

1991

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TELECOMMUNICATIONS (TRANSITIONAL PROVISIONS
AND CONSEQUENTIAL AMENDMENTS) BILL 1991

EXPLANATORY MEMORANDUM

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



**TELECOMMUNICATIONS (TRANSITIONAL PROVISIONS AND
CONSEQUENTIAL AMENDMENTS) BILL 1991**

OUTLINE

On 8 November 1990, the Prime Minister gave a Ministerial Statement on Transport and Telecommunications reform. That Statement was accompanied by the booklet "Micro Economic Reform: Progress - Telecommunications" which was released after the Statement was made.

The Telecommunications Bill 1991, together with the related Bills introduced in this package, implement the Government's decisions announced in the Prime Ministerial Statement and booklet. The Telecommunications (Transitional Provisions and Consequential Amendments) Bill 1991 forms part of the legislative package.

This Bill provides for the repeal of the Telecommunications Act 1989 and transitional provisions and consequential amendments relating to that repeal. It also provides for the repeal of the Australian Telecommunications Corporation Act 1989 and the Overseas Telecommunications Corporation Act 1946 consequential to the Australian and Overseas Telecommunications Corporation Bill 1991, and amendments to other Commonwealth legislation consequential to that Bill.

FINANCIAL IMPACT

The financial impact of the package as a whole is identified in the outline to the explanatory memorandum for the Telecommunications Bill 1991. The measures in this Bill are not expected to have any identifiable financial impact of their own account.

ABBREVIATIONS

The following abbreviations are used in this Explanatory Memorandum:

AOTC Act: Australian and Overseas Telecommunications Corporation Act 1991

1989 Act: Telecommunications Act 1989

new Act: Telecommunications Act 1991

new Bill: Telecommunications Bill 1991

T(TP&CA) Act: the Telecommunications (Transitional
Provisions and Consequential Amendments)
Act 1991

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short title

This clause provides for the citation of the Telecommunications (Transitional Provisions and Consequential Amendments) Act 1991.

Clause 2 - Commencement

This clause provides for the commencement of the T(TP&CA) Act.

Clause 2(1) provides for the preliminary clauses to commence on Royal Assent.

Clause 2(2) provides for the transitional provisions, repeals and consequential amendments which relate to the new Telecommunications Act to commence on 1 July 1991, the date on which most of that Act will commence.

Clause 2(3) provides for the repeals and consequential amendments which relate to the merger of Telecom and OTC under the AOTC Act to commence at the same time as the provisions which result in the merger. The reasons for this commencement are set out in the notes on the commencement clause in the explanatory memorandum for the AOTC Bill.

PART 2 - TRANSITIONAL PROVISIONS

Clause 3 - Interpretation

This clause provides definitions of terms used in, and a rule for the interpretation of, this Part.

Clause 3(1) gives a definition of "AUSSAT" and "OTC".

Clause 3(2) provides that in this Part, unless the contrary intention appears, expressions have the same meanings as in the new Act.

Clause 4 - Application

This clause makes the provisions of this Part override inconsistent provisions of the new Act.

~~Clause 5 - Pre-existing notifications and directions to
AUSTEL~~

Sections 28 and 29 of the 1989 Act enable the Minister respectively to -

- . notify AUSTEL of general policies of the Commonwealth Government; and
- . give directions to AUSTEL in relation to the performance of its functions and the exercise of its powers.

Clauses 49 and 50 of the new Bill re-enact those sections for the purposes of the new Act. *

This clause ensures that any notification or direction given under those sections and in force immediately before their repeal is taken to have been given under the corresponding provisions of the new Act on their commencement.

~~Clause 6 - Pre-existing advisory committees established by
AUSTEL~~

Section 32 of the 1989 Act enables AUSTEL to establish advisory committees to assist it in carrying out its functions and to give such committees directions. Four such committees currently exist.

Clause 53 of the new Bill re-enacts section 32 for the purposes of the new Act.

Clause 6(1) preserves the existing advisory committees and clause 6(2) makes any written directions in force continue to apply.

~~Clause 7 - Existing carriers may continue to operate
pending grant of licences~~

Clause 57 of the new Bill enables the Minister to grant a general telecommunications licence or a public mobile licence after receiving an application.

AUSSAT, Telecom and OTC can currently provide certain services and do certain things under their respective parent Acts and the Telecommunications Act 1989.

This clause is included because there will be a short hiatus between the commencement of the new Act and the granting of licences under that Act. It enables AUSSAT, OTC and Telecom each to continue to perform the functions and exercise the powers it had immediately before the new

Act commenced until a decision is made whether to grant the licence or the Minister Gazettes a date at which this section ceases. The reason for the latter provision is because grant of a licence requires an application and this requirement can be used to insist upon a licence application to enable the grant to occur.

Clause 8 - Disclosure of pre-existing communications

This clause provides that section 88 of the new Act, which concerns the disclosure or use of a fact or document, applies to any disclosure or use by a person of such information after the commencement of section 88 where the disclosure or use relates to a communication carried or a telecommunications service supplied before the commencement of the new section or where the person became aware of the information prior to that section's commencement.

Clause 9 - Relief in respect of past infringing conduct

Section 69 of the 1989 Act enables Telecom, OTC and AUSSAT, with AUSTEL's consent, to apply to the Federal Court for relief where a person has engaged in conduct that infringes an exclusive right that the carrier has under Part 3 of the 1989 Act.

This clause preserves the right for a carrier to take such action, AUSTEL to consent and the Federal Court to grant relief in respect of conduct engaged in before the repeal of section 69.

Clause 10 - Pre-existing interconnection rights

Section 49 of the 1989 Act enables AUSTEL to direct Telecom, OTC and AUSSAT to make a network or facility available for the use of another carrier. Section 10A of the AUSSAT Act 1984 gives AUSSAT a right to connect its facilities to another carrier's network. Clause 137 of the new Bill gives a right of interconnection for the purposes of the new Act.

This clause preserves any such interconnection right that a carrier has and the amount agreed or determined by AUSTEL for the right is taken to have been agreed or determined for the purposes of paragraph 137(2)(b) of the new Act.

Clause 11 - Pre-existing class licences

Clause 11(1) provides that, until class licences are issued under clause 209 of the new Act, services supplied under value added or private network class licences issued under

~~section 75 of the 1989 Act and which are in force~~
immediately before the repeal of that section, are taken to be services supplied under class licences issued under the new Act.

Clause 11(2) makes this clause have effect subject to section 12, which provides a specific rule in relation to services grandfathered under the 1989 Act.

Clause 12 - Pre-existing eligible services

Clause 12(1) provides for the grandfathering of value added or private network services. A value added or private network service that was approved by a carrier and that was supplied before the commencement of the 1989 Act and which, under section 104 of that Act was taken to be a service supplied within the meaning of that Act, is correspondingly to be taken, on the repeal of section 104, to be an eligible service supplied under a class licence within the meaning of the new Act.

Clause 12(2) provides that if at any time after the repeal of section 104 of the 1989 Act the service is supplied other than in accordance with the approval that had been obtained from the carrier, the grandfathered protection for the service ceases to apply.

Clause 13 - Pre-existing numbers

Clause 241 of the new Bill prohibits provision of a telecommunications service across a public telecommunications network unless the numbers used accord with the national numbering plan.

This clause exempts from the prohibition numbers allocated before that plan is prepared.

Clause 14 - Effect of standards determined under section 106 of the Telecommunications Act 1989

Section 106 of the 1989 Act enables AUSTEL to determine technical standards relating to customer equipment and customer cabling.

Clause 246 of the new Bill re-enacts section 106 for the purposes of the new Act. This clause ensures that any technical standard in force under section 106 immediately before its repeal, has effect as if it had been determined under section 246 of the new Act and that section had applied on the day it was determined.

Clause 15 - Pre-existing authorities for connection of customer equipment

Subsection 118(1) of the 1989 Act enables AUSTEL to issue permits for connection of customer equipment or a type of customer equipment to a network. Section 126 of the 1989 Act grandfathers authorities for connection given by the carriers prior to the commencement of that Act.

Clause 258 of the new Bill re-enacts section 118 for the purposes of the new Act.

This clause would apply to a permit for the connection of customer equipment (which includes a permit for connection of equipment or a type of equipment under section 118 of the 1989 Act and an authority grandfathered under section 126 of that Act), in force immediately before the commencement of section 258 of the new Act, to deem on that commencement -

- . the previous permit to be a permit issued under Division 6 of Part 12 of the new Act;
- . the new permit to include the conditions to which the previous permit was subject; and
- . the person who held the previous permit to be the permit holder.

Clause 16 - Pre-existing licences for performing cabling work

Section 131 of the 1989 Act enables AUSTEL to issue a licence for the performance of cabling work. Section 139 of the 1989 Act grandfathers licences given by a carrier prior to the commencement of that Act.

This clause would apply to a licence for the performance of cabling work (which includes a licence for performance of cabling work under section 131 of the 1989 Act and a licence grandfathered under section 139 of that Act), in force immediately before the commencement of section 271 of the new Act, to deem on that commencement -

- . the previous licence to be a licence issued under Division 7 of Part 12 of the new Act;
- . the new licence to include the conditions to which the previous licence was subject; and
- . the person who held the previous licence to be the licence holder.

Clause 17 - ~~Pre-existing delegations by AUSTEL~~

Clause 17 continues in force any delegation of a function or power of AUSTEL made under section 140 of the 1989 Act that was in force immediately before the repeal of that section and deems any such delegation to be a delegation of the corresponding function and power made under section 279 of the new Act on the commencement of that section.

Clause 18 - Continuation of investigations

Clause 18(1) saves any investigation commenced by AUSTEL under Part 6 of the 1989 Act, but not completed or reported on, before the repeal of that Part.

Clause 18(2) saves any request made by the Minister to AUSTEL, before the repeal of Part 6 of the 1989 Act, requesting AUSTEL to conduct an investigation under that Part. The effect of the clause is to require AUSTEL to comply with the Minister's direction and to conclude and report on the investigation in accordance with the Part.

Clause 18(3) provides that Part 6 of the 1989 Act continues in force for the purposes of section 18.

Clause 19 - Existing members and associate members of AUSTEL

Clause 19(1) continues in force the appointment of a member of AUSTEL, for the unexpired portion of the period of his or her appointment, and deems the appointment to have been made under section 368 of the new Act, where that member held office immediately before the repeal of Part 7 of the 1989 Act. Part 7 of the 1989 Act concerns the constitution of AUSTEL and includes provisions dealing with the appointments of members and associate members.

Clause 19(2) continues in force the appointment of an associate member of AUSTEL, for the unexpired portion of the period of his or her appointment, and deems the appointment to have been made under section 369 of the new Act, where that associate member held office immediately before the repeal of Part 7 of the 1989 Act.

Clause 19(3) continues in force any direction given by the Minister, under subsection 160(5) of the 1989 Act, to an associate member directing him or her to perform the duties of a member and deems any such direction to have been made under section 369 of the new Act.

Clause 20 - Existing regulations under Telecommunications Act 1989

Clause 20(1) saves, subject to subsection 20(3), any regulations made under section 185 of the 1989 Act and in force immediately before the repeal of section 185 and deems them to have been made under section 406 of the new Act.

Clause 20(2) provides that where a saved regulation refers to a provision of the 1989 Act that reference is taken to be a reference to the corresponding provision of the new Act.

Clause 20(3) provides that a regulation made under the 1989 Act is not saved where there is no authority under the new Act for the making of that regulation.

Clause 21 - Existing regulations under Telecommunications (Application Fees) Act 1989

Clause 21(1) saves, subject to subsection 21(3), any regulations made under the Telecommunications (Application Fees) Act 1989 in force immediately before the repeal of that Act and deems them to have been made under the new Telecommunications (Application Fees) Act 1991 (the Application Fees Act 1991).

Clause 21(2) provides that where a saved regulation makes a reference to a provision in the Telecommunications (Application Fees) Act 1989 that reference is to be taken to be a reference to the corresponding provision of the Application Fees Act 1991.

Clause 21(3) provides that a regulation made under the Telecommunications (Application Fees) Act 1989 is not saved where there is no authority under the Application Fees Act 1991 for the making of that regulation.

Clause 22 - Application of State and Territory laws to Telecom

Clause 22 provides that for the period beginning on the commencement of section 22 and continuing until immediately prior to the commencement of section 116 of the new Act, Telecom is not subject, with one area of exception, to any requirement, obligation, liability, penalty or disability under a law of a State or Territory to which the Commonwealth is not subject. The exemption from State and Territory laws under clause 22 does not include an exemption from State or Territory taxation laws. Telecom remains, under section 59 of the Australian

~~Telecommunications Corporation Act 1989, subject to State and Territory laws imposing taxes.~~

PART 3 - REPEALS

Clause 23 - Repeal of regulatory legislation

Clause 23 repeals the Telecommunications Act 1989 and the Telecommunications (Application Fees) Act 1989. Section 23 will commence on 1 July 1991.

Clause 24 - Repeal of Acts relating to Telecom and OTC

Clause 24 repeals the Australian Telecommunications Corporation Act 1989 and the OTC Act 1946. Section 24 will commence on the merger of Telecom and OTC under the AOTC Act.

PART 4 - AMENDMENTS CONSEQUENTIAL ON TELECOMMUNICATIONS ACT 1991

Clause 25 - Amendments consequential on new regulatory legislation

Clause 25 provides for amendments to Commonwealth legislation specified in Schedule 1 of this Bill. These amendments are consequential to the new Telecommunications Act 1991 and will commence on 1 July 1991.

PART 5 - AMENDMENTS CONSEQUENTIAL ON AUSTRALIAN AND OVERSEAS TELECOMMUNICATIONS CORPORATION ACT 1991

Clause 26 - Amendments consequential on formation of AOTC

Clause 26 provides for amendments to Commonwealth legislation specified in Schedule 2 of this Bill. These amendments are consequential to the AOTC Act and will commence on the merger of Telecom and OTC under the AOTC Act.





