amends section 7 of the Radio Licence Fees Act to confer a power on the ABA.)

Item 2 - Subsection 4(1) (definition of *FM access fee*)

Subsection 4(1) of the Radio Licence Fees Act defines "FM access fee" as the fee payable in respect of a licence under section 6B of that Act. Section 6B of the Radio Licence Fees Act imposes an FM access fee for the grant of non-metropolitan FM commercial radio licences and supplementary radio licences, and for the conversion of non-metropolitan AM commercial radio licences to FM.

Section 6B, along with sections 6BA and 6C, are now spent and are repealed by Item 9 (see explanatory notes on Item 9 below). The definition of "FM access fee" is made redundant by the repeal of sections 6B, 6BA and 6C, and this item repeals the definition.

Item 3 - Subsection 4(1) (definition of *gross earnings*)

This item amends the definition of "gross earnings" in subsection 4(1) of the Radio Licence Fees Act so that the language used in the provision is consistent with that used in the Broadcasting Services Act.

Item 4 - Subsection 4(1) (definition of *licence*)

This item corrects a typographical error in the definition of "licence" in subsection 4(1) of the Radio Licence Fees Act.

Subsection 4(1) of the Radio Licence Fees Act defines "licence" to mean a commercial radio broadcasting licence referred to in paragraph 5(1)(b), (d) or (f) of the Transitional Provisions Act. These paragraphs preserve licences which were granted under the former Act so that they continue in force as if they had been allocated under the Broadcasting Services Act.

The definition in subsection 4(1) of the Radio Licence Fees Act mistakenly refers to paragraph 5(1)(b) of the Transitional Provisions Act, which deals with commercial television licences, rather than to paragraph 5(1)(a), which deals with commercial radio licences.

This item substitutes a new definition of licence in subsection 4(1) of the Radio Licence Fees Act to define "licence" as a commercial radio broadcasting licence referred to in paragraph 5(1)(a), (d) or (f) of the Transitional Provisions Act.

Clause 2(2) makes the amendment retrospective to the time that the provision commenced to remove any uncertainty caused by the typographical error. This will ensure that licence fees in respect of commercial radio licences granted under the former Act and preserved by the Transitional Provisions Act were imposed validly under the Radio Licences Fees Act.

From the time this Bill receives the Royal Assent, the definition is itself repealed and a new definition substituted by the following item.

Item 5 - Subsection 4(1) (definition of *licence*)

This item substitutes a new definition of “licence” in subsection 4(1) of the Radio Licence Fees Act to make commercial radio licences allocated under the Broadcasting Services Act also subject to annual licence fees.

Section 5 of the Radio Licence Fees Act provides that fees are payable by a licensee in respect of a licence. Subsection 4(1) of the Radio Licence Fees Act defines “licence” as a commercial radio broadcasting licence referred to in paragraph 5(1)(b), (d) or (f) of the Transitional Provisions Act.

As noted in the explanatory notes on Item 4, paragraphs 5(1)(a), (d) and (f) of the Transitional Provisions Act preserve licences granted under the former Act so that they continue in force as if they had been allocated under the Broadcasting Services Act. Section 7 of the Transitional Provisions Act enables a licence preserved under section 5 to continue in force for the unexpired term of the licence, but enables the licence to be renewed under the Broadcasting Services Act.

This item substitutes a new definition of “licence” in subsection 4(1). “Licence” is defined as a commercial radio broadcasting licence referred to in paragraph 5(1)(a), (d) or (f) of the Transitional Provisions Act, or a commercial radio broadcasting licence allocated or renewed under the Broadcasting Services Act.

Commercial radio broadcasting licences allocated under the Broadcasting Services Act are licences allocated under Part 4 of the Broadcasting Services Act, namely:

- commercial radio broadcasting licences allocated under section 36;
- additional commercial radio broadcasting licences in single markets allocated under section 39; and
- other commercial radio broadcasting licences that are allocated under section 40 (ie non-broadcasting services bands licences).

Item 6 - Section 5

This item amends section 5 of the Radio Licence Fees Act to replace the gender specific term “his” with a non-gender specific term “the”.

Item 7 - Subsection 6(1)

This item repeals subsection 6(1) of the Radio Licence Fees Act, which provides for a \$500 fee payable on the grant of a commercial radio licence. This fee is considered unnecessary, given that the provisions of Part 4 of the Broadcasting Services Act allow the ABA to determine application fees or fees representing the administrative costs of allocating a licence, in respect of commercial radio broadcasting licences.

Item 8 - Paragraph 6(3)(b)

This item amends subsection 6(3) of the Radio Licence Fees Act to ensure that licensees who adopt a different accounting period under the Broadcasting Services Act after it is amended have their annual licence fee calculated by reference to any different accounting period they may adopt.

Section 5 of the Radio Licence Fees Act provides that licence fees are payable by a licensee. The amount of the annual fee is calculated in accordance with subsections 6(2) and 6(2A) of the Radio Licence Fees Act, and is based on gross earnings in respect of the licence during the previous financial year.

Under the former Act, licensees could adopt an accounting period ending on a date other than 30 June. This mechanism has been kept in force by the operation of section 22 of the Transitional Provisions Act.

The proposed amendments in the Broadcasting Services Legislation Amendment Bill 1997 will transfer the mechanism for adopting a different accounting period to the Broadcasting Services Act. Proposed section 205B of the Broadcasting Services Act provides that a licensee may adopt a different accounting period with the permission of the ABA (see explanatory notes on Item 5 of Schedule 1 of the Broadcasting Services Legislation Amendment Bill 1997).

Subsection 6(3) of the Radio Licence Fees Act allows the amount of the annual fee to be calculated by reference to any different accounting period adopted by licensees under the former Act or the Transitional Provisions Act.

This item will allow the amount of the annual licence fee to be calculated by reference to any different accounting period licensees may adopt under the Broadcasting Services Act after it is amended.

Item 9 - Sections 6B, 6BA and 6C

This item repeals sections 6B, 6BA and 6C of the Radio Licence Fees Act, which are spent.

Section 6B of the Radio Licence Fees Act imposes an FM access fee for the grant of non-metropolitan FM commercial radio licences and supplementary radio licences, and for the conversion of non-metropolitan AM commercial radio licences to FM.

Section 6BA provides for the calculation of the FM access fee.

Section 6C imposes a fee for the conversion of an AM licence to FM under the National Metropolitan Radio Plan.

Item 10 - Section 7

Section 7 of the Radio Licence Fees Act is an anti-avoidance provision which gives the Minister a discretion to treat the earnings of associates of licensees as the earnings of a licensee for the purposes of the licence fee provisions.

This item amends section 7 to transfer this power from the Minister to the ABA in recognition that the ABA administers the licence fee provisions and is therefore the appropriate body to hold this power.

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