

1982-83

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

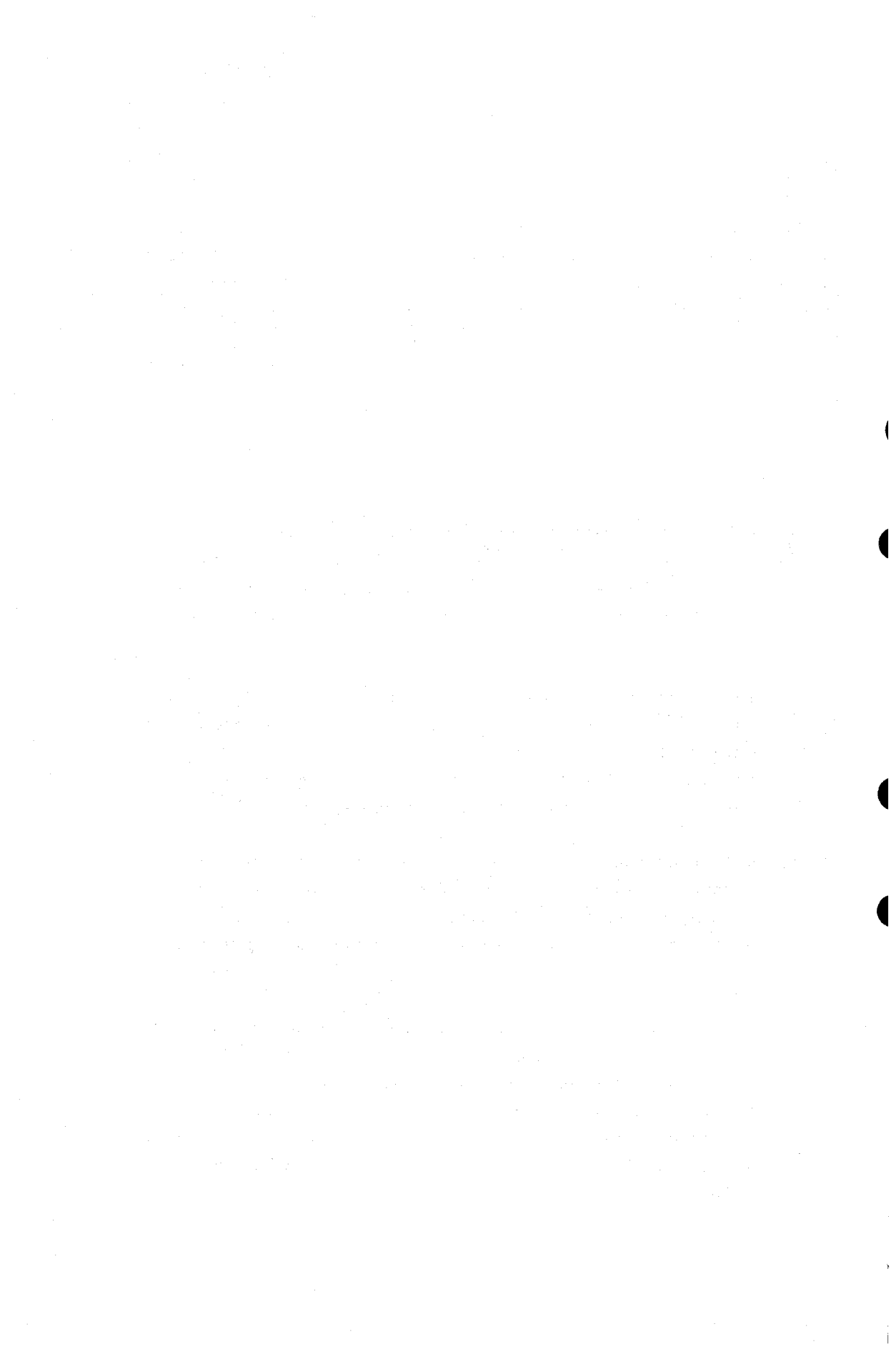
BROADCASTING AND TELEVISION AMENDMENT BILL 1982

BROADCASTING STATIONS LICENCE FEES AMENDMENT BILL 1982

TELEVISION STATIONS LICENCE FEES AMENDMENT BILL 1982

EXPLANATORY MEMORANDUM

(Circulated by the Minister for Communications,
the Honourable N.A. Brown, QC, MP)



BROADCASTING AND TELEVISION AMENDMENT BILL 1982

Outline of Bill

The Broadcasting and Television Amendment Bill 1982 is designed to provide for an expansion of commercial radio and television services in centres other than the five mainland state capital cities. It modifies the existing framework for the supplementary radio licence scheme as enacted by the Broadcasting and Television Amendment Act 1981, and introduces similar provisions for supplementary television licences.

The effect of the amendments on the existing legislative framework is as follows:

- (a) a "service-based" concept has been introduced in the legislation for supplementary licences to simplify the legislative provisions and obviate the need to licence separately translators within the service area of a supplementary licence;
- (b) the Australian Broadcasting Tribunal must at its hearing into the grant of a supplementary licence, determine not only whether an independent licence would be viable, but also whether it would be in the public interest to invite applications for such a licence;
- (c) a supplementary licensee may elect to bring forward a licence renewal hearing covered by section 86A (i.e. a hearing at which the Tribunal must re-examine the question of the viability of an independent commercial licence);
- (d) the supplementary licensee has the opportunity, after the Tribunal has determined at a renewal hearing that an independent licence would be viable in an area served by a supplementary licence, to arrange a transfer of either his commercial or supplementary licence to another party as a full licence. This transfer must be approved by the Tribunal in accordance with the normal provisions

applying to transfers of licences. If a transfer is not effected, the Minister will be able to invite applications for an independent licence in the normal way.

The Bill deletes all references to Metropolitan Broadcasting Areas, and repeals provisions requiring supplementary radio licensees to gain prior Tribunal approval before arranging to broadcast programs from other stations. The Bill also repeals the provision that the conditions of a supplementary radio licence may include localism requirements. The Bill does however refer to the desirability of including some locally produced or presented programs in the programming of a supplementary television licence.

The Bill also provides for an increase of three in the maximum membership of the Australian Broadcasting Tribunal.

Consequential amendments are made to the Broadcasting and Television Amendment Act 1981 and the Copyright Act 1968.

BROADCASTING STATIONS LICENCE FEES AMENDMENT BILL 1982 AND TELEVISION STATIONS LICENCE FEES AMENDMENT BILL 1982

Outline of Bills

These Bills are consequent upon the introduction of the Broadcasting and Television Amendment Bill 1982, which gives effect to the decisions of the Government with respect to supplementary broadcasting and television licences. These Bills will therefore commence upon the date of commencement of the Broadcasting and Television Amendment Bill 1982.

The purpose of the Broadcasting Stations Licence Fees Amendment Bill 1982 is to make consequential amendments to the Broadcasting Stations Licence Fees Act 1964 relating to supplementary broadcasting stations/licences.

The purpose of the Television Stations Licence Fees Amendment Bill 1982 is to extend the provisions of the Television Stations Licence Fees Act 1964 to supplementary television stations.

DETAIL OF MAIN CLAUSES

BROADCASTING AND TELEVISION AMENDMENT BILL 1982

Clause 1 - Short title, etc.

Clause 1 provides for the short title of the Bill and for the Broadcasting and Television Act 1942 to be the Principal Act.

Clause 2 - Commencement

Clause 2 provides that the Bill shall come into operation upon Royal Assent.

Clause 3 - Interpretation

Clause 3 amends section 4 of the Principal Act, "Interpretation", by adding specified definitions of words and phrases to provide for the introduction of supplementary television licences and to modify existing definitions in accordance with the service-based licensing concept being introduced for supplementary licences.

Clause 4 - Increase in Membership of the Australian Broadcasting Tribunal

Clause 4 amends section 8 of the Principal Act by increasing the maximum number of members of the Tribunal from 5 to 8, i.e. a Chairman, a Vice-Chairman and up to 6 other members.

Clause 5 - Interpretation

Clause 5 amends section 80 of the Principal Act, "Interpretation", as follows:

- (a) a drafting simplification;
- (b) and (c)
insertion of reference to supplementary television licences;
- (d) deletion of definition of "metropolitan broadcasting area";
- (e) insertion of reference to a licence for a "service" in accordance with the service-based concept;
- (f) re-insertion of sub-sections 80(2A) and (2B) with amendments consequential to changes made in the Bill.

Clause 6 - Grant and Renewal

Clause 6 amends sub-sections 81(5) and (6) of the Principal Act, "Grant and Renewal", to apply the section to supplementary television licences and remove references to associated translator licences in accordance with the service-based concept.

Clause 7 - Applications

Clause 7 makes a similar consequential amendment to sub-section 82(6) of the Principal Act, "Applications".

Clause 8 - Applications for Supplementary Licences

Clause 8 repeals section 82A of the Principal Act, "Applications for Supplementary Licences and Associated Commercial Translator Licences" and substitutes a new section, "Applications for Supplementary Licences", which differs from the old section in that it is drafted on service-based lines, and provides for a simplification of procedures. The new section 82A provides as follows:

82A(1) provides that the holder of a commercial broadcasting licence (or a consortium of such holders) may apply to the Minister for a licence for a broadcasting service, in the frequency modulation (FM) mode, to be provided by a broadcasting station and if necessary broadcasting translator stations, to serve an area determined by the Minister under sub-section 82A(7).

82A(2) - As for 82A(1), but referring to a supplementary television licence etc., and excluding any reference to the mode of transmission.

82A(3) provides that commercial FM broadcasting licensees may not apply for a supplementary licence under sub-section 82A(1).

82A(4) provides that the Minister may refer an application to the Australian Broadcasting Tribunal together with specifications as to the area to be served and other specifications, or dismiss the application for a reason relating to technical matters or to the planning or development of broadcasting and television services.

82A(5) provides that the Minister shall also dismiss an application from a consortium if, in his opinion, the areas served by the licensees in pursuance of their existing commercial licences are not substantially co-extensive with each other.

82A(6) provides that the Minister within 21 days of his decision shall inform applicants under sub-section (4) or (5) and supply them in the case of sub-section (4), with information on specifications and, in the case of dismissal for technical or planning reasons, the reasons for the decision.

82A(7) provides that in determining the area to be served by a supplementary licence, the Minister shall endeavour to ensure that as far as practicable, that area shall be the whole of the area served by the commercial licence and any associated commercial translator licences.

82A(8) provides that the Minister, in referring an application for a supplementary television licence to the Tribunal, shall not specify a service area for a supplementary licence which covers any of the 5 mainland state capital cities.

82A(9) provides that when the Tribunal receives an application from the Minister, it shall publish full particulars in the Gazette and local newspaper(s) and state that submissions relating to the grant of the licence may be made by interested persons no later than a specified date (no earlier than 21 days after the publication of the notice).

82A(10) provides that within 21 days of the closing date for submissions, the Tribunal shall serve on the applicant a copy of all submissions made.

82A(11) provides that the applicant may reply to these submissions within 21 days.

82A(12) provides that the Tribunal may grant an extension of time for lodgement of an application, a submission or a reply, and give relevant directions. The provision is similar to the current sub-section 82A(14).

82A(13) provides that the definition of "metropolitan television area" in section 105AA applies to section 82A.

Clause 9 - Consideration of applications by Tribunal

Clause 9 amends section 83 of the Principal Act, "Consideration of applications by Tribunal", to provide for supplementary television licences and make changes necessitated by the introduction of the service-based concept, as follows:

- (a) amends reference in section 83(1) to section 82A, consequential to amendments contained in Clause 8;
- (b) omits sub-sections (2) and (2A), and re-inserts sub-section (2) excluding reference to translators associated with supplementary licences, in accordance with the service-based concept. The sub-section enables the Tribunal to consider applications for commercial translator, repeater, supplementary licences and community television aeriels without public inquiry if there is only one application and no substantial submissions have been received;
- (c) inserts a reference to supplementary television licences in paragraph 83 (5)(b) relating to undertakings to the Tribunal by licensees;

- (d) deletes reference to "a supplementary licence" in sub-sub paragraph (6)(c)(ii)(A).
- (e) amends references in paragraph 83 (6)(d) to section 82A, consequential to amendments contained in Clause 8, and requires the Tribunal to determine, when considering the grant of a supplementary licence, not only whether an independent commercial licence would be viable in that area, but also whether it would be in the public interest for applications for such a licence to be invited.
- (f) omits existing sub-section (8) and substitutes a new (8) which specifies the public interest criteria to be taken into account by the Tribunal in the new section 83 (6)(e)(ii); and inserts a new sub-section (8A) which incorporates the requirement contained in the previous section 83 (8) that the Tribunal shall inform the Minister in writing of its determination under paragraph 83 (6) (e), and the reasons for it. It also requires the Tribunal to inform the applicant in similar manner, and to recommend to the Minister in writing that he invite applications for an independent commercial licence where it has determined that such a licence would be viable. These additional requirements parallel provisions in current section 86A(4) which apply after the Tribunal has made a similar determination after a licence renewal hearing.

Clause 10 - Imposition of Conditions

Clause 10 amends section 84 of the Principal Act, "Imposition of conditions" as follows:

- (a) reference to section 82A(3)(a) in sub-section 84(1) is deleted and replaced with a reference to section 82A(4)(a), consequential to Clause 8 above. Reference to a "statement referred to in sub-section 82A(6)" is deleted as it is unnecessary with the introduction of the service-based concept.

- (b) replaces the reference to section 105AD(7) with a reference to sub-section 105AD(6) to correct an erroneous cross-reference.

Clause 11 - Renewal

Clause 11 amends section 86 of the Principal Act, "Renewal", as follows:

- (a) replaces "matter" with "matters or circumstances" in line with section 86A(4);
- (b) replaces a reference to sub-section 86A(2) with a reference to sub-section 86A(4), consequential to Clause 12 (below);
- (c) makes consequential amendments resulting from introduction of sections 86A(7)(b) and 86B(2);
- (d) makes consequential amendments to cross references;
- (e) In relation to joint renewal hearings, reference to commercial translators associated with a supplementary licence is deleted, as it is rendered unnecessary with the introduction of the service-based concept.

Clause 12 - Renewal of certain supplementary licences

Clause 12 repeals section 86A of the Principal Act, "Renewal of certain supplementary licences", and substitutes a new section 86A which simplifies the provisions, deletes provisions covering associated translator licences in view of the service-based concept, and allows the supplementary licensee to bring forward a renewal hearing covered by this section.

Clause 12 also inserts a new provision, section 86B, "Election to renew", which replaces the old sub-sections 86A(10) and (11). The new section 86B provides that if a licensee wishes to retain his supplementary licence, any renewal at the end of the prescribed period will be treated as a renewal of a full commercial licence, except that a public inquiry must be held.

Any translators operated by virtue of the supplementary licence will then be deemed to be operated by virtue of commercial translator licences. The section also provides that the related commercial licence and associated translator licences will consequently cease upon expiry of the prescribed period unless transferred under section 86C.

Clause 12 also inserts a new section, section 86C, "Election to transfer supplementary or other licence", which provides that a supplementary licensee has 8 months (or longer, at the discretion of the Tribunal) to effect a transfer of the supplementary licence, or the related commercial licence and its associated translator licences, in accordance with the normal transfer provisions. Any supplementary licence so transferred becomes a full commercial licence on the day the transfer is effected, and any translators operated by virtue of the supplementary licence are then deemed to be operated by virtue of a commercial translator licence.

Clause 12 also inserts a new provision, section 86D, "Invitation of Applications", which provides that in certain prescribed circumstances the Minister may invite applications for a full commercial licence within 3 months. If the Minister fails to do so, or no applications are lodged, or the Tribunal does not grant a licence during the prescribed period, the supplementary licence may be renewed. If a full commercial licence is granted but commences after the expiry of the prescribed period, the prescribed period is deemed to expire immediately before the commencement of the commercial licence.

Details of the new sections are as follows:

86A(1) provides that in sections 86A and 86B to 86D inclusive, "prescribed period" means 3 years commencing on the renewal of the supplementary licence.

86A(2) provides that sections 86A and 86B to 86D inclusive apply only to renewals of supplementary licences.

86A(3) provides that sections 86A and 86B to 86D inclusive do not apply to renewals of supplementary licences during the prescribed period, or within 8 years of grant, unless in the latter case, the licensee elects to do so (in order to facilitate a transfer of either the commercial or supplementary licence as a full licence at an earlier date).

86A(4) provides that at an inquiry into the renewal of a supplementary licence, the Tribunal, having regard to the need for commercial viability in the area served, shall determine if, in its opinion, both the following matters apply:

- (a) an additional commercial station to serve that area is likely to be commercially viable after the expiry of prescribed period; and
- (b) having considered the need for an adequate and comprehensive service, it is in the public interest that applications for such a station be called.

86A(5) provides that in considering such a need the Tribunal shall have regard only to the nature of the community to be served, the diversity of interests of that community and the nature of broadcasting and television services of which satisfactory reception is being obtained in the area.

86A(6) provides that the Tribunal shall, as soon as practicable after making a determination under sub-section (4), inform the Minister and the licensee of the determination and the reasons for it, and make a recommendation to the Minister that he invite applications for an independent licence, to serve, after the expiry of the prescribed period, an area substantially coextensive with the area served by the supplementary licence.

86A(7) provides that where the Tribunal is of the opinion referred to in sub-section (4) and grants a renewal of the

supplementary licence, the Tribunal shall not, where the period of renewal is less than 3 years, subsequently grant a renewal that expires after the prescribed period, or grant a renewal at the end of the prescribed period unless the related commercial licence ceases to be in force on or before the end of the period and is not renewed, and the supplementary licence is not held by a consortium.

86A(8) provides that where the Tribunal makes a recommendation that applications should be invited under sub-section (6), the Minister may, within 3 months after the start of the prescribed period, inform the licensee that he accepts the recommendation of the Tribunal, and that the licensee may within 3 months, or such further period allowed by the Tribunal, make the election provided for in sub-section (10).

86A(9) provides that where the Minister does not inform a licensee under sub-section (8) that he accepts the Tribunal's recommendation, sub-section (7) does not apply in relation to the supplementary licence, i.e. the Tribunal may further renew the supplementary licence beyond the prescribed period.

86A(10) provides that where the Minister so informs a licensee, that licensee may, within 3 months, or such further period allowed by the Tribunal, elect either to apply for a renewal of the supplementary licence at the end of the prescribed period and therefore to transfer the related commercial licence and associated translator licences under section 86C or allow them to expire under sub-section 86B(2); or to not apply for a renewal of the supplementary licence at the end of the prescribed period and therefore allow it to expire; or to transfer the supplementary licence under section 86C. Where the licensee elects, he shall inform the Tribunal by notice in writing within that period and the Tribunal shall forward a copy of the notice to the Minister.

86A(11) provides that an election under sub-section (10) is binding on any person to whom the supplementary licence is transferred under the ordinary transfer provisions under section 89A.

Election to renew supplementary licence

86B(1) provides that where a licensee elects under sub-section 86A(10) to apply for a renewal at the end of the prescribed period, the following provisions apply:

- (a) where paragraph 86C(1)(b) applies, it shall be dealt with under section 86 as a renewal of a commercial licence and associated commercial translator licences, except that sub-section 86(8) and the provisions relating to the consideration of an application without an inquiry do not apply;
- (b) where the Minister fails to invite applications for an independent licence, no applications are received, or the Tribunal does not grant a licence, the supplementary licence may be renewed under section 86.
- (c) in any other case -
 - (i) the application shall be lodged and dealt with under section 86 as if it were an application for the renewal of a commercial licence and associated commercial translator licences, except that sub-section 86(8) and the provisions relating to the consideration of an application without an inquiry do not apply.

86B(2) provides that where a licensee has elected under sub-section 86A(10) to apply for a renewal of a supplementary licence at the end of the prescribed period, the related commercial licence and commercial translator licences, unless transferred under section 86C, cease to be in force at the end of that period and shall not be renewed.

Election to transfer supplementary or other licence

86C (1) provides that where a licensee elects under sub-section 86A(10) to transfer a supplementary licence or a related commercial licence and associated commercial translator

licences -

(a) the transfer may only be made, within 8 months of the election or such further period as the Tribunal on application within that period allows, under sections 89A and 89B, except that sub-section 89A(1F) shall not apply;

(b) where the licence is transferred under this section -

(i) the supplementary licence is deemed to be a commercial licence and to have ceased to be a supplementary licence;

(ii) the supplementary station is deemed to be a commercial station and to have ceased to be a supplementary station;

(iii) the conditions of the supplementary licence, in regard to the supplementary station, are deemed to constitute a commercial licence;

(iv) any translator stations operated under the supplementary licence shall be deemed to become commercial translator stations;

(v) the conditions of the supplementary licence, in regard to translator stations, are deemed to constitute a commercial translator licence.

86C (2) provides that where the Tribunal considers an application for an extension of time in paragraph 86C(1)(a), it shall have regard to the need for ensuring that continuity of service is maintained.

Invitation of Applications

86D(1) provides that where a licensee has failed to make an election under sub-section 86A(10), has elected to renew the supplementary licence at the end of the prescribed period but not

the related commercial licence, has elected not to apply to renew the supplementary licence at the end of the prescribed period, or has elected to transfer the supplementary licence but has failed to do so within the time allowed by paragraph 86C(a), the Minister may, within 3 months, call applications for a commercial licence and associated commercial translator stations to serve an area substantially coextensive with the area served by the supplementary licence.

86D(2) provides that where the Minister does not call such applications, or there are no applications, or the Tribunal refuses to grant the licence applied for, sub-sections 86A(7) and 86B(2) do not apply in relation to the supplementary licence or the related commercial licence and associated commercial translator licences. This provision ensures the continuity of existing services in an area in the event that no independent commercial licence is granted.

"86D(3) provides that where the Tribunal grants a commercial licence to an applicant under sub-section (1), which commences after the expiry of the prescribed period -

- (a) sub-section 86B(2) applies to the related commercial licence and associated commercial translator licences as if the prescribed period ended immediately before the commencement of the commercial licence; and
- (b) the supplementary licence shall be deemed to continue in force until immediately before the commencement of the commercial licence.

This provision ensures that there is no discontinuity of service in the area concerned.

Clause 13 - Transfers

Clause 13 amends section 89A of the Principal Act, "Transfers", by making minor and consequential changes.

Clause 14 - Interpretation

Clause 14 amends section 105AA of the Principal Act,

"Interpretation", by omitting definitions of "metropolitan broadcasting area" and "metropolitan broadcasting station".

Clause 15 - Determination of metropolitan areas

Clause 15 amends section 105AB of the Principal Act, "Determination of metropolitan areas", by deleting reference to metropolitan broadcasting areas and making other consequential changes.

Clause 16 - Commercial broadcasting translator station licences

Clause 16 amends section 105AD of the Principal Act by omitting sub-section (4), which deals with metropolitan broadcasting areas and makes a minor consequential change.

Clause 17 - Commercial television translator station licences

Clause 17 amends section 105B of the Principal Act by inserting a new provision similar to sub-section 105AD(5) of the Principal Act and inserts a new sub-section (3), which provides that it shall be a condition of a commercial television translator licence that the station only be used for the reception and re-transmission, without alteration, of the programs of one or more of a specified commercial television station, a specified supplementary television station, specified commercial television stations or specified supplementary television stations.

Clause 18 - Application of Act

Clause 18 amends section 105P of the Principal Act, "Application of Act", by making minor consequential changes and inserting the following sub-sections which provide as follows:

105P(1A) provides that the provisions of the Principal Act apply, except where the contrary intention appears, to supplementary television licences in the same manner as to commercial television licences and so on, in similar manner to the current sub-section 105P(1) which only relates to broadcasting.

105P(1B) provides that Division 4, "Technical Conditions", and sections 107 to 111 (inclusive) apply to broadcasting and

television translator stations operated under a supplementary licence as they apply to commercial translator stations.

105P(1C) provides that paragraph 121(1)(b) does not apply to the holder of a supplementary broadcasting licence.

Clause 19 - Use of facilities of commercial stations by supplementary licensees

Clause 19 repeals section 105Q of the Principal Act and inserts a new section which provides as follows:

105Q(1) provides that the holder of a supplementary broadcasting licence shall not be taken not to operate a broadcasting station merely because facilities (other than the transmitter) are shared with a commercial broadcasting station.

105Q(2) provides that the holder of a supplementary television licence shall not be taken not to operate a television station merely because the facilities (other than the transmitter) are shared with a commercial television station.

Clause 20 - Programs of supplementary stations

Clause 20 repeals section 105R of the Principal Act and substitutes a new section which provides as follows:

105R(1) defines various words and phrases used in this section.

105R(2) provides that with the approval of the Tribunal, but not otherwise, a supplementary broadcasting station may regularly broadcast programs of the related commercial broadcasting station.

105R(3) provides that with the approval of the Tribunal, but not otherwise, a supplementary television station may regularly televise programs of the related commercial station and make arrangements for the regular televising of programs of the ABC, SBS, public, or other commercial television stations.

105R(4) provides that a supplementary television licensee should have regard to the desirability of including in his programming, a reasonable amount of locally produced or presented programs.

105R(5) provides that a supplementary television station shall encourage, as far as practicable, local advertising.

"105R(6) provides that for the purpose of determining whether sub-section (5) has been complied with, the local advertisements televised by a related commercial station shall be counted as if they were advertisements televised by the supplementary television station.

Clause 21 - Review of decisions

Clause 21 amends section 119A of the Principal Act by omitting provisions relating to the determination of metropolitan broadcasting areas.

Clause 22 - Amendment of Broadcasting and Television Amendment Act 1981

Clause 22 repeals section 52 of the Broadcasting and Television Amendment Act 1981.

Clause 23 - Amendment of Copyright Act 1968

Clause 23 amends section 10 of the Copyright Act 1968 to provide for supplementary television stations.

Clause 24 - Transitional provision - supplementary licences

Clause 24 provides that an application for a supplementary licence shall not be made under section 82A of the Principal Act as amended until a date fixed by Proclamation.

BROADCASTING STATIONS LICENCE FEES AMENDMENT BILL 1982

Clause 1 - Short title, etc

Clause 1 provides for the short title and for the Broadcasting Stations Licence Fees Act 1964 to be the Principal Act.

Clause 2 - Commencement

Clause 2 provides that this Act shall come into operation on the day on which the Broadcasting and Television Amendment Act 1982 comes into operation.

Clause 3 - Application of Act to Supplementary Broadcasting Stations, etc.

Clause 3 amends section 8 of the Principal Act to make the terms used to refer to supplementary broadcasting licences/stations consistent with terms used in the Broadcasting and Television Amendment Bill 1982.

TELEVISION STATIONS LICENCE FEES AMENDMENT BILL 1982

Clause 1 - Short title, etc.

Clause 1 provides for the short title and for the Television Stations Licence Fees Act 1964 to be the Principal Act.

Clause 2 - Commencement

Clause 2 provides that this Act shall come into operation on the day on which the Broadcasting and Television Amendment Act 1982 comes into operation.

Clause 3 - Incorporation of Broadcasting and Television Act

Clause 3 amends section 3 of the Principal Act by omitting "1942-1964" and substituting "1942".

Clause 4 - Licence fees

Clause 4 amends section 5 of the Principal Act by making a stylistic change.

Clause 5 - Amount of fees

Clause 5 amends sub-section 6(3) of the Principal Act to ensure its application to supplementary television licences.

Clause 6 - Application of Act to supplementary television stations, etc.

Clause 6 inserts a new section 8 in the Principal Act which applies the provisions of that Act to supplementary television stations and which clarifies the definition of "gross earnings" in respect of supplementary television licences held by a consortium. The section applies the Principal Act to supplementary television stations/licences/licensees in the same way as it applies to commercial television stations/licences/licensees.

Clause 7 - Title

Clause 7 amends the title to the Principal Act by omitting "commercial" and substituting "certain".

