



# Broadcasting (National Metropolitan Radio Plan) Act 1988

No. 147 of 1988

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# Broadcasting (National Metropolitan Radio Plan) Act 1988

No. 147 of 1988

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

[Assented to 26 December 1988]

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

### Short title etc.

1. (1) This Act may be cited as the *Broadcasting (National Metropolitan Radio Plan) Act 1988*.

(2) In this Act, "Principal Act" means the *Broadcasting Act 1942*.

### Commencement

2. This Act commences on the day on which it receives the Royal Assent.

### Interpretation

3. Section 4 of the Principal Act is amended:

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

“AM commercial radio licence” has the meaning given by subsection (14);

- 'AM commercial radio licence in a large city or town' has the meaning given by subsection (16);
- 'arbitrator' means a person acting as arbitrator under a State commercial arbitration law;
- 'convert to FM', in relation to an AM commercial radio licence, means vary the technical conditions of the licence warrant in respect of the licence under subsection 89D (6) so as to authorise very high frequency transmission;
- 'default', in relation to an offer of FM conversion, has the meaning given by subsection 89DAM (1);
- 'FM frequency' means a frequency in the very high frequency band;
- 'large city or town' has the meaning given by subsection (15);
- 'medium frequency band' means the band designated in the spectrum plan as the medium frequency or MF band;
- 'medium frequency transmission' means the operation of a radiocommunications transmitter or transmitters to transmit programs in the medium frequency band;
- 'necessary preconditions for conversion', in relation to a section 89DAB notice, means the conditions specified in the notice under paragraph 89DAB (2) (n);
- 'offer', in relation to FM conversion, has the meaning given by subsection 89DAK (1);
- 'Secretary' means the Secretary to the Department;
- 'section 89DAB notice' means a notice published under section 89DAB;
- 'spectrum plan' has the same meaning as in Part IV of the *Radiocommunications Act 1983*;
- 'State commercial arbitration law' means a law of a State or Territory that makes provision for the submission of a dispute to arbitration pursuant to a written agreement between the parties to the dispute;
- 'Tender Board' means the Tender Board established under section 89DAF;
- 'tender list' means a list prepared under subsection 89DAH (4) as affected by any deletions made under subsection 89DAM (2);
- 'transfer to the Commonwealth', in relation to a transmission site, means make available to the Commonwealth an interest in the site that is acceptable to the Secretary, having regard to the objectives of Division 1A of Part IIIB;
- 'transmission equipment' means:
- (a) a radiocommunications transmitter or transmitters; and
  - (b) any associated mast or masts;

'transmission facilities' means transmission equipment and the site or sites on which the transmission equipment is or is to be located;

'transmission facilities value', in relation to an application under section 89DAE, means the amount specified in the statement referred to in paragraph 89DAE (2) (f);

'transmission site' means the site or sites on which transmission equipment is or is to be located and includes any transmitter hut associated with that equipment but does not include any mast associated with that equipment;

'value', in relation to a transmission site, has the meaning given by subsection (17);

'very high frequency band' means the band designated in the spectrum plan as the very high frequency or VHF band;

'very high frequency transmission' means the operation of a radiocommunications transmitter or transmitters to transmit programs in the very high frequency band;";

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

"(14) For the purposes of this Act, a licence is an AM commercial radio licence if:

- (a) the licence is a commercial radio licence; and
- (b) the licence warrant in respect of the licence authorises medium frequency transmission but not very high frequency transmission.

"(15) For the purposes of this Act, a city or town is a large city or town if the population of the statistical district or statistical division for the city or town exceeds 800,000, or such higher figure as is prescribed for the purposes of subsection 6B (2) of the *Radio Licence Fees Act 1964*.

"(16) For the purposes of this Act, an AM commercial radio licence is in a large city or town if:

- (a) the service area of the licence includes the general post office or main post office of a large city or town; or
- (b) the following conditions are satisfied:
  - (i) the licence (in this paragraph called the 'first licence') is specified in a declaration under subsection 89T (2) as having a substantial market in common with another AM commercial radio licence (in this paragraph called the 'second licence');
  - (ii) the service area of the second licence includes the general post office or main post office of a large city or town;
  - (iii) at the time when the declaration under subsection 89T (2) was made, the Minister was satisfied that

more than 30% of the population of the service area of the second licence was also within the service area of the first licence.

“(17) Where a licensee proposes to make available to the Commonwealth an interest in a transmission site, a reference in Division 1A of Part IIIB to the value of the transmission site is to be read as a reference to the value of that interest.”.

4. Before Division 2 of Part IIIB of the Principal Act the following Division is inserted:

***“Division 1A—Conversion of AM commercial radio licences to FM as part of the National Metropolitan Radio Plan***

**National Metropolitan Radio Plan objectives**

“89DAA. The objectives of this Division are:

- (a) to convert to FM 2 AM commercial radio licences in each large city or town;
- (b) to allow the determination of which licences are to be converted to be made on the basis of competitive bids; and
- (c) to allow a successful bid to be satisfied in part by the transfer to the Commonwealth of transmission facilities to be used for:
  - (i) radio services for the print handicapped; or
  - (ii) Parliamentary broadcasts.

**The Minister may publish a notice inviting applications for conversion to FM**

“89DAB. (1) The Minister may publish a notice in the *Gazette* that invites licensees who hold AM commercial radio licences in a particular large city or town to lodge applications with the Tender Board for conversion of their licences to FM.

“(2) The notice shall:

- (a) specify whether one FM frequency or 2 FM frequencies are to be allocated pursuant to the notice;
- (b) set out an outline of the new technical conditions proposed for that frequency or each of those frequencies;
- (c) specify the period within which applications must be lodged;
- (d) specify the address at which applications must be lodged;
- (e) inform the licensees of the requirements imposed by section 89DAE as to the form and content of an application and the material to accompany an application;
- (f) specify the amount of the deposit that must be paid to the Commonwealth in relation to an application;
- (g) specify any things that will need to be done by a licensee before an application is lodged;

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- (h) specify the minimum technical requirements that will need to be met before transmission equipment is accepted as technically adequate;
- (j) specify the principles according to which the Secretary is to decide whether an interest in a transmission site is acceptable;
- (k) specify the principles according to which the value of transmission facilities is to be assessed;
- (m) inform the licensees that the Minister will determine an amount as an undisclosed reserve and that a licence will be converted to FM only if the licensee's bid is at least equal to that amount; and
- (n) inform the licensees of the things that will need to be done by a licensee who is offered FM conversion before the licensee's licence is converted to FM.

“(3) The period specified under paragraph (2) (c) shall end not less than 90 days after the day on which the notice is published in the *Gazette*.

“(4) In specifying principles under paragraph (2) (k), the Minister shall ensure that the value of transmission sites is to be assessed having regard not only to the current use of the sites but also to other uses.

“(5) Without limiting subsection (2) in any way, the matters that may be specified under paragraph (2) (g) include the following:

- (a) a condition that the licensee must, before the end of a period specified in the notice, notify the Secretary of the transmission facilities that the licensee proposes to transfer to the Commonwealth in part satisfaction of the licensee's bid, if successful;
- (b) a condition that the licensee must allow officers of the Department reasonable opportunity to inspect the transmission equipment to assess its technical adequacy and to assess its value;
- (c) a condition that the licensee must allow officers of the Australian Valuation Office reasonable opportunity to inspect the transmission site or sites to assess the value of the site or sites.

**Application of the principles etc. specified in a section 89DAB notice**

“89DAC. (1) Officers of the Department and the Secretary shall, in assessing the technical adequacy of transmission equipment, apply the requirements specified under paragraph 89DAB (2) (h).

“(2) The Secretary shall, in deciding whether an interest in a transmission site is acceptable, apply the principles specified under paragraph 89DAB (2) (j).

“(3) Officers of the Department, officers of the Australian Valuation Office, arbitrators and the Secretary shall, in assessing the value of transmission facilities, apply the principles specified under paragraph 89DAB (2) (k).

**Extension of the period for lodging applications**

“89DAD. (1) The Minister may, by notice published in the *Gazette*, extend or further extend the period specified under paragraph 89DAB (2) (c).

“(2) An extension of the period specified under paragraph 89DAB (2) (c) must be made at least 14 days before the end of that period.

“(3) A further extension of the period specified under paragraph 89DAB (2) (c) must be made at least 14 days before the end of that period as previously extended.

“(4) There may be more than one further extension under subsection (1) of the period specified under paragraph 89DAB (2) (c).

“(5) Where the period specified under paragraph 89DAB (2) (c) is extended or further extended, a reference in this Division (other than in this section) to the period specified under that paragraph is to be read as a reference to that period as extended or further extended.

**Applications for conversion to FM**

“89DAE. (1) Where the Minister publishes a section 89DAB notice in relation to a city or town, a licensee who holds an AM commercial radio licence in that city or town may lodge with the Tender Board an application for conversion of the licensee’s licence to FM.

“(2) An application must:

- (a) be made in the form approved by the Minister;
- (b) be lodged at the address specified under paragraph 89DAB (2) (d) within the period specified under paragraph 89DAB (2) (c);
- (c) be accompanied by a sealed envelope that contains a written statement of the amount of the licensee’s bid for conversion of the licensee’s licence to FM;
- (d) be accompanied by either:
  - (i) a written statement by the Secretary approving the technical adequacy of the transmission equipment that the licensee proposes to transfer to the Commonwealth in part satisfaction of the licensee’s bid, if successful; or
  - (ii) a written statement by the Secretary approving the technical adequacy of that equipment subject to the licensee making the improvements specified in the statement;
- (e) be accompanied by a written statement by the Secretary that the interest in each transmission site that the licensee proposes to make available to the Commonwealth is acceptable; and
- (f) be accompanied by either:
  - (i) a written statement by the Secretary agreeing to a specified amount as:

- (A) the value of the transmission facilities that the licensee proposes to transfer to the Commonwealth in part satisfaction of the licensee's bid, if successful; or
  - (B) if the application is accompanied by a statement of the kind referred to in subparagraph (d) (ii)—the value of those facilities with the improvements specified in that statement; or
- (ii) a written statement by an arbitrator determining an amount as:
- (A) the value of those facilities; or
  - (B) if the application is accompanied by a statement of the kind referred to in subparagraph (d) (ii)—the value of those facilities with the improvements specified in that statement.

“(3) The applicant must have done the things specified under paragraph 89DAB (2) (g) before the application is lodged.

“(4) The envelope containing the licensee's bid must have written on it:

- (a) the licensee's name;
- (b) the name of the city or town concerned;
- (c) the word 'bid'; and
- (d) an identification of the date of publication of the section 89DAB notice in response to which the application is lodged;

but must not have written on it anything that indicates the amount of the licensee's bid.

“(5) A licensee's bid must be expressed as a single amount in whole dollars or in whole dollars and cents.

“(6) The amount of a licensee's bid must exceed the transmission facilities value in relation to the licensee's application.

“(7) The transmission facilities value in relation to a licensee's application is to be included in the amount of the licensee's bid.

“(8) The licensee must have paid the Commonwealth a deposit of the amount specified under paragraph 89DAB (2) (f) before the end of the period specified under paragraph 89DAB (2) (c).

“(9) In deciding whether to issue a statement of the kind referred to in paragraph (2) (f), the Secretary shall act with the advice of the Australian Valuation Office on the value of a transmission site.

#### **Establishment of the Tender Board**

“89DAF. (1) The Secretary shall, by determination in writing, establish a Tender Board to process applications lodged in response to section 89DAB notices.



“(2) The Secretary may, in writing, appoint a person who is an officer of the Department as a member of the Tender Board.

“(3) The Secretary shall, in writing, designate one of the members as Chairperson of the Tender Board.

**Determination of the reserve**

“89DAG. Where the Minister publishes a section 89DAB notice, the Minister shall, before the end of the period specified under paragraph 89DAB (2) (c), determine the amount of the reserve that is to apply to conversions of licences to FM pursuant to the notice and notify the Chairperson of the Tender Board of the determination.

**Processing applications for conversion to FM**

“89DAH. (1) Where:

- (a) a section 89DAB notice is published; and
- (b) the period for lodging applications in response to the notice ends;

the Tender Board shall initially assess the applications lodged in response to the notice without opening the envelopes that appear to contain the licensees' bids.

“(2) The Tender Board shall then reject any application that the Tender Board is satisfied, upon that assessment, is not in accordance with section 89DAE.

“(3) The Tender Board shall then open the envelopes that appear to contain the remaining licensee's bids and reject:

- (a) any application that is not accompanied by a bid that is in accordance with section 89DAE; and
- (b) any application by a licensee whose bid is below the reserve determined by the Minister.

“(4) The Tender Board shall then prepare a list that sets out the names of the remaining licensees and the amounts of their bids in descending order according to the amounts of their bids.

“(5) Where the bids of 2 or more licensees are the same, the order in which the licensee's names are to be set out on the list shall be determined by lot in accordance with the regulations.

“(6) The Chairperson of the Tender Board shall give the Minister the list prepared under subsection (4).

“(7) Where the Tender Board rejects a licensee's application under this section, the Chairperson of the Board shall give the licensee written notice of the rejection and of the grounds on which the application is rejected.

**Report to the Minister on the processing of applications**

“89DAI. (1) The Chairperson of the Tender Board shall report to the Minister on the processing of applications under section 89DAH and, in particular, shall:

- (a) if no applications that meet the requirements of section 89DAE are lodged in response to the section 89DAB notice—inform the Minister accordingly; and
- (b) if the bid of a licensee referred to in subsection 89DAH (3) is below the reserve determined by the Minister under section 89DAG—inform the Minister of:
  - (i) the name of the licensee; and
  - (ii) the amount of the licensee’s bid.

“(2) If:

- (a) the Minister publishes a section 89DAB notice for the allocation of an FM frequency or FM frequencies in a city or town; and
- (b) no applications that meet the requirements of section 89DAE are lodged in response to the notice;

the Minister may publish a fresh section 89DAB notice for the allocation of an FM frequency or FM frequencies in that city or town.

“(3) Where:

- (a) the Minister publishes a section 89DAB notice for the allocation of 2 FM frequencies in a city or town; and
- (b) only one licensee is included on the tender list;

the Minister may publish a fresh section 89DAB notice for the allocation of an FM frequency in that city or town.

**The Minister to publish a notice about the licensees on the tender list**

“89DAJ. (1) Where the Minister receives a tender list under subsection 89DAH (4), the Minister shall publish a notice in the *Gazette* that sets out the names of the licensees on the list according to their order on that list.

“(2) If only one FM frequency is to be allocated pursuant to the section 89DAB notice, the notice under subsection (1) shall also specify the amount of the bid of the licensee who is alone on the tender list or highest on the tender list.

“(3) If 2 FM frequencies are to be allocated pursuant to the section 89DAB notice, the notice under subsection (1) shall also specify the amount of the bid of the licensee who is alone on the tender list or the amounts of the bids of the licensees who are highest and second highest on the tender list.

**Meaning of offer of FM conversion to a licensee**

“89DAK. (1) Where:

- (a) the Minister publishes a section 89DAB notice; and
- (b) a licensee lodges an application in response to the notice;

the Minister shall be taken, for the purposes of this Division, to offer FM conversion to the licensee if the Minister gives the licensee written notice that the licensee's licence will be converted to FM if the licensee meets the necessary preconditions for conversion within the period specified in the notice that contains the offer.

“(2) The period specified in the notice must be a reasonable one, having regard to the preconditions to be met by the licensee.

**Initial offers**

“89DAL. (1) Where the Minister receives a tender list under subsection 89DAH (6), the Minister shall, subject to section 89DAN, make an offer or offers of FM conversion in accordance with this section and section 89DAM.

“(2) If there is only one licensee on the tender list, the Minister shall offer FM conversion to that licensee.

“(3) If:

- (a) there are 2 or more licensees on the tender list; and
- (b) only one FM frequency is to be allocated pursuant to the section 89DAB notice;

the Minister shall offer FM conversion to the licensee who is highest on the tender list.

“(4) If:

- (a) there are 2 or more licensees on the tender list; and
- (b) 2 FM frequencies are to be allocated pursuant to the section 89DAB notice;

the Minister shall offer FM conversion to the licensees who are highest and second highest on the tender list.

**What happens if a successful licensee defaults?**

“89DAM. (1) A licensee who has been offered FM conversion pursuant to a section 89DAB notice defaults if:

- (a) the licensee gives the Minister written notice that the licensee does not wish to proceed with conversion of the licensee's licence to FM; or
- (b) the licensee does not meet the necessary preconditions for conversion within the period specified in the notice that contains the offer.

“(2) Where a licensee defaults, the following provisions have effect:

- (a) if the licensee is, at the time of default, the only licensee on the tender list—the Minister may publish a fresh section 89DAB notice for the allocation of an FM frequency in the city or town concerned;
- (b) if:
  - (i) there are, at the time of default, 2 or more licensees on the tender list; and

- (ii) only one FM frequency is to be allocated pursuant to the section 89DAB notice;

the Minister shall delete the defaulting licensee from the tender list and offer FM conversion to the licensee who is then alone on the tender list or highest on the tender list;

(c) if:

- (i) there are, at the time of default, 2 licensees on the tender list; and

- (ii) 2 FM frequencies are to be allocated pursuant to the section 89DAB notice;

the Minister shall delete the defaulting licensee from the tender list and may publish a fresh section 89DAB notice for the allocation of an FM frequency in the city or town concerned;

(d) if:

- (i) there are, at the time of default, 3 or more licensees on the tender list; and

- (ii) 2 FM frequencies are to be allocated pursuant to the section 89DAB notice;

the Minister shall delete the defaulting licensee from the tender list and offer FM conversion to the licensee who is then second highest on the tender list.

“(3) Where a licensee is offered FM conversion under this section, the Minister shall publish a notice in the *Gazette* stating that FM conversion has been offered to the licensee and specifying the amount of the licensee’s bid.

**The Minister may publish a fresh section 89DAB notice if satisfied of collusion between licensees**

“89DAN. (1) Where the Minister is satisfied that any of the licensees’ bids have been affected by collusion among licensees, the Minister may determine that the applications not be dealt with under sections 89DAL and 89DAM and that a fresh section 89DAB notice for the city or town concerned be published instead.

“(2) Where the Minister makes a determination under subsection (1), the applications shall not be dealt with under sections 89DAL and 89DAM and the Minister may publish a fresh section 89DAB notice for the allocation of an FM frequency or FM frequencies in the city or town concerned.

**How are deposits dealt with?**

“89DAO. (1) Where a licensee’s application is rejected under subsection 89DAH (2) or (3), any deposit paid by the licensee in relation to the application shall be repaid to the licensee within 14 days after the day on which the application is rejected.

“(2) Where:

- (a) the Minister publishes a section 89DAB notice;
- (b) a licensee’s name is included in the tender list;
- (c) the licensee’s licence is not converted to FM pursuant to the section 89DAB notice; and
- (d) another licence or licences are converted to FM pursuant to the section 89DAB notice;

the deposit paid by the licensee in relation to the application shall, subject to subsection (5), be repaid to the licensee within 14 days after the conversion or, where there are 2 conversions at different times, the last of the conversions.

“(3) Where a deposit is repaid under subsection (2), the licensee shall also be paid interest on the deposit from (and including) the day on which the relevant notice under subsection 89DAJ (1) is published to (and including) the day on which the deposit is repaid.

“(4) Interest payable under subsection (3) shall be paid at the rate determined in accordance with the regulations.

“(5) If a licensee defaults, the licensee forfeits any deposit paid by the licensee in relation to the application.

#### **Conversion to FM**

“89DAP. (1) Where:

- (a) a licensee is offered FM conversion pursuant to a section 89DAB notice; and
- (b) the licensee meets the necessary preconditions for conversion before the end of the period specified in the notice that contains the offer;

the Minister shall convert the licensee’s licence to FM accordingly.

“(2) Where 2 FM frequencies are to be allocated pursuant to the section 89DAB notice, the Minister shall, in converting a licence or licences to FM pursuant to the notice, have regard to the desirability, subject to planning considerations, of the licensee who is alone on the tender list, or highest on the tender list, having the licensee’s licence converted to whichever of those frequencies the licensee prefers.”.

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#### **NOTE**

1. 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;

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**NOTE—continued**

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 Nos. 56, 99, 109 and 146, 1988.

*[Minister's second reading speech made in—  
House of Representatives on 2 November 1988  
Senate on 22 November 1988]*