

1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 23 August 1990

(*Mr N. A. Brown*)

A BILL

FOR

An Act to amend the *Telecommunications Act 1989*, to provide for competition in telecommunications and to encourage the expansion of Australia's telecommunications infrastructure and industry

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART 1—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Telecommunications Reform Act 1990*.

Commencement

2. This Act commences on a day to be fixed by Proclamation.

General objects of Act

3. The objects of this Act include:

- (a) encouraging the expansion of the telecommunications industry;
- (b) providing for competition in telecommunications;
- (c) providing opportunities for increased investment and employment in telecommunications; 5
- (d) encouraging the modernisation of telecommunications by the introduction of new and diverse telecommunications services; and
- (e) making arrangements for persons to apply for and to be issued with licences to enable them to provide telecommunications services and for other incidental arrangements. 10

Interpretation

4. In this Act:

- (a) “**Principal Act**” means the *Telecommunications Act 1989*; 15
- (b) words and expressions have the same meaning as in the Principal Act except for the meaning given to the words “telecommunications service”;
- (c) “**telecommunications service**” means a service for carrying communications by means of guided or unguided electromagnetic energy or both, whether the service for carrying communications is provided by means of radiocommunication or otherwise. 20

**PART 2—AMENDMENTS OF TELECOMMUNICATIONS
ACT 1989**

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5. Section 19 of the Principal Act is repealed and the following section is substituted:

General functions—promotion of competition

“19. The functions of AUSTEL include:

- (a) encouraging and facilitating competition in all telecommunications facilities and services; 30
- (b) enabling competitors to Telecom to connect to the Telecom network on non-discriminatory terms and fair prices;
- (c) regulating relations between the carriers;
- (d) monitoring and reporting to the Minister on the areas in which this Act and the *Radiocommunications Act 1983* overlap.”. 35

6. Section 20 of the Principal Act is repealed and the following section is substituted:

General functions—protection of competitors from unfair practices of carriers

5 “20. The functions of AUSTEL include protecting the suppliers of competitive facilities and services from unfair practices of the carriers and generally promoting fair and efficient market conduct in relation to the supply of competitive facilities and services.”

7. Section 22 of the Principal Act is amended:

(a) by omitting paragraph (a);

10 (b) by omitting from paragraph (b) “reserved facilities and services” and substituting “its services”;

(c) by omitting from paragraph (c) “reserved facilities and”.

8. Section 33 of the Principal Act is repealed and the following section is substituted:

15 **Declaration of policy—shared use and resale of carriage of communications over private telecommunications networks**

“33. It is the intention of the Parliament:

(a) that the carriers should provide telecommunications infrastructures and networks, but that they should be subject to competition and should not be monopolies; and

20 (b) that the shared use and resale of simple carriage of communications over private telecommunications networks should be permitted and encouraged.”

9. Section 34 of the Principal Act is repealed and the following section is substituted:

25 **Declaration of policy—domestic satellite systems**

“34. It is the intention of the Parliament that AUSSAT should not have the exclusive right to provide the space segment of Australia’s domestic satellite system, but that the provision of such services should be open to competition.”

30 10. Section 35 of the Principal Act is repealed and the following section is substituted:

Declaration of policy—supply of facilities

“35. It is the intention of the Parliament:

35 (a) that the role of Telecom as the sole supplier of the first telephone ends on the day on which this Act commences;

(b) that Telecom does not have the exclusive right to supply, install and maintain public payphones; and

40 (c) that the right of each carrier to supply, install, maintain and operate all equipment, lines and other facilities that are connected to and whether within or beyond the boundaries of a telecommunications network operated by it, should not be an

exclusive right but that the performance of such functions should be open to competition.”.

11. Section 36 of the Principal Act is repealed and the following section is substituted:

Declaration of policy—services not to be reserved 5

“36. It is the intention of the Parliament that the carriers should not have the exclusive right to supply any telecommunications service hitherto known as a reserved service.”.

Operation etc. of networks to supply telecommunications services between places within Australia otherwise than by satellite-based facilities 10

12. Section 37 of the Principal Act is amended:

- (a) by omitting from subsection (1) “the exclusive right” and substituting “the right”;
- (b) by omitting from subsection (2) “the exclusive right” and substituting “the right”. 15

Operation etc. of networks to supply telecommunications services from and to Australia

13. Section 38 of the Principal Act is amended:

- (a) by omitting from subsection (1) “the exclusive right” and substituting “the right”; 20
- (b) by omitting from subsection (2) “the exclusive right” and substituting “the right”.

Supply etc. of facilities connected to carrier networks

14. Section 43 of the Principal Act is amended by omitting from subsection (1) “the exclusive right” and substituting “the right”. 25

Operation of satellite-based facilities

15. Section 44 of the Principal Act is amended by omitting from subsection (1) “the exclusive right” and substituting “the right”.

Repeal 30

16. Section 46 of the Principal Act is amended by omitting subsections (3), (4) and (5).

17. Section 47 of the Principal Act is repealed and the following section is substituted:

Supply etc. of first telephones 35

“47. As and from the day on which this Act commences, the right to supply, install and maintain the first telephone for a basic telephone service shall not be the exclusive right of Telecom but shall be open to competition.”.

18. Section 48 of the Principal Act is repealed and the following section is substituted:

Supply etc. of public payphones

5 “48. As from the day on which this Act commences, the right to supply, install and maintain public payphones shall not be the exclusive right of Telecom but shall be open to competition.”

Abolition of the reservation of services

19. The Principal Act is amended by omitting Divisions 3, 4 and 5 of Part 3.

10 **Value added services and private network services**

20. Section 70 of the Principal Act is amended by omitting from subparagraph (a) (i) “the carriers’ exclusive rights” and substituting “the carriers’ rights”.

Repeal of sections 71 and 72 and subsection 73 (4)

- 15 21. (1) Section 71 of the Principal Act is repealed.
(2) Section 72 of the Principal Act is repealed.
(3) Subsection 73 (4) of the Principal Act is repealed.

Directions to have general application only

- 20 22. Subsection 74 (1) of the Principal Act is amended:
(a) by omitting from paragraph (c) “or”;
(b) by adding the following paragraph:
“or (e) a particular application to AUSTEL under section 146A for a telecommunications service licence.”

Repeal

- 25 23. (1) Subparagraphs 75 (3) (a) and (b) of the Principal Act are repealed.
(2) Subparagraphs 77 (3) (a) and (b) of the Principal Act are repealed.
(3) Subparagraphs 83 (3) (a) and (b) of the Principal Act are repealed.

Obligation to connect value added services and private network services

- 30 24. Section 97 of the Principal Act is amended by adding after the words “private network service” the following words “or a service that may be provided under a telecommunications service licence”.

Discrimination prohibited in relation to value added and private network services

- 35 25. Section 98 of the Principal Act is amended:
(a) by omitting from subsection (1) “reserved services” and substituting “its services”;

- (b) by omitting from paragraph (c) “or”;
- (c) by adding after paragraph (1) (c) the following paragraph:
 “or (d) provides, or wishes to provide, telecommunications services provided under a telecommunications services licence.”; 5
- (d) by omitting from subsection (2) “a reserved service charge” and substituting “a service charge”;
- (e) by adding after subsection (4) the following subsections:
- “(5) For the more effective implementation of the objects of this Act contained in section 3, AUSTEL may give any direction to a carrier that in the opinion of AUSTEL is necessary to ensure that a telecommunications service licensee is able to connect the licensee’s service to the network operated by a carrier. 10
- “(6) A carrier to whom a direction is given under subsection (5) shall comply with the direction.”. 15

Carriers not to bundle certain charges

26. Section 100 of the Principal Act is amended:

- (a) by omitting “and (b) the services consist of:
 (i) public reserved services, leased circuit services, or both; and
 (ii) value added services;”.
- (b) by omitting “charges for any public reserved services” and substituting “charges for each service”.

27. Section 101 of the Principal Act is repealed and the following section is substituted: 25

Accounting requirements

“101. A carrier shall maintain its accounts and records so as to enable each and every of its services to be separately identified.”.

Reconsideration of decisions

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28. Section 144 of the Principal Act is amended by adding after item No. 13 in the Table set out in that section the following:

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|---|--|
| “14. The inclusion, under subsection 146B (2) of conditions in a telecommunications service licence | The person who applied for the licence |
| 15. A refusal to issue a telecommunications service licence under section 146B | The person who applied for the licence |

- | | | |
|-----|---|--|
| 16. | A decision to vary a telecommunications service licence under section 146D | The licensee |
| 17. | A decision not to vary a telecommunications service licence where an application for variation has been made under section 146E | The person who applied for a variation |
| 18. | A decision to cancel a telecommunications service licence under section 146G | The licensee”. |

Telecommunications service licences

29. After Part 5 of the Principal Act the following Part is inserted:

“PART 5A—TELECOMMUNICATIONS SERVICE LICENCES

Applications for telecommunications service licences

5 “146A. (1) Notwithstanding any provision of this Act relating to the issuing of class licences, the registration of value added services and private network services, the issue of permits and the issuing of cabling licences, a person may apply to AUSTEL for a telecommunications service licence.

10 “(2) A telecommunications service licence is a licence that enables the holder of the licence to provide the telecommunications service or services specified in the licence.

“(3) The application shall:

- 15 (a) describe the knowledge and experience of the applicant to provide telecommunications services;
- (b) be in the form approved by AUSTEL;
- (c) be accompanied by the payment of the appropriate fee; and
- 20 (d) specify the telecommunications service or services that the applicant wishes to provide and, in particular, whether the applicant wishes to provide services in the entire field of telecommunications or only in those areas of telecommunications that are specified in the application.

“(4) Before deciding whether to issue a telecommunications service licence to the applicant, AUSTEL shall consider:

- 25 (a) the additional competition that would be provided in telecommunications if the licence was issued;
- (b) the additional telecommunications services that would be generated if the licence was issued;
- 30 (c) the additional investment and employment that would be generated if the licence was issued;

- (d) if the applicant is a natural person, whether the applicant is an Australian citizen or resident or, if the applicant is a company, the degree of Australian ownership of the company;
- (e) any directions given by the Minister under section 29; and
- (f) the merits of the application. 5

“(5) The approved form of application may provide for verification by statutory declaration of statements in applications.

Issue of telecommunications service licences

“146B. (1) Where an application has been made under section 146A AUSTEL may, by written notice given to the applicant, issue a telecommunications service licence. 10

“(2) AUSTEL may include conditions in a telecommunications service licence including, for example, conditions relating to:

- (a) the telecommunications service or services which the licensee may perform under the licence; 15
- (b) the duration of the licence.

“(3) AUSTEL shall not issue a telecommunications service licence unless it is satisfied that:

- (a) the application complies with subsection 146A (3);
- (b) the applicant has the necessary knowledge and experience to provide the proposed service; 20
- (c) telecommunications services to be provided in accordance with the conditions included in the licence would comply with technical standards determined by AUSTEL under section 106;
- (d) the issuing of the licence is not contrary to directions given by the Minister under section 111; and 25
- (e) the provision of telecommunication services under the licence would contribute to increased competition in telecommunications.

“(4) Where AUSTEL issues a telecommunications service licence, it shall include in the notice under subsection (1) a statement to the effect that the applicant may, within 21 days after receiving the notice, apply to AUSTEL for reconsideration of the conditions included in the licence. 30

“(5) Where AUSTEL decides not to issue a telecommunications service licence, it shall give to the applicant written notice that the application is refused, together with: 35

- (a) its reasons for refusal; and
- (b) a statement to the effect that the applicant may, within 21 days after receiving the notice, apply to AUSTEL for reconsideration of the refusal. 40

Deemed refusal of telecommunications service licences

“146C. If, at the end of 30 days after an application for the issue of a telecommunications service licence has been made under section 146A, AUSTEL has not issued the licence, AUSTEL shall be regarded, for the purposes of section 144, as:

- (a) having decided, on the last of the 30 days, not to issue the licence; and
- (b) having informed the applicant accordingly on that day.

Variation of telecommunications service licences

“146D. (1) AUSTEL may, by written notice given to a licensee, vary the telecommunications service licence concerned.

“(2) The power to vary a telecommunications service licence includes the power to:

- (a) vary the conditions of the licence;
- (b) add further conditions; or
- (c) revoke any of the conditions.

“(3) AUSTEL shall not vary a telecommunications service licence unless it is satisfied that:

- (a) telecommunications services to be provided in accordance with the conditions included in the licence, as varied, would comply with technical standards determined by AUSTEL under section 106; and
- (b) the variation is not contrary to directions given by the Minister under section 111.

“(4) A telecommunications service licence varied under this section has effect, as varied, on and from the day after the day on which notice of the variation is given to the licensee.

“(5) Where AUSTEL varies a telecommunications service licence, it shall include in the notice under subsection (1):

- (a) the text of the variation;
- (b) AUSTEL’s reasons for the variation; and
- (c) a statement to the effect that the licensee may, within 21 days after receiving the notice, apply to AUSTEL for reconsideration of the variation.

Applications for variation of telecommunications service licences

“146E. (1) A person may apply to AUSTEL to vary a telecommunications service licence under section 146A.

“(2) The application shall:

- (a) be in the form approved by AUSTEL; and
- (b) be accompanied by the payment of the appropriate fee.

“(3) The approved form of application may provide for verification by statutory declaration of statements in applications.

“(4) Where AUSTEL decides not to vary the licence, it shall give to the applicant written notice that the application is refused, together with:

- (a) its reasons for the refusal; and
- (b) a statement to the effect that the applicant may, within 21 days after receiving the notice, apply to AUSTEL for reconsideration of the refusal.

“(5) If, at the end of 30 days after an application under this section for the variation of a telecommunications service licence has been made, AUSTEL has not varied the licence, or given to the applicant notice under subsection 146D for variation of the licence, AUSTEL shall be regarded, for the purposes of section 144, as:

- (a) having decided, on the last of the 30 days, not to vary the licence; and
- (b) having informed the applicant accordingly on that day.

Representations concerning variation of telecommunications service licences

“146F. (1) Before varying a telecommunications service licence, AUSTEL shall give to the licensee a notice:

- (a) setting out the text of the proposed variation; and
- (b) inviting the licensee to make representations to AUSTEL, within 21 days after receiving the notice, concerning the proposed variation.

“(2) The licensee who receives such a notice may, within 21 days after receiving this notice, make such representations to AUSTEL.

“(3) AUSTEL shall give due consideration to any representation so made.

“(4) Failure to comply strictly with subsection (1) does not affect the validity of the notice, or of a variation of a telecommunications service licence, if the requirements of that subsection are substantially complied with.

Cancellation of telecommunications service licences

“146G. (1) Where AUSTEL is satisfied that a licensee has contravened the conditions of its telecommunications service licence, AUSTEL may cancel the licence by written notice given to the licensee.

“(2) Where AUSTEL cancels a telecommunications service licence, it shall include in the notice under subsection (1):

- (a) AUSTEL’s reasons for the cancellation; and
- (b) a statement to the effect that the licensee may, within 21 days

after receiving the notice, apply to AUSTEL for reconsideration of the cancellation.

5 “(3) The cancellation of a telecommunications service licence has effect on and from the day on which notice of the cancellation is given to the licensee.

Representations concerning cancellation of telecommunications service licences

“146H. (1) Before cancelling a telecommunications service licence, AUSTEL shall give to the licensee a written notice:

- 10 (a) stating that it proposes to cancel the licence; and
(b) inviting the licensee who receives such a notice to make representations to AUSTEL, within 21 days after receiving the notice, concerning the proposed cancellation.

15 “(2) The licensee who receives such a notice may, within 21 days after receiving the notice, make such representations to AUSTEL.

“(3) AUSTEL shall give due consideration to any representations so made.

“(4) If AUSTEL decides not to proceed with the cancellation, it shall give to the licensee written notice to that effect.

20 “(5) Failure to comply strictly with subsection (1) does not affect the validity of the notice, or of a cancellation of a telecommunications service licence, if the requirements of that subsection are substantially complied with.

Surrender of telecommunications service licences

25 “146J. (1) A licensee may, at any time, surrender his or her telecommunications service licence by:

- (a) returning it to AUSTEL; and
(b) giving AUSTEL written notice that it is surrendered.

30 “(2) The surrender of a telecommunications service licence takes effect (unless the licence is sooner cancelled):

- (a) if the notice of surrender specifies a day on which the surrender is to take effect—at the end of that day; or
(b) in any other case—on the day on which the notice is given.

Validity of telecommunications service licences

35 “146K. A telecommunications service licence issued under section 146A shall, subject to the conditions included in the licence, be a valid licence to provide the telecommunications service or services specified in the licence notwithstanding that the licensee also holds any other licence (by whatever name called and whether issued under this Act or
40 otherwise) to provide telecommunications or other like services.”.

Review of decisions

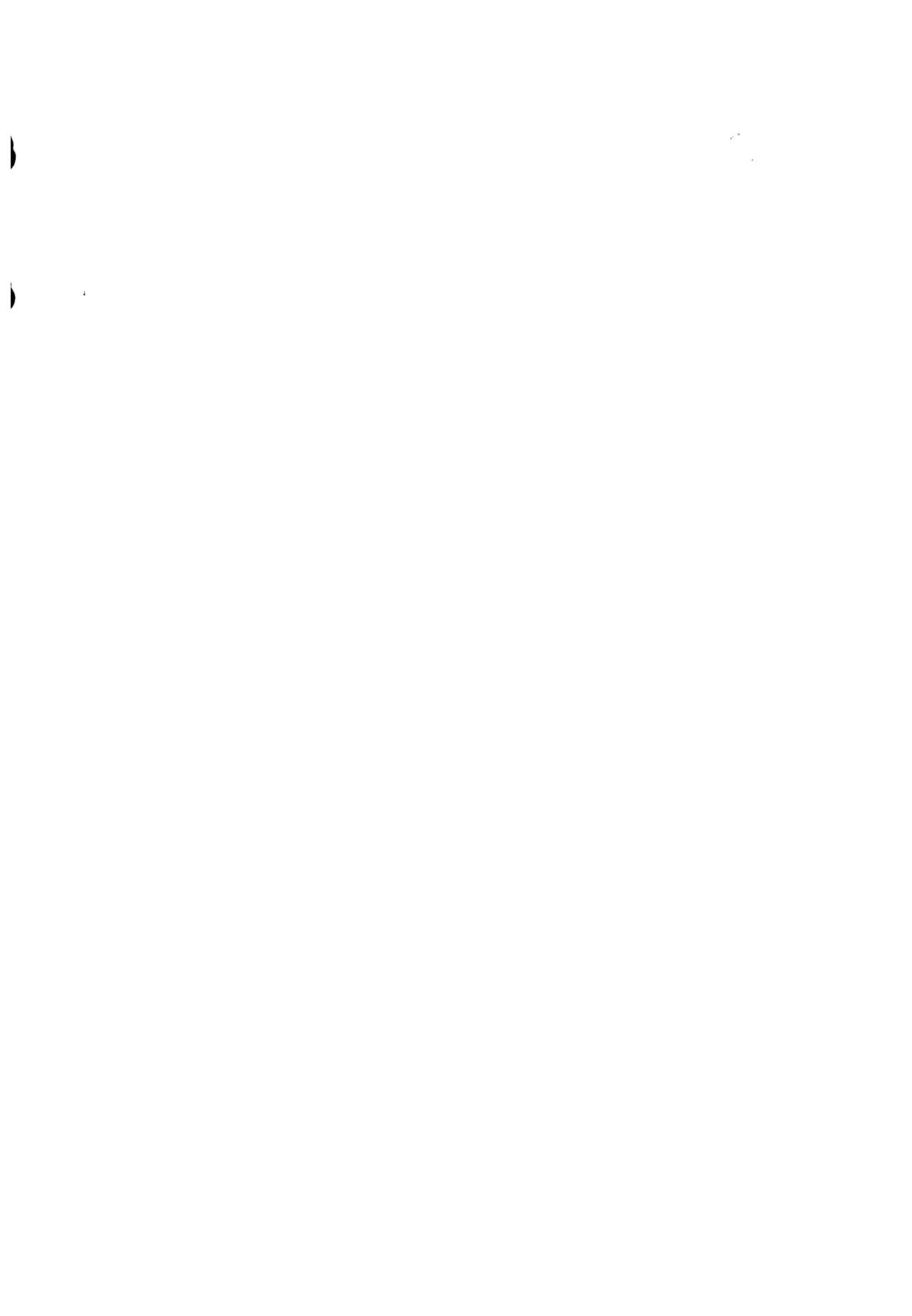
30. Subsection 178 (1) of the Principal Act is amended by adding the following paragraph:

“(f) a decision under this Act reconsidering a decision of AUSTEL to refuse an application for a telecommunications service licence.”.

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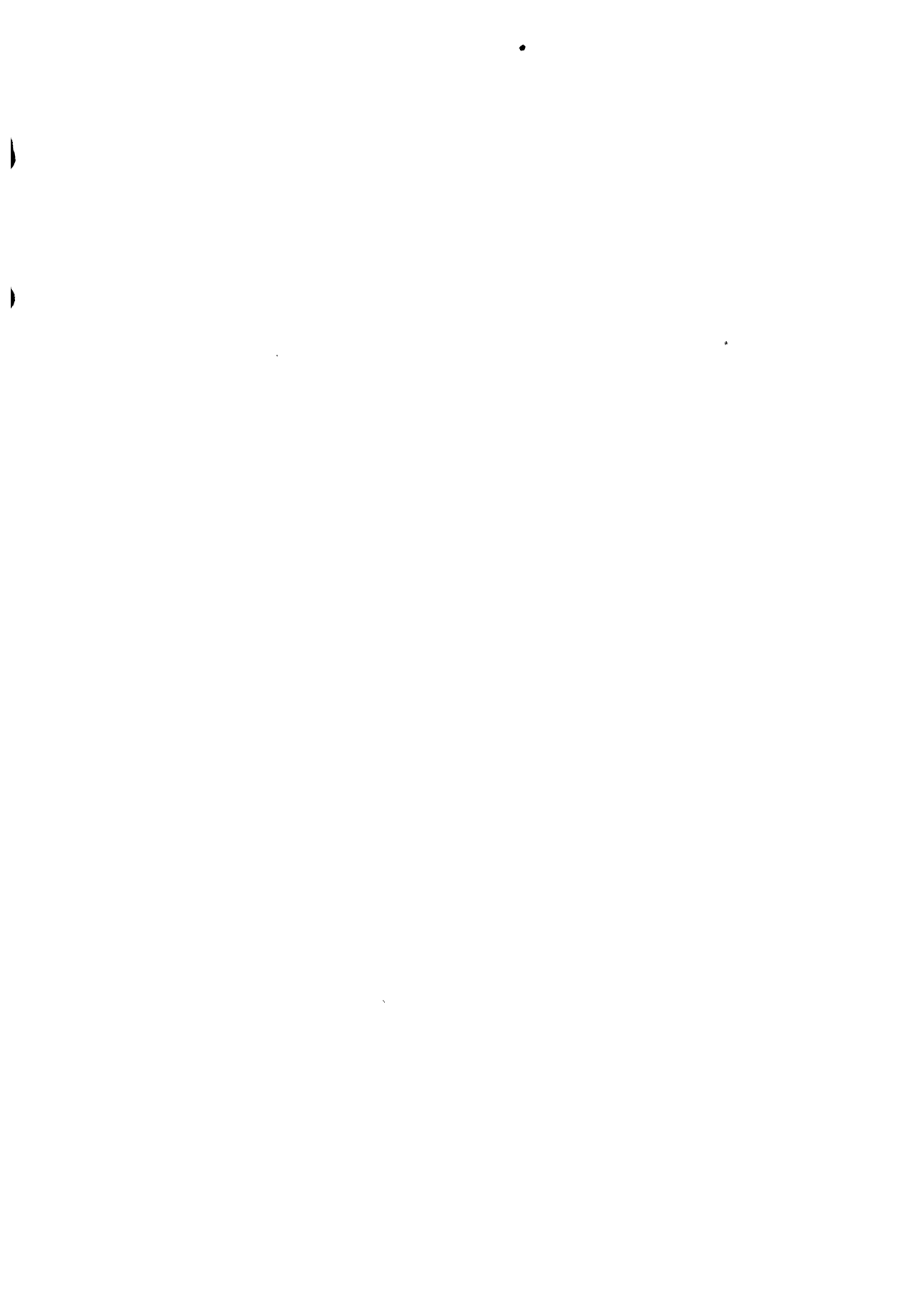
NOTE

1. No. 53, 1989, as amended. For previous amendment see No. 23, 1990.



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