COMMUNICATIONS LEGISLATION AMENDMENT BILL 1985

Date Introduced: 8 May 1985
Date Amended: 23 May 1985
House: House of Representatives
Presented by: Hon. Michael Duffy, M.P., Minister for Communications

Short Digest of Bill

Purpose

The Bill amends the

- Overseas Telecommunications Act 1946 (OTC Act)
- Postal Services Act 1975
- Radiocommunications Act 1983
- Telecommunications Act 1975 (Telecom Act)

with a view to enabling the Australian Telecommunications Commission (Telecom), the Australian Postal Commission (Australia Post) and the Overseas Telecommunication Commission (OTC) to undertake long-term leases up to a specified value without ministerial consent; and to also allow Telecom and OTC to enter into contractual arrangements to provide against foreign exchange and interest rate fluctuations.

Background

Both Telecom and Australia Post are required to operate on a commercial basis with the financial objective of generating, by way of charges for its services, such amounts as will enable it to cover its operating costs and finance at least half of its capital expenditures each year. OTC is responsible for providing telecommunications services between Australia and other countries and is also required to operate on a commercial basis.

Consequently, a notable proportion of the operations and programs of the three Commissions need to be financed by borrowings. For example, Telecom's capital expenditures in 1984-85 are estimated to total $1925m. This program will partly be financed by borrowings ($600m) with the balance of the funds provided from internal sources.
particularly depreciation provisions and retained profits. Telecom is expected to borrow significantly more from the capital markets as a consequence of the new "global" approach to borrowings by Commonwealth and State semi-government authorities which the Loan Council adopted on a trial basis in 1984.[1]

Under present legislative provisions, the three Commissions are permitted to borrow and lease, within a certain prescribed contract value threshold. Contracts which exceed the threshold require ministerial approval.

The Government is aware however, that large business enterprises like Telecom and OTC need to manage their foreign exchange exposure in a prudent and effective manner. The negotiation and implementation of foreign exchange contracts require both efficiency and timing. The Government therefore believes it is inappropriate and impractical to require the Commissions to obtain ministerial approval for currency hedging or futures contracts when the main contract is exempt from requiring that consent or has already received it.

Outline

The Bill will enable the Commissions to respond efficiently to changing circumstances in financial markets, but at the same time will prohibit any element of speculation, by requiring hedging or futures dealings to be in accordance with guidelines to be determined by the Minister. As the Minister has stated:

"Such an arrangement provides the flexibility necessary for commercial efficiency while ensuring the appropriate level of Ministerial control".[2]

The Bill also repeals the need for Ministerial approval of property leases entered into by Australia Post, Telecom and OTC for periods in excess of 10 years.

The Bill makes amendments to the Telecom Act which include a review of the level of offences and penalties currently in the By-Laws and Regulations to the Act, which deal with the misuse of Telecom's network. These amendments follow recommendations made by Mr F.H.R. Vincent, OC in his report on the Review of Matters affecting the Australian Telecommunications Commission (the Vincent Report).

Main Provisions

A detailed analysis of the provisions of the Bill is contained in the Explanatory Memorandum.
The Bill conveniently deals with each of the four Acts it amends, in separate Parts. While Part I deals with preliminary matters, Part II deals with the OTC Act; Part III with the Postal Services Act; Part IV with the Radiocommunications Act; and Part V with the Telecom Act.

**OTC Act 1946**

The Bill proposes to insert a new section 38AAA into the OTC Act, which allows the OTC to enter into any contracts in respect of financial futures or foreign currency for the purpose of reducing or eliminating risks of adverse financial consequences to the Commission (clause 6). Clause 6 was amended by the House so that the provisions within the proposed section 38AAA will also apply to contracts made under that section.[3] It is important to note that under section 38AAA(2) the Minister may, by determination in writing, set guidelines which the Commission must follow, in the exercise of its powers under the section.

**Postal Services Act 1975**

The Bill amends section 82 of this Act by empowering Australia Post to enter into contracts worth $500,000, without Ministerial approval (clause 9).

**Telecommunications Act 1975**

The Bill imposes a duty upon Telecom to ensure that none of its telecommunications' systems or installations is used in the commission of an offence against a Commonwealth or State law (clause 14). Telecom will also be empowered to enter into any contract with a value up to $500,000, without Ministerial approval (clause 16). Clause 16 also grants Telecom, (through the inclusion of a new section 79A in the Telecom Act) similar powers to the OTC in entering hedging contracts for financial futures or foreign currency. Clause 16 was also amended by the House to allow contracts made under the section to be governed by the provisions of the proposed section 79A.[4]

The Bill also makes further amendments to the Telecom Act (inserts new sections 86 and 94A), in relation to the use of telecommunications services for menaces and the unauthorised alteration or modification of Telecom equipment (clauses 17 and 18).

Finally, the Schedule to the Bill outlines further amendments to the Telecom Act. These amendments are
predominantly concerned with the level of penalties for offences committed under the Act.

For further information, if required, contact:

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References

4. Ibid., p.316.