



Communications Legislation Amendment Act (No. 1) 1997

No. 119, 1997

An Act to amend the *Broadcasting Services Act 1992* and the *Radiocommunications Act 1992*

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An Act to amend the *Broadcasting Services Act 1992* and the *Radiocommunications Act 1992*

[Assented to 7 July 1997]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Communications Legislation Amendment Act (No. 1) 1997*.

2 Commencement

This Act commences on the 28th day after the day on which it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Broadcasting Services Act 1992

1 Subsection 6(1) (definition of *licence area*)

Omit “or 40”, substitute “, 40 or 92G”.

2 Subsection 6(1)

Insert:

temporary community broadcasting licence means a community broadcasting licence that:

- (a) is a broadcasting services bands licence; and
- (b) is allocated under Part 6A.

3 Subsection 29(1)

After “community broadcasting licence”, insert “(other than a temporary community broadcasting licence)”.

4 At the end of paragraph 31(1)(b)

Add “(other than services provided by temporary community broadcasting licensees)”.

5 After paragraph 34(1)(e)

Insert:

- (ea) to temporary community broadcasting licensees; or

6 After section 79

Insert:

79A Application

This Part does not apply in relation to community broadcasting licences that are temporary community broadcasting licences.

Note: Part 6A deals with temporary community broadcasting licences.

7 After Part 6

Insert:

Part 6A—Temporary community broadcasting licences

92A Interpretation

In this Part:

company includes an incorporated association.

licence period means the period of a temporary community broadcasting licence determined by the ABA under paragraph 92G(1)(c) or varied by the ABA under section 92J.

timing conditions means the conditions of a temporary community broadcasting licence that:

- (a) are about the times in which the licence allows community broadcasting services to be provided; and
- (b) are determined by the ABA under paragraph 92G(1)(b) or varied by the ABA under section 92J.

92B Temporary community broadcasting licences

- (1) The ABA may allocate to a person, on application in writing by the person, a temporary community broadcasting licence.
- (2) Applications must be in accordance with a form approved in writing by the ABA.

92C Applicants for temporary community broadcasting licences

- (1) The ABA is not to allocate a temporary community broadcasting licence to an applicant unless the applicant:
 - (a) is a company that is formed in Australia or in an external Territory; and
 - (b) represents a community interest.
- (2) The ABA is not to allocate a licence to an applicant if the ABA decides that subsection 92D(2) applies to the applicant in relation to the licence. However, the ABA is not required to consider the application of subsection 92D(2) to the applicant before allocating the licence.

- (3) The ABA may refuse to allocate a licence to an applicant if the applicant was a temporary community broadcasting licensee for a period but did not provide community broadcasting services in that period. This subsection does not limit the ABA's discretion to refuse to allocate a licence.

92D When applicants and licensees are regarded as suitable

- (1) A company is a *suitable applicant* or *suitable licensee* in relation to a temporary community broadcasting licence if the ABA has not decided that subsection (2) applies to the company in relation to the licence.

Note: It is a condition of a temporary community broadcasting licence that the licensee remain a suitable licensee: see paragraph 9(2)(a) of Schedule 2.

- (2) The ABA may, if it is satisfied that allowing a company to provide or continue to provide broadcasting services under a temporary community broadcasting licence would lead to a significant risk of:

- (a) an offence against this Act or the regulations being committed; or
- (b) a breach of the conditions of the licence occurring;

decide that this subsection applies to the company in relation to the licence.

- (3) In deciding whether such a risk exists, the ABA is to take into account only:
- (a) the business record of the company; and
 - (b) the company's record in situations requiring trust and candour; and
 - (c) the business record of the chief executive and each director and secretary of the applicant; and
 - (d) the record in situations requiring trust and candour of each such person; and
 - (e) whether the company, or a person referred to in paragraph (c) or (d), has been convicted of an offence against this Act or the regulations.

92E Criteria for deciding whether to allocate a licence

- (1) In deciding whether to allocate a temporary community broadcasting licence to an applicant or to one of a group of applicants, the ABA may have regard to:
 - (a) the undesirability of one person being in a position to exercise control of more than one community broadcasting licence that is a broadcasting services bands licence in the same licence area; and
 - (b) the undesirability of the Commonwealth, a State or a Territory or a political party being in a position to exercise control of a temporary community broadcasting licence.
- (2) In deciding whether to allocate a temporary community broadcasting licence to an applicant or to one of a group of applicants, the ABA is not to have regard to:
 - (a) the extent to which the proposed service would meet the existing and perceived future needs of the community within the licence area of the proposed licence; and
 - (b) the nature and diversity of the interests of that community; and
 - (c) the nature and diversity of other broadcasting services (including national broadcasting services) available within that licence area; and
 - (d) the capacity of the applicant to provide the proposed service.

92F Licences to accord with alternative planning procedures

The ABA is not to allocate a temporary community broadcasting licence except in accordance with a decision of the ABA under section 34.

92G Licence area, timing conditions and licence period

- (1) Before allocating a temporary community broadcasting licence, the ABA is to:
 - (a) designate a particular area in Australia as the licence area of the licence; and
 - (b) determine the timing conditions of the licence; and
 - (c) determine a period of up to 12 months as the licence period.

- (2) In determining the timing conditions and licence period, the ABA is to have regard to:
- (a) any other applications for temporary community broadcasting licences in the licence area of the proposed licence; and
 - (b) any other temporary community broadcasting licences in the licence area of the proposed licence; and
 - (c) such other matters as the ABA thinks fit.

92H Conditions of temporary community broadcasting licences

Each temporary community broadcasting licence is subject to:

- (a) the conditions set out in Part 5 (other than paragraph 9(1)(h)) of Schedule 2; and
- (b) the timing conditions; and
- (c) such other conditions as are imposed under section 92J.

92J ABA may vary conditions or periods, or impose new conditions

- (1) The ABA may, by notice in writing given to a temporary community broadcasting licensee:
 - (a) vary or revoke a condition of the licence (including a timing condition); or
 - (b) impose an additional condition on the licence; or
 - (c) vary the licence period.
- (2) Without limiting subsection (1), the ABA may impose an additional condition on a licence:
 - (a) requiring the licensee to comply with a code of practice that is applicable to the licensee; or
 - (b) designed to ensure that a breach of a condition by the licensee does not recur.
- (3) An additional condition of a licence must be relevant to community broadcasting services.
- (4) If the ABA proposes to vary or revoke a condition, impose an additional condition or vary the licence period, the ABA is to give to the licensee:
 - (a) written notice of its intention; and

- (b) a reasonable opportunity to make representations to the ABA in relation to the proposed action.
- (5) This section does not allow the ABA:
 - (a) to vary or revoke a condition set out in Part 5 of Schedule 2; or
 - (b) to vary or revoke a timing condition so that there are no times in which the licence allows community broadcasting services to be provided; or
 - (c) to vary the licence period so that the period is longer than 12 months.
- (6) If the ABA varies or revokes a condition (other than a timing condition), imposes an additional condition or varies the licence period, the ABA is to publish the fact of the variation, revocation or additional condition in the *Gazette*.
- (7) Action taken under subsection (1) must not be inconsistent with:
 - (a) determinations and clarifications under section 19; or
 - (b) conditions set out in Part 5 (other than paragraph 9(1)(h)) of Schedule 2.

92K Duration of temporary community broadcasting licences

Subject to section 92L and Part 10, a temporary community broadcasting licence remains in force for the licence period.

92L Surrender of temporary community broadcasting licences

A temporary community broadcasting licensee may, by notice in writing given to the ABA, surrender the licence.

8 Subsection 139(4)

After “licensee”, insert “(other than a temporary community broadcasting licensee)”.

9 After subsection 139(4)

Insert:

(4A) A temporary community broadcasting licensee who breaches a condition of the licence set out in subclause 9(1) (other than paragraph 9(1)(h)) of Schedule 2 is guilty of an offence.

Penalty: 50 penalty units.

10 Section 204 (after the table item that relates to subsection 87(1))

Insert:

That a person is not a suitable applicant or licensee (Temporary community)	Subsection 92D(2)	The person
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Variation of licence conditions (other than timing conditions), imposition of new conditions or variation of licence period (Temporary community)	Section 92J	The licensee
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11 Paragraph 18(2)(c) of Schedule 3

After “licence”, insert “(other than a timing condition on a temporary community broadcasting licence)”.

Schedule 2—Amendment of the Radiocommunications Act 1992

1 Section 5

Insert:

community broadcasting service has the same meaning as in the *Broadcasting Services Act 1992*.

temporary community broadcasting licence has the same meaning as in the *Broadcasting Services Act 1992*.

2 After subsection 100(1)

Insert:

- (1A) The ACA must not issue a temporary community transmitter licence except under section 101A. For the purposes of this subsection, a *temporary community transmitter licence* is an apparatus licence that authorises operation of one or more radiocommunications transmitters for transmitting a community broadcasting service in accordance with a temporary community broadcasting licence.

3 After section 101

Insert:

101A Transmitter licences for temporary community broadcasting

- (1) If the ABA allocates a temporary community broadcasting licence (the *related licence*) to a person, then the ACA may issue to the person, upon application by the person under section 99, a transmitter licence that authorises operation of one or more specified radiocommunications transmitters for transmitting the community broadcasting service in accordance with the related licence.
- (2) Subsections 100(4) to (8) apply for the purposes of this section.

4 Subsections 103(2) and (4)

Omit “102”, substitute “101A or 102”.

5 At the end of subsection 106(1)

Add “(other than licences issued under section 101A)”.

6 Subsections 107(3) and 108(5)

Omit “102”, substitute “101A or 102”.

7 After section 108

Insert:

108A Conditions of transmitter licences for temporary community broadcasters

- (1) A transmitter licence issued under section 101A is subject to the following conditions:
- (a) a condition that the licensee must comply with this Act;
 - (b) a condition that the licensee meet all obligations (if any) of the licensee to pay:
 - (i) charges fixed by determinations under section 293; and
 - (ii) amounts of apparatus licence tax;
 - (c) a condition that the licensee inform each person authorised by the licensee to operate a radiocommunications transmitter under the licence of the person’s obligations to comply with this Act and the conditions of the licence;
 - (d) a condition that the licensee, and any person so authorised, must comply with guidelines developed by the ABA under section 33 of the *Broadcasting Services Act 1992*;
 - (e) such conditions (if any) as the ACA determines, by written instrument, in relation to licences issued under section 101A;
 - (f) such other conditions as are specified in the licence.

Note: Inclusion of conditions under paragraph (1)(f) is a reviewable decision under Part 5.6.

- (2) The conditions of the licence, including any further conditions imposed under paragraph 111(1)(a), must not be inconsistent with the related licence as referred to in section 101A.

- (3) A determination under paragraph (1)(e) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

8 Section 110 and paragraph 111(1)(c)

After “107(1)(g)”, insert “, 108A(1)(f)”.

9 Paragraph 111(1)(d) and subsections 125(2) and 129(1)

Omit “102”, substitute “101A or 102”.

10 Paragraph 238(3)(c)

After “107(1)(g)”, insert “, 108A(1)(f)”.

11 After paragraph 285(e)

Insert:

(ea) refusal to issue a transmitter licence under section 101A;

12 Paragraph 285(f)

After “107(1)(g)”, insert “, 108A(1)(f)”.

*[Minister’s second reading speech made in—
Senate on 18 June 1997
House of Representatives on 27 June 1997]*

(81/97)
