# Broadcasting Services Act 1992

**No. 110, 1992**

## Compilation No. 104

| | |
|---|---|
| **Compilation date:** | 13 December 2022 |
| **Includes amendments up to:** | Act No. 91, 2022 |
| **Registered:** | 3 January 2023 |

This compilation is in 2 volumes

| | |
|---|---|
| **Volume 1:** | **sections 1–218**<br>**Schedules 1 and 2** |
| Volume 2: | Schedules 4–8<br>Endnotes |

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

# About this compilation

### This compilation

This is a compilation of the *Broadcasting Services Act 1992* that shows the text of the law as amended and in force on 13 December 2022 (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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

# Contents


## Part 1—Preliminary 1

1 Short title ..... 1
2 Commencement ..... 1
3 Objects of this Act ..... 1
4 Regulatory policy ..... 3
5 Role of the ACMA ..... 4
6 Interpretation ..... 5
7 Interpretation—meaning of control ..... 18
8 Interpretation—shareholding interests, voting interests, dividend interests and winding-up interests ..... 19
8A Captioning taken to be part of program ..... 20
8AA Designated community radio broadcasting licence ..... 20
8AB Digital program enhancement content taken to be a radio program ..... 21
8AC Digital radio start-up day ..... 22
8AD Deemed radio broadcasting licence areas ..... 23
8AE Local content exemption period—regional commercial radio broadcasting licensee ..... 25
8AF Regional racing service radio licence ..... 28
8B Remote Indigenous community ..... 29
9 Act to bind the Crown ..... 29
10 Extension of Act to the external Territories ..... 29
10A Application of the *Criminal Code* ..... 29

## Part 2—Categories of broadcasting services 31

11 Categories of broadcasting services ..... 31
11A Dual categorisation of international broadcasting services ..... 31
12 Method of regulating particular services ..... 31
13 National broadcasting services ..... 32
14 Commercial broadcasting services ..... 33
15 Community broadcasting services ..... 33
16 Subscription broadcasting services ..... 34
17 Subscription narrowcasting services ..... 34
18 Open narrowcasting services ..... 34
18A International broadcasting services ..... 35





Authorised Version C2023C00001 registered 03/01/2023

19 ACMA may determine additional criteria or clarify existing criteria ..... 37
21 Requests to ACMA to decide which category a broadcasting service falls into ..... 37
22 Matters to be considered by ACMA ..... 39

**Part 3—Planning of the broadcasting services bands** 41
23 Planning criteria ..... 41
26 Preparation of licence area plans ..... 41
26AA Compliance with television licence area plan ..... 44
26C Licence area plans not required to deal with certain digital radio broadcasting services ..... 45
26D Licence area plans—how digital radio broadcasting services may be dealt with ..... 46
29 Designation of licence areas ..... 47
30 ACMA may determine population figures ..... 47
31 Minister may reserve capacity for national broadcasters or community broadcasters ..... 48
33 Development of technical planning guidelines ..... 48
34 Alternative uses of broadcasting services bands ..... 48

**Part 4—Commercial television broadcasting licences and commercial radio broadcasting licences** 51

**Division 1—Allocation of licences** 51
36 ACMA to determine system for allocating licences ..... 51
36A Commercial radio broadcasting licences to provide analog or digital commercial radio broadcasting services ..... 52
37 When licences must not be allocated ..... 53
37A Limitation on number of commercial television broadcasting licences ..... 53
38 ACMA to advertise for applications for certain licences ..... 54
38A Additional commercial television licences in single markets ..... 54
38B Additional commercial television licences in 2-station markets ..... 56
38C Commercial television broadcasting licences—services provided with the use of a satellite ..... 60
39 Additional commercial radio licences in single markets ..... 64
40 Allocation of other licences ..... 67



Authorised Version C2023C00001 registered 03/01/2023

41 When persons are regarded as suitable ..... 70

**Division 2—Services authorised by licences** 72

41C Services authorised by commercial television broadcasting licences ..... 72

41CA Services authorised by commercial television broadcasting licences allocated under section 38C ..... 72

41D Services authorised by commercial radio broadcasting licences ..... 78

**Division 3—Licence conditions** 81

42 Conditions of commercial broadcasting licences ..... 81

43 ACMA may impose additional conditions ..... 81

43AA Local news to be provided to section 38C licensees by regional commercial television broadcasting licensees ..... 82

43AB Commercial television programs to be provided to section 38C licensees by metropolitan commercial television broadcasting licensees ..... 85

43AC Commercial television programs to be provided to section 38C licensees by remote terrestrial licensees ..... 87

43AD Compensation for acquisition of property ..... 88

43B Local presence—regional commercial radio broadcasting licences ..... 89

43C Local content—regional commercial radio broadcasting licences ..... 90

43D Special licence conditions relating to digital radio commercial broadcasting services ..... 93

44 Matters to which conditions may relate ..... 95

**Division 4—General provisions** 96

45 Duration of licences ..... 96

46 Applications for renewal ..... 96

47 ACMA to renew licences unless it is aware of special circumstances ..... 96

48 Transfer of commercial broadcasting licences ..... 97

49 Surrender of commercial broadcasting licences ..... 97

**Part 5—Control of commercial broadcasting licences** 98

**Division 1—Preliminary** 98

50A This Part does not apply in relation to licences allocated under section 38C or subsection 40(1) ..... 98



Authorised Version C2023C00001 registered 03/01/2023

50 Interpretation—knowledge of company ..... 98
51 Means of dealing with overlapping licence areas ..... 98
52 Changes in licence area populations not to put persons in breach of this Part ..... 99
52A Newspapers—additional constitutional basis ..... 99

**Division 2—Limitation on control** 100
53 Limitation on control of commercial television broadcasting licences ..... 100
54 Limitation on control of commercial radio broadcasting licences ..... 100

**Division 3—Limitation on directorships** 101
55 Limitation on numbers of directorships—television ..... 101
56 Limitation on numbers of directorships—radio ..... 101

**Division 5—Newspapers associated with licence areas** 102
59 Newspapers associated with commercial television or radio broadcasting licence areas ..... 102

**Division 5A—Media diversity** 105

**Subdivision A—Introduction** 105
61AA Definitions ..... 105
61AB Unacceptable media diversity situation ..... 107
61AC Points ..... 107
61AD Statutory control rules ..... 110
61AE Shared content test ..... 110
61AF Overlapping licence areas ..... 111

**Subdivision B—Prohibition of transactions that result in an unacceptable media diversity situation coming into existence etc.** 111
61AG Prohibition of transactions that result in an unacceptable media diversity situation coming into existence—offence ..... 111
61AH Prohibition of transactions that result in an unacceptable media diversity situation coming into existence—civil penalty ..... 112
61AJ Prior approval of transactions that result in an unacceptable media diversity situation coming into existence etc. ..... 112
61AK Extension of time for compliance with prior approval notice ..... 114



Authorised Version C2023C00001 registered 03/01/2023

61AL Breach of prior approval notice—offence ..... 116
61AM Breach of prior approval notice—civil penalty ..... 116
**Subdivision C—Remedial directions** 116
61AN Remedial directions—unacceptable media diversity situation ..... 116
61AP Extension of time for compliance with remedial direction ..... 120
61AQ Breach of remedial direction—offence ..... 121
61AR Breach of remedial direction—civil penalty ..... 121
**Subdivision D—Enforceable undertakings** 122
61AS Acceptance of undertakings ..... 122
61AT Enforcement of undertakings ..... 122
**Subdivision E—Register of Controlled Media Groups** 123
61AU Register of Controlled Media Groups ..... 123
61AV How a media group is to be entered in the Register ..... 123
61AW Explanatory notes may be included in the Register ..... 124
61AX Continuity of media group ..... 124
61AY Initial registration of media groups ..... 124
61AZ Registration of newly-formed media group ..... 125
61AZA De-registration of media group that has ceased to exist ..... 128
61AZB Registration of change of controller of registered media group ..... 129
61AZC Registration of change of composition of media group ..... 129
61AZCA ACMA must deal with notifications in order of receipt ..... 130
61AZD Conditional transactions ..... 130
61AZE Review and confirmation of entries and alterations etc. ..... 132
61AZF Reconsideration of decisions ..... 135
61AZG Corrections of clerical errors or obvious defects ..... 137
61AZH Regulations ..... 137
**Division 5B—Disclosure of cross-media relationships** 138
61BA Definitions ..... 138
61BB Disclosure of cross-media relationship by commercial television broadcasting licensee ..... 138
61BC Choice of disclosure method—commercial radio broadcasting licensee ..... 140



Authorised Version C2023C00001 registered 03/01/2023

61BD Disclosure of cross-media relationship by commercial radio broadcasting licensee—business affairs disclosure method ..... 141
61BE Disclosure of cross-media relationship by commercial radio broadcasting licensee—regular disclosure method ..... 142
61BF Disclosure of cross-media relationship by publisher of newspaper ..... 144
61BG Exception—political communication ..... 145
61BH Matter or material about the business affairs of a broadcasting licensee or newspaper publisher ..... 146

**Division 5C—Local news and information requirements for regional commercial radio broadcasting licensees** 149

**Subdivision A—Introduction** 149
61CA Definitions ..... 149
61CAA This Division does not apply in relation to certain licences ..... 150
61CB Trigger event ..... 151
61CC What is local? ..... 153

**Subdivision B—Minimum service standards for local news and information** 153
61CD Licensee must meet minimum service standards for local news and information ..... 153
61CE Minimum service standards for local news and information ..... 155

**Subdivision C—Local content statements** 157
61CF Licensee must prepare and publish local content statements ..... 157

**Subdivision CA—Licensee to inform the ACMA how the licensee will comply with minimum service standards for emergency warnings** 159
61CG Licensee to inform the ACMA how the licensee will comply with minimum service standards for emergency warnings ..... 159

**Subdivision CB—ACMA's information-gathering powers** 160
61CH ACMA's information-gathering powers ..... 160

**Subdivision D—Other local content requirements** 160
61CR Minister may direct the ACMA to conduct an investigation about other local content requirements ..... 160



Authorised Version C2023C00001 registered 03/01/2023

61CS Minister may direct the ACMA to impose licence conditions relating to local content ... 161

**Division 5D—Local programming requirements for regional commercial television broadcasting licensees** 162

61CU Definitions ... 162
61CV Trigger event ... 164
61CW Local programming requirements for regional aggregated commercial television broadcasting licensees ... 164
61CX Local programming requirements for regional non-aggregated commercial television broadcasting licensees ... 166
61CY Points system ... 167
61CYA Modifications relating to designated Western Australian commercial television broadcasting licences ... 170
61CYB When designated Western Australian commercial television broadcasting licences are under common control ... 172
61CZ Local programming determination ... 172
61CZA Record-keeping requirements ... 173
61CZB Licensee must submit compliance reports ... 173
61CZC Review of local programming requirements ... 174
61CZD Minister may direct the ACMA about the exercise of its powers ... 175

**Division 6—Notification provisions** 176

63 Requirement to notify changes in control ... 176
65A Strict liability offence ... 177
65B Designated infringement notice provision ... 177

**Division 7—Approval of temporary breaches** 178

66 Offence for breaches without approval ... 178
67 Applications for prior approval of temporary breaches ... 179
68 Extension of time for compliance with notice ... 180
69 Breach of notice under section 67 to constitute an offence ... 181

**Division 8—Action by the ACMA** 182

70 Notices by the ACMA ... 182
71 Extension of time for compliance with notice ... 183



Authorised Version C2023C00001 registered 03/01/2023

72 Breach of notice under section 70 to constitute an offence ..... 184

**Division 9—Special provision for small markets** 185

73 Additional licence under section 38A not to result in breach of ownership limits ..... 185

73A Additional licence allocated under section 38B not to result in breach of control rules ..... 185

**Division 10—Prior opinions by the ACMA** 186

74 Requests to ACMA to give an opinion on whether a person is in a position to control a licence, a newspaper or a company ..... 186

**Division 10A—Register of Foreign Owners of Media Assets** 188

**Subdivision A—Introduction** 188

74A Simplified outline of this Division ..... 188

74B Definitions ..... 188

74C Foreign stakeholder ..... 190

**Subdivision B—Register of Foreign Owners of Media Assets** 190

74D Register of Foreign Owners of Media Assets ..... 190

74E Information to be set out in the Register of Foreign Owners of Media Assets ..... 191

**Subdivision C—Notification** 192

74F Notification by a person who becomes a foreign stakeholder in an Australian media company ..... 192

74G Notification by a person who ceases to be a foreign stakeholder in an Australian media company ..... 193

74H Notification by a person who is a foreign stakeholder in an Australian media company at the end of a financial year ..... 194

74J Notification by a person who is a foreign stakeholder in an Australian media company at the commencement of this Division ..... 195

74K Notification by a person who is a foreign stakeholder in an Australian media company—requirement by the ACMA ..... 196

74L Requirement for executors, administrators and liquidators to give notification ..... 197

74M Person may give the ACMA relevant information ..... 197



Authorised Version C2023C00001 registered 03/01/2023

**Subdivision D—Miscellaneous** 198
74N Minister may direct the ACMA about the performance of its functions or the exercise of its powers ... 198
74P Service of summons, process or notice on corporations incorporated outside Australia ... 198
74Q Extra-territorial application ... 199
74R Annual report ... 199
74S Part 13 not limited ... 199
74T Liability for damages ... 199
74U Review of this Division etc. ... 200
**Division 11—Miscellaneous** 201
75 Register of matters under this Part ... 201
76 Continuing offences ... 201
77 Part has effect notwithstanding Competition and Consumer Act ... 202
78 Part not to invalidate appointments ... 202
**Part 6—Community broadcasting licences** 203
79 Interpretation ... 203
79A Application ... 203
80 Allocation of BSB community broadcasting licences ... 203
81 When licences must not be allocated ... 204
82 Other community broadcasting licences ... 204
83 When persons are regarded as suitable ... 204
84 Allocation of community broadcasting licences ... 206
84A Designated community radio broadcasting licences to provide analog or digital services ... 207
85 ACMA not required to allocate community broadcasting licence to any applicant ... 208
85A Services authorised by designated community radio broadcasting licences ... 208
86 Conditions of community broadcasting licences ... 210
87 ACMA may impose additional conditions on community broadcasting licences ... 210
87A Additional conditions on CTV licences ... 211
87B Special licence condition relating to digital community radio broadcasting services ... 213
88 Matters to which conditions may relate ... 214
89 Duration of community broadcasting licences ... 214



Authorised Version C2023C00001 registered 03/01/2023

90 Applications for renewal of community broadcasting licences ..... 214
91 ACMA may renew community broadcasting licences ..... 216
91A Transfer of community broadcasting licences ..... 217
92 Surrender of community broadcasting licences ..... 219

**Part 6A—Temporary community broadcasting licences** 220
92A Interpretation ..... 220
92B Temporary community broadcasting licences ..... 220
92C Applicants for temporary community broadcasting licences ..... 220
92D When applicants and licensees are regarded as suitable ..... 221
92E Criteria for deciding whether to allocate a licence ..... 222
92F Licences to accord with alternative planning procedures ..... 223
92G Licence area, timing conditions and licence period ..... 223
92H Conditions of temporary community broadcasting licences ..... 224
92J ACMA may vary conditions or periods, or impose new conditions ..... 224
92K Duration of temporary community broadcasting licences ..... 225
92L Surrender of temporary community broadcasting licences ..... 225

**Part 7—Subscription television broadcasting services** 226

**Division 1—Allocation of subscription television broadcasting licences** 226
95 When subscription television broadcasting licence must not be allocated ..... 226
96 Allocation of other subscription television broadcasting licences ..... 226
97 Requests to Australian Competition and Consumer Commission ..... 227
98 Suitability for allocation of licence ..... 228
98D Compensation ..... 229



Authorised Version C2023C00001 registered 03/01/2023

**Division 2—Conditions of subscription television broadcasting licence** 230

99 Conditions applicable to subscription television broadcasting licence ..... 230

100 Matters to which conditions may relate ..... 231

**Division 2A—Eligible drama expenditure** 233

**Subdivision A—Introduction** 233

103A Simplified outline ..... 233

103B Definitions ..... 234

103C Channel providers ..... 237

103D Part-channel providers ..... 238

103E Pass-through providers ..... 238

103F Part-pass-through providers ..... 239

103G Supply of channel or package ..... 239

103H Non-designated pre-production expenditure not to be counted unless principal photography has commenced ..... 240

103J Cash-based accounting—when expenditure is incurred ..... 240

103JA When designated script development expenditure is incurred in relation to an eligible drama program etc. ..... 240

103K When expenditure incurred on a new eligible drama program ..... 243

103L ACMA may make determinations about what constitutes program expenditure ..... 243

103M Expenditure to be nominated only once in meeting licence conditions ..... 245

**Subdivision B—Channel provider supplies channel** 246

103N 10% minimum eligible drama expenditure—channel provider supplies channel ..... 246

103NA Carry-forward eligible drama expenditure ..... 248

103P Shortfall of eligible drama expenditure—channel provider supplies channel exclusively to licensee ..... 248

103Q Shortfall of eligible drama expenditure—channel provider supplies channel to multiple licensees ..... 250

**Subdivision C—Pass-through provider supplies channel** 253

103R 10% minimum eligible drama expenditure—pass-through provider supplies channel ..... 253

103RA Carry-forward eligible drama expenditure ..... 255



Authorised Version C2023C00001 registered 03/01/2023

103S Shortfall of eligible drama expenditure—pass-through provider supplies channel....256
**Subdivision D—Licensee supplies all program material** 257
103T 10% minimum eligible drama expenditure—licensee supplies all program material....257
103TA Carry-forward eligible drama expenditure....259
**Subdivision E—Part-channel provider supplies package of programs** 260
103U 10% minimum eligible drama expenditure—part-channel provider supplies package of programs....260
103UA Carry-forward eligible drama expenditure....261
103V Shortfall of eligible drama expenditure—part-channel provider supplies a package of programs exclusively to licensee....262
103W Shortfall of eligible drama expenditure—part-channel provider supplies a package of programs to multiple licensees....264
**Subdivision F—Part-pass-through provider supplies package of programs** 267
103X 10% minimum eligible drama expenditure—part-pass-through provider supplies package of programs....267
103XA Carry-forward eligible drama expenditure....268
103Y Shortfall of eligible drama expenditure—part-pass-through provider supplies package of programs....269
**Subdivision G—Licensee supplies part of program material** 271
103Z 10% minimum eligible drama expenditure—licensee supplies part of program material....271
103ZAA Carry-forward eligible drama expenditure....272
**Subdivision H—Annual returns** 273
103ZA Licensee to lodge annual return....273
103ZB Channel provider and part-channel provider to lodge annual return....274
103ZC ACMA may inquire into the correctness of an annual return....275
103ZD Nominations to be attached to annual returns....275



Authorised Version C2023C00001 registered 03/01/2023

**Subdivision J—Miscellaneous** 276
103ZG Anti-avoidance—transactions between persons not at arm's length ... 276
103ZH Expenditure to be expressed in Australian currency ... 276
**Division 6—Miscellaneous** 277
113 Transfer of subscription television broadcasting licence ... 277
114 Surrender of subscription television broadcasting licence ... 277
115 Minister may protect the free availability of certain types of programs ... 277
116 Certain arrangements not to result in control or in persons being associates ... 278
116A Use of additional capacity ... 279
116B Application of section 51 of the Competition and Consumer Act ... 279
**Part 8—Subscription broadcasting and narrowcasting class licences** 280
117 Determination of class licences ... 280
118 Conditions of class licences ... 280
119 Matters to which conditions may relate ... 280
120 Variation of class licences ... 281
**Part 8A—Restrictions on subscription television broadcasting services in regional areas etc.** 282
121A Simplified outline ... 282
121B Definitions ... 282
121C Identical program items ... 283
121D Continuity of program items ... 283
121E ACMA permission is required to provide certain television services in regional areas ... 284
**Part 8B—International broadcasting licences** 286
**Division 1—Introduction** 286
121F Simplified outline ... 286
121FAA Definitions ... 287
**Division 2—Allocation of international broadcasting licences** 288
121FA Application for international broadcasting licence ... 288



Authorised Version C2023C00001 registered 03/01/2023

121FB Corporate status and suitability ..... 288
121FC Unsuitable applicant ..... 290
121FD Australia's national interest ..... 291
121FE Allocation of licence ..... 293
**Division 3—Obligations of international broadcasting licensees** 294
121FF Conditions of international broadcasting licences ..... 294
**Division 4—Remedies** 295
121FG Prohibition on providing an international broadcasting service without a licence ..... 295
121FH Remedial directions—unlicensed international broadcasting services ..... 295
121FHA Breach of remedial direction—offence ..... 296
121FHB Breach of remedial direction—civil penalty provision ..... 296
121FJ Offence for breach of conditions of international broadcasting licence ..... 296
121FJA Civil penalty provision relating to breach of conditions of international broadcasting licences ..... 297
121FJB Remedial directions—licence conditions ..... 297
121FJC Breach of remedial direction—offence ..... 298
121FJD Breach of remedial direction—civil penalty provision ..... 298
121FK Cancellation of licence if service does not commence within 2 years ..... 298
121FL Formal warning, or cancellation or suspension of licence, where service is contrary to Australia's national interest ..... 299
**Division 4A—Nominated broadcaster declarations** 302
121FLA Object of this Division ..... 302
121FLB Applications for nominated broadcaster declarations ..... 302
121FLC Making a nominated broadcaster declaration ..... 302
121FLD Effect of nominated broadcaster declaration ..... 304
121FLE Conditions of nominated broadcaster declarations ..... 305
121FLF Offence for breach of conditions of nominated broadcaster declaration ..... 305
121FLG Revocation of nominated broadcaster declaration ..... 306
121FLH Cancellation of licence if declaration ceases to be in force and licensee is not an Australian company ..... 308
121FLJ Register of nominated broadcaster declarations ..... 309



Authorised Version C2023C00001 registered 03/01/2023

**Division 5—ACMA to assist the Minister for Foreign Affairs** 310
121FM Report about compliance with international broadcasting guidelines ..... 310
121FN Records of broadcasts ..... 310
**Division 6—Miscellaneous** 311
121FP International broadcasting guidelines ..... 311
121FQ Surrender of international broadcasting licences ..... 311
121FR Complaints about international broadcasting services ..... 311
121FS Statements about decisions of the Minister for Foreign Affairs ..... 311
**Part 9—Content rules, program standards and codes of practice** 313
121G Australian content—transmission quota ..... 313
121H Australian content: transmission quota for regional/remote commercial television broadcasting licensees ..... 317
122 Program standards for children's programs and Australian content ..... 320
123 Development of codes of practice ..... 322
123B Review by the ACMA—application of code of practice to section 38C licences ..... 326
124 ACMA to maintain Register of codes of practice ..... 327
125 ACMA may determine program standards where codes of practice fail or where no code of practice developed ..... 327
125A ACMA must determine a gambling promotion program standard if directed by the Minister ..... 328
126 Consultation on standards ..... 334
127 Notification of determination or variation or revocation of standards ..... 334
128 Standards and codes to be amendable by the Parliament ..... 335
129 Limitation of ACMA's power in relation to standards ..... 335
130 Application of the Competition and Consumer Act ..... 336
**Part 9A—Technical standards** 337
130A Technical standards for digital transmission—television etc ..... 337



Authorised Version C2023C00001 registered 03/01/2023

130AA Technical standards for digital transmission—radio etc. 339
130AB Technical standards relating to the operation of multiplex transmitters 340
130AC Technical standards for digital transmission of television services provided with the use of a satellite 340
130B Technical standards for domestic digital reception equipment—television etc. 341
130BA Technical standards for domestic digital reception equipment—radio etc. 343
130BB Technical standards for domestic digital reception equipment—television services provided with the use of a satellite 346

**Part 9B—Industry codes and industry standards** 350

**Division 1—Simplified outline** 350
130C Simplified outline 350

**Division 2—Interpretation** 351
130D Industry codes 351
130E Industry standards 351
130F Industry activities 351
130G Sections of the industry 353
130H Participants in a section of the industry 353

**Division 3—General principles relating to industry codes and industry standards** 354
130J Statement of regulatory policy 354
130K Examples of matters that may be dealt with by industry codes and industry standards 354
130L Industry codes and industry standards not to deal with certain matters 355

**Division 4—Industry codes** 356
130M Registration of industry codes 356
130N ACMA may request codes 357
130P Publication of notice where no body or association represents a section of the industry 358
130Q Replacement of industry codes 359

**Division 5—Industry standards** 360
130R ACMA may determine an industry standard if a request for an industry code is not complied with 360



Authorised Version C2023C00001 registered 03/01/2023

130S ACMA may determine industry standard where no industry body or association formed....361
130T ACMA may determine industry standards—total failure of industry codes....362
130U ACMA may determine industry standards—partial failure of industry codes....363
130V Compliance with industry standards....365
130W Formal warnings—breach of industry standards....365
130X Variation of industry standards....365
130Y Revocation of industry standards....366

**Division 6—Register of industry codes and industry standards** 367
130ZA ACMA to maintain Register of industry codes and industry standards....367

**Part 9C—Access to commercial television broadcasting services provided with the use of a satellite** 368
130ZBA Simplified outline....368
130ZB Objectives of conditional access scheme—South Eastern Australia TV3 licence area and Northern Australia TV3 licence area....368
130ZBB Objectives of conditional access scheme—Western Australia TV3 licence area....373
130ZC Registration of conditional access scheme developed by representative body or association....377
130ZCAA ACMA may invite representative body or association to develop a revised conditional access scheme....379
130ZCAB ACMA may request development of replacement conditional access scheme....380
130ZCA Registration of conditional access scheme formulated by the ACMA....381
130ZD Replacement of conditional access scheme....384
130ZE ACMA to maintain register of conditional access schemes....384
130ZF ACMA may direct a scheme administrator to issue a reception certificate etc....385
130ZFA Adequate reception....388
130ZG Applicable terrestrial digital commercial television broadcasting services....389
130ZH Declared service-deficient areas....390



Authorised Version C2023C00001 registered 03/01/2023

**Part 9D—Captioning** 393

**Division 1—Introduction** 393

130ZJ Simplified outline ..... 393
130ZK Definitions ..... 393
130ZKA Definition of *channel provider* ..... 397
130ZKB Definition of *part-channel provider* ..... 397
130ZKC Supply of channel or package ..... 398
130ZL Designated viewing hours ..... 398
130ZM This Part does not apply to foreign language programs ..... 398
130ZN This Part does not apply to programs that consist wholly of music ..... 399
130ZO Captioning service provided for part of program ..... 399
130ZP Multiple subscription television services provided by licensee ..... 399
130ZQ Television service provided in a period ..... 400

**Division 2—Captioning obligations of commercial television broadcasting licensees and national broadcasters** 401

130ZR Captioning obligations—basic rule ..... 401
130ZS Captioning obligations—special rules for multi-channelled services ..... 404
130ZUA Exemption orders and target reduction orders—unjustifiable hardship ..... 406
130ZUAA Effect of target reduction order ..... 411
130ZUB Certain breaches to be disregarded ..... 413

**Division 3—Captioning obligations of subscription television licensees** 415

130ZV Annual captioning targets—subscription television licensees ..... 415
130ZVA Categories for subscription television movie services ..... 418
130ZW Categories for subscription television general entertainment services ..... 419
130ZX Exemptions—certain subscription television services provided before 1 July 2022 ..... 421
130ZY Exemption orders and target reduction orders—unjustifiable hardship ..... 427
130ZYA Effect of target reduction order ..... 431
130ZZ Captioning services for repeats of television programs ..... 432



Authorised Version C2023C00001 registered 03/01/2023

130ZZAA Captioning services for simultaneously transmitted television programs ..... 432
130ZZAB Certain breaches to be disregarded ..... 433
**Division 4—Captioning standards** 434
130ZZA Captioning standards ..... 434
**Division 5—Emergency warnings** 436
130ZZB Emergency warnings ..... 436
**Division 6—Reports and record-keeping** 438
130ZZC Annual compliance reports ..... 438
130ZZD Record-keeping ..... 439
**Division 7—Review of this Part etc.** 441
130ZZE Review of this Part etc ..... 441
**Part 10—Remedies for breaches of licensing provisions** 442
**Division 1—Offences for providing unlicensed services** 442
131 Prohibition on providing a commercial television broadcasting service without a licence ..... 442
132 Prohibition on providing a subscription television broadcasting service without a licence ..... 442
133 Prohibition on providing a commercial radio broadcasting service without a licence ..... 442
134 Prohibition on providing a community television broadcasting service without a licence ..... 442
135 Prohibition on providing a community radio broadcasting service without a licence ..... 443
136 Continuing offences ..... 443
**Division 1A—Civil penalty provisions relating to unlicensed services** 444
136A Prohibition on providing a commercial television broadcasting service without a licence ..... 444
136B Prohibition on providing a subscription television broadcasting service without a licence ..... 444
136C Prohibition on providing a commercial radio broadcasting service without a licence ..... 444
136D Prohibition on providing a community television broadcasting service without a licence ..... 444
136E Prohibition on providing a community radio broadcasting service without a licence ..... 445
136F Continuing breaches ..... 445



Authorised Version C2023C00001 registered 03/01/2023

**Division 2—Action by ACMA where a person provides a service without a licence** 446
137 Remedial directions—unlicensed services ..... 446
138 Breach of remedial direction—offences ..... 446
138A Breach of remedial direction—civil penalty provision ..... 447
**Division 3—Action in relation to breaches by licensees** 448
139 Offence for breach of conditions of licences and class licences ..... 448
140 Continuing offences ..... 450
140A Civil penalty provisions relating to breach of conditions of licences and class licences ..... 450
141 Remedial directions—licence conditions, class licences and codes of practice ..... 451
142 Breach of remedial direction—offences ..... 454
142A Breach of remedial direction—civil penalty provision ..... 455
143 Suspension and cancellation ..... 456
**Division 4—Action in relation to class licences** 458
144 Application to Federal Court ..... 458
**Part 10A—Anti-hoarding rules** 459
**Division 1—Introduction** 459
146A Simplified outline ..... 459
146B Definitions ..... 460
146C Designated events and designated series of events ..... 462
146CA When event or series is eligible for delayed televising in the Central-Western time zones ..... 462
146D Program suppliers ..... 463
**Division 2—Commercial television broadcasting licensees** 466
146E Anti-hoarding rule—licensees ..... 466
146F Anti-hoarding rule—program suppliers ..... 467
146G What constitutes an offer to transfer rights to televise live events ..... 469
146H Offers to transfer rights to televise live events ..... 469
146J Contracts to acquire rights to televise live events must authorise the transfer of the rights ..... 470
146K Simultaneous events in a series ..... 471



Authorised Version C2023C00001 registered 03/01/2023

146KA Delayed televising in the Central-Western time zones....472

**Division 3—National broadcasters** 475

146L Anti-hoarding rule....475

146M What constitutes an offer to transfer rights to televise live events....476

146N Offers to transfer rights to televise live events....477

146P Contracts to acquire rights to televise live events must authorise the transfer of the rights....477

146Q Simultaneous events in a series....478

146R Delayed televising in the Central-Western time zones....478

**Part 11—Complaints to the ACMA** 481

**Division 1—Complaints relating to action under licences and class licences** 481

147 Complaints relating to offences or breach of licence conditions....481

148 Complaints under codes of practice....481

149 Investigation of complaints by the ACMA....482

**Division 2—Complaints relating to national broadcasting services or datacasting services provided by the ABC or SBS** 483

150 Complaints relating to national broadcasting services or datacasting services provided by the ABC or SBS....483

151 Investigation of complaints relating to the ABC or SBS by the ACMA....484

152 Action by ACMA where complaint justified....484

153 ACMA may report to Minister on results of recommendation....484

**Part 13—Information gathering by the ACMA** 485

**Division 1—Introduction** 485

168 Obtaining of information by the ACMA....485

169 Decision-making by the ACMA not limited to matters discovered by investigation or hearing....485

**Division 2—Investigations** 486

170 Investigations by the ACMA....486



Authorised Version C2023C00001 registered 03/01/2023

171 Minister may direct ACMA to conduct an investigation ..... 486
172 ACMA may call for written submissions from the public ..... 486
173 Notice requiring appearance for examination ..... 487
174 Examination on oath or affirmation ..... 487
175 Examination to take place in private ..... 487
176 Record to be made of examination ..... 488
177 Production of documents for inspection ..... 488
178 Report on investigation ..... 488
179 Publication of report ..... 489
180 Person adversely affected by report to be given opportunity to comment ..... 489

**Division 3—Hearings** 490

182 Power to hold hearings ..... 490
183 Minister may direct ACMA to hold a hearing ..... 490
184 Procedure for conduct of hearings ..... 490
185 ACMA may direct holding of conference ..... 490
186 Hearings to be informal, quick and economical ..... 491
187 Hearings to be in public except in exceptional cases ..... 491
188 Public notice of hearings ..... 491
189 Confidential material not to be published ..... 491
190 Directions as to private hearings ..... 492
191 Constitution of ACMA for conduct of hearings ..... 492
192 Presiding member ..... 492
193 Reconstitution of hearing panel ..... 492
194 Exercise of powers in relation to conduct of hearing ..... 493
195 Summons to give evidence or produce documents ..... 493
196 Written submissions may be made to hearing ..... 493
197 Evidence and submissions to be taken into account by ACMA ..... 493
198 Representation at hearings ..... 494
199 Reports on hearings ..... 494

**Division 4—General** 495

200 Protection of members and persons giving evidence ..... 495
201 Protection of panel conducting hearing ..... 495



Authorised Version C2023C00001 registered 03/01/2023

202 Non-compliance with requirement to give evidence ..... 495
203 Proceedings for defamation not to lie ..... 497

**Part 14—Appeals to the Administrative Appeals Tribunal** 498
204 Appeals to the Administrative Appeals Tribunal ..... 498
205 Notification of decisions to include notification of reasons and appeal rights ..... 506

**Part 14AA—Collection and recovery of interim tax** 507
205AA Simplified outline of this Part ..... 507
205AB Assessments ..... 507
205AC When interim tax becomes due and payable ..... 508
205AD Recovery of interim tax ..... 509
205AE Refund of overpayment of interim tax ..... 509
205AF Late payment penalty ..... 509
205AG Anti-avoidance ..... 510

**Part 14B—Civil penalties** 512
**Division 1—Ancillary contravention of civil penalty provision** 512
205E Ancillary contravention of civil penalty provision ..... 512
**Division 2—Civil penalty orders** 513
205EA Simplified outline ..... 513
205F Civil penalty orders ..... 513
205G Who may apply for a civil penalty order ..... 516
205H 2 or more proceedings may be heard together ..... 516
205J Time limit for application for an order ..... 516
205K Civil evidence and procedure rules for civil penalty orders ..... 517
205L Civil proceedings after criminal proceedings ..... 517
205M Criminal proceedings during civil proceedings ..... 517
205N Criminal proceedings after civil proceedings ..... 517
205P Evidence given in proceedings for a civil penalty order not admissible in criminal proceedings ..... 518
205PAA Mistake of fact ..... 518

**Part 14C—Injunctions** 520
205PA Simplified outline ..... 520
205Q Injunctions ..... 520
205R Interim injunctions ..... 521
205S Discharge etc. of injunctions ..... 521



Authorised Version C2023C00001 registered 03/01/2023

205T Certain limits on granting injunctions not to apply ..... 521
205U Other powers of the Federal Court unaffected ..... 522

**Part 14D—Enforceable undertakings** 523
205V Simplified outline ..... 523
205W Acceptance of undertakings ..... 523
205X Enforcement of undertakings ..... 524

**Part 14E—Infringement notices** 525
205XAA Simplified outline ..... 525
205XA Formal warning ..... 525
205Y When an infringement notice can be given ..... 525
205Z Matters to be included in an infringement notice ..... 526
205ZA Amount of penalty ..... 526
205ZB Withdrawal of an infringement notice ..... 527
205ZC What happens if the penalty is paid ..... 527
205ZD Effect of this Part on criminal proceedings ..... 528
205ZE Appointment of authorised infringement notice officer ..... 528
205ZF Regulations ..... 529

**Part 14F—Grants** 530
205ZG Simplified outline of this Part ..... 530
205ZH Grants ..... 530
205ZJ Terms and conditions for grants ..... 531
205ZK Advisory committee ..... 532
205ZL Annual report ..... 533
205ZM Short title of amending Act does not limit the powers conferred by this Part ..... 533

**Part 15—Miscellaneous** 534
206 Broadcasting or datacasting taken to be publication in permanent form ..... 534
207 Amounts of fees ..... 534
209 Prosecutions ..... 534
210 Publication of opinions ..... 534
211AA Time when a television program is broadcast—certain terrestrial licence areas ..... 535
211A Time when a television program is broadcast—South Eastern Australia TV3 and Northern Australia TV3 licence areas ..... 536
212 Special provisions for re-transmission of programs ..... 538



Authorised Version C2023C00001 registered 03/01/2023

212A Self-help providers ..... 540
212B Declared self-help providers and excluded providers ..... 542
213 Penalties for continuing offences ..... 543
214 Procedure relating to continuing offences ..... 543
215 Guidelines relating to ACMA's enforcement powers etc. ..... 543
216 Ministerial consultative and advisory bodies ..... 545
216A Schedule 4 (digital television broadcasting) ..... 545
216AA Review of taxation arrangements etc. ..... 545
216C Schedule 6 (datacasting services) ..... 546
216D Schedule 7 (content services) ..... 546
216E Schedule 8 (online content services) ..... 546
217 Regulations ..... 546
218 Channel sharing ..... 546

**Schedule 1—Control and ownership of company interests** 548

**Part 1—Introduction** 548
1 Control—general ..... 548

**Part 2—When person is in a position to exercise control** 550
2 When person is in a position to exercise control ..... 550
3 When person is in a position to exercise control of a newspaper ..... 552
4 Special provisions for authorised lenders ..... 553

**Part 3—Deemed control** 557
5 Explanation of examples ..... 557
6 The 15% rule ..... 557
7 Application of method through chain of companies ..... 557

**Part 4—Tracing of ownership** 558
8 Tracing of ownership ..... 558

**Schedule 2—Standard conditions** 560

**Part 1—Interpretation** 560
1 Definitions ..... 560
2 Interpretation—certain things do not amount to broadcasting of advertisements ..... 565



Authorised Version C2023C00001 registered 03/01/2023

**Part 2—Special conditions** 567
3 Broadcasting of political or controversial material ..... 567
3A Broadcasting of election advertisements ..... 567
4 Identification of certain political matter ..... 568
5 Records of matter broadcast ..... 570
**Part 3—Commercial television broadcasting licences** 572
**Division 1—General** 572
7 Conditions of commercial television broadcasting licences ..... 572
**Division 2—Licences allocated under section 38C** 577
7A Common conditions ..... 577
7B Conditions about the provision of primary commercial television broadcasting services ..... 577
7C Conditions about the provision of non-primary commercial television broadcasting services ..... 581
7D Condition about the provision of local news services ..... 585
7E Exemption—provision of new commercial television broadcasting services not technically feasible ..... 585
7F Exemption—commercial television broadcasting services with the same program content ..... 586
7G Delay in commencement of new commercial television broadcasting services ..... 588
7J Program content ..... 589
7L Definitions ..... 589
**Part 4—Commercial radio broadcasting licences** 591
8 Standard conditions of commercial radio broadcasting licences ..... 591
**Part 5—Community broadcasting licences** 595
9 Conditions applicable to services provided under community broadcasting licences ..... 595
**Part 6—Subscription television broadcasting licences** 599
10 Conditions applicable to subscription television broadcasting licences ..... 599



Authorised Version C2023C00001 registered 03/01/2023

**Part 7—Services provided under class licences** 602

11 Conditions applicable to broadcasting services provided under class licences ..... 602



Authorised Version C2023C00001 registered 03/01/2023

Authorised Version C2023C00001 registered 03/01/2023

# An Act relating to broadcasting services, datacasting services, online services and content services, and for related purposes

# Part 1—Preliminary

## 1 Short title

This Act may be cited as the *Broadcasting Services Act 1992*.

## 2 Commencement

(1) Section 1, this section, sections 3 and 6 commence on the day on which this Act receives the Royal Assent.

(2) The remaining provisions of this Act commence on a day to be fixed by Proclamation.

(3) If those provisions do not commence under subsection (2) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, those provisions commence on the first day after the end of that period.

## 3 Objects of this Act

(1) The objects of this Act are:

(a) to promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information; and

(aa) to promote the availability to audiences and users throughout Australia of a diverse range of datacasting services; and

(b) to provide a regulatory environment that will facilitate the development of a broadcasting industry in Australia that is efficient, competitive and responsive to audience needs; and



Authorised Version C2023C00001 registered 03/01/2023

(ba) to provide a regulatory environment that will facilitate the development of a datacasting industry in Australia that is efficient, competitive and responsive to audience and user needs; and

(c) to encourage diversity in control of the more influential broadcasting services; and

(e) to promote the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity; and

(ea) to promote the availability to audiences throughout Australia of television and radio programs about matters of local significance; and

(f) to promote the provision of high quality and innovative programming by providers of broadcasting services; and

(fa) to promote the provision of high quality and innovative content by providers of datacasting services; and

(g) to encourage providers of commercial and community broadcasting services to be responsive to the need for a fair and accurate coverage of matters of public interest and for an appropriate coverage of matters of local significance; and

(h) to encourage providers of broadcasting services to respect community standards in the provision of program material; and

(hb) to ensure online content service providers respect community standards in relation to gambling promotional content; and

(i) to encourage the provision of means for addressing complaints about broadcasting services; and

(ia) to provide a means for addressing complaints about gambling promotional content provided on online content services; and

(j) to ensure that providers of broadcasting services place a high priority on the protection of children from exposure to program material which may be harmful to them; and

(ja) to ensure that international broadcasting services are not provided contrary to Australia's national interest; and



Authorised Version C2023C00001 registered 03/01/2023

(n) to ensure the maintenance and, where possible, the development of diversity, including public, community and indigenous broadcasting, in the Australian broadcasting system in the transition to digital broadcasting.

(2) In this section:

***gambling promotional content*** has the same meaning as in Schedule 8.

***online content service*** has the same meaning as in Schedule 8.

***online content service provider*** has the same meaning as in Schedule 8.

## 4 Regulatory policy

(1) The Parliament intends that different levels of regulatory control be applied across the range of broadcasting services, datacasting services and online content services according to the degree of influence that different types of broadcasting services, datacasting services and online content services are able to exert in shaping community views in Australia.

(2) The Parliament also intends that broadcasting services and datacasting services in Australia be regulated in a manner that, in the opinion of the ACMA:

(a) enables public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on providers of broadcasting services and datacasting services; and

(b) will readily accommodate technological change; and

(c) encourages:

(i) the development of broadcasting technologies and datacasting technologies, and their application; and

(ii) the provision of services made practicable by those technologies to the Australian community.



Authorised Version C2023C00001 registered 03/01/2023

(3AB) The Parliament also intends that gambling promotional content provided on online content services be regulated in a manner that:

(a) enables public interest considerations in relation to gambling promotional content to be addressed in a way that does not impose unnecessary financial and administrative burdens on the providers of online content services; and

(b) will readily accommodate technological change; and

(c) encourages the provision of online content services to the Australian community; and

(d) encourages the development of technologies relating to online content services.

(3A) This section does not apply to Part 8B (which deals with international broadcasting services).

(4) In this section:

***gambling promotional content*** has the same meaning as in Schedule 8.

***online content service*** has the same meaning as in Schedule 8.

***online content service provider*** has the same meaning as in Schedule 8.

## 5 Role of the ACMA

(1) In order to achieve the objects of this Act in a way that is consistent with the regulatory policy referred to in section 4, the Parliament:

(a) charges the ACMA with responsibility for monitoring the broadcasting industry, the datacasting industry and the online content service industry; and

(b) confers on the ACMA a range of functions and powers that are to be used in a manner that, in the opinion of the ACMA, will:

(i) produce regulatory arrangements that are stable and predictable; and



Authorised Version C2023C00001 registered 03/01/2023

(ii) deal effectively with breaches of the rules established by this Act.

(2) Where it is necessary for the ACMA to use any of the powers conferred on it by this Act to deal with a breach of this Act or the regulations, the Parliament intends that the ACMA use its powers, or a combination of its powers, in a manner that, in the opinion of the ACMA, is commensurate with the seriousness of the breach concerned.

(3) This section does not, by implication, limit the functions and powers of:

(b) the Australian Competition and Consumer Commission; or

(c) any other body or person who has regulatory responsibilities in relation to the internet industry.

(4) In this section:

***online content service*** has the same meaning as in Schedule 8.

## 6 Interpretation

(1) In this Act, unless the contrary intention appears:

***ACMA*** means the Australian Communications and Media Authority.

***ACNC type of entity*** means an entity that meets the description of a type of entity in column 1 of the table in subsection 25-5(5) of the *Australian Charities and Not-for-profits Commission Act 2012*.

***amount paid on shares***, in relation to a company, includes an amount treated by the company as having been so paid.

***analog commercial radio broadcasting service*** means a commercial radio broadcasting service that is transmitted using an analog modulation technique.



Authorised Version C2023C00001 registered 03/01/2023

***analog community radio broadcasting service*** means a community radio broadcasting service that is transmitted using an analog modulation technique.

***anti-siphoning event*** means an event, or an event of a kind, that is specified in a notice under subsection 115(1). For this purpose, disregard subsections 115(1AA) and (1B).

***associate***, in relation to a person in relation to control of a licence or a newspaper, or control of a company in relation to a licence or a newspaper, means:

(a) the person's spouse or a parent, child, brother or sister of the person; or

(b) a partner of the person or, if a partner of the person is a natural person, a spouse or a child of a partner of the person; or

(c) if the person or another person who is an associate of the person under another paragraph receives benefits or is capable of benefiting under a trust—the trustee of the trust; or

(d) a person (whether a company or not) who:

(i) acts, or is accustomed to act; or

(ii) under a contract or an arrangement or understanding (whether formal or informal) is intended or expected to act;

in accordance with the directions, instructions or wishes of, or in concert with, the first-mentioned person or of the first-mentioned person and another person who is an associate of the first-mentioned person under another paragraph; or

(e) if the person is a company—another company if:

(i) the other company is a related body corporate of the person for the purposes of the *Corporations Act 2001*; or

(ii) the person, or the person and another person who is an associate of the person under another paragraph, are in a position to exercise control of the other company;



Authorised Version C2023C00001 registered 03/01/2023

but persons are not associates if the ACMA is satisfied that they do not act together in any relevant dealings relating to that company, licence or newspaper, and neither of them is in a position to exert influence over the business dealings of the other in relation to that company, licence or newspaper.

Note: See also subsection (3).

***associate member*** means an associate member of the ACMA.

***authorised infringement notice officer*** means:

(a) the Chair of the ACMA; or

(b) a member of the staff of the ACMA appointed under section 205ZE.

***broadcasting service*** means a service that delivers television programs or radio programs to persons having equipment appropriate for receiving that service, whether the delivery uses the radiofrequency spectrum, cable, optical fibre, satellite or any other means or a combination of those means, but does not include:

(a) a service (including a teletext service) that provides no more than data, or no more than text (with or without associated still images); or

(b) a service that makes programs available on demand on a point-to-point basis, including a dial-up service; or

(c) a service, or a class of services, that the Minister determines, under subsection (2), not to fall within this definition.

***broadcasting services bands*** means:

(a) that part of the radiofrequency spectrum that is designated under subsection 31(1) of the *Radiocommunications Act 1992* as being primarily for broadcasting purposes; and

(b) that part of the radiofrequency spectrum that is designated under subsection 31(1A) of the *Radiocommunications Act 1992* as being partly for the purpose of digital radio broadcasting services.



Authorised Version C2023C00001 registered 03/01/2023

***broadcasting services bands licence*** means a commercial television broadcasting licence, a commercial radio broadcasting licence or a community broadcasting licence that uses the broadcasting services bands as a means of delivering broadcasting services.

***census count*** means a census count of the Australian population published by the Australian Statistician.

***CER Trade in Services Protocol***:

(a) means the Protocol on Trade in Services to the Australia New Zealand Closer Economic Relations Trade Agreement (being that Protocol as in force from time to time); and

(b) includes an instrument under that Protocol (being that instrument as in force from time to time).

***Chair*** means the Chair of the ACMA.

***child***: without limiting who is a child of a person for the purposes of this Act, someone is the ***child*** of a person if he or she is a child of the person within the meaning of the *Family Law Act 1975*.

***civil penalty order*** means an order under subsection 205F(1).

***civil penalty provision*** means a provision declared by this Act to be a civil penalty provision.

***class licence*** means a class licence determined by the ACMA under section 117.

***commercial broadcasting service*** has the meaning given by section 14.

***commercial radio broadcasting licence*** means a licence under Part 4 to provide:

(a) in the case of a licence allocated under subsection 40(1)—a commercial radio broadcasting service; or

(b) in any other case—the commercial radio broadcasting service or services that, under section 41D, are authorised by the licence.



Authorised Version C2023C00001 registered 03/01/2023

***commercial radio broadcasting service*** means a commercial broadcasting service that provides radio programs.

***commercial television broadcasting licence*** means a licence under Part 4 to provide:

(aa) in the case of a licence allocated under section 38C—the commercial television broadcasting services that, under section 41CA, are authorised by the licence; or

(a) in the case of a licence allocated under subsection 40(1)—a commercial television broadcasting service; or

(b) in any other case—the commercial television broadcasting services that, under section 41C, are authorised by the licence.

***commercial television broadcasting service*** means a commercial broadcasting service that provides television programs.

***community broadcasting licence*** means:

(a) a community radio broadcasting licence; or

(b) a community television broadcasting licence.

***community broadcasting service*** has the meaning given by section 15.

***community radio broadcasting licence*** means:

(a) a licence under Part 6 to provide:

(i) in the case of a licence allocated under subsection 82(1)—a community radio broadcasting service; or

(ii) in the case of a designated community radio broadcasting licence—the community radio broadcasting service or services that, under section 85A, are authorised by the licence; or

(iii) in any other case—a community radio broadcasting service; or

(b) a licence under Part 6A to provide a community radio broadcasting service.



Authorised Version C2023C00001 registered 03/01/2023

***community radio broadcasting service*** means a community broadcasting service that provides radio programs.

***community television broadcasting licence*** means a licence under Part 6 or 6A to provide a community broadcasting service that provides television programs.

***company interests***, in relation to a person who has a shareholding interest, a voting interest, a dividend interest or a winding-up interest in a company, means the percentage of that interest or, if the person has 2 or more of those interests, whichever of those interests has the greater or greatest percentage.

***conditional access scheme*** means a scheme that sets out rules relating to access to services provided under a commercial television broadcasting licence allocated under section 38C.

***constitutional corporation*** means a corporation to which paragraph 51(xx) of the Constitution applies.

***control*** includes control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights.

***CTV licence*** means a community broadcasting licence under Part 6 to provide a service that provides television programs but is not targeted, to a significant extent, to one or more remote Indigenous communities.

***datacasting licence*** means a licence under Schedule 6 to provide a datacasting service.

***datacasting service*** means a service that delivers 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



Authorised Version C2023C00001 registered 03/01/2023

(f) whether in any combination of forms;

to persons having equipment appropriate for receiving that content, where the delivery of the service uses the broadcasting services bands.

***de facto partner*** of a person has the meaning given by the *Acts Interpretation Act 1901*.

***designated community radio broadcasting licence*** has the meaning given by section 8AA.

***designated infringement notice provision*** means a provision declared by this Act to be a designated infringement notice provision.

***digital commercial radio broadcasting service*** means a commercial radio broadcasting service that is transmitted using a digital modulation technique.

***digital community radio broadcasting service*** means a community radio broadcasting service that is transmitted using a digital modulation technique.

***digital national radio broadcasting service*** means a national radio broadcasting service that is transmitted using a digital modulation technique.

***digital program enhancement content***, in relation to a radio program, means content:

(a) in the form of text; or

(b) in the form of still visual images; or

(c) if a form is specified in a legislative instrument made by the Minister—in that form; or

(d) in any combination of the above forms;

where:

(e) the content is transmitted using a digital modulation technique; and

(f) both the content and the radio program are intended to be received by the same reception equipment; and



Authorised Version C2023C00001 registered 03/01/2023

(g) if:

(i) the reception equipment is capable of receiving both the content and the radio program; and

(ii) the reception equipment is set to receive the radio program;

the reception equipment will also receive the content.

***digital radio multiplex transmitter licence*** has the same meaning as in the *Radiocommunications Act 1992*.

***digital radio start-up day*** for a licence area has the meaning given by section 8AC.

***evidential burden***, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

***Federal Court*** means the Federal Court of Australia.

***foundation digital radio multiplex transmitter licence*** has the same meaning as in the *Radiocommunications Act 1992*.

***gambling promotion program standard*** means a standard determined by the ACMA under section 125A.

***infringement notice*** means an infringement notice under section 205Y.

***interim tax*** means tax imposed by the *Commercial Broadcasting (Tax) Act 2017*.

***international broadcasting guidelines*** means guidelines in force under section 121FP.

***international broadcasting licence*** means a licence to provide an international broadcasting service.

***international broadcasting service*** has the meaning given by section 18A.



Authorised Version C2023C00001 registered 03/01/2023

***legislature of a Territory*** means:

(a) the Legislative Assembly for the Australian Capital Territory; or

(b) the Legislative Assembly of the Northern Territory; or

(c) such other Territory legislative bodies as are prescribed.

***licence*** means a licence allocated by the ACMA under this Act (other than a class licence).

***licence area*** means:

(a) an area designated by the ACMA under section 29, 40 or 92G; or

(b) an area specified in column 1 of the table in subsection 38C(1).

Note: See also section 8AD, which deals with deemed radio broadcasting licence areas.

***licence area plan*** means a licence area plan prepared under subsection 26(1) or (1B).

***licence area population***, in relation to a licence area, means the population of the licence area determined under section 30.

***line*** has the same meaning as in the *Telecommunications Act 1997*.

***local content exemption period*** has the meaning given by section 8AE.

***member*** means a member of the ACMA.

***Minister for Foreign Affairs*** means the Minister administering the *Diplomatic Privileges and Immunities Act 1967*.

***multiplex capacity*** has the same meaning as in Division 4B of Part 3.3 of the *Radiocommunications Act 1992*.

***national broadcaster*** means the provider of a national broadcasting service referred to in paragraph 13(1)(a) or (b).



Authorised Version C2023C00001 registered 03/01/2023

***national broadcasting service*** has the meaning given by section 13.

***national radio broadcasting service*** means a national broadcasting service that provides radio programs.

***near relative***, in relation to a person, means:

(a) a parent, step-parent, child, stepchild, grandparent, grandchild, brother or sister of the person; or

(b) the spouse of the first-mentioned person.

***newspaper*** means a newspaper that is in the English language and is published on at least 4 days in each week, but does not include a publication if less than 50% of its circulation is by way of sale.

***offence against this Act*** includes an offence against section 136.1 or 137.1 of the *Criminal Code* that relates to this Act.

***open narrowcasting radio service*** means an open narrowcasting service that provides radio programs.

***open narrowcasting service*** has the meaning given by section 18.

***open narrowcasting television service*** means an open narrowcasting service that provides television programs.

***overlap area***, in relation to a licence area part of which is within another licence area, means the area of overlap between the 2 licence areas.

***parent***: without limiting who is a parent of a person for the purposes of this Act, someone is the ***parent*** of a person if the person is his or her child because of the definition of ***child*** in this section.

***Parliament*** means:

(a) the Parliament of the Commonwealth; or

(b) a State Parliament; or

(c) the legislature of a Territory.



Authorised Version C2023C00001 registered 03/01/2023

***political party*** means an organisation whose objects or activities include the promotion of the election of candidates endorsed by it to a Parliament.

***population of Australia*** means the Australian population determined by the ACMA under section 30.

***primary commercial television broadcasting service***, in relation to a commercial television broadcasting licence, has the same meaning as in Schedule 4.

***program***, in relation to a broadcasting service, means:

(a) matter the primary purpose of which is to entertain, to educate or to inform an audience; or

(b) advertising or sponsorship matter, whether or not of a commercial kind.

***program standards*** means standards determined by the ACMA relating to the content or delivery of programs, and includes a gambling promotion program standard.

***radio program*** has a meaning affected by section 8AB.

***reception certificate*** means a reception certificate issued under a conditional access scheme registered under Part 9C.

***regional commercial radio broadcasting licence*** means a commercial radio broadcasting licence the licence area of which is neither:

(a) a licence area in which is situated the General Post Office of the capital city of any of the following States:

(i) New South Wales;

(ii) Victoria;

(iii) Queensland;

(iv) Western Australia;

(v) South Australia; nor

(b) the licence area known as Western Suburbs Sydney RA1.



Authorised Version C2023C00001 registered 03/01/2023

***regional racing service radio licence*** has the meaning given by section 8AF.

***registered code of practice*** means a code of practice registered under:

(a) section 123; or

(c) clause 28 of Schedule 6.

***remote area service radio licence*** means a regional commercial radio broadcasting licence the licence area of which is:

(a) Remote Commercial Radio Service Central Zone RA1; or

(b) Remote Commercial Radio Service North East Zone RA1; or

(c) Remote Commercial Radio Service Western Zone RA1.

***remote Indigenous community*** has the meaning given by section 8B.

***satellite subscription television broadcasting licence*** means a licence under Part 7 to provide a subscription television broadcasting service with the use of a subscription television satellite.

***scheme administrator***:

(a) in relation to a conditional access scheme for the South Eastern Australia TV3 licence area or the Northern Australia TV3 licence area—has the meaning given by subsection 130ZB(8); or

(b) in relation to a conditional access scheme for the Western Australia TV3 licence area—has the meaning given by subsection 130ZBB(9).

***shares***, in relation to a company, means shares in, or stock forming part of, the capital of the company.

***spouse*** of a person includes a de facto partner of the person.

***stepchild***: without limiting who is a stepchild of a person for the purposes of this Act, someone who is a child of a de facto partner of the person is the ***stepchild*** of the person if he or she would be



Authorised Version C2023C00001 registered 03/01/2023

the person's stepchild except that the person is not legally married to the partner.

***step-parent***: without limiting who is a step-parent of a person for the purposes of this Act, someone who is a de facto partner of a parent of the person is the ***step-parent*** of the person if he or she would be the person's step-parent except that he or she is not legally married to the person's parent.

***subscription broadcasting service*** has the meaning given by section 16.

***subscription fee*** includes any form of consideration.

***subscription narrowcasting service*** has the meaning given by section 17.

***subscription radio broadcasting service*** means a subscription broadcasting service that provides radio programs.

***subscription radio narrowcasting service*** means a subscription narrowcasting service that provides radio programs.

***subscription television broadcasting licence*** means a licence under Part 7 to provide one or more subscription television broadcasting services.

***subscription television broadcasting service*** means a subscription broadcasting service that provides television programs.

***subscription television narrowcasting service*** means a subscription narrowcasting service that provides television programs.

***subscription television satellite*** means a satellite that was, at any time before 1 July 1997, operated under the general telecommunications licence that was granted to AUSSAT Pty Ltd and notified on 26 November 1991 in *Gazette* No. S323.

***telecommunications carrier*** means a carrier (within the meaning of the *Telecommunications Act 1997*).



Authorised Version C2023C00001 registered 03/01/2023

***television licence area plan*** means a licence area plan prepared under subsection 26(1B).

***temporary community broadcasting licence*** means a community broadcasting licence that:

(a) is a broadcasting services bands licence; and

(b) is allocated under Part 6A.

***transaction*** includes:

(a) arrangements under which a person becomes a director of a company; and

(b) the acquisition of things by gift or inheritance.

***transmitter licence*** has the same meaning as in the *Radiocommunications Act 1992*.

(2) For the purposes of paragraph (c) of the definition of ***broadcasting service*** in subsection (1), the Minister may, by legislative instrument, determine that a service, or a class of services, does not fall within that definition.

(3) For the purposes of paragraph (a) of the definition of ***associate*** in subsection (1) and the definition of ***near relative*** in subsection (1), if one person is the child of another person because of the definition of ***child*** in this section, relationships traced to or through the person are to be determined on the basis that the person is the child of the other person.

## 7 Interpretation—meaning of control

Schedule 1 sets out mechanisms that are to be used in:

(a) deciding whether a person is in a position to exercise control of a licence, a company or a newspaper for the purposes of this Act; and

(b) tracing company interests of persons.



Authorised Version C2023C00001 registered 03/01/2023

## 8 Interpretation—shareholding interests, voting interests, dividend interests and winding-up interests

(1) For the purposes of this Act:

(a) a person has a shareholding interest in a company if the person is beneficially entitled to, or to an interest in, shares in the company, whether or not any part of the legal ownership of the shares is vested in the person; and

(b) the percentage of the interest is the value of the shares, or of the interest in the shares, as the case may be, on the basis that the value of the shares is equal to the amount paid on the shares, expressed as a percentage of the total of all amounts paid on shares in the company.

(2) For the purposes of this Act:

(a) a person has a voting interest in a company if the person is in a position to exercise control of votes cast on a poll at a meeting of the company; and

(b) the percentage of the interest is the greatest percentage of the number of votes, expressed as a percentage of the total number of votes that could be cast on any issue at a meeting of the company, the casting of which the person is in a position to control.

(3) For the purposes of this Act:

(a) a person has a dividend interest in a company if:

(i) the person is, or would become if a dividend were declared, beneficially entitled to be paid or credited a dividend by the company; or

(ii) under the memorandum and articles of association of the company, a share of any profits of the company is to be, or may be, paid or credited to the person otherwise than as dividends on shares; and

(b) the percentage of the interest is:

(i) if subparagraph (a)(i) applies—the amount of the dividend to which the person is beneficially entitled or will become beneficially entitled expressed as a



Authorised Version C2023C00001 registered 03/01/2023

percentage of the total of all dividends to which members of the company become entitled at that time; or

(ii) if subparagraph (a)(ii) applies—the amount of the maximum share of any profits of the company that could be paid or credited to the person at a particular time expressed as a percentage of the total of all shares of profits that could be paid or credited to all members of the company at that time.

(4) For the purposes of this Act:

(a) a person has a winding-up interest in a company if the person would be entitled to a share of the property of the company that could be distributed among members of the company if property of the company were distributed among members, whether as a result of a winding-up or otherwise; and

(b) the percentage of the interest is the percentage that the value of that part of the property of the company to which the person would be so entitled bears to the total value of the property of the company.

(5) A person may have a voting interest, a dividend interest or a winding-up interest in a company even if the person does not have a beneficial entitlement to, or to an interest in, shares in the company.

## 8A Captioning taken to be part of program

(1) For the purposes of this Act, if a television program is captioned for the deaf and hearing impaired, the captioning is taken to be part of the program.

(2) Subsection (1) is enacted for the avoidance of doubt.

## 8AA Designated community radio broadcasting licence

(1) For the purposes of this Act, a community radio broadcasting licence is a ***designated community radio broadcasting licence*** if:



Authorised Version C2023C00001 registered 03/01/2023

(a) the community radio broadcasting licence was allocated under Part 6 (other than under subsection 82(1)); and

(b) the licence area of the community radio broadcasting licence is the same as the licence area of a commercial radio broadcasting licence; and

(c) the community radio broadcasting service or services provided under the community radio broadcasting licence satisfy such conditions (if any) as are set out in a legislative instrument made by the ACMA.

Note: See also section 8AD, which deals with deemed radio broadcasting licence areas.

(2) The Minister may, by legislative instrument, give the ACMA a direction about the exercise of the power conferred by paragraph (1)(c).

(3) The ACMA must comply with a direction under subsection (2).

## 8AB Digital program enhancement content taken to be a radio program

*Commercial radio broadcasting services*

(1) For the purposes of this Act and any other law of the Commonwealth, if a commercial radio broadcasting licensee provides:

(a) a digital commercial radio broadcasting service; and

(b) digital program enhancement content in relation to a radio program delivered by that service;

the digital program enhancement content is taken to be a radio program delivered by that service.

*Community radio broadcasting services*

(2) For the purposes of this Act and any other law of the Commonwealth, if a designated community radio broadcasting licensee provides:

(a) a digital community radio broadcasting service; and



Authorised Version C2023C00001 registered 03/01/2023

(b) digital program enhancement content in relation to a radio program delivered by that service;

the digital program enhancement content is taken to be a radio program delivered by that service.

*National radio broadcasting services*

(3) For the purposes of this Act and any other law of the Commonwealth, if a national broadcaster provides:

(a) a digital national radio broadcasting service; and

(b) digital program enhancement content in relation to a radio program delivered by that service;

the digital program enhancement content is taken to be a radio program delivered by that service.

## 8AC Digital radio start-up day

(1) If the ACMA is satisfied that:

(a) the ACMA has taken sufficient action under:

(i) Part 3 of this Act; and

(ii) Part 2.3 of the *Radiocommunications Act 1992*;

to facilitate the provision of the following services in a licence area:

(iii) digital commercial radio broadcasting services;

(iv) digital community radio broadcasting services;

(v) digital national radio broadcasting services; and

(b) one or more foundation digital radio multiplex transmitter licences have been issued for the licence area; and

(c) the multiplex capacity, or the combined multiplex capacities, of those licences are sufficient to fulfil the standard access entitlements that are likely to come into existence under subsection 118NQ(2) of the *Radiocommunications Act 1992* in its application to the licence area; and

(d) an access undertaking under Division 4B of Part 3.3 of the *Radiocommunications Act 1992* is in force for the licence or licences referred to in paragraph (b);



Authorised Version C2023C00001 registered 03/01/2023

the ACMA may, by writing, declare a specified day to be the ***digital radio start-up day*** for the licence area.

(2) A day specified in a declaration under subsection (1) must not be earlier than the day on which the declaration is made.

(4) A copy of a declaration under subsection (1) must be made available on the ACMA's website.

(5) A declaration under subsection (1) is not a legislative instrument.

*Definitions*

(8) In this section:

***licence area*** means:

(a) the licence area of a commercial radio broadcasting licence; or

(b) the licence area of a community radio broadcasting licence, where that licence area is the same as the licence area of a commercial radio broadcasting licence.

Note: See also section 8AD, which deals with deemed radio broadcasting licence areas.

## 8AD Deemed radio broadcasting licence areas

*Western Suburbs Sydney RA1*

(1) For the purposes of:

(a) section 8AC of this Act; and

(b) the definition of ***designated BSA radio area*** in section 5 of the *Radiocommunications Act 1992*; and

(c) the application of:

(i) any other provision of this Act; or

(ii) any other provision of the *Radiocommunications Act 1992*; or

(iii) any other law of the Commonwealth;

to digital commercial radio broadcasting services;



Authorised Version C2023C00001 registered 03/01/2023

the licence area known as Western Suburbs Sydney RA1 is taken to be the same as the commercial radio broadcasting licence area in which is situated the General Post Office of Sydney.

*Hobart RA2 and Hobart RA4*

(2) For the purposes of:

(a) sections 8AA and 8AC of this Act; and

(b) the definition of ***designated BSA radio area*** in section 5 of the *Radiocommunications Act 1992*; and

(c) paragraph 9C(1)(i) and subparagraph 9C(1)(j)(ii) of the *Radiocommunications Act 1992*; and

(d) the application of:

(i) any other provision of this Act; or

(ii) any other provision of the *Radiocommunications Act 1992*; or

(iii) any other law of the Commonwealth;

to digital community radio broadcasting services;

the licence areas known as Hobart RA2 and Hobart RA4 are taken to be the same as the commercial radio broadcasting licence area in which is situated the General Post Office of Hobart.

*Other licence areas*

(3) The ACMA may, by legislative instrument, determine that, for the purposes of:

(a) sections 8AA and 8AC of this Act; and

(b) the definition of ***designated BSA radio area*** in section 5 of the *Radiocommunications Act 1992*; and

(c) paragraph 9C(1)(i) and subparagraph 9C(1)(j)(ii) of the *Radiocommunications Act 1992*; and

(d) the application of:

(i) any other provision of this Act; or

(ii) any other provision of the *Radiocommunications Act 1992*; or

(iii) any other law of the Commonwealth;



Authorised Version C2023C00001 registered 03/01/2023

to digital community radio broadcasting services;

a specified licence area of a community radio broadcasting licence is taken to be the same as a specified licence area of a commercial radio broadcasting licence.

(4) The Minister may, by legislative instrument, give the ACMA a direction about the exercise of the power conferred by subsection (3).

(5) The ACMA must comply with a direction under subsection (4).

## 8AE Local content exemption period—regional commercial radio broadcasting licensee

(1) For the purposes of this Act, a ***local content exemption period***, for the licensee of a regional commercial radio broadcasting licence, is:

(a) if:

(i) the ACMA, by legislative instrument, specifies a period in relation to one or more specified regional commercial radio broadcasting licensees; and

(ii) the period does not exceed 5 weeks; and

(iii) the licensees specified in the instrument consist of or include the licensee;

that period; or

(b) if:

(i) paragraph (a) does not apply; and

(ii) the ACMA, by legislative instrument, specifies 2 periods in relation to one or more specified regional commercial radio broadcasting licensees; and

(iii) the periods, in aggregate, do not exceed 5 weeks; and

(iv) the licensees specified in the instrument consist of or include the licensee;

each of those periods; or

(c) if:

(i) neither paragraph (a) nor (b) applies; and



Authorised Version C2023C00001 registered 03/01/2023

(ii) the ACMA, by legislative instrument, specifies a period; and

(iii) the period does not exceed 5 weeks;

that period; or

(d) if:

(i) none of paragraphs (a), (b) or (c) apply; and

(ii) the ACMA, by legislative instrument, specifies 2 periods; and

(iii) the periods, in aggregate, do not exceed 5 weeks;

each of those periods; or

(e) if:

(i) none of paragraphs (a), (b), (c) or (d) apply; and

(ii) the licensee, by written notice given to the ACMA, specifies a period; and

(iii) the period does not exceed 5 weeks;

that period; or

(f) if:

(i) none of paragraphs (a), (b), (c), (d) or (e) apply; and

(ii) the licensee, by written notice given to the ACMA, specifies 2 periods; and

(iii) the periods, in aggregate, do not exceed 5 weeks;

each of those periods; or

(g) if none of paragraphs (a), (b), (c), (d), (e) or (f) apply—the 5-week period beginning on the second Sunday in December each financial year.

(2) A period specified under subsection (1) may be:

(a) a period that occurs only once; or

(b) a recurring period.

*Notice given to the ACMA—requirements*

(3) A notice under paragraph (1)(e) or (f) must be given to the ACMA at least 21 days before the earlier of:



Authorised Version C2023C00001 registered 03/01/2023

(a) the start of the next local content exemption period that, disregarding the notice, would be applicable to the licensee giving the notice; and

(b) whichever of the following times is applicable:

(i) in the case of a notice under paragraph (1)(e)—the start of the period specified in the notice;

(ii) in the case of a notice under paragraph (1)(f)—the start of the earlier of the periods specified in the notice.

(4) A regional commercial radio broadcasting licensee may only give the ACMA one notice under subsection (1) each financial year.

(5) A notice given to the ACMA under subsection (1) cannot be varied.

(6) If:

(a) a regional commercial radio broadcasting licensee gives the ACMA a notice under subsection (1) (the ***earlier notice***) in a financial year; and

(b) the licensee gives the ACMA another notice under subsection (1) (the ***later notice***) in a later financial year; and

(c) the later notice is expressed to replace the earlier notice;

the earlier notice is taken to cease to be in force when the later notice is given.

(7) If a notice given to the ACMA under subsection (1) (the ***original notice***) by a regional commercial radio broadcasting licensee is in force, the licensee may, by written notice to the ACMA, revoke the original notice, so long as the notice of revocation is not given during a period specified in the original notice.

(8) If a regional commercial radio broadcasting licensee gives the ACMA a notice under subsection (1), the licensee must publish the notice on its website.

(9) If:

(a) a regional commercial radio broadcasting licensee gives the ACMA a revocation notice under subsection (7); and



Authorised Version C2023C00001 registered 03/01/2023

(b) the revocation results in paragraph (1)(g) applying to the licensee;

the licensee must publish the revocation notice on its website.

## 8AF Regional racing service radio licence

(1) For the purposes of this Act, a ***regional racing service radio licence*** is a regional commercial radio broadcasting licence, where the following conditions are satisfied in relation to a broadcasting service provided under the licence:

(a) the broadcasting service is promoted, on the broadcasting service:

(i) as a broadcasting service of interest mainly to persons involved in horse racing, harness racing or greyhound racing; or

(ii) using the phrase "racing radio service";

(b) the racing content percentage, in relation to the broadcasting service, is 60% or more for each day, other than Christmas Day and Good Friday;

(c) if, on a particular day, content other than racing content is broadcast on the broadcasting service—a significant proportion of that content is:

(i) relevant to horse racing, harness racing or greyhound racing; or

(ii) of interest mainly to persons involved in horse racing, harness racing or greyhound racing.

(2) For the purposes of this section, ***racing content percentage*** means the percentage worked out using the following formula:

$$\frac{\text{Total number of minutes of racing content broadcast on the day on the broadcasting service}}{\text{Total number of minutes of content broadcast on the day on the broadcasting service}} \times 100$$



Authorised Version C2023C00001 registered 03/01/2023

(3) For the purposes of this section, ***racing content*** means content that consists of:

(a) coverage of a horse race, a harness race or a greyhound race; or

(b) information directly related to horse racing, harness racing or greyhound racing, including:

(i) selections; and

(ii) scratchings; and

(iii) betting information; and

(iv) track conditions; or

(c) other material that is broadcast during an hour, so long as that material:

(i) is broadcast between 2 races of a kind referred to in paragraph (a); and

(ii) is not broadcast for more than 15 minutes of the hour.

## 8B Remote Indigenous community

An Indigenous community is a ***remote Indigenous community*** for the purposes of this Act if the ACMA so determines by legislative instrument.

## 9 Act to bind the Crown

This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory, but nothing in this Act renders the Crown liable to be prosecuted for an offence.

## 10 Extension of Act to the external Territories

This Act extends to all the external Territories.

## 10A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.



Authorised Version C2023C00001 registered 03/01/2023

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.



Authorised Version C2023C00001 registered 03/01/2023

# Part 2—Categories of broadcasting services

## 11 Categories of broadcasting services

The following categories of broadcasting services are broadcasting services to which this Act relates:

(a) national broadcasting services;
(b) commercial broadcasting services;
(c) community broadcasting services;
(d) subscription broadcasting services;
(e) subscription narrowcasting services;
(f) open narrowcasting services;
(fa) international broadcasting services.

## 11A Dual categorisation of international broadcasting services

An international broadcasting service may also fall into another category of broadcasting services.

## 12 Method of regulating particular services

(1) Commercial broadcasting services, community broadcasting services, subscription television broadcasting services and international broadcasting services require individual licences.

(2) Other broadcasting services (other than national broadcasting services) are to be provided under the relevant class licence.

*Dual categorisation of international broadcasting services*

(3) An international broadcasting service that also falls into the category of commercial broadcasting services requires both:
(a) an international broadcasting licence; and
(b) either:
(i) a commercial radio broadcasting licence; or



Authorised Version C2023C00001 registered 03/01/2023

(ii) a commercial television broadcasting licence.

(4) An international broadcasting service that also falls into the category of community broadcasting services requires both:
   (a) an international broadcasting licence; and
   (b) a community broadcasting licence.

(5) An international broadcasting service that also falls into the category of subscription television broadcasting services requires both:
   (a) an international broadcasting licence; and
   (b) a subscription television broadcasting licence.

(6) Both of the following rules apply to an international broadcasting service that also falls into a category of broadcasting services covered by subsection (2):
   (a) the service requires an international broadcasting licence;
   (b) the service is to be provided under the relevant class licence.

## 13 National broadcasting services

(1) National broadcasting services are:
   (a) broadcasting services provided by the Australian Broadcasting Corporation in accordance with section 6 of the *Australian Broadcasting Corporation Act 1983*; or
   (b) broadcasting services provided by the Special Broadcasting Service Corporation in accordance with section 6 of the *Special Broadcasting Service Act 1991*; or
   (c) broadcasting services provided under the *Parliamentary Proceedings Broadcasting Act 1946*.

(2) National broadcasting services do not include subscription broadcasting services or subscription or open narrowcasting services provided by the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation.

(3) Subsection (2) does not apply to services specified by the Minister under subsection (4).



Authorised Version C2023C00001 registered 03/01/2023

(4) The Minister may, by legislative instrument, specify services for the purposes of subsection (3).

(5) Except as expressly provided by this Act, the regulatory regime established by this Act does not apply to national broadcasting services.

## 14 Commercial broadcasting services

(1) Commercial broadcasting services are broadcasting services:

(a) that provide programs that, when considered in the context of the service being provided, appear to be intended to appeal to the general public; and

(b) that provide programs that:

(i) are able to be received by commonly available equipment; and

(ii) are made available free to the general public; and

(c) that are usually funded by advertising revenue; and

(d) that are operated for profit or as part of a profit-making enterprise; and

(e) that comply with any determinations or clarifications under section 19 in relation to commercial broadcasting services.

(2) For the purposes of the application of subsection (1) to a broadcasting service provided under a licence allocated under section 38C, assume that there is no conditional access system that relates to the broadcasting service.

## 15 Community broadcasting services

Community broadcasting services are broadcasting services that:

(a) are provided for community purposes; and

(b) are not operated for profit or as part of a profit-making enterprise; and

(c) that provide programs that:

(i) are able to be received by commonly available equipment; and



Authorised Version C2023C00001 registered 03/01/2023

(ii) are made available free to the general public; and

(d) comply with any determinations or clarifications under section 19 in relation to community broadcasting services.

## 16 Subscription broadcasting services

Subscription broadcasting services are broadcasting services that:

(a) provide programs that, when considered in the context of the service being provided, appear to be intended to appeal to the general public; and

(b) are made available to the general public but only on payment of subscription fees (whether periodical or otherwise); and

(c) comply with any determinations or clarifications under section 19 in relation to subscription broadcasting services.

## 17 Subscription narrowcasting services

Subscription narrowcasting services are broadcasting services:

(a) whose reception is limited:

(i) by being targeted to special interest groups; or

(ii) by being intended only for limited locations, for example, arenas or business premises; or

(iii) by being provided during a limited period or to cover a special event; or

(iv) because they provide programs of limited appeal; or

(v) for some other reason; and

(b) that are made available only on payment of subscription fees (whether periodical or otherwise); and

(c) that comply with any determinations or clarifications under section 19 in relation to subscription narrowcasting services.

## 18 Open narrowcasting services

(1) Open narrowcasting services are broadcasting services:

(a) whose reception is limited:

(i) by being targeted to special interest groups; or



Authorised Version C2023C00001 registered 03/01/2023

(ii) by being intended only for limited locations, for example, arenas or business premises; or

(iii) by being provided during a limited period or to cover a special event; or

(iv) because they provide programs of limited appeal; or

(v) for some other reason; and

(b) that comply with any determinations or clarifications under section 19 in relation to open narrowcasting services.

(1A) A HDTV multi-channelled commercial television broadcasting service (within the meaning of Schedule 4) is not an open narrowcasting service.

(1AA) A SDTV multi-channelled commercial television broadcasting service (within the meaning of Schedule 4) is not an open narrowcasting service.

(1B) A HDTV multi-channelled national television broadcasting service (within the meaning of Schedule 4) is not an open narrowcasting service.

(2) A SDTV multi-channelled national television broadcasting service (within the meaning of Schedule 4) is not an open narrowcasting service.

(3) A digital commercial radio broadcasting service is not an open narrowcasting service.

(4) A digital community radio broadcasting service is not an open narrowcasting service.

(5) A digital national radio broadcasting service is not an open narrowcasting service.

## 18A International broadcasting services

(1) International broadcasting services are broadcasting services that are targeted, to a significant extent, to audiences outside Australia, where:



Authorised Version C2023C00001 registered 03/01/2023

(a) the means of delivering the services involves the use of a radiocommunications transmitter in Australia (whether alone or in combination with any other means); and

(b) the services comply with any determinations or clarifications under section 19 in relation to international broadcasting services.

(2) A broadcasting service is not an international broadcasting service if the broadcasting service is:

(a) provided by the Australian Broadcasting Corporation in accordance with section 6 of the *Australian Broadcasting Corporation Act 1983*; or

(b) provided by the Special Broadcasting Service Corporation in accordance with section 6 of the *Special Broadcasting Service Act 1991*; or

(c) an exempt broadcasting service (as defined by subsection (3)).

(3) For the purposes of this section, a broadcasting service is an ***exempt broadcasting service*** if:

(a) the service delivers only programs packaged outside Australia (which may include programs produced in Australia); and

(b) all relevant programming decisions are made outside Australia; and

(c) the service is transmitted from a place outside Australia to an earth station in Australia for the sole purpose of being immediately re-transmitted to a satellite; and

(d) the satellite is a means of delivering the service (whether alone or in combination with any other means).

(4) The references in this section to localities do not, by implication, affect the application of paragraph 21(1)(b) of the *Acts Interpretation Act 1901* and section 10 of this Act to a provision of this Act that deals with a category of broadcasting services other than international broadcasting services.

(5) In this section:



Authorised Version C2023C00001 registered 03/01/2023

***Australia*** includes the external Territories.

***radiocommunications transmitter*** has the same meaning as in the *Radiocommunications Act 1992*.

## 19 ACMA may determine additional criteria or clarify existing criteria

(1) The ACMA may, by legislative instrument:

(a) determine additional criteria to those specified in sections 14 to 18A; or

(b) clarify the criteria specified in sections 14 to 18A;

for the purpose of distinguishing between categories of broadcasting services.

(2) Different criteria or clarifications may be determined or made for radio services and television services.

(3) The Minister may give specific directions to the ACMA as to the making of determinations and clarifications, and the ACMA must observe those directions.

## 21 Requests to ACMA to decide which category a broadcasting service falls into

(1) A person who is providing, or who proposes to provide, a broadcasting service may apply to the ACMA for an opinion as to which category, or categories, of broadcasting services the service falls into.

(2) An application must be in accordance with a form approved in writing by the ACMA, and must state the applicant's opinion as to which category, or categories, of broadcasting services the service falls into.

(3) If the ACMA considers that additional information is required before an opinion can be given, the ACMA may, by notice in writing given to the applicant within 30 days after receiving the application, request the applicant to provide that information.



Authorised Version C2023C00001 registered 03/01/2023

(4) The ACMA must, as soon as practicable after:
   (a) receiving the application; or
   (b) if the ACMA has requested further information—receiving that further information;

   give the applicant, in writing, its opinion as to which category, or categories, of broadcasting services the service falls into.

(5) If the ACMA has given an opinion under this section to the provider of a broadcasting service, neither the ACMA nor any other Government agency may, while the circumstances relating to the broadcasting service remain substantially the same as those advised to the ACMA in relation to the application for the opinion:
   (a) take any action against the provider of the service during the period of 5 years commencing on the day on which the opinion is given on the basis that the service falls into a different category, or different categories, of broadcasting services than that advised in the opinion; or
   (b) unless the ACMA has made a determination or clarification under section 19 after that opinion was given that places the broadcasting service in a different category or different categories—take any action against the provider of the service after the end of that period on the basis that the service falls into a different category, or different categories, of broadcasting services.

(6) If the ACMA does not, within 45 days after:
   (a) receiving the application; or
   (b) if the ACMA has requested further information—receiving that further information;

   give the applicant, in writing, its opinion as to which category, or categories, of broadcasting services the service falls into, the ACMA is taken to have given an opinion at the end of that period that accords with the applicant's opinion.

(7) The ACMA may charge a fee for providing an opinion under this section.



Authorised Version C2023C00001 registered 03/01/2023

(8) The ACMA must not give an opinion under this section that a particular broadcasting service falls into more than one category of broadcasting services unless one of the categories is international broadcasting services.

(9) A person must not, in an application under this section, state an opinion that a particular broadcasting service falls into more than one category of broadcasting services unless one of the categories is international broadcasting services.

## 22 Matters to be considered by ACMA

In making determinations or clarifications under section 19 in relation to broadcasting services, and in giving opinions under section 21 in relation to broadcasting services, the ACMA is to have regard to:

(a) the geographic coverage of those services; and

(b) the number of persons who receive or are able to receive those services; and

(c) the accessibility of those services, including:

(i) whether those services are encrypted; and

(ii) whether their availability is otherwise restricted, whether because of the high cost of the equipment required to receive those services, the controlled supply of that equipment or otherwise; and

(iii) whether their comprehensibility is otherwise restricted; and

(d) the duration and frequency of the provision of those services, including whether those services are provided for a set period only; and

(e) the nature of the audience to which those services are targeted; and

(f) the nature of the programs being provided by those services, including:

(i) the level of interest in the subject matter of those programs; and



Authorised Version C2023C00001 registered 03/01/2023

(ii) whether those programs are directed at a specialised audience; and

(iii) the social and cultural impact of those programs; and

(g) such other matters as the ACMA thinks fit.



Authorised Version C2023C00001 registered 03/01/2023

# Part 3—Planning of the broadcasting services bands

## 23 Planning criteria

In performing functions under this Part, the ACMA is to promote the objects of this Act including the economic and efficient use of the radiofrequency spectrum, and is to have regard to:

(a) demographics; and

(b) social and economic characteristics within the licence area, within neighbouring licence areas and within Australia generally; and

(c) the number of existing broadcasting services and the demand for new broadcasting services within the licence area, within neighbouring licence areas and within Australia generally; and

(d) developments in technology; and

(e) technical restraints relating to the delivery or reception of broadcasting services; and

(f) the demand for radiofrequency spectrum for services other than broadcasting services; and

(g) such other matters as the ACMA considers relevant.

## 26 Preparation of licence area plans

(1) The ACMA must, by legislative instrument, prepare licence area plans that determine the number and characteristics, including technical specifications, of broadcasting services that are to be available in particular areas of Australia with the use of the broadcasting services bands.

(1A) To the extent to which a licence area plan prepared under subsection (1) deals with:

(a) digital commercial radio broadcasting services; or



Authorised Version C2023C00001 registered 03/01/2023

(b) digital community radio broadcasting services; or

(c) digital national radio broadcasting services;

the licence area plan is not required to determine the technical specifications of those services.

*Television licence area plans*

(1B) The ACMA may, by legislative instrument, prepare licence area plans that:

(a) specify the channels that are to be available in particular areas of Australia to provide the following services:

(i) commercial television broadcasting services;

(ii) national television broadcasting services;

(iii) other television broadcasting services;

with the use of the broadcasting services bands; and

(b) allot, or empower the ACMA to allot, those channels to:

(i) particular commercial television broadcasting licensees; or

(ii) particular national broadcasters; or

(iii) particular providers of television broadcasting services (other than commercial television broadcasting licensees or national broadcasters);

as the case requires; and

(c) determine the characteristics, including technical specifications, of the transmission of each of the following services:

(i) commercial television broadcasting services;

(ii) national television broadcasting services;

(iii) other television broadcasting services;

using those channels; and

(d) determine, or empower the ACMA to determine, any technical limitations on the use of a particular channel that the ACMA considers should be applicable; and

(e) determine, or empower the ACMA to determine, whether the use of a particular channel depends on any event or



Authorised Version C2023C00001 registered 03/01/2023

circumstances that the ACMA considers should be applicable.

(1C) A licence area plan prepared under subsection (1B) is to be known as a ***television licence area plan***.

(1D) A television licence area plan may allot, or empower the ACMA to allot, different channels to:

(a) a particular commercial television broadcasting licensee; or

(b) a particular national broadcaster; or

(c) a particular provider of a television broadcasting service (other than a commercial television broadcasting licensee or a national broadcaster);

for different periods.

(1E) A television licence area plan may allot, or empower the ACMA to allot, 2 or more channels to:

(a) a particular commercial television broadcasting licensee; or

(b) a particular national broadcaster; or

(c) a particular provider of a television broadcasting service (other than a commercial television broadcasting licensee or a national broadcaster).

(1G) A television licence area plan does not need to identify a particular television broadcasting service by name.

(1M) Section 23 has effect as if a function or power conferred on the ACMA by a television licence area plan were a function conferred on the ACMA by this section.

*Variation*

(2) The ACMA may, by legislative instrument, vary a licence area plan.



Authorised Version C2023C00001 registered 03/01/2023

*Ministerial direction*

(8) The Minister may, by legislative instrument, direct the ACMA about the exercise of its powers to make or vary a licence area plan for a particular area.

(9) The ACMA must comply with a direction under subsection (8).

*Legislative instruments*

(11) If a determination made by the ACMA under a television licence area plan is in writing, the determination is not a legislative instrument.

*Definitions*

(13) In this section:

***national television broadcasting service*** has the same meaning as in Schedule 4.

***television broadcasting service*** means a broadcasting service that provides television programs.

Note: For designation of licence areas, see section 29.

## 26AA Compliance with television licence area plan

(1) If:

(a) a television licence area plan is applicable to the transmission of one or more commercial television broadcasting services in a particular area; and

(b) those services are provided under a particular commercial television broadcasting licence;

the licensee must not transmit any of those commercial television broadcasting services in that area otherwise than in accordance with the television licence area plan.

(2) If:



Authorised Version C2023C00001 registered 03/01/2023

(a) a television licence area plan is applicable to the transmission of one or more national television broadcasting services in a particular area; and

(b) those services are provided by a particular national broadcaster;

the national broadcaster must not transmit any of those national television broadcasting services in that area otherwise than in accordance with the television licence area plan.

(3) If:

(a) a television licence area plan is applicable to the transmission of one or more television broadcasting services in a particular area; and

(b) those services are not provided:

(i) under a commercial television broadcasting licence; or

(ii) by a national broadcaster;

the provider of those television broadcasting services must not transmit any of those services in that area otherwise than in accordance with the television licence area plan.

(4) In this section:

***national television broadcasting service*** has the same meaning as in Schedule 4.

***television broadcasting service*** means a broadcasting service that provides television programs.

## 26C Licence area plans not required to deal with certain digital radio broadcasting services

*Commercial radio broadcasting services*

(1) If:

(a) a commercial radio broadcasting licence was in force immediately before the digital radio start-up day for the licence area; and



Authorised Version C2023C00001 registered 03/01/2023

(b) the licence authorises the licensee to provide digital commercial radio broadcasting services in the licence area;

the relevant licence area plan is not required to deal with those services.

*Community radio broadcasting services*

(3) If:

(a) a designated community radio broadcasting licence was in force immediately before the digital radio start-up day for the licence; and

(b) the licence authorises the licensee to provide digital community radio broadcasting services in the licence area;

the relevant licence area plan is not required to deal with those services.

## 26D Licence area plans—how digital radio broadcasting services may be dealt with

(1) This section applies if a licence area plan deals with:

(a) digital commercial radio broadcasting services; or

(b) digital community radio broadcasting services; or

(c) digital national radio broadcasting services.

(2) The licence area plan is not required to identify:

(a) individual digital commercial radio broadcasting services; or

(b) individual digital community radio broadcasting services; or

(c) individual digital national radio broadcasting services.

(3) It is sufficient if the licence area plan deals collectively with:

(a) the digital commercial radio broadcasting services; and

(b) the digital community radio broadcasting services; and

(c) the digital national radio broadcasting services;

that, from time to time, are, or are to be, transmitted under the digital radio multiplex transmitter licence or licences issued, or to be issued, in relation to the area concerned.



Authorised Version C2023C00001 registered 03/01/2023

## 29 Designation of licence areas

(1) Before allocating a new commercial television broadcasting licence, commercial radio broadcasting licence or community broadcasting licence (other than a temporary community broadcasting licence) that is a broadcasting services bands licence, the ACMA is to designate one of the areas referred to in whichever of subsection 26(1) or (1B) is applicable as the licence area of the licence.

(2) If the ACMA varies a licence area plan, the ACMA may vary the designation of the relevant licence areas.

(3) This section does not apply to a licence allocated under section 38C.

## 30 ACMA may determine population figures

(1) The ACMA may, by notice in writing, determine the licence area population of a licence area.

(2) The ACMA may, by notice in writing, determine a number that is to be the population of Australia for the purposes of this Act.

(3) In making a determination, the ACMA is to have regard to the most recently published census count prepared by the Australian Statistician.

(4) The ACMA is to make a new determination of the licence area population of a licence area if the licence area is changed.

(5) The ACMA is to specify, in a determination of the licence area population of a licence area:

(a) the percentage of the population of Australia constituted by that licence area population; and

(b) the percentage of that licence area population that is attributable to an overlap area.



Authorised Version C2023C00001 registered 03/01/2023

## 31 Minister may reserve capacity for national broadcasters or community broadcasters

(1) The Minister may, by legislative instrument, notify the ACMA that capacity in the broadcasting services bands is to be reserved for a specified number of:

(a) national broadcasting services; or

(b) community broadcasting services (other than services provided by temporary community broadcasting licensees);

but such a notice must not affect the provision of services in accordance with a licence already allocated by the ACMA under this Act or in accordance with a class licence.

(2) The ACMA must not, except in accordance with section 34, allocate a licence or determine a class licence that would allow the provision of broadcasting services (other than services provided by national broadcasters or community broadcasting licensees) which would make use of reserved capacity in the broadcasting services bands.

## 33 Development of technical planning guidelines

The ACMA is to develop in writing guidelines for the technical planning of individual services that use the broadcasting services bands as a means of delivery.

## 34 Alternative uses of broadcasting services bands

(1) If:

(a) the ACMA has advertised under section 38 for applications for the allocation of one or more commercial television broadcasting licences or commercial radio broadcasting licences that are broadcasting services bands licences and that licence is not allocated or not all of those licences are allocated; or

(b) broadcasting services bands spectrum is available in a licence area but has not been made available for commercial



Authorised Version C2023C00001 registered 03/01/2023

television broadcasting licences or commercial radio broadcasting licences; or

(c) broadcasting services bands spectrum has been reserved under section 31 but has not been made available for the purpose for which it was reserved; or

(d) broadcasting services bands spectrum is available but the ACMA has not commenced or completed planning and allocation processes in relation to that spectrum;

the ACMA may, by written instrument, determine that the part or parts of the radiofrequency spectrum concerned is or are available for allocation, for a period specified by the ACMA:

(e) for the temporary transmission or the re-transmission of programs; or

(ea) to temporary community broadcasting licensees; or

(f) to providers of subscription broadcasting services, subscription narrowcasting services or open narrowcasting services; or

(fa) for the transmission of datacasting services on a temporary basis; or

(g) for other purposes.

(2) In making a determination under subsection (1), the ACMA is to have regard to:

(a) the possible future demand for the use of that part of the radiofrequency spectrum; and

(b) such other matters as the ACMA considers relevant.

(2A) If a determination made under subsection (1) determines that a part or parts of the radiofrequency spectrum concerned is or are available for allocation to temporary broadcasting licensees for a period, the ACMA may also specify, in the determination, the maximum number of temporary community broadcasting licences that may be allocated to part or parts of the spectrum for the period.

(3) The ACMA may, by written instrument, determine that a part or parts of the broadcasting services bands spectrum is or are



Authorised Version C2023C00001 registered 03/01/2023

available for allocation for the purposes of the transmission of datacasting services.

(4) In making a determination under subsection (3), the ACMA is to have regard to:

(a) the possible future demand for the use of that part of the radiofrequency spectrum for the provision of commercial television broadcasting services; and

(b) such other matters as the ACMA considers relevant.

(4A) Each part determined under subsection (3) must be 7 MHz. However, this rule does not prevent a particular part from being determined even if it adjoins:

(a) another part that is also specified in the determination; or

(b) 2 other parts that are also specified in the determination.



Authorised Version C2023C00001 registered 03/01/2023

# Part 4—Commercial television broadcasting licences and commercial radio broadcasting licences

## Division 1—Allocation of licences

### 36 ACMA to determine system for allocating licences

(1) The ACMA is to determine in writing a price-based system for allocating:

(a) commercial television broadcasting licences that are broadcasting services bands licences; and

(b) commercial radio broadcasting licences that are broadcasting services bands licences.

(2) The Minister may give specific directions to the ACMA for the purpose of a determination.

(3) Directions may be to include in a determination specified reserve prices for licences, and those reserve prices may be different for licences in different licence areas.

(4) If a commercial television broadcasting licence or a commercial radio broadcasting licence referred to in subsection (1) is allocated, the ACMA must, unless the allocation system adopted was public, publish in the *Gazette* the name of the successful applicant and the amount that the applicant agreed to pay to the Commonwealth for the allocation of the licence.



Authorised Version C2023C00001 registered 03/01/2023

Section 36A

## 36A Commercial radio broadcasting licences to provide analog or digital commercial radio broadcasting services

*Licences in force immediately before the commencement of this section*

(1) If a commercial radio broadcasting licence was in force immediately before the commencement of this section, the licence is taken, for the purposes of this Act, to have been allocated as a licence to provide an analog commercial radio broadcasting service.

*Licences allocated before the digital radio start-up day for the licence area*

(2) If the ACMA allocates a commercial radio broadcasting licence after the commencement of this section but before the digital radio start-up day for the licence area, the licence must be allocated as a licence to provide an analog commercial radio broadcasting service.

*Licences allocated on or after digital radio start-up day for the licence area*

(3) If the ACMA allocates a commercial radio broadcasting licence on or after the digital radio start-up day for the licence area, the licence must be allocated as:
  (a) a licence to provide an analog commercial radio broadcasting service; or
  (b) a licence to provide digital commercial radio broadcasting services.

*Licence conditions*

(4) Subject to subsection (5), if a commercial radio broadcasting licence is or was allocated as a licence to provide an analog commercial radio broadcasting service, the licence is subject to the condition that the licensee may only provide an analog commercial radio broadcasting service under the licence.



Authorised Version C2023C00001 registered 03/01/2023

(5) If:

(a) a commercial radio broadcasting licence was in force immediately before the digital radio start-up day for the licence area; and

(b) the licence authorised the licensee to provide an analog commercial radio broadcasting service in the licence area;

subsection (4) ceases to apply in relation to the licence at the start of the digital radio start-up day for the licence area.

(6) If a commercial radio broadcasting licence is allocated as a licence to provide digital commercial radio broadcasting services, the licence is subject to the condition that the licensee may only provide digital commercial radio broadcasting services under the licence.

*Subsection 40(1) licences*

(8) This section does not apply to a commercial radio broadcasting licence that is or was allocated under subsection 40(1).

## 37 When licences must not be allocated

(1) A licence is not to be allocated to an applicant if:

(a) the applicant is not a company that is registered as a company under Part 2A.2 of the *Corporations Act 2001* and has a share capital; or

(b) the ACMA decides that subsection 41(2) applies to the applicant.

(2) Paragraph (1)(b) does not require the ACMA to consider the application of section 41 in relation to an applicant before allocating a licence to the applicant.

## 37A Limitation on number of commercial television broadcasting licences

The ACMA must ensure that the number of commercial television broadcasting licences that:



Authorised Version C2023C00001 registered 03/01/2023

(a) have the same licence area; and
(b) are broadcasting services bands licences;

does not exceed 3.

## 38 ACMA to advertise for applications for certain licences

(1) Where the ACMA is going to allocate one or more commercial television broadcasting licences or commercial radio broadcasting licences referred to in subsection 36(1), the ACMA is to advertise, in a manner determined by the ACMA, for applications for licences of that kind, and is to include in the advertisements:
(a) the date before which applications must be received by the ACMA; and
(b) a statement specifying how details of:
(i) the system determined under section 36; and
(ii) the conditions that are to apply to the licence; and
(iii) the licence area of the licence, the licence area population of the licence and any areas of overlap with other licence areas;

can be obtained.

(2) Applications must:
(a) be in accordance with a form approved in writing by the ACMA; and
(b) be accompanied by the application fee determined in writing by the ACMA.

## 38A Additional commercial television licences in single markets

*Circumstances in which existing licensee may apply for additional licence*

(1) If:
(a) a particular licence area is the licence area of only one commercial television broadcasting licence (the ***parent licence***) that is in force; and



Authorised Version C2023C00001 registered 03/01/2023

(aa) the parent licence is not a licence allocated under section 38C; and

(b) additional commercial television broadcasting licences can be allocated for the licence area;

the existing licensee may apply in writing to the ACMA for an additional commercial television broadcasting licence for the licence area.

*ACMA must grant additional licence*

(2) As soon as practicable, the ACMA must allocate an additional commercial television broadcasting licence to the existing licensee for the licence area, so long as:

(a) all of the following conditions are satisfied:

(i) no licence for the licence area previously allocated under this section to the existing licensee has been cancelled because of a breach of the condition set out in paragraph 7(1)(i) of Schedule 2;

(iii) no licence for the licence area previously held by the existing licensee has been surrendered; or

(b) both:

(i) paragraph (a) does not apply; and

(ii) the ACMA is satisfied that there are exceptional circumstances.

*Amalgamation of licence areas in some cases*

(7) If:

(a) more than 30% of the licence area population of a licence area is attributable to an overlap area; or

(b) a licence area is entirely within another licence area;

this section applies as if the 2 licence areas were one.

*Fee for additional licence*

(8) On allocation of the additional licence, the applicant must pay to the ACMA a fee determined by the ACMA. The fee must not be



Authorised Version C2023C00001 registered 03/01/2023

more than the amount that, in the opinion of the ACMA, represents the costs (including planning costs) incurred by the ACMA in allocating the additional licence.

*Section 37 restrictions apply*

(11) This section has effect subject to section 37.

## 38B Additional commercial television licences in 2-station markets

(1) If:

(a) a particular licence area is the licence area of only 2 commercial television broadcasting licences (the ***parent licences***) that are in force; and

(c) an additional commercial television broadcasting licence can be allocated for the licence area; and

(ca) the ACMA, by notice published in the *Gazette*, invites:

(i) the existing licensees to give the ACMA a joint written notice under paragraph (d); and

(ii) each existing licensee to give the ACMA a written notice under paragraph (e);

during the period specified in the notice;

then, within the period specified in the paragraph (ca) notice:

(d) the existing licensees may give the ACMA a joint written notice stating that:

(i) a company specified in the notice (the ***joint-venture company***) will apply for an additional commercial television broadcasting licence for the licence area; and

(ii) the joint-venture company is jointly owned by the existing licensees; and

(iii) the joint-venture company is registered as a company under Part 2A.2 of the *Corporations Act 2001* and has a share capital; or

(e) each existing licensee may give the ACMA a written notice stating that the licensee will apply separately for an



Authorised Version C2023C00001 registered 03/01/2023

additional commercial television broadcasting licence for the licence area.

(1A) A notice under paragraph (1)(ca) is not a legislative instrument.

*Application by joint-venture company*

(2) If a notice is given under paragraph (1)(d), the joint-venture company may, within 12 months after the notice is given, apply in writing to the ACMA for an additional commercial television broadcasting licence for the licence area.

*Separate applications by existing licensees*

(3) If an existing licensee gives a notice under paragraph (1)(e), the licensee may, within 12 months after the notice is given, apply in writing to the ACMA for an additional commercial television broadcasting licence for the licence area.

*Allocation of additional licence to joint-venture company*

(5) As soon as practicable after receiving an application under subsection (2), the ACMA must allocate an additional commercial television broadcasting licence to the joint-venture company for the licence area, so long as the ACMA is satisfied that the joint-venture company is jointly owned by the existing licensees.

*Allocation of additional licence to existing licensee*

(6) If the ACMA has received applications from both of the existing licensees under subsection (3), the ACMA must allocate an additional commercial television broadcasting licence to one of those licensees for the licence area in accordance with a price-based system determined under subsection (10).

(7) If:

(a) each existing licensee gives a notice under paragraph (1)(e); and



Authorised Version C2023C00001 registered 03/01/2023

(b) by the end of the 12-month period beginning at the time when the notice is given:

(i) the ACMA has received an application from only one existing licensee (the ***first licensee***) under subsection (3); and

(ii) the ACMA has not received a notice from the other existing licensee stating that it will not be applying under subsection (3);

the ACMA must, as soon as practicable after the end of that 12-month period, allocate an additional commercial television broadcasting licence to the first licensee for the licence area.

(8) If:

(a) each existing licensee gives a notice under paragraph (1)(e); and

(b) before the end of the 12-month period beginning at the time when the notice is given, the ACMA receives:

(i) an application from one existing licensee (the ***first licensee***) under subsection (3); and

(ii) a notice from the other existing licensee stating that it will not be applying under subsection (3);

the ACMA must, as soon as practicable after both have been received, allocate an additional commercial television broadcasting licence to the first licensee for the licence area.

(9) If only one existing licensee gives a notice under paragraph (1)(e), then, as soon as practicable after receiving an application under subsection (3) from that licensee, the ACMA must allocate an additional commercial television broadcasting licence to that licensee for the licence area.

*Price-based system for allocating licences where separate applications have been received*

(10) The ACMA may determine in writing a price-based system for allocating commercial television broadcasting licences under subsection (6).



Authorised Version C2023C00001 registered 03/01/2023

(11) The Minister may give specific directions to the ACMA for the purpose of a determination.

(12) Directions may be to include in a determination specified reserve prices for licences, and those reserve prices may be different for licences in different licence areas.

(13) If a commercial television broadcasting licence is allocated under subsection (6), the ACMA must, unless the allocation system adopted was public, publish in the *Gazette*:

(a) the name of the successful applicant; and

(b) the amount that the applicant agreed to pay to the Commonwealth for the allocation of the licence.

*Amalgamation of licence areas in some cases*

(14) The ACMA may, by legislative instrument, determine that, if:

(a) more than 30% of the licence area population of a specified licence area is attributable to a specified overlap area; or

(b) a specified licence area is entirely within another specified licence area;

this section applies as if the 2 licence areas were one.

(14A) If a determination is made under subsection (14) for 2 licence areas that are remote licence areas (within the meaning of Schedule 4) because of paragraph (14)(b), this section applies as if the single licence area referred to in subsection (14) were the licence area that is entirely within the other licence area.

(15) A determination under subsection (14) has effect accordingly.

*Fee for additional licence*

(17) On allocation of the additional licence under subsection (5), (7), (8) or (9), the applicant must pay to the ACMA a fee determined by the ACMA. The fee must not be more than the amount that, in the opinion of the ACMA, represents the costs (including planning costs) incurred by the ACMA in allocating the additional licence.



Authorised Version C2023C00001 registered 03/01/2023

*Section 37 restrictions apply*

(24) This section has effect subject to section 37.

*Jointly owned company*

(25) For the purposes of this section, a company (the ***first company***) is ***jointly owned*** by 2 other companies if, and only if, each share in the first company is beneficially owned by either or both of those other companies.

## 38C Commercial television broadcasting licences—services provided with the use of a satellite

(1) The following table has effect:

**Licence areas and eligible joint venturers**

| | Column 1 | Column 2 | Column 3 |
|---|---|---|---|
| **Item** | **Licence area for a commercial television broadcasting licence allocated, or to be allocated, under this section** | **Description of the licence area** | **Eligible joint venturers for the licence area** |
| 1 | South Eastern Australia TV3 | The area consisting of New South Wales, Victoria, South Australia, Tasmania, the Australian Capital Territory, Norfolk Island and the Jervis Bay Territory. | The commercial television broadcasting licensees for the following licence areas:<br>(a) Remote Central and Eastern Australia TV1;<br>(b) Remote Central and Eastern Australia TV2;<br>(c) Mt Isa TV1. |



Authorised Version C2023C00001 registered 03/01/2023

**Licence areas and eligible joint venturers**

| | Column 1 | Column 2 | Column 3 |
|---|---|---|---|
| **Item** | **Licence area for a commercial television broadcasting licence allocated, or to be allocated, under this section** | **Description of the licence area** | **Eligible joint venturers for the licence area** |
| 2 | Northern Australia TV3 | The area consisting of Queensland, the Northern Territory and the Coral Sea Islands Territory. | The commercial television broadcasting licensees for the following licence areas:<br>(a) Remote Central and Eastern Australia TV1;<br>(b) Remote Central and Eastern Australia TV2;<br>(c) Mt Isa TV1. |
| 3 | Western Australia TV3 | The area consisting of Western Australia, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands. | The commercial television broadcasting licensees for the following licence areas:<br>(a) Remote and Regional WA TV1;<br>(b) Western Zone TV1;<br>(c) Kalgoorlie TV1;<br>(d) Geraldton TV1;<br>(e) South West and Great Southern TV1. |



Authorised Version C2023C00001 registered 03/01/2023

*Allocation of licence*

(2) A commercial television broadcasting licence that was allocated under this section before the commencement of Schedule 2 to the *Broadcasting and Other Legislation Amendment (Deregulation) Act 2015* continues in force unless it is cancelled.

*Cancellation of licence—services not provided*

(15) If:

(a) the licensee of a licence allocated under this section is contravening a licence condition set out in:

(i) clause 7B of Schedule 2; or

(ii) clause 7C of Schedule 2; and

(b) the ACMA is satisfied that the contravention is not due to:

(i) technical circumstances that are beyond the licensee's control; or

(ii) unforeseen circumstances that are beyond the licensee's control; or

(iii) circumstances specified in the regulations; and

(c) the ACMA gives the licensee a written notice warning the licensee that, if the contravention continues for 30 days, the licence may be cancelled; and

(d) 30 days pass after the notice is given, and the contravention continues;

the ACMA must, by written notice given to the licensee, cancel the licence.

(16) The cancellation takes effect:

(a) when the notice of cancellation is given to the licensee; or

(b) if a later time is specified in the notice of cancellation—at that later time.

*Allocation of licence after cancellation etc.*

(17) If the ACMA gives a notice under subsection (15) to a licensee, cancelling the licence for a licence area, the ACMA must, within



Authorised Version C2023C00001 registered 03/01/2023

45 days after the giving of the notice, advertise, in a manner determined by the ACMA, for applications for a licence to be allocated under subsection (23) for the licence area.

(18) Before commencing to advertise under subsection (17), the ACMA must, by legislative instrument, determine the eligibility requirements that must be met by persons applying for a licence in response to such an advertisement.

(19) The eligibility requirements determined under subsection (18) must include that the applicant has the capacity to provide the services that the licensee will be required to provide under clauses 7B, 7C and 7D of Schedule 2. This subsection does not limit other eligibility requirements that may be determined under subsection (18).

(20) The Minister may, by legislative instrument, direct the ACMA about the exercise of its powers under subsection (18).

(21) The ACMA must include in an advertisement under subsection (17):

(a) a description of the matter mentioned in the applicable paragraph of subsection (17); and

(b) the date on or before which applications must be received by the ACMA (the ***applications closing date***); and

(c) a statement specifying how details of:

(i) the licence area for the licence; and

(ii) the eligibility requirements; and

(iii) the conditions that will apply to the licence;

may be obtained.

(22) The applications closing date must be the 90th day after the day of publication of the first advertisement under subsection (17) that describes the contravention or cancellation concerned.

(23) If:

(a) in response to an advertisement under subsection (17), the ACMA receives one or more applications for a licence; and



Authorised Version C2023C00001 registered 03/01/2023

(b) the applications were received on or before the applications closing date specified in the advertisement; and

(c) the ACMA is satisfied that one or more of the applicants meets the eligibility requirements;

the ACMA must:

(d) allocate the licence to one of the applicants referred to in paragraph (c); and

(e) do so within 90 days after the applications closing date.

(24) Subsection (23) has effect subject to section 37.

*Restrictions on transfer of licences*

(25) During the period of 2 years after the date of allocation of a licence under this section, any attempt by any person to transfer the licence is of no effect.

*Definitions*

(26) In this section:

***wholly-owned subsidiary*** has the same meaning as in the *Corporations Act 2001*.

## 39 Additional commercial radio licences in single markets

*Conditions for allocation of additional licence*

(1) If:

(a) a particular licence area is the licence area of only one commercial radio broadcasting licence (the ***parent licence***) that is in force; and

(b) a service is being provided under the parent licence; and

(c) the licence area for the parent licence does not have an excessive overlap area, as determined under subsection (5); and

(d) the licensee requests the ACMA, in writing, to allocate to the licensee, for the same licence area, another commercial radio



Authorised Version C2023C00001 registered 03/01/2023

broadcasting licence that is a broadcasting services bands licence; and

(e) in the opinion of the ACMA, suitable broadcasting services bands spectrum is available for providing another commercial radio broadcasting service in the same licence area;

the ACMA must allocate an additional licence to the applicant for the same licence area as soon as practicable.

*Time limit for applications*

(2) An application under subsection (1) must be made within 60 days after:

(a) the commencement of this section; or

(b) the time when paragraphs (1)(a), (b) and (c) are first satisfied in relation to the parent licence;

whichever is later.

(3) If the conditions in paragraphs (1)(a), (b), (c) and (e) are not all satisfied at the time when the application is made, but at a later time they are all satisfied, then the ACMA is under an obligation at that later time to allocate the additional licence (unless the application has been withdrawn).

*Matters that ACMA must take into account*

(4) The matters that the ACMA must take into account in forming an opinion for the purposes of paragraph (1)(e) include the following:

(b) any relevant plan under section 26;

(c) any relevant capacity that has been reserved under section 31.

*Excessive overlap area*

(5) The licence area for the parent licence has an excessive overlap area if:

(a) more than 30% of the licence area population of the licence area of the parent licence is attributable to an area that



Authorised Version C2023C00001 registered 03/01/2023

overlaps with the licence area of another commercial radio broadcasting licence; and

(b) at least one of the following situations exists:

(i) more than 30% of the licence area population of the licence area of that other licence is also attributable to the area that overlaps with the licence area of the parent licence;

(ii) more than one commercial radio broadcasting licence is in force with the same licence area as that other licence.

*Technical specifications for additional licence*

(6) The ACMA must make a determination in writing setting out the technical specifications that apply to the additional licence. The ACMA is not required to make the determination if a plan under section 26 applies to the licence area of the additional licence.

(7) For the purposes of this Act and section 109 of the *Radiocommunications Act 1992*, the technical specifications are taken to have been determined under section 26 of this Act.

*Fee for additional licence*

(8) On allocation of the additional licence, the applicant must pay to the ACMA a fee determined by the ACMA. The fee must not be more than the amount that, in the opinion of the ACMA, represents the costs (including planning costs) incurred by the ACMA in allocating the additional licence.

*Licence conditions*

(9) On the allocation of the additional licence, it becomes a condition of both the parent licence and the additional licence that the licensee will continue to provide services under those licences for at least 2 years after the date of allocation of the additional licence.



Authorised Version C2023C00001 registered 03/01/2023

*Restrictions on transfer of licences*

(10) During the period of 2 years after the date of allocation of the additional licence, any attempt by any person to transfer either the parent licence or the additional licence is of no effect unless both of those licences are transferred at the same time by the same person to the same transferee.

*Section 37 restrictions apply*

(11) This section has effect subject to section 37.

*Section 29 does not apply in some cases*

(12) If the licence area of the parent licence is not provided for under a licence area plan under section 26, then section 29 does not apply to the allocation of the additional licence.

## 40 Allocation of other licences

(1) The ACMA may allocate to a person, on application in writing by the person, a commercial television broadcasting licence or a commercial radio broadcasting licence that is not a licence referred to in subsection 36(1).

(1A) Licences under subsection (1) are to be allocated on the basis of one licence per service.

(2) Before allocating a licence referred to in subsection (1), the ACMA is to designate a particular area in Australia as the licence area of the licence.

(3) Applications must:
  (a) be in accordance with a form approved in writing by the ACMA; and
  (b) be accompanied by the application fee determined in writing by the ACMA.



Authorised Version C2023C00001 registered 03/01/2023

(4) If the ACMA makes a decision under subsection (1) or (2), the ACMA must publish in the *Gazette* details of the allocation or the designation of a licence area.

*Referral of application to the Minister*

(5) Before allocating a commercial television broadcasting licence under subsection (1), the ACMA must refer the application to the Minister.

(6) If an application for a commercial television broadcasting licence is referred to the Minister under subsection (5), the ACMA must not make a decision about the application until the Minister:

(a) gives a direction under subsection (7) in relation to the application; or

(b) gives a notice under subsection (9) in relation to the application.

(7) If:

(a) an application for a commercial television broadcasting licence is referred to the Minister under subsection (5); and

(b) the Minister is of the opinion that the proposed commercial television broadcasting service is likely to be contrary to the public interest;

the Minister must, by written notice given to the ACMA, direct the ACMA not to allocate the licence to the applicant.

(8) The ACMA must comply with a direction under subsection (7).

(9) If:

(a) an application for a commercial television broadcasting licence is referred to the Minister under subsection (5); and

(b) the Minister is not of the opinion that the proposed commercial television broadcasting service is likely to be contrary to the public interest;

the Minister must, by written notice given to the ACMA, inform the ACMA that he or she has no objection to the allocation of the licence to the applicant.



Authorised Version C2023C00001 registered 03/01/2023

*Minister may request additional information*

(10) If an application is referred to the Minister under subsection (5), and the Minister considers that additional information is required before the Minister can decide whether to:

(a) give a direction under subsection (7) in relation to the application; or

(b) give a notice under subsection (9) in relation to the application;

the Minister may, by written notice given to the applicant within 30 days after the day on which the application is referred to the Minister, request the applicant to provide that information.

(11) If the Minister requests additional information under subsection (10), the Minister must give the ACMA a copy of the request.

*Decision to be made within 60 days*

(12) If the Minister does not, within 60 days after the day on which:

(a) an application is referred to the Minister under subsection (5); or

(b) if the Minister requests additional information under subsection (10)—that additional information is received;

do either of the following:

(c) give a direction under subsection (7) in relation to the application;

(d) give a notice under subsection (9) in relation to the application;

then the Minister is taken to have given a notice under subsection (9) in relation to the application.

*Licence condition*

(13) If the ACMA allocates a commercial television broadcasting licence under subsection (1), the licence is subject to the condition that the licensee may only provide the commercial television



Authorised Version C2023C00001 registered 03/01/2023

broadcasting service concerned in digital mode (within the meaning of Schedule 4).

## 41 When persons are regarded as suitable

(1) For the purposes of this Part, a company is a suitable licensee or a suitable applicant for a licence if the ACMA has not decided that subsection (2) applies to the company.

(2) The ACMA may, if it is satisfied that allowing a particular company to provide or continue to provide commercial broadcasting services under a licence would lead to a significant risk of:

(a) an offence against this Act or the regulations being committed; or

(aa) a breach of a civil penalty provision occurring; or

(b) a breach of the conditions of the licence occurring;

decide that this subsection applies to the company.

(3) In deciding whether such a risk exists, the ACMA is to take into account:

(a) the business record of the company; and

(b) the company's record in situations requiring trust and candour; and

(c) the business record of each person who is, or would be, if a licence were allocated to the applicant, in a position to control the licence; and

(d) the record in situations requiring trust and candour of each such person; and

(e) whether the company, or a person referred to in paragraph (c) or (d), has been convicted of an offence against this Act or the regulations; and

(f) whether a civil penalty order has been made against:

(i) the company; or

(ii) a person referred to in paragraph (c) or (d).



Authorised Version C2023C00001 registered 03/01/2023

(4) This section does not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).



Authorised Version C2023C00001 registered 03/01/2023

## Division 2—Services authorised by licences

### 41C Services authorised by commercial television broadcasting licences

(1) A commercial television broadcasting licence for a licence area authorises the licensee to provide the following services in the licence area:

(a) one or more HDTV multi-channelled commercial television broadcasting services;

(b) one or more SDTV multi-channelled commercial television broadcasting services.

*Licences allocated under section 38C or subsection 40(1)*

(2) This section does not apply to a commercial television broadcasting licence allocated under section 38C or subsection 40(1).

*Definitions*

(3) In this section:

***HDTV multi-channelled commercial television broadcasting service*** has the same meaning as in Schedule 4.

***SDTV multi-channelled commercial television broadcasting service*** has the same meaning as in Schedule 4.

### 41CA Services authorised by commercial television broadcasting licences allocated under section 38C

*Authorised services*

(1) A licence allocated under section 38C authorises the licensee to provide the following commercial television broadcasting services in the licence area:



Authorised Version C2023C00001 registered 03/01/2023

(b) if:

(i) a commercial television broadcasting licensee (a ***related terrestrial licensee***) for a related terrestrial licence area provides a SDTV multi-channelled commercial television broadcasting service in the related terrestrial licence area; and

(ii) the service is not the primary commercial television broadcasting service provided by the related terrestrial licensee;

a SDTV multi-channelled commercial television broadcasting service the program content of which is the same, or substantially the same, as the service provided by the related terrestrial licensee;

(c) if:

(i) a commercial television broadcasting licensee (a ***related terrestrial licensee***) for a related terrestrial licence area provides a SDTV multi-channelled commercial television broadcasting service in the related terrestrial licence area; and

(ii) the service is the primary commercial television broadcasting service provided by the related terrestrial licensee;

a commercial television broadcasting service the program content of which is the same, or substantially the same, as the service provided by the related terrestrial licensee;

(e) if:

(i) a commercial television broadcasting licensee (a ***metropolitan licensee***) for a metropolitan licence area provides a SDTV multi-channelled commercial television broadcasting service in the metropolitan licence area; and

(ii) the service is not the primary commercial television broadcasting service provided by the metropolitan licensee;

a SDTV multi-channelled commercial television broadcasting service the program content of which is the



Authorised Version C2023C00001 registered 03/01/2023

same, or substantially the same, as the service provided by the metropolitan licensee;

(f) if:

(i) a commercial television broadcasting licensee (a ***metropolitan licensee***) for a metropolitan licence area provides a SDTV multi-channelled commercial television broadcasting service in the metropolitan licence area; and

(ii) the service is the primary commercial television broadcasting service provided by the metropolitan licensee;

a commercial television broadcasting service the program content of which is the same, or substantially the same, as the service provided by the metropolitan licensee;

(fa) if:

(i) a commercial television broadcasting licensee (a ***related terrestrial licensee***) for a related terrestrial licence area provides a HDTV multi-channelled commercial television broadcasting service in the related terrestrial licence area; and

(ii) the service is not the primary commercial television broadcasting service provided by the related terrestrial licensee;

a HDTV multi-channelled commercial television broadcasting service the program content of which is the same, or substantially the same, as the service provided by the related terrestrial licensee;

(fb) if:

(i) a commercial television broadcasting licensee (a ***related terrestrial licensee***) for a related terrestrial licence area provides a HDTV multi-channelled commercial television broadcasting service in the related terrestrial licence area; and

(ii) the service is the primary commercial television broadcasting service provided by the related terrestrial licensee;



Authorised Version C2023C00001 registered 03/01/2023

a commercial television broadcasting service the program content of which is the same, or substantially the same, as the service provided by the related terrestrial licensee;

(fc) if:

(i) a commercial television broadcasting licensee (a ***metropolitan licensee***) for a metropolitan licence area provides a HDTV multi-channelled commercial television broadcasting service in the metropolitan licence area; and

(ii) the service is not the primary commercial television broadcasting service provided by the metropolitan licensee;

a HDTV multi-channelled commercial television broadcasting service the program content of which is the same, or substantially the same, as the service provided by the metropolitan licensee;

(fd) if:

(i) a commercial television broadcasting licensee (a ***metropolitan licensee***) for a metropolitan licence area provides a HDTV multi-channelled commercial television broadcasting service in the metropolitan licence area; and

(ii) the service is the primary commercial television broadcasting service provided by the metropolitan licensee;

a commercial television broadcasting service the program content of which is the same, or substantially the same, as the service provided by the metropolitan licensee;

(g) one or more multi-channelled commercial television broadcasting services the program content of which consists wholly or primarily of programs provided, or required to be provided, to the licensee under subsection 43AA(1).

*Program content*

(2) In determining, for the purposes of this section, whether the program content of a commercial television broadcasting service



Authorised Version C2023C00001 registered 03/01/2023

provided by a licensee in a licence area is the same, or substantially the same, as the program content of another commercial television broadcasting service:

(a) ignore the following:
  (i) advertising or sponsorship material (whether or not of a commercial kind);
  (ii) a promotion for a television program or a television broadcasting service;
  (iii) community information material or community promotional material;
  (iv) a weather bulletin;
  (v) any other similar material; and
(b) ignore a news program; and
(c) ignore any program the broadcasting of which in any jurisdiction in the licence area could result in the licensee:
  (i) committing an offence; or
  (ii) becoming liable to a civil penalty; or
  (iii) breaching an order or direction of a court; or
  (iv) being in contempt of court; and
(d) ignore a program broadcast in circumstances specified in the regulations.

(3) In determining, for the purposes of:
(a) paragraph (1)(c); or
(b) paragraph (1)(f); or
(c) paragraph (1)(fb); or
(d) paragraph (1)(fd);
whether the program content of a commercial television broadcasting service provided by a licensee in a licence area is the same, or substantially the same, as the program content of another commercial television broadcasting service, assume that a program that provides coverage of an anti-siphoning event is the same as a program that provides coverage of another anti-siphoning event.

(4) Subsection (3) does not limit subsection (2).



Authorised Version C2023C00001 registered 03/01/2023

*Providing an authorised service on Norfolk Island*

(5A) A person authorised by a licence allocated under section 38C to provide a commercial television broadcasting service in a licence area including Norfolk Island may provide the service despite a law of Norfolk Island about broadcasting services.

*Definitions*

(6) In this section:

***HDTV multi-channelled commercial television broadcasting service*** has the same meaning as in Schedule 4.

***metropolitan licence area*** means a licence area in which is situated the General Post Office of the capital city of:

(a) New South Wales; or
(b) Victoria; or
(c) Queensland; or
(d) Western Australia; or
(e) South Australia;

but does not include the licence area of a commercial television broadcasting licence allocated under section 38C.

***related terrestrial licence area***:

(a) in relation to a licence allocated under section 38C for the South Eastern Australia TV3 licence area—means a licence area mentioned in column 3 of item 1 of the table in subsection 38C(1); or
(b) in relation to a licence allocated under section 38C for the Northern Australia TV3 licence area—means a licence area mentioned in column 3 of item 2 of the table in subsection 38C(1); or
(c) in relation to a licence allocated under section 38C for the Western Australia TV3 licence area—means a licence area mentioned in column 3 of item 3 of the table in subsection 38C(1).



Authorised Version C2023C00001 registered 03/01/2023

***SDTV multi-channelled commercial television broadcasting service*** has the same meaning as in Schedule 4.

## 41D Services authorised by commercial radio broadcasting licences

*Licences in force immediately before the commencement of this section*

(1) If:

(a) a commercial radio broadcasting licence was in force immediately before the commencement of this section; and

(b) the licence authorised the licensee to provide an analog commercial radio broadcasting service in the licence area;

then, during the period:

(c) beginning at the start of the day on which this section commences; and

(d) ending immediately before the digital radio start-up day for the licence area;

the licence is taken to authorise the licensee to provide that service in the licence area.

*Licences allocated on or after the commencement of this section*

(2) If:

(a) a commercial radio broadcasting licence is allocated on or after the commencement of this section but before the digital radio start-up day for the licence area; and

(b) the licence is allocated as a licence to provide an analog commercial radio broadcasting service in the licence area;

then, during the period:

(c) beginning at the start of the day on which the licence is allocated; and

(d) ending immediately before the digital radio start-up day for the licence area;

the licence is taken to authorise the licensee to provide that service in the licence area.



Authorised Version C2023C00001 registered 03/01/2023

*Licences in force immediately before the digital radio start-up day for the licence area*

(3) If:

(a) a commercial radio broadcasting licence was in force immediately before the digital radio start-up day for the licence area; and

(b) the licence authorised the licensee to provide an analog commercial radio broadcasting service in the licence area;

then, on and after the digital radio start-up day for the licence area, the licence is taken to authorise the licensee to provide the following services in the licence area:

(c) the analog commercial radio broadcasting service;

(d) one or more digital commercial radio broadcasting services.

*Licences allocated on or after digital radio start-up day for the licence area*

(4) If:

(a) a commercial radio broadcasting licence is allocated on or after the digital radio start-up day for the licence area; and

(b) the licence is allocated as a licence to provide an analog commercial radio broadcasting service in the licence area;

the licence is taken to authorise the licensee to provide that service in the licence area.

(5) If:

(a) a commercial radio broadcasting licence is allocated on or after the digital radio start-up day for the licence area; and

(b) the licence is allocated as a licence to provide digital commercial radio broadcasting services in the licence area;

the licence is taken to authorise the licensee to provide one or more digital commercial radio broadcasting services in the licence area.



Authorised Version C2023C00001 registered 03/01/2023

## Section 41D

*Subsection 40(1) licences*

(7) This section does not apply to a commercial radio broadcasting licence allocated under subsection 40(1).



Authorised Version C2023C00001 registered 03/01/2023

## Division 3—Licence conditions

### 42 Conditions of commercial broadcasting licences

(1) Each commercial television broadcasting licence is subject to:
  (a) the conditions set out in Division 1 of Part 3 of Schedule 2; and
  (b) such other conditions as are imposed under section 43.

(1A) Each commercial television broadcasting licence allocated under section 38C is also subject to the conditions set out in Division 2 of Part 3 of Schedule 2.

(2) Each commercial radio broadcasting licence is subject to:
  (a) the conditions set out in Part 4 of Schedule 2; and
  (b) such other conditions as are imposed under section 43.

### 43 ACMA may impose additional conditions

(1) The ACMA may, by notice in writing given to a commercial television broadcasting licensee or a commercial radio broadcasting licensee, vary or revoke a condition of the licence or impose an additional condition on the licence.

(2) If the ACMA proposes to vary or revoke a condition or to impose a new condition, the ACMA must:
  (a) give to the licensee written notice of its intention; and
  (b) give to the licensee a reasonable opportunity to make representations to the ACMA in relation to the proposed action; and
  (c) publish the proposed changes in the *Gazette*.

(3) This section does not allow the ACMA to vary or revoke a condition set out in Part 3 or 4 of Schedule 2.



Authorised Version C2023C00001 registered 03/01/2023

(4) If the ACMA varies or revokes a condition or imposes a new condition, the ACMA must publish the variation, the fact of the revocation or the new condition, as the case may be, in the *Gazette*.

(5) Action taken under subsection (1) must not be inconsistent with:
  (a) determinations and clarifications under section 19; or
  (b) conditions set out in Part 3 or 4 of Schedule 2.

## 43AA Local news to be provided to section 38C licensees by regional commercial television broadcasting licensees

(1) A commercial television broadcasting licence for a regional licence area is subject to the condition that, if:
  (a) the licensee broadcasts a local news program in the licence area; and
  (aa) the licensee has not previously broadcast the program in the licence area; and
  (b) the licence area is wholly or partly included in the licence area of a licence allocated under section 38C;

the licensee of the regional commercial television broadcasting licence must:
  (c) provide the local news program to the licensee of the section 38C licence for broadcast by the section 38C licensee; and
  (d) do so:
    (i) simultaneously with the broadcast of the program by the licensee of the regional commercial television broadcasting licence; or
    (ii) as soon as practicable after the broadcast of the program by the licensee of the regional commercial television broadcasting licence.

(2) A program must be provided under subsection (1) by transmitting it in digital mode (within the meaning of Schedule 4).

(3) If:



Authorised Version C2023C00001 registered 03/01/2023

(a) apart from this subsection, a commercial television broadcasting licensee for a regional licence area (the ***regional licensee***) is required by subsection (1) to provide a program to the licensee of a commercial television broadcasting licence allocated under section 38C; and

(b) the regional licensee believes, on reasonable grounds, that the broadcasting of a part of the program in any jurisdiction in the licence area of the section 38C licence could result in the section 38C licensee:

(i) committing an offence; or

(ii) becoming liable to a civil penalty; or

(iii) breaching an order or direction of a court; or

(iv) being in contempt of court;

subsection (1) has effect as if the program did not include that part of the program.

(3A) If:

(a) apart from this subsection, a commercial television broadcasting licensee for a regional licence area (the ***regional licensee***) is required by subsection (1) to provide a program to the licensee of a commercial television broadcasting licence allocated under section 38C; and

(b) the regional licensee believes, on reasonable grounds, that the broadcasting of the program in any jurisdiction in the licence area of the section 38C licence could result in the section 38C licensee:

(i) committing an offence; or

(ii) becoming liable to a civil penalty; or

(iii) breaching an order or direction of a court; or

(iv) being in contempt of court;

subsection (1) does not apply to the program.

(3B) A commercial television broadcasting licence for a regional licence area is subject to the condition that, if:

(a) the licensee broadcasts a local news program in the licence area on 2 or more occasions; and



Authorised Version C2023C00001 registered 03/01/2023

(b) the licence area is wholly or partly included in the licence area of a licence allocated under section 38C;

the licensee of the regional commercial television broadcasting licence will take reasonable steps to ensure that the licensee of the regional commercial television broadcasting licence does not, on more than one occasion, provide the program to the section 38C licensee for broadcast by the section 38C licensee.

(6) This section does not apply to a commercial television broadcasting licence allocated under subsection 40(1).

(7) In this section:

***local news program*** means:

(a) a program that consists solely of local news and/or local weather information; or

(b) a program:

(i) that consists primarily of local news and/or local weather information; and

(ii) the remainder of which consists of other news and/or other weather information;

but does not include:

(c) a short segment, or a headline update, that is broadcast for the sole or primary purpose of promoting another program; or

(d) a short segment, or a headline update, that repeats news content that has previously been broadcast by the licensee concerned.

***metropolitan licence area*** means a licence area in which is situated the General Post Office of the capital city of:

(a) New South Wales; or

(b) Victoria; or

(c) Queensland; or

(d) Western Australia; or

(e) South Australia;



Authorised Version C2023C00001 registered 03/01/2023

but does not include the licence area of a commercial television broadcasting licence allocated under section 38C.

***regional licence area*** means a licence area that is not a metropolitan licence area, but does not include:

(a) the licence area of a commercial television broadcasting licence allocated under section 38C; or

(b) a licence area specified in column 3 of the table in subsection 38C(1).

## 43AB Commercial television programs to be provided to section 38C licensees by metropolitan commercial television broadcasting licensees

*Programs to be provided by metropolitan licensees*

(1) A commercial television broadcasting licence for a metropolitan licence area is subject to the condition that, if:

(a) the licensee (the ***metropolitan licensee***) broadcasts a program in a metropolitan licence area on either of the following services (a ***metropolitan service***):

(i) a HDTV multi-channelled commercial television broadcasting service;

(ii) a SDTV multi-channelled commercial television broadcasting service; and

(b) before the program is broadcast, a section 38C licensee requests the metropolitan licensee to provide the section 38C licensee with the programs broadcast on the metropolitan service;

the metropolitan licensee must:

(c) provide the program to the section 38C licensee for broadcast by the section 38C licensee; and

(d) do so:

(i) simultaneously with the broadcast of that program on the metropolitan service; or



Authorised Version C2023C00001 registered 03/01/2023

(ii) as soon as practicable after the broadcast of that program on the metropolitan service.

*HDTV digital mode or SDTV digital mode*

(2) A program must be provided under subsection (1) by transmitting it:

(a) if subparagraph (1)(a)(i) applies—in HDTV digital mode (within the meaning of Schedule 4); or

(b) if subparagraph (1)(a)(ii) applies—in SDTV digital mode (within the meaning of Schedule 4).

*Definitions*

(4) In this section:

***HDTV multi-channelled commercial television broadcasting service*** has the same meaning as in Schedule 4.

***metropolitan licence area*** means a licence area in which is situated the General Post Office of the capital city of:

(a) New South Wales; or

(b) Victoria; or

(c) Queensland; or

(d) Western Australia; or

(e) South Australia;

but does not include the licence area of a commercial television broadcasting licence allocated under section 38C.

***SDTV multi-channelled commercial television broadcasting service*** has the same meaning as in Schedule 4.

***section 38C licensee*** means the licensee of a commercial television broadcasting licence allocated under section 38C.



Authorised Version C2023C00001 registered 03/01/2023

## 43AC Commercial television programs to be provided to section 38C licensees by remote terrestrial licensees

*Scope*

(1) This section applies if the licence area of a commercial television broadcasting licence (the ***remote terrestrial licence***) is a related terrestrial licence area of a licence allocated under section 38C.

*Programs to be provided by remote terrestrial licensees*

(2) The remote terrestrial licence is subject to the condition that, if the licensee broadcasts a program in the related terrestrial licence area on either of the following services (a ***remote terrestrial service***):

(a) a HDTV multi-channelled commercial television broadcasting service;

(b) a SDTV multi-channelled commercial television broadcasting service;

the licensee of the remote terrestrial licence must:

(c) provide the program to the section 38C licensee for broadcast by the section 38C licensee; and

(d) do so:

(i) simultaneously with the broadcast of that program on the remote terrestrial service; or

(ii) as soon as practicable after the broadcast of that program on the remote terrestrial service.

*HDTV digital mode or SDTV digital mode*

(3) A program must be provided under subsection (2) by transmitting it:

(a) if paragraph (2)(a) applies—in HDTV digital mode (within the meaning of Schedule 4); or

(b) if paragraph (2)(b) applies—in SDTV digital mode (within the meaning of Schedule 4).



Authorised Version C2023C00001 registered 03/01/2023

*Definitions*

(5) In this section:

***HDTV multi-channelled commercial television broadcasting service*** has the same meaning as in Schedule 4.

***related terrestrial licence area***:

(a) in relation to a licence allocated under section 38C for the South Eastern Australia TV3 licence area—means a licence area mentioned in column 3 of item 1 of the table in subsection 38C(1); or

(b) in relation to a licence allocated under section 38C for the Northern Australia TV3 licence area—means a licence area mentioned in column 3 of item 2 of the table in subsection 38C(1); or

(c) in relation to a licence allocated under section 38C for the Western Australia TV3 licence area—means a licence area mentioned in column 3 of item 3 of the table in subsection 38C(1).

***SDTV multi-channelled commercial television broadcasting service*** has the same meaning as in Schedule 4.

***section 38C licensee*** means the licensee of a commercial television broadcasting licence allocated under section 38C.

## 43AD Compensation for acquisition of property

(1) If the operation of:

(b) section 43AA; or

(c) section 43AB; or

(d) section 43AC;

in relation to the provision of a program to the licensee of a commercial television broadcasting licence would result in an acquisition of property from a person otherwise than on just terms, the licensee is liable to pay a reasonable amount of compensation to the person.



Authorised Version C2023C00001 registered 03/01/2023

(2) If the licensee and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the licensee of such reasonable amount of compensation as the court determines.

(3) In this section:

***acquisition of property*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

***just terms*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

## 43B Local presence—regional commercial radio broadcasting licences

(1A) The ACMA must ensure that, at all times after the commencement of Schedule 2 to the *Broadcasting Services Amendment (Regional Commercial Radio) Act 2012*, there is in force under section 43 a condition that has the effect of requiring that, if a trigger event for a regional commercial radio broadcasting licence occurs after the commencement of that Schedule, then, throughout the 24-month period beginning when the trigger event occurs, the licensee must maintain at least the existing level of local presence.

Note: A trigger event cannot occur in relation to a regional commercial radio broadcasting licence that was allocated under subsection 40(1): see section 50A.

(2) The condition must define ***existing level of local presence*** for the purposes of the condition.

(3) The definition must deal with:
(a) staffing levels; and
(b) studios and other production facilities.

(4) Subsection (3) does not limit subsection (2).

(4A) The condition does not apply to a regional commercial radio broadcasting licence that is:



Authorised Version C2023C00001 registered 03/01/2023

(a) a remote area service radio licence; or
(b) a regional racing service radio licence.

(5) To avoid doubt, this section does not create any obligations under subsection 43(2) that would not exist apart from this section.

(6) Subsection 43(5) does not apply to the condition.

(7) This section does not limit the powers conferred on the ACMA by section 43 to impose, vary or revoke other conditions.

(8) The Minister may give the ACMA a written direction about the fulfilment of the obligation imposed on the ACMA by this section.

(9) The ACMA must comply with a direction under subsection (8).

(10) In this section:

***staff*** includes individuals engaged as independent contractors.

***trigger event*** has the same meaning as in Division 5C of Part 5.

## 43C Local content—regional commercial radio broadcasting licences

(1) The ACMA must ensure that, at all times on and after 1 January 2008, there is in force under section 43 a condition that has the effect of requiring the licensee of a regional commercial radio broadcasting licence to broadcast, during daytime hours each business day, at least the applicable number of hours of material of local significance.

(1A) A licence condition imposed as a result of subsection (1) does not require a regional commercial radio broadcasting licensee to broadcast material on a business day included in a local content exemption period for the licensee.



Authorised Version C2023C00001 registered 03/01/2023

*Material of local significance*

(2) The condition must define ***material of local significance*** for the purposes of the condition. If a regional commercial radio broadcasting licensee is required to comply with section 61CD, the definition of ***material of local significance*** must be broad enough to cover material that the licensee must broadcast in order to comply with that section.

*Exclusion of certain licences*

(2A) The condition does not apply to a regional commercial radio broadcasting licence that is:

(a) a remote area service radio licence; or

(b) a regional racing service radio licence; or

(c) allocated under subsection 40(1).

*Applicable number*

(3) For the purposes of the application of subsection (1) to a regional commercial radio broadcasting licence, the ***applicable number*** is:

(a) 4.5; or

(b) if the Minister, by legislative instrument, declares that another number is the applicable number for regional commercial radio broadcasting licences generally—the other number; or

(c) if:

(i) the Minister, by legislative instrument, declares that another number is the applicable number for a specified class of regional commercial radio broadcasting licences; and

(ii) the regional commercial radio broadcasting licence is included in that class;

the other number.



Authorised Version C2023C00001 registered 03/01/2023

*Changes in licence area populations not to put persons in breach of condition*

(4) If:

(a) the ACMA makes a new determination of the licence area population of a licence area or of the population of Australia; and

(b) as a result of the determination, a person would be in breach of the condition;

the condition continues to apply to the person as if the most recent determination under which the person was not in breach of the condition remained in force.

*Sunset*

(4A) Subsection (4) ceases to have effect at the end of 5 years after the commencement of Schedule 4 of the *Broadcasting Legislation Amendment (2021 Measures No. 1) Act 2021*.

*Section 43 powers etc.*

(5) To avoid doubt, this section does not create any obligations under subsection 43(2) that would not exist apart from this section.

(6) Subsection 43(5) does not apply to the condition.

(7) This section does not limit the powers conferred on the ACMA by section 43 to impose, vary or revoke other conditions.

*Definitions*

(8) In this section:

***daytime hours*** means the hours:

(a) beginning at 6 am each day or, if another time is prescribed, beginning at that prescribed time each day; and

(b) ending at 6 pm on the same day or, if another time is prescribed, ending at that prescribed time on the same day.



Authorised Version C2023C00001 registered 03/01/2023

## 43D Special licence conditions relating to digital radio commercial broadcasting services

*Scope*

(1) This section applies to a commercial radio broadcasting licence (the ***first licence***) if:

(a) the first licence authorises the licensee to provide one or more digital commercial radio broadcasting services; and

(b) the first licence was not allocated under subsection 40(1).

*Transmission by multiplex transmitter*

(2) The first licence is subject to the condition that the licensee must not provide a digital commercial radio broadcasting service under the first licence unless:

(a) the service is transmitted using a multiplex transmitter; and

(b) the operation of the multiplex transmitter is authorised by a digital radio multiplex transmitter licence.

*Use of more than one-ninth of multiplex capacity*

(3) If there is only one digital radio multiplex transmitter licence for the licence area of the first licence, the first licence is subject to the condition that the licensee of the first licence must not use more than one-ninth of multiplex capacity under the digital radio multiplex transmitter licence for the purpose of providing, under the first licence, a digital commercial radio broadcasting service that passes the shared content test in relation to an analog commercial radio broadcasting service provided under:

(a) the first licence; or

(b) another commercial radio broadcasting licence that has the same licence area as the first licence.

(4) If there are 2 or more digital radio multiplex transmitter licences for the licence area of the first licence, the first licence is subject to the condition that the licensee of the first licence must not use more than the designated fraction of the total multiplex capacities under



Authorised Version C2023C00001 registered 03/01/2023

those digital radio multiplex transmitter licences for the purpose of providing, under the first licence, a digital commercial radio broadcasting service that passes the shared content test in relation to an analog commercial radio broadcasting service provided under:

(a) the first licence; or

(b) another commercial radio broadcasting licence that has the same licence area as the first licence.

(5) For the purposes of subsection (4), the ***designated fraction*** of the total multiplex capacities under those digital radio multiplex transmitter licences is as follows:

$$\frac{1}{\text{Number of digital radio multiplex transmitter licences} \times 9}$$

*Shared content test*

(6) For the purposes of subsections (3) and (4), a digital commercial radio broadcasting service ***passes the shared content test*** at a particular time in relation to an analog commercial radio broadcasting service if:

(a) the program content of at least 50% of the total number of hours of programs broadcast by the first-mentioned service during daytime/evening hours during the 6-month period ending at that time;

were the same as:

(b) the program content of at least 50% of the total number of hours of programs broadcast by the other service during daytime/evening hours during the 6-month period ending at that time.

(7) For the purposes of subsection (6), ignore the following:

(a) advertising or sponsorship material (whether or not of a commercial kind);

(b) a promotion for a radio program or a radio broadcasting service;



Authorised Version C2023C00001 registered 03/01/2023

(c) any digital program enhancement content in relation to a radio program;
(d) community information material or community promotional material;
(e) a news break or weather bulletin;
(f) any other similar material.

*Definitions*

(8) In this section:

***category 1 digital radio multiplex transmitter licence*** has the same meaning as in the *Radiocommunications Act 1992*.

***category 2 digital radio multiplex transmitter licence*** has the same meaning as in the *Radiocommunications Act 1992*.

***daytime/evening hours*** means the hours:
(a) beginning at 6 am each day; and
(b) ending at midnight on the same day.

***digital radio multiplex transmitter licence*** means:
(a) a category 1 digital radio multiplex transmitter licence; or
(b) a category 2 digital radio multiplex transmitter licence.

## 44 Matters to which conditions may relate

(1) Conditions of commercial television broadcasting licences and commercial radio broadcasting licences must be relevant to the broadcasting services to which those licences relate.

(2) Without limiting the range of conditions that may be imposed, the ACMA may impose a condition on a commercial television broadcasting licensee or a commercial radio broadcasting licensee:
(a) requiring the licensee to comply with a code of practice that is applicable to the licensee; or
(b) designed to ensure that a breach of a condition by the licensee does not recur.



Authorised Version C2023C00001 registered 03/01/2023

# Division 4—General provisions

## 45 Duration of licences

(1) Subject to Part 10, commercial television broadcasting licences (other than commercial television broadcasting licences allocated under section 38C) and commercial radio broadcasting licences remain in force for 5 years.

(2) A commercial television broadcasting licence allocated under section 38C remains in force for 10 years.

(3) Subsection (2) has effect subject to:
  (a) subsection 38C(15); and
  (b) Part 10.

## 46 Applications for renewal

(1) The ACMA may renew a commercial television broadcasting licence or a commercial radio broadcasting licence if:
  (a) the licensee makes an application for renewal of the licence, in accordance with a form approved in writing by the ACMA, at least 20 weeks but not more than one year before the licence is due to expire; and
  (b) the application is accompanied by the renewal fee determined in writing by the ACMA.

(2) If the ACMA receives an application for renewal, the ACMA must notify in the *Gazette* the fact that the application has been made.

## 47 ACMA to renew licences unless it is aware of special circumstances

(1) Subject to subsection (2), if the ACMA receives an application under section 46, the ACMA must, by notice in writing given to the licensee, renew the licence for a period of 5 years.



Authorised Version C2023C00001 registered 03/01/2023

(2) The ACMA must refuse to renew a licence if the ACMA decides that subsection 41(2) applies to the licensee.

(3) The ACMA is not required to conduct an investigation or a hearing into whether a licence should be renewed.

## 48 Transfer of commercial broadcasting licences

A commercial television broadcasting licensee or a commercial radio broadcasting licensee may transfer the licence to another person.

## 49 Surrender of commercial broadcasting licences

A commercial television broadcasting licensee or a commercial radio broadcasting licensee may, by notice in writing given to the ACMA, surrender the licence.



Authorised Version C2023C00001 registered 03/01/2023

# Part 5—Control of commercial broadcasting licences

## Division 1—Preliminary

### 50A This Part does not apply in relation to licences allocated under section 38C or subsection 40(1)

This Part does not apply in relation to:

(a) a commercial television broadcasting licence; or

(b) a commercial radio broadcasting licence;

if the licence was allocated under section 38C or subsection 40(1).

### 50 Interpretation—knowledge of company

(1) For the purposes of this Part, if a director, the chief executive or a secretary of a company has knowledge of a matter, the company is taken to have knowledge of the matter.

(2) Subsection (1) does not limit the ways in which knowledge of a company can be established.

### 51 Means of dealing with overlapping licence areas

If:

(a) more than 30% of the licence area population of a licence area is attributable to an overlap area; or

(b) a licence area is entirely within another licence area;

the rules in this Part apply to the 2 licence areas, but not between those licence areas and other licence areas, as if the 2 licence areas were one.



Authorised Version C2023C00001 registered 03/01/2023

## 52 Changes in licence area populations not to put persons in breach of this Part

(1) If:

(a) the ACMA makes a new determination of the licence area population of a licence area or of the population of Australia; and

(b) as a result of the determination, a person would be in breach of a provision of Division 2 or 3;

those provisions continue to apply to the person as if the most recent determination under which the person was not in breach of the provision remained in force.

(2) This section ceases to have effect at the end of 5 years after the commencement of Schedule 4 of the *Broadcasting Legislation Amendment (2021 Measures No. 1) Act 2021*.

## 52A Newspapers—additional constitutional basis

(1) Without limiting its effect apart from this section, this Act (other than Division 10A) also has effect as provided by this section.

(2) This Act (other than Division 10A) also has the effect it would have if each reference in this Part (other than Division 10A) to a newspaper were, by express provision, confined to a newspaper where:

(a) the publisher of the newspaper is a constitutional corporation; or

(b) at least part of the circulation of the newspaper is:

(i) in 2 or more States; or

(ii) in a Territory; or

(iii) in a foreign country.



Authorised Version C2023C00001 registered 03/01/2023

## Division 2—Limitation on control

### 53 Limitation on control of commercial television broadcasting licences

A person must not be in a position to exercise control of more than one commercial television broadcasting licence in the same licence area.

### 54 Limitation on control of commercial radio broadcasting licences

A person must not be in a position to exercise control of more than 2 commercial radio broadcasting licences in the same licence area.



Authorised Version C2023C00001 registered 03/01/2023

## Division 3—Limitation on directorships

### 55 Limitation on numbers of directorships—television

(3) A person must not be:

(a) a director of a company that is in a position to exercise control of a commercial television broadcasting licence; and

(b) a director of a company that is in a position to exercise control of another commercial television broadcasting licence;

if each of those licences have the same licence area.

(4) A person must not be:

(a) a director of a company that is in a position to exercise control of a commercial television broadcasting licence; and

(b) in a position to exercise control of another commercial television broadcasting licence;

if each of those licences have the same licence area.

### 56 Limitation on numbers of directorships—radio

A person must not be:

(a) a director of a company that is, or of 2 or more companies that are, between them, in a position to exercise control of more than 2 commercial radio broadcasting licences in the same licence area; or

(b) a director of a company that is, or of 2 or more companies that are, between them, in a position to exercise control of 2 commercial radio broadcasting licences in a licence area and in a position to exercise control of another commercial radio broadcasting licence in the same licence area; or

(c) in a position to exercise control of 2 commercial radio broadcasting licences in a licence area and a director of a company that is in a position to exercise control of another commercial radio broadcasting licence in the same licence area.



Authorised Version C2023C00001 registered 03/01/2023

## Division 5—Newspapers associated with licence areas

### 59 Newspapers associated with commercial television or radio broadcasting licence areas

(1) The ACMA is to maintain an Associated Newspaper Register.

(2) For the purposes of this Part, a newspaper is associated with the licence area of a licence if the name of the newspaper is entered in the Register as being associated with the licence area of the licence.

(3) If the ACMA is satisfied that at least 50% of the circulation of a newspaper is within the licence area of a commercial television broadcasting licence, the ACMA is to enter the name of the newspaper in the Register in relation to that licence area.

(4) If the ACMA is satisfied that less than 50% of the circulation of a newspaper that is entered in the Register in relation to a commercial television broadcasting licence is within the licence area of that licence, the ACMA is to remove the name of the newspaper from the Register in relation to that licence area.

(4A) If the ACMA is satisfied that:

(a) at least 50% of the circulation of a newspaper is within the licence area of a commercial radio broadcasting licence; and

(b) the circulation of the newspaper within that licence area is at least 2% of the licence area population;

the ACMA must enter the name of the newspaper in the Register in relation to the licence area.

(4B) If the ACMA is satisfied that:

(a) less than 50% of the circulation of a newspaper that is entered in the Register in relation to a commercial radio broadcasting licence is within the licence area of that licence; or



Authorised Version C2023C00001 registered 03/01/2023

(b) the circulation of the newspaper within that licence area is less than 2% of the licence area population;

the ACMA must remove the name of the newspaper from the Register in relation to the licence area.

(4C) Despite subsections (3) and (4A), if the ACMA is satisfied that:

(a) a person (either alone or together with one or more other persons) has entered into, begun to carry out or carried out a scheme to publish a newspaper; and

(b) the person did so for the sole or dominant purpose of ensuring that the number of points in the licence area of a commercial radio broadcasting licence would be increased or maintained;

the ACMA may refuse to enter the name of the newspaper in the Register.

(4D) If:

(a) a newspaper is entered in the Register; and

(b) the ACMA is satisfied that:

(i) a person (either alone or together with one or more other persons) entered into, began to carry out or carried out a scheme to publish the newspaper; and

(ii) the person did so for the sole or dominant purpose of ensuring that the number of points in the licence area of a commercial radio broadcasting licence would be increased or maintained;

the ACMA may remove the name of the newspaper from the Register.

(5) The Register may be maintained by electronic means.

(6) The Register is to be made available for inspection on the internet.

(7) The ACMA may supply copies of or extracts from the Register certified by a member, and a copy or extract so certified is admissible in evidence in all courts and proceedings without further proof or production of the original.



Authorised Version C2023C00001 registered 03/01/2023

(8) In this section:

***points*** has the same meaning as in Division 5A.

***scheme*** has the same meaning as in Division 5A.



Authorised Version C2023C00001 registered 03/01/2023

# Division 5A—Media diversity

## Subdivision A—Introduction

### 61AA Definitions

In this Division:

***commencement day*** means the day on which Schedule 2 to the *Broadcasting Services Amendment (Media Ownership) Act 2006* commences.

***controller*** of a media group means a person who is in a position to exercise control of each media operation in the media group.

***daytime/evening hours*** means the hours:

(a) beginning at 6 am each day; and

(b) ending at midnight on the same day.

***engage in conduct*** means:

(a) do an act; or

(b) omit to perform an act.

***interest*** in a share means a legal or equitable interest in the share.

***media group*** means a group of 2 or more media operations.

***media operation*** means:

(a) a commercial television broadcasting licence; or

(b) a commercial radio broadcasting licence; or

(c) a newspaper that is associated with the licence area of a commercial television broadcasting licence or a commercial radio broadcasting licence.

***metropolitan licence area*** means:

(a) a licence area in which is situated the General Post Office of the capital city of:

(i) New South Wales; or



Authorised Version C2023C00001 registered 03/01/2023

(ii) Victoria; or
(iii) Queensland; or
(iv) Western Australia; or
(v) South Australia; or

(b) the licence area known as Western Suburbs Sydney RA1.

***name*** of a commercial television broadcasting licence or a commercial radio broadcasting licence means the service licence number of the licence.

***points***, in relation to the licence area of a commercial radio broadcasting licence, has the meaning given by section 61AC.

***regional licence area*** means a licence area that is not a metropolitan licence area.

***Register*** means the Register of Controlled Media Groups maintained under section 61AU.

***registered controller*** of a registered media group means a person whose name is entered in the Register as a controller of the media group.

***registered media group*** means a media group that is entered in the Register.

***registrable media group***, in relation to the licence area of a commercial radio broadcasting licence, means a media group covered by item 1 of the table in subsection 61AC(1) in its application to that licence area. For this purpose, disregard subsection 61AC(2).

***scheme*** means:

(a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
(b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.



Authorised Version C2023C00001 registered 03/01/2023

***shared content test*** has the meaning given by section 61AE.

***statutory control rules*** has the meaning given by section 61AD.

***unacceptable media diversity situation*** has the meaning given by section 61AB.

## 61AB Unacceptable media diversity situation

*Metropolitan licence area*

(1) For the purposes of this Division, an ***unacceptable media diversity situation*** exists in relation to a metropolitan licence area of a commercial radio broadcasting licence if the number of points in the licence area is less than 5.

*Regional licence area*

(2) For the purposes of this Division, an ***unacceptable media diversity situation*** exists in relation to a regional licence area of a commercial radio broadcasting licence if the number of points in the licence area is less than 4.

## 61AC Points

(1) Use the table to work out the number of points in the licence area of a commercial radio broadcasting licence (the ***first radio licence area***):



Authorised Version C2023C00001 registered 03/01/2023

**Points**

| Item | This ... | is worth ... |
|---|---|---|
| 1 | a group of 2 or more media operations, where:<br>(a) a person is in a position to exercise control of each of those media operations; and<br>(b) each of those media operations complies with the statutory control rules; and<br>(c) if a commercial television broadcasting licence is in the group—more than 50% of the licence area population of the first radio licence area is attributable to the licence area of the commercial television broadcasting licence; and<br>(d) if a commercial radio broadcasting licence is in the group—the first radio licence area is the same as, or is entirely within, the licence area of the commercial radio broadcasting licence; and<br>(e) if a newspaper is in the group—the newspaper is associated with the first radio licence area | 1 point. |
| 2 | a commercial radio broadcasting licence, where:<br>(a) the licence complies with the statutory control rules; and<br>(b) the first radio licence area is the same as, or is entirely within, the licence area of the licence; and<br>(c) item 1 does not apply to the licence | 1 point. |
| 3 | a newspaper, where:<br>(a) the newspaper complies with the statutory control rules; and<br>(b) the newspaper is associated with the first radio licence area; and<br>(c) item 1 does not apply to the newspaper | 1 point. |



Authorised Version C2023C00001 registered 03/01/2023

| **Points** | | |
|---|---|---|
| **Item** | **This ...** | **is worth ...** |
| 4 | a group of 2 or more commercial television broadcasting licences, where:<br>(a) each of those licences complies with the statutory control rules; and<br>(b) more than 50% of the licence area population of the first radio licence area is attributable to the licence area of each of those commercial television broadcasting licences; and<br>(c) the primary commercial television broadcasting service to which those commercial television broadcasting licences relate pass the shared content test in relation to each other; and<br>(d) item 1 does not apply to any of those commercial television broadcasting licences | 1 point. |
| 5 | a commercial television broadcasting licence, where:<br>(a) the licence complies with the statutory control rules; and<br>(b) more than 50% of the licence area population of the first radio licence area is attributable to the licence area of the commercial television broadcasting licence; and<br>(c) none of the commercial television broadcasting services provided under the licence passes the shared content test in relation to any of the commercial television broadcasting services provided under another commercial television broadcasting licence, where more than 50% of the licence area population of the first radio licence area is attributable to the licence area of the other commercial television broadcasting licence; and<br>(d) item 1 does not apply to the first-mentioned licence | 1 point. |

(2) If, apart from this subsection, all the media operations in a group of media operations mentioned in an item of the table are also in one or more other groups mentioned in an item of the table, then, for the purposes of subsection (1), ignore the existence of:



Authorised Version C2023C00001 registered 03/01/2023

(a) if one of the groups has the highest number of media operations—the remaining group or groups; or
(b) if 2 or more of the groups have an equal highest number of media operations:
(i) all but one of the groups that have an equal highest number of media operations; and
(ii) the remaining group or groups; or
(c) if the groups have an equal number of media operations—all but one of those groups.

## 61AD Statutory control rules

For the purposes of this Division, a media operation ***complies with the statutory control rules*** if, and only if:

(a) no person is in breach of a prohibition in Division 2 or 3 that relates directly or indirectly to the media operation; or
(b) a person is in breach of a prohibition in Division 2 or 3 that relates directly or indirectly to the media operation, but the ACMA has approved the breach under section 67.

Note: Section 67 is about approval of temporary breaches.

## 61AE Shared content test

(1) For the purposes of this Division, a commercial television broadcasting service ***passes the shared content test*** at a particular time in relation to another commercial television broadcasting service if:

(a) the program content of at least 50% of the total number of hours of programs broadcast by the first-mentioned service during daytime/evening hours during the 6-month period ending at that time;

were the same as:

(b) the program content of at least 50% of the total number of hours of programs broadcast by the other service during daytime/evening hours during the 6-month period ending at that time.



Authorised Version C2023C00001 registered 03/01/2023

(2) For the purposes of subsection (1), ignore the following:
  (a) advertising or sponsorship material (whether or not of a commercial kind);
  (b) a promotion for a television program or a television broadcasting service;
  (c) community information material or community promotional material;
  (d) a news break or weather bulletin;
  (e) any other similar material.

### 61AF Overlapping licence areas

Section 51 does not apply to this Division.

Note: Section 51 is about overlapping licence areas.

## Subdivision B—Prohibition of transactions that result in an unacceptable media diversity situation coming into existence etc.

### 61AG Prohibition of transactions that result in an unacceptable media diversity situation coming into existence—offence

A person commits an offence if:
  (a) one or more transactions take place on or after the commencement day; and
  (b) the transactions have the result that:
    (i) an unacceptable media diversity situation comes into existence in relation to the licence area of a commercial radio broadcasting licence; or
    (ii) if an unacceptable media diversity situation already exists in relation to the licence area of a commercial radio broadcasting licence—there is a reduction in the number of points in the licence area; and
  (c) the person was:
    (i) a party to the transactions; or



Authorised Version C2023C00001 registered 03/01/2023

(ii) in a position to prevent the transactions taking place; and

(d) the ACMA has not approved the transactions under section 61AJ.

Penalty: 20,000 penalty units.

## 61AH Prohibition of transactions that result in an unacceptable media diversity situation coming into existence—civil penalty

(1) This section applies if:

(a) one or more transactions take place on or after the commencement day; and

(b) the transactions have the result that:

(i) an unacceptable media diversity situation comes into existence in relation to the licence area of a commercial radio broadcasting licence; or

(ii) if an unacceptable media diversity situation already exists in relation to the licence area of a commercial radio broadcasting licence—there is a reduction in the number of points in the licence area; and

(c) the ACMA has not approved the transactions under section 61AJ.

(2) A person must not be:

(a) a party to the transactions; or

(b) in a position to prevent the transactions taking place.

(3) Subsection (2) is a civil penalty provision.

## 61AJ Prior approval of transactions that result in an unacceptable media diversity situation coming into existence etc.

(1) A person may, before a transaction takes place that would place a person in breach of section 61AG or 61AH, make an application to the ACMA for an approval of the transaction.



Authorised Version C2023C00001 registered 03/01/2023

(2) An application is to be made in accordance with a form approved in writing by the ACMA.

(3) If the ACMA considers that additional information is required before the ACMA can make a decision on an application, the ACMA may, by written notice given to the applicant within 30 days after receiving the application, request the applicant to provide that information.

(4) If, after receiving an application, the ACMA is satisfied that:

(a) if the transaction took place, it would place a person in breach of section 61AG or 61AH; and

(b) either:

(i) the applicant; or

(ii) another person;

will take action, within a period of not longer than 2 years, to ensure that:

(iii) an unacceptable media diversity situation does not exist in relation to the licence area concerned; or

(iv) if an unacceptable media diversity situation already exists in relation to the licence area concerned—there is not a reduction in the number of points in the licence area concerned;

the ACMA may, by written notice given to the applicant:

(c) approve the transaction; and

(d) if subparagraph (b)(i) applies—specify a period within which action must be taken by the applicant to ensure that:

(i) an unacceptable media diversity situation does not exist in relation to the licence area concerned; or

(ii) if an unacceptable media diversity situation already exists in relation to the licence area concerned—there is not a reduction in the number of points in the licence area concerned; and

(e) if subparagraph (b)(ii) applies—inform the applicant accordingly.



Authorised Version C2023C00001 registered 03/01/2023

(5) The period specified in the notice must be at least one month, but not longer than 2 years.

(6) The ACMA may specify in a notice given to an applicant the action that the ACMA considers the applicant must take to ensure that:

(a) an unacceptable media diversity situation does not exist in relation to the licence area concerned; or

(b) if an unacceptable media diversity situation already exists in relation to the licence area concerned—there is not a reduction in the number of points in the licence area concerned.

(7) In deciding whether to approve a transaction, the ACMA may have regard to:

(a) any relevant undertakings that:

(i) have been accepted by the ACMA under section 61AS; and

(ii) have not been withdrawn or cancelled; and

(b) such other matters (if any) as the ACMA considers relevant.

(8) If the ACMA refuses to approve a transaction, the ACMA must give written notice of the refusal to the applicant.

(9) The ACMA must deal with applications under subsection (1) in order of receipt.

(10) If the ACMA receives an application under subsection (1), the ACMA must use its best endeavours to make a decision on the application within 45 days after receipt of the application.

## 61AK Extension of time for compliance with prior approval notice

(1) A person who has been given a notice under section 61AJ may, within 3 months before the end of the period specified in the notice but not less than one month before the end of that period, apply in writing to the ACMA for an extension of that period.



Authorised Version C2023C00001 registered 03/01/2023

(2) The ACMA may grant an extension if it is of the opinion that an extension is appropriate in all the circumstances.

(3) If the ACMA considers that additional information is required before the ACMA can make a decision on an application, the ACMA may, by written notice given to the applicant within 30 days after receiving the application, request the applicant to provide that information.

(4) The ACMA must not grant more than one extension, and the period of any extension must not exceed:

(a) the period originally specified in the notice; or

(b) one year;

whichever is the lesser period.

(5) In deciding whether to grant an extension to an applicant, the ACMA is to have regard to:

(a) the endeavours that the applicant made in attempting to comply with the notice; and

(b) the difficulties that the applicant experienced in attempting to comply with the notice;

but the ACMA must not have regard to any financial disadvantage that compliance with the notice may cause.

(6) If the ACMA does not, within 45 days after:

(a) receiving the application; or

(b) if the ACMA has requested further information—receiving that further information;

extend the period or refuse to extend the period originally specified in the notice, the ACMA is to be taken to have extended that period by:

(c) the period originally specified in the notice; or

(d) one year;

whichever is the lesser period.

(7) If the ACMA refuses to approve an application made under subsection (1), the ACMA must give written notice of the refusal to the applicant.



Authorised Version C2023C00001 registered 03/01/2023

### 61AL Breach of prior approval notice—offence

(1) A person commits an offence if:
  (a) the person has been given a notice under section 61AJ; and
  (b) the person engages in conduct; and
  (c) the person's conduct contravenes a requirement in the notice.

  Penalty: 20,000 penalty units.

(2) A person who contravenes subsection (1) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

### 61AM Breach of prior approval notice—civil penalty

(1) A person must comply with a notice under section 61AJ.

(2) Subsection (1) is a civil penalty provision.

(3) A person who contravenes subsection (1) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any later day) during which the contravention continues.

## Subdivision C—Remedial directions

### 61AN Remedial directions—unacceptable media diversity situation

(1) If, on or after the commencement day, the ACMA is satisfied that an unacceptable media diversity situation exists in relation to the licence area of a commercial radio broadcasting licence, the ACMA may give a person such written directions as the ACMA considers appropriate for the purpose of ensuring that that situation ceases to exist.

(2) The ACMA's directions may include:
  (a) a direction requiring the disposal of shares or interests in shares; or



Authorised Version C2023C00001 registered 03/01/2023

(b) a direction restraining the exercise of any rights attached to:
(i) shares; or
(ii) interests in shares; or
(c) a direction prohibiting or deferring the payment of any sums due to a person in respect of shares, or interests in shares, held by the person; or
(d) a direction that any exercise of rights attached to:
(i) shares; or
(ii) interests in shares;
be disregarded.

(3) Subsection (2) does not limit subsection (1).

(4) The ACMA must not give a direction under subsection (1) if the direction would have the effect of requiring a registered controller of a registered media group to cease to be in a position to exercise control of any of the media operations in the group.

(4A) Subsection (4) does not prevent the ACMA from giving a direction under subsection (1) to a registered controller of a registered media group that would have the effect of requiring the registered controller to cease to be in a position to exercise control of a media operation in the group if:
(a) the registered controller failed to comply with a notice under section 61AJ; and
(b) the notice related, to any extent, to the media operation.

(4B) Subsection (4) does not prevent the ACMA from giving a direction under subsection (1) to a registered controller of a registered media group that would have the effect of requiring the registered controller to cease to be in a position to exercise control of a media operation in the group if:
(a) an approval under section 61AJ was given on the basis that the ACMA was satisfied that a person other than the registered controller would, within a particular period, take action that, to any extent, relates to the media operation; and
(b) the person failed to take the action within that period.



Authorised Version C2023C00001 registered 03/01/2023

(4C) If:

(a) the ACMA made any of the following decisions (the ***original decision***) in connection with a registrable media group in relation to the licence area of a commercial radio broadcasting licence:

(i) a decision to enter the media group in the Register under subsection 61AY(1) or 61AZ(1);

(ii) a decision under subsection 61AZE(1) confirming the entry of the media group in the Register;

(iii) a decision under section 61AZF affirming a decision under subsection 61AZE(1) to confirm the entry of the media group in the Register;

(iv) a decision under section 61AZF revoking a decision under subsection 61AZE(1) to cancel the entry of the media group in the Register; and

(b) any of the following subparagraphs applies:

(i) in the case of a decision under subsection 61AZE(1)—a person applied to the ACMA for a reconsideration of the original decision;

(ii) in the case of a decision under section 61AZF—a person applied to the Administrative Appeals Tribunal for a review of the original decision;

(iii) in any case—a person applied to a court for an order of review, a writ of mandamus or prohibition, or an injunction, in relation to the original decision; and

(c) the original decision was set aside or revoked; and

(d) after the original decision was set aside or revoked, the ACMA entered another registrable media group in relation to that licence area in the Register; and

(e) after that other group was entered in the Register, the Administrative Appeals Tribunal or a court made a decision the effect of which was to restore or affirm the original decision;

subsection (4) does not prevent the ACMA from giving a direction under subsection (1) to a registered controller of that other group that would have the effect of requiring the registered controller to



Authorised Version C2023C00001 registered 03/01/2023

cease to be in a position to exercise control of any media operation in that other group.

(5) A direction under subsection (1) must specify a period within which the person must comply with the direction.

(6) The period must not be longer than 2 years.

(6A) If:

(a) the ACMA gives a direction under subsection (1) in the circumstances referred to in subsection (4C); and

(b) subsection (8) does not apply;

the period specified in the direction must be 2 years.

(7) If the ACMA is satisfied that the person:

(a) acted in good faith; and

(b) took reasonable precautions, and exercised due diligence, to avoid:

(i) the unacceptable media diversity situation coming into existence; or

(ii) if the unacceptable media diversity situation already existed—a reduction in the number of points in the licence area concerned;

the period specified in the direction must be 2 years.

(8) If the ACMA is satisfied that the person acted flagrantly in breach of section 61AG or 61AH, the period specified in the direction must be one month.

(9) The Parliament recognises that, if a period of one month is specified in a direction, the person to whom the direction is given or another person may be required to dispose of shares or interests in shares in a way, or otherwise make arrangements, that could cause the person a considerable financial disadvantage. Such a result is seen as necessary in order to discourage flagrant breaches of sections 61AG and 61AH.



Authorised Version C2023C00001 registered 03/01/2023

## 61AP Extension of time for compliance with remedial direction

(1) A person who has been given a direction under section 61AN may, within 3 months before the end of the period specified in the direction but not less than one month before the end of that period, apply in writing to the ACMA for an extension of that period.

(2) An application for an extension cannot be made if the period specified in the direction was one month.

(3) In the case of a direction under section 61AN, the ACMA may grant an extension if it is of the opinion that:

(a) an unacceptable media diversity situation is likely to cease to exist in the licence area concerned within 3 months after the end of the period specified in the direction under section 61AN; and

(b) the applicant acted in good faith; and

(c) an extension is appropriate in all the circumstances.

(4) If the ACMA considers that additional information is required before the ACMA can make a decision on an application, the ACMA may, by written notice given to the applicant within 30 days after receiving the application, request the applicant to provide that information.

(5) The ACMA must not grant more than one extension, and the period of any extension must not exceed 3 months.

(6) In deciding whether to grant an extension to a person, the ACMA is to have regard to:

(a) the endeavours that the applicant made in attempting to comply with the direction; and

(b) the difficulties experienced by the applicant in attempting to comply with the direction; and

(c) the seriousness of the situation that led to the giving of the direction under section 61AN;

but the ACMA must not have regard to any financial disadvantage that compliance with the direction may cause.



Authorised Version C2023C00001 registered 03/01/2023

(7) If the ACMA does not, within 45 days after:
  (a) receiving the application; or
  (b) if the ACMA has requested further information—receiving that further information;

extend the period or refuse to extend the period originally specified in the direction, the ACMA is to be taken to have extended that period by 3 months.

(8) If the ACMA refuses to approve an application made under subsection (1), the ACMA must give written notice of the refusal to the applicant.

## 61AQ Breach of remedial direction—offence

(1) A person commits an offence if:
  (a) the person has been given a direction under section 61AN; and
  (b) the person engages in conduct; and
  (c) the person's conduct contravenes a requirement in the direction.

Penalty: 20,000 penalty units.

(2) A person who contravenes subsection (1) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

## 61AR Breach of remedial direction—civil penalty

(1) A person must comply with a direction under section 61AN.

(2) Subsection (1) is a civil penalty provision.

(3) A person who contravenes subsection (1) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any later day) during which the contravention continues.



Authorised Version C2023C00001 registered 03/01/2023

## Subdivision D—Enforceable undertakings

### 61AS Acceptance of undertakings

(1) The ACMA may accept any of the following undertakings:

(a) a written undertaking given by a person that the person will take specified action to ensure that an unacceptable media diversity situation does not exist in relation to the licence area of a commercial radio broadcasting licence;

(b) if an unacceptable media diversity situation already exists in relation to the licence area of a commercial radio broadcasting licence—a written undertaking given by a person that the person will take specified action to ensure that there is not a reduction in the number of points in the licence area.

(2) The undertaking must be expressed to be an undertaking under this section.

(3) The person may withdraw or vary the undertaking at any time, but only with the consent of the ACMA.

(4) The ACMA may, by written notice given to the person, cancel the undertaking.

(5) The ACMA may publish the undertaking on its website.

### 61AT Enforcement of undertakings

(1) If:

(a) a person has given an undertaking under section 61AS; and

(b) the undertaking has not been withdrawn or cancelled; and

(c) the ACMA considers that the person has breached the undertaking;

the ACMA may apply to the Federal Court for an order under subsection (2).

(2) If the Federal Court is satisfied that the person has breached the undertaking, the court may make any or all of the following orders:



Authorised Version C2023C00001 registered 03/01/2023

(a) an order directing the person to comply with the undertaking;
(b) an order directing the person to pay to the ACMA, on behalf of the Commonwealth, an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
(c) any order that the court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
(d) any other order that the court considers appropriate.

## Subdivision E—Register of Controlled Media Groups

### 61AU Register of Controlled Media Groups

(1) The ACMA is to maintain a register, to be known as the Register of Controlled Media Groups.

(2) The Register is to be maintained by electronic means.

(3) The Register is to be made available for inspection on the internet.

(4) The Register is not a legislative instrument.

(5) The ACMA must begin to comply with subsection (1) as soon as practicable after the start of 1 February 2007.

### 61AV How a media group is to be entered in the Register

(1) For the purposes of this Subdivision, the ACMA is to enter a media group in the Register by entering in the Register, under a heading for the group:
(a) the names of the media operations in the group; and
(b) the name of the controller, or the names of each of the controllers, of the media operations in the group.

(2) A media group is to be identified in the Register by a unique number assigned by the ACMA.



Authorised Version C2023C00001 registered 03/01/2023

## 61AW Explanatory notes may be included in the Register

(1) The ACMA may include explanatory notes in the Register.

(2) Explanatory notes do not form part of a media group's entry in the Register.

## 61AX Continuity of media group

(1) For the purposes of this Subdivision, a change in the controller, or any of the controllers, of a media group does not affect the continuity of the group.

(2) For the purposes of this Subdivision, a change in the composition of the media operations in a media group results in the group ceasing to exist.

(3) However, the rule in subsection (2) does not apply to a change in the composition of the media operations in a media group if:

(a) one or more media operations cease to be in the group; and

(b) at least 2 media operations remain in the group; and

(c) there is no increase in the number of media operations that remain in the group.

## 61AY Initial registration of media groups

(1) If the ACMA is satisfied that a particular media group was a registrable media group in relation to the licence area of a commercial radio broadcasting licence at the start of 1 February 2007, the ACMA must enter the group in the Register.

(2) For the purposes of subsection (1), the ACMA may rely on one or more notifications given, or purportedly given, under Division 6 on or after 1 February 2007.

(3) If the ACMA relies on a notification or notifications given, or purportedly given, under Division 6, the ACMA must make the relevant entry within 2 business days after receiving the notification or the last of the notifications.



Authorised Version C2023C00001 registered 03/01/2023

(4) If the ACMA makes an entry under subsection (1), the ACMA is to include in the Register a note to the effect that the entry is unconfirmed.

(5) An entry under subsection (1) is taken to have been made at the start of 1 February 2007.

## 61AZ Registration of newly-formed media group

(1) If:

(a) the ACMA is satisfied that:

(i) a registrable media group has come into existence on or after 1 February 2007; and

(ii) the media group is not already entered in the Register; and

(b) the ACMA is satisfied that the coming into existence of the media group does not have the result that:

(i) an unacceptable media diversity situation comes into existence in relation to the licence area of a commercial radio broadcasting licence; or

(ii) if an unacceptable media diversity situation already exists in relation to the licence area of a commercial radio broadcasting licence—there is a reduction in the number of points in the licence area;

the ACMA must enter the group in the Register.

(2) For the purposes of subsection (1), the ACMA may rely on one or more notifications given, or purportedly given, under Division 6 on or after 1 February 2007.

(3) If the ACMA relies on a notification or notifications given, or purportedly given, under Division 6, the ACMA must make the relevant entry within 2 business days after receiving the notification or the last of the notifications.

(4) If the ACMA makes an entry under subsection (1), the ACMA is to include in the Register a note to the effect that the entry is unconfirmed.



Authorised Version C2023C00001 registered 03/01/2023

*Register frozen while ACMA reconsideration is pending or AAT/court proceedings are pending*

(5) If:

(a) the ACMA makes a decision under this Subdivision in connection with a registrable media group in relation to the licence area of a commercial radio broadcasting licence; and

(b) any of the following subparagraphs applies:

(i) in the case of a decision under subsection 61AZE(1)—a person applies to the ACMA for a reconsideration of the decision;

(ii) in the case of a decision under section 61AZF—a person applies to the Administrative Appeals Tribunal for a review of the decision;

(iii) in any case—a person applies to a court for an order of review, a writ of mandamus or prohibition, or an injunction, in relation to the decision;

then:

(c) despite subsection (1), the ACMA must not enter any other registrable media group in relation to that licence area in the Register under that subsection during the period (the ***pending period***) when that application has not been finalised unless the ACMA is satisfied that, assuming that the decision were not to be set aside or revoked, the coming into existence of the media group does not have the result that:

(i) an unacceptable media diversity situation comes into existence in relation to the licence area of a commercial radio broadcasting licence; or

(ii) if an unacceptable media diversity situation already exists in relation to the licence area of a commercial radio broadcasting licence—there is a reduction in the number of points in the licence area; and

(d) if the ACMA is satisfied that another registrable media group in relation to that licence area has come into existence during the pending period—subsection (3) has effect, in relation to the other registrable media group, as if the relevant notification, or the last of the relevant notifications, as the



Authorised Version C2023C00001 registered 03/01/2023

case may be, had been received on the first day after the end of the pending period.

(6) For the purposes of subsection (5), an application for reconsideration of a decision is taken not to have been finalised during the period of 28 days beginning on:

(a) if, because of the operation of subsection 61AZF(9), the decision is taken to be affirmed—the day on which the decision is taken to have been affirmed; or

(b) in any other case—the day on which the decision on the reconsideration is notified to the person concerned.

(7) For the purposes of subsection (5), if:

(a) a person applied to the Administrative Appeals Tribunal for a review of a decision; and

(b) the Administrative Appeals Tribunal makes a decision on the application;

the application is taken not to have been finalised during the period of 28 days beginning on the day on which the decision mentioned in paragraph (b) is made.

(8) For the purposes of subsection (5), if:

(a) a person applied to the Administrative Appeals Tribunal for a review of a decision; and

(b) the Administrative Appeals Tribunal made a decision on the application; and

(c) a person appeals from the decision to the Federal Court; and

(d) the Court makes a decision on the appeal;

the application is taken not to have been finalised during the period of 28 days beginning on the day on which the decision mentioned in paragraph (d) is made.

(9) For the purposes of subsection (5), if:

(a) a person applied to a court for an order of review, a writ of mandamus or prohibition, or an injunction, in relation to a decision; and

(b) the court makes a decision on the application;



Authorised Version C2023C00001 registered 03/01/2023

the application is taken not to have been finalised during the period of 28 days beginning on the day on which the decision mentioned in paragraph (b) is made.

(10) For the purposes of subsection (5), if:

(a) a person applied to a court for an order of review, a writ of mandamus or prohibition, or an injunction, in relation to a decision; and

(b) the court made a decision on the application; and

(c) the decision became the subject of an appeal; and

(d) the court or another court makes a decision on the appeal; and

(e) the decision mentioned in paragraph (d) could be the subject of an appeal;

the application is taken not to have been finalised during the period of 28 days beginning on the day on which the decision mentioned in paragraph (d) is made.

(11) The regulations may provide that, in specified circumstances, an application is taken, for the purposes of subsection (5), not to have been finalised during a period ascertained in accordance with the regulations.

(12) The regulations may extend the 28-day period referred to in subsection (6), (7), (8), (9) or (10).

## 61AZA De-registration of media group that has ceased to exist

(1) If the ACMA is satisfied that a registered media group has ceased to exist on or after 1 February 2007, the ACMA must remove the group's entry from the Register.

(2) For the purposes of subsection (1), the ACMA may rely on one or more notifications given, or purportedly given, under Division 6 on or after 1 February 2007.

(3) If the ACMA relies on a notification or notifications given, or purportedly given, under Division 6, the ACMA must remove the



Authorised Version C2023C00001 registered 03/01/2023

relevant entry within 2 business days after receiving the notification or the last of the notifications.

(4) If, under subsection (1), the ACMA removes a group's entry from the Register, the ACMA must include in the Register a note to the effect that the removal is unconfirmed.

## 61AZB Registration of change of controller of registered media group

(1) If the ACMA is satisfied that:

(a) a person who is not a registered controller of a registered media group has become a controller of the group on or after 1 February 2007; or

(b) a registered controller of a registered media group has ceased to be a controller of the group on or after 1 February 2007;

the ACMA must:

(c) if paragraph (a) applies—alter the group's entry in the Register by adding the name of the controller concerned; or

(d) if paragraph (b) applies—alter the group's entry in the Register by omitting the name of the controller concerned.

(2) For the purposes of subsection (1), the ACMA may rely on one or more notifications given, or purportedly given, under Division 6 on or after 1 February 2007.

(3) If the ACMA relies on a notification or notifications given, or purportedly given, under Division 6, the ACMA must make the relevant alteration within 2 business days after receiving the notification or the last of the notifications.

(4) If the ACMA makes an alteration under subsection (1), the ACMA must include in the Register a note to the effect that the alteration is unconfirmed.

## 61AZC Registration of change of composition of media group

(1) If the ACMA is satisfied that:



Authorised Version C2023C00001 registered 03/01/2023

(a) one or more of the media operations in a registered media group have ceased to be in that group on or after 1 February 2007; and

(b) the group continues in existence;

the ACMA must alter the group's entry in the Register by omitting the name or names of the media operations referred to in paragraph (a).

(2) For the purposes of subsection (1), the ACMA may rely on one or more notifications given, or purportedly given, under Division 6 on or after 1 February 2007.

(3) If the ACMA relies on a notification or notifications given, or purportedly given, under Division 6, the ACMA must make the relevant alteration within 2 business days after receiving the notification or the last of the notifications.

(4) If the ACMA makes an alteration under subsection (1), the ACMA is to include in the Register a note to the effect that the alteration is unconfirmed.

## 61AZCA ACMA must deal with notifications in order of receipt

(1) For the purposes of sections 61AY, 61AZ, 61AZA, 61AZB and 61AZC, the ACMA must deal with notifications given, or purportedly given, under Division 6 in order of receipt.

(2) Subsection (1) has effect subject to subsection 61AZ(5).

## 61AZD Conditional transactions

*Entry of media group*

(1) If:

(a) a person is a party to a proposed transaction; and

(b) the proposed transaction is subject to the condition that the ACMA enters a proposed media group in the Register; and

(c) the person requests the ACMA to assume, for the purposes of this Subdivision, that the proposed transaction:



Authorised Version C2023C00001 registered 03/01/2023

(i) had been completed; and
(ii) were not subject to that condition; and

(d) the ACMA is satisfied that:
(i) the parties to the proposed transaction are acting in good faith; and
(ii) if the media group were to be entered in the Register on the basis of the assumption mentioned in paragraph (c)—the proposed transaction will be completed within 5 business days after the making of the relevant entry in the Register;

then, for the purposes of this Subdivision, the ACMA may make the assumption mentioned in paragraph (c).

*Removal of entry of media group*

(2) If:
(a) a person is a party to a proposed transaction; and
(b) the proposed transaction is subject to the condition that the ACMA removes a media group's entry from the Register; and
(c) the person requests the ACMA to assume, for the purposes of this Subdivision, that the proposed transaction:
(i) had been completed; and
(ii) were not subject to that condition; and
(d) the ACMA is satisfied that:
(i) the parties to the proposed transaction are acting in good faith; and
(ii) if the media group's entry were to be removed from the Register on the basis of the assumption mentioned in paragraph (c)—the proposed transaction will be completed within 5 business days after the removal of the relevant entry from the Register;

then, for the purposes of this Subdivision, the ACMA may make the assumption mentioned in paragraph (c).



Authorised Version C2023C00001 registered 03/01/2023

*Alteration of entry of media group*

(3) If:

(a) a person is a party to a proposed transaction; and

(b) the proposed transaction is subject to the condition that the ACMA alters a media group's entry in the Register; and

(c) the person requests the ACMA to assume, for the purposes of this Subdivision, that the proposed transaction:

(i) had been completed; and

(ii) were not subject to that condition; and

(d) the ACMA is satisfied that:

(i) the parties to the proposed transaction are acting in good faith; and

(ii) if the media group's entry in the Register were to be altered on the basis of the assumption mentioned in paragraph (c)—the proposed transaction will be completed within 5 business days after the making of the relevant alteration in the Register;

then, for the purposes of this Subdivision, the ACMA may make the assumption mentioned in paragraph (c).

*Requests*

(4) A request under subsection (1), (2) or (3) must be:

(a) in a form approved in writing by the ACMA; and

(b) accompanied by such information as the ACMA requires.

(5) An approved form of a request may provide for verification by statutory declaration of information accompanying requests.

## 61AZE Review and confirmation of entries and alterations etc.

*Review*

(1) If the ACMA:

(a) enters a media group in the Register under subsection 61AY(1) or 61AZ(1); or



Authorised Version C2023C00001 registered 03/01/2023

(b) removes a media group's entry from the Register under subsection 61AZA(1); or

(c) makes an alteration to a media group's entry in the Register under subsection 61AZB(1) or 61AZC(1);

the ACMA must review the entry, removal or alteration, and make a decision:

(d) confirming the relevant entry, removal or alteration; or

(e) cancelling the relevant entry, removal or alteration.

*Confirmation*

(2) If the ACMA confirms the relevant entry, removal or alteration, the ACMA must remove from the Register the note stating that the entry, removal or alteration is unconfirmed.

*Cancellation*

(3) If the ACMA cancels an entry, the ACMA must:

(a) remove the entry from the Register; and

(b) remove from the Register the note stating that the entry is unconfirmed.

(4) If the ACMA cancels the removal of an entry, the ACMA must:

(a) restore the entry to the Register; and

(b) remove from the Register the note stating that the removal is unconfirmed.

(5) If the ACMA cancels an alteration, the ACMA must:

(a) reverse the alteration; and

(b) remove from the Register the note stating that the alteration is unconfirmed.

*ACMA not required to rely on notifications*

(6) To avoid doubt, in exercising its powers under subsection (1), the ACMA is not required to rely on a notification given, or purportedly given, under Division 6.



Authorised Version C2023C00001 registered 03/01/2023

*Conditional transactions*

(7) If:

(a) under subsection (1), the ACMA reviews an entry or alteration; and

(b) the entry or alteration was made on the assumption that a proposed transaction had been completed (see section 61AZD); and

(c) the ACMA is not satisfied that the proposed transaction was completed within 5 business days after the making of the entry or alteration;

the ACMA must make a decision under subsection (1) cancelling the entry or alteration.

(8) If:

(a) under subsection (1), the ACMA reviews a removal of an entry; and

(b) the removal was done on the assumption that a proposed transaction had been completed (see section 61AZD); and

(c) the ACMA is not satisfied that the proposed transaction was completed within 5 business days after the removal;

the ACMA must make a decision under subsection (1) to cancel the removal.

*ACMA may request additional information*

(9) If:

(a) under subsection (1), the ACMA reviews an entry, removal or alteration; and

(b) the ACMA considers that additional information is required before the ACMA can make a decision under subsection (1);

the ACMA may, within 14 days after the relevant entry, removal or alteration, by written notice given to a person, request the person to provide that information.

*Deadline*

(10) If the ACMA does not, within 28 days after:



Authorised Version C2023C00001 registered 03/01/2023

(a) doing whichever of the following is applicable:
(i) entering a media group in the Register under subsection 61AY(1) or 61AZ(1);
(ii) removing a media group's entry from the Register under subsection 61AZA(1);
(iii) making an alteration to a media group's entry in the Register under subsection 61AZB(1) or 61AZC(1); or
(b) if the ACMA has requested further information—receiving that further information;

make a decision under subsection (1):

(c) confirming the relevant entry, removal or alteration; or
(d) cancelling the relevant entry, removal or alteration;

the ACMA is taken to have made a decision under subsection (1) at the end of that 28-day period confirming the relevant entry, removal or alteration.

## 61AZF Reconsideration of decisions

*Applications for reconsideration of decisions*

(1) A person:
(a) whose interests are affected by a decision under subsection 61AZE(1); and
(b) who is dissatisfied with the decision;

may apply to the ACMA for the ACMA to reconsider the decision.

(2) The application must:
(a) be in a form approved in writing by the ACMA; and
(b) set out the reasons for the application.

(3) The application must be made within 7 days after the taking of the action required by subsection 61AZE(2), (3), (4) or (5) to give effect to the decision.

(4) An approved form of an application may provide for verification by statutory declaration of statements in applications.



Authorised Version C2023C00001 registered 03/01/2023

*Reconsideration of decisions—application*

(5) Upon receiving an application under subsection (1), the ACMA must:
  (a) reconsider the decision; and
  (b) affirm or revoke the decision.

(6) The ACMA's decision on reconsideration of a decision has effect as if it had been made under subsection 61AZE(1).

(7) The ACMA must give to the applicant a notice stating its decision on the reconsideration.

*ACMA may request additional information*

(8) If:
  (a) an application is made under subsection (1); and
  (b) the ACMA considers that additional information is required before the ACMA can make a decision under subsection (5);

the ACMA may, within 14 days after receiving the application, by written notice given to:
  (c) the applicant; or
  (d) any other person;

request the applicant or other person to provide that information.

(9) If the ACMA does not, within 28 days after:
  (a) receiving an application under subsection (1); or
  (b) if the ACMA has requested further information—receiving that further information;

make a decision under subsection (5), the ACMA is taken to have made a decision under subsection (5) at the end of that 28-day period affirming the original decision.

*Reconsideration of decisions—ACMA's own initiative*

(10) The ACMA may, at any time:
  (a) reconsider a decision made under subsection 61AZE(1); and
  (b) affirm or revoke the decision.



Authorised Version C2023C00001 registered 03/01/2023

(11) The ACMA's decision on reconsideration of a decision has effect as if it had been made under subsection 61AZE(1).

## 61AZG Corrections of clerical errors or obvious defects

The ACMA may alter the Register for the purposes of correcting a clerical error or an obvious defect in the Register.

## 61AZH Regulations

The regulations may make further provision about the operation of the Register.



Authorised Version C2023C00001 registered 03/01/2023

# Division 5B—Disclosure of cross-media relationships

## 61BA Definitions

In this Division:

***media operation*** means:

(a) a commercial television broadcasting licence; or

(b) a commercial radio broadcasting licence; or

(c) a newspaper that is associated with the licence area of a commercial television broadcasting licence or a commercial radio broadcasting licence.

***prime-time hours*** means the hours:

(a) beginning at 6 am each day or, if another time is prescribed, beginning at that prescribed time each day; and

(b) ending at 10 am on the same day or, if another time is prescribed, ending at that prescribed time on the same day.

***set of media operations*** means:

(a) a commercial television broadcasting licence and a commercial radio broadcasting licence that have the same licence area; or

(b) a commercial television broadcasting licence and a newspaper that is associated with the licence area of the licence; or

(c) a commercial radio broadcasting licence and a newspaper that is associated with the licence area of the licence.

## 61BB Disclosure of cross-media relationship by commercial television broadcasting licensee

*Scope*

(1) This section applies if:



Authorised Version C2023C00001 registered 03/01/2023

(a) a person is in a position to exercise control of each media operation in a set of media operations; and
(b) a commercial television broadcasting licence is in the set; and
(c) the licensee broadcasts matter that is wholly or partly about:
(i) the business affairs of a commercial radio broadcasting licensee whose licence is in the set; or
(ii) the business affairs of the publisher of a newspaper that is in the set.

Note: For ***business affairs***, see section 61BH.

*Requirement to disclose cross-media relationship*

(2) If subparagraph (1)(c)(i) applies, the commercial television broadcasting licensee must also broadcast a statement describing (whether in summary form or otherwise) the relationship between the commercial television broadcasting licensee and the commercial radio broadcasting licensee.

(3) It is sufficient if the statement under subsection (2) is to the effect that there is a cross-media relationship between the commercial television broadcasting licensee and the commercial radio broadcasting licensee.

(4) If subparagraph (1)(c)(ii) applies, the commercial television broadcasting licensee must also broadcast a statement describing (whether in summary form or otherwise) the relationship between the commercial television broadcasting licensee and the publisher of the newspaper.

(5) It is sufficient if the statement under subsection (4) is to the effect that there is a cross-media relationship between the commercial television broadcasting licensee and the publisher of the newspaper.



Authorised Version C2023C00001 registered 03/01/2023

*How statement is to be broadcast*

(6) A statement under subsection (2) or (4) must be broadcast in a way that will adequately bring it to the attention of a reasonable person who may have viewed the broadcast mentioned in paragraph (1)(c).

(7) The regulations may provide that subsection (6) is taken to have been complied with if the statement is broadcast in the manner, and at the time, specified in, or ascertained in accordance with, the regulations.

## 61BC Choice of disclosure method—commercial radio broadcasting licensee

*Notice of choice may be given to the ACMA*

(1) A commercial radio broadcasting licensee may give the ACMA a written notice making a choice that section 61BE apply to the licensee with effect from a Sunday specified in the notice.

Note: If a notice is not given, section 61BD applies to the licensee.

*When notice must be given*

(2) A notice under subsection (1) must be given at least 5 business days before the Sunday specified in the notice.

*Duration of notice*

(3) A notice under subsection (1):
(a) comes into force at the beginning of the Sunday specified in the notice; and
(b) unless sooner revoked, remains in force indefinitely.

*Revocation of notice*

(4) If a notice under subsection (1) is in force in relation to a commercial radio broadcasting licensee, the licensee may, by written notice given to the ACMA, revoke the subsection (1) notice



Authorised Version C2023C00001 registered 03/01/2023

with effect from the end of a Saturday specified in the revocation notice.

(5) A notice under subsection (4) must be given at least 5 business days before the Saturday specified in the notice.

*Notices to be available on the internet*

(6) If a notice is in force under subsection (1), the ACMA must make a copy of the notice available on the internet.

## 61BD Disclosure of cross-media relationship by commercial radio broadcasting licensee—business affairs disclosure method

*Scope*

(1) This section applies if:
  (a) a person is in a position to exercise control of each media operation in a set of media operations; and
  (b) a commercial radio broadcasting licence is in the set; and
  (c) the licensee broadcasts matter that is wholly or partly about:
    (i) the business affairs of a commercial television broadcasting licensee whose licence is in the set; or
    (ii) the business affairs of the publisher of a newspaper that is in the set; and
  (d) a notice under subsection 61BC(1) is not in force in relation to the commercial radio broadcasting licensee.

Note: For ***business affairs***, see section 61BH.

*Requirement to disclose cross-media relationship*

(2) If subparagraph (1)(c)(i) applies, the commercial radio broadcasting licensee must also broadcast a statement describing (whether in summary form or otherwise) the relationship between the commercial radio broadcasting licensee and the commercial television broadcasting licensee.



Authorised Version C2023C00001 registered 03/01/2023

(3) It is sufficient if the statement under subsection (2) is to the effect that there is a cross-media relationship between the commercial radio broadcasting licensee and the commercial television broadcasting licensee.

(4) If subparagraph (1)(c)(ii) applies, the commercial radio broadcasting licensee must also broadcast a statement describing (whether in summary form or otherwise) the relationship between the commercial radio broadcasting licensee and the publisher of the newspaper.

(5) It is sufficient if the statement under subsection (4) is to the effect that there is a cross-media relationship between the commercial radio broadcasting licensee and the publisher of the newspaper.

*How statement is to be broadcast*

(6) A statement under subsection (2) or (4) must be broadcast in a way that will adequately bring it to the attention of a reasonable person who may have listened to the broadcast mentioned in paragraph (1)(c).

(7) The regulations may provide that subsection (6) is taken to have been complied with if the statement is broadcast in the manner, and at the time, specified in, or ascertained in accordance with, the regulations.

## 61BE Disclosure of cross-media relationship by commercial radio broadcasting licensee—regular disclosure method

*Scope*

(1) This section applies if:
  (a) a person is in a position to exercise control of each media operation in a set of media operations; and
  (b) a commercial radio broadcasting licence is in the set; and
  (c) a notice under subsection 61BC(1) is in force in relation to the commercial radio broadcasting licensee.



Authorised Version C2023C00001 registered 03/01/2023

*Requirement to disclose cross-media relationship*

(2) If a commercial television broadcasting licence is in the set, the commercial radio broadcasting licensee must regularly broadcast a statement describing (whether in summary form or otherwise) the relationship between the commercial radio broadcasting licensee and the commercial television broadcasting licensee.

(3) It is sufficient if the statement under subsection (2) is to the effect that there is a cross-media relationship between the commercial radio broadcasting licensee and the commercial television broadcasting licensee.

(4) If a newspaper is in the set, the commercial radio broadcasting licensee must regularly broadcast a statement describing (whether in summary form or otherwise) the relationship between the commercial radio broadcasting licensee and the publisher of the newspaper.

(5) It is sufficient if the statement under subsection (4) is to the effect that there is a cross-media relationship between the commercial radio broadcasting licensee and the publisher of the newspaper.

*How statement is to be broadcast*

(6) Statements under subsection (2) or (4) are to be broadcast in a way, and with a frequency, that is reasonably likely to ensure that the audience of the commercial radio broadcasting service during prime-time hours is aware that:

(a) in the case of statements under subsection (2)—there is a relationship between the commercial radio broadcasting licensee and the commercial television broadcasting licensee; or

(b) in the case of statements under subsection (4)—there is a relationship between the commercial radio broadcasting licensee and the publisher of the newspaper.

(7) A commercial radio broadcasting licensee is taken to have complied with subsection (6) if:



Authorised Version C2023C00001 registered 03/01/2023

(a) the statement is broadcast at least once each day during prime-time hours; and
(b) the statement is broadcast in a way that will adequately bring it to the attention of a reasonable person who may have listened to the broadcast of the statement.

(8) The regulations may provide that a commercial radio broadcasting licensee is taken to have complied with subsection (6) if the statement is broadcast in the manner, and at the times, ascertained in accordance with the regulations.

## 61BF Disclosure of cross-media relationship by publisher of newspaper

*Scope*

(1) This section applies if:
(a) a person is in a position to exercise control of each media operation in a set of media operations; and
(b) a newspaper is in the set; and
(c) material published in a particular edition of the newspaper is wholly or partly about:
(i) the business affairs of a commercial television broadcasting licensee whose licence is in the set; or
(ii) the business affairs of a commercial radio broadcasting licensee whose licence is in the set.

Note: For ***business affairs***, see section 61BH.

*Requirement to disclose cross-media relationship*

(2) If subparagraph (1)(c)(i) applies, the publisher of the newspaper must cause to be published in the same edition of the newspaper a statement describing (whether in summary form or otherwise) the relationship between the publisher and the commercial television broadcasting licensee.



Authorised Version C2023C00001 registered 03/01/2023

(3) It is sufficient if the statement under subsection (2) is to the effect that there is a cross-media relationship between the publisher and the commercial television broadcasting licensee.

(4) If subparagraph (1)(c)(ii) applies, the publisher of the newspaper must cause to be published in the same edition of the newspaper a statement describing (whether in summary form or otherwise) the relationship between the publisher and the commercial radio broadcasting licensee.

(5) It is sufficient if the statement under subsection (4) is to the effect that there is a cross-media relationship between the publisher and the commercial radio broadcasting licensee.

*How statement is to be published*

(6) A statement under subsection (2) or (4) must be published in a way that will adequately bring it to the attention of a reasonable person who may have read the material mentioned in paragraph (1)(c).

(7) The regulations may provide that subsection (6) is taken to have been complied with if the statement is published in the manner specified in, or ascertained in accordance with, the regulations.

*Offence*

(8) A person commits an offence if:
  (a) the person is subject to a requirement under this section; and
  (b) the person omits to do an act; and
  (c) the omission breaches the requirement.

Penalty for contravention of this subsection: 2,000 penalty units.

## 61BG Exception—political communication

Sections 61BB, 61BD, 61BE and 61BF do not apply to the extent (if any) that they would infringe any constitutional doctrine of implied freedom of political communication.



Authorised Version C2023C00001 registered 03/01/2023

## 61BH Matter or material about the business affairs of a broadcasting licensee or newspaper publisher

*Matter or material about business affairs—what is included and excluded*

(1) A reference in this Division to ***matter or material that is wholly or partly about the business affairs*** of a commercial television broadcasting licensee, a commercial radio broadcasting licensee or a newspaper publisher:

(a) includes a reference to matter or material, where, having regard to:

(i) the nature of the matter or material; and

(ii) the way in which the matter or material is presented;

it would be reasonable to conclude that the object, or one of the objects, of the broadcast of the matter or the publication of the material, as the case may be, was to:

(iii) promote; or

(iv) otherwise influence members of the public, or of a section of the public, to view, to listen to, or to read;

matter broadcast, or to be broadcast, by the licensee, or material published, or to be published, in the newspaper, as the case may be; and

(b) does not include a reference to:

(i) a journalistic acknowledgment of a program or article as being the source of particular information; or

(ii) advertising matter or advertising material, where a reasonable person would be able to distinguish the advertising matter or advertising material from other matter or material; or

(iii) a program guide (see subsection (2)); or

(iv) exempt matter or exempt material (see subsection (4)).

*Program guide*

(2) For the purposes of this section, a ***program guide*** is matter or material that consists of no more than:



Authorised Version C2023C00001 registered 03/01/2023

(a) a schedule of:
(i) the television programs provided by 2 or more television broadcasting services; or
(ii) the radio programs provided by 2 or more radio broadcasting services; or
(b) a combination of:
(i) a schedule covered by paragraph (a); and
(ii) items of factual information, and/or items of comment, about some or all of the programs in the schedule, where each item is brief;

where the matter or material does not single out one of those services for special promotion.

(3) For the purposes of subsection (2):
(a) a ***television broadcasting service*** is:
(i) a commercial broadcasting service that provides television programs; or
(ii) a national broadcasting service that provides television programs; and
(b) a ***radio broadcasting service*** is:
(i) a commercial broadcasting service that provides radio programs; or
(ii) a national broadcasting service that provides radio programs.

*Exempt matter or exempt material*

(4) The Minister may, by legislative instrument, determine that:
(a) matter included in a specified class of matter is ***exempt matter*** for the purposes of this section; and
(b) material included in a specified class of material is ***exempt material*** for the purposes of this section.

(5) A determination under subsection (4) has effect accordingly.



Authorised Version C2023C00001 registered 03/01/2023

*Advertising*

(6) This section does not, by implication, affect the meaning of the expression ***advertising*** when used in any other provision of this Act.



Authorised Version C2023C00001 registered 03/01/2023

# Division 5C—Local news and information requirements for regional commercial radio broadcasting licensees

## Subdivision A—Introduction

### 61CA Definitions

In this Division:

***benchmark year*** means:

(a) in relation to a regional commercial radio broadcasting licence where a single trigger event has occurred—the 52-week period ending on the Saturday before the day on which the trigger event occurred; and

(b) in relation to a regional commercial radio broadcasting licence where 2 or more trigger events have occurred—the 52-week period ending on the Saturday before the day on which the most recent trigger event occurred.

***community service announcement*** means community information, or community promotional material, for the broadcast of which the licensee does not receive any consideration in cash or in kind.

***controller*** has the same meaning as in Division 5A.

***designated local content program*** means a program about matters of local significance, other than:

(a) a news bulletin; or

(aa) a weather bulletin; or

(b) a community service announcement; or

(c) an emergency warning.

***eligible local news bulletins*** means local news bulletins that meet the following requirements:

(a) the bulletins are broadcast during prime-time hours;



Authorised Version C2023C00001 registered 03/01/2023

(b) the bulletins adequately reflect matters of local significance;
(c) none of the bulletins consists wholly of material that has previously been broadcast in the licence area concerned.

***eligible local weather bulletins*** means local weather bulletins broadcast during prime-time hours.

***emergency service agency*** means:
(a) a police force or service; or
(b) a fire service; or
(c) a body that runs an emergency service specified in the regulations.

***local*** (except in sections 61CR and 61CS) has a meaning affected by section 61CC.

***prime-time hours*** means the hours:
(a) beginning at 6 am each day or, if another time is prescribed, beginning at that prescribed time each day; and
(b) ending at 10 am on the same day or, if another time is prescribed, ending at that prescribed time on the same day.

***Register*** has the same meaning as in Division 5A.

***registrable media group*** has the same meaning as in Division 5A.

***trigger event*** has the meaning given by section 61CB.

***weather bulletin*** means a weather bulletin that is transmitted:
(a) as a stand-alone bulletin; or
(b) in conjunction with a news bulletin.

***week*** means a 7-day period that begins on a Sunday.

## 61CAA This Division does not apply in relation to certain licences

This Division does not apply in relation to:
(a) a remote area service radio licence; or
(b) a regional racing service radio licence.



Authorised Version C2023C00001 registered 03/01/2023

Note: This Division does not apply to a regional commercial radio broadcasting licence allocated under subsection 40(1): see section 50A.

## 61CB Trigger event

*Transfer of licence*

(1) For the purposes of this Division, if:
(a) a regional commercial radio broadcasting licence is held by a person; and
(b) the person transfers the licence to another person; and
(c) the transfer occurred before the commencement of this paragraph;
the transfer of the licence is a ***trigger event*** for the licence.

*Change in control of licence*

(1A) For the purposes of this Division, if either of the following events (a ***control event***) happens after the commencement of this subsection:
(a) a person starts to be in a position to exercise control of a regional commercial radio broadcasting licence;
(b) a person ceases to be in a position to exercise control of a regional commercial radio broadcasting licence;
the control event is a ***trigger event*** for the licence.

(1B) Subsection (1A) does not apply to a control event if:
(a) the control event is attributable to a transfer of shares from one person (the ***first person***) to another person (the ***second person***); and
(b) there is no consideration for the transfer; and
(c) the second person is a near relative of the first person.

Note: For ***near relative***, see subsection 6(1).

(1C) Subsection (1A) does not apply to a control event if the control event is attributable to circumstances beyond the control of each



Authorised Version C2023C00001 registered 03/01/2023

person who was, immediately before the control event occurred, in a position to exercise control of the regional commercial radio broadcasting licence concerned.

(1D) The regulations may provide for exemptions from subsection (1A).

*Formation of new registrable media group*

(2) For the purposes of this Division, if:
(a) a registrable media group comes into existence; and
(b) the media group is not already entered in the Register; and
(c) a regional commercial radio broadcasting licence is in the group;

the coming into existence of the group is a ***trigger event*** for the licence.

(2A) Subsection (2) does not apply to a registrable media group that comes into existence after the commencement of this subsection only because the ACMA varies, under section 29, the designation of a licence area.

(2B) Subsection (2) does not apply to a registrable media group that comes into existence after the commencement of this subsection only because the ACMA makes or varies a determination, under section 30, of the licence area population of a licence area.

(2C) The regulations may provide for exemptions from subsection (2).

*Change of controller of registrable media group*

(3) For the purposes of this Division, if:
(a) either:
(i) a person who is not a controller of a registrable media group becomes a controller of the group; or
(ii) a controller of a registrable media group ceases to be a controller of the group; and
(b) a regional commercial radio broadcasting licence is in the group;



Authorised Version C2023C00001 registered 03/01/2023

the change of controller is a ***trigger event*** for the licence.

(4) Subsection (3) does not apply to a change of controller of a registrable media group if the change of controller is attributable to circumstances beyond the control of each person who was, immediately before the change occurred, a controller of the registrable media group.

(5) The regulations may provide for exemptions from subsection (3).

### 61CC What is local?

(1) The ACMA may, by legislative instrument, define what is meant by the expression ***local*** for the purposes of the application of:

(a) this Division (other than sections 61CR and 61CS); or

(b) a specified provision of this Division (other than sections 61CR and 61CS);

to a specified licence area.

(2) In making an instrument under subsection (1), the ACMA must have regard to:

(a) the areas where separate programming is provided; and

(b) such other matters (if any) as the ACMA considers relevant.

Note: Program includes advertising or sponsorship matter—see the definition of ***program*** in subsection 6(1).

## Subdivision B—Minimum service standards for local news and information

### 61CD Licensee must meet minimum service standards for local news and information

(1) If a trigger event for a regional commercial radio broadcasting licence has occurred before the commencement of this section, then, after that commencement, the licensee must meet the standards mentioned in subsection (3).



Authorised Version C2023C00001 registered 03/01/2023

(2) If a trigger event for a regional commercial radio broadcasting licence occurs after the commencement of this section, then, after the occurrence of the trigger event, the licensee must meet the standards mentioned in subsection (3).

(3) The standards are as follows:

(a) minimum business day service standards for local news;

(b) minimum weekly service standards for local news;

(c) minimum business day service standards for local weather;

(d) minimum weekly service standards for local community service announcements;

(e) minimum weekly service standards for emergency warnings;

(f) if a declaration is in force under subsection 61CE(10)—minimum business day service standards for designated local content programs.

*Local content exemption period*

(4) A regional commercial radio broadcasting licensee is not required to meet any of the following standards:

(a) minimum business day service standards for local news;

(b) minimum business day service standards for local weather;

(c) if a declaration is in force under subsection 61CE(10)—minimum business day service standards for designated local content programs;

on a business day included in a local content exemption period for the licensee.

(5) A regional commercial radio broadcasting licensee is not required to meet any of the following standards:

(a) minimum weekly service standards for local news;

(b) minimum weekly service standards for local community service announcements;

(c) minimum weekly service standards for emergency warnings;

during a week included in a local content exemption period for the licensee.



Authorised Version C2023C00001 registered 03/01/2023

## 61CE Minimum service standards for local news and information

*Local news*

(1) For the purposes of this Subdivision, a regional commercial radio broadcasting licensee meets the ***minimum business day service standards for local news*** on a particular business day if, on that day, the number of eligible local news bulletins broadcast by the licensee is at least:

(a) the local news target number; or

(b) if the average business-day number of eligible local news bulletins broadcast under the licence during the benchmark year is a number greater than the local news target number—the greater number.

(2) For the purposes of subsection (1), the ***local news target number*** is:

(a) 1; or

(b) if the Minister, by legislative instrument, declares that a greater number is the local news target number—the greater number.

(3) For the purposes of subsection (1), the ***average business-day number of eligible local news bulletins broadcast under the licence during the benchmark year*** is the number calculated using the formula:

$$\frac{\text{Number of eligible local news bulletins broadcast under the licence on business days during the benchmark year}}{\text{Number of business days in the benchmark year}}$$

(4) For the purposes of this Subdivision, a regional commercial radio broadcasting licensee meets the ***minimum weekly service standards for local news*** during a particular week if, during that week, the total duration of eligible local news bulletins broadcast by the licensee is at least 62.5 minutes.



Authorised Version C2023C00001 registered 03/01/2023

*Local weather*

(5) For the purposes of this Subdivision, a regional commercial radio broadcasting licensee meets the ***minimum business day service standards for local weather*** on a particular business day if, on that day, the number of eligible local weather bulletins broadcast by the licensee is at least the local weather target number.

(6) For the purposes of subsection (5), the ***local weather target number*** is:
  (a) 1; or
  (b) if the Minister, by legislative instrument, declares that a greater number is the local weather target number—the greater number.

*Local community service announcements*

(7) For the purposes of this Subdivision, a regional commercial radio broadcasting licensee meets the ***minimum weekly service standards for local community service announcements*** during a particular week if, during that week, the number of local community service announcements broadcast by the licensee is at least the community service target number.

(8) For the purposes of subsection (7), the ***community service target number*** is:
  (a) 1; or
  (b) if the Minister, by legislative instrument, declares that a greater number is the local community service target number—the greater number.

*Emergency warnings*

(9) For the purposes of this Subdivision, a regional commercial radio broadcasting licensee meets the ***minimum weekly service standards for emergency warnings*** during a particular week if:
  (a) on one or more occasions during that week, one or more emergency service agencies asked the licensee to broadcast



Authorised Version C2023C00001 registered 03/01/2023

emergency warnings, and the licensee broadcast those warnings as and when asked to do so by those emergency service agencies; or

(b) there was no occasion during that week when an emergency service agency asked the licensee to broadcast an emergency warning.

*Designated local content programs*

(10) For the purposes of this Subdivision, the Minister may, by legislative instrument, declare that a regional commercial radio broadcasting licence meets the ***minimum business day service standards for designated local content programs*** on a particular business day if, on that day, the licensee meets such requirements in relation to designated local content programs as are specified in the declaration.

## Subdivision C—Local content statements

### 61CF Licensee must prepare and publish local content statements

*Scope*

(1) This section applies if:

(a) both:

(i) a trigger event for a regional commercial radio broadcasting licence has occurred before the commencement of this section; and

(ii) 90 days have passed since the commencement of this section; or

(b) both:

(i) a trigger event for a regional commercial radio broadcasting licence occurs after the commencement of this section; and

(ii) 90 days have passed since the occurrence of the trigger event.



Authorised Version C2023C00001 registered 03/01/2023

*Requirements—local content statement*

(2) For each business day, the licensee of the regional commercial radio broadcasting licence must prepare a statement that:
  (a) identifies the eligible local news bulletin or bulletins to be broadcast by the licensee on that business day; and
  (b) identifies the eligible local weather bulletin or bulletins to be broadcast by the licensee on that business day; and
  (c) contains such other information (if any) as is specified under subsection (4).

(3) A statement prepared under subsection (2) is to be known as a ***local content statement***.

(4) For the purposes of paragraph (2)(c), the ACMA may, by legislative instrument, specify information relating to either or both of the following:
  (a) eligible local news bulletins;
  (b) eligible local weather bulletins.

(5) If the licensee of the regional commercial radio broadcasting licence has prepared a local content statement for a business day, the licensee must:
  (a) make the statement available to the public by:
    (i) publishing the statement on the licensee's website; or
    (ii) providing copies of the statement to any person on request; and
  (b) do so until the end of the 18-month period that began on the business day.

(6) If the licensee of the regional commercial radio broadcasting licence chooses to comply with subsection (5) by providing copies of one or more local content statements to any person on request, the licensee must publish on the licensee's website a notice that states that the licensee will provide copies of those statements to any person on request.



Authorised Version C2023C00001 registered 03/01/2023

(7) If the licensee of the regional commercial radio broadcasting licence has prepared a local content statement, the licensee must retain the statement for at least 18 months

## Subdivision CA—Licensee to inform the ACMA how the licensee will comply with minimum service standards for emergency warnings

### 61CG Licensee to inform the ACMA how the licensee will comply with minimum service standards for emergency warnings

*Scope*

(1) This section applies if:
  (a) both:
    (i) a trigger event for a regional commercial radio broadcasting licence has occurred before the commencement of this section; and
    (ii) 90 days have passed since the commencement of this section; or
  (b) both:
    (i) a trigger event for a regional commercial radio broadcasting licence occurs after the commencement of this section; and
    (ii) 90 days have passed since the occurrence of the trigger event.

*Requirements*

(2) The licensee of the regional commercial radio broadcasting licence must take all reasonable steps to ensure that the ACMA is informed, in writing, how the licensee will comply with subsection 61CE(9) (minimum weekly service standards for emergency warnings).



Authorised Version C2023C00001 registered 03/01/2023

## Subdivision CB—ACMA's information-gathering powers

### 61CH ACMA's information-gathering powers

*Scope*

(1) This section applies to information that is relevant to the operation of Subdivision B.

*Requirement*

(2) The ACMA may, by written notice given to a regional commercial radio broadcasting licensee, require the licensee to:
  (a) give the ACMA any such information; and
  (b) do so within the period, and in the manner, specified in the notice.

*Compliance*

(3) A regional commercial radio broadcasting licensee must comply with a requirement under subsection (2) to the extent that the licensee is capable of doing so.

## Subdivision D—Other local content requirements

### 61CR Minister may direct the ACMA to conduct an investigation about other local content requirements

(1) The Minister may give the ACMA a written direction requiring the ACMA to conduct an investigation under section 170 into:
  (a) whether the ACMA should exercise its powers under section 43 to impose conditions requiring regional commercial radio broadcasting licensees to broadcast programs about matters of local significance; and
  (b) if so, the content of those conditions.

(2) The ACMA must comply with a direction under subsection (1).



Authorised Version C2023C00001 registered 03/01/2023

(3) This section does not limit the powers conferred on the ACMA by section 43 or 170.

(4) This section does not limit the powers conferred on the Minister by section 61CS.

### 61CS Minister may direct the ACMA to impose licence conditions relating to local content

(1) The Minister may give the ACMA a written direction requiring the ACMA to exercise its powers under section 43 to impose conditions requiring regional commercial radio broadcasting licensees to broadcast programs about matters of local significance.

(2) The Minister may give the ACMA a written direction requiring the ACMA to exercise its powers under section 43 to impose one or more specified conditions requiring regional commercial radio broadcasting licensees to broadcast programs about matters of local significance.

(3) The Minister may give the ACMA a written direction requiring the ACMA to exercise its powers under section 43 to impose conditions requiring a specified regional commercial radio broadcasting licensee to broadcast programs about matters of local significance.

(4) The Minister may give the ACMA a written direction requiring the ACMA to exercise its powers under section 43 to impose one or more specified conditions requiring a specified regional commercial radio broadcasting licensee to broadcast programs about matters of local significance.

(5) The ACMA must comply with a direction under subsection (1), (2), (3) or (4).

(6) This section does not limit the powers conferred on the ACMA by section 43.



Authorised Version C2023C00001 registered 03/01/2023

# Division 5D—Local programming requirements for regional commercial television broadcasting licensees

## 61CU Definitions

In this Division:

***combined designated Western Australian commercial television broadcasting licence area*** means the area that consists of the licence areas of the designated Western Australian commercial television broadcasting licences.

***combined designated Western Australian commercial television broadcasting local area*** means the area that consists of the local areas of the designated Western Australian commercial television broadcasting licences.

***designated Western Australian commercial television broadcasting licence*** means a commercial television broadcasting licence for any of the following licence areas:

(a) Geraldton TV1;
(b) Kalgoorlie TV1;
(c) South West and Great Southern TV1.

***eligible period*** has the meaning given by section 61CY.

***local area***: the local programming determination may provide that a specified area is a ***local area*** in relation to a specified regional commercial television broadcasting licence.

Note: See also section 61CYA (modifications relating to designated Western Australian commercial television broadcasting licences).

***local programming determination*** means the determination made under section 61CZ.



Authorised Version C2023C00001 registered 03/01/2023

***material of local significance***, in relation to a local area, has the meaning given by the local programming determination. The definition of ***material of local significance*** must be broad enough to cover news that relates directly to the local area concerned.

Note: See also section 61CYA (modifications relating to designated Western Australian commercial television broadcasting licences).

***points***: see section 61CY.

***regional aggregated commercial television broadcasting licence*** means a commercial television broadcasting licence for any of the following licence areas:

(a) Northern New South Wales TV1;
(b) Southern New South Wales TV1;
(c) Regional Victoria TV1;
(d) Eastern Victoria TV1;
(e) Western Victoria TV1;
(f) Regional Queensland TV1;
(g) Tasmania TV1.

***regional commercial television broadcasting licence*** means:

(a) a regional aggregated commercial television broadcasting licence; or
(b) a regional non-aggregated commercial television broadcasting licence.

***regional non-aggregated commercial television broadcasting licence*** means a commercial television broadcasting licence for any of the following licence areas:

(a) Broken Hill TV1;
(b) Darwin TV1;
(c) Geraldton TV1;
(d) Griffith and MIA TV1;
(e) Kalgoorlie TV1;
(f) Mildura/Sunraysia TV1;
(g) Mount Gambier/South East TV1;



Authorised Version C2023C00001 registered 03/01/2023

(h) Mt Isa TV1;
(i) Remote and Regional WA TV1;
(j) Riverland TV1;
(k) South West and Great Southern TV1;
(l) Spencer Gulf TV1.

***timing period*** has the meaning given by section 61CY.

***trigger event*** has the meaning given by section 61CV.

***week*** means a period of 7 days starting on a Sunday.

## 61CV Trigger event

For the purposes of this Division, if:

(a) a person starts to be in a position to exercise control of a commercial television broadcasting licence; and
(b) immediately after that event:
(i) the person is in a position to exercise control of 2 or more commercial television broadcasting licences; and
(ii) the combined licence area populations of those licences exceed 75% of the population of Australia; and
(iii) at least one of those licences is a regional commercial television broadcasting licence;

that event is a ***trigger event*** for each of those licences that is a regional commercial television broadcasting licence.

## 61CW Local programming requirements for regional aggregated commercial television broadcasting licensees

*Trigger event occurs—ongoing requirements*

(1) If:
(a) a trigger event for a regional aggregated commercial television broadcasting licence occurs on a particular day; and
(b) that event is the first or only trigger event for the licence;



Authorised Version C2023C00001 registered 03/01/2023

the licensee must broadcast, to each local area, material of local significance in order to accumulate at least:

(c) 900 points in each timing period that begins after the end of the period of 6 months beginning on that day; and

(d) 120 points in each week that is included in a timing period covered by paragraph (c).

*Trigger event occurs—transitional requirements*

(2) If:

(a) a trigger event for a regional aggregated commercial television broadcasting licence occurs on a particular day; and

(b) that event is the first or only trigger event for the licence;

the licensee must broadcast, to each local area, material of local significance in order to accumulate at least:

(c) 720 points in each timing period that:

(i) begins before the end of the period of 6 months beginning on that day; and

(ii) does not end before that day; and

(iii) begins after the end of the period of 6 months beginning at the commencement of this subsection; and

(d) 90 points in each week that is included in a timing period covered by paragraph (c).

Note: The *Broadcasting Services (Additional Television Licence Condition) Notice 2014* imposes local programming requirements for a timing period that begins before the end of the period of 6 months beginning at the commencement of this subsection.

*No trigger event has occurred*

(3) If no trigger event for a regional aggregated commercial television broadcasting licence has occurred, the licensee must broadcast, to each local area, material of local significance in order to accumulate at least:



Authorised Version C2023C00001 registered 03/01/2023

(a) 720 points in each timing period that begins after the end of the period of 6 months beginning at the commencement of this subsection; and

(b) 90 points in each week that is included in a timing period covered by paragraph (a).

Note: The *Broadcasting Services (Additional Television Licence Condition) Notice 2014* imposes local programming requirements for a timing period that begins before the end of the period of 6 months beginning at the commencement of this subsection.

## 61CX Local programming requirements for regional non-aggregated commercial television broadcasting licensees

*Trigger event occurs*

(1) If:

(a) a trigger event for a regional non-aggregated commercial television broadcasting licence occurs on a particular day; and

(b) that event is the first or only trigger event for the licence;

the licensee must broadcast, to each local area, material of local significance in order to accumulate at least:

(c) 600 points in each timing period that begins after the end of the period of 6 months beginning on that day; and

(d) 100 points in each week that is included in a timing period covered by paragraph (c).

Note: See also section 61CYA (modifications relating to designated Western Australian commercial television broadcasting licences).

*Exemption—licences granted under section 38A or 38B*

(2) Subsection (1) does not apply to a licence granted under section 38A or 38B.



Authorised Version C2023C00001 registered 03/01/2023

## 61CY Points system

*Eligible periods*

(1) For the purposes of this Division, points are accumulated during the following ***eligible periods***:

(a) from 6:30 am to midnight on Monday to Friday;

(b) from 8:00 am to midnight on Saturday and Sunday.

*Timing periods*

(2) For the purposes of this Division, points are calculated during the following ***timing periods***:

(a) the period of 6 weeks starting on the first Sunday in February in a year;

(b) each subsequent period of 6 weeks until the end of the 42nd week after the first Sunday in February;

(c) the period:

(i) starting at the end of the 42nd week after the first Sunday in February; and

(ii) ending immediately before the first Sunday in February in the following year.

Note 1: A licensee is not able to accumulate points during the period specified in subsection (4).

Note 2: See also subsection (9).

*Points for material of local significance*

(3) Subject to subsections (4) to (8), material of local significance accumulates points in a local area according to the following table.

**Points**

| Item | Material | Points for each minute of material |
|---|---|---|
| 1 | News that:<br>(a) is broadcast during an eligible period by a licensee | 3 |



Authorised Version C2023C00001 registered 03/01/2023

Section 61CY

**Points**

| Item | Material | Points for each minute of material |
|---|---|---|
| | covered by subsection 61CW(1) or 61CX(1); and<br>(b) has not previously been broadcast to the local area during an eligible period; and<br>(c) depicts people, places or things in the local area; and<br>(d) meets such other requirements (if any) as are set out in the local programming determination. | |
| 2 | News that:<br>(a) is broadcast during an eligible period; and<br>(b) has not previously been broadcast to the local area during an eligible period; and<br>(c) relates directly to the local area; and<br>(d) is not covered by item 1. | 2 |
| 3 | Other material that:<br>(a) is broadcast during an eligible period; and<br>(b) except in the case of a community service announcement—has not previously been broadcast to the local area during an eligible period; and<br>(c) relates directly to the local area. | 1 |
| 4 | News that:<br>(a) is broadcast during an eligible period; and<br>(b) has not previously been broadcast to the local area during an eligible period; and<br>(c) relates directly to the licensee's licence area. | 1 |
| 5 | Other material that:<br>(a) is broadcast during an eligible period; and<br>(b) except in the case of a community service announcement—has not previously been broadcast to the local area during an eligible period; and<br>(c) relates directly to the licensee's licence area. | 1 |

Note: See also section 61CYA (modifications relating to designated Western Australian commercial television broadcasting licences).



Authorised Version C2023C00001 registered 03/01/2023

*Limits on material in the timing period starting at the end of the 42nd week*

(4) For the timing period mentioned in paragraph (2)(c), points cannot be accumulated:

(a) for 4 weeks from and including the week of the timing period that includes 15 December; and

(b) for any week between the end of the tenth week of the timing period mentioned in paragraph (2)(c) and the beginning of the timing period mentioned in paragraph (2)(a).

Note: See also subsection (10).

*Limits on material that relates directly to the licensee's licence area*

(5) Except for service licence numbers 104 and 106, not more than 50% of the points accumulated in a local area during a timing period is to be attributable to material that relates directly to the licensee's licence area.

Note: See also section 61CYA (modifications relating to designated Western Australian commercial television broadcasting licences).

(6) For service licence numbers 104 and 106, not more than 50% of the points accumulated in a local area during a timing period is to be attributable to material that relates directly to the combined licence areas of the licensees for service licence numbers 104 and 106.

*Limits on community service announcements*

(7) Points may be accumulated in a local area for:

(a) the first broadcast of a community service announcement in the area; and

(b) not more than 4 repeats of the community service announcement in the area.

Note: See also section 61CYA (modifications relating to designated Western Australian commercial television broadcasting licences).



Authorised Version C2023C00001 registered 03/01/2023

(8) Despite subsection (7), not more than 10% of the points accumulated in a local area during a timing period is to be attributable to material of local significance in the form of community service announcements.

(9) The local programming determination may, with the written consent of the licensee of a regional non-aggregated commercial television broadcasting licence, modify subsection (2) so far as that subsection applies in relation to the licence.

(10) The local programming determination may, with the written consent of the licensee of a regional non-aggregated commercial television broadcasting licence, modify subsection (4) so far as that subsection applies in relation to the licence.

## 61CYA Modifications relating to designated Western Australian commercial television broadcasting licences

*Scope*

(1) This section applies if:

(a) a trigger event for a designated Western Australian commercial television broadcasting licence (the ***relevant licence***) occurs on a particular day; and

(b) that event is the first or only trigger event for the relevant licence; and

(c) immediately before that event, the designated Western Australian commercial television broadcasting licences were under common control; and

(d) a period (the ***relevant period***) satisfies the following conditions:

(i) the period began at the time of that event;

(ii) at all times during the period, the designated Western Australian commercial television broadcasting licences are under common control.

Note: Section 61CYB defines when licences are under common control.



Authorised Version C2023C00001 registered 03/01/2023

*Material of local significance*

(2) During the relevant period, in determining, for the purposes of this Division, whether material is material of local significance in relation to the local area of the relevant licence:

(a) material that relates directly to the combined designated Western Australian commercial television broadcasting local area is taken to be material that relates directly to the local area of the relevant licence; and

(b) material that relates directly to the combined designated Western Australian commercial television broadcasting licence area is taken to be material that relates directly to the licence area of the relevant licence.

*Points system*

(3) During the relevant period, the table in subsection 61CY(3) has effect, in relation to the relevant licence, as if:

(a) a reference in the table to the local area were a reference to the combined designated Western Australian commercial television broadcasting local area; and

(b) a reference in the table to the licensee's licence area were a reference to the combined designated Western Australian commercial television broadcasting licence area.

(4) During the relevant period, the provision of the local programming determination that was made for the purposes of paragraph (d) of item 1 of the table in subsection 61CY(3) has effect, in relation to the relevant licence, as if a reference in that provision to the local area were a reference to the combined designated Western Australian commercial television broadcasting local area.

(5) During the relevant period, subsection 61CY(5) has effect, in relation to the relevant licence, as if a reference in that subsection to the licensee's licence area were a reference to the combined designated Western Australian commercial television broadcasting licence area.



Authorised Version C2023C00001 registered 03/01/2023

(6) During the relevant period, paragraphs 61CY(7)(a) and (b) have effect, in relation to the relevant licence, as if a reference in those paragraphs to the area were a reference to the combined designated Western Australian commercial television broadcasting local area.

## 61CYB When designated Western Australian commercial television broadcasting licences are under common control

(1) For the purposes of section 61CYA, if, at a particular time, a person controls each designated Western Australian commercial television broadcasting licence, the designated Western Australian commercial television broadcasting licences are ***under common control*** at that time.

(2) For the purposes of subsection (1), a person ***controls*** a designated Western Australian commercial television broadcasting licence if, and only if, the person:

(a) holds the licence; or

(b) is in a position to exercise control of the licence.

## 61CZ Local programming determination

(1) The ACMA may, by legislative instrument, make a determination (the ***local programming determination***) prescribing matters required or permitted by this Act to be prescribed by the local programming determination.

(2) The ACMA must take all reasonable steps to ensure that the local programming determination is in force under subsection (1) at all times after the end of the 6-month period that began at the commencement of this section.



Authorised Version C2023C00001 registered 03/01/2023

## 61CZA Record-keeping requirements

*Scope*

(1) This section applies if the licensee of a regional commercial television broadcasting licence is subject to a requirement under section 61CW or 61CX.

*Requirements*

(2) The licensee must:
  (a) make a record, in audiovisual form, of material of local significance that the licensee has broadcast in any of its local areas; and
  (b) retain the record for:
    (i) 30 days after the end of the timing period to which the record relates; or
    (ii) if the ACMA directs the licensee to retain the record for a longer period—that longer period; and
  (c) on request by the ACMA, provide the ACMA with access to the record.

(3) The licensee must comply with any directions by the ACMA about:
  (a) what a record made under subsection (2) must cover; or
  (b) how the record must be made or retained.

## 61CZB Licensee must submit compliance reports

*Scope*

(1) This section applies if:
  (a) a trigger event for a regional commercial television broadcasting licence occurs on a particular day; and
  (b) that event is the first or only trigger event for the licence.



Authorised Version C2023C00001 registered 03/01/2023

*Reports*

(2) The licensee must give to the ACMA:

(a) a report covering the licensee's compliance with the requirements of this Division during the 12-month period (the ***initial reporting period***) beginning immediately after the end of the 6-month period that began on the day the trigger event happened; and

(b) a report covering the licensee's compliance with the requirements of this Division during the 12-month period beginning immediately after the end of the initial reporting period.

*Timing of reports*

(3) The licensee must give a copy of a report under this section to the ACMA within 28 days of the end of the period covered by the report.

*Other requirements*

(4) A report under this section must:

(a) be in a form approved in writing by the ACMA; and

(b) set out such information as the ACMA requires.

## 61CZC Review of local programming requirements

(1) The ACMA must:

(a) conduct a review of the following matters:

(i) the operation of this Division;

(ii) the operation of the local programming determination;

(iii) the operation of paragraph 7(2)(ba) of Schedule 2; and

(b) do so within 30 months after the commencement of this section.

(2) The ACMA must prepare a report of the review under subsection (1).



Authorised Version C2023C00001 registered 03/01/2023

(3) The ACMA must give the report to the Minister.

(4) The Minister must cause copies of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

### 61CZD Minister may direct the ACMA about the exercise of its powers

(1) The Minister may, by legislative instrument, give a direction to the ACMA about the exercise of the powers conferred on the ACMA by this Division (other than section 61CZC).

(2) The ACMA must comply with a direction under subsection (1).



Authorised Version C2023C00001 registered 03/01/2023

## Division 6—Notification provisions

### 63 Requirement to notify changes in control

*Notification by licensee—general*

(1) If a commercial television broadcasting licensee or a commercial radio broadcasting licensee becomes aware that:

(a) a person who was not in a position to exercise control of the licence has become in a position to exercise control of the licence; or

(b) a person who was in a position to control the licence has ceased to be in that position;

the licensee must, within 10 business days after becoming so aware, notify the ACMA in writing of that event.

(2) The details are to be provided in a form approved in writing by the ACMA.

*Notification by publisher of newspaper*

(3) If the publisher of a newspaper that is associated with the licence area of a commercial television broadcasting licence or a commercial radio broadcasting licence becomes aware that:

(a) a person who was not in a position to exercise control of the newspaper has become in a position to exercise control of the newspaper; or

(b) a person who was in a position to control the newspaper has ceased to be in that position;

the publisher of the newspaper must, within 10 business days after becoming so aware, notify the ACMA in writing of that event.

(4) The details are to be provided in a form approved in writing by the ACMA.



Authorised Version C2023C00001 registered 03/01/2023

*Offence*

(5) A person commits an offence if:
  (a) the person is subject to a requirement under subsection (1) or (3); and
  (b) the person omits to do an act; and
  (c) the omission breaches the requirement.

Penalty for contravention of this subsection:
  (a) if the breach relates to a commercial television broadcasting licence or a newspaper—500 penalty units; or
  (b) otherwise—50 penalty units.

## 65A Strict liability offence

An offence against section 63 is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

## 65B Designated infringement notice provision

Section 63 is a designated infringement notice provision.



Authorised Version C2023C00001 registered 03/01/2023

# Division 7—Approval of temporary breaches

## 66 Offence for breaches without approval

(1) If:

(a) a transaction takes place that places a person in breach of a provision of Division 2 or 3; and

(b) the person knew, or ought reasonably to have known, that a result of the transaction would be to place the person in breach of a provision of Division 2 or 3; and

(c) the person was a party to the transaction or was in a position to prevent the transaction taking place; and

(d) the ACMA has not approved the breach under section 67;

the person commits an offence.

Penalty:

(e) if the breach relates to a commercial television broadcasting licence—20,000 penalty units; or

(f) if the breach relates to a commercial radio broadcasting licence—2,000 penalty units.

(1A) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the provision breached was a provision of Division 2 or 3.

(2) A person who breaches subsection (1) commits a separate offence in respect of each day (including a day of a conviction under this subsection or any subsequent day) during which the breach of Division 2 or 3 continues.

(3) A prosecution for an offence under this section against a person in relation to a transaction cannot be commenced if the ACMA has given the person a notice under section 70 in relation to the transaction and the time for compliance with the notice has not expired.



Authorised Version C2023C00001 registered 03/01/2023

## 67 Applications for prior approval of temporary breaches

(1) A person may, before a transaction takes place or an agreement is entered into that would place a person in breach of a provision of Division 2 or 3, make an application to the ACMA for an approval of the breach.

(2) An application is to be made in accordance with a form approved in writing by the ACMA.

(3) If the ACMA considers that additional information is required before the ACMA can make a decision on an application, the ACMA may, by notice in writing given to the applicant within 30 days after receiving the application, request the applicant to provide that information.

(4) If, after receiving an application, the ACMA is satisfied that:

(a) if the transaction took place or the agreement was entered into, it would place a person in breach of a provision of Division 2 or 3; and

(b) the person will take action to ensure that the breach of that provision ceases; and

(c) the breach is incidental to the objectives of the transaction or agreement;

the ACMA may, by notice in writing given to the applicant, approve the breach arising as a result of the transaction or agreement and specify a period during which action must be taken to ensure that the breach ceases, being a period that commences on the day on which the transaction takes place or the agreement is entered into.

(5) The period specified in the notice must be 6 months, one year or 2 years.

(6) The ACMA may specify in a notice the action that the ACMA considers the person is to take so that the person is no longer in breach of the relevant provision.

(7) If the ACMA does not, within 45 days after:



Authorised Version C2023C00001 registered 03/01/2023

(a) receiving the application; or
(b) if the ACMA has requested further information—receiving that further information;

approve or refuse to approve the breach arising as a result of the transaction or agreement, the ACMA is to be taken to have approved the breach and allowed a period of 2 years before which the breach must cease.

## 68 Extension of time for compliance with notice

(1) A person who has been given a notice under section 67 may, within 3 months before the end of the period specified in the notice, apply in writing to the ACMA for an extension of that period.

(2) The ACMA is not required to grant an extension, but may do so if, in its opinion, an extension is appropriate in all the circumstances.

(3) If the ACMA considers that additional information is required before the ACMA can make a decision on an application, the ACMA may, by notice in writing given to the applicant within 30 days after receiving the application, request the applicant to provide that information.

(4) The ACMA must not grant more than one extension, and the period of any extension must not exceed:
(a) the period originally specified in the notice; or
(b) one year;

whichever is the lesser.

(5) In deciding whether to grant an extension to an applicant, the ACMA is to have regard to:
(a) the endeavours that the applicant made in attempting to comply with the notice; and
(b) the difficulties that the applicant experienced in attempting to comply with the notice;

but the ACMA must not have regard to any financial disadvantage that compliance with the notice may cause.



Authorised Version C2023C00001 registered 03/01/2023

(6) If the ACMA does not, within 45 days after:

(a) receiving the application; or

(b) if the ACMA has requested further information—receiving that further information;

extend the period or refuse to extend the period originally specified in the notice, the ACMA is to be taken to have extended that period by:

(c) the period originally specified in the notice; or

(d) one year;

whichever is the lesser.

## 69 Breach of notice under section 67 to constitute an offence

A person who fails to comply with a notice under section 67 commits an offence.

Penalty:

(a) if the breach relates to a commercial television broadcasting licence—20,000 penalty units; or

(b) if the breach relates to a commercial radio broadcasting licence—2,000 penalty units.



Authorised Version C2023C00001 registered 03/01/2023

# Division 8—Action by the ACMA

## 70 Notices by the ACMA

(1) If the ACMA is satisfied that a person is in breach of a provision of Division 2 or 3, the ACMA may, by notice in writing given to:

(a) the person; or

(b) if the person is not the licensee and the breach is one that can be remedied by the licensee—the licensee;

direct the person or the licensee to take action so that the person is no longer in breach of that provision.

(2) The ACMA is not to give a notice to a person under subsection (1) in relation to a breach if an approval under section 67 has been given in respect of the breach and the period specified under that section, or an extension of that period, has not expired.

(3) The notice is to specify a period during which the person must take action to ensure that the person is no longer in that position.

(4) The period must be one month, 6 months, one year or 2 years.

(5) If the ACMA is satisfied that the breach was deliberate and flagrant, the period specified in the notice must be one month.

(6) If the ACMA gives a notice under subsection (1) in respect of a breach that the ACMA had approved under section 67, the ACMA must specify a period of one month in the notice under subsection (1).

(7) If the ACMA is satisfied that the person breached the relevant provision as a result of the actions of other persons none of whom is an associate of the person, a period of one year or 2 years must be specified, but such a period must not be specified in other circumstances.

(8) The Parliament recognises that, if a period of one month is specified in a notice, the person to whom the notice is given or



Authorised Version C2023C00001 registered 03/01/2023

another person may be required to dispose of shares in a way, or otherwise make arrangements, that could cause the person a considerable financial disadvantage. Such a result is seen as necessary in order to discourage deliberate and flagrant breaches of this Part.

## 71 Extension of time for compliance with notice

(1) A person who has been given a notice under section 70 may, within 3 months before the end of the period specified in the notice, apply in writing to the ACMA for an extension of that period.

(2) An application for an extension cannot be made if the period specified in the notice was one month.

(3) The ACMA is not required to grant an extension, but may do so if, in its opinion, an extension is appropriate in all the circumstances.

(4) If the ACMA considers that additional information is required before the ACMA can make a decision on an application, the ACMA may, by notice in writing given to the applicant within 30 days after receiving the application, request the applicant to provide that information.

(5) The ACMA must not grant more than one extension, and the period of any extension must not exceed:

(a) the period originally specified in the notice; or

(b) one year;

whichever is the lesser.

(6) In deciding whether to grant an extension to a person, the ACMA is to have regard to:

(a) the endeavours that the applicant made in attempting to comply with the notice; and

(b) the difficulties experienced by the applicant in attempting to comply with the notice; and

(c) the seriousness of the breach that led to the giving of the notice;



Authorised Version C2023C00001 registered 03/01/2023

but the ACMA must not have regard to any financial disadvantage that compliance with the notice may cause.

(7) If the ACMA does not, within 45 days after:

(a) receiving the application; or

(b) if the ACMA has requested further information—receiving that further information;

extend the period or refuse to extend the period originally specified in the notice, the ACMA is to be taken to have extended that period by:

(c) the period originally specified in the notice; or

(d) one year;

whichever is the lesser.

## 72 Breach of notice under section 70 to constitute an offence

A person who fails to comply with a notice under section 70 commits an offence.

Penalty:

(a) if the breach relates to a commercial television broadcasting licence—20,000 penalty units; or

(b) if the breach relates to a commercial radio broadcasting licence—2,000 penalty units.



Authorised Version C2023C00001 registered 03/01/2023

## Division 9—Special provision for small markets

### 73 Additional licence under section 38A not to result in breach of ownership limits

(1) If an additional licence has been allocated under section 38A to the holder of an existing licence, the existing licence and additional licence are to be treated, for the purposes of this Part, as being only one licence.

(2) This section does not apply to the licences at any time after either of the licences is first held by a different person (whether or not it continues to be held by a different person).

### 73A Additional licence allocated under section 38B not to result in breach of control rules

(1) If an additional licence is allocated under section 38B, then for the purposes of Divisions 2 and 3 of this Part:

(a) the licence is to be disregarded in relation to a person who is in a position to exercise control of that licence at the time it is allocated; and

(b) the licence is to be so disregarded until that person first ceases to be in a position to exercise control of that licence.

(2) If, during the time a licence is disregarded in relation to a person under subsection (1), that person is in a position to exercise control of another person who is in a position to exercise control of the licence, then, for the purposes of Divisions 2 and 3 of this Part, the licence is also to be disregarded during that time in relation to that other person.



Authorised Version C2023C00001 registered 03/01/2023

## Division 10—Prior opinions by the ACMA

### 74 Requests to ACMA to give an opinion on whether a person is in a position to control a licence, a newspaper or a company

(1) A person may apply to the ACMA for an opinion as to whether:

(a) the person is in a position to exercise control of a commercial television broadcasting licence, a commercial radio broadcasting licence, a satellite subscription television broadcasting licence, a newspaper or a company; or

(b) the person would, if a transaction took place or a contract, agreement or arrangement were entered into, being one details of which are given in the application, be in a position to exercise control of a commercial television broadcasting licence, a commercial radio broadcasting licence, a satellite subscription television broadcasting licence, a newspaper or a company.

(2) An application must be in accordance with a form approved in writing by the ACMA, and must state the applicant's opinion as to whether the applicant is, or would be, in a position to exercise control of the commercial television broadcasting licence, the commercial radio broadcasting licence, the satellite subscription television broadcasting licence, the newspaper or the company.

(3) If the ACMA considers that additional information is required before an opinion can be given, the ACMA may, by notice in writing given to the applicant within 30 days after receiving the application, request the applicant to provide that information.

(4) The ACMA must, as soon as practicable after:

(a) receiving the application; or

(b) if the ACMA has requested further information—receiving that further information;

give the applicant, in writing, its opinion as to whether the applicant is in a position to exercise control of the relevant licence, newspaper or company.



Authorised Version C2023C00001 registered 03/01/2023

(5) If the ACMA has given an opinion under this section to a person that the person is not in a position to exercise control of a licence or newspaper, neither the ACMA nor any other Government agency may, while the circumstances relating to the applicant and the licence, a newspaper or a company remain substantially the same as those advised to the ACMA in relation to the application for the opinion, take any action against the person under this Act on the basis that the person is in a position to exercise control of the licence, newspaper or company.

(6) If the ACMA does not, within 45 days after:

(a) receiving the application; or

(b) if the ACMA has requested further information—receiving that further information;

give the applicant, in writing, its opinion as to whether the applicant is in a position to exercise control of the relevant licence, newspaper or company, the ACMA is to be taken to have given an opinion at the end of that period that accords with the applicant's opinion.

(7) The ACMA may charge a fee for providing an opinion under this section.



Authorised Version C2023C00001 registered 03/01/2023

# Division 10A—Register of Foreign Owners of Media Assets

## Subdivision A—Introduction

### 74A Simplified outline of this Division

- The ACMA must maintain a Register of Foreign Owners of Media Assets.
- The Register of Foreign Owners of Media Assets must set out, for each Australian media company, information about each foreign stakeholder in the company.
- Foreign stakeholders must notify the ACMA of their company interests in Australian media companies.

Note: For ***company interests***, see section 6.

### 74B Definitions

In this Division:

***ACMA official*** has the same meaning as in the *Australian Communications and Media Authority Act 2005*.

***Australia***, when used in a geographical sense, includes all the external Territories.

***Australian media company*** means:

(a) a company that holds a commercial television broadcasting licence; or

(b) a company that holds a commercial radio broadcasting licence; or

(c) a company that is:

(i) the publisher of a newspaper that is associated with the licence area of a commercial television broadcasting licence or a commercial radio broadcasting licence; and



Authorised Version C2023C00001 registered 03/01/2023

(ii) a constitutional corporation.

***designated information***, in relation to a person, means:

(a) if the person is an individual:
  (i) the person's date of birth; and
  (ii) the country in which the person is ordinarily resident; and
(b) if the person is a corporation—the country in which the corporation was formed; and
(c) if the person is a trustee of a trust:
  (i) the name of the trust; and
  (ii) the country in which the trust was established; and
(d) if the person is a foreign government investor as the result of the application of paragraph 17(a) of the *Foreign Acquisitions and Takeovers Regulation 2015* to a separate government entity of a foreign country or a part of a foreign country—the foreign country or the part of the foreign country, as the case may be; and
(e) if the person is a foreign government investor wholly or partly as the result of the application of paragraph 17(b), (c), (d) or (e) of the *Foreign Acquisitions and Takeovers Regulation 2015* to a foreign government—the foreign government; and
(f) if the person is a foreign government investor wholly or partly as the result of the application of paragraph 17(b), (c), (d) or (e) of the *Foreign Acquisitions and Takeovers Regulation 2015* to a separate government entity of a foreign country or a part of a foreign country—the foreign country or the part of the foreign country, as the case may be; and
(g) the following contact details:
  (i) the person's address;
  (ii) the person's email address (if any);
  (iii) the person's telephone number (if any).

***foreign government*** has the same meaning as in the *Foreign Acquisitions and Takeovers Act 1975*.



Authorised Version C2023C00001 registered 03/01/2023

***foreign government investor*** has the same meaning as in the *Foreign Acquisitions and Takeovers Act 1975*.

***foreign person*** has the same meaning as in the *Foreign Acquisitions and Takeovers Act 1975*.

***foreign stakeholder***, in relation to an Australian media company, has the meaning given by section 74C.

***initial disclosure period*** means the period of 6 months beginning at the commencement of this Division.

***person*** includes a foreign person.

***separate government entity*** has the same meaning as in the *Foreign Acquisitions and Takeovers Act 1975*.

### 74C Foreign stakeholder

For the purposes of this Division, if a foreign person has company interests in an Australian media company of 2.5% or more, that person is a ***foreign stakeholder*** in that company.

## Subdivision B—Register of Foreign Owners of Media Assets

### 74D Register of Foreign Owners of Media Assets

(1) After the end of the initial disclosure period, the ACMA is to maintain a register, to be known as the Register of Foreign Owners of Media Assets.

(2) The Register of Foreign Owners of Media Assets is to be maintained by electronic means.

(3) The Register of Foreign Owners of Media Assets is to be made available for inspection on the internet.

(4) The Register of Foreign Owners of Media Assets is not a legislative instrument.



Authorised Version C2023C00001 registered 03/01/2023

## 74E Information to be set out in the Register of Foreign Owners of Media Assets

(1) The Register of Foreign Owners of Media Assets must set out, for each Australian media company, the following information about each foreign stakeholder in the company:

(a) the name of the foreign stakeholder;

(b) the foreign stakeholder's company interests in the company;

(c) the method used to determine those company interests;

(d) the reason why the foreign stakeholder is a foreign person;

(e) if the foreign stakeholder is an individual—the country in which the foreign stakeholder is ordinarily resident;

(f) if the foreign stakeholder is a corporation—the country in which the corporation was formed;

(g) if the foreign stakeholder is a trustee of a trust:

(i) the name of the trust; and

(ii) the country in which the trust was established;

(h) if the foreign stakeholder is a foreign government investor as the result of the application of paragraph 17(a) of the *Foreign Acquisitions and Takeovers Regulation 2015* to a separate government entity of a foreign country or a part of a foreign country—the foreign country or the part of the foreign country, as the case may be;

(i) if the foreign stakeholder is a foreign government investor wholly or partly as the result of the application of paragraph 17(b), (c), (d) or (e) of the *Foreign Acquisitions and Takeovers Regulation 2015* to a foreign government—the foreign government;

(j) if the foreign stakeholder is a foreign government investor wholly or partly as the result of the application of paragraph 17(b), (c), (d) or (e) of the *Foreign Acquisitions and Takeovers Regulation 2015* to a separate government entity of a foreign country or a part of a foreign country—the foreign country or the part of the foreign country, as the case may be.



Authorised Version C2023C00001 registered 03/01/2023

(2) Despite subsection (1), the Register of Foreign Owners of Media Assets must not set out particular information if the ACMA is satisfied that disclosure of the information could reasonably be expected to prejudice materially the commercial interests of a person.

## Subdivision C—Notification

### 74F Notification by a person who becomes a foreign stakeholder in an Australian media company

(1) If a person who was not a foreign stakeholder in a particular Australian media company becomes a foreign stakeholder in the company at a particular time, the person must, within 30 days after that time, notify the ACMA in writing of:

(a) the person's name; and

(b) the circumstances that resulted in the person becoming a foreign stakeholder in the company; and

(c) the person's company interests in the company; and

(d) the method used to determine those company interests; and

(e) the reason why the person is a foreign person; and

(f) the designated information relating to the person; and

(g) such other information (if any) relating to the person as is specified under subsection (2).

(2) The ACMA may, by legislative instrument, specify information for the purposes of paragraph (1)(g).

*Civil penalty provision*

(3) Subsection (1) is a civil penalty provision.

(4) A person who contravenes subsection (1) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.



Authorised Version C2023C00001 registered 03/01/2023

*Designated infringement notice provision*

(5) Subsection (1) is a designated infringement notice provision.

*Self-incrimination*

(6) A person is not required to notify information under subsection (1) if the information might tend to incriminate the person or expose the person to a penalty.

## 74G Notification by a person who ceases to be a foreign stakeholder in an Australian media company

(1) If a person who was a foreign stakeholder in an Australian media company has ceased to be a foreign stakeholder in the company, the person must, within 30 days after the cessation, notify the ACMA in writing of:
  (a) the cessation; and
  (b) the circumstances that resulted in the cessation.

*Civil penalty provision*

(2) Subsection (1) is a civil penalty provision.

(3) A person who contravenes subsection (1) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

*Designated infringement notice provision*

(4) Subsection (1) is a designated infringement notice provision.

*Self-incrimination*

(5) A person is not required to notify information under subsection (1) if the information might tend to incriminate the person or expose the person to a penalty.



Authorised Version C2023C00001 registered 03/01/2023

## 74H Notification by a person who is a foreign stakeholder in an Australian media company at the end of a financial year

(1) If, at the end of a financial year, a person is a foreign stakeholder in an Australian media company, the person must, within 30 days after the end of the financial year, notify the ACMA in writing of:
  (a) the person's name; and
  (b) the circumstances that resulted in the person being a foreign stakeholder in the company at the end of the financial year; and
  (c) the person's company interests in the company at the end of the financial year; and
  (d) the method used to determine those company interests; and
  (e) the reason why the person was a foreign person at the end of the financial year; and
  (f) the designated information relating to the person; and
  (g) such other information (if any) relating to the person as is specified under subsection (2).

(2) The ACMA may, by legislative instrument, specify information for the purposes of paragraph (1)(g).

*Civil penalty provision*

(3) Subsection (1) is a civil penalty provision.

(4) A person who contravenes subsection (1) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

*Designated infringement notice provision*

(5) Subsection (1) is a designated infringement notice provision.



Authorised Version C2023C00001 registered 03/01/2023

*Self-incrimination*

(6) A person is not required to notify information under subsection (1) if the information might tend to incriminate the person or expose the person to a penalty.

## 74J Notification by a person who is a foreign stakeholder in an Australian media company at the commencement of this Division

(1) If, at the commencement of this Division, a person is a foreign stakeholder in an Australian media company, the person must, within the initial disclosure period, notify the ACMA in writing of:
  (a) the person's name; and
  (b) the circumstances that resulted in the person being a foreign stakeholder in the company at the commencement of this Division; and
  (c) the person's company interests in the company at the commencement of this Division; and
  (d) the method used to determine those company interests; and
  (e) the reason why the person was a foreign person at the commencement of this Division; and
  (f) the designated information relating to the person; and
  (g) such other information (if any) relating to the person as is specified under subsection (2).

(2) The ACMA may, by legislative instrument, specify information for the purposes of paragraph (1)(g).

*Civil penalty provision*

(3) Subsection (1) is a civil penalty provision.

(4) A person who contravenes subsection (1) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.



Authorised Version C2023C00001 registered 03/01/2023

*Designated infringement notice provision*

(5) Subsection (1) is a designated infringement notice provision.

*Self-incrimination*

(6) A person is not required to notify information under subsection (1) if the information might tend to incriminate the person or expose the person to a penalty.

## 74K Notification by a person who is a foreign stakeholder in an Australian media company—requirement by the ACMA

(1) The ACMA may, by written notice given to a foreign stakeholder in an Australian media company, require the foreign stakeholder to:

(a) notify the ACMA of:

(i) the foreign stakeholder's company interests in the company; and

(ii) the method used to determine those company interests; and

(iii) such other information (if any) relating to the foreign stakeholder as is specified under subsection (2); and

(b) do so within the period specified in the notice.

(2) The ACMA may, by legislative instrument, specify information for the purposes of subparagraph (1)(a)(iii).

(3) A period specified under paragraph (1)(b) must not be shorter than 14 days after the notice is given.

*Civil penalty provision*

(4) Subsection (1) is a civil penalty provision.

(5) A person who contravenes subsection (1) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.



Authorised Version C2023C00001 registered 03/01/2023

*Designated infringement notice provision*

(6) Subsection (1) is a designated infringement notice provision.

*Self-incrimination*

(7) A person is not required to notify information under subsection (1) if the information might tend to incriminate the person or expose the person to a penalty.

## 74L Requirement for executors, administrators and liquidators to give notification

(1) If a person who is required by subsection 74F(1), 74G(1), 74H(1), 74J(1) or 74K(1) to notify information dies before notifying the information, the executor or administrator of the person's estate must notify the information in accordance with the subsection concerned.

(2) If a person who is required by subsection 74F(1), 74G(1), 74H(1), 74J(1) or 74K(1) to notify information is a corporation and is wound up before notifying the information, the liquidator of the corporation must notify the information in accordance with the subsection concerned.

## 74M Person may give the ACMA relevant information

(1) A person may give the ACMA information that is relevant to the performance of the ACMA's functions under this Division.

(2) The information may consist of, or include, personal information (within the meaning of the *Privacy Act 1988*).



Authorised Version C2023C00001 registered 03/01/2023

## Subdivision D—Miscellaneous

### 74N Minister may direct the ACMA about the performance of its functions or the exercise of its powers

(1) The Minister may, by legislative instrument, give the ACMA a direction about the performance of the functions, or the exercise of the powers, conferred on the ACMA by this Division (other than section 74U).

Note: Section 74U requires the ACMA to conduct a review of this Division.

(2) The ACMA must comply with a direction under subsection (1).

### 74P Service of summons, process or notice on corporations incorporated outside Australia

*Scope*

(1) This section applies to:

(a) a summons or process in any proceedings under, or connected with, this Division; or

(b) a notice under any other provision of this Act, so far as that provision relates to this Division;

where:

(c) the summons, process or notice, as the case may be, is required to be served on, or given to, a body corporate incorporated outside Australia; and

(d) the body corporate does not have a registered office or a principal office in Australia; and

(e) the body corporate has an agent in Australia.

*Service*

(2) The summons, process or notice, as the case may be, is taken to have been served on, or given to, the body corporate if it is served on, or given to, the agent.



Authorised Version C2023C00001 registered 03/01/2023

(3) Subsection (2) has effect in addition to section 28A of the *Acts Interpretation Act 1901*.

Note: Section 28A of the *Acts Interpretation Act 1901* deals with the service of documents.

## 74Q Extra-territorial application

This Division extends to acts, omissions, matters and things outside Australia.

## 74R Annual report

(1) As soon as practicable after 30 July next following a financial year, the ACMA must:

(a) prepare a report about the company interests in Australian media companies that were held by foreign stakeholders at the end of the financial year; and

(b) give the report to the Minister.

(2) A report under subsection (1) may include the ACMA's observations about trends relating to the company interests in Australian media companies that are held by foreign stakeholders.

(3) The Minister may cause a copy of a report under subsection (1) to be published on the Department's website.

## 74S Part 13 not limited

This Division does not limit the operation of Part 13 (which confers certain investigative powers on the ACMA).

## 74T Liability for damages

The Commonwealth, the ACMA, or an ACMA official, is not liable to an action or other proceeding for damages for, or in relation to, an act or matter in good faith done or omitted to be done:



Authorised Version C2023C00001 registered 03/01/2023

(a) in the performance or purported performance of any function; or

(b) in the exercise or purported exercise of any power;

conferred on the ACMA by Subdivision B.

### 74U Review of this Division etc.

(1) The ACMA must:

(a) conduct a review of the following matters:

(i) the operation of this Division;

(ii) the operation of the remaining provisions of this Act to the extent to which they relate to this Division;

(iii) whether this Division should be amended;

(iv) whether the remaining provisions of this Act, to the extent to which they relate to this Division, should be amended; and

(b) do so as soon as practicable after the end of the 3-year period that began at the end of the initial disclosure period.

(2) The ACMA must prepare a report of the review under subsection (1).

(3) The ACMA must give the report to the Minister.

(4) The Minister must cause copies of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.



Authorised Version C2023C00001 registered 03/01/2023

## Division 11—Miscellaneous

### 75 Register of matters under this Part

(1) The ACMA is to maintain a Register of:
  (aa) licences granted under section 38A or 38B; and
  (a) notifications under Division 6; and
  (b) approvals given by the ACMA under section 67; and
  (c) extensions granted by the ACMA under section 68; and
  (d) notices given by the ACMA under section 70; and
  (e) extensions granted by the ACMA under section 71.

(2) The ACMA is not to include in the Register an approval under section 67 until the relevant transaction or agreement has taken place or been entered into.

(3) The Register is to be open for public inspection, and a person is entitled to be given a copy of, or an extract from, any entry in the Register.

(4) The ACMA may charge fees for inspections of the Register or for the provision of copies of or extracts from the Register.

(5) The ACMA may supply copies of or extracts from the Register certified by a member, and a copy or extract so certified is admissible in evidence in all courts and proceedings without further proof or production of the original.

### 76 Continuing offences

In order to avoid any doubt, it is declared that section 4K of the *Crimes Act 1914* applies to obligations under this Part to comply with a notice and other obligations under this Part to do things within a particular period.



Authorised Version C2023C00001 registered 03/01/2023

## 77 Part has effect notwithstanding Competition and Consumer Act

The provisions of this Part have effect notwithstanding the *Competition and Consumer Act 2010*.

## 78 Part not to invalidate appointments

Nothing in this Part invalidates an appointment of a person as a director of a company.



Authorised Version C2023C00001 registered 03/01/2023

# Part 6—Community broadcasting licences

## 79 Interpretation

In this Part, ***company*** includes an incorporated association.

## 79A Application

This Part does not apply in relation to community broadcasting licences that are temporary community broadcasting licences.

Note: Part 6A deals with temporary community broadcasting licences.

## 80 Allocation of BSB community broadcasting licences

(1A) The ACMA may decide to allocate one or more community broadcasting licences that are broadcasting services bands licences.

(1) If the ACMA decides under subsection (1A) to allocate one or more community broadcasting licences that are broadcasting services bands licences, the ACMA is to advertise, in a manner determined by the ACMA, for applications from companies that:

(a) are formed in Australia or in an external Territory; and

(b) represent a community interest.

(2) The advertisements are to include:

(a) the date before which applications must be received by the ACMA; and

(b) a statement specifying how details of:

(i) the conditions that are to apply to the licence; and

(ii) the licence area of the licence; and

(iii) any priorities that the Minister has, under subsection 84(1), directed the ACMA to observe in the allocation of that licence or those licences;

can be obtained.



Authorised Version C2023C00001 registered 03/01/2023

(3) Applications must be in accordance with a form approved in writing by the ACMA.

## 81 When licences must not be allocated

(1) A licence is not to be allocated to an applicant if:

(a) in the case of an applicant for a CTV licence—the applicant is not a company limited by guarantee within the meaning of the *Corporations Act 2001*; or

(b) the ACMA decides that subsection 83(2) applies to the applicant.

Note: See also section 96B of the *Radiocommunications Act 1992*, which provides that CTV licences must not be granted to new holders after 30 June 2021.

(2) Paragraph (1)(b) does not require the ACMA to consider the application of subsection 83(2) in relation to an applicant before allocating a licence to the applicant.

## 82 Other community broadcasting licences

(1) The ACMA may allocate to a person, on application in writing by the person, a community broadcasting licence that is not a broadcasting services bands licence.

(1A) Licences under subsection (1) are to be allocated on the basis of one licence per service.

(2) Applications must:

(a) be in accordance with a form approved in writing by the ACMA; and

(b) be accompanied by the application fee determined in writing by the ACMA.

## 83 When persons are regarded as suitable

(1) For the purposes of this Part, a company is a suitable community broadcasting licensee or a suitable applicant for a community



Authorised Version C2023C00001 registered 03/01/2023

broadcasting licence if the ACMA has not decided that subsection (2) applies to the company.

(2) The ACMA may, if it is satisfied that allowing a particular company to provide or continue to provide broadcasting services under a community broadcasting licence would lead to a significant risk of:

(a) an offence against this Act or the regulations being committed; or

(aa) a breach of a civil penalty provision occurring; or

(b) a breach of the conditions of the licence occurring;

decide that this subsection applies to the company.

(3) In deciding whether such a risk exists, the ACMA is to take into account:

(a) the business record of the company; and

(b) the company's record in situations requiring trust and candour; and

(c) the business record of the chief executive and each director and secretary of the applicant; and

(d) the record in situations requiring trust and candour of each such person; and

(e) whether the company, or a person referred to in paragraph (c) or (d), has been convicted of an offence against this Act or the regulations; and

(f) whether a civil penalty order has been made against:

(i) the company; or

(ii) a person referred to in paragraph (c) or (d).

(4) This section does not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).



Authorised Version C2023C00001 registered 03/01/2023

## 84 Allocation of community broadcasting licences

(1) The Minister may give directions to the ACMA to give priority to a particular community interest or interests, whether generally or in a particular licence area, in allocating community licences that are broadcasting services bands licences.

(2) In deciding whether to allocate a community broadcasting licence that is a broadcasting services bands licence to an applicant or to one of a group of applicants, the ACMA is to have regard to:

(a) the extent to which the proposed service or services would meet the existing and perceived future needs of the community within the licence area of the proposed licence; and

(b) the nature and diversity of the interests of that community; and

(ba) in the case of a community radio broadcasting licence—the extent to which the proposed service or services would provide material of local significance; and

(c) the nature and diversity of other broadcasting services (including national broadcasting services) available within that licence area; and

(d) the capacity of the applicant to provide the proposed service or services; and

(e) the undesirability of one person being in a position to exercise control of more than one community broadcasting licence that is a broadcasting services bands licence in the same licence area; and

(f) the undesirability of the Commonwealth, a State or a Territory or a political party being in a position to exercise control of a community broadcasting licence.

(3) For the purposes of paragraph (2)(ba), material is of ***local significance*** if:

(a) it is hosted in the licence area of the proposed licence; or

(b) it is produced in the licence area of the proposed licence; or

(c) it relates to the licence area of the proposed licence.



Authorised Version C2023C00001 registered 03/01/2023

## 84A Designated community radio broadcasting licences to provide analog or digital services

*Licences in force immediately before the commencement of this section*

(1) If a designated community radio broadcasting licence was in force immediately before the commencement of this section, the licence is taken, for the purposes of this Act, to have been allocated as a licence to provide an analog community radio broadcasting service.

*Licences allocated before the digital radio start-up day for the licence area*

(2) If the ACMA allocates a designated community radio broadcasting licence after the commencement of this section but before the digital radio start-up day for the licence area, the licence must be allocated as a licence to provide an analog community radio broadcasting service.

*Licences allocated on or after digital radio start-up day for the licence area*

(3) If the ACMA allocates a designated community radio broadcasting licence on or after the digital radio start-up day for the licence area, the licence must be allocated as:

(a) a licence to provide an analog community radio broadcasting service; or

(b) a licence to provide digital community radio broadcasting services.

*Licence conditions*

(4) Subject to subsection (5), if a designated community radio broadcasting licence is or was allocated as a licence to provide an analog community radio broadcasting service, the licence is subject to the condition that the licensee may only provide an analog community radio broadcasting service under the licence.



Authorised Version C2023C00001 registered 03/01/2023

(5) If:

(a) a designated community radio broadcasting licence was in force immediately before the digital radio start-up day for the licence area; and

(b) the licence authorised the licensee to provide an analog community radio broadcasting service in the licence area;

subsection (4) ceases to apply in relation to the licence at the start of the digital radio start-up day for the licence area.

(6) If a designated community radio broadcasting licence is allocated as a licence to provide digital community radio broadcasting services, the licence is subject to the condition that the licensee may only provide digital community radio broadcasting services under the licence.

## 85 ACMA not required to allocate community broadcasting licence to any applicant

The ACMA is not required to allocate a community broadcasting licence to any applicant.

## 85A Services authorised by designated community radio broadcasting licences

*Licences in force immediately before the commencement of this section*

(1) If:

(a) a designated community radio broadcasting licence was in force immediately before the commencement of this section; and

(b) the licence authorised the licensee to provide an analog community radio broadcasting service in the licence area;

then, during the period:

(c) beginning at the start of the day on which this section commences; and



Authorised Version C2023C00001 registered 03/01/2023

(d) ending immediately before the digital radio start-up day for the licence area;

the licence is taken to authorise the licensee to provide that service in the licence area.

*Licences allocated on or after the commencement of this section*

(2) If:

(a) a designated community radio broadcasting licence is allocated on or after the commencement of this section but before the digital radio start-up day for the licence area; and

(b) the licence is allocated as a licence to provide an analog community radio broadcasting service in the licence area;

then, during the period:

(c) beginning at the start of the day on which the licence is allocated; and

(d) ending immediately before the digital radio start-up day for the licence area;

the licence is taken to authorise the licensee to provide that service in the licence area.

*Licences in force immediately before the digital radio start-up day for the licence area*

(3) If:

(a) a designated community radio broadcasting licence was in force immediately before the digital radio start-up day for the licence area; and

(b) the licence authorised the licensee to provide an analog community radio broadcasting service in the licence area;

then, after the digital radio start-up day for the licence area, the licence is taken to authorise the licensee to provide the following services in the licence area:

(c) the analog community radio broadcasting service;

(d) one or more digital community radio broadcasting services.



Authorised Version C2023C00001 registered 03/01/2023

*Licences allocated on or after digital radio start-up day for the licence area*

(4) If:

(a) a designated community radio broadcasting licence is allocated on or after the digital radio start-up day for the licence area; and

(b) the licence is allocated as a licence to provide an analog community radio broadcasting service in the licence area;

the licence is taken to authorise the licensee to provide that service in the licence area.

(5) If:

(a) a designated community radio broadcasting licence is allocated on or after the digital radio start-up day for the licence area; and

(b) the licence is allocated as a licence to provide digital community radio broadcasting services in the licence area;

the licence is taken to authorise the licensee to provide one or more digital community radio broadcasting services in the licence area.

## 86 Conditions of community broadcasting licences

(1) Each community broadcasting licence is subject to:

(a) the conditions set out in Part 5 of Schedule 2; and

(b) such other conditions as are imposed under section 87.

(2) In addition, CTV licences are subject to such other conditions as are imposed by or under section 87A.

## 87 ACMA may impose additional conditions on community broadcasting licences

(1) The ACMA may, by notice in writing given to a community broadcasting licensee, vary or revoke a condition of the licence or impose an additional condition on the licence.



Authorised Version C2023C00001 registered 03/01/2023

(2) If the ACMA proposes to vary or revoke a condition or to impose a new condition, the ACMA must give to the licensee:
  (a) written notice of its intention; and
  (b) a reasonable opportunity to make representations to the ACMA in relation to the proposed action; and
  (c) publish the proposed changes in the *Gazette*.

(3) This section does not allow the ACMA to vary or revoke a condition set out in Part 5 of Schedule 2.

(4) If the ACMA varies or revokes a condition or imposes a new condition, the ACMA must publish the variation, the fact of the revocation or the new condition, as the case may be, in the *Gazette*.

(5) Action taken under subsection (1) must not be inconsistent with:
  (a) determinations and clarifications under section 19; or
  (b) conditions set out in Part 5 of Schedule 2; or
  (c) if the licence is a CTV licence—any conditions imposed on the licence by or under section 87A.

## 87A Additional conditions on CTV licences

*Policy underlying additional conditions*

(1) It is the intention of the Parliament that services provided under CTV licences be regulated in a manner that causes them not to operate in the same way as commercial television broadcasting services.

*Conditions relating to sale of access to air-time*

(2) Each CTV licence is subject to the condition that the licensee must not sell access to more than 2 hours of air-time in any day to a particular person who operates a business for profit or as part of a profit-making enterprise, unless the person is a company that has a sole or dominant purpose of assisting a person in education or learning.



Authorised Version C2023C00001 registered 03/01/2023

(3) Each CTV licence is subject to the condition that the licensee must not sell access to a combined total of more than 8 hours of air-time in any day to people who operate businesses for profit or as part of profit-making enterprises.

(4) Each CTV licence is subject to the condition that the licensee must not sell access to more than 8 hours of air-time in any day to a particular person.

(5) For the purposes of the conditions imposed by subsections (2), (3) and (4), the sale of access to air-time to any of the following is taken to be the sale of access to air-time to a company:

(a) the sale of access to air-time to any person in a position to exercise control of the company;

(b) the sale of access to air-time to any related body corporate (within the meaning of the *Corporations Act 2001*) of the company.

(6) The ACMA may, by legislative instrument, impose other conditions on all CTV licences relating to sale of access to air-time.

*Conditions relating to other matters*

(7) The ACMA may, by legislative instrument, impose other conditions on all CTV licences, including, but not limited to, conditions relating to:

(a) community access to air-time; or

(b) the governance of CTV licensees (including conditions relating to provisions that the constitution of the licensee must at all times contain); or

(c) the provision of annual reports to the ACMA and the form in which they are to be provided.

*Changes to conditions*

(8) The ACMA may, by legislative instrument, vary or revoke any condition imposed by or under this section.



Authorised Version C2023C00001 registered 03/01/2023

(9) The ACMA must, before imposing, varying or revoking a condition under this section, seek public comment on the proposed condition or the proposed variation or revocation.

(10) Action taken under this section must not be inconsistent with:

(a) determinations and clarifications under section 19; or

(b) conditions set out in Part 5 of Schedule 2.

*Definitions*

(12) In this section:

***access***, in relation to air-time, means the right to select or provide programs to be broadcast during the air-time.

***air-time*** means time available for broadcasting programs on a community broadcasting service.

***sell***, in relation to access to air-time, means enter into any arrangement under which a person receives any consideration in cash or in kind in relation to provision of the access to air-time.

## 87B Special licence condition relating to digital community radio broadcasting services

(1) This section applies to a designated community radio broadcasting licence if the licence authorises the licensee to provide one or more digital community radio broadcasting services.

(2) The licence is subject to the condition that the licensee must not provide a digital community radio broadcasting service under the licence unless:

(a) the service is transmitted using a multiplex transmitter; and

(b) the operation of the multiplex transmitter is authorised by a digital radio multiplex transmitter licence.



Authorised Version C2023C00001 registered 03/01/2023

## 88 Matters to which conditions may relate

(1) Conditions of community broadcasting licences must be relevant to community broadcasting services.

(2) Without limiting the range of conditions that may be imposed, the ACMA may impose a condition on a community broadcasting licensee:

(a) requiring the licensee to comply with a code of practice that is applicable to the licensee; or

(b) designed to ensure that a breach of a condition by the licensee does not recur.

## 89 Duration of community broadcasting licences

A community broadcasting licence:

(a) comes into force on a day determined by the ACMA; and

(b) subject to subsection 90(1E) and Part 10, remains in force for 5 years from that day.

## 90 Applications for renewal of community broadcasting licences

(1) The ACMA may renew a community broadcasting licence if the licensee makes an application for renewal of the licence, in accordance with a form approved in writing by the ACMA.

(1A) Subject to subsection (1C), an application for renewal must be made no earlier than one year before the licence is due to expire, but no later than the earlier of the following times:

(a) 26 weeks before the licence is due to expire;

(b) a time that is notified in writing to the licensee by the ACMA.

(1B) A time that is notified under paragraph (1A)(b) must be at least 4 weeks after the day on which it is notified to the licensee.



Authorised Version C2023C00001 registered 03/01/2023

*Late applications*

(1C) The ACMA may consider a late application for the renewal of a community broadcasting licence if:

(a) the licensee makes the application before the earlier of the following:

(i) the time when the licence is due to expire;

(ii) the time (if any) notified to the licensee by the ACMA under subsection (1CA); and

(b) the application is accompanied by a written statement setting out the licensee's reasons for the lateness of the application; and

(c) the ACMA considers that there are exceptional circumstances that warrant the consideration of the application.

(1CA) The ACMA may, by notice in writing given to a licensee, specify a time after which a late application lodged by the licensee will not be accepted.

(1D) In deciding whether there are exceptional circumstances that warrant the consideration of the application, the ACMA must have regard to:

(a) how late the application is; and

(b) the reasons given by the licensee for the lateness of the application; and

(c) the number of paid staff (if any) employed by the licensee; and

(d) such other matters (if any) as the ACMA considers relevant.

(1E) If:

(a) the ACMA decides, under subsection (1C), to consider a late application for the renewal of a community broadcasting licence; and

(b) the ACMA does not make a decision on the application before the time when the licence is due to expire;

the licence remains in force until the ACMA makes a decision on the application.



Authorised Version C2023C00001 registered 03/01/2023

(1F) If:

(a) the ACMA decides, under subsection (1C), to consider a late application for the renewal of a community broadcasting licence; and

(b) the ACMA does not make a decision on the application within 26 weeks after receiving the application;

the ACMA is taken to have made, at the end of that 26-week period, a decision under section 91 to refuse to renew the licence.

*Notification*

(2) If the ACMA receives an application for renewal, the ACMA must notify in the *Gazette* the fact that the application has been made.

## 91 ACMA may renew community broadcasting licences

(1) Subject to subsection (2), if the ACMA receives an application under section 90, the ACMA may, by notice in writing given to the licensee, renew the licence for:

(a) if:

(i) the ACMA renews the licence after the time when the licence was due to expire; and

(ii) under subsection 90(1E), the licence remained in force until the ACMA made a decision on the application;

the period:

(iii) beginning immediately after the time when the ACMA made a decision on the application; and

(iv) ending at the end of the period of 5 years that began immediately after the time when the licence was due to expire; or

(b) otherwise—the period of 5 years beginning immediately after the time when the licence is due to expire.

(2) The ACMA must refuse to renew a community broadcasting licence if the ACMA decides that subsection 83(2) applies to the licensee.



Authorised Version C2023C00001 registered 03/01/2023

(2A) The ACMA may refuse to renew a community broadcasting licence that is a broadcasting services bands licence if, having regard to the following, the ACMA considers that the licence should not be renewed:

(a) the extent to which the service or services provided under the licence, if renewed, would continue to meet the existing and perceived future needs of the community within the licence area;

(b) the nature and diversity of the interests of that community;

(c) the extent to which the service or services provided under the licence, if renewed, would continue to provide material of local significance;

(d) the nature and diversity of other broadcasting services (including national broadcasting services) available within that licence area;

(e) the capacity of the licensee to continue to provide the service or services;

(f) the undesirability of one person being in a position to exercise control of more than one community broadcasting licence that is a broadcasting services bands licence in the same licence area;

(g) the undesirability of the Commonwealth, a State or a Territory or a political party being in a position to exercise control of a community broadcasting licence.

(3) The ACMA is not required to conduct an investigation or a hearing into whether a licence should be renewed.

## 91A Transfer of community broadcasting licences

*Application for approval of transfer*

(1) A community broadcasting licensee may apply to the ACMA for approval of the transfer of the community broadcasting licence to another person.

(2) Applications must:



Authorised Version C2023C00001 registered 03/01/2023

(a) be in accordance with a form approved in writing by the ACMA; and

(b) be accompanied by the application fee determined in writing by the ACMA.

*Decision about approval of transfer*

(3) After considering an application for approval of the transfer of a community broadcasting licence, the ACMA must, by written notice given to the applicant:

(a) approve the transfer; or

(b) refuse to approve the transfer.

*Criteria*

(4) The ACMA must not approve the transfer of a community broadcasting licence that is a broadcasting services bands licence if:

(a) the proposed transferee is not a company that:

(i) was formed in Australia or in an external Territory; and

(ii) represents a community interest; or

(b) in the case of a transfer of a CTV licence—the proposed transferee is not a company limited by guarantee within the meaning of the *Corporations Act 2001*; or

(c) the ACMA decides that subsection 83(2) applies to the proposed transferee.

(5) Paragraph (4)(c) does not require the ACMA to consider the application of subsection 83(2) in relation to a proposed transferee before approving the transfer of a licence to the proposed transferee.

(6) The ACMA must not approve the transfer of a community broadcasting licence unless the ACMA is satisfied that:

(a) if the licence has not been renewed—the proposed transferee represents the same community interest as the original licensee represented when the licence was allocated; or



Authorised Version C2023C00001 registered 03/01/2023

(b) if the licence has been renewed on one or more occasions—the proposed transferee represents the same community interest as the applicant for renewal represented when the licence was last renewed.

(7) In deciding whether to approve the transfer of a community broadcasting licence, the ACMA must have regard to:

(a) the principle that, except in special circumstances, the transfer should not be approved if consideration has been, or is to be, provided to the applicant in relation to the proposed transfer; and

(b) such other matters (if any) as the ACMA considers relevant.

*Transfer*

(8) If the ACMA has approved the transfer of a community broadcasting licence to a particular person, the community broadcasting licensee may, within 90 days after the approval was given, transfer the community broadcasting licence to the person.

## 92 Surrender of community broadcasting licences

A community broadcasting licensee may, by notice in writing given to the ACMA, surrender the licence.



Authorised Version C2023C00001 registered 03/01/2023

# Part 6A—Temporary community broadcasting licences

## 92A Interpretation

In this Part:

***company*** includes an incorporated association.

***licence period*** means the period of a temporary community broadcasting licence determined by the ACMA under paragraph 92G(1)(c) or varied by the ACMA under section 92J.

***timing conditions*** means the conditions of a temporary community broadcasting licence that:

(a) are about the times in which the licence allows community broadcasting services to be provided; and

(b) are determined by the ACMA under paragraph 92G(1)(b) or varied by the ACMA under section 92J.

## 92B Temporary community broadcasting licences

(1) The ACMA may allocate to a person, on application in writing by the person, a temporary community broadcasting licence.

(2) Applications must be in accordance with a form approved in writing by the ACMA.

## 92C Applicants for temporary community broadcasting licences

(1) The ACMA is not to allocate a temporary community broadcasting licence to an applicant unless the applicant:

(a) is a company that is formed in Australia or in an external Territory; and

(b) represents a community interest.



Authorised Version C2023C00001 registered 03/01/2023

Note: See also section 96B of the *Radiocommunications Act 1992*, which provides that licences for television services under this Part must not be granted to new holders after 30 June 2021.

(2) The ACMA is not to allocate a licence to an applicant if the ACMA decides that subsection 92D(2) applies to the applicant in relation to the licence. However, the ACMA is not required to consider the application of subsection 92D(2) to the applicant before allocating the licence.

(3) The ACMA may refuse to allocate a licence to an applicant if the applicant was a temporary community broadcasting licensee for a period but did not provide community broadcasting services in that period. This subsection does not limit the ACMA's discretion to refuse to allocate a licence.

## 92D When applicants and licensees are regarded as suitable

(1) A company is a ***suitable applicant*** or ***suitable licensee*** in relation to a temporary community broadcasting licence if the ACMA has not decided that subsection (2) applies to the company in relation to the licence.

Note: It is a condition of a temporary community broadcasting licence that the licensee remain a suitable licensee: see paragraph 9(2)(a) of Schedule 2.

(2) The ACMA may, if it is satisfied that allowing a company to provide or continue to provide broadcasting services under a temporary community broadcasting licence would lead to a significant risk of:

(a) an offence against this Act or the regulations being committed; or

(aa) a breach of a civil penalty provision occurring; or

(b) a breach of the conditions of the licence occurring;

decide that this subsection applies to the company in relation to the licence.

(3) In deciding whether such a risk exists, the ACMA is to take into account only:



Authorised Version C2023C00001 registered 03/01/2023

(a) the business record of the company; and
(b) the company's record in situations requiring trust and candour; and
(c) the business record of the chief executive and each director and secretary of the applicant; and
(d) the record in situations requiring trust and candour of each such person; and
(e) whether the company, or a person referred to in paragraph (c) or (d), has been convicted of an offence against this Act or the regulations; and
(f) whether a civil penalty order has been made against:
(i) the company; or
(ii) a person referred to in paragraph (c) or (d).

(4) This section does not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

## 92E Criteria for deciding whether to allocate a licence

(1) In deciding whether to allocate a temporary community broadcasting licence to an applicant or to one of a group of applicants, the ACMA may have regard to:
(a) the undesirability of one person being in a position to exercise control of more than one community broadcasting licence that is a broadcasting services bands licence in the same licence area; and
(b) the undesirability of the Commonwealth, a State or a Territory or a political party being in a position to exercise control of a temporary community broadcasting licence.

(2) In deciding whether to allocate a temporary community broadcasting licence to an applicant or to one of a group of applicants, the ACMA may also have regard to:



Authorised Version C2023C00001 registered 03/01/2023

(a) the extent to which the proposed service would meet the existing and perceived future needs of the community within the licence area of the proposed licence; and

(b) the nature and diversity of the interests of that community; and

(ba) the extent to which the proposed service would provide material of local significance (within the meaning of subsection 84(3)); and

(c) the nature and diversity of other broadcasting services (including national broadcasting services) available within that licence area; and

(d) the capacity of the applicant to provide the proposed service.

## 92F Licences to accord with alternative planning procedures

(1) The ACMA is not to allocate a temporary community broadcasting licence except in accordance with a determination of the ACMA under section 34.

(2) If the ACMA specifies in the determination a maximum number of temporary community broadcasting licences for the purposes of subsection 34(2A), the ACMA is not to allocate a temporary community broadcasting licence if that number would be exceeded.

## 92G Licence area, timing conditions and licence period

(1) Before allocating a temporary community broadcasting licence, the ACMA is to:

(a) designate a particular area in Australia as the licence area of the licence; and

(b) determine the timing conditions of the licence; and

(c) determine a period:

(i) starting on a day determined by the ACMA; and

(ii) ending not later than 12 months after that day;

as the licence period.



Authorised Version C2023C00001 registered 03/01/2023

(2) In determining the timing conditions and licence period, the ACMA is to have regard to:

(a) any other applications for temporary community broadcasting licences in the licence area of the proposed licence; and

(b) any other temporary community broadcasting licences in the licence area of the proposed licence; and

(c) such other matters as the ACMA thinks fit.

## 92H Conditions of temporary community broadcasting licences

Each temporary community broadcasting licence is subject to:

(a) the conditions set out in Part 5 (other than paragraph 9(1)(h)) of Schedule 2; and

(b) the timing conditions; and

(c) such other conditions as are imposed under section 92J.

## 92J ACMA may vary conditions or periods, or impose new conditions

(1) The ACMA may, by notice in writing given to a temporary community broadcasting licensee:

(a) vary or revoke a condition of the licence (including a timing condition); or

(b) impose an additional condition on the licence; or

(c) vary the licence period.

(2) Without limiting subsection (1), the ACMA may impose an additional condition on a licence:

(a) requiring the licensee to comply with a code of practice that is applicable to the licensee; or

(b) designed to ensure that a breach of a condition by the licensee does not recur.

(3) An additional condition of a licence must be relevant to community broadcasting services.



Authorised Version C2023C00001 registered 03/01/2023

(4) If the ACMA proposes to vary or revoke a condition, impose an additional condition or vary the licence period, the ACMA is to give to the licensee:
   (a) written notice of its intention; and
   (b) a reasonable opportunity to make representations to the ACMA in relation to the proposed action.

(5) This section does not allow the ACMA:
   (a) to vary or revoke a condition set out in Part 5 of Schedule 2; or
   (b) to vary or revoke a timing condition so that there are no times in which the licence allows community broadcasting services to be provided; or
   (c) to vary the licence period so that the period is longer than 12 months.

(6) If the ACMA varies or revokes a condition (other than a timing condition), imposes an additional condition or varies the licence period, the ACMA is to publish the fact of the variation, revocation or additional condition in the *Gazette*.

(7) Action taken under subsection (1) must not be inconsistent with:
   (a) determinations and clarifications under section 19; or
   (b) conditions set out in Part 5 (other than paragraph 9(1)(h)) of Schedule 2.

## 92K Duration of temporary community broadcasting licences

Subject to section 92L and Part 10, a temporary community broadcasting licence remains in force for the licence period.

## 92L Surrender of temporary community broadcasting licences

A temporary community broadcasting licensee may, by notice in writing given to the ACMA, surrender the licence.



Authorised Version C2023C00001 registered 03/01/2023

# Part 7—Subscription television broadcasting services

## Division 1—Allocation of subscription television broadcasting licences

### 95 When subscription television broadcasting licence must not be allocated

(1) A subscription television broadcasting licence is not to be allocated to an applicant if:

(a) the applicant is not a company that is registered under Part 2A.2 of the *Corporations Act 2001* and has a share capital; or

(b) the ACMA decides that subsection 98(2) applies to the applicant.

(2) Paragraph (1)(b) does not require the ACMA to consider the application of subsection 98(2) in relation to an applicant before a subscription television broadcasting licence is allocated to the applicant.

### 96 Allocation of other subscription television broadcasting licences

(1) The ACMA may allocate to a person, on application in writing by the person, a subscription television broadcasting licence.

(2) Licences under subsection (1) are to be allocated on the basis of one licence per service.

(4) Applications must:

(a) be in accordance with a form approved in writing by the ACMA; and

(b) be accompanied by the application fee determined by the ACMA.



Authorised Version C2023C00001 registered 03/01/2023

(5) The ACMA must not allocate a subscription television broadcasting licence under this section if the Australian Competition and Consumer Commission has reported, within 30 days after being requested for a report under section 97, that, in the opinion of the Australian Competition and Consumer Commission, the allocation of the licence to the applicant:

(a) would constitute a contravention of section 50 of the *Competition and Consumer Act 2010* if the allocation of the licence were the acquisition by the applicant of an asset of a body corporate; and

(b) would not be authorised under section 88 of that Act if the applicant had applied for such an authorisation.

(6) If a licence is allocated under this section, the ACMA must publish in the *Gazette* the name of the successful applicant.

## 97 Requests to Australian Competition and Consumer Commission

(1) Before a subscription television broadcasting licence is allocated to a person under section 96, the ACMA must request the Australian Competition and Consumer Commission to provide a report under this section.

(2) The report is to advise whether, in the opinion of the Australian Competition and Consumer Commission, the allocation of the licence to the applicant:

(a) would constitute a contravention of section 50 of the *Competition and Consumer Act 2010* if the allocation of the licence were the acquisition by the applicant of an asset of a body corporate; and

(b) would not be authorised under section 88 of that Act if the applicant had applied for such an authorisation.

(3) For the purposes of the consideration of a request by the Australian Competition and Consumer Commission, section 155 of the *Competition and Consumer Act 2010* applies as if the allocation of a licence under this Part were a matter referred to in subsection (1) of that section.



Authorised Version C2023C00001 registered 03/01/2023

## 98 Suitability for allocation of licence

(1) For the purposes of this Part, a company is a suitable subscription television broadcasting licensee or a suitable applicant for a subscription television broadcasting licence if the ACMA has not decided that subsection (2) applies to the person.

(2) The ACMA may, if it is satisfied that allocating a subscription television broadcasting licence to a particular company or allowing a particular company to continue to hold a subscription television broadcasting licence would lead to a significant risk of:

(a) an offence against this Act or the regulations being committed; or

(aa) a breach of a civil penalty provision occurring; or

(b) a breach of the conditions of the licence occurring;

decide that this subsection applies to the company.

(3) In deciding whether such a risk exists, the ACMA is to take into account:

(a) the business record of the company; and

(b) the company's record in situations requiring trust and candour; and

(c) the business record of each person who is, or would be, if a subscription television broadcasting licence were allocated to the applicant, in a position to exercise control of the licence; and

(d) the record in situations requiring trust and candour of each such person; and

(e) whether the company, or a person referred to in paragraph (c) or (d), has been convicted of an offence against this Act or the regulations; and

(f) whether a civil penalty order has been made against:

(i) the company; or

(ii) a person referred to in paragraph (c) or (d).

(4) This section does not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain



Authorised Version C2023C00001 registered 03/01/2023

circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

## 98D Compensation

(1) In this section:

***acquisition of property*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

***just terms*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

(2) If the operation of this Act (other than section 43AA, section 43AB or section 43AC) would result in the acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.

(3) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the Court determines.



Authorised Version C2023C00001 registered 03/01/2023

# Division 2—Conditions of subscription television broadcasting licence

## 99 Conditions applicable to subscription television broadcasting licence

(1) The conditions set out in Part 6 of Schedule 2 apply to the provision by a subscription television broadcasting licensee of a subscription television broadcasting service.

(2) The ACMA may, by notice in writing given to a subscription television broadcasting licensee, specify additional conditions to which the licence is subject or vary or revoke a condition imposed under this subsection.

(4) If the ACMA proposes to impose a new condition or to vary or revoke a condition, the ACMA must:
  (a) give to the licensee written notice of its intention; and
  (b) give to the licensee a reasonable opportunity to make representations to the ACMA in relation to the proposed action; and
  (c) publish the proposed changes in the *Gazette*.

(5) This section does not allow the ACMA to vary or revoke a condition set out in Part 6 of Schedule 2.

(6) If the ACMA varies or revokes a condition or imposes a new condition, the ACMA must publish the variation, the fact of the revocation or the new condition, as the case may be, in the *Gazette*.

(7) Action taken under this section must not be inconsistent with:
  (a) determinations and clarifications under section 19; or
  (b) conditions set out in Part 6 of Schedule 2.



Authorised Version C2023C00001 registered 03/01/2023

## 100 Matters to which conditions may relate

(1) Conditions of a subscription television broadcasting licence must be relevant to subscription television broadcasting services.

(2) Without limiting the range of conditions that may be imposed, the ACMA may impose a condition:

(a) requiring a licensee to comply with a code of practice that is applicable to the licensee; or

(b) designed to ensure that a breach of a condition by a subscription television broadcasting licensee does not recur; or

(c) designed to ensure compliance with the film classification system provided for by the *Classification (Publications, Films and Computer Games) Act 1995*.

(3) The ACMA must impose conditions on satellite subscription television broadcasting licences:

(a) designed to ensure that the domestic reception equipment used by each satellite subscription television broadcasting licensee is accessible by other satellite broadcasting services; and

(b) designed to ensure that each satellite subscription television broadcasting licensee that has a subscriber management system provides access to that system to other satellite subscription television broadcasting licensees at a fair price.

(4) The Minister may direct the ACMA to impose a condition under this section designed to ensure that subscription television broadcasting licensees adequately involve Australian industry in the provision of services under those licences.

(4A) Conditions under subsection (4) may be different for different classes of licensees.

(5) The ACMA must impose a condition on all subscription television broadcasting licences requiring each licensee to make available, as an option, domestic reception equipment on a rental basis.



Authorised Version C2023C00001 registered 03/01/2023

(6) The ACMA must impose a condition on all non-satellite subscription television broadcasting licences requiring that, if a licensee rents domestic reception equipment to a consumer, the rental agreement must allow the consumer to terminate the agreement on giving one month's written notice to the licensee.



Authorised Version C2023C00001 registered 03/01/2023

# Division 2A—Eligible drama expenditure

## Subdivision A—Introduction

### 103A Simplified outline

The following is a simplified outline of this Division:

- This Division requires subscription television broadcasting licensees to ensure the maintenance of minimum levels of expenditure on new ***eligible drama programs***.
- An ***eligible drama program*** is a drama program that is an Australian program, an Australian/New Zealand program, a New Zealand program or an Australian official co-production.
- If a licensee provides a subscription TV drama service, expenditure on new eligible drama programs for each financial year must be at least 10% of total program expenditure.
- If a ***channel provider*** supplies a channel that is televised on a subscription TV drama service, the 10% expenditure requirement is calculated by reference to the expenditure incurred by the channel provider.
- If a channel provider supplies a channel that is televised on a subscription TV drama service and the 10% expenditure requirement is not met for a particular financial year, the shortfall will have to be made up in the next financial year.
- If expenditure on new eligible drama programs for a financial year exceeds the 10% expenditure requirement, the excess expenditure may be carried forward to the next financial year.



Authorised Version C2023C00001 registered 03/01/2023

- Licensees and channel providers are required to lodge annual returns about their program expenditure.

## 103B Definitions

In this Division:

***acquiring***, in relation to a drama program, includes acquiring rights in relation to the program.

***Australian Content Standard*** means:

(a) the *Broadcasting Services (Australian Content) Standard 2005* as in force from time to time; or

(b) if the standard mentioned in paragraph (a) is not in force, but there is in force another standard that is a successor (whether immediate or not) to the standard mentioned in paragraph (a)—that other standard as in force from time to time.

***carry-forward eligible drama expenditure provision*** means:

(a) subsection 103NA(2); or

(b) subsection 103RA(2); or

(c) subsection 103TA(2); or

(d) subsection 103UA(2); or

(e) subsection 103XA(2); or

(f) subsection 103ZAA(2).

***channel*** means a continuous stream of programs.

***channel provider*** has the meaning given by section 103C.

***designated script development expenditure***, in relation to a program, means expenditure incurred in developing the screenplay or a script outline for the program, where:

(a) the program is a drama program; and



Authorised Version C2023C00001 registered 03/01/2023

(b) the expenditure is incurred by a person (the ***first person***) under a contract with another person who is not a director, officer or employee of the first person; and

(c) the writer, or each of the writers, involved in developing the screenplay or script outline is:

(i) a citizen or permanent resident of Australia; or

(ii) a citizen or permanent resident of New Zealand; and

(d) the producer of the program is:

(i) a citizen or permanent resident of Australia; or

(ii) a citizen or permanent resident of New Zealand; and

(e) the expenditure is paid before the commencement of principal photography for the program; and

(f) the expenditure is paid on or after 1 January 2006.

For the purposes of paragraph (d), ***producer*** has the same meaning as in the Australian Content Standard.

***drama program*** means:

(a) a program that has a fully scripted screenplay in which the dramatic elements of character, theme and plot are introduced and developed to form a narrative structure; or

(b) a program that has:

(i) a partially scripted screenplay in which the dramatic elements of character, theme and plot are introduced and developed to form a narrative structure; and

(ii) actors delivering improvised dialogue that is based on a script outline or outlines developed by a writer or writers; or

(c) a program that has actors delivering improvised dialogue that is based on a script outline or outlines:

(i) developed by a writer or writers; and

(ii) in which the dramatic elements of character, theme and plot are introduced and developed to form a narrative structure;

and includes:

(d) a fully scripted sketch comedy program; and



Authorised Version C2023C00001 registered 03/01/2023

(e) an animated drama; and
(f) a dramatised documentary;

but does not include:

(g) a program that involves the incidental use of actors; or
(h) advertising or sponsorship matter (whether or not of a commercial kind).

***eligible drama program*** means:

(a) a drama program that is an Australian program (within the meaning of the Australian Content Standard); or
(b) a drama program that is an Australian/New Zealand program (within the meaning of the Australian Content Standard); or
(c) a drama program that is a New Zealand program (within the meaning of the Australian Content Standard); or
(d) a drama program that is an Australian official co-production (within the meaning of the Australian Content Standard).

***expenditure***, in relation to a program or program material, means:

(a) expenditure incurred in acquiring the program or program material; or
(b) expenditure incurred in producing the program or program material; or
(c) pre-production expenditure incurred in relation to the program or program material; or
(d) expenditure incurred by way of the making of an investment in the program or program material;

and includes nil expenditure.

Note: Section 103H sets out a special rule for non-designated pre-production expenditure.

***financial year*** means:

(a) the financial year beginning on 1 July 1999; or
(b) a later financial year.

***incidental matter*** means:

(a) advertising or sponsorship matter (whether or not of a commercial kind); or



Authorised Version C2023C00001 registered 03/01/2023

(b) a program promotion; or
(c) an announcement; or
(d) a hosting; or
(e) any other interstitial program.

***licensee*** means a subscription television broadcasting licensee.

***new***, in relation to an eligible drama program, has the meaning given by section 103K.

***non-designated pre-production expenditure*** means pre-production expenditure other than designated script development expenditure.

***part-channel provider*** has the meaning given by section 103D.

***part-pass-through provider*** has the meaning given by section 103F.

***pass-through provider*** has the meaning given by section 103E.

***pre-production expenditure***, in relation to a program or program material, means:
(a) expenditure incurred in developing the screenplay or a script outline for the program or program material; or
(b) any other expenditure incurred by way of pre-production costs for the program or program material.

***program material*** does not include advertising or sponsorship matter (whether or not of a commercial kind).

***subscription TV drama service*** means a subscription television broadcasting service devoted predominantly to drama programs.

## 103C Channel providers

For the purposes of this Division, a ***channel provider***, in relation to a subscription TV drama service provided by a licensee, is a person who:
(a) packages a channel (which may include programs produced by the person); and



Authorised Version C2023C00001 registered 03/01/2023

(b) supplies the licensee with the channel; and

(c) carries on a business in Australia, by means of a principal office or of a branch, that involves the supply of the channel;

where, apart from any breaks for the purposes of the transmission of incidental matter, the channel is televised by the licensee on the subscription TV drama service.

## 103D Part-channel providers

For the purposes of this Division, a ***part-channel provider***, in relation to a subscription TV drama service provided by a licensee, is a person who:

(a) assembles a package of programs (which may include programs produced by the person); and

(b) supplies the licensee with the package; and

(c) carries on a business in Australia, by means of a principal office or of a branch, that involves the supply of the package;

where:

(d) the package consists predominantly of drama programs; and

(e) the package constitutes a significant proportion of the program material that is televised by the licensee on the subscription TV drama service; and

(f) there is neither:

(i) a channel provider; nor

(ii) a pass-through provider;

in relation to the subscription TV drama service.

## 103E Pass-through providers

For the purposes of this Division, a ***pass-through provider***, in relation to a subscription TV drama service provided by a licensee, is a person who:

(a) packages a channel (which may include programs produced by the person); and

(b) supplies the licensee with the channel; and



Authorised Version C2023C00001 registered 03/01/2023

(c) does not carry on a business in Australia, by means of a principal office or of a branch, that involves the supply of the channel;

where, apart from any breaks for the purposes of the transmission of incidental matter, the channel is televised by the licensee on the subscription TV drama service.

## 103F Part-pass-through providers

For the purposes of this Division, a ***part-pass-through provider***, in relation to a subscription TV drama service provided by a licensee, is a person who:

(a) assembles a package of programs (which may include programs produced by the person); and

(b) supplies the licensee with the package; and

(c) does not carry on a business in Australia, by means of a principal office or of a branch, that involves the supply of the package;

where:

(d) the package consists predominantly of drama programs; and

(e) the package constitutes a significant proportion of the program material that is televised by the licensee on the subscription TV drama service; and

(f) there is neither:

(i) a channel provider; nor

(ii) a pass-through provider;

in relation to the subscription TV drama service.

## 103G Supply of channel or package

For the purposes of this Division, a person is taken to have supplied a channel, or a package of programs, to a licensee if the channel or package, as the case may be, is supplied to the licensee by the person:

(a) directly; or

(b) indirectly through one or more interposed persons.



Authorised Version C2023C00001 registered 03/01/2023

### 103H Non-designated pre-production expenditure not to be counted unless principal photography has commenced

For the purposes of this Division, non-designated pre-production expenditure is not to be counted unless principal photography has commenced for the program or program material concerned.

### 103J Cash-based accounting—when expenditure is incurred

(1) For the purposes of this Division:

(a) if the whole of an item of expenditure (other than non-designated pre-production expenditure) is paid at a particular time—the expenditure is incurred when the expenditure is paid; and

(b) if different parts of an item of expenditure (other than non-designated pre-production expenditure) are paid at different times—each part is incurred when the part is paid.

(2) For the purposes of this Division:

(a) if the whole of an item of non-designated pre-production expenditure is paid at a particular time—the expenditure is incurred at whichever is the later of the following times:

(i) the time when the expenditure is paid;

(ii) the commencement of principal photography for the program or program material concerned; and

(b) if different parts of an item of non-designated pre-production expenditure are paid at different times—each part is incurred at whichever is the later of the following times:

(i) the time when the part is paid;

(ii) the commencement of principal photography for the program or program material concerned.

### 103JA When designated script development expenditure is incurred in relation to an eligible drama program etc.

(1) If:



Authorised Version C2023C00001 registered 03/01/2023

(a) during a financial year, a person incurs designated script development expenditure in relation to a drama program; and

(b) principal photography did not commence for the program before the end of the financial year;

this Division has effect, in relation to that expenditure, as if the drama program were an eligible drama program.

*Recoupment of expenditure incurred by a person—program is not produced as an eligible drama program*

(2) If:

(a) during a financial year (the ***first financial year***), a person incurred designated script development expenditure in relation to a drama program; and

(b) principal photography did not commence for the program before the end of the first financial year; and

(c) principal photography commences for the program during a later financial year; and

(d) when principal photography commences for the program, the drama program is not an eligible drama program; and

(e) the person nominated the whole or a part of the designated script development expenditure for the purposes of the application of a particular provision of this Division in relation to a subscription TV drama service;

then, for the purposes of the application of this Division to the subscription TV drama service, the total expenditure incurred by the person during the later financial year on new eligible drama programs is taken to be reduced (but not below zero) by the amount of the whole or the part, as the case may be, of the expenditure referred to in paragraph (e).

*Recoupment of expenditure incurred by a pass-through provider—program is not produced as an eligible drama program*

(3) If:



Authorised Version C2023C00001 registered 03/01/2023

(a) during a financial year (the ***first financial year***), a person incurred designated script development expenditure in relation to a drama program; and

(b) the person is a pass-through provider in relation to a subscription TV drama service because the person supplies a channel; and

(c) principal photography did not commence for the program before the end of the first financial year; and

(d) principal photography commences for the program during a later financial year; and

(e) when principal photography commences for the program, the drama program is not an eligible drama program; and

(f) the licensee who provided the subscription TV drama service nominated the whole or a part of the designated script development expenditure for the purposes of the application of a particular provision of this Division in relation to the subscription TV drama service;

then, for the purposes of the application of this Division to the subscription TV drama service, the total expenditure incurred by the pass-through provider during the later financial year on new eligible drama programs is taken to be reduced (but not below zero) by the amount of the whole or the part, as the case may be, of the expenditure referred to in paragraph (f).

*Recoupment of expenditure incurred by a part-pass-through provider—program is not produced as an eligible drama program*

(4) If:

(a) during a financial year (the ***first financial year***), a person incurred designated script development expenditure in relation to a drama program; and

(b) the person is a part-pass-through provider in relation to a subscription TV drama service because the person supplies a package of programs; and

(c) principal photography did not commence for the program before the end of the first financial year; and



Authorised Version C2023C00001 registered 03/01/2023

(d) principal photography commences for the program during a later financial year; and

(e) when principal photography commences for the program, the drama program is not an eligible drama program; and

(f) the licensee who provided the subscription TV drama service nominated the whole or a part of the designated script development expenditure for the purposes of the application of a particular provision of this Division in relation to the subscription TV drama service;

then, for the purposes of the application of this Division to the subscription TV drama service, the total expenditure incurred by the part-pass-through provider during the later financial year on new eligible drama programs is taken to be reduced (but not below zero) by the amount of the whole or the part, as the case may be, of the expenditure referred to in paragraph (f).

## 103K When expenditure incurred on a new eligible drama program

(1) For the purposes of this Division, if a person incurs expenditure on an eligible drama program, the eligible drama program is ***new*** if, and only if, the whole or a substantial part of the program has not been televised in Australia or New Zealand on a broadcasting service at any time before the expenditure is incurred.

(2) For the purposes of subsection (1), it is to be assumed that the definition of ***broadcasting service*** in subsection 6(1) extended to matters and things in New Zealand.

## 103L ACMA may make determinations about what constitutes program expenditure

*Program material*

(1) The ACMA may make a written determination providing that, for the purposes of this Division, specified expenditure is taken to be expenditure incurred on program material (other than eligible drama programs).



Authorised Version C2023C00001 registered 03/01/2023

(2) The ACMA may make a written determination providing that, for the purposes of this Division, specified expenditure is taken not to be expenditure incurred on program material (other than eligible drama programs).

*Eligible drama programs*

(3) The ACMA may make a written determination providing that, for the purposes of this Division, specified expenditure is taken to be expenditure incurred on an eligible drama program.

(4) The ACMA may make a written determination providing that, for the purposes of this Division, specified expenditure is taken not to be expenditure incurred on an eligible drama program.

*Designated script development expenditure*

(4A) The ACMA may make a written determination providing that, for the purposes of this Division, specified expenditure is taken to be designated script development expenditure.

(4B) The ACMA may make a written determination providing that, for the purposes of this Division, specified expenditure is taken not to be designated script development expenditure.

*Determination has effect*

(5) A determination under this section has effect accordingly.

*Determination to be of a legislative character*

(6) A determination under this section is to be an instrument of a legislative character.

*Legislative instrument*

(7) A determination under this section is a legislative instrument.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.



Authorised Version C2023C00001 registered 03/01/2023

## 103M Expenditure to be nominated only once in meeting licence conditions

*Channel provider and part-channel provider*

(1) If:

(a) either:

(i) a person is a channel provider in relation to a subscription TV drama service provided by a licensee because the person supplies a channel; or

(ii) a person is a part-channel provider in relation to a subscription TV drama service provided by a licensee because the person supplies a package of programs; and

(b) the person nominates the whole or a part of particular expenditure for the purposes of the application of a particular provision of this Division in relation to the subscription TV drama service;

the whole or part, as the case may be, of the expenditure must not be nominated by the person for the purposes of:

(c) the application of any other provision of this Division (other than a carry-forward eligible drama expenditure provision) in relation to that service; or

(d) the application of any provision of this Division in relation to another subscription TV drama service provided by the licensee; or

(e) the application of any provision of this Division in relation to another subscription TV drama service provided by another licensee.

(2) However, the rule in paragraph (1)(e):

(a) does not apply in relation to a person who is a channel provider if:

(i) the person supplies the same or a substantially similar channel to the other licensee; and

(ii) apart from any breaks for the purposes of the transmission of incidental matter, the same or a substantially similar channel supplied by the person is



Authorised Version C2023C00001 registered 03/01/2023

televised by the other licensee on the other subscription TV drama service; and

(b) does not apply in relation to a person who is a part-channel provider if:

(i) the person supplies the same or a substantially similar package of programs to the other licensee; and

(ii) apart from any breaks for the purposes of the transmission of incidental matter, the same or a substantially similar package of programs supplied by the person is televised by the other licensee on the other subscription TV drama service.

*Licensee*

(3) If:

(a) a licensee provides a subscription TV drama service; and

(b) the licensee nominates the whole or a part of particular expenditure for the purposes of the application of a particular provision of this Division in relation to the subscription TV drama service;

the whole or part, as the case may be, of the expenditure must not be nominated by the licensee for the purposes of:

(c) the application of any other provision of this Division (other than a carry-forward eligible drama expenditure provision) in relation to that service; or

(d) the application of any provision of this Division in relation to another subscription TV drama service provided by the licensee.

## Subdivision B—Channel provider supplies channel

### 103N 10% minimum eligible drama expenditure—channel provider supplies channel

(1) If:

(a) a licensee provides a subscription TV drama service; and



Authorised Version C2023C00001 registered 03/01/2023

(b) a person is a channel provider in relation to the subscription TV drama service because the person supplies a channel;

it is a condition of the licence that, for each financial year of operation, the sum of:

(c) the channel provider's new eligible drama expenditure in relation to the subscription TV drama service; and

(d) the channel provider's carry-forward eligible drama expenditure in relation to the subscription TV drama service;

equals or exceeds 10% of the channel provider's total program expenditure in relation to the channel.

(2) In this section:

***channel provider's carry-forward eligible drama expenditure***, in relation to the subscription TV drama service, means the channel provider's carry-forward eligible drama expenditure (within the meaning of subsection 103NA(2)) for the financial year.

***channel provider's new eligible drama expenditure***, in relation to the subscription TV drama service, means so much of the total expenditure incurred by the channel provider during the financial year on new eligible drama programs as the channel provider nominates for the purposes of the application of subsection (1) in relation to the subscription TV drama service.

***channel provider's total program expenditure***, in relation to the channel, means the total expenditure incurred by the channel provider during the financial year on the program material that is included, or available to be included, in the channel.

(2A) The channel provider is not entitled to nominate, under the definition of ***channel provider's new eligible drama expenditure*** in subsection (2), so much of the designated script development expenditure incurred by the channel provider during the financial year as exceeds 10% of the channel provider's new eligible drama expenditure in relation to the subscription TV drama service.

(3) Division 3 of Part 10 (which deals with breaches of conditions) does not apply to the condition set out in subsection (1).



Authorised Version C2023C00001 registered 03/01/2023

Note: If the sum of the channel provider's new eligible drama expenditure and the channel provider's carry-forward eligible drama expenditure is less than 10% of the channel provider's total program expenditure, the shortfall will have to be made up in the next financial year—see sections 103P and 103Q.

## 103NA Carry-forward eligible drama expenditure

(1) This section applies if:

(a) a licensee provides a subscription TV drama service; and

(b) a person is a channel provider in relation to the subscription TV drama service because the person supplies a channel; and

(c) the channel provider's new eligible drama expenditure (within the meaning of section 103N) in relation to the subscription TV drama service for a financial year exceeds 10% of the channel provider's total program expenditure (within the meaning of section 103N) in relation to the channel for the financial year.

(2) For the purposes of section 103N, the ***channel provider's carry-forward eligible drama expenditure*** in relation to the subscription TV drama service for the next following financial year is so much of the excess expenditure as the channel provider nominates for the purposes of the application of this subsection in relation to the subscription TV drama service.

(3) Paragraph (1)(c) does not apply to so much of the channel provider's new eligible drama expenditure (within the meaning of section 103N) in relation to the subscription TV drama service as was incurred before 1 January 2006.

## 103P Shortfall of eligible drama expenditure—channel provider supplies channel exclusively to licensee

(1) This section applies if:

(a) a licensee (the ***first licensee***) provides a subscription TV drama service (the ***first subscription TV drama service***); and



Authorised Version C2023C00001 registered 03/01/2023

(b) a person is a channel provider in relation to the subscription TV drama service because the person supplies a channel (the ***first channel***); and

(c) it is not the case that the channel provider supplies the same or a substantially similar channel to another licensee in circumstances where, apart from any breaks for the purposes of the transmission of incidental matter, the same or substantially similar channel supplied by the channel provider is televised by the other licensee on another subscription TV drama service; and

(d) the sum of:

(i) the channel provider's new eligible drama expenditure (within the meaning of section 103N) in relation to the first subscription TV drama service for a particular financial year (the ***shortfall year***); and

(ii) the channel provider's carry-forward eligible drama expenditure (within the meaning of section 103N) in relation to the first subscription TV drama service for the shortfall year;

is less than 10% of the channel provider's total program expenditure (within the meaning of section 103N) in relation to the first channel for the shortfall year.

*Shortfall amount to be made up next financial year*

(2) It is a condition of the first licensee's licence that, for the next financial year (the ***make-up year***):

(a) the channel provider's make-up expenditure is equal to the shortfall amount; or

(b) the first licensee's make-up expenditure is equal to the shortfall amount; or

(c) the sum of:

(i) the channel provider's make-up expenditure; and

(ii) the first licensee's make-up expenditure;

is equal to the shortfall amount.



Authorised Version C2023C00001 registered 03/01/2023

*Definitions*

(3) In this section:

***channel provider's make-up expenditure*** means so much of the total expenditure incurred by the channel provider during the make-up year on new eligible drama programs as the channel provider nominates for the purposes of the application of subsection (2) in relation to the first subscription TV drama service.

***first licensee's make-up expenditure*** means so much of the total expenditure incurred by the first licensee during the make-up year on new eligible drama programs not included, or available to be included, in the first channel as the first licensee nominates for the purposes of the application of subsection (2) in relation to the first subscription TV drama service.

***shortfall amount*** means the amount by which the sum of:

(a) the channel provider's new eligible drama expenditure (within the meaning of section 103N) in relation to the first subscription TV drama service for the shortfall year; and

(b) the channel provider's carry-forward eligible drama expenditure (within the meaning of section 103N) in relation to the first subscription TV drama service for the shortfall year;

fell short of 10% of the channel provider's total program expenditure (within the meaning of section 103N) in relation to the first channel for the shortfall year.

## 103Q Shortfall of eligible drama expenditure—channel provider supplies channel to multiple licensees

(1) This section applies if:

(a) a licensee (the ***first licensee***) provides a subscription TV drama service (the ***first subscription TV drama service***); and



Authorised Version C2023C00001 registered 03/01/2023

(b) a person is a channel provider in relation to the first subscription TV drama service because the person supplies a channel (the ***first channel***); and

(c) the channel provider supplies the same or a substantially similar channel to one or more other licensees (the ***additional licensees***) in circumstances where, apart from any breaks for the purposes of the transmission of incidental matter, the same or substantially similar channel supplied by the channel provider is televised by the additional licensees on subscription TV drama services (the ***additional subscription TV drama services***); and

(d) the sum of:

(i) the channel provider's new eligible drama expenditure (within the meaning of section 103N) in relation to the first subscription TV drama service for a particular financial year (the ***shortfall year***); and

(ii) the channel provider's carry-forward eligible drama expenditure (within the meaning of section 103N) in relation to the first subscription TV drama service for the shortfall year;

is less than 10% of the channel provider's total program expenditure (within the meaning of section 103N) in relation to the first channel for the shortfall year.

*Shortfall amount to be made up next financial year*

(2) It is a condition of the first licensee's licence that, for the next financial year (the ***make-up year***):

(a) the channel provider's make-up expenditure is equal to the shortfall amount; or

(b) the first licensee's make-up expenditure is equal to the first licensee's subscriber percentage of the shortfall amount; or

(c) if the channel provider's make-up expenditure is less than the shortfall amount—the first licensee's make-up expenditure is equal to the first licensee's subscriber percentage of the difference between the shortfall amount and the channel provider's make-up expenditure.



Authorised Version C2023C00001 registered 03/01/2023

*Definitions*

(3) In this section:

***channel provider's make-up expenditure*** means so much of the total expenditure incurred by the channel provider during the make-up year on new eligible drama programs as the channel provider nominates for the purposes of the application of subsection (2) in relation to the first subscription TV drama service.

***first licensee's make-up expenditure*** means so much of the total expenditure incurred by the first licensee during the make-up year on new eligible drama programs not included, or available to be included, in the first channel as the first licensee nominates for the purposes of the application of subsection (2) in relation to the first subscription TV drama service.

***first licensee's subscriber percentage*** means the percentage worked out using the following formula:

$$\frac{\text{Subscribers of first licensee}}{\text{Subscribers of first licensee} + \text{Subscribers of additional licensees}} \times 100$$

***monthly subscriber number***, for a subscription TV drama service for a particular month, means the number worked out using the following formula:

$$\frac{\text{Number of subscribers to the subscription TV drama service on the first day of the month} + \text{Number of subscribers to the subscription TV drama service on the last day of the month}}{2}$$

***shortfall amount*** means the amount by which the sum of:

(a) the channel provider's new eligible drama expenditure (within the meaning of section 103N) in relation to the first subscription TV drama service for the shortfall year; and



Authorised Version C2023C00001 registered 03/01/2023

(b) the channel provider's carry-forward eligible drama expenditure (within the meaning of section 103N) in relation to the first subscription TV drama service for the shortfall year;

fell short of 10% of the channel provider's total program expenditure (within the meaning of section 103N) in relation to the first channel for the shortfall year.

***subscribers of additional licensees*** means the sum of the monthly subscriber numbers for the additional subscription TV drama services for each month of operation during the shortfall year.

***subscribers of first licensee*** means the sum of the monthly subscriber numbers for the first subscription TV drama service for each month of operation during the shortfall year.

## Subdivision C—Pass-through provider supplies channel

### 103R 10% minimum eligible drama expenditure—pass-through provider supplies channel

(1) If:

(a) a licensee provides a subscription TV drama service; and

(b) a person is a pass-through provider in relation to the subscription TV drama service because the person supplies a channel;

it is a condition of the licence that, for each financial year of operation, the sum of:

(c) the licensee's new eligible drama expenditure in relation to the subscription TV drama service; and

(d) the licensee's carry-forward eligible drama expenditure in relation to the subscription TV drama service;

equals or exceeds 10% of the licensee's total program expenditure in relation to the channel.

(2) In this section:



Authorised Version C2023C00001 registered 03/01/2023

***licensee's carry-forward eligible drama expenditure***, in relation to the subscription TV drama service, means the licensee's carry-forward eligible drama expenditure (within the meaning of subsection 103RA(2)) for the financial year.

***licensee's new eligible drama expenditure***, in relation to the subscription TV drama service, means the sum of:

(a) so much of the total expenditure incurred by the licensee during the financial year on new eligible drama programs as the licensee nominates for the purposes of the application of subsection (1) in relation to the subscription TV drama service; and

(b) so much of the total expenditure incurred by the pass-through provider during the financial year on new eligible drama programs as the licensee nominates for the purposes of the application of subsection (1) in relation to the subscription TV drama service.

***licensee's total program expenditure***, in relation to the channel, means the total expenditure incurred by the licensee during the financial year in respect of the supply by the pass-through provider of the channel.

(2A) The licensee is not entitled to nominate, under the definition of ***licensee's new eligible drama expenditure*** in subsection (2), so much of the designated script development expenditure incurred by the licensee and/or the pass-through provider during the financial year as exceeds 10% of the licensee's new eligible drama expenditure in relation to the subscription TV drama service.

(3) If:

(a) the licensee nominates the whole or a part of particular expenditure under paragraph (a) of the definition of ***licensee's new eligible drama expenditure*** in subsection (2); and

(b) the whole or part, as the case may be, of the expenditure is attributable to a new eligible drama program on which expenditure was incurred by the pass-through provider;



Authorised Version C2023C00001 registered 03/01/2023

that new eligible drama program is to be disregarded in determining the expenditure that may be nominated by the licensee under paragraph (b) of that definition.

(4) Division 3 of Part 10 (which deals with breaches of conditions) does not apply to the condition set out in subsection (1).

Note: If the sum of the licensee's new eligible drama expenditure and the licensee's carry-forward eligible drama expenditure is less than 10% of the licensee's total program expenditure, the shortfall will have to be made up in the next financial year—see section 103S.

## 103RA Carry-forward eligible drama expenditure

(1) This section applies if:

(a) a licensee provides a subscription TV drama service; and

(b) a person is a pass-through provider in relation to the subscription TV drama service because the person supplies a channel; and

(c) the licensee's new eligible drama expenditure (within the meaning of section 103R) in relation to the subscription TV drama service for a financial year exceeds 10% of the licensee's total program expenditure (within the meaning of section 103R) in relation to the channel for the financial year.

(2) For the purposes of section 103R, the ***licensee's carry-forward eligible drama expenditure*** in relation to the subscription TV drama service for the next following financial year is so much of the excess expenditure as the licensee nominates for the purposes of the application of this subsection in relation to the subscription TV drama service.

(3) Paragraph (1)(c) does not apply to so much of the licensee's new eligible drama expenditure (within the meaning of section 103R) in relation to the subscription TV drama service as was incurred before 1 January 2006.



Authorised Version C2023C00001 registered 03/01/2023

## 103S Shortfall of eligible drama expenditure—pass-through provider supplies channel

(1) This section applies if:

(a) a licensee provides a subscription TV drama service; and

(b) a person is a pass-through provider in relation to the subscription TV drama service because the person supplies a channel; and

(c) the sum of:

(i) the licensee's new eligible drama expenditure (within the meaning of section 103R) in relation to the subscription TV drama service for a particular financial year (the ***shortfall year***); and

(ii) the licensee's carry-forward eligible drama expenditure (within the meaning of section 103R) in relation to the subscription TV drama service for the shortfall year;

is less than 10% of the licensee's total program expenditure (within the meaning of section 103R) in relation to the channel for the shortfall year.

*Shortfall amount to be made up next financial year*

(2) It is a condition of the licensee's licence that, for the next financial year (the ***make-up year***), the licensee's make-up expenditure is equal to the shortfall amount.

*Definitions*

(3) In this section:

***licensee's make-up expenditure***, in relation to the subscription TV drama service, means the sum of:

(a) so much of the total expenditure incurred by the licensee during the make-up year on new eligible drama programs as the licensee nominates for the purposes of the application of subsection (2) in relation to the subscription TV drama service; and



Authorised Version C2023C00001 registered 03/01/2023

(b) so much of the total expenditure incurred by the pass-through provider during the make-up year on new eligible drama programs as the licensee nominates for the purposes of the application of subsection (2) in relation to the subscription TV drama service.

***shortfall amount*** means the amount by which the sum of:

(a) the licensee's new eligible drama expenditure (within the meaning of section 103R) in relation to the subscription TV drama service for the shortfall year; and

(b) the licensee's carry-forward eligible drama expenditure (within the meaning of section 103R) in relation to the subscription TV drama service for the shortfall year;

fell short of 10% of the licensee's total program expenditure (within the meaning of section 103R) in relation to the channel for the shortfall year.

*Double counting*

(4) If:

(a) the licensee nominates the whole or a part of particular expenditure under paragraph (a) of the definition of ***licensee's make-up expenditure*** in subsection (3); and

(b) the whole or part, as the case may be, of the expenditure is attributable to a new eligible drama program on which expenditure was incurred by the pass-through provider;

that new eligible drama program is to be disregarded in determining the expenditure that may be nominated by the licensee under paragraph (b) of that definition.

## Subdivision D—Licensee supplies all program material

### 103T 10% minimum eligible drama expenditure—licensee supplies all program material

(1) If:

(a) a licensee provides a subscription TV drama service; and



Authorised Version C2023C00001 registered 03/01/2023

(b) there is none of the following:

(i) a channel provider;

(ii) a pass-through provider;

(iii) a part-channel provider;

(iv) a part-pass-through provider;

in relation to the subscription TV drama service;

it is a condition of the licence that, for each financial year of operation, the sum of:

(c) the licensee's new eligible drama expenditure in relation to the subscription TV drama service; and

(d) the licensee's carry-forward eligible drama expenditure in relation to the subscription TV drama service;

equals or exceeds 10% of the licensee's total program expenditure in relation to the subscription TV drama service.

(2) In this section:

***licensee's carry-forward eligible drama expenditure***, in relation to the subscription TV drama service, means the licensee's carry-forward eligible drama expenditure (within the meaning of subsection 103TA(2)) for the financial year.

***licensee's new eligible drama expenditure***, in relation to the subscription TV drama service, means so much of the total expenditure incurred by the licensee during the financial year on new eligible drama programs as the licensee nominates for the purposes of the application of subsection (1) in relation to the subscription TV drama service.

***licensee's total program expenditure***, in relation to the subscription TV drama service, means the total expenditure incurred by the licensee during the financial year on program material that is for televising, or available for televising, by the licensee on the subscription TV drama service.

(3) The licensee is not entitled to nominate, under the definition of ***licensee's new eligible drama expenditure*** in subsection (2), so much of the designated script development expenditure incurred by



Authorised Version C2023C00001 registered 03/01/2023

the licensee during the financial year as exceeds 10% of the licensee's new eligible drama expenditure in relation to the subscription TV drama service.

## 103TA Carry-forward eligible drama expenditure

(1) This section applies if:

(a) a licensee provides a subscription TV drama service; and

(b) there is none of the following:

(i) a channel provider;

(ii) a pass-through provider;

(iii) a part-channel provider;

(iv) a part-pass-through provider;

in relation to the subscription TV drama service; and

(c) the licensee's new eligible drama expenditure (within the meaning of section 103T) in relation to the subscription TV drama service for a financial year exceeds 10% of the licensee's total program expenditure (within the meaning of section 103T) in relation to the subscription TV drama service for the financial year.

(2) For the purposes of section 103T, the ***licensee's carry-forward eligible drama expenditure*** in relation to the subscription TV drama service for the next following financial year is so much of the excess expenditure as the licensee nominates for the purposes of the application of this subsection in relation to the subscription TV drama service.

(3) Paragraph (1)(c) does not apply to so much of the licensee's new eligible drama expenditure (within the meaning of section 103T) in relation to the subscription TV drama service as was incurred before 1 January 2006.



Authorised Version C2023C00001 registered 03/01/2023

## Subdivision E—Part-channel provider supplies package of programs

### 103U 10% minimum eligible drama expenditure—part-channel provider supplies package of programs

(1) If:

(a) a licensee provides a subscription TV drama service; and

(b) a person is a part-channel provider in relation to the subscription TV drama service because the person supplies a package of programs;

it is a condition of the licence that, for each financial year of operation, the sum of:

(c) the part-channel provider's new eligible drama expenditure in relation to the subscription TV drama service; and

(d) the part-channel provider's carry-forward eligible drama expenditure in relation to the subscription TV drama service;

equals or exceeds 10% of the part-channel provider's total program expenditure in relation to the package of programs.

(2) In this section:

***part-channel provider's carry-forward eligible drama expenditure***, in relation to the subscription TV drama service, means the part-channel provider's carry-forward eligible drama expenditure (within the meaning of subsection 103UA(2)) for the financial year.

***part-channel provider's new eligible drama expenditure***, in relation to the subscription TV drama service, means so much of the total expenditure incurred by the part-channel provider during the financial year on new eligible drama programs as the part-channel provider nominates for the purposes of the application of subsection (1) in relation to the subscription TV drama service.

***part-channel provider's total program expenditure***, in relation to the package of programs, means the total expenditure incurred by the part-channel provider during the financial year on the program



Authorised Version C2023C00001 registered 03/01/2023

material that is included, or available to be included, in the package of programs.

(2A) The part-channel provider is not entitled to nominate, under the definition of ***part-channel provider's new eligible drama expenditure*** in subsection (2), so much of the designated script development expenditure incurred by the part-channel provider during the financial year as exceeds 10% of the part-channel provider's new eligible drama expenditure in relation to the subscription TV drama service.

(3) Division 3 of Part 10 (which deals with breaches of conditions) does not apply to the condition set out in subsection (1).

Note: If the sum of the part-channel provider's new eligible drama expenditure and the part-channel provider's carry-forward eligible drama expenditure is less than 10% of the part-channel provider's total program expenditure, the shortfall will have to be made up in the next financial year—see sections 103V and 103W.

## 103UA Carry-forward eligible drama expenditure

(1) This section applies if:

(a) a licensee provides a subscription TV drama service; and

(b) a person is a part-channel provider in relation to the subscription TV drama service because the person supplies a package of programs; and

(c) the part-channel provider's new eligible drama expenditure (within the meaning of section 103U) in relation to the subscription TV drama service for a financial year exceeds 10% of the part-channel provider's total program expenditure (within the meaning of section 103U) in relation to the package of programs for the financial year.

(2) For the purposes of section 103U, the ***part-channel provider's carry-forward eligible drama expenditure*** in relation to the subscription TV drama service for the next following financial year is so much of the excess expenditure as the part-channel provider nominates for the purposes of the application of this subsection in relation to the subscription TV drama service.



Authorised Version C2023C00001 registered 03/01/2023

(3) Paragraph (1)(c) does not apply to so much of the part-channel provider's new eligible drama expenditure (within the meaning of section 103U) in relation to the subscription TV drama service as was incurred before 1 January 2006.

## 103V Shortfall of eligible drama expenditure—part-channel provider supplies a package of programs exclusively to licensee

(1) This section applies if:

(a) a licensee (the ***first licensee***) provides a subscription TV drama service (the ***first subscription TV drama service***); and

(b) a person is a part-channel provider in relation to the subscription TV drama service because the person supplies a package of programs (the ***first package of programs***); and

(c) it is not the case that the part-channel provider supplies the same or a substantially similar package of programs to another licensee in circumstances where, apart from any breaks for the purposes of the transmission of incidental matter, the same or substantially similar package of programs supplied by the part-channel provider is televised by the other licensee on another subscription TV drama service; and

(d) the sum of:

(i) the part-channel provider's new eligible drama expenditure (within the meaning of section 103U) in relation to the first subscription TV drama service for a particular financial year (the ***shortfall year***); and

(ii) the part-channel provider's carry-forward eligible drama expenditure (within the meaning of section 103U) in relation to the first subscription TV drama service for the shortfall year;

is less than 10% of the part-channel provider's total program expenditure (within the meaning of section 103U) in relation to the first package of programs for the shortfall year.



Authorised Version C2023C00001 registered 03/01/2023

*Shortfall amount to be made up next financial year*

(2) It is a condition of the first licensee's licence that, for the next financial year (the ***make-up year***):

(a) the part-channel provider's make-up expenditure is equal to the shortfall amount; or

(b) the first licensee's make-up expenditure is equal to the shortfall amount; or

(c) the sum of:

(i) the part-channel provider's make-up expenditure; and

(ii) the first licensee's make-up expenditure;

is equal to the shortfall amount.

*Definitions*

(3) In this section:

***first licensee's make-up expenditure*** means so much of the total expenditure incurred by the first licensee during the make-up year on new eligible drama programs not included, or available to be included, in the first package of programs as the first licensee nominates for the purposes of the application of subsection (2) in relation to the first subscription TV drama service.

***part-channel provider's make-up expenditure*** means so much of the total expenditure incurred by the part-channel provider during the make-up year on new eligible drama programs as the part-channel provider nominates for the purposes of the application of subsection (2) in relation to the first subscription TV drama service.

***shortfall amount*** means the amount by which the sum of:

(a) the part-channel provider's new eligible drama expenditure (within the meaning of section 103U) in relation to the first subscription TV drama service for the shortfall year; and

(b) the part-channel provider's carry-forward eligible drama expenditure (within the meaning of section 103U) in relation to the first TV drama service for the shortfall year;



Authorised Version C2023C00001 registered 03/01/2023

fell short of 10% of the part-channel provider's total program expenditure (within the meaning of section 103U) in relation to the first package of programs for the shortfall year.

### 103W Shortfall of eligible drama expenditure—part-channel provider supplies a package of programs to multiple licensees

(1) This section applies if:

(a) a licensee (the ***first licensee***) provides a subscription TV drama service (the ***first subscription TV drama service***); and

(b) a person is a part-channel provider in relation to the first subscription TV drama service because the person supplies a package of programs (the ***first package of programs***); and

(c) the part-channel provider supplies the same or a substantially similar package of programs to one or more other licensees (the ***additional licensees***) in circumstances where, apart from any breaks for the purposes of the transmission of incidental matter, the same or substantially similar package of programs supplied by the part-channel provider is televised by the additional licensees on subscription TV drama services (the ***additional subscription TV drama services***); and

(d) the sum of:

(i) the part-channel provider's new eligible drama expenditure (within the meaning of section 103U) in relation to the first subscription TV drama service for a particular financial year (the ***shortfall year***); and

(ii) the part-channel provider's carry-forward eligible drama expenditure (within the meaning of section 103U) in relation to the first subscription TV drama service for the shortfall year;

is less than 10% of the part-channel provider's total program expenditure (within the meaning of section 103U) in relation to the first package of programs for the shortfall year.



Authorised Version C2023C00001 registered 03/01/2023

*Shortfall amount to be made up next financial year*

(2) It is a condition of the first licensee's licence that, for the next financial year (the ***make-up year***):

(a) the part-channel provider's make-up expenditure is equal to the shortfall amount; or

(b) the first licensee's make-up expenditure is equal to the first licensee's subscriber percentage of the shortfall amount; or

(c) if the part-channel provider's make-up expenditure is less than the shortfall amount—the first licensee's make-up expenditure is equal to the first licensee's subscriber percentage of the difference between the shortfall amount and the part-channel provider's make-up expenditure.

*Definitions*

(3) In this section:

***first licensee's make-up expenditure*** means so much of the total expenditure incurred by the first licensee during the make-up year on new eligible drama programs not included, or available to be included, in the first package of programs as the first licensee nominates for the purposes of the application of subsection (2) in relation to the first subscription TV drama service.

***first licensee's subscriber percentage*** means the percentage worked out using the following formula:

$$\frac{\text{Subscribers of first licensee}}{\text{Subscribers of first licensee} + \text{Subscribers of additional licensees}} \times 100$$

***monthly subscriber number***, for a subscription TV drama service for a particular month, means the number worked out using the following formula:



Authorised Version C2023C00001 registered 03/01/2023

$$\frac{\text{Number of subscribers to the subscription TV drama service on the first day of the month} + \text{Number of subscribers to the subscription TV drama service on the last day of the month}}{2}$$

***part-channel provider's make-up expenditure*** means so much of the total expenditure incurred by the part-channel provider during the make-up year on new eligible drama programs as the part-channel provider nominates for the purposes of the application of subsection (2) in relation to the first subscription TV drama service.

***shortfall amount*** means the amount by which the sum of:

(a) the part-channel provider's new eligible drama expenditure (within the meaning of section 103U) in relation to the first subscription TV drama service for the shortfall year; and

(b) the part-channel provider's carry-forward eligible drama expenditure (within the meaning of section 103U) in relation to the first TV drama service for the shortfall year;

fell short of 10% of the part-channel provider's total program expenditure (within the meaning of section 103U) in relation to the first package of programs for the shortfall year.

***subscribers of additional licensees*** means the sum of the monthly subscriber numbers for the additional subscription TV drama services for each month of operation during the shortfall year.

***subscribers of first licensee*** means the sum of the monthly subscriber numbers for the first subscription TV drama service for each month of operation during the shortfall year.



Authorised Version C2023C00001 registered 03/01/2023

## Subdivision F—Part-pass-through provider supplies package of programs

### 103X 10% minimum eligible drama expenditure—part-pass-through provider supplies package of programs

(1) If:

(a) a licensee provides a subscription TV drama service; and

(b) a person is a part-pass-through provider in relation to the subscription TV drama service because the person supplies a package of programs;

it is a condition of the licence that, for each financial year of operation, the sum of:

(c) the licensee's new eligible drama expenditure in relation to the subscription TV drama service; and

(d) the licensee's carry-forward eligible drama expenditure in relation to the subscription TV drama service;

equals or exceeds 10% of the licensee's total program expenditure in relation to the package of programs.

(2) In this section:

***licensee's carry-forward eligible drama expenditure***, in relation to the subscription TV drama service, means the licensee's carry-forward eligible drama expenditure (within the meaning of subsection 103XA(2)) for the financial year.

***licensee's new eligible drama expenditure***, in relation to the subscription TV drama service, means the sum of:

(a) so much of the total expenditure incurred by the licensee during the financial year on new eligible drama programs as the licensee nominates for the purposes of the application of subsection (1) in relation to the subscription TV drama service; and

(b) so much of the total expenditure incurred by the part-pass-through provider during the financial year on new eligible drama programs as the licensee nominates for the



Authorised Version C2023C00001 registered 03/01/2023

purposes of the application of subsection (1) in relation to the subscription TV drama service.

***licensee's total program expenditure***, in relation to the package of programs, means the total expenditure incurred by the licensee during the financial year in respect of the supply by the part-pass-through provider of the package of programs.

(2A) The licensee is not entitled to nominate, under the definition of ***licensee's new eligible drama expenditure*** in subsection (2), so much of the designated script development expenditure incurred by the licensee and/or the part-pass-through provider during the financial year as exceeds 10% of the licensee's new eligible drama expenditure in relation to the subscription TV drama service.

(3) If:

(a) the licensee nominates the whole or a part of particular expenditure under paragraph (a) of the definition of ***licensee's new eligible drama expenditure*** in subsection (2); and

(b) the whole or part, as the case may be, of the expenditure is attributable to a new eligible drama program on which expenditure was incurred by the part-pass-through provider;

that new eligible drama program is to be disregarded in determining the expenditure that may be nominated by the licensee under paragraph (b) of that definition.

(4) Division 3 of Part 10 (which deals with breaches of conditions) does not apply to the condition set out in subsection (1).

Note: If the sum of the licensee's new eligible drama expenditure and the licensee's carry-forward eligible drama expenditure is less than 10% of the licensee's total program expenditure, the shortfall will have to be made up in the next financial year—see section 103Y.

## 103XA Carry-forward eligible drama expenditure

(1) This section applies if:

(a) a licensee provides a subscription TV drama service; and



Authorised Version C2023C00001 registered 03/01/2023

(b) a person is a part-pass-through provider in relation to the subscription TV drama service because the person supplies a package of programs; and

(c) the licensee's new eligible drama expenditure (within the meaning of section 103X) in relation to the subscription TV drama service for a financial year exceeds 10% of the licensee's total program expenditure (within the meaning of section 103X) in relation to the package of programs for the financial year.

(2) For the purposes of section 103X, the ***licensee's carry-forward eligible drama expenditure*** in relation to the subscription TV drama service for the next following financial year is so much of the excess expenditure as the licensee nominates for the purposes of the application of this subsection in relation to the subscription TV drama service.

(3) Paragraph (1)(c) does not apply to so much of the licensee's new eligible drama expenditure (within the meaning of section 103X) in relation to the subscription TV drama service as was incurred before 1 January 2006.

## 103Y Shortfall of eligible drama expenditure—part-pass-through provider supplies package of programs

(1) This section applies if:

(a) a licensee provides a subscription TV drama service; and

(b) a person is a part-pass-through provider in relation to the subscription TV drama service because the person supplies a package of programs; and

(c) the sum of

(i) the licensee's new eligible drama expenditure (within the meaning of section 103X) in relation to the subscription TV drama service for a particular financial year (the ***shortfall year***); and

(ii) the licensee's carry-forward eligible drama expenditure (within the meaning of section 103X) in relation to the subscription TV drama service for the shortfall year;



Authorised Version C2023C00001 registered 03/01/2023

is less than 10% of the licensee's total program expenditure (within the meaning of section 103X) in relation to the package of programs for the shortfall year.

*Shortfall amount to be made up next financial year*

(2) It is a condition of the licensee's licence that, for the next financial year (the ***make-up year***), the licensee's make-up expenditure is equal to the shortfall amount.

*Definitions*

(3) In this section:

***licensee's make-up expenditure***, in relation to the subscription TV drama service, means the sum of:

(a) so much of the total expenditure incurred by the licensee during the make-up year on new eligible drama programs as the licensee nominates for the purposes of the application of subsection (2) in relation to the subscription TV drama service; and

(b) so much of the total expenditure incurred by the part-pass-through provider during the make-up year on new eligible drama programs as the licensee nominates for the purposes of the application of subsection (2) in relation to the subscription TV drama service.

***shortfall amount*** means the amount by which the sum of:

(a) the licensee's new eligible drama expenditure (within the meaning of section 103X) in relation to the subscription TV drama service for the shortfall year; and

(b) the licensee's carry-forward eligible drama expenditure (within the meaning of section 103X) in relation to the subscription TV drama service for the shortfall year;

fell short of 10% of the licensee's total program expenditure (within the meaning of section 103X) in relation to the package of programs for the shortfall year.



Authorised Version C2023C00001 registered 03/01/2023

*Double counting*

(4) If:

(a) the licensee nominates the whole or a part of particular expenditure under paragraph (a) of the definition of ***licensee's make-up expenditure*** in subsection (3); and

(b) the whole or part, as the case may be, of the expenditure is attributable to a new eligible drama program on which expenditure was incurred by the part-pass-through provider;

that new eligible drama program is to be disregarded in determining the expenditure that may be nominated by the licensee under paragraph (b) of that definition.

## Subdivision G—Licensee supplies part of program material

### 103Z 10% minimum eligible drama expenditure—licensee supplies part of program material

(1) If:

(a) a licensee provides a subscription TV drama service; and

(b) some, but not all, of the program material that is televised by the licensee on the subscription TV drama service consists of program material included in a package of programs supplied to the licensee by:

(i) a part-channel provider; or

(ii) a part-pass-through provider;

in relation to the subscription TV drama service; and

(c) the remainder of the program material that is televised by the licensee on the subscription TV drama service consists predominantly of drama programs;

it is a condition of the licence that, for each financial year of operation, the sum of:

(d) the licensee's new eligible drama expenditure in relation to the subscription TV drama service; and

(e) the licensee's carry-forward eligible drama expenditure in relation to the subscription TV drama service;



Authorised Version C2023C00001 registered 03/01/2023

equals or exceeds 10% of the licensee's total program expenditure in relation to the subscription TV drama service.

(2) In this section:

***licensee's carry-forward eligible drama expenditure***, in relation to the subscription TV drama service, means the licensee's carry-forward eligible drama expenditure (within the meaning of subsection 103ZAA(2)) for the financial year.

***licensee's new eligible drama expenditure***, in relation to the subscription TV drama service, means so much of the total expenditure incurred by the licensee during the financial year on new eligible drama programs not included in that package as the licensee nominates for the purposes of the application of subsection (1) in relation to the subscription TV drama service.

***licensee's total program expenditure***, in relation to the subscription TV drama service, means the total expenditure incurred by the licensee during the financial year on program material that is:

(a) not included in that package; and

(b) for televising, or available for televising, by the licensee on the subscription TV drama service.

(3) The licensee is not entitled to nominate, under the definition of ***licensee's new eligible drama expenditure*** in subsection (2), so much of the designated script development expenditure incurred by the licensee during the financial year as exceeds 10% of the licensee's new eligible drama expenditure in relation to the subscription TV drama service.

## 103ZAA Carry-forward eligible drama expenditure

(1) This section applies if:

(a) a licensee provides a subscription TV drama service; and

(b) some, but not all, of the program material that is televised by the licensee on the subscription TV drama service consists of



Authorised Version C2023C00001 registered 03/01/2023

program material included in a package of programs supplied to the licensee by:

(i) a part-channel provider; or

(ii) a part-pass-through provider;

in relation to the subscription TV drama service; and

(c) the remainder of the program material that is televised by the licensee on the subscription TV drama service consists predominantly of drama programs; and

(d) the licensee's new eligible drama expenditure (within the meaning of section 103Z) in relation to the subscription TV drama service for a financial year exceeds 10% of the licensee's total program expenditure (within the meaning of section 103Z) in relation to the subscription TV drama service for the financial year.

(2) For the purposes of section 103Z, the ***licensee's carry-forward eligible drama expenditure*** in relation to the subscription TV drama service for the next following financial year is so much of the excess expenditure as the licensee nominates for the purposes of the application of this subsection in relation to the subscription TV drama service.

(3) Paragraph (1)(c) does not apply to so much of the licensee's new eligible drama expenditure (within the meaning of section 103Z) in relation to the subscription TV drama service as was incurred before 1 January 2006.

## Subdivision H—Annual returns

### 103ZA Licensee to lodge annual return

(1) A licensee who provides one or more subscription TV drama services must, within 60 days after the end of each financial year of operation, give to the ACMA a return, in the approved form, containing such information as is required by that form in relation to the application of this Division in connection with those services.



Authorised Version C2023C00001 registered 03/01/2023

(2) A person commits an offence if:
   (a) the person is subject to a requirement under subsection (1); and
   (b) the person intentionally contravenes that requirement.

   Penalty: 1,000 penalty units.

(3) A reference in this section to an ***approved form*** is a reference to a form approved, in writing, by the ACMA for the purposes of the provision in which the expression appears.

## 103ZB Channel provider and part-channel provider to lodge annual return

(1) If a person is a channel provider or a part-channel provider in relation to one or more subscription TV drama services provided by a licensee during a financial year, the person must, within 60 days after the end of that financial year, give to the ACMA a return, in the approved form, containing such information as is required by that form in relation to the application of this Division in connection with those services.

(2) A person commits an offence if:
   (a) the person is subject to a requirement under subsection (1); and
   (b) the person intentionally contravenes that requirement.

   Penalty: 1,000 penalty units.

(3) If:
   (a) a person is a channel provider or a part-channel provider in relation to one or more subscription TV drama services provided by a licensee during a financial year; and
   (b) the person contravenes subsection (1) in relation to the financial year;

   the ACMA must inform the licensee, in writing, of that contravention as soon as practicable after the ACMA becomes aware of that contravention.



Authorised Version C2023C00001 registered 03/01/2023

(4) A reference in this section to an ***approved form*** is a reference to a form approved, in writing, by the ACMA for the purposes of the provision in which the expression appears.

## 103ZC ACMA may inquire into the correctness of an annual return

The ACMA may make whatever inquiries it thinks necessary or desirable in order to determine whether a return given to it under this Subdivision contains correct information.

## 103ZD Nominations to be attached to annual returns

*Licensee*

(1) A nomination that:

(a) is made by a licensee; and

(b) relates to the application of a provision of this Division in respect of a financial year;

must:

(c) be in writing; and

(d) accompany the return given by the licensee under section 103ZA for that financial year.

*Channel provider and part-channel provider*

(2) A nomination that:

(a) is made by a person who is a channel provider or a part-channel provider in relation to one or more subscription TV drama services provided by a licensee during a financial year; and

(b) relates to the application of a provision of this Division in respect of that financial year;

must:

(c) be in writing; and

(d) accompany the relevant return given by the channel provider or the part-channel provider, as the case may be, under section 103ZB for that financial year.



Authorised Version C2023C00001 registered 03/01/2023

## Subdivision J—Miscellaneous

### 103ZG Anti-avoidance—transactions between persons not at arm's length

(1) If:

(a) a person has incurred expenditure in connection with a transaction where the parties to the transaction are not dealing with each other at arm's length in relation to the transaction; and

(b) apart from this section, the expenditure is counted for the purposes of the application of this Division; and

(c) the amount of the expenditure is greater or less than is reasonable;

the ACMA may, by writing, determine that the amount of the expenditure is taken, for the purposes of the application of this Division in relation to the parties to the transaction, to be the amount that would have been reasonable if the parties were dealing with each other at arm's length.

(2) A determination under subsection (1) has effect accordingly.

### 103ZH Expenditure to be expressed in Australian currency

(1) For the purposes of this Division, expenditure is to be expressed in Australian currency.

(2) For the purposes of this Division, if expenditure is incurred otherwise than in Australian currency, the expenditure is to be expressed in Australian currency at a rate equal to whichever of the following is applicable:

(a) if the expenditure is incurred in connection with a transaction and the parties to the transaction have agreed on the exchange rate that is applicable to the expenditure—that exchange rate; or

(b) in any other case—the exchange rate applicable at the time when the expenditure is incurred.



Authorised Version C2023C00001 registered 03/01/2023

## Division 6—Miscellaneous

### 113 Transfer of subscription television broadcasting licence

A subscription television broadcasting licensee may transfer the subscription television broadcasting licence to another person.

### 114 Surrender of subscription television broadcasting licence

A subscription television broadcasting licensee may, by notice in writing given to the ACMA, surrender the licence.

### 115 Minister may protect the free availability of certain types of programs

(1) The Minister may give notice, by legislative instrument, specifying an event, or events of a kind, the televising of which should, in the opinion of the Minister, be available free to the general public.

(1A) The Minister may give notice, by legislative instrument, amending a notice under subsection (1) to specify an additional event, or events of a kind, the televising of which should, in the opinion of the Minister, be available free to the public.

(1AA) Subject to subsection (2), an event specified in a notice under subsection (1) is taken to be removed from the notice 4,368 hours before the start of the event, unless the Minister, by legislative instrument registered under the *Legislation Act 2003* before that time, declares that the event continues to be specified in the notice after that time.

(1AB) The Minister may make a declaration under subsection (1AA) only if the Minister is satisfied that at least one commercial television broadcasting licensee or national broadcaster has not had a reasonable opportunity to acquire the right to televise the event concerned.



Authorised Version C2023C00001 registered 03/01/2023

(1B) Subject to subsections (1AA) and (2), an event specified in a notice under subsection (1) is taken to be removed from the notice 168 hours after the end of the event, unless the Minister, by legislative instrument registered under the *Legislation Act 2003* before that time, declares that the event continues to be specified in the notice after that time.

(2) The Minister may give notice, by legislative instrument, amending a notice under subsection (1) to remove an event from the notice.

Note: The following are examples of situations in which the Minister might exercise the power to remove an event from a notice:

*Example 1*

The national broadcasters and commercial television broadcasting licensees have had a real opportunity to acquire the right to televise an event, but none of them has acquired the right within a reasonable time. The Minister is of the opinion that removing the event from the notice is likely to have the effect that the event will be televised to a greater extent than if it remained on the notice.

*Example 2*

A commercial television broadcasting licensee has acquired the right to televise an event, but has failed to televise the event or has televised only an unreasonably small proportion of the event. The Minister is of the opinion that removing that event, or another event, from the notice is likely to have the effect that the removed event will be televised to a greater extent than it would be if it remained on the notice.

## 116 Certain arrangements not to result in control or in persons being associates

(1) A person who is in a position to exercise control of a satellite subscription television broadcasting licence is not taken to be in a position to exercise control of another satellite subscription television broadcasting licence only because of a provision of a contract, arrangement or understanding under which all or any of the following things are done:

(a) a subscriber management system is provided for subscribing to either or both of the subscription television broadcasting services being provided under those licences;



Authorised Version C2023C00001 registered 03/01/2023

(b) the subscription television broadcasting services being provided under those licences are marketed on a joint basis;

(c) joint use is made of facilities for:

(i) transmitting programs; or

(ii) the operation of disabling devices for restricting access to certain programs;

(d) such other things as are prescribed.

(2) Subsection (1) does not apply to a contract, arrangement or understanding under which, or as a result of which, a person who is in a position to exercise control of a satellite subscription television broadcasting service comes to be in a position to exercise control (whether directly or indirectly) of the selection or provision of a significant proportion of the programs broadcast by another satellite subscription television broadcasting licensee.

## 116A Use of additional capacity

Services under a satellite subscription television broadcasting licence may use capacity other than high performance beams on a subscription television satellite for the purpose of ensuring that as much of Australia as possible is covered by those services.

## 116B Application of section 51 of the Competition and Consumer Act

Nothing in this Part is to be taken as specifically authorising any act or thing for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*.



Authorised Version C2023C00001 registered 03/01/2023

# Part 8—Subscription broadcasting and narrowcasting class licences

## 117 Determination of class licences

The ACMA may, by legislative instrument, determine a class licence for the provision of:

(a) subscription radio broadcasting services; or

(b) subscription radio narrowcasting services; or

(c) subscription television narrowcasting services; or

(d) open narrowcasting radio services; or

(e) open narrowcasting television services.

## 118 Conditions of class licences

(1) The ACMA may include in a class licence conditions that, having regard to:

(a) the objects of this Act and the regulatory policy set out in section 4; and

(b) the matters referred to in section 22;

it considers should be imposed on the provision of services under that licence.

(2) Different conditions may be specified for:

(a) different categories of broadcasting services; and

(b) services providing radio programs and services providing television programs.

(3) Each class licence is subject to the conditions set out in Part 7 of Schedule 2.

## 119 Matters to which conditions may relate

(1) Conditions of class licences must be relevant to the broadcasting services to which those licences relate.



Authorised Version C2023C00001 registered 03/01/2023

(2) Without limiting the range of conditions that may be imposed, the ACMA may impose a condition on a class licence:

(a) requiring the licensee to comply with a code of practice that is applicable to the licensee; or

(b) designed to ensure that a breach of a condition by the licensee does not recur; or

(c) designed to ensure compliance with the film classification system provided for by the *Classification (Publications, Films and Computer Games) Act 1995*.

## 120 Variation of class licences

(1) The ACMA may, by legislative instrument:

(a) vary or revoke conditions specified in a class licence; or

(b) specify additional conditions of the licence.

(2) Action taken under subsection (1) must not be inconsistent with:

(a) determinations and clarifications under section 19; or

(b) conditions set out in Part 7 of Schedule 2.



Authorised Version C2023C00001 registered 03/01/2023

# Part 8A—Restrictions on subscription television broadcasting services in regional areas etc.

## 121A Simplified outline

The following is a simplified outline of this Part:

- Unless the ACMA gives permission, a subscription television broadcasting licensee, or a related body corporate, must not provide a television service in a regional area if 3 or more consecutive program items transmitted on that service are identical to any 3 or more consecutive program items transmitted by a metropolitan commercial television broadcasting licensee during prime viewing hours.

## 121B Definitions

In this Part:

***licence area*** means a licence area of a commercial television broadcasting licence.

***metropolitan commercial television broadcasting licensee*** means a commercial television broadcasting licensee whose licence area is a metropolitan licence area.

***metropolitan licence area*** means a licence area in which is situated the General Post Office of the capital city of:

(a) New South Wales; or
(b) Victoria; or
(c) Queensland; or
(d) Western Australia; or
(e) South Australia.



Authorised Version C2023C00001 registered 03/01/2023

***prime viewing hours*** means the hours:

(a) beginning at 6 pm each day or, if another time is prescribed, beginning at that prescribed time each day; and

(b) ending at 10.30 pm on the same day or, if another time is prescribed, ending at that prescribed time on the same day.

***program item*** means a television program, but does not include:

(a) advertising or sponsorship matter (whether or not of a commercial kind); or

(b) a news program that:

(i) is not a regularly scheduled news program; and

(ii) is solely or principally about a matter of national significance; or

(c) a program that covers an Olympic Games that is being held at the time the program is transmitted; or

(d) a program that covers a Paralympic Games that is being held at the time the program is transmitted; or

(e) a program that covers a Commonwealth Games that is being held at the time the program is transmitted.

***regional area*** means an area that is not part of a metropolitan licence area.

***related body corporate*** has the same meaning as in the *Corporations Act 2001*.

## 121C Identical program items

For the purposes of this Part, in determining whether a program item is identical to another program item, disregard any differences between the techniques used to transmit the program items.

## 121D Continuity of program items

(1) For the purposes of this Part, any break during the transmission of a program item for the purposes of the transmission of other matter:



Authorised Version C2023C00001 registered 03/01/2023

(a) is taken not to affect the continuity of the program item; and

(b) is to be counted in working out the length of the program item; and

(c) despite paragraph (b), is to be ignored in working out whether the program item is identical to another program item.

(2) For the purposes of this Part, any break between program items for the purposes of the transmission of other matter:

(a) is taken not to affect the consecutiveness of the program items; and

(b) is to be counted in working out the total length of the program items.

## 121E ACMA permission is required to provide certain television services in regional areas

(1) A subscription television broadcasting licensee, or a related body corporate of a subscription television broadcasting licensee, ***engages in conduct to which this subsection applies*** if, without the written permission of the ACMA, the subscription television broadcasting licensee or the related body corporate, as the case may be, provides:

(a) a subscription television broadcasting service; or

(b) a subscription television narrowcasting service; or

(c) an open narrowcasting television service;

in a regional area, where, to the knowledge of the subscription television broadcasting licensee or the related body corporate, as the case may be, 3 or more consecutive program items transmitted on that service during a particular period:

(d) the total length of which is the same as, or shorter than, the length of prime viewing hours; and

(e) that occurs within the 24 hour period beginning at the start of prime viewing hours;



Authorised Version C2023C00001 registered 03/01/2023

are identical to any 3 or more consecutive program items transmitted by a metropolitan commercial television broadcasting licensee during those prime viewing hours.

(2) A subscription television broadcasting licensee, or a related body corporate of a subscription television broadcasting licensee, must take all reasonable steps to ensure that the subscription television broadcasting licensee or the related body corporate, as the case may be, does not engage in conduct to which subsection (1) applies.



Authorised Version C2023C00001 registered 03/01/2023

# Part 8B—International broadcasting licences

## Division 1—Introduction

### 121F Simplified outline

The following is a simplified outline of this Part:

- Applications may be made to the ACMA for the allocation of international broadcasting licences.
- The ACMA may only reject an application for the allocation of an international broadcasting licence to a person if:
    - (a) the ACMA is not satisfied that the person is an Australian company; or
    - (b) the ACMA is not satisfied that the person is a suitable applicant; or
    - (c) the Minister for Foreign Affairs is of the opinion that the international broadcasting service is likely to be contrary to Australia's national interest.
- A licensee must keep records of broadcasts for 90 days.
- An international broadcasting licence may only be cancelled if:
    - (a) the licensee does not commence to provide an international broadcasting service within 2 years; or
    - (b) the Minister for Foreign Affairs is of the opinion that the international broadcasting service is likely to be contrary to Australia's national interest.



Authorised Version C2023C00001 registered 03/01/2023

- The ACMA may make declarations (***nominated broadcaster declarations***) that allow international broadcasting licences and related transmitter licences to be held by different persons, so long as the transmitter licence is held by an Australian company.
- If a nominated broadcaster declaration is in force:
  - (a) the international broadcasting licence may be issued to a company that is not an Australian company; and
  - (b) the holder of the transmitter licence must keep records of broadcasts for 90 days; and
  - (c) the holder of the transmitter licence may receive notices on behalf of the holder of the international broadcasting licence.

## 121FAA Definitions

In this Part:

***company*** means a body corporate.

***holder***, in relation to a nominated broadcaster declaration, means the person who applied for the declaration.

***nominated broadcaster declaration*** means a declaration under section 121FLC.

***transmitter licence*** has the same meaning as in the *Radiocommunications Act 1992*.



Authorised Version C2023C00001 registered 03/01/2023

# Division 2—Allocation of international broadcasting licences

## 121FA Application for international broadcasting licence

(1) A person may apply to the ACMA for a licence to provide an international broadcasting service if no nominated broadcaster declaration is in force in relation to that service.

(1A) If a person is the holder of a nominated broadcaster declaration in relation to an international broadcasting service proposed to be provided by another person (the ***content provider***):

(a) the holder of the declaration may, on behalf of the content provider, apply to the ACMA for a licence authorising the content provider to provide the international broadcasting service; and

(b) if an application is made under paragraph (a)—the content provider is taken to be the applicant for the licence.

(1B) An application under this section may only be made on the basis of one licence per service.

(2) An application under this section must:

(a) be in accordance with a form approved in writing by the ACMA; and

(b) be accompanied by the application fee determined in writing by the ACMA.

## 121FB Corporate status and suitability

(1) If the ACMA:

(a) is satisfied that an applicant under subsection 121FA(1) for an international broadcasting licence is registered as a company under Part 2A.2 of the *Corporations Act 2001*; and

(b) does not decide that subsection 121FC(1) applies to the applicant;



Authorised Version C2023C00001 registered 03/01/2023

the ACMA must:

(c) refer the application to the Minister for Foreign Affairs; and

(d) give the Minister for Foreign Affairs a report about whether the proposed international broadcasting service concerned complies with the international broadcasting guidelines.

(2) If the ACMA:

(a) is not satisfied that an applicant under subsection 121FA(1) for an international broadcasting licence is registered as a company under Part 2A.2 of the *Corporations Act 2001*; or

(b) decides that subsection 121FC(1) applies to an applicant under subsection 121FA(1) for an international broadcasting licence;

the ACMA must refuse to allocate an international broadcasting licence to the applicant.

(3) If, under subsection (2), the ACMA refuses to allocate an international broadcasting licence to an applicant, the ACMA must give written notice of the refusal to the applicant.

(4) If an application for an international broadcasting licence is made under subsection 121FA(1), the ACMA must make reasonable efforts to either:

(a) take action under subsection (1) of this section; or

(b) refuse to allocate the licence;

within 30 days after the application was made.

(5) If the ACMA:

(a) is satisfied that an applicant under subsection 121FA(1A) for an international broadcasting licence is a company; and

(b) does not decide that subsection 121FC(1) applies to the applicant;

the ACMA must:

(c) refer the application to the Minister for Foreign Affairs; and

(d) give the Minister for Foreign Affairs a report about whether the proposed international broadcasting service concerned complies with the international broadcasting guidelines.



Authorised Version C2023C00001 registered 03/01/2023

(6) If the ACMA:
  (a) is not satisfied that an applicant under subsection 121FA(1A) for an international broadcasting licence is a company; or
  (b) decides that subsection 121FC(1) applies to an applicant under subsection 121FA(1A) for an international broadcasting licence;

the ACMA must refuse to allocate an international broadcasting licence to the applicant.

(7) If, under subsection (6), the ACMA refuses to allocate an international broadcasting licence to an applicant, the ACMA must give written notice of the refusal to:
  (a) the applicant; and
  (b) the holder of the nominated broadcaster declaration concerned.

(8) If an application for an international broadcasting licence is made under subsection 121FA(1A), the ACMA must make reasonable efforts to either:
  (a) take action under subsection (5) of this section; or
  (b) refuse to allocate the licence;

within 30 days after the application was made.

## 121FC Unsuitable applicant

(1) The ACMA may, if it is satisfied that allowing a particular company to provide an international broadcasting service under an international broadcasting licence would lead to a significant risk of:
  (a) an offence against this Act or the regulations being committed; or
  (aa) a breach of a civil penalty provision occurring; or
  (b) a breach of the conditions of the licence occurring;

decide that this subsection applies to the company.

(2) In deciding whether such a risk exists, the ACMA is to take into account:



Authorised Version C2023C00001 registered 03/01/2023

(a) the business record of the company; and
(b) the company's record in situations requiring trust and candour; and
(c) the business record of each person who is, or would be, if an international broadcasting licence were allocated to the company, in a position to control the licence; and
(d) the record in situations requiring trust and candour of each such person; and
(e) whether the company, or a person referred to in paragraph (c) or (d), has been convicted of an offence against this Act or the regulations; and
(f) whether a civil penalty order has been made against:
(i) the company; or
(ii) a person referred to in paragraph (c) or (d).

## 121FD Australia's national interest

*Direction not to allocate licence*

(1) If:
(a) an application for an international broadcasting licence is referred to the Minister for Foreign Affairs under subsection 121FB(1) or (5); and
(b) the Minister for Foreign Affairs is of the opinion that the proposed international broadcasting service concerned is likely to be contrary to Australia's national interest;
the Minister for Foreign Affairs may, by written notice given to the ACMA, direct the ACMA not to allocate an international broadcasting licence to the applicant.

*No objection to allocation of licence*

(2) If:
(a) an application for an international broadcasting licence is referred to the Minister for Foreign Affairs under subsection 121FB(1) or (5); and



Authorised Version C2023C00001 registered 03/01/2023

(b) the Minister for Foreign Affairs is not of the opinion that the proposed international broadcasting service concerned is likely to be contrary to Australia's national interest;

the Minister for Foreign Affairs must, by written notice given to the ACMA, inform the ACMA that he or she has no objection to the allocation of an international broadcasting licence to the applicant.

*Australia's national interest*

(3) For the purposes of this section, in determining whether a proposed international broadcasting service is likely to be contrary to Australia's national interest, the Minister for Foreign Affairs must have regard to the likely effect of the proposed service on Australia's international relations.

(4) For the purposes of this section, in determining whether a proposed international broadcasting service is likely to be contrary to Australia's national interest, the Minister for Foreign Affairs may have regard to a report given by the ACMA under subsection 121FB(1) or (5). This subsection does not limit the material to which the Minister for Foreign Affairs may have regard.

*Decision to be made within 60 days*

(5) If an application for an international broadcasting licence is referred to the Minister for Foreign Affairs under subsection 121FB(1) or (5), the Minister for Foreign Affairs must make reasonable efforts to either:

(a) direct the ACMA under subsection (1) of this section; or

(b) inform the ACMA under subsection (2) of this section;

within 60 days after the referral.

*Notification*

(6) If the Minister for Foreign Affairs directs the ACMA not to allocate an international broadcasting licence to an applicant, the ACMA must give written notice of the direction to:



Authorised Version C2023C00001 registered 03/01/2023

(a) in all cases—the applicant; and
(b) in the case of an application under subsection 121FA(1A)—the holder of the nominated broadcaster declaration concerned.

## 121FE Allocation of licence

If the Minister for Foreign Affairs informs the ACMA under subsection 121FD(2) that he or she has no objection to the allocation of an international broadcasting licence to an applicant, the ACMA must allocate the licence to the applicant.



Authorised Version C2023C00001 registered 03/01/2023

# Division 3—Obligations of international broadcasting licensees

## 121FF Conditions of international broadcasting licences

(1) Each international broadcasting licence is subject to the following conditions:

(a) the licensee must cause a record of programs broadcast on the international broadcasting service concerned to be made in a form approved in writing by the ACMA;

(b) the licensee must retain in its custody a record so made for a period of 90 days after the broadcast;

(c) the licensee must, without charge, make available to the ACMA, on request, any specified record made by the licensee under paragraph (a) that has been retained by the licensee (whether or not the licensee is, at the time of the request, under an obligation to retain the record).

(2) This section does not apply to an international broadcasting licence if a nominated broadcaster declaration is in force in relation to the international broadcasting service concerned.

Note: Corresponding conditions apply to nominated broadcaster declarations—see section 121FLE.



Authorised Version C2023C00001 registered 03/01/2023

## Division 4—Remedies

### 121FG Prohibition on providing an international broadcasting service without a licence

(1) A person commits an offence if the person:
  (a) intentionally provides an international broadcasting service; and
  (b) does not have an international broadcasting licence to provide the service, and is reckless as to that fact.

  Penalty: 20,000 penalty units.

(2) A person who contravenes subsection (1) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

(3) A person must not provide an international broadcasting service if the person does not have a licence to provide that service.

(4) Subsection (3) is a civil penalty provision.

(5) A person who contravenes subsection (3) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

### 121FH Remedial directions—unlicensed international broadcasting services

If the ACMA is satisfied that a person has breached, or is breaching, subsection 121FG(3), the ACMA may, by written notice given to the person, direct the person to take action directed towards ensuring that the person does not breach that section, or is unlikely to breach that section, in the future.



Authorised Version C2023C00001 registered 03/01/2023

## 121FHA Breach of remedial direction—offence

(1) A person commits an offence if:
  (a) the person has been given a notice under section 121FH; and
  (b) the person engages in conduct; and
  (c) the person's conduct contravenes a requirement in the notice.

  Penalty: 20,000 penalty units.

(2) A person who contravenes subsection (1) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

(3) In this section:

  ***engage in conduct*** means:
  (a) do an act; or
  (b) omit to perform an act.

## 121FHB Breach of remedial direction—civil penalty provision

(1) A person must comply with a notice under section 121FH.

(2) Subsection (1) is a civil penalty provision.

(3) A person who contravenes subsection (1) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

## 121FJ Offence for breach of conditions of international broadcasting licence

(1) A person commits an offence if:
  (a) the person is an international broadcasting licensee; and
  (b) the person engages in conduct; and
  (c) the person's conduct breaches a condition of the licence.



Authorised Version C2023C00001 registered 03/01/2023

Penalty: 2,000 penalty units.

(2) In this section:

***engage in conduct*** means:

(a) do an act; or

(b) omit to perform an act.

## 121FJA Civil penalty provision relating to breach of conditions of international broadcasting licences

(1) An international broadcasting licensee must not breach a condition of the licence.

(2) Subsection (1) is a civil penalty provision.

(3) A person who contravenes subsection (1) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

## 121FJB Remedial directions—licence conditions

(1) If the ACMA is satisfied that an international broadcasting licensee has breached, or is breaching, a condition of the licence, the ACMA may, by written notice given to the licensee, direct the licensee to take action directed towards ensuring that the licensee does not breach that condition, or is unlikely to breach that condition, in the future.

(2) The following are examples of the kinds of direction that may be given to a licensee under subsection (1):

(a) a direction that the licensee implement effective administrative systems for monitoring compliance with a condition of the licence;

(b) a direction that the licensee implement a system designed to give the licensee's employees, agents and contractors a reasonable knowledge and understanding of the requirements



Authorised Version C2023C00001 registered 03/01/2023

of a condition of the licence, in so far as those requirements affect the employees, agents or contractors concerned.

## 121FJC Breach of remedial direction—offence

(1) A person commits an offence if:
  (a) the person has been given a notice under section 121FJB; and
  (b) the person engages in conduct; and
  (c) the person's conduct contravenes a requirement in the notice.

Penalty: 2,000 penalty units.

(2) A person who contravenes subsection (1) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

(3) In this section:

***engage in conduct*** means:
  (a) do an act; or
  (b) omit to perform an act.

## 121FJD Breach of remedial direction—civil penalty provision

(1) A person must comply with a notice under section 121FJB.

(2) Subsection (1) is a civil penalty provision.

(3) A person who contravenes subsection (1) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

## 121FK Cancellation of licence if service does not commence within 2 years

(1) If:



Authorised Version C2023C00001 registered 03/01/2023

(a) a person has been allocated an international broadcasting licence; and

(b) the person has not commenced to provide the international broadcasting service concerned within 2 years after the allocation of the licence;

the ACMA may cancel the licence.

*Notice of intention to cancel*

(2) If the ACMA proposes to cancel a licence under subsection (1), the ACMA must give to the licensee:

(a) written notice of its intention; and

(b) a reasonable opportunity to make representations to the ACMA in relation to the proposed cancellation.

## 121FL Formal warning, or cancellation or suspension of licence, where service is contrary to Australia's national interest

*Formal warning*

(1) If:

(a) an international broadcasting service is provided under an international broadcasting licence; and

(b) the Minister for Foreign Affairs is of the opinion that the service is contrary to Australia's national interest; and

(c) the Minister for Foreign Affairs, by written notice given to the ACMA, directs the ACMA to issue a formal warning to the licensee;

the ACMA must issue a formal warning to the licensee.

*Suspension of licence*

(3) If:

(a) an international broadcasting service is provided under an international broadcasting licence; and

(b) the Minister for Foreign Affairs is of the opinion that the service is contrary to Australia's national interest; and



Authorised Version C2023C00001 registered 03/01/2023

(c) the Minister for Foreign Affairs, by written notice given to the ACMA, directs the ACMA to suspend the licence for the period specified in the direction;

the ACMA must suspend the licence for the period specified in the direction.

*Cancellation of licence*

(5) If:

(a) an international broadcasting service is provided under an international broadcasting licence; and

(b) the Minister for Foreign Affairs is of the opinion that the service is contrary to Australia's national interest; and

(c) the Minister for Foreign Affairs, by written notice given to the ACMA, directs the ACMA to cancel the licence;

the ACMA must cancel the licence.

(6) If the Minister for Foreign Affairs proposes to direct the ACMA to cancel an international broadcasting licence, he or she must direct the ACMA to:

(a) give the licensee written notice of his or her intention; and

(b) give the licensee a reasonable opportunity to send a submission to the ACMA in relation to the proposed direction; and

(c) forward any such submission to the Minister for Foreign Affairs.

*Australia's national interest*

(8) For the purposes of this section, in determining whether an international broadcasting service is contrary to Australia's national interest, the Minister for Foreign Affairs must have regard to the effect of the service on Australia's international relations.

(9) For the purposes of this section, in determining whether an international broadcasting service is contrary to Australia's national interest, the Minister for Foreign Affairs may have regard to a report given by the ACMA under section 121FM. This



Authorised Version C2023C00001 registered 03/01/2023

subsection does not limit the material to which the Minister for Foreign Affairs may have regard.



Authorised Version C2023C00001 registered 03/01/2023

# Division 4A—Nominated broadcaster declarations

## 121FLA Object of this Division

The main object of this Division is to provide for the making of declarations (***nominated broadcaster declarations***) that allow the following licences to be held by different persons:

(a) an international broadcasting licence that authorises the provision of an international broadcasting service;

(b) a transmitter licence for a radiocommunications transmitter that is for use for transmitting the international broadcasting service.

## 121FLB Applications for nominated broadcaster declarations

If a person (the ***transmission provider***):

(a) is the licensee of a transmitter licence for a transmitter that is used, or intended for use, for transmitting an international broadcasting service; or

(b) proposes to apply for a transmitter licence for a transmitter that is intended for use for transmitting an international broadcasting service;

the transmission provider may apply to the ACMA for a nominated broadcaster declaration in relation to the provision of the international broadcasting service by a particular person (the ***content provider***).

## 121FLC Making a nominated broadcaster declaration

(1) After considering the application, the ACMA must declare in writing that the provision of the international broadcasting service by the content provider is nominated in relation to the transmitter licence or proposed transmitter licence, if the ACMA is satisfied that:

(a) either:



Authorised Version C2023C00001 registered 03/01/2023

(i) the content provider holds an international broadcasting licence that authorises the provision of the international broadcasting service; or

(ii) the content provider does not hold such a licence but, if the declaration were made, the transmission provider or another person will, within 60 days after the making of the declaration, apply under subsection 121FA(1A), on behalf of the content provider, for an international broadcasting licence that authorises the provision of the international broadcasting service by the content provider; and

(b) the transmission provider intends to transmit the international broadcasting service on behalf of the content provider; and

(c) the transmission provider is registered as a company under Part 2A.2 of the *Corporations Act 2001*; and

(d) if the declaration were made, the transmission provider would be in a position to comply with all of the obligations imposed on the transmission provider under section 121FLE.

(2) The ACMA must give a copy of the declaration to:

(a) the transmission provider; and

(b) the content provider.

(3) If the ACMA refuses to make a nominated broadcaster declaration, the ACMA must give written notice of the refusal to:

(a) the transmission provider; and

(b) the content provider.

(4) If an application is made for a nominated broadcaster declaration, the ACMA must make reasonable efforts to:

(a) make the declaration under subsection (1); or

(b) refuse to make the declaration;

within 30 days after the application is made.

(5) This Part does not prevent the ACMA from making more than one nominated broadcaster declaration in relation to a particular international broadcasting service, so long as each declaration



Authorised Version C2023C00001 registered 03/01/2023

relates to a different transmitter licence or proposed transmitter licence.

## 121FLD Effect of nominated broadcaster declaration

If:

(a) a nominated broadcaster declaration is in force in relation to an international broadcasting service; and

(b) the provision of the international broadcasting service is authorised by an international broadcasting licence; and

(c) the holder of the declaration is the licensee of a transmitter licence that authorises the operation of a transmitter for transmitting the international broadcasting service; and

(d) the licensee of the transmitter licence transmits the international broadcasting service on behalf of the licensee of the international broadcasting licence;

then:

(e) for the purposes of the *Radiocommunications Act 1992*, the licensee of the international broadcasting licence is taken not to operate the radiocommunications transmitter for any purpose in connection with that transmission; and

(f) for the purposes of this Act:

(i) the licensee of the international broadcasting licence is taken to provide the international broadcasting service; and

(ii) the licensee of the transmitter licence is taken not to provide the international broadcasting service; and

(g) for the purposes of this Act, any programs that are transmitted by the licensee of the transmitter licence on behalf of the licensee of the international broadcasting licence:

(i) are taken to be programs transmitted by the licensee of the international broadcasting licence; and

(ii) are not taken to be programs transmitted by the licensee of the transmitter licence; and



Authorised Version C2023C00001 registered 03/01/2023

(h) for the purposes of this Part (other than section 121FLG), the ACMA is taken to have given a written notice to the licensee of the international broadcasting licence if the ACMA gives the notice to the licensee of the transmitter licence.

## 121FLE Conditions of nominated broadcaster declarations

(1) Each nominated broadcaster declaration is subject to the following conditions:

(a) the holder of the declaration must cause a record of programs broadcast on the international broadcasting service concerned to be made in a form approved in writing by the ACMA;

(b) the holder of the declaration must retain in the holder's custody a record so made for a period of 90 days after the broadcast;

(c) the holder of the declaration must, without charge, make available to the ACMA, on request, any specified record made by the holder under paragraph (a) that has been retained by the holder (whether or not the holder is, at the time of the request, under an obligation to retain the record).

(2) Subsection (1) does not apply to a nominated broadcaster declaration unless the holder of the declaration is the licensee of a transmitter licence that authorises the operation of a transmitter for transmitting the international broadcasting service concerned.

## 121FLF Offence for breach of conditions of nominated broadcaster declaration

(1) A person commits an offence if:

(a) the person is the holder of a nominated broadcaster declaration; and

(b) the person engages in conduct; and

(c) the person's conduct breaches a condition of the declaration.

Penalty: 2,000 penalty units.

(2) In this section:



Authorised Version C2023C00001 registered 03/01/2023

***engage in conduct*** means:

(a) do an act; or

(b) omit to perform an act.

## 121FLG Revocation of nominated broadcaster declaration

(1) The ACMA must, by writing, revoke a nominated broadcaster declaration relating to the provision of an international broadcasting service by a person (the ***content provider***) if the ACMA is satisfied that:

(a) the holder of the declaration is neither transmitting, nor proposing to transmit, the international broadcasting service on behalf of the content provider; or

(b) the holder of the declaration is involved, or proposes to become involved, in the selection or provision of programs to be transmitted on the international broadcasting service; or

(c) the holder of the declaration is not registered as a company under Part 2A.2 of the *Corporations Act 2001*.

(2) The ACMA must, by writing, revoke a nominated broadcaster declaration relating to the provision of an international broadcasting service by a person (the ***content provider***) if the ACMA is satisfied that:

(a) at the time the declaration was made, there was no international broadcasting licence that authorised the provision of the international broadcasting service by the content provider; and

(b) either:

(i) no application was made under subsection 121FA(1A) for such a licence within 60 days after the making of the declaration; or

(ii) an application for such a licence was made under subsection 121FA(1A) within 60 days after the making of the declaration, but the application was refused.



Authorised Version C2023C00001 registered 03/01/2023

(3) The ACMA must, by writing, revoke a nominated broadcaster declaration relating to the provision of an international broadcasting service by a person (the ***content provider***) if:

(a) the holder of the declaration; or

(b) the content provider;

gives the ACMA a written notice stating that the holder of the declaration, or the content provider, does not consent to the continued operation of the declaration.

(4) The ACMA must give a copy of the revocation to:

(a) the person who held the declaration; and

(b) the content provider.

(5) A revocation under subsection (1), (2) or (3) takes effect on the date specified in the revocation.

(6) The ACMA must not revoke a nominated broadcaster declaration under subsection (1) or (2) unless the ACMA has first:

(a) given the holder of the declaration a written notice:

(i) setting out a proposal to revoke the declaration; and

(ii) inviting the holder of the declaration to make a submission to the ACMA on the proposal; and

(b) given the content provider a written notice:

(i) setting out a proposal to revoke the declaration; and

(ii) inviting the content provider to make a submission to the ACMA on the proposal; and

(c) considered any submission that was received under paragraph (a) or (b) within the time limit specified in the notice concerned.

(7) A time limit specified in a notice under subsection (6) must run for at least 7 days.

(8) A person must not enter into a contract or arrangement under which the person or another person is:

(a) prevented from giving a notice under subsection (3); or



Authorised Version C2023C00001 registered 03/01/2023

(b) subject to any restriction in relation to the giving of a notice under subsection (3).

(9) A contract or arrangement entered into in contravention of subsection (8) is void.

### 121FLH Cancellation of licence if declaration ceases to be in force and licensee is not an Australian company

(1) If:

(a) a nominated broadcaster declaration ceases to be in force; and

(b) the provision of the international broadcasting service concerned is authorised by an international broadcasting licence; and

(c) 30 days pass, and the ACMA is satisfied that:

(i) the international broadcasting licensee is not registered as a company under Part 2A.2 of the *Corporations Act 2001*; and

(ii) the international broadcasting licensee has not taken reasonable steps to arrange for the international broadcasting service to be provided by a company that is registered under Part 2A.2 of the *Corporations Act 2001*;

the ACMA must cancel the licence.

(2) If:

(a) a nominated broadcaster declaration ceases to be in force; and

(b) the provision of the international broadcasting service concerned is authorised by an international broadcasting licence; and

(c) 90 days pass, and the ACMA is satisfied that the international broadcasting licensee is not registered as a company under Part 2A.2 of the *Corporations Act 2001*;

the ACMA must cancel the licence.



Authorised Version C2023C00001 registered 03/01/2023

(3) The ACMA may, by written notice given to the licensee, determine that paragraph (2)(c) has effect, in relation to the licensee, as if a reference in that paragraph to 90 days were a reference to such greater number of days as is specified in the notice.

(4) The ACMA must not notify a greater number of days under subsection (3) unless it is satisfied that there are exceptional circumstances that warrant the greater number of days.

*Notice of intention to cancel*

(5) If the ACMA proposes to cancel a licence under subsection (1) or (2), the ACMA must give to the licensee:
  (a) written notice of its intention; and
  (b) a reasonable opportunity to make representations to the ACMA in relation to the proposed cancellation.

## 121FLJ Register of nominated broadcaster declarations

(1) The ACMA is to maintain a register in which the ACMA includes particulars of all nominated broadcaster declarations currently in force.

(2) The Register may be maintained by electronic means.

(3) The Register is to be made available for inspection on the internet.



Authorised Version C2023C00001 registered 03/01/2023

# Division 5—ACMA to assist the Minister for Foreign Affairs

## 121FM Report about compliance with international broadcasting guidelines

The Minister for Foreign Affairs may, by written notice given to the ACMA, direct the ACMA to:

(a) prepare a report about whether a specified international broadcasting service complies with the international broadcasting guidelines; and

(b) give the report to the Minister for Foreign Affairs.

## 121FN Records of broadcasts

The Minister for Foreign Affairs may, by written notice given to the ACMA, direct the ACMA to:

(a) obtain specified records from an international broadcasting licensee under section 121FF; and

(b) give the records to the Minister for Foreign Affairs.



Authorised Version C2023C00001 registered 03/01/2023

## Division 6—Miscellaneous

### 121FP International broadcasting guidelines

(1) The ACMA must, by legislative instrument, formulate guidelines relating to international broadcasting services.

(2) To avoid doubt, international broadcasting guidelines may deal with matters other than Australia's national interest.

### 121FQ Surrender of international broadcasting licences

(1) An international broadcasting licensee may, by notice in writing given to the ACMA, surrender the licence.

### 121FR Complaints about international broadcasting services

(1) It is not a function of the ACMA to monitor and investigate complaints concerning international broadcasting services.

(2) However, if an international broadcasting service also falls into another category of broadcasting services, this section does not prevent the ACMA from performing its function of monitoring and investigating complaints about the service in the service's capacity as a service that falls into that other category.

### 121FS Statements about decisions of the Minister for Foreign Affairs

(1) If:

(a) the Minister for Foreign Affairs makes a decision under subsection 121FD(1) or 121FL(3) or (5); and

(b) a person is entitled to make an application to the Federal Court or the Federal Circuit and Family Court of Australia (Division 2) under section 5 of the *Administrative Decisions (Judicial Review) Act 1977* in relation to the decision;



Authorised Version C2023C00001 registered 03/01/2023

the person may, by written notice given to the Minister for Foreign Affairs, request the Minister for Foreign Affairs to give the person a written statement setting out the reasons for the decision.

(2) If a person makes a request under subsection (1) in relation to a decision, the Minister for Foreign Affairs must either:

(a) as soon as practicable, and in any event within 28 days, after receiving the request:

(i) prepare a written statement setting out the reasons for the decision; and

(ii) give the statement to the person; or

(b) both:

(i) as soon as practicable, and in any event within 28 days, after receiving the request, prepare a statement about the decision; and

(ii) cause a copy of the statement to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the statement.



Authorised Version C2023C00001 registered 03/01/2023

# Part 9—Content rules, program standards and codes of practice

## 121G Australian content—transmission quota

*Programs transmitted on primary commercial television broadcasting service*

(1) A commercial television broadcasting licensee must ensure that, for:

(a) the calendar year that began on 1 January 2013; and

(b) each later calendar year;

the percentage worked out using the following formula is not less than 55%:

$$\frac{\text{Total hours of Australian programs transmitted during the year}}{\text{Total hours of programs transmitted during the year}} \times 100$$

where:

***total hours of Australian programs transmitted during the year*** means the total number of hours of Australian programs that were transmitted:

(a) during targeted viewing hours in the year; and

(b) on the primary commercial television broadcasting service provided by the licensee.

***total hours of programs transmitted during the year*** means the total number of hours of television programs transmitted:

(a) during targeted viewing hours in the year; and

(b) on the primary commercial television broadcasting service provided by the licensee.



Authorised Version C2023C00001 registered 03/01/2023

*Programs transmitted otherwise than on primary commercial television broadcasting service*

(2) A commercial television broadcasting licensee must ensure that, for each calendar year beginning on or after 1 January 2015, the total number of hours of Australian programs that were transmitted by the licensee:

(a) during targeted viewing hours in the year; and

(b) otherwise than on the primary commercial television broadcasting service provided by the licensee;

is not less than 1,460.

Note: See also section 121H (which deals with compliance by regional/remote commercial television broadcasting licensees).

(3) For the purposes of the application of subsection (2) to a commercial television broadcasting licensee, if a first release Australian drama program was transmitted by the licensee:

(a) during targeted viewing hours in a calendar year; and

(b) otherwise than on the primary commercial television broadcasting service provided by the licensee;

assume that the duration of the program was twice as long as the actual duration of the program.

*Targeted viewing hours*

(4) For the purposes of this section, ***targeted viewing hours*** are the hours:

(a) beginning at 6 am each day; and

(b) ending at midnight on the same day.

(5) For the purposes of this section, if:

(a) a television program consists of coverage of a sporting event; and

(b) the program:

(i) begins before midnight on a particular day (the ***first day***); and

(ii) ends on the next day;



Authorised Version C2023C00001 registered 03/01/2023

the part of the program transmitted between midnight on the first day and 2 am on the next day is taken to have been transmitted during targeted viewing hours on the first day.

*Australian programs*

(6) For the purposes of this section, ***Australian program*** means:
  (a) if an instrument is in force under subsection (7)—an Australian program as defined by that instrument; or
  (b) otherwise:
    (i) an Australian program (within the meaning of the *Broadcasting Services (Australian Content) Standard 2005* as in force on 1 January 2013); or
    (ii) an Australian official co-production (within the meaning of the *Broadcasting Services (Australian Content) Standard 2005* as in force on 1 January 2013); or
    (iii) a New Zealand program (within the meaning of the *Broadcasting Services (Australian Content) Standard 2005* as in force on 1 January 2013); or
    (iv) an Australian/New Zealand program (within the meaning of the *Broadcasting Services (Australian Content) Standard 2005* as in force on 1 January 2013).

(7) The ACMA may, by legislative instrument, define the meaning of the expression ***Australian program*** for the purposes of this section.

Note: See also section 16 of the *Australian Communications and Media Authority Act 2005* (consistency with CER Trade in Services Protocol).

*First release Australian drama program*

(8) For the purposes of this section, ***first release*** means:
  (a) if an instrument is in force under subsection (9)—first release as defined by that instrument; or
  (b) otherwise—first release (within the meaning of the *Broadcasting Services (Australian Content) Standard 2005* as in force on 1 January 2013).



Authorised Version C2023C00001 registered 03/01/2023

(9) The ACMA may, by legislative instrument, define the meaning of the expression ***first release*** for the purposes of this section.

Note: See also section 16 of the *Australian Communications and Media Authority Act 2005* (consistency with CER Trade in Services Protocol).

(10) For the purposes of this section, ***Australian drama program*** means:

(a) if an instrument is in force under subsection (12)—an Australian drama program as defined by that instrument; or

(b) otherwise:

(i) an Australian drama program (within the meaning of the *Broadcasting Services (Australian Content) Standard 2005* as in force on 1 January 2013); or

(ii) an Australian official co-production (within the meaning of the *Broadcasting Services (Australian Content) Standard 2005* as in force on 1 January 2013) that is a drama program; or

(iii) a New Zealand program (within the meaning of the *Broadcasting Services (Australian Content) Standard 2005* as in force on 1 January 2013) that is a drama program; or

(iv) an Australian/New Zealand program (within the meaning of the *Broadcasting Services (Australian Content) Standard 2005* as in force on 1 January 2013) that is a drama program.

(11) For the purposes of subparagraphs (10)(b)(ii), (iii) and (iv), ***drama program*** means a program that would be an Australian drama program (within the meaning of the *Broadcasting Services (Australian Content) Standard 2005* as in force on 1 January 2013) if the expression "Australian" were omitted from paragraphs (a) and (c) of the definition of ***Australian drama program*** in that standard as in force on 1 January 2013.

(12) The ACMA may, by legislative instrument, define the meaning of the expression ***Australian drama program*** for the purposes of this section.



Authorised Version C2023C00001 registered 03/01/2023

Note: See also section 16 of the *Australian Communications and Media Authority Act 2005* (consistency with CER Trade in Services Protocol).

*Licence allocated under subsection 40(1) on or after 1 January 2007*

(13) If a commercial television broadcasting licence is or was allocated under subsection 40(1) on or after 1 January 2007, subsections (1) and (2) of this section do not apply to the licensee for:

(a) the calendar year in which the licence is or was allocated; and

(b) any of the next 4 calendar years.

*Ministerial direction*

(14) The Minister may, by legislative instrument, give directions to the ACMA in relation to the exercise of its powers under this section.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the direction (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

(15) The ACMA must comply with a direction under subsection (14).

## 121H Australian content: transmission quota for regional/remote commercial television broadcasting licensees

*Deemed compliance*

(1) If:

(a) apart from this section, a regional/remote commercial television broadcasting licensee did not comply with subsection 121G(2) for a calendar year; and

(b) the regional/remote commercial television broadcasting licensee gives the ACMA a written notice that:

(i) states that the regional/remote commercial television broadcasting licensee wants to rely on this section for the calendar year; and



Authorised Version C2023C00001 registered 03/01/2023

(ii) specifies a particular metropolitan commercial television broadcasting licensee; and

(iii) is in a form approved in writing by the ACMA; and

(c) the notice is given within:

(i) 30 days after the end of the calendar year; or

(ii) such longer period as the ACMA allows; and

(d) the total number of hours of Australian programs that were transmitted by the regional/remote commercial television broadcasting licensee:

(i) during targeted viewing hours in the calendar year; and

(ii) on such of its secondary commercial television broadcasting services as were equivalent to secondary commercial television broadcasting services of the metropolitan commercial television broadcasting licensee (the ***equivalent metropolitan secondary commercial television broadcasting services***);

was not less than the total number of hours of Australian programs transmitted by the metropolitan commercial television broadcasting licensee:

(iii) during targeted viewing hours in the calendar year; and

(iv) on the equivalent metropolitan secondary commercial television broadcasting services;

the regional/remote commercial television broadcasting licensee is taken to have complied with subsection 121G(2) for the calendar year.

*Publication of copy of notice*

(2) If a notice is given under paragraph (1)(b), the ACMA must publish a copy of the notice on the ACMA's website.

*Application of subsection 121G(3)*

(3) Subsection 121G(3) applies to paragraph (1)(d) in a corresponding way to the way in which it applies to subsection 121G(2).



Authorised Version C2023C00001 registered 03/01/2023

*Equivalent services*

(4) For the purposes of this section, if the program content of a secondary commercial television broadcasting service provided by a regional/remote commercial television broadcasting licensee is the same, or substantially the same, as the program content of a secondary commercial television broadcasting service provided by a metropolitan commercial broadcasting licensee, then those services are ***equivalent*** to each other.

*Definitions*

(5) In this section:

***Australian program*** has the same meaning as in section 121G.

***metropolitan commercial television broadcasting licensee*** means a commercial television broadcasting licensee whose licence area is a metropolitan licence area.

***metropolitan licence area*** means a licence area in which is situated the General Post Office of the capital city of:

(a) New South Wales; or
(b) Victoria; or
(c) Queensland; or
(d) Western Australia; or
(e) South Australia.

***regional/remote commercial television broadcasting licensee*** means a commercial television broadcasting licensee whose licence area is a regional/remote licence area.

***regional/remote licence area*** means any of the following licence areas:

(a) Northern New South Wales TV1;
(b) Southern New South Wales TV1;
(c) Regional Victoria TV1;
(d) Eastern Victoria TV1;
(e) Western Victoria TV1;



Authorised Version C2023C00001 registered 03/01/2023

(f) Regional Queensland TV1;
(g) Tasmania TV1;
(h) Broken Hill TV1;
(i) Darwin TV1;
(j) Geraldton TV1;
(k) Griffith and MIA TV1;
(l) Kalgoorlie TV1;
(m) Mildura/Sunraysia TV1;
(n) Mount Gambier/South East TV1;
(o) Mt Isa TV1;
(p) Riverland TV1;
(q) South West and Great Southern TV1;
(r) Spencer Gulf TV1;
(s) Remote and Regional WA TV1;
(t) Remote Central and Eastern Australia TV1;
(u) Western Zone TV1;
(v) South Eastern Australia TV3;
(w) Northern Australia TV3;
(x) Western Australia TV3;
(y) Remote and Central Eastern Australia TV2.

***secondary commercial television broadcasting service***, of a commercial television broadcasting licensee, means a commercial television broadcasting service provided by the licensee that is not the licensee's primary commercial television broadcasting service.

***targeted viewing hours*** has the same meaning as in section 121G.

## 122 Program standards for children's programs and Australian content

(1) The ACMA must, by legislative instrument, determine standards that are to be observed by commercial television broadcasting licensees.



Authorised Version C2023C00001 registered 03/01/2023

Note: See also section 16 of the *Australian Communications and Media Authority Act 2005* (consistency with CER Trade in Services Protocol).

(2) Standards under subsection (1) for commercial television broadcasting licensees are to relate to:

(a) programs for children; and

(b) the Australian content of programs.

(4) Standards must not be inconsistent with this Act or the regulations.

(6) The ACMA must ensure that, at all times after the commencement of this subsection, there is in force under subsection (1) a standard that is, or has the same effect as, the standard in section 5 of *Television Program Standard 23—Australian Content in Advertising* as in force on 4 August 2004.

Note: Section 5 of *Television Program Standard 23—Australian Content in Advertising* deals with quotas for Australian television advertisements.

(7) The Minister may, by legislative instrument, give directions to the ACMA in relation to the exercise of its powers under this section.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the direction (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

(8) The ACMA must comply with a direction under subsection (7).

(9) The ACMA must not determine a standard under subsection (1) that has the effect of quantitatively extending the requirements imposed by subsection 121G(1) or (2).

(10) If:

(a) a standard under subsection (1) imposes a quantitative requirement in relation to a particular kind of program transmitted by a commercial television broadcasting licensee; and

(b) the requirement does not substantially correspond to subsection 121G(1) or (2); and



Authorised Version C2023C00001 registered 03/01/2023

(c) a program of that kind is transmitted on a commercial television broadcasting service provided by the licensee;

the transmission of the program counts for the purposes of meeting the requirement.

Note: The following are examples of a kind of program:

(a) an Australian drama program (within the meaning of the *Broadcasting Services (Australian Content) Standard 2005*);

(b) a C program (within the meaning of the *Children's Television Standards 2009*);

(c) a P program (within the meaning of the *Children's Television Standards 2009*).

(11) If a commercial television broadcasting licence is or was allocated under subsection 40(1) on or after 1 January 2007, standards under subsection (1) of this section do not apply to the licensee during:

(a) the calendar year in which the licence is or was allocated; and

(b) any of the next 4 calendar years.

(12) For the purposes of this section, in determining whether a requirement substantially corresponds to subsection 121G(1) or (2), disregard any differences as to:

(a) percentage; or

(b) viewing hours.

## 123 Development of codes of practice

(1) It is the intention of the Parliament that radio and television industry groups representing:

(a) commercial broadcasting licensees; and

(b) community broadcasting licensees other than providers of services targeted, to a significant extent, to one or more remote Indigenous communities; and

(ba) community broadcasting licensees whose services are targeted, to a significant extent, to one or more remote Indigenous communities; and

(c) providers of subscription broadcasting services; and

(d) providers of subscription narrowcasting services; and



Authorised Version C2023C00001 registered 03/01/2023

(e) providers of open narrowcasting services;

develop, in consultation with the ACMA and taking account of any relevant research conducted by the ACMA, codes of practice that are to be applicable to the broadcasting operations of each of those sections of the industry.

(2) Codes of practice developed for a section of the broadcasting industry may relate to:

(a) preventing the broadcasting of programs that, in accordance with community standards, are not suitable to be broadcast by that section of the industry; and

(b) methods of ensuring that the protection of children from exposure to program material which may be harmful to them is a high priority; and

(c) methods of classifying programs that reflect community standards; and

(d) promoting accuracy and fairness in news and current affairs programs; and

(e) preventing the broadcasting of programs that:

(i) simulate news or events in a way that misleads or alarms the audience; or

(ii) depict the actual process of putting a person into a hypnotic state; or

(iii) are designed to induce a hypnotic state in the audience; or

(iv) use or involve the process known as ***subliminal perception*** or any other technique that attempts to convey information to the audience by broadcasting messages below or near the threshold of normal awareness; and

(f) in the case of codes of practice developed by commercial broadcasting licensees—broadcasting time devoted to advertising; and

(g) in the case of codes of practice developed by commercial radio broadcasting licensees—the broadcasting of Australian music; and



Authorised Version C2023C00001 registered 03/01/2023

(h) methods of:
  (i) handling complaints from the public about program content or compliance with codes of practice; and
  (ii) reporting to the ACMA on complaints so made; and
(i) captioning of programs for the hearing impaired; and
(j) in the case of codes of practice developed by community broadcasting licensees:
  (i) the kinds of sponsorship announcements that may be broadcast by those licensees; or
  (ii) the kinds of sponsorship announcements that particular kinds of program may carry; and
(k) in the case of codes of practice developed by subscription broadcasting licensees—dealings with customers of the licensees, including methods of billing, fault repair, privacy and credit management;
(l) such other matters relating to program content as are of concern to the community.

(3) In developing codes of practice relating to matters referred to in paragraphs (2)(a) and (c), community attitudes to the following matters are to be taken into account:
(a) the portrayal in programs of physical and psychological violence;
(b) the portrayal in programs of sexual conduct and nudity;
(c) the use in programs of offensive language;
(d) the portrayal in programs of the use of drugs, including alcohol and tobacco;
(e) the portrayal in programs of matter that is likely to incite or perpetuate hatred against, or vilifies, any person or group on the basis of ethnicity, nationality, race, gender, sexual orientation, age, religion or physical or mental disability;
(f) such other matters relating to program content as are of concern to the community.



Authorised Version C2023C00001 registered 03/01/2023

(3E) A code of practice referred to in paragraph (2)(i) has no effect to the extent to which it is inconsistent with a standard determined under subsection 130ZZA(1).

(4) If:

(a) a group representing a particular section of the broadcasting industry develops a code of practice to be observed in the conduct of the broadcasting operations of that section of the industry; and

(b) the ACMA is satisfied that:

(i) the code of practice provides appropriate community safeguards for the matters covered by the code; and

(ii) the code is endorsed by a majority of the providers of broadcasting services in that section of the industry; and

(iii) members of the public have been given an adequate opportunity to comment on the code;

the ACMA must include that code in the Register of codes of practice.

(5) To avoid doubt, a reference in this section to ***broadcasting operations*** includes a reference to each commercial television broadcasting service provided by a commercial television broadcasting licensee.

(6) To avoid doubt, a reference in this section to ***broadcasting operations*** includes a reference to each commercial radio broadcasting service provided by a commercial radio broadcasting licensee.

(7) To avoid doubt, a reference in this section to ***broadcasting operations*** includes a reference to each community radio broadcasting service provided by a designated community radio broadcasting licensee.



Authorised Version C2023C00001 registered 03/01/2023

## 123B Review by the ACMA—application of code of practice to section 38C licences

*Scope*

(1) This section applies if:

(a) a code of practice (the ***original code***) is registered under section 123; and

(b) the code applies to the broadcasting operations of commercial television broadcasting licensees.

*Review of original code*

(2) The ACMA may conduct a review of whether the original code is appropriate in its application to the broadcasting operations of licensees of commercial television broadcasting licences allocated under section 38C.

*Request for development of replacement code*

(3) If the ACMA:

(a) conducts a review of the original code under subsection (2); and

(b) considers that the original code is not appropriate in its application to the broadcasting operations of licensees of commercial television broadcasting licences allocated under section 38C;

the ACMA may, by written notice given to the industry group that developed the original code:

(c) request the industry group to:

(i) develop another code of practice (the ***replacement code***) that is expressed to replace the original code; and

(ii) give a copy of the replacement code to the ACMA within the period specified in the notice; and

(d) specify particular matters that, in the ACMA's opinion, should be addressed in the replacement code.



Authorised Version C2023C00001 registered 03/01/2023

## 124 ACMA to maintain Register of codes of practice

(1) The ACMA is to maintain a Register in which it includes all codes of practice registered under section 123.

(2) The Register is to be open for public inspection.

(3) The Register may be maintained by electronic means.

## 125 ACMA may determine program standards where codes of practice fail or where no code of practice developed

(1) If:

(a) the ACMA is satisfied that there is convincing evidence that a code of practice registered under section 123 is not operating to provide appropriate community safeguards for a matter referred to in subsection 123(2) in a particular section of the broadcasting industry; and

(b) the ACMA is satisfied that it should determine a standard in relation to that matter;

the ACMA must, in writing, determine a standard in relation to that matter.

(2) If:

(a) no code of practice has been registered under section 123 for a matter referred to in subsection 123(2) in a particular section of the broadcasting industry; and

(b) the ACMA is satisfied that it should determine a standard in relation to that matter;

the ACMA must, by notice in writing, determine a standard in relation to that matter.



Authorised Version C2023C00001 registered 03/01/2023

## 125A ACMA must determine a gambling promotion program standard if directed by the Minister

*Ministerial direction*

(1) The Minister may, by legislative instrument, give the ACMA a direction to:

(a) determine a gambling promotion program standard that complies with the requirements specified in the direction; and

(b) do so within a period specified in the direction.

(2) The ACMA must comply with a direction under subsection (1).

(3) The ACMA must not determine a gambling promotion program standard unless it does so in accordance with a direction under subsection (1).

*Determination of a gambling promotion program standard*

(4) The ACMA may, by legislative instrument, determine a standard, to be known as a gambling promotion program standard, prescribing matters required or permitted by this Act to be prescribed by a gambling promotion program standard.

*Prohibiting or regulating gambling promotional content*

(5) A gambling promotion program standard may make provision for or in relation to prohibiting or regulating the broadcast of gambling promotional content:

(a) on broadcasting services provided by any or all of the following:

(i) commercial television broadcasting licensees;

(ii) commercial radio broadcasting licensees;

(iii) subscription television broadcasting licensees;

(iv) providers of subscription radio narrowcasting services;

(v) providers of subscription television narrowcasting services; and

(b) in conjunction with live coverage of a sporting event.



Authorised Version C2023C00001 registered 03/01/2023

Note: See also subsection 33(3A) of the *Acts Interpretation Act 1901*.

*Explanatory matter*

(6) A gambling promotion program standard may make provision for or in relation to requiring any or all of the following:

(a) commercial television broadcasting licensees;

(b) commercial radio broadcasting licensees;

(c) subscription television broadcasting licensees;

(d) providers of subscription radio narrowcasting services;

(e) providers of subscription television narrowcasting services;

to ensure that, if live coverage of a sporting event is, or is to be, broadcast on a broadcasting service provided by the licensee or provider, explanatory matter that relates to the following is provided by the licensee or provider in a manner specified in the standard:

(f) whether a gambling promotion program standard made for the purposes of subsection (5) applies in relation to that live coverage;

(g) if so, how the gambling promotion program standard applies in relation to that live coverage.

*Record-keeping*

(7) A gambling promotion program standard may make provision for or in relation to requiring any or all of the following:

(a) commercial television broadcasting licensees;

(b) commercial radio broadcasting licensees;

(c) subscription television broadcasting licensees;

(d) providers of subscription radio narrowcasting services;

(e) providers of subscription television narrowcasting services;

to ensure that, if live coverage of a sporting event is, or is to be, broadcast on a broadcasting service provided by the licensee or provider, the licensee or provider will:

(f) make records that:

(i) are of a kind or kinds specified in the standard; and



Authorised Version C2023C00001 registered 03/01/2023

(ii) are sufficient to enable compliance by the licensee or provider with a gambling promotion program standard made for the purposes of subsection (5) or (6) to be readily ascertained; and

(g) retain those records for the period ascertained in accordance with the first-mentioned standard; and

(h) make those retained records available to the ACMA on request.

Note: See also subsection 33(3A) of the *Acts Interpretation Act 1901*.

(8) For the purposes of subparagraph (7)(f)(i), each of the following is an example of a kind of record:

(a) a written record;

(b) an audio record;

(c) an audio-visual record.

*Accidental or incidental broadcast of gambling promotional content*

(9) A gambling promotion program standard does not apply in relation to the broadcasting of gambling promotional content on a broadcasting service if:

(a) the gambling promotional content is broadcast as an accidental or incidental accompaniment to the broadcasting of other matter; and

(b) the licensee or provider of the broadcasting service does not receive any direct or indirect benefit (whether financial or not) for broadcasting the gambling promotional content (in addition to any direct or indirect benefit that the licensee or provider receives for broadcasting the other matter).

*Live coverage of a sporting event*

(10) For the purposes of this section, if:

(a) live coverage of a sporting event is broadcast on a broadcasting service; and

(b) there is an unscheduled break in the sporting event;



Authorised Version C2023C00001 registered 03/01/2023

any matter broadcast on the service during the break is taken to be live coverage of the sporting event.

*Gambling promotional content broadcast in conjunction with live coverage of a sporting event*

(11) For the purposes of this section, gambling promotional content (other than a commentator betting odds promotion or a representative venue-based promotion) is broadcast on a broadcasting service in conjunction with live coverage of a sporting event if, and only if, the content is broadcast on the service during the period:

(a) beginning 5 minutes before the scheduled start of the sporting event; and

(b) ending 5 minutes after the conclusion of the sporting event.

(12) However, if coverage of the sporting event is delayed, this section has effect as if there were a corresponding delay to the period mentioned in subsection (11).

(13) For the purposes of this section, gambling promotional content that consists of a commentator betting odds promotion or a representative venue-based promotion is broadcast on a broadcasting service in conjunction with live coverage of a sporting event if, and only if, the promotion is broadcast on the service during the period:

(a) beginning 30 minutes before the scheduled start of the sporting event; and

(b) ending 30 minutes after the conclusion of the sporting event.

(14) However, if coverage of the sporting event is delayed, this section has effect as if there were a corresponding delay to the period mentioned in subsection (13).

*Administrative decisions*

(15) A gambling promotion program standard may make provision for or in relation to a particular matter by empowering the ACMA to make decisions of an administrative character.



Authorised Version C2023C00001 registered 03/01/2023

*This section does not limit section 125*

(16) This section does not limit the operation of section 125.

*Implied freedom of political communication*

(17) The provisions of:

(a) this section; and

(b) a gambling promotion program standard;

have no effect to the extent (if any) that their operation would infringe any constitutional doctrine of implied freedom of political communication.

(18) Subsection (17) does not limit the application of section 15A of the *Acts Interpretation Act 1901* to this Act.

*Acquisition of property*

(19) The provisions of:

(a) this section; and

(b) a gambling promotion program standard;

have no effect to the extent (if any) to which their operation would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph).

*Sporting event*

(20) Subclause 19(1) of Schedule 8 applies in relation to this section in a corresponding way to the way in which it applies in relation to that Schedule.

(21) Online content service provider rules made for the purposes of subclause 19(2) of Schedule 8 apply in relation to this section in a corresponding way to the way in which they apply in relation to that Schedule.

(22) Online content service provider rules made for the purposes of subclause 19(3) of Schedule 8 apply in relation to this section in a



Authorised Version C2023C00001 registered 03/01/2023

corresponding way to the way in which they apply in relation to that Schedule.

*Scheduled start of a sporting event*

(23) Online content service provider rules made for the purposes of clause 22 of Schedule 8 apply in relation to this section in a corresponding way to the way in which they apply in relation to that Schedule.

*Conclusion of a sporting event*

(24) Online content service provider rules made for the purposes of clause 23 of Schedule 8 apply in relation to this section in a corresponding way to the way in which they apply in relation to that Schedule.

*Definitions*

(25) In this section:

***commentator betting odds promotion*** means gambling promotional content to the extent to which it consists of the provision of betting odds (however described) by a commentator.

***conclusion***, in relation to a sporting event, has a meaning affected by subsection (24).

***coverage*** has the same meaning as in Schedule 8.

***gambling promotional content*** means:

(a) advertising matter; or

(b) sponsorship matter; or

(c) promotional matter;

that relates to a gambling service.

***gambling service*** has the same meaning as in Schedule 8.

***gambling service provider*** means a person who provides a gambling service.



Authorised Version C2023C00001 registered 03/01/2023

***in conjunction with***, when used in relation to live coverage of a sporting event, has the meaning given by subsections (11) to (14).

***live***, in relation to coverage of a sporting event, has the same meaning as in Schedule 8.

***representative venue-based promotion*** means gambling promotional content to the extent to which it consists of:

(a) visual images (whether animated or otherwise) of a representative of a gambling service provider; or

(b) speech of a representative of a gambling service provider;

where those visual images, or that speech, as the case may be, gives the impression that the representative is at, or around, the venue of a sporting event.

***scheduled start***, in relation to a sporting event, has a meaning affected by subsection (23).

***sporting event*** has a meaning affected by subsections (20), (21) and (22).

## 126 Consultation on standards

The ACMA must, before determining, varying or revoking a standard, seek public comment on the proposed standard or the variation or revocation.

## 127 Notification of determination or variation or revocation of standards

(1) If the ACMA determines or varies or revokes a standard, the ACMA must publish a notice stating:

(a) that the standard has been determined, varied or revoked; and

(b) the places where copies of the standard or of the variation or revocation can be accessed.

(2) A notice under subsection (1) must be published:

(a) on the ACMA's website; and



Authorised Version C2023C00001 registered 03/01/2023

(b) in one or more other forms that are readily accessible by the public.

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

## 128 Standards and codes to be amendable by the Parliament

(1) If:

(a) either House of the Parliament agrees to an amendment of a standard or code of practice which has been determined or registered in accordance with this Part; and

(b) otherwise than as mentioned in subsection (2), the other House agrees to that amendment of the standard or code of practice;

the standard or code of practice has effect as amended by that amendment from the 28th day after the day on which that other House agrees to the amendment.

(2) If notice of a motion for an amendment to a standard or code of practice is given in a House, and within 15 sitting days of that House after the notice has been given:

(a) the notice has not been withdrawn and the motion has not been called on; or

(b) the motion has been called on and moved and has not been withdrawn or otherwise disposed of;

the amendment specified in the motion shall then be taken to have been agreed to by that House.

## 129 Limitation of ACMA's power in relation to standards

(1) Subject to subsection (2), the ACMA must not determine a standard that requires that, before programs are broadcast, the programs, or a sample of the programs, be approved by the ACMA or by a person or body appointed by the ACMA.

(2) The ACMA may determine such a standard in relation to programs for children.



Authorised Version C2023C00001 registered 03/01/2023

## 130 Application of the Competition and Consumer Act

Nothing in this Part is to be taken as specifically authorising any act or thing for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*.



Authorised Version C2023C00001 registered 03/01/2023

# Part 9A—Technical standards

## 130A Technical standards for digital transmission—television etc.

(1) The ACMA may, by legislative instrument, determine technical standards that relate to the transmission in digital mode of any or all of the following services delivered using the broadcasting services bands:

(a) commercial television broadcasting services;

(b) national television broadcasting services;

(c) community television broadcasting services;

(d) subscription television broadcasting services;

(e) subscription television narrowcasting services provided under a class licence;

(ea) open narrowcasting television services provided under a class licence;

(f) datacasting services provided under datacasting licences.

*Conditional access systems*

(2) Standards under subsection (1), to the extent that they deal with conditional access systems, must be directed towards ensuring the achievement of the policy objective that, as far as is practicable, those systems should be open to all providers of eligible datacasting services.

*Application program interfaces*

(3) Standards under subsection (1), to the extent that they deal with application program interfaces, must be directed towards ensuring the achievement of the policy objective that, as far as is practicable, those interfaces should be open to all providers of eligible datacasting services.



Authorised Version C2023C00001 registered 03/01/2023

*Instruments*

(6) Section 589 of the *Telecommunications Act 1997* applies to standards determined under subsection (1) of this section in a corresponding way to the way in which it applies to an instrument under that Act.

*Compliance*

(7) A national broadcaster must comply with a standard determined under subsection (1).

Note 1: For compliance by holders of commercial television broadcasting licences, see clause 7 of Schedule 2.

Note 2: For compliance by holders of community television broadcasting licences, see clause 9 of Schedule 2.

Note 3: For compliance by holders of subscription television broadcasting licences, see clause 10 of Schedule 2.

Note 4: For compliance by providers of television broadcasting services provided under a class licence, see clause 11 of Schedule 2.

Note 5: For compliance by holders of datacasting licences, see clause 24 of Schedule 6.

*Definitions*

(8) In this section:

***application program interface*** has the meaning generally accepted within the broadcasting industry.

***conditional access system*** means a conditional access system that:

(a) relates to the provision of one or more eligible datacasting services; and

(b) allows a provider of an eligible datacasting service to determine whether an end-user is able to receive a particular eligible datacasting service.

***digital mode*** has the same meaning as in Schedule 4.

***eligible datacasting service*** means:



Authorised Version C2023C00001 registered 03/01/2023

(a) a datacasting service provided under, and in accordance with the conditions of, a datacasting licence; or
(b) a television broadcasting service transmitted in digital mode using the broadcasting services bands.

***national television broadcasting service*** has the same meaning as in Schedule 4.

## 130AA Technical standards for digital transmission—radio etc.

(1) The ACMA may, by legislative instrument, determine technical standards that relate to the transmission of any or all of the following services using a digital modulation technique:
(a) commercial radio broadcasting services;
(b) national radio broadcasting services;
(c) community radio broadcasting services;
(d) subscription radio broadcasting services provided under a class licence;
(e) subscription radio narrowcasting services provided under a class licence;
(f) open narrowcasting radio services provided under a class licence.

*Instruments*

(2) Section 589 of the *Telecommunications Act 1997* applies to standards determined under subsection (1) of this section in a corresponding way to the way in which it applies to an instrument under that Act.

*Compliance*

(3) A national broadcaster must comply with a standard determined under subsection (1).

Note 1: For compliance by holders of commercial radio broadcasting licences, see clause 8 of Schedule 2.

Note 2: For compliance by holders of community radio broadcasting licences, see clause 9 of Schedule 2.



Authorised Version C2023C00001 registered 03/01/2023

Note 3: For compliance by providers of radio broadcasting services provided under a class licence, see clause 11 of Schedule 2.

## 130AB Technical standards relating to the operation of multiplex transmitters

(1) The ACMA may, by legislative instrument, determine technical standards that relate to the operation of multiplex transmitters under digital radio multiplex transmitter licences.

Note: For compliance, see paragraph 109B(1)(o) of the *Radiocommunications Act 1992*.

*Instruments*

(2) Section 589 of the *Telecommunications Act 1997* applies to standards determined under subsection (1) of this section in a corresponding way to the way in which it applies to an instrument under that Act.

## 130AC Technical standards for digital transmission of television services provided with the use of a satellite

(1) The ACMA may, by legislative instrument, determine technical standards that relate to the transmission in digital mode of either or both of the following services:

(a) commercial television broadcasting services provided under a licence allocated under section 38C;

(b) national television broadcasting services provided with the use of a satellite.

*Instruments*

(2) Section 589 of the *Telecommunications Act 1997* applies to standards determined under subsection (1) of this section in a corresponding way to the way in which it applies to an instrument under that Act.



Authorised Version C2023C00001 registered 03/01/2023

*Compliance*

(3) A national broadcaster must comply with a standard determined under subsection (1).

Note: For compliance by holders of commercial television broadcasting licences, see paragraph 7A(1)(d) of Schedule 2.

*Definitions*

(4) In this section:

***digital mode*** has the same meaning as in Schedule 4.

***national television broadcasting service*** has the same meaning as in Schedule 4.

## 130B Technical standards for domestic digital reception equipment—television etc.

(1) The ACMA may, by legislative instrument, determine technical standards that relate to domestic reception equipment that is capable of receiving any or all of the following services transmitted in digital mode using the broadcasting services bands:

(a) commercial television broadcasting services;
(b) national television broadcasting services;
(c) community television broadcasting services;
(d) subscription television broadcasting services;
(e) television broadcasting services provided under a class licence;
(f) datacasting services provided under datacasting licences.

*Offence*

(2) A person commits an offence if:

(a) the person supplies equipment; and
(b) the equipment is domestic reception equipment; and



Authorised Version C2023C00001 registered 03/01/2023

(c) the equipment is capable of receiving any or all of the following services transmitted in digital mode using the broadcasting services bands:
  (i) commercial television broadcasting services;
  (ii) national television broadcasting services;
  (iii) community television broadcasting services;
  (iv) subscription television broadcasting services;
  (v) television broadcasting services provided under a class licence;
  (vi) datacasting services provided under datacasting licences; and
(d) the equipment does not comply with a standard determined under subsection (1).

Penalty: 1,500 penalty units.

*Civil penalty*

(3) A person must not supply domestic reception equipment if:
(a) the equipment is capable of receiving any or all of the following services transmitted in digital mode using the broadcasting services bands:
  (i) commercial television broadcasting services;
  (ii) national television broadcasting services;
  (iii) community television broadcasting services;
  (iv) subscription television broadcasting services;
  (v) television broadcasting services provided under a class licence;
  (vi) datacasting services provided under datacasting licences; and
(b) the equipment does not comply with a standard determined under subsection (1).

(4) Subsection (3) is a civil penalty provision.



Authorised Version C2023C00001 registered 03/01/2023

*Instruments*

(5) Section 589 of the *Telecommunications Act 1997* applies to standards determined under subsection (1) of this section in a corresponding way to the way in which it applies to an instrument under that Act.

*Reception of subscription television broadcasting services*

(6) For the purposes of this section, it is immaterial whether domestic reception equipment is capable of receiving subscription television broadcasting services when used:

(a) in isolation; or

(b) in conjunction with any other equipment.

*Exemptions*

(7) The ACMA may, by legislative instrument, exempt specified domestic reception equipment from subsections (2) and (3).

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

*Definitions*

(8) In this section:

***digital mode*** has the same meaning as in Schedule 4.

***national television broadcasting service*** has the same meaning as in Schedule 4.

***supply*** has the same meaning as in the *Competition and Consumer Act 2010*.

## 130BA Technical standards for domestic digital reception equipment—radio etc.

(1) The ACMA may, by legislative instrument, determine technical standards that relate to domestic reception equipment that is



Authorised Version C2023C00001 registered 03/01/2023

capable of receiving any or all of the following services transmitted using a digital modulation technique:

(a) commercial radio broadcasting services;
(b) national radio broadcasting services;
(c) community radio broadcasting services;
(d) subscription radio broadcasting services provided under a class licence;
(e) subscription radio narrowcasting services provided under a class licence;
(f) open narrowcasting radio services provided under a class licence.

*Offence*

(2) A person commits an offence if:

(a) the person supplies equipment; and
(b) the equipment is domestic reception equipment; and
(c) the equipment is capable of receiving any or all of the following services transmitted using a digital modulation technique:
(i) commercial radio broadcasting services;
(ii) national radio broadcasting services;
(iii) community radio broadcasting services;
(iv) subscription radio broadcasting services provided under a class licence;
(v) subscription radio narrowcasting services provided under a class licence;
(vi) open narrowcasting radio services provided under a class licence; and
(d) the equipment does not comply with a standard determined under subsection (1).

Penalty: 1,500 penalty units.



Authorised Version C2023C00001 registered 03/01/2023

*Civil penalty*

(3) A person must not supply domestic reception equipment if:

(a) the equipment is capable of receiving any or all of the following services transmitted using a digital modulation technique:

(i) commercial radio broadcasting services;

(ii) national radio broadcasting services;

(iii) community radio broadcasting services;

(iv) subscription radio broadcasting services provided under a class licence;

(v) subscription radio narrowcasting services provided under a class licence;

(vi) open narrowcasting radio services provided under a class licence; and

(b) the equipment does not comply with a standard determined under subsection (1).

(4) Subsection (3) is a civil penalty provision.

*Instruments*

(5) Section 589 of the *Telecommunications Act 1997* applies to standards determined under subsection (1) of this section in a corresponding way to the way in which it applies to an instrument under that Act.

*Reception of subscription radio broadcasting services*

(6) For the purposes of this section, it is immaterial whether domestic reception equipment is capable of receiving subscription radio broadcasting services when used:

(a) in isolation; or

(b) in conjunction with any other equipment.



Authorised Version C2023C00001 registered 03/01/2023

*Exemptions*

(7) The ACMA may, by legislative instrument, exempt specified domestic reception equipment from subsections (2) and (3).

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

*Definition*

(8) In this section:

***supply*** has the same meaning as in the *Competition and Consumer Act 2010*.

## 130BB Technical standards for domestic digital reception equipment—television services provided with the use of a satellite

(1) The ACMA may, by legislative instrument, determine technical standards that relate to domestic reception equipment that is capable of receiving any or all of the following services transmitted in digital mode:

(a) commercial television broadcasting services provided under a licence allocated under section 38C;

(b) national television broadcasting services provided with the use of a satellite;

(c) community television broadcasting services provided with the use of a satellite;

(d) open narrowcasting television services provided with the use of a satellite.

*Offence*

(2) A person commits an offence if:

(a) the person supplies equipment; and

(b) the equipment is domestic reception equipment; and

(c) the equipment is capable of receiving any or all of the following services transmitted in digital mode:



Authorised Version C2023C00001 registered 03/01/2023

(i) commercial television broadcasting services provided under a licence allocated under section 38C;

(ii) national television broadcasting services provided with the use of a satellite;

(iii) community television broadcasting services provided with the use of a satellite;

(iv) open narrowcasting television services provided with the use of a satellite; and

(d) the equipment does not comply with a standard determined under subsection (1).

Penalty: 1,500 penalty units.

*Civil penalty*

(3) A person must not supply domestic reception equipment if:

(a) the equipment is capable of receiving any or all of the following services transmitted in digital mode:

(i) commercial television broadcasting services provided under a licence allocated under section 38C;

(ii) national television broadcasting services provided with the use of a satellite;

(iii) community television broadcasting services provided with the use of a satellite;

(iv) open narrowcasting television services provided with the use of a satellite; and

(b) the equipment does not comply with a standard determined under subsection (1).

(4) Subsection (3) is a civil penalty provision.

*Instruments*

(5) Section 589 of the *Telecommunications Act 1997* applies to standards determined under subsection (1) of this section in a corresponding way to the way in which it applies to an instrument under that Act.



Authorised Version C2023C00001 registered 03/01/2023

*Reception of television services provided with the use of a satellite*

(6) For the purposes of this section, it is immaterial whether domestic reception equipment is capable of receiving any or all of the following transmitted in digital mode:

(a) commercial television broadcasting services provided under a licence allocated under section 38C;

(b) national television broadcasting services provided with the use of a satellite;

(ba) community television broadcasting services provided with the use of a satellite;

(bb) open narrowcasting television services provided with the use of a satellite;

when used:

(c) in isolation; or

(d) in conjunction with any other equipment.

*Ministerial direction*

(6A) The Minister may, by legislative instrument, direct the ACMA about the exercise of its powers to:

(a) determine technical standards under subsection (1); or

(b) vary technical standards determined under subsection (1).

(6B) The ACMA must comply with a direction under subsection (6A).

*Exemptions*

(7) The ACMA may, by legislative instrument, exempt specified domestic reception equipment from subsections (2) and (3).

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.



Authorised Version C2023C00001 registered 03/01/2023

*Definitions*

(8) In this section:

***community television broadcasting service*** means a community broadcasting service that provides television programs.

***digital mode*** has the same meaning as in Schedule 4.

***national television broadcasting service*** has the same meaning as in Schedule 4.

***supply*** has the same meaning as in the *Competition and Consumer Act 2010*.



Authorised Version C2023C00001 registered 03/01/2023

# Part 9B—Industry codes and industry standards

## Division 1—Simplified outline

### 130C Simplified outline

The following is a simplified outline of this Part:

- Industry codes may be registered by the ACMA.
- The ACMA has a reserve power to make an industry standard if there are no industry codes or if an industry code is deficient.
- Compliance with industry standards is mandatory.



Authorised Version C2023C00001 registered 03/01/2023

## Division 2—Interpretation

### 130D Industry codes

For the purposes of this Part, an ***industry code*** is a code developed under this Part (whether or not in response to a request under this Part).

### 130E Industry standards

For the purposes of this Part, an ***industry standard*** is a standard determined under this Part.

### 130F Industry activities

(1) For the purposes of this Part, each of the following is an ***industry activity***:

(a) providing a commercial television broadcasting service;

(b) providing a national television broadcasting service (within the meaning of Schedule 4);

(c) providing a community television broadcasting service;

(d) providing a subscription television broadcasting service;

(e) providing a television broadcasting service under a class licence;

(ea) providing a commercial radio broadcasting service;

(eb) providing a national radio broadcasting service;

(ec) providing a community radio broadcasting service;

(ed) subscription radio broadcasting services provided under a class licence;

(ee) subscription radio narrowcasting services provided under a class licence;

(ef) open narrowcasting radio services provided under a class licence;

(f) providing a datacasting service under a datacasting licence;



Authorised Version C2023C00001 registered 03/01/2023

(g) importing, manufacturing or supplying domestic reception equipment that is capable of receiving any or all of the following:
  (i) commercial television broadcasting services;
  (ii) national television broadcasting services;
  (iii) community television broadcasting services;
  (iv) subscription television broadcasting services;
  (v) television broadcasting services provided under a class licence;
  (va) commercial radio broadcasting services;
  (vb) national radio broadcasting services;
  (vc) community radio broadcasting services;
  (vd) subscription radio broadcasting services provided under a class licence;
  (ve) subscription radio narrowcasting services provided under a class licence;
  (vf) open narrowcasting radio services provided under a class licence;
  (vi) datacasting services provided under datacasting licences;
(i) operating a multiplex transmitter under a digital radio multiplex transmitter licence.

*Reception of subscription television broadcasting services*

(2) For the purposes of this section, it is immaterial whether domestic reception equipment is capable of receiving subscription television broadcasting services, or subscription radio broadcasting services, when used:
  (a) in isolation; or
  (b) in conjunction with any other equipment.

*Definitions*

(3) In this section:

***import*** means import into Australia.



Authorised Version C2023C00001 registered 03/01/2023

***national television broadcasting service*** has the same meaning as in Schedule 4.

***supply*** has the same meaning as in the *Competition and Consumer Act 2010*.

## 130G Sections of the industry

(1) For the purposes of this Part, ***sections of the industry*** are to be ascertained in accordance with this section.

(2) The ACMA may, by legislative instrument, determine that persons carrying on, or proposing to carry on, one or more specified kinds of industry activity constitute a section of the industry for the purposes of this Part.

(3) The section must be identified in the determination by a unique name and/or number.

(4) A determination under subsection (2) has effect accordingly.

(5) Sections of the industry determined under subsection (2):
  (a) need not be mutually exclusive; and
  (b) may consist of the aggregate of any 2 or more sections of the industry determined under subsection (2); and
  (c) may be subsets of a section of the industry determined under subsection (2).

(6) Subsection (5) does not, by implication, limit subsection (2).

## 130H Participants in a section of the industry

For the purposes of this Part, if a person is a member of a group that constitutes a section of the industry, the person is a ***participant*** in that section of the industry.



Authorised Version C2023C00001 registered 03/01/2023

# Division 3—General principles relating to industry codes and industry standards

## 130J Statement of regulatory policy

The Parliament intends that bodies or associations that the ACMA is satisfied represent sections of the industry should develop codes (***industry codes***) that are to apply to participants in that section of the industry in relation to the industry activities of the participants.

## 130K Examples of matters that may be dealt with by industry codes and industry standards

(1) This section sets out examples of matters that may be dealt with by industry codes and industry standards.

(2) The applicability of a particular example will depend on which section of the industry is involved.

(3) The examples are as follows:

(a) the labelling of domestic reception equipment;

(b) electronic program guides, including the provision of information for the purpose of compiling electronic program guides;

(c) the numbering of digital services, including the use of logical channel numbers;

(d) application program interfaces (within the meaning of section 130A);

(e) conditional access systems (within the meaning of section 130A);

(f) the updating of software used in domestic reception equipment.



Authorised Version C2023C00001 registered 03/01/2023

## 130L Industry codes and industry standards not to deal with certain matters

For the purposes of this Part, an industry code or an industry standard that deals with a particular matter has no effect to the extent (if any) to which the matter is dealt with by:

(a) a code registered, or a standard determined, under Part 6 of the *Telecommunications Act 1997*; or

(b) a code registered, or a standard determined, under Part 9 of this Act; or

(c) a standard determined under Part 9A of this Act; or

(e) a code registered, or a standard determined, under Division 7 of Part 9 of the *Online Safety Act 2021*; or

(f) a code registered, or a standard determined, under Part 4 of Schedule 6 to this Act; or

(g) a code of practice notified to the ACMA under subsection 8(1) of the *Australian Broadcasting Corporation Act 1983*; or

(h) a code of practice notified to the ACMA under subsection 10(1) of the *Special Broadcasting Service Act 1991*.



Authorised Version C2023C00001 registered 03/01/2023

# Division 4—Industry codes

## 130M Registration of industry codes

(1) This section applies if:

(a) the ACMA is satisfied that a body or association represents a particular section of the industry; and

(b) that body or association develops an industry code that applies to participants in that section of the industry and deals with one or more matters relating to the industry activities of those participants; and

(c) the body or association gives a copy of the code to the ACMA; and

(d) the ACMA is satisfied that:

(i) to the extent to which the code deals with one or more matters of substantial relevance to the community—the code provides appropriate community safeguards for that matter or those matters; and

(ii) to the extent to which the code deals with one or more matters that are not of substantial relevance to the community—the code deals with that matter or those matters in an appropriate manner; and

(e) the ACMA is satisfied that, before giving the copy of the code to the ACMA:

(i) the body or association published a draft of the code and invited members of the public to make submissions to the body or association about the draft within a specified period; and

(ii) the body or association gave consideration to any submissions that were received from members of the public within that period; and

(f) the ACMA is satisfied that, before giving the copy of the code to the ACMA:

(i) the body or association published a draft of the code and invited participants in that section of the industry to



Authorised Version C2023C00001 registered 03/01/2023

make submissions to the body or association about the draft within a specified period; and

(ii) the body or association gave consideration to any submissions that were received from participants in that section of the industry within that period.

(2) The ACMA must register the code by including it in the Register of industry codes kept under section 130ZA.

(3) A period specified under subparagraph (1)(e)(i) or (1)(f)(i) must run for at least 30 days.

(4) If:

(a) an industry code (the ***new code***) is registered under this Part; and

(b) the new code is expressed to replace another industry code;

the other code ceases to be registered under this Part when the new code is registered.

## 130N ACMA may request codes

(1) If the ACMA is satisfied that a body or association represents a particular section of the industry, the ACMA may, by written notice given to the body or association, request the body or association to:

(a) develop an industry code that applies to participants in that section of the industry and deals with one or more specified matters relating to the industry activities of those participants; and

(b) give the ACMA a copy of the code within the period specified in the notice.

(2) The period specified in a notice under subsection (1) must run for at least 120 days.

(3) The ACMA must not make a request under subsection (1) in relation to a particular section of the industry unless the ACMA is satisfied that:



Authorised Version C2023C00001 registered 03/01/2023

(a) the development of the code is necessary or convenient in order to:
(i) provide appropriate community safeguards; or
(ii) otherwise deal with the performance or conduct of participants in that section of the industry; and
(b) in the absence of the request, it is unlikely that an industry code would be developed within a reasonable period.

(4) The ACMA may vary a notice under subsection (1) by extending the period specified in the notice.

(5) Subsection (4) does not, by implication, limit the application of subsection 33(3) of the *Acts Interpretation Act 1901*.

(6) A notice under subsection (1) may specify indicative targets for achieving progress in the development of the code (for example, a target of 60 days to develop a preliminary draft of the code).

## 130P Publication of notice where no body or association represents a section of the industry

(1) If the ACMA is satisfied that a particular section of the industry is not represented by a body or association, the ACMA may publish a notice in the *Gazette*:
(a) stating that, if such a body or association were to come into existence within a specified period, the ACMA would be likely to give a notice to that body or association under subsection 130N(1); and
(b) setting out the matter or matters relating to the industry activities that would be likely to be specified in the subsection 130N(1) notice.

(2) The period specified in a notice under subsection (1) must run for at least 60 days.



Authorised Version C2023C00001 registered 03/01/2023

## 130Q Replacement of industry codes

(1) Changes to an industry code are to be achieved by replacing the code instead of varying the code.

(2) If the replacement code differs only in minor respects from the original code, section 130M has effect, in relation to the registration of the code, as if paragraphs 130M(1)(e) and (f) had not been enacted.

Note: Paragraphs 130M(1)(e) and (f) deal with submissions about draft codes.



Authorised Version C2023C00001 registered 03/01/2023

## Division 5—Industry standards

### 130R ACMA may determine an industry standard if a request for an industry code is not complied with

(1) This section applies if:

(a) the ACMA has made a request under subsection 130N(1) in relation to the development of a code that is to:

(i) apply to participants in a particular section of the industry; and

(ii) deal with one or more matters relating to the industry activities of those participants; and

(b) any of the following conditions is satisfied:

(i) the request is not complied with;

(ii) if indicative targets for achieving progress in the development of the code were specified in the notice of request—any of those indicative targets were not met;

(iii) the request is complied with, but the ACMA subsequently refuses to register the code; and

(c) the ACMA is satisfied that it is necessary or convenient for the ACMA to determine a standard in order to:

(i) provide appropriate community safeguards in relation to that matter or those matters; or

(ii) otherwise regulate adequately participants in that section of the industry in relation to that matter or those matters.

(2) The ACMA may, by legislative instrument, determine a standard that applies to participants in that section of the industry and deals with that matter or those matters. A standard under this subsection is to be known as an ***industry standard***.

(3) Before determining an industry standard under this section, the ACMA must consult the body or association to whom the request mentioned in paragraph (1)(a) was made.



Authorised Version C2023C00001 registered 03/01/2023

(4) The Minister may give the ACMA a written direction as to the exercise of its powers under this section.

## 130S ACMA may determine industry standard where no industry body or association formed

(1) This section applies if:

(a) the ACMA is satisfied that a particular section of the industry is not represented by a body or association; and

(b) the ACMA has published a notice under subsection 130P(1) relating to that section of the industry; and

(c) that notice:

(i) states that, if such a body or association were to come into existence within a particular period, the ACMA would be likely to give a notice to that body or association under subsection 130N(1); and

(ii) sets out one or more matters relating to the industry activities of the participants in that section of the industry; and

(d) no such body or association comes into existence within that period; and

(e) the ACMA is satisfied that it is necessary or convenient for the ACMA to determine a standard in order to:

(i) provide appropriate community safeguards in relation to that matter or those matters; or

(ii) otherwise regulate adequately participants in that section of the industry in relation to that matter or those matters.

(2) The ACMA may, by legislative instrument, determine a standard that applies to participants in that section of the industry and deals with that matter or those matters. A standard under this subsection is to be known as an ***industry standard***.

(3) The Minister may give the ACMA a written direction as to the exercise of its powers under this section.



Authorised Version C2023C00001 registered 03/01/2023

## 130T ACMA may determine industry standards—total failure of industry codes

(1) This section applies if:

(a) an industry code that:

(i) applies to participants in a particular section of the industry; and

(ii) deals with one or more matters relating to the industry activities of those participants;

has been registered under this Part for at least 180 days; and

(b) the ACMA is satisfied that the code is totally deficient (as defined by subsection (6)); and

(c) the ACMA has given the body or association that developed the code a written notice requesting that deficiencies in the code be addressed within a specified period; and

(d) that period ends and the ACMA is satisfied that it is necessary or convenient for the ACMA to determine a standard that applies to participants in that section of the industry and deals with that matter or those matters.

(2) The period specified in a notice under paragraph (1)(c) must run for at least 30 days.

(3) The ACMA may, by legislative instrument, determine a standard that applies to participants in that section of the industry and deals with that matter or those matters. A standard under this subsection is to be known as an ***industry standard***.

(4) If the ACMA is satisfied that a body or association represents that section of the industry, the ACMA must consult the body or association before determining an industry standard under subsection (3).

(5) The industry code ceases to be registered under this Part on the day on which the industry standard comes into force.



Authorised Version C2023C00001 registered 03/01/2023

(6) For the purposes of this section, an industry code that applies to participants in a particular section of the industry and deals with one or more matters relating to the industry activities of those participants is ***totally deficient*** if, and only if:

(a) the code is not operating to provide appropriate community safeguards in relation to that matter or those matters; or

(b) the code is not otherwise operating to regulate adequately participants in that section of the industry in relation to that matter or those matters.

(7) The Minister may give the ACMA a written direction as to the exercise of its powers under this section.

## 130U ACMA may determine industry standards—partial failure of industry codes

(1) This section applies if:

(a) an industry code that:

(i) applies to participants in a particular section of the industry; and

(ii) deals with 2 or more matters relating to the industry activities of those participants;

has been registered under this Part for at least 180 days; and

(b) section 130T does not apply to the code; and

(c) the ACMA is satisfied that the code is deficient (as defined by subsection (6)) to the extent to which the code deals with one or more of those matters (the ***deficient matter*** or ***deficient matters***); and

(d) the ACMA has given the body or association that developed the code a written notice requesting that deficiencies in the code be addressed within a specified period; and

(e) that period ends and the ACMA is satisfied that it is necessary or convenient for the ACMA to determine a standard that applies to participants in that section of the industry and deals with the deficient matter or deficient matters.



Authorised Version C2023C00001 registered 03/01/2023

(2) The period specified in a notice under paragraph (1)(d) must run for at least 30 days.

(3) The ACMA may, by legislative instrument, determine a standard that applies to participants in that section of the industry and deals with the deficient matter or deficient matters. A standard under this subsection is to be known as an ***industry standard***.

(4) If the ACMA is satisfied that a body or association represents that section of the industry, the ACMA must consult the body or association before determining an industry standard under subsection (3).

(5) On and after the day on which the industry standard comes into force, the industry code has no effect to the extent to which it deals with the deficient matter or deficient matters. However, this subsection does not affect:

(a) the continuing registration of the remainder of the industry code; or

(b) any investigation, proceeding or remedy in respect of a contravention of the industry code that occurred before that day.

(6) For the purposes of this section, an industry code that applies to participants in a particular section of the industry and deals with 2 or more matters relating to the industry activities of those participants is ***deficient*** to the extent to which it deals with a particular one of those matters if, and only if:

(a) the code is not operating to provide appropriate community safeguards in relation to that matter; or

(b) the code is not otherwise operating to regulate adequately participants in that section of the industry in relation to that matter.

(7) The Minister may give the ACMA a written direction as to the exercise of its powers under this section.



Authorised Version C2023C00001 registered 03/01/2023

## 130V Compliance with industry standards

(1) If:

(a) an industry standard that applies to participants in a particular section of the industry is registered under this Part; and

(b) a person is a participant in that section of the industry;

the person must comply with the industry standard.

*Offence*

(2) A person commits an offence if:

(a) the person is subject to a requirement under subsection (1); and

(b) the person engages in conduct; and

(c) the person's conduct contravenes the requirement.

Penalty: 1,500 penalty units.

*Civil penalty*

(3) Subsection (1) is a civil penalty provision.

## 130W Formal warnings—breach of industry standards

(1) This section applies to a person who is a participant in a particular section of the industry.

(2) The ACMA may issue a formal warning if the person contravenes an industry standard registered under this Part.

## 130X Variation of industry standards

The ACMA may, by legislative instrument, vary an industry standard that applies to participants in a particular section of the industry if it is satisfied that it is necessary or convenient to do so to:

(a) provide appropriate community safeguards in relation to one or more matters relating to the industry activities of those participants; and



Authorised Version C2023C00001 registered 03/01/2023

(b) otherwise regulate adequately those participants in relation to one or more matters relating to the industry activities of those participants.

## 130Y Revocation of industry standards

(1) The ACMA may, by legislative instrument, revoke an industry standard.

(2) If:

(a) an industry code is registered under this Part; and

(b) the code is expressed to replace an industry standard;

the industry standard is revoked when the code is registered.



Authorised Version C2023C00001 registered 03/01/2023

# Division 6—Register of industry codes and industry standards

## 130ZA ACMA to maintain Register of industry codes and industry standards

(1) The ACMA is to maintain a Register in which the ACMA includes:

(a) all industry codes required to be registered under this Part; and

(b) all industry standards; and

(c) all requests made under section 130N; and

(d) all notices under section 130P.

(2) The Register is to be maintained by electronic means.

(3) The Register is to be made available for inspection on the internet.



Authorised Version C2023C00001 registered 03/01/2023

# Part 9C—Access to commercial television broadcasting services provided with the use of a satellite

## 130ZBA Simplified outline

The following is a simplified outline of this Part:

- A conditional access scheme is a scheme that sets out rules relating to access to services provided under a commercial television broadcasting licence allocated under section 38C.
- The ACMA may register a conditional access scheme developed by a body or association that represents commercial television broadcasting licensees.
- If no conditional access scheme is developed by a body or association that represents commercial television broadcasting licensees, the ACMA may formulate and register a conditional access scheme.

Note: Under paragraph 7A(1)(c) of Schedule 2, it is a condition of a licence allocated under section 38C that the licensee will ensure that any conditional access system relating to the services provided under the licence will comply with any conditional access scheme registered under this Part.

## 130ZB Objectives of conditional access scheme—South Eastern Australia TV3 licence area and Northern Australia TV3 licence area

*Scope*

(1) This section applies to a commercial television broadcasting licence allocated under section 38C for:



Authorised Version C2023C00001 registered 03/01/2023

(a) the South Eastern Australia TV3 licence area; or
(b) the Northern Australia TV3 licence area.

*Objectives*

(2) A conditional access scheme for the section 38C licence area complies with this section if the scheme is directed towards the achievement of the objectives set out in this section.

(3) The first objective is that:
(a) the scheme should specify all of the following as areas that are taken to be areas (***category A reception areas***) in which people are unable to receive adequate reception of all of the applicable terrestrial digital commercial television broadcasting services:
(i) the related terrestrial licence areas;
(ii) the external Territory in the section 38C licence area; and
(b) if a terrestrial licensee for a related terrestrial licence area is authorised, under paragraph 7(2A)(d) of Schedule 2, to provide a commercial television broadcasting service outside the related terrestrial licence area to one or more persons who are in the section 38C licence area—the scheme should provide that those persons are taken in to be in a category A reception area.

(4) The second objective is that the scheme should:
(a) specify one or more areas included in the section 38C licence area; or
(b) specify a method for ascertaining one or more areas included in the section 38C licence area;
that are taken to be areas (***category B reception areas***) in which people are unable to receive adequate reception of all of the applicable terrestrial digital commercial television broadcasting services.



Authorised Version C2023C00001 registered 03/01/2023

(5) The third objective is that a conditional access system that relates to any of the commercial television broadcasting services provided under the section 38C licence must enable persons in:

(a) a category A reception area; or

(b) a category B reception area; or

(c) a declared service-deficient area;

to receive those commercial television broadcasting services.

(7) The fourth objective is that the scheme should provide that so much of the section 38C licence area as is neither:

(a) a category A reception area; nor

(b) a category B reception area;

is a ***category C reception area***.

(8) The fifth objective is that the scheme must:

(a) if the scheme is developed by a body or association that the ACMA is satisfied represents commercial television broadcasting licensees—identify a company; or

(b) if the scheme is formulated by the ACMA—identify the ACMA;

as the ***scheme administrator*** for the scheme.

(9) The sixth objective is that the scheme must authorise the scheme administrator to issue a certificate (a ***reception certificate***) to a person in a category C reception area (but not in a declared service-deficient area) stating that the person is unable to receive adequate reception of all of the applicable terrestrial digital commercial television broadcasting services.

(10) The seventh objective is that a conditional access system that relates to any of the commercial television broadcasting services provided under the section 38C licence must enable a person who:

(a) is in a category C reception area; and

(aa) is not in a declared service-deficient area; and

(b) holds a reception certificate;

to receive those commercial television broadcasting services.



Authorised Version C2023C00001 registered 03/01/2023

(12) The eighth objective is that, if an application for a reception certificate is made in accordance with the scheme, the application must:

(a) be dealt with by the scheme administrator within 15 business days after receiving the application; and

(b) be accepted, and dealt with, without requiring:

(i) the payment of a fee by the applicant; or

(ii) the applicant to incur any expenses (other than the expense of filling in the application and sending it to the scheme administrator).

(13) The ninth objective is that the scheme must authorise the scheme administrator to revoke a reception certificate issued to a person if the person is no longer eligible for the reception certificate.

(13A) For the purposes of subsection (13), if:

(a) at a particular time, a reception certificate was issued to a person; and

(b) after that time, the person has not moved to new premises;

the person is taken to be eligible for the reception certificate.

(15A) The 12th objective is that, if:

(a) at a particular time, a person was in a category B reception area; and

(b) at that time, a conditional access system that relates to any of the commercial television broadcasting services provided under the section 38C licence enabled the person to receive those commercial television broadcasting services; and

(c) after that time:

(i) the person ceases to be in the category B reception area; and

(ii) the person has not moved to new premises;

the conditional access system must enable the person to receive those commercial television broadcasting services.

(15B) The 13th objective is that, if:



Authorised Version C2023C00001 registered 03/01/2023

(a) at a particular time, a person was in a declared service-deficient area; and

(b) at that time, a conditional access system that relates to any of the commercial television broadcasting services provided under the section 38C licence enabled the person to receive those commercial television broadcasting services; and

(c) after that time:

(i) the person ceases to be in the declared service-deficient area; and

(ii) the person has not moved to new premises;

the conditional access system must enable the person to receive those commercial television broadcasting services.

(16) In this section:

***related terrestrial licence area***:

(a) in relation to a licence allocated under section 38C for the South Eastern Australia TV3 licence area—means a terrestrial licence area mentioned in column 3 of item 1 of the table in subsection 38C(1); or

(b) in relation to a licence allocated under section 38C for the Northern Australia TV3 licence area—means a terrestrial licence area mentioned in column 3 of item 2 of the table in subsection 38C(1).

***terrestrial licence*** means a commercial television broadcasting licence other than a commercial television broadcasting licence allocated under section 38C or subsection 40(1).

***terrestrial licence area*** means the licence area of a terrestrial licence.

Note 1: For ***adequate reception***, see section 130ZFA.

Note 2: For ***applicable terrestrial digital commercial television broadcasting services***, see section 130ZG.

Note 3: For ***declared service-deficient area***, see section 130ZH.



Authorised Version C2023C00001 registered 03/01/2023

## 130ZBB Objectives of conditional access scheme—Western Australia TV3 licence area

*Scope*

(1) This section applies to a commercial television broadcasting licence allocated under section 38C for the Western Australia TV3 licence area.

*Objectives*

(2) A conditional access scheme for the section 38C licence area complies with this section if the scheme is directed towards the achievement of the objectives set out in this section.

(3) The first objective is that:

(a) the scheme should specify all of the following as areas that are, subject to paragraph (c), taken to be areas (***category A reception areas***) in which people are unable to receive adequate reception of all of the applicable terrestrial digital commercial television broadcasting services:

(i) the related terrestrial licence areas;

(ii) the external Territories in the section 38C licence area; and

(b) if a terrestrial licensee for a related terrestrial licence area is authorised, under paragraph 7(2A)(d) of Schedule 2, to provide a commercial television broadcasting service outside the related terrestrial licence area to one or more persons who are in the section 38C licence area—the scheme should provide that those persons are, subject to paragraph (c) of this subsection, taken to be in a category A reception area; and

(c) the scheme should provide that a person in a category D reception area is taken not to be in a category A reception area.

Note: For ***category D reception area***, see subsection (8).

(4) The second objective is that the scheme should:



Authorised Version C2023C00001 registered 03/01/2023

(a) specify one or more areas included in the Perth TV1 licence area; or

(b) specify a method for ascertaining one or more areas included in the Perth TV1 licence area;

that are taken to be areas (***category B reception areas***) in which people are unable to receive adequate reception of all of the applicable terrestrial digital commercial television broadcasting services.

(5) The third objective is that a conditional access system that relates to any of the commercial television broadcasting services provided under the section 38C licence must enable persons in:

(a) a category A reception area; or

(b) a category B reception area; or

(c) a declared service-deficient area;

to receive those commercial television broadcasting services.

(7) The fourth objective is that the scheme should provide that so much of the section 38C licence area as is not:

(a) a category A reception area; or

(b) a category B reception area; or

(c) a category D reception area;

is a ***category C reception area***.

Note: For ***category D reception area***, see subsection (8).

(8) The fifth objective is that the scheme should:

(a) specify one or more related terrestrial sub-areas; or

(b) specify a method for ascertaining one or more related terrestrial sub-areas;

each of which is taken to be an area (a ***category D reception area***) in which people are to receive adequate reception of all the applicable terrestrial digital commercial television broadcasting services.

(9) The sixth objective is that the scheme must:



Authorised Version C2023C00001 registered 03/01/2023

(a) if the scheme is developed by a body or association that the ACMA is satisfied represents commercial television broadcasting licensees—identify a company; or

(b) if the scheme is formulated by the ACMA—identify the ACMA;

as the ***scheme administrator*** for the scheme.

(10) The seventh objective is that the scheme must authorise the scheme administrator to issue a certificate (a ***reception certificate***) to:

(a) a person in a category C reception area (but not in a declared service-deficient area); or

(b) a person in a category D reception area (but not in a declared service-deficient area);

stating that the person is unable to receive adequate reception of all of the applicable terrestrial digital commercial television broadcasting services.

(11) The eighth objective is that a conditional access system that relates to any of the commercial television broadcasting services provided under the section 38C licence must enable a person who:

(a) is in:

(i) a category C reception area; or

(ii) a category D reception area; and

(b) is not in a declared service-deficient area; and

(c) holds a reception certificate;

to receive those commercial television broadcasting services.

(13) The ninth objective is that, if an application for a reception certificate is made in accordance with the scheme, the application must:

(a) be dealt with by the scheme administrator within 15 business days after receiving the application; and

(b) be accepted, and dealt with, without requiring:

(i) the payment of a fee by the applicant; or



Authorised Version C2023C00001 registered 03/01/2023

(ii) the applicant to incur any expenses (other than the expense of filling in the application and sending it to the scheme administrator).

(16) The 12th objective is that the scheme must authorise the scheme administrator to revoke a reception certificate issued to a person if the person is no longer eligible for the reception certificate.

(17) For the purposes of subsection (16), if:

(a) at a particular time, a reception certificate was issued to a person; and

(b) after that time, the person has not moved to new premises;

the person is taken to be eligible for the reception certificate.

(20) The 15th objective is that, if:

(a) at a particular time, a person was in a category B reception area; and

(b) at that time, a conditional access system that relates to any of the commercial television broadcasting services provided under the section 38C licence enabled the person to receive those commercial television broadcasting services; and

(c) after that time:

(i) the person ceases to be in the category B reception area; and

(ii) the person has not moved to new premises;

the conditional access system must enable the person to receive those commercial television broadcasting services.

(21) The 16th objective is that, if:

(a) at a particular time, a person was in a declared service-deficient area; and

(b) at that time, a conditional access system that relates to any of the commercial television broadcasting services provided under the section 38C licence enabled the person to receive those commercial television broadcasting services; and

(c) after that time:



Authorised Version C2023C00001 registered 03/01/2023

(i) the person ceases to be in the declared service-deficient area; and

(ii) the person has not moved to new premises;

the conditional access system must enable the person to receive those commercial television broadcasting services.

(22) In this section:

***related terrestrial licence area*** means a terrestrial licence area mentioned in column 3 of item 3 of the table in subsection 38C(1).

***related terrestrial sub-area*** means an area included in a related terrestrial licence area.

***terrestrial licence*** means a commercial television broadcasting licence other than a commercial television broadcasting licence allocated under section 38C or subsection 40(1).

***terrestrial licence area*** means the licence area of a terrestrial licence.

Note 1: For ***adequate reception***, see section 130ZFA.

Note 2: For ***applicable terrestrial digital commercial television broadcasting services***, see section 130ZG.

Note 3: For ***declared service-deficient area***, see section 130ZH.

## 130ZC Registration of conditional access scheme developed by representative body or association

*Scope*

(1) This section applies if:

(a) the ACMA is satisfied that a body or association represents commercial television broadcasting licensees; and

(b) that body or association develops a conditional access scheme (the ***new scheme***) for the licence area of a commercial television broadcasting licence allocated under section 38C; and



Authorised Version C2023C00001 registered 03/01/2023

(c) the body or association gives a copy of the new scheme to the ACMA; and

(d) any of the following subparagraphs applies:

(i) the body or association gives the copy of the new scheme to the ACMA within 45 days after the first or only occasion on which a licence for the licence area is allocated under section 38C;

(ii) the body or association gives the copy of the new scheme to the ACMA in response to an invitation under section 130ZCAA;

(iii) the new scheme is expressed to replace another conditional access scheme registered under this section or section 130ZCA; and

(da) the ACMA is satisfied that:

(i) if the scheme is for the South Eastern Australia TV3 licence area or the Northern Australia TV3 licence area—the scheme complies with section 130ZB; or

(ii) if the scheme is for the Western Australia TV3 licence area—the scheme complies with section 130ZBB; and

(e) the ACMA is satisfied that the new scheme is consistent with the principle that a person in the licence area should have adequate reception of:

(i) all of the applicable terrestrial digital commercial television broadcasting services; or

(ii) all of the commercial television broadcasting services that the section 38C licensee is required to provide under clauses 7B and 7C of Schedule 2.

*Registration*

(2) The ACMA must:

(a) register the new scheme by including it in the register under section 130ZE; and

(b) do so within 35 days after the copy of the new scheme is given to the ACMA.



Authorised Version C2023C00001 registered 03/01/2023

## 130ZCAA ACMA may invite representative body or association to develop a revised conditional access scheme

*Scope*

(1) This section applies if:

(a) the ACMA is satisfied that a body or association represents commercial television broadcasting licensees; and

(b) that body or association develops a conditional access scheme (the ***new scheme***) for the licence area of a commercial television broadcasting licence allocated under section 38C; and

(c) the body or association gives a copy of the new scheme to the ACMA; and

(d) the body or association gives the copy of the new scheme to the ACMA within 45 days after the first or only occasion on which a licence for the licence area is allocated under section 38C;

and either:

(e) the ACMA is not satisfied that:

(i) if the new scheme is for the South Eastern Australia TV3 licence area or the Northern Australia TV3 licence area—the new scheme complies with section 130ZB; or

(ii) if the new scheme is for the Western Australia TV3 licence area—the scheme complies with section 130ZBB; and

(f) the ACMA is not satisfied that the new scheme is consistent with the principle that a person in the licence area should have adequate reception of:

(i) all of the applicable terrestrial digital commercial television broadcasting services; or

(ii) all of the commercial television broadcasting services that the section 38C licensee is required to provide under clauses 7B and 7C of Schedule 2.



Authorised Version C2023C00001 registered 03/01/2023

*Invitation*

(2) The ACMA must:

(a) by written notice given to the body or association, invite the body or association to:

(i) develop a revised conditional access scheme for the licence area; and

(ii) give a copy of the revised scheme to the ACMA within 30 days after the invitation is given; and

(b) do so within 60 days after the copy of the new scheme is given to the ACMA.

## 130ZCAB ACMA may request development of replacement conditional access scheme

*Scope*

(1) This section applies if:

(a) a conditional access scheme for a licence area is registered under section 130ZC or 130ZCA; and

(b) if the scheme is registered under section 130ZC—the ACMA is satisfied that:

(i) if the scheme is for the South Eastern Australia TV3 licence area or the Northern Australia TV3 licence area—the scheme is not achieving one or more of the objectives set out in section 130ZB; or

(ii) if the scheme is for the Western Australia TV3 licence area—the scheme is not achieving one or more of the objectives set out in section 130ZBB.

*Request*

(2) The ACMA may, by written notice given to the appropriate body or association:

(a) request the body or association to:



Authorised Version C2023C00001 registered 03/01/2023

(i) develop another conditional access scheme (the ***replacement scheme***) that is expressed to replace the scheme registered under section 130ZC or 130ZCA; and

(ii) give a copy of the replacement scheme to the ACMA within the period specified in the notice; and

(b) specify particular matters that, in the ACMA's opinion, should be addressed in the replacement scheme.

(2A) For the purposes of subsection (2), the ***appropriate body or association*** is:

(a) if the scheme is registered under section 130ZC—the body or association that developed the scheme; or

(b) if the scheme is registered under section 130ZCA—a body or organisation that the ACMA is satisfied represents commercial television broadcasting licensees.

(3) The period specified in a notice under subsection (2):

(a) must not be shorter than 30 days after the notice is given; and

(b) must not be longer than 60 days after the notice is given.

## 130ZCA Registration of conditional access scheme formulated by the ACMA

*Scope*

(1) This section applies if:

(a) the following conditions are satisfied:

(i) a commercial television broadcasting licence is allocated under section 38C for a particular licence area;

(ii) that is the first or only occasion on which a commercial television broadcasting licence is allocated under section 38C for the licence area;

(iii) if the ACMA has not given an invitation under section 130ZCAA in relation to the licence area—90 days pass after the allocation of the licence, and no conditional access scheme for the licence area has been



Authorised Version C2023C00001 registered 03/01/2023

registered, or is required to be registered, under section 130ZC;

(iv) if the ACMA has given an invitation under section 130ZCAA in relation to the licence area—60 days pass after the invitation is given, and no conditional access scheme for the licence area has been registered, or is required to be registered, under section 130ZC; or

(b) the following conditions are satisfied:

(i) a commercial television broadcasting licence is allocated under section 38C for a particular licence area;

(ii) a conditional access scheme for the licence area is registered under section 130ZC;

(iii) the ACMA gives a notice under subsection 130ZCAB(2) to a body or association in relation to the scheme;

(iv) the body or association does not give the ACMA a copy of a replacement scheme within the period specified in the notice; or

(c) the following conditions are satisfied:

(i) a commercial television broadcasting licence is allocated under section 38C for a particular licence area;

(ii) a conditional access scheme for the licence area is registered under section 130ZC;

(iii) the ACMA gives a notice under subsection 130ZCAB(2) to a body or association in relation to the scheme;

(iv) the body or association gives the ACMA a copy of a replacement scheme within the period specified in the notice;

(v) 35 days pass after the copy is given to the ACMA, and the replacement scheme has not been, and is not required to be, registered under section 130ZC.



Authorised Version C2023C00001 registered 03/01/2023

*Scheme*

(2) The ACMA may, by legislative instrument, formulate a conditional access scheme for the licence area.

(3) The ACMA must not formulate a conditional access scheme unless:

(a) the ACMA is satisfied that:

(i) if the scheme is for the South Eastern Australia TV3 licence area or the Northern Australia TV3 licence area—the scheme complies with section 130ZB; or

(ii) if the scheme is for the Western Australia TV3 licence area—the scheme complies with section 130ZBB; and

(b) the ACMA is satisfied that the scheme is consistent with the principle that a person in the licence area should have adequate reception of:

(i) all of the applicable terrestrial digital commercial television broadcasting services; or

(ii) all of the commercial television broadcasting services that the section 38C licensee is required to provide under clauses 7B and 7C of Schedule 2.

*Registration*

(4) The ACMA must register a scheme formulated under subsection (2) by including it in the register under section 130ZE.

*Consultation*

(5) Before registering a conditional access scheme formulated under subsection (2), the ACMA must:

(a) publish on its website:

(i) a draft of the scheme; and

(ii) a notice inviting interested persons to give written submissions about the draft to the ACMA within the period specified in the notice; and



Authorised Version C2023C00001 registered 03/01/2023

(b) if any submissions are given to the ACMA within that period—have due regard to those submissions in formulating the scheme.

(6) The period specified under subparagraph (5)(a)(ii) must not be shorter than 14 days.

### 130ZD Replacement of conditional access scheme

(1) Changes to a conditional access scheme are to be achieved by replacing the scheme instead of varying the scheme.

(2) If:

(a) the replacement scheme is formulated by the ACMA; and

(b) the replacement scheme differs in only minor respects from the original scheme;

section 130ZCA has effect, in relation to the registration of the scheme, as if subsections 130ZCA(5) and (6) had not been enacted.

Note: Subsections 130ZCA(5) and (6) deal with submissions about a draft scheme formulated by the ACMA.

(3) If:

(a) a conditional access scheme is registered under this Part; and

(b) the scheme is expressed to replace another conditional access scheme;

the other conditional access scheme ceases to be registered under this Part when the replacement scheme is registered.

(4) The replacement of a conditional access scheme does not affect the continuity of a reception certificate issued under the scheme.

### 130ZE ACMA to maintain register of conditional access schemes

(1) The ACMA is to maintain a Register in which the ACMA includes any conditional access schemes required to be registered under section 130ZC or 130ZCA.

(2) The Register is to be maintained by electronic means.



Authorised Version C2023C00001 registered 03/01/2023

(3) The Register is to be made available for inspection on the ACMA's website.

(4) The Register is not a legislative instrument.

## 130ZF ACMA may direct a scheme administrator to issue a reception certificate etc.

*Scope*

(1) This section applies if:

(a) a conditional access scheme is registered under section 130ZC; and

(b) either:

(i) a person is in a category C reception area (within the meaning of the scheme), but is not in a declared service-deficient area; or

(ii) if the scheme is for the Western Australia TV3 licence area—a person is in a category D reception area (within the meaning of the scheme), but is not in a declared service-deficient area; and

(c) the person considers that he or she does not have adequate reception of all of the applicable terrestrial digital commercial television broadcasting services.

Note: For ***applicable terrestrial digital commercial television broadcasting services***, see section 130ZG.

*Investigation of complaint*

(2) The person may make a complaint to the ACMA about the matter, so long as:

(a) the following conditions are satisfied:

(i) the person has previously made an application under the scheme for a reception certificate;

(ii) the application was made in accordance with the scheme;



Authorised Version C2023C00001 registered 03/01/2023

(iii) the scheme administrator refused to issue the reception certificate; or

(b) the following conditions are satisfied:

(i) the person has previously held a reception certificate under the scheme;

(ii) the scheme administrator revoked the reception certificate; or

(c) the following conditions are satisfied:

(i) the person has previously made an application under the scheme for a reception certificate;

(ii) the application was made in accordance with the scheme;

(iii) the scheme administrator did not deal with the application within 15 business days after receiving the application.

(3) The ACMA must investigate the complaint in a manner determined by the ACMA.

(4) However, the ACMA need not investigate the complaint if it is satisfied that the complaint:

(a) is frivolous or vexatious; or

(b) was not made in good faith.

*Direction to issue reception certificate*

(5) If:

(a) the person makes a complaint under paragraph (2)(a) or (b); and

(b) having investigated the complaint, the ACMA is satisfied that the person does not have adequate reception of all of the applicable terrestrial digital commercial television broadcasting services;

the ACMA may, by written notice given to the scheme administrator, direct the scheme administrator to issue a reception certificate to the person within a specified period.



Authorised Version C2023C00001 registered 03/01/2023

(6) The specified period must not be longer than 28 days.

(7) In deciding whether to give a direction under subsection (5), it is to be presumed that the person does not have adequate reception of all of the applicable terrestrial digital commercial television broadcasting services, unless the scheme administrator satisfies the ACMA that the person has adequate reception of all of those services.

*Consultation*

(8) Before giving a direction under subsection (5), the ACMA must, by written notice given to the scheme administrator:

(a) invite the scheme administrator to make a submission to the ACMA, within the time limit specified in the notice, about the question of whether the person has adequate reception of all of the applicable terrestrial digital commercial television broadcasting services; and

(b) have regard to any submission received within that time limit.

(9) The time limit must not be longer than 28 days.

*Compliance with direction*

(10) The scheme administrator must comply with a direction under subsection (5).

(11) If the scheme administrator does not comply with a direction under subsection (5), then:

(a) this Act; and

(b) the conditional access scheme;

have effect as if, at the end of the last day for compliance, the scheme administrator had issued a reception certificate to the person.



Authorised Version C2023C00001 registered 03/01/2023

*Determination that reception certificate is taken to have been issued to complainant*

(12) If the person makes a complaint under paragraph (2)(c), the ACMA may determine that:

(a) this Act; and

(b) the conditional access scheme;

have effect as if the scheme administrator had issued a reception certificate to the person.

*Revocation of reception certificate taken to have been issued*

(13) This Act does not prevent the subsequent revocation of a reception certificate that is taken to have been issued under subsection (11) or (12) if the revocation is on the ground that the holder of the reception certificate is no longer eligible for the reception certificate.

*Notification of results of investigation*

(14) If:

(a) the person makes a complaint under subsection (2); and

(b) the ACMA investigates the complaint;

the ACMA must notify the person of the results of the investigation.

## 130ZFA Adequate reception

The ACMA may, by legislative instrument, determine that, for the purposes of this Part, ***adequate reception*** has the meaning ascertained in accordance with the determination.



Authorised Version C2023C00001 registered 03/01/2023

## 130ZG Applicable terrestrial digital commercial television broadcasting services

*Scope*

(1) This section applies if a person is in the licence area of a commercial television broadcasting licence.

*Applicable terrestrial digital commercial television broadcasting services*

(2) For the purposes of the application of this Part to the person, a service is an ***applicable terrestrial digital commercial television broadcasting service*** if it is:

(a) a commercial television broadcasting service that is:

(i) provided by a commercial television broadcasting licensee in the licence area; and

(ii) transmitted in digital mode; or

(b) a service that:

(i) is merely a re-transmission of the programs provided by a commercial television broadcasting service described in paragraph (a); and

(ii) is provided in the licence area; and

(iii) is transmitted in digital mode; and

(iv) is provided by a person declared by the ACMA under subsection (2A).

(2A) If the ACMA is satisfied that a person represents one or more commercial television broadcasting licensees, the ACMA may declare the person for the purposes of subparagraph (2)(b)(iv).

(2B) If the declaration under subsection (2A) is made in writing, the declaration is not a legislative instrument.

(2C) For the purposes of this Part, an applicable terrestrial digital commercial television broadcasting service described in paragraph (2)(b) is taken to be the same as the commercial



Authorised Version C2023C00001 registered 03/01/2023

television broadcasting service mentioned in subparagraph (2)(b)(i).

Note: This means a person is taken to receive adequate reception of a single applicable terrestrial digital commercial television broadcasting service whether the person receives adequate reception of:

(a) the commercial television broadcasting service described in paragraph (2)(a); or

(b) the service of re-transmission described in paragraph (2)(b) by reference to that commercial television broadcasting service.

*Exemptions*

(3) This section does not apply to a commercial television broadcasting licence allocated under section 38C or subsection 40(1).

*Definitions*

(4) In this section:

***digital mode*** has the same meaning as in Schedule 4.

***re-transmission*** has the same meaning as in section 212.

## 130ZH Declared service-deficient areas

*Declaration*

(1) If:

(a) the ACMA is satisfied that the number of applicable terrestrial digital commercial television broadcasting services provided to persons in a particular area (the ***relevant area***) is less than the number of commercial television broadcasting services required by clauses 7B and 7C of Schedule 2 to be provided under a commercial television broadcasting licence allocated under section 38C; and

(b) the relevant area is included in a terrestrial licence area; and

(c) the terrestrial licence area is wholly or partly included in the licence area of the section 38C licence;



Authorised Version C2023C00001 registered 03/01/2023

the ACMA must, by legislative instrument, declare that the relevant area is a ***declared service-deficient area*** for the purposes of this Part.

*Revocation*

(4) If:

(a) a declaration is in force under subsection (1) in relation to a particular area (the ***relevant area***); and

(b) the relevant area is included in a terrestrial licence area; and

(c) the terrestrial licence area is wholly or partly included in the licence area of a commercial television broadcasting licence allocated under section 38C; and

(d) the ACMA is not satisfied that the number of applicable terrestrial digital commercial television broadcasting services provided to persons in the relevant area is less than the number of commercial television broadcasting services provided under the section 38C licence;

the ACMA must, by legislative instrument, revoke the declaration.

*Certain satellite services to be disregarded*

(5) For the purposes of subsections (1) and (4), disregard a commercial television broadcasting service provided under a section 38C licence if the service is authorised by paragraph 41CA(1)(g).

*Definitions*

(6) In this section:

***number*** includes zero.

***terrestrial licence*** means a commercial television broadcasting licence other than a commercial television broadcasting licence allocated under section 38C or subsection 40(1).

***terrestrial licence area*** means the licence area of a terrestrial licence.



Authorised Version C2023C00001 registered 03/01/2023

## Section 130ZH

Note: For ***applicable terrestrial digital commercial television broadcasting services***, see section 130ZG.



Authorised Version C2023C00001 registered 03/01/2023

# Part 9D—Captioning

## Division 1—Introduction

### 130ZJ Simplified outline

The following is a simplified outline of this Part:

- Broadcasters must comply with rules and standards relating to captioning of television programs for the deaf and hearing impaired.

### 130ZK Definitions

In this Part:

***Category A subscription television general entertainment service*** has the meaning given by section 130ZW.

***Category A subscription television movie service*** has the meaning given by section 130ZVA.

***Category B subscription television general entertainment service*** has the meaning given by section 130ZW.

***Category B subscription television movie service*** has the meaning given by section 130ZVA.

***Category C subscription television general entertainment service*** has the meaning given by section 130ZW.

***Category C subscription television movie service*** has the meaning given by section 130ZVA.

***channel*** means a continuous stream of programs.

***channel provider*** has the meaning given by section 130ZKA.



Authorised Version C2023C00001 registered 03/01/2023

***community service announcement*** means community information, or community promotional material, for the broadcast of which the commercial television broadcasting licensee, subscription television licensee or national broadcaster does not receive any consideration in cash or in kind.

***coverage area*** has the same meaning as in Schedule 4.

***designated viewing hours*** has the meaning given by section 130ZL.

***emergency service agency*** means:

(a) a police force or service; or
(b) a fire service; or
(c) a State Emergency Service of a State or a Territory; or
(d) the Commonwealth Bureau of Meteorology; or
(e) a body that runs an emergency service specified in the regulations.

***general entertainment program*** means a program other than:

(a) a movie program; or
(b) a news or current affairs program; or
(c) a sports program; or
(d) a music program.

***HDTV multi-channelled commercial television broadcasting service*** has the same meaning as in Schedule 4.

***HDTV multi-channelled national television broadcasting service*** has the same meaning as in Schedule 4.

***incidental matter*** means:

(a) advertising or sponsorship matter (whether or not of a commercial kind); or
(b) a program promotion; or
(c) an announcement; or
(d) a hosting; or
(e) any other interstitial program.



Authorised Version C2023C00001 registered 03/01/2023

***movie program*** means a program that is:

(a) a feature film; or

(b) a short film; or

(c) a telemovie.

***music program*** means a program the sole or dominant purpose of which is to provide:

(a) music with video clips; or

(b) video footage of musical performances;

or both.

***national broadcasting service*** does not include a broadcasting service provided under the *Parliamentary Proceedings Broadcasting Act 1946*.

***national television broadcasting service*** means a national broadcasting service that provides television programs.

***news or current affairs program*** means any of the following:

(a) a news bulletin;

(b) a program (whether presenter-based or not) whose sole or dominant purpose is to provide analysis, commentary or discussion principally designed to inform the general community about social, economic or political issues of current relevance to the general community.

***part-channel provider*** has the meaning given by section 130ZKB.

***primary national television broadcasting service*** has the same meaning as in Schedule 4.

***primary satellite national television broadcasting service*** has the same meaning as in Schedule 4.

***program*** does not include:

(a) advertising or sponsorship matter (whether or not of a commercial kind); or

(b) a community service announcement; or

(c) an emergency warning.



Authorised Version C2023C00001 registered 03/01/2023

***satellite delivery area*** has the same meaning as in Schedule 4.

***SDTV multi-channelled commercial television broadcasting service*** has the same meaning as in Schedule 4.

***SDTV multi-channelled national television broadcasting service*** has the same meaning as in Schedule 4.

***sports program*** means:

(a) a sports news bulletin; or

(b) a program the sole or dominant purpose of which is to provide:

(i) coverage of one or more sporting events; or

(ii) analysis, commentary or discussion in relation to one or more sporting events;

or both.

***subscription television general entertainment service*** means a subscription television service the program content of which consists wholly or primarily of general entertainment programs.

***subscription television licensee*** means:

(a) a subscription television broadcasting licensee; or

(b) a subscription television narrowcasting licensee.

***subscription television movie service*** means a subscription television service the program content of which consists wholly or primarily of movie programs.

***subscription television music service*** means a subscription television service the program content of which consists wholly or primarily of music programs.

***subscription television narrowcasting licensee*** means a person who provides a subscription television narrowcasting service under a class license.

***subscription television news service*** means a subscription television service the program content of which consists wholly or primarily of news or current affairs programs.



Authorised Version C2023C00001 registered 03/01/2023

***subscription television service*** means:

(a) a subscription television broadcasting service; or

(b) a subscription television narrowcasting service.

***subscription television sports service*** means a subscription television service the program content of which consists wholly or primarily of sports programs.

## 130ZKA Definition of *channel provider*

For the purposes of this Part, a ***channel provider***, in relation to a subscription television service provided by a subscription television licensee, is a person who:

(a) packages a channel (which may include programs produced by the person); and

(b) supplies the licensee with the channel;

where, apart from any breaks for the purposes of the transmission of incidental matter, the channel is televised by the licensee on the service.

## 130ZKB Definition of *part-channel provider*

For the purposes of this Part, a ***part-channel provider***, in relation to a subscription television service provided by a subscription television licensee, is a person who:

(a) assembles a package of programs (which may include programs produced by the person); and

(b) supplies the licensee with the package;

where:

(c) the package constitutes a significant proportion of the program material that is televised by the licensee on the service; and

(d) there is no channel provider in relation to the service.



Authorised Version C2023C00001 registered 03/01/2023

## 130ZKC Supply of channel or package

For the purposes of this Part, a person is taken to have supplied a channel or a package to a subscription television licensee if the channel or package is supplied by the person to the licensee:

(a) directly; or

(b) indirectly through one or more interposed persons.

## 130ZL Designated viewing hours

*Programs transmitted before 1 July 2014*

(1) For the purposes of the application of this Part to programs transmitted before 1 July 2014, ***designated viewing hours*** are the hours:

(a) beginning at 6 pm each day or, if another time is prescribed, beginning at that prescribed time each day; and

(b) ending at 10.30 pm on the same day or, if another time is prescribed, ending at that prescribed time on the same day.

*Programs transmitted on or after 1 July 2014*

(2) For the purposes of the application of this Part to programs transmitted on or after 1 July 2014, ***designated viewing hours*** are the hours:

(a) beginning at 6 am each day or, if another time is prescribed, beginning at that prescribed time each day; and

(b) ending at midnight on the same day or, if another time is prescribed, ending at that prescribed time on the same day.

## 130ZM This Part does not apply to foreign language programs

(1) This Part does not apply to a television program that is wholly in a language other than English.

(2) For the purposes of subsection (1), disregard minor and infrequent uses of the English language.



Authorised Version C2023C00001 registered 03/01/2023

## 130ZN This Part does not apply to programs that consist wholly of music

(1) This Part does not apply to a television program the audio component of which consists only of music that has no human vocal content that is recognisable as being in the English language.

(2) For the purposes of subsection (1), disregard minor and infrequent uses of the English language.

## 130ZO Captioning service provided for part of program

For the purposes of this Part, if:

(a) a television program is transmitted on:

(i) a commercial television broadcasting service provided by a commercial television broadcasting licensee; or

(ii) a national television broadcasting service provided by a national broadcaster; or

(iii) a subscription television service provided by a subscription television licensee; and

(b) the audio component of the television program consists:

(i) partly of human vocal content that is recognisable as being in the English language; and

(ii) partly of other content; and

(c) a captioning service is provided for the human vocal content covered by subparagraph (b)(i);

the licensee or the national broadcaster, as the case may be, is taken to have provided a captioning service for the program.

## 130ZP Multiple subscription television services provided by licensee

For the purposes of this Part, the subscription television services provided by a subscription television licensee are to be determined by reference to:

(a) all of the subscription television broadcasting licences (if any) under which the licensee provides services; and



Authorised Version C2023C00001 registered 03/01/2023

(b) the class licence (if any) under which the licensee provides services.

## 130ZQ Television service provided in a period

(1) For the purposes of this Part, a commercial television broadcasting service is provided ***in*** a period (for example, a financial year) if the service is provided during the whole or a part of the period.

(2) For the purposes of this Part, a national television broadcasting service is provided ***in*** a period (for example, a financial year) if the service is provided during the whole or a part of the period.

(3) For the purposes of this Part, a subscription television service is provided ***in*** a period (for example, a financial year) if the service is provided during the whole or a part of the period.



Authorised Version C2023C00001 registered 03/01/2023

# Division 2—Captioning obligations of commercial television broadcasting licensees and national broadcasters

## 130ZR Captioning obligations—basic rule

*Basic rule*

(1) Each commercial television broadcasting licensee, and each national broadcaster, must provide a captioning service for:

(a) television programs transmitted during designated viewing hours; and

(b) television news or current affairs programs transmitted outside designated viewing hours.

Note: For compliance by licensees, see clause 7 of Schedule 2.

*Exceptions*

(4) If:

(a) a commercial television broadcasting licence is in force; and

(b) the licence was not allocated under section 38C; and

(c) the licensee provides a primary commercial television broadcasting service in the licence area; and

(d) the licensee provides in the licence area another service that is:

(i) a SDTV multi-channelled commercial television broadcasting service; or

(ii) a HDTV multi-channelled commercial television broadcasting service;

subsection (1) does not require the provision of a captioning service for a television program transmitted on:

(e) the SDTV multi-channelled commercial television broadcasting service mentioned in subparagraph (d)(i) of this subsection; or



Authorised Version C2023C00001 registered 03/01/2023

(f) the HDTV multi-channelled commercial television broadcasting service mentioned in subparagraph (d)(ii) of this subsection;

unless the program has been previously transmitted on the primary commercial television broadcasting service.

(5) If:

(a) a commercial television broadcasting licence is allocated under section 38C; and

(b) the licensee provides a primary commercial television broadcasting service in the licence area; and

(c) the licensee provides in the licence area:

(i) another SDTV multi-channelled commercial television broadcasting service; or

(ii) a HDTV multi-channelled commercial television broadcasting service;

subsection (1) does not require the provision of a captioning service for a television program transmitted on:

(d) the other SDTV multi-channelled commercial television broadcasting service; or

(e) the HDTV multi-channelled commercial television broadcasting service;

unless the program has been previously transmitted on the primary commercial television broadcasting service.

(6) If:

(a) a national broadcaster provides a national television broadcasting service in a coverage area; and

(b) the service is not provided with the use of a satellite;

subsection (1) does not require the provision of a captioning service for a television program transmitted on:

(c) a SDTV multi-channelled national television broadcasting service provided by the national broadcaster otherwise than with the use of a satellite; or



Authorised Version C2023C00001 registered 03/01/2023

(d) a HDTV multi-channelled national television broadcasting service provided by the national broadcaster otherwise than with the use of a satellite;

unless the television program was previously transmitted by the national broadcaster on the primary national television broadcasting service provided by the national broadcaster.

(7) If:

(a) a national broadcaster provides a national television broadcasting service in a satellite delivery area; and

(b) the service is provided with the use of a satellite;

subsection (1) does not require the provision of a captioning service for a television program transmitted on:

(c) a SDTV multi-channelled national television broadcasting service provided by the national broadcaster with the use of a satellite; or

(d) a HDTV multi-channelled national television broadcasting service provided by the national broadcaster with the use of a satellite;

unless the television program has been previously transmitted by the national broadcaster on the broadcaster's primary satellite national television broadcasting service.

(8) Subsection (1) does not require the provision of a captioning service:

(a) by the licensee of a commercial television broadcasting licence that was allocated under subsection 40(1); and

(b) during:

(i) the first year of operation of the licence; or

(ii) if the ACMA, by written notice given to the licensee, allows a longer period—that longer period.

Note 1: For exemption orders, see section 130ZUA.

Note 2: For target reduction orders, see section 130ZUA.



Authorised Version C2023C00001 registered 03/01/2023

## 130ZS Captioning obligations—special rules for multi-channelled services

*Commercial television broadcasting licensee*

(1) If:

(a) a commercial television broadcasting licence is in force; and

(b) the licence was not allocated under section 38C; and

(c) the licensee transmits a television program on:

(i) a SDTV multi-channelled commercial television broadcasting service; or

(ii) a HDTV multi-channelled commercial television broadcasting service;

in the licence area; and

(d) the program has been previously transmitted on another commercial television broadcasting service provided by the licensee in the licence area; and

(e) the licensee provided a captioning service for the program when the program was so previously transmitted on the other service;

the licensee must provide a captioning service for the television program transmitted as mentioned in paragraph (c).

Note: For compliance by licensees, see clause 7 of Schedule 2.

(2) If:

(a) a commercial television broadcasting licence is allocated under section 38C; and

(b) the licensee transmits a television program on:

(i) a SDTV multi-channelled commercial television broadcasting service; or

(ii) a HDTV multi-channelled commercial television broadcasting service;

in the licence area; and



Authorised Version C2023C00001 registered 03/01/2023

(c) the program has been previously transmitted on another commercial television broadcasting service provided by the licensee in the licence area; and

(d) the licensee provided a captioning service for the program when the program was so previously transmitted on the other service;

the licensee must provide a captioning service for the television program transmitted as mentioned in paragraph (b).

Note: For compliance by licensees, see clause 7 of Schedule 2.

*National broadcaster*

(3) If:

(a) a national broadcaster transmits a television program on:

(i) a SDTV multi-channelled national television broadcasting service; or

(ii) a HDTV multi-channelled national television broadcasting service;

in a coverage area; and

(b) the program has been previously transmitted on another national television broadcasting service provided by the national broadcaster in the coverage area; and

(c) the national broadcaster provided a captioning service for the program when the program was so previously transmitted on the other service;

the national broadcaster must provide a captioning service for the television program transmitted as mentioned in paragraph (a).

(4) Subsection (3) does not apply to a national television broadcasting service provided with the use of a satellite.

(5) If:

(a) a national broadcaster transmits a television program on:

(i) a SDTV multi-channelled national television broadcasting service; or



Authorised Version C2023C00001 registered 03/01/2023

(ii) a HDTV multi-channelled national television broadcasting service;

in a satellite delivery area; and

(b) the service mentioned in paragraph (a) is provided with the use of a satellite; and

(c) the program has been previously transmitted on another national television broadcasting service provided by the national broadcaster, with the use of a satellite, in the satellite delivery area; and

(d) the national broadcaster provided a captioning service for the program when the program was so previously transmitted on the other service;

the national broadcaster must provide a captioning service for the television program transmitted as mentioned in paragraph (a).

## 130ZUA Exemption orders and target reduction orders—unjustifiable hardship

*Application*

(1) A commercial television broadcasting licensee may apply to the ACMA for:

(a) an order (an ***exemption order***) that exempts from subsection 130ZR(1) a specified commercial television broadcasting service provided by the licensee in a specified eligible period; or

(b) an order (a ***target reduction order***) that:

(i) is expressed to relate to a specified commercial television broadcasting service provided by the licensee in a specified eligible period; and

(ii) for each financial year included in the eligible period, provides that a specified percentage is the ***reduced annual captioning target*** for the service for the financial year.

Note: For ***eligible period***, see subsection (15).



Authorised Version C2023C00001 registered 03/01/2023

(2) A national broadcaster may apply to the ACMA for:

(a) an order (an ***exemption order***) that exempts from subsection 130ZR(1) a specified national television broadcasting service provided by the broadcaster in a specified eligible period; or

(b) an order (a ***target reduction order***) that:

(i) is expressed to relate to a specified national television broadcasting service provided by the broadcaster in a specified eligible period; and

(ii) for each financial year included in the eligible period, provides that a specified percentage is the ***reduced annual captioning target*** for the service for the financial year.

Note: For ***eligible period***, see subsection (15).

(3) An application under subsection (1) or (2) must:

(a) be in writing; and

(b) be in a form approved, in writing, by the ACMA; and

(c) be made in the period:

(i) commencing on 1 July in the financial year immediately before the eligible period specified in the application; and

(ii) ending on the first 31 March in the eligible period specified in the application.

*Decision on application*

(4) If an application under subsection (1) or (2) has been made for an exemption order or target reduction order, the ACMA must, after considering the application:

(a) by writing, make the exemption order or target reduction order, as the case may be; or

(b) refuse to make the exemption order or target reduction order, as the case may be.



Authorised Version C2023C00001 registered 03/01/2023

*Criteria for making exemption order or target reduction order*

(5) The ACMA must not make the exemption order or target reduction order unless the ACMA is satisfied that a refusal to make the exemption order or target reduction order, as the case may be, would impose an unjustifiable hardship on the applicant.

(6) In determining whether a failure to make the exemption order or target reduction order, as the case may be, would impose an unjustifiable hardship on the applicant, the ACMA must have regard to the following matters:

(a) the nature of the detriment likely to be suffered by the applicant;

(b) the impact of making the exemption order or target reduction order, as the case may be, on deaf or hearing impaired viewers, or potential viewers, of the commercial television broadcasting service or national television broadcasting service concerned;

(c) the financial circumstances of the applicant;

(d) the estimated amount of expenditure that the applicant would be required to make if there was a failure to make the exemption order or target reduction order, as the case may be;

(e) the extent to which captioning services are provided by the applicant for television programs transmitted on commercial television broadcasting services or national television broadcasting services provided by the applicant;

(f) the likely impact of a failure to make the exemption order or target reduction order, as the case may be, on the quantity and quality of television programs transmitted on commercial television broadcasting services or national television broadcasting services provided by the applicant;

(g) whether the applicant has applied, or has proposed to apply, for exemption orders or target reduction orders under this section in relation to any other commercial television broadcasting services or national television broadcasting services provided by the applicant;



Authorised Version C2023C00001 registered 03/01/2023

(h) such other matters (if any) as the ACMA considers relevant.

*Consultation*

(7) Before making an exemption order, or a target reduction order, under subsection (4), the ACMA must:

(a) within 50 days after receiving the application for the exemption order or target reduction order, as the case may be, publish on the ACMA's website a notice:

(i) setting out the draft exemption order or draft target reduction order, as the case may be; and

(ii) inviting persons to make submissions to the ACMA about the draft exemption order or draft target reduction order, as the case may be, within 30 days after the notice is published; and

(b) consider any submissions received within the 30-day period mentioned in subparagraph (a)(ii).

*Commencement of exemption order or target reduction order*

(8) An exemption order, or a target reduction order, under subsection (4) comes into force at the start of the eligible period to which the exemption order or target reduction order, as the case may be, relates.

*Refusal to make exemption order or target reduction order*

(9) If:

(a) an application under subsection (1) or (2) has been made for an exemption order or target reduction order; and

(b) the ACMA does not make a decision on the application within the period of 90 days beginning at the start of the day on which the ACMA received the application;

the ACMA is taken, at the end of that 90-day period, to have decided to refuse to make the exemption order or target reduction order, as the case may be.

(10) If:



Authorised Version C2023C00001 registered 03/01/2023

(a) an application under subsection (1) or (2) has been made for an exemption order or target reduction order; and

(b) the ACMA decides to refuse to make the exemption order or target reduction order, as the case may be;

the ACMA must give written notice of the decision to the applicant.

*Publication requirement*

(11) If the ACMA makes an exemption order or target reduction order under subsection (4), the ACMA must publish a copy of the order on the ACMA's website.

*Order is not a legislative instrument*

(12) An exemption order, or a target reduction order, under subsection (4) is not a legislative instrument.

*Target reduction order may specify different percentages for different years*

(13) A target reduction order under subsection (4) may specify different percentages for different financial years.

*Specification of national television broadcasting services*

(14) For the purposes of this section, a national television broadcasting service may be specified by reference to:

(a) whether or not the service is provided with the use of a satellite; and

(b) the coverage area, or the satellite delivery area, in which the service is provided.

*Definitions*

(15) In this section:

***commercial television broadcasting service*** includes a proposed commercial television broadcasting service.



Authorised Version C2023C00001 registered 03/01/2023

***eligible period*** means:

(a) a financial year; or

(b) 2 consecutive financial years; or

(c) 3 consecutive financial years; or

(d) 4 consecutive financial years; or

(e) 5 consecutive financial years.

***national television broadcasting service*** includes a proposed national television broadcasting service.

## 130ZUAA Effect of target reduction order

*Scope*

(1) This section applies if a target reduction order under section 130ZUA is applicable to:

(a) a commercial television broadcasting service; or

(b) a national television broadcasting service;

for a financial year.

*Commercial television broadcasting service*

(2) If the service is a commercial television broadcasting service provided by a commercial television broadcasting licensee, the licensee must ensure that the percentage worked out using the following formula is not less than the reduced annual captioning target for the service for the financial year:

$$\frac{\text{Total hours of captioned programs transmitted during the financial year}}{\text{Total hours of programs transmitted during the financial year}} \times 100$$

where:

***total hours of captioned programs transmitted during the financial year*** means the total number of hours of television programs:



Authorised Version C2023C00001 registered 03/01/2023

(a) that were transmitted:
(i) during targeted viewing hours in the financial year; and
(ii) on the service; and
(b) for which a captioning service was provided.

***total hours of programs transmitted during the financial year*** means the total number of hours of television programs transmitted:
(a) during targeted viewing hours in the financial year; and
(b) on the service.

*National television broadcasting service*

(3) If the service is a national television broadcasting service provided by a national broadcaster, the national broadcaster must ensure that the percentage worked out using the following formula is not less than the reduced annual captioning target for the service for the financial year:

$$\frac{\text{Total hours of captioned programs transmitted during the financial year}}{\text{Total hours of programs transmitted during the financial year}} \times 100$$

where:

***total hours of captioned programs transmitted during the financial year*** means the total number of hours of television programs:
(a) that were transmitted:
(i) during targeted viewing hours in the financial year; and
(ii) on the service; and
(b) for which a captioning service was provided.

***total hours of programs transmitted during the financial year*** means the total number of hours of television programs transmitted:
(a) during targeted viewing hours in the financial year; and



Authorised Version C2023C00001 registered 03/01/2023

(b) on the service.

*Standard captioning rule does not apply*

(4) Subsection 130ZR(1) does not apply to the service for the financial year.

*Targeted viewing hours*

(7) For the purposes of this section, ***targeted viewing hours*** are the hours:

(a) beginning at 6 am each day or, if another time is prescribed, beginning at that prescribed time each day; and

(b) ending at midnight on the same day or, if another time is prescribed, ending at that prescribed time on the same day.

## 130ZUB Certain breaches to be disregarded

(1) If:

(a) apart from this subsection, a commercial television broadcasting licensee has breached a provision of this Division; and

(b) the breach is attributable to significant difficulties of a technical or engineering nature for the licensee; and

(c) those difficulties could not reasonably have been foreseen by the licensee;

then the breach is to be disregarded in determining whether the licensee has complied with the provision.

(2) If:

(a) apart from this subsection, a national broadcaster has breached a provision of this Division; and

(b) the breach is attributable to significant difficulties of a technical or engineering nature for the broadcaster; and

(c) those difficulties could not reasonably have been foreseen by the broadcaster;



Authorised Version C2023C00001 registered 03/01/2023

then the breach is to be disregarded in determining whether the broadcaster has complied with the provision.



Authorised Version C2023C00001 registered 03/01/2023

# Division 3—Captioning obligations of subscription television licensees

## 130ZV Annual captioning targets—subscription television licensees

*Annual captioning targets*

(1) If a subscription television licensee provides a subscription television service in a financial year, the licensee must ensure that the percentage worked out using the following formula is not less than the annual captioning target for the service for the financial year:

$$\frac{\text{Total captioned hours}}{\text{Total program hours}} \times 100$$

where:

***total captioned hours*** means the total number of hours of television programs transmitted on the service during the financial year for which a captioning service was provided.

***total program hours*** means the total number of hours of television programs transmitted on the service during the financial year.

(2) For the purposes of this section, the ***annual captioning target*** for a subscription television service for a financial year is:

(a) for the financial year beginning on 1 July 2014—the applicable percentage set out in the following table; and

(b) for a later financial year—the lesser of:

(i) the annual captioning target for the service for the previous financial year plus an additional 5%; and

(ii) 100%.

Note: For example, the annual captioning target for the financial year beginning on 1 July 2015 for a category A subscription television movie service is 80% (75% plus an additional 5%).



Authorised Version C2023C00001 registered 03/01/2023

| **Annual captioning target for financial year beginning on 1 July 2014** | | |
|---|---|---|
| **Item** | **Service** | **Percentage** |
| 1 | Category A subscription television movie service | 75% |
| 2 | Category B subscription television movie service | 55% |
| 3 | Category C subscription television movie service | 45% |
| 4 | Category A subscription television general entertainment service | 55% |
| 5 | Category B subscription television general entertainment service | 45% |
| 6 | Category C subscription television general entertainment service | 25% |
| 7 | Subscription television news service | 15% |
| 8 | Subscription television sports service | 15% |
| 9 | Subscription television music service | 5% |

*Modified formula for subscription television sports services*

(3) If, in relation to a financial year:

(a) a subscription television licensee provides a subscription television sports service; and

(b) the percentage worked out using the formula in subsection (1) for the service is at least two-thirds of the annual captioning target;

the licensee is taken to have satisfied the requirement in subsection (1) for the service for the financial year if the percentage worked out using the following formula is not less than the annual captioning target:

$$\frac{\text{Total captioned hours on relevant sports services}}{\text{Total program hours on relevant sports services}} \times 100$$

where:



Authorised Version C2023C00001 registered 03/01/2023

***relevant sports services*** means all subscription television sports services provided by the licensee that televise channels supplied by the same channel provider, other than:

(a) services to which subsection 130ZV(1) does not apply during the financial year because of subsection 130ZX(7); and

(b) services to which an exemption order or target reduction order under section 130ZY applies for the financial year.

***total captioned hours on relevant sports services*** means the total number of hours of television programs transmitted on relevant sports services during the financial year for which a captioning service was provided.

***total program hours on relevant sports services*** means the total number of hours of television programs transmitted on relevant sports services during the financial year.

*Exclusion of time-shifting services and high definition services*

(5) This section does not apply to a subscription television service provided by a subscription television licensee if the service does no more than:

(a) transmit the same stream of programs that has been previously transmitted on another subscription television service provided by the licensee; or

(b) simultaneously transmit, in a high definition format, the same stream of programs that is transmitted, in a standard definition format, on another subscription television service provided by the licensee.

Note 1: For exemption orders, see section 130ZYA.

Note 2: For target reduction orders, see section 130ZYA.

*Exclusion for new subscription television service*

(6) This section does not apply to a subscription television service until the financial year beginning on the first 1 July that is at least 1 year after the service commenced, if the service predominantly



Authorised Version C2023C00001 registered 03/01/2023

consists of programs not transmitted in Australia before that commencement.

## 130ZVA Categories for subscription television movie services

(1) For the purposes of this Part, if a subscription television licensee provides at least one, but fewer than 7, subscription television movie services in a financial year, those services are ***Category A subscription television movie services*** for the financial year.

(2) For the purposes of this Part, if a subscription television licensee provides 7 subscription television movie services in a financial year:

(a) if the licensee, by written notice given to the ACMA before the end of the financial year, nominates 6 of those services to be Category A subscription television movie services for the financial year:

(i) the nominated services are ***Category A subscription television movie services*** for the financial year; and

(ii) the remaining service is a ***Category B subscription television movie service*** for the financial year; or

(b) otherwise—each of those services is a ***Category A subscription television movie service*** for the financial year.

(3) For the purposes of this Part, if a subscription television licensee provides more than 7 subscription television movie services in a financial year:

(a) if the licensee, by written notice given to the ACMA before the end of the financial year, nominates:

(i) 6 of those services to be Category A subscription television movie services for the financial year; and

(ii) one of those services (other than services nominated under subparagraph (i)) to be a Category B subscription television movie service for the financial year;

then:



Authorised Version C2023C00001 registered 03/01/2023

(iii) the services nominated under subparagraph (i) are ***Category A subscription television movie services*** for the financial year; and

(iv) the service nominated under subparagraph (ii) is a ***Category B subscription television movie service*** for the financial year; and

(v) the remainder of those services are ***Category C subscription television movie services*** for the financial year; or

(b) otherwise—each of those services is a ***Category A subscription television movie service*** for the financial year.

*Exclusion of time-shifting services and high definition services*

(4) This section does not apply to a subscription television service provided by a subscription television licensee if the service does no more than:

(a) transmit the same stream of programs that has been previously transmitted on another subscription television service provided by the licensee; or

(b) simultaneously transmit, in a high definition format, the same stream of programs that is transmitted, in a standard definition format, on another subscription television service provided by the licensee.

## 130ZW Categories for subscription television general entertainment services

(1) For the purposes of this Part, if a subscription television licensee provides at least one, but fewer than 19, subscription television general entertainment services in a financial year, those services are ***Category A subscription television general entertainment services*** for the financial year.



Authorised Version C2023C00001 registered 03/01/2023

(2) For the purposes of this Part, if a subscription television licensee provides more than 18, but fewer than 35, subscription television general entertainment services in a financial year:

(a) if the licensee, by written notice given to the ACMA before the end of the financial year, nominates 18 of those services to be Category A subscription television general entertainment services for the financial year:

(i) the nominated services are ***Category A subscription television general entertainment services*** for the financial year; and

(ii) the remainder of those services are ***Category B subscription television general entertainment services*** for the financial year; or

(b) otherwise—each of those services is a ***Category A subscription television general entertainment service*** for the financial year.

(3) For the purposes of this Part, if a subscription television licensee provides more than 34 subscription television general entertainment services in a financial year:

(a) if the licensee, by written notice given to the ACMA before the end of the financial year, nominates:

(i) 18 of those services to be Category A subscription television general entertainment services for the financial year; and

(ii) 16 of those services (other than services nominated under subparagraph (i)) to be Category B subscription television general entertainment services for the financial year;

then:

(iii) the services nominated under subparagraph (i) are ***Category A subscription television general entertainment services*** for the financial year; and

(iv) the services nominated under subparagraph (ii) are ***Category B subscription television general entertainment services*** for the financial year; and



Authorised Version C2023C00001 registered 03/01/2023

(v) the remainder of those services are ***Category C subscription television general entertainment services*** for the financial year; or

(b) otherwise—each of those services is a ***Category A subscription television general entertainment service*** for the financial year.

*Exclusion of time-shifting services and high definition services*

(4) This section does not apply to a subscription television service provided by a subscription television licensee if the service does no more than:

(a) transmit the same stream of programs that has been previously transmitted on another subscription television service provided by the licensee; or

(b) simultaneously transmit, in a high definition format, the same stream of programs that is transmitted, in a standard definition format, on another subscription television service provided by the licensee.

## 130ZX Exemptions—certain subscription television services provided before 1 July 2022

*Subscription television movie services*

(1) If:

(a) a subscription television licensee provides more than 11 subscription television movie services in a financial year beginning before 1 July 2022; and

(b) the licensee has complied with subsection 130ZV(1) in relation to at least 11 of those services for the financial year; and

(c) the licensee, by written notice given to the ACMA not later than 30 days after the end of the financial year, nominates one or more of the subscription television movie services that:

(i) are covered by paragraph (a); and



Authorised Version C2023C00001 registered 03/01/2023

(ii) are not covered by paragraph (b);

to be exempt services for the financial year; and

(d) the total number of nominated services does not exceed the number worked out using the formula in subsection (2);

subsection 130ZV(1) does not apply, and is taken never to have applied, to programs transmitted on a nominated service during the financial year.

(2) The formula is:

$$\left(\begin{array}{l}\text{Total number of the services}\\ \text{covered by paragraph (1)(a)}\end{array} - 11\right) \times \text{Exemption percentage}$$

where:

***exemption percentage*** means the exemption percentage for the financial year.

Note: See subsection (11).

*Subscription television general entertainment services*

(3) If:

(a) a subscription television licensee provides more than 43 subscription television general entertainment services in a financial year beginning before 1 July 2022; and

(b) the licensee has complied with subsection 130ZV(1) in relation to at least 43 of those services for the financial year; and

(c) the licensee, by written notice given to the ACMA not later than 30 days after the end of the financial year, nominates one or more of the subscription television general entertainment services that:

(i) are covered by paragraph (a); and

(ii) are not covered by paragraph (b);

to be exempt services for the financial year; and

(d) the total number of nominated services does not exceed the number worked out using the formula in subsection (4);



Authorised Version C2023C00001 registered 03/01/2023

subsection 130ZV(1) does not apply, and is taken never to have applied, to programs transmitted on a nominated service during the financial year.

(4) The formula is:

$$\left(\begin{array}{l}\text{Total number of the services}\\ \text{covered by paragraph (3)(a)}\end{array} - 43\right) \times \text{Exemption percentage}$$

where:

***exemption percentage*** means the exemption percentage for the financial year.

Note: See subsection (11).

*Subscription television news services*

(5) If:

(a) a subscription television licensee provides more than 3 subscription television news services in a financial year beginning before 1 July 2022; and

(b) the licensee has complied with subsection 130ZV(1) in relation to at least 3 of those services for the financial year; and

(c) the licensee, by written notice given to the ACMA not later than 30 days after the end of the financial year, nominates one or more of the subscription television news services that:

(i) are covered by paragraph (a); and

(ii) are not covered by paragraph (b);

to be exempt services for the financial year; and

(d) the total number of nominated services does not exceed the number worked out using the formula in subsection (6);

subsection 130ZV(1) does not apply, and is taken never to have applied, to programs transmitted on a nominated service during the financial year.

(6) The formula is:



Authorised Version C2023C00001 registered 03/01/2023

$$\left(\begin{array}{l}\text{Total number of the services}\\ \text{covered by paragraph (5)(a)}\end{array} - 3\right) \times \text{Exemption percentage}$$

where:

***exemption percentage*** means the exemption percentage for the financial year.

Note: See subsection (11).

*Subscription television sports services*

(7) If:

(a) a subscription television licensee provides more than 7 subscription television sports services in a financial year beginning before 1 July 2022; and

(b) the licensee has complied with subsection 130ZV(1) in relation to at least 7 of those services for the financial year; and

(c) the licensee, by written notice given to the ACMA not later than 30 days after the end of the financial year, nominates one or more of the subscription television sports services that:

(i) are covered by paragraph (a); and

(ii) are not covered by paragraph (b);

to be exempt services for the financial year; and

(d) the total number of nominated services does not exceed the number worked out using the formula in subsection (8);

subsection 130ZV(1) does not apply, and is taken never to have applied, to programs transmitted on a nominated service during the financial year.

(8) The formula is:

$$\left(\begin{array}{l}\text{Total number of the services}\\ \text{covered by paragraph (7)(a)}\end{array} - 7\right) \times \text{Exemption percentage}$$

where:



Authorised Version C2023C00001 registered 03/01/2023

***exemption percentage*** means the exemption percentage for the financial year.

Note: See subsection (11).

*Subscription television music services*

(9) If:

(a) a subscription television licensee provides more than 6 subscription television music services in a financial year beginning before 1 July 2022; and

(b) the licensee has complied with subsection 130ZV(1) in relation to at least 6 of those services for the financial year; and

(c) the licensee, by written notice given to the ACMA not later than 30 days after the end of the financial year, nominates one or more of the subscription television music services that:

(i) are covered by paragraph (a); and

(ii) are not covered by paragraph (b);

to be exempt services for the financial year; and

(d) the total number of nominated services does not exceed the number worked out using the formula in subsection (10);

subsection 130ZV(1) does not apply, and is taken never to have applied, to programs transmitted on a nominated service during the financial year.

(10) The formula is:

$$\left(\begin{array}{l}\text{Total number of the services}\\ \text{covered by paragraph (9)(a)}\end{array} - 6\right) \times \text{Exemption percentage}$$

where:

***exemption percentage*** means the exemption percentage for the financial year.



Authorised Version C2023C00001 registered 03/01/2023

*Exemption percentage*

(11) For the purposes of this section, the ***exemption percentage*** for a financial year is:

(a) in the case of the financial year beginning on 1 July 2012—100%; or

(b) in the case of the financial year beginning on 1 July 2013—100%; or

(c) in the case of the financial year beginning on 1 July 2014—100%; or

(d) in the case of the financial year beginning on 1 July 2015—80%; or

(e) in the case of the financial year beginning on 1 July 2016—80%; or

(f) in the case of the financial year beginning on 1 July 2017—60%; or

(g) in the case of the financial year beginning on 1 July 2018—60%; or

(h) in the case of the financial year beginning on 1 July 2019—40%; or

(i) in the case of the financial year beginning on 1 July 2020—40%; or

(j) in the case of the financial year beginning on 1 July 2021—20%.

*Rounding*

(12) If the number worked out using the formula in subsection (2), (4), (6), (8) or (10) is not a whole number, the number is to be rounded up to the nearest whole number.

*Exclusion of time-shifting services and high definition services*

(13) This section does not apply to a subscription television service provided by a subscription television licensee if the service does no more than:



Authorised Version C2023C00001 registered 03/01/2023

(a) transmit the same stream of programs that has been previously transmitted on another subscription television service provided by the licensee; or

(b) simultaneously transmit, in a high definition format, the same stream of programs that is transmitted, in a standard definition format, on another subscription television service provided by the licensee.

## 130ZY Exemption orders and target reduction orders—unjustifiable hardship

*Application*

(1) A subscription television licensee may apply to the ACMA for:

(a) an order (an ***exemption order***) that exempts from subsection 130ZV(1) a specified subscription television service provided by the licensee in a specified eligible period; or

(b) an order (a ***target reduction order***) that:

(i) is expressed to relate to a specified subscription television service provided by the licensee in a specified eligible period; and

(ii) for each financial year included in the eligible period, provides that a specified percentage is the ***reduced annual captioning target*** for the service for the financial year.

Note: For ***eligible period***, see subsection (13).

(2) An application must:

(a) be in writing; and

(b) be in a form approved, in writing, by the ACMA; and

(c) be made in the period:

(i) commencing on 1 July in the financial year immediately before the eligible period specified in the application; and



Authorised Version C2023C00001 registered 03/01/2023

(ii) ending on the first 31 March in the eligible period specified in the application.

*Decision on application*

(3) If an application under subsection (1) has been made for an exemption order or target reduction order, the ACMA must, after considering the application:

(a) by writing, make the exemption order or target reduction order, as the case may be; or

(b) refuse to make the exemption order or target reduction order, as the case may be.

*Criteria for making exemption order or target reduction order*

(4) The ACMA must not make the exemption order or target reduction order unless the ACMA is satisfied that a refusal to make the exemption order or target reduction order, as the case may be, would impose an unjustifiable hardship on the applicant.

(5) In determining whether a failure to make the exemption order or target reduction order, as the case may be, would impose an unjustifiable hardship on the applicant, the ACMA must have regard to the following matters:

(a) the nature of the detriment likely to be suffered by the applicant;

(b) the impact of making the exemption order or target reduction order, as the case may be, on deaf or hearing impaired viewers, or potential viewers, of the subscription television service concerned;

(c) the number of people who subscribe to the subscription television service concerned;

(d) the financial circumstances of the applicant;

(e) the estimated amount of expenditure that the applicant would be required to make if there was a failure to make the exemption order or target reduction order, as the case may be;



Authorised Version C2023C00001 registered 03/01/2023

(f) the extent to which captioning services are provided by the applicant for television programs transmitted on subscription television services provided by the applicant;

(g) the likely impact of a failure to make the exemption order or target reduction order, as the case may be, on the quantity and quality of television programs transmitted on subscription television services provided by the applicant;

(h) whether the applicant has applied, or has proposed to apply, for exemption orders or target reduction orders under this section in relation to any other subscription television services provided by the applicant;

(i) such other matters (if any) as the ACMA considers relevant.

*Consultation*

(6) Before making an exemption order, or a target reduction order, under subsection (3), the ACMA must:

(a) within 50 days after receiving the application for the exemption order or target reduction order, as the case may be, publish on the ACMA's website a notice:

(i) setting out the draft exemption order or draft target reduction order, as the case may be; and

(ii) inviting persons to make submissions to the ACMA about the draft exemption order or draft target reduction order, as the case may be, within 30 days after the notice is published; and

(b) consider any submissions received within the 30-day period mentioned in subparagraph (a)(ii).

*Commencement of exemption order or target reduction order*

(7) An exemption order, or a target reduction order, under subsection (3) comes into force at the start of the eligible period to which the exemption order or target reduction order, as the case may be, relates.



Authorised Version C2023C00001 registered 03/01/2023

*Refusal to make exemption order or target reduction order*

(8) If:

(a) an application under subsection (1) has been made for an exemption order or target reduction order; and

(b) the ACMA does not make a decision on the application within the period of 90 days beginning at the start of the day on which the ACMA received the application;

the ACMA is taken, at the end of that 90-day period, to have decided to refuse to make the exemption order or target reduction order, as the case may be.

(9) If:

(a) an application under subsection (1) has been made for an exemption order or target reduction order; and

(b) the ACMA decides to refuse to make the exemption order or target reduction order, as the case may be;

the ACMA must give written notice of the decision to the applicant.

*Publication requirement*

(10) If the ACMA makes an exemption order or target reduction order under subsection (3), the ACMA must publish a copy of the order on the ACMA's website.

*Order is not a legislative instrument*

(11) An exemption order, or a target reduction order, under subsection (3) is not a legislative instrument.

*Target reduction order may specify different percentages for different years*

(12) A target reduction order under subsection (3) may specify different percentages for different financial years.



Authorised Version C2023C00001 registered 03/01/2023

*Definitions*

(13) In this section:

***eligible period*** means:

(a) a financial year; or
(b) 2 consecutive financial years; or
(c) 3 consecutive financial years; or
(d) 4 consecutive financial years; or
(e) 5 consecutive financial years.

***subscription television service*** includes a proposed subscription television service.

## 130ZYA Effect of target reduction order

*Scope*

(1) This section applies if a target reduction order under section 130ZY is applicable to a subscription television service for a financial year.

*Subscription television broadcasting and narrowcasting services*

(2) The subscription television licensee who provides the service must ensure that the percentage worked out using the following formula is not less than the reduced annual captioning target for the service for the financial year:

$$\frac{\text{Total captioned hours}}{\text{Total program hours}} \times 100$$

where:

***total captioned hours*** means the total number of hours of television programs transmitted on the service during the financial year for which a captioning service was provided.

***total program hours*** means the total number of hours of television programs transmitted on the service during the financial year.



Authorised Version C2023C00001 registered 03/01/2023

*Standard captioning targets do not apply*

(3) Subsection 130ZV(1) does not apply to the service for the financial year.

## 130ZZ Captioning services for repeats of television programs

(1) If:

(a) a subscription television licensee transmits a television program on a subscription television service; and

(b) the program has been previously transmitted:

(i) on the same subscription television service; or

(ii) on another subscription television service provided by the licensee; and

(c) the licensee provided a captioning service for the program when the program was so previously transmitted;

the licensee must provide a captioning service for the television program transmitted as mentioned in paragraph (a).

(2) Subsection (1) does not apply if:

(a) the program when previously transmitted was supplied by a channel provider or part-channel provider; and

(b) the program when transmitted as mentioned in paragraph (1)(a) was not supplied by that channel provider or part-channel provider.

Note 1: For compliance by subscription television broadcasting licensees, see clause 10 of Schedule 2.

Note 2: For compliance by subscription television narrowcasting licensees, see clause 11 of Schedule 2.

## 130ZZAA Captioning services for simultaneously transmitted television programs

If:

(a) a subscription television licensee transmits a television program on a subscription television service (the ***first service***); and



Authorised Version C2023C00001 registered 03/01/2023

(b) the program is simultaneously transmitted on another subscription television service (the ***second service***) provided by the licensee; and

(c) the licensee provides a captioning service for the transmission of the program on the first service;

the licensee must provide a captioning service for the television program transmitted on the second service.

Note 1: For compliance by subscription television broadcasting licensees, see clause 10 of Schedule 2.

Note 2: For compliance by subscription television narrowcasting licensees, see clause 11 of Schedule 2.

## 130ZZAB Certain breaches to be disregarded

If:

(a) apart from this section, a subscription television licensee has breached a provision of this Division; and

(b) the breach is attributable to significant difficulties of a technical or engineering nature for the licensee; and

(c) those difficulties could not reasonably have been foreseen by the licensee;

then the breach is to be disregarded in determining whether the licensee has complied with the provision.



Authorised Version C2023C00001 registered 03/01/2023

# Division 4—Captioning standards

## 130ZZA Captioning standards

(1) The ACMA may, by legislative instrument, determine standards that relate to:

(a) the quality of captioning services provided by commercial television broadcasting licensees for television programs; and

(b) the quality of captioning services provided by national broadcasters for television programs; and

(c) the quality of captioning services provided by subscription television broadcasting licensees for television programs; and

(d) the quality of captioning services provided by subscription television narrowcasting licensees for television programs.

(2) For the purposes of subsection (1), ***quality*** includes:

(a) readability; and

(b) comprehensibility; and

(c) accuracy.

(2A) In determining a standard under subsection (1), the ACMA must consider the differences (including time constraints for live content) between providing captioning services for:

(a) live television programs and pre-recorded television programs; and

(b) wholly live or wholly pre-recorded television programs and television programs that include both live and pre-recorded program material.

(2B) Subsection (2A) does not authorise the ACMA to determine that a lower quality (within the meaning of subsection (2)) of captioning service is acceptable for a kind of program or program material.

(3) Section 589 of the *Telecommunications Act 1997* applies to standards determined under subsection (1) of this section in a corresponding way to the way in which it applies to an instrument under that Act.



Authorised Version C2023C00001 registered 03/01/2023

*Compliance*

(4) A commercial television broadcasting licensee must comply with a standard determined under subsection (1).

Note 1: For compliance by licensees, see clause 7 of Schedule 2.

Note 2: See also subsection 123(3E) (standards determined under subsection (1) of this section prevail over inconsistent codes of practice).

(5) A national broadcaster must comply with a standard determined under subsection (1).

(6) A subscription television broadcasting licensee must comply with a standard determined under subsection (1).

Note 1: For compliance by licensees, see clause 10 of Schedule 2.

Note 2: See also subsection 123(3E) (standards determined under subsection (1) of this section prevail over inconsistent codes of practice).

(7) A subscription television narrowcasting licensee must comply with a standard determined under subsection (1).

Note 1: For compliance by licensees, see clause 11 of Schedule 2.

Note 2: See also subsection 123(3E) (standards determined under subsection (1) of this section prevail over inconsistent codes of practice).

(7A) A failure by a licensee or broadcaster to comply with a standard determined under subsection (1) is to be disregarded to the extent to which the failure is attributable to significant difficulties of a technical or engineering nature for the licensee or broadcaster, which it could not reasonably have foreseen.

*Timing*

(8) The ACMA must take all reasonable steps to ensure that standards are in force under subsection (1) at all times after the end of the 12-month period that began at the commencement of this section.



Authorised Version C2023C00001 registered 03/01/2023

# Division 5—Emergency warnings

## 130ZZB Emergency warnings

*Commercial television broadcasting licensee*

(1) If a commercial television broadcasting licensee, at the request of an emergency service agency, transmits an emergency warning on any of its commercial television broadcasting services, the licensee must:

(a) transmit the whole of the emergency warning in:

(i) the form of text; and

(ii) the form of speech; and

(b) if it is reasonably practicable to do so—provide a captioning service for the emergency warning.

Note: For compliance by licensees, see clause 7 of Schedule 2.

*National broadcaster*

(2) If a national broadcaster, at the request of an emergency service agency, transmits an emergency warning on any of its national television broadcasting services, the national broadcaster must:

(a) transmit the whole of the emergency warning in:

(i) the form of text; and

(ii) the form of speech; and

(b) if it is reasonably practicable to do so—provide a captioning service for the emergency warning.

*Subscription television licensee*

(3) If a subscription television licensee, at the request of an emergency service agency, transmits an emergency warning on a subscription television service, the licensee must:

(a) transmit the whole of the emergency warning in:

(i) the form of text; and

(ii) the form of speech; and



Authorised Version C2023C00001 registered 03/01/2023

(b) if it is reasonably practicable to do so—provide a captioning service for the emergency warning.

Note 1: For compliance by subscription television broadcasting licensees, see clause 10 of Schedule 2.

Note 2: For compliance by subscription television narrowcasting licensees, see clause 11 of Schedule 2.



Authorised Version C2023C00001 registered 03/01/2023

# Division 6—Reports and record-keeping

## 130ZZC Annual compliance reports

*Commercial television broadcasting licensee*

(1) A commercial television broadcasting licensee must, within 90 days after the end of each financial year, prepare and give to the ACMA a report relating to compliance by the licensee with Divisions 2, 4 and 5 during the financial year.

Note: For compliance by licensees, see clause 7 of Schedule 2.

(2) A report under subsection (1) must:
(a) be in a form approved, in writing, by the ACMA; and
(b) set out such information as is required by the form.

*National broadcasters*

(3) A national broadcaster must, within 90 days after the end of each financial year, prepare and give to the ACMA a report relating to compliance by the national broadcaster with Divisions 2, 4 and 5 during the financial year.

(4) A report under subsection (3) must:
(a) be in a form approved, in writing, by the ACMA; and
(b) set out such information as is required by the form.

*Subscription television licensee*

(5) If a subscription television licensee is a body corporate, the licensee must, within 90 days after the end of each financial year, prepare and give to the ACMA a report relating to compliance by the licensee with Divisions 3, 4 and 5 during the financial year.

Note 1: For compliance by subscription television broadcasting licensees, see clause 10 of Schedule 2.

Note 2: For compliance by subscription television narrowcasting licensees, see clause 11 of Schedule 2.



Authorised Version C2023C00001 registered 03/01/2023

(6) A report under subsection (5) must:
  (a) be in a form approved, in writing, by the ACMA; and
  (b) set out such information as is required by the form.

*Publication of copy of report*

(7) The ACMA must publish on its website a copy of a report given to it under subsection (1), (3) or (5).

## 130ZZD Record-keeping

(1) This section applies to each of the following (a ***responsible person***):
  (a) a commercial television broadcasting licensee;
  (b) a national broadcaster;
  (c) a subscription television licensee that is a body corporate.

Note: For compliance, see clause 7 of Schedule 2 (for commercial television broadcasting licensees), clause 10 of Schedule 2 (for subscription television broadcasting licensees) and clause 11 of Schedule 2 (for subscription television narrowcasting licensees).

(2) A responsible person must, in a form approved in writing by the ACMA, make:
  (a) written records sufficient to enable the responsible person's compliance with Division 2 or 3 to be readily ascertained; and
  (b) audio-visual records sufficient to enable the responsible person's compliance with Divisions 4 and 5 to be readily ascertained.

(3) A written record must be retained in the responsible person's custody for at least 90 days after the responsible person's report under section 130ZZC in relation to the financial year to which the record relates is given to the ACMA.

(4) An audio-visual record must be retained in the responsible person's custody:



Authorised Version C2023C00001 registered 03/01/2023

(a) for at least 30 days after the day the program to which the record relates was broadcast; or

(b) if, before the end of those 30 days, the responsible person becomes aware that a complaint has been made under Part 11 about captioning of the program—for at least 90 days after the day the program was broadcast.

(5) A responsible person must, without charge, make available to the ACMA on request any records retained by the responsible person under this section (whether or not the minimum period for retaining the records has passed).



Authorised Version C2023C00001 registered 03/01/2023

## Division 7—Review of this Part etc.

### 130ZZE Review of this Part etc.

(1) Before 31 December 2016, the ACMA must conduct a review of the following matters:

(a) the operation of this Part;

(b) whether this Part should be amended;

(c) the operation of paragraph 7(1)(o) of Schedule 2;

(d) whether paragraph 7(1)(o) of Schedule 2 should be amended;

(e) the operation of paragraph 10(1)(eb) of Schedule 2;

(f) whether paragraph 10(1)(eb) of Schedule 2 should be amended;

(g) the operation of paragraph 11(1)(bc) of Schedule 2;

(h) whether paragraph 11(1)(bc) of Schedule 2 should be amended.

*Consultation*

(2) In conducting the review, the ACMA must make provision for public consultation.

*Report*

(3) The ACMA must give the Minister a report of the review before 30 June 2017.

(4) The Minister must cause copies of a report under subsection (3) to be tabled in each House of the Parliament within 15 sittings days of that House after receiving the report.



Authorised Version C2023C00001 registered 03/01/2023

# Part 10—Remedies for breaches of licensing provisions

## Division 1—Offences for providing unlicensed services

### 131 Prohibition on providing a commercial television broadcasting service without a licence

A person must not provide a commercial television broadcasting service unless the person has a licence to provide that service.

Penalty: 20,000 penalty units.

### 132 Prohibition on providing a subscription television broadcasting service without a licence

A person must not provide a subscription television broadcasting service unless the person has a licence to provide that service.

Penalty: 2,000 penalty units.

### 133 Prohibition on providing a commercial radio broadcasting service without a licence

A person must not provide a commercial radio broadcasting service unless the person has a licence to provide that service.

Penalty: 2,000 penalty units.

### 134 Prohibition on providing a community television broadcasting service without a licence

A person must not provide a community television broadcasting service with the use of the broadcasting services bands unless the person has a licence to provide that service.

Penalty: 500 penalty units.



Authorised Version C2023C00001 registered 03/01/2023

## 135 Prohibition on providing a community radio broadcasting service without a licence

A person must not provide a community radio broadcasting service with the use of the broadcasting services bands unless the person has a licence to provide that service.

Penalty: 50 penalty units.

## 136 Continuing offences

A person who breaches a provision of this Division commits a separate offence in respect of each day (including a day of a conviction under this section or any subsequent day) during which the breach continues.



Authorised Version C2023C00001 registered 03/01/2023

# Division 1A—Civil penalty provisions relating to unlicensed services

## 136A Prohibition on providing a commercial television broadcasting service without a licence

(1) A person must not provide a commercial television broadcasting service if the person does not have a licence to provide that service.

(2) Subsection (1) is a civil penalty provision.

## 136B Prohibition on providing a subscription television broadcasting service without a licence

(1) A person must not provide a subscription television broadcasting service if the person does not have a licence to provide that service.

(2) Subsection (1) is a civil penalty provision.

## 136C Prohibition on providing a commercial radio broadcasting service without a licence

(1) A person must not provide a commercial radio broadcasting service if the person does not have a licence to provide that service.

(2) Subsection (1) is a civil penalty provision.

## 136D Prohibition on providing a community television broadcasting service without a licence

(1) A person must not provide a community television broadcasting service with the use of the broadcasting services bands if the person does not have a licence to provide that service.

(2) Subsection (1) is a civil penalty provision.



Authorised Version C2023C00001 registered 03/01/2023

## 136E Prohibition on providing a community radio broadcasting service without a licence

(1) A person must not provide a community radio broadcasting service with the use of the broadcasting services bands if the person does not have a licence to provide that service.

(2) Subsection (1) is a civil penalty provision.

## 136F Continuing breaches

A person who contravenes a provision of this Division commits a separate contravention of that provision in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.



Authorised Version C2023C00001 registered 03/01/2023

## Division 2—Action by ACMA where a person provides a service without a licence

### 137 Remedial directions—unlicensed services

If the ACMA is satisfied that a person has breached, or is breaching, section 136A, 136B, 136C, 136D or 136E, the ACMA may, by written notice given to the person, direct the person to take action directed towards ensuring that the person does not breach that section, or is unlikely to breach that section, in the future.

### 138 Breach of remedial direction—offences

(1) A person commits an offence if:
  (a) the person has been given a notice under section 137; and
  (b) the notice relates to a breach of section 136A; and
  (c) the person engages in conduct; and
  (d) the person's conduct contravenes a requirement in the notice.

Penalty: 20,000 penalty units.

(2) A person commits an offence if:
  (a) the person has been given a notice under section 137; and
  (b) the notice relates to a breach of section 136B or 136C; and
  (c) the person engages in conduct; and
  (d) the person's conduct contravenes a requirement in the notice.

Penalty: 2,000 penalty units.

(3) A person commits an offence if:
  (a) the person has been given a notice under section 137; and
  (b) the notice relates to a breach of section 136D or 136E; and
  (c) the person engages in conduct; and
  (d) the person's conduct contravenes a requirement in the notice.

Penalty: 50 penalty units.



Authorised Version C2023C00001 registered 03/01/2023

(4) A person who contravenes subsection (1), (2) or (3) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

(5) In this section:

***engage in conduct*** means:

(a) do an act; or

(b) omit to perform an act.

## 138A Breach of remedial direction—civil penalty provision

(1) A person must comply with a notice under section 137.

(2) Subsection (1) is a civil penalty provision.

(3) A person who contravenes subsection (1) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.



Authorised Version C2023C00001 registered 03/01/2023

## Division 3—Action in relation to breaches by licensees

### 139 Offence for breach of conditions of licences and class licences

(1) A person commits an offence if:

(a) the person is a commercial television broadcasting licensee; and

(b) the person engages in conduct; and

(c) the person's conduct breaches a condition of the licence set out in subclause 7(1) (other than paragraph 7(1)(ia)) of Schedule 2.

Penalty: 2,000 penalty units.

(1A) A person commits an offence if:

(a) the person is a commercial television broadcasting licensee; and

(b) the person engages in conduct; and

(c) the person's conduct breaches the condition of the licence set out in paragraph 7(1)(ia) of Schedule 2.

Penalty: 60 penalty units.

(1B) An offence against subsection (1A) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(1C) Subsection (1A) is a designated infringement notice provision.

(2) A person commits an offence if:

(a) the person is a subscription television broadcasting licensee; and

(b) the person engages in conduct; and

(c) the person's conduct breaches a condition of a subscription television broadcasting licence set out in section 103P, 103Q, 103S, 103T, 103V, 103W, 103Y or 103Z, or in subclause 10(1) of Schedule 2.



Authorised Version C2023C00001 registered 03/01/2023

Penalty: 1,000 penalty units.

(3) A person commits an offence if:
(a) the person is a commercial radio broadcasting licensee; and
(b) the person engages in conduct; and
(c) the person's conduct breaches a condition of the licence set out in subclause 8(1) (other than paragraph 8(1)(ha)) of Schedule 2.

Penalty: 500 penalty units.

(3A) A person commits an offence if:
(a) the person is a commercial radio broadcasting licensee; and
(b) the person engages in conduct; and
(c) the person's conduct breaches the condition of the licence set out in paragraph 8(1)(ha) of Schedule 2.

Penalty: 60 penalty units.

(3B) An offence against subsection (3A) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(3C) Subsection (3A) is a designated infringement notice provision.

(4) A person commits an offence if:
(a) the person is a community broadcasting licensee (other than a temporary community broadcasting licensee); and
(b) the person engages in conduct; and
(c) the person's conduct breaches a condition of the licence set out in subclause 9(1) of Schedule 2.

Penalty: 50 penalty units.

(5) A person commits an offence if:
(a) the person is a temporary community broadcasting licensee; and
(b) the person engages in conduct; and



Authorised Version C2023C00001 registered 03/01/2023

(c) the person's conduct breaches a condition of the licence set out in subclause 9(1) (other than paragraph 9(1)(h)) of Schedule 2.

Penalty: 50 penalty units.

(6) A person commits an offence if:

(a) the person provides a subscription radio broadcasting service, a subscription narrowcasting service or an open narrowcasting service; and

(b) the person engages in conduct; and

(c) the person's conduct breaches a condition set out in subclause 11(1) of Schedule 2.

Penalty: 50 penalty units.

(7) In this section:

***engage in conduct*** means:

(a) do an act; or

(b) omit to perform an act.

## 140 Continuing offences

A person who breaches section 139 commits a separate offence in respect of each day (including a day of a conviction under this section or any subsequent day) during which the breach continues.

## 140A Civil penalty provisions relating to breach of conditions of licences and class licences

(1) A commercial television broadcasting licensee must not breach a condition of the licence set out in subclause 7(1) of Schedule 2.

(2) A subscription television broadcasting licensee must not breach a condition of a subscription television broadcasting licence set out in:

(a) section 103P, 103Q, 103S, 103T, 103V, 103W, 103Y or 103Z; or



Authorised Version C2023C00001 registered 03/01/2023

(b) subclause 10(1) of Schedule 2.

(3) A commercial radio broadcasting licensee must not breach a condition of the licence set out in subclause 8(1) of Schedule 2.

(4) A community broadcasting licensee (other than a temporary community broadcasting licensee) must not breach a condition of the licence set out in subclause 9(1) of Schedule 2.

(5) A temporary community broadcasting licensee must not breach a condition of the licence set out in subclause 9(1) (other than paragraph 9(1)(h)) of Schedule 2.

(6) A person who provides a subscription radio broadcasting service, a subscription narrowcasting service or an open narrowcasting service must not breach a condition set out in subclause 11(1) of Schedule 2.

*Civil penalty*

(7) Subsections (1), (2), (3), (4), (5) and (6) are civil penalty provisions.

*Continuing breaches*

(8) A person who contravenes a provision of this section commits a separate contravention of that provision in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

## 141 Remedial directions—licence conditions, class licences and codes of practice

*Licence conditions relating to commercial, community or subscription services*

(1) If the ACMA is satisfied that a person who is:
(a) a commercial television broadcasting licensee; or
(b) a commercial radio broadcasting licensee; or



Authorised Version C2023C00001 registered 03/01/2023

(c) a community broadcasting licensee; or
(d) a subscription television broadcasting licensee;

has breached, or is breaching, a condition of the licence, the ACMA may, by written notice given to the person, direct the person to take action directed towards ensuring that the person does not breach that condition, or is unlikely to breach that condition, in the future.

(2) The following are examples of the kinds of direction that may be given to a person under subsection (1):
(a) a direction that the person implement effective administrative systems for monitoring compliance with a condition of the licence;
(b) a direction that the person implement a system designed to give the person's employees, agents and contractors a reasonable knowledge and understanding of the requirements of a condition of the licence, in so far as those requirements affect the employees, agents or contractors concerned.

(3) If the ACMA is satisfied that a person who is in a position to exercise control of:
(a) a commercial television broadcasting licence; or
(b) a commercial radio broadcasting licence;

has caused, or is causing, the licensee to breach a condition of the licence, the ACMA may, by written notice given to the person, direct the person to take action directed towards ensuring that the person does not cause the licensee to breach that condition, or is unlikely to cause the licensee to breach that condition, in the future.

*Class licences*

(4) If the ACMA is satisfied that a person who provides:
(a) a subscription radio broadcasting service; or
(b) a subscription narrowcasting service; or
(c) an open narrowcasting service;



Authorised Version C2023C00001 registered 03/01/2023

has breached, or is breaching, a condition of the relevant class licence, the ACMA may, by written notice given to the person, direct the person to take action directed towards ensuring that the person does not breach that condition, or is unlikely to breach that condition, in the future.

(5) The following are examples of the kinds of direction that may be given to a person under subsection (4):

(a) a direction that the person implement effective administrative systems for monitoring compliance with a condition of the relevant class licence;

(b) a direction that the person implement a system designed to give the person's employees, agents and contractors a reasonable knowledge and understanding of the requirements of a condition of the relevant class licence, in so far as those requirements affect the employees, agents or contractors concerned.

*Codes of practice*

(6) If the ACMA is satisfied that a person who provides:

(a) a subscription radio broadcasting service; or

(b) a subscription narrowcasting service; or

(c) an open narrowcasting service;

has breached, or is breaching, a registered code of practice that applies to the service, the ACMA may, by written notice given to the person, direct the person to take action directed towards ensuring that the person does not breach that code of practice, or is unlikely to breach that code of practice, in the future.

(7) The following are examples of the kinds of direction that may be given to a person under subsection (6):

(a) a direction that the person implement effective administrative systems for monitoring compliance with a registered code of practice that applies to the service concerned;

(b) a direction that the person implement a system designed to give the person's employees, agents and contractors a reasonable knowledge and understanding of the requirements



Authorised Version C2023C00001 registered 03/01/2023

of a registered code of practice that applies to the service concerned, in so far as those requirements affect the employees, agents or contractors concerned.

## 142 Breach of remedial direction—offences

(1) A person commits an offence if:
  (a) the person has been given a notice under section 141; and
  (b) the person is:
    (i) a commercial television broadcasting licensee; or
    (ii) in a position to exercise control of a commercial television broadcasting licence; and
  (c) the person engages in conduct; and
  (d) the person's conduct contravenes a requirement in the notice.

Penalty: 20,000 penalty units.

(2) A person commits an offence if:
  (a) a person has been given a notice under section 141; and
  (b) the person is a subscription television broadcasting licensee; and
  (c) the person engages in conduct; and
  (d) the person's conduct contravenes a requirement in the notice.

Penalty: 2,000 penalty units.

(3) A person commits an offence if:
  (a) the person has been given a notice under section 141; and
  (b) the person is:
    (i) a commercial radio broadcasting licensee; or
    (ii) in a position to exercise control of a commercial radio broadcasting licence; and
  (c) the person engages in conduct; and
  (d) the person's conduct contravenes a requirement in the notice.

Penalty: 500 penalty units.



Authorised Version C2023C00001 registered 03/01/2023

(4) A person commits an offence if:
  (a) the person has been given a notice under section 141; and
  (b) the person is not:
    (i) a commercial television broadcasting licensee; or
    (ii) in a position to exercise control of a commercial television broadcasting licence; or
    (iii) a subscription television broadcasting licensee; or
    (iv) a commercial radio broadcasting licensee; or
    (v) in a position to exercise control of a commercial radio broadcasting licence; and
  (c) the person engages in conduct; and
  (d) the person's conduct contravenes a requirement in the notice.

  Penalty: 50 penalty units.

(5) A person who contravenes subsection (1), (2), (3) or (4) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

(6) In this section:

  ***engage in conduct*** means:
  (a) do an act; or
  (b) omit to perform an act.

## 142A Breach of remedial direction—civil penalty provision

(1) A person must comply with a notice under section 141.

(2) Subsection (1) is a civil penalty provision.

(3) A person who contravenes subsection (1) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.



Authorised Version C2023C00001 registered 03/01/2023

## 143 Suspension and cancellation

(1) If a commercial television broadcasting licensee, a commercial radio broadcasting licensee, a subscription television broadcasting licensee or a community broadcasting licensee:

(a) fails to comply with a notice under section 141; or

(b) breaches a condition of the licence;

the ACMA may, by notice in writing given to the person:

(c) suspend the licence for such period, not exceeding 3 months, as is specified in the notice; or

(d) cancel the licence.

(1A) If:

(a) a subscription television broadcasting licensee provides a subscription TV drama service (within the meaning of Division 2A of Part 7); and

(b) the licence is suspended because of a breach of a condition set out in that Division;

the ACMA may take such action, by way of suspending one or more subscription television broadcasting licences held by:

(c) the licensee; or

(d) a related body corporate of the licensee;

as the ACMA considers necessary to ensure that the same, or a substantially similar, service is not transmitted by the licensee or the related body corporate, as the case may be, during the period of suspension.

(1B) If:

(a) a subscription television broadcasting licensee provides a subscription TV drama service (within the meaning of Division 2A of Part 7); and

(b) the licence is cancelled because of a breach of a condition set out in that Division;

the ACMA may take such action, by way of cancelling one or more subscription television broadcasting licences held by:

(c) the licensee; or



Authorised Version C2023C00001 registered 03/01/2023

(d) a related body corporate of the licensee;

as the ACMA considers necessary to ensure that the same, or a substantially similar, service is not transmitted by the licensee or the related body corporate, as the case may be, at a time after the cancellation.

(2) If the ACMA proposes to take action under subsection (1), (1A) or (1B) the ACMA must give to the person:

(a) written notice of its intention; and

(b) a reasonable opportunity to make representations to the ACMA in relation to the proposed action.

(3) In this section:

***related body corporate*** has the same meaning as in the *Corporations Act 2001*.



Authorised Version C2023C00001 registered 03/01/2023

## Division 4—Action in relation to class licences

### 144 Application to Federal Court

(1) If the ACMA is satisfied that a person is providing subscription radio broadcasting services, subscription narrowcasting services or open narrowcasting services otherwise than in accordance with the relevant class licence, the ACMA may apply to the Federal Court for an order that the person cease providing those services.

(2) If the Federal Court is satisfied, on such an application, that the person is providing subscription radio broadcasting services, subscription narrowcasting services or open narrowcasting services otherwise than in accordance with the relevant class licence, the Federal Court may order the person to cease providing those services.



Authorised Version C2023C00001 registered 03/01/2023

# Part 10A—Anti-hoarding rules

## Division 1—Introduction

### 146A Simplified outline

The following is a simplified outline of this Part:

- This Part sets up a regime to discourage commercial television broadcasting licensees, program suppliers, the ABC and the SBS from hoarding rights to provide live television coverage of certain events or series of events.
- The Minister may, by legislative instrument, designate the events or series that are covered by this Part. The instrument must also specify an ***offer time*** for the event or series. The offer time must occur 30 days or more before the start of the event or series unless the Minister is satisfied that the offer time should occur closer to the start of the event or series.
- If a commercial television broadcasting licensee acquires a right to provide live television coverage of a designated event or series, but does not intend to televise the whole or a part of the event or series, the licensee must, before the offer time, offer to transfer the right to televise the whole or the part of the event or series, for a nominal charge, to the ABC and the SBS. The offer must remain open for acceptance for a minimum period of 7 days.



Authorised Version C2023C00001 registered 03/01/2023

- If a commercial television broadcasting licensee's program supplier is entitled to confer on the licensee a right to provide live television coverage of a designated event or series, but does not confer the right to televise the whole or a part of the event or series, the program supplier must, before the offer time, offer to transfer the right to televise the whole or the part of the event or series, for a nominal charge, to the ABC and the SBS. The offer must remain open for acceptance for a minimum period of 7 days.
- If the ABC acquires a right to provide live television coverage of a designated event or series, but does not intend to televise the whole or a part of the event or series, the ABC must, before the offer time, offer to transfer the right to televise the whole or the part of the event or series, for a nominal charge, to the SBS. The offer must remain open for acceptance for a minimum period of 7 days.
- If the SBS acquires a right to provide live television coverage of a designated event or series, but does not intend to televise the whole or a part of the event or series, the SBS must, before the offer time, offer to transfer the right to televise the whole or the part of the event or series, for a nominal charge, to the ABC. The offer must remain open for acceptance for a minimum period of 7 days.

## 146B Definitions

In this Part:

***Central-Western time zone*** means:

(a) the area consisting of:
  (i) South Australia; and
  (ii) Broken Hill (within the meaning of the *Standard Time Act 1987* of New South Wales); or

(b) Western Australia; or

(c) the Northern Territory; or



Authorised Version C2023C00001 registered 03/01/2023

(d) the Territory of Christmas Island; or
(e) the Territory of Cocos (Keeling) Islands.

***commercial television broadcasting service*** means a commercial broadcasting service that provides television programs.

***coverage area*** means an area that corresponds to a licence area.

***designated event*** has the meaning given by section 146C.

***designated series of events*** has the meaning given by section 146C.

***licence area*** means a licence area for a commercial television broadcasting licence.

***live***, in relation to the televising of an event, or series of events, has the meaning generally accepted within the television industry.

***national television broadcasting service*** means a national broadcasting service that provides television programs.

***offer time*** has the meaning given by section 146C.

***program supplier*** has the meaning given by section 146D.

***related body corporate*** has the same meaning as in the *Corporations Act 2001*.

***supply***, in relation to programs, includes confer rights to televise the programs.

***televise*** means:
(a) in relation to a commercial television broadcasting licensee—televise on a commercial television broadcasting service provided by the licensee; or
(b) in relation to a national broadcaster—televise on a national television broadcasting service provided by the broadcaster.



Authorised Version C2023C00001 registered 03/01/2023

## 146C Designated events and designated series of events

(1) The Minister may, by legislative instrument, declare that a specified event is a ***designated event*** for the purposes of this Part.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

(2) The Minister may, by legislative instrument, declare that a specified series of events is a ***designated series of events*** for the purposes of this Part.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

(3) To avoid doubt, the Minister may declare an event to be a designated event under subsection (1) even if the event is part of a series of events.

(4) A declaration under subsection (1) or (2) must also provide that a time that:

(a) is ascertained in accordance with the declaration; and

(b) occurs before the start of the event, or the series of events, as the case may be;

is the ***offer time*** in relation to the event or the series of events, as the case requires, for the purposes of this Part.

(5) The offer time in relation to an event or series of events must occur 30 days or more before the start of the event or the series of events, as the case may be, unless the Minister is satisfied that the offer time should occur closer to the start of the event or series of events, as the case requires.

(6) A declaration under this section has effect accordingly.

## 146CA When event or series is eligible for delayed televising in the Central-Western time zones

(1) The Minister may, by legislative instrument, determine that a specified designated event is eligible for delayed televising in the Central-Western time zones.



Authorised Version C2023C00001 registered 03/01/2023

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

(2) The Minister may, by legislative instrument, determine that a specified designated series of events is eligible for delayed televising in the Central-Western time zones.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

(3) To avoid doubt, the Minister may make a determination under subsection (1) even if the event concerned is part of a series of events.

(4) A determination under this section has effect only for the purposes of paragraphs 146KA(1)(b) and (2)(d) and 146R(1)(b) and (2)(d).

Note: The following is an example of a situation in which the Minister might make a determination under this section: in a case where a day-night cricket match begins at 2 pm in Sydney, delayed televising of the match in Perth would allow Perth viewers the same evening viewing time as viewers in Sydney.

## 146D Program suppliers

(1) This section sets out the 3 situations in which a person is a ***program supplier*** of a commercial television broadcasting licensee for the purposes of this Part.

*Agreements*

(2) A person is a ***program supplier*** of a commercial television broadcasting licensee for the purposes of this Part if:

(a) the person has an agreement to supply the licensee with programs that can be televised by the licensee; and

(b) the person supplies, or may reasonably be expected to supply, the licensee with at least two-thirds of:

(i) all the sporting programs that are, or are to be, televised by the licensee during the period when the agreement is in force; or



Authorised Version C2023C00001 registered 03/01/2023

(ii) all the prescribed programs that are, or are to be, televised by the licensee during the period when the agreement is in force;

whether or not the programs are, or are to be, supplied under the agreement.

*Related body corporate*

(3) A person is a ***program supplier*** of a commercial television broadcasting licensee for the purposes of this Part if the person:

(a) is a related body corporate of the licensee; and

(b) supplies, or proposes to supply, the licensee with any of:

(i) the sporting programs that are, or are to be, televised by the licensee; or

(ii) the prescribed programs that are, or are to be, televised by the licensee.

*ACMA declaration*

(4) If:

(a) apart from this subsection, a person is not a program supplier of a commercial television broadcasting licensee; and

(b) the person supplies, or proposes to supply, the licensee with any of:

(i) the sporting programs that are, or are to be, televised by the licensee; or

(ii) the prescribed programs that are, or are to be, televised by the licensee; and

(c) having regard to the following matters, the ACMA is satisfied that the person should be treated as a program supplier of the licensee:

(i) the purpose underlying this Part;

(ii) whether the relationship between the person and the licensee was entered into or maintained for the sole or dominant purpose of avoiding the application of any provision of this Part;

(iii) any other relevant matters;



Authorised Version C2023C00001 registered 03/01/2023

the ACMA may, by writing, declare that the person is a ***program supplier*** of the licensee for the purposes of this Part.

(5) A declaration under subsection (4) has effect accordingly.

(6) The ACMA must arrange for a copy of a declaration under subsection (4) to be:
  (a) given to the person and licensee concerned; and
  (b) published in the *Gazette*.



Authorised Version C2023C00001 registered 03/01/2023

# Division 2—Commercial television broadcasting licensees

## 146E Anti-hoarding rule—licensees

(1) A commercial television broadcasting licensee ***contravenes the anti-hoarding rule*** if:

(a) the licensee has a right to televise live, in the licence area for the licence, the whole of a designated event or the whole of a designated series of events; and

(b) the licensee acquired the right when the event was a designated event, or the series was a designated series of events, as the case may be; and

(c) either:

(i) the licensee did not televise live in that area any part of the event or series; or

(ii) the licensee televised live in that area some, but not all, of the event or series; and

(d) neither the licensee nor the licensee's program supplier, before the offer time for the event or series, offered to transfer to each national broadcaster, in accordance with sections 146G and 146H, the right to televise live in the corresponding coverage area:

(i) if subparagraph (c)(i) applies—the whole of the event or series; or

(ii) if subparagraph (c)(ii) applies—the remainder of the event or series.

Note 1: For compliance by licensees, see clause 7 of Schedule 2.

Note 2: For delayed televising in the Central-Western time zones, see section 146KA.

(2) For the purposes of subsection (1), a licensee is taken to have televised live the whole of an event, or the whole of a series of events, if the licensee televises live all but an insubstantial proportion of the event or series, as the case may be.



Authorised Version C2023C00001 registered 03/01/2023

Note: For example, interruptions by way of commercial breaks, news breaks, program promotions, announcements or brief crosses to other live events would amount to an insubstantial proportion of the event or series being televised.

(3) If a commercial television broadcasting licensee has a right to televise live a substantial proportion of a designated event, this section has effect, in relation to the licensee, as if that proportion were a designated event in its own right.

(4) If a commercial television broadcasting licensee has a right to televise live a substantial proportion of a designated series of events, this section has effect, in relation to the licensee, as if that proportion were a designated series of events in its own right.

## 146F Anti-hoarding rule—program suppliers

(1) A commercial television broadcasting licensee's program supplier must not intentionally or recklessly contravene the anti-hoarding rule.

Penalty: 2,000 penalty units.

(2) A commercial television broadcasting licensee's program supplier ***contravenes the anti-hoarding rule*** if:

(a) the program supplier is entitled to confer on the licensee (the ***first licensee***) a right to televise live, in the licence area for the licence, the whole of a designated event or the whole of a designated series of events; and

(b) the program supplier acquired the entitlement when the event was a designated event, or the series was a designated series of events, as the case may be; and

(c) either:

(i) the program supplier did not confer on the first licensee, or on another commercial television broadcasting licensee whose licence area is the same as that of the first licensee, the right to televise live in that area any part of the event or series; or



Authorised Version C2023C00001 registered 03/01/2023

(ii) the program supplier conferred on the first licensee, or on another commercial television broadcasting licensee whose licence area is the same as that of the first licensee, the right to televise live in that area some, but not all, of the event or series; and

(d) the program supplier did not, before the offer time for the event or series, offer to transfer to each national broadcaster, in accordance with sections 146G and 146H, the right to televise live in the corresponding coverage area:

(i) if subparagraph (c)(i) applies—the whole of the event or series; or

(ii) if subparagraph (c)(ii) applies—the remainder of the event or series.

(3) If a commercial television broadcasting licensee's program supplier is entitled to confer on the licensee a right to televise live a substantial proportion of a designated event, this section has effect, in relation to the program supplier, as if that proportion were a designated event in its own right.

(4) If a commercial television broadcasting licensee's program supplier is entitled to confer on the licensee a right to televise live a substantial proportion of a designated series of events, this section has effect, in relation to the program supplier, as if that proportion were a designated series of events in its own right.

(5) This section has no effect to the extent (if any) to which it purports to authorise the acquisition of property if that acquisition:

(a) is otherwise than on just terms; and

(b) would be invalid because of paragraph 51(xxxi) of the Constitution.

(6) In this section:

***acquisition of property*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

***just terms*** has the same meaning as in paragraph 51(xxxi) of the Constitution.



Authorised Version C2023C00001 registered 03/01/2023

## 146G What constitutes an offer to transfer rights to televise live events

(1) For the purposes of this Division, a commercial television broadcasting licensee, or a program supplier, is taken to offer to transfer to a national broadcaster the right to televise live:

(a) the whole or a part of a particular designated event; or

(b) the whole or a part of a particular designated series of events;

if, and only if, the licensee or supplier, as the case may be, offers to make an arrangement (whatever its terms or form) which in substance gives the national broadcaster the right to televise live the whole or the part of the event or series, as the case may be.

(2) In determining whether an arrangement is covered by subsection (1), regard must be had to the practical effect of the arrangement.

## 146H Offers to transfer rights to televise live events

(1) This section applies to an offer by a commercial television broadcasting licensee, or a program supplier, to transfer to a particular national broadcaster (the ***first national broadcaster***) the right to televise live:

(a) the whole or a part of a particular designated event; or

(b) the whole or a part of a particular designated series of events.

(2) The offer must be in writing.

(3) The offer must be given to the Managing Director of the first national broadcaster.

(4) The offer must be given to the Managing Director of the first national broadcaster at or about the same time as a corresponding offer is made to the Managing Director of the other national broadcaster.

(5) The offer must be open for acceptance by the first national broadcaster throughout the period:



Authorised Version C2023C00001 registered 03/01/2023

(a) beginning when the offer is given to the Managing Director of the first national broadcaster; and

(b) ending immediately before the start of the event or series.

(6) The period referred to in subsection (5) must not be shorter than 7 days.

(7) The offer must require that the consideration to be given by the first national broadcaster is to consist of a promise to pay $1, if and when demanded by the licensee or the program supplier, as the case requires.

(8) The first national broadcaster is not entitled to accept the offer if a corresponding offer has already been accepted by the other national broadcaster, unless the other national broadcaster consents in writing.

(9) If:

(a) the offer is accepted by the first national broadcaster; and

(b) a corresponding offer is simultaneously accepted by the other national broadcaster;

then:

(c) the licensee or program supplier, as the case may be, may elect to treat one of those acceptances as having preceded the other of those acceptances; and

(d) if such an election is made—the other of those acceptances has no effect unless the national broadcaster who gave the preceding acceptance consents in writing.

## 146J Contracts to acquire rights to televise live events must authorise the transfer of the rights

(1) Neither a commercial television broadcasting licensee, nor the licensee's program supplier, must enter into a contract under which the licensee or the program supplier, as the case may be:

(a) acquires; or

(b) will be entitled to acquire (whether on the fulfilment of a condition or otherwise);



Authorised Version C2023C00001 registered 03/01/2023

rights to televise live the whole, or a substantial proportion, of a designated event, or of a designated series of events, unless the contract authorises the licensee or program supplier, as the case may be, to make an offer of the kind referred to in section 146E.

(2) A commercial television broadcasting licensee's program supplier must not enter into a contract under which the program supplier:

(a) is entitled; or

(b) will be entitled (whether on the fulfilment of a condition or otherwise);

to confer on the licensee the right to televise live the whole, or a substantial proportion, of a designated event, or of a designated series of events, unless the contract authorises the program supplier to make an offer of the kind referred to in section 146F.

(3) A contract entered into in contravention of subsection (1) or (2) is void.

## 146K Simultaneous events in a series

*Licensees*

(1) For the purposes of this Division, if:

(a) a commercial television broadcasting licensee has the right to televise live, in the licence area for the licence, a particular designated series of events; and

(b) during a particular period, 2 or more events in that series (the ***simultaneous events***) wholly or partly overlap; and

(c) during that period, the licensee televises live in that area one of those simultaneous events;

the licensee is taken, during that period, to have televised live in that area the remainder of those simultaneous events.

Note: For delayed televising in the Central-Western time zones, see section 146KA.

(2) For the purposes of paragraph (1)(c), a licensee is taken to have televised live the whole of an event if the licensee televises live all but an insubstantial proportion of the event.



Authorised Version C2023C00001 registered 03/01/2023

Note: For example, interruptions by way of commercial breaks, news breaks, program promotions, announcements or brief crosses to other live events would amount to an insubstantial proportion of the event being televised.

(3) If a commercial television broadcasting licensee has a right to televise live a substantial proportion of a designated series of events, subsection (1) has effect, in relation to the licensee, as if that proportion were a designated series of events in its own right.

*Program suppliers*

(4) For the purposes of this Division, if:
   (a) a commercial television broadcasting licensee's program supplier is entitled to confer on the licensee a right to televise live, in the licence area for the licence, a particular designated series of events; and
   (b) during a particular period, 2 or more events in that series (the ***simultaneous events***) wholly or partly overlap; and
   (c) the program supplier conferred on the licensee the right to televise live during that period in that area one of those simultaneous events;

the program supplier is taken to have conferred on the licensee the right to televise live during that period in that area the remainder of those simultaneous events.

(5) If a commercial television broadcasting licensee's program supplier is entitled to confer on the licensee a right to televise live a substantial proportion of a designated series of events, subsection (4) has effect, in relation to the program supplier, as if that proportion were a designated series of events in its own right.

## 146KA Delayed televising in the Central-Western time zones

(1) For the purposes of paragraph 146E(1)(c), if:
   (a) a commercial television broadcasting licensee televises, in the licence area for the licence:
      (i) a designated event or a designated series of events; or



Authorised Version C2023C00001 registered 03/01/2023

(ii) a part of a designated event or a part of a designated series of events; and

(b) the event or series is eligible for delayed televising in the Central-Western time zones; and

(c) apart from this subsection, the televising mentioned in paragraph (a) is not live; and

(d) the licence area is wholly or substantially within a particular Central-Western time zone; and

(e) assuming the event or series, or the part of the event or series, as the case may be, had been televised live in Sydney—the event or series, or the part of the event or series, as the case may be, is televised, as mentioned in paragraph (a), not later than the local time in that zone that is equivalent to the time at which the event or series, or the part of the event or series, as the case may be, was televised live in Sydney;

the event or series, or the part of the event or series, as the case may be, is taken to be televised live by the licensee in the licence area.

(2) For the purposes of paragraph 146K(1)(c), if:

(a) a commercial television broadcasting licensee has the right to televise live, in the licence area for the licence, a particular designated series of events; and

(b) during a particular period, 2 or more events in that series wholly or partly overlap; and

(c) the licensee televises in the licence area one of those events; and

(d) the series is eligible for delayed televising in the Central-Western time zones; and

(e) apart from this subsection, the televising mentioned in paragraph (c) is not live; and

(f) the licence area is wholly or substantially within a particular Central-Western time zone; and

(g) assuming the event had been televised live in Sydney—the event is televised, as mentioned in paragraph (c), not later



Authorised Version C2023C00001 registered 03/01/2023

than the local time in that zone that is equivalent to the time at which the event was televised live in Sydney;

the event is taken to be televised live by the licensee in the licence area during that period.

(3) For the purposes of subsections (1) and (2), a licensee is taken to have televised live the whole of an event, or the whole of a series of events, if the licensee televises all but an insubstantial proportion of the event or series, as the case may be.

Note: For example, interruptions by way of commercial breaks, news breaks, program promotions, announcements or brief crosses to other live events would amount to an insubstantial proportion of the event or series being televised.

(4) If a commercial television broadcasting licensee has a right to televise live a substantial proportion of a designated event, this section has effect, in relation to the licensee, as if that proportion were a designated event in its own right.

(5) If a commercial television broadcasting licensee has a right to televise live a substantial proportion of a designated series of events, this section has effect, in relation to the licensee, as if that proportion were a designated series of events in its own right.



Authorised Version C2023C00001 registered 03/01/2023

## Division 3—National broadcasters

### 146L Anti-hoarding rule

(1) A national broadcaster must not contravene the anti-hoarding rule.

(2) A national broadcaster ***contravenes the anti-hoarding rule*** if:

(a) the national broadcaster has a right to televise live, in a coverage area, the whole of a designated event, or the whole of a designated series of events; and

(b) the national broadcaster acquired the right when the event was a designated event, or the series was a designated series of events, as the case may be; and

(c) either:

(i) the national broadcaster did not televise live in that area any part of the event or series; or

(ii) the national broadcaster televised live in that area some, but not all, of the event or series; and

(d) the national broadcaster did not, before the offer time for the event or series of events, offer to transfer to the other national broadcaster, in accordance with sections 146M and 146N, the right to televise live in that area:

(i) if subparagraph (c)(i) applies—the whole of the event or series; or

(ii) if subparagraph (c)(ii) applies—the remainder of the event or series.

Note: For delayed televising in the Central-Western time zones, see section 146R.

(3) For the purposes of subsection (2), a national broadcaster is taken to have televised live the whole of an event, or the whole of a series of events, if the national broadcaster televises live all but an insubstantial proportion of the event or series, as the case may be.

Note 1: For example, in the case of the ABC, interruptions by way of news breaks, program promotions, announcements or brief crosses to other



Authorised Version C2023C00001 registered 03/01/2023

live events would amount to an insubstantial proportion of the event or series being televised.

Note 2: For example, in the case of the SBS, interruptions by way of commercial breaks, news breaks, program promotions, announcements or brief crosses to other live events would amount to an insubstantial proportion of the event or series being televised.

(4) If a national broadcaster has a right to televise live a substantial proportion of a designated event, this section has effect, in relation to the national broadcaster, as if that proportion were a designated event in its own right.

(5) If a national broadcaster has a right to televise live a substantial proportion of a designated series of events, this section has effect, in relation to the national broadcaster, as if that proportion were a designated series of events in its own right.

(6) This section does not apply to a right acquired by a national broadcaster because of the operation of Division 2 or this Division.

## 146M What constitutes an offer to transfer rights to televise live events

(1) For the purposes of this Division, a national broadcaster (the ***first national broadcaster***) is taken to offer to transfer to the other national broadcaster the right to televise live:

(a) the whole or a part of a particular designated event; or

(b) the whole or a part of a particular designated series of events;

if, and only if, the first national broadcaster offers to make an arrangement (whatever its terms or form) which in substance gives the other national broadcaster the right to televise live the whole or the part of the event or series, as the case may be.

(2) In determining whether an arrangement is covered by subsection (1), regard must be had to the practical effect of the arrangement.



Authorised Version C2023C00001 registered 03/01/2023

## 146N Offers to transfer rights to televise live events

(1) This section applies to an offer by a national broadcaster to transfer to the other national broadcaster the right to televise live:
  (a) the whole or a part of a particular designated event; or
  (b) the whole or a part of a particular designated series of events.

(2) The offer must be in writing.

(3) The offer must be given to the Managing Director of the other national broadcaster.

(4) The offer must be open for acceptance by the other national broadcaster throughout the period:
  (a) beginning when the offer is given to the Managing Director of the other national broadcaster; and
  (b) ending immediately before the start of the event or series.

(5) The period referred to in subsection (4) must not be shorter than 7 days.

(6) The offer must require that the consideration to be given by the other national broadcaster is to consist of a promise to pay $1, if and when demanded by the national broadcaster who made the offer.

## 146P Contracts to acquire rights to televise live events must authorise the transfer of the rights

(1) A national broadcaster must not enter into a contract under which the national broadcaster:
  (a) acquires; or
  (b) will be entitled to acquire (whether on the fulfilment of a condition or otherwise);

rights to televise live the whole, or a substantial proportion, of a designated event, or of a designated series of events, unless the contract authorises the national broadcaster to make an offer of the kind referred to in section 146L.



Authorised Version C2023C00001 registered 03/01/2023

(2) A contract entered into in contravention of subsection (1) is void.

## 146Q Simultaneous events in a series

(1) For the purposes of this Division, if:

(a) a national broadcaster has the right to televise live, in a coverage area, a particular designated series of events; and

(b) during a particular period, 2 or more events in that series (the ***simultaneous events***) wholly or partly overlap; and

(c) during that period, the national broadcaster televises live in that area one of those simultaneous events;

the national broadcaster is taken, during that period, to have televised live in that area the remainder of those simultaneous events.

Note: For delayed televising in the Central-Western time zones, see section 146R.

(2) For the purposes of paragraph (1)(c), a national broadcaster is taken to have televised live the whole of an event if the broadcaster televises live all but an insubstantial proportion of the event.

Note 1: For example, in the case of the ABC, interruptions by way of news breaks, program promotions, announcements or brief crosses to other live events would amount to an insubstantial proportion of the event being televised.

Note 2: For example, in the case of the SBS, interruptions by way of commercial breaks, news breaks, program promotions, announcements or brief crosses to other live events would amount to an insubstantial proportion of the event being televised.

(3) If a national broadcaster has a right to televise live a substantial proportion of a designated series of events, this section has effect, in relation to the national broadcaster, as if that proportion were a designated series of events in its own right.

## 146R Delayed televising in the Central-Western time zones

(1) For the purposes of paragraph 146L(2)(c), if:

(a) a national broadcaster televises, in a coverage area:



Authorised Version C2023C00001 registered 03/01/2023

(i) a designated event or a designated series of events; or
(ii) a part of a designated event or a part of a designated series of events; and

(b) the event or series is eligible for delayed televising in the Central-Western time zones; and

(c) apart from this subsection, the televising mentioned in paragraph (a) is not live; and

(d) the coverage area is wholly or substantially within a particular Central-Western time zone; and

(e) assuming the event or series, or the part of the event or series, as the case may be, had been televised live in Sydney—the event or series, or the part of the event or series, as the case may be, is televised, as mentioned in paragraph (a), not later than the local time in that zone that is equivalent to the time at which the event or series, or the part of the event or series, as the case may be, was televised live in Sydney;

the event or series, or the part of the event or series, as the case may be, is taken to be televised live by the national broadcaster in the coverage area.

(2) For the purposes of paragraph 146Q(1)(c), if:

(a) a national broadcaster has the right to televise live, in a coverage area, a particular designated series of events; and

(b) during a particular period, 2 or more events in that series wholly or partly overlap; and

(c) the broadcaster televises in the coverage area one of those events; and

(d) the series is eligible for delayed televising in the Central-Western time zones; and

(e) apart from this subsection, the televising mentioned in paragraph (c) is not live; and

(f) the coverage area is wholly or substantially within a particular Central-Western time zone; and

(g) assuming the event had been televised live in Sydney—the event is televised, as mentioned in paragraph (c), not later



Authorised Version C2023C00001 registered 03/01/2023

than the local time in that zone that is equivalent to the time at which the event was televised live in Sydney;

the event is taken to be televised live by the national broadcaster in the coverage area during that period.

(3) For the purposes of subsections (1) and (2), a national broadcaster is taken to have televised live the whole of an event, or the whole of a series of events, if the broadcaster televises all but an insubstantial proportion of the event or series, as the case may be.

Note 1: For example, in the case of the ABC, interruptions by way of news breaks, program promotions, announcements or brief crosses to other live events would amount to an insubstantial proportion of the event or series being televised.

Note 2: For example, in the case of the SBS, interruptions by way of commercial breaks, news breaks, program promotions, announcements or brief crosses to other live events would amount to an insubstantial proportion of the event or series being televised.

(4) If a national broadcaster has a right to televise live a substantial proportion of a designated event, this section has effect, in relation to the broadcaster, as if that proportion were a designated event in its own right.

(5) If a national broadcaster has a right to televise live a substantial proportion of a designated series of events, this section has effect, in relation to the broadcaster, as if that proportion were a designated series of events in its own right.



Authorised Version C2023C00001 registered 03/01/2023

# Part 11—Complaints to the ACMA

## Division 1—Complaints relating to action under licences and class licences

### 147 Complaints relating to offences or breach of licence conditions

If a person believes that another person who is providing a broadcasting service has:

(a) committed an offence against this Act or the regulations; or

(aa) breached a civil penalty provision; or

(b) breached a condition of a licence or a class licence;

the person may make a complaint to the ACMA about the matter.

### 148 Complaints under codes of practice

If:

(a) a person has made a complaint to a provider of broadcasting services on a matter relating to:

(i) program content; or

(ii) compliance with a code of practice that applies to those services and that is included in the Register of codes of practice; and

(b) if there is a relevant code of practice relating to the handling of complaints of that kind—the complaint was made in accordance with that code of practice; and

(c) either:

(i) the person has not received a response within 60 days after making the complaint; or

(ii) the person has received a response within that period but considers that response to be inadequate;

the person may make a complaint to the ACMA about the matter.



Authorised Version C2023C00001 registered 03/01/2023

## 149 Investigation of complaints by the ACMA

The ACMA may investigate the complaint if the ACMA thinks that it is desirable to do so.



Authorised Version C2023C00001 registered 03/01/2023

# Division 2—Complaints relating to national broadcasting services or datacasting services provided by the ABC or SBS

## 150 Complaints relating to national broadcasting services or datacasting services provided by the ABC or SBS

(1) If:

(a) a person has made a complaint to the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation on the ground that the Corporation has, in providing a national broadcasting service or a datacasting service, acted contrary to a code of practice developed by the Corporation and notified to the ACMA; and

(b) either:

(i) the person has not received a response within 60 days after making the complaint; or

(ii) the person has received a response within that period but considers that response to be inadequate;

the person may make a complaint to the ACMA about the matter.

(2) If:

(a) a person has made a complaint to the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation on the ground that the Corporation has breached Part 9D (which deals with captioning); and

(b) either:

(i) the person has not received a response within 30 days after making the complaint; or

(ii) the person has received a response within that period but considers that response to be inadequate;

the person may make a complaint to the ACMA about the matter.



Authorised Version C2023C00001 registered 03/01/2023

## 151 Investigation of complaints relating to the ABC or SBS by the ACMA

The ACMA may investigate the complaint if the ACMA thinks that it is desirable to do so.

## 152 Action by ACMA where complaint justified

(1) If, having investigated a complaint, the ACMA is satisfied that:

(a) the complaint was justified; and

(b) the ACMA should take action under this section to encourage the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation to comply with the relevant code of practice;

the ACMA may, by notice in writing given to the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation, recommend that it take action to comply with the relevant code of practice and take such other action in relation to the complaint as is specified in the notice.

(2) That other action may include broadcasting or otherwise publishing an apology or retraction.

## 153 ACMA may report to Minister on results of recommendation

(1) If:

(a) the ACMA has made a recommendation to the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation under section 152; and

(b) the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation, as the case may be, does not, within 30 days after the recommendation was given, take action that the ACMA considers to be appropriate;

the ACMA may give the Minister a written report on the matter.

(2) The Minister must cause a copy of the report to be laid before each House of the Parliament within 7 sitting days of that House after the day on which he or she received the report.



Authorised Version C2023C00001 registered 03/01/2023

# Part 13—Information gathering by the ACMA

## Division 1—Introduction

### 168 Obtaining of information by the ACMA

(1) In informing itself on any matter relevant to its broadcasting, content and datacasting functions (as defined in the *Australian Communications and Media Authority Act 2005*), the ACMA:

(a) may consult with such persons, bodies and groups as it thinks fit, and may form consultative committees for that purpose; and

(b) may conduct investigations and hold hearings; and

(c) may otherwise inform itself in any manner it thinks fit.

(2) Subject to any directions by the Minister under this Part, the procedure that the ACMA adopts in informing itself on any matter relevant to those functions is to be that which the ACMA considers:

(a) will be the quickest and most economical in the circumstances; and

(b) will also promote the due administration of this Act.

### 169 Decision-making by the ACMA not limited to matters discovered by investigation or hearing

In making a decision on any matter relating to the functions referred to in subsection 168(1), the ACMA is not limited to a consideration of material made available through an investigation or hearing conducted in relation to the matter, but may take into account such other matters as it considers relevant, including the knowledge and experience of the members.



Authorised Version C2023C00001 registered 03/01/2023

## Division 2—Investigations

### 170 Investigations by the ACMA

The ACMA may conduct investigations for the purposes of the performance or exercise of any of its broadcasting, content and datacasting functions (as defined in the *Australian Communications and Media Authority Act 2005*) and related powers.

### 171 Minister may direct ACMA to conduct an investigation

(1) The Minister may direct the ACMA in writing to investigate any matter with respect to which the Parliament is given power to make laws by paragraph 51(v) of the Constitution.

(2) Without limiting subsection (1), the Minister may direct the ACMA to investigate:

(a) any matter that the Minister is satisfied should be investigated in the interests of the due administration of this Act; or

(b) any matter relating to the future regulation or operation of a carriage service or a content service.

(3) In this section:

***carriage service*** has the same meaning as in the *Telecommunications Act 1997*.

***content service*** has the same meaning as in the *Telecommunications Act 1997*.

### 172 ACMA may call for written submissions from the public

The ACMA may, in conducting an investigation, call for written submissions from members of the public.



Authorised Version C2023C00001 registered 03/01/2023

## 173 Notice requiring appearance for examination

For the purposes of an investigation by the ACMA, the ACMA may give a notice in writing to a person summoning the person:

(a) to attend before a delegate of the ACMA named in the notice to produce documents or to answer questions; or

(b) to provide documents or other information to the ACMA;

relevant to the subject matter of the investigation.

## 174 Examination on oath or affirmation

*Investigation by the ACMA*

(1) If a person is summoned to attend before a delegate of the ACMA, the delegate may examine that person on oath or affirmation and, for that purpose:

(a) may require the person to take an oath or make an affirmation; and

(b) may administer an oath or affirmation to the person.

(2) The oath or affirmation is to be an oath or affirmation that the statements the person will make will be true to the best of the person's knowledge or belief.

(3) The delegate may require the person to answer a question that is put to the person at an examination and that is relevant to a matter that the ACMA is investigating or is to investigate.

## 175 Examination to take place in private

The examination of a person for the purposes of an investigation must be conducted in private, but the person is entitled to have an adviser present at the examination.



Authorised Version C2023C00001 registered 03/01/2023

## 176 Record to be made of examination

*Investigation by the ACMA*

(1) If a person is examined by a delegate of the ACMA, a record must be made of the examination and the person is entitled to be given a written copy of the record.

(2) If the record of the examination of a person is made in electronic form, the person is, if the person so requests, to be given a copy of the record in that form.

## 177 Production of documents for inspection

The ACMA may, by notice in writing given to a person, require the person:

(a) to make available for inspection by a member of the staff of the ACMA any documents in the possession of the person that may contain information relevant to the subject matter of an investigation by the ACMA; and

(b) to permit that member to make copies of any such documents.

## 178 Report on investigation

(1) The ACMA may prepare a report on an investigation, and must prepare a report on an investigation conducted at the direction of the Minister and give a copy of each report conducted at the direction of the Minister to the Minister.

(2) If a report on an investigation relates to conduct that could constitute an offence under this Act or another law of the Commonwealth, the ACMA may give a copy of the report or of a part of the report to the Director of Public Prosecutions.



Authorised Version C2023C00001 registered 03/01/2023

## 179 Publication of report

(1) Except in the case of a report prepared as a result of an investigation directed by the Minister, the ACMA may cause a copy of a report on an investigation to be published.

(2) The Minister may direct the ACMA to publish a report on an investigation directed by the Minister.

(3) The ACMA is not required to publish, or to disclose to a person to whose affairs it relates, a report or part of a report if the publication or disclosure would:

(a) disclose matter of a confidential character; or

(b) be likely to prejudice the fair trial of a person.

## 180 Person adversely affected by report to be given opportunity to comment

If publication of matter in a report or part of a report would or would be likely to adversely affect the interests of a person, the ACMA must not publish the report or the part of the report until it has given the person a reasonable period, not exceeding 30 days, to make representations, either orally or in writing, in relation to the matter.



Authorised Version C2023C00001 registered 03/01/2023

## Division 3—Hearings

### 182 Power to hold hearings

The ACMA may hold hearings for the purposes of the performance or exercise of any of its broadcasting, content and datacasting functions (as defined in the *Australian Communications and Media Authority Act 2005*) and related powers.

### 183 Minister may direct ACMA to hold a hearing

If the Minister is satisfied that the ACMA should, in the interests of the due administration of this Act, hold a hearing in relation to any matter, the Minister may direct the ACMA in writing to hold a hearing in relation to the matter.

### 184 Procedure for conduct of hearings

(1) Subject to this Division, the procedure for the conduct of a hearing is within the discretion of the ACMA.

(2) The ACMA may give directions, either generally or in relation to a particular case, for the procedures to be followed in relation to the conduct of hearings.

### 185 ACMA may direct holding of conference

(1) The ACMA may, at any stage of a hearing, direct persons participating or seeking to participate in the hearing to attend a conference before a member of the ACMA or a member of the staff of the ACMA for the purpose of:
  (a) discussing matters relevant to the hearing; or
  (b) clarifying any of the matters to be dealt with by the hearing; or
  (c) resolving any differences between the persons participating in the hearing.



Authorised Version C2023C00001 registered 03/01/2023

(2) If a person who is directed to participate in a conference in relation to a hearing fails, without reasonable excuse, to attend the conference, the person may be excluded from participation or further participation in the hearing.

## 186 Hearings to be informal, quick and economical

(1) A hearing is to be conducted:

(a) with as little technicality and formality; and

(b) as quickly and economically;

as the requirements of this Act and a proper consideration of the matters before the ACMA permit.

(2) In holding a hearing, the ACMA is not bound by the rules of evidence.

## 187 Hearings to be in public except in exceptional cases

(1) Subject to subsection (2), a hearing conducted by the ACMA must take place in public.

(2) A hearing or a part of a hearing may be conducted in private if:

(a) evidence that may be given, or a matter that may arise, during the hearing or the part of the hearing is of a confidential nature; or

(b) the ACMA is satisfied that hearing a matter or part of a matter in public would not be conducive to the due administration of this Act.

## 188 Public notice of hearings

If the ACMA is to conduct a hearing in public, the ACMA must give reasonable public notice of the conduct of the hearing.

## 189 Confidential material not to be published

If a hearing or part of a hearing takes place in public, the ACMA may order that evidence or other material presented to the hearing,



Authorised Version C2023C00001 registered 03/01/2023

or material in a submission lodged with the ACMA under section 196, that is, in the opinion of the ACMA, of a confidential nature not be published, or that its disclosure be restricted as directed by the ACMA.

## 190 Directions as to private hearings

If a hearing or part of a hearing takes place in private, the ACMA:

(a) must give directions as to the persons who may be present at the hearing or the part of the hearing; and

(b) may give directions restricting the disclosure of evidence or other material presented at the hearing or the part of the hearing.

## 191 Constitution of ACMA for conduct of hearings

The ACMA is to be constituted for the purposes of a hearing by a panel consisting of such members as the Chair directs.

## 192 Presiding member

A panel conducting a hearing is to be presided over by the Chair or, if the Chair is not a member of the panel, by such member of the panel as the Chair directs.

## 193 Reconstitution of hearing panel

(1) If, during the course of a hearing:

(a) it appears to the Chair that, because of the importance of the matters in issue the panel conducting a hearing should be reconstituted by the addition to that panel of one or more additional members; or

(b) a member of the panel conducting the hearing is unable to continue with the hearing;

the Chair may direct that the panel be reconstituted.

(2) All proceedings in the hearing that have taken place before the reconstitution of the panel are, unless the panel as reconstituted



Authorised Version C2023C00001 registered 03/01/2023

otherwise directs, to be taken to have taken place before the reconstituted panel.

## 194 Exercise of powers in relation to conduct of hearing

The powers of the ACMA in relation to the conduct of a particular hearing may be exercised:

(a) by the panel conducting that hearing; or

(b) by the Chair; or

(c) by a member of the ACMA authorised by the Chair to exercise those powers in relation to the hearing.

## 195 Summons to give evidence or produce documents

(1) The member presiding at a hearing may:

(a) by notice in writing given to a person, summon that person to appear before the ACMA as constituted for the purposes of the hearing to give evidence in relation to the subject matter of the hearing or to produce to the ACMA such documents as are specified in the notice, or to do both; or

(b) require a person appearing to give evidence either to take an oath or to make an affirmation; or

(c) administer an oath or affirmation to a person so appearing.

(2) The oath or affirmation to be taken or made by a person is an oath or affirmation that the evidence the person will give will be true.

## 196 Written submissions may be made to hearing

A person may lodge with the ACMA any submissions in writing that the person wishes the ACMA to take into account in relation to the subject matter of the hearing.

## 197 Evidence and submissions to be taken into account by ACMA

The ACMA must take into account:

(a) evidence given, or a submission made, to it at a hearing; or



Authorised Version C2023C00001 registered 03/01/2023

(b) a submission lodged with it in relation to the hearing;

in making a decision on a matter to which the evidence or submission relates.

## 198 Representation at hearings

(1) A person who wishes to participate in a hearing may be represented at the hearing by another person.

(2) As far as practicable, the ACMA is to ensure that a person is not at a disadvantage at a hearing because that person is not represented by another person.

## 199 Reports on hearings

(1) If the ACMA has completed a hearing, the ACMA must prepare and publish a report setting out its findings as a result of the hearing.

(2) If the hearing was conducted at the direction of the Minister, the ACMA must give a copy of the report to the Minister.

(3) The ACMA is not required to include in a report any material:

(a) that is of a confidential nature; or

(b) the disclosure of which is likely to prejudice the fair trial of a person; or

(c) that is the subject of an order or direction under section 189 or 190.



Authorised Version C2023C00001 registered 03/01/2023

## Division 4—General

### 200 Protection of members and persons giving evidence

(1) A person who is a member of the panel conducting a hearing has in the performance of his or her duties as a member of the panel the same protection and immunity as a Justice of the High Court.

(2) A lawyer appearing before the ACMA at a hearing as the representative of another person has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

(3) A person who is summoned to appear at a hearing, or a person who gives evidence or produces documents at an investigation by the ACMA or a hearing, has the same protection as a witness in a proceeding in the High Court.

### 201 Protection of panel conducting hearing

A person must not:

(a) obstruct a member of a panel conducting a hearing; or

(b) disrupt a hearing; or

(c) do any other act or thing that would, if the hearing were a proceeding in the High Court, constitute a contempt in the face of that Court.

Penalty: Imprisonment for one year.

### 202 Non-compliance with requirement to give evidence

(1) A person required to give evidence or to produce documents at a hearing must not:

(a) fail to attend as required by the notice; or

(b) fail to appear and report from day to day unless excused or released from further attendance.



Authorised Version C2023C00001 registered 03/01/2023

Penalty: Imprisonment for one year.

(1A) A person required to give evidence or to produce documents at a hearing must not:

(a) fail to attend as required by the notice; or

(b) fail to appear and report from day to day unless excused or released from further attendance.

(1B) Subsection (1A) is a civil penalty provision.

(2) A person required to answer a question, to give evidence or to produce documents under this Part must not:

(a) when required to take an oath or make an affirmation, refuse or fail to take the oath or make the affirmation; or

(b) refuse or fail to answer a question that the person is required to answer; or

(c) refuse or fail to produce a document that the person is required to produce.

Penalty: Imprisonment for one year.

(2AA) A person required to answer a question, to give evidence or to produce documents under this Part must not:

(a) when required to take an oath or make an affirmation, refuse or fail to take the oath or make the affirmation; or

(b) refuse or fail to answer a question that the person is required to answer; or

(c) refuse or fail to produce a document that the person is required to produce.

(2AB) Subsection (2AA) is a civil penalty provision.

(2A) Subsections (1), (1A), (2) and (2AA) do not apply if the person has a reasonable excuse.

Note: In criminal proceedings, a defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).



Authorised Version C2023C00001 registered 03/01/2023

(2B) A person who wishes to rely on subsection (2A) in proceedings for a civil penalty order bears an evidential burden in relation to that matter.

(3) For the avoidance of doubt, it is declared that it is a reasonable excuse for a person to refuse to answer a question or to produce a document if the answer to the question or the production of the document would tend to incriminate the person.

(4) It is a reasonable excuse for a person to refuse to answer a question or to produce a document if:

(a) the person is a journalist; and

(b) the answer to the question or the production of the document would tend to disclose the identity of a person who supplied information in confidence to the journalist; and

(c) the information has been used for the purposes of:

(i) a television or radio program; or

(ii) datacasting content.

(5) For the purposes of this section, ***journalist*** means a person engaged in the profession or practice of reporting for, photographing, editing, recording or making:

(a) television or radio programs; or

(b) datacasting content;

of a news, current affairs, information or documentary character.

## 203 Proceedings for defamation not to lie

No action or proceeding, whether civil or criminal, lies:

(a) against the Commonwealth, the Minister, the ACMA, a member of the staff of the ACMA, a person who is a member of the panel constituting a hearing or a person acting with the authority of the ACMA in respect of the printing or publishing of a report of an investigation or a transcript of proceedings at a hearing; or

(b) in respect of the publication, by any means, of a fair and accurate report of proceedings at a hearing.



Authorised Version C2023C00001 registered 03/01/2023

# Part 14—Appeals to the Administrative Appeals Tribunal

## 204 Appeals to the Administrative Appeals Tribunal

*Decisions under this Act*

(1) Subject to this section, an application may be made to the Administrative Appeals Tribunal for a review of a decision set out in column 1 of the table made under the provision of this Act set out in column 2, but such an application may only be made by the person described in column 3.

TABLE

| **Column 1**<br>**Decision** | **Column 2**<br>**Provision** | **Column 3**<br>**Person who may apply** |
|---|---|---|
| Refusal to allocate an additional licence | Section 38A | The licensee |
| Refusal to allocate an additional licence | Section 38B | The applicant |
| Cancellation of licence | Section 38C | The licensee |
| Refusal to allocate licence | Subsection 40(1) | The applicant |
| Direction that a licence not be allocated under subsection 40(1) | Subsection 40(7) | The applicant |
| That a person is not a suitable applicant or licensee (Commercial) | Subsection 41(2) | The person |



Authorised Version C2023C00001 registered 03/01/2023

| **Column 1**<br>**Decision** | **Column 2**<br>**Provision** | **Column 3**<br>**Person who may apply** |
|---|---|---|
| Variation of licence conditions or imposition of new conditions (Commercial) | Subsection 43(1) | The licensee |
| To enter a newspaper in Register | Subsection 59(3) | The publisher of a newspaper or a commercial television broadcasting licensee in the relevant licence area |
| Refusal to remove newspaper from Register | Subsection 59(4) | The publisher of a newspaper or a commercial television broadcasting licensee in the relevant licence area |
| To enter a newspaper in Register | subsection 59(4A) | The publisher of a newspaper or a commercial radio broadcasting licensee in the relevant licence area |
| Refusal to remove newspaper from Register | subsection 59(4B) | The publisher of a newspaper or a commercial radio broadcasting licensee in the relevant licence area |
| Refusal to approve transaction or determination of period of approval | Section 61AJ | The applicant for approval |



Authorised Version C2023C00001 registered 03/01/2023

Section 204

| **Column 1**<br>**Decision** | **Column 2**<br>**Provision** | **Column 3**<br>**Person who may apply** |
|---|---|---|
| Refusal to extend time for compliance | Section 61AK | The applicant |
| Refusal to extend time for compliance | Section 61AP | The applicant |
| To affirm or revoke a decision made under subsection 61AZE(1) | Section 61AZF | A person whose interests are affected by the decision made under subsection 61AZE(1) |
| Refusal to approve temporary breach or determination of period of approval | Subsection 67(4) | The applicant for approval |
| Refusal to extend time for compliance | Subsection 68(2) | The applicant |
| Refusal to extend time for compliance | Subsection 71(3) | The applicant |
| That a person is not a suitable applicant or licensee (Community) | Subsection 83(2) | The person |
| Variation of licence conditions or imposition of new conditions (Community) | Subsection 87(1) | The licensee |
| Refusal to approve the transfer of a community broadcasting licence | Section 91A | The applicant or the proposed transferee |
| That a person is not a suitable applicant or licensee (Temporary community) | Subsection 92D(2) | The person |



Authorised Version C2023C00001 registered 03/01/2023

| **Column 1**<br>**Decision** | **Column 2**<br>**Provision** | **Column 3**<br>**Person who may apply** |
|---|---|---|
| Variation of licence conditions (other than timing conditions), imposition of new conditions or variation of licence period (Temporary community) | Section 92J | The licensee |
| Refusal to allocate licence | Subsection 96(1) | The applicant |
| That a person is not a suitable applicant or licensee | Subsection 98(2) | The person |
| Variation of conditions or imposition of new conditions | Subsection 99(2) | The licensee |
| Variation of class licence conditions or imposition of new conditions | Subsection 120(1) | A person operating under the class licence |
| Refusal of permission | Subsection 121E(1) | The subscription television broadcasting licensee or the related body corporate, as the case may be |
| Grant of permission | Subsection 121E(1) | A commercial television broadcasting licensee any part of whose licence area is included in the regional area |



Authorised Version C2023C00001 registered 03/01/2023

| **Column 1**<br>**Decision** | **Column 2**<br>**Provision** | **Column 3**<br>**Person who may apply** |
|---|---|---|
| That subsection 121FC(1) applies to a company | Subsection 121FC(1) | The company |
| Cancellation of an international broadcasting licence | Subsection 121FK(1) | The licensee |
| Refusal to make a nominated broadcaster declaration | Section 121FLC | The transmission provider or the content provider |
| Revocation of a nominated broadcaster declaration | Section 121FLG | The holder of the declaration, or the content provider |
| Cancellation of an international broadcasting licence | Section 121FLH | The licensee |
| Refusal to include a code of practice in the Register | Subsection 123(4) | The relevant industry group |
| To make an exemption order or target reduction order | Section 130ZUA | A person whose interests are affected by the decision to make the exemption order or target reduction order |
| Refusal to make an exemption order or target reduction order | Section 130ZUA | The applicant |



Authorised Version C2023C00001 registered 03/01/2023

| **Column 1**<br>**Decision** | **Column 2**<br>**Provision** | **Column 3**<br>**Person who may apply** |
|---|---|---|
| To make an exemption order or target reduction order | Section 130ZY | A person whose interests are affected by the decision to make the exemption order or target reduction order |
| Refusal to make an exemption order or target reduction order | Section 130ZY | The applicant |
| Suspension or cancellation of licence | Section 143 | The licensee |
| Declaration that a person is a program supplier of a commercial television broadcasting licensee | Subsection 146D(4) | The person |
| Refusal to remit the whole or part of a late payment penalty | Subsection 205AF(3) | The person liable to pay the penalty |
| Refusal of permission | Subclause 7(2A) of Schedule 2 | The licensee seeking the permission |
| Grant of permission | Subclause 7(2A) of Schedule 2 | A commercial television broadcasting licensee where the provision of the services would occur in any part of that licensee's licence area |
| Refusal of permission | Subclause 8(3) of Schedule 2 | The licensee seeking the permission |



Authorised Version C2023C00001 registered 03/01/2023

| **Column 1**<br>**Decision** | **Column 2**<br>**Provision** | **Column 3**<br>**Person who may apply** |
|---|---|---|
| Grant of permission | Subclause 8(3) of Schedule 2 | A commercial radio broadcasting licensee where the provision of the services would occur in any part of that licensee's licence area |
| Refusal of permission | Subclause 9(2A) of Schedule 2 | The licensee seeking the permission |
| Grant of permission | Subclause 9(2A) of Schedule 2 | A community broadcasting licensee where the provision of the services would occur in any part of that licensee's licence area |
| Refusal to make an exemption determination | Subclause 15(1) or (2) of Schedule 8 | The provider of the online content service to which the determination relates |
| Variation of an exemption determination | Subclause 15(1) or (2) of Schedule 8 | The provider of the online content service to which the determination relates |
| Revocation of an exemption determination | Subclause 15(1) or (2) of Schedule 8 | The provider of the online content service to which the determination relates |
| Refusal to make an exemption determination | Subclause 15(3) or (4) of Schedule 8 | The person to whom the determination relates |
| Variation of an exemption determination | Subclause 15(3) or (4) of Schedule 8 | The person to whom the determination relates |



Authorised Version C2023C00001 registered 03/01/2023

| Column 1<br>Decision | Column 2<br>Provision | Column 3<br>Person who may apply |
|---|---|---|
| Revocation of an exemption determination | Subclause 15(3) or (4) of Schedule 8 | The person to whom the determination relates |
| To give a remedial direction | Subclause 26(2) of Schedule 8 | The person to whom the direction was given |
| Variation of a remedial direction | Subclause 26(2) of Schedule 8 | The person to whom the direction was given |
| Refusal to revoke a remedial direction | Subclause 26(2) of Schedule 8 | The person to whom the direction was given |

*Decisions under a conditional access scheme registered under section 130ZCA*

(2) An application may be made to the Administrative Appeals Tribunal for review of a decision set out in column 1 of the table, but such an application may only be made by the person described in column 2.

**Reviewable decisions**

| | Column 1 | Column 2 |
|---|---|---|
| **Item** | **Decision** | **Person who may apply** |
| 1 | Refusal to issue a reception certificate under a conditional access scheme registered under section 130ZCA | The applicant |
| 2 | Revocation of a reception certificate under a conditional access scheme registered under section 130ZCA | The holder of the reception certificate |



Authorised Version C2023C00001 registered 03/01/2023

*Decisions under a gambling promotion program standard*

(3) An application may be made to the Administrative Appeals Tribunal for review of a decision made by the ACMA under a gambling promotion program standard, so long as the standard provides that the decision is a reviewable decision for the purposes of this section.

*Decisions under the online content service provider rules*

(4) An application may be made to the Administrative Appeals Tribunal for review of a decision made by the ACMA under the online content service provider rules, so long as those rules provide that the decision is a reviewable decision for the purposes of this section.

*Online content service provider rules*

(5) In this section:

***online content service provider rules*** has the same meaning as in Schedule 8.

## 205 Notification of decisions to include notification of reasons and appeal rights

If the ACMA makes a decision that is reviewable under section 204, the ACMA is to include in the document by which the decision is notified:

(a) a statement setting out the reasons for the decision; and

(b) a statement to the effect that an application may be made to the Administrative Appeals Tribunal for a review of the decision.



Authorised Version C2023C00001 registered 03/01/2023

# Part 14AA—Collection and recovery of interim tax

## 205AA Simplified outline of this Part

- The ACMA must make assessments of interim tax.
- Interim tax is due and payable 28 days after the assessment is given to the person to whom the assessment relates.
- There is a penalty for late payment of interim tax.
- Schemes to avoid interim tax are prohibited.

## 205AB Assessments

(1) If interim tax is payable by a person in relation to the issue of a transmitter licence, the ACMA must:

(a) make a written assessment setting out the interim tax payable by the person; and

(b) do so on, or as soon as practicable after, the later of the following days:

(i) the day the licence was issued;

(ii) 1 December 2017.

(2) If interim tax is payable by a person in relation to an anniversary of the day a transmitter licence came into force, the ACMA must:

(a) make a written assessment setting out the interim tax payable by the person; and

(b) do so on, or as soon as practicable after, the later of the following days:

(i) the anniversary;

(ii) 1 December 2017.



Authorised Version C2023C00001 registered 03/01/2023

(3) If interim tax is payable by a person in relation to a transmitter licence ceasing to be in force, the ACMA must:

(a) make a written assessment setting out the interim tax payable by the person; and

(b) do so on, or as soon as practicable after, the later of the following days:

(i) the day the licence ceased to be in force;

(ii) 1 December 2017.

(4) If interim tax is payable by a person in relation to the holding of a transmitter licence at the start of 1 July 2017, the ACMA must:

(a) make a written assessment setting out the interim tax payable by the person; and

(b) do so on, or as soon as practicable after, 1 December 2017.

*Notification of assessment*

(5) As soon as practicable after making an assessment under this section, the ACMA must give a copy of the assessment to the person to whom the assessment relates.

*Variation of assessments*

(6) The ACMA may vary an assessment made under this section by making such alterations and additions as it thinks necessary, even if interim tax has been paid in respect of an assessment.

(7) Unless the contrary intention appears, a varied assessment is taken, for the purposes of this Part, to be an assessment under this section.

## 205AC When interim tax becomes due and payable

Interim tax becomes due and payable on:

(a) the 28th day after a copy of the assessment of the interim tax was given to the person to whom the assessment relates; or

(b) if that assessment is varied—the 28th day after a copy of the varied assessment was given to the person to whom the varied assessment relates.



Authorised Version C2023C00001 registered 03/01/2023

## 205AD Recovery of interim tax

Interim tax:

(a) is a debt due to the ACMA on behalf of the Commonwealth; and

(b) may be recovered by the ACMA, on behalf of the Commonwealth, in:

(i) the Federal Court; or

(ii) the Federal Circuit and Family Court of Australia (Division 2); or

(iii) a court of a State or Territory that has jurisdiction in relation to the matter.

## 205AE Refund of overpayment of interim tax

If there is an overpayment of interim tax, the overpayment is to be refunded by the ACMA on behalf of the Commonwealth.

## 205AF Late payment penalty

(1) If an amount of interim tax that is payable by a person remains unpaid after the day on which it becomes due and payable, the person is liable to pay a penalty (***late payment penalty***) on the unpaid amount for each day until all of the interim tax has been paid.

(2) The late payment penalty rate is 20% per year, or such lower rate as the ACMA determines in writing for the purposes of this subsection.

(3) The ACMA may remit the whole or part of a late payment penalty that a person is liable to pay under subsection (1).

(4) The late payment penalty for a day is due and payable at the end of that day.

(5) Late payment penalty:

(a) is a debt due to the ACMA on behalf of the Commonwealth; and



Authorised Version C2023C00001 registered 03/01/2023

(b) may be recovered by the ACMA, on behalf of the Commonwealth, in:
(i) the Federal Court; or
(ii) the Federal Circuit and Family Court of Australia (Division 2); or
(iii) a court of a State or Territory that has jurisdiction in relation to the matter.

(6) If the amount of the late payment penalty for a day is not an amount of whole dollars, the late payment penalty is rounded to the nearest dollar (rounding 50 cents upwards).

(7) If there is an overpayment of late payment penalty, the overpayment is to be refunded by the ACMA on behalf of the Commonwealth.

(8) A determination under subsection (2) is a legislative instrument.

## 205AG Anti-avoidance

(1) The holder of a transmitter licence must not, either alone or together with one or more other persons, do any of the following:
(a) enter into a scheme;
(b) begin to carry out a scheme;
(c) carry out a scheme;
if it would be concluded that the holder of the transmitter licence did so for the sole or dominant purpose of avoiding the application of any provision of the *Commercial Broadcasting (Tax) Act 2017* (other than section 14 of that Act) in relation to:
(d) the holder of the transmitter licence; or
(e) the holder of any other transmitter licence.

*Civil penalty provision*

(2) Subsection (1) is a civil penalty provision.

Note: Part 14B deals with civil penalties.



Authorised Version C2023C00001 registered 03/01/2023

*Validity of transactions*

(3) A contravention of subsection (1) does not affect the validity of any transaction.

*Scheme*

(4) For the purposes of this section, ***scheme*** means:

(a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied; or

(b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.



Authorised Version C2023C00001 registered 03/01/2023

# Part 14B—Civil penalties

## Division 1—Ancillary contravention of civil penalty provision

### 205E Ancillary contravention of civil penalty provision

(1) A person must not:

(a) attempt to contravene a civil penalty provision (other than this subsection); or

(b) aid, abet, counsel or procure a contravention of a civil penalty provision (other than this subsection); or

(c) induce, whether by threats or promises or otherwise, a contravention of a civil penalty provision (other than this subsection); or

(d) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision (other than this subsection); or

(e) conspire with others to effect a contravention of a civil penalty provision (other than this subsection).

(2) Subsection (1) is a civil penalty provision.



Authorised Version C2023C00001 registered 03/01/2023

# Division 2—Civil penalty orders

## 205EA Simplified outline

The following is a simplified outline of this Division:

- Pecuniary penalties are payable for contraventions of civil penalty provisions.

## 205F Civil penalty orders

(1) If the Federal Court is satisfied that a person has contravened a civil penalty provision, the Federal Court may order the person to pay the Commonwealth a pecuniary penalty.

(2) An order under subsection (1) is to be known as a ***civil penalty order***.

*Determining amount of pecuniary penalty*

(3) In determining the pecuniary penalty, the Federal Court must have regard to all relevant matters, including:
  (a) the nature and extent of the contravention; and
  (b) the nature and extent of any loss or damage suffered as a result of the contravention; and
  (c) the circumstances in which the contravention took place; and
  (d) whether the person has previously been found by a court in proceedings under this Act to have engaged in any similar conduct.

*Maximum pecuniary penalty*

(4) The pecuniary penalty payable by a person in respect of a contravention of a civil penalty provision (other than subsection 74F(1), 74G(1), 74H(1), 74J(1), 74K(1), 205AG(1) or 205E(1) or subclause 25(1) or 26(4) of Schedule 8) must not



Authorised Version C2023C00001 registered 03/01/2023

exceed the maximum pecuniary penalty that could have been imposed on the person if the person had been convicted of an offence against the provision of this Act that corresponds to the civil penalty provision.

(5) The pecuniary penalty payable by a person in respect of a contravention of subsection 205E(1) that relates to another civil penalty provision (other than subsection 74F(1), 74G(1), 74H(1), 74J(1), 74K(1) or 205AG(1) or subclause 25(1) or 26(4) of Schedule 8) must not exceed the maximum pecuniary penalty that could have been imposed on the person if the person had been convicted of an offence against the provision of this Act that corresponds to the other civil penalty provision.

(5AA) The pecuniary penalty payable by a person in respect of:

(a) a contravention of subsection 74F(1), 74G(1), 74H(1), 74J(1) or 74K(1); or

(b) a contravention of section 205E that relates to a contravention of subsection 74F(1), 74G(1), 74H(1), 74J(1) or 74K(1);

must not exceed:

(c) if the person is a body corporate—300 penalty units; or

(d) if the person is not a body corporate—60 penalty units.

(5A) The pecuniary penalty payable by a person in respect of a contravention of subsection 205AG(1) must not exceed the sum of:

(a) whichever of the following is applicable:

(i) if the person is a body corporate—2,000 penalty units;

(ii) if the person is not a body corporate—400 penalty units; and

(b) if the Federal Court is satisfied that, as a result of the scheme to which the contravention relates, the person or another person has avoided becoming liable to pay an amount of interim tax—200% of the amount of interim tax avoided.

(5B) The pecuniary penalty payable by a person in respect of a contravention of subsection 205E(1) that relates to subsection 205AG(1) must not exceed the sum of:



Authorised Version C2023C00001 registered 03/01/2023

(a) whichever of the following is applicable:
(i) if the person is a body corporate—2,000 penalty units;
(ii) if the person is not a body corporate—400 penalty units; and
(b) if the Federal Court is satisfied that, as a result of the scheme to which the contravention of subsection 205AG(1) relates, the person or another person has avoided becoming liable to pay an amount of interim tax—200% of the amount of interim tax avoided.

(5C) The pecuniary penalty payable by a person in respect of:
(a) a contravention of subclause 25(1) of Schedule 8; or
(b) a contravention of section 205E that relates to a contravention of subclause 25(1) of Schedule 8;
must not exceed:
(c) if the person is a body corporate—300 penalty units; or
(d) if the person is not a body corporate—60 penalty units.

(5D) The pecuniary penalty payable by a person in respect of:
(a) a contravention of subclause 26(4) of Schedule 8; or
(b) a contravention of section 205E that relates to a contravention of subclause 26(4) of Schedule 8;
must not exceed:
(c) if the person is a body corporate—2,000 penalty units; or
(d) if the person is not a body corporate—400 penalty units.

*Penalties for continuing contraventions*

(6) If:
(a) subsection 121FG(5), 121FHB(3), 121FJA(3) or 121FJD(3), section 136F or subsection 138A(3), 140A(8) or 142A(3) applies to a contravention of a civil penalty provision; and
(b) civil penalty orders are made against a person in respect of 2 or more contraventions of such a provision;
the court may impose one penalty in respect of both or all of those contraventions, but that penalty must not exceed the sum of the



Authorised Version C2023C00001 registered 03/01/2023

maximum penalties that could be imposed if a separate penalty were imposed in respect of each contravention.

*Conduct contravening more than one civil penalty provision*

(7) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this section against a person in relation to the contravention of any one or more of those provisions. However, the person is not liable to more than one pecuniary penalty under this section in respect of the same conduct.

*Civil enforcement of penalty*

(8) A pecuniary penalty is a civil debt payable to the Commonwealth. The Commonwealth may enforce the civil penalty order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.

## 205G Who may apply for a civil penalty order

(1) Only the ACMA may apply for a civil penalty order.

(2) Subsection (1) does not exclude the operation of the *Director of Public Prosecutions Act 1983*.

## 205H 2 or more proceedings may be heard together

The Federal Court may direct that 2 or more proceedings for civil penalty orders are to be heard together.

## 205J Time limit for application for an order

Proceedings for a civil penalty order may be started no later than 6 years after the contravention.



Authorised Version C2023C00001 registered 03/01/2023

## 205K Civil evidence and procedure rules for civil penalty orders

The Federal Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order.

## 205L Civil proceedings after criminal proceedings

The Federal Court must not make a civil penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

## 205M Criminal proceedings during civil proceedings

(1) Proceedings for a civil penalty order against a person for a contravention of a civil penalty provision are stayed if:

(a) criminal proceedings are started or have already been started against the person for an offence; and

(b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.

(2) The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

## 205N Criminal proceedings after civil proceedings

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether a civil penalty order has been made against the person.



Authorised Version C2023C00001 registered 03/01/2023

## 205P Evidence given in proceedings for a civil penalty order not admissible in criminal proceedings

Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual if:

(a) the individual previously gave the evidence or produced the documents in proceedings for a civil penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and

(b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the civil penalty order.

## 205PAA Mistake of fact

(1) A person is not liable to have a civil penalty order made against the person for a contravention of a civil penalty provision (other than subsection 202(1A) or (2AA)) if:

(a) at or before the time of the conduct constituting the contravention, the person:

(i) considered whether or not facts existed; and

(ii) was under a mistaken but reasonable belief about those facts; and

(b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.

(2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:

(a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and

(b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the



Authorised Version C2023C00001 registered 03/01/2023

same, or substantially the same, as those surrounding the previous occasion.

(3) A person who wishes to rely on subsection (1) or (2) in proceedings for a civil penalty order bears an evidential burden in relation to that matter.



Authorised Version C2023C00001 registered 03/01/2023

# Part 14C—Injunctions

## 205PA Simplified outline

The following is a simplified outline of this Part:

- The Federal Court may grant injunctions in relation to contraventions of subsection 121FG(3) or section 136A, 136B, 136C, 136D or 136E or subclause 49(3) of Schedule 6 (which deal with the provision of unlicensed services).
- The Federal Court may also grant injunctions in relation to contraventions of section 26AA (which deals with television licence area plans).
- The Federal Court may also grant injunctions in relation to transactions that are prohibited under Division 5A of Part 5 (which deals with media diversity).

## 205Q Injunctions

If a person has engaged, is engaging or is proposing to engage, in any conduct in contravention of section 26AA or 61AH or subsection 121FG(3) or section 136A, 136B, 136C, 136D or 136E or subclause 49(3) of Schedule 6, the Federal Court may, on the application of the ACMA, grant an injunction:

(a) restraining the person from engaging in the conduct; and

(b) if, in the court's opinion, it is desirable to do so—requiring the person to do something.



Authorised Version C2023C00001 registered 03/01/2023

## 205R Interim injunctions

*Grant of interim injunction*

(1) If an application is made to the Federal Court for an injunction under section 205Q, the court may, before considering the application, grant an interim injunction restraining a person from engaging in conduct of a kind referred to in that section.

*No undertakings as to damages*

(2) The Federal Court is not to require an applicant for an injunction under section 205Q, as a condition of granting an interim injunction, to give any undertakings as to damages.

## 205S Discharge etc. of injunctions

The Federal Court may discharge or vary an injunction granted under this Part.

## 205T Certain limits on granting injunctions not to apply

The power of the Federal Court under this Part to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:

(a) if the court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

(b) if it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the person engages in conduct of that kind.



Authorised Version C2023C00001 registered 03/01/2023

## 205U Other powers of the Federal Court unaffected

The powers conferred on the Federal Court under this Part are in addition to, and not instead of, any other powers of the court, whether conferred by this Act or otherwise.



Authorised Version C2023C00001 registered 03/01/2023

# Part 14D—Enforceable undertakings

## 205V Simplified outline

The following is a simplified outline of this Part:

- A person may give the ACMA an enforceable undertaking about compliance with this Act or a registered code of practice.

## 205W Acceptance of undertakings

(1) The ACMA may accept any of the following undertakings:

(a) a written undertaking given by a person that the person will, in order to comply with this Act, take specified action;

(b) a written undertaking given by a person that the person will, in order to comply with this Act, refrain from taking specified action;

(c) a written undertaking given by a person that the person will take specified action directed towards ensuring that the person does not contravene this Act, or is unlikely to contravene this Act, in the future;

(d) a written undertaking given by a person that the person will, in order to comply with a registered code of practice, take specified action;

(e) a written undertaking given by a person that the person will, in order to comply with a registered code of practice, refrain from taking specified action;

(f) a written undertaking given by a person that the person will take specified action directed towards ensuring that the person does not contravene a registered code of practice, or is unlikely to contravene a registered code of practice, in the future.



Authorised Version C2023C00001 registered 03/01/2023

(2) The undertaking must be expressed to be an undertaking under this section.

(3) The person may withdraw or vary the undertaking at any time, but only with the consent of the ACMA.

(4) The ACMA may, by written notice given to the person, cancel the undertaking.

(5) The ACMA may publish the undertaking on its website.

## 205X Enforcement of undertakings

(1) If:

(a) a person has given an undertaking under section 205W; and

(b) the undertaking has not been withdrawn or cancelled; and

(c) the ACMA considers that the person has breached the undertaking;

the ACMA may apply to the Federal Court for an order under subsection (2).

(2) If the Federal Court is satisfied that the person has breached the undertaking, the court may make any or all of the following orders:

(a) an order directing the person to comply with the undertaking;

(b) an order directing the person to pay to the ACMA, on behalf of the Commonwealth, an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;

(c) any order that the court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;

(d) any other order that the court considers appropriate.



Authorised Version C2023C00001 registered 03/01/2023

# Part 14E—Infringement notices

## 205XAA Simplified outline

The following is a simplified outline of this Part:

- This Part sets up a system of infringement notices for contraventions of a designated infringement notice provision as an alternative to the institution of court proceedings.

## 205XA Formal warning

If an authorised infringement notice officer has reasonable grounds to believe that a person has contravened a designated infringement notice provision, the officer may, by written notice given to the person:

(a) inform the person accordingly; and

(b) warn the person that the officer, or another authorised infringement notice officer, may be entitled to give the person an infringement notice relating to the contravention.

Note: See subsection 205Y(4).

## 205Y When an infringement notice can be given

(1) If an authorised infringement notice officer has reasonable grounds to believe that a person has contravened a designated infringement notice provision, the officer may give the person an infringement notice relating to the contravention.

(2) The infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.

(3) Subsection (1) has effect subject to subsection (4).

(4) An authorised infringement notice officer must not give a person an infringement notice relating to a contravention of a designated



Authorised Version C2023C00001 registered 03/01/2023

infringement notice provision unless the officer, or another authorised infringement notice officer, has previously given a notice to the person under section 205XA in relation to:

(a) the contravention; or

(b) a similar contravention.

## 205Z Matters to be included in an infringement notice

An infringement notice must:

(a) set out the name of the person to whom the notice is given; and

(b) set out the name of the person who gave the notice; and

(c) set out brief details relating to the alleged contravention of a designated infringement notice provision, including the date of the alleged contravention; and

(d) contain a statement to the effect that proceedings will not be brought in relation to the alleged contravention if the penalty specified in the notice is paid to the ACMA, on behalf of the Commonwealth, within:

(i) 28 days after the notice is given; or

(ii) if the ACMA allows a longer period—that longer period; and

(e) give an explanation of how payment of the penalty is to be made; and

(f) set out the effect of section 205ZB; and

(g) set out such other matters (if any) as are specified in the regulations.

## 205ZA Amount of penalty

(1) The penalty to be specified in an infringement notice given to a person must be a pecuniary penalty equal to:

(aa) if the infringement notice relates to subclause 25(1) of Schedule 8 and the person is a body corporate—60 penalty units; or



Authorised Version C2023C00001 registered 03/01/2023

(a) if the infringement notice does not relate to subclause 25(1) of Schedule 8 and the person is a commercial television broadcasting licensee or a subscription television broadcasting licensee—60 penalty units; or

(b) in any other case—10 penalty units.

(2) Subsection (1) does not apply to an infringement notice that relates to subsection 74F(1), 74G(1), 74H(1), 74J(1) or 74K(1).

(3) If an infringement notice given to a person relates to subsection 74F(1), 74G(1), 74H(1), 74J(1) or 74K(1), the penalty to be specified in the infringement notice must be a pecuniary penalty equal to:

(a) if the person is a body corporate—60 penalty units; or

(b) in any other case—10 penalty units.

## 205ZB Withdrawal of an infringement notice

(1) This section applies if an infringement notice is given to a person.

(2) An authorised infringement notice officer may, by written notice (the ***withdrawal notice***) given to the person, withdraw the infringement notice.

(3) To be effective, the withdrawal notice must be given to the person within 28 days after the infringement notice was given.

*Refund of penalty if infringement notice withdrawn*

(4) If:

(a) the penalty specified in the infringement notice is paid; and

(b) the infringement notice is withdrawn after the penalty is paid;

the Commonwealth is liable to refund the penalty.

## 205ZC What happens if the penalty is paid

(1) This section applies if:



Authorised Version C2023C00001 registered 03/01/2023

(a) an infringement notice relating to an alleged contravention of a designated infringement notice provision is given to a person; and
(b) the penalty is paid in accordance with the infringement notice; and
(c) the infringement notice is not withdrawn.

(2) Any liability of the person for the alleged contravention is discharged.

(3) Proceedings may not be brought against the person for the alleged contravention.

## 205ZD Effect of this Part on criminal proceedings

This Part does not:
(a) require an infringement notice to be given in relation to an alleged contravention of a designated infringement notice provision; or
(b) affect the liability of a person to have proceedings brought against the person for an alleged contravention of a designated infringement notice provision if:
(i) the person does not comply with an infringement notice relating to the contravention; or
(ii) an infringement notice relating to the contravention is not given to the person; or
(iii) an infringement notice relating to the contravention is given to the person and subsequently withdrawn; or
(c) limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found in proceedings to have contravened a designated infringement notice provision.

## 205ZE Appointment of authorised infringement notice officer

The ACMA may, by writing, appoint a member of the staff of the ACMA as an authorised infringement notice officer for the purposes of this Act.



Authorised Version C2023C00001 registered 03/01/2023

## 205ZF Regulations

The regulations may make further provision in relation to infringement notices.



Authorised Version C2023C00001 registered 03/01/2023

# Part 14F—Grants

## 205ZG Simplified outline of this Part

- The ACMA may, on behalf of the Commonwealth, make a grant of financial assistance to:
  - (a) a publisher of a newspaper, magazine or other periodical; or
  - (b) a content service provider.
- A grant must be in respect of:
  - (a) the financial year commencing on 1 July 2018; or
  - (b) the financial year commencing on 1 July 2019; or
  - (c) the financial year commencing on 1 July 2020.
- The Minister may constitute an advisory committee to advise the ACMA.

## 205ZH Grants

(1) The ACMA may, on behalf of the Commonwealth, make a grant of financial assistance to:

(a) a constitutional corporation that publishes a newspaper, magazine or other periodical; or

(b) a content service provider (within the meaning of Schedule 7);

in respect of:

(c) the financial year commencing on 1 July 2018; or

(d) the financial year commencing on 1 July 2019; or

(e) the financial year commencing on 1 July 2020; or

(f) the financial year commencing on 1 July 2021.



Authorised Version C2023C00001 registered 03/01/2023

(2) A grant of financial assistance must not be made to a person under this section unless the person is party to an agreement under subsection 205ZJ(2).

(3) The total amount of financial assistance granted under this section must not exceed $50,100,000.

(4) Payments under this section are to be made out of money appropriated by the Parliament by another Act.

Note: The other Act will usually be an Annual Appropriation Act.

## 205ZJ Terms and conditions for grants

*Scope*

(1) This section applies to a grant of financial assistance under section 205ZH.

*Terms and conditions*

(2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the recipient.

(3) An agreement under subsection (2) may be entered into by the ACMA on behalf of the Commonwealth.

*Core condition*

(4) An agreement under subsection (2) must set out a condition to the effect that the recipient will spend the amount of the grant in connection with a matter specified in the agreement.

(5) If the grant is made to the recipient in the recipient's capacity as a constitutional corporation that publishes a newspaper, magazine or other periodical, the specified matter must concern the recipient's activities, so far as those activities relate to the newspaper, magazine or other periodical.



Authorised Version C2023C00001 registered 03/01/2023

(6) If the grant is made to the recipient in the recipient's capacity as a content service provider (within the meaning of Schedule 7), the specified matter must concern the recipient's activities, so far as those activities relate to the provision of a content service (within the meaning of Schedule 7).

## 205ZK Advisory committee

(1) The Minister may constitute a committee to advise the ACMA in relation to the exercise of the ACMA's powers under this Part.

(2) In exercising its powers under this Part, the ACMA must have regard to any relevant advice given to it by the committee.

(3) Subsection (2) does not, by implication, limit the matters to which the ACMA may have regard.

*Remuneration*

(4) A member of the committee is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, a member of the committee is to be paid such remuneration as the Minister determines in writing.

(5) A member of the committee is to be paid such allowances as the Minister determines in writing.

(6) Subsections (4) and (5) have effect subject to the *Remuneration Tribunal Act 1973*.

(7) A determination made by the Minister under subsection (4) or (5) is a legislative instrument.

*Sunsetting*

(8) The committee ceases to exist at the end of 30 June 2021.



Authorised Version C2023C00001 registered 03/01/2023

## 205ZL Annual report

The Chair of the ACMA must include in the annual report on the ACMA given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a financial year mentioned in subsection 205ZH(1):

(a) the name of each person who received one or more grants of financial assistance under section 205ZH in respect of the financial year; and

(b) the amount of each of those grants; and

(c) the purpose of each of those grants; and

(d) any advice given during the financial year to the ACMA by the committee constituted under section 205ZK.

## 205ZM Short title of amending Act does not limit the powers conferred by this Part

To avoid doubt, the use of the expression "Regional and Small Publishers Innovation" in the short title of the Act that inserted this Part does not limit the powers conferred by this Part.



Authorised Version C2023C00001 registered 03/01/2023

# Part 15—Miscellaneous

## 206 Broadcasting or datacasting taken to be publication in permanent form

For the purposes of the law of defamation, the broadcasting or datacasting of matter is taken to be publication of the matter in a permanent form.

## 207 Amounts of fees

Where the Minister or the ACMA may determine a fee under this Act, the amount of the fee so determined must not exceed the amount that the Minister or the ACMA estimates to be costs of processing the application, or doing the thing, to which the fee relates.

## 209 Prosecutions

(1) An offence against this Act may be prosecuted at any time.

(2) A prosecution for an offence against this Act the maximum penalty for which exceeds 500 penalty units for a natural person may be brought only in the Federal Court.

(3) Subsection (2) does not apply to an offence the maximum penalty for which may include a term of imprisonment.

(4) The Federal Court has jurisdiction to hear and determine matters arising under this Act.

## 210 Publication of opinions

(1) Subject to subsection (2), if the ACMA gives an opinion under section 21 or 74, the ACMA must cause a copy of the opinion to be published in the *Gazette*.



Authorised Version C2023C00001 registered 03/01/2023

(2) The ACMA must not publish such an opinion until:

(a) in the case of an opinion under section 21—the service to which it relates has commenced; or

(b) in the case of an opinion under section 74—the transaction has taken place or the contract, agreement or arrangement has been entered into.

## 211AA Time when a television program is broadcast—certain terrestrial licence areas

*Scope*

(1A) This section affects the operation of the following (the ***affected provisions***) in relation to a commercial television broadcasting licence for the Remote Central and Eastern Australia TV1 licence area or the Remote Central and Eastern Australia TV2 licence area:

(a) this Act;

(b) any program standards;

(c) any other instrument under this Act;

(d) any codes of practice registered under section 123.

*Nomination of places for services under licence*

(1) The licensee of the licence may nominate one or more specified places in the licence area for one or more specified broadcasting services provided under the licence in specified parts of the licence area.

Note: A nomination may specify one place for all parts of the licence area.

(2) The nomination must be expressed to be a nomination under subsection (1).

*Withdrawal of nomination*

(3) If a nomination is in force under subsection (1), the licensee may, by written notice given to the ACMA, withdraw the nomination.



Authorised Version C2023C00001 registered 03/01/2023

(4) The withdrawal of a nomination does not prevent the licensee from making a fresh nomination under subsection (1).

*Time when a program is broadcast*

(5) The affected provisions have effect, in relation to any programs broadcast in a part of the licence area on a service for which part and service a place is nominated under subsection (1), as if the programs had been broadcast in that part on that service at the legal time they were broadcast in that place on that service.

## 211A Time when a television program is broadcast—South Eastern Australia TV3 and Northern Australia TV3 licence areas

*Nomination of place—South Eastern Australia TV3 licence area*

(1) The licensee of a commercial television broadcasting licence allocated under section 38C for the South Eastern Australia TV3 licence area may, by written notice given to the ACMA, nominate either or both of the following:

(a) a specified place in:

(i) the South Eastern Australia TV3 licence area; or

(ii) the Northern Australia TV3 licence area;

for the purposes of the HDTV multi-channelled commercial television broadcasting services provided under the licence;

(b) a specified place in the South Eastern Australia TV3 licence area for the purposes of the SDTV multi-channelled commercial television broadcasting services provided under the licence.

(2) The nomination must be expressed to be a nomination under subsection (1).

*Nomination of place—Northern Australia TV3 licence area*

(3) The licensee of a commercial television broadcasting licence allocated under section 38C for the Northern Australia TV3 licence



Authorised Version C2023C00001 registered 03/01/2023

area may, by written notice given to the ACMA, nominate either or both of the following:

(a) a specified place in:

(i) the Northern Australia TV3 licence area; or

(ii) the South Eastern Australia TV3 licence area;

for the purposes of the HDTV multi-channelled commercial television broadcasting services provided under the licence;

(b) a specified place in the Northern Australia TV3 licence area for the purposes of the SDTV multi-channelled commercial television broadcasting services provided under the licence.

(4) The nomination must be expressed to be a nomination under subsection (3).

*Withdrawal of nomination*

(5) If a nomination is in force under subsection (1) or (3), the licensee may, by written notice given to the ACMA, withdraw the nomination.

(6) The withdrawal of a nomination does not prevent the licensee from making a fresh nomination under subsection (1) or (3).

*Time when a program is broadcast*

(7) If a nomination of a place is in force under paragraph (1)(a) or (3)(a) for the purposes of the HDTV multi-channelled commercial television broadcasting services provided under a licence, then:

(a) this Act; and

(b) any program standards; and

(c) any other instrument under this Act; and

(d) any codes of practice registered under section 123;

have effect, in relation to any programs broadcast on those services, as if those programs had been broadcast in all parts of the licence area at the time that is legal time in the nominated place.



Authorised Version C2023C00001 registered 03/01/2023

(8) If a nomination of a place is in force under paragraph (1)(b) or (3)(b) for the purposes of the SDTV multi-channelled commercial television broadcasting services provided under a licence, then:

(a) this Act; and

(b) any program standards; and

(c) any other instrument under this Act; and

(d) any codes of practice registered under section 123;

have effect, in relation to any programs broadcast on those services, as if those programs had been broadcast in all parts of the licence area at the time that is legal time in the nominated place.

*Definitions*

(9) In this section:

***HDTV multi-channelled commercial television broadcasting service*** has the same meaning as in Schedule 4.

***SDTV multi-channelled commercial television broadcasting service*** has the same meaning as in Schedule 4.

## 212 Special provisions for re-transmission of programs

(1) Subject to this section, the regulatory regime established by this Act does not apply to a service that does no more than:

(a) re-transmit programs that are transmitted by a national broadcasting service; or

(b) re-transmit programs that are transmitted by a commercial broadcasting licensee or a community broadcasting licensee:

(i) within the licence area of that licence; or

(ii) outside the licence area of that licence in accordance with permission in writing given by the ACMA.

(2) No action, suit or proceeding lies against a person in respect of the re-transmission by the person of programs as mentioned in subsection (1).



Authorised Version C2023C00001 registered 03/01/2023

(2A) However, the rule in subsection (2) does not prevent an action, suit or proceeding against a person under the *Copyright Act 1968* for infringement of copyright subsisting in a work, a sound recording or a cinematograph film, where:

(a) the infringement is in respect of the re-transmission by the person of programs as mentioned in subsection (1); and

(b) the re-transmission is not provided by a self-help provider.

(2C) The Minister may give the ACMA a written direction about the exercise of the power conferred by subparagraph (1)(b)(ii).

(3) A reference in this section to a ***re-transmission*** does not include a reference to:

(a) a re-transmission by a commercial television broadcasting licensee of the programs transmitted by any of the licensee's commercial television broadcasting services; or

(aa) a re-transmission by a commercial radio broadcasting licensee of the programs transmitted by any of the licensee's commercial radio broadcasting services; or

(b) a re-transmission by a community broadcasting licensee (other than a designated community radio broadcasting licensee) of the programs transmitted by the licensee's community broadcasting service; or

(ba) a re-transmission by a designated community radio broadcasting licensee of the programs transmitted by any of the licensee's community radio broadcasting services; or

(c) a re-transmission by the Australian Broadcasting Corporation of the programs transmitted by any of its national broadcasting services, being national broadcasting services covered by paragraph 13(1)(a); or

(d) a re-transmission by the Special Broadcasting Service Corporation of the programs transmitted by any of its national broadcasting services.

(4) In this section:

***cinematograph film*** has the same meaning as in the *Copyright Act 1968*.



Authorised Version C2023C00001 registered 03/01/2023

***self-help provider*** has the meaning given by section 212A.

***sound recording*** has the same meaning as in the *Copyright Act 1968*.

***work*** has the same meaning as in the *Copyright Act 1968*.

## 212A Self-help providers

(1) For the purposes of the application of section 212 to a particular re-transmission of programs, a ***self-help provider*** is:

(a) one of the following that provides the re-transmission for the sole or principal purpose of obtaining or improving reception in a small community:

(i) an entity that is registered under the *Australian Charities and Not-for-profits Commission Act 2012*;

(ii) a not-for-profit entity that is not an ACNC type of entity; or

(b) a local government body which provides the re-transmission for the sole or principal purpose of obtaining or improving reception in a community located in the area served by the body; or

(c) a company which operates a mine and/or related infrastructure at an isolated location and which provides the re-transmission for the sole or principal purpose of obtaining or improving reception in a community:

(i) that is located in the vicinity of the mine or infrastructure, as the case may be; and

(ii) that accommodates the whole or a part of the workforce for the mine or infrastructure, as the case may be; or

(d) a company which operates a petroleum, oil or gas installation and/or related infrastructure at an isolated location and which provides the re-transmission for the sole or principal purpose of obtaining or improving reception in a community:

(i) that is located in the vicinity of the installation or infrastructure, as the case may be; and



Authorised Version C2023C00001 registered 03/01/2023

(ii) that accommodates the whole or a part of the workforce for the installation or infrastructure, as the case may be; or

(e) a person who provides the re-transmission within a building or structure for the sole or principal purpose of obtaining or improving reception for persons in the building or structure, as the case may be; or

(f) a person who provides the re-transmission within one or more places that are all in the same area (within the meaning of section 36 of the *Telecommunications Act 1997*) for the sole or principal purpose of obtaining or improving reception for persons in those places; or

(g) a person who is a declared self-help provider in relation to the re-transmission;

other than:

(h) a subscription television broadcasting licensee; or

(i) a related body corporate of a subscription television broadcasting licensee; or

(j) a person who is an excluded provider in relation to the re-transmission.

(2) Nothing in subsection (1) limits the generality of anything else in subsection (1).

(3) Subsection (1) does not limit the generality of anything in section 212B.

(4) In this section:

***declared self-help provider*** has the meaning given by section 212B.

***excluded provider*** has the meaning given by section 212B.

***isolated location*** means a place in a State or Territory that is not at a location in, or adjacent to, an eligible urban area (within the meaning of section 140 of the *Fringe Benefits Tax Assessment Act 1986*).



Authorised Version C2023C00001 registered 03/01/2023

***non-profit body*** means an incorporated body that:

(a) is not carried on for the purposes of profit or gain to its individual members; and

(b) is prohibited by its constituent document from making any distribution of money or property to its individual members.

***related body corporate*** has the same meaning as in the *Corporations Act 2001*.

## 212B Declared self-help providers and excluded providers

*Declared self-help providers*

(1) The Minister may, by legislative instrument, determine that a specified person who provides a re-transmission of programs for the sole or principal purpose of obtaining or improving reception is a ***declared self-help provider*** in relation to the re-transmission for the purposes of section 212A.

(2) The Minister may, by legislative instrument, determine that a specified person who provides a re-transmission of programs for the sole or principal purpose of obtaining or improving reception in specified circumstances is a ***declared self-help provider*** in relation to the re-transmission for the purposes of section 212A.

*Excluded providers*

(3) The Minister may, by legislative instrument, determine that a specified person who provides a re-transmission of programs is an ***excluded provider*** in relation to the re-transmission for the purposes of section 212A.

(4) The Minister may, by legislative instrument, determine that a specified person who provides a re-transmission of programs in specified circumstances is an ***excluded provider*** in relation to the re-transmission for the purposes of section 212A.



Authorised Version C2023C00001 registered 03/01/2023

*Determination has effect*

(5) A determination under this section has effect accordingly.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

## 213 Penalties for continuing offences

If an offence against this Act is a continuing offence (whether under this Act or because of section 4K of the *Crimes Act 1914*), the maximum penalty for each day that the offence continues is 10% of the maximum penalty that could be imposed in respect of the principal offence.

## 214 Procedure relating to continuing offences

(1) Where subsection 66(2), 121FG(2) or 121FHA(2), 121FJC(2), section 136, subsection 138(4), section 140 or subsection 142(5) or subclause 49(2), 50(3), 52(2) or 53(5) of Schedule 6 applies to an offence against a provision of this Act, charges against the same person for any number of offences against that provision may be joined in the same information, complaint or summons if those charges are founded on the same facts or form, or are part of a series of offences of the same or a similar character.

(2) If a person is convicted of 2 or more offences against such a provision, the court may impose one penalty in respect of both or all of those offences, but that penalty must not exceed the sum of the maximum penalties that could be imposed if a separate penalty were imposed in respect of each offence.

## 215 Guidelines relating to ACMA's enforcement powers etc.

*ACMA's enforcement powers etc.*

(1) In exercising a power conferred on the ACMA by:
(a) Division 4 of Part 8B; or
(b) Part 10, 13, 14B, 14C or 14D; or



Authorised Version C2023C00001 registered 03/01/2023

(c) Part 8 of Schedule 6;

the ACMA must have regard to any relevant guidelines in force under subsection (4).

*Power to give infringement notices*

(2) In exercising a power conferred on an authorised infringement notice officer by Part 14E, the officer must have regard to any relevant guidelines in force under subsection (4).

*Referrals to Director of Public Prosecutions*

(3) In deciding whether to refer a matter to the Director of Public Prosecutions for action in relation to a possible offence against this Act, the ACMA must have regard to any relevant guidelines in force under subsection (4).

*Formulation of guidelines*

(4) The ACMA may, by legislative instrument, formulate guidelines for the purposes of subsections (1), (2) and (3).

Note: For consultation requirements, see section 17 of the *Legislation Act 2003*.

(5) The ACMA must ensure that guidelines relating to the powers conferred on the ACMA by:

(a) Division 4 of Part 8B; or

(b) Part 10, 14B or 14D; or

(c) Part 8 of Schedule 6;

are in force under subsection (4) at all times after the commencement of this section.

(6) The ACMA must ensure that guidelines relating to the powers conferred on an authorised infringement notice officer by Part 14E are in force under subsection (4) at all times after the commencement of this section.



Authorised Version C2023C00001 registered 03/01/2023

## 216 Ministerial consultative and advisory bodies

The Minister may form consultative or advisory bodies to assist the Minister in the administration of this Act.

## 216A Schedule 4 (digital television broadcasting)

Schedule 4 has effect.

## 216AA Review of taxation arrangements etc.

(1) After 30 June 2019, the ACMA must conduct a review of the following matters:

(a) whether the *Commercial Broadcasting (Tax) Act 2017* should be repealed or amended on or before 1 July 2022;

(b) such matters (if any) as are specified in an instrument under subsection (2).

(2) The Minister may, by notifiable instrument, specify one or more matters for the purposes of paragraph (1)(b), so long as those matters relate to:

(a) commercial television broadcasting licensees and commercial radio broadcasting licensees; and

(b) the use of spectrum (within the meaning of the *Radiocommunications Act 1992*) by those licensees to provide commercial broadcasting services.

(3) In conducting the review, the ACMA must consider such matters (if any) as are specified in an instrument under subsection (4).

(4) The Minister may, by notifiable instrument, specify one or more matters for the purposes of subsection (3).

*Consultation*

(5) In conducting the review, the ACMA must make provision for public consultation.



Authorised Version C2023C00001 registered 03/01/2023

*Report*

(6) The ACMA must give the Minister a report of the review before 1 July 2021.

(7) The Minister must cause copies of a report under subsection (6) to be tabled in each House of the Parliament within 15 sittings days of that House after receiving the report.

### 216C Schedule 6 (datacasting services)

Schedule 6 has effect.

### 216D Schedule 7 (content services)

Schedule 7 has effect.

### 216E Schedule 8 (online content services)

Schedule 8 has effect.

### 217 Regulations

(1) The Governor-General may make regulations prescribing matters:
  (a) required or permitted to be prescribed by this Act; or
  (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations may prescribe penalties, not exceeding 250 penalty units for a company or 50 penalty units for a natural person, for offences against the regulations.

### 218 Channel sharing

(1) The regulations may make provision for the allocation by the ACMA of additional commercial television broadcasting licences, commercial radio broadcasting licences and community broadcasting licences on the application of an existing licensee.



Authorised Version C2023C00001 registered 03/01/2023

(2) Those additional licences are:

(a) to be allocated to a person other than the licensee; and

(b) to allow the provision of broadcasting services with the use of the same part of the broadcasting services bands or other means of delivery as is used by the licensee.

(3) The provisions of this Act, other than the provisions dealing with advertising for or allocating licences, apply to those additional licences.

(4) If such an additional licence would use a part of the broadcasting services bands being used by a community broadcasting licensee, services under that licence can only be provided with the approval of the ACMA.



Authorised Version C2023C00001 registered 03/01/2023

# Schedule 1—Control and ownership of company interests

## Part 1—Introduction

### 1 Control—general

(1) This Schedule is intended to provide a means of finding out who is in a position to exercise control of commercial television broadcasting licences, commercial radio broadcasting licences, subscription television broadcasting licences, international broadcasting licences, newspapers and companies and a means of tracing company interests.

This Schedule recognises that the concept of control of a licence, a newspaper or a company can be a complex one.

The holding of company interests is not the only way to be in a position to exercise control. Clauses 2 and 3 set out the rules for deciding when a position to exercise control exists. While company interests may be important in deciding that question, they are only one issue. In some cases, it may be important to look at agreements and arrangements between people and at accustomed courses of conduct between people. In this respect, the definition of ***associate*** in section 6 of this Act is important.

A person who has company interests exceeding 15% in a company is regarded as being in a position to control the company.

Control of a company may also come about through company interests of 15% or less. This could happen where a person holds company interests of say 10% but no other person holds company interests of more than say 2% and those other persons do not act in concert.

A person may be in a position to exercise control of only the media activities of a licensee or a newspaper, but that position is nevertheless to be regarded as a position to exercise control of the licence or the newspaper.



Authorised Version C2023C00001 registered 03/01/2023

(2) Because of the complexities involved in this area, it is not possible to provide rules which will give a definite answer in all cases. Therefore, the ACMA is given a monitoring role over the broadcasting industry and suitable powers of investigation in order to reach a conclusion as to whether a person is in a position to exercise control or not. In order to provide certainty for persons involved in those industries, the ACMA is also given, under section 74, a power to give a binding opinion on the question of control.



Authorised Version C2023C00001 registered 03/01/2023

# Part 2—When person is in a position to exercise control

## 2 When person is in a position to exercise control

(1) For the purposes of this Schedule, a person is in a position to exercise control of a licence or a company if:

(a) the person, either alone or together with an associate of the person, is in a position to exercise control of the licensee or the company; or

(b) in the case of a licence:

(i) the person is the licensee; or

(ii) the person, either alone or together with an associate of the person, is in a position to exercise (whether directly or indirectly) control of the selection or provision of a significant proportion of the programs broadcast by the licensee; or

(iii) the person, either alone or together with an associate of the person, is in a position to exercise (whether directly or indirectly) control of a significant proportion of the operations of the licensee in providing broadcasting services under the licence; or

(c) in the case of a non-licensee company—the person, either alone or together with an associate of the person, is in a position to exercise (whether directly or indirectly) control of a significant proportion of the operations of the company; or

(d) the person, either alone or together with an associate of the person, is in a position to:

(i) veto any action taken by the board of directors of the licensee or the company; or

(ii) appoint or secure the appointment of, or veto the appointment of, at least half of the board of directors of the licensee or the company; or



Authorised Version C2023C00001 registered 03/01/2023

(iii) exercise, in any other manner, whether directly or indirectly, direction or restraint over any substantial issue affecting the management or affairs of the licensee or the company; or

(e) the licensee or the company or more than 50% of its directors:

(i) act, or are accustomed to act; or

(ii) under a contract or an arrangement or understanding (whether formal or informal) are intended or expected to act;

in accordance with the directions, instructions or wishes of, or in concert with, the person or of the person and an associate of the person acting together or, if the person is a company, of the directors of the person.

(2) Paragraph (1)(b) does not apply to the provision of programs by a person to a licensee under an agreement for the supply of programs to a licensee if the conditions of the agreement relate only to the programs so supplied or their promotion.

(3) An employee of a licensee or of a non-licensee company is not, except through an association with another person, to be regarded as being in a position to exercise control of a licence or a company under subclause (1) purely because of being an employee.

(4) More than one person may be in a position to exercise control of a licence or a company.

(5) The following are examples of situations that, depending on the circumstances, may be relevant in determining whether a person is in a position to exercise control of 2 or more licences:

(a) the licensees share any or all of the following:

(i) equipment;

(ii) studios;

(iii) other production facilities;

(iv) transmission facilities;

(v) human resources;



Authorised Version C2023C00001 registered 03/01/2023

(vi) other resources;

(b) the program content of a substantial percentage of the total number of hours of programs broadcast under one of those licences is the same as the program content of a substantial percentage of the total number of hours of programs broadcast under the other licence or licences;

(c) the licensees have financial relationships with each other;

(d) both of the following subparagraphs apply:

(i) the person is in a position to exercise control of one or more of the licences;

(ii) the person has a financial relationship with another person who is in a position to exercise control of the other licence or one or more of the other licences.

## 3 When person is in a position to exercise control of a newspaper

(1) For the purposes of this Schedule, a person is in a position to exercise control of a newspaper if:

(a) the person is the publisher of the newspaper; or

(b) the person is in a position, either alone or together with an associate of the person and whether directly or indirectly:

(i) to exercise control of a significant proportion of the operations of the publisher in publishing the newspaper; or

(ii) to exercise control of the selection or provision of a significant proportion of the material to be published in the newspaper; or

(c) if the newspaper is published by a company:

(i) the person is in a position, either alone or together with an associate of the person, to exercise control of the company; or

(ii) the person, either alone or together with an associate of the person, is in a position to veto any action taken by the board of directors of the company; or

(iii) the person, either alone or together with an associate of the person, is in a position to appoint or secure the



Authorised Version C2023C00001 registered 03/01/2023

appointment of, or veto the appointment of, at least half of the board of directors of the company; or

(iv) the person, either alone or together with an associate of the person, is in a position to exercise, in any other manner, whether directly or indirectly, direction or restraint over any substantial issue affecting the management or affairs of the company; or

(v) the company or more than 50% of its directors:

(A) act, or are accustomed to act; or

(B) under a contract or an arrangement or understanding (whether formal or informal) are intended or expected to act;

in accordance with the directions, instructions or wishes of, or in concert with, the person or of the person and an associate of the person acting together or, if the person is a company, of the directors of the person.

(2) Subparagraph (1)(b)(ii) does not apply to the provision of material by a person to a newspaper under an agreement for the supply of material of that kind if the conditions of the agreement relate only to the material so supplied.

(3) An employee of the publisher of a newspaper is not, except through an association with another person, to be regarded as being in a position to control the newspaper under subclause (1) purely because of being an employee.

## 4 Special provisions for authorised lenders

(1) Subject to subclause (2), if an authorised lender has a loan agreement with a media company:

(a) the agreement; and

(b) any other agreement or transaction that is:

(i) associated with the loan agreement; and

(ii) entered into in the ordinary course of carrying on a business of providing financial accommodation; and



Authorised Version C2023C00001 registered 03/01/2023

(c) anything done under the loan agreement or under an agreement or transaction referred to in paragraph (b), being a thing done in the ordinary course of carrying on a business of providing financial accommodation;

are to be disregarded in deciding whether the lender or any controller of the lender is in a position to exercise control of the media company or of any licence or newspaper of which the media company is in a position to exercise control.

(2) Subclause (1) does not apply in relation to being in a position to exercise control of a licence if the lender or a controller of the lender:

(a) prevents the licensee from complying with a condition of the licence; or

(b) controls the selection or provision of any of the programs to be broadcast by the licensee; or

(c) appoints or secures the appointment of at least half of the board of directors of the licensee; or

(d) vetoes the appointment of at least half of the board of directors of the licensee otherwise than:

(i) under a loan agreement or an agreement or transaction referred to in paragraph (1)(b); and

(ii) in the ordinary course of carrying on a business of providing financial accommodation.

(3) Subclause (1) does not apply in relation to being in a position to exercise control of a newspaper if the lender or a controller of the lender:

(a) controls the selection or provision of any of the material to be published in the newspaper; or

(b) appoints or secures the appointment of at least half of the board of directors of the media company that publishes the newspaper; or

(c) vetoes the appointment of at least half of the board of directors of the media company that publishes the newspaper otherwise than:



Authorised Version C2023C00001 registered 03/01/2023

(i) under a loan agreement or an agreement or transaction referred to in paragraph (1)(b); and

(ii) in the ordinary course of carrying on a business of providing financial accommodation.

(4) In this clause:

***authorised lender*** means:

(a) an ADI (authorised deposit-taking institution) within the meaning of the *Banking Act 1959*; or

(b) a corporation formed under the law of a State or Territory to carry on the business of banking within Australia; or

(c) a corporation whose sole or principal business is the provision of financial accommodation to other persons, being a corporation:

(i) that is a registered entity under the *Financial Sector (Collection of Data) Act 2001*; or

(ii) in respect of which a declaration under subclause (5) is in force; or

(iii) in respect of which an application for such a declaration has been made but not finally disposed of.

***controller***, in relation to an authorised lender, means a person who is in a position to exercise control of the lender.

***loan agreement***, in relation to a company, means an agreement entered into in the ordinary course of carrying on a business of providing financial accommodation under which:

(a) financial accommodation is provided to the company; or

(b) money is deposited with the company; or

(c) a debt or liability (whether or not financial) of the company arises;

whether or not:

(d) the financial accommodation, money, debt or liability is secured; or

(e) money payable by the company under the agreement is presently payable; or



Authorised Version C2023C00001 registered 03/01/2023

(f) liability arising under the agreement is unconditional.

***media company*** means:

(a) a company that holds a commercial television broadcasting licence or a commercial radio broadcasting licence; or

(b) a company that holds a subscription television broadcasting licence; or

(ba) a company that holds an international broadcasting licence; or

(c) a company that publishes a newspaper; or

(d) a company that is in a position to exercise control of such a company.

(5) The ACMA may, in writing, declare a corporation (whether formed inside or outside Australia) whose sole or principal business is the provision of financial accommodation to other persons to be an authorised lender for the purposes of this clause.



Authorised Version C2023C00001 registered 03/01/2023

# Part 3—Deemed control

## 5 Explanation of examples

In an example in this Part, a percentage written next to an arrow indicates that the person before the arrow has company interests in the company to which the arrow is pointing which exceeds that percentage.

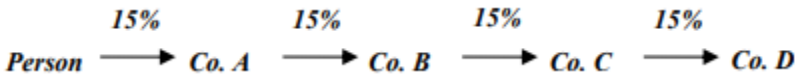
## 6 The 15% rule

(1) If a person has company interests in a company exceeding 15%, the person is to be regarded as being in a position to exercise control of the company.

## 7 Application of method through chain of companies

The method described in clause 6 can be applied in the case of a chain of companies. Where a company interest of more than 15% is maintained throughout the chain, the person is to be regarded as being in a position to exercise control of the last company in the chain.

***Example:***




*Here the person is to be regarded as being in a position to exercise control of Company D.*



Authorised Version C2023C00001 registered 03/01/2023

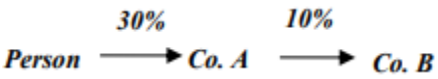
# Part 4—Tracing of ownership

## 8 Tracing of ownership

Company interests can be traced through a chain of companies using a method known as the fractional tracing method. This method applies a formula to decide what company interest a person has.

This method is best demonstrated by an example.

***Example:***




*The person's company interest in Company B is worked out using the formula:*

Company Interest 1 × Company Interest 2

*where:*

***Company Interest 1*** *is the company interest of the person, expressed as a fraction, in Company A.*

***Company Interest 2*** *is the company interest of Company A, expressed as a fraction, in Company B.*

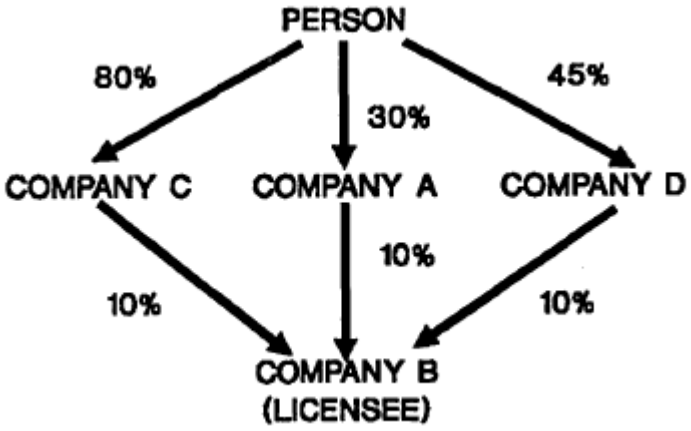
*In this case, the formula produces: 3/10 X 1/10, which means that the person has a 3% company interest in Company B.*

Interests traced in this way can be added. If Company B is a licensee and the person had, through other chains of companies, a further 12.5% company interest in Company B, the person would be regarded as being in a position to exercise control of Company B under Part 3 of this Schedule because the person would have company interests exceeding 15% in Company B.



Authorised Version C2023C00001 registered 03/01/2023

***Example:***




In this example, the person has a 15.5% company interest in Company B. This is made up of 3% (through Company A), 8% (through Company C) and 4.5% (through Company D).

This method of tracing ownership may be used through any number of companies. However, the ACMA is not required to trace every minor company interest.



Authorised Version C2023C00001 registered 03/01/2023

# Schedule 2—Standard conditions

## Part 1—Interpretation

### 1 Definitions

(1) In this Schedule:

***Classification Board*** means the Classification Board established by the *Classification (Publications, Films and Computer Games) Act 1995*.

***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*.

***election*** means an election to a Parliament or a local government authority of a State or Territory.

***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 relevant licensee 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



Authorised Version C2023C00001 registered 03/01/2023

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;

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

***election period*** means:

(a) in relation to an election to the Legislative Council of Tasmania, or an ordinary election to the Legislative Assembly for the Australian Capital Territory—the period that starts 33 days before the polling day for the election and ends at the close of the poll on that day; and

(b) in relation to any other election to a Parliament—the period that starts on:

(i) the day on which the proposed polling day for the election is publicly announced; or

(ii) the day on which the writs for the election are issued;

whichever happens first, and ends at the close of the poll on the polling day for the election; and

(c) in relation to an election to a local government authority—the period that starts 33 days before the polling day for the election and ends at the close of the poll on that day; and

(d) in relation to a referendum whose voting day is the same as the polling day for an election to the Parliament of the Commonwealth—the election period in relation to that election; and



Authorised Version C2023C00001 registered 03/01/2023

(e) in relation to any other referendum—the period that starts 33 days before the voting day for the referendum and ends at the close of voting on that day.

***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.

***radiocommunications device*** has the same meaning as in the *Radiocommunications Act 1992*.

***referendum*** means the submission to the electors of a proposed law for the alteration of the Constitution, whether or not the proposal to make the submission has been announced.

***registered political party*** means a political party that is registered under Part XI of the *Commonwealth Electoral Act 1918*.

***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.

***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 subclause (2).

***required period***, in relation to the keeping of a record in relation to political matter, means:

(a) subject to paragraph (b), the period of 6 weeks commencing on the day on which the matter was broadcast; or



Authorised Version C2023C00001 registered 03/01/2023

(b) if the matter relates to an election or referendum and was broadcast during the election period in relation to the election or referendum—the period commencing on the day on which the matter was broadcast and ending:

(i) at the end of the period referred to in paragraph (a); or

(ii) if that period ends before the end of the election period in relation to the election or referendum—the day on which that election period ends;

or such longer period as the ACMA, before the end of that period, directs by notice in writing to the broadcaster concerned.

*Meaning of **required particulars***

(2) 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 particulars of the name of the entity required by subclause (3);<br>(b) the relevant town or city of the entity;<br>(c) the name of the natural person 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;<br>(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;<br>(b) the relevant town or city of the entity |
| 4 | the broadcast is authorised by a | (a) the name of the person; |



Authorised Version C2023C00001 registered 03/01/2023

| **Required particulars** | | |
|---|---|---|
| **Item** | **If …** | **the *required particulars* are the following …** |
| | natural person who is not a disclosure entity | (b) the town or city in which the person lives |

(3) For the purposes of item 1 of the table in subclause (2), the required particulars of the name of the entity are:

(a) if the entity is a registered political party—the name of the party (the ***registered name***) that is entered in the Register of Political Parties under the *Commonwealth Electoral Act 1918* or that name omitting any of the following:

(i) if the registered name includes both a word or phrase and its abbreviation—the abbreviation;

(ii) if the registered name includes "Incorporated" or an abbreviation of that word—that word or its abbreviation;

(iii) if the registered name includes "of Australia"—those words;

(iv) if the registered name ends with "Australia"—that word;

(v) if the entity is a registered branch or division of a registered political party—the words indicating the name of the branch or division; or

(b) if the entity is a disclosure entity (but not a registered political party)—the name of the entity entered on the Transparency Register under the *Commonwealth Electoral Act 1918*; or

(c) if the entity is not an entity covered by paragraph (a) or (b) and a return has been given under Part XX of the *Commonwealth Electoral Act 1918* in relation to the entity—the name included in the most recent return given in relation to the entity; or

(d) in any other case—the name of the entity.



Authorised Version C2023C00001 registered 03/01/2023

Note: For example, under paragraph (a) the registered name "Quokka Party of Australia Inc.—NSW" may be notified as "Quokka Party".

(4) If an abbreviation (the ***registered abbreviation***) of the name of an entity is entered in the Register of Political Parties under the *Commonwealth Electoral Act 1918* and the entity is:

(a) a registered political party that has a registered branch or division; or

(b) a registered branch or division of a registered political party;

then, for the purposes of item 1 of the table in subclause (2), the required particulars of the name of the entity in paragraph (3)(a) are taken to be either:

(c) the particulars referred to in paragraph (3)(a); or

(d) the registered abbreviation.

## 2 Interpretation—certain things do not amount to broadcasting of advertisements

(1) For the purposes of this Schedule (other than paragraphs 7(1)(a), 8(1)(a), 9(1)(a), 10(1)(a) and 11(1)(a)), a person is not taken to broadcast an advertisement if:

(a) the person broadcasts matter of an advertising character as an accidental or incidental accompaniment to the broadcasting of other matter; and

(b) the person does not receive payment or other valuable consideration for broadcasting the advertising matter.

(2) For the purposes of this Schedule (other than paragraph 9(1)(a)), the broadcasting by a community broadcasting licensee of:

(a) community information material or community promotional material; or

(b) a sponsorship announcement that acknowledges financial support by a person of the licensee or of a program broadcast on a service provided under the licence, whether or not the announcement:



Authorised Version C2023C00001 registered 03/01/2023

(i) specifies the name and address of, and a description of the general nature of any business or undertaking carried on by the person; or

(ii) promotes activities, events, products, services or programs of the person; or

(c) material that announces or promotes a service provided under the licence, including material (whether by way of the announcement or promotion of activities, events, products, services or otherwise) that is likely to induce public support, whether financially or otherwise, or to make use of, the service or services provided under the licence;

is not taken to be the broadcasting of an advertisement.



Authorised Version C2023C00001 registered 03/01/2023

# Part 2—Special conditions

## 3 Broadcasting of political or controversial material

(1) In this clause, ***broadcaster*** means:
  (a) a commercial television broadcasting licensee; or
  (b) a commercial radio broadcasting licensee; or
  (c) a community broadcasting licensee; or
  (d) a subscription television broadcasting licensee; or
  (e) a person providing broadcasting services under a class licence.

(2) If, during an election period, a broadcaster broadcasts election matter, the broadcaster must give reasonable opportunities for the broadcasting of election matter to all political parties contesting the election, being parties which were represented in either House of the Parliament for which the election is to be held at the time of its last meeting before the election period.

(3) This clause does not require a broadcaster to broadcast any matter free of charge.

## 3A Broadcasting of election advertisements

(1) In this clause, ***broadcaster*** means:
  (a) a commercial television broadcasting licensee; or
  (b) a commercial radio broadcasting licensee; or
  (c) a community broadcasting licensee; or
  (d) a subscription television broadcasting licensee; or
  (e) a person providing broadcasting services under a class licence.

(2) If:
  (a) a broadcaster has a licence that has a licence area; and
  (b) an election to a Parliament is to be held; and



Authorised Version C2023C00001 registered 03/01/2023

(c) the licence area overlaps, contains or is contained in the area of Australia to which the election relates;

the broadcaster must not broadcast under the licence an election advertisement in relation to the election during the relevant period.

(3) If:

(a) a broadcaster has a licence that does not have a licence area; and

(b) an election to a Parliament is to be held; and

(c) a broadcasting service under the licence is normally received in the area of Australia to which the election relates;

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

(4) If:

(a) a broadcaster provides a broadcasting service under a class licence; and

(b) an election to a Parliament is to be held; and

(c) the broadcasting service is normally received in the area of Australia to which the election relates;

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

## 4 Identification of certain political matter

*Meaning of **broadcaster***

(1) In this clause, ***broadcaster*** means:

(a) a commercial television broadcasting licensee; or

(b) a commercial radio broadcasting licensee; or

(c) a community broadcasting licensee; or

(d) a subscription television broadcasting licensee; or

(e) a person providing broadcasting services under a class licence.



Authorised Version C2023C00001 registered 03/01/2023

*Announcing required particulars*

(2) If a broadcaster broadcasts political matter at the request of another person, the broadcaster must ensure that the required particulars in relation to the matter are announced in accordance with any requirements determined under subsection 321D(7) of the *Commonwealth Electoral Act 1918* for the purposes of this subclause.

Note: A broadcaster is taken to have ensured that required particulars are announced in certain circumstances (see subclause (5)).

*Keeping records*

(3) A broadcaster 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 clause, 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.

*Particulars taken to be announced*

(5) A broadcaster that broadcasts political matter is taken to have ensured that required particulars are announced 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 subclause 1(2); and

(c) as a result of steps taken by the broadcaster, it was reasonable for the broadcaster to rely on the particulars that were provided for the purposes of this Act.



Authorised Version C2023C00001 registered 03/01/2023

Note: An example of steps that may be taken by the broadcaster 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.

## 5 Records of matter broadcast

(1) In this clause, ***broadcaster*** means:

(a) a commercial television broadcasting licensee; or

(b) a commercial radio broadcasting licensee; or

(c) a community broadcasting licensee; or

(d) a subscription television broadcasting licensee; or

(e) a person providing broadcasting services under a class licence.

(2) If a broadcaster 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 broadcaster must cause a record of the matter to be made in a form approved in writing by the ACMA.

(3) Subject to this clause, a broadcaster must retain in his or her 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 60 days from the date on which the matter was broadcast;

or for such longer period as the ACMA, in special circumstances, directs in writing.

(4) 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 subclause (3), the person may give to the broadcaster a notice in writing informing the broadcaster that the record may be required for the purposes of the proceedings.



Authorised Version C2023C00001 registered 03/01/2023

(5) If such a notice is given to a broadcaster in respect of a record, the broadcaster must, subject to this clause, retain the record until the proceedings or the proposed proceedings to which the notice relates have been finally determined.

(6) If the proceedings are not instituted within a period of 3 months after the notice is given to the broadcaster, subclause (5) ceases to apply to the record at the end of that period.

(7) The obligation imposed by this clause on a broadcaster 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.

(8) If the ACMA is of the opinion that a matter of which a record has been made under this clause is of sufficient historic interest to justify its being permanently preserved, the ACMA may direct in writing a person who has custody of the record to deliver it for safe keeping to a person or authority specified by the ACMA, and the person to whom the direction is given must comply with the direction but is entitled to fair compensation.

(9) A broadcaster must, without charge, make available to the ACMA, upon request, any specified record made by the broadcaster under subclause (2) that has been retained by the broadcaster (whether or not the broadcaster is, at the time of the request, under an obligation to retain the record).



Authorised Version C2023C00001 registered 03/01/2023

# Part 3—Commercial television broadcasting licences

## Division 1—General

### 7 Conditions of commercial television broadcasting licences

(1) Each commercial television broadcasting licence is subject to the following conditions:

(a) the licensee will not, in contravention of the *Tobacco Advertising Prohibition Act 1992*, broadcast a tobacco advertisement within the meaning of that Act;

(aa) the licensee will comply with section 121G (which deals with Australian content);

(b) the licensee will comply with program standards applicable to the licence under Part 9 of this Act;

(ba) the licensee will comply with subsection 130V(1) (which deals with industry standards);

(c) except in the case of a licence allocated under section 38C or subsection 40(1)—the articles of association of the licensee will at all times contain provisions under which:

(i) a person is not eligible to continue to be the holder of shares in the licensee if, because of holding those shares and of any other relevant circumstances, that or some other person would contravene Part 5 of this Act; and

(ii) the licensee may secure the disposal of shares held by a person to the extent necessary to prevent a contravention of Part 5 of this Act continuing or of shares held by a person who refuses or fails to provide a statutory declaration under the provisions referred to in subparagraph (iii) or (iv); and

(iii) a person who becomes the holder of shares in the licensee is required to provide to the company a statutory declaration stating whether the shares are held by the person beneficially and, if not, who has



Authorised Version C2023C00001 registered 03/01/2023

beneficial interests in the shares and stating whether the person, or any person who has a beneficial interest in the shares, is in a position to exercise control of another licence, and giving particulars of any such position; and

(iv) a person holding shares in the licensee may be required by the licensee, from time to time, to provide to the licensee statutory declarations concerning matters relevant to his or her eligibility to continue to be the holder of those shares having regard to the provisions of Part 5 of this Act;

(d) the licensee will, if the Minister, by notice in writing given to the licensee, so requires broadcast, without charge, such items of national interest as are specified in the notice;

(e) the licensee will, if the Minister notifies the licensee in writing that an emergency has arisen which makes it important in the public interest that persons authorised by the Minister have control over matter broadcast using the licensee's broadcasting facilities, allow those persons access to and control over those facilities;

(f) if the licence is a broadcasting services bands licence—the licensee will keep in force a licence under the *Radiocommunications Act 1992* that authorises operation by the licensee of the radiocommunications devices used to provide broadcasting services;

(h) the licensee will not use broadcasting services in the commission of an offence against another Act or a law of a State or Territory;

(ha) the licensee will not contravene the anti-hoarding rule (within the meaning of section 146E);

(i) the licensee will commence to provide at least one broadcasting service within one year of being allocated the licence or within such longer period as is notified in writing by the ACMA;

(j) the licensee will comply with the requirements of clauses 3, 3A, 4 and 5;

(o) if a provision of Part 9D (which deals with captioning of television programs for the deaf and hearing impaired)



Authorised Version C2023C00001 registered 03/01/2023

applies to the licensee—the licensee will comply with that provision;

(oa) the licensee will comply with any standards under section 130A (which deals with technical standards for digital transmission);

(p) if the licensee holds a transmitter licence under section 101B, 101C, 102 or 102A of the *Radiocommunications Act 1992* that authorises the operation of a transmitter—the licensee will not operate, or permit the operation of, that transmitter to transmit in digital mode:

(i) a commercial broadcasting service that provides radio programs; or

(ii) a subscription radio broadcasting service; or

(iii) a subscription television broadcasting service; or

(iv) a subscription radio narrowcasting service; or

(v) a subscription television narrowcasting service; or

(vi) an open narrowcasting radio service; or

(vii) an open narrowcasting television service;

(q) the licensee will comply with a requirement that is applicable to the licensee under section 61BB (which deals with the disclosure of cross-media relationships);

(r) the licensee will not use the part of the radiofrequency spectrum covered by paragraph (b) of the definition of ***broadcasting services bands*** in subsection 6(1) to provide a commercial television broadcasting service under the licence;

(s) if a television licence area plan applies to the licence area—the licensee will comply with subsection 26AA(1).

(2) Each commercial television broadcasting licence is also subject to the following conditions:

(a) except in a case where the licence was allocated under section 38C or subsection 40(1)—the licensee will provide a service or services that, when considered together with other broadcasting services available in the licence area of the licence (including another service or services operated by the licensee), contributes to the provision of an adequate and



Authorised Version C2023C00001 registered 03/01/2023

comprehensive range of broadcasting services in that licence area;

(b) the licensee will remain a suitable licensee;

(ba) if a requirement under Division 5D of Part 5 (which sets out local programming requirements) applies to the licensee—the licensee will comply with that requirement;

(c) except in a case where the licence was allocated under section 38C or subsection 40(1)—the licensee will broadcast matter of a religious nature during such periods as the ACMA determines and, if the ACMA so directs, will do so without charge;

(2A) Each commercial television broadcasting licence is also subject to the condition that the licensee will not provide commercial television broadcasting services under the licence outside the licence area of the licence unless:

(a) the provision of those services outside that licence area occurs accidentally; or

(b) the provision of those services outside that licence area occurs as a necessary result of the provision of commercial television broadcasting services within the licence area; or

(c) both:

(i) the licensee satisfies the ACMA that the provision of those services outside that licence area occurs in exceptional circumstances; and

(ii) the ACMA has given permission in writing; or

(d) all of the following subparagraphs apply:

(i) the first-mentioned licensee satisfies the ACMA that there is a person (the ***eligible person***) who is in a commercial television broadcasting licence area (the ***second licence area***) that is not the same as the first-mentioned licence area and who is not receiving adequate reception of a commercial television broadcasting service or services provided by a commercial television broadcasting licensee for the second licence area;



Authorised Version C2023C00001 registered 03/01/2023

(ii) the provision of the first-mentioned services outside the first-mentioned licence area occurs only to the extent necessary to provide adequate reception of the first-mentioned services to the eligible person;

(iii) the ACMA has given permission in writing.



Authorised Version C2023C00001 registered 03/01/2023

## Division 2—Licences allocated under section 38C

### 7A Common conditions

(1) A licence allocated under section 38C is subject to the following conditions:

(a) the licensee may only provide commercial television broadcasting services in digital mode (within the meaning of Schedule 4);

(b) the licensee may only provide commercial television broadcasting services with the use of a satellite;

(c) if a conditional access scheme for the licence area is registered under Part 9C—the licensee will ensure that any conditional access system that relates to any of the commercial television broadcasting services provided under the licence complies with the scheme;

(d) the licensee will comply with any standards under section 130AC (which deals with technical standards for digital transmission).

(2) Paragraphs 7(1)(i) and (oa) of this Schedule do not apply to a licence allocated under section 38C.

### 7B Conditions about the provision of primary commercial television broadcasting services

*Conditions about the provision of primary services*

(1) A licence allocated under section 38C is subject to the condition that, if there are at least 3 commercial television broadcasting services (the ***related terrestrial primary services***), where each of the services:

(a) is provided by a terrestrial licensee in a related terrestrial licence area; and

(b) is a primary commercial television broadcasting service; and

(c) is distinct from each of the other services;



Authorised Version C2023C00001 registered 03/01/2023

the section 38C licensee will provide at least 3 commercial television broadcasting services, where:

(d) the program content of each of the services is the same, or substantially the same, as the program content of a related terrestrial primary service; and

(e) each of the services is distinct from each of the other services.

(2) A licence allocated under section 38C is subject to the condition that, if there are only 2 commercial television broadcasting services (the ***related terrestrial primary services***), where each of the services:

(a) is provided by a terrestrial licensee in a related terrestrial licence area; and

(b) is a primary commercial television broadcasting service; and

(c) is distinct from the other service;

the section 38C licensee will provide:

(d) 2 commercial television broadcasting services, where:

(i) the program content of each of the services is the same, or substantially the same, as the program content of a related terrestrial primary service; and

(ii) the services are distinct from one another; and

(e) one commercial television broadcasting service, where:

(i) the program content of the service is the same, or substantially the same, as the program content of a primary commercial television broadcasting service provided by a terrestrial licensee in a metropolitan licence area; and

(ii) the service is distinct from each of the services required to be provided by paragraph (d).

(3) A licence allocated under section 38C is subject to the condition that, if:

(a) neither subclause (1) nor subclause (2) applies; and

(b) there is a commercial television broadcasting service (the ***related terrestrial primary service***), where:



Authorised Version C2023C00001 registered 03/01/2023

(i) the service is provided by a terrestrial licensee in a related terrestrial licence area; and

(ii) the service is a primary commercial television broadcasting service;

the section 38C licensee will provide:

(c) one commercial television broadcasting service that has program content that is the same, or substantially the same, as the program content of the related terrestrial primary service; and

(d) 2 commercial television broadcasting services, where:

(i) the program content of each of the services is the same, or substantially the same, as the program content of a primary commercial television broadcasting service provided by a terrestrial licensee in a metropolitan licence area; and

(ii) the services are distinct from each other and from the service required to be provided by paragraph (c).

*Exemption—cessation of related terrestrial primary service*

(5) If:

(a) in compliance with subclause (1), the licensee of a licence allocated under section 38C provides a commercial television broadcasting service that has the same, or substantially the same, program content as a primary commercial television broadcasting service provided by a terrestrial licensee in a related terrestrial licence area; and

(b) the primary commercial television broadcasting service ceases to be provided by the terrestrial licensee in the related terrestrial licence area; and

(c) as a result of the cessation of the service, subclause (2) applies to the section 38C licensee;

subclause (2) has effect in relation to the section 38C licensee, while the cessation continues, as if paragraph (2)(e) had not been enacted.

(6) If:



Authorised Version C2023C00001 registered 03/01/2023

(a) in compliance with subclause (2), the licensee of a licence allocated under section 38C provides a commercial television broadcasting service that has the same, or substantially the same, program content as a primary commercial television broadcasting service provided by a terrestrial licensee in a related terrestrial licence area; and

(b) the primary commercial television broadcasting service ceases to be provided by the terrestrial licensee in the related terrestrial licence area; and

(c) as a result of the cessation of the service, subclause (3) applies to the section 38C licensee;

then, while the cessation continues:

(d) subclause (3) has effect in relation to the section 38C licensee as if paragraph (3)(d) had not been enacted; and

(e) the section 38C licence is subject to the condition that the section 38C licensee will provide one commercial television broadcasting service, where:

(i) the program content of the service is the same, or substantially the same, as the program content of a primary commercial television broadcasting service provided by a terrestrial licensee in a metropolitan licence area; and

(ii) the service is distinct from the service required to be provided by paragraph (3)(c).

*Distinct services*

(7) For the purposes of this clause, a commercial television broadcasting service is ***distinct*** from another commercial television broadcasting service if, and only if, the program content of the services is not the same or substantially the same.

Note: For ***metropolitan licence area***, ***related terrestrial licence area*** and ***terrestrial licence***, see clause 7L.



Authorised Version C2023C00001 registered 03/01/2023

## 7C Conditions about the provision of non-primary commercial television broadcasting services

*HDTV multi-channelled commercial television broadcasting services*

(1) A licence allocated under section 38C is subject to the condition that, if:

(a) the licensee of a terrestrial licence for a metropolitan licence area provides a HDTV multi-channelled commercial television broadcasting service (the ***metropolitan service***) in the metropolitan licence area; and

(aa) the metropolitan service is not the primary commercial television broadcasting service provided by the licensee mentioned in paragraph (a); and

(b) the licensee of a terrestrial licence for a related terrestrial licence area provides a HDTV multi-channelled commercial television broadcasting service (the ***related terrestrial service***) in the related terrestrial licence area; and

(c) the related terrestrial service has the same, or substantially the same, program content as the metropolitan service;

the section 38C licensee will provide a HDTV multi-channelled commercial television broadcasting service that has the same, or substantially the same, program content as the related terrestrial service.

(2) A licence allocated under section 38C is subject to the condition that, if:

(a) the licensee of a terrestrial licence for a metropolitan licence area provides a HDTV multi-channelled commercial television broadcasting service (the ***metropolitan service***) in the metropolitan licence area; and

(aa) the metropolitan service is not the primary commercial television broadcasting service provided by the licensee mentioned in paragraph (a); and

(b) there is no HDTV multi-channelled commercial television broadcasting service that:



Authorised Version C2023C00001 registered 03/01/2023

(i) is provided by the licensee of a terrestrial licence for a related terrestrial licence area; and

(ii) has the same, or substantially the same, program content as the metropolitan service;

the section 38C licensee will provide a HDTV multi-channelled commercial television broadcasting service that has the same, or substantially the same, program content as the metropolitan service.

(4) Subclause (2) does not apply to a HDTV multi-channelled commercial television broadcasting service that a commercial television broadcasting licensee for a metropolitan licence area commences to provide after 10 December 2013.

(5) If:

(a) the licensee of a commercial television broadcasting licence for a metropolitan licence area provides a HDTV multi-channelled commercial television broadcasting service (the ***metropolitan service***) in the metropolitan licence area; and

(aa) the metropolitan service is not the primary commercial television broadcasting service provided by the licensee mentioned in paragraph (a); and

(b) the licensee of a terrestrial licence for a related terrestrial licence area provides a HDTV multi-channelled commercial television broadcasting service (the ***related terrestrial service***) in the related terrestrial licence area; and

(c) the related terrestrial service has the same, or substantially the same, program content as the metropolitan service; and

(d) in compliance with subclause (1), the licensee of a licence allocated under section 38C provides a HDTV multi-channelled commercial television broadcasting service that has the same, or substantially the same, program content as the related terrestrial service; and

(e) the related terrestrial service ceases to be provided by the terrestrial licensee in the related terrestrial licence area;



Authorised Version C2023C00001 registered 03/01/2023

subclause (2) does not apply to the section 38C licensee in relation to the metropolitan service while the cessation continues.

*SDTV multi-channelled commercial television broadcasting services*

(6) A licence allocated under section 38C is subject to the condition that, if:

(a) the licensee (the ***metropolitan licensee***) of a commercial television broadcasting licence for a metropolitan licence area provides a SDTV multi-channelled commercial television broadcasting service (the ***metropolitan service***) in the metropolitan licence area; and

(b) the metropolitan service is not the primary commercial television broadcasting service provided by the metropolitan licensee; and

(c) the licensee of a terrestrial licence for a related terrestrial licence area provides a SDTV multi-channelled commercial television broadcasting service (the ***related terrestrial service***) in the related terrestrial licence area; and

(d) the related terrestrial service has the same, or substantially the same, program content as the metropolitan service;

the section 38C licensee will provide a SDTV multi-channelled commercial television broadcasting service that has the same, or substantially the same, program content as the related terrestrial service.

(7) A licence allocated under section 38C is subject to the condition that, if:

(a) the licensee (the ***metropolitan licensee***) of a commercial television broadcasting licence for a metropolitan licence area provides a SDTV multi-channelled commercial television broadcasting service (the ***metropolitan service***) in the metropolitan licence area; and

(b) the metropolitan service is not the primary commercial television broadcasting service provided by the metropolitan licensee; and



Authorised Version C2023C00001 registered 03/01/2023

(c) there is no SDTV multi-channelled commercial television broadcasting service that:

(i) is provided by the licensee of a terrestrial licence for a related terrestrial licence area; and

(ii) has the same, or substantially the same, program content as the metropolitan service;

the section 38C licensee will provide a SDTV multi-channelled commercial television broadcasting service that has the same, or substantially the same, program content as the metropolitan service.

(9) Subclause (7) does not apply to a SDTV multi-channelled commercial television broadcasting service that a commercial television broadcasting licensee for a metropolitan licence area commences to provide after 10 December 2013.

(10) If:

(a) the licensee (the ***metropolitan licensee***) of a commercial television broadcasting licence for a metropolitan licence area provides a SDTV multi-channelled commercial television broadcasting service (the ***metropolitan service***) in the metropolitan licence area; and

(b) the metropolitan service is not the primary commercial television broadcasting service provided by the metropolitan licensee; and

(c) the licensee of a terrestrial licence for a related terrestrial licence area provides a SDTV multi-channelled commercial television broadcasting service (the ***related terrestrial service***) in the related terrestrial licence area; and

(d) the related terrestrial service has the same, or substantially the same, program content as the metropolitan service; and

(e) in compliance with subclause (6), the licensee of a licence allocated under section 38C provides a SDTV multi-channelled commercial television broadcasting service that has the same, or substantially the same, program content as the related terrestrial service; and



Authorised Version C2023C00001 registered 03/01/2023

(f) the related terrestrial service ceases to be provided by the terrestrial licensee in the related terrestrial licence area;

subclause (7) does not apply to the section 38C licensee in relation to the metropolitan service while the cessation continues.

Note: For ***metropolitan licence area***, ***related terrestrial licence area*** and ***terrestrial licence***, see clause 7L.

## 7D Condition about the provision of local news services

(1) A licence allocated under section 38C is subject to the condition that, if a program is provided, or required to be provided, to the licensee by another licensee under subsection 43AA(1), the section 38C licensee will broadcast the program on a service authorised by paragraph 41CA(1)(c), (f), (fb), (fd) or (g) as soon as practicable after the other licensee begins to broadcast the program.

(2) Subclause (1) does not apply if the section 38C licensee has previously broadcast the program on such a service.

(3) Subclause (1) does not apply to a program the broadcasting of which in any jurisdiction in the licence area of the section 38C licence could result in the section 38C licensee:

(a) committing an offence; or
(b) becoming liable to a civil penalty; or
(c) breaching an order or direction of a court; or
(d) being in contempt of court.

## 7E Exemption—provision of new commercial television broadcasting services not technically feasible

If:

(a) a licence is allocated under section 38C; and
(b) a commercial television broadcasting licensee (the ***terrestrial licensee***) for a terrestrial licence area commences to provide, or proposes to commence to provide:
(i) a HDTV multi-channelled commercial television broadcasting service that is not the primary commercial



Authorised Version C2023C00001 registered 03/01/2023

television broadcasting service provided by the terrestrial licensee; or

(ii) a SDTV multi-channelled commercial television broadcasting service that is not the primary commercial television broadcasting service provided by the terrestrial licensee; and

(c) apart from this clause, the licensee of the section 38C licence is, or will be, required to provide:

(i) if subparagraph (b)(i) applies—a HDTV multi-channelled commercial television broadcasting service the program content of which is the same, or substantially the same, as the service provided by the terrestrial licensee; or

(ii) if subparagraph (b)(ii) applies—a SDTV multi-channelled commercial television broadcasting service the program content of which is the same, or substantially the same, as the service provided by the terrestrial licensee; and

(d) the ACMA considers that it is not technically feasible for the licensee of the section 38C licence to provide the required service;

the ACMA may, by legislative instrument, determine that clause 7C does not oblige the section 38C licensee to provide the required service.

Note: For ***terrestrial licence area***, see clause 7L.

## 7F Exemption—commercial television broadcasting services with the same program content

(1) If:

(a) a commercial television broadcasting licensee (the ***terrestrial licensee***) for a terrestrial licence area provides, or proposes to commence to provide:

(i) a HDTV multi-channelled commercial television broadcasting service that is not the primary commercial



Authorised Version C2023C00001 registered 03/01/2023

television broadcasting service provided by the terrestrial licensee; or

(ii) a SDTV multi-channelled commercial television broadcasting service that is not the primary commercial television broadcasting service provided by the terrestrial licensee; and

(b) the program content of the service provided, or to be provided, by the terrestrial licensee is, or will be:

(i) the same; or

(ii) substantially the same;

as the program content of another commercial television broadcasting service provided, or to be provided, by the terrestrial licensee; and

(c) apart from this subclause, the licensee of a section 38C licence is, or will be, required to provide:

(i) if subparagraph (a)(i) applies—a HDTV multi-channelled commercial television broadcasting service the program content of which is the same, or substantially the same, as the service provided by the terrestrial licensee; or

(ii) if subparagraph (a)(ii) applies—a SDTV multi-channelled commercial television broadcasting service the program content of which is the same, or substantially the same, as the service provided by the terrestrial licensee;

the Minister may, by legislative instrument, determine that clause 7C does not oblige the section 38C licensee to provide the required service during a period specified in the determination.

(2) The specified period must not be longer than 2 years.

(3) The Minister may, by legislative instrument, extend or further extend the specified period.

(4) Before making:

(a) a determination under subclause (1); or

(b) an instrument under subclause (3);



Authorised Version C2023C00001 registered 03/01/2023

the Minister must consult:

(c) the section 38C licensee concerned; and

(d) the ACMA.

Note: For ***terrestrial licence area***, see clause 7L.

## 7G Delay in commencement of new commercial television broadcasting services

For the purposes of this Division, if:

(a) a licence is allocated under section 38C; and

(b) a commercial television broadcasting licensee (the ***terrestrial licensee***) for a terrestrial licence area commences to provide:

(i) a HDTV multi-channelled commercial television broadcasting service that is not the primary commercial television broadcasting service provided by the terrestrial licensee; or

(ii) a SDTV multi-channelled commercial television broadcasting service that is not the primary commercial television broadcasting service provided by the terrestrial licensee; and

(c) the licensee of the section 38C licence is required to provide:

(i) if subparagraph (b)(i) applies—a HDTV multi-channelled commercial television broadcasting service the program content of which is the same, or substantially the same, as the service provided by the terrestrial licensee; or

(ii) if subparagraph (b)(ii) applies—a SDTV multi-channelled commercial television broadcasting service the program content of which is the same, or substantially the same, as the service provided by the terrestrial licensee; and

(d) there is a delay in the provision of the required service;

disregard the delay so long as the delay is as short as is practicable.

Note: For ***terrestrial licence area***, see clause 7L.



Authorised Version C2023C00001 registered 03/01/2023

## 7J Program content

(1) In determining, for the purposes of this Division, whether the program content of a commercial television broadcasting service provided by a licensee in a licence area is the same, or substantially the same, as the program content of another commercial television broadcasting service:

(a) ignore the following:

(i) advertising or sponsorship material (whether or not of a commercial kind);

(ii) a promotion for a television program or a television broadcasting service;

(iii) community information material or community promotional material;

(iv) a weather bulletin;

(v) any other similar material; and

(b) ignore a news program; and

(c) ignore any program the broadcasting of which in any jurisdiction in the licence area could result in the licensee:

(i) committing an offence; or

(ii) becoming liable to a civil penalty; or

(iii) breaching an order or direction of a court; or

(iv) being in contempt of court; and

(d) ignore a program broadcast in circumstances specified in the regulations.

(2) In determining, for the purposes of clause 7B of this Schedule, whether the program content of a commercial television broadcasting service is the same, or substantially the same, as the program content of another commercial television broadcasting service, assume that a program that provides coverage of an anti-siphoning event is the same as a program that provides coverage of another anti-siphoning event.

## 7L Definitions

In this Division:



Authorised Version C2023C00001 registered 03/01/2023

***HDTV multi-channelled commercial television broadcasting service*** has the same meaning as in Schedule 4.

***metropolitan licence area*** means a licence area in which is situated the General Post Office of the capital city of:

(a) New South Wales; or
(b) Victoria; or
(c) Queensland; or
(d) Western Australia; or
(e) South Australia;

but does not include the licence area of a commercial television broadcasting licence allocated under section 38C.

***related terrestrial licence area***:

(a) in relation to a licence allocated under section 38C for the South Eastern Australia TV3 licence area—means a terrestrial licence area mentioned in column 3 of item 1 of the table in subsection 38C(1); or
(b) in relation to a licence allocated under section 38C for the Northern Australia TV3 licence area—means a terrestrial licence area mentioned in column 3 of item 2 of the table in subsection 38C(1); or
(c) in relation to a licence allocated under section 38C for the Western Australia TV3 licence area—means a terrestrial licence area mentioned in column 3 of item 3 of the table in subsection 38C(1).

***SDTV multi-channelled commercial television broadcasting service*** has the same meaning as in Schedule 4.

***terrestrial licence*** means a commercial television broadcasting licence other than a commercial television broadcasting licence allocated under section 38C or subsection 40(1).

***terrestrial licence area*** means the licence area of a terrestrial licence.



Authorised Version C2023C00001 registered 03/01/2023

# Part 4—Commercial radio broadcasting licences

## 8 Standard conditions of commercial radio broadcasting licences

(1) Each commercial radio broadcasting licence is subject to the following conditions:

(a) the licensee will not, in contravention of the *Tobacco Advertising Prohibition Act 1992*, broadcast a tobacco advertisement within the meaning of that Act;

(b) the licensee will comply with program standards applicable to the licence under Part 9 of this Act;

(ba) if the licensee provides a digital commercial radio broadcasting service under the licence—the licensee will comply with any standards under section 130AA (which deals with technical standards for digital transmission);

(bb) the licensee will comply with subsection 130V(1) (which deals with industry standards);

(c) the articles of association of the licensee will at all times contain:

(i) provisions under which a person is not eligible to continue to be the holder of shares in the licensee if, because of holding those shares and of any other relevant circumstances, that or some other person would contravene Part 5 of this Act; and

(ii) provisions under which the licensee may secure the disposal of shares held by a person to the extent necessary to prevent a contravention of Part 5 of this Act continuing or of shares held by a person who refuses or fails to provide a statutory declaration under the provisions referred to in subparagraph (iii) or (iv); and

(iii) provisions under which a person who becomes the holder of shares in the licensee is required to provide to the company a statutory declaration stating whether the shares are held by the person beneficially and, if not,



Authorised Version C2023C00001 registered 03/01/2023

who has beneficial interests in the shares and stating whether the person, or any person who has a beneficial interest in the shares, is in a position to exercise control of another licence, and giving particulars of any such position; and

(iv) provisions under which a person holding shares in the licensee may be required by the licensee, from time to time, to provide to the licensee statutory declarations concerning matters relevant to his or her eligibility to continue to be the holder of those shares having regard to the provisions of Part 5 of this Act;

(d) the licensee will, if the Minister, by notice in writing given to the licensee, so requires broadcast, without charge, such items of national interest as are specified in the notice;

(e) the licensee will, if the Minister notifies the licensee in writing that an emergency has arisen which makes it important in the public interest that persons authorised by the Minister have control over matter broadcast using the licensee's broadcasting facilities, allow those persons access to and control over those facilities;

(f) if:

(i) the licence is a broadcasting services bands licence; and

(ii) the licence authorises the licensee to provide an analog commercial radio broadcasting service;

the licensee will keep in force a licence under the *Radiocommunications Act 1992* that authorises the operation by the licensee of the radiocommunications devices used to provide that service;

(g) the licensee will not use the broadcasting service or services in the commission of an offence against another Act or a law of a State or Territory;

(h) the licensee will commence to provide at least one broadcasting service within one year of being allocated the licence or within such longer period as is notified in writing by the ACMA;



Authorised Version C2023C00001 registered 03/01/2023

(i) the licensee will comply with the requirements of clauses 3, 3A, 4 and 5;

(j) the licensee will comply with a requirement that is applicable to the licensee under section 61BD or 61BE (which deal with the disclosure of cross-media relationships);

(k) the licensee will not use the part of the radiofrequency spectrum covered by paragraph (b) of the definition of ***broadcasting services bands*** in subsection 6(1) to provide a commercial radio broadcasting service under the licence unless the service is a digital commercial radio broadcasting service.

(2) Each commercial radio broadcasting licence is also subject to the following conditions:

(a) the licensee will provide a service or services that, when considered together with other broadcasting services available in the licence area of the licence (including another service or services operated by the licensee), contributes to the provision of an adequate and comprehensive range of broadcasting services in that licence area;

(b) the licensee will remain a suitable licensee;

(c) if a requirement under Division 5C of Part 5 (which sets out local news and information requirements) applies to the licensee—the licensee will comply with that requirement.

(3) Each commercial radio broadcasting licence is also subject to the condition that the licensee will not provide commercial radio broadcasting services under the licence outside the licence area of the licence unless:

(a) the provision of those services outside that licence area occurs accidentally; or

(b) the provision of those services outside that licence area occurs as a necessary result of the provision of commercial radio broadcasting services within the licence area; or

(c) both:



Authorised Version C2023C00001 registered 03/01/2023

(i) the licensee satisfies the ACMA that the provision of those services outside that licence area occurs in exceptional circumstances; and

(ii) the ACMA has given permission in writing; or

(d) all of the following subparagraphs apply:

(i) the first-mentioned licensee satisfies the ACMA that there is a person (the ***eligible person***) who is in a commercial radio broadcasting licence area (the ***second licence area***) that is not the same as the first-mentioned licence area and who is not receiving adequate reception of a commercial radio broadcasting service or services provided by a commercial radio broadcasting licensee for the second licence area;

(ii) the provision of the first-mentioned services outside the first-mentioned licence area occurs only to the extent necessary to provide adequate reception of the first-mentioned services to the eligible person;

(iii) the ACMA has given permission in writing.



Authorised Version C2023C00001 registered 03/01/2023

# Part 5—Community broadcasting licences

## 9 Conditions applicable to services provided under community broadcasting licences

(1) Each community broadcasting licence is subject to the following conditions:

(a) the licensee will not, in contravention of the *Tobacco Advertising Prohibition Act 1992*, broadcast a tobacco advertisement within the meaning of that Act;

(b) the licensee will not broadcast advertisements, and the licensee will not broadcast sponsorship announcements otherwise than as mentioned in this clause;

(c) the licensee will comply with program standards applicable to the licence under Part 9 of this Act;

(ca) the licensee will comply with standards under section 130A (which deals with technical standards for digital transmission);

(caa) if the licensee provides a digital community radio broadcasting service under the licence—the licensee will comply with any standards under section 130AA (which deals with technical standards for digital transmission);

(cb) the licensee will comply with subsection 130V(1) (which deals with industry standards);

(d) the licensee will, if the Minister, by notice in writing given to the licensee, so requires broadcast, without charge, such items of national interest as are specified in the notice;

(e) the licensee will, if the Minister notifies the licensee in writing that an emergency has arisen which makes it important in the public interest that persons authorised by the Minister have control over matter broadcast using the licensee's broadcasting facilities, allow those persons access to and control over those facilities;



Authorised Version C2023C00001 registered 03/01/2023

(f) the licensee will not use the broadcasting service or services in the commission of an offence against another Act or a law of a State or Territory;

(h) the licensee will commence the provision of at least one broadcasting service within one year of being allocated the licence or within such longer period as is notified in writing by the ACMA;

(i) the licensee will comply with the requirements of clauses 3, 3A, 4 and 5;

(j) the licensee will not use the part of the radiofrequency spectrum covered by paragraph (b) of the definition of ***broadcasting services bands*** in subsection 6(1) to provide a community broadcasting service under the licence unless the service is a digital community radio broadcasting service;

(k) if a television licence area plan applies to the licence area—the licensee will comply with subsection 26AA(3).

(2) Each community broadcasting licence is also subject to the following conditions:

(a) the licensee will remain a suitable licensee;

(b) the licensee will continue to represent the community interest that it represented at the time when the licence was allocated or was last renewed;

(c) the licensee will encourage members of the community that it serves to participate in:

(i) the operations of the licensee in providing the service or services; and

(ii) the selection and provision of programs under the licence;

(d) the licensee will provide the service or services for community purposes;

(e) the licensee will not operate the service or services for profit or as part of a profit-making enterprise.

(2AA) Paragraph (2)(e) does not prevent a designated community radio broadcasting licensee from holding shares in a digital community



Authorised Version C2023C00001 registered 03/01/2023

radio broadcasting representative company (within the meaning of the *Radiocommunications Act 1992*).

(2A) Each community broadcasting licence is also subject to the condition that the licensee will not provide community broadcasting services under the licence outside the licence area of the licence unless:

(a) the provision of those services outside that licence area occurs accidentally; or

(b) the provision of those services outside that licence area occurs as a necessary result of the provision of community broadcasting services within the licence area; or

(c) both:

(i) the licensee satisfies the ACMA that the provision of those services outside that licence area occurs in exceptional circumstances; and

(ii) the ACMA has given permission in writing; or

(d) all of the following subparagraphs apply:

(i) the first-mentioned licensee satisfies the ACMA that there is a person (the ***eligible person***) who is in a community broadcasting licence area (the ***second licence area***) that is not the same as the first-mentioned licence area and who is not receiving adequate reception of a community broadcasting service or services provided by a community broadcasting licensee for the second licence area;

(ii) the provision of the first-mentioned services outside the first-mentioned licence area occurs only to the extent necessary to provide adequate reception of the first-mentioned services to the eligible person;

(iii) the ACMA has given permission in writing.

(2B) Each community broadcasting licence that has been transferred is also subject to the condition that the transferee must, within 7 days after the transfer, notify the ACMA of the transfer. A notification must be in accordance with a form approved in writing by the ACMA.



Authorised Version C2023C00001 registered 03/01/2023

(3) A community broadcasting licensee may broadcast sponsorship announcements on a particular community broadcasting service. However, they must not run in total for more than:

(a) if the licensee is a community television broadcasting licensee—7 minutes in any hour of broadcasting on that service; or

(b) in any other case—5 minutes in any hour of broadcasting on that service.

(4) A community television broadcasting licensee may broadcast sponsorship announcements only during periods before programs commence, after programs end or during natural program breaks.

(5) In working out the length of time devoted to the broadcasting of sponsorship announcements, account is not to be taken of the broadcasting by a community broadcasting licensee of any of the following:

(a) material that publicises programs to be broadcast by the licensee;

(b) material that promotes the licensee's products, services or activities for the broadcast of which the licensee does not receive any consideration in cash or in kind;

(c) community information or community promotional material for the broadcast of which the licensee does not receive any consideration in cash or in kind;

(d) sponsorship announcements consisting of moving text that is overlaid on a test pattern.

(6) Paragraph (1)(b) applies to a community broadcasting service targeted, to a significant extent, to one or more remote Indigenous communities as if the words "for which the licensee receives any consideration in cash or in kind" were inserted after "advertisements".



Authorised Version C2023C00001 registered 03/01/2023

# Part 6—Subscription television broadcasting licences

## 10 Conditions applicable to subscription television broadcasting licences

(1) Each subscription television broadcasting licence is subject to the following conditions:

(a) the licensee will not, in contravention of the *Tobacco Advertising Prohibition Act 1992*, broadcast a tobacco advertisement within the meaning of that Act;

(b) the licensee will comply with program standards applicable under Part 9 of this Act;

(ba) the licensee will comply with standards under section 130A (which deals with technical standards for digital transmission);

(bb) the licensee will comply with subsection 130V(1) (which deals with industry standards);

(d) the licensee will, if the Minister notifies the licensee in writing that an emergency has arisen which makes it important in the public interest that persons authorised by the Minister have control over matter broadcast using the licensee's broadcasting facilities, allow those persons access to and control over those facilities;

(e) the licensee will not acquire the right to televise, on a subscription television broadcasting service, an event that is specified in a notice under subsection 115(1) unless:

(i) a national broadcaster has the right to televise the event on any of its broadcasting services; or

(ii) the television broadcasting services of commercial television broadcasting licensees (other than licensees who hold licences allocated under section 38C or subsection 40(1)) who have the right to televise the



Authorised Version C2023C00001 registered 03/01/2023

event cover a total of more than 50% of the Australian population;

(ea) the licensee will comply with subsection 121E(2) (section 121E is about requiring the ACMA's permission to provide certain television services in regional areas);

(eb) if a provision of Part 9D (which deals with captioning of television programs for the deaf and hearing impaired) applies to the licensee—the licensee will comply with that provision;

(f) the licensee will not broadcast a program that has been classified RC or X 18+ by the Classification Board;

(g) the licensee will ensure that access to programs classified as "R 18+" by the Classification Board is restricted by disabling devices acceptable to the ACMA but will not broadcast such an "R 18+" classified program until the ACMA has completed extensive, Australia-wide qualitative and quantitative research on community standards of taste and decency in relation to classifications for pay television and on what levels of violence and depiction of sex should be allowed, and the ACMA has recommended, and the Parliament has, by resolution of each House, approved, the broadcast of such programs;

(h) the licensee will not use its subscription broadcasting service in the commission of an offence against another Act or a law of a State or Territory;

(i) the licensee will comply with the requirements of clauses 3, 3A, 4 and 5;

(j) the licensee will not use the part of the radiofrequency spectrum covered by paragraph (b) of the definition of ***broadcasting services bands*** in subsection 6(1) to provide a subscription television broadcasting service under the licence.

(1A) For the purposes of subparagraph (1)(e)(ii), the percentage of the Australian population covered by the television broadcasting service or services of a commercial television broadcasting licensee (other than a licensee who holds a licence allocated under



Authorised Version C2023C00001 registered 03/01/2023

section 38C or subsection 40(1)) is the percentage most recently specified by the ACMA under paragraph 30(5)(a) for the licence area of the licensee's licence.

(1B) For the purposes of subparagraph (1)(e)(ii), if a program supplier for a commercial television broadcasting licensee (other than a licensee who holds a licence allocated under section 38C or subsection 40(1)) has a right to televise an event, the licensee is taken also to have the right. For this purpose, ***program supplier*** means a person who:

(a) has an agreement to supply the licensee with program material that can be televised on a commercial television broadcasting service provided by the licensee (whether or not the program material includes matter showing the event); and

(b) supplies the licensee with a substantial proportion of all the program material that is televised on a commercial television broadcasting service provided by the licensee (whether or not the material is supplied under the agreement mentioned in paragraph (a)).

(2) Each subscription television broadcasting licence is also subject to the following conditions:

(a) the licensee will remain a suitable licensee;

(b) subscription fees will continue to be the predominant source of revenue for the service.



Authorised Version C2023C00001 registered 03/01/2023

# Part 7—Services provided under class licences

## 11 Conditions applicable to broadcasting services provided under class licences

(1) The following conditions apply to the provision by a person of a broadcasting service under a class licence:

(a) the licensee will not, in contravention of the *Tobacco Advertising Prohibition Act 1992*, broadcast a tobacco advertisement within the meaning of that Act;

(ab) in the case of a person who provides an open narrowcasting television service or a subscription television narrowcasting service—the person will comply with subsection 121E(2) (section 121E is about requiring the ACMA's permission to provide certain television services in regional areas);

(b) the person will comply with program standards applicable to the licence under Part 9 of this Act;

(ba) in the case of a person who provides an open narrowcasting television service or a subscription television narrowcasting service—the licensee will comply with standards under section 130A (which deals with technical standards for digital transmission);

(baa) in the case of a person who provides:

(i) a subscription radio broadcasting service; or

(ii) a subscription radio narrowcasting service; or

(iii) an open narrowcasting radio service;

transmitted using a digital modulation technique—the licensee will comply with standards under section 130AA (which deals with technical standards for digital transmission);

(bb) the licensee will comply with standards under subsection 130V(1) (which deals with industry standards);

(bc) if a provision of Part 9D (which deals with captioning of television programs for the deaf and hearing impaired)



Authorised Version C2023C00001 registered 03/01/2023

applies to the licensee—the licensee will comply with that provision;

(c) the person will not use the broadcasting service in the commission of an offence against another Act or a law of a State or Territory;

(d) the person will comply with the requirements of clauses 3, 3A, 4 and 5;

(e) the person will not use the part of the radiofrequency spectrum covered by paragraph (b) of the definition of ***broadcasting services bands*** in subsection 6(1) to provide broadcasting services under the licence.

(2) The provision by a person of a subscription broadcasting service or a subscription narrowcasting service under a class licence is also subject to the condition that subscription fees will continue to be the predominant source of revenue for the service.

(4) The provision by a person of a subscription television narrowcasting service under a class licence is also subject to the condition that the licensee will not broadcast a program that has been classified RC or X 18+ by the Classification Board.



Authorised Version C2023C00001 registered 03/01/2023