



Broadcasting Services Legislation Amendment Act 1997

No. 143, 1997



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An Act to amend the *Broadcasting Services Act 1992* and the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992*, and for related purposes

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An Act to amend the *Broadcasting Services Act 1992* and the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992*, and for related purposes

[Assented to 8 October 1997]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Broadcasting Services Legislation Amendment Act 1997*.

2 Commencement

This Act commences on 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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 Subsections 59(3) and (4)

Omit “or a commercial radio broadcasting licence” (wherever occurring).

2 After subsection 59(4)

Insert:

(4A) If the ABA is satisfied that:

- (a) at least 50% of the circulation of a newspaper is within the licence area of a commercial radio broadcasting licence; and
- (b) the circulation of the newspaper within that licence area is at least 2% of the licence area population;

the ABA must enter the name of the newspaper in the Register in relation to the licence area.

(4B) If the ABA is satisfied that:

- (a) less than 50% of the circulation of a newspaper that is entered in the Register in relation to a commercial radio broadcasting licence is within the licence area of that licence; or
- (b) the circulation of the newspaper within that licence area is less than 2% of the licence area population;

the ABA must remove the name of the newspaper from the Register in relation to the licence area.

3 Section 204 (after table row relating to decision to remove newspaper from Register)

Insert:

To enter a newspaper in subsection 59(4A)
Register

The publisher of a
newspaper or a
commercial radio
broadcasting licensee in
the relevant licence area

Refusal to remove newspaper from Register	subsection 59(4B)	The publisher of a newspaper or a commercial radio broadcasting licensee in the relevant licence area
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4 Section 204 (at the end of the table)

Add:

Refusal to permit an accounting period ending on a day other than 30 June	Subsection 205B(2)	The licensee
To issue a notice relating to the amount of licence fee paid	Subsection 205C(2)	The licensee
That no additional fee be remitted or that part only of the additional fee be remitted	Subsection 205D(4)	The licensee

5 After Part 14

Insert:

Part 14A—Accounts and payment of licence fees

205A Definitions

In this Part:

gross earnings has the same meaning:

- (a) in relation to a commercial radio broadcasting licence—as in the *Radio Licence Fees Act 1964*; and
- (b) in relation to a commercial television broadcasting licence—as in the *Television Licence Fees Act 1964*.

licence fee means a fee imposed under:

- (a) section 5 of the *Radio Licence Fees Act 1964*; or
- (b) section 5 of the *Television Licence Fees Act 1964*.

205B Licensees to keep accounts

- (1) A commercial television broadcasting licensee or a commercial radio broadcasting licensee must:
 - (a) keep and maintain, in a recognised business or commercial form, financial accounts in relation to the service provided under the licence; and
 - (b) make those accounts available for inspection by the ABA or an authorised officer when requested to do so; and
 - (c) within 6 months after 30 June in each year, give the ABA:
 - (i) an audited balance-sheet and an audited profit and loss account, in a form approved by the ABA, in relation to the service provided under the licence for the year ending on that 30 June; and
 - (ii) a statutory declaration stating the gross earnings in relation to the licence during that year; and
 - (d) keep such records in respect of the service provided under the licence as the ABA directs and give copies of those records to the ABA when requested to do so.
- (2) A licensee may, with the permission of the ABA, adopt an accounting period which is a period of 12 months ending on a day other than 30 June.
- (3) If a licensee adopts such an accounting period, paragraph (1)(c) has effect as if:
 - (a) the reference in that paragraph to 6 months after 30 June were a reference to:
 - (i) if 6 months after the end of the accounting period does not include 31 December—6 months after the end of the accounting period; or
 - (ii) if 6 months after the end of the accounting period includes 31 December—the period starting immediately after the end of the accounting period and ending on that 31 December; and
 - (b) a reference in that paragraph to the year ending on 30 June were a reference to the year ending on the last day of that accounting period.
- (4) The declaration referred to in subparagraph (1)(c)(ii) must be made by the chief executive officer or secretary of the licensee.

- (5) In this section:

authorised officer means a member, an associate member or a member of the staff of the ABA, authorised by the ABA in writing for the purposes of this section.

205C Payment of licence fees

- (1) If a commercial television broadcasting licensee or a commercial radio broadcasting licensee pays an amount that the licensee believes is the licence fee that is due and payable in relation to the licence, the licensee must, in a notice accompanying the payment, inform the ABA, in a form approved by the ABA, of the manner of working out the amount paid.
- (2) If:
- (a) the ABA, having regard to the documents given to it under paragraph 205B(1)(c), works out the amount of the licence fee that is due and payable in relation to the licence; and
 - (b) the amount worked out is not the same as the amount paid; the ABA must give the licensee, as soon as practicable, a notice in writing:
 - (c) specifying the amount worked out; and
 - (d) setting out details of how the amount was worked out; and
 - (e) if the amount paid is more than the amount worked out, specifying the amount overpaid; and
 - (f) if the amount paid is less than the amount worked out, specifying the amount unpaid; and
 - (g) if the ABA is satisfied that the licensee deliberately miscalculated the amount of the licence fee—stating that it is so satisfied.
- (3) If the notice given to the licensee under subsection (2) specifies an amount overpaid, the ABA must, within 21 days after the day the notice was issued, arrange for the amount to be refunded to the licensee.

205D Penalty for unpaid licence fees

- (1) If an amount of licence fee remains unpaid after the due date, an additional fee is due and payable by the licensee as a penalty at the rate of 20% per annum on the amount unpaid, worked out from the
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due date, unless subsection (2) or (3) applies in relation to the amount unpaid.

(2) If:

- (a) an amount of licence fee is specified in a notice under paragraph 205C(2)(f) as an amount unpaid; and
- (b) the notice does not contain a statement that the ABA is satisfied that the licensee deliberately miscalculated the amount of the licence fee; and
- (c) the amount unpaid is not paid within 21 days after the day the notice was issued;

then:

- (d) this subsection applies in relation to the amount unpaid; and
- (e) an additional fee is due and payable by the licensee as a penalty, at the rate of 20% per annum on the amount unpaid, worked out from the day the notice was issued.

(3) If:

- (a) an amount of licence fee is specified in a notice under paragraph 205C(2)(f) as an amount unpaid; and
- (b) the notice does not contain a statement that the ABA is satisfied that the licensee deliberately miscalculated the amount of the licence fee; and
- (c) the amount unpaid is paid within 21 days after the day the notice was issued;

then:

- (d) this subsection applies in relation to the amount unpaid; and
- (e) no additional fee is due and payable by the licensee as a penalty.

(4) If an additional fee is due and payable by the licensee under subsection (1) or (2) in relation to an amount of licence fee, or such an additional fee has been paid, and an authorised person:

- (a) is satisfied that:
 - (i) the circumstances that contributed to the delay in payment of the amount were not caused directly or indirectly by an act or omission of the licensee; and
 - (ii) the licensee has taken reasonable action to mitigate, or mitigate the effects of, those circumstances; or
- (b) is satisfied that:

- (i) the circumstances that contributed to the delay in payment of the amount were caused directly or indirectly by an act or omission of the licensee; and
 - (ii) the licensee has taken reasonable action to mitigate, or mitigate the effects of, those circumstances; and
 - (iii) having regard to the nature of those circumstances, it would be reasonable to remit the additional fee or part of that fee; or
 - (c) is satisfied that there are special circumstances that make it reasonable to remit the additional fee or part of that fee;
- the authorised person may remit the additional fee or part of that fee.
- (5) If:
- (a) an authorised person remits the additional fee or part of that fee; and
 - (b) the licensee has paid an amount of that fee;
- the authorised person must, within 21 days after remitting that fee or part of that fee, arrange for so much of the amount as is remitted to be refunded to the licensee.
- (6) Despite subsections (1) and (2), an amount of unpaid licence fee may be recovered immediately after the due date in a court of competent jurisdiction as a debt due to the Commonwealth.
- (7) If:
- (a) judgment is entered or given in a court for the payment of an amount of unpaid licence fee; and
 - (b) interest is payable on the judgment debt; and
 - (c) an additional fee is payable in respect of the unpaid licence fee under subsection (1) or (2);
- the amount of the additional fee that would, but for the operation of this subsection, be so payable is reduced by the amount of the interest payable on that judgment debt.
- (8) If:
- (a) judgment is entered or given in a court for the payment of an amount that includes an amount of unpaid licence fee; and
 - (b) interest is payable on the judgment debt; and
 - (c) an additional fee is payable in respect of the unpaid licence fee under subsection (1) or (2);
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the amount of the additional fee that would, but for the operation of this subsection, be so payable is reduced by an amount worked out using the formula:

$$\text{Interest on judgment debt} \times \frac{\text{Licence fee component of judgment debt}}{\text{Judgment debt}}$$

where:

interest on judgment debt means the dollar amount representing the amount of interest payable on the judgment debt at the time the debt is paid.

licence fee component of judgment debt means the amount determined by the court to be the amount of licence fee unpaid.

(9) In this section:

authorised person means:

- (a) the Minister; or
- (b) an officer authorised by the Minister in writing for the purposes of this section.

due date, in relation to a licence fee, means the day on which the fee becomes payable under the *Radio Licence Fees Act 1964* or the *Television Licence Fees Act 1964*.

6 After paragraph 7(1)(i) of Schedule 2

Insert:

- (ia) the licensee will comply with the requirements set out in section 205B;

7 After paragraph 8(1)(h) of Schedule 2

Insert:

- (ha) the licensee will comply with the requirements set out in section 205B;

8 Application

- (1) The amendment of clause 7 of Schedule 2 to the *Broadcasting Services Act 1992* that is made by this Act extends to:
- (a) a commercial television broadcasting licence referred to in paragraph 5(1)(b) or (e) of the Transitional Provisions Act; or
 - (b) a commercial television broadcasting licence allocated or renewed under the *Broadcasting Services Act 1992* before, on or after the commencement of this Act.
- (2) The amendment of clause 8 of Schedule 2 to the *Broadcasting Services Act 1992* that is made by this Act extends to:
- (a) a commercial radio broadcasting licence referred to in paragraph 5(1)(a), (d) or (f) of the Transitional Provisions Act; or
 - (b) a commercial radio broadcasting licence allocated or renewed under the *Broadcasting Services Act 1992* before, on or after the commencement of this Act.
- (3) In this item:
- Transitional Provisions Act*** means the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992*.

9 Transitional

- (1) If:
- (a) a decision has been made under subsection 59(3) of the *Broadcasting Services Act 1992* as in force at any time before the commencement day to enter the name of a newspaper in the Associated Newspaper Register as a newspaper associated with the licence area of a commercial radio broadcasting licence; and
 - (b) the decision has not been revoked or rescinded before that day;
- the decision has effect, on and after that day, as if it were a decision to the same effect made under subsection 59(4A) of that Act as amended by this Act.
- (2) If:

- (a) a decision has been made under subsection 59(4) of the *Broadcasting Services Act 1992* as in force at any time before the commencement day to refuse to remove the name of a newspaper from the Associated Newspaper Register as a newspaper associated with the licence area of a commercial radio broadcasting licence; and
- (b) the decision has not been revoked or rescinded before that day;

the decision has effect, on and after that day, as if it were a decision to the same effect made under subsection 59(4B) of that Act as amended by this Act.

(3) If:

- (a) a direction, requirement, approval or leave is given, or is taken to have been given, by the ABA under a continued section of the *Broadcasting Act 1942*; and
- (b) the direction, requirement, approval or leave is in force immediately before the commencement day;

the direction, requirement, approval or leave continues in force, on and after that day, as if it were a direction, requirement, approval or permission given under the corresponding provision of Part 14A of the *Broadcasting Services Act 1992*.

(4) If, before the commencement day, a request has been made, or is taken to have been made, by the ABA under subsection 123(4) of the *Broadcasting Act 1942* as that subsection is continued in force by section 22 of the Transitional Provisions Act, for books or documents to be made available, or particulars to be furnished, that request has effect, on and after that day, for the purposes of Part 14A of the *Broadcasting Services Act 1992*:

- (a) as if it were a request made under subsection 205B(1) of the last-mentioned Act; and
- (b) as if the books or documents required to be made available, or the particulars required to be furnished, were financial accounts or other records required under subsection 205B(1) of the last-mentioned Act to be provided to the ABA.

(5) If, before the commencement day, a request has been made, or is taken to have been made, by the ABA under subsection 123(4AA) of the *Broadcasting Act 1942* as that subsection is continued in force by section 22 of the Transitional Provisions Act, that request has effect, on

or after that day, for the purposes of the *Broadcasting Services Act 1992* as if it were a notice in writing under section 173 of the last-mentioned Act to provide the information to the ABA for the purposes of an investigation under section 170 of the last-mentioned Act.

- (6) If, before the commencement day, a notice has been given by the ABA under subsection 123AA(3) of the *Broadcasting Act 1942* as that subsection is continued in force by section 22 of the Transitional Provisions Act:
- (a) the notice has effect, on and after that day, for the purposes of Part 14A of the *Broadcasting Services Act 1992*, as if it were a notice given under subsection 205C(2) of the last-mentioned Act; but
 - (b) for the purpose of working out the period of 21 days beginning on the day the notice was issued, Part 14A of the last-mentioned Act has effect as if it had been in force at the time of issue of the notice.
- (7) If, immediately before the commencement day, an additional fee, by way of penalty, was payable under subsection 123A(1A) or (1B) of the *Broadcasting Act 1942* as that subsection is continued in force by section 22 of the Transitional Provisions Act, that additional fee is treated, on and after that day, as if:
- (a) it were payable under subsection 205D(1) or (2) of the *Broadcasting Services Act 1992*, whichever is appropriate; and
 - (b) Part 14A of the last-mentioned Act had been in force since the additional fee first became payable.
- (8) Any action taken before the commencement day by a licensee under a provision of a continued section of the *Broadcasting Act 1942* has effect, on and after that day, as if it had been taken by the licensee under the corresponding provision of Part 14A of the *Broadcasting Services Act 1992*.
- (9) Any action taken before the commencement day by a corporation that is related to a licensee in response to a request made under subsection 123(4AA) of the *Broadcasting Act 1942* as that subsection is continued in force under section 22 of the Transitional Provisions Act has effect, on and after that day, as if it had been taken by the corporation in response to a notice under section 173 of the *Broadcasting Services Act 1992*.
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(10) In this item:

commencement day means the day on which this Act receives the Royal Assent.

continued section of the Broadcasting Act 1942 means section 123, 123AA or 123A of the *Broadcasting Act 1942* as that section is continued in force by section 22 of the Transitional Provisions Act.

Transitional Provisions Act means the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992*.

Schedule 2—Amendment of the Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992

1 Sections 14, 15 and 22

Repeal the sections.

*[Minister's second reading speech made in—
House of Representatives on 19 March 1997
Senate on 15 May 1997]*

(30/97)