

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146, 1988

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BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 -  
LONG TITLE

An Act to amend the Australian Broadcasting Corporation Act

1983 and the Broadcasting Act 1942,

and for related purposes

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 -  
PART I

PART I-PRELIMINARY

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 –  
SECT 1 Short title

(Assented to 26 December 1988)

1. This Act may be cited as the Broadcasting Legislation Amendment Act 1988.

(Minister's second reading speech made in-

House of Representatives on 28 September 1988

Senate on 22 November 1988)

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 –  
SECT 2 Commencement

2. (1) Subject to subsections (2), (3), (4) and (5), this Act commences on the twenty-eighth day after the day on which it receives the Royal Assent.

(2) Sections 8, 11 and 12 and Schedule 1 commence on a day to be fixed by Proclamation.

(3) Sections 15, 16 and 36, subsection 48 (2), section 49 and Schedules 2, 4 and 5 commence on 1 March 1989.

(4) Sections 51 and 52 are deemed to have commenced on 16 December 1987.

(5) Paragraph 54 (1) (b) is deemed to have commenced on 4 August 1987.

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 -  
PART II

PART II-AMENDMENTS OF THE AUSTRALIAN BROADCASTING  
CORPORATION ACT 1983

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 –  
SECT 3 Principal Act

3. In this Part, "Principal Act" means the Australian Broadcasting Corporation Act 1983\*1\*.

\*1\* No. 6, 1983, as amended. For previous amendments, see No. 91, 1983; Nos. 65 and 67, 1985; and No. 2, 1986 (as amended by No. 76, 1986).

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 –  
SECT 4 Interpretations

4. Section 3 of the Principal Act is amended:

(a) by inserting the following definitions:

" 'dealing', in relation to securities, has the meaning given by subsection

(2);

'interest', in relation to money, includes interest on interest payable on that money;

'securities' includes stocks, debentures, debenture stocks, notes, bonds, promissory notes, bills of exchange and similar instruments or documents;"

(b) by adding at the end the following subsection:

"(2) A reference in this Act to dealing with securities includes a reference to:

(a) creating, executing, entering into, drawing, making, accepting, endorsing, issuing, discounting, selling, purchasing or re-selling securities;

(b) creating, selling, purchasing or re-selling rights or options in respect of securities; and

(c) entering into agreements or other arrangements relating to

securities."

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 –  
SECT 5 General powers of the Corporation

5. Section 25 of the Principal Act is amended by omitting subsection (2).

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 –  
SECT 6

6. After section 25A of the Principal Act the following section is inserted:  
Hedging contracts etc.

"25B. (1) Subject to subsection (3), the Corporation may enter into or deal with contracts, and make other arrangements, in relation to financial futures or foreign currency (including foreign currency futures) for the purpose of reducing or eliminating risks of adverse financial consequences to the Corporation in relation to:

(a) any contract (including a contract that may be entered into under this section), or proposed contract, involving the payment or receipt of money by the Corporation; or

(b) a borrowing or raising of money by the Corporation or a proposed borrowing or raising of money by the Corporation (including a borrowing or raising of money by the Corporation by dealing with securities); being risks that may arise from variations in the rate of currency exchange or rate of interest applicable to the contract or proposed contract, or to the borrowing or raising of money or proposed borrowing or raising of money, as the case may be, referred to in paragraph (a) or (b).

"(2) The Minister may, by determination in writing:

(a) set guidelines for the purpose of the exercise by the Corporation of its power under subsection (1); and

(b) revoke or vary guidelines set for that purpose or set new guidelines

for that purpose;

and shall give to the Corporation a copy of each determination made under this subsection.

"(3) The Corporation shall not enter into a contract, dealing or other arrangement under subsection (1) otherwise than in accordance with the guidelines having effect from time to time under subsection (2).

"(4) A contract, dealing or other arrangement under subsection (1) does not require the approval of the Minister under subsection 70 (1).

"(5) In this section:

'proposed borrowing or raising of money' means a proposed borrowing or raising of money that has been approved by the Treasurer under section 70B."

## BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 – SECT 7

7. After section 29 of the Principal Act the following section is inserted:

Broadcasting facilities may be made available to limited licensees

"29A. Where a person holds a limited licence granted under the Broadcasting Act 1942, the Corporation may make broadcasting facilities and staff available to the person so that the person can transmit programs to the general public pursuant to the licence."

## BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 – SECT 8

8. (1) Part V of the Principal Act is repealed and the following Part is substituted:

### "PART V-EMPLOYEES

Staff of Corporation

"32. (1) The Corporation may engage such employees as are necessary for the performance of its functions and the exercise of its powers.



"(2) The terms and conditions of employment shall be determined by the Corporation.

The Corporation is to achieve and maintain high standards as an employer

"33. The Corporation shall endeavour to achieve and maintain high standards as an employer in relation to terms and conditions of employment, occupational health, industrial safety, industrial democracy, non-discriminatory employment practices and other matters."

(2) Where a person is, immediately before commencement, an officer or a temporary employee of the Corporation, the person shall, upon commencement, be taken to be employed by the Corporation under section 32 of the amended Act.

(3) A person to whom subsection (2) applies shall be taken to be employed on the terms and conditions that were applicable to the person immediately before commencement.

(4) Subsection (3) does not apply to a person if the Corporation makes a determination under subsection 32 (2) of the amended Act and that determination: (a) applies to the person; and

(b) takes effect on the day of commencement.

(5) Subsection (3) continues to apply to a person until the Corporation makes a determination under subsection 32 (2) of the amended Act and that determination applies to the person.

(6) In this section:

"amended Act" means the Principal Act as amended by this section;

"commencement" means the commencement of this section.

## BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 – SECT 9 Application and investment of money

9. Section 68 of the Principal Act is amended:

(a) by omitting "The moneys" and substituting "Subject to subsection (2), the money";

(b) by adding at the end the following subsections:

"(2) Money of the Corporation that is not immediately required for the purposes of the Corporation may be invested:

- (a) on fixed deposit with an approved bank;
- (b) in securities of the Commonwealth; or
- (c) in any other manner approved by the Treasurer.

"(3) In subsection (2):

'approved bank' means the Reserve Bank of Australia or a bank approved by the Treasurer for the purposes of this section."

## BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 – SECT 10

10. After section 70 of the Principal Act the following sections are inserted:

### Borrowing from Commonwealth

"70A. (1) The Minister for Finance may, on behalf of the Commonwealth, lend money to the Corporation.

"(2) The money shall be lent on the terms and conditions determined by the Minister for Finance.

"(3) A determination under subsection (2) shall be in writing.

"(4) The money shall be lent out of money appropriated by the Parliament for that purpose.

### Borrowings otherwise than from Commonwealth

"70B. (1) The Corporation may, with the approval of the Treasurer:

- (a) borrow money from someone other than the Commonwealth; or
- (b) raise money otherwise than by borrowing it.

"(2) An approval under subsection (1) shall be in writing.

"(3) The Corporation may borrow or raise money under subsection (1) only on terms and conditions that are specified in, or are consistent with, the approval under that subsection.

"(4) Without limiting subsection (1), the Corporation may borrow or raise money under that subsection by dealing with securities.

"(5) Without limiting subsection (1), the Corporation may borrow or raise money under that subsection in the currency of a foreign country.

"(6) The Treasurer may give an approval under subsection (1) either:

- (a) in relation to a particular transaction; or
- (b) in relation to all transactions in a particular class of transactions.

"(7) For the purposes of this section, if:

- (a) the Corporation issues an instrument that acknowledges a debt;
- (b) the instrument is issued in consideration of the payment or deposit of money; and
- (c) the instrument is issued in relation to a transaction that is not a routine operational transaction; the Corporation shall be taken to raise money otherwise than by borrowing and the amount of money raised shall be taken to be the amount of the money paid or deposited.

"(8) For the purposes of this section, if:

- (a) the Corporation issues an instrument that acknowledges a debt;
  - (b) the instrument is issued in consideration of the provision of credit;
- and (c) the instrument is issued in relation to a transaction that is not a routine operational transaction; the Corporation shall be taken to raise money otherwise than by borrowing and the amount of money raised shall be taken to be the amount of the value of the credit provided.

"(9) For the purposes of this section, if:

- (a) the Corporation obtains credit; and
  - (b) the credit is obtained in relation to a transaction that is not a routine operational transaction;
- the Corporation shall be taken to raise money otherwise than by borrowing and the amount of money raised shall be taken to be the amount of the value of the credit obtained.

"(10) In subsections (7), (8) and (9):

'routine operational transaction' means a transaction that is carried out in

the ordinary course of the day-to-day operations of the Corporation.

Guarantee of borrowings by Corporation

"70C. (1) The Treasurer may, on behalf of the Commonwealth, enter into a contract that:

(a) guarantees the repayment of money borrowed under paragraph 70B (1) (a) and the payment of interest on that money; or

(b) guarantees the payment of an amount that the Corporation is liable to pay in relation to money raised under paragraph 70B (1) (b).

"(2) The Treasurer may determine:

(a) that the Commonwealth guarantees the repayment of money borrowed under paragraph 70B (1) (a) and the payment of interest on that money; or

(b) guarantees the payment of an amount that the Corporation is liable to pay in relation to money raised under paragraph 70B (1) (b);

and, where the Treasurer makes such a determination, the repayment of that money and the payment of that interest are, or the payment of that money is, by force of this subsection, guaranteed by the Commonwealth.

"(3) A determination under subsection (2) shall be in writing.

"(4) The amounts referred to in paragraphs (1) (b) and (2) (b) may be amounts of interest.

"(5) A contract may be entered into under subsection (1), and a determination may be made under subsection (2), either:

(a) in relation to a particular transaction; or

(b) in relation to all transactions in a particular class of transactions.

"(6) A contract entered into under subsection (1) may include a provision agreeing, on behalf of the Commonwealth, that proceedings under the contract may be taken in the courts, or a specified court, of a foreign country.

"(7) A contract entered into under subsection (1) may include a provision waiving the immunity of the Commonwealth from suit in the courts, or a specified court, of a foreign country in relation to any proceedings under the contract.

Corporation may give security

"70D. The Corporation may give security over the whole or any part of its land or other assets for:

- (a) the repayment of money borrowed under section 70A or paragraph 70B (1) and the payment of interest on that money;
- (b) the payment of amounts (including any interest) that the Corporation is liable to pay in relation to money raised under paragraph 70B (1) (b); or
- (c) the payment to the Commonwealth of amounts equal to any amounts that the Commonwealth may become liable to pay under:
  - (i) a contract entered into under subsection 70C (1); or
  - (ii) a determination made under subsection 70C (2).

Borrowings not otherwise permitted

"70E. The Corporation may borrow money, or raise money otherwise than by borrowing, only in accordance with sections 70A and 70B.

Delegation by Treasurer

"70F. The Treasurer may by signed instrument delegate to a person performing the duties of an office in the Department of the Treasury all or any of the Treasurer's powers under sections 70B and 70C."

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 –  
SECT 11 Consequential amendments of the Australian Broadcasting Corporation Act 1983

11. The Principal Act is amended as set out in Schedule 1.

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 - SECT  
12 Transitional provisions

12. A delegation to a person that was in force under section 23 or 24 of the Principal Act immediately before the commencement of this section continues in force, after the commencement of this section, as if the delegation had been made to the person under section 23 or 24 as amended by section 11 and

Schedule 1 to this Act.

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 -  
PART III

PART III-AMENDMENTS OF THE BROADCASTING ACT 1942

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 - SECT  
13 Principal Act

13. In this Part, "Principal Act" means the Broadcasting Act 1942\*2\*.

\*2\* No. 33, 1942, as amended. For previous amendments, see No. 39, 1946; No. 64, 1948; No. 80, 1950; No. 41, 1951; No. 12, 1953; No. 82, 1954; Nos. 33, 65 and 92, 1956; No. 36 1960 (as amended by No. 32, 1961); No. 96, 1962; No. 82, 1963; Nos. 67 and 121, 1964; Nos. 38 and 120, 1965; No. 57, 1966; No. 47, 1967; No. 69, 1968; Nos. 21 and 31, 1969; Nos. 8, 72 and 136, 1971; No. 49, 1972; No. 50, 1973; No. 216, 1973 (as amended by No. 20, 1974); No. 55, 1974; No. 56, 1975; Nos. 89, 157 and 187, 1976; No. 160, 1977; Nos. 36, 52 and 210, 1978; Nos. 143 and 177, 1980; Nos. 61, 113 and 153, 1981; No. 154, 1982; Nos. 7, 37, 39, 91 and 136, 1983; Nos. 10, 63, 72, 163 and 165, 1984; Nos. 66 and 191, 1985; Nos. 2 and 76, 1986; Nos. 68, 79, 80, 134 and 184, 1987; and No. 56, 1988.

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 - SECT  
14 Interpretation

14. Section 4 of the Principal Act is amended:

(a) by inserting in subsection (1) the following definitions:

" 'adequate and comprehensive service' has the meaning given by subsections (6), (7) and (12);

'Fees Act' means the Radio Licence Fees Act 1964, the Television Licence

Fees Act 1964 or the Broadcasting (Limited Licences) Fees Act 1988;

'planning grounds' means grounds relating to the planning or development of broadcasting services or radiocommunications;

'radiocommunication' has the same meaning as in the Radiocommunications Act 1983;

'related corporation' has the same meaning as in the Companies Act 1981;

'relevant special event', in relation to a limited licence that is granted

for special event purposes, means the festival, exhibition, exposition, sporting event or other special event in relation to which the licence is granted;

'remote Aboriginal community' means a community declared under subsection

81B (9) to be a remote Aboriginal community for the purposes of section 81B;

'service specification', in relation to a licence, means a specification of service area of the licence and includes:

(a) in the case of a public licence-the specification of the purpose for which the licence is granted, to the extent that that purpose is specified by the Minister in accordance with Part IIIB; and

(b) in the case of a limited licence-the specification of:

(i) whether the service to be provided pursuant to the licence is to be one involving:

(A) the broadcasting of radio programs; or

(B) the broadcasting of television programs; and

(ii) the purpose for which the licence is granted, to the extent that that purpose is specified by the Minister in accordance with Part IIIB;

'technical condition' means:

(a) in relation to a licence warrant in respect of a licence (other than a re-transmission licence) or an MCS permit warrant-a condition relating to:

(i) the design, siting, installation, maintenance or operation (including operating power, constancy and frequency) of the radiocommunications transmitter or transmitters to be used for the transmission of programs pursuant to the licence or MCS permit;

(ii) the design, siting, installation, maintenance or operation of facilities (not including studios or studio equipment or facilities) to be used in association with the radiocommunications transmitter or transmitters;

or

(iii) the siting of the studio or studios to be used in connection with the transmission of programs pursuant to the licence or MCS permit; or

(b) in relation to a licence warrant in respect of a re-transmission licence-a condition relating to the design, siting, installation, maintenance or operation of the telegraph lines and other equipment or facilities to be used for or in connection with the transmission of programs pursuant to the licence;

'technical grounds' means grounds relating to technical matters;";

(b) by omitting from paragraph (6) (d) "and";

(c) by inserting after paragraph (6) (d) the following paragraph:

"(da) the extent (if any) to which the licensee broadcasts different programs from different radiocommunications transmitters pursuant to the licence; and";

(d) by inserting after paragraph (7) (d) the following paragraph:

"(da) the extent (if any) to which the licensee broadcasts different programs from different radiocommunications transmitters pursuant to the permit;".

## BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 – SECT 15 Unauthorised operation of certain transmitters prohibited

15. Section 6A of the Principal Act is amended:



(a) by omitting subsection (1) and substituting the following subsection:

"(1) A person shall not, without reasonable excuse, operate a radiocommunications transmitter to transmit radio programs or television programs to the general public except as authorised by:

- (a) a licence warrant;
- (b) an MCS permit warrant;
- (c) a retransmission permit; or
- (d) a temporary transmission permit."

(b) by omitting from subsection (1A) "licence warrant" (wherever occurring) and substituting "warrant or permit";

(c) by omitting subsection (5).

## BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 – SECT 16

16. Section 6B of the Principal Act is repealed and the following section is substituted:

Use of telegraph lines for retransmission of programs

"6B. (1) A person shall not use a telegraph line to transmit a program broadcast or transmitted by the Corporation or the Service unless:

- (a) the telegraph line is erected upon private land or within a private building;
- (b) the transmission is made for the purpose of broadcasting the program;
- (c) the transmission is made in the course of a telephone call between that person and another person; or
- (d) the transmission is authorised by a retransmission permit.

"(2) A person shall not use a telegraph line to transmit a program broadcast or transmitted by a licensee unless:

- (a) the telegraph line is erected upon private land or within a private building;
- (b) the transmission terminates at a place within the licence's service

area; (c) the transmission is made for the purpose of broadcasting the program;

(d) the transmission is made in the course of a telephone call between that person and another person; or

(e) the transmission is authorised by a retransmission permit.

"(3) Examples of the operation of this section and section 89DA are set out in the Schedule."

## BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 – SECT 17 Functions and powers of Tribunal

17. Section 16 of the Principal Act is amended by inserting after subsection (6A) the following subsections:

"(6B) The Tribunal may do all things that are necessary or convenient to be done for or in connection with, or as incidental to, the performance of its functions and, in particular, may:

(a) produce, publish or distribute documents;

(b) conduct or arrange for conferences or seminars;

(c) provide information services;

(d) otherwise publish or distribute information;

(e) impose charges, subject to subsection (6C), in relation to a matter or activity referred to in paragraph (a), (b), (c) or (d); and

(f) do anything incidental to any of its powers.

Note: "document" is defined by section 25 of the Acts Interpretation Act 1901 as including, among other things, any article or material from which sounds, images or writing can be reproduced.

"(6C) The Tribunal shall not impose a charge in relation to the publication of a document in a particular manner or form if the Tribunal is required by this Act to publish the document in that manner or form.

"(6D) Subsection (6C) is subject to subsection 124 (3) (which requires the Tribunal to make information assembled under section 124 available, whether

gratis or otherwise, as the Tribunal thinks fit, to any person upon request).".

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 –  
SECT 18

18. After section 26 of the Principal Act the following section is inserted:

Money of the Tribunal

"26A. The money of the Tribunal consists of:

(a) money paid to the Tribunal under section 26; and

(b) money received by the Tribunal in connection with the performance of its functions or the exercise of its powers.".

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 –  
SECT 19 Application of money

19. Section 27A of the Principal Act is amended by inserting in paragraph

(a) "or the exercise of its powers" after "functions".

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 –  
SECT 20

20. After section 79E of the Principal Act the following section is inserted:

Broadcasting facilities may be made available to limited licensees

"79EA. (1) Where a person holds a limited licence, the Service may make broadcasting facilities and staff available to the person so that the person can transmit programs to the general public pursuant to the licence.

"(2) Subsection (1) does not limit the power of the Service to provide facilities for the transmission of programs by other persons.".

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 –  
SECT 21 Responsibility for programs

21. Section 79F of the Principal Act is amended by adding at the end the following subsection:

"(2) Subsection (1) does not apply in a case where the Service makes broadcasting facilities available to a person under section 79EA."

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 –  
SECT 22

22. After section 81 of the Principal Act the following sections are inserted:

Who is eligible for the grant of a licence?

"81AA. (1) A commercial licence shall only be granted to a company that is formed within the limits of the Commonwealth or a Territory and has a share capital.

"(2) A public licence shall only be granted to a corporation that is formed within the limits of the Commonwealth or a Territory.

"(3) A public licence shall not be granted to:

- (a) a corporation whose objects include the acquisition of profit or gain for the benefit of its individual members;
- (b) a government corporation; or
- (c) a political party.

"(4) A remote licence shall only be granted to:

- (a) a company that is formed within the limits of the Commonwealth or a Territory and has a share capital; or
- (b) a consortium of companies to which paragraph (a) applies.

"(5) A limited licence shall only be granted to a corporation that is formed within the limits of the Commonwealth or a Territory.

### Licence held by a consortium

"81AB. Where a remote licence or a supplementary radio licence is granted to the members of a consortium:

- (a) the persons to whom the licence is granted take the licence in equal undivided shares as owners in common;
- (b) references in the licence, in this Act and in any other law to the licensee or to the holder of the licence shall be read as references to each co-owner of the licence; and
- (c) the performance by a co-owner of the licence of an obligation imposed by the licence, by this Act or by any other law on the licensee or the holder of the licence shall, to the extent of that performance, be deemed to release that co-owner and each other co-owner of the licence from that obligation."

### BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 – SECT 23

23. After section 81A of the Principal Act the following sections are inserted:

#### Purpose of limited licence

"81B. (1) A limited licence shall be granted for:

- (a) information purposes;
- (b) special event purposes;
- (c) remote Aboriginal community purposes;
- (d) special interest purposes; or
- (e) a purpose specified by the regulations in accordance with section 81C.

"(2) In setting out, in a notice under subsection 82AB (3) or (5), the service specifications to which a limited licence is to be subject, the Minister shall specify that the licence is to be:

- (a) granted for particular purposes; or
- (b) granted for purposes within a particular range of purposes.

"(3) Where the Minister specifies, in a notice under subsection 82AB (3) or

(5), that the licence is to be granted for purposes within a particular range of purposes, the Tribunal shall determine the particular purposes within that range for which the licence is granted.

"(4) The purpose for which a limited licence is granted shall be ascertained by reference to:

- (a) the service specifications of the licence; and
- (b) the conditions (if any) imposed by the Tribunal on the licence under paragraph 84 (4) (b) or subsection 85 (1) or 86 (6).

"(5) A limited licence is granted for information purposes if the licence is granted for the purposes of providing:

- (a) an information service that is relevant to the interests of people living or working in or visiting the service area of the licence; or
- (b) an information service that presents data solely or primarily in the form of alphanumeric text or graphics (including diagrams, tables or images).

"(6) A limited licence is granted for special event purposes if the licence is granted for the purpose of providing a service that has a substantial connection with a festival, exhibition, exposition, sporting event or other special event.

"(7) A limited licence is granted for remote Aboriginal community purposes if the licence is granted for the purpose of serving the cultural, linguistic, educational, recreational or other needs of a remote Aboriginal community.

"(8) A limited licence is granted for special interest purposes if the licence is granted for the purpose of enabling a person to use broadcasting facilities of the Corporation or the Service to transmit programs in order to serve a particular special interest, or particular special interests, of the community, or a section of the community, that is located within the service area of the licence.

"(9) The Minister for Aboriginal Affairs, or an authorised Aboriginal Affairs officer, may declare that a community is a remote Aboriginal community for the purposes of this section.

"(10) A declaration under subsection (9) shall be made by notice published

in the Gazette.

"(11) In this section:

'authorised Aboriginal Affairs officer' means a person who is performing the duties of an office in the Department administered by the Minister for Aboriginal Affairs and is authorised by that Minister, in writing, to make declarations under subsection (9).

Regulations may add new categories of limited licence

"81C. (1) The regulations may specify a purpose as a purpose for which a limited licence may be granted.

"(2) Where regulations are made for the purposes of subsection (1), the regulations:

(a) may specify additional matters of which the Tribunal must be satisfied before granting a limited licence that has that purpose; and

(b) may specify additional conditions that are to apply to a limited licence that has that purpose."

#### BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 – SECT 24 Applications for grant of certain licences

24. (1) Section 82 of the Principal Act is amended:

(a) by inserting in subsection (1) "that" after "a notice";

(b) by omitting paragraphs (1) (a) and (b) and substituting the following paragraphs:

"(a) specifies the category of licence and sets out:

(i) the service specifications to which the licence is to be subject;

and

(ii) an outline of the technical conditions proposed to be included in the licence warrant;

(b) invites interested persons to apply to the Tribunal, in accordance with the regulations, for the grant of the licence; and

(c) notifies interested persons that they will be able to make submissions to the Tribunal as part of the inquiry that will be conducted in relation to the grant of the licence.";

(c) by inserting after subsection (1) the following subsections:

"(1A) A notice under subsection (1) shall specify the day by which applications must be made to the Tribunal.

"(1B) The day specified under subsection (1A) shall be not less than 56 days after the day on which the notice is published in the Gazette."

(2) The amendments made by subsection (1) apply in relation to a licence only if the notice in relation to the licence under subsection 82 (1) of the Principal Act is published after the commencement of this subsection.

#### BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 – SECT 25 Applications for grant of supplementary radio licences

25. (1) Section 82A of the Principal Act is amended by omitting subsection (9).

(2) The amendment made by subsection (1) applies in relation to a licence only if the notice in relation to the licence under subsection 82A (4) of the Principal Act is given after the commencement of this subsection.

#### BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 – SECT 26

26. After section 82A of the Principal Act the following sections are inserted:

##### Applications for grant of limited licences

"82AB. (1) A person may apply to the Minister for the grant of a limited licence.

"(2) The application must be in a form approved by the Minister.

"(3) Where the Minister receives an application under subsection (1), the



Minister shall:

- (a) dismiss the application on technical or planning grounds;
- (b) defer consideration of the application on technical or planning grounds;
- (c) determine not to consider the application but to exercise the Minister's powers under subsection (5) instead; or
- (d) refer the application to the Tribunal together with a written notice that sets out:
  - (i) the service specifications to which the licence is to be subject; and
  - (ii) an outline of the technical conditions proposed to be included in the licence warrant.

"(4) The Minister shall not exercise the power under paragraph (3) (b) or (c) in relation to an application more than 2 months after receiving the application.

"(5) The Minister may call for applications for a limited licence or limited licences by publishing in the Gazette and in a newspaper or newspapers, if any, circulating in the area concerned, a notice that:

- (a) sets out, in relation to the licence or each of the licences:
  - (i) the service specifications to which the licence is to be subject; and
  - (ii) an outline of the technical conditions proposed to be included in the licence warrant;
- (b) invites interested persons to apply to the Tribunal, in accordance with the regulations, for the grant of the licence or of one or more of the licences; and
- (c) where the notice relates to 2 or more licences-sets out the maximum number of licences that the Tribunal may grant pursuant to the notice.

"(6) The Minister may exercise the powers under subsection (5) either:

- (a) in response to an application under subsection (1); or
- (b) on the Minister's own initiative.

"(7) A notice under subsection (5) shall specify the day by which applications must be made to the Tribunal.

"(8) The day specified under subsection (7) shall be not less than 56 days after the day on which the notice is published in the Gazette.

"(9) Where the Minister sets out in a notice under subsection (5) the maximum number of licences that the Tribunal may grant pursuant to the notice, the Tribunal may grant a licence, or a number of licences not exceeding that maximum number, pursuant to the notice.

"(10) Where the Minister may defer consideration of an application under this section, the Minister:

(a) may defer consideration of the application either indefinitely or for a particular period; and

(b) may specify the period by reference to the happening of a particular event or the existence of particular circumstances.

"(11) Where the Minister exercises a power under paragraph (3) (a), (b) or (c), the Minister shall give the applicant, as soon as practicable after exercising the power, written notice of the Minister's decision.

Tribunal may request outline of program content and format

"82AC. (1) The Tribunal may ask an applicant for a limited licence to give the Tribunal a written statement that sets out an outline of the content and format of the programs that the applicant intends to broadcast if granted the licence.

"(2) A request under subsection (1) shall be in writing.

Tribunal may request applicant to give copy of constituent documents

"82AD. (1) The Tribunal may ask an applicant for a limited licence to give the Tribunal a copy of the applicant's constituent documents.

"(2) A request under subsection (1) shall be in writing."

27. Section 83 of the Principal Act is repealed and the following sections are substituted:

#### Undertaking

"83. (1) An applicant for the grant of a licence shall, before the licence is granted, give a written undertaking to the Tribunal that the applicant will, if granted the licence:

- (a) comply with the conditions of the licence;
- (b) provide an adequate and comprehensive service pursuant to the licence;
- (c) encourage the provision of programs wholly or substantially produced in Australia; and
- (d) use, and encourage the use of, Australian creative resources in connection with the provision of programs.

"(2) Subsection (1) does not apply to a limited licence.

#### Criteria for grant of commercial licence

"83A. (1) The Tribunal shall not refuse to grant a commercial licence to a person unless it is required to do so by subsection (2), (3), (4), (5), (7), (9) or (10).

"(2) The Tribunal shall refuse to grant a commercial licence to a person if the person has failed to give an undertaking in accordance with subsection 83 (1).

"(3) The Tribunal shall refuse to grant a commercial licence to a person if the Tribunal is satisfied that the grant of the licence would be contrary to a provision of this Act.

"(4) The Tribunal shall refuse to grant a commercial licence to a person if it appears to the Tribunal, having regard only to the following matters or circumstances, that it is advisable in the public interest to refuse to grant the licence to the person:

- (a) the Tribunal is not satisfied that the person:
  - (i) is a fit and proper person to hold the licence;
  - (ii) has the financial, technical and management capabilities necessary to provide an adequate and comprehensive service pursuant to the licence; and

- (iii) is otherwise capable of complying with the conditions of the licence;
- (b) if the licence's service area:
  - (i) is not a metropolitan service area; and
  - (ii) overlaps the service area of at least one other commercial licence whose service area is also not a metropolitan service area;
- the need to avoid undue concentration of influence, whether direct or indirect, on the person and on the corporation or corporations holding the other licence or licences;
- (c) where the service area of the licence overlaps the service area of another non-limited licence or other non-limited licences-the need for the commercial viability of the service or services provided pursuant to the other licence or other licences.

"(5) The Tribunal shall refuse to grant a commercial licence to a person if it appears to the Tribunal that a licence of the kind contemplated by the matters (other than the outline of the technical conditions proposed to be included in the licence warrant) set out in the notice under paragraph 82 (1) (a) should not be granted.

"(6) The reference in subsection (5) to the matters set out in the notice under paragraph 82 (1) (a) is a reference to such matters as affected by any determination under subsection 83F (1).

"(7) Subject to subsection (8), the Tribunal shall refuse to grant a commercial licence to a person if the circumstances are such that, if the Tribunal granted the licence to the person:

- (a) the Tribunal would have reasonable grounds for believing that a person would be contravening section 90C, 92 or 92JB in circumstances that would constitute an offence against that section;
- (b) a person would be contravening section 90F, 92C or 92JD; or
- (c) a condition specified in section 90G or 92D would be contravened.

"(8) For the purposes of subsection (7), the Tribunal may disregard a contravention of section 90C, 92 or 92JB by a person if satisfied that:

- (a) as soon as practicable after the grant of the licence the person will

take all reasonable steps with a view to causing the contravention to cease;  
or

(b) the contravention will not result in the person being, within the meaning of Part III BA, in a position to control the company to which the licence is to be granted.

"(9) Subject to subsection (10), where there are 2 or more applicants for a commercial licence, each of whom is a person to whom, but for this subsection, the Tribunal would be required to grant the licence, the Tribunal shall grant the licence to the most suitable applicant.

"(10) Where the licence is a commercial radio licence, the following provisions have effect:

(a) the Tribunal shall give the eligible applicant who, in the opinion of the Tribunal, is the most suitable applicant notice in writing that the licence is available to that applicant;

(b) if an applicant who is given notice under paragraph (a) or (c) tenders to the Commonwealth, before the end of the relevant period, an amount equal to the amount of the establishment fee, the Tribunal shall grant the licence to that applicant;

(c) if an applicant who is given notice under paragraph (a) or this paragraph does not tender to the Commonwealth, before the end of the relevant period, an amount equal to the amount of the establishment fee and there is at least one other eligible applicant:

(i) the application by the applicant given that notice shall be deemed to have been withdrawn; and

(ii) the Tribunal shall give the remaining eligible applicant, or the one of the remaining eligible applicants who, in the opinion of the Tribunal, is the most suitable applicant, notice in writing that the licence is available to that applicant;

(d) if an applicant who is given notice under paragraph (a) or (c) does not tender to the Commonwealth, before the end of the relevant period, an amount

equal to the amount of the establishment fee, the Minister may:

(i) determine that, even though the relevant period has ended, the licence shall continue to be available to that applicant for such further period as is specified in the determination; or

(ii) determine that a fresh notice under subsection 82 (1) should be published in relation to the proposed grant of the licence;

(e) if a determination is made under subparagraph (d) (i) in relation to an applicant and the applicant, before the end of the further period specified in the determination, tenders to the Commonwealth, an amount equal to the sum of:

(i) the amount of the establishment fee; and

(ii) the amount of any late payment charge payable under paragraph (f);  
the Tribunal shall grant the licence to the applicant;

(f) where an applicant in relation to whom a determination under subparagraph (d) (i) has been made tenders to the Commonwealth, after the end of the relevant period, an amount in respect of the establishment fee, an additional fee is due and payable by way of penalty by the applicant at the rate of 20% per annum on the amount tendered, computed from the end of the relevant period until the day on which the amount is tendered;

(g) if a determination is made under subparagraph (d) (i) in relation to an applicant and the applicant does not tender to the Commonwealth, before the end of the further period specified in the determination, an amount equal to the sum of the amounts specified in subparagraphs (e) (i) and (ii), the Minister may determine that a fresh notice under subsection 82 (1) should be published in relation to the proposed grant of the licence.

"(11) In subsection (10):

'eligible applicant', in relation to the grant of a commercial radio licence, means a person to whom, but for subsection (9), the Tribunal would be required to grant the licence;

'establishment fee', in relation to the grant of a commercial radio licence, means the fee payable on the grant of the licence under subsection 6 (1A) of

the Radio Licence Fees Act 1964;

'relevant period', in relation to an applicant who is given notice under paragraph (10) (a) or (c), means:

(a) the period of 60 days commencing on the day on which the notice is given; or

(b) if, before the end of that period, legal proceedings are commenced to challenge the giving of the notice or to prevent the granting of the licence to the applicant-the period of 30 days commencing on the day after the termination of all such proceedings (whether commenced before or after the end of the period referred to in paragraph (a));

'termination' includes termination by way of withdrawal or final determination and, when used in relation to legal proceedings, includes the termination of any appeal arising out of those proceedings.

Criteria for grant of supplementary radio licence

"83B. (1) The Tribunal shall not refuse to grant a supplementary radio licence to a person unless it is required to do so by subsection (2), (3), (4), (5) or (7).

"(2) The Tribunal shall refuse to grant a supplementary radio licence to a person if the person has failed to give an undertaking in accordance with subsection 83 (1).

"(3) The Tribunal shall refuse to grant a supplementary radio licence to a person if the Tribunal is satisfied that the grant of the licence would be contrary to a provision of this Act.

"(4) The Tribunal shall refuse to grant a supplementary radio licence to a person if it appears to the Tribunal, having regard only to the following matters or circumstances, that it is advisable in the public interest to refuse to grant the licence to the person:

(a) the Tribunal is not satisfied that the person:

(i) is a fit and proper person to hold the licence;

(ii) has the financial, technical and management capabilities necessary to provide an adequate and comprehensive service pursuant to the licence; and

(iii) is otherwise capable of complying with the conditions of the licence;

(b) where the licence's service area overlaps the service area of another non-limited licence or other non-limited licences-the need for the commercial viability of the service or services provided pursuant to the other licence or licences.

"(5) The Tribunal shall refuse to grant a supplementary radio licence to a person if it appears to the Tribunal that a licence of the kind contemplated by the matters (other than the outline of the technical conditions proposed to be included in the licence warrant) set out in the notice under paragraph 82A (4) (a) should not be granted.

"(6) The reference in subsection (5) to the matters set out in the notice under paragraph 82A (4) (a) is a reference to such matters as affected by any determination under subsection 83F (1).

"(7) The Tribunal shall refuse to grant a supplementary radio licence to a person if the Tribunal, having due regard to the need for the commercial viability of radio services provided pursuant to other non-limited licences that have service areas that overlap the service area of the supplementary radio licence, determines:

(a) that an additional radio service provided pursuant to a commercial radio licence having the same service area as that of the supplementary licence is reasonably likely to be commercially viable during the period in which the supplementary licence, if granted, would be in force; and

(b) that, having considered:

(i) the need for an adequate and comprehensive service to be provided pursuant to such an additional licence; and

(ii) whether, in the Tribunal's opinion, there is or would, if the supplementary licence were granted, be an undue concentration of the ownership or control, direct or indirect, of the media in the service area of the supplementary radio licence;

it is in the public interest that applications for such a commercial



radio

licence should be invited.

"(8) The Tribunal shall, as soon as practicable after making a determination under subsection (7):

(a) inform the applicant and the Minister, by notice in writing, of the determination and the reasons for the determination; and

(b) make a written recommendation to the Minister that the Minister invite applications for a commercial radio licence to serve the area that would have been the service area of the supplementary radio licence.

Criteria for grant of public licence

"83C. (1) The Tribunal shall not refuse to grant a public licence to a person unless it is required to do so by subsection (2), (3), (4), (5) or (7).

"(2) The Tribunal shall refuse to grant a public licence to a person if the person has failed to give an undertaking in accordance with subsection 83 (1).

"(3) The Tribunal shall refuse to grant a public licence to a person if the Tribunal is satisfied that the grant of the licence would be contrary to a provision of this Act.

"(4) The Tribunal shall refuse to grant a public licence to a person if it appears to the Tribunal, having regard only to the following matters or circumstances, that it is advisable in the public interest to refuse to grant the licence to the person:

(a) the Tribunal is not satisfied that the person:

(i) is a fit and proper person to hold the licence;

(ii) has the financial, technical and management capabilities necessary to provide an adequate and comprehensive service pursuant to the licence; and

(iii) is otherwise capable of complying with the conditions of the licence;

(b) where the service area of the licence overlaps the service area of another non-limited licence or other non-limited licences-the need for the commercial viability of the service or services provided pursuant to the other

licence or other licences;

(c) the undesirability of a person being in a position to exercise control, within the meaning of Division 6 of Part III BA, of more than one public radio licence or more than one public television licence;

(d) the undesirability of:

(i) the Commonwealth, a State or the Northern Territory or a statutory authority of the Commonwealth, a State or a Territory; or

(ii) a political party;

being in a position to exercise control, within the meaning of Division 6 of Part III BA, of a public licence;

(e) the undesirability of a public licence being held by a corporation whose operations pursuant to the licence will be conducted, either wholly or substantially, for the purpose of the acquisition by another person of profit or gain;

(f) the desirability of members of the community to be served pursuant to a public licence being in a position to exercise control of the licence;

(g) the need to encourage members of the community to be served pursuant to a public licence to participate in:

(i) the operations of the licensee in providing the service pursuant to the licence; and

(ii) the selection and provision of programs to be broadcast pursuant to the licence.

"(5) The Tribunal shall refuse to grant a public licence to a person if it appears to the Tribunal that a licence of the kind contemplated by the matters (other than the outline of the technical conditions proposed to be included in the licence warrant) set out in the notice under paragraph 82 (1) (a) should not be granted.

"(6) The reference in subsection (5) to the matters set out in the notice under paragraph 82 (1) (a) is a reference to such matters as affected by any determination under subsection 83F (1).

"(7) Where there are 2 or more applicants for a public licence, each of whom

is a person to whom, but for this subsection, the Tribunal would be required to grant the licence, the Tribunal shall grant the licence to the most suitable applicant.

Criteria for grant of remote licence

"83D. (1) The Tribunal shall not refuse to grant a remote licence to a person unless it is required to do so by subsection (2), (3), (4), (5) or (7).

"(2) The Tribunal shall refuse to grant a remote licence to a person if the person has failed to give an undertaking in accordance with subsection 83 (1).

"(3) The Tribunal shall refuse to grant a remote licence to a person if the Tribunal is satisfied that the grant of the licence would be contrary to a provision of this Act.

"(4) The Tribunal shall refuse to grant a remote licence to a person if it appears to the Tribunal, having regard to the following matters or circumstances, that it is advisable in the public interest to refuse to grant the licence to the person:

(a) the Tribunal is not satisfied that the person:

(i) is a fit and proper person to hold the licence;

(ii) has the financial, technical and management capabilities necessary to provide an adequate and comprehensive service pursuant to the licence; and

(iii) is otherwise capable of complying with the conditions of the licence;

(b) where the service area of the licence overlaps the service area of another non-limited licence or other non-limited licences-the need for the commercial viability of the service or services provided pursuant to the other licence or other licences;

(c) subject to the desirability of ensuring that, in all parts of Australia, there are available:

(i) at least one service provided pursuant to a commercial radio licence or remote radio licence; and

(ii) at least one service provided pursuant to a commercial television

licence or remote television licence;

the need to avoid an undue concentration of the ownership or control, direct or indirect, of the media in the service area of the licence;

(d) the likelihood that, if the Tribunal granted the licence, a person would, in relation to the licence or the holder of the licence, contravene an order of the Tribunal made for the purposes of section 92V;

(e) any relevant government policy statements;

(f) any matters prescribed by regulations for the purposes of this paragraph; (g) any other matters or circumstances that the Tribunal considers relevant.

"(5) The Tribunal shall refuse to grant a remote licence to a person if it appears to the Tribunal that a licence of the kind contemplated by the matters (other than the outline of technical conditions proposed to be included in the licence warrant) set out in the notice under paragraph 82 (1) (a) should not be granted.

"(6) The reference in subsection (5) to the matters set out in the notice under paragraph 82 (1) (a) is a reference to such matters as affected by any determination under subsection 83F (1).

"(7) Where there are 2 or more applicants for a remote licence, each of whom is a person to whom, but for this subsection, the Tribunal would be required to grant the licence, the Tribunal shall grant the licence to the most suitable applicant.

Criteria for grant of limited licence

"83E. (1) The Tribunal shall not grant a limited licence to a person if the Tribunal is satisfied that:

(a) the person is not a fit and proper person to hold the licence;

(b) the person is not capable of complying with the conditions of the licence;

(c) any relevant matters specified by regulations made for the purposes of subsection 81C (1) have not been satisfied; or

(d) it is otherwise not in the public interest to grant the licence to the

person.

"(2) In deciding whether to grant a limited licence to a person, the Tribunal may have regard to:

- (a) any outline provided by the person in accordance with section 82AC;
- (b) any failure by the person to provide an outline in accordance with section 82AC;
- (c) the likelihood that, if the Tribunal granted the licence, a person would, in relation to the licence or the holder of the licence, contravene an order of the Tribunal made for the purposes of section 92VA; and
- (d) any other matters or circumstances that the Tribunal considers relevant.

"(3) The Tribunal may refuse to grant a limited licence to a person if it appears to the Tribunal that a licence of the kind contemplated by the matters (other than the outline of the technical conditions proposed to be included in the licence warrant) set out in the notice under paragraph 82AB (3) (d) or subsection 82AB (5) should not be granted.

"(4) The reference in subsection (3) to the matters set out in the notice under paragraph 82AB (3) (d) or subsection 82AB (5) is a reference to such matters as affected by any determination under subsection 83F (1).

"(5) Subject to subsection (6), where there are 2 or more applicants for a limited licence, each of whom is a person to whom, but for this subsection, the Tribunal would be able to grant the licence, the Tribunal shall grant the licence to the most suitable applicant.

"(6) If regulations are made under the Broadcasting (Limited Licences) Fees Act 1988 prescribing a fee payable on the grant of a limited licence that is payable in accordance with a system of tendering, bidding or auction, subsection (5) ceases to have effect in relation to that licence while those regulations are in force and regulations may be made under this Act prescribing the rules that are to apply to the grant of that licence where there are 2 or more applicants for that licence, each of whom, but for the regulations, is a person to whom the Tribunal would be able to grant that

licence.

Minister may revise service specifications before grant of licence

"83F. (1) Subject to subsection (2), the Minister may, at any time before the grant of a licence, revoke the service specifications determined in relation to the licence under:

- (a) subsection 82 (1);
- (b) subsection 82A (4);
- (c) subsection 82AB (3) or (5); or

(d) this subsection; and determine that the new service specifications specified in the determination are the service specifications to which the licence is to be subject.

"(2) The service specifications determined by the Minister under subsection (1) must be substantially consistent with the service specifications determined in relation to the licence under:

- (a) if the licence is a supplementary licence-subsection 82A (4);
- (b) if the licence is a limited licence-subsection 82AB (3) or (5), as the case requires; or
- (c) in any other case-subsection 82 (1).

"(3) Where the Minister makes a determination under subsection (1), the Minister shall notify the Tribunal accordingly."

## BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 – SECT 28 Imposition of licence conditions

28. (1) Section 84 of the Principal Act is amended:

(a) by omitting subsections (1) and (2) and substituting the following subsection:

"(1) Upon the grant of a licence (other than a public licence or a limited licence), the conditions of the licence are:

(a) the service specifications determined by the Minister under:

- (i) if the licence is a supplementary licence-subsection 82A (4) or 83F (1); or
- (ii) in any other case-subsection 82 (1) or 83F (1);

(b) such conditions, not relating to matters referred to in the definition of 'service specification' or 'technical condition' in subsection 4 (1), as are imposed by the Tribunal; and

(c) the conditions imposed by sections 90K, 90L, 90M, 92FA, 92G, 92H and 129.";

(b) by omitting paragraph (3) (a) and substituting the following paragraph:

"(a) the service specifications determined by the Minister under subsection 82 (1) or 83F (1);";

(c) by omitting from paragraph (3) (b) "and";

(d) by adding at the end of subsection (3) the following word and paragraph:

"; and (d) the conditions imposed by sections 119AB and 129.";

(e) by adding at the end the following subsection:

"(4) Upon the grant of a limited licence, the conditions of the licence are:

(a) the service specifications determined by the Minister under subsection 82AB (3) or (5) or 83F (1);

(b) the conditions imposed by the Tribunal for the purpose of giving effect to any determination by the Tribunal, under subsection 81B (3), of the purpose for which the licence is granted;

(c) any other conditions, not relating to matters referred to in the definition of 'service specification' or 'technical condition' in subsection 4 (1), imposed by the Tribunal;

(d) any conditions imposed by regulations made for the purposes of subsection 81C (1); and

(e) the conditions imposed by sections 119AC and 129."

(2) The amendments made by subsection (1) apply in relation to a non-limited licence only if the notice in relation to the licence under subsection 82 (1) or 82A (4) of the Principal Act is published or given after the commencement of this subsection.

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 –  
SECT 29 Variation of licence conditions

29. Section 85 of the Principal Act is amended by inserting after paragraph (5) (aa) the following paragraph:

"(ab) in the case of a direction to vary the purpose of a limited licence-the Minister, or an officer authorised by the Minister in writing for the purposes of this paragraph, shall also give the Tribunal notice in writing:

(i) specifying the direction proposed to be given by the Minister;  
and

(ii) inviting the Tribunal to make representations to the Minister relating to the proposed direction;"

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 –  
SECT 30

30. (1) Section 86 of the Principal Act is repealed and the following sections are substituted:

Renewal of licences-general

"86. (1) Subject to subsection (2), an application for the renewal of a licence shall be lodged with the Tribunal not less than 20 weeks before the expiration of the licence.

"(2) An application for the renewal of a limited licence may, with the approval of the Tribunal, be lodged less than 20 weeks before the expiration



of the licence.

"(3) The application must be made in accordance with the regulations.

"(4) The licensee shall, before the licence is renewed, give a fresh undertaking in writing to the Tribunal in the same terms as an undertaking required to be given under subsection 83 (1).

"(5) Subsection (4) does not apply to a limited licence.

"(6) On the renewal of a licence, the Tribunal may vary or revoke any of the conditions of the licence or impose further conditions.

"(7) The Tribunal shall not, under subsection (6), vary, revoke or impose a condition relating to a matter referred to in the definition of 'service specification' or 'technical condition' in subsection 4 (1).

#### Renewal of commercial licence

"86AA. (1) The Tribunal shall not refuse to renew a commercial licence unless it is:

- (a) required to do so by subsection (2), (3), (4) or (5); or
- (b) authorised to do so by subsection (8), (9) or (10).

"(2) The Tribunal shall refuse to renew a commercial licence if the licensee has failed to give an undertaking under subsection 86 (4).

"(3) The Tribunal shall refuse to renew a commercial licence if the Tribunal is satisfied that the renewal of the licence would be contrary to a provision of this Act.

"(4) The Tribunal shall refuse to renew a commercial licence if it appears to the Tribunal, having regard only to the following matters or circumstances, that it is advisable in the public interest to refuse to renew the licence:

- (a) the Tribunal is satisfied that the licensee has failed to comply with the undertaking (if any) given under subsection 83 (1) or 86 (4), as the case may be, in relation to the licence to be renewed;
- (b) the Tribunal is satisfied that the licensee:
  - (i) is no longer a fit and proper person to hold the licence; or
  - (ii) no longer has the financial, technical and management capabilities necessary to provide an adequate and comprehensive service pursuant to the

licence;

(c) the Tribunal is satisfied that a condition of the licence has not been complied with;

(d) the need for the commercial viability of the service provided pursuant to the licence.

"(5) Subject to subsection (6), the Tribunal shall refuse to renew a commercial licence if the circumstances are such that, if the Tribunal renewed the licence:

(a) the Tribunal would have reasonable grounds for believing that a person would be contravening section 90C, 92 or 92JB in circumstances that would constitute an offence against that section;

(b) a person would be contravening section 90F, 92C or 92JD; or

(c) a condition specified in section 90G or 92D would be contravened.

"(6) For the purposes of subsection (5), the Tribunal may disregard a contravention of section 90C, 92 or 92JB by a person if satisfied that:

(a) as soon as practicable after the renewal of the licence the person will take all reasonable steps with a view to causing the contravention to cease;  
or

(b) the contravention will not result in the person being, within the meaning of Part III BA, in a position to control the company that holds the licence.

"(7) Where an implementation plan is applicable to a licensee in respect of a commercial television licence, the Tribunal shall, in determining for the purposes of subsection (4) whether the licensee has failed to comply with the undertaking (if any) given under subsection 83 (1) or 86 (4) in relation to the licence, have regard to the terms of the implementation plan.

"(8) The Tribunal may refuse to renew a commercial licence if it is satisfied that the licensee has unreasonably or repeatedly delayed paying an amount payable by the licensee under a Fees Act.

"(9) Where an MCS permit has been granted in respect of a commercial television licence, the Tribunal may refuse to renew the licence if the

Tribunal is satisfied that:

(a) the licensee has failed to comply with:

(i) a condition of the permit; or

(ii) an undertaking given under subsection 94V (5) or 94X (3) in

relation

to the permit; and

(b) it is advisable in the public interest, having regard to that failure, that the licence not be renewed.

"(10) Where an implementation plan is applicable to a licensee in respect of a commercial television licence, the Tribunal may refuse to renew the licence if the Tribunal is satisfied that:

(a) the licensee has failed to a significant extent to comply with the implementation plan; and

(b) it is advisable in the public interest, having regard to that failure, that the licence not be renewed.

"(11) Before the Tribunal refuses to renew a licence under subsection (10):

(a) the Chairman of the Tribunal shall give the Minister written notice that the Tribunal is satisfied as to the matters referred to in paragraphs (10) (a) and (b) in relation to the licence; and

(b) the Tribunal shall have regard to any representations made by the Minister.

"(12) Without limiting subsection (11), the Minister may include, in representations made pursuant to that subsection in relation to a licence, details of any proposed variations of the implementation plan applicable to the licensee in respect of the licence.

Renewal of supplementary radio licence

"86AB. (1) The Tribunal shall not refuse to renew a supplementary radio licence unless it is:

(a) required to do so by subsection (2), (3) or (4); or

(b) authorised to do so by subsection (5).

"(2) The Tribunal shall refuse to renew a supplementary radio licence if the

licensee has failed to give an undertaking under subsection 86 (4).

"(3) The Tribunal shall refuse to renew a supplementary radio licence if the Tribunal is satisfied that the renewal of the licence would be contrary to a provision of this Act.

"(4) The Tribunal shall refuse to renew a supplementary radio licence if it appears to the Tribunal, having regard only to the following matters or circumstances, that it is advisable in the public interest to refuse to renew the licence:

(a) the Tribunal is satisfied that the licensee has failed to comply with the undertaking (if any) given under subsection 83 (1) or 86 (4), as the case may be, in relation to the licence to be renewed;

(b) the Tribunal is satisfied that the licensee:

(i) is no longer a fit and proper person to hold the licence; or

(ii) no longer has the financial, technical and management capabilities necessary to provide an adequate and comprehensive service pursuant to the licence;

(c) the Tribunal is satisfied that a condition of the licence has not been complied with;

(d) the need for the commercial viability of the service provided pursuant to the licence.

"(5) The Tribunal may refuse to renew a supplementary radio licence if it is satisfied that the licensee has unreasonably or repeatedly delayed paying an amount payable by the licensee under the Radio Licence Fees Act 1964."

(2) Section 86 of the Principal Act continues to apply, after the commencement of this subsection and until 1 March 1989, in relation to the renewal of a re-broadcasting or re-transmission licence as if the amendment made by subsection (1) had not been made.

31. After section 86D of the Principal Act the following sections are inserted:

#### Renewal of public licence

"86E. (1) The Tribunal shall not refuse to renew a public licence unless it is required to do so by subsection (2), (3) or (4).

"(2) The Tribunal shall refuse to renew a public licence if the licensee has failed to give an undertaking under subsection 86 (4).

"(3) The Tribunal shall refuse to renew a public licence if the Tribunal is satisfied that the renewal of the licence would be contrary to a provision of this Act.

"(4) The Tribunal shall refuse to renew a public licence if it appears to the Tribunal, having regard only to the following matters or circumstances, that it is advisable in the public interest to refuse to renew the licence:

(a) the Tribunal is satisfied that the licensee has failed to comply with an undertaking (if any) given under subsection 83 (1) or 86 (4), as the case may be, in relation to the licence to be renewed;

(b) the Tribunal is satisfied that the licensee:

(i) is no longer a fit and proper person to hold the licence; or

(ii) no longer has the financial, technical and management capabilities necessary to provide an adequate and comprehensive service pursuant to the licence;

(c) the Tribunal is satisfied that a condition of the licence has not been complied with;

(d) the need for the commercial viability of the service provided pursuant to the licence;

(e) the undesirability of a person being in a position to exercise control, within the meaning of Division 6 of Part IIIA, of more than one public radio licence or more than one public television licence;

(f) the undesirability of:

(i) the Commonwealth, a State or the Northern Territory or a statutory authority of the Commonwealth, a State or a Territory; or

(ii) a political party;

being in a position to exercise control, within the meaning of Division 6 of Part III BA, of a public licence;

(g) the undesirability of a public licence being held by a corporation whose operations pursuant to the licence have been, or will be, conducted, either wholly or substantially, for the purpose of the acquisition by another person of profit or gain;

(h) the desirability of members of the community to be served pursuant to a public licence being in a position to exercise control of the licence;

(j) the need to encourage members of the community to be served pursuant to a public licence to participate in:

(i) the operations of the licensee in providing the service pursuant to the licence; and

(ii) the selection and provision of programs to be broadcast pursuant to the licence.

#### Renewal of remote licence

"86F. (1) The Tribunal shall not refuse to renew a remote licence unless it is:

- (a) required to do so by subsection (2), (3) or (4); or
- (b) authorised to do so by subsection (5).

"(2) The Tribunal shall refuse to renew a remote licence if the licensee has failed to give an undertaking under subsection 86 (4).

"(3) The Tribunal shall refuse to renew a remote licence if the Tribunal is satisfied that the renewal of the licence would be contrary to a provision of this Act.

"(4) The Tribunal shall refuse to renew a remote licence if it appears to the Tribunal, having regard to the following matters or circumstances, that it is advisable in the public interest to refuse to renew the licence:

- (a) the Tribunal is satisfied that the licensee has failed to comply with the undertaking (if any) given under subsection 83 (1) or 86 (4), as the case may be, in relation to the licence to be renewed;
- (b) the Tribunal is satisfied that the licensee:
  - (i) is no longer a fit and proper person to hold the licence; or
  - (ii) no longer has the financial, technical and management capabilities necessary to provide an adequate and comprehensive service pursuant to the licence;
- (c) the Tribunal is satisfied that a condition of the licence has not been complied with;
- (d) the need for the commercial viability of the service provided pursuant to the licence;
- (e) the likelihood that, if the Tribunal renewed the licence, a person would, in relation to the licence or the holder of the licence, contravene an order of the Tribunal made for the purposes of section 92V;
- (f) any relevant government policy statements;
- (g) any matters prescribed by regulations for the purposes of this paragraph; (h) any other matters or circumstances that the Tribunal considers relevant.

"(5) The Tribunal may refuse to renew a remote licence if it is satisfied that the licensee has unreasonably or repeatedly delayed paying an amount payable by the licensee under a Fees Act.

#### Renewal of limited licence

"86G. (1) Where a person applies for renewal of a limited licence, the Tribunal may ask the applicant to give the Tribunal a written statement that sets out an outline of the content and format of the programs the applicant intends to broadcast if the licence is renewed.

"(2) The request shall be made in writing.

"(3) The Tribunal shall not renew a limited licence if it is satisfied that:

- (a) renewal of the licence would be inconsistent with the conditions

applicable to the licence;

(b) the applicant is no longer a fit and proper person to hold the licence;

(c) the applicant is no longer capable of complying with the conditions of the licence;

(d) any relevant matters specified by regulations made for the purposes of subsection 81C (1) have not been satisfied; or

(e) it is otherwise not in the public interest to renew the licence.

"(4) In exercising its powers under subsection (3), the Tribunal may have regard to:

(a) any breach of the conditions of the licence by the licensee;

(b) any recommendation made by the Minister under subsection 86H (1);

(c) any outline provided by the licensee under subsection 82AC (1) or subsection (1) of this section;

(d) the content and format of the programs broadcast by the licensee pursuant to the licence;

(e) any failure by the licensee to provide an outline in accordance with subsection (1);

(f) any delay by the licensee in paying amounts payable by the licensee under a Fees Act;

(g) the likelihood that, if the Tribunal renewed the licence, a person would, in relation to the licence or the holder of the licence, contravene an order of the Tribunal made for the purposes of section 92VA; and

(h) any other matters or circumstances that the Tribunal considers relevant.

Minister may recommend non-renewal of limited licence

"86H. (1) Where:

(a) a limited licence has been granted for a particular period;

(b) less than half of the period has elapsed; and

(c) the Minister is satisfied, on technical or planning grounds, that the



licence should not be renewed; the Minister may recommend to the Tribunal that the licence not be renewed.

"(2) The recommendation shall be made in writing.

"(3) The recommendation shall set out the grounds on which it is made.

"(4) The Minister shall give the licensee a copy of the recommendation within 7 days after making the recommendation."

## BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 – SECT 32 Duration

32. Section 87 of the Principal Act is amended by inserting after subsection (2) the following subsections:

"(2A) A limited licence granted for special event purposes continues in force for such period as is specified in the licence.

"(2B) The period specified under subsection (2A) shall not:

(a) commence more than a reasonable time before the beginning of the relevant special event; or

(b) end more than a reasonable time after the end of the relevant special event.

"(2C) Where regulations are made for the purposes of subsection 81C (1) specifying a purpose as a purpose for which a limited licence may be granted, the regulations may provide that subsections (1) and (2) apply in relation to licences that have that purpose as if:

(a) the period specified in the regulations (not exceeding 5 years) were substituted for the reference to 5 years in paragraph (1) (a);

(b) the period specified in the regulations (not exceeding 3 years) were substituted for the reference to 3 years in subsection (2); and

(c) the period specified in the regulations (exceeding 12 months) were substituted for the reference to 12 months in subsection (2)."

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 –  
SECT 33

33. (1) Section 88 of the Principal Act is repealed and the following sections are substituted:

Suspension and revocation of commercial licence

"88. (1) The Tribunal may suspend or revoke a commercial licence if it is authorised to do so by subsection (2), (4), (5) or (6).

"(2) The Tribunal may suspend or revoke a commercial licence if it appears to the Tribunal that it is advisable in the public interest to do so, having regard only to the following matters or circumstances:

- (a) the Tribunal is satisfied that the licensee has failed to comply with the undertaking given under subsection 83 (1) or 86 (4), as the case may be, in relation to the licence;
- (b) the Tribunal is satisfied that the licensee:
  - (i) is no longer a fit and proper person to hold the licence; or
  - (ii) no longer has the financial, technical and management capabilities necessary to provide an adequate and comprehensive service pursuant to the licence; or
- (c) the Tribunal is satisfied that a condition of the licence has not been complied with.

"(3) Where an implementation plan is applicable to a licensee in respect of a commercial television licence, the Tribunal shall, in determining for the purposes of subsection (2) whether the licensee has failed to comply with an undertaking given under subsection 83 (1) or 86 (4) in relation to the licence, have regard to the terms of the implementation plan.

"(4) The Tribunal may suspend or revoke a commercial licence if the Tribunal is satisfied that the licensee has unreasonably or repeatedly delayed paying an amount payable by the licensee under a Fees Act.

"(5) Where an MCS permit has been granted in respect of a commercial television licence, the Tribunal may suspend or revoke the licence if the Tribunal is satisfied that:

(a) the licensee has failed to comply with:

(i) a condition of the permit; or

(ii) an undertaking given under subsection 94V (5) or 94X (3) in relation

to the permit; and

(b) it is advisable in the public interest, having regard to that failure, that the licence be suspended or revoked.

"(6) Where an implementation plan is applicable to a licensee in respect of a commercial television licence, the Tribunal may suspend or revoke the licence if the Tribunal is satisfied that:

(a) the licensee has failed to a significant extent to comply with the implementation plan; and

(b) it is advisable in the public interest, having regard to that failure, that the licence be suspended or revoked.

"(7) Before the Tribunal suspends or revokes a licence under subsection (6):

(a) the Chairman of the Tribunal shall give the Minister written notice that the Tribunal is satisfied as to the matters referred to in paragraphs (6) (a) and (b) in relation to the licence; and

(b) the Tribunal shall have regard to any representations made by the Minister.

"(8) Without limiting subsection (7), the Minister may include, in representations made pursuant to that subsection in relation to a licence, details of any proposed variations of the implementation plan applicable to the licensee in respect of the licence.

Suspension and revocation of supplementary radio licence

"88A. (1) The Tribunal may suspend or revoke a supplementary radio licence if it is authorised to do so by subsection (2) or (3).

"(2) The Tribunal may suspend or revoke a supplementary radio licence if it appears to the Tribunal that it is advisable in the public interest to do so, having regard only to the following matters or circumstances:

(a) the Tribunal is satisfied that the licensee has failed to comply with the undertaking given under subsection 83 (1) or 86 (4), as the case may be, in relation to the licence;

(b) the Tribunal is satisfied that the licensee:

(i) is no longer a fit and proper person to hold the licence; or

(ii) no longer has the financial, technical and management capabilities necessary to provide an adequate and comprehensive service pursuant to the licence;

(c) the Tribunal is satisfied that a condition of the licence has not been complied with.

"(3) The Tribunal may suspend or revoke a supplementary radio licence if the Tribunal is satisfied that the licensee has unreasonably or repeatedly delayed paying an amount payable by the licensee under a Fees Act.

#### Suspension and revocation of public licence

"88B. The Tribunal may suspend or revoke a public licence if it appears to the Tribunal that it is advisable in the public interest to do so, having regard only to the following matters or circumstances:

(a) the Tribunal is satisfied that the licensee has failed to comply with an undertaking given under subsection 83 (1) or 86 (4), as the case may be, in relation to the licence;

(b) the Tribunal is satisfied that the licensee:

(i) is no longer a fit and proper person to hold the licence; or

(ii) no longer has the financial, technical and management capabilities necessary to provide an adequate and comprehensive service pursuant to the licence;

(c) the Tribunal is satisfied that a condition of the licence has not been complied with;

(d) the undesirability of a person being in a position to exercise control,

within the meaning of Division 6 of Part IIIBA, of more than one public radio licence or more than one public television licence;

(e) the undesirability of:

(i) the Commonwealth, a State or the Northern Territory or a statutory authority of the Commonwealth, a State or a Territory; or

(ii) a political party;

being in a position to exercise control, within the meaning of Division 6 of Part IIIBA, of a public licence;

(f) the undesirability of a public licence being held by a corporation whose operations pursuant to the licence are conducted, either wholly or substantially, for the purpose of the acquisition by another person of profit or gain;

(g) the desirability of members of the community to be served pursuant to a public licence being in a position to exercise control of the licence;

(h) the need to encourage members of the community to be served pursuant to a public licence to participate in:

(i) the operations of the licensee in providing the service pursuant to the licence; and

(ii) the selection and provision of programs to be broadcast pursuant to the licence.

Suspension and revocation of remote licence

"88C. (1) The Tribunal may suspend or revoke a remote licence if it is authorised to do so by subsection (2) or (3).

"(2) The Tribunal may suspend or revoke a remote licence if it appears to the Tribunal that it is advisable in the public interest to do so, having regard to the following matters or circumstances:

(a) the Tribunal is satisfied that the licensee has failed to comply with the undertaking given under subsection 83 (1) or 86 (4), as the case may be, in relation to the licence;

(b) the Tribunal is satisfied that the licensee:

(i) is no longer a fit and proper person to hold the licence; or

(ii) no longer has the financial, technical and management capabilities necessary to provide an adequate and comprehensive service pursuant to the licence;

(c) the Tribunal is satisfied that a condition of the licence has not been complied with;

(d) any other matters or circumstances that the Tribunal considers relevant.

"(3) The Tribunal may suspend or revoke a remote licence if the Tribunal is satisfied that the licensee has unreasonably or repeatedly delayed paying an amount payable by the licensee under a Fees Act.

Suspension and revocation of limited licence

"88D. (1) The Tribunal may suspend or revoke a limited licence if the Tribunal is satisfied that:

(a) the licensee is no longer a fit and proper person to hold the licence;

(b) the licensee is no longer capable of complying with the conditions of the licence;

(c) any relevant matters specified by regulations made for the purposes of subsection 81C (1) have not been satisfied; or

(d) it is otherwise in the public interest to suspend or revoke the licence.

"(2) In exercising its powers under subsection (1) the Tribunal may have regard to:

(a) any breach of the conditions of the licence by the licensee;

(b) any outline provided by the licensee in accordance with subsection 82AC (1) or 86G (1);

(c) the content and format of the programs broadcast by the licensee pursuant to the licence;

(d) any delay by the licensee in paying amounts payable by the licensee under a Fees Act; and

(e) any other matters or circumstances that the Tribunal considers relevant.

## Suspension and revocation-general

"88E. (1) A suspension or revocation of a licence shall be by notice in writing to the licensee.

"(2) The suspension of a licence shall be for the period (not exceeding 7 days) specified in the notice.

"(3) A person is not entitled to compensation from the Commonwealth or the Tribunal by reason of the suspension or revocation of a licence.

"(4) While a licence is suspended, the licence has no force or effect, but the period of currency of the licence continues to run."

(2) Section 88 of the Principal Act continues to apply, after the commencement of this subsection and until 1 March 1989, in relation to the suspension or cancellation of a re-broadcasting or re-transmission licence as if the amendment made by subsection (1) had not been made.

## BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 – SECT 34

34. (1) Sections 89A, 89B and 89C of the Principal Act are repealed and the following sections are substituted:

### Transfer of commercial licences

"89A. (1) Subject to subsections (2), (3) and (4), the holder of a commercial licence may:

- (a) transfer the licence to another person; or
- (b) admit another person to participate in any of the benefits of the licence or to exercise any of the powers or authorities granted by the licence; but only with the written consent of the Tribunal.

"(2) A commercial licence shall not be transferred to a person if the person would, by virtue of subsection 81AA (1), be ineligible for the grant of the licence.

"(3) A person shall not be admitted to participate in any of the benefits of a commercial licence, or to exercise any of the powers or authorities granted

by a commercial licence, if the person would be ineligible for the grant of the licence under subsection 81AA (1).

"(4) A commercial licence shall not be transferred to a person, and a person shall not be admitted to participate in any of the benefits of a commercial licence or to exercise any of the powers or authorities granted by a commercial licence, before the end of the period of 2 years commencing on the day of commencement of the licence.

"(5) Subsection (4) does not apply to:

(a) the grant of a commercial radio licence or of a commercial television licence under section 99 or 99A of the Broadcasting and Television Amendment Act 1985; or

(b) the grant of a commercial television licence pursuant to section 94ZC or 94ZG of this Act.

"(6) A person to whom the holder of a commercial licence proposes to transfer the licence shall give a written undertaking to the Tribunal in the same terms as an undertaking required to be given under subsection 83 (1).

"(7) The Tribunal shall not refuse to give consent to the transfer of a commercial licence unless it is required to do so by subsection (8) or (10).

"(8) The Tribunal shall refuse to give consent to the transfer of a commercial licence to a person if:

(a) the person has failed to give an undertaking under subsection (6);

(b) the Tribunal is satisfied that the giving of the consent would be contrary to a provision of this Act;

(c) it appears to the Tribunal, having regard only to the following matters or circumstances, that it is advisable in the public interest to refuse consent:

(i) the Tribunal is not satisfied that the person:

(A) is a fit and proper person to hold the licence;

(B) has the financial, technical and management capabilities

necessary

to provide an adequate and comprehensive service pursuant to the licence; and



(C) is otherwise capable of complying with the conditions of the licence;

(ii) if the licence's service area:

(A) is not a metropolitan service area; and

(B) overlaps the service area of at least one other commercial licence

whose service area is also not a metropolitan service area;

the need to avoid undue concentration of influence, whether, direct or indirect, on the person and on the corporation or corporations holding the other licence or licences; or

(d) the circumstances are such that, if the Tribunal gave consent:

(i) the Tribunal would have reasonable grounds for believing that a person would be contravening section 90C, 92 or 92JB in circumstances that would constitute an offence against that section;

(ii) a person would be contravening section 90F, 92C or 92JD; or

(iii) a condition specified in section 90G or 92D would be contravened.

"(9) For the purposes of paragraph (8) (d), the Tribunal may disregard a contravention of section 90C, 92 or 92JB by a person if satisfied that:

(a) as soon as practicable after the transfer of the licence, the person will take all reasonable steps with a view to causing the contravention to cease; or

(b) in the case of a contravention by a person other than the transferee-the contravention will not result in the person being, within the meaning of Part IIIIBA, in a position to control the transferee.

"(10) The Tribunal shall refuse to give consent to the transfer to a person 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.

Transfer of supplementary radio licences

"89B. (1) The holder of a supplementary radio licence may:

- (a) transfer the licence to another person; or
- (b) admit another person to participate in any of the benefits of the licence or to exercise any of the powers or authorities granted by the licence; but only with the written consent of the Tribunal.

"(2) A person to whom the holder of a supplementary radio licence proposes to transfer the licence shall give a written undertaking to the Tribunal in the same terms as an undertaking required to be given under subsection 83 (1).

"(3) The Tribunal shall not refuse to give consent to the transfer of a supplementary radio licence unless it is required to do so by subsection (4) or (5).

"(4) The Tribunal shall refuse to give consent to the transfer of a supplementary radio licence to a person if:

- (a) the person has failed to give an undertaking under subsection (2);
- (b) the Tribunal is satisfied that the giving of the consent would be contrary to a provision of this Act; or
- (c) it appears to the Tribunal, having regard only to the following matters or circumstances, that it is advisable in the public interest to refuse consent:

- (i) it is not satisfied that the person is a fit and proper person to hold the licence;

- (ii) it is not satisfied that the person has the financial, technical and management capabilities necessary to provide an adequate and comprehensive service pursuant to the licence;

- (iii) it is not satisfied that the person is otherwise capable of complying with the conditions of the licence.

"(5) The Tribunal shall refuse to give consent to:

- (a) the transfer of a supplementary radio licence by the licensee to another person; or
- (b) the admission by the licensee of a supplementary radio licence or, if the licence is held by 2 or more persons as co-owners, by any of those

persons, of another person to participate in any of the benefits of the licence or to exercise any of the powers or authorities granted by the licence; unless that other person is the holder of a commercial radio licence and the whole or a substantial part of the service area of that commercial radio licence is coextensive with the whole or a substantial part of the service area of the supplementary radio licence.

"(6) In relation to a supplementary radio licence held by 2 or more persons as co-owners, the references in this section to the transfer by the licensee of the licence shall be read as references to the transfer by any of those persons of the whole of the person's interest in the licence.

#### Transfer of public licences

"89C. (1) Subject to subsection (3), the holder of a public licence may admit another person to participate in any of the benefits of the licence or to exercise any of the powers or authorities granted by the licence, but only with the written consent of the Tribunal.

"(2) A public licence may not be transferred.

"(3) A person shall not be admitted to participate in any of the benefits of a public licence, or to exercise any of the powers or authorities granted by a public licence, if the person would be ineligible for the grant of the licence under subsection 81AA (2) or (3).

#### Transfer of remote licences

"89CA. (1) The holder of a remote licence may:

- (a) transfer the licence to another person; or
- (b) admit another person to participate in any of the benefits of the licence or to exercise any of the powers or authorities granted by the licence; but only with the written consent of the Tribunal.

"(2) A person to whom the holder of a remote licence proposes to transfer the licence shall give a written undertaking to the Tribunal in the same terms as an undertaking required to be given under subsection 83 (1).

"(3) The Tribunal shall not refuse to give consent to the transfer of a

remote licence unless it is required to do so by subsection (4).

"(4) The Tribunal shall refuse to give consent to the transfer of a remote licence to a person if:

(a) the person has failed to give an undertaking under subsection (2);

(b) the Tribunal is satisfied that the giving of the consent would be contrary to a provision of this Act; or

(c) it appears to the Tribunal, having regard to the following matters or circumstances, that it is advisable in the public interest to refuse consent:

(i) it is not satisfied that the person:

(A) is a fit and proper person to hold the licence;

(B) has the financial, technical and management capabilities

necessary

to provide an adequate and comprehensive service pursuant to the licence; and

(C) is otherwise capable of complying with the conditions of the licence;

(ii) subject to the desirability of ensuring that, in all parts of Australia, there are available:

(A) at least one service provided pursuant to a commercial radio licence or remote radio licence; and

(B) at least one service provided pursuant to a commercial television licence or remote television licence;

the need to avoid an undue concentration of the ownership or control, direct or indirect, of the media in the service area of the licence;

(iii) the likelihood that, if the Tribunal gave consent, a person would,

in relation to the licence or the holder of the licence, contravene an order of the Tribunal made for the purposes of section 92V;

(iv) any relevant government policy statements;

(v) any matters prescribed by regulations for the purposes of this paragraph;

(vi) any other matters or circumstances that the Tribunal considers

relevant.

"(5) In relation to a remote licence held by 2 or more persons as co-owners, the references in this section to the transfer by the licensee of the licence shall be read as references to the transfer by any of those persons of the whole of the person's interest in the licence.

#### Transfer of limited licence

"89CB. (1) The holder of a limited licence may:

- (a) transfer the licence to another person; or
- (b) admit another person to participate in any of the benefits of the licence or to exercise any of the powers or authorities granted by the licence; but only with the written consent of the Tribunal.

"(2) Where the Tribunal is asked to consent to the transfer of a limited licence to a person, the Tribunal may ask the person to give the Tribunal a written statement that sets out an outline of the content and format of the programs that the person intends to broadcast if the licence is transferred to the person.

"(3) A request under subsection (2) shall be in writing.

"(4) The Tribunal shall not give its consent under subsection (1) to the transfer of a limited licence to a person if it is satisfied that:

- (a) the person is not a fit and proper person to hold the licence;
- (b) the person is not capable of complying with the conditions of the licence;
- (c) any relevant matters specified by regulations made for the purposes of subsection 81C (1) have not been satisfied; or
- (d) it is otherwise not in the public interest to give the consent.

"(5) In deciding whether to consent to the transfer of a limited licence to a person, the Tribunal may have regard to:

- (a) any outline provided by the person in accordance with subsection (2);
- (b) any failure by the person to provide an outline in accordance with subsection (2);
- (c) the likelihood that if the Tribunal gave consent, a person would, in

relation to the licence or the holder of the licence, contravene an order of the Tribunal made for the purposes of section 92VA; and

(d) any other matters or circumstances that the Tribunal considers relevant.

"(6) A limited licence shall not be transferred to a person if the person would, by virtue of subsection 81AA (5), be ineligible for the grant of the licence.

Effect of transfer etc. of licence

"89CC. (1) Where, with the written consent of the Tribunal, a licensee transfers the licence to another person, that person shall be deemed to become the licensee to the exclusion of the former licensee.

"(2) Where, with the written consent of the Tribunal, a licensee admits another person to participate in any of the benefits of the licence or to exercise any of the powers or authorities granted by the licence, this Act applies as if every reference in this Act (except in subsection (3)) to a licensee or to the holder of a licence included a reference to that person.

"(3) The performance by the licensee or the other person referred to in subsection (2) of an obligation imposed upon the licensee by the licence or by this Act shall, to the extent of that performance, be deemed to release both the licensee and that person from the obligation."

(2) Where the Tribunal had, before the commencement of this subsection, given a consent under section 89A of the Principal Act, the consent has effect, after the commencement of this subsection, as if it had been given:

(a) where the consent relates to a commercial licence-under section 89A of the amended Act;

(b) where the consent relates to a supplementary radio licence-under section 89B of the amended Act;

(c) where the consent relates to a public licence-under section 89C of the amended Act; or

(d) where the consent relates to a remote licence-under section 89CA of the amended Act.

(3) In subsection (2):

"amended Act" means the Principal Act as amended by subsection (1).

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 –  
SECT 35 Licence warrants

35. Section 89D of the Principal Act is amended:

(a) by omitting subsections (1) and (2);

(b) by omitting from subsection (3) "Upon the grant of the licence, the Minister shall grant to the licensee" and substituting "Where the Tribunal has determined that a licence should be granted to a person, the Minister shall grant the person";

(c) by inserting after subsection (3) the following subsections:

"(3A) Technical conditions specified under subsection (3) may include conditions that are to be applicable only in specified circumstances.

"(3B) If, at the time when the licence warrant is granted, the licence itself has not been granted, the licence warrant has effect from the time when the licence is granted."

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 –  
SECT 36

36. After section 89D of the Principal Act the following heading and sections are inserted:

"Division 2-Retransmission permits and temporary transmission permits  
Retransmission permits

"89DA. (1) A person may apply to the Minister for the grant of a permit under this section.

"(2) The reference in subsection (1) to the grant of a permit includes a reference to the grant of a permit by way of renewal.

"(3) The application must be made in the form approved by the Minister.

"(4) A permit under this section shall only be granted to a corporation that is formed within the limits of the Commonwealth or a Territory.

"(5) Where a person (who may be a licensee) applies for a permit under this section, the Minister may grant the person:

(a) a permit authorising the person to rebroadcast programs broadcast or transmitted by the Corporation, the Service or a licensee;

(b) a permit authorising the person to use telegraph lines to transmit programs broadcast or transmitted by the Corporation, the Service or a licensee; or

(c) a permit authorising persons to whom the permit holder transmits programs broadcast or transmitted by the Corporation, the Service or a licensee by telegraph line to use telegraph lines to transmit the programs to other persons.

"(6) Where a licensee applies for a permit under this section, the Minister may grant the licensee a permit authorising persons to whom the licensee's programs are broadcast to use telegraph lines to transmit the programs to other persons.

"(7) A permit under this section:

(a) shall be in writing;

(b) shall specify the period for which the permit is to be in force;

(c) if the permit is granted under paragraph (5) (a)-shall specify:

(i) the programs to be rebroadcast under the permit; and

(ii) the area to be served pursuant to the permit;

(d) if the permit is granted under paragraph (5) (b) or (c) or subsection (6)-shall specify:

(i) the programs to be transmitted under the permit; and

(ii) the persons to whom the programs may be transmitted under the permit; and

(e) shall specify the conditions on which the permit is granted.

"(8) Conditions specified under subsection (7) may include conditions that are to be applicable only in specified circumstances.



"(9) In deciding whether to grant a permit under this section, the Minister shall have regard to:

(a) the desirability of ensuring that, as far as practicable, a technically adequate signal is available throughout the service area of a licence;

(b) the implications (if any) for the integrity of the service area of any licence if the permit were granted; and

(c) any other matters or circumstances that the Minister considers relevant.

"(10) Where the Minister refuses to grant a person a permit under this section, the Minister shall give the person a written statement setting out the reasons for not granting the permit.

"(11) Transmissions are not authorised by a permit under this section unless they are made in accordance with the conditions specified in the permit.

"(12) Examples of the operation of this section and section 6B are set out in the Schedule.

#### Duration of retransmission permit

"89DB. (1) The period specified under paragraph 89DA (7) (b) shall not exceed:

(a) if the permit is granted otherwise than by way of renewal-5 years; or

(b) if the permit is granted by way of renewal-3 years.

"(2) A retransmission permit granted continues in force, subject to subsections 89DE (1) and (5), for the period specified in the permit.

#### Technical conditions for retransmission permit

"89DC. If a retransmission permit is granted under paragraph 89DA (5) (a), the conditions specified under paragraph 89DA (7) (e) shall include technical conditions.

#### Variation of retransmission permit

"89DD. (1) The Minister may vary a retransmission permit.

"(2) A variation shall be made by written notice to the holder of the

retransmission permit.

#### Suspension and cancellation of retransmission permit

"89DE. (1) The Minister may suspend a retransmission permit.

"(2) A suspension shall be made by written notice to the holder of the retransmission permit.

"(3) The suspension of a retransmission permit shall be for the period (not exceeding 7 days) specified in the notice.

"(4) While a retransmission permit is suspended, the permit has no force or effect, but the period of currency of the permit continues to run.

"(5) The Minister may cancel a retransmission permit.

"(6) A cancellation under subsection (5) shall be made by written notice to the holder of the retransmission permit.

"(7) A notice under subsection (2) or (6) shall include a statement setting out the reasons for suspending or cancelling the permit.

"(8) A person is not entitled to compensation from the Commonwealth by reason of the suspension or cancellation of a retransmission permit.

#### Temporary transmission permit

"89DF. (1) A person may apply to the Minister for a permit under this section.

"(2) The application must be made in the form approved by the Minister.

"(3) Where the Minister considers it appropriate to do so, the Minister may refer an application made under subsection (1) to the Tribunal and ask the Tribunal to make recommendations to the Minister in relation to the application.

"(4) Where the Minister makes a request under subsection (3), the Minister shall specify the matters on which the Tribunal is to make recommendations.

"(5) The Tribunal shall make recommendations to the Minister on the matters specified by the Minister.

"(6) The Minister shall have regard to any recommendations made by the Tribunal pursuant to the request.

"(7) Where a person applies for a permit under this section, the Minister

may grant the person a permit authorising the person to conduct temporary transmissions.

"(8) A permit under this section:

- (a) shall be in writing;
- (b) shall specify the period for which the permit is to be in force; and
- (c) shall specify the conditions on which the permit is granted.

"(9) Transmissions are not authorised by a permit under this section unless they are made in accordance with:

- (a) the conditions specified in the permit; and
- (b) any other conditions that are determined by the Minister.

"(10) Anything done pursuant to a permit under this section shall be taken not to be a contravention of the Radiocommunications Act 1983 or the regulations under that Act.

#### Duration of temporary transmission permit

"89DG. The period specified under paragraph 89DF (8) (b) shall not exceed 14 days.

#### Advertising not allowed pursuant to temporary transmission permit

"89DH. (1) Subject to subsection (2), the holder of a temporary transmission permit shall not broadcast advertisements.

"(2) Subsection (1) does not apply to a temporary transmission permit granted in relation to a proposed variation of a licence warrant or an MCS permit warrant.

#### Cancellation of temporary transmission permit

"89DI. The Minister may cancel a temporary transmission permit by notice given to the holder of the permit, or to such other person as the Minister considers appropriate, by any means that the Minister considers appropriate."

37. Before section 92V of the Principal Act the following section is inserted in Division 5 of Part IIIA:

Interpretation

"92UA. In this Division:

'foreign person' has the same meaning as in section 92D;

'interest' means an interest of any kind, whether direct or indirect, and includes a shareholding interest, a voting interest and a financial interest."

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 –  
SECT 38

Orders relating to ownership, control etc. of remote licences

38. Section 92V of the Principal Act is amended by omitting subsection (4).

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 –  
SECT 39

39. After section 92V of the Principal Act following section is inserted:

Orders relating to ownership, control etc. of limited licences

"92VA. (1) The Tribunal may make orders under section 17 for or in relation to:

- (a) the ownership of limited licences;
- (b) the holding of interests in the holders of limited licences; and
- (c) the exercise of control of, or influence on, the holders, or the operations of the holders, of limited licences.

"(2) Without limiting subsection (1), the Tribunal may make orders under section 17 with respect to:

- (a) the number of limited licences, or of limited licences of a particular kind, that may be held by a person or in the holders of which a person may have an interest;

- (b) the interests that a person may have in the holder of a limited licence;
- (c) the number of directorships that a person may hold in companies having interests in the holders of limited licences that are companies;
- (d) the approval of the Tribunal of transactions involving the acquisition of interests in the holder of a limited licence;
- (e) the provisions to be contained in the constituent documents of the holder of a limited licence; and
- (f) changes to the constituent documents of the holder of a limited licence.

"(3) In making orders for the purposes of this section the Tribunal shall have regard to the undesirability of the exercise of undue influence by foreign persons on the operations of the holders of limited licences."

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 –  
SECT 40 Repeal of section 99A

40. Section 99A of the Principal Act is repealed.

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 –  
SECT 41 Special provisions relating to advertisements

41. Section 100 of the Principal Act is amended by omitting subsection (5A) and substituting the following subsection:

"(5A) A licensee shall not broadcast an advertisement for, or for the use of:

- (a) cigarettes;
- (b) cigarette tobacco; or
- (c) other tobacco products."

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 –

SECT 42 Broadcasting or televising of political matter or controversial matter

42. Section 116 of the Principal Act is amended by omitting from subsection (6) the definition of "election" and substituting the following definition:

" 'election' means an election to a Parliament;".

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 –

SECT 43

43. After section 119AB of the Principal Act the following section is inserted in Part IV:

Special provisions relating to limited licences

"119AC. (1) It is a condition of a limited licence that the service provided pursuant to the licence is in accordance with the purpose for which the licence is granted.

"(2) Subject to this section, the holder of a limited licence shall not broadcast an advertisement if the licensee receives payment or other consideration for broadcasting the advertisement.

"(3) Subsection (2) does not apply to a limited licence that is granted for the purposes of providing an information service of the kind referred to in paragraph 81B (5) (b).

"(4) Nothing in subsection (2) shall be taken to prevent the holder of a special limited licence from broadcasting, in accordance with any applicable program standards, a sponsorship announcement.

"(5) For the purposes of subsection (4), a sponsorship announcement:

- (a) shall not promote activities, events, products, services or programs;
- (b) may acknowledge the support, whether financial or otherwise, of a person or persons:

- (i) in respect of a particular program or programs provided under the licence; or

(ii) generally in respect of the service provided under the licence;  
and

(c) may specify the name and address of, and a concise description of the general nature of any business, undertaking or activity carried on by, that person or those persons.

"(6) In this section:

'special limited licence' means:

- (a) a limited licence granted for special event purposes;
- (b) a limited licence granted for special interest purposes; or
- (c) a limited licence of a kind declared by the regulations to be a special limited licence for the purposes of this section."

#### BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 – SECT 44 Licensee to keep accounts etc.

44. Section 123 of the Principal Act is amended by inserting after subsection (4) the following subsection:

"(4AA) Where:

- (a) a corporation (in this subsection called the 'associated corporation') is related to the corporation that holds a licence; and
  - (b) the Tribunal requests the associated corporation to give the Tribunal information that is:
    - (i) information about the activities or affairs of the associated corporation; and
    - (ii) relevant to the operation of a Fees Act;
- the associated corporation shall give the Tribunal the information specified in the request."

#### BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 – SECT 45 Penalty for unpaid licence fees

45. Section 123A of the Principal Act is amended by inserting in paragraph (6) (a) "non-limited" after "the holder of a".

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 –  
SECT 46

46. (1) After section 125F of the Principal Act the following section is inserted:

Delegation by Minister

"125G. The Minister may by signed instrument delegate to an officer of the Department all or any of the Minister's powers and functions under:

- (a) subsection 82AB (3);
- (b) subsection 89D (3);
- (c) subsection 89D (6);
- (d) section 89DA, 89DD, 89DE, 89DF or 89DI;
- (e) subsection 94N (1) or (3);
- (f) section 94P; or
- (g) section 94ZC."

(2) Notwithstanding the repeal of section 94ZM of the Principal Act, a delegation in force under that section immediately before the commencement of this subsection continues in force, after the commencement of this subsection, as if it were a delegation under section 125G of the Broadcasting Act 1942.

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 –  
SECT 47 New Schedule

47. The Principal Act is amended by adding at the end the Schedule set out in Schedule 2 to this Act.

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 –  
SECT 48 Consequential and minor amendments of the Broadcasting Act 1942



48. (1) The Principal Act is amended as set out in Schedule 3 to this Act.

(2) The Principal Act is amended as set out in Schedule 4 to this Act.

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 –  
SECT 49 Consequential amendments of other legislation

49. The Acts specified in Schedule 5 are amended as set out in that Schedule.

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 –  
SECT 50 Conversion of re-broadcasting and re-transmission licences

50. (1) Where a person holds a re-broadcasting licence or a re-transmission licence, the Minister may grant the person a retransmission permit under section 89DA of the Broadcasting Act 1942 in substitution for the licence.

(2) For the purposes of:

(a) the grant of a retransmission permit pursuant to subsection (1); and

(b) the application of the Broadcasting Act 1942 in relation to a retransmission permit granted pursuant to subsection (1); the amendments made by sections 15, 16 and 36, subsection 48 (2), section 49 and Schedules 2, 4 and 5 shall be taken to commence on the twenty-eighth day after the day on which this Act receives the Royal Assent.

(3) Where the licence is a re-broadcasting licence, the retransmission permit shall be a permit of the kind referred to in paragraph 89DA (5) (a) of the Broadcasting Act 1942.

(4) Where the licence is a re-transmission licence, the retransmission permit shall be a permit of the kind referred to in paragraph 89DA (5) (b) of the Broadcasting Act 1942.

(5) The Minister may grant a retransmission permit to a person pursuant to subsection (1) without receiving an application from the person for the grant

of the permit.

(6) Where a permit is granted pursuant to subsection (1) in substitution for a licence, the licence ceases to have effect when the permit commences to have effect.

(7) In this section:

"re-broadcasting licence" means a re-broadcasting licence within the meaning of the Broadcasting Act 1942 as in force immediately before the commencement of this subsection;

"re-transmission licence" means a re-transmission licence within the meaning of the Broadcasting Act 1942 as in force immediately before the commencement of this subsection.

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 -  
PART IV

PART IV-AMENDMENTS OF THE RADIO LICENCE FEES  
ACT 1964

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 –  
SECT 51 Principal Act

51. In this Part, "Principal Act" means the Radio Licence Fees Act 1964\*3\*.  
\*3\* No. 119, 1964, as amended. For previous amendments, see No. 93, 1966; No. 148, 1973; Nos. 37 and 188, 1976; No. 94, 1977; No. 50, 1978; Nos. 114 and 168, 1981; No. 155, 1982; No. 58, 1983; No. 68, 1985; and Nos. 66 and 116, 1987.

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 –  
SECT 52 Interpretation

52. Section 4 of the Principal Act is amended by inserting the following definition in subsection (1):

" 'Broadcasting Act' means the Broadcasting Act 1942;"

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 -  
PART V

PART V-AMENDMENTS OF TRANSITIONAL LEGISLATION

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 –  
SECT 53 Amendments of the Broadcasting and Television Act 1942 as in force  
Immediately before 1 January 1986 for the purpose of its continued application to old  
system licences

53. For the purposes of the continued application, by virtue of section 98  
of the Broadcasting and Television Amendment Act 1985, of the Broadcasting and  
Television Act 1942 as in force immediately before 1 January 1986, section 106  
of the Broadcasting and Television Act 1942 as in force immediately before 1  
January 1986 is amended by inserting after subsection (4) the following  
subsections:

"(4A) Where:

(a) a corporation (in this subsection called the 'associated corporation')  
is related to the corporation that holds a licence; and

(b) the Tribunal requests the associated corporation to give the Tribunal  
information that is:

(i) information about the activities or affairs of the associated  
corporation; and

(ii) relevant to the operation of the Broadcasting Stations Licence

Fees

Act 1964 or the Television Stations Licence Fees Act 1964; the associated corporation shall give the Tribunal the information specified in the request.

"(4B) In subsection (4A):

'related corporation' has the same meaning as in the Companies Act 1981."

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 –  
SECT 54 Amendments of the Broadcasting and Television Amendment Act 1985

54. (1) Section 98 of the Broadcasting and Television Amendment Act 1985 is amended:

(a) by omitting from subsection (1) "subsection (2)" and substituting "subsections (2) and (8)";

(b) by omitting from paragraph (1) (c) "radio" and substituting "broadcasting";

(c) by adding at the end the following subsection:

"(8) Where:

(a) an application for the grant of a supplementary broadcasting licence

was lodged under the previous Act before the commencement date;

(b) before the commencement of this subsection a licence has not been granted pursuant to the application; and

(c) the Tribunal would, but for this subsection, grant the applicant a supplementary broadcasting licence;

the following provisions have effect:

(d) the Tribunal may grant the applicant a supplementary radio licence under section 81 of the Broadcasting Act 1942;

(e) the Minister may determine the technical conditions of a licence warrant in respect of the supplementary radio licence and grant the licence warrant to the applicant under section 89D."

(2) Section 100 of the Broadcasting and Television Amendment Act 1985 is amended by omitting from subsection (1) "83, 86, 86A" and substituting "83A, 83B, 83C, 83D, 86AA, 86AB, 86A, 86E, 86F,".

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 –  
SECT 55 Amendments of the Broadcasting Amendment Act (No. 3) 1987

55. (1) Section 23 of the Broadcasting Amendment Act (No. 3) 1987 is amended by omitting "88" and substituting "88C".

(2) Section 24 of the Broadcasting Amendment Act (No. 3) 1987 is amended by omitting from subsection (3) "88 (1A) (e)" and substituting "88B (e)".

(3) Section 34 of the Broadcasting Amendment Act (No. 3) 1987 is amended by omitting from subsection (6) "86 (12)" and substituting "86 (6)".

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 -  
SCHEDULE 1

SCHEDULE 1

Section 11 CONSEQUENTIAL AMENDMENTS OF THE AUSTRALIAN  
BROADCASTING CORPORATION ACT  
1983

Section 3 (definitions of "appoint", "award", "Disciplinary Appeal Board", "officer of the Corporation", "Promotions Appeal Board", "Service" and "Tenure Appeal Board"):

Omit the definitions.

Section 10:

Add at the end the following subsection:

"(3) All acts and things done in the name of, or on behalf of, the Corporation by the Managing Director shall be taken to have been done by the Corporation."

Paragraph 13A (2) (a):

Omit "officer or temporary".

Paragraph 13A (2) (b):

Omit "officer or temporary".

Paragraph 13A (2) (c):

Omit "officer or temporary".

Subsection 17 (1A):

(a) Omit "officers or temporary".

(b) Omit "officer or temporary".

Subsection 20 (4):

Omit "officer" (wherever occurring), substitute "employee".

Subsection 23 (1):

Omit "officer or temporary".

Subsection 24 (1):

Omit "officer or temporary".

Subsection 27 (3):

Omit "officers and temporary".

Paragraph 81 (1) (b):

Omit "officers and full-time" (wherever occurring).

Paragraph 82 (3) (b):

Omit "officer", substitute "employee".

Subsection 83 (3):

Omit the subsection.

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 -

SCHEDULE 2

#### SCHEDULE

Section 47 NEW SCHEDULE TO THE BROADCASTING ACT 1942

#### SCHEDULE

Sections 6B and 89DA

EXAMPLES OF THE OPERATION OF SECTIONS 6B AND 89DA  
(RETRANSMISSION PERMITS)

In these examples, a line is a telegraph line and an arrow indicates the transmission along a line of a program broadcast or transmitted by the Radio Station. The radio licence service area boundary is the boundary of the service area of the licence held by the Radio Station.

EXAMPLE No. 1 Notes: The Radio Station does not need a retransmission permit for line 1 because the transmissions along line 1 terminate within the licence service area.

Notes: The Radio Station does not need a retransmission permit for line 2 either; although the line travels outside the licence service area, the transmissions along the line terminate within the licence service area.

EXAMPLE No. 2 Notes: The Radio Station needs a retransmission permit for line 1 because the transmissions along the line terminate outside the licence service area.

Notes: The Radio Station may obtain a retransmission permit that authorises the transmissions that will be made along lines 2, 3 and 4 by TAB Headquarters: See paragraph 89DA (5) (c).

Notes: If the Radio Station does not obtain a retransmission permit for lines 2, 3 and 4, TAB Headquarters will need to obtain a permit for those lines.

Notes: The one permit may be obtained for a number of lines; the lines need not be individually identified but may be described as a class. A retransmission permit granted to the Radio Station (see paragraph 89DA (5) (c)) or TAB Headquarters (see paragraph 89DA (5) (b)) might authorise TAB Headquarters to use lines to transmit programs to "TAB Shops in NSW".

EXAMPLE No. 3 Notes: Retransmission permits are not required for lines 1 or 3 because the transmissions along these lines terminate within the licence service area.

Notes: A retransmission permit is required for line 2.

Notes: The Radio Station may obtain a retransmission permit that authorises the transmissions that will be made along line 2 (subsection 89DA (6)).

Notes: If the Radio Station does not obtain a retransmission permit for line 2, the Bank Head Office will need to obtain a permit for that line.

EXAMPLE No. 4 Notes: The Radio Station does not need a retransmission permit for line 1 because transmissions along the line terminate within the licence service area. Notes: Retransmission permits are not required for lines 2, 3, 4 and 5 because they are being used in the course of a telephone call between the Motel and the caller (see paragraph 6B (2) (d)).

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 -  
SCHEDULE 3

SCHEDULE 3

Subsection 48 (1)

CONSEQUENTIAL AND MINOR AMENDMENTS OF THE BROADCASTING  
ACT 1942

Subsection 4 (1) (definition of "licence"):

Insert after paragraph (h) the following paragraph:

"(ha) a limited licence;"

Subsection 4 (1):

Omit the definition of "supplementary licence".

Subsection 4 (1):

Insert the following definitions:

" 'limited licence' means a licence granted as a limited licence under section 81 including such a licence as renewed or further renewed;

'media in the service area of the licence' has the meaning given by subsection (13);

'non-limited licence' means a licence that is not a limited licence;"

Subsection 4 (3):

Omit the subsection.

Paragraph 4 (7) (e):

Insert "or the Service" after "Corporation".

Section 4:

Add at the end the following subsection:



"(13) A reference in this Act to the media in the service area of a licence includes a reference to:

- (a) newspapers, journals and the like available in that service area; and
- (b) any broadcasting service provided pursuant to another licence that has

a service area that overlaps the service area of the licence."

Paragraph 16 (1) (b):

Insert "89B, 89C, 89CA and 89CB" after "89A".

Subsection 17 (4):

Omit "or fail to comply with".

Paragraph 17A (2) (d):

Omit "sub-section 88 (1), (1B) or (1C)", substitute "section 88, 88A, 88B, 88C or 88D".

Paragraph 17A (2) (e):

Insert "89B (1), 89C (1), 89CA (1) or 89CB (1)" after "89A (1)".

Paragraph 17A (2) (k):

Insert "or 92VA" after "92V".

Paragraph 17A (2) (m):

Omit the paragraph.

Subsection 80 (1) (definition of "applicant"):

Omit "or subsection 82A (1)", substitute ", subsection 82A (1) or section 82AB".

Subsection 80 (1) (definitions of "service specification" and "technical condition"):

Omit the definitions.

Subsection 80 (2A):

- (a) Omit "section 89A" (wherever occurring), substitute "section 89B".
- (b) Omit "subsection 81 (6)", substitute "section 81AB".
- (c) Omit "paragraph 89A (1F) (b)", substitute "subsection 89B (5)".

Subsection 81 (2):

Omit "having", substitute "that are non-limited licences and that have".

Subsections 81 (3), (4), (4AA), (4A) and (6):

Omit the subsections.

Subsection 81A (2):

Omit "the outline of".

Subsection 81A (2):

Omit "it is proposed".

Paragraph 81A (5) (b):

Omit "86 (12)", substitute "86 (6)".

Subsection 82 (6):

Add at the end "or section 82AB".

Paragraph 82A (4) (b):

Omit the paragraph, substitute the following paragraph:

"(b) dismiss the application on technical or planning grounds."

Paragraph 84 (3) (c):

Omit "80 (1)", substitute "4 (1)".

Subsection 85 (7):

Omit "80 (1)", substitute "4 (1)".

Subsection 86A (4):

(a) Omit "86", substitute "86AB".

(b) Insert "non-limited" after "pursuant to" (first occurring).

Paragraph 86B (1) (a):

Omit all the words after "section 86" (first occurring), substitute "sections 86 and 86AA".

Paragraph 86B (1) (b):

Omit "section 86", substitute "sections 86 and 86AB".

Paragraph 86B (1) (c):

Omit "section 86", substitute "sections 86 and 86AA".

Paragraph 86C (1) (a):

Omit "sections 89A (other than subsection (1F)) and 89B", substitute "sections 89A (other than subsection (10)) and 89B (other than subsection

(5))".

Subparagraph 86C (1) (a) (i):

Omit "89A (1D)", substitute "89A (8)".

Subparagraph 86C (1) (a) (ii):

Omit "section 89B has", substitute "subsections 89A (2) and (3) have".

Subsection 87 (1):

Insert "and to the regulations (if any) made pursuant to subsection (2C)" after "this Act".

Subsection 87 (2):

Insert "and to the regulations (if any) made pursuant to subsection (2C)" after "this Act".

Paragraph 89D (3) (a):

Insert ", limited licence" after "public licence".

Paragraph 89D (3) (ba):

Insert "or limited licence" after "a remote licence".

Subparagraph 90JA (2) (c) (i):

Omit "83 (5), 86 (10) or 89A (1A)", substitute "83 (1), 86 (4) or 89A (6)".

Paragraph 90JA (2) (d):

Omit "89A (1D)", substitute "89A (8)".

Subsection 92 (1AF):

Omit "98N", substitute "89N".

Subparagraph 92FAA (2) (c) (i):

Omit "83 (5), 86 (10) or 89A (1A)", substitute "83 (1), 86 (4) or 89A (6)".

Paragraph 92FAA (2) (d):

Omit "89A (1D)", substitute "89A (8)".

Heading to Division 5 of Part III BA:

Add at the end "and Limited Licences".

Section 92Y:

Omit "83 (7A), 86 (11DA), 88 (1E) and 89B (2) and (4)", substitute "83C (4)

and 86E (4), section 88B, subsections 89C (2) and (3)".

Subsection 94ZC (9):

Omit "83 (5)", substitute "83 (1)".

Section 94ZE:

(a) Omit "and 83 but section 83", substitute ", 83 and 83A but section 83A".

(b) Omit "subparagraph 83 (6) (c) (iii)", substitute "paragraph 83A (4) (c)".

(c) Omit "paragraph 83 (6) (d)", substitute "subsection 83A (5)".

Section 94ZF:

(a) Omit "83 but section 83", substitute ", 83 and 83A but section 83A".

(b) Omit "subparagraph 83 (6) (c) (iii)", substitute "paragraph 83A (4) (c)".

(c) Omit "paragraph 83 (6) (d)", substitute "subsection 83A (5)".

Section 94ZM:

Repeal the section.

Subsection 100 (9):

Omit "the Director-General of Health", substitute "that Secretary".

Paragraph 119A (1) (b):

Omit "86", substitute "86AA, 86AB, 86E, 86F or 86G".

Paragraph 119A (1) (ba):

Omit the paragraph.

Paragraph 119A (1) (c):

Omit "86 (12)", substitute "86 (6)".

Paragraph 119A (1) (e):

After "88" insert ", 88A, 88B, 88C or 88D".

Paragraph 119A (1) (f):

Insert ", 89B, 89C, 89CA or 89CB" after "89A".

Paragraph 119A (2) (a):

Omit "(ba),".

Subsection 123 (1):

Insert "a limited licence," after "other than".

Paragraph 123 (4) (b):

Omit ", the Radio Licence Fees Act 1964 or the Television Licence Fees Act 1964", substitute "a Fees Act".

Subsection 123 (5) (definition of "supplementary radio service"):

Omit "broadcasting licence or a supplementary radio television licence", substitute "licence".

Subsection 123A (7) (definition of "licence fee"):

Omit "the Radio Licence Fees Act 1964 or the Television Licence Fees Act 1964", substitute "a Fees Act".

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 -  
SCHEDULE 4

SCHEDULE 4

Subsection 48 (2)

CONSEQUENTIAL AND MINOR AMENDMENTS OF THE BROADCASTING  
ACT 1942

Subsection 4 (1) (definition of "licence"):

- (a) Add "or" at the end of paragraph (h).
- (b) Omit paragraphs (j) and (k).

Subsection 4 (1) (definitions of "service area" and "technical condition"):

Omit the definitions, substitute respectively the following definitions:

" 'service area' means:

- (a) in relation to a licence or the holder of a licence-the area to be served pursuant to the licence;
- (b) in relation to a permit or the holder of a permit-the area to be served pursuant to the permit; or
- (c) in relation to the Corporation or the Service-an area in which the Corporation or Service, as the case may be, provides a broadcasting service,

being an area determined by the Minister to be a service area for the purposes of this paragraph;

'technical condition' means:

(a) in relation to a licence warrant or an MCS permit warrant-a condition relating to:

(i) the design, siting, installation, maintenance or operation (including operating power, constancy and frequency) of the radiocommunications transmitter or transmitters to be used for the transmission of programs pursuant to the licence or the MCS permit;

(ii) the design, siting, installation, maintenance or operation of facilities (not including studios or studio equipment facilities) to be used in association with the radiocommunications transmitter or transmitters; or

(iii) the siting of the studio or the studios to be used in connection with the transmission of programs pursuant to the licence or the MCS permit; and

(b) in relation to a retransmission permit granted under paragraph 89DA (5) (a) or temporary transmission permit-a condition relating to:

(i) the design, siting, installation, maintenance or operation (including operating power, constancy and frequency) of the radiocommunications transmitter or transmitters to be used for the transmission of programs pursuant to the permit; or

(ii) the design, siting, installation, maintenance or operation of facilities to be used in association with the radiocommunications transmitter or transmitters;"

Subsection 4 (1):

Omit the definitions of "re-broadcasting licence" and "re-transmission licence".

Subsection 4 (1):

Insert the following definitions:

" 'permit' means:

- (a) an MCS permit;
- (b) a retransmission permit; or
- (c) a temporary transmission permit;

'renewal', in relation to a licence or permit, has the meaning given by subsection (11);

'retransmission permit' means a permit granted under section 89DA including

such a permit as renewed or further renewed;

'temporary transmission permit' means a permit granted under section 89DF;".

Subsection 4 (5):

Omit "MCS" (wherever occurring).

Subsection 4 (11):

(a) Omit "an MCS permit" (wherever occurring), substitute "a licence or permit".

(b) Omit "original permit" (wherever occurring), substitute "original licence or permit".

(c) Omit "renewed permit" (wherever occurring), substitute "renewed licence or permit".

Subsection 17A (3):

Omit the subsection.

Subsection 18A (3):

Add at the end "or retransmission permit".

Heading to Part IIIB:

Omit the heading, substitute the following headings:

"PART IIIB-LICENCES, LICENCE WARRANTS AND PERMITS

"Division 1-Licences and licence warrants".

Subsection 80 (2):

Omit the subsection.

Subsection 81 (5):

Omit the subsection, substitute the following subsection:

"(3) Such fees as are prescribed are payable in respect of grants and renewals of public licences."

Paragraph 89D (3) (a):

Omit ", limited licence or re-transmission", substitute "or limited".

Paragraph 89D (3) (ba):

Add at the end "and".

Paragraph 89D (3) (c):

Omit the paragraph.

Subsection 94ZA (1):

Omit the subsection.

Section 95:

Repeal the section.

Subsection 96 (1):

Omit "other than a re-transmission licence".

Subsection 96 (3):

Omit the subsection.

Section 102:

Add at the end the following subsection:

"(2) A reference in subsection (1) to a licensee includes a reference to the holder of an MCS permit."

Subsection 113 (1):

Omit "(other than a television re-transmission licence)".

Section 113A:

(a) Omit "re-broadcasting or re-transmission licence", substitute "retransmission permit".

(b) Omit "licence" (second occurring), substitute "permit".

After subsection 117 (3):

Insert the following subsection:

"(3A) A reference in this section to a licensee includes a reference to:

(a) the holder of an MCS permit; and



(b) the holder of a temporary transmission permit."

Section 117A:

Add at the end the following subsection:

"(9) A reference in this section to a licensee includes a reference to the holder of an MCS permit."

Section 118:

Add at the end the following subsection:

"(4) A reference in this section to a licensee includes a reference to:

- (a) the holder of an MCS permit; and
- (b) the holder of a temporary transmission permit."

Subsection 121 (2):

Omit "an MCS", substitute "a".

Section 122:

(a) Omit "re-broadcasting licence or a re-transmission licence" (first occurring), substitute "retransmission permit".

(b) Omit "that licence", substitute "the permit".

(c) Omit "another licence (other than a re-broadcasting licence or a re-transmission licence)", substitute "a licence".

Subsection 123 (1):

Omit ", a re-broadcasting licence or a re-transmission licence".

Paragraph 125A (2) (a):

Omit "MCS".

Paragraph 125A (2) (b):

Omit "an MCS", substitute "a".

Subsection 125B (2):

Omit "an MCS" (wherever occurring), substitute "a".

Section 126:

Repeal the section.

Subsection 129 (2):

Omit "an MCS", substitute "a".

Subsection 131 (2):

Omit "an MCS", substitute "a".

Subsection 131A (2):

Omit "an MCS" (wherever occurring), substitute "a".

Subsection 134 (4):

Omit "an MCS" (wherever occurring), substitute "a".

BROADCASTING LEGISLATION AMENDMENT ACT 1988 No. 146 of 1988 -  
SCHEDULE 5

SCHEDULE 5

Section 49

CONSEQUENTIAL AMENDMENTS OF OTHER LEGISLATION

Copyright Act 1968

Subsection 10 (1) (definitions of "holder of a radio licence" and "holder of a television licence"):

Omit the definitions.

Section 91:

Omit the section, substitute the following section:

Television broadcasts and sound broadcasts in which copyright subsists

"91. Subject to this Act, copyright subsists:

(a) in a television broadcast made from a place in Australia by:

(i) the Australian Broadcasting Corporation;

(ii) the Special Broadcasting Service; or

(iii) any prescribed person, being a person who is, at the time when the broadcast is made, the holder of a transmitter licence or a temporary permit in force under the Radiocommunications Act 1983;

(b) in a television broadcast made from a place in Australia pursuant to a licence or permit granted under the Broadcasting Act 1942 by the holder of the licence or permit;

(c) in a sound broadcast made from a place in Australia by:

(i) the Australian Broadcasting Corporation;

- (ii) the Special Broadcasting Service; or
- (iii) any prescribed person, being a person who is, at the time when the broadcast is made, the holder of a transmitter licence or a temporary permit in force under the Radiocommunications Act 1983; and
- (d) in a sound broadcast made from a place in Australia pursuant to a licence or permit granted under the Broadcasting Act 1942 by the holder of the licence or permit."

Paragraph 99 (b):

(a) Omit "a television licence, a holder of a radio licence", substitute "a licence or permit granted under the Broadcasting Act 1942".

(b) Omit "91 (b) (iii)", substitute "91 (c) (iii)".

Subsection 152 (1) (definition of "broadcaster"):

(a) Omit paragraphs (b) and (c), substitute the following paragraph:

"(b) the holder of a licence or permit granted under the Broadcasting Act 1942; or".

(b) Omit "91 (b) (iii)", substitute "91 (c) (iii)".

Subsection 152 (8):

Omit "radio licence", substitute "radio licence granted under the Broadcasting Act 1942".

Subsection 152 (9):

(a) Omit "radio licence", substitute "radio licence granted under the Broadcasting Act 1942".

(b) Omit "Broadcasting Act 1942", substitute "that Act".

Paragraph 184 (1) (f):

(a) Omit "television licence, by a holder of a radio licence", substitute "licence or permit granted under the Broadcasting Act 1942".

(b) Omit "91 (b) (iii)", substitute "91 (c) (iii)".

Paragraph 199 (7) (a):

Omit "television licence", substitute "licence or permit granted under the Broadcasting Act 1942".

Paragraph 199 (7) (b):

(a) Omit "radio licence", substitute "licence or permit granted under the Broadcasting Act 1942".

(b) Omit "91 (b) (iii)", substitute "91 (c) (iii)".

Telecommunications Act 1975

Paragraph 94 (2) (f):

Omit "(other than a re-transmission licence under that Act)".

After paragraph 94 (2) (f):

Insert the following paragraphs:

"(faa) by the holder of an MCS permit under Part IIIC of the Broadcasting Act 1942 in accordance with the technical conditions of the MCS permit warrant; (fab) by the holder of a temporary transmission permit under the Broadcasting Act 1942 in accordance with the technical conditions of the permit; (fac) by the holder of a retransmission permit under the Broadcasting Act 1942 (other than a permit authorising the use of telegraph lines to transmit programs) in accordance with the technical conditions of the permit;"