

BROADCASTING AND TELEVISION AMENDMENT ACT 1977

No. 160 of 1977

An Act to amend the *Broadcasting and Television Act 1942*, and for related purposes.

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:

1. (1) This Act may be cited as the *Broadcasting and Television Amendment Act 1977*.¹ Short title,
&c.

(2) The *Broadcasting and Television Act 1942*² is in this Act referred to as the Principal Act.

2. This Act shall come into operation on a date to be fixed by Proclamation. Commence-
ment

3. Section 9 of the Principal Act is repealed and the following section substituted:

“9. A member who, on the date on which he becomes a member, has a direct or indirect pecuniary interest in a business carried on in Australia, or in a body corporate carrying on such a business, being an interest that could be in conflict with his duties as a member, shall dispose of the interest within 14 days after that date.” Pecuniary
interests

4. Section 15A of the Principal Act is amended—

(a) by omitting from sub-paragraph (ii) of paragraph (b) of sub-section (2) “or” (last occurring); and

(b) by omitting sub-paragraph (iii) of that paragraph and substituting the following sub-paragraphs:

“(iii) being a member to whom section 9 applies, fails to comply with that section; or

“(iv) acquires a direct or indirect pecuniary interest in a business carried on in Australia, or in a body corporate carrying on such a business, being an interest that could be in conflict with his duties as a member.” Termination
of office

5. Section 15C of the Principal Act is repealed and the following section is substituted:

“15C. (1) Subject to sub-sections (6) and (7), for the purposes of holding an inquiry, the Tribunal may be constituted by a Division of the Tribunal consisting of— Divisions of
Tribunal

- (a) a member or members (who may be or include the Chairman of the Tribunal) designated by the Chairman of the Tribunal; and
- (b) the associate member or associate members (if any) appointed for those purposes.

“(2) Where a Division of the Tribunal includes the Chairman or a person acting as Chairman in accordance with sub-section (1) of section 10, he shall preside.

“(3) Subject to sub-section (2), where a Division of the Tribunal includes the Vice-Chairman, he shall preside.

“(4) Subject to sub-sections (2) and (3), where a Division of the Tribunal consists of, or includes, two or more members, the Chairman shall designate one of the members to preside.

“(5) Where a Division of the Tribunal consists of one member and an associate member or associate members, the member shall preside.

“(6) This section does not apply in relation to an inquiry for the purposes of—

- (a) the renewal of a licence for a commercial broadcasting station or commercial television station, being, in either case, a station situated within a radius of 50 kilometres from the General Post Office in the capital city of a State; or
- (b) the suspension or revocation of any licence in force under Part IIIB.

“(7) The powers of the Tribunal constituted by a Division of the Tribunal for the purposes of holding an inquiry do not extend to the making of a decision, recommendation or report on the matter or matters the subject of the inquiry.”

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

Functions of
Tribunal

“16. (1) The functions of the Tribunal are—

- (a) to grant, renew, suspend and revoke licences;
- (b) to authorize transactions in relation to licences under section 89A;
- (c) to grant approvals and give directions under Divisions 2 and 3 of Part IV in relation to the ownership and control of licences;
- (d) to determine the standards to be observed by licensees in respect of the broadcasting or televising of programs;
- (e) to determine the conditions subject to which advertisements may be broadcast or televised by licensees;
- (f) to determine the hours during which programs may be broadcast or televised by licensees;

- (g) to hold inquiries as provided by this Act or as directed by the Minister under section 18, and to publish reports in relation to those inquiries;
- (h) to assemble information relating to broadcasting and television in Australia under section 106A; and
- (i) to perform such duties and exercise such powers as are imposed or conferred upon it by this Act and the regulations.

“(2) In performing its functions under paragraphs (d), (e) and (f) of sub-section (1) in relation to broadcasting stations or television stations, the Tribunal shall consult the Broadcasting Council or, if there is no Broadcasting Council, it shall consult representatives of those stations.

“(3) In this section, except so far as the contrary intention appears, ‘licence’ has the same meaning as in Part IIIB.”

7. Section 18 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “making a recommendation under this Act to the Minister as to any matter, or before”;
- (b) by omitting from sub-section (1) “or the Minister so directs”; and
- (c) by omitting from sub-section (2) “and the Tribunal shall hold an inquiry accordingly” and substituting “and may direct the Tribunal to make recommendations in relation to that matter following the inquiry”.

Holding of inquiries

8. Section 19 of the Principal Act is repealed and the following section is substituted:

“19. (1) Subject to this section, proceedings before the Tribunal at an inquiry shall be held in public.

Inquiries to be in public except in special circumstances

“(2) Where the Tribunal is satisfied that, by reason of the confidential nature of any evidence or matter or for any other reason, it is desirable that the Tribunal should give directions of all or any of the following kinds, namely—

- (a) directions that the proceedings, or part of the proceedings, at an inquiry shall be held in private and directions as to the persons who may be present;
- (b) directions prohibiting or restricting the publication of evidence given before the Tribunal, whether in public or in private, or of matters contained in documents lodged with, or received in evidence by, the Tribunal; and
- (c) directions prohibiting or restricting the disclosure to some or all of the persons having an interest in the proceedings at an inquiry of evidence given before the Tribunal, whether in public or in private, or of matters contained in documents lodged with, or received in evidence by, the Tribunal,

the Tribunal shall give such of those directions as it thinks necessary.

“(3) In considering whether any directions should be given under sub-section (2), the Tribunal shall take as the basis of its consideration the principle that it is desirable that proceedings before the Tribunal at an inquiry should be held in public and that evidence given before the Tribunal and the contents of documents lodged with, or received in evidence by, the Tribunal should be made available to the public and to all the persons having an interest in the proceedings, but shall pay due regard to any reasons why any such directions should be given.”.

9. Section 21 of the Principal Act is repealed and the following sections are substituted:

Evidence

“21. (1) For the purposes of proceedings before the Tribunal at an inquiry, the Tribunal may take evidence on oath or affirmation.

“(2) For the purposes of proceedings before the Tribunal at an inquiry, an officer of the staff of the Tribunal shall, if directed to do so by the Chairman of the Tribunal, or by another member of the Tribunal who is to preside, or presides, at the proceedings, summon a person to appear before the Tribunal at the proceedings to give evidence and to produce such documents (if any) as are referred to in the summons.

“(3) The member who presides at proceedings before the Tribunal at an inquiry—

- (a) may require a person appearing before the Tribunal at the proceedings to give evidence either to take an oath or to make an affirmation; and
- (b) may administer an oath or affirmation to a person so appearing before the Tribunal.

“(4) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the answers he will give to questions asked him will be true.

“(5) A summons for the purposes of this section shall be in a form determined by the Tribunal and may be served on a person personally or by sending it by registered letter addressed to that person at the usual or last known place of residence or business of that person.

Failure of
witness to
attend

“21AA. A person served in accordance with section 21 with a summons to appear as a witness before the Tribunal shall not, without reasonable excuse—

- (a) fail to attend as required by the summons; or
- (b) fail to appear and report himself from day to day unless excused, or released from further attendance, by a member.

Penalty: \$1,000 or imprisonment for 3 months.

“21AB. (1) A person appearing as a witness before the Tribunal shall not, without reasonable excuse—

Refusal to be sworn or to answer questions

- (a) when required under section 21 either to take an oath or make an affirmation—refuse or fail to comply with the requirement;
- (b) refuse or fail to answer a question that he is required to answer by the member presiding at the proceedings; or
- (c) refuse or fail to produce a document that he is required to produce by a summons served on him in accordance with section 21.

Penalty: \$1,000 or imprisonment for 3 months.

“(2) It is a reasonable excuse for a person to refuse or fail to answer a question that he is required to answer under this section, that the answer to the question may tend to incriminate him and it is a reasonable excuse for a person to refuse or fail to produce a document that he is required to produce under this section, that any matter contained in the document may tend to incriminate him.”.

10. After section 22 of the Principal Act the following section is inserted:

“22AA. Where a person does not have an interest in proceedings before the Tribunal at an inquiry, the Tribunal may declare that the person is not entitled to appear before the Tribunal at the proceedings.”.

Appearance before Tribunal

11. Section 25 of the Principal Act is amended by adding at the end thereof the following sub-section:

Procedure at inquiries

“(3) Subject to section 19, the Tribunal shall ensure that every person having an interest in proceedings before the Tribunal at an inquiry is given a reasonable opportunity to present his case and, in particular, to inspect any documents to which the Tribunal proposes to have regard in reaching a decision in the proceedings and to make submissions in relation to those documents.”.

12. After section 25 of the Principal Act the following sections are inserted:

“25AA. Where the Tribunal has held an inquiry in pursuance of section 83, 86, 89, 90J or 92F, it shall cause a copy of its decision to be served on each person having an interest in the proceedings.

Notice of decision

“25AB. A person shall not—

Contempt of Tribunal

- (a) insult a member, acting member, associate member or acting associate member in or in relation to the exercise of his powers or functions at or in relation to proceedings before the Tribunal at an inquiry;
- (b) interrupt proceedings of the Tribunal at an inquiry;

- (c) create a disturbance, or take part in creating or continuing a disturbance, in or near a place where the Tribunal is holding an inquiry;
- (d) contravene or fail to comply with a direction given by the Tribunal under this Division; or
- (e) do any other act or thing that would, if the Tribunal were a court of record, constitute a contempt of that court.

Penalty: \$1,000 or imprisonment for 3 months.”

13. After section 25A of the Principal Act the following section is inserted in Division 3 of Part II:

Reports on
inquiries

“25B. (1) Subject to sub-section (2), where the Tribunal has held an inquiry, the Tribunal shall furnish to the Minister, and cause to be made available to the public in such manner as it thinks fit, a report setting out—

- (a) a summary of the proceedings at the inquiry, including particulars of, and the reasons for, any declaration made under section 22AA;
- (b) the findings of the Tribunal and the reasons for those findings; and
- (c) the decision or recommendations (if any) made by the Tribunal in consequence of those findings, and the reasons for any such decision or recommendations.

“(2) In preparing a report under sub-section (1), the Tribunal shall have regard to any relevant direction given under section 19.

“(3) Where an inquiry to which a report relates was held in pursuance of a direction of the Minister under section 18, any matter that, by reason of a direction given under section 19, has not been included in the report shall be furnished separately to the Minister.

“(4) A copy of a report furnished to the Minister under sub-section (1) in relation to an inquiry held in pursuance of a direction of the Minister under section 18 shall be laid before each House of the Parliament within 15 sitting days of that House after the receipt of the report by the Minister.”

14. After section 28 of the Principal Act the following section is inserted:

Provision of
facilities for
Tribunal

“28A. The Minister may, at the request and expense of the Tribunal, arrange for the provision of facilities and services required by the Tribunal for the performance of its functions under this Act.”

15. Section 59 of the Principal Act is amended by inserting after sub-section (1) the following sub-section: Functions of Commission

“(1A) In complying with the requirements of sub-section (1), the Commission shall have regard to the services provided under Part IIIA.”

16. Section 63 of the Principal Act is repealed and the following section is substituted:

“63. (1) The Commission shall provide such studios, offices and other accommodation as are necessary for the performance of its powers and functions under this Act, and such accommodation in relation to the studios as the Minister requires for the carrying out of the technical services to be provided in pursuance of sub-section (2) of section 73. Studios to be provided by Commission

“(2) The location of any studios to be provided by the Commission in pursuance of sub-section (1) shall be subject to the approval of the Minister.”

17. Sections 73, 74, 75 and 76 of the Principal Act are repealed and the following sections are substituted:

“73. (1) Subject to sub-section (2), the Commission shall provide and operate all the technical equipment required for the purposes of performing its functions. Provision and operation of studios, transmitting stations, &c.

“(2) The Minister shall arrange for the provision and operation, for the purposes of the performance by the Commission of its functions, of—

- (a) transmitting stations, broadcasting translator stations, television translator stations and television repeater stations; and
- (b) technical equipment to connect a studio of the Commission to the local transmitting station.

“(3) Except in so far as the Minister otherwise determines, the stations and equipment referred to in sub-section (2) shall be provided and operated without charge to the Commission.

“74. (1) For the purpose of providing and operating the stations referred to in this Division, a person acting under the authority of the Minister may— Lines for conveyance of electric current to stations

- (a) erect, place and maintain any electric line that is necessary for conveying electric current to, or for the operation of, any such station; and
- (b) arrange for and obtain from any person the supply of any electric current that is necessary or advisable for the operation of any such station.

“(2) Except in so far as the Minister otherwise determines, the erection, placing and maintenance of an electric line, and the supply of any

electric current, in pursuance of sub-section (1) shall be without charge to the Commission.

“(3) In respect of the erection, placing and maintenance of an electric line by a person in pursuance of paragraph (a) of sub-section (1), that person has the same powers, and is subject to the same obligations, as are conferred or imposed on the Australian Telecommunications Commission under Part III of the *Telecommunications Act 1975* in relation to the erection, placing and maintenance of lines within the meaning of that Act.

“(4) In this section, ‘electric line’ includes all means used for the purpose of conveying, transmitting, transforming or distributing electricity and any casing, coating, covering, tube, tunnel, pipe, pillar, pole, post, frame, bracket or insulator enclosing, surrounding or supporting the same or any part thereof or any apparatus connected therewith.”

18. The Principal Act is amended by inserting after Part III the following Parts:

“PART IIIA—THE SPECIAL BROADCASTING SERVICE

“*Division 1—Preliminary*

Interpretation

“79B. In this Part, unless the contrary intention appears—
 ‘Chairman’ means the Chairman of the Service;
 ‘Executive Director’ means the Executive Director of the Service;
 ‘member’ means a member of the Service;
 ‘program’ means a broadcasting program or a television program.

“*Division 2—Establishment, Functions and Powers of Service*

Establishment

“79C. There is established by this Part a body by the name of the Special Broadcasting Service.

Functions

“79D. The functions of the Service are—
 (a) to provide multilingual broadcasting services and, if authorized by the regulations, to provide multilingual television services; and
 (b) to provide broadcasting and television services for such special purposes as are prescribed.

Powers

“79E. (1) The Service may do all things that are necessary or convenient to be done for or in connexion with, or as incidental to, the performance of its functions and, in particular, may—
 (a) produce or present programs or arrange, or provide facilities, for the production or presentation of programs;

- (b) subject to section 73 as applied in accordance with section 79ZJ, transmit programs or provide facilities for the transmission of programs;
- (c) arrange for the transmission of programs;
- (d) acquire, accept or take on hire, or dispose of or let out, personal property (including programs or rights or interests in programs);
- (e) acquire, hold or dispose of land and buildings;
- (f) enter into contracts;
- (g) accept gifts, devises or bequests made to the Service, whether on trust or otherwise, or act as trustee of moneys or other property vested in the Service on trust;
- (h) occupy, use and control any land or building owned or held under lease by the Commonwealth and made available for the purposes of the Service; and
- (i) do anything incidental to any of its powers.

“(2) The provision under this Part of broadcasting or television services shall be in accordance with such principles as are prescribed.

“(3) Notwithstanding anything contained in this Part, any moneys or other property vested in the Service on trust shall be dealt with in accordance with the powers and duties of the Service as trustee.

“79F. Where the Service arranges, or provides facilities, for the production, presentation or transmission of programs by other persons, it is the responsibility of the Service to ensure that those programs comply with the provisions of this Act and the regulations to the extent that those provisions are applicable to those programs, but this sub-section does not limit the application of those provisions to those persons.

Responsi-
bility for
programs

“*Division 3—Constitution and Meetings of Service*

“79G. (1) The Service—

- (a) is a body corporate with perpetual succession;
- (b) shall have a common seal; and
- (c) may sue or be sued in its corporate name.

Incorpor-
ation

“(2) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Service affixed to a document and shall presume that it was duly affixed.

“79H. (1) The Service shall consist of a Chairman and not less than 2, nor more than 6, other members. Membership

“(2) The members shall be appointed by the Governor-General as part-time members.

“(3) A member shall be appointed for such period, not exceeding 5 years, as is specified in his instrument of appointment, but is eligible for re-appointment.

“(4) A member shall hold office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.

“(5) The performance of the functions or the exercise of the powers of the Service is not affected by reason only of—

- (a) there being a vacancy in the office of Chairman; or
- (b) the number of members falling below 3 for a period of not more than 6 months.

Pecuniary
interests

“79J. (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Service, otherwise than as a member of, and in common with the other members of, an incorporated company which consists of more than 25 persons and of which he is not a director, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Service.

“(2) A disclosure under sub-section (1) shall be recorded in the minutes of the meeting of the Service and the member shall not be present during any deliberation of the Service with respect to that matter.

Acting
appointments

“79K. (1) The Minister may appoint a person (who may be a member) to act as Chairman—

- (a) during a vacancy in the office of Chairman, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Chairman is absent from duty or from Australia or is, for any other reason, unable to perform the duties of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

“(2) Where a person is acting as Chairman in accordance with paragraph (b) of sub-section (1) and the office of Chairman becomes vacant while that person is so acting, that person may continue so to act until the Minister otherwise directs, the vacancy is filled or the period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

“(3) The Minister may appoint a person to act as a member—

- (a) during a vacancy in the office of a member (other than the Chairman), whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when a member is acting as Chairman, is absent from duty or from Australia or is, for any other reason, unable to perform the duties of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

“(4) The Minister may—

- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person appointed under this section; and
- (b) at any time terminate such an appointment.

“(5) A person appointed under this section may resign his appointment by writing signed by him and delivered to the Minister.

“(6) While a person is acting as Chairman or as a member under this section, he has, and may exercise, all the powers and shall perform all the functions of the Chairman or a member, as the case may be, and, if he is not a member, shall be deemed to be a member for the purposes of sections 79J and 79P.

“(7) The validity of anything done by a person purporting to act under this section shall not be called in question by reason of any defect or irregularity in or in connexion with his appointment or on the ground that the occasion for his so acting had not arisen or had ceased.

“79L. The Minister may grant leave of absence to a member upon such terms and conditions as to remuneration or otherwise as the Minister determines. Leave of absence

“79M. A member may resign his office by writing signed by him and delivered to the Governor-General. Resignation of member

“79N. (1) The Governor-General may terminate the appointment of a member for misbehaviour or physical or mental incapacity. Termination of appointment

“(2) If a member—

- (a) is absent, except on leave granted by the Minister or otherwise with the permission of the Minister, from 3 consecutive meetings of the Service;
 - (b) becomes bankrupt or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
 - (c) fails to comply with his obligations under section 79J,
- the Governor-General shall terminate his appointment.

“79P. (1) The Service shall hold such meetings as are necessary for the performance of its functions. Meetings

“(2) The Chairman may convene a meeting at any time, and shall convene a meeting when requested to do so by the Minister or by a majority of the members for the time being holding office.

“(3) At a meeting a quorum is constituted by a majority of the members for the time being holding office.

“(4) The Chairman shall preside at all meetings at which he is present.

“(5) If the Chairman is not present at a meeting, the members present shall elect one of their number to preside.

“(6) Questions arising at a meeting shall be determined by a majority of the votes of the members present and voting.

“(7) The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

“(8) The Executive Director shall, as far as practicable, attend all meetings, but, if the Service so directs, he shall temporarily retire from any meeting.

“(9) In relation to a time when a person is acting as Chairman, references in this section to the Chairman shall be read as references to that person.

“Division 4—Administration of Service

Executive
Director

“79Q. (1) There shall be an Executive Director of the Service who shall be the chief executive officer of the Service.

“(2) The Executive Director shall be appointed by the Governor-General, and holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.

Term of
office of
Executive
Director

“79R. (1) The Executive Director shall be appointed for such period, not exceeding 7 years, as is specified in his instrument of appointment, but is eligible for re-appointment.

“(2) A person who has attained the age of 65 years shall not be appointed or re-appointed as the Executive Director and a person shall not be appointed or re-appointed as the Executive Director for a period that extends beyond the date on which he will attain the age of 65 years.

Pecuniary
interests of
Executive
Director

“79S. Where, on the date on which a person becomes the Executive Director, the person has a direct or indirect pecuniary interest in a business carried on in Australia, or in a body corporate carrying on such a business, being an interest that could be in conflict with his duties as the Executive Director, he shall dispose of the interest within 14 days after that date.

“79T. (1) The Minister may appoint a person to act as Executive Director— Acting
Executive
Director

- (a) during a vacancy in the office of Executive Director, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Executive Director is absent from duty or from Australia or is, for any other reason, unable to perform the duties of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

“(2) Where a person is acting as Executive Director in accordance with paragraph (b) of sub-section (1) and the office of Executive Director becomes vacant while that person is so acting, that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

“(3) The Minister may—

- (a) determine the terms of conditions of appointment, including remuneration and allowances, of an acting Executive Director; and
- (b) at any time terminate such an appointment.

“(4) A person appointed under this section may resign his appointment by writing signed by him and delivered to the Minister.

“(5) While a person is acting as Executive Director under this section, he has, and may exercise, all the powers and shall perform all the functions of the Executive Director, including powers and functions delegated to the Executive Director under this Part.

“(6) The validity of anything done by a person purporting to act under this section shall not be called in question by reason of any defect or irregularity in or in connexion with his appointment or on the ground that the occasion for his so acting had not arisen or had ceased.

“79U. The Minister may grant leave of absence to the Executive Director on such terms and conditions as to remuneration and otherwise as the Minister directs. Leave of
absence of
Executive
Director

“79V. The Executive Director may resign his office by writing signed by him and delivered to the Governor-General. Resignation
of Executive
Director

“79W. (1) The Governor-General may terminate the appointment of the Executive Director for misbehaviour or physical or mental incapacity. Termination
of office of
Executive
Director

“(2) If the Executive Director—

- (a) engages in paid employment outside the duties of his office without the approval of the Minister;

- (b) is absent from duty, except on leave granted by the Minister, for 14 consecutive days, or for 28 days in any 12 months;
- (c) becomes bankrupt or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (d) fails to comply with his obligations under section 79S; or
- (e) acquires a direct or indirect pecuniary interest in a business carried on in Australia, or in a body corporate carrying on such a business, being an interest that could be in conflict with his duties as the Executive Director,

the Governor-General shall terminate his appointment.

Delegations
by Service

“79X. (1) The Service may, either generally or as otherwise provided by the instrument of delegation, by writing under its common seal, delegate to a member, to the Executive Director or to an officer of the staff referred to in sub-section (1) of section 79Y any of its powers under this Part, other than this power of delegation.

“(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Service.

“(3) A delegation under this section does not prevent the exercise of a power by the Service.

Staff

“79Y. (1) The staff of the Service shall be persons appointed or employed under the *Public Service Act 1922*.

“(2) The Service may, with the approval of the Public Service Board, engage persons to perform services for the Service otherwise than as members of the staff referred to in sub-section (1).

“(3) The terms and conditions of engagement of persons under sub-section (2) shall be such as are, with the approval of the Public Service Board, determined by the Service.

“(4) The Executive Director has all the powers of, or exercisable by, a Permanent Head under the *Public Service Act 1922* so far as those powers relate to the branch of the Australian Public Service comprising the staff referred to in sub-section (1) as if that branch were a separate Department of the Australian Public Service.

“(5) For the purposes of sub-sections (5) and (6) of section 25 of the *Public Service Act 1922*, the Executive Director shall be deemed to be a Permanent Head.

“Division 5—Finance

“79Z. (1) There are payable to the Service such moneys as are appropriated by the Parliament for the purposes of the Service. Moneys to be appropriated

“(2) The Treasurer may give directions as to the amounts in which, and the times at which, moneys referred to in sub-section (1) are to be paid to the Service.

“79ZA. The moneys of the Service shall consist of— Moneys of Service

- (a) moneys paid to the Service under section 79Z;
- (b) moneys received by the Service in respect of the provision of services and facilities;
- (c) the proceeds of the sale or other disposition of any property of the Service (including programs and rights or interests in programs);
- (d) moneys received by the Service in respect of program sponsorship of a kind approved by the Minister;
- (e) any other moneys derived by the Service in the performance of its functions; and
- (f) any moneys received by the Service by way of, or as a result of, a gift, devise or bequest.

“79ZB. The moneys of the Service shall be applied only— Application of moneys

- (a) in payment or discharge of expenses, obligations and liabilities of the Service arising under this Act; and
- (b) in payment of remuneration, allowances and fees payable to members, acting members, the Executive Director, an acting Executive Director and persons referred to in section 79Y.

“79ZC. (1) The Service may open and maintain an account or accounts with an approved bank or approved banks and shall maintain at all times at least one such account. Bank accounts

“(2) The Service shall pay all moneys received by it into an account referred to in this section.

“79ZD. (1) The Service shall prepare estimates, in such form as the Minister directs, of its receipts and expenditure for each financial year and, if the Minister so directs, for any other period specified by the Minister, and the Service shall submit estimates so prepared to the Minister not later than such date as the Minister directs. Estimates

“(2) The moneys of the Service shall not be expended otherwise than in accordance with estimates of expenditure approved by the Minister.

“Division 6—Miscellaneous

“79ZH. (1) The Service shall, as soon as practicable after each 30 June, prepare and furnish to the Minister a report of its operations during the year ended on that date, together with financial statements in respect of that year in such form as the Treasurer approves. ^{Annual report}

“(2) Before furnishing financial statements to the Minister, the Service shall submit them to the Auditor-General, who shall report to the Minister—

- (a) whether the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records;
- (c) whether the receipt and expenditure of moneys, and the acquisition and disposal of assets, by the Service during the year have been in accordance with this Part; and
- (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

“(3) The Service shall furnish to the Minister such additional reports, with or without financial statements, as the Minister from time to time requires.

“(4) The Minister shall cause—

- (a) copies of the report and financial statements of the Service furnished to him under sub-section (1), together with a copy of the report of the Auditor-General; and
- (b) copies of any report and financial statements furnished to him under sub-section (3),

to be laid before each House of the Parliament within 15 sitting days of that House after having been received by the Minister.

“79ZJ. (1) Sections 60, 63, 64, 72 to 77 (inclusive), 78A, 112, 113, 113A, 115, 116 (other than sub-section (1)), 117, 117A, 118, 124A and 131 apply, with such exceptions and subject to such modifications and adaptations as are prescribed, in relation to the Service, to programs broadcast or televised under Part IIIA and to stations used by the Service as they apply in relation to the Commission, to programs broadcast or televised by the Commission and to stations used by the Commission. ^{Application of Act}

“(2) In sub-section (1), ‘station’ means a broadcasting station, television station, broadcasting translator station, television translator station or television repeater station.

“PART IIIB—LICENCES

Interpretation

“80. (1) In this Part, except where the contrary intention appears—
‘applicant’, in relation to a licence, means a person who has lodged an application for the grant of the licence in accordance with sub-paragraph (i) of paragraph (b) of sub-section (1) of section 82;

‘licence’ means—

- (a) a licence for a commercial broadcasting station;
- (b) a licence for a commercial television station;
- (c) a broadcasting translator station licence;
- (d) a television translator station licence;
- (e) a television repeater station licence;
- (f) a public broadcasting licence;
- (g) a public television licence; or
- (h) a licence to which section 130A applies;

‘specification’, in relation to a licence, means a specification of any of the following matters:

- (a) the nature of the service provided in pursuance of the licence;
- (b) the area served in pursuance of the licence;
- (c) the purpose of the service provided in pursuance of the licence;
- (d) in the case of a public broadcasting licence or public television licence—the special purpose for which the licence is granted;
- (e) a matter referred to in section 93, 94, 95 or 96;
- (f) a matter that, by virtue of section 111C, falls within the responsibility of the Minister.

“(2) A reference in this Part to the renewal of a licence shall be read as a reference to the grant of a licence in respect of the station or aerial to which the first-mentioned licence related, where the second-mentioned licence is to commence on the day after the expiration of the first-mentioned licence or on the day after the expiration of the licence granted upon the previous renewal, or, if there have been two or more renewals, the last previous renewal, of the first-mentioned licence.

“(3) For the purposes of sub-section (2), ‘aerial’ means an aerial to which section 130A applies.

Tribunal to act impartially, &c.

“80A. In the performance of its functions under this Part, the Tribunal shall act fairly and impartially and shall observe the rules of natural justice.

“81. (1) Subject to this Act, the Tribunal may grant or renew a licence upon such conditions, and in accordance with such form, as the Tribunal determines. Grant and renewal

“(2) In deciding whether to grant or renew a licence and in determining the conditions upon which or the form in accordance with which a licence is to be granted or renewed, the Tribunal shall have due regard to the need for the commercial viability of the commercial broadcasting and television stations in the area served or to be served in pursuance of the licence.

“(3) A licence for a commercial broadcasting station or for a commercial television station shall not be granted except to a company formed within the limits of the Commonwealth or a Territory and having a share capital.

“(4) A public broadcasting licence or public television licence shall not be granted except to a corporation formed within the limits of the Commonwealth or a Territory, not being a corporation the objects of which include the acquisition of profit or gain for the benefit of its individual members.

“(5) Such fees as are prescribed are payable in respect of—

- (a) grants and renewals of licences, other than licences for commercial broadcasting stations or commercial television stations; and
- (b) transfers of licences to which section 130A applies.

“82. (1) Before a licence is granted (otherwise than by way of renewal) the Minister shall publish, in the *Gazette* and in a newspaper or newspapers, if any, circulating in the area concerned, a notice— Applications

- (a) setting out an outline of the specifications to which it is proposed the licence is to be subject; and
- (b) notifying interested persons that they may—
 - (i) lodge with the Tribunal, not later than a specified date (not being earlier than 21 days after the date of publication of the notice in the *Gazette*) applications, in accordance with a form supplied by the Minister, for the grant of the licence; or
 - (ii) lodge with the Tribunal, not later than 14 days after the date so specified, written submissions relating to the grant of the licence.

“(2) The Tribunal shall make available for public inspection the names and addresses of persons lodging applications in accordance with sub-paragraph (i) of paragraph (b) of sub-section (1).

“(3) The Tribunal shall, within the period of 21 days after the expiration of the period of 14 days referred to in sub-paragraph (ii) of paragraph (b) of sub-section (1), serve on each applicant copies of all submissions lodged in accordance with that sub-paragraph.

“(4) An applicant may, within the period of 21 days after the expiration of the period referred to in sub-section (3), lodge with the Tribunal his reply to any submission a copy of which was served on him under that sub-section.

Consideration of applications by Tribunal

“83. (1) As soon as practicable after the expiration of the period referred to in sub-section (4) of section 82, the Tribunal shall, subject to sub-section (2), hold an inquiry into the grant of the licence.

“(2) Where, in respect of the grant of a broadcasting translator station licence, a television translator station licence, a television repeater station licence or a licence to which section 130A applies—

- (a) there is only one applicant; and
- (b) no submission has been lodged in accordance with sub-paragraph (ii) of paragraph (b) of sub-section (1) of section 82 objecting to the grant of the licence or to the grant of the licence to that applicant,

the Tribunal shall, as soon as practicable after the expiration of the period referred to in sub-section (4) of section 82, hold an inquiry into the grant of the licence or, if it thinks fit, consider the application without holding an inquiry.

“(3) The Tribunal shall, at the inquiry or in its consideration of the application, as the case may be, have regard to any submissions, and to any replies or reply, lodged in accordance with section 82.

“(4) If the Tribunal, in accordance with sub-section (2), considers an application without holding an inquiry, it shall as soon as practicable thereafter furnish to the Minister, and cause to be made available to the public in such manner as it thinks fit, a report of its consideration, including a statement of its reasons for not holding an inquiry.

“(5) The Tribunal shall not refuse to grant a licence unless it has held an inquiry into the grant of the licence and—

- (a) it is satisfied that—
 - (i) where there is only one applicant for the licence—that applicant is not suitable; or
 - (ii) where there are two or more applicants for the licence—none of those applicants is suitable;
- (b) it is satisfied that the grant of the licence would be contrary to a provision of this Act; or
- (c) it appears to the Tribunal that a licence of the kind contemplated by the outline of specifications set out under paragraph (a) of sub-section (1) of section 82 should not be granted.

“84. (1) After the provisions of section 83 have been complied with in relation to a licence, and before the grant of the licence, the Minister shall determine the specifications applicable to the licence (which shall be consistent with, or substantially consistent with, the outline published under paragraph (a) of sub-section (1) of section 82) and notify the Tribunal in writing accordingly. Imposition
of conditions

“(2) Upon the grant of the licence, the conditions of the licence are—

- (a) the specifications so determined by the Minister; and
- (b) such conditions, not relating to matters referred to in the definition of ‘specification’ in sub-section (1) of section 80, as are imposed by the Tribunal.

“85. (1) Subject to this section, the Tribunal may, during the currency of a licence, by notice in writing to the licensee, vary or revoke any of the conditions of the licence (other than conditions applicable by virtue of section 129) or impose further conditions. Variation of
conditions

“(2) In deciding whether to vary or revoke any of the conditions of a licence or to impose further conditions in respect of a licence, the Tribunal shall have due regard to the need for the commercial viability of the commercial broadcasting and television stations in the area served in pursuance of the licence.

“(3) Except with the approval of the Minister, the Tribunal shall not vary, revoke or impose a condition relating to a matter referred to in the definition of ‘specification’ in sub-section (1) of section 80.

“(4) Subject to sub-section (5), the Minister may, during the currency of a licence, by notice in writing, direct the Tribunal, as specified in the notice, to vary or revoke a condition of the licence, or impose a further condition, relating to a matter referred to in the definition of ‘specification’ in sub-section (1) of section 80, and the Tribunal shall comply with the direction.

“(5) Before the Minister gives a direction to the Tribunal under sub-section (4), he shall give the licensee notice in writing, specifying the direction he proposes to give and informing the licensee that he may make representations to him not later than a specified date (being a date not earlier than 14 days after the date of the notice), and shall have regard to any representations so made.

“(6) The Tribunal shall give not less than 14 days’ notice in writing of its intention to vary or revoke a condition, or to impose a further condition, under this section (otherwise than in pursuance of a direction under sub-section (4)), and shall specify in the notice the variation proposed or the condition to be revoked or imposed.

“86. (1) An application for the renewal of a licence shall be made to the Minister in accordance with a form supplied by the Minister. Renewal

“(2) An application for the renewal of a licence shall be made not less than 20 weeks before the expiration of the licence.

“(3) When an application for the renewal of a licence is duly made, the Minister shall refer the application to the Tribunal.

“(4) Upon receipt of the application, the Tribunal shall, by notice in the *Gazette* and in a newspaper or newspapers, if any, circulating in the area concerned, notify interested persons that they may, not later than a specified date (not being earlier than 21 days after the date of publication of the notice in the *Gazette*), lodge with the Tribunal written submissions relating to the renewal of the licence.

“(5) The Tribunal shall, within the period of 21 days after the date specified in pursuance of sub-section (4), serve on the licensee copies of all submissions lodged in accordance with that sub-section.

“(6) The licensee may, within the period of 21 days after the expiration of the period referred to in sub-section (5), lodge with the Tribunal his reply to any submission a copy of which was served on him under that sub-section.

“(7) Subject to sub-section (8), the Tribunal shall hold an inquiry into the renewal of the licence as soon as practicable after the expiration of the period referred to in sub-section (6).

“(8) Where no submissions (other than submissions that, in the opinion of the Tribunal, are frivolous, vexatious or not made in good faith) have been lodged in accordance with sub-section (4), the Tribunal shall, as soon as practicable after the expiration of the period referred to in sub-section (6), hold an inquiry into the renewal of the licence or, if it thinks fit, consider the application without holding an inquiry.

“(9) The Tribunal shall, at the inquiry or in its consideration of the application, as the case may be, have regard to any submissions lodged in accordance with sub-section (4) and to the reply, if any, lodged in accordance with sub-section (6).

“(10) Except as provided in sub-section (11), the Tribunal shall renew the licence.

“(11) Where the Tribunal has held an inquiry into the renewal of the licence—

- (a) the Tribunal may refuse to renew the licence if circumstances exist by reason of which it would be empowered to revoke the licence; and
- (b) the Tribunal shall refuse to renew the licence if it is satisfied that the renewal of the licence would be contrary to a provision of this Act.

“(12) On the renewal of the licence, the Tribunal may vary or revoke any of the conditions of the licence or impose further conditions,

but it shall not, without the approval of the Minister, vary, revoke or impose a condition relating to a matter referred to in the definition of 'specification' in sub-section (1) of section 80.

“(13) If the Tribunal, in accordance with sub-section (8), considers the application without holding an inquiry, it shall as soon as practicable thereafter furnish to the Minister, and cause to be made available to the public in such manner as it thinks fit, a report of its consideration, including a statement of its reasons for not holding an inquiry.

“87. (1) Subject to this Act, a licence granted otherwise than by way of renewal continues in force for such period (not exceeding 5 years) as is specified in the licence. Duration

“(2) Subject to this Act, a licence granted by way of renewal continues in force for 3 years or such lesser period (being not less than 12 months) as is specified in the licence, but the Tribunal shall not specify a period of less than 3 years unless it is satisfied that the circumstances justify its so doing.

“88. (1) Subject to section 89, the Tribunal may, by notice in writing to the licensee, suspend or revoke a licence where— Suspension
and
revocation

- (a) the Tribunal is satisfied that a condition of the licence has not been complied with;
- (b) it appears to the Tribunal that it is advisable in the public interest, for a specified reason, to do so; or
- (c) the Tribunal is satisfied that the licensee has failed to pay an amount payable by him under the *Broadcasting Stations Licence Fees Act 1964* or the *Television Stations Licence Fees Act 1964*.

“(2) The suspension of a licence shall be for a specified period not exceeding 7 days.

“(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) During the period of suspension of a licence, a licence has no force or effect, but the period of currency of the licence continues to run.

“89. The Tribunal shall not suspend or revoke a licence on any ground except after holding an inquiry into the question whether facts exist by reason of which the licence is liable to suspension or revocation on that ground. Procedure
for
suspension
or revocation

“89A. (1) Subject to section 89B, a licensee may, with the consent in writing of the Tribunal, but without that consent shall not, transfer the licence or 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. Transfers

“(2) Where, with the consent in writing of the Tribunal, a licensee transfers his licence to another person, that person shall be deemed to become the licensee to the exclusion of the former licensee.

“(3) Where, with the consent in writing 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 sub-section (4)) to a licensee or to the holder of a licence included a reference to that person.

“(4) The performance by the licensee or the other person referred to in sub-section (3) 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.

Limitation
on transfer
of certain
licences

“89B. (1) This section applies to a licence for a commercial broadcasting station or for a commercial television station or to a public broadcasting licence or a public television licence.

“(2) A licence to which this section applies shall not be transferred to a person, and a person shall not be admitted to participate in any of the benefits of such a licence or to exercise any of the powers or authorities granted by such a licence, if the person would, by virtue of sub-section (3) or (4), as the case may be, of section 81, be ineligible for the grant of the licence.

Commence-
ment of
service

“89C. The holder of a licence shall commence the service in pursuance of the licence on such date as is determined by the Tribunal.

Application
of Wireless
Telegraphy
Act

“89D. Anything done in pursuance of a licence shall be deemed not to be in contravention of the *Wireless Telegraphy Act* 1905 or the regulations under that Act.

Service of
documents

“89E. A document required by a provision of this Part to be served on a person may be served on that person by sending it by registered letter addressed to that person at the usual or last known place of residence or business of that person.”

Repeal of
Division 1 of
Part IV

19. Division 1 of Part IV of the Principal Act is repealed.

Broadcasting
translator
station
licences

20. Section 105AD of the Principal Act is amended—

- (a) by omitting sub-section (1);
- (b) by omitting from sub-section (2) “sub-section (3), the Tribunal shall not recommend that a licence be granted” and substituting “sub-sections (2A) and (3), the Tribunal shall not grant or renew a licence”;
- (c) by inserting after sub-section (2) the following sub-section:

“(2A) The Tribunal shall not form an opinion for the purposes of sub-section (2) except after obtaining and considering the comments of the Minister.”;

- (d) by omitting from sub-section (3) “recommend that a licence be granted” and substituting “grant or renew a licence”;
- (e) by omitting from sub-section (4) “making recommendations under this section” and substituting “considering the grant or renewal of a licence”;
- (f) by inserting in sub-section (4) “or renewed” after “granted”;
- and
- (g) by omitting sub-sections (5), (6) and (8).

21. Section 105B of the Principal Act is amended—

- (a) by omitting sub-section (1);
- (b) by omitting from sub-section (2) “sub-section (2A), the Tribunal shall not recommend that a licence be granted” and substituting “sub-sections (2AA) and (2A), the Tribunal shall not grant or renew a licence”;
- (c) by inserting after sub-section (2) the following sub-section:

“(2AA) The Tribunal shall not form an opinion for the purposes of sub-section (2) except after obtaining and considering the comments of the Minister.”;
- (d) by omitting from sub-section (2A) “recommend that a licence be granted” and substituting “grant or renew a licence”;
- (e) by omitting from sub-section (2B) “making recommendations under this section” and substituting “considering the grant or renewal of a licence”;
- (f) by inserting in sub-section (2B) “or renewed” after “granted”;
- and
- (g) by omitting sub-sections (2C), (2D) and (4).

Television
translator
station
licences

22. Section 105G of the Principal Act is amended—

- (a) by omitting sub-sections (1) and (2) and substituting the following sub-sections:

“(1) Subject to sub-section (2), the Tribunal shall not grant a television repeater station licence (otherwise than by way of renewal of such a licence) if, in the opinion of the Tribunal, satisfactory reception of television programs from a commercial television station or from a television translator station re-transmitting programs received from a commercial television station is being obtained in the area in which the signals from that television repeater station are designed to be satisfactorily received.

“(2) The Tribunal shall not form an opinion for the purpose of sub-section (1) except after obtaining and considering the comments of the Minister.”; and

Television
repeater
station
licences

(b) by omitting sub-section (4).

23. After section 106 of the Principal Act the following sections are inserted:

Assembly of
information

“106A. (1) The Tribunal shall assemble information relating to broadcasting and television in Australia, being information—

- (a) supplied to the Tribunal in accordance with section 106;
- (b) supplied to the Tribunal in accordance with sub-section (2); or
- (c) otherwise acquired by the Tribunal in the performance of its functions.

“(2) The Tribunal may, by notice in writing, require a person who is the holder of a licence granted under Part IIIB to supply to the Tribunal, within a specified period (not being less than 21 days after the receipt of the notice) such information in his possession as is specified, being information relating to a function of the Tribunal, and that person shall comply with the requirement.

“(3) Subject to sub-sections (4) and (5), information assembled under this section—

- (a) shall be made available to the Minister upon request; and
- (b) shall be made available (whether gratis or otherwise, as the Tribunal thinks fit) to any other person upon request.

“(4) In complying with sub-section (3), the Tribunal shall have regard to any directions given under section 19 in relation to the information concerned.

“(5) Information assembled under this section (other than information to which sub-section (4) applies) shall not be made available under sub-section (3) in such manner, or in such circumstances, as, in the opinion of the Tribunal, would be prejudicial to the interests of any person.

Secrecy

“106B. (1) This section applies to every person who is or has been a member, acting member, associate member or acting associate member of the Tribunal or a member of the staff of the Tribunal.

“(2) Subject to this section, a person to whom this section applies shall not, either directly or indirectly, except for the purposes of this Act—

- (a) make a record of, or divulge or communicate to any person, any information concerning the affairs of another person acquired by him by reason of his office or appointment under this Act or in the performance of his duties, or the exercise of his powers or functions, under or in connexion with this Act; or
- (b) produce to any person a document supplied to, lodged with or otherwise acquired by, the Tribunal under this Act.

Penalty: \$1,000 or imprisonment for 3 months.

“(3) Sub-section (2) does not apply to the disclosure of information, or the production of a document, to the Minister, to the Secretary to the Department that deals with matters arising under this Act or to an officer of that Department designated by the Secretary to that Department.

“(4) A person to whom this section applies shall not be required to divulge or communicate to a court information of a kind referred to in paragraph (a) of sub-section (2), or to produce in a court a document of a kind referred to in paragraph (b) of sub-section (2), except where it is necessary to do so for the purposes of this Act, or for the purposes of proceedings under or arising out of this Act.

“(5) Where, in accordance with this section, a person to whom this section applies divulges or communicates to another person information of a kind referred to in paragraph (a) of sub-section (2), or produces to another person a document of a kind referred to in paragraph (b) of sub-section (2), that other person, if he is not a person to whom this section applies, shall be deemed, in relation to that information or document, to be such a person.

“(6) In this section—

‘court’ includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

‘document’ includes any record of information, however recorded or stored, whether in written or printed form, on film, by electronic means or otherwise;

‘produce’ includes permit access to.

24. Section 111A of the Principal Act is repealed and the following section substituted:

“111A. (1) This Part applies to a licence granted for a special purpose, as specified in the licence.

“(2) It is a condition of a public broadcasting licence or a public television licence that the broadcasting station or television station, as the case may be, to which the licence relates is to be operated only for the purpose specified in the licence as described in sub-section (1).”

25. Section 111C of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

“(1) It shall be the responsibility of the Minister—

(a) to plan the development of broadcasting and television services in Australia;

(b) to determine standards and practices in relation to the technical equipment used for broadcasting and television services and the operation of such equipment;

Public
broadcasting
licences and
public
television
licences

Additional
functions of
Minister

- (c) to investigate and correct interference with the transmission and reception of broadcasting and television programs; and
- (d) to conduct examinations, or make or approve arrangements for the conduct of examinations, and to issue certificates, as to the competence of persons to operate technical equipment used for broadcasting and television services.”.

Remuneration

26. Section 111E of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

“(1) This section applies to—

- (a) a member and an associate member of the Tribunal;
- (b) a Commissioner and the general manager of the Commission; and
- (c) a member of the Service and the Executive Director of the Service.

27. After section 111E of the Principal Act the following section is inserted:

Rights of public servants

“111F. Where a person appointed as a member of the Tribunal or as the Executive Director of the Service was, immediately before his appointment, an officer of the Australian Public Service or a person to whom the *Officers’ Rights Declaration Act 1928* applied—

- (a) he retains his existing and accruing rights;
- (b) for the purpose of determining those rights, his service under this Act shall be taken into account as if it were service in the Australian Public Service; and
- (c) that Act applies as if this Act and this section had been specified in the Schedule to that Act.”.

28. Section 119A of the Principal Act is repealed and the following section is substituted:

Review of decisions

“119A. (1) Subject to this section, an application may be made to the Administrative Appeals Tribunal for a review of—

- (a) a variation, revocation or imposition of a condition of a licence by the Tribunal under section 85, other than a variation, revocation or imposition of a condition in accordance with sub-section (4) of that section;
- (b) a refusal by the Tribunal to renew a licence under section 86;
- (c) a variation, revocation or imposition of a condition of a licence by the Tribunal under sub-section (12) of section 86, other than a variation, revocation or imposition of a condition requiring the approval of the Minister;
- (d) a decision by the Tribunal for the purposes of sub-section (2) of section 87 specifying a period of renewal of a licence of less than 3 years;

- (e) a suspension or revocation of a licence by the Tribunal under section 88;
- (f) a refusal by the Tribunal to give consent under section 89A;
- (g) a refusal by the Tribunal to grant approval under section 90J or 92F;
- (h) a determination by the Minister under section 105AB;
- (i) a decision by the Tribunal to grant or renew a licence for a broadcasting translator station for the purpose of the re-transmission of the programs of a metropolitan broadcasting station for reception in an area that is not within a metropolitan broadcasting area;
- (j) a decision by the Tribunal to grant or renew a licence for a television translator station for the purpose of the re-transmission of the programs of a metropolitan television station for reception in an area that is not within a metropolitan television area; or
- (k) a decision by the Tribunal under sub-section (2) of section 119.

“(2) Notwithstanding section 27 of the *Administrative Appeals Tribunal Act 1975*—

- (a) an application in pursuance of paragraph (a), (b), (c), (d), (e) or (f) of sub-section (1) may be made only by or on behalf of the licensee; and
- (b) an application in pursuance of paragraph (g) of sub-section (1) may be made only by or on behalf of the person applying for the approval.

“(3) For the purposes of a review by the Administrative Appeals Tribunal in pursuance of an application referred to in sub-section (1), the Tribunal shall be constituted by a presidential member alone.

“(4) In this section, except so far as the contrary intention appears—
 ‘metropolitan broadcasting area’, ‘metropolitan broadcasting station’, ‘metropolitan television area’ and ‘metropolitan television station’ have the same respective meanings as in Division 5A of Part IV;

‘licence’ has the same meaning as in Part IIIB.”

29. Section 130A of the Principal Act is amended—

- (a) by omitting sub-section (2) and substituting the following sub-section:

“(2) This section applies to a licence that entitles the holder to use a telegraph line for the purpose of transmitting television programs from a receiving aerial maintained and used by that person solely for the reception of television programs to television receivers situated in an area specified in the licence.”;

Community
television
aerials

- (b) by omitting from sub-section (3) “recommend that a permit be granted” and substituting “grant or renew a licence to which this section applies”;
- (c) by omitting from paragraphs (a), (b), (c) and (d) of sub-section (3) “permit” and substituting “licence”;
- (d) by omitting sub-sections (4), (5), (6) and (7) and substituting the following sub-section:
 - “(4) The Tribunal shall not—
 - (a) form an opinion for the purposes of paragraph (a), (b) or (d) of sub-section (3); or
 - (b) form an opinion for the purposes of paragraph (c) of sub-section (3), other than an opinion for the purposes of sub-paragraph (i) or (ii) of that paragraph, except after obtaining and considering the comments of the Minister.”; and
- (e) by omitting from sub-section (8) “permit in force under this section” and substituting “licence to which this section applies”.

Minor and
con-
sequential
amendments

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

Amendments
of
Copyright
Act and
Telecom-
munications
Act

31. The Acts specified in Schedule 2 are amended as set out in that Schedule.

Transitional
provisions—
general

32. (1) In this section, unless the contrary intention appears—

“commencing date” means the date of commencement of this section;

“existing licence” means—

- (a) a licence for a commercial broadcasting station;
- (b) a licence for a commercial television station;
- (c) a broadcasting translator station licence;
- (d) a television translator station licence;
- (e) a television repeater station licence;
- (f) a public broadcasting licence; or
- (g) a public television licence,

in force immediately before the commencing date;

“new licence” has the same meaning as in Part IIIB of the Principal Act as amended by this Act;

“permit” means a permit under section 130A of the Principal Act in force immediately before the commencing date.

(2) An existing licence or a permit continues in force on and after the commencing date for the remainder of the period of its currency (but subject to the Principal Act as amended by this Act) as if it had been granted, under Part IIIB of the Principal Act as so amended, as a new licence of the kind corresponding to the existing licence or to the permit, as the case may be.

(3) An application for the renewal of an existing licence or a permit, being an application—

- (a) made in accordance with the provisions of the Principal Act; and
- (b) pending immediately before the commencing date,

has effect, for the purposes of section 33 of this Act, on and after that date as if it were an application made in accordance with that section for a new licence of the kind corresponding to the existing licence or to the permit, as the case may be.

(4) Where, immediately before the commencing date, an inquiry by the Tribunal for the purposes of a provision of the Principal Act was pending or uncompleted, the Tribunal shall conduct or continue the inquiry as if it were an inquiry held for the purposes of the corresponding provision of the Principal Act as amended by this Act and, for the purposes of the inquiry as so conducted or continued (in this sub-section referred to as “the continued inquiry”)—

- (a) all documents filed or lodged in relation to the first-mentioned inquiry shall be deemed to have been filed or lodged in relation to the continued inquiry;
- (b) all things done in and in relation to the first-mentioned inquiry shall be deemed to have been done in and in relation to the continued inquiry; and
- (c) the Tribunal may have regard to any evidence or argument in the first-mentioned inquiry.

(5) Where, before the commencing date, an inquiry had been held by the Tribunal for the purpose of making a recommendation under section 83 of the Principal Act, but no recommendation had been made, the Tribunal may treat the inquiry as if it had been held for the purposes of section 83 of the Principal Act as amended by this Act.

(6) Where, immediately before the commencing date, a review by the Administrative Appeals Tribunal of a decision made under a provision of the Principal Act was pending or uncompleted, the Administrative Appeals Tribunal shall conduct or continue the review as if it were a review of a decision made under the corresponding provision of the Principal Act as amended by this Act and, for the purposes of the review as so conducted or continued (in this sub-section referred to as “the continued review”)—

- (a) all documents filed or lodged in relation to the first-mentioned review shall be deemed to have been filed or lodged in relation to the continued review;
- (b) all things done in and in relation to the first-mentioned review shall be deemed to have been done in and in relation to the continued review; and
- (c) the Administrative Appeals Tribunal may have regard to any evidence or argument in the first-mentioned review.

(7) Anything done by or in relation to the Minister in accordance with Division 2 or 3 of Part IV of the Principal Act before the amendment of those Divisions by this Act shall, for the purposes of those Divisions as so amended, be deemed to have been done by or in relation to the Tribunal.

Transitional provisions—
renewal of
licences

33. (1) In this section—

- (a) a reference to a licence shall be read as a reference to a licence as defined for the purposes of Part IIIB of the Principal Act as amended by this Act, including a licence that has effect after the commencement of this section by virtue of section 32; and
- (b) a reference to the renewal of a licence shall be read as a reference to the grant of a licence under this section in respect of the station or aerial to which the first-mentioned licence related, where the second-mentioned licence is to commence on the day after the expiration of the first-mentioned licence or on the day after the expiration of the licence granted upon the previous renewal under this section, or, if there have been two such renewals, the last such renewal, of the first-mentioned licence.

(2) For the purposes of paragraph (b) of sub-section (1), “aerial” means an aerial to which section 130A of the Principal Act, or of the Principal Act as amended by this Act, applies.

(3) Notwithstanding section 86 of the Principal Act as amended by this Act, this section applies in relation to the renewal of a licence, other than a renewal of a licence occurring after—

- (a) the licence has been renewed under this section following the holding of an inquiry into the renewal; or
- (b) the third renewal under this section of the licence,

whichever first occurs.

(4) The application for the first renewal, under this section, of a licence shall be made—

- (a) if a period was prescribed by a provision of the Principal Act, or of the licence, for the making of an application for the renewal of the licence—in accordance with that provision; or
- (b) in any other case—as determined by the Minister.

(5) An application for the renewal, under this section, of a licence, other than the first such renewal, shall be made not less than 20 weeks, or such lesser period as is approved by the Minister, before the expiration of the licence.

(6) An application for the renewal, under this section, of a licence shall be made to the Minister in accordance with a form supplied by the Minister.

(7) When an application for the renewal, under this section, of a licence is duly made, the Minister shall refer the application to the Tribunal.

(8) On receipt of the application, the Tribunal shall consider the application without holding an inquiry or, if it thinks fit, hold an inquiry into the renewal of the licence.

(9) Except as provided in sub-section (10), the Tribunal shall renew the licence.

(10) Where the Tribunal has held an inquiry into the renewal of the licence—

- (a) the Tribunal may refuse to renew the licence if circumstances exist by reason of which it would be empowered to revoke the licence; and
- (b) the Tribunal shall refuse to renew the licence if it is satisfied that the renewal of the licence would be contrary to a provision of the Principal Act as amended by this Act.

(11) A licence renewed under this section continues in force for such period (not exceeding one year) as is specified in the licence.

SCHEDULE 1

Section 30

MINOR AND CONSEQUENTIAL AMENDMENTS

| Provision | Amendment |
|--|---|
| Sub-section 4 (1) (definition of "licensee") | Omit the definition. |
| Sub-section 4 (1) (definitions of "public broadcasting licence" and "public television licence") | Omit "granted under Part IVA", substitute "to which Part IVA applies". |
| Sub-section 4 (1) | Before the definition of "technical equipment", insert— " 'Service' means the Special Broadcasting Service established by Part IIIA; " |
| Sub-section 10 (9) | Omit "and 15D", substitute " , 15D, 23 and 24 " |
| Sub-section 11 (1) | Omit "report is made in relation to the inquiry", substitute "inquiry has been completed". |
| Sub-section 11 (3) | Omit "makes its report in relation to that", substitute "completes the". |
| Sub-section 12 (4) | Omit "section 13", substitute "sections 13, 23 and 24". |

SCHEDULE 1—continued

| Provision | Amendment |
|--|---|
| Sub-section 12 (6) | Omit “making of the report in relation to”, substitute “completion of”. |
| Sub-section 15B (1) | Omit “(other than its functions in relation to inquiries)”. |
| Section 15F | Repeal the section. |
| Sub-section 22A (1) | Omit the sub-section, substitute— “(1) Where, at any meeting of the Tribunal, the members are divided in opinion as to the decision or recommendations to be made on the matter or matters the subject of an inquiry, the opinion or opinions of the member or members disagreeing with the decisions or recommendations of the Tribunal shall be set out in the report relating to the inquiry.” |
| Sub-section 22A (2) | Omit “associate”, substitute “acting”. |
| Sub-section 23 (1) | Omit “a member has, in the exercise of his functions as a member”, substitute “a member or an associate member has, in the exercise of his functions as a member or as an associate member”. |
| Paragraph 24 (a) | After “member,” insert “against an associate member.” |
| Paragraph 24 (b) | Omit “of any evidence taken in private by the Tribunal”, substitute “in contravention of a direction given under section 19”. |
| Sub-section 25A (1) | (a) Omit “or completed”. (b) Omit “report in relation to the inquiry has been made”, substitute “inquiry has been completed”. (c) Omit “and report, or the report, as the case may be”. |
| Sub-section 25A (3) | Omit “and report, or a report, as the case may be.” |
| Sub-section 59 (1) | Omit “transmitting stations made available by the Australian Telecommunications Commission”, substitute “stations provided in accordance with section 73”. |
| Sub-section 90F (4) | Omit “Minister” (wherever occurring), substitute “Tribunal”. |
| Sub-sections 90J (2) and (3) | Omit “Minister” (wherever occurring), substitute “Tribunal”. |
| Sub-section 90J (4) | Omit the sub-section, substitute— “(4) The Tribunal shall not refuse to grant approval under this section unless it has held an inquiry into such matters as are determined by the Tribunal to be relevant to the application of this sub-section and sub-section (4A) in relation to the transaction. “(4A) The Tribunal shall not refuse to grant approval under this section, and shall not give a notice under sub-section (3), unless the Tribunal— (a) is of the opinion that the transaction has resulted or would result in a contravention by the person concerned of section 90C; or (b) considers it necessary to do so in order to maintain such ownership and control, whether direct or indirect, of the company holding the licence as, in the opinion of the Tribunal, best accord with the public interest.” |
| Sub-section 90J (5) | Omit “Minister”, substitute “Tribunal”. |
| Sub-sections 90K (1) and (2) | Omit “Minister”, substitute “Tribunal”. |
| Sub-section 90K (3) | Omit “Minister shall grant his approval under this section unless he”, substitute “Tribunal shall grant its approval under this section unless it”. |
| Sub-section 90L (2) | Omit “Minister, by writing under his hand,”, substitute “Tribunal, by instrument in writing,”. |
| Sub-section 90L (5) | Omit “Minister”, substitute “Tribunal”. |
| Section 90M | Omit “Minister”, substitute “Tribunal”. |
| Paragraph 92 (3) (b) | (a) Omit “Minister”, substitute “Tribunal”. (b) Omit “approved by him”, substitute “approved by it”. |
| Sub-section 92C (3) | Omit “Minister” (wherever occurring), substitute “Tribunal”. |
| Sub-sections 92F (2) and (3) | Omit “Minister” (wherever occurring), substitute “Tribunal”. |

SCHEDULE 1—continued

| Provision | Amendment |
|-------------------------------|--|
| Sub-section 92F (4) | Omit the sub-section, substitute— “(4) The Tribunal shall not refuse to grant approval under this section unless it has held an inquiry into such matters as are determined by the Tribunal to be relevant to the application of this sub-section and sub-section (4A) in relation to the transaction. “(4A) The Tribunal shall not refuse to grant approval under this section, and shall not give a notice under sub-section (3), unless the Tribunal— (a) is of the opinion that the transaction has resulted or would result in a contravention by the person concerned of section 92; or (b) considers it necessary to do so in order to maintain such ownership and control, whether direct or indirect, of the company holding the licence as, in the opinion of the Tribunal, best accord with the public interest.” |
| Sub-section 92F (5) | Omit “Minister”, substitute “Tribunal”. |
| Sub-sections 92FA (1) and (2) | Omit “Minister”, substitute “Tribunal”. |
| Sub-section 92FA (3) | Omit “Minister shall grant his approval under this section unless he”, substitute “Tribunal shall grant its approval under this section unless it”. |
| Sub-section 92G (2) | Omit “Minister, by writing under his hand,”, substitute “Tribunal, by instrument in writing,”. |
| Sub-section 92G (5) | Omit “Minister”, substitute “Tribunal”. |
| Section 92H | Omit “Minister”, substitute “Tribunal”. |
| Sub-section 99 (4) | Omit “programme”, substitute “program”. |
| Section 105AC | Repeal the section. |
| Section 105AE | Repeal the section. |
| Section 105BA | Repeal the section. |
| Section 105C | Repeal the section. |
| Section 105D | Repeal the section. |
| Section 105E | Repeal the section. |
| Section 105H | Repeal the section. |
| Section 105J | Repeal the section. |
| Section 105K | Repeal the section. |
| Section 107 | Omit “Minster”, substitute “Commonwealth, the Minister and the Tribunal”. |
| Section 108 | Repeal the section. |
| Section 109 | Repeal the section. |
| Sub-section 111B (1) | Omit “, the holders of such licences and the grant, renewal, suspension and revocation of such licences” (wherever occurring), substitute “and the holders of such licences”. |
| Sub-section 111C (2) | Omit “Secretary”, substitute “Minister”. |
| Sub-section 111D (1) | Omit “Secretary to the Postal and Telecommunications Department may, subject to any directions of the Minister,”, substitute “Minister may”. |
| Sub-sections 111D (7) and (9) | Omit “Secretary”, substitute “Minister”. |
| Section 112 | Omit “either of those Acts”, substitute “that Act”. |
| Section 122 | Repeal the section. |
| Sub-section 124A (2) | Omit the sub-section, substitute— “(2) In this section— ‘licence’ has the same meaning as in Part IIIb; ‘station’ means— (a) a national broadcasting station, a national television station or a broadcasting translator station, television translator station or television repeater station used by the Commission; or (b) a station, or an aerial to which section 130A applies, in respect of which a licence is in force, and includes any technical equipment used in connexion therewith.” |

SCHEDULE 1—continued

| Provision | Amendment |
|------------------------------|---|
| Sub-section 130 (1) | Omit "(including a television translator station licence or television repeater station licence) may be granted under this Act", substitute "may be granted under Part IIIB". |
| Sub-section 132 (1A) | Omit the sub-section, substitute— “(1A) In this section, ‘licence’ has the same meaning as in Part IIIB.” |
| Sub-sections 134 (2) and (3) | Omit “Australian Industrial Court”, substitute “Federal Court of Australia”. |

SCHEDULE 2

Section 31

AMENDMENTS OF COPYRIGHT ACT AND TELECOMMUNICATIONS ACT

| Act | Provision | Amendment |
|---------------------------|--------------------------------|---|
| <i>Copyright Act 1968</i> | Section 10 | (a) In the definition of “holder of a licence for a broadcasting station”, after “commercial broadcasting station”, insert “or a public broadcasting station”. (b) In the definition of “holder of a licence for a television station”, after “commercial television station”, insert “or a public television station”. (c) After the definition of “the royalty” insert— “ ‘the Special Broadcasting Service’ means the Special Broadcasting Service established by the <i>Broadcasting and Television Act 1942</i> ;”. |
| | Paragraphs 91 (a) and (b) | After sub-paragraph (i) insert— “(ia) the Special Broadcasting Service;”. |
| | Section 99 | (a) Omit from paragraph (a) “and” (last occurring). (b) After paragraph (a) insert— “(aa) the Special Broadcasting Service is the owner of any copyright subsisting in a television broadcast or sound broadcast made by it; and”. |
| | Sub-section 152 (1) | After paragraph (a) of the definition of “broadcaster”, insert— “(aa) the Special Broadcasting Service;”. |
| | Paragraph 184 (1) (f) | After “Commission,”, insert “by the Special Broadcasting Service,”. |
| | Paragraphs 199 (7) (a) and (b) | After “Commission,”, insert “by the Special Broadcasting Service, by any person with the use of facilities provided by that Service,”. |

SCHEDULE 2—continued

| Act | Provision | Amendment |
|---|------------------------------|---|
| <i>Telecommunications Act</i> 1975 | Sub-section 94 (2) | Omit paragraphs (e) and (f), substitute— “(e) by the Australian Broadcasting Commission or the Special Broadcasting Service in accordance with the <i>Broadcasting and Television Act</i> 1942 or by a person doing any act in pursuance of sub-section 73 (2) or 74 (1) of that Act; (f) by the holder of a licence under Part IIIB of the <i>Broadcasting and Television Act</i> 1942 (other than a licence to which section 130A of that Act applies) in accordance with the terms of the licence;”. |

NOTES

1. Act No. 160, 1977; assented to 10 November 1977.
2. Act No. 33, 1942, as amended. For previous amendments *see* Act 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; and Nos. 89 and 187, 1976.