



Special Broadcasting Service Act 1991

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About this compilation

This compilation

This is a compilation of the *Special Broadcasting Service Act 1991* that shows the text of the law as amended and in force on 12 December 2019 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act relating to the Special Broadcasting Service Corporation, and for related purposes

Part 1—Preliminary

1 Short title

This Act may be cited as the *Special Broadcasting Service Act 1991*.

2 Commencement

- (1) Subject to subsection (2), this Act commences 28 days after the day on which it receives the Royal Assent.
- (2) Section 54 commences on a day to be fixed by Proclamation.

3 Interpretation

In this Act, unless the contrary intention appears:

ACMA means the Australian Communications and Media Authority.

Board means the Special Broadcasting Service Board referred to in section 7.

borrowing, includes raising money or obtaining credit, whether by dealing in securities or otherwise, but does not include obtaining credit in a transaction forming part of the day-to-day operations of the SBS.

broadcasting service has the same meaning as in the *Broadcasting Services Act 1992*.

Chairperson means the Chairperson of the Board.

Section 3

Charter means the Charter of the SBS described in subsection 6(3).

Community Advisory Committee means the Community Advisory Committee established under section 50.

datacasting licence has the same meaning as in the *Broadcasting Services Act 1992*.

datacasting service has the same meaning as in the *Broadcasting Services Act 1992*.

digital electronic communications means communications that:

- (a) are carried by means of guided and/or unguided electromagnetic energy; and
- (b) involve the use of digital technology.

digital media service has the meaning given by section 3A.

Director means a member of the Board and includes the Chairperson, the Deputy Chairperson and the Managing Director.

Finance Minister means the Minister who administers the *Public Governance, Performance and Accountability Act 2013*.

Indigenous person means a person who is:

- (a) a member of the Aboriginal race of Australia; or
- (b) a descendant of an Indigenous inhabitant of the Torres Strait Islands.

interest, in relation to money, includes compound interest.

Managing Director means the Managing Director of the SBS.

national broadcasting service has the same meaning as in the *Broadcasting Services Act 1992*.

Nomination Panel means the Nomination Panel established under section 24A of the *Australian Broadcasting Corporation Act 1983*.

non-executive Director means a Director other than the Managing Director.

program means a radio program or a television program.

SBS means the body corporate preserved and continued in existence as the Special Broadcasting Service Corporation under section 5.

3A Digital media service

- (1) For the purposes of this Act, ***digital media service*** means:
- (a) a service that delivers content to persons having equipment appropriate for receiving that content, where the delivery of the service is by means of digital electronic communications;
 - or
 - (b) a service that allows end-users to access content using digital electronic communications;
- but does not include:
- (c) a broadcasting service; or
 - (d) a datacasting service.
- (2) For the purposes of this section, ***content*** means content:
- (a) whether in the form of text; or
 - (b) whether in the form of data; or
 - (c) whether in the form of speech, music or other sounds; or
 - (d) whether in the form of visual images (animated or otherwise); or
 - (e) whether in any other form; or
 - (f) whether in any combination of forms.

4 Extension to external Territories

This Act extends to all the external Territories.

Part 2—Establishment, functions and management of the SBS

5 Special Broadcasting Service Corporation

- (1) The body corporate that was, immediately before the day this section commences, in existence because of section 79C of the *Broadcasting Act 1942* under the name Special Broadcasting Service continues in existence, by force of this subsection, as a body corporate, under this Act, under the name Special Broadcasting Service Corporation.

Note: The *Public Governance, Performance and Accountability Act 2013* applies to the SBS. That Act deals with matters relating to corporate Commonwealth entities, including reporting and the use and management of public resources.

- (2) The SBS:
 - (a) has a seal; and
 - (b) may sue and be sued.
- (3) All courts, judges and persons acting judicially must take judicial notice of the imprint of the seal of the SBS appearing on a document and must presume that the document was duly sealed.

6 Charter of the SBS

- (1) The principal function of the SBS is to provide multilingual and multicultural broadcasting and digital media services that inform, educate and entertain all Australians, and, in doing so, reflect Australia's multicultural society.
- (2) The SBS, in performing its principal function, must:
 - (a) contribute to meeting the communications needs of Australia's multicultural society, including ethnic, Aboriginal and Torres Strait Islander communities; and

- (b) increase awareness of the contribution of a diversity of cultures to the continuing development of Australian society; and
 - (c) promote understanding and acceptance of the cultural, linguistic and ethnic diversity of the Australian people; and
 - (d) contribute to the retention and continuing development of language and other cultural skills; and
 - (e) as far as practicable, inform, educate and entertain Australians in their preferred languages; and
 - (f) make use of Australia's diverse creative resources; and
 - (g) contribute to the overall diversity of Australian broadcasting and digital media services, particularly taking into account the contribution of the Australian Broadcasting Corporation and the community broadcasting sector; and
 - (h) contribute to extending the range of Australian broadcasting and digital media services, and reflect the changing nature of Australian society, by presenting many points of view and using innovative forms of expression.
- (3) The principal function of the SBS under subsection (1) and the duties imposed on the SBS under subsection (2) constitute the Charter of the SBS.
- (4) Nothing in this section imposes on the SBS a duty that is enforceable by proceedings in a court.
- (5) A subsidiary function of the SBS is to carry on, within or outside Australia, any business or other activity incidental to the fulfilment of the Charter.

6A Datacasting functions

- (1) If:
- (a) the SBS applies for a datacasting licence; and
 - (b) the licence is allocated to the SBS;
- then, in addition to the functions conferred on the SBS under section 6, the SBS has the function of providing a datacasting

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service under, and in accordance with the conditions of, the licence.

- (2) However, subsection (1) is not intended to impose any obligation on the SBS, in relation to the provision of such a service, beyond that imposed on the SBS as holder of such a licence.

7 Establishment of Special Broadcasting Service Board

There is to be a Board of Directors of the SBS under the name Special Broadcasting Service Board.

8 Constitution of the Board

The Board consists of:

- (a) the Managing Director; and
- (aa) the Chairperson; and
- (b) not fewer than 3 nor more than 7 other non-executive Directors.

9 Role of the Board

The role of the Board is:

- (a) to decide the objectives, strategies and policies to be followed by the SBS in performing its functions; and
- (b) to ensure that the SBS performs its functions in a proper, efficient and economical manner and with the maximum benefit to the people of Australia.

10 Duties of the Board

- (1) It is the duty of the Board:
- (a) to maintain the independence and integrity of the SBS; and
 - (b) to develop and publicise the SBS's programming policies; and
 - (c) to ensure, by means of the SBS's programming policies, that the gathering and presentation by the SBS of news and

information is accurate and is balanced over time and across the schedule of programs broadcast; and

- (d) to ensure that the SBS does not contravene:
 - (i) this Act or any other Act; or
 - (ii) any directions given to, or requirements made in relation to, the SBS under this Act or another Act; and
 - (e) to ensure the efficient and cost effective functioning of the SBS; and
 - (f) to ensure that the SBS seeks to co-operate closely with the Australian Broadcasting Corporation to maximise the efficiency of the publicly funded sectors of Australian broadcasting; and
 - (g) to be aware of, and responsive to, community needs and opinions on matters relevant to the Charter; and
 - (h) to develop and publicise the SBS's policies on the handling of complaints; and
 - (i) to ensure that the pursuit by the SBS of its subsidiary functions does not detract from the SBS fulfilling its Charter responsibilities; and
 - (j) to develop codes of practice relating to:
 - (i) programming matters; and
 - (ii) if the SBS has the function of providing a datacasting service under section 6A—that service;and to notify those codes to the ACMA.
- (2) Nothing in this section imposes on the Board a duty that is enforceable by proceedings in a court.

11 Minister may give directions to the Board

- (1) Subject to subsections (2) and (3), the Minister may, after consultation with the Board, give to the Board such written directions in relation to the performance of the SBS's functions as appear to the Minister to be necessary in the public interest.

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- (2) Subject to subsections (3) and (3A), the Minister may only give a direction in relation to a prescribed matter or in prescribed circumstances.
- (3) The Minister must not give a direction in relation to the content or scheduling of programs to be broadcast.
- (3A) The Minister must not give a direction in relation to the content to be provided on a digital media service.
- (4) Where the Minister gives a direction to the Board, the Minister must cause a copy of the direction to be laid before each House of the Parliament within 15 sitting days of that House after giving the direction.

12 Minister may give directions to the SBS in the national interest

- (1) Where the Minister is of the opinion that the broadcasting of a particular matter by the SBS would be in the national interest, the Minister may direct the SBS to broadcast that matter from all the broadcasting stations from which the SBS programs are broadcast or from such of them as are specified in the direction.
- (2) Where the Minister gives a direction to the SBS, the SBS must broadcast the matter, free of charge, in accordance with the direction.
- (3) The Minister may direct that a matter be broadcast in a language or languages specified in the direction.
- (4) Subsection (1) has effect subject to section 116 of the *Broadcasting Act 1942*.
- (4A) If the Minister is of the opinion that the provision of particular content by the SBS would be in the national interest, the Minister may direct the SBS to provide that content on all of its digital media services or on such of them as are specified in the direction. If such a direction is given, the SBS must provide that content, free of charge, in accordance with the direction.

- (5) A direction under this section must be given in writing, or sent by telex or fax, to the Managing Director.
- (6) Where the Minister gives a direction under this section to the SBS, the Minister must cause a statement setting out particulars of, and the reasons for, the direction to be laid before each House of the Parliament within 7 sitting days of that House after giving the direction.

13 Limits on Government directions to SBS

- (1) Except as otherwise provided by or under this or any other Act, the SBS and its Board are not subject to direction by or on behalf of the Commonwealth Government.
- (2) Section 22 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the application of government policy to corporate Commonwealth entities) applies in relation to the SBS and its Board to the extent that a government policy order mentioned in that section does not affect the content or scheduling of programs.

14 Managing Director

There is to be a Managing Director of the SBS, who is to be appointed and hold office as provided by Division 2 of Part 3.

15 Duties of the Managing Director

- (1) Subject to subsection (2), the affairs of the SBS are to be managed by the Managing Director.
- (2) In managing any of the affairs of the SBS and in exercising any powers conferred on him or her by this Act, the Managing Director must act in accordance with any policies determined, and any directions given, by the Board.
- (3) Anything done in the name of, or on behalf of, the SBS by the Managing Director is taken to have been done by the SBS.

Part 3—The Board of Directors and the Managing Director

Division 1—Provisions relating to non-executive Directors

16 This Division applies to non-executive Directors

This Division applies to the non-executive Directors.

17 Appointment of non-executive Directors

- (1) The Governor-General must appoint the non-executive Directors.
- (2) Before the Governor-General appoints a person as a non-executive Director, the Minister must have regard to the need to ensure:
 - (a) that the Directors collectively possess an appropriate balance of expertise in the areas required to govern the SBS effectively, including an understanding of Australia's multicultural society and the needs and interests of the SBS's culturally diverse audience; and
 - (b) that the Directors collectively comprise persons with a diversity of cultural perspectives; and
 - (c) that the Directors include a person who the Minister is satisfied, having regard to consultations between the Minister and representatives of industrial organisations representing employees, has an appropriate understanding of the interests of employees; and
 - (d) that at least one of the Directors is an Indigenous person.
- (2A) The following persons are not eligible for appointment as a non-executive Director referred to in paragraph 8(aa) or (b):
 - (a) a member or former member of the Parliament of the Commonwealth;
 - (b) a member or former member of the Parliament of a State, of the Legislative Assembly for the Australian Capital Territory or of the Legislative Assembly of the Northern Territory;

- (c) a person who is or was a senior political staff member (within the meaning of the *Australian Broadcasting Corporation Act 1983*).
- (2AA) However, so far as subsection (2A) relates to a person who:
- (a) is a former member of a Parliament or a Legislative Assembly referred to in that subsection; or
 - (b) was a senior political staff member (within the meaning of the *Australian Broadcasting Corporation Act 1983*);
- that subsection applies only for the period of 12 months beginning on the day the person ceased to be a member of that Parliament or that Legislative Assembly or a senior political staff member (within the meaning of that Act).
- (2AB) A person who:
- (a) is a former member of a Parliament or a Legislative Assembly referred to in subsection (2A); or
 - (b) was a senior political staff member (within the meaning of the *Australian Broadcasting Corporation Act 1983*);
- must not be appointed as a non-executive Director referred to in paragraph 8(aa) or (b) unless, in accordance with Part 3A, the Nomination Panel has nominated the person for the appointment.
- (2B) Subject to subsection (2C), a person must not be appointed as a non-executive Director referred to in paragraph 8(aa) or (b) unless Part 3A is complied with.
- (2C) The Minister may recommend to the Governor-General that a particular person be re-appointed as a non-executive Director referred to in paragraph 8(aa) or (b) without Part 3A being complied with.
- (3) The appointment of a person as a non-executive Director is not invalid merely because of a defect or irregularity in relation to the appointment (including a failure to comply with Part 3A).

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18 Term of appointment

- (1) A non-executive Director holds office, subject to this Act, for such period (not longer than 5 years) as is specified in the instrument of appointment, but is eligible for re-appointment.
- (2) Where a person is re-appointed as a non-executive Director, the re-appointment must be for a period not exceeding 5 years.
- (3) The sum of the periods for which a person holds either or both of the following offices must not exceed 10 years:
 - (a) an office referred to in paragraph 8(aa);
 - (b) an office referred to in paragraph 8(b).

Example 1: Assume a person holds office as Chairperson for an initial period of 5 years and then holds office as Chairperson for a further period of 5 years.

The person cannot hold office as Chairperson again and cannot hold office as a Director referred to in paragraph 8(b).

Example 2: Assume a person holds office as a Director referred to in paragraph 8(b) for a period of 5 years and then holds office as Chairperson for a period of 3 years.

The person may now hold office as Chairperson, or as a Director referred to in paragraph 8(b), for a maximum period of 2 years.

19 Non-executive Directors hold office on part-time basis

Non-executive Directors hold office on a part-time basis.

20 Terms and conditions of appointment not provided for by Act

A non-executive Director holds office on such terms and conditions in relation to matters not provided for by this Act as are determined by the Governor-General.

21 Appointment of Deputy Chairperson

- (1) The Governor-General must appoint one of the non-executive Directors to be the Deputy Chairperson of the Board.

- (2) A person must not continue to hold the position of Deputy Chairperson, acting Chairperson or acting Deputy Chairperson if the person ceases to be a non-executive Director.

22 Board's functions and powers not affected by vacancy etc.

The performance of the functions or the exercise of the powers of the Board is not affected merely because:

- (a) there is a vacancy in the office of the Chairperson or Deputy Chairperson; or
- (b) there is a vacancy in the office of Managing Director; or
- (c) the number of non-executive Directors falls below 4 for not longer than 6 months.

23 Remuneration and allowances of non-executive Directors

- (1) A non-executive Director must be paid such remuneration as is determined by the Remuneration Tribunal.
- (2) A non-executive Director must be paid such allowances as are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

24 Acting Chairperson and other acting non-executive Directors

- (1) Where:
 - (a) there is a vacancy in the office of Chairperson, whether or not an appointment has previously been made to the office; or
 - (b) the Chairperson is absent from duty or from Australia or is, for any other reason, unable to perform the duties of his or her office;

the Deputy Chairperson must act as Chairperson.

Note: For rules that apply to persons acting as the Chairperson, see section 33A of the *Acts Interpretation Act 1901*.

Section 24

- (2) The Minister may appoint a non-executive Director to act as Deputy Chairperson:
- (a) during a vacancy in the office of Deputy Chairperson, whether or not an appointment has previously been made to that office; or
 - (b) during any period, or during all periods, when the Deputy Chairperson is absent from duty or from Australia, is acting as Chairperson or is, for any other reason, unable to perform the duties of his or her office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

- (3) The Minister may appoint a person to act as a non-executive Director other than the Chairperson or the Deputy Chairperson:
- (a) during a vacancy in the office of such a non-executive Director, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when such a non-executive Director is acting as Chairperson or as Deputy Chairperson, is absent from duty or from Australia or is, for any other reason, unable to perform the duties of his or her office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

- (4) The Minister may determine the terms and conditions, other than terms and conditions relating to remuneration and allowances, applying to a person acting as Chairperson, as Deputy Chairperson or as another non-executive Director.
- (5) A person acting as Chairperson, as Deputy Chairperson or as another non-executive Director is to be paid the same remuneration and allowances as are payable to the Chairperson, the Deputy Chairperson or other non-executive Directors, as the case requires.

25 Leave of absence of non-executive Directors

- (1) The Minister may grant leave to the Chairperson to be absent from a meeting of the Board upon such conditions as to remuneration or otherwise as the Minister thinks fit.
- (2) Where the Chairperson is unable to attend a meeting of the Board because of ill health, the Board may grant leave to the Chairperson to be absent from that meeting.
- (3) The Chairperson may grant leave to any other non-executive Director to be absent from a meeting of the Board upon such conditions as to remuneration or otherwise as the Chairperson thinks fit.

26 Resignation of non-executive Directors

A non-executive Director may resign his or her office by writing signed and delivered to the Governor-General.

27 Removal of non-executive Directors from office

- (1) The Governor-General may remove a non-executive Director from office for misbehaviour or physical or mental incapacity.
- (2) If:
 - (a) the Chairperson, or a non-executive Director acting as Chairperson, is absent, except with the leave of the Minister or the Board, from 3 consecutive meetings of the Board; or
 - (b) a non-executive Director (other than the Chairperson or a Director acting as Chairperson) is absent, except with the leave of the Chairperson, from 3 consecutive meetings of the Board; or
 - (c) a non-executive Director becomes bankrupt, takes steps to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with one or more of his or her creditors or makes an assignment of his or her remuneration for the benefit of one or more of his or her creditors;

Section 27

the Governor-General may remove the non-executive Director concerned from office.

Note: The appointment of a non-executive Director may also be terminated under section 30 of the *Public Governance, Performance and Accountability Act 2013* (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).

(3) If:

- (a) the Minister is of the opinion that the performance of the Board or the SBS has been unsatisfactory for a significant period of time; and
- (b) the Minister proposes that the appointment of all non-executive Directors, or specified non-executive Directors, be terminated;

the Governor-General must terminate the appointment of all non-executive Directors or the specified non-executive Directors, as the case may be.

(4) If:

- (a) the Minister is of the opinion that the performance of a particular non-executive Director has been unsatisfactory for a significant period of time; and
- (b) the Minister proposes that the appointment of the non-executive Director be terminated;

the Governor-General must terminate the appointment of the non-executive Director.

Division 2—Provisions relating to the Managing Director

28 Appointment of Managing Director

- (1) The Board must appoint the Managing Director.
- (2) The appointment of a person as Managing Director is not invalid merely because of a defect or irregularity in relation to the appointment.

29 Term of appointment of Managing Director

- (1) Subject to subsection (2), the Managing Director must be appointed for a period not longer than 5 years, but is eligible for re-appointment.
- (2) Where the person holding office as Managing Director is re-appointed, the re-appointment must be for a period not longer than 5 years.

30 Managing Director holds office on a full-time basis

The Managing Director holds office on a full-time basis.

31 Terms and conditions of appointment not provided for by Act

The Managing Director holds office on such terms and conditions in relation to matters not provided for by this Act as are determined by the Board.

32 Remuneration and allowances of Managing Director

- (1) The Managing Director must be paid such remuneration as is determined by the Remuneration Tribunal.
- (2) The Managing Director must be paid such allowances as are determined by the Board.

Section 33

- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

33 Acting Managing Director

- (1) The Board may appoint a person to act as Managing Director:
- (a) during a vacancy in the office of Managing Director; or
 - (b) during any period, or during all periods, when the Managing Director is absent from duty or from Australia or is, for any other reason, unable to perform the functions of his or her office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

- (2) The Board may determine the terms and conditions of appointment, excluding remuneration and allowances, of a person acting as Managing Director.
- (3) An employee of the SBS who is acting as Managing Director must be paid:
- (a) remuneration at the same level as would be payable to the Managing Director under subsection 32(1); and
 - (b) such allowances as are determined by the Board.

34 Leave of absence of Managing Director

- (1) The Managing Director has such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Managing Director may take recreation leave only with the approval of the Board.
- (3) The Board may grant leave of absence, other than recreation leave, to the Managing Director on such terms and conditions as the Board thinks fit.

35 Resignation of Managing Director

The Managing Director may resign his or her office by writing signed and delivered to the Board.

36 Duty of Managing Director to disclose certain interests

- (1) The Managing Director must give written notice to the Chairperson of all direct and indirect pecuniary interests that the Managing Director has or acquires in any business or in any body corporate carrying on any business.
- (2) Subsection (1) applies in addition to section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests).

37 Removal of Managing Director from office

- (1) The Managing Director holds office during the Board's pleasure.
- (2) If the Managing Director:
 - (a) engages in paid employment outside the duties of his or her office without the approval of the Board; or
 - (b) is absent from duty, except on leave granted by the Board, for 14 consecutive days, or for 28 days in any 12 months; or
 - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (d) fails, without reasonable excuse, to comply with section 36;the Board may remove the Managing Director from office.

Note: The appointment of the Managing Director may also be terminated under section 30 of the *Public Governance, Performance and Accountability Act 2013* (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).

Division 3—Meetings of the Board

38 Meetings of the Board

- (1) The Board is to hold such meetings as are necessary for the efficient performance of its role and duties.
- (2) The Chairperson:
 - (a) may convene a meeting at any time; and
 - (b) must convene a meeting on receipt of a written request signed by:
 - (i) if there are not more than 6 non-executive Directors holding office under section 17—not fewer than 4 Directors; or
 - (ii) if there are more than 6 non-executive Directors holding office under that section—not fewer than 5 Directors.
- (3) Meetings of the Board are to be held at such places as the Chairperson determines.

39 Presiding at meetings

- (1) The Chairperson is to preside at all meetings of the Board at which he or she is present.
- (2) If the Chairperson is absent from a meeting of the Board, the Deputy Chairperson is to preside at the meeting.
- (3) If the Chairperson and the Deputy Chairperson are absent from a meeting of the Board:
 - (a) if a non-executive Director is acting as Chairperson—that non-executive Director is to preside at the meeting; or
 - (b) in any other case—the Directors present must elect one of their number other than the Managing Director to preside at the meeting.

40 Quorum and voting at meetings

- (1) At a meeting of the Board:
 - (a) a quorum is constituted by:
 - (i) if there are not more than 6 non-executive Directors holding office under section 17—4 Directors; or
 - (ii) if there are more than 6 non-executive Directors holding office under that section—5 Directors; and
 - (b) all questions are to be decided by a majority of the votes of the Directors present; and
 - (c) the Director presiding has a deliberative vote and, if necessary, also has a casting vote.
- (2) If, because of rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013*, a non-executive Director is not present at a meeting of the Board during a deliberation of the Board in relation to a matter, but there would be a quorum if the non-executive Director were present, the remaining Directors present constitute a quorum for the purpose of any deliberation or decision of the Board at the meeting in relation to the matter.
- (3) The Managing Director must not be present during any deliberation, or take part in any decision, of the Board with respect to the appointment, or any of the terms and conditions of employment, of the Managing Director.

41 Conduct of meetings

- (1) The Director presiding at a meeting of the Board may give directions regarding the procedure to be followed at or in connection with the meeting.
- (2) Without limiting subsection (1), the Board may permit Directors to participate in a particular meeting, or all meetings, by:
 - (a) telephone; or
 - (b) closed-circuit television; or
 - (c) any other means of communication.

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- (3) A Director who is permitted to participate in a meeting under subsection (2) is to be regarded as being present at that meeting.

42 Resolutions without formal meetings

Where the Board so determines, a resolution is taken to have been passed at a meeting of the Board if:

- (a) without a meeting, a majority of the number of the Directors indicate agreement with the resolution in accordance with the method determined by the Board; and
- (b) that majority would, if present at a meeting of the Board, have constituted a quorum under subsection 40(1).

Part 3A—Merit-based appointment of non-executive Directors

43 Functions of Nomination Panel

- (1) The functions of the Nomination Panel include:
 - (a) to conduct a selection process for each appointment of a non-executive Director referred to in paragraph 8(aa) or (b); and
 - (b) to assess all applicants for the appointment against the selection criteria determined under subsection 43A(1) and any additional selection criteria notified under subsection 43A(2); and
 - (c) to assess all applicants for the appointment on the basis of merit; and
 - (d) to give a written report to the Minister on the outcome of the selection process that contains a list of at least 3 candidates who are nominated for the appointment and a comparative assessment of those candidates.
- (2) For the purposes of paragraph (1)(c), the assessment of applicants for appointment as a non-executive Director referred to in paragraph 8(aa) or (b) is based on merit if:
 - (a) an assessment is made of the comparative suitability of the applicants for the duties of that Director, using a competitive selection process; and
 - (b) the assessment is based on the relationship between the applicants' experience, skills and competencies and the experience, skills and competencies genuinely required for the duties of that Director; and
 - (c) the assessment focuses on the capability of the applicants to achieve outcomes related to the duties of that Director; and
 - (d) the assessment is the primary consideration in nominating the candidates for that appointment.

Section 43

Advertising appointments

- (3) The Nomination Panel must invite written applications by persons seeking to be appointed as a non-executive Director referred to in paragraph 8(aa) or (b) by advertisements published:
- (a) on the Department's website; and
 - (b) in one or more other forms that are readily accessible by potential applicants.

Example: Publication in a form mentioned in paragraph (b) could be publication on a website other than the Department's website.

Selection process creates another appointment

- (4) If:
- (a) under subsection (3), the Nomination Panel invites applications by persons seeking to be appointed as Chairperson (whether or not it also invites applications by persons seeking to be appointed as a non-executive Director referred to in paragraph 8(b)); and
 - (b) as a result of the selection process, a non-executive Director referred to in paragraph 8(b) is appointed as the Chairperson (allowing another appointment (the *new appointment*) of a Director referred to in that paragraph to be made);
- then:
- (c) the Panel is not required to conduct another selection process for the new appointment; and
 - (d) if the Panel does not do so—paragraphs (1)(b), (c) and (d) of this section apply in relation to the new appointment as if:
 - (i) the unsuccessful applicants (other than a non-executive Director referred to in paragraph 8(b)) for the appointment as Chairperson were applicants for the new appointment; and
 - (ii) if the Panel also invited applications by persons seeking to be appointed as a non-executive Director referred to in paragraph 8(b)—the unsuccessful applicants for the appointment were applicants for the new appointment.

43A Selection criteria

- (1) The Minister must, by legislative instrument, determine selection criteria for the appointment of a non-executive Director referred to in paragraph 8(aa) or (b).
- (2) The Minister may, in relation to a particular such appointment, give a written notice to the Nomination Panel of additional selection criteria for that appointment.
- (3) A notice under subsection (2) is not a legislative instrument.

43B Consultation, and selection of candidate not nominated by Nomination Panel

- (1) If:
 - (a) the Nomination Panel gives the Minister a report under paragraph 43(1)(d) in relation to the appointment of a non-executive Director referred to in paragraph 8(aa) or (b); and
 - (b) the Minister considers that a person not nominated by the Nomination Panel should be appointed;the Minister must give the Prime Minister a written notice that:
 - (c) specifies the name of that person; and
 - (d) sets out the Minister's reasons for preferring that person.
- (2) If that person is so appointed, the Minister must table the reasons for that appointment in each House of the Parliament no later than 15 sitting days of that House after that appointment is made. Those reasons must include an assessment of that person against the selection criteria.

43C Department's annual report

The Department's annual report for a period must include a statement in relation to each selection process for the appointment of a non-executive Director that was completed in that period.

Part 4—Powers and duties of the SBS

44 General powers of the SBS

- (1) The SBS may do all things that are necessary or convenient to be done for or in connection with, or as incidental to, the performance of its functions and, in particular, has the following powers:
 - (a) to produce, promote or present programs or arrange, or provide facilities, for the production, promotion or presentation of programs;
 - (b) to transmit or communicate programs or other matter by means of guided or unguided electromagnetic energy, or provide facilities for such transmissions and communications;
 - (c) to arrange for the transmission or communication of programs or other matter by means of guided or unguided electromagnetic energy;
 - (d) to make facilities and staff available to persons for the production, presentation, transmission or communication of programs or other matter;
 - (e) to acquire, accept, take on hire, dispose of or lease, personal property (including programs or rights or interests in programs);
 - (f) to prepare, promote and distribute printed material;
 - (g) to make, promote and distribute films, sound recordings, video-tapes, computer programs and other similar material;
 - (h) to make, promote and distribute any other thing associated with, or with the activities of, the SBS;
 - (i) to acquire, hold, dispose of or lease, real property;
 - (j) to erect buildings or structures or carry out works;
 - (k) to enter into contracts;
 - (l) to make arrangements for holding, organising or subsidising, any public concert or other public entertainment;

- (m) to accept gifts, devises or bequests made to the SBS, whether on trust or otherwise, or to act as trustee of money or other property vested in the SBS on trust;
 - (n) to occupy, use and control any land or building owned or leased by the Commonwealth and made available for the purposes of the SBS;
 - (o) to appoint agents and attorneys, and to act as an agent for other persons;
 - (p) to engage persons to perform services for the SBS otherwise than as employees of the SBS;
 - (q) to do anything incidental to any of its powers.
- (2) The SBS may, from time to time, determine charges payable in respect of any matter or activity referred to in subsection (1).
- (3) Subject to subsection (4), the SBS does not have power:
- (a) to accept the performance of any service, or the provision of any facility, for the SBS; or
 - (b) to accept any gift, devise or bequest to the SBS, whether offered or made unconditionally or subject to conditions;
- where it is likely that the independence or integrity of the SBS would be affected.
- (4) Nothing in subsection (3) precludes the SBS from accepting the performance of services, the provision of facilities or the payment of money by or on behalf of the Commonwealth, a State or a Territory or an authority of the Commonwealth, of a State or of a Territory.
- (5) Before the publication of program schedules of the SBS broadcasting stations, the SBS must make those schedules available at an office of the SBS on equal terms to the publishers of any newspaper, magazine or journal published in Australia.
- (6) The powers of the SBS may be exercised within or outside Australia.

Section 45

45 Advertising and sponsorship—broadcasting services

- (1) Subject to subsection (2) and section 70C, the SBS may broadcast advertisements and sponsorship announcements on any of its broadcasting services.
- (2) The SBS may only broadcast advertisements or sponsorship announcements:
 - (a) that run during periods before programs commence, after programs end or during natural program breaks; and
 - (b) that run in total for not more than 5 minutes in any hour of broadcasting.
- (3) In computing the length of time devoted to the broadcasting of advertisements and sponsorship announcements, account is not to be taken to the broadcasting by the SBS of any of the following:
 - (a) material that publicises programs to be broadcast by the SBS;
 - (b) material that promotes the SBS's products, services or activities for the broadcast of which the SBS does not receive any consideration in cash or in kind;
 - (c) community information or community promotional material for the broadcast of which the SBS does not receive any consideration in cash or in kind;
 - (d) advertisements or sponsorship announcements consisting of moving text that is overlaid on the test pattern.
- (4) The Board:
 - (a) must develop and publicise guidelines on the kinds of advertisements and sponsorship announcements that it is prepared to broadcast; and
 - (b) may develop guidelines on other matters relating to advertisements and sponsorship announcements including:
 - (i) the placement of such advertisements and announcements; and
 - (ii) the duration of such advertisements and announcements; and

- (iii) the kinds of advertising and sponsorship (if any) that particular kinds of program may carry.
- (5) The Board must, from time to time, revise any guidelines developed by it and must ensure that the guidelines as so developed, or as so developed and revised, are included in the corporate plan prepared by the Board under section 35 of the *Public Governance, Performance and Accountability Act 2013*.
- (6) Without limiting the generality of subsection (4), the reference to kinds of advertisements and sponsorship announcements in that subsection includes a reference to such kinds of advertisements and sponsorship announcements identified by reference to products and services.

45A Advertising and sponsorship—digital media services

- (1) The SBS may have advertisements and sponsorship announcements on any of its digital media services.
- (2) The Board:
 - (a) must develop and publicise guidelines on the kinds of advertisements and sponsorship announcements that it is prepared to have on its digital media services; and
 - (b) may develop guidelines on other matters relating to advertisements and sponsorship announcements on its digital media services.
- (3) The Board must, from time to time, revise any guidelines developed by it and must ensure that the guidelines as so developed, or as so developed and revised, are included in the corporate plan prepared by the Board under section 35 of the *Public Governance, Performance and Accountability Act 2013*.
- (4) Without limiting the generality of subsection (2), the reference to kinds of advertisements and sponsorship announcements in that subsection includes a reference to such kinds of advertisements and sponsorship announcements identified by reference to products and services.

Section 46

- (5) For the purposes of this section, *announcement* includes an announcement in the form of text.

46 Community information

The Board must develop and publicise guidelines on the kinds of community information or community promotional material that it is prepared to broadcast.

48 Matters to be included in corporate plans

- (1) The corporate plan prepared by the Board under section 35 of the *Public Governance, Performance and Accountability Act 2013* must:
- (a) outline the overall strategies and policies that the SBS and its subsidiaries are to follow:
 - (i) to achieve the objectives of the SBS; and
 - (ii) to fulfil the SBS's principal and subsidiary functions; and
 - (iii) to ensure that the Board performs its role under paragraph 9(b) and fulfils its duties under section 10; and
 - (b) include a forecast of the revenue and expenditure of the SBS and its subsidiaries, including a forecast of capital expenditure and borrowings; and
 - (c) set out any measures that the Board proposes to adopt (in addition to receiving advice from the Community Advisory Committee) to ensure that it is aware of, and responsive to, community needs and opinions (including the needs and opinions of small or newly arrived ethnic groups) on matters relevant to the Charter; and
 - (d) include such other matters as are prescribed.
- (2) The forecast of the revenue and expenditure of the SBS must include an assessment of all the taxes and charges that would be payable by the SBS under the laws of the Commonwealth and of

each State and Territory if the SBS were subject to taxation liability under those laws.

- (3) In this section, unless the contrary intention appears, **subsidiary** means a prescribed company within the meaning of section 52 that the SBS controls.
- (4) For the purposes of the application of section 35 of the *Public Governance, Performance and Accountability Act 2013* in relation to the SBS, **subsidiary** is taken to have the meaning given by subsection (3) of this section, despite the definition of **subsidiary** in section 8 of that Act.
- (5) The Board may review and revise a corporate plan at any time.

50 Community Advisory Committee

- (1) The Board must establish a committee to be known as the Community Advisory Committee.
- (2) The function of the Committee is to assist the Board to fulfil its duty under paragraph 10(1)(g) by advising the Board on community needs and opinions, including the needs and opinions of small or newly arrived ethnic groups, on matters relevant to the Charter.
- (3) Each member of the Committee is to be appointed by the Board.
- (4) The Board may only appoint a person to the Committee if the Board is satisfied that the person:
 - (a) has an understanding of Australia's multicultural society; and
 - (b) in particular, has interests relevant to, and an understanding of, ethnic, Aboriginal or Torres Strait Islander communities.
- (5) The Board is to determine the terms and conditions of appointment of each member of the Committee.

Section 52

52 Power to form companies etc.

(1) In this section:

authorised business means a business or other activity related to or incidental to the performance of any of the functions of the SBS.

prescribed company means a public company that carries on, or proposes to carry on, an authorised business.

(2) The SBS may:

- (a) form, or participate with other persons in the formation of, a public company to carry on an authorised business; and
- (b) acquire, hold and dispose of shares or stock in the capital of, or debentures or other securities of, a prescribed company; and
- (c) enter into a partnership, or an arrangement for the sharing of profits or expenses, with a person or body for the purpose of carrying on an authorised business; and
- (d) provide technical or other assistance and facilities (whether within or outside Australia) for a prescribed company or for a partnership, or for the purposes of an arrangement, referred to in paragraph (c).

Note: Paragraph 19(1)(c) of the *Public Governance, Performance and Accountability Act 2013* requires the accountable authority of a Commonwealth entity to notify the Minister of significant decisions in relation to the entity or any of its subsidiaries.

(4) Where:

- (a) the SBS has an interest in a prescribed company; and
 - (b) the prescribed company ceases to be a prescribed company;
- the Minister may give to the SBS such written directions as the Minister thinks appropriate with respect to the disposal of the interest of the SBS in the company and the SBS must comply with any such directions.

(5) This section does not authorise a prescribed company to carry on an authorised business otherwise than in accordance with any applicable law.

Part 5—Staff

53 Staff of the SBS until section 54 commences

- (1) The employees of the SBS are to be persons appointed or employed under the *Public Service Act 1922*.
- (2) The Managing Director has all the powers of, or exercisable by, a Secretary under the *Public Service Act 1922* so far as those powers relate to the branch of the Australian Public Service comprising the employees of the SBS.
- (3) This section is taken to have been repealed by another Act on the day that is fixed by Proclamation for the commencement of section 54.

54 Staff of the SBS

- (1) The SBS may engage such employees as are necessary for the performance of its functions and the exercise of its powers.
- (2) The terms and conditions of employment are to be determined by the SBS.

55 The SBS is to achieve and maintain high standards as an employer

The SBS must endeavour to achieve and maintain high standards as an employer in relation to terms and conditions of employment, occupational health, industrial safety, industrial democracy, non-discriminatory employment practices and other related matters.

Part 6—Finance

56 Money to be appropriated

- (1) There is payable to the SBS such money as is from time to time appropriated by the Parliament for the purposes of the SBS.
- (2) The Finance Minister may give directions as to the amounts in which, and the times at which, money referred to in subsection (1) is to be paid to the SBS.

57 Money of the SBS

The money of the SBS consists of:

- (a) money paid to the SBS under section 56; and
- (b) money borrowed by the SBS under sections 59 or 60; and
- (c) money received by the SBS in respect of the provision of services and facilities; and
- (d) the proceeds of the sale or other disposition of any property of the SBS (including programs and rights or interests in programs); and
- (e) money received by the SBS in respect of sponsorships and the sale and broadcasting of advertisements; and
- (f) any other money derived by the SBS in the performance of its functions; and
- (g) any money received by the SBS by way of, or as a result of, a gift, devise or bequest.

58 Application of money

- (1) The money of the SBS is to be applied only:
 - (a) in payment or discharge of expenses, obligations and liabilities of the SBS arising under this Act; and

- (b) in payment of remuneration, allowances and fees payable to non-executive Directors, the Managing Director and persons referred to in section 53 or 54; and
 - (c) in payment of any remuneration, allowances and fees payable to the members of the Community Advisory Committee or other consultative body established by the Board.
- (2) Subsection (1) does not prevent investment, under section 59 of the *Public Governance, Performance and Accountability Act 2013*, of money that is not immediately required for the purposes of the SBS.

59 Borrowing from the Commonwealth

The Finance Minister may, on behalf of the Commonwealth, out of money appropriated by the Parliament for the purpose, lend money to the SBS on such terms and conditions as he or she determines in writing.

60 Borrowings otherwise than from the Commonwealth

- (1) The SBS may, with the written approval of the Finance Minister, borrow money from persons other than the Commonwealth on terms and conditions specified in, or consistent with, the approval.
- (2) Money may be borrowed wholly or partly in foreign currency.

61 Guarantee of borrowing

- (1) The Finance Minister may, on behalf of the Commonwealth, enter into a contract guaranteeing the performance by the SBS of obligations incurred by it under section 60.
- (2) If the Finance Minister determines in writing that obligations incurred by the SBS under that section are guaranteed by the Commonwealth, the obligations are so guaranteed by force of this subsection.
- (3) A contract under subsection (1) may include:

Section 62

- (a) a provision agreeing that proceedings under the contract may be taken in a court of a foreign country; or
- (b) a provision waiving the immunity of the Commonwealth from suit in a court of a foreign country.

62 The SBS may give security

The SBS may give security over the whole or part of its assets for:

- (a) the performance by the SBS of any obligation incurred under section 59 or 60; or
- (b) the payment to the Commonwealth of amounts equal to amounts paid or payable by the Commonwealth under a guarantee under section 61.

63 Borrowings not otherwise permitted

The SBS must not borrow money except under this Part.

64 Delegation by Finance Minister

- (1) The Finance Minister may, by written instrument, delegate any of the Finance Minister's powers or functions under section 60 or 61 to an official (*Public Governance, Performance and Accountability Act 2013*) of a non-corporate Commonwealth entity (within the meaning of that Act).
- (2) In exercising powers or functions under a delegation, the official must comply with any directions of the Finance Minister.

65 Hedging contracts etc.

- (1) Subject to subsection (3), the SBS may enter into or deal with contracts, and make other arrangements, in relation to financial futures or foreign currency (including foreign currency futures) for the purpose of reducing or eliminating risks of adverse financial consequences to the SBS in relation to:

- (a) any contract (including a contract that may be entered into under this section), or any proposed contract, involving the payment or receipt of money by the SBS; or
 - (b) a borrowing or a proposed borrowing of money by the SBS; being risks that may arise from variations in the rate of currency exchange or rate of interest applicable to the contract or proposed contract, or to the borrowing or proposed borrowing of money, as the case may be, referred to in paragraph (a) or (b).
- (2) The Minister may, by determination in writing:
- (a) set guidelines for the purpose of the exercise by the SBS of its power under subsection (1); and
 - (b) revoke or vary guidelines set for that purpose or set new guidelines for that purpose;
- and must give to the SBS a copy of each determination made under this subsection.
- (3) The SBS may only enter into a contract, dealing or other arrangement under subsection (1) in accordance with the guidelines (if any) having effect from time to time under subsection (2).
- (4) A contract, dealing or other arrangement under subsection (1) does not require the approval of the Minister under subsection 67(1).
- (5) In this section:
- proposed borrowing*** means a proposed borrowing of money that is in accordance with an approval under section 60.

68 Taxation

The SBS is not subject to taxation under any law of the Commonwealth, of a State or of a Territory.

Part 7—Miscellaneous

70 Application of Broadcasting Act

Except where the *Broadcasting Services Act 1992* otherwise expressly provides, that Act does not apply in relation to the broadcasting services provided by the SBS.

70AA Report by ACMA on degradation of signal quality

If:

- (a) a person has made a complaint to the SBS about degradation of the quality of signal reception of a national broadcasting service; and
- (b) within 60 days after making the complaint, the person did not receive a response that the person regarded as adequate; and
- (c) the signal concerned is received from an analog terrestrial radiocommunications transmitter;

the Minister may direct the ACMA to conduct an investigation into the matter.

70A Broadcasting of political or controversial matter

- (1) Subject to this Act, the SBS may determine to what extent and in what manner political matter or controversial matter will be broadcast by the SBS.

Announcing required particulars

- (2) If the SBS broadcasts political matter at the request of another person, the SBS must, in accordance with any requirements determined under subsection 321D(7) of the *Commonwealth Electoral Act 1918* for the purposes of this subsection:
 - (a) if the matter was broadcast by radio—ensure that the required particulars in relation to the matter are announced; or
 - (b) if the matter was televised:

- (i) ensure that the required particulars in relation to the matter are announced; and
- (ii) ensure that all the required particulars in relation to the matter are transmitted in the form of images of words.

Note: The SBS is taken to have ensured that required particulars are announced in certain circumstances (see subsection (7)).

Keeping records

- (3) The SBS must, in relation to political matter broadcast at the request of another person, keep a record of the name, address and occupation of the person or, if the person is a company, the name and the address of the principal office of the person, for the required period and must give to the ACMA any particulars of the record that the ACMA, by written notice, requires.

Meaning of authorises

- (4) For the purposes of this section, a person authorises the broadcasting of political matter only if the person is responsible for approval of the content of the political matter and the decision to present it for broadcasting.

Definitions

- (5) In this section:

disclosure entity has the meaning given by:

- (a) section 321B of the *Commonwealth Electoral Act 1918*; or
- (b) paragraph (e) of the definition of **disclosure entity** in section 110A of the *Referendum (Machinery Provisions) Act 1984*.

person includes a political party, a corporation and any other association (whether incorporated or unincorporated);

political matter means any political matter, including the policy launch of a political party.

Section 70A

relevant town or city of an entity that authorised the broadcast of political matter means:

- (a) if the entity has a principal office—the town or city in which the office is located; or
- (b) if the entity does not have a principal office, but does have premises—the town or city in which the premises are located; or
- (c) otherwise—the town or city in which the natural person who was responsible for giving effect to the authorisation lives.

required particulars has the meaning given by subsection (6).

required period, in relation to the keeping of a record in relation to political matter, means the period of 2 years commencing on the day on which the matter was broadcast.

Meaning of required particulars

- (6) The **required particulars** are:
 - (a) the particulars set out in the following table; and
 - (b) any other particulars determined under subsection 321D(7) of the *Commonwealth Electoral Act 1918* for the purposes of this paragraph.

Required particulars		
Item	If ...	the required particulars are the following ...
1	the broadcast is authorised by a disclosure entity that is not a natural person	(a) the name of the entity (as included in the most recent return given in relation to the entity under Part XX of the <i>Commonwealth Electoral Act 1918</i> , if a return has been given in relation to the entity under that Part); (b) the relevant town or city of the entity; (c) the name of the natural person

Section 70B

Required particulars		
Item	If ...	the required particulars are the following ...
		responsible for giving effect to the authorisation
2	the broadcast is authorised by a disclosure entity who is a natural person	(a) the name of the person; (b) the town or city in which the person lives
3	the broadcast is authorised by an entity that is not a disclosure entity or a natural person	(a) the name of the entity; (b) the relevant town or city of the entity
4	the broadcast is authorised by a natural person who is not a disclosure entity	(a) the name of the person; (b) the town or city in which the person lives

Particulars taken to be announced

- (7) The SBS is taken to have ensured that required particulars are announced in relation to a political matter that it broadcasts if:
- (a) particulars were announced in relation to the matter for the purposes of this Act; and
 - (b) those particulars purported to be particulars referred to in item 3 or 4 of the table in subsection (6); and
 - (c) as a result of steps taken by the SBS, it was reasonable for the SBS to rely on the particulars that were provided for the purposes of this Act.

- Note: An example of steps that may be taken by the SBS include:
- (a) notifying a person wanting to broadcast political matter that the name of the person required to be announced as having authorised the broadcast depends on whether the person is a disclosure entity; and
 - (b) seeking a verification from that person that the person is or is not a disclosure entity.

Section 70B

70B Records of matter broadcast

- (1) If the SBS broadcasts matter relating to a political subject or current affairs, being matter that is in the form of news, an address, a statement, a commentary or a discussion, the SBS must cause a record of the matter to be made:
 - (a) in the case of a radio broadcast—by using a device for recording sound; or
 - (b) in the case of a television broadcast—by using a device for recording images and associated sound.
- (2) Subject to this section, the SBS must retain in its custody a record so made for a period of:
 - (a) 6 weeks from the date on which the matter was broadcast; or
 - (b) if a complaint has been made about the matter—for 70 days from the date on which the complaint was made.
- (3) If a person considers that a record so made is admissible in evidence in proceedings instituted, or proposed to be instituted, in a court, being a record that is held under subsection (2), the person may give to the SBS a notice in writing informing the SBS that the record may be required for the purposes of the proceedings.
- (4) If such a notice is given to the SBS in respect of a record, the SBS must, subject to this section, retain the record until the proceedings or the proposed proceedings to which the notice relates have been finally determined.
- (5) If the proceedings are not instituted within a period of 3 months after the notice is given to the SBS, subsection (4) ceases to apply to the record at the end of that period.
- (6) The obligation imposed by this section on the SBS to retain a record does not apply at any time when the record is in the custody of a court in connection with proceedings instituted in the court.

70C Broadcasting of election advertisements

- (1) If:
-

- (a) an election to a Parliament is to be held; and
- (b) a broadcasting service provided by the SBS would normally be received in the area of Australia to which the election relates;

the SBS must not broadcast an election advertisement in relation to the election during the relevant period as part of that service.

(2) In this section:

election means an election to a Parliament.

election advertisement, in relation to an election, means:

- (a) an advertisement:
 - (i) that contains election matter that relates to that election; and
 - (ii) in respect of the broadcasting of which the SBS has received or is to receive, directly or indirectly, any money or other consideration; or
- (b) an announcement containing a statement to the effect that a program that is to be or has been broadcast is or was sponsored by a person or persons and indicating that the person is a candidate, or one or more of the persons is or are candidates, at the election; or
- (c) an announcement containing a statement to the effect that a program that is to be or has been broadcast is or was sponsored by a particular political party where a candidate at the election belongs to that party.

election matter, in relation to an election, means matter of any of the following kinds:

- (a) matter commenting on, or soliciting votes for, a candidate at the election;
- (b) matter commenting on, or advocating support of, a political party to which a candidate at the election belongs;
- (c) matter commenting on, stating or indicating any of the matters being submitted to the electors at the election or any part of the policy of a candidate at the election or of the political party to which a candidate at the election belongs;

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- (d) matter referring to a meeting held or to be held in connection with the election.

Parliament means:

- (a) the Parliament of the Commonwealth; or
- (b) a State Parliament; or
- (c) a legislature of a Territory.

relevant period, in relation to an election, means the period that commences at the end of the Wednesday before the polling day for the election and ends at the close of the poll on that polling day.

73 Matters to be included in annual report

The annual report prepared by the Board and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must include:

- (a) particulars of any broadcast by the SBS during the period because of a direction by the Minister under subsection 12(1); and
- (aa) particulars of any content provided by the SBS on a digital media service during the period because of a direction by the Minister under subsection 12(4A); and
- (b) particulars of any broadcast by the SBS during the period because of a direction by the Minister otherwise than under this Act; and
- (ba) particulars of any content provided by the SBS on a digital media service during the period because of a direction by the Minister otherwise than under this Act; and
- (c) particulars of any written statement of Commonwealth Government policy given to the Board by the Minister during the period and the action (if any) taken by the Board in respect of the statement; and
- (d) particulars of any gift, devise or bequest accepted by the SBS during the period; and
- (e) particulars of how the programming activities during the period have related to the SBS's Charter obligations; and

- (f) particulars of the total revenue earned during the period from advertising and sponsorship, of the identity of each advertiser or sponsor and of the programs (if any) with which each advertiser or sponsor is associated; and
- (g) particulars of any direction by the Minister during the period under section 11 or 12; and
- (h) particulars of any advice received by the Board during the period from the Community Advisory Committee and the action taken by the Board in response to that advice; and
- (i) particulars of any other measures taken by the Board during the period to ensure that the Board is aware of, and responsive to, community needs and opinions on matters relevant to the SBS's Charter; and
- (j) an assessment of the extent to which the operations of the SBS and its subsidiaries during the period have achieved the objectives of the SBS and its subsidiaries under the corporate plan and fulfilled the functions of the SBS; and
- (k) particulars of any activities carried out during the period by the SBS under subsection 52(2); and
- (l) particulars of the activities during the period of any authorised business with which the SBS is associated under section 52; and
- (m) particulars of any significant changes during the period in the transmission coverage, or transmission quality, of national broadcasting services provided by the SBS.

74 Delegation by the SBS

The SBS may, by signed instrument, delegate to a Director or to an employee of the SBS all or any of its powers under this Act or the regulations.

75 Delegation by Managing Director

The Managing Director may, by signed instrument, delegate to an employee of the SBS all or any of his or her powers under this Act or the regulations.

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76 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed by regulations; or
- (b) necessary or convenient to be prescribed by regulations for carrying out or giving effect to this Act.

Part 8—Transitional

77 Interpretation

In this Part:

assets means property of any kind including:

- (a) choses in action; and
- (b) rights, interests or claims in or to property, whether liquidated or unliquidated, certain or contingent or accrued or accruing.

liabilities means liabilities or obligations of any kind, whether liquidated or unliquidated, certain or contingent or accrued or accruing.

old body corporate means the Special Broadcasting Service established by Part IIIA of the *Broadcasting Act 1942*.

restructured body corporate means the body corporate preserved and continued in existence under section 5 as the Special Broadcasting Service Corporation.

restructuring day means the day section 5 commences.

80 Persons employed or engaged by the old body corporate

- (1) A person who, immediately before the restructuring day, was an officer or employee of the old body corporate is, on that day, taken to have become an employee of the restructured body corporate under section 53 of this Act as if the person had been employed under that section on the terms and conditions that were applicable to the person immediately before that day.
- (2) A person who, immediately before the restructuring day, had been engaged to perform services for the old body corporate otherwise than as a member of the staff is, on that day, taken to have been

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engaged under paragraph 44(1)(p) of this Act by the restructured body corporate to perform those services for the restructured body corporate on the terms and conditions that were applicable to the person immediately before that day.

81 Persons engaged under section 53

- (1) A person who, immediately before the day on which section 53 is taken to have been repealed, was engaged, or was taken to have been engaged, by the restructured body corporate under that section is, on that day, taken to have become an employee of the restructured body corporate engaged under section 54 of this Act.
- (2) Where the restructured body corporate determines, on or before the day on which section 53 is taken to have been repealed, certain terms and conditions to be the terms and conditions of employment applicable to a person to whom subsection (1) applies, those terms and conditions are to take effect on that day and are to be taken to have been determined under subsection 54(2).
- (3) Before the SBS makes a determination mentioned in subsection (2), it must consult with the representatives of industrial organisations representing the interests of the employees who will be affected by the determination.

83 References to old body corporate in instruments etc.

A reference to the old body corporate in any law of the Commonwealth, a State or Territory, or in any contract, award or other instrument to which the old body corporate was a party, is, except in relation to matters that occurred before the restructuring day, to be taken to be a reference to the restructured body corporate.

84 Property, powers, liabilities etc.

- (1) The assets, powers, rights, liabilities and obligations of the old body corporate are to be treated, on and after the restructuring day,

as assets, powers, rights, liabilities and obligations of the restructured body corporate.

- (2) Subsection (1) extends, so far as the powers of the Parliament permit, to:
- (a) assets situated outside Australia and powers conferred by, or rights existing under, the law of a foreign country; and
 - (b) liabilities or obligations arising under the law of a foreign country.

85 Saving of proceedings

The alteration, under this Act, of the name and constitution of the old body corporate does not render defective any legal or other proceedings instituted by or against the old body corporate, and any legal or other proceedings that might have been commenced by or against the old body corporate may be commenced by or against the restructured body corporate.

86 Judicial notice

All courts, judges and persons acting judicially must take judicial notice of the imprint of the seal of the old body corporate appearing on a document that was executed before the restructuring day and must presume that the document was duly sealed.

87 Application of money

Despite section 58 of this Act, the money of the restructured body corporate may be applied:

- (a) in payment or discharge of any expenses, charges, obligations or liabilities that were incurred or undertaken before the restructuring day by the old body corporate in connection with the performance of its functions or the exercise of its powers and were not paid or discharged before that day; and

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- (b) in payment of any remuneration or allowances the liability for which arose under Part IIIA of the *Broadcasting Act 1942* but which had not been paid before the restructuring day.

89 Bank accounts to be treated as if opened under this Act

Any bank account maintained by the old body corporate immediately before the restructuring day under section 79ZC of the *Broadcasting Act 1942* is to be treated, on and after that day, as if it had been opened by the restructured body corporate under section 63J of the *Audit Act 1901* as that section applies to the restructured body corporate because of repealed section 69 of this Act.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Endnotes

Endnote 1—About the endnotes

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Special Broadcasting Service Act 1991	180, 1991	25 Nov 1991	s 54: 24 Mar 1994 (s 2(2) and gaz 1994, No GN10) Remainder: 23 Dec 1991 (s 2(1))	
Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992	105, 1992	9 July 1992	5 Oct 1992 (<i>see</i> s. 2 and <i>Gazette</i> 1992, No. GN38)	—
Sales Tax Amendment (Transitional) Act 1992	118, 1992	30 Sept 1992	28 Oct 1992	—
Radiocommunications (Transitional Provisions and Consequential Amendments) Act 1992	167, 1992	11 Dec 1992	1 July 1993	—
Transport and Communications Legislation Amendment Act (No. 3) 1992	216, 1992	24 Dec 1992	s 34 and 35: 24 Dec 1992 (s 2(1))	—
Communications and the Arts Legislation Amendment Act (No. 1) 1995	32, 1995	12 Apr 1995	Sch (item 122): 12 Apr 1995 (s 2(1))	—
Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997	59, 1997	3 May 1997	Sch 1 (items 49, 50): 1 July 1997 (s 2(2)(d))	—
Audit (Transitional and Miscellaneous) Amendment Act 1997	152, 1997	24 Oct 1997	Sch 2 (items 1207–1218): 1 Jan 1998 (s 2(2))	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
National Transmission Network Sale (Consequential Amendments) Act 1998	131, 1998	21 Dec 1998	21 Dec 1998	s 4
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (items 826, 827): 5 Dec 1999 (s 2(1), (2))	—
Corporate Law Economic Reform Program Act 1999	156, 1999	24 Nov 1999	Sch 10 (items 119–121): 13 Mar 2000 (s 2(2)(c) and gaz 2000, No S114)	—
Broadcasting Legislation Amendment Act 2001	23, 2001	6 Apr 2001	6 Apr 2001	—
Statute Law Revision Act 2002	63, 2002	3 July 2002	Sch 1 (item 29): 23 Dec 1991 (s 2(1) item 23)	—
Financial Framework Legislation Amendment Act 2005	8, 2005	22 Feb 2005	Sch 2 (items 162–168, 174): Royal Assent	Sch 2 (item 174)
Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005	45, 2005	1 Apr 2005	Sch 1 (items 124–126) and Sch 4: 1 July 2005 (s 2(1) items 2, 10) Sch 2: 1 July 2005 (s 2(1) item 3)	Sch 4
as amended by Omnibus Repeal Day (Autumn 2014) Act 2014	109, 2014	16 Oct 2014	Sch 2 (items 177–181): 17 Oct 2014 (s 2(1) item 2)	—
Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006	101, 2006	14 Sept 2006	Sch 5 (item 138) and Sch 6 (items 5–11): Royal Assent	Sch 6 (items 5–11)

Special Broadcasting Service Act 1991

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Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Commonwealth Authorities and Companies Amendment Act 2008	20, 2008	26 May 2008	Sch 2 (item 8): 1 July 2008	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 1060–1066) and Sch 3 (items 10, 11): 27 Dec 2011	Sch 3 (items 10, 11)
National Broadcasting Legislation Amendment Act 2012	112, 2012	24 July 2012	Sch 1 (items 18–30): 24 Nov 2012 (F2012L02226)	Sch 1 (item 30)
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Sch 1 (item 119) and Sch 6 (items 70–72): Royal Assent	Sch 6 (item 72)
Broadcasting Legislation Amendment (Convergence Review and Other Measures) Act 2013	29, 2013	30 Mar 2013	Sch 1 (items 15–17, 36–49): 31 Mar 2013	Sch 1 (item 17)
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 4 (item 91): 24 June 2014	—
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 12 (items 137–157) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14
as amended by Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Omnibus Repeal Day (Autumn 2014) Act 2014	109, 2014	16 Oct 2014	Sch 2 (items 144, 145, 161, 237–242): 17 Oct 2014 (s 2(1) item 2)	Sch 2 (item 161)
Electoral and Other Legislation Amendment Act 2017	99, 2017	14 Sept 2017	Sch 1 (items 63–68): 14 Mar 2018 (s 2(1) item 2)	—
Communications Legislation Amendment (Deregulation and Other Measures) Act 2019	120, 2019	12 Dec 2019	Sch 4 (items 6–18): 12 Dec 2019 (s 2(1) item 1)	—

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s. 3	am. No. 167, 1992; No. 131, 1998; No. 23, 2001; Nos. 8 and 45, 2005; No. 112, 2012; No. 29, 2013; No 62, 2014; No 120, 2019
s. 3A.....	ad. No. 29, 2013 am No 120, 2019
Part 2	
s. 5	am. No. 152, 1997; No 62, 2014
s. 6	am. No. 105, 1992; No. 29, 2013; No 120, 2019
s. 6A.....	ad. No. 23, 2001
s. 8	am. No. 112, 2012
s. 10	am. No. 105, 1992; No. 23, 2001; No. 45, 2005
s. 11	am. No. 29, 2013
s. 12	am. No. 29, 2013; No 31, 2014
s. 13	am. No. 152, 1997; No. 20, 2008; No 62, 2014
Part 3	
Division 1	
s. 17	am. No. 112, 2012; No. 29, 2013
s. 18	am. No. 112, 2012
s. 21	am. No. 112, 2012
s. 24	am. No. 46, 2011
s. 27	am. No. 152, 1997; No. 156, 1999; No 62, 2014
Division 2	
s. 33	am. No. 46, 2011
s. 34	am. No. 146, 1999
s. 36	am No 62, 2014
s. 37	am. No. 152, 1997; No. 156, 1999; No 62, 2014
Division 3	
s. 40	am. No. 152, 1997; No. 156, 1999; No 62, 2014

Endnote 4—Amendment history

Provision affected	How affected
Part 3A	
Part 3A.....	ad. No. 112, 2012
s. 43	rep. No. 152, 1997
	ad. No. 112, 2012
	am No 109, 2014
s. 43A.....	ad. No. 112, 2012
s. 43B.....	ad. No. 112, 2012
s. 43C.....	ad. No. 112, 2012
	am No 62, 2014
Part 4	
s. 44	am. No. 131, 1998; No 120, 2019
s. 45	am. Nos. 105 and 216, 1992; No. 29, 2013; No 62, 2014
s. 45A.....	ad. No. 29, 2013
	am No 62, 2014
s. 47	rep No 62, 2014
s. 48	am No 62, 2014
s. 49	rep No 62, 2014
s. 51	rep No 62, 2014
s. 52	am. No. 152, 1997; No 62, 2014
Part 5	
s. 53	exp 24 Mar 1994 (s 53(3))
	am No 63, 2002
Part 6	
s. 56	am. No. 8, 2005
s. 58	am. No. 152, 1997; No 62, 2014
s. 59	am. No. 8, 2005
s. 60	am. No. 8, 2005
s. 61	am. No. 8, 2005
s. 64	rs. No. 8, 2005
	am No 62, 2014
s. 66	rep. No. 152, 1997

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s. 67	rep. No. 32, 1995
s. 68	am. No. 118, 1992; No. 101, 2006
s. 69	rep. No. 152, 1997
Part 7	
s 70	am No 105, 1992
s 70AA.....	ad No 131, 1998 am No 45, 2005
s 70A.....	ad No 105, 1992 am No 45, 2005; No 136, 2012; No 99, 2017; No 120, 2019
s 70B.....	ad No 105, 1992
s 70C.....	ad No 216, 1992 am No 120, 2019
s 71	rep No 131, 1998
s 72	am No 59, 1997 rep No 131, 1998
s 73	am No 152, 1997; No 131, 1998; No 29, 2013; No 62, 2014
Part 8	
s 78	rep No 109, 2014
s 79	rep No 109, 2014
s. 81	am. No. 146, 1999
s 82	rep No 109, 2014
s 85	am No 109, 2014
s 88	rep No 109, 2014
s 89	am No 109, 2014
s 90	rep No 109, 2014
s 91	rep No 109, 2014
s 92	rep No 109, 2014
Part 9.....	rep. No. 136, 2012
s. 93	rep. No. 136, 2012
s. 94	rep. No. 136, 2012
s. 95	rep. No. 136, 2012

Endnote 4—Amendment history

Provision affected	How affected
s. 96	rep. No. 136, 2012
s. 97	rep. No. 136, 2012
s. 98	rep. No. 136, 2012
s. 99	rep. No. 136, 2012
s. 100	rep. No. 136, 2012
s. 101	rep. No. 136, 2012
s. 102	rep. No. 136, 2012
s. 103	rep. No. 136, 2012
s. 104	rep. No. 136, 2012
s. 105	rep. No. 136, 2012
s. 106	rep. No. 136, 2012
s. 107	rep. No. 136, 2012
s. 108	rep. No. 136, 2012
s. 109	rep. No. 136, 2012
s. 110	rep. No. 136, 2012
s. 111	rep. No. 136, 2012
s. 112	rep. No. 136, 2012
s. 113	rep. No. 136, 2012
s. 114	rep. No. 136, 2012
s. 115	rep. No. 136, 2012
Part 10.....	rep. No. 136, 2012
s. 116	rep. No. 136, 2012
Schedule	rep. No. 136, 2012