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**Radiocommunications (Transmitter Licence Tax)
Amendment Bill 2002**

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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Radiocommunications (Transmitter Licence Tax)
Amendment Bill 2002

Mark Tapley
Law and Bills Digest Group
12 March 2002

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Radiocommunications (Transmitter Licence Tax) Amendment Bill 2002

Date Introduced: 14 February 2002

House: House of Representatives

Portfolio: Communications, Information Technology and the Arts

Commencement: Item 1 is backdated to commence on March 29 1996. The transitional provisions commence on Royal Assent.

Purpose

To ensure that a tax is imposed on the issue of a transmitter licence regardless of whether an application for the licence has been made.

Background

Radiocommunications are communications between people and/or objects transmitted using the radiofrequency spectrum.¹ Television and radio broadcasting are common forms of radiocommunication.

Commercial and community broadcasters² require a transmitter licence from the Australian Communications Authority (ACA). These licences specify the category of service (eg broadcasting, mobile) and technical conditions (including frequency, power and geographic area). A transmitter licence authorises the use of radiofrequency spectrum. Spectrum is valuable for many different communication purposes, including broadcasting and mobile telephony.³

The purpose of the *Radiocommunications (Transmitter Licence Tax) Act 1983* (the Licence Tax Act) is to impose a tax on transmitter licences held under the *Radiocommunications Act 1992* (RC Act). Under section 7 of the Licence Tax Act, the amount of tax payable for a transmitter licence is an amount determined by the ACA. In his second reading speech, the Minister stated that the justification for the tax is 'to encourage efficiency in the use of the spectrum and to provide a return to the community for the use of a scarce community resource'.⁴

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

This Bill is designed to correct an anomaly in the collection of the licence tax. Under section 6, tax is imposed on the issue of a licence if it is issued for a period of less than 12 months. However, if the licence is for a period of more than 12 months, subsection 6(4) states that the person should, on *application* for the licence, elect to pay tax in relation to the licence by full up-front payment on issue or in annual instalments.

The anomaly arises because a number of transmitter licences are granted automatically under the RC Act without the need for an application. For example, under section 102 of the RC Act, the ACA must issue a transmitter licence to a commercial or community broadcaster who has been issued with a licence under the *Broadcasting Services Act 1992*. The ACA is similarly required under sections 100B and 102A of the RC Act to issue transmitter licenses to the national broadcasters (ABC and SBS) and commercial broadcasters to allow them to broadcast in digital mode. Such licences are, at present, not liable to taxation under the Licence Tax Act. This anomaly has existed since 1996.⁵

Despite the fact that they were not legally obliged to do so, the Minister has reported that all affected broadcasting licensees have paid the tax and that no retrospective payment will be required.⁶ The Bill will amend section 6 of the Licence Tax Act to ensure that a tax is payable by a licensee whether or not the person applied for the licence and will validate taxes already collected.

Main Provisions

Item 1 amends section 6 of the Licence Tax Act to impose liability on a person granted a transmitter licence under sections 100B, 102 or 102A of the RC Act without making an application. **Proposed subsection 6(9)** provides that before the licence is issued, a person must elect to pay the tax on the issue of the licence for the period that the licence is in force (under **proposed subsection 6(7)**) or to pay the tax by instalments (under **proposed subsection 6(8)**). **Proposed subsection 6(10)** states that if no election is made, the tax will be payable by instalments.

Proposed subsection 6(11) provides a mechanism for licensees who elected to pay by instalments to decide to pay the tax outstanding on the remainder of the licence period.

Under **proposed subsection 6(12)**, if a licensee fails to pay an annual instalment within 60 days of the payment falling due, the full tax for the remaining period of the licence will become payable.

Item 2 contains transitional provisions dealing with ‘issued licences’. That is, those issued for a period of more than 12 months under sections 100B, 102 or 102A of the RC Act prior to the enactment of this Bill.

Sub-item 2(2) validates elections purported to have been made by licensees under existing legislation by deeming them to have been made under **proposed subsection 6(9)**.

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Sub-item 2(3) provides that licensees who purported to pay tax under the existing section 6 are taken to have paid it under new subsections 6(7), (8), (11) or (12).

As noted above, the ACA is empowered to issue determinations stating the amount of tax payable under the Act. **Sub-item 2(5)** deems these determinations to include references to new subsections 6(7), (8), (11) and (12). This provision is necessary to validate taxes already collected from licensees without legal authority.

Endnotes

- 1 This spectrum is technically defined as the electromagnetic frequencies between 3000 hertz (Hz) and 300 gigahertz (Ghz). See Productivity Commission, *Radiocommunications: Draft Report*, February 2002, p.1.
- 2 The Australian Broadcasting Authority also regulates broadcasters. The ABA has particular powers in relation to matters of broadcast content.
- 3 Productivity Commission, *Radiocommunications: Draft Report*, February 2002, p.xxxvi.
- 4 The Hon. Peter McGauran MP , Second Reading Speech, House of Representatives, *Hansard*, 14 February 2002, p.132.
- 5 The *Radiocommunications (Transmitter Licence Tax) Amendment Act 1995* commenced on 29 March 1996.
- 6 The Hon. Peter McGauran MP, Second Reading Speech, House of Representatives, *Hansard*, 14 February 2002, p.132.

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