



Communications Legislation Amendment (Miscellaneous Measures) Bill 2007

Paula Pyburne
Law and Bills Digest Section

Contents

Purpose.	2
Background.	2
Financial implications	4
Main provisions.	4
The first correction	6
The second correction	6
Concluding comments	7

Communications Legislation Amendment (Miscellaneous Measures) Bill 2007

Date introduced: 13 September 2007

House: Senate

Portfolio: Communications, Information Technology and the Arts

Commencement: Schedule 1, item 6, immediately after the time specified in the *Broadcasting Legislation Amendment (Digital Radio) Act 2007* for the commencement of item 148 of Schedule 1 to that Act. Schedule 1, item 7, immediately after the time specified in the *Broadcasting Legislation Amendment (Digital Television) Act 2006* for the commencement of item 26 of Schedule 2A to that Act. For all other parts, the day on which this Act received the Royal Assent.

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

To amend the *Broadcasting Services Act 1992* (the Broadcasting Services Act) to give the Australian Communications and Media Authority (the ACMA) the discretion to consider late applications for renewals of community broadcasting licences up to the expiry date of the licence.

To amend the *Broadcasting Legislation Amendment (Digital Radio) Act 2007* (the Broadcasting Legislation Amendment (Digital Radio) Act) and the *Broadcasting Legislation Amendment (Digital Television) Act 2006* (the Broadcasting Legislation Amendment (Digital Television) Act) to make minor technical corrections.

Background

Part 6 of the Broadcasting Services Act provides for the allocation and renewal of community broadcasting licences.

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As at December 2006, there was a total of 358 current community radio broadcasting licences in Australia. There were also approximately 80 remote indigenous broadcasters and 36 current temporary community broadcasting licences.¹

In deciding whether to renew a community broadcasting licence the ACMA must take into account all those matters which are relevant to an original grant of such a licence including:

- the extent to which the proposed service would meet the existing and perceived future needs of the community within the licence area
- the nature and diversity of the interest of that community
- the nature and diversity of other broadcasting services available within the licence area
- the capacity of the licensee to continue providing the subject service
- the undesirability of one person being in a position to exercise control of more than one community broadcasting licence in the same licence area, and
- the undesirability of the Commonwealth, a State or a Territory or a political party being in a position to exercise control of a community broadcasting licence.²

The ACMA currently has no discretion to consider late applications for the renewal of community broadcasting licences, regardless of the circumstances giving rise to the application.

According to the Explanatory Memorandum some community broadcasting licensees have lodged renewal applications up to three months late.³ While most community broadcasters have adequate administrative processes in place to ensure that their licence renewal applications are submitted within time, others operate without paid staff and have little administrative support.⁴ Consequently a good community broadcasting licensee, providing a valuable public service, could lose its licence as a result of making a late application – even in circumstances where the licensee can show good reasons as to why the application is late.⁵

The Bill is intended to remedy this situation.

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1. House of Representatives, Standing Committee on Communications, Information Technology and the Arts, '[Tuning in to Community Broadcasting](#)', Canberra, June 2007, p. 5.
 2. Section 84 *Broadcasting Services Act 1992*.
 3. Explanatory Memorandum, p. 3.
 4. House of Representatives, Standing Committee on Communications, Information Technology and the Arts, op. cit., p. 30.
 5. Explanatory Memorandum, p. 3.

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Financial implications

The Explanatory Memorandum states that there is no financial impact on the Commonwealth.⁶

Main provisions

Existing subsection 90(1) of the Broadcasting Services Act provides that the ACMA may renew a community broadcasting licence if the licensee makes an application for renewal by submitting the approved form. According to their website, the ACMA writes to existing community broadcasting licensees approximately 58 weeks before the expiry of their licence to request that they submit an application to renew it no later than 52 weeks before the expiry of the licence.⁷

Existing subsection 90(1A) sets out the general rule that a licensee **must** apply for the renewal of the licence within the following times:

- the earliest date to apply is one year before the licence is due to expire, and
- the latest date to apply is the first of the following times:
 - 26 weeks before the licence is due to expire, or
 - a time that is notified in writing to the licensee by the ACMA.

Under subsection 91(3) the ACMA is not required to conduct an investigation or a hearing into whether a licence should be renewed. However it does take into consideration written submissions from the public in making its decision and may require clarification from the licensee of certain matters before making its decision. This is the reason for the lengthy timeframe.

Item 2 of the Bill amends existing subsection 90(1A) so that the general rule regarding renewals is subject to **proposed subsection 90(1C)** which allows the submission to the ACMA of late applications by licensees in certain circumstances.⁸

Item 3 of the Bill inserts **proposed subsections 90(1C) to (1F)**.

6. Explanatory Memorandum, p. 2.

7. http://www.acma.gov.au/WEB/STANDARD/pc=PC_100412 as accessed on 14 September 2007.

8. Explanatory Memorandum, p. 3.

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Proposed subsection 90(1C) authorises the ACMA to consider a late application for renewal if **all** the following conditions are satisfied:

- the licensee makes the application before the time when the licence is due to expire and
- the application is accompanied by a written statement setting out the reasons for the late lodgement of the application and
- the ACMA considers that there are ‘exceptional circumstances’ that warrant consideration of the application.

Proposed subsection 90(1D) provides that in deciding whether ‘exceptional circumstances’ exist, the ACMA **must** take into account all of the following matters:

- how late the application is
- the reasons given by the licensee for the late lodgement of the application
- the number of paid staff employed by the licensee, and
- any other matters which ACMA thinks are relevant.

Where the ACMA decides that it will consider a late application, and has not made a decision on the application by the date that the licence is due to expire, **proposed subsection 90(1E)** provides that the licence will remain in force until the ACMA has made its decision.

Where the ACMA decides that it will consider a late application, and has not made a decision on the application within 26 weeks of receiving it, the ACMA is taken to have made a decision to refuse to renew the licence at the end of the 26 week period: **proposed subsection 90(1F)**.

Existing subsection 91(1) allows the ACMA to renew a community broadcasting licence for a period of five years. **Item 4** of the Bill amends subsection 91(1) to grant a licence for a shorter period in circumstances where the application to renew an existing licence has been lodged late.

Where:

- the ACMA renews a licence after its expiry date, and
- under proposed subsection 90(1E) the licence remained in force until the ACMA made a decision on the application

then **proposed paragraph 91(1)(a)** will require the ACMA to renew the licence beginning on the date that the ACMA made its decision to renew the licence, and ending on the date which is five years after the expiry date.

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Under **proposed paragraph 91(1)(b)** the ACMA may renew all other licences for a period of five years beginning immediately after their expiry date.

Item 5 of the Bill provides that these amendments to sections 90 and 91 of the Broadcasting Act apply to an application for renewal which is made after the commencement of the relevant item, that is, the date on which the Act receives Royal Assent.

Part 2 of the Bill provides for two separate technical corrections.

The first correction

Prior to 28 March 2007,⁹ section 31 of the *Radiocommunications Act 1992* (the Radiocommunications Act) provided that:

- (1) The Minister may, after consulting the ACMA, and in accordance with the spectrum plan, by written instrument:
 - (a) designate a part of the spectrum as being primarily for broadcasting purposes; and
 - (b) refer it to the ACMA for planning under Part 3 of the *Broadcasting Services Act 1992*.

Item 148 of Schedule 1 of the Broadcasting Legislation Amendment (Digital Radio) Act purports to amend section 31 by inserting the words ‘or restricted datacasting services, or both’ after the phrase ‘broadcasting services’.

This amendment could not take effect as there is no phrase ‘broadcasting services’ in section 31(1) of the Radiocommunications Act.

Item 6 of this Bill corrects that error so that the words ‘or restricted datacasting services, or both’ can be inserted after the phrase ‘broadcasting purposes’, as was originally intended.

The second correction

Prior to 14 September 2006,¹⁰ section 54 of Schedule 6 of the Broadcasting Services Act provided that:

- (1) ...

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9. The date on which the Broadcasting Legislation Amendment (Digital Radio) Bill 2007 was introduced into the House of Representatives.
 10. The date on which the Broadcasting Legislation Amendment (Digital Television) Bill 2006 was introduced in the Senate.

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- (2) If a datacasting licence is suspended because of a breach of a condition set out in clause 14, 16, 20B or 21, the ACMA may take such action, by way of suspending one or more datacasting licences held by:
- (a) the licensee; or
 - (b) a related body corporate of the licensee;
- (2A) ...
- (3) If a datacasting licence is cancelled because of a breach of a condition set out in clause 14, 16, 20B or 21, the ACMA may take such action, by way of cancelling one or more datacasting licences held by:
- (a) the licensee; or
 - (b) a related body corporate of the licensee;

...

Item 26 of Schedule 2A of the Broadcasting Legislation Amendment (Digital Television) Act purports to amend subsections 54(2) and 54(3) by omitting the reference to section '20B,'.

This amendment could not take effect as the reference to the section should have been '20B', that is, the inclusion of the comma was incorrect.

Item 7 of this Bill corrects the error so that the reference to section '20B', is to be omitted from subsections 54(2) and 54(3), as was originally intended.

Concluding comments

Both of the technical corrections are retrospective. The introduction of retrospective legislation is generally opposed in principle. However, the speed with which the errors were detected and corrected means that the retrospective effect of items 6 and 7 of the Bill will not cause a detriment. The Bill is not contentious and does not contain any provisions which would indicate that it should not be passed.

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