



Parliament of the Commonwealth of Australia

Radiocommunications Legislation Amendment Bill 1999

Radiocommunications (Receiver Licence Tax) Amendment Bill 1999

Radiocommunications (Transmitter Licence Tax) Amendment Bill 1999

**Report by the Senate Environment, Communications,
Information Technology and the Arts Legislation Committee**

May 1999

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ISSN 1441-9920

This document was produced from camera ready copy prepared by the Senate Environment, Communications, Information Technology and the Arts Legislation Committee and printed by the Senate Printing Unit, Parliament House, Canberra

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Introduction

The Radiocommunications Legislation Amendment Bill 1999, the Radiocommunications (Receiver Licence Tax) Amendment Bill 1999 and the Radiocommunications (Transmitter Licence Tax) Amendment Bill 1999 were referred to the Senate Environment, Communications, Information Technology and the Arts Legislation Committee on 10 March 1999 by the Selection of Bills Committee (Report No 3 of 1999). The Committee was required to report to the Senate by the 26 April 1999. The tabling date was subsequently extended to Tuesday 11 May 1999.

The Bills

The Radiocommunications Legislation Amendment Bill 1999 makes various, unrelated minor amendments which have been requested by the Australian Communications Authority (ACA), after consultations with the telecommunications industry and consumers in order to aid the provision of telecommunications services.¹

In particular, the Bill amends the Radiocommunications Act 1992 and the Radiocommunications Taxes Collection Act 1983 to:

- allow the Australian Communications Authority (ACA) to regulate communications with 'space objects' more broadly defined than those currently defined as 'Australian satellites' for the purposes of the Act;
- enable the ACA and the Australian Broadcasting Authority to make an agreement allowing the ACA to issue radiocommunications licences in the broadcasting services bands;
- allow the Minister to limit to zero the amount of spectrum specified persons may acquire;
- require that a frequency assignment certificate states clearly that apparatus licences are only issued after correct frequency coordination have been followed;
- enable the ACA to delegate the power to issue certificates of proficiency to persons who have become qualified operators of transmitters (new subsection 122A(1))
- ensure that when a licence is renewed, it commences from the time of expiry;
- ensure that the ACA may make conditions relating to matters existing or arising at, before or after the time of accreditation;
- require that all relevant documents relating to products' standards be produced for inspection by the ACA;
- enable the ACA to determine that bodies conducting approved examinations, issuing certificates of proficiency, and performing accreditation and approving functions may charge for the services they provide to users of telecommunications services;

1 McGauran, Peter MP, Radiocommunications Legislation Amendment Bill 1999, second reading speech, HoR Hansard, 18 February 1999, p.3146

- simplify and reduce penalties payable in lieu of prosecution for offences committed under the Act, and allow a penalty in lieu of prosecution to be imposed on a manufacturer or importer who fails to meet requirements including retaining appropriate records concerning a device covered by mandatory standards;
- ensure that licence tax instalments are due on the anniversary of the date the licence commenced rather than on the anniversary of the date of issue.

The Radiocommunications (Receiver Licence Tax) Amendment Bill 1999 and the Radiocommunications (Transmitter Licence Tax) Amendment Bill 1999 make the amendments necessary to ensure that in future the relevant licence taxes will be calculated directly by reference to the periods for which the licences are effective.

Scrutiny of Bills Committee Report

The Committee notes that the Scrutiny of Bills Committee noted two concerns with the Radiocommunications Legislation Amendment Bill 1999 in its Alert Digest No. 3 of 1999 and reported on the Minister for Communications, Information Technology and the Arts' responses to its letters on those concerns in its Fifth Report of 1999.

The Scrutiny of Bills Committee sought the Minister's advice in relation to proposed new subsection 122A(1). That amendment would allow the Australian Communications Authority (ACA) to delegate the power to issue certificates of proficiency in the operation of a specified class of transmitters to a "body or organisation" with no further limit or qualification on the categories of potential delegates.

In response to the Scrutiny of Bills Committee's letter, the Minister pointed out that since the ACA must act in a manner consistent with the spirit of the *Australian Communications Authority Act 1997*, it would be unlikely to use its powers of delegation inappropriately. The Minister also considered that since the ACA must report its actions to the Minister, its powers of delegation are subject to ministerial review, which constituted 'sufficient oversight' in his view.

The Scrutiny of Bills Committee also pointed to item 1 of Schedule 3 to the bill which states that amendments to be made by items 8 and 9 of Schedule 2 (to ensure that Australia was able to assert its taxing rights over income from the use of spectrum licences owned by non-residents) would apply from 11 March 1998, the date the Treasurer issued a press release to that effect. The Scrutiny of Bills Committee pointed to the fact that since more than 6 months have elapsed since the press release was issued, the Senate's resolution of 8 November 1988 might apply.

The Senate's Resolution states that:

Where the Government has announced, by press release, its intention to introduce a Bill to amend taxation law, and that Bill has not been introduced into the Parliament or made available by way of publication of a draft Bill within 6 calendar months after the date of the announcement, the Senate shall, subject to any further resolution, amend the Bill to provide that the commencement date of the

Bill shall be a date that is no earlier than either the date of introduction of the Bill into the Parliament or the date of publication of the draft Bill.²

In response to the Scrutiny of Bills Committee's letter on this matter, the Minister advised that he had sought the advice of the Treasurer who had replied that it was "desirable to maintain the date of effect at 11 March 1998 to preclude problems of tax avoidance" by owners of spectrum licences. Since none of the spectrum licences have been used to date, the Scrutiny of Bills Committee did not find the reason given sufficient for the Senate to fail to apply the terms of its resolution of 8 November 1988.³

This Committee's Inquiry

The Senate Environment, Communications, Information Technology and the Arts Committee advertised its inquiry in *The Australian* and *The Australian Financial Review* and wrote to a number of organisations with an interest in the radiocommunications industry inviting submissions. The Committee received 3 submissions, one from the Department of Communications, Information Technology and the Arts, one from Motorola Australia and one from J.R.D. Communications Proprietary Limited.

Meetings

The Committee considered the Bill and the issues raised in submissions at 2 private meetings. It decided not to hold a public hearing. However, the Committee contacted the three organisations that had sent in submissions to offer them the opportunity to make further written comment on the bills. Committee members also asked the Department of Communications, Information Technology and the Arts to answer a number of specific questions. The answers to those questions are at Appendix 1.

The Issues

In its submission, Motorola was supportive of the amendments proposed in the Radiocommunications Legislation Amendment Bill 1999 stating:

Motorola Australia gives wholehearted support to the proposed amendments and can state that their effect will be to expedite our plans to expand our trunked radio systems and offer a wider range of services to many more members of the community.⁴

Motorola's main concern was with the issue of sharing broadcasting spectrum with radiocommunications services. It supports the amendments proposed in the Bill (Schedule 2, sections 3,4,5 and 10) which it believes "will greatly facilitate the sharing of Television spectrum and provide an expansion path for (our) trunked radio systems."⁵

The Department of Communications, Information Technology and the Arts (DOCITA) explained in its submission that under the current legislative framework there are restrictions on sharing spectrum in spite of the fact that:

2 Standing Orders of the Senate, Resolutions expressing opinions of the Senate, p 118

3 Scrutiny of Bills Committee, Fifth Report of 1999, p22

4 Submission No. 2 (Motorola Australia), p.4

5 Submission No. 2 (Motorola Australia), p.2

There are a number of radiocommunications services that can share broadcasting spectrum without any risk of interfering with broadcasting services.

In DOCITA's view, the current bill would improve the situation:

The proposed amendments will allow the ACA and the ABA to make written agreements allowing the licensing of other radiocommunications services in the broadcasting services bands. They will also provide a mechanism for cancelling such agreements. This will provide greater certainty to the marketplace by providing criteria under which any agreement reached between the ACA and the ABA may subsequently be revoked.⁶

J.R.D. Communications Proprietary Limited's main concern was with Subsection 100(4A) of the proposed legislation. It sought an assurance that:

In the event that the existing and new licences have both been allocated in accordance with 'correct frequency coordination procedure under section 266A of the Act' ... the rights of the existing licence holder, who may well have considerable financial investment in communications infrastructure and a responsibility of service to his clients, must take precedence in the real event of "unacceptable" interference, without the need to resort to expensive Civil litigation.⁷

J.R.D. would like the ACA to maintain a role in "policing" the spectrum and in resolving any dispute that might arise. In discussions with the Committee, officers of the Department of Communications, Information Technology and the Arts stated that in their view, the incumbents have priority to the frequency being used and any new entrant will have to co-ordinate with the existing players to eliminate interference.⁸

Conclusion

In view of the fact that no more than 3 submissions were received to this inquiry, the Committee concludes that the consultation process with the industry was conducted satisfactorily and that the amendments proposed in the bills are supported by the majority of players in the radiocommunications industry. Accordingly,

The Committee recommends to the Senate that the Bills proceed.

Senator Alan Eggleston

Chair

6 Submission No. 1 (DOCITA), p.4

7 Submission No. 3 (J.R.D. Communications), p 1

8 Private Briefing for the Committee, 30 March 1999

APPENDIX 1

ANSWERS TO QUESTIONS PUT ON NOTICE

ANSWERS TO QUESTIONS ON NOTICE - 8 PAGES NOT IN ELECTRONIC FORM

Senate Environment, Communications, Information Technology and the Arts Legislation Committee

ALP minority report in respect of issues concerning the Radiocommunications Legislation Amendment Bill 1999 raised by the Scrutiny of Bills Committee Report

The Treasurer announced in a press release of 11th March, 1998, that legislation would be introduced to ensure that those holding spectrum licences, such as mobile phone companies, paid tax in Australia.

This legislative measure was included in the Radiocommunications Legislation Amendment Bill 1999 which was introduced into the House of Representatives on 18th February, 1999 in breach of the Senate's resolution, of 8th November, 1998, namely that a tax measure announced by press release must be introduced into the Parliament no later than six months after the date of the press release.

The Minister for Communications, Information Technology and the Arts, made a statement to the Scrutiny of Bills Committee, on 23rd March, 1999, to the effect that he had been advised by the Treasurer that the date of effect for the legislation announced by press release, despite the Senate's resolution, should be maintained at 11th March, 1998 to preclude problems of "tax avoidance".

In the course of this inquiry, Senator Bishop (A.L.P., W.A.) asked officers of the Department of Communications, Information Technology and the Arts several questions. In essence, these questions required:

- (a) an explanation of why the introduction of the Radiocommunications Legislation Amendment Bill 1999, had been delayed so that it breached the Senate's resolution on legislation by press release, and,
- (b) a request for an estimation of the loss of tax revenue that would result from moving the date of effect of the legislation announced by the Treasurer's press release from the date of the press release to the date of the introduction of the legislation, in accordance with the Senate's resolution.

Despite the fact that officers of the Department of Communications, Information Technology and the Arts apparently sought the advice of Treasury, they were unable, or unwilling, to answer these questions.

In response to the request to estimate the amount of tax revenue lost to Australia by subjecting the Radiocommunications Legislation Amendment Bill 1999 to the resolution of the Senate, the Department of Communications, Information Technology and the Arts was able only to repeat what it had been told by the Australian Taxation Office, namely that it had no idea of the amount of tax revenue, if any, involved.

Despite this extraordinary lack of knowledge on the part of two relevant portfolio Departments, the Department of Communications, Information Technology and the Arts, in its second attempt to answer questions posed by Senator Bishop, stated that it had been "advised" by the Australian Taxation Office that, despite not knowing the amount of revenue involved, it was "important to maintain the date of effect" of the legislation at the date of the Treasurer's press release and therefore the Senate should not apply its resolution regarding legislation by press release.

The Senate, however, should not set aside one of its resolutions simply because two portfolio Departments effectively tell the Senate, without any evidence, that "it is important" to do so.

In its second attempt to respond to questions from Senator Bishop, the Department of Communications, Information Technology and the Arts stated that the Radiocommunications Legislation Amendment Bill 1999 was not introduced in the Spring Sittings of 1998 because of the “need to obtain the Treasurer’s approval to two unrelated radiocommunications measures, including consequential amendments”.

The Bill was therefore delayed because the Treasurer would not approve “consequential amendments”, something which should have taken relatively little time.

Clearly the Department of Communications, Information Technology and the Arts failed to pursue the matter.

The Department of Communications, Information Technology and the Arts stated that it was advised by the Australian Taxation Office that the date of effect of the legislation should be maintained at 11th March, 1998 because “[I]t is necessary to guard against the possibility of non-resident taxpayers taking advantage of their non-resident status to avoid Australian tax.”

It would seem to be as the result of the inattention to detail and disregard for the resolution of the Senate on the part of both Treasury and the Department of Communications, Information Technology and the Arts that the Radiocommunications Legislation Amendment Bill 1999 was not introduced until over five months after the deadline set by the Senate’s resolution regarding legislation by press release had passed.

Consequently non-residents may be able to take advantage of a loophole in the law to avoid paying tax in Australia.

The Department of Communications, Information Technology and the Arts advised that it consulted other portfolios regarding the Radiocommunications Legislation Amendment Bill 1999 in a “timely manner”. It is difficult to understand how the “timely” handling of a bill resulted in it being over five months late. The Department of Communications, Information Technology and the Arts would seem to have been very neglectful regarding the Radiocommunications Legislation Amendment Bill 1999.

It is obvious that the real reason for this neglect, as stated by the Department of Communications, Information Technology and the Arts, was the “need to afford maximum Parliamentary time to consider tax reform issues”. Treasury and the Department of Communications, Information Technology and the Arts apparently pursued GST issues so single-mindedly that they neglected to progress legislation, legislation which the Treasurer had announced would be introduced, that would have the effect of ensuring that spectrum licence holders, such as mobile phone companies paid tax in Australia. This is an extremely unsatisfactory state of affairs.

Labor Senators will pursue these issues and look forward to receiving a proper explanation from the Minister when the Radiocommunications Legislation Amendment Bill 1999 is listed for discussion in the Senate. In particular, Labor Senators will be interested in the alternate proposal put to the Treasurer by the Minister for Communications, Information Technology and the Arts in the Minister’s letters to the Treasurer dated November 10th 1998, and January 6th 1999.

SENATOR MARK BISHOP
ALP WESTERN AUSTRALIA

SENATOR NICK BOLKUS
ALP SOUTH AUSTRALIA