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19 March 2008, no. 90, 2007–08, ISSN 1328-8091

Communications Legislation Amendment (Miscellaneous Measures) Bill 2008

Paula Pyburne
Law and Bills Digest Section

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Communications Legislation Amendment (Miscellaneous Measures) Bill 2008

Date introduced: 12 March 2008

House: Senate

Portfolio: Broadband, Communications and the Digital Economy

Commencement: Sections 1-3 commence on the day on which the Bill receives the Royal Assent and schedule 1 commences on the following day.

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.

History of the Bill

The Communications Legislation Amendment (Miscellaneous Measures) Bill 2007 (the 2007 Bill) was introduced into the 41st Parliament on 13 September 2007. According to the Senate [Notice Paper](#) debate on the 2007 Bill was adjourned on the same day.

No further debate occurred and the 2007 Bill had not been passed when the Parliament was prorogued on 15 October 2007. As a result, the 2007 Bill lapsed.

The 2007 Bill had two parts. This Bill is different from the 2007 Bill in that the second part of the 2007 Bill has been omitted.

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. 4.
 4. House of Representatives, Standing Committee on Communications, Information Technology and the Arts, op. cit., p. 30.
 5. Explanatory Memorandum, p. 4.

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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 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)**.

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

6. Explanatory Memorandum, p. 2.

7. http://www.acma.gov.au/WEB/STANDARD/pc=PC_100412 as accessed on 12 March 2008.

8. Explanatory Memorandum, p. 4.

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- 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.

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.

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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.

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