



Radiocommunications Act 1992

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About this compilation

This compilation

This is a compilation of the *Radiocommunications Act 1992* that shows the text of the law as amended and in force on 1 September 2021 (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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.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

Chapter 1—Preliminary	1
Part 1.1—Formal matters	1
1 Short title	1
2 Commencement	1
Part 1.2—Object of this Act	2
3 Object	2
4 Outline of this Act	2
Part 1.3—Interpretative provisions	4
5 Definitions	4
6 Definition of <i>radiocommunication</i>	19
7 Definitions of <i>radiocommunications device</i> , <i>radiocommunications transmitter</i> and <i>radiocommunications</i> <i>receiver</i>	20
7A Designated radiocommunications receiver	21
8 Definitions of <i>radio emission</i> and <i>transmitter</i>	21
9 Application of labels	22
9B Digital mode	22
9C Digital community radio broadcasting representative company	22
9D Incumbent digital radio broadcasting licensees	25
10 Public or community services	26
10A ACMA determinations about space objects	26
10B Authorised defence supplier	26
11 References to offences against this Act etc.	27
Part 1.4—Application of this Act	28
12 Outline of this Part	28
Division 1—General	29
13 Crown to be bound	29
Division 2—Provisions relating to location and similar matters	30
14 Operation of this Division	30
15 Application to external Territories	30
16 Application outside Australia	30
17 Offshore areas	31

17A	Greater Sunrise special regime area, Greater Sunrise pipeline international offshore area and Bayu-Undan pipeline international offshore area	31
18	Application to the atmosphere etc.	33
Division 3—Provisions extending the concept of radiocommunication		34
19	Operation of this Division	34
20	Radio transmissions for the purpose of measurement.....	34
21	Astronomical and meteorological observations	37
22	Lighthouses etc.	37
Division 4—Matters to which this Act does not apply		38
23	Foreign space objects, vessels and aircraft	38
24	Defence research and intelligence	38
25	Special defence undertakings	40
26	Additional exemption for defence matters.....	40
27	Exemption for defence, law enforcement and emergency personnel	42
28	Use of devices by the ACMA	44
Part 1.5—Ministerial policy statements		45
28A	Simplified outline of this Part.....	45
28B	Ministerial policy statements.....	45
28C	The ACMA must have regard to Ministerial policy statements	45
Part 1.6—The ACMA’s work program		46
28D	Simplified outline of this Part.....	46
28E	The ACMA’s work program	46
28F	Consultation.....	46
Chapter 2—Radio frequency planning		48
29	Outline of this Chapter	48
Part 2.1—Spectrum plans and frequency band plans		49
30	Spectrum plans	49
31	Planning of broadcasting services bands	49
32	Frequency band plans	51
33	Publication etc. of plans.....	52
Part 2.2—Marketing plans		54
37	Preparation or variation of frequency band plans	54

39	Marketing plans—unencumbered spectrum	54
39A	Marketing plans—re-allocation of spectrum	56
41	Delays in preparing marketing plans	57
42	Variation of marketing plans	58
44	Expressions of interest in spectrum licences	58
Part 2.3—Digital radio channel plans		59
44A	Preparation of digital radio channel plans	59
Chapter 3—Licensing of radiocommunications		62
45	Outline of this Chapter	62
Part 3.1—Unlicensed radiocommunications		64
Division 1—Offences and civil penalties		64
46	Unlicensed operation of radiocommunications devices	64
47	Unlawful possession of radiocommunications devices	65
48	Additional provisions about possession of radiocommunications devices	66
49	Emergency operation etc. of radiocommunications devices	67
Division 2—Civil proceedings		69
50	Civil proceedings	69
Part 3.2—Spectrum licences		70
51	Outline of this Part	70
Division 1—Issuing spectrum licences		71
Subdivision B—Issuing spectrum licences		71
60	Procedures for allocating spectrum licences	71
60A	Direct allocation of spectrum licences	74
60B	Restriction on allocation of spectrum licences	75
61	Preparation of draft spectrum licences	75
62	Issue of spectrum licences	75
63	Compliance with marketing plans	76
Subdivision C—Contents of spectrum licences		76
64	Authorisation to use part of the spectrum	76
65	Duration of spectrum licences	77
65A	Renewal statements etc.	77
66	Core conditions of spectrum licences	80
67	Conditions about payment of charges	81
68	Conditions about third party use	81

68A	Authorisation under spectrum licence taken to be an acquisition of an asset and conduct.....	82
69	Conditions about registration of radiocommunications transmitters	83
69A	Conditions about residency etc.	83
71	Other conditions of spectrum licences	84
Subdivision D—Rules about section 50 and related provisions of the Competition and Consumer Act		84
71A	Issue of spectrum licence taken to be an acquisition of an asset and conduct.....	84
Division 2—Varying spectrum licences		86
72	Variation with agreement	86
73	Variation without agreement	87
73A	Conditions included in a spectrum licence—decision-making powers	88
Division 3—Suspending and cancelling spectrum licences		89
74	Application of this Division	89
75	Suspending spectrum licences	89
76	Period of suspension.....	89
77	Cancelling spectrum licences	90
Division 3A—Renewal of spectrum licences		91
77A	Applications for renewal of spectrum licences	91
77B	Further information	92
77C	Renewal of spectrum licences	92
77D	Notice of refusal to renew spectrum licence etc.	94
77E	Application of other provisions	95
Division 4—Issuing further spectrum licences (otherwise than by way of renewal)		96
78	Notice of spectrum licences that are about to expire	96
79	Preparation of draft further spectrum licences	96
80	Procedures for re-allocating spectrum licences	96
81	Issue of further spectrum licences	97
83	General rules about newly-issued spectrum licences apply to re-issued spectrum licences	97
84	Commencement of re-issued spectrum licences	97
Division 5—Trading spectrum licences		98
85	Trading spectrum licences	98
86	Registration of assignments etc.	98

87	Variation etc. of spectrum licences to take assignments into account	98
88	Rules about assignments etc.	99
Division 6—Resuming spectrum licences		100
Subdivision A—Resuming spectrum licences by agreement		100
89	ACMA may resume spectrum licences by agreement	100
90	Effect of resumption	100
Subdivision B—Resuming spectrum licences by compulsory process		101
91	ACMA may resume spectrum licences compulsorily	101
92	Effect of resumption	101
93	Payment of compensation	101
94	Interest payable on resumption etc.	102
95	Reaching agreements during the compulsory process	102
Part 3.3—Apparatus licences		103
96	Outline of this Part	103
96A	Policy in relation to certain community broadcasting services and open narrowcasting television services	103
96B	Licences of certain kinds must not be granted to new holders after 30 June 2021	104
Division 1—Kinds of apparatus licences		106
97	Transmitter licences and receiver licences	106
98	Types of transmitter licences and receiver licences	107
98C	Foundation category 1 digital radio multiplex transmitter licence	107
98D	Foundation category 2 digital radio multiplex transmitter licence	107
98E	Limit on declaration of foundation digital radio multiplex transmitter licences	108
Division 2—Issuing apparatus licences		110
99	Applications for apparatus licences	110
100	Issuing apparatus licences	110
100AA	NBS transmitter licences—authorised channels	115
100A	NBS transmitter licences—authorisation of datacasting services	115
100C	NBS transmitter licences—authorisation of radio broadcasting services	116

100D	NBS transmitter licences—authorisation of SDTV multi-channelled national television broadcasting services	117
100E	NBS transmitter licences—authorisation of HDTV multi-channelled national television broadcasting services	118
101	Testing of radiocommunications devices.....	119
101A	Transmitter licences for temporary community broadcasting.....	119
102	Transmitter licences for certain broadcasting services	119
102AD	Transmitter licences—authorised channels	121
102C	Category 1 digital radio multiplex transmitter licences	122
102D	Category 2 digital radio multiplex transmitter licences	127
102E	Category 3 digital radio multiplex transmitter licences	131
102F	Limit on issue of non-foundation digital radio multiplex transmitter licences	133
102G	Limits on use of the spectrum.....	133
103	Duration of apparatus licences.....	135
103A	Renewal statements etc.....	136
103B	Variation of renewal statements etc. with agreement	138
103C	Variation of renewal statements etc. without agreement	139
104	Compliance with plans	140
105	Restrictions on issuing apparatus licences	140
105A	Notice of apparatus licences that are about to expire.....	141
106	Price-based allocation system for certain transmitter licences.....	141
106A	Issue of apparatus licence taken to be an acquisition of an asset and conduct.....	145
Division 3—Conditions of apparatus licences		146
107	General conditions.....	146
108	Additional conditions for transmitter licences	147
108A	Conditions of transmitter licences for temporary community broadcasters	149
109	Conditions of transmitter licences for certain broadcasting services	150
109B	Conditions of digital radio multiplex transmitter licences—general	151
109C	Conditions of category 1 and category 2 digital radio multiplex transmitter licences—access etc.	155
109D	Conditions of foundation digital radio multiplex transmitter licences	157
110	Conditions relating to interference	158
110A	Conditions determined by the ACMA	159
111	Changes to licence conditions	160

111A	Licence conditions may confer powers on the ACMA or a person who holds an accreditation.....	161
112	Guidelines relating to conditions etc.	161
113	Contravention of conditions	161
113A	Constitutional safety net—issue of shares to digital community radio broadcasting representative company	162
Division 4—Third party users		163
114	Licensees may authorise third party users	163
114A	Authorisation under apparatus licence taken to be an acquisition of an asset and conduct.....	163
115	Determinations limiting authorisation of third party users	164
116	Revocation of authorisations	164
117	Licensees must keep records of authorisations	165
118	Licensees must notify authorised persons of certain matters	165
Division 4B—Access to digital radio multiplex transmitter licences		167
Subdivision A—Introduction		167
118N	Simplified outline	167
118NA	Scope.....	167
118NB	Definitions.....	167
118NC	National broadcasters	169
Subdivision B—Access undertakings		169
118ND	Digital radio multiplex transmitter licensees must give the ACCC access undertakings	169
118NE	Further information about access undertakings	170
118NF	ACCC to accept or reject access undertakings	171
118NG	Duration of access undertakings etc.	172
118NH	Variation of access undertakings	174
118NI	Further information about variation of access undertakings	176
118NJ	Decision-making criteria	177
118NK	Register of access undertakings	177
Subdivision C—Standard access obligations, excess-capacity access obligations and distributed-capacity access obligations		178
118NL	Standard access obligations.....	178
118NM	Excess-capacity access obligations.....	178
118NN	Distributed-capacity access obligations.....	179
118NO	Compliance with access obligations.....	180

118NP	Other obligations	180
118NQ	Standard access entitlements of commercial broadcasters	180
118NR	Standard access entitlements of community broadcasters	182
118NS	Standard access entitlements of national broadcasters	189
118NT	Excess-capacity access entitlements etc.	190
118NU	Distributed-capacity access entitlements etc	194
118NV	Capacity cap—digital commercial radio broadcasting licensees	197
118NW	Suspension of access entitlements	198
118NX	Transfer of digital radio multiplex transmitter licence	198
118NY	Renewal of digital radio multiplex transmitter licence	200
Subdivision D—Enforcement		201
118NZ	Judicial enforcement of access obligations etc.	201
118P	Enforcement of access undertakings	202
Subdivision E—External audits		202
118PA	External audits	202
118PB	Eligibility for appointment	205
118PC	External auditor may have regard to the results of previous audit	206
118PD	External auditors	206
Subdivision F—Review of decisions		207
118PE	Review by Australian Competition Tribunal	207
118PF	Functions and powers of Australian Competition Tribunal	207
118PG	Provisions that do not apply in relation to a Australian Competition Tribunal review	211
118PH	Statement of reasons for reviewable decision—specification of documents	211
Subdivision G—Injunctions		211
118PI	Injunctions	211
118PJ	Interim injunctions	212
118PK	Discharge or variation of injunctions	213
118PL	Certain limits on granting injunctions not to apply	213
118PM	Other powers of the Federal Court unaffected	214
Subdivision H—Miscellaneous		214
118PN	Annual reports	214
118PO	Procedural Rules	215
118PP	Constitutional safety net	216

Division 4C—Access to broadcasting transmission towers etc. by digital radio multiplex transmitter licensees and authorised persons	217
Subdivision A—Introduction	217
118Q Simplified outline	217
118QA Definitions	218
118QB Designated associated facilities	218
118QC Extended meaning of <i>access</i>	219
Subdivision B—Access to broadcasting transmission towers etc. by digital radio multiplex transmitter licensees	219
118QD Access to broadcasting transmission towers	219
118QE Access to designated associated facilities	221
118QF Access to sites of broadcasting transmission towers	222
118QG Terms and conditions of access	224
118QH Code relating to access	226
Subdivision C—Miscellaneous	226
118QI Arbitration—acquisition of property	226
118QJ Relationship between this Division and the <i>National Transmission Network Sale Act 1998</i>	227
Division 5—Qualified operators	228
119 ACMA to determine the need for qualified operators	228
120 Applications for certificates of proficiency	228
121 Issuing certificates of proficiency	228
122 Restrictions on issuing certificates of proficiency	229
122A Delegating the power to issue certificates of proficiency	229
123 Re-examination of qualified operators	230
124 Cancelling certificates of proficiency	231
Division 6—Suspending and cancelling apparatus licences	233
Subdivision A—General provisions	233
125 Application of this Subdivision	233
126 Suspending apparatus licences	233
127 Period of suspension	234
128 Cancelling apparatus licences	234
Subdivision B—International broadcasting services	235
128A Application of this Subdivision	235
128B Cancelling transmitter licences	235

Division 7—Renewing apparatus licences	236
129 Applications for renewal of apparatus licences	236
129A Further information	237
130 Renewing apparatus licences	238
131 Application of other provisions	240
Division 8—Transfer of apparatus licences	241
131AA Applications for transfer of apparatus licences	241
131AB Transfer of apparatus licences	242
131AC Apparatus licences not transferable in certain circumstances	242
Division 10—Provisional international broadcasting certificates	243
131AE Applications for certificates	243
131AF Issuing certificates	243
131AG Duration of certificates	244
Part 3.4—Class licences	245
Division 1—General	245
132 ACMA may issue class licences	245
133 Conditions of class licences	245
134 Varying class licences	246
136 Consultation on variations and revocations	246
137 Compliance with plans	248
138 Parts of the spectrum allocated for spectrum licences	248
Division 2—Requests for advice	250
140 Requests for advice on operation of radiocommunications devices	250
141 ACMA to advise on the operation of radiocommunications devices	250
142 The effect of the ACMA's advice	250
Part 3.5—Registration of licences	252
143 The Register of Radiocommunications Licences	252
144 Contents of the Register—spectrum licences	252
145 Refusal to register radiocommunications transmitters for operation under spectrum licences	253
146 Updating the Register to take variations etc. of spectrum licences into account	254
147 Contents of the Register—apparatus licences	254
148 Updating the Register to take variations etc. of apparatus licences into account	255

149	Contents of the Register—class licences	255
150	Updating the Register to take variations etc. of class licences into account	256
151	Inspection of the Register.....	256
152	Parts of the Register may be kept confidential	256
153	Correction of the Register.....	256
Part 3.6—Re-allocation of encumbered spectrum		258
153A	Outline of this Part.....	258
153B	Spectrum re-allocation declaration	258
153D	Affected apparatus licences and licensees	260
153H	Effect of spectrum re-allocation declaration	260
153J	Revocation and variation of spectrum re-allocation declaration	261
153K	Automatic revocation of spectrum re-allocation declaration if no licences allocated by re-allocation deadline.....	262
153L	Re-allocation by means of issuing spectrum licences.....	262
153M	Re-allocation by means of issuing apparatus licences	263
153N	Restriction on issuing spectrum licences for parts of the spectrum subject to re-allocation	263
153P	Restriction on issuing apparatus licences for parts of the spectrum subject to re-allocation	264
Chapter 4—General regulatory provisions		265
154	Outline of this Chapter	265
Part 4.1—Equipment		266
Division 1—Introduction		266
155	Simplified outline of this Part.....	266
Division 2—Equipment rules		268
156	Equipment rules.....	268
157	Constitutional limits	269
158	Standards	269
159	Obligations, prohibitions and permits.....	270
160	Breach of equipment rules and permit conditions.....	273
161	Equipment rules may confer powers on the ACMA	276
162	Equipment rules may confer powers on accredited persons	276
163	Equipment rules may authorise the charging of fees by certain persons	276
164	Divisions 4 and 5 do not limit the ACMA’s power to make equipment rules	276

Division 3—Protected symbols	277
165 Use or application of protected symbols.....	277
166 Protected symbol	279
Division 4—Bans on equipment	281
Subdivision A—Interim bans	281
167 Interim bans on equipment	281
168 Duration of interim bans.....	282
169 Revocation of interim bans.....	282
170 Compliance with interim bans	282
171 Actions for damages	283
Subdivision B—Permanent bans	284
172 Permanent bans on equipment	284
173 When permanent bans come into force.....	285
174 Revocation of permanent bans.....	285
175 Compliance with permanent bans—offences	286
176 Compliance with permanent bans—civil penalties.....	287
177 Actions for damages	288
Subdivision C—Presumptions	289
178 Presumptions	289
Subdivision D—Amnesty for banned equipment	290
179 Amnesty for banned equipment.....	290
180 The ACMA may take possession of equipment.....	291
181 Forfeiture of equipment to the Commonwealth.....	291
182 Forfeited equipment may be sold, destroyed or otherwise disposed of.....	292
Division 5—Recall of equipment	293
Subdivision A—Compulsory recall of equipment	293
183 Compulsory recall of equipment	293
184 Contents of a recall notice	295
185 Obligations of a supplier in relation to a recall notice	296
186 Compliance with recall notices.....	298
187 Actions for damages	299
Subdivision B—Voluntary recall of equipment	300
188 Notification requirements for a voluntary recall of equipment	300

Part 4.2—Offences relating to radio emission	303
192 Interference likely to prejudice safe operation of vessels, aircraft or space objects	303
193 Interference in relation to certain radiocommunications.....	303
194 Interference likely to endanger safety or cause loss or damage	304
195 Transmission from foreign vessel, aircraft or space object.....	304
196 Emergency transmissions etc.....	305
197 Causing interference etc.	306
198 Transmission of false information	306
199 Transmission likely to cause explosion	306
200 Imputed knowledge	307
201 Operation of laws of States or Territories.....	307
Part 4.3—Settlement of interference disputes	308
Division 1—Conciliators	308
202 Conciliator.....	308
Division 2—Referral of matters to conciliators	309
205 Referral of complaints to conciliators.....	309
206 Referral of other matters to conciliators	309
207 Consideration of whether to refer a matter	310
Division 3—The conciliation process	311
208 Conciliator may effect settlement in relation to disputed conduct	311
209 Conciliator may decide not to make inquiry	311
210 Compulsory conference	312
211 Protection from civil actions.....	313
Division 4—Directions	314
212 ACMA may issue directions.....	314
213 Complainants to be kept informed.....	315
214 Contravention of a direction	315
215 Commonwealth not liable for costs	315
Division 5—Miscellaneous	316
216 Offences relating to settlement of interference disputes	316
217 Operation of State and Territory laws.....	316

Part 4.4—Restricted use zones	317
Division 1—Declarations of emergency	317
219 Declaration of period of emergency	317
220 Circumstances in which Proclamation may be made.....	317
221 Termination of period of emergency	317
221A Effect of a national emergency declaration.....	318
Division 2—Restrictive orders	319
222 Restrictive orders.....	319
223 Publication of restrictive orders.....	319
224 Application of orders to broadcasting.....	320
225 Revocation of orders.....	320
226 Orders may have extended operation.....	320
227 Contravention of orders	320
228 Orders to prevail over inconsistent laws	321
229 Restrictive orders are legislative instruments	321
Division 3—Guidelines for making restrictive orders	322
230 Minister may make guidelines.....	322
Chapter 5—Administration and enforcement	323
231 Outline of this Chapter	323
Part 5.1—Delegation	324
238 Delegation	324
Part 5.3—Advisory guidelines	325
262 ACMA may make advisory guidelines.....	325
Part 5.4—Accreditation	326
263 ACMA may accredit persons.....	326
264 Conditions of accreditation.....	326
264A Withdrawal of accreditation	326
265 Procedure for withdrawing accreditation.....	327
266 Accreditation rules.....	327
266A ACMA determination in relation to certificates	328
Part 5.5—Enforcement	329
Division 1—Introduction	329
267 Simplified outline of this Part.....	329

Division 2—Enforcement	331
268 Remedial directions—breach of civil penalty provision.....	331
269 Civil penalty provisions—enforcement.....	332
270 Infringement notices.....	333
271 Enforceable undertakings	336
272 Injunctions.....	337
Division 3—Forfeiture notices	340
273 Provisions subject to a forfeiture notice.....	340
274 When a forfeiture notice may be given.....	340
275 Matters to be included in a forfeiture notice	341
276 Extension of time to agree to forfeit a thing to the Commonwealth	342
277 Withdrawal of a forfeiture notice.....	343
278 Effect of agreeing to forfeit a thing to the Commonwealth	345
279 The ACMA may take possession of a thing	345
280 Forfeiture of a thing to the Commonwealth.....	347
281 Forfeited things may be sold, destroyed or otherwise disposed of.....	348
282 Effect of this Division	348
283 Designated forfeiture officer.....	349
Division 4—Inspectors	350
284 Inspectors	350
Division 5—Monitoring and investigation powers	352
284A Monitoring powers	352
284B Investigation powers—general	355
284C Identity card.....	358
284D Retention of thing seized etc.....	359
284E Securing evidential material	360
284F Directions to licensees—managing interference with radiocommunications	361
284H Powers of inspectors to require operation of transmitters.....	363
284J General powers of inspectors.....	363
284K Self-incrimination etc.	365
Division 6—Power of inspectors to enter premises and adjust transmitters in emergencies	367
Subdivision A—Powers of inspectors	367
284KA Power of inspectors to enter premises and adjust transmitters in emergencies	367

Subdivision B—Investigation warrants	369
284KB Transmitter access warrants.....	369
284KC Offence relating to warrants	371
Subdivision C—Issuing officers	372
284KD Issuing officer.....	372
284KE Powers of issuing officers.....	372
Division 7—Court-ordered forfeiture	374
284L Court may order forfeiture.....	374
284M Forfeited goods may be sold, destroyed or otherwise disposed of.....	374
Division 8—Public warning notices	375
284N Public warning notices.....	375
Division 9—Miscellaneous	376
284P Act not to affect performance of duties by inspectors	376
284Q Inspectors not authorised to enter or search certain land or premises etc. used for defence purposes	376
Part 5.5A—Information-gathering powers	377
284R Simplified outline of this Part.....	377
284S The ACMA may obtain information or documents	377
284T Copying documents—compensation	380
284U Copies of documents	380
284V ACMA may retain documents	381
284W Self-incrimination.....	381
Part 5.6—Review of decisions	383
285 Decisions that may be subject to reconsideration by the ACMA	383
286 Deadlines for reaching certain decisions	384
287 Statements to accompany notification of decisions	386
288 Applications for reconsideration of decisions.....	387
289 Reconsideration by the ACMA	387
290 Deadlines for reconsiderations	388
291 Statements to accompany notification of decisions on reconsideration	388
292 Review by the AAT.....	389
Part 5.7—Charges	390
294 Spectrum access charges	390
295 Publication of determinations	391

296	Collection of charges on behalf of the ACMA	391
297	Limits on charges	391
298	Recovery of charges	391
298A	Fees imposed by bodies or organisations.....	391
Chapter 6—Miscellaneous		392
299	International agreements etc.	392
300	Labelling of radiocommunications transmitters for purposes of identification	392
300A	Transitional—failure to comply with requirements to be met after a label has been applied to a device.....	393
300B	Transitional—general powers of inspectors	395
300C	Transitional—retention of records of the supply of radiocommunications devices.....	395
302	Exemptions from certain compliance provisions	396
303	Compilation etc. of information	397
304	Applications in electronic form	398
304A	Service of notices and instruments by electronic means.....	398
305	Evidentiary certificates	398
305A	Computerised decision-making	399
306	Conduct by directors, employees and agents	400
307	Surrender of licences, certificates and permits	401
308	No compensation for suspensions and cancellations	402
308A	Compensation for acquisition of property	402
309	Officers and employees of governments and authorities	402
310	Operation of this Act in relation to the Broadcasting Services Act	402
311	Act not to affect performance of functions by States or certain Territories	403
312	Application of the Competition and Consumer Act.....	403
313	Legislation of the Australian Antarctic Territory	403
313A	Application of the <i>Criminal Code</i>	403
313B	Legislative rules	404
314	Regulations.....	405
314A	Instruments under this Act may provide for matters by reference to other instruments	406

Schedule—Resuming spectrum licences by compulsory process	408
Part 1—Resumption Procedures	408
1 Pre-acquisition declarations.....	408
2 Service on licensees and third party users	408
3 Resumption notices	409
4 Date of effect of resumptions	409
5 Notification of licensees	409
Part 2—Compensation	411
1 The basis on which compensation is payable	411
2 Amounts of compensation payable	412
3 Claims for compensation	412
4 Consideration of claims by the ACMA	412
5 Deadline for consideration of claims	413
6 Consideration of offers by licensees.....	413
7 Determination of compensation by the AAT	413
8 Determination of compensation by the Federal Court	414
9 Determination of compensation by independent valuers	414
Endnotes	416
Endnote 1—About the endnotes	416
Endnote 2—Abbreviation key	418
Endnote 3—Legislation history	419
Endnote 4—Amendment history	430

An Act about management of the radiofrequency spectrum, and other matters

Chapter 1—Preliminary

Part 1.1—Formal matters

1 Short title

This Act may be cited as the *Radiocommunications Act 1992*.

2 Commencement

This Act commences on 1 July 1993.

Section 3

Part 1.2—Object of this Act

3 Object

The object of this Act is to promote the long-term public interest derived from the use of the spectrum by providing for the management of the spectrum in a manner that:

- (a) facilitates the efficient planning, allocation and use of the spectrum; and
- (b) facilitates the use of the spectrum for:
 - (i) commercial purposes; and
 - (ii) defence purposes, national security purposes and other non-commercial purposes (including public safety and community purposes); and
- (c) supports the communications policy objectives of the Commonwealth Government.

4 Outline of this Act

In order to achieve this object:

- (a) Chapter 2 provides for radio frequency planning that involves preparation of:
 - (i) a spectrum plan and frequency band plans (see Part 2.1); and
 - (ii) marketing plans (see Part 2.2); and
- (b) Chapter 3 provides for licensing radiocommunications under:
 - (i) spectrum licences (see Part 3.2); and
 - (ii) apparatus licences (see Part 3.3); and
 - (iii) class licences (see Part 3.4);
- (c) Chapter 3 also provides for registration of licences (see Part 3.5); and
- (ca) Chapter 3 also provides for the re-allocation of parts of the spectrum (see Part 3.6); and

Section 4

- (d) Chapter 4 provides for general regulatory requirements aimed at:
 - (i) providing for equipment rules and other technical regulation (see Part 4.1); and
 - (ii) regulating various acts relating to radio emissions, particularly those involving interference with radiocommunications (see Part 4.2); and
 - (iii) settling interference disputes (see Part 4.3); and
 - (iv) providing for restricted use zones (see Part 4.4); and
- (e) Chapter 5 provides for various other matters dealing with the administration and enforcement of this Act.

Section 5

Part 1.3—Interpretative provisions

5 Definitions

In this Act, unless the contrary intention appears:

AAT means the Administrative Appeals Tribunal.

ACCC means the Australian Competition and Consumer Commission.

accreditation means an accreditation given under section 263.

accreditation rules means rules made under section 266.

ACMA means the Australian Communications and Media Authority.

advisory guideline means an advisory guideline made under section 262.

aircraft includes a balloon.

apparatus licence means an apparatus licence issued under Part 3.3.

apparatus licence tax means a tax imposed under the *Radiocommunications (Receiver Licence Tax) Act 1983* or the *Radiocommunications (Transmitter Licence Tax) Act 1983*.

Australia, when used in a geographical sense, includes the external Territories.

Australian aircraft means an aircraft that is in Australian control or is registered, or required to be registered, under regulations made under the *Civil Aviation Act 1988*.

Section 5

Australian space object means a space object that the ACMA, by legislative instrument, determines to be an Australian space object for the purposes of this Act.

Australian vessel means a vessel that is in Australian control or:

- (a) not being an air-cushion vehicle—is an Australian boat within the meaning of the *Fisheries Management Act 1991*; or
- (b) being an air-cushion vehicle—would be an Australian boat within the meaning of that Act if it were a boat within the meaning of that Act.

authorised defence supplier has the meaning given by section 10B.

authority, in relation to the Commonwealth, a State or a Territory, means:

- (a) a Department; or
- (b) a body (whether incorporated or unincorporated) established for a public purpose by or under the law of the Commonwealth, the State or the Territory, as the case may be; or
- (c) any other body corporate in which:
 - (i) the Commonwealth, the State or the Territory, as the case may be; or
 - (ii) a body corporate referred to in paragraph (b);has a controlling interest.

broadcasting services bands licence has the same meaning as in the *Broadcasting Services Act 1992*.

broadcasting station means a transmitter that is operating for the purposes of:

- (a) a broadcasting services bands licence; or
- (b) the provision of a national broadcasting service within the meaning of the *Broadcasting Services Act 1992*.

BSA control rules means:

Section 5

- (a) sections 54A and 56A of the *Broadcasting Services Act 1992*; and
- (b) clause 41 of Schedule 6 to the *Broadcasting Services Act 1992*.

BSA coverage area means coverage area within the meaning of Schedule 4 to the *Broadcasting Services Act 1992*.

BSA datacasting licence means a datacasting licence under Schedule 6 to the *Broadcasting Services Act 1992*.

BSA exempt re-transmission service means a service that, under subsection 212(1) of the *Broadcasting Services Act 1992*, is exempt from the regulatory regime established by that Act.

BSA licence area means licence area within the meaning of the *Broadcasting Services Act 1992*.

BSA television licence area plan means a television licence area plan within the meaning of the *Broadcasting Services Act 1992*.

category 1 digital radio multiplex transmitter licence means a transmitter licence for one or more multiplex transmitters that are for use for transmitting either or both of the following services in a designated BSA radio area:

- (a) one or more digital commercial radio broadcasting services;
- (b) one or more digital community radio broadcasting services.

category 2 digital radio multiplex transmitter licence means a transmitter licence for one or more multiplex transmitters that are for use for transmitting any or all of the following services in a designated BSA radio area:

- (a) one or more digital commercial radio broadcasting services;
- (b) one or more digital community radio broadcasting services;
- (c) one or more digital national radio broadcasting services.

category 3 digital radio multiplex transmitter licence means a transmitter licence for one or more multiplex transmitters that are

Section 5

for use for transmitting one or more digital national radio broadcasting services in a designated BSA radio area.

certificate means:

- (i) a certificate of proficiency; or
- (ii) a compliance certificate; or
- (iii) a frequency assignment certificate referred to in subsection 100(4A); or
- (iv) any other kind of certificate that may be issued under this Act.

certificate of proficiency means a certificate of proficiency issued under section 121.

change, in relation to information in the Register, means any one or more of the following:

- (a) the addition of matter to the information;
- (b) the alteration of matter included in the information;
- (c) the deletion of matter from the information.

class licence means a class licence issued under Part 3.4.

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

commercial radio broadcasting licence has the same meaning as in the *Broadcasting Services Act 1992*.

commercial television broadcasting licence has the same meaning as in the *Broadcasting Services Act 1992*.

Commonwealth officer means:

- (a) a Minister; or
- (b) a person who, whether on a full-time or a part-time basis, and whether in a permanent capacity or otherwise:
 - (i) is in the service or employment of the Commonwealth, the Administration of a Territory or an authority of the Commonwealth; or

Section 5

- (ii) holds or performs the duties of any office or position established by or under a law of the Commonwealth or a Territory; or
- (c) a member of the Defence Force; or
- (d) the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police, an AFP employee or a special member of the Australian Federal Police (all within the meaning of the *Australian Federal Police Act 1979*); or
- (e) a member of the police force of a Territory.

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

conciliator has the meaning given by section 202.

conciliator's report means a report by a conciliator under section 208.

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

core condition means a condition included in a spectrum licence under section 66.

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

Defence Department means the Department of State that deals with defence and that is administered by the Minister administering section 1 of the *Defence Act 1903*.

Department means:

- (a) in relation to the Commonwealth—an Agency within the meaning of the *Public Service Act 1999*; or
- (b) in relation to a State or Territory—a body that, in relation to that State or Territory, is a body of such a kind.

designated BSA radio area means:

Section 5

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

Note: See also section 8AD of the *Broadcasting Services Act 1992*, which deals with deemed radio broadcasting licence areas.

designated community radio broadcasting licence has the same meaning as in the *Broadcasting Services Act 1992*.

designated datacasting service has the same meaning as in Schedule 6 to the *Broadcasting Services Act 1992*.

designated forfeiture officer has the meaning given by section 283.

designated radiocommunications receiver has the meaning given by section 7A.

designated teletext service has the same meaning as in Schedule 6 to the *Broadcasting Services Act 1992*.

device means an item of equipment.

digital commercial radio broadcasting licence means a commercial radio broadcasting licence that authorises the provision of one or more digital commercial radio broadcasting services.

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

digital community radio broadcasting licence means a designated community radio broadcasting licence that authorises the provision of one or more digital community radio broadcasting services.

digital community radio broadcasting representative company, in relation to a designated BSA radio area, has the meaning given by section 9C.

Section 5

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

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

digital radio channel plan means a plan under section 44A.

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; or
- (c) a category 3 digital radio multiplex transmitter licence.

digital radio start-up day has the same meaning as in the *Broadcasting Services Act 1992*.

direct allocation has the meaning given by section 60A.

disputed conduct means conduct (including any act and any refusal or omission to act) of a kind referred to in paragraph 205(1)(a).

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

environment means the physical environment.

equipment means:

- (a) a radiocommunications transmitter; or
- (b) a radiocommunications receiver; or
- (c) anything designed or intended for radio emission; or
- (d) anything, irrespective of its use or function or the purpose of its design, that is capable of radio emission; or
- (e) anything that has a use or function that is capable of being interfered with by radio emission.

equipment rules means rules made under section 156.

Federal Court means the Federal Court of Australia.

Section 5

foreign aircraft means an aircraft that is not an Australian aircraft.

foreign space object means a space object that is not an Australian space object.

foreign vessel means a vessel that is not an Australian vessel.

forfeiture notice means a notice under section 274.

foundation category 1 digital radio multiplex transmitter licence has the meaning given by section 98C.

foundation category 2 digital radio multiplex transmitter licence has the meaning given by section 98D.

foundation digital radio multiplex transmitter licence means:

- (a) a foundation category 1 digital radio multiplex transmitter licence; or
- (b) a foundation category 2 digital radio multiplex transmitter licence.

frequency band means any contiguous range of radio frequencies.

frequency band plan means a plan prepared under section 32.

HDTV digital mode has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

import means import into Australia.

in Australian control means in the control or possession of one or more of any of the following:

- (a) the Commonwealth (including an arm of the Defence Force) or a State or Territory;
- (b) an authority of the Commonwealth;
- (c) an authority of a State;
- (d) an authority of a Territory.

incumbent digital commercial radio broadcasting licensee has the meaning given by subsection 9D(1).

Section 5

incumbent digital community radio broadcasting licensee has the meaning given by subsection 9D(2).

inspector has the meaning given in section 284.

interference means:

- (a) in relation to radiocommunications—interference to, or with, radiocommunications that is attributable, whether wholly or partly and whether directly or indirectly, to an emission of electromagnetic energy by equipment; or
- (b) in relation to the uses or functions of equipment—interference to, or with, those uses or functions that is attributable, whether wholly or partly and whether directly or indirectly, to an emission of electromagnetic energy by equipment.

interim ban has the meaning given by section 167.

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

international broadcasting licence means an international broadcasting licence under the *Broadcasting Services Act 1992*.

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

label includes:

- (a) a statement; and
- (b) a QR code, or a similar thing, if the relevant link is to information on a website.

legislative rules means rules made under section 313B.

licence means a spectrum licence, an apparatus licence or a class licence.

licensee means:

- (a) in relation to a spectrum licence—the person specified in the licence as the licensee, whether the licence was originally

Section 5

issued to that person or subsequently assigned to him or her;
or

(b) in relation to an apparatus licence—the person who holds the licence;

and, in Part 2 of the Schedule, includes the person from whom the spectrum licence in question, or the part of the spectrum licence in question, was resumed.

marketing plan means a plan prepared under section 39 or 39A.

member, in relation to the Australian Federal Police, includes a special member of the Australian Federal Police.

member of a civilian component of a visiting force has the meaning given by subsection 5(3) of the *Defence (Visiting Forces) Act 1963*.

member of a visiting force has the meaning given by subsection 5(2) of the *Defence (Visiting Forces) Act 1963*.

member of the crew, in relation to an vessel, aircraft or space object, includes the person in charge of the vessel, aircraft or space object.

Ministerial policy statement has the meaning given by section 28B.

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

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

national emergency declaration has the same meaning as in the *National Emergency Declaration Act 2020*.

NBS transmitter licence means a transmitter licence for a transmitter that is for use for transmitting, to the public, a national broadcasting service, but does not include a digital radio multiplex transmitter licence.

Section 5

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.

non-foundation 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;
- that is not a foundation digital radio multiplex transmitter licence.

offer to supply includes:

- (a) make available for supply; and
- (b) expose for supply; and
- (c) display for supply; and
- (d) advertise for supply.

open narrowcasting television service has the same meaning as in the *Broadcasting Services Act 1992*.

operate:

- (a) when used in relation to:
 - (i) a radiocommunications transmitter; or
 - (ii) a radiocommunications receiver; or
 - (iii) a radiocommunications device; or
 - (iv) a transmitter that is a radiocommunications transmitter;
or
 - (v) equipment that is a radiocommunications transmitter; or
 - (vi) equipment that is a radiocommunications receiver;means operate for the purposes of, or in connection with, radiocommunications; or
- (b) when used in relation to a transmitter that is not a radiocommunications transmitter—means operate (within the ordinary meaning of that expression); or
- (c) when used in relation to equipment that is neither a radiocommunications transmitter nor a radiocommunications receiver—means operate (within the ordinary meaning of that expression).

Section 5

part, in relation to a spectrum licence, means:

- (a) a specified portion of the frequencies at which operation of radiocommunications devices is authorised under the licence; or
- (b) a specified portion of the area within which operation of radiocommunications devices is so authorised; or
- (c) a specified portion of the frequencies at which operation of radiocommunications devices is so authorised in a specified portion of the area within which operation of radiocommunications devices is so authorised.

period of emergency means a period declared to be a period of emergency under subsection 219(1).

Note: If a national emergency declaration is in force, the period for which the declaration is in force is taken to be a period of emergency for the purposes of this Act (see section 221A).

permanent ban has the meaning given by section 172.

permit means a permit issued by the ACMA under the equipment rules.

pre-acquisition declaration means a declaration published in the *Gazette* under clause 1 of Part 1 of the Schedule.

protected symbol has the meaning given by section 166.

provisional international broadcasting certificate means a provisional international broadcasting certificate issued under section 131AF.

public interest statement:

- (a) for a spectrum licence—has the meaning given by section 65A; or
- (b) for an apparatus licence—has the meaning given by section 103A.

public or community service has the meaning given in section 10.

qualified company means a company that:

Section 5

- (a) is formed in Australia; and
- (b) has a share capital.

qualified operator means a person who holds a certificate of proficiency.

radiocommunication has the meaning given in section 6.

radiocommunications device has the meaning given in subsection 7(1).

radiocommunications receiver has the meaning given in subsection 7(3).

radiocommunications transmitter has the meaning given in subsection 7(2).

radio emission has the meaning given in subsection 8(1).

re-allocation deadline, in relation to a spectrum re-allocation declaration, has the meaning given by section 153B.

re-allocation period, in relation to a spectrum re-allocation declaration, has the meaning given by section 153B.

recall notice means a notice issued under subsection 183(1), (2), (3) or (4).

receiver licence means an apparatus licence of the kind referred to in subsection 97(3).

reception, in relation to radio emission, includes interception.

Register means the Register of Radiocommunications Licences established under section 143.

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

renewal application period:

- (a) for a spectrum licence—has the meaning given by section 65A; or

Section 5

- (b) for an apparatus licence—has the meaning given by section 103A.

renewal application period statement:

- (a) for a spectrum licence—has the meaning given by section 65A; or
- (b) for an apparatus licence—has the meaning given by section 103A.

renewal decision-making period, for a spectrum licence, has the meaning given by section 65A.

renewal decision-making period statement, for a spectrum licence, has the meaning given by section 65A.

renewal statement:

- (a) for a spectrum licence—has the meaning given by section 65A; or
- (b) for an apparatus licence—has the meaning given by section 103A.

restrictive order means an order made under subsection 222(1).

resumption notice means a notice published in the *Gazette* under clause 3 of Part 1 of the Schedule.

SDTV digital mode has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

space object means an object (whether artificial or natural) that is beyond, has been beyond or is intended to go beyond the major portion of the Earth's atmosphere, or any part of such an object, even if the part is intended to go only some of the way towards leaving the major portion of the Earth's atmosphere.

Note: Under section 10A, the ACMA may determine that a particular object is not a ***space object*** for the purposes of this Act.

spectrum means the range of frequencies within which radiocommunications are capable of being made.

Section 5

spectrum access charge means a spectrum access charge fixed under section 294.

spectrum licence means a spectrum licence issued under Part 3.2.

spectrum licence tax means a tax imposed under the *Radiocommunications (Spectrum Licence Tax) Act 1997*.

spectrum management functions, in relation to the ACMA, has the same meaning as in the *Australian Communications and Media Authority Act 2005*.

spectrum management powers, in relation to the ACMA, means the powers conferred on the ACMA by or under:

- (a) this Act; or
- (b) the *Radiocommunications (Receiver Licence Tax) Act 1983*; or
- (c) the *Radiocommunications (Spectrum Licence Tax) Act 1997*; or
- (d) the *Radiocommunications Taxes Collection Act 1983*; or
- (e) the *Radiocommunications (Transmitter Licence Tax) Act 1983*; or
- (f) Part 14AA of the *Broadcasting Services Act 1992*; or
- (g) section 12 of the *Australian Communications and Media Authority Act 2005*, to the extent that the powers relate to the performance of the ACMA's spectrum management functions.

spectrum plan means:

- (a) in relation to a time before the first plan prepared under section 30 comes into effect—the last plan prepared under section 18 of the *Radiocommunications Act 1983*; and
- (b) in relation to a time after the first plan prepared under section 30 comes into effect—a plan prepared under section 30.

spectrum re-allocation declaration means a declaration under section 153B.

Section 6

State officer means a person who, whether on a full-time basis or a part-time basis, and whether in a permanent capacity or otherwise:

- (a) is in the service or employment of a State or an authority of a State; or
 - (b) holds or performs the duties of any office or position established by or under a law of a State;
- and includes a member of the police force of a State.

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

supply includes supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase.

television program includes so much of a television program as consists only of sounds or images.

temporary community broadcasting licence has the same meaning as in the *Broadcasting Services Act 1992*.

this Act includes the regulations.

transmitter has the meaning given in subsection 8(2).

transmitter access warrant means a warrant issued under section 284KB.

transmitter licence means an apparatus licence of the kind referred to in subsection 97(2).

vessel means a vessel or boat of any description, and includes:

- (a) an air-cushion vehicle; and
- (b) any floating structure.

6 Definition of *radiocommunication*

(1) For the purposes of this Act, **radiocommunication** is:

- (a) radio emission; or
- (b) reception of radio emission;

Section 7

for the purpose of communicating information between persons and persons, persons and things or things and things.

- (2) The reference in subsection (1) to communicating information includes communicating information between a part of a thing and:
- (a) another part of the same thing; or
 - (b) the same part of that thing;
- (as, for example, in the operation of radar equipment).

Note: Division 3 of Part 1.4 has the effect of extending the concept of radiocommunication in certain circumstances.

7 Definitions of *radiocommunications device*, *radiocommunications transmitter* and *radiocommunications receiver*

- (1) For the purposes of this Act, a ***radiocommunications device*** is:
- (a) a radiocommunications transmitter other than a radiocommunications transmitter of a kind specified in a written determination made by the ACMA for the purposes of this paragraph; or
 - (b) a radiocommunications receiver of a kind specified in a written determination made by the ACMA for the purposes of this paragraph.
- (2) For the purposes of this Act, a ***radiocommunications transmitter*** is:
- (a) a transmitter designed or intended for use for the purpose of radiocommunication; or
 - (b) anything (other than a line within the meaning of the *Telecommunications Act 1997*) designed or intended to be ancillary to, or associated with, such a transmitter for the purposes of that use; or
 - (c) anything (whether artificial or natural) that is designed or intended for use for the purpose of radiocommunication by means of the reflection of radio emissions and that the ACMA determines in writing to be a ***radiocommunications transmitter*** for the purposes of this Act.

Section 7A

- (3) For the purposes of this Act, a ***radiocommunications receiver*** is:
- (a) anything designed or intended for use for the purposes of radiocommunication by means of the reception of radio emission; or
 - (b) anything (other than a line within the meaning of the *Telecommunications Act 1997*) designed or intended to be ancillary to, or associated with, such a thing for the purposes of that use; or
 - (c) anything (whether artificial or natural) that is designed or intended for use for the purpose of radiocommunication by means of the reflection of radio emissions and that the ACMA determines in writing to be a ***radiocommunications receiver*** for the purposes of this Act.
- (4) This Act does not preclude the same thing from being both a radiocommunications receiver and a radiocommunications transmitter, or any other kind of transmitter, for the purposes of this Act.
- (5) A determination by the ACMA under this section is a legislative instrument.

7A Designated radiocommunications receiver

For the purposes of this Act, if the operation of a radiocommunications receiver is not authorised by a class licence, the radiocommunications receiver is a ***designated radiocommunications receiver***.

8 Definitions of *radio emission* and *transmitter*

- (1) For the purposes of this Act, a ***radio emission*** is any emission of electromagnetic energy of frequencies less than 420 terahertz without continuous artificial guide, whether or not any person intended the emission to occur.
- (2) For the purposes of this Act, a ***transmitter*** is:
- (a) anything designed or intended for radio emission; or

Section 9

- (b) any other thing, irrespective of its use or function or the purpose of its design, that is capable of radio emission.

9 Application of labels

For the purposes of this Act, a label is taken to be *applied* to a thing if:

- (a) the label is affixed to the thing; or
- (b) the label is woven in, impressed on, worked into or annexed to the thing; or
- (c) the label is affixed to a container, covering, package, case, box or other thing in or with which the first-mentioned thing is, or is to be, supplied; or
- (d) the label is woven in, impressed on, worked into or annexed to a container, covering, package, case, box or other thing in or with which the first-mentioned thing is, or is to be, supplied; or
- (e) the label is affixed to, or incorporated in, an instruction or other document that accompanies the first-mentioned thing.

9B Digital mode

For the purposes of this Act, a service is transmitted in *digital mode* if the service is transmitted using a digital modulation technique.

9C Digital community radio broadcasting representative company

- (1) For the purposes of this Act, a company is the *digital community radio broadcasting representative company* for a particular designated BSA radio area if:
 - (a) the company is a qualified company; and
 - (b) the incumbent digital community radio broadcasting licensees for the designated BSA radio area have given the ACMA a joint written notice electing that this paragraph apply to the company; and

Section 9C

- (c) before the company was formed, the promoters of the company invited each incumbent digital community radio broadcasting licensee for the area to subscribe for shares in the company on the basis that:
 - (i) the incumbent digital community radio broadcasting licensees who accepted the invitation would be issued with an equal number of shares; and
 - (ii) no other persons would be entitled to subscribe for shares in the company; and
- (d) the invitations referred to in paragraph (c) were published on the ACMA's website; and
- (da) the invitations referred to in paragraph (c) were open for whichever of the following periods is applicable:
 - (i) a period of at least 60 days;
 - (ii) if all the invitees responded to the invitations within the period mentioned in subparagraph (i)—the period that began at the start of the period mentioned in subparagraph (i) and ended on the last occasion on which the promoters received such a response; and
- (e) there was no discrimination between subscribers for shares in the company in relation to the consideration payable for the issue of the shares concerned; and
- (f) the total amount of money payable as consideration for the issue of the shares in the company is not substantially in excess of the total amount that, as at the time the invitations referred to in paragraph (c) are published, would be required for the viable operation of the company; and
- (g) none of the recipients of an invitation referred to in paragraph (c) were subject to duress as to whether the invitation should be accepted; and
- (h) the company has a constitution; and
- (i) the company's constitution provides that a person is not eligible to hold a share in the company unless the person is a digital community radio broadcasting licensee whose BSA licence area is the same as the designated BSA radio area; and

Section 9C

- (j) the company's constitution provides that, if:
 - (i) a digital community radio broadcasting licence is allocated to a person under the *Broadcasting Services Act 1992* after the commencement of this section; and
 - (ii) the BSA licence area of the digital community radio broadcasting licence is the same as the designated BSA radio area;the company must:
 - (iii) within 30 days after the allocation of the digital community radio broadcasting licence, offer to issue shares in the company to the holder of the digital community radio broadcasting licence, where the number of shares offered equals the number of shares already held by a particular digital community radio broadcasting licensee; and
 - (iv) keep the offer open for at least 90 days; and
 - (v) ensure that, if the offer is accepted, the amount of money payable as consideration for the issue of the shares is not substantially in excess of the amount that was payable by an incumbent digital community radio broadcasting licensee who subscribed for shares in the company in response to an invitation referred to in paragraph (c); and
- (k) the company's constitution provides that the purposes of the company are:
 - (i) holding shares in one or more companies that hold, have applied for, or propose to apply for, category 1 digital radio multiplex transmitter licences, or category 2 digital radio multiplex transmitter licences, for the designated BSA radio area; and
 - (ii) exercising the powers conferred by this Act on a digital community radio broadcasting representative company; and
 - (iii) carrying out activities incidental to the purposes mentioned in subparagraphs (i) and (ii); and

Section 9D

- (l) the company complies with such other conditions (if any) as are specified in the regulations.

Note: See also section 8AD of the *Broadcasting Services Act 1992*, which deals with deemed radio broadcasting licence areas.

- (2) For the purposes of the application of paragraph (1)(i) and subparagraph (1)(j)(iii) before the digital radio start-up day for the designated BSA radio area, ***digital community radio broadcasting licensee*** includes an incumbent digital community radio broadcasting licensee.
- (3) An election under paragraph (1)(b) given in relation to a particular designated BSA radio area has no effect if an election under that paragraph has been previously given in relation to that area.
- (4) An election under paragraph (1)(b) is irrevocable.
- (5) The promoters of a company may request the ACMA to publish on its website the invitations referred to in paragraph (1)(c).
- (6) The ACMA must comply with a request under subsection (5) if the ACMA is satisfied that the request was made in good faith.

9D Incumbent digital radio broadcasting licensees

Incumbent digital commercial radio broadcasting licensee

- (1) For the purposes of this Act, if:
- (a) the licensee of a commercial radio broadcasting licence held the licence at the commencement of this section; and
 - (b) the licence was not allocated under subsection 40(1) of the *Broadcasting Services Act 1992*;
- the licensee is an ***incumbent digital commercial radio broadcasting licensee***.

Incumbent digital community radio broadcasting licensee

- (2) For the purposes of this Act, if the licensee of a designated community radio broadcasting licence held the licence at the

Section 10

commencement of this section, the licensee is an *incumbent digital community radio broadcasting licensee*.

10 Public or community services

- (1) For the purposes of this Act, a *public or community service* is a service provided by a body or organisation of a kind specified by the Minister, by written instrument, to be bodies or organisations for the purposes of this section.
- (2) Each such body or organisation must either be:
 - (a) an authority of the Commonwealth, a State or a Territory; or
 - (b) a body or organisation that:
 - (i) is not carried on for the purpose of profit or gain to its members; and
 - (ii) applies its profits (if any) or other income in achieving its objects; and
 - (iii) does not provide for making any distribution, whether in money, property or otherwise, to its members.
- (3) The instrument is a legislative instrument.

10A ACMA determinations about space objects

Despite the definition of *space object* in section 5, the ACMA may, by legislative instrument, make a determination that a particular object is not a *space object* for the purposes of this Act.

Note: Under subsection 33(3A) of the *Acts Interpretation Act 1901*, objects may be specified by reference to a particular class or classes of objects.

10B Authorised defence supplier

- (1) For the purposes of this Act, *authorised defence supplier* means a person who:
 - (a) is a party to a written agreement for the supply of goods or services to the Defence Force or the Defence Department; and

Section 11

- (b) is approved in writing by a member of the Defence Force or an officer of the Defence Department.
- (2) An approval under paragraph (1)(b) is not a legislative instrument.

11 References to offences against this Act etc.

- (1) A reference in this Act to an offence against this Act or to an offence against a provision of this Act includes a reference to an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act or that provision, as the case requires.
- (2) A reference in this Act to a conviction of an offence includes a reference to:
 - (a) making an order under section 19B of the *Crimes Act 1914* in relation to the offence; or
 - (b) payment of the amount stated in an infringement notice given under Part 5 of the Regulatory Powers Act, so far as it applies to the provision mentioned in subsection 270(1) of this Act that creates the offence.

Section 12

Part 1.4—Application of this Act

12 Outline of this Part

- (1) This Part is about the scope of this Act's operation, and the situations in which that operation is extended or restricted.
- (2) Division 1 applies this Act to the Crown.
- (3) Division 2 describes how questions of location affect the application of this Act.
- (4) Division 3 brings certain activities within the concept of radiocommunication for the purposes of this Act.
- (5) Division 4 is about the situations and activities that are exempt from the operation of this Act.

Division 1—General

13 Crown to be bound

- (1) Subject to subsection (2), this Act binds the Crown in all its capacities.
- (2) Nothing in this Act renders the Crown liable to be prosecuted for an offence.

Section 14

Division 2—Provisions relating to location and similar matters

14 Operation of this Division

This Division has effect subject to Division 4.

15 Application to external Territories

This Act extends to all the external Territories.

16 Application outside Australia

- (1) Except so far as the contrary intention appears, this Act applies outside Australia (whether or not in a foreign country), but only in relation to:
- (a) Australian citizens ordinarily resident in Australia, in respect of radio emissions intended to be received in Australia, other than:
 - (i) radio emissions made by a genuine member of the crew of a foreign vessel, foreign aircraft or foreign space object in the course of his or her duties as such a member; or
 - (ii) radio emissions made from a foreign country by a person in the performance of a duty imposed by the law of that country; and
 - (b) members of the crew of Australian aircraft, Australian vessels and Australian space objects; and
 - (c) Australian aircraft, Australian space objects and Australian vessels; and
 - (ca) foreign space objects, in the circumstances specified in a determination by the ACMA; and
 - (d) anything to which this Act extends because of section 17 or 17A.

- (2) For the purposes of paragraph (1)(a), a radio emission that is intended to be retransmitted to Australia is taken to be intended to be received in Australia.
- (3) Section 195 applies without limitation outside Australia (whether or not in a foreign country).
- (4) A determination under paragraph (1)(ca) is a legislative instrument.

17 Offshore areas

- (1) Subject to subsection (2), this Act applies in relation to the offshore areas in respect of the States and Territories as if references in this Act to Australia, when used in a geographical sense, included references to the offshore areas in respect of the States and Territories.
- (2) The extended application given to this Act by subsection (1) extends only in relation to:
 - (a) acts, matters and things directly or indirectly connected with exploration of, or exploitation of the resources of, the continental shelf of Australia or of an external Territory; and
 - (b) acts done by or in relation to, and matters, circumstances and things affecting, or any person who is in offshore area for a reason directly or indirectly connected with such exploration or exploitation.
- (3) In this section:

offshore area, in relation to a State or Territory, has the same meaning as in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

17A Greater Sunrise special regime area, Greater Sunrise pipeline international offshore area and Bayu-Undan pipeline international offshore area

- (1) Subject to subsection (2), this Act applies in relation to the Greater Sunrise special regime area, the Greater Sunrise pipeline

Section 17A

international offshore area and the Bayu-Undan pipeline
international offshore area as if references in this Act to Australia,
when used in a geographical sense, included references to the
Greater Sunrise special regime area, the Greater Sunrise pipeline
international offshore area and the Bayu-Undan pipeline
international offshore area.

- (2) The extended application given to this Act by subsection (1) extends only in relation to:
- (a) acts, matters and things directly or indirectly connected with:
 - (i) Petroleum Activities (within the meaning of the Timor Sea Maritime Boundaries Treaty) relating to the Greater Sunrise Fields (within the meaning of that treaty); or
 - (ii) construction, operation, maintenance or decommissioning of a pipeline in the Greater Sunrise pipeline international offshore area; or
 - (iii) operation, maintenance or decommissioning of the Bayu-Undan Pipeline (within the meaning of that treaty); and
 - (b) acts done by or in relation to, and matters, circumstances and things affecting, any person who is:
 - (i) in the Greater Sunrise special regime area for a reason directly or indirectly connected with such Petroleum Activities; or
 - (ii) in the Greater Sunrise pipeline international offshore area for a reason directly or indirectly connected with the construction, operation, maintenance or decommissioning of a pipeline in the area; or
 - (iii) in the Bayu-Undan pipeline international offshore area for a reason directly or indirectly connected with the operation, maintenance or decommissioning of the Bayu-Undan Pipeline.
- (3) In this section:

Bayu-Undan pipeline international offshore area has the same meaning as in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

Greater Sunrise pipeline international offshore area has the same meaning as in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

Greater Sunrise special regime area has the same meaning as in the *Seas and Submerged Lands Act 1973*.

Timor Sea Maritime Boundaries Treaty means the Treaty between Australia and the Democratic Republic of Timor-Leste Establishing their Maritime Boundaries in the Timor Sea done at New York on 6 March 2018, as in force from time to time.

Note: The Timor Sea Maritime Boundaries Treaty could in 2019 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

18 Application to the atmosphere etc.

Except so far as the contrary intention appears, references in this Act to Australia, a foreign country, a place or any waters include references to the space (including the atmosphere and outer space) above.

Division 3—Provisions extending the concept of radiocommunication

19 Operation of this Division

- (1) This Division:
 - (a) only applies in relation to anything to which this Act extends under Division 2; and
 - (b) has effect subject to Division 4.
- (2) Subsections 20(1) and (2) and sections 21 and 22 each have effect without prejudice to the effect that this Act has apart from that subsection or section.

20 Radio transmissions for the purpose of measurement

- (1) This Act applies in relation to:
 - (a) a measurement transmission made in the course of, or in relation to:
 - (i) trade and commerce between Australia and places outside Australia; or
 - (ii) trade and commerce among the States; or
 - (iii) trade and commerce within a Territory, between a State and a Territory or between 2 Territories; or
 - (iv) any trading activity of a trading corporation, or any other activity of the corporation carried on for the purpose of its trading activities; or
 - (v) any other activity carried on by a trading corporation; or
 - (vi) any financial activity of a financial corporation, or any other activity of the corporation carried on for the purpose of its financial activities; or
 - (vii) any other activity carried on by a financial corporation; or
 - (viii) the operation of lighthouses, lightships, beacons or buoys; or

Section 20

- (ix) the making of astronomical or meteorological observations; or
 - (b) a measurement transmission made by or on behalf of the Commonwealth, an authority or instrumentality of the Commonwealth, a foreign corporation or a body corporate incorporated in a Territory; or
 - (c) a measurement transmission made in a Territory or a place outside Australia; or
 - (d) any other measurement transmission;
- in the same way as it applies in relation to radiocommunication.

Note: Section 6 sets out the general meaning of *radiocommunication*.

(2) This Act applies in relation to:

- (a) a measurement transmitter used in the course of, or in relation to:
 - (i) trade and commerce between Australia and places outside Australia; or
 - (ii) trade and commerce among the States; or
 - (iii) trade and commerce within a Territory, between a State and a Territory or between 2 Territories; or
 - (iv) any trading activity of a trading corporation, or any other activity of the corporation carried on for the purpose of its trading activities; or
 - (v) any other activity carried on by a trading corporation; or
 - (vi) any financial activity of a financial corporation, or any other activity of the corporation carried on for the purpose of its financial activities; or
 - (vii) any other activity carried on by a financial corporation; or
 - (viii) the operation of lighthouses, lightships, beacons or buoys; or
 - (ix) the making of astronomical or meteorological observations; or
- (b) a measurement transmitter used by or on behalf of the Commonwealth, an authority or instrumentality of the

Section 20

Commonwealth, a foreign corporation or a body corporate incorporated in a Territory; or

(c) a measurement transmitter in a Territory or a place outside Australia; or

(d) any other measurement transmitter;

in the same way as it applies in relation to a radiocommunications transmitter.

Note: Subsection 7(2) sets out the general meaning of *radiocommunications transmitter*.

(3) This section does not apply with respect to:

(a) State banking that does not extend beyond the limits of the State concerned; or

(b) State insurance that does not so extend.

(4) In this section:

financial corporation means a financial corporation to which paragraph 51(xx) of the Constitution applies, and includes a body corporate formed within the limits of Australia that carries on as its sole or principal business the business of:

(a) banking within the meaning of paragraph 51(xiii) of the Constitution; or

(b) insurance within the meaning of paragraph 51(xiv) of the Constitution.

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

measurement transmission means radio emission for purposes connected with making a measurement by means of the propagation or other qualities of radio emission.

measurement transmitter means a transmitter designed or intended for measurement transmission.

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

21 Astronomical and meteorological observations

This Act applies to a radio emission in connection with making astronomical or meteorological observations in the same way as it applies to a radiocommunication.

22 Lighthouses etc.

This Act applies to a radio emission in connection with the operation of lighthouses, lightships, beacons and buoys in the same way as it applies to a radiocommunication.

Division 4—Matters to which this Act does not apply

23 Foreign space objects, vessels and aircraft

- (1) This Act does not apply to foreign space objects, except in accordance with a determination by the ACMA under paragraph 16(1)(ca).
- (2) This Act does not apply to transmitters or radiocommunications receivers on board a foreign vessel that is travelling, or is in transit, (whether in or outside Australia) on a voyage:
 - (a) from a point outside Australia to a port in Australia; or
 - (b) from a port in Australia to a point outside Australia; or
 - (c) from a point outside Australia to another point outside Australia.
- (3) This Act does not apply to transmitters or radiocommunications receivers on board a foreign aircraft that is travelling, or is in transit, (whether in or outside Australia) on a voyage:
 - (a) from a point outside Australia to an airport in Australia; or
 - (b) from an airport in Australia to a point outside Australia; or
 - (c) from a point outside Australia to another point outside Australia.
- (4) Subsections (2) and (3) apply subject to the provisions of any agreement, treaty or convention between Australia and any other countries that makes provision in relation to radio emission.
- (5) However, nothing in this section limits section 195 or Part 5.5.

24 Defence research and intelligence

- (1) This Act does not apply to anything done or omitted to be done by a member of the Defence Force, or by an officer of the Defence Department, in the performance of the member's or officer's functions or duties as such a member or officer, to the extent that those functions or duties are for a purpose that relates to:

- (a) research for purposes connected with defence; or
 - (b) intelligence.
- (1A) This Act does not apply to anything done or omitted to be done by a member of a visiting force, or by a member of a civilian component of a visiting force, in the performance of the member's functions or duties in relation to the defence, security or international relations of:
 - (a) Australia; or
 - (b) a foreign country whose military is acting in co-operation with the Defence Force;to the extent that those functions or duties:
 - (c) relate to an activity that is approved in writing by a member of the Defence Force or an officer of the Defence Department; and
 - (d) are for a purpose that relates to:
 - (i) research for purposes connected with defence; or
 - (ii) intelligence.
- (1B) This Act does not apply to anything done or omitted to be done by an approved defence supplier in the performance of the supplier's functions or duties in relation to the supply of goods or services to the Defence Force or the Defence Department, to the extent that those functions or duties are for a purpose that relates to:
 - (a) research for purposes connected with defence; or
 - (b) intelligence.
- (2) This Act does not apply in relation to anything done or omitted to be done by or on behalf of:
 - (a) the Australian Secret Intelligence Service; or
 - (b) the Australian Security Intelligence Organisation; or
 - (c) the Australian Signals Directorate.
- (3) An approval under paragraph (1A)(c) is not a legislative instrument.

Section 25

25 Special defence undertakings

This Act does not apply to anything done or omitted to be done by a person performing a function or duty in relation to the operation of a facility that is:

- (a) jointly operated by the Commonwealth and a foreign country; and
- (b) a special defence undertaking for the purposes of the *Defence (Special Undertakings) Act 1952*.

26 Additional exemption for defence matters

- (1) Subject to subsection (2), Parts 3.1, 4.1 and 4.2 do not apply to anything done or omitted to be done by a member of the Defence Force, or by an officer of the Defence Department, if:
 - (a) the act or omission takes place in the performance of one of his or her functions or duties as such a member or officer; and
 - (b) the function or duty concerned is, under the regulations, taken for the purposes of this subsection to be a function or duty that relates to:
 - (i) military command and control; or
 - (ii) intelligence; or
 - (iii) weapons systems; or
 - (iv) safety; or
 - (v) security.
- (1A) Subject to subsection (3), Parts 3.1, 4.1 and 4.2 do not apply to anything done or omitted to be done by a member of a visiting force, or a member of a civilian component of a visiting force, if:
 - (a) the act or omission takes place in the performance of one of the member's functions or duties in relation to the defence, security or international relations of:
 - (i) Australia; or
 - (ii) a foreign country whose military is acting in co-operation with the Defence Force; and

- (b) the act or omission relates to an activity that is approved in writing by a member of the Defence Force or an officer of the Defence Department; and
 - (c) the function or duty concerned is, under the regulations, taken for the purposes of this subsection to be a function or duty that relates to:
 - (i) military command and control; or
 - (ii) intelligence; or
 - (iii) weapons systems; or
 - (iv) safety; or
 - (v) security.
- (1B) Subject to subsection (4), Parts 3.1, 4.1 and 4.2 do not apply to anything done or omitted to be done by an authorised defence supplier if:
- (a) the act or omission takes place in the in the performance of one of the supplier's functions or duties in relation to the supply of goods or services to the Defence Force or the Defence Department; and
 - (b) the function or duty concerned is, under the regulations, taken for the purposes of this subsection to be a function or duty that relates to:
 - (i) military command and control; or
 - (ii) intelligence; or
 - (iii) weapons systems; or
 - (iv) safety; or
 - (v) security.
- (2) The regulations may provide for the application, in specified circumstances, of all or any of Parts 3.1, 4.1 or 4.2, or any of the provisions of those Parts, to a member of the Defence Force, or to an officer of the Defence Department, in the performance of one of his or her functions or duties as mentioned in subsection (1).
- (3) The regulations may provide for the application, in specified circumstances, of all or any of Parts 3.1, 4.1 or 4.2, or any of the provisions of those Parts, to a member of a visiting force, or a

Section 27

member of a civilian component of a visiting force, in the performance of one of the member's functions or duties as mentioned in subsection (1A).

- (4) The regulations may provide for the application, in specified circumstances, of all or any of Parts 3.1, 4.1 or 4.2, or any of the provisions of those Parts, to an authorised defence supplier in the performance of one of the supplier's functions or duties as mentioned in subsection (1B).
- (5) An approval under paragraph (1A)(b) is not a legislative instrument.

27 Exemption for defence, law enforcement and emergency personnel

- (1) This section applies to a person performing a function or duty in relation to:
 - (a) the defence, security or international relations of:
 - (i) Australia; or
 - (ii) a foreign country whose naval, military or air force is acting in co-operation with the Defence Force of Australia; or
 - (b) the Australian Federal Police or the police force of a State or Territory; or
 - (baa) the performance of the functions of the Integrity Commissioner (within the meaning of the *Law Enforcement Integrity Commissioner Act 2006*); or
 - (ba) one of the following bodies or offices:
 - (i) the Independent Commission Against Corruption of New South Wales;
 - (ii) the Corruption and Crime Commission of Western Australia;
 - (iii) the Independent Commissioner Against Corruption of South Australia; or
 - (bb) one of the following bodies:
 - (i) the New South Wales Crime Commission;

- (ii) the Crime and Corruption Commission of Queensland;
or
 - (bc) the Australian Crime Commission; or
 - (bd) the Law Enforcement Conduct Commission of New South
Wales; or
 - (be) a body that:
 - (i) performs functions related to the investigation,
prevention or prosecution of serious crime, or of
corruption (whether or not the body also performs other
functions); and
 - (ii) is covered by a written determination made by the
ACMA for the purposes of this paragraph; or
 - (c) a fire-fighting, civil defence or rescue organisation; or
 - (d) an ambulance service; or
 - (e) the Royal Flying Doctor Service; or
 - (f) any other organisation whose sole or principal purpose
involves securing the safety of persons during an emergency.
- (2) The ACMA may determine in writing that acts or omissions by
members of a class of persons to whom this section applies are
exempt from either or both of the following:
- (a) all or any of Parts 3.1, 4.1 and 4.2;
 - (b) specified provisions of those Parts.
- The exemption may be expressed to apply generally or in specified
circumstances.
- (2A) A determination under subsection (2) may confer a power to make
a decision of an administrative character on a person or the
ACMA.
- (3) A determination under paragraph (1)(be) or subsection (2) is a
legislative instrument.
- (4) For the purposes of subparagraph (1)(be)(i), **serious crime** is
conduct that, if engaged in within, or in connection with, Australia,
would constitute an offence against the law of the Commonwealth,

Section 28

a State or a Territory punishable by imprisonment for a period exceeding 12 months.

28 Use of devices by the ACMA

Parts 3.1, 4.1 and 4.2 do not apply to anything done by the ACMA in connection with the use of a device in performing its functions or exercising its powers under this Act.

Part 1.5—Ministerial policy statements

28A Simplified outline of this Part

- In performing its spectrum management functions, and exercising its spectrum management powers, the ACMA must have regard to any relevant Ministerial policy statements.

28B Ministerial policy statements

- (1) The Minister may, by notifiable instrument, specify a policy of the Commonwealth Government that is to apply in relation to:
 - (a) the performance of any of the ACMA's spectrum management functions; or
 - (b) the exercise of any of the ACMA's spectrum management powers.
- (2) An instrument under subsection (1) is to be known as a ***Ministerial policy statement***.

28C The ACMA must have regard to Ministerial policy statements

- (1) In performing its spectrum management functions, and exercising its spectrum management powers, the ACMA must have regard to any relevant Ministerial policy statements.
- (2) A contravention of subsection (1) does not affect the validity of:
 - (a) an instrument made by the ACMA; or
 - (b) anything else done by the ACMA;in the performance of its functions or the exercise of its powers.

Section 28D

Part 1.6—The ACMA's work program

28D Simplified outline of this Part

- At least once each financial year, the ACMA must determine a work program in relation to its spectrum management functions and its spectrum management powers.
- Before determining a work program, the ACMA must:
 - (a) consult the Minister; and
 - (b) undertake any other consultation that is appropriate and reasonably practicable.

28E The ACMA's work program

- (1) At least once each financial year, the ACMA must determine a work program in relation to its spectrum management functions and its spectrum management powers.
- (2) A work program must be for a period of not less than 5 financial years.
- (3) If the ACMA has a work program (the *original work program*), the ACMA may determine a work program (the *new work program*) that is expressed to replace the original work program. If the ACMA does so, the original work program is taken to be revoked when the new work program comes into force.
- (4) The ACMA must publish a work program on the ACMA's website.
- (5) A work program is not a legislative instrument.

28F Consultation

- (1) Before determining a work program, the ACMA must:
-

Section 28F

- (a) consult the Minister; and
 - (b) undertake any other consultation that is:
 - (i) considered by the ACMA to be appropriate to undertake; and
 - (ii) reasonably practicable to undertake.
- (2) A contravention of subsection (1) does not affect the validity of the work program.

Chapter 2—Radio frequency planning

29 Outline of this Chapter

- (1) This Chapter provides for the preparation of plans that will govern the allocation of the spectrum under the licensing systems provided for in Chapter 3.
- (2) Part 2.1 is about preparing:
 - (a) a spectrum plan that covers so much of the spectrum as is relevant to regulation of radiocommunications under this Act; and
 - (b) frequency band plans that cover particular parts of the spectrum in more detail.
- (3) Part 2.2 is about the additional plans necessary to enable selected parts of the spectrum to be allocated under the spectrum licensing system, namely:
 - (b) marketing plans that govern allocation under spectrum licences of so much of the parts of the spectrum in question as have not been allocated under apparatus licences; and
 - (c) marketing plans that govern allocation under spectrum licences of parts of the spectrum that are subject to re-allocation.
- (4) Part 2.3 is about preparing digital radio channel plans relating to digital radio multiplex transmitter licences.

Part 2.1—Spectrum plans and frequency band plans

30 Spectrum plans

- (1) The ACMA may, by legislative instrument, prepare a spectrum plan.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) A spectrum plan must:
- (a) divide into such number of frequency bands as the ACMA thinks appropriate so much of the spectrum as the ACMA thinks necessary for the purpose of regulating radiocommunications under this Act; and
 - (b) designate one or more bands to be used primarily for the general purposes of defence; and
 - (c) specify the general purpose or purposes for which each other band may be used.

- (2A) A spectrum plan may confer a power to make a decision of an administrative character on the ACMA.

- (3) In this section:

used includes:

- (a) reserved for future use; and
- (b) reserved for the prevention or control of interference to radiocommunications.

31 Planning of broadcasting services bands

- (1) The Minister may, after consulting the ACMA, and in accordance with the spectrum plan, by written instrument:
- (a) designate a part of the spectrum as being primarily for broadcasting purposes; and

Section 31

- (b) refer it to the ACMA for planning under Part 3 of the *Broadcasting Services Act 1992*.
- (1AA) The Minister may, by written instrument, vary a subsection (1) designation so as to enlarge or reduce the part of the spectrum covered by the designation.
- (1A) The Minister may, after consulting the ACMA, and in accordance with the spectrum plan, by written instrument:
 - (a) designate a part of the spectrum as being partly for the purpose of digital radio broadcasting services; and
 - (b) refer that part of the spectrum to the ACMA for planning under Part 3 of the *Broadcasting Services Act 1992*.
- (1B) Subsection (1A) does not limit subsection (1).
- (1BA) The Minister may, by written instrument, vary a subsection (1A) designation so as to enlarge or reduce the part of the spectrum covered by the designation.
- (1C) The Minister may, by written instrument, determine that a designation under subsection (1A) ceases to be in force at a specified time.
- (1D) The Minister may, by written instrument, determine that a designation under subsection (1A) has effect only in relation to one or more specified areas of Australia.
- (2) If a subsection (1) or (1A) designation is in force in relation to a particular part of the spectrum, the ACMA may make a written determination that licences, or specified kinds of licences, can be issued in specified circumstances in relation to that part of the spectrum, or in relation to a specified part or parts of that part of the spectrum.
- (3) In making or varying a subsection (2) determination, the ACMA must:
 - (a) promote the objects, and have regard to the matters, described in section 23 of the *Broadcasting Services Act 1992*; and

- (b) promote the object of this Act, to the extent this is not inconsistent with paragraph (a).

This subsection has effect subject to subsection (4).

- (4) A subsection (2) determination (including as varied) must not be inconsistent with the spectrum plan.
- (5) Subject to subsections (3) and (4), the ACMA may, by written instrument, vary a subsection (2) determination.
- (6) The ACMA may, by written instrument, revoke a subsection (2) determination.
- (7) An instrument under subsection (1), (1AA), (1A), (1BA), (1C), (1D), (5) or (6) is not a legislative instrument.
- (8) A determination under subsection (2) is not a legislative instrument.

32 Frequency band plans

- (1) The ACMA may, by legislative instrument, prepare frequency band plans, each relating to one or more frequency bands.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (3) A frequency band plan must not be inconsistent with the spectrum plan.
- (4) A frequency band plan:
 - (a) must make provision in relation to the purpose or purposes for which the band or bands may be used; and
 - (b) without limiting paragraph (a), may provide for:
 - (i) the one or more purposes for which any part of a band (including any particular frequency or frequency channel) may be used; and
 - (ii) parts of the spectrum to be reserved for provision of public or community services.

Section 33

- (5) A frequency band plan:
 - (a) may be of general application or may be limited as provided in the plan; and
 - (b) without limiting paragraph (a), may apply:
 - (i) with respect to a specified area; and
 - (ii) with respect to a specified period.
- (5A) A frequency band plan may confer a power to make a decision of an administrative character on the ACMA.
- (6) In this section:
used includes:
 - (a) reserved for future use; and
 - (b) reserved for the prevention or control of interference to radiocommunications.

33 Publication etc. of plans

- (1) Before preparing a spectrum plan or a frequency band plan, the ACMA must, by notice published on the ACMA's website:
 - (a) state that a draft of the plan is available for public comment; and
 - (b) set out the draft plan; and
 - (c) invite interested parties to make representations about the draft plan on or before the day specified in the notice.
- (2) The day specified under paragraph (1)(c) must be at least one month later than the day on which the notice is published.
- (3) A person may, not later than the day specified under paragraph (1)(c), make representations to the ACMA about the draft plan.
- (4) The ACMA:
 - (a) must give due consideration to any representations so made; and

Section 33

- (b) may, having considered the representations, alter the draft plan.
- (5) The requirements of this section do not apply to the draft plan as altered under paragraph (4)(b).
- (6) This section does not apply to the preparation of a plan if the ACMA is satisfied that the preparation of the plan is a matter of urgency.

Part 2.2—Marketing plans

37 Preparation or variation of frequency band plans

The ACMA may, before preparing a marketing plan under this Part, prepare a frequency band plan under section 32, or vary a frequency band plan in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*, in order to assist it in preparing the marketing plan.

39 Marketing plans—unencumbered spectrum

- (1) The ACMA may, by legislative instrument, prepare a marketing plan for issuing spectrum licences that authorise the operation of radiocommunications devices:
 - (a) at the frequencies specified in the plan; and
 - (b) within the area or areas specified in the plan.
- (2) If an apparatus licence authorises the operation of radiocommunications devices:
 - (a) at one or more frequencies; and
 - (b) within one or more areas;the ACMA must not make a marketing plan that applies to the issue of spectrum licences that authorise the operation of radiocommunications devices:
 - (c) at those frequencies; and
 - (d) within those areas;unless the marketing plan provides that one or more spectrum licences are to be allocated by direct allocation to the holder of the apparatus licence.
- (3) The marketing plan need not require spectrum licences issued in accordance with it to apply to the whole of the area or areas to which the plan applies.

- (4) Without limiting the matters that the marketing plan may contain, it may indicate:
 - (a) the procedures to be followed for issuing spectrum licences in accordance with the plan; and
 - (b) the timetable for issuing spectrum licences in accordance with the plan; and
 - (c) how the spectrum dealt with under the plan is to be apportioned amongst the spectrum licences to be issued; and
 - (d) how much of the spectrum dealt with under the plan is to be reserved for public or community services; and
 - (e) the conditions, or types of conditions, that may be included in spectrum licences to be issued.
- (5) In indicating the procedures to be followed for issuing spectrum licences, the plan may, for example, indicate whether the licences are to be allocated:
 - (a) by auction; or
 - (b) by tender; or
 - (c) by allocation for a pre-determined price or a negotiated price; or
 - (d) by direct allocation; or
 - (e) by a combination of any or all of the following:
 - (i) auction;
 - (ii) tender;
 - (iii) allocation for a pre-determined price or a negotiated price;
 - (iv) direct allocation.
- (6) The marketing plan must not be inconsistent with:
 - (a) the spectrum plan; or
 - (b) a frequency band plan that relates, wholly or partly, to the part of the spectrum to which the marketing plan relates.
- (7) A marketing plan must not relate wholly or partly to a part of the spectrum referred to the ACMA under subsection 31(1) or (1A),

Section 39A

unless the part, or each of the parts, of the spectrum to which the plan relates is covered by a determination under subsection 31(2).

39A Marketing plans—re-allocation of spectrum

- (1) This section applies if a spectrum re-allocation declaration states that a part or parts of the spectrum should be re-allocated:
 - (a) by issuing spectrum licences; or
 - (b) by a combination of:
 - (i) issuing spectrum licences; and
 - (ii) issuing apparatus licences.
- (2) The ACMA must, by legislative instrument, prepare a marketing plan for issuing spectrum licences that authorise the operation of radiocommunications devices:
 - (a) at frequencies within that part, or those parts, of the spectrum; and
 - (b) within the area or areas specified in the declaration with respect to that part or those parts.
- (3) The marketing plan is to apply to spectrum licences with respect to that part or those parts that might be issued as mentioned in section 153L.
- (4) The marketing plan need not require spectrum licences issued in accordance with it to apply to the whole of the area or areas to which the declaration applies.
- (5) The marketing plan may indicate:
 - (a) the procedures to be followed for issuing spectrum licences in accordance with the plan; and
 - (b) the timetable for issuing spectrum licences in accordance with the plan; and
 - (c) how the spectrum dealt with under the plan is to be apportioned among the spectrum licences to be issued; and
 - (d) how much of the spectrum dealt with under the plan is to be reserved for public or community services; and

Section 41

- (e) the conditions, or types of conditions, that may be included in spectrum licences to be issued.
- (6) Subsection (5) does not, by implication, limit the matters that the marketing plan may indicate.
- (7) In indicating the procedures to be followed for issuing spectrum licences, the plan may, for example, indicate whether the licences are to be allocated:
 - (a) by auction; or
 - (b) by tender; or
 - (c) by allocation for a pre-determined price or a negotiated price; or
 - (d) by direct allocation; or
 - (e) by a combination of any or all of the following:
 - (i) auction;
 - (ii) tender;
 - (iii) allocation for a pre-determined price or a negotiated price;
 - (iv) direct allocation.
- (8) The marketing plan must not be inconsistent with:
 - (a) the spectrum plan; or
 - (b) a frequency band plan that relates, wholly or partly, to the part or parts of the spectrum to which the marketing plan relates.

41 Delays in preparing marketing plans

- (1) If the ACMA thinks that preparation of a marketing plan may be unduly delayed because of difficulties in preparing the plan so far as it relates to some of the frequencies within the part of the spectrum in respect of which the plan is to be prepared, the ACMA may:
 - (a) decide that, in order not to delay the preparation of a plan in relation to frequencies for which the difficulties do not apply,

Section 42

- the task of preparing the plan should be divided into one of preparing more than one plan; and
- (b) prepare those plans at different times.
- (2) Each of the plans so prepared is taken to have been prepared under section 39 or 39A, as the case requires, and this Part applies to the preparation of each plan accordingly.

42 Variation of marketing plans

- (1) The ACMA may, at any time, by legislative instrument, vary a marketing plan.
- (2) This Part applies in relation to a variation of a marketing plan in the same way that it applies in relation to the preparation of the plan.

44 Expressions of interest in spectrum licences

This Part does not prevent the ACMA, prior to preparing a marketing plan, from seeking from members of the public, in any way the ACMA thinks appropriate, expressions of interest in being issued with spectrum licences in accordance with such a plan.

Part 2.3—Digital radio channel plans

44A Preparation of digital radio channel plans

- (1) Before issuing the first digital radio multiplex transmitter licence for a designated BSA radio area, the ACMA must, by legislative instrument, prepare a plan that:
 - (a) allots a frequency channel or channels in relation to the designated BSA radio area for use by digital radio multiplex transmitter licensees, where each allotted frequency channel has a bandwidth of at least 1.536 MHz; and
 - (b) reserves a frequency channel of at least 1.536 MHz bandwidth for a category 3 digital radio multiplex transmitter licence for the designated BSA radio area to be issued in accordance with subsection 102E(2); and
 - (c) determines which of the following types of licences, or which combination of the following types of licences, are to be issued for the designated BSA radio area:
 - (i) category 1 digital radio multiplex transmitter licence;
 - (ii) category 2 digital radio multiplex transmitter licence;and
 - (d) if a particular type of licence mentioned in paragraph (c) is to be issued for the designated BSA radio area—determines whether:
 - (i) a single licence of that type is to be issued for the designated BSA radio area; or
 - (ii) 2 or more licences of that type are to be issued for the designated BSA radio area; and
 - (e) determines technical specifications of multiplex transmitters operated under digital radio multiplex transmitter licences for the designated BSA radio area.
- (2) The plan must be consistent with:
 - (a) the spectrum plan; and

Section 44A

- (b) any relevant frequency band plans; and
 - (d) any relevant licence area plans prepared under section 26 of the *Broadcasting Services Act 1992*.
- (3) A plan under subsection (1) is to be known as the ***digital radio channel plan*** for the designated BSA radio area.
- (4) A copy of a digital radio channel plan is to be made available on the ACMA's website.
- (4A) A digital radio channel plan may confer a power to make a decision of an administrative character on the ACMA.

Variation of digital radio plans

- (6) The ACMA may, by legislative instrument, vary a digital radio channel plan.

ACMA must have regard to authorised digital radio broadcasting services

- (8) In preparing a plan under subsection (1) or varying a plan under subsection (6), the ACMA must have regard to:
- (a) the digital commercial radio broadcasting services that are, or will be, authorised by commercial radio broadcasting licences for the designated BSA radio area; and
 - (b) the digital community radio broadcasting services that are, or will be, authorised by community radio broadcasting licences for the designated BSA radio area; and
 - (c) the digital national radio broadcasting services that are, or will be, provided by national broadcasters in the designated BSA radio area.
- (9) Subsection (8) does not limit the matters to which the ACMA may have regard.

Section 44A

Technical specifications not to discriminate between digital radio multiplex transmitter licensees

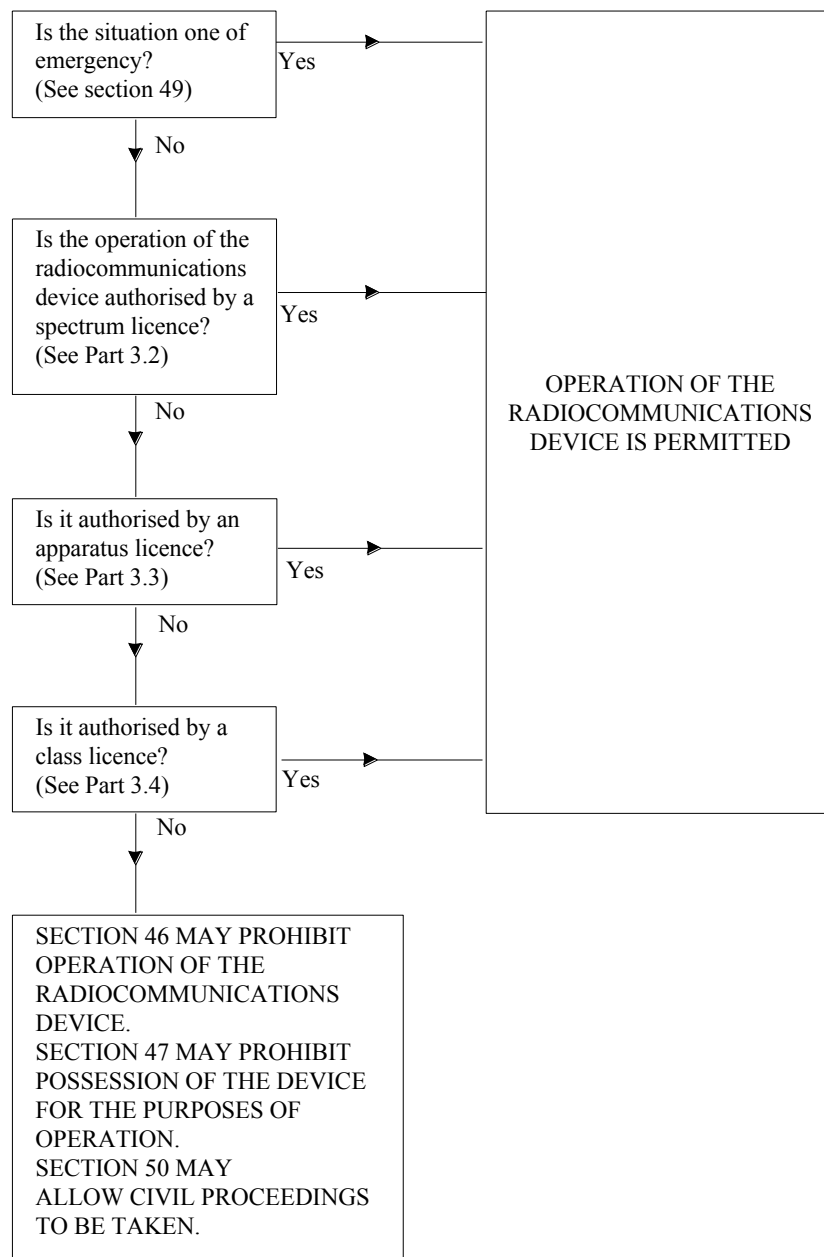
- (11) The ACMA must, as far as practicable, ensure that a digital radio channel plan for a particular designated BSA radio area does not discriminate between digital radio multiplex transmitter licensees in relation to the technical specifications of multiplex transmitters.

Chapter 3—Licensing of radiocommunications

45 Outline of this Chapter

- (1) This Chapter provides for the 3 systems of licences that apply to radiocommunications and for registration of licences.
- (2) Part 3.1 prohibits unlicensed radiocommunications, except in emergency situations, and allows for civil proceedings to be taken in some circumstances.
- (3) Part 3.2 provides for spectrum licences, under which licensees may use parts of the spectrum.
- (4) Part 3.3 provides for apparatus licences, under which licensees may operate the radiocommunications devices to which the licences relate.
- (5) Part 3.4 provides for class licences, under which any person may operate radiocommunications devices that come within the terms of the licences.
- (6) Part 3.5 provides for registration of these licences in a Register of Radiocommunications Licences.
- (6A) Part 3.6 provides for parts of the spectrum to be declared to be subject to re-allocation.
- (7) The following diagram shows how this Chapter applies to a particular operation of a radiocommunications device.

Section 45



Part 3.1—Unlicensed radiocommunications

Division 1—Offences and civil penalties

46 Unlicensed operation of radiocommunications devices

Offence

- (1) Subject to section 49, a person must not operate a radiocommunications device otherwise than as authorised by:
- (a) a spectrum licence; or
 - (b) an apparatus licence; or
 - (c) a class licence.

Penalty:

- (a) if the radiocommunications device is a radiocommunications transmitter:
 - (i) if the offender is an individual—imprisonment for 2 years; or
 - (ii) otherwise—1,500 penalty units; or
 - (b) if the radiocommunications device is not a radiocommunications transmitter—20 penalty units.
- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Civil penalty

- (3) Subject to section 49, a person must not operate a radiocommunications device otherwise than as authorised by:
- (a) a spectrum licence; or
 - (b) an apparatus licence; or
 - (c) a class licence.

Section 47

Civil penalty:

- (a) if the radiocommunications device is a radiocommunications transmitter—300 penalty units; or
 - (b) if the radiocommunications device is not a radiocommunications transmitter—20 penalty units.
- (4) Subsection (3) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

47 Unlawful possession of radiocommunications devices

Offence

- (1) Subject to section 49, a person must not have a radiocommunications device in his or her possession for the purpose of operating the device otherwise than as authorised by:
- (a) a spectrum licence; or
 - (b) an apparatus licence; or
 - (c) a class licence.

Penalty:

- (a) if the radiocommunications device is a radiocommunications transmitter:
 - (i) if the offender is an individual—imprisonment for 2 years; or
 - (ii) otherwise—1,500 penalty units; or
 - (b) if the radiocommunications device is not a radiocommunications transmitter—20 penalty units.
- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Section 48

Civil penalty

- (3) Subject to section 49, a person must not have a radiocommunications device in the person's possession for the purpose of operating the device otherwise than as authorised by:
- (a) a spectrum licence; or
 - (b) an apparatus licence; or
 - (c) a class licence.

Civil penalty:

- (a) if the radiocommunications device is a radiocommunications transmitter—300 penalty units; or
 - (b) if the radiocommunications device is not a radiocommunications transmitter—20 penalty units.
- (4) Subsection (3) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

48 Additional provisions about possession of radiocommunications devices

- (1) For the purposes of section 47, if:
- (a) at a particular time, a person has a radiocommunications device in the person's possession, otherwise than for the purpose of supplying the radiocommunications device to another person; and
 - (b) the radiocommunications device can be operated;
- it must be presumed that the person has the radiocommunications device in the person's possession for the purpose of operating the radiocommunications device, unless the person adduces or points to evidence that suggests a reasonable possibility that, at that time, the person did not have the radiocommunications device in the person's possession for the purpose of operating the radiocommunications device.

- (2) For the purposes of subsection (1), it is immaterial whether the radiocommunications device can be operated:
 - (a) immediately; or
 - (b) after taking one or more steps (for example, the connection of the radiocommunications device to a power supply).
- (3) A reference in this Division to a person having a radiocommunications device in his or her possession includes a reference to the person having it under control in any place whatever, whether for the use or benefit of that person or another person, and although another person has the actual possession or custody of it.

49 Emergency operation etc. of radiocommunications devices

- (1) A person does not contravene section 46 or 47 by operating a radiocommunications device, or having a radiocommunications device in his or her possession, in the reasonable belief that the operation or possession was necessary for the purpose of:
 - (a) securing the safety of a vessel, aircraft or space object that was in danger; or
 - (b) dealing with an emergency involving a serious threat to the environment; or
 - (c) dealing with an emergency involving risk of death of, or injury to, persons; or
 - (d) dealing with an emergency involving risk of substantial loss of, or substantial damage to, property; or
 - (e) if a national emergency declaration is in force—dealing with the emergency to which the declaration relates.
- (2) In proceedings for an offence against subsection 46(1) or 47(1), the burden of proving any of the matters referred to in subsection (1) lies on the defendant.
- (2A) In proceedings for a civil penalty order for a contravention of subsection 46(3) or 47(3), the burden of proving any of the matters referred to in subsection (1) of this section lies on the defendant.

Chapter 3 Licensing of radiocommunications

Part 3.1 Unlicensed radiocommunications

Division 1 Offences and civil penalties

Section 49

- (3) Nothing in this section limits the scope of the expression “reasonable excuse” in section 46 or 47.

Division 2—Civil proceedings

50 Civil proceedings

- (1) If a person (*the defendant*):
 - (a) operates a radiocommunications device in a way that is not in accordance with any licence; and
 - (b) that operation causes interference to radiocommunications carried on by another person (*the plaintiff*) under a spectrum licence;the plaintiff may apply to the Federal Court for relief.
- (2) The court may grant all or any of the following forms of relief:
 - (a) an injunction restraining the defendant from causing such interference, from causing interference of a similar kind or from causing or permitting others to cause interference of the same or a similar kind;
 - (b) an order directing the defendant to do a specified act for the purpose of:
 - (i) placing the plaintiff as nearly as practicable in the position in which he or she would have been but for the interference; or
 - (ii) otherwise mitigating detriment to the plaintiff arising out of the interference;
 - (c) damages against the defendant in respect of loss suffered by the plaintiff as a result of the interference, including loss of any benefit that the plaintiff might reasonably have been expected to obtain but for the interference;
 - (d) such other relief as the court thinks just.

Part 3.2—Spectrum licences

51 Outline of this Part

- (1) This Part is about spectrum licences, under which licensees are authorised to use parts of the spectrum.
- (2) Division 1 is about issuing spectrum licences, in particular:
 - (b) issuing spectrum licences under marketing plans (Subdivision B); and
 - (c) what spectrum licences will contain (Subdivision C); and
 - (d) how section 50 and related provisions of the *Competition and Consumer Act 2010* apply to the issue of spectrum licences (Subdivision D).
- (3) Division 2 is about varying spectrum licences.
- (4) Division 3 is about suspending and cancelling spectrum licences.
- (5) Division 3A is about renewing spectrum licences.
- (5A) Division 4 is about issuing further spectrum licences (otherwise than by way of renewal).
- (6) Division 5 is about trading spectrum licences.
- (7) Division 6 enables the ACMA to resume spectrum licences:
 - (a) by agreement with the licensee (Subdivision A); or
 - (b) by the compulsory process set out in the Schedule (Subdivision B).

Division 1—Issuing spectrum licences**Subdivision B—Issuing spectrum licences****60 Procedures for allocating spectrum licences**

- (1) The ACMA must determine, in writing, the procedures to be applied in allocating spectrum licences under this Subdivision:
 - (a) by auction; or
 - (b) by tender; or
 - (c) by allocation for a pre-determined price or a negotiated price; or
 - (d) by direct allocation; or
 - (e) by a combination of any or all of the following:
 - (i) auction;
 - (ii) tender;
 - (iii) allocation for a pre-determined price or a negotiated price;
 - (iv) direct allocation.
- (2) The procedures, so far as they deal with allocation by auction may, for example, deal with any of the following matters:
 - (a) the types of auction;
 - (b) advertising of auctions;
 - (c) entry fees for prospective bidders;
 - (ca) eligibility requirements (if any) for participation in auctions;
 - (cb) credits (if any) for prospective bidders;
 - (d) reserve prices (if any);
 - (e) deposits (if any) payable by successful bidders;
 - (f) methods of payment for licences.
- (3) The procedures, so far as they deal with allocation by tender may, for example, deal with any of the following matters:
 - (a) the types of tender;

Section 60

- (b) advertising of tenders;
 - (c) entry fees for prospective tenderers;
 - (ca) eligibility requirements (if any) for submission of a tender;
 - (cb) credits (if any) for prospective tenderers;
 - (d) reserve prices (if any);
 - (e) the method for resolving which of 2 or more equal tenders is to be successful;
 - (f) deposits (if any) payable by successful tenderers;
 - (g) methods of payment for licences.
- (4) The procedures, so far as they deal with allocation for a pre-determined or negotiated price may, for example, deal with any of the following matters:
 - (a) the way in which prices are to be determined or negotiated;
 - (b) advertising of proposed allocations;
 - (ba) eligibility requirements (if any) for prospective licensees;
 - (bb) credits (if any) for prospective licensees;
 - (c) methods of payment for licences.
- (5) Procedures determined under subsection (1) may:
 - (a) impose limits on the aggregate of the parts of the spectrum that:
 - (i) under transmitter licences; and
 - (ii) under existing spectrum licences; and
 - (iii) as a result of the allocation of spectrum licences under this Subdivision;may be used by:
 - (iv) any one person; or
 - (v) a specified person; or
 - (b) impose limits on the aggregate of the parts of the spectrum that:
 - (i) under transmitter licences; and
 - (ii) under existing spectrum licences; and
 - (iii) as a result of the allocation of spectrum licences under this Subdivision;

may, in total, be used by the members of a specified group of persons.

Note: Persons or groups may be specified by name, by inclusion in a specified class or in any other way.

- (6) A limit imposed as mentioned in subsection (5) may be expressed to apply in relation to any or all of the following:

- (a) a specified part of the spectrum;
- (b) a specified area;
- (c) a specified population reach.

For example, procedures might specify an aggregate limit of 15 MHz per person in the band between 1200 MHz and 1300 MHz (inclusive) for a particular area. This subsection does not, by implication, limit subsection (5).

- (6A) Procedures that impose limits as mentioned in subsection (5) may impose limits of nil in relation to specified persons or to the members of specified groups of persons.
- (7) Procedures determined under subsection (1) may require the ACMA to give specified information to the ACCC.
- (7A) Procedures determined under subsection (1), so far as they relate to direct allocation of spectrum licences, may provide for the ACMA to have regard to a frequency assignment certificate issued by a person who holds an accreditation of a kind specified in the legislative rules, stating that the operation of a device under such a licence:
- (a) on a specified frequency or frequencies, or on a specified frequency channel; and
 - (b) at a specified constancy; and
 - (c) at a specified location; and
 - (d) subject to specified technical conditions;
- will satisfy any conditions that are required to be satisfied, in relation to the issue of such a certificate, under a determination made under section 266A.

Section 60A

- (8) Subsections (5), (6), (6A), (7) and (7A) do not, by implication, limit subsection (1).
- (10) The Minister may give written directions to the ACMA in relation to the exercise of the power to determine procedures imposing a limit as mentioned in subsection (5).
- (11) A direction under subsection (10) must be published in the *Gazette*.
- (12) The ACMA must exercise its powers under subsection (1) in a manner consistent with any directions given by the Minister under subsection (10).
- (13) Subsection (10) does not, by implication, limit the Minister's power to give directions otherwise than under that subsection.
- (13A) Before determining procedures under subsection (1), the ACMA must consult the ACCC about whether the procedures should impose limits as mentioned in subsection (5) and, if so, the nature of those limits.
- (14) Before determining procedures under subsection (1), the ACMA must consult the ACCC about whether the procedures should include a requirement mentioned in subsection (7) and, if so, the nature of the requirement.
- (14A) Procedures determined under subsection (1) may confer a power to make a decision of an administrative character on a person or the ACMA.
- (15) This section has effect subject to section 577J of the *Telecommunications Act 1997*.
- (16) A determination under subsection (1) is a legislative instrument.

60A Direct allocation of spectrum licences

For the purposes of this Act, **direct allocation** of a spectrum licence means the allocation of the licence to:

- (a) a person specified in procedures determined under section 60; or

Section 60B

- (b) a person ascertained in accordance with procedures determined under section 60.

60B Restriction on allocation of spectrum licences

If a spectrum licence authorises the operation of radiocommunications devices:

- (a) at one or more frequencies; and
- (b) within one or more areas;

the ACMA must not allocate another spectrum licence if the other spectrum licence authorises the operation of radiocommunications devices:

- (c) at those frequencies; and
- (d) within those areas.

61 Preparation of draft spectrum licences

- (1) After a marketing plan has been prepared, the ACMA may prepare drafts of spectrum licences that are to be allocated in accordance with the marketing plan.
- (2) Drafts of spectrum licences so prepared need not be complete, but each must contain a draft of its core conditions.

62 Issue of spectrum licences

- (1) The ACMA may allocate such a spectrum licence in accordance with the procedures determined under section 60 but not otherwise.
- (2) The ACMA must issue the spectrum licence to the person to whom it is allocated if the person:
 - (a) pays to the ACMA the spectrum access charge for issuing the licence; or
 - (b) reaches an agreement with the ACMA for the payment of that spectrum access charge.

Note: Spectrum access charges are determined under Part 5.7.

Section 63

- (3) If the issue of the licence is covered by section 153L (which deals with re-allocation of spectrum), the ACMA may defer the issue of the licence until the relevant frequencies become available as a result of the expiry, surrender or cancellation of one or more apparatus licences that, under section 153D, are affected by the spectrum re-allocation declaration concerned.
- (4) This section has effect subject to section 577J of the *Telecommunications Act 1997*.

63 Compliance with marketing plans

- (1) The ACMA must ensure that, in issuing a spectrum licence under this Subdivision, the ACMA has complied with any requirements relating to:
 - (a) issuing the licence; or
 - (b) the procedures to be followed prior to its issue;that are imposed by the relevant marketing plan.
- (2) Failure to comply with this section does not affect the validity of a spectrum licence.

Subdivision C—Contents of spectrum licences

64 Authorisation to use part of the spectrum

- (1) A spectrum licence authorises:
 - (a) the person specified in the licence as the licensee; and
 - (b) subject to section 68, any person authorised by that person; to operate a radiocommunications device in accordance with the licence.
- (2) Operation of a radiocommunications device is not authorised by the spectrum licence if it is not in accordance with the conditions of the licence.

65 Duration of spectrum licences

- (1) A spectrum licence comes into force on the day on which it is issued or on such later day as is specified in the licence for the purpose.
- (2) Subject to Division 3, a spectrum licence remains in force for the period specified in the licence.
- (3) The licence may specify any period up to 20 years.

65A Renewal statements etc.*Renewal statement*

- (1) A spectrum licence issued after the commencement of this section must include:
 - (a) a statement to the effect that the licence cannot be renewed; or
 - (b) a statement to the effect that the licence may be renewed at the discretion of the ACMA; or
 - (c) a statement to the effect that the licence may be renewed at the discretion of the ACMA so long as specified circumstances exist.

Note: For transitional exceptions, see subsection (21).

- (2) A statement mentioned in paragraph (1)(a), (b) or (c) is to be known as a **renewal statement**.
- (3) Circumstances specified under paragraph (1)(c) may be an act or omission by the ACMA.
- (4) Subsection (3) does not limit paragraph (1)(c).
- (5) The ACMA may, by legislative instrument, determine that each spectrum licence included in a specified class of spectrum licences is taken to include one of the following statements:
 - (a) a statement to the effect that the licence cannot be renewed;

Section 65A

- (b) a statement to the effect that the licence may be renewed at the discretion of the ACMA;
- (c) a statement to the effect that the licence may be renewed at the discretion of the ACMA so long as specified circumstances exist.

Note: For transitional exceptions, see subsections (21) and (22).

- (6) A statement mentioned in paragraph (5)(a), (b) or (c) is to be known as a ***renewal statement***.
- (7) Circumstances specified under paragraph (5)(c) may be an act or omission by the ACMA.
- (8) Subsection (7) does not limit paragraph (5)(c).
- (9) A determination under subsection (5) does not apply to a spectrum licence if a renewal statement is included in the licence under subsection (1).

Renewal application period

- (10) If a spectrum licence includes:
 - (a) a statement to the effect that the licence may be renewed at the discretion of the ACMA; or
 - (b) a statement to the effect that the licence may be renewed at the discretion of the ACMA so long as specified circumstances exist;the licence must also include a statement to the effect that a specified period is the ***renewal application period*** for the licence.
- (11) A statement mentioned in subsection (10) is to be known as a ***renewal application period statement***.
- (12) The ACMA may, by legislative instrument, determine that each spectrum licence included in a specified class of spectrum licences is taken to include a statement to the effect that a period ascertained in accordance with the determination is the ***renewal application period*** for the licence.

Section 65A

- (13) A renewal application period for a spectrum licence must:
- (a) begin at a time when the licence is in force; and
 - (b) end before the licence is due to expire.
- (14) A determination under subsection (12) does not apply to a spectrum licence if a renewal application period statement is included in the licence under subsection (10).

Renewal decision-making period

- (15) A spectrum licence may include a statement to the effect that a specified period is the **renewal decision-making period** for the licence.
- (16) A statement mentioned in subsection (15) is to be known as a **renewal decision-making period statement**.

Public interest statement

- (17) If a spectrum licence includes:
- (a) a statement to the effect that the licence may be renewed at the discretion of the ACMA; or
 - (b) a statement to the effect that the licence may be renewed at the discretion of the ACMA so long as specified circumstances exist;
- the licence may also include a statement to the effect that the ACMA will not renew the licence unless the ACMA is satisfied that it is in the public interest to do so.
- (18) A statement mentioned in subsection (17) is to be known as a **public interest statement**.
- (19) The ACMA may, by legislative instrument, determine that each spectrum licence included in a specified class of spectrum licences is taken to include a statement to the effect that the ACMA will not renew the licence unless the ACMA is satisfied that it is in the public interest to do so.

Note: For transitional exceptions, see subsections (21) and (22).

Section 66

- (20) A statement mentioned in subsection (19) is to be known as a ***public interest statement***.

Transitional—exceptions

- (21) Subsections (1), (5) and (19) do not apply to a spectrum licence if:
- (a) both:
 - (i) a marketing plan was applicable to the issue of the licence; and
 - (ii) the marketing plan was prepared before the commencement of this section; or
 - (b) the licence was issued as the result of an offer under repealed section 56.
- (22) Subsections (5) and (19) do not apply to a spectrum licence if the licence was issued under repealed section 82.

66 Core conditions of spectrum licences

- (1) A spectrum licence must include the following core conditions:
- (a) a condition specifying the part or parts of the spectrum in which operation of radiocommunications devices is authorised under the licence;
 - (b) a condition specifying the maximum permitted level of radio emission, in parts of the spectrum outside such a part, that may be caused by operation of radiocommunications devices under the licence;
 - (c) a condition specifying the area within which operation of radiocommunications devices is authorised under the licence;
 - (d) a condition specifying the maximum permitted level of radio emission, outside that area, that may be caused by operation of radiocommunications devices under the licence.
- (2) The area specified in the condition referred to in paragraph (1)(c) may be the whole of Australia.

- (3) A spectrum licence may also include a core condition specifying the periods during which operation of radiocommunications devices is authorised under the licence.
- (4) Without limiting subsection (3), the periods specified may include times during each day or times during particular days of each week.
- (5) If the issue of the licence is covered by section 153L (which deals with re-allocation of spectrum), a condition mentioned in paragraph (1)(a) of this section may provide for the progressive authorisation of the operation of radiocommunications devices under the licence. The progressivity is to be based on the times when a particular part or parts of the spectrum become available as a result of the expiry, surrender or cancellation of one or more apparatus licences that, under section 153D, are affected by the spectrum re-allocation declaration concerned.
- (6) Subsection (5) does not, by implication, limit subsection (1).

67 Conditions about payment of charges

A spectrum licence must include a condition that the licensee meet all obligations (if any) of the licensee to pay:

- (a) charges fixed by determinations made under section 60 of the *Australian Communications and Media Authority Act 2005*; and
- (b) spectrum access charges fixed by determinations made under section 294; and
- (c) amounts of spectrum licence tax.

68 Conditions about third party use

- (1) Except as provided by this section, the licensee of a spectrum licence may authorise other persons to operate radiocommunications devices under the licence.
- (2) A spectrum licence:

Section 68A

- (a) must include a condition that any operation of a radiocommunications device under the licence by a person other than the licensee must comply with any rules made under subsection (3); and
- (b) must include a condition that the licensee must notify any persons whom he or she authorises to operate radiocommunications devices under the licence of their obligations under this Act, in particular:
 - (i) the registration requirements under Part 3.5 for operation of radiocommunications devices under the licence; and
 - (ii) any rules made under subsection (3).
- (3) The ACMA may, by legislative instrument, make rules about the operation of radiocommunications devices under spectrum licences by persons other than licensees, including rules about the way in which licensees may authorise those persons to operate radiocommunications devices under spectrum licences.
- (5) This section has effect subject to section 577K of the *Telecommunications Act 1997*.

68A Authorisation under spectrum licence taken to be an acquisition of an asset and conduct

- (1) For the purposes of the provisions of the *Competition and Consumer Act 2010* mentioned in subsection (2), the authorisation under subsection 68(1) of this Act of a person to operate radiocommunications devices under a spectrum licence is taken to be:
 - (a) an acquisition by the person of an asset of another person; and
 - (b) conduct engaged in by the person.
- (2) The provisions of the *Competition and Consumer Act 2010* are:
 - (a) section 50 and subsections 81(1) and (1A); and
 - (b) the remaining provisions of that Act, to the extent that those provisions relate to section 50 of that Act.

69 Conditions about registration of radiocommunications transmitters

- (1) A spectrum licence must include a condition that radiocommunications transmitters not be operated under the licence unless the requirements of the ACMA under Part 3.5 for registration of the transmitter under that Part have been met.
- (2) The condition may exempt radiocommunications transmitters of particular kinds from meeting those requirements.

69A Conditions about residency etc.

- (1) A spectrum licence must include a condition that, at all times when the licensee derives income, profits or gains from operating radiocommunications devices under the licence or from authorising others to do so, either:
 - (a) the licensee is to be an Australian resident (see subsection (3)); or
 - (b) the income, profits or gains are to be attributable to a permanent establishment (see subsection (3)) in Australia through which the licensee carries on business.
- (2) A spectrum licence must include a condition that, at all times when a person (the **authorised person**) authorised under section 68 in relation to the licence derives income, profits or gains from operating radiocommunications devices under the licence, either:
 - (a) the authorised person is to be an Australian resident; or
 - (b) the income, profits or gains are to be attributable to a permanent establishment in Australia through which the authorised person carries on business.
- (3) In this section:

Australian resident has the same meaning as in the *Income Tax Assessment Act 1997*.

Section 71

permanent establishment has the same meaning as in:

- (a) if the licensee or authorised person (as appropriate) is a resident of a country or other jurisdiction with which Australia has an agreement, within the meaning of the *International Tax Agreements Act 1953*—that agreement; or
- (b) in any other case—the *Income Tax Assessment Act 1997*.

71 Other conditions of spectrum licences

- (1) The ACMA may include such other conditions in a spectrum licence as it thinks fit.
- (2) The ACMA's power under this section is not limited by sections 67 to 69A.
- (3) A condition included in a spectrum licence under subsection (1) may confer a power to make a decision of an administrative character on the ACMA.
- (4) A condition included in a spectrum licence under subsection (1) may confer a power to make a decision of an administrative character on a person who holds a specified kind of accreditation.
- (5) The legislative rules may authorise a person who holds a specified kind of accreditation to charge fees in relation to the exercise by the person of a power conferred by a condition included in a spectrum licence under subsection (1). A fee must not be such as to amount to taxation.

Subdivision D—Rules about section 50 and related provisions of the Competition and Consumer Act

71A Issue of spectrum licence taken to be an acquisition of an asset and conduct

- (1) For the purposes of the provisions of the *Competition and Consumer Act 2010* mentioned in subsection (2), the issue of a spectrum licence to a person is taken to be:

Section 71A

- (a) an acquisition by the person of an asset of another person;
and
 - (b) conduct engaged in by the person.
- (2) The provisions of the *Competition and Consumer Act 2010* are:
 - (a) section 50 and subsection 81(1); and
 - (b) the remaining provisions of that Act, to the extent that those provisions relate to section 50 of that Act.
- (3) Subsection (1) does not apply to the issue of a spectrum licence under section 77C.

Division 2—Varying spectrum licences

72 Variation with agreement

- (1) Subject to subsection (2), the ACMA may, with the written agreement of the licensee of a spectrum licence, vary the licence by:
 - (a) including one or more further conditions; or
 - (b) revoking or varying any conditions of the licence.
- (2) The conditions as varied must still comply with the requirements of Subdivision C of Division 1.
- (3) Subject to subsections (4), (5) and (6), the ACMA may, with the written agreement of the licensee of a spectrum licence, vary the licence by:
 - (a) varying the renewal statement included in the licence; or
 - (b) omitting the renewal statement included in the licence and substituting another renewal statement; or
 - (c) varying the renewal application period statement included in the licence; or
 - (d) omitting the public interest statement included in the licence; or
 - (e) omitting the renewal decision-making period statement included in the licence; or
 - (f) varying the renewal decision-making period statement included in the licence.
- (4) If the renewal statement is varied, the statement as varied must comply with the requirements of section 65A.
- (5) If another renewal statement is substituted, the substituted renewal statement must comply with the requirements of section 65A.
- (6) If the renewal application period statement is varied, the statement as varied must comply with the requirements of section 65A.

73 Variation without agreement

- (1) Subject to subsection (2), the ACMA may, by written notice given to the licensee of a spectrum licence, vary the licence by:
 - (a) including one or more further conditions; or
 - (b) revoking or varying any conditions of the licence, other than core conditions.
- (2) The conditions as varied must still comply with the requirements of Subdivision C of Division 1.

Note: Variations of spectrum licences under this section are reviewable under Part 5.6.

- (3) Subject to subsections (4), (5) and (6), if a spectrum licence includes a renewal statement to the effect that the licence may be renewed at the discretion of the ACMA so long as specified circumstances exist, the ACMA may, by written notice given to the licensee of the licence, vary the licence by:
 - (a) varying the circumstances specified in the renewal statement included in the licence; or
 - (b) omitting the renewal statement included in the licence and substituting another renewal statement to the effect that the licence may be renewed at the discretion of the ACMA so long as specified circumstances exist.
- (4) The ACMA must not vary the licence under subsection (3) unless the ACMA is satisfied that exceptional circumstances exist that warrant the variation of the licence.
- (5) If the renewal statement is varied, the statement as varied must comply with the requirements of section 65A.
- (6) If another renewal statement is substituted, the substituted renewal statement must comply with the requirements of section 65A.

Section 73A

73A Conditions included in a spectrum licence—decision-making powers

- (1) A condition included in a spectrum licence under subsection 72(1) or 73(1) may confer a power to make a decision of an administrative character on the ACMA.
- (2) A condition included in a spectrum licence under subsection 72(1) or 73(1) may confer a power to make a decision of an administrative character on a person who holds a specified kind of accreditation.
- (3) The legislative rules may authorise a person who holds a specified kind of accreditation to charge fees in relation to the exercise by the person of a power conferred by a condition included in a spectrum licence under subsection 72(1) or 73(1). A fee must not be such as to amount to taxation.

Division 3—Suspending and cancelling spectrum licences

74 Application of this Division

This Division applies to a spectrum licence if the ACMA is satisfied that the licensee, or a person authorised by the licensee to operate a radiocommunications device under the licence, has:

- (a) contravened a condition of the licence, or in any other way contravened this Act; or
- (b) operated a radiocommunications device under the licence, or purportedly under the licence:
 - (i) in contravention of any other law (whether written or unwritten) of the Commonwealth, a State or a Territory; or
 - (ii) in the course of contravening such a law.

75 Suspending spectrum licences

- (1) The ACMA may, by written notice given to the licensee, suspend the spectrum licence.

Note: Suspensions of spectrum licences are reviewable under Part 5.6.

- (2) The notice must give the reasons for suspending the licence.
- (3) The ACMA may, at any time, by written notice given to the licensee, revoke the suspension of the licence.

76 Period of suspension

- (1) Subject to subsection (2), the suspension of the spectrum licence, unless it is sooner revoked, ceases:
 - (a) if, within 28 days after the suspension, proceedings for an offence against this Act are instituted against the licensee, or against a person authorised by the licensee to operate a radiocommunications device under the licence, and he or she is convicted of the offence—on the expiration of 14 days after the date of the conviction; or

Section 77

- (b) if such proceedings are instituted within 28 days after the suspension and he or she is not convicted of the offence—on the completion of the proceedings; or
 - (c) in any other case—on the expiration of 28 days after the suspension.
- (2) If:
 - (a) the notice of suspension specifies a day as the day on which the suspension of the spectrum licence ceases; and
 - (b) that day occurs before the day fixed under subsection (1);the suspension of the licence, unless it is sooner revoked, ceases on the day so specified.
- (3) In subsection (1):
proceedings does not include proceedings by way of appeal or review.

77 Cancelling spectrum licences

- (1) The ACMA may, by written notice given to the licensee, cancel the spectrum licence.
Note: Cancellations of spectrum licences are reviewable under Part 5.6.
- (2) The notice must give the reasons for cancelling the licence.

Division 3A—Renewal of spectrum licences**77A Applications for renewal of spectrum licences**

- (1) A licensee of a spectrum licence may apply to the ACMA for the licence to be renewed.
- (2) If there is a renewal application period for the licence, the application must be made within the renewal application period.
- (3) If there is no renewal application period for the licence, the application must be made within the 2-year period ending when the licence is due to expire.
- (4) The application must:
 - (a) be made in a manner approved, in writing, by the ACMA; and
 - (b) be in a form approved, in writing, by the ACMA; and
 - (c) be accompanied by such information (if any) as is specified in an instrument under subsection (6); and
 - (d) be accompanied by such documents (if any) as are specified in an instrument under subsection (7).
- (5) The ACMA may approve different forms for different applications.
- (6) The ACMA may, by legislative instrument, specify information for the purposes of paragraph (4)(c).
- (7) The ACMA may, by legislative instrument, specify documents for the purposes of paragraph (4)(d).
- (8) An instrument under paragraph (4)(a) is a notifiable instrument.
- (9) An approved form of application may provide for verification by statutory declaration of statements in applications.

Deemed applications

- (10) If:
-

Section 77B

- (a) the ACMA gives a person a notice that is expressed to be a licence renewal notice; and
 - (b) the notice relates to one or more spectrum licences held by the person; and
 - (c) in response to the notice, the person:
 - (i) pays to the ACMA (on behalf of the Commonwealth) the amount specified in the notice as the amount due; and
 - (ii) does so on or before the day specified in the notice as the payment due date;
- then:
- (d) if the notice relates to a single spectrum licence—the person is taken to have made an application under subsection (1) for the licence to be renewed; and
 - (e) if the notice relates to 2 or more spectrum licences—the person is taken to have made separate applications under subsection (1) for each of those licences to be renewed; and
 - (f) subsection (4) does not apply to that application or those applications, as the case requires.

77B Further information

- (1) If an application is made for the renewal of a spectrum licence, the ACMA may, by written notice given to the applicant, require the applicant to give the ACMA, within the period specified in the notice, further information in connection with the application.
- (2) If the applicant breaches the requirement, the ACMA may, by written notice given to the applicant:
 - (a) refuse to consider the application; or
 - (b) refuse to take any action, or any further action, in relation to the application.

77C Renewal of spectrum licences

- (1) When an application is made for the renewal of a spectrum licence, the ACMA may, without following the procedures determined

Section 77C

under section 60, renew the licence by issuing to the applicant a new spectrum licence.

- (2) Subsection (1) does not imply that the ACMA must renew the licence without the applicant:
 - (a) paying to the ACMA the spectrum access charge for issuing the new spectrum licence; or
 - (b) reaching an agreement with the ACMA for payment of that spectrum access charge.
- (3) The ACMA must not renew the licence if the licence included a renewal statement to the effect that the licence cannot be renewed.
- (4) If the licence included a renewal statement to the effect that the licence may be renewed at the discretion of the ACMA so long as specified circumstances exist, the ACMA must not renew the licence unless the ACMA is satisfied that the specified circumstances exist.
- (5) The ACMA must not renew the licence by issuing a new spectrum licence that specifies a period for the purposes of subsection 65(2) that is 10 years or longer unless the ACMA is satisfied that it is in the public interest to do so.
- (6) If the licence included a public interest statement, the ACMA must not renew the licence unless the ACMA is satisfied that it is in the public interest to do so.
- (7) In deciding whether to renew the licence, the ACMA must have regard to:
 - (a) all matters that it considers relevant; and
 - (b) without limiting paragraph (a), the effect on radiocommunications of the proposed operation of the radiocommunications devices that would be authorised under the new spectrum licence.
- (8) In deciding whether to renew the licence, the ACMA may have regard to the following matters:

Section 77D

- (a) whether the applicant has an outstanding liability to pay an amount of:
 - (i) apparatus licence tax; or
 - (ii) spectrum licence tax; or
 - (iii) spectrum access charge; or
 - (iv) interim tax;
 - (b) whether the applicant has contravened a condition of the licence;
 - (c) whether the following conditions are satisfied:
 - (i) a person authorised by the applicant under section 68 in relation to the licence has contravened a condition of the licence;
 - (ii) the applicant was aware, or ought reasonably to have been aware, of the contravention;
 - (iii) the applicant failed to take reasonable steps to prevent the contravention;
 - (d) whether the applicant held another licence that was cancelled during the previous 2 years (otherwise than under section 87, 128B, 153H or 307).
- (9) The new spectrum licence comes into force, or is taken to have come into force, immediately after the expiration of the licence that it replaces.
- (10) The conditions of the new spectrum licence need not be the same as those of the licence that it replaces.

77D Notice of refusal to renew spectrum licence etc.

- (1) If the ACMA:
- (a) refuses to renew a spectrum licence; or
 - (b) renews a spectrum licence but not on the same conditions;
- the ACMA must give the licensee a written notice stating that fact.

Note: Refusals to renew spectrum licences, and changes to licence conditions on renewal, are reviewable under Part 5.6.

- (2) The notice under subsection (1) must state that:
-

Section 77E

- (a) the licensee may request a statement of reasons for the decision; and
 - (b) a request must be made within 28 days of receipt of the notice.
- (3) A person receiving a notice under subsection (1) may request a statement of reasons for the decision within 28 days of receiving the notice.
- (4) If the ACMA receives a request in accordance with subsection (3), it must give the person a statement of reasons within 28 days of receipt of the request.

77E Application of other provisions

Subdivisions C and D of Division 1 apply to a spectrum licence issued under this Division in the same way that those Subdivisions apply to spectrum licences issued under Division 1.

Division 4—Issuing further spectrum licences (otherwise than by way of renewal)

78 Notice of spectrum licences that are about to expire

The ACMA must, from time to time, publish on its website a notice that:

- (a) states where information may be obtained about:
 - (i) the spectrum licences that will expire during a period specified in the notice; and
 - (ii) the parts of the spectrum to which they relate; and
- (b) invites expressions of interest from persons who wish to have issued to them spectrum licences relating to those parts of the spectrum.

79 Preparation of draft further spectrum licences

- (1) The ACMA may, at any time prior to a spectrum licence expiring, prepare:
 - (a) a draft of a new spectrum licence that would wholly or partly replace that licence; or
 - (b) drafts of 2 or more new spectrum licences that, taken together, would wholly or partly replace that licence.
- (2) The conditions included in a draft licence need not be the same conditions as those included in the licence that is to be replaced.

80 Procedures for re-allocating spectrum licences

- (1) The procedures determined under section 60 apply, so far as they are capable of applying, to re-allocating spectrum licences under this Division in the same way that they apply to allocating spectrum licences under Subdivision B of Division 1.
- (2) To avoid doubt, subsection (1) of this section does not prevent or limit the variation, in accordance with subsection 33(3) of the *Acts*

Interpretation Act 1901, of procedures determined under section 60 of this Act.

81 Issue of further spectrum licences

- (1) The ACMA may re-allocate a spectrum licence in accordance with the procedures determined under section 60 (as they apply because of section 80), but not otherwise.
- (2) The ACMA must issue the spectrum licence to the person to whom it is re-allocated if the person:
 - (a) pays to the ACMA the spectrum access charge for issuing the licence; or
 - (b) reaches an agreement with the ACMA for payment of that spectrum access charge.

83 General rules about newly-issued spectrum licences apply to re-issued spectrum licences

Subdivisions C and D of Division 1 apply to spectrum licences re-issued under this Division in the same way that those Subdivisions apply to spectrum licences issued under Division 1.

84 Commencement of re-issued spectrum licences

A spectrum licence re-issued under this Division comes into force on the day specified in the licence, not being a day occurring earlier than the expiry of the spectrum licence it replaces.

Division 5—Trading spectrum licences

85 Trading spectrum licences

- (1) Subject to subsection (2) and section 86 of this Act and section 577L of the *Telecommunications Act 1997*, the licensee of a spectrum licence may assign, or otherwise deal with, the whole or any part of the licence.
- (2) An assignment must comply with any rules made under section 88.

86 Registration of assignments etc.

- (1) The parties to an assignment under section 85 of the whole, or any part of, a licence that involves:
 - (a) a change in the licensee; or
 - (b) the issue of a spectrum licence; or
 - (c) the variation of the conditions of a spectrum licence; or
 - (d) the cancellation of one or more existing spectrum licences;must give to the ACMA such information about the assignment as the ACMA requires (if any) for the purpose of amending the Register to take account of the assignment.
- (2) The assignment covered by subsection (1) cannot take effect before the Register is amended under Part 3.5 to take it into account.

87 Variation etc. of spectrum licences to take assignments into account

- (1) The ACMA may do one or more of the following if it is satisfied it is necessary or convenient to do so in order to give effect to an assignment under section 85:
 - (a) vary a spectrum licence by specifying in it as the licensee a different person from the person currently specified;
 - (b) vary the conditions of a spectrum licence by:
 - (i) including one or more further conditions; or

Section 88

- (ii) revoking or varying any conditions;
 - (c) issue one or more new spectrum licences;
 - (d) cancel one or more existing spectrum licences.
- (2) A licence as varied, or a new licence issued, under subsection (1) must comply with the requirements of Subdivision C of Division 1.
- (3) Subdivision D of Division 1 applies to the issue of a new licence under subsection (1) of this section.

Note: Variations and cancellations under this section are reviewable under Part 5.6.

88 Rules about assignments etc.

- (1) The ACMA may, by legislative instrument, determine rules:
 - (a) for assignments of spectrum licences; and
 - (b) setting out the circumstances in which spectrum licences are to be varied, issued or cancelled under section 87.
- (2) The rules may, for example, restrict assignments of spectrum licences that were issued for the provision of public or community services.
- (3) The rules may confer a power to make a decision of an administrative character on the ACMA.

Division 6—Resuming spectrum licences

Subdivision A—Resuming spectrum licences by agreement

89 ACMA may resume spectrum licences by agreement

- (1) The ACMA may resume a spectrum licence, or a part of a spectrum licence, under an agreement entered into with the licensee.
- (2) Without limiting the matters that may be included in the agreement, if a part of the licence is to be resumed, the agreement must specify variations to the conditions included in the remaining part of the licence that will be made to give effect to the agreement.

90 Effect of resumption

- (1) If the whole of the licence is resumed, it ceases to have effect:
 - (a) at the end of the day specified for that purpose in the agreement; or
 - (b) if such a day is not specified—at the end of the day on which the agreement is entered into.
- (2) If a part of the licence is resumed:
 - (a) that part of the licence ceases to have effect at the end of the day on which the ACMA makes the necessary changes to the information in the Register under section 146 to take the resumption into account; and
 - (b) the ACMA must vary, in a way that gives effect to the variations specified in the agreement, the conditions included in the remaining part of the licence.

Subdivision B—Resuming spectrum licences by compulsory process**91 ACMA may resume spectrum licences compulsorily**

- (1) Subject to subsection (2), the ACMA may resume a spectrum licence, or a part of a spectrum licence.
- (2) The ACMA must not resume the licence unless:
 - (a) the Minister has given his or her written approval for the resumption; and
 - (b) the ACMA has followed the resumption procedures set out in Part 1 of the Schedule.

92 Effect of resumption

- (1) If the whole of the licence is resumed, it ceases to have effect:
 - (a) on the day specified for that purpose in the notice of resumption; or
 - (b) if such a day is not specified—at the end of the day on which the notice is given.
- (2) If a part of the licence is resumed:
 - (a) that part of the licence ceases to have effect at the end of the day on which the ACMA makes the necessary changes to the information in the Register under section 146 to take the resumption into account; and
 - (b) the ACMA must vary, in the way that in its opinion best gives effect to the resumption, the conditions included in the remaining part of the licence.

Note: Variations under this section are reviewable under Part 5.6.

93 Payment of compensation

- (1) Part 2 of the Schedule sets out the procedures to be followed for determining the compensation payable for:
 - (a) resuming the licence or the part of the licence; or

Section 94

- (b) publishing a pre-acquisition declaration that is revoked before resumption of the licence, or the part of the licence, takes place.
- (2) If an amount of compensation is determined under those procedures to be payable to a person, the Commonwealth must pay that amount to that person, together with the amount of interest payable under section 94.

94 Interest payable on resumption etc.

- (1) Interest is payable on the amount of compensation in respect of the period:
 - (a) starting:
 - (i) if the licence or the part of the licence is resumed—on the day the resumption took place; or
 - (ii) if the pre-acquisition declaration was revoked before the resumption took place—on the day the pre-acquisition declaration was served on the licensee; and
 - (b) finishing at the end of the day on which the compensation is paid.
- (2) Interest is payable at the rate specified in, or ascertained in accordance with, the regulations.

95 Reaching agreements during the compulsory process

- (1) This Subdivision does not prevent the ACMA entering into an agreement under section 89 under which a spectrum licence or a part of a spectrum licence is resumed even though the ACMA was, until the agreement was entered into, in the process of resuming the licence, or the part of the licence, under section 91.
- (2) On entering into the agreement, the ACMA must stop the process of resuming the licence, or the part of the licence, under this Subdivision.

Part 3.3—Apparatus licences

96 Outline of this Part

- (1) This Part is about apparatus licences, under which licensees are authorised to operate the radiocommunications devices to which the licences relate.
- (2) Division 1 is about the kinds of apparatus licences that may be issued.
- (3) Division 2 is about issuing apparatus licences.
- (4) Division 3 is about the conditions to which apparatus licences are subject.
- (5) Division 4 is about licensees authorising third parties to operate radiocommunications devices under apparatus licences.
- (6) Division 5 is about requirements to have qualified operators to operate radiocommunications devices under some apparatus licences.
- (7) Division 6 is about suspending and cancelling apparatus licences.
- (8) Division 7 is about renewing apparatus licences.

96A Policy in relation to certain community broadcasting services and open narrowcasting television services

- (1) It is the intention of the Parliament that:
 - (a) until 30 June 2024, access to the broadcasting services bands be available to provide the following services in a prescribed area:
 - (i) community broadcasting services provided under a CTV licence;

Section 96B

- (ii) community broadcasting services that provide television programs under a licence under Part 6A of the *Broadcasting Services Act 1992*;
 - (iii) open narrowcasting television services provided for community or educational non-profit purposes that are transmitted from one or more radiocommunications transmitters, the operation of which is authorised under an apparatus licence issued under section 100; but
 - (b) on and after 30 June 2024, all such services should be delivered using online platforms.
- (2) The Minister may, by legislative instrument, prescribe an area for the purposes of paragraph (c) of the definition of ***prescribed area*** in subsection (3).
- (3) In this section:

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

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

prescribed area means:

- (a) Adelaide; or
- (b) Melbourne; or
- (c) an area prescribed in an instrument under subsection (2).

96B Licences of certain kinds must not be granted to new holders after 30 June 2021

- (1) This section applies to a person if, on 30 June 2021, the person did not hold one or more of the following licences:
- (a) a CTV licence;
 - (b) a licence under Part 6A of the *Broadcasting Services Act 1992* to provide a community broadcasting service that provides television programs;
 - (c) an apparatus licence issued under section 100 that:

Section 96B

- (i) authorises the operation of one or more radiocommunications transmitters; and
 - (ii) includes a condition that the licence may only be used to provide a transmission in standard definition digital mode of an open narrowcasting television service for community and educational non-profit purposes.
- (2) Despite anything else in this Act or the *Broadcasting Services Act 1992*, the person is not eligible to hold a licence of that kind after that day.

Division 1—Kinds of apparatus licences

97 Transmitter licences and receiver licences

- (1) The ACMA may issue:
 - (a) transmitter licences; and
 - (b) receiver licences.
- (2) A transmitter licence authorises:
 - (a) the person specified in the licence as the licensee; and
 - (b) subject to Division 4, any person authorised by that person under section 114;
to operate:
 - (c) specified radiocommunications transmitters; or
 - (d) radiocommunications transmitters of a specified kind; or
 - (e) if neither paragraph (c) nor (d) applies—
radiocommunications transmitters of any kind.
- (3) A receiver licence authorises:
 - (a) the person specified in the licence as the licensee; and
 - (b) subject to Division 4, any person authorised by that person under section 114;
to operate:
 - (c) specified radiocommunications receivers; or
 - (d) radiocommunications receivers of a specified kind; or
 - (e) if neither paragraph (c) nor (d) applies—
radiocommunications receivers of any kind.
- (4) Operation of a radiocommunications device is not authorised by the relevant apparatus licence if it is not in accordance with the conditions of the licence.

98 Types of transmitter licences and receiver licences

- (1) The ACMA may, by legislative instrument, determine the types of transmitter licences and the types of receiver licences that it may issue.
- (2) Subsection (1) does not prevent the ACMA from issuing an apparatus licence that is not a transmitter licence or receiver licence of a type so determined.
- (2A) For the purposes of this Act, the type of an apparatus licence is to be ascertained solely by reference to a determination.

98C Foundation category 1 digital radio multiplex transmitter licence

- (1) Subject to this section, the ACMA may, by writing, declare that a specified category 1 digital radio multiplex transmitter licence proposed to be issued is a ***foundation category 1 digital radio multiplex transmitter licence*** for the purposes of this Act.
- (2) If such a category 1 digital radio multiplex transmitter licence is issued, the licence is a ***foundation category 1 digital radio multiplex transmitter licence*** for the purposes of this Act.
- (3) A declaration under subsection (1) is not a legislative instrument.
- (4) A copy of a declaration under subsection (1) is to be made available on the ACMA's website.

98D Foundation category 2 digital radio multiplex transmitter licence

- (1) Subject to this section, the ACMA may, by writing, declare that a specified category 2 digital radio multiplex transmitter licence proposed to be issued is a ***foundation category 2 digital radio multiplex transmitter licence*** for the purposes of this Act.

Section 98E

- (2) If such a category 2 digital radio multiplex transmitter licence is issued, the licence is a ***foundation category 2 digital radio multiplex transmitter licence*** for the purposes of this Act.
- (3) A declaration under subsection (1) is not a legislative instrument.
- (4) A copy of a declaration under subsection (1) is to be made available on the ACMA's website.

98E Limit on declaration of foundation digital radio multiplex transmitter licences

- (1) In exercising its powers under subsection 98C(1) or 98D(1) in relation to a particular designated BSA radio area, the ACMA must ensure that the total multiplex capacities under foundation digital radio multiplex transmitter licences for the designated BSA radio area is not more than sufficient to fulfil the number of standard access entitlements that have come into existence, or are likely to come into existence, under subsection 118NQ(2) in its application to the designated BSA radio area.
- (2) For the purposes of subsection (1), if the number of standard access entitlements that have come into existence, or are likely to come into existence, under subsection 118NQ(2) in its application to the designated BSA radio area is not a multiple of 7, round up that number to the next higher number that is a multiple of 7.
- (3) Subsection (1) does not prevent the ACMA from making a declaration under subsection 98C(1) in relation to a category 1 digital radio multiplex transmitter licence for a particular designated BSA radio area if the ACMA proposes to cancel a foundation category 1 digital radio multiplex transmitter licence that has been previously issued for that area.
- (4) Subsection (1) does not prevent the ACMA from making a declaration under subsection 98D(1) in relation to a category 2 digital radio multiplex transmitter licence for a particular designated BSA radio area if the ACMA proposes to cancel a

foundation category 2 digital radio multiplex transmitter licence
that has been previously issued for that area.

(5) In this section:

multiplex capacity has the same meaning as in Division 4B.

Division 2—Issuing apparatus licences

99 Applications for apparatus licences

- (1) A person may apply to the ACMA for an apparatus licence.
- (1A) The application must be made in a manner approved, in writing, by the ACMA.
- (2) The application must be in a form approved, in writing, by the ACMA.
- (3) The ACMA may approve different forms for different applications.
- (4) An instrument under subsection (1A) is a notifiable instrument.

100 Issuing apparatus licences

- (1) Subject to sections 102, 102C, 102D, 102E and 102F, upon such application being made, the ACMA may issue to the applicant an apparatus licence.
- (1A) The ACMA must not issue a temporary community transmitter licence except under section 101A. For the purposes of this subsection, a **temporary community transmitter licence** is an apparatus licence that authorises operation of one or more radiocommunications transmitters for transmitting a community broadcasting service in accordance with a temporary community broadcasting licence.
- (2) The ACMA must not issue an apparatus licence authorising operation of a radiocommunications transmitter within a part of the spectrum designated under subsection 31(1) or (1A) unless:
 - (a) the issue of the licence is in accordance with a decision of the ACMA under subsection 34(1) or (3) of the *Broadcasting Services Act 1992*; or
 - (b) the issue of the licence is in accordance with a determination under subsection 31(2) of this Act; or

- (c) the licence is a digital radio multiplex transmitter licence.
- (3) Subsection (2) does not prevent the ACMA from issuing an apparatus licence authorising operation of a radiocommunications transmitter for transmitting a broadcasting service if:
- (a) the licence authorises operation of the transmitter only within a part of the spectrum that constitutes capacity reserved under paragraph 31(1)(a) of the *Broadcasting Services Act 1992*; and
 - (b) the broadcasting service in question is a broadcasting service of a kind for which the capacity has been so reserved.
- (3A) An NBS transmitter licence cannot be issued to any person other than:
- (a) the Australian Broadcasting Corporation; or
 - (b) the Special Broadcasting Service Corporation; or
 - (c) the Commonwealth.
- (3AA) Subsection (2) does not prevent the ACMA from issuing an NBS transmitter licence that authorises the operation of one or more transmitters for transmitting one or more national broadcasting services that are covered by a licence area plan in force under section 26 of the *Broadcasting Services Act 1992*.
- (3B) The ACMA must not issue a transmitter licence authorising operation of a radiocommunications transmitter for transmitting an international broadcasting service unless there is in force an international broadcasting licence that authorises the provision of that service.
- (3BA) The ACMA must not issue a transmitter licence authorising operation of a radiocommunications transmitter for transmitting or re-transmitting a commercial broadcasting service if:
- (a) the ACMA has reasonable grounds to believe that the application for the licence is part of a scheme:
 - (i) entered into; or
 - (ii) being carried out; or
 - (iii) that has been carried out;

Section 100

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); and

- (b) the applicant has not satisfied the ACMA that the application for the licence is not part of such a scheme.

(3BB) For the purposes of subsection (3BA), *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.

(3C) If:

- (a) a provisional international broadcasting certificate is in force in relation to an application for a transmitter licence; and
- (b) the application for the licence is made by the holder of the certificate; and
- (c) the conditions set out in the certificate are satisfied;

the ACMA must not refuse to issue the transmitter licence unless the ACMA is satisfied that there are exceptional circumstances that warrant the refusal.

(4) In deciding whether to issue an apparatus licence, the ACMA must have regard to:

- (a) all matters that it considers relevant; and
- (b) without limiting paragraph (a), the effect on radiocommunications of the proposed operation of the radiocommunications devices that would be authorised under the licence.

(4A) The ACMA, in deciding whether to issue an apparatus licence, may have regard to a frequency assignment certificate issued by a person who holds an accreditation of a kind specified in the legislative rules, stating that the operation of a device under the licence:

- (a) on a specified frequency or frequencies, or on a specified frequency channel; and

- (b) at a specified constancy; and
 - (c) at a specified location; and
 - (d) subject to specified technical conditions;
- will satisfy any conditions that are required to be satisfied, in relation to the issue of such a certificate, under a determination made under section 266A.
- (4B) The legislative rules may authorise a person who holds a kind of accreditation mentioned in subsection (4A) to charge fees in relation to the issue of frequency assignment certificates under subsection (4A). A fee must not be such as to amount to taxation.
- (4C) In deciding whether to issue an apparatus licence, the ACMA may also have regard to the aggregate of the parts of the spectrum that, under transmitter licences or spectrum licences, may be used by the applicant.
- (5) In deciding whether to issue an apparatus licence, the ACMA may also have regard to whether, in the 2 years before the application, the applicant has been the holder of an apparatus licence that has been cancelled otherwise than under section 153H.
- (5A) In deciding whether to issue a transmitter licence authorising operation of a radiocommunications transmitter:
- (a) within a part of the spectrum designated under subsection 31(1) or (1A); and
 - (b) at a particular location (the *relevant location*);
- for transmitting or re-transmitting a commercial broadcasting service, the ACMA must also have regard to:
- (c) whether:
 - (i) the commercial television broadcasting licensee; or
 - (ii) the commercial radio broadcasting licensee;who provides the commercial broadcasting service has previously held a transmitter licence authorising operation of a radiocommunications transmitter for transmitting or re-transmitting the commercial broadcasting service at a location that is the same as, or substantially similar to, the relevant location; and

Section 100

- (d) whether there is a commercial arrangement between:
 - (i) the applicant for the transmitter licence; and
 - (ii) the commercial television broadcasting licensee or the commercial radio broadcasting licensee who provides the commercial broadcasting service;in relation to:
 - (iii) the application; or
 - (iv) the transmission of the commercial broadcasting service at a location that is the same as, or substantially similar to, the relevant location.
- (6) Without limiting subsection (4), in deciding whether to issue a transmitter licence, the ACMA must have regard to the following additional matters:
 - (a) if a licence that the ACMA may issue as a result of the application would be a licence in respect of which persons operating the transmitters are required under section 119 to be qualified operators in relation to the licence—whether:
 - (i) the applicant; or
 - (ii) each person specified by the applicant as a person whom the applicant proposes to authorise under the licence to operate the transmitters;is a qualified operator in relation to such a licence;
 - (b) whether the ACMA is satisfied that the proposed operation of the transmitters is not reasonably likely to cause:
 - (i) death of, or injury to, persons; or
 - (ii) loss of, or damage to, property.
- (7) If the ACMA refuses to issue the licence, it must give the applicant a written notice of the refusal, together with a statement of its reasons.

Note: Refusals to issue apparatus licences are reviewable under Part 5.6.
- (8) Nothing in this Act prevents 2 or more apparatus licences (whether transmitter licences or receiver licences or both) from being contained in the same instrument.

100AA NBS transmitter licences—authorised channels

(1) If:

- (a) an NBS transmitter licence is issued under section 100; and
- (b) the licence authorises the operation of one or more radiocommunications transmitters for transmitting one or more national television broadcasting services in digital mode in a BSA coverage area;

the licence authorises the operation of the transmitter or transmitters concerned for transmitting those services in that area using the channel or channels allotted to the national broadcaster concerned under the BSA television licence area plan for that BSA television licence area.

(2) In this section:

BSA television licence area means a BSA licence area for a commercial television broadcasting licence.

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

NBS transmitter licence means a transmitter licence for a transmitter that is for use for transmitting, to the public, a national broadcasting service.

100A NBS transmitter licences—authorisation of datacasting services

(1) If:

- (a) an NBS transmitter licence is or was issued under section 100; and
- (b) the licence authorises the operation of one or more specified radiocommunications transmitters for transmitting a national television broadcasting service in digital mode using one or more channels;

Section 100C

the licence is also taken to authorise the operation of the transmitter or transmitters concerned for transmitting designated datacasting services in digital mode using those channels.

- (1B) The authorisation of the operation of the transmitter or transmitters concerned for transmitting a designated datacasting service in digital mode using those channels has no effect unless the licensee holds a BSA datacasting licence authorising the provision of that service.

- (2) In this section:

national broadcasting service has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

NBS transmitter licence means a transmitter licence for a transmitter that is for use for transmitting, to the public, a national broadcasting service.

100C NBS transmitter licences—authorisation of radio broadcasting services

- (1) If:

- (a) an NBS transmitter licence is or was issued to a particular national broadcaster; and
- (b) the licence authorises the operation of one or more specified radiocommunications transmitters for transmitting a national television broadcasting service in digital mode using one or more channels;

the licence is also taken to authorise the operation of the transmitter or transmitters concerned for transmitting national radio broadcasting services in digital mode using those channels.

- (2) In this section:

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

national broadcasting service has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

Section 100D

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

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

NBS transmitter licence means a transmitter licence for a transmitter that is for use for transmitting, to the public, a national broadcasting service.

**100D NBS transmitter licences—authorisation of SDTV
multi-channelled national television broadcasting services**

(1) If:

- (a) an NBS transmitter licence is or was issued to a particular national broadcaster; and
- (b) the licence authorises the operation of one or more specified radiocommunications transmitters for transmitting a national television broadcasting service in digital mode using one or more channels; and
- (c) the national broadcaster provides, or proposes to provide, one or more SDTV multi-channelled national television broadcasting services;

the licence is also taken to authorise the operation of the transmitter or transmitters concerned for transmitting the SDTV multi-channelled national television broadcasting services in digital mode using those channels.

(2) In this section:

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

national broadcasting service has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

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

Section 100E

NBS transmitter licence means a transmitter licence for a transmitter that is for use for transmitting, to the public, a national broadcasting service.

SDTV multi-channelled national television broadcasting service has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

100E NBS transmitter licences—authorisation of HDTV multi-channelled national television broadcasting services

(1) If:

- (a) an NBS transmitter licence is or was issued to a national broadcaster; and
- (b) the NBS transmitter licence authorises the operation of one or more specified radiocommunications transmitters for transmitting one or more national television broadcasting services in digital mode using one or more channels; and
- (c) the national broadcaster provides, or proposes to provide, one or more HDTV multi-channelled national television broadcasting services;

the licence is also taken to authorise the operation of the transmitter or transmitters concerned for transmitting HDTV multi-channelled national television broadcasting services using those channels.

(2) In this section:

HDTV multi-channelled national television broadcasting service has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

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

national broadcasting service has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

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

NBS transmitter licence means a transmitter licence for a transmitter that is for use for transmitting, to the public, a national broadcasting service.

101 Testing of radiocommunications devices

- (1) If the ACMA thinks it necessary for the purposes of paragraph 100(4)(b), the ACMA may, by written notice given to the applicant for a transmitter licence or a receiver licence, request the applicant to:
 - (a) submit to the ACMA the radiocommunications device specified in the notice, at a time and place specified in the notice, for testing; or
 - (b) permit the ACMA, or a recognised testing authority, to test the radiocommunications device so specified.
- (2) A radiocommunications device submitted under paragraph (1)(a) for testing must be returned to the applicant within a reasonable time.

101A Transmitter licences for temporary community broadcasting

- (1) If the ACMA allocates a temporary community broadcasting licence (the ***related licence***) to a person, then the ACMA may issue to the person, upon application by the person under section 99, a transmitter licence that authorises operation of one or more specified radiocommunications transmitters for transmitting the community broadcasting service in accordance with the related licence.
- (2) Subsections 100(4) to (8) apply for the purposes of this section.

102 Transmitter licences for certain broadcasting services

- (1) Subject to subsections (2AA) and (2AB), if a broadcasting services bands licence (the ***related licence***) is allocated to a person under
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Section 102

Part 4 or 6 of the *Broadcasting Services Act 1992*, the ACMA must issue to the person a transmitter licence that authorises operation of one or more specified radiocommunications transmitters for transmitting the broadcasting service or services concerned in accordance with the related licence.

- (2) If the related licence is transferred, that transmitter licence is taken to be issued to the person to whom the related licence is transferred.
- (2AA) Subsection (1) does not apply if:
- (a) the related licence is a commercial radio broadcasting licence allocated on or after the digital radio start-up day for the BSA licence area; and
 - (b) the related licence is subject to a condition that the related licensee may only provide digital commercial radio broadcasting services under the related licence.
- (2AB) Subsection (1) does not apply if:
- (a) the related licence is a designated community radio broadcasting licence allocated on or after the digital radio start-up day for the BSA licence area; and
 - (b) the related licence is subject to a condition that the related licensee may only provide digital community radio broadcasting services under the related licence.
- (2AC) If:
- (a) the related licence is a commercial radio broadcasting licence allocated before the digital radio start-up day for the BSA licence area; and
 - (b) under the *Broadcasting Services Act 1992*, the related licence authorises the related licensee to provide digital commercial radio broadcasting services;
- then, after the digital radio start-up day for the BSA licence area, the transmitter licence does not authorise the operation of a radiocommunications transmitter for transmitting those services.

(2AD) If:

Section 102AD

- (a) the related licence is a designated community radio broadcasting licence allocated before the digital radio start-up day for the BSA licence area; and
 - (b) under the *Broadcasting Services Act 1992*, the related licence authorises the related licensee to provide digital community radio broadcasting services;
- then, after the digital radio start-up day for the BSA licence area, the transmitter licence does not authorise the operation of a radiocommunications transmitter for transmitting those services.
- (3) If:
- (a) a transmitter licence is or was issued under this section; and
 - (b) the licence authorises the operation of one or more specified radiocommunications transmitters for transmitting the broadcasting service or services concerned in digital mode using one or more channels;
- the licence is also taken to authorise the operation of the transmitter or transmitters concerned for transmitting designated datacasting services in digital mode using those channels.
- (5) The authorisation of the operation of the transmitter or transmitters concerned for transmitting a designated datacasting service in digital mode using those channels has no effect unless:
- (a) the licensee holds a BSA datacasting licence authorising the provision of that service; or
 - (b) the service is a designated teletext service.

102AD Transmitter licences—authorised channels

- (1) If:
- (a) a transmitter licence is issued under section 102 in relation to a broadcasting services bands licence (the *related licence*); and
 - (b) the transmitter licence is held by the licensee of the related licence; and
 - (c) the transmitter licence authorises the operation of one or more radiocommunications transmitters for transmitting one

Section 102C

or more commercial television broadcasting services in accordance with the related licence;

the transmitter licence authorises the operation of the transmitter or transmitters concerned for transmitting:

(d) one or more HDTV multi-channelled commercial television broadcasting services; and

(e) one or more SDTV multi-channelled commercial television broadcasting services;

in accordance with the related licence, using the channel or channels allotted to the licensee of the related licence under the BSA television licence area plan.

(2) In this section:

commercial television broadcasting licence has the same meaning as in the *Broadcasting Services Act 1992*.

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

HDTV multi-channelled commercial television broadcasting service has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

SDTV multi-channelled commercial television broadcasting service has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

102C Category 1 digital radio multiplex transmitter licences

- (1) The ACMA must not issue a category 1 digital radio multiplex transmitter licence to a person unless the person is a qualified company.
- (2) The ACMA must not issue a foundation category 1 digital radio multiplex transmitter licence for a particular designated BSA radio area otherwise than in accordance with a price-based allocation system determined under section 106 unless:
 - (a) the licensee is an eligible joint venture company; and

Section 102C

- (b) the application for the licence is accompanied by the fee determined by the ACMA by legislative instrument.
- (3) The ACMA must not issue a foundation category 1 digital radio multiplex transmitter licence for a particular designated BSA radio area in accordance with a price-based allocation system determined under section 106 unless:
 - (a) the ACMA has, by notice published on its website at least 120 days before the issue of the licence, invited applications from eligible joint venture companies for the issue of the licence otherwise than in accordance with a price-based allocation system determined under section 106; and
 - (b) either:
 - (i) no applications were received from eligible joint venture companies after the publication of the notice; or
 - (ii) one or more applications were received from eligible joint venture companies after the publication of the notice, but the ACMA refused, under section 100, to issue the licence to any of the applicants.
- (4) The ACMA must not issue a category 1 digital radio multiplex transmitter licence (other than a foundation category 1 digital radio multiplex transmitter licence) for a particular designated BSA radio area otherwise than in accordance with a price-based allocation system determined under section 106.

Eligible joint venture company

- (5) For the purposes of the application of this section to a particular designated BSA radio area, a company is an ***eligible joint venture company*** if:
 - (a) before the company was formed, the promoters of the company initially invited:
 - (i) each incumbent digital commercial radio broadcasting licensee for the designated BSA radio area; and
 - (ii) if there is a digital community radio broadcasting representative company for the designated BSA radio

Section 102C

area—the digital community radio broadcasting representative company;

to subscribe for shares in the first-mentioned company on the basis that:

- (iii) the incumbent digital commercial radio broadcasting licensees who accepted the invitation would be issued with an equal number of shares; and
 - (iv) the only persons entitled to subscribe for shares in the first-mentioned company are the incumbent digital commercial radio broadcasting licensees and the digital community radio broadcasting representative company; and
 - (v) assuming that the invitation were to be accepted by each invitee—the incumbent digital commercial radio broadcasting licensees would, in aggregate, hold seven-ninths of the shares in the first-mentioned company; and
 - (vi) assuming that the invitation were to be accepted by each invitee—the digital community radio broadcasting representative company would hold two-ninths of the shares in the first-mentioned company; and
- (b) in a case where not all of the invitations referred to in paragraph (a) were accepted—before the company was formed, the promoters of the first-mentioned company invited each person who had accepted an invitation referred to in paragraph (a) to subscribe for the remaining shares in the first-mentioned company; and
- (c) the invitations referred to in paragraph (a) were published on the ACMA’s website; and
- (ca) the invitations referred to in paragraph (a) were open for whichever of the following periods is applicable:
- (i) a period of at least 80 days;
 - (ii) if all the invitees responded to the invitations within the period mentioned in subparagraph (i)—the period that began at the start of the period mentioned in

- subparagraph (i) and ended on the last occasion on which the promoters received such a response; and
- (d) there was no discrimination between subscribers for shares in the first-mentioned company in relation to the consideration payable for the issue of the shares concerned; and
 - (e) the total amount of money payable as consideration for the issue of the shares in the first-mentioned company is not substantially in excess of the total amount that, as at the time the invitations referred to in paragraph (a) are published, would be required for the commercially viable operation of the first-mentioned company if it were assumed that a foundation category 1 digital radio multiplex transmitter licence had been issued to the first-mentioned company at that time; and
 - (f) none of the recipients of an invitation referred to in paragraph (a) or (b) were subject to duress as to whether the invitation should be accepted.
- (6) The promoters of a company may request the ACMA to publish on its website the invitations referred to in paragraph (5)(a).
- (7) The ACMA must comply with a request under subsection (6) if the ACMA is satisfied that the request was made in good faith.

Copies of responses to invitations to subscribe for shares

- (7A) If:
- (a) an application is made for a foundation category 1 digital radio multiplex transmitter licence for a particular designated BSA radio area; and
 - (b) the applicant is an eligible joint venture company;
- the ACMA may, by written notice given to the applicant, require the applicant to:
- (c) give the ACMA a copy of each of the responses to the invitations referred to in paragraph (5)(a), so far as that paragraph applies to the promoters of the applicant; and
 - (d) do so within the period specified in the notice.

Section 102C

(7B) If the applicant breaches the requirement set out in the subsection (7A) notice, the ACMA may, by written notice given to the applicant:

- (a) refuse to consider the application; or
- (b) refuse to take any action, or any further action, in relation to the application.

(7C) If:

- (a) an application is made for a foundation category 1 digital radio multiplex transmitter licence for a particular designated BSA radio area; and
- (b) the application includes a statement to the effect that a particular company is a digital community radio broadcasting representative company for the area;

then:

- (c) the ACMA may, by written notice given to the company, require the company to:
 - (i) give the ACMA a copy of each of the responses to the invitations referred to in paragraph 9C(1)(c), so far as that paragraph applies to the promoters of the company; and
 - (ii) do so within the period specified in the notice; and
 - (d) if the ACMA gives a notice to the company—the ACMA must give a copy of the notice to the applicant.
- (7D) If the company breaches the requirement set out in the subsection (7C) notice, the ACMA may, by written notice given to the applicant:
- (a) refuse to consider the application; or
 - (b) refuse to take any action, or any further action, in relation to the application.

Fee

- (8) A fee determined under paragraph (2)(b) must not be such as to amount to taxation.

102D Category 2 digital radio multiplex transmitter licences

- (1) The ACMA must not issue a category 2 digital radio multiplex transmitter licence to a person unless the person is a qualified company.
- (2) The ACMA must not issue a foundation category 2 digital radio multiplex transmitter licence for a particular designated BSA radio area otherwise than in accordance with a price-based allocation system determined under section 106 unless:
 - (a) the licensee is an eligible joint venture company; and
 - (b) the application for the licence is accompanied by the fee determined by the ACMA by legislative instrument.
- (3) The ACMA must not issue a foundation category 2 digital radio multiplex transmitter licence for a particular designated BSA radio area in accordance with a price-based allocation system determined under section 106 unless:
 - (a) the ACMA has, by notice published on its website at least 120 days before the issue of the licence, invited applications from eligible joint venture companies for the issue of the licence otherwise than in accordance with a price-based allocation system determined under section 106; and
 - (b) either:
 - (i) no applications were received from eligible joint venture companies after the publication of the notice; or
 - (ii) one or more applications were received from eligible joint venture companies after the publication of the notice, but the ACMA refused, under section 100, to issue the licence to any of the applicants.
- (4) The ACMA must not issue a category 2 digital radio multiplex transmitter licence (other than a foundation category 2 digital radio multiplex transmitter licence) for a particular designated BSA radio area otherwise than in accordance with a price-based allocation system determined under section 106.

Section 102D

Eligible joint venture company

- (5) For the purposes of the application of this section to a particular designated BSA radio area, a company is an ***eligible joint venture company*** if:
- (a) before the company was formed, the promoters of the company initially invited:
 - (i) each incumbent digital commercial radio broadcasting licensee for the designated BSA radio area; and
 - (ii) if there is a digital community radio broadcasting representative company for the designated BSA radio area—the digital community radio broadcasting representative company; and
 - (iii) each national broadcaster;to subscribe for shares in the first-mentioned company on the basis that:
 - (iv) the incumbent digital commercial radio broadcasting licensees who accepted the invitation would be issued with an equal number of shares; and
 - (v) the only persons entitled to subscribe for shares in the first-mentioned company are the incumbent digital commercial radio broadcasting licensees, the digital community radio broadcasting representative company and the national broadcasters; and
 - (vi) assuming that the invitation were to be accepted by each invitee—the incumbent digital commercial radio broadcasting licensees would, in aggregate, hold five-ninths of the shares in the first-mentioned company; and
 - (vii) assuming that the invitation were to be accepted by each invitee—the digital community radio broadcasting representative company would hold two-ninths of the shares in the first-mentioned company; and
 - (viii) assuming that the invitation were to be accepted by each invitee—each national broadcaster would hold one-ninth of the shares in the first-mentioned company; and

Section 102D

- (b) in a case where not all of the invitations referred to in paragraph (a) were accepted—before the company was formed, the promoters of the first-mentioned company invited each person who had accepted an invitation referred to in paragraph (a) to subscribe for the remaining shares in the first-mentioned company; and
 - (c) the invitations referred to in paragraph (a) were published on the ACMA's website; and
 - (ca) the invitations referred to in paragraph (a) were open for whichever of the following periods is applicable:
 - (i) a period of at least 80 days;
 - (ii) if all the invitees responded to the invitations within the period mentioned in subparagraph (i)—the period that began at the start of the period mentioned in subparagraph (i) and ended on the last occasion on which the promoters received such a response; and
 - (d) there was no discrimination between subscribers for shares in the first-mentioned company in relation to the consideration payable for the issue of the shares concerned; and
 - (e) the total amount of money payable as consideration for the issue of the shares in the first-mentioned company is not substantially in excess of the total amount that, as at the time the invitations referred to in paragraph (a) are published, would be required for the commercially viable operation of the first-mentioned company if it were assumed that a foundation category 2 digital radio multiplex transmitter licence had been issued to the first-mentioned company at that time; and
 - (f) none of the recipients of an invitation referred to in paragraph (a) or (b) were subject to duress as to whether the invitation should be accepted.
- (6) The promoters of a company may request the ACMA to publish on its website the invitations referred to in paragraph (5)(a).
- (7) The ACMA must comply with a request under subsection (6) if the ACMA is satisfied that the request was made in good faith.
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Section 102D

Copies of responses to invitations to subscribe for shares

(7A) If:

- (a) an application is made for a foundation category 2 digital radio multiplex transmitter licence for a particular designated BSA radio area; and
 - (b) the applicant is an eligible joint venture company;
- the ACMA may, by written notice given to the applicant, require the applicant to:
- (c) give the ACMA a copy of each of the responses to the invitations referred to in paragraph (5)(a), so far as that paragraph applies to the promoters of the applicant; and
 - (d) do so within the period specified in the notice.

(7B) If the applicant breaches the requirement set out in the subsection (7A) notice, the ACMA may, by written notice given to the applicant:

- (a) refuse to consider the application; or
- (b) refuse to take any action, or any further action, in relation to the application.

(7C) If:

- (a) an application is made for a foundation category 2 digital radio multiplex transmitter licence for a particular designated BSA radio area; and
- (b) the application includes a statement to the effect that a particular company is a digital community radio broadcasting representative company for the area;

then:

- (c) the ACMA may, by written notice given to the company, require the company to:
 - (i) give the ACMA a copy of each of the responses to the invitations referred to in paragraph 9C(1)(c), so far as that paragraph applies to the promoters of the company; and
 - (ii) do so within the period specified in the notice; and

Section 102E

- (d) if the ACMA gives a notice to the company—the ACMA must give a copy of the notice to the applicant.
- (7D) If the company breaches the requirement set out in the subsection (7C) notice, the ACMA may, by written notice given to the applicant:
 - (a) refuse to consider the application; or
 - (b) refuse to take any action, or any further action, in relation to the application.

National broadcasters

- (8) A national broadcaster may hold shares in a company that:
 - (a) is the holder of a category 2 digital radio multiplex transmitter licence; or
 - (b) is an applicant for the issue of a category 2 digital radio multiplex transmitter licence; or
 - (c) proposes to apply for the issue of a category 2 digital radio multiplex transmitter licence.

Fee

- (9) A fee determined under paragraph (2)(b) must not be such as to amount to taxation.

102E Category 3 digital radio multiplex transmitter licences*Holder of a category 3 digital radio multiplex licence*

- (1) The ACMA must not issue a category 3 digital radio multiplex transmitter licence to a person unless the person is a qualified company, and:
 - (a) both:
 - (i) each national broadcaster beneficially owns shares in the company; and
 - (ii) there are no other beneficial owners of shares in the company; or

Section 102F

(b) both:

- (i) a single national broadcaster beneficially owns all the shares in the company; and
- (ii) the other national broadcaster has consented to that beneficial ownership.

Obligation to issue a category 3 digital radio multiplex licence

(2) If:

- (a) a digital radio channel plan is in force for a designated BSA radio area; and
- (b) a qualified company applies under section 99 for a category 3 digital radio multiplex transmitter licence for the designated BSA radio area; and
- (c) the requirements of paragraph (1)(a) or (b) of this section are satisfied in relation to the qualified company;

the ACMA must, under section 100, issue the category 3 digital radio multiplex transmitter licence to the company unless there is already a category 3 digital radio multiplex transmitter licence for the designated BSA radio area.

National broadcaster may hold shares in the holder of a category 3 digital radio multiplex licence etc.

(3) A national broadcaster may hold shares in a company that:

- (a) is the holder of a category 3 digital radio multiplex transmitter licence; or
- (b) is an applicant for the issue of a category 3 digital radio multiplex transmitter licence; or
- (c) proposes to apply for the issue of a category 3 digital radio multiplex transmitter licence.

102F Limit on issue of non-foundation digital radio multiplex transmitter licences

- (1) Before issuing a non-foundation digital radio multiplex transmitter licence for a particular designated BSA radio area, the ACMA must ensure that:
 - (a) one or more foundation digital radio multiplex transmitter licences are in force for the designated BSA radio area; and
 - (b) the total multiplex capacities under those foundation digital radio multiplex transmitter licences is sufficient to fulfil the number of standard access entitlements that have come into existence, or are likely to come into existence, under subsection 118NQ(2) in its application to the designated BSA radio area.
- (2) For the purposes of subsection (1), if the number of standard access entitlements that have come into existence, or are likely to come into existence, under subsection 118NQ(2) in its application to the designated BSA radio area is not a multiple of 7, round up that number to the next higher number that is a multiple of 7.

102G Limits on use of the spectrum

- (1) The ACMA may, by legislative instrument:
 - (a) impose limits on the aggregate of the parts of the spectrum that:
 - (i) under spectrum licences; and
 - (ii) under existing transmitter licences; and
 - (iii) as a result of the allocation or issue of transmitter licences;may be used by:
 - (iv) any one person; or
 - (v) a specified person; or
 - (b) impose limits on the aggregate of the parts of the spectrum that:
 - (i) under spectrum licences; and
 - (ii) under existing transmitter licences; and

Section 102G

(iii) as a result of the allocation or issue of transmitter licences;

may, in total, be used by the members of a specified group of persons.

Note: Persons or groups may be specified by name, by inclusion in a specified class or in any other way.

(2) A limit imposed as mentioned in subsection (1) may be expressed to apply in relation to any or all of the following:

- (a) a specified part of the spectrum;
- (b) a specified area;
- (c) a specified population reach.

For example, a limit might specify an aggregate limit of 15 MHz per person in the band between 1800 MHz and 1900 MHz (inclusive) for a particular area. This subsection does not, by implication, limit subsection (1).

- (3) An instrument that imposes limits as mentioned in subsection (1) may impose limits of nil in relation to specified persons or to the members of specified groups of persons.
- (4) The Minister may, by notifiable instrument, give written directions to the ACMA in relation to the exercise of the power conferred by subsection (1).
- (5) The ACMA must exercise its power under subsection (1) in a manner consistent with any directions given by the Minister under subsection (4).
- (6) Before making an instrument under subsection (1), the ACMA must consult the ACCC about whether the instrument should impose limits and, if so, the nature of the limits.
- (7) This section does not apply to:
 - (a) an apparatus licence issued under section 101A or 102; or
 - (b) a digital radio multiplex transmitter licence.

103 Duration of apparatus licences

- (1) An apparatus licence comes into force on the day on which it is issued or on such later day as is specified in the licence for the purpose.
- (2) Subject to subsection (2A) and Division 6, an apparatus licence (other than an apparatus licence issued under section 101A or 102 or a digital radio multiplex transmitter licence) remains in force for the period specified in the licence.
- (2A) An apparatus licence issued under section 100 with the licence number 1171866 does not have effect after 30 June 2024.
- (3) The licence may specify any period not exceeding 20 years.
- (4) A transmitter licence issued under section 101A:
 - (a) subject to paragraph (b), continues in force while the related licence referred to in that section remains in force; and
 - (b) does not have effect while the related licence referred to in that section is suspended.
- (4A) A transmitter licence issued under subsection 102(1):
 - (a) subject to paragraphs (b) and (c), continues in force while the related licence referred to in that subsection remains in force; and
 - (b) does not have effect while the related licence referred to in that subsection is suspended; and
 - (c) if the related licence is a CTV licence within the meaning of the *Broadcasting Services Act 1992*—does not have effect after 30 June 2024.
- (4B) A determination under subparagraph (4A)(c)(ii) is a legislative instrument.
- (6) Subject to Division 6, a digital radio multiplex transmitter licence remains in force for 15 years.

Section 103A

103A Renewal statements etc.

Renewal statement

- (1) An apparatus licence issued after the commencement of this section may include:
 - (a) a statement to the effect that the licence cannot be renewed; or
 - (b) a statement to the effect that the licence may be renewed at the discretion of the ACMA so long as specified circumstances exist.
- (2) A statement mentioned in paragraph (1)(a) or (b) is to be known as a **renewal statement**.
- (3) Circumstances specified under paragraph (1)(b) may be an act or omission by the ACMA.
- (4) Subsection (3) does not limit paragraph (1)(b).
- (5) The ACMA may, by legislative instrument, determine that each apparatus licence included in a specified class of apparatus licences is taken to include one of the following statements:
 - (a) a statement to the effect that the licence cannot be renewed;
 - (b) a statement to the effect that the licence may be renewed at the discretion of the ACMA so long as specified circumstances exist.
- (6) A statement mentioned in paragraph (5)(a) or (b) is to be known as a **renewal statement**.
- (7) Circumstances specified under paragraph (5)(b) may be an act or omission by the ACMA.
- (8) Subsection (7) does not limit paragraph (5)(b).
- (9) A determination under subsection (5) does not apply to an apparatus licence if a renewal statement is included in the licence under subsection (1).

Renewal application period

- (10) If an apparatus licence includes a statement to the effect that the licence may be renewed at the discretion of the ACMA so long as specified circumstances exist, the licence must also include a statement to the effect that a specified period is the ***renewal application period*** for the licence.
- (11) A statement mentioned in subsection (10) is to be known as a ***renewal application period statement***.
- (12) The ACMA may, by legislative instrument, determine that each apparatus licence included in a specified class of apparatus licences is taken to include a statement to the effect that a period ascertained in accordance with the determination is the ***renewal application period*** for the licence.
- (13) A renewal application period for an apparatus licence must:
 - (a) begin at a time when the licence is in force; and
 - (b) end not later than 60 days after the licence is due to expire.
- (14) A determination under subsection (12) does not apply to an apparatus licence if a renewal application period statement is included in the licence under subsection (10).

Public interest statement

- (15) If an apparatus licence includes a statement to the effect that the licence may be renewed at the discretion of the ACMA so long as specified circumstances exist, the licence may also include a statement to the effect that the ACMA will not renew the licence unless the ACMA is satisfied that it is in the public interest to do so.
- (16) A statement mentioned in subsection (15) is to be known as a ***public interest statement***.
- (17) The ACMA may, by legislative instrument, determine that each apparatus licence included in a specified class of apparatus licences is taken to include a statement to the effect that the ACMA will not

Section 103B

renew the licence unless the ACMA is satisfied that it is in the public interest to do so.

- (18) A statement mentioned in subsection (17) is to be known as a ***public interest statement***.

Exceptions

- (19) This section does not apply to:
- (a) a transmitter licence issued under section 101A or 102; or
 - (b) a digital radio multiplex transmitter licence.
- (20) Subsections (5) and (17) do not apply to a licence issued before the commencement of this section.

103B Variation of renewal statements etc. with agreement

- (1) Subject to subsections (2), (3) and (4), the ACMA may, with the written agreement of the licensee of an apparatus licence, vary the licence by:
- (a) varying the renewal statement included in the licence; or
 - (b) omitting the renewal statement included in the licence and substituting another renewal statement; or
 - (c) omitting the renewal statement included in the licence; or
 - (d) including a renewal statement in the licence; or
 - (e) varying the renewal application period statement included in the licence; or
 - (f) including a renewal application period statement in the licence; or
 - (g) omitting the public interest statement included in the licence.
- (2) If the renewal statement is varied, the statement as varied must comply with the requirements of section 103A.
- (3) If another renewal statement is substituted, the substituted renewal statement must comply with the requirements of section 103A.

Section 103C

- (4) If a renewal statement is included in the licence, the statement must comply with the requirements of section 103A.
- (5) If the renewal application period statement is varied, the statement as varied must comply with the requirements of section 103A.
- (6) If a renewal application period statement is included in the licence, the statement must comply with the requirements of section 103A.

103C Variation of renewal statements etc. without agreement

- (1) Subject to subsections (2), (3) and (4), the ACMA may, by written notice given to the licensee of an apparatus licence, vary the licence by:
 - (a) varying the renewal statement included in the licence; or
 - (b) omitting the renewal statement included in the licence and substituting another renewal statement; or
 - (c) omitting the renewal statement included in the licence; or
 - (d) including a renewal statement in the licence; or
 - (e) varying the renewal application period statement included in the licence; or
 - (f) including a renewal application period statement in the licence; or
 - (g) omitting the public interest statement included in the licence.
 - (2) If the renewal statement is varied, the statement as varied must comply with the requirements of section 103A.
 - (3) If another renewal statement is substituted, the substituted renewal statement must comply with the requirements of section 103A.
 - (4) If a renewal statement is included in the licence, the statement must comply with the requirements of section 103A.
 - (5) If the renewal application period statement is varied, the statement as varied must comply with the requirements of section 103A.
 - (6) If a renewal application period statement is included in the licence, the statement must comply with the requirements of section 103A.
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Section 104

104 Compliance with plans

- (1) Subject to subsections (2) and (3), the ACMA may issue an apparatus licence that is inconsistent with the spectrum plan or any relevant frequency band plan only if:
 - (a) the apparatus licence is granted for purposes which relate to an event of international, national or regional significance; or
 - (b) the issue of the apparatus licence is otherwise in the public interest; or
 - (c) the apparatus licence authorises a body covered by any of paragraphs 27(1)(b) to (be) to operate specified radiocommunications devices, or radiocommunications devices of a specified kind, for the purpose of investigations or operations conducted by the body.
- (2) An apparatus licence of a kind mentioned in paragraph (1)(a) or (b) must not be issued for more than 30 days.
- (3) An apparatus licence of a kind mentioned in paragraph (1)(a) or (b) must not be renewed under section 130 more than once.

105 Restrictions on issuing apparatus licences

- (1) Subject to subsection (3), if a spectrum licence authorises the operation of radiocommunications devices:
 - (a) at one or more frequencies; and
 - (b) within one or more areas;the ACMA must not issue an apparatus licence that authorises the operation of radiocommunications devices:
 - (c) at those frequencies; and
 - (d) within those areas.
- (2) Subject to subsection (3), if a marketing plan is in force in relation to the issue of a spectrum licence that authorises the operation of radiocommunications devices:
 - (a) at one or more frequencies; and
 - (b) within one or more areas;

Section 105A

the ACMA must not issue an apparatus licence that authorises the operation of radiocommunications devices:

- (c) at those frequencies; and
 - (d) within those areas.
- (3) The ACMA may issue an apparatus licence mentioned in subsection (1) or (2):
- (a) to a body or person covered by any of paragraphs 27(1)(b) to (be) for the purpose of investigations or operations conducted by the body or person; or
 - (b) if it is satisfied that the special circumstances of the particular case justify the issuing of the licence.

105A Notice of apparatus licences that are about to expire

The ACMA may publish on its website a notice that:

- (a) states where information may be obtained about:
 - (i) the apparatus licences that are included in a specified class and that will expire during a specified period; and
 - (ii) the parts of the spectrum to which the licences relate; and
- (b) invites applications from persons who wish to have issued to them apparatus licences relating to those parts of the spectrum.

106 Price-based allocation system for certain transmitter licences

- (1) The ACMA may determine in writing a price-based allocation system for allocating and/or issuing specified transmitter licences (other than licences issued under section 101A or NBS transmitter licences).
- (2) A system so determined:
 - (a) may apply generally or in respect of a particular area; and
 - (b) may apply only in relation to a specified range of frequencies; and

Section 106

- (ba) may provide for eligibility requirements (if any) for prospective licensees; and
 - (bb) may provide for credits (if any) for prospective licensees; and
 - (c) may require payment of an application fee, but not a fee that would be such as to amount to taxation.
- (3) A system so determined may:
 - (a) impose limits on the aggregate of the parts of the spectrum that:
 - (i) under spectrum licences; and
 - (ii) under existing transmitter licences; and
 - (iii) as a result of the allocation or issue of transmitter licences;may be used by:
 - (iv) any one person; or
 - (v) a specified person; or
 - (b) impose limits on the aggregate of the parts of the spectrum that:
 - (i) under spectrum licences; and
 - (ii) under existing transmitter licences; and
 - (iii) as a result of the allocation or issue of transmitter licences;may, in total, be used by the members of a specified group of persons.

Note: Persons or groups may be specified by name, by inclusion in a specified class or in any other way.

- (4) A limit imposed as mentioned in subsection (3) may be expressed to apply in relation to any or all of the following:
 - (a) a specified part of the spectrum;
 - (b) a specified area;
 - (c) a specified population reach.

For example, a system might specify an aggregate limit of 15 MHz per person in the band between 1800 MHz and 1900 MHz (inclusive) for a particular area. This subsection does not, by implication, limit subsection (3).

- (4A) A system that imposes limits as mentioned in subsection (3) may impose limits of nil in relation to specified persons or to the members of specified groups of persons.
 - (5) A system so determined may provide that, if the issue of a licence is covered by section 153M (which deals with re-allocation of spectrum), the ACMA may defer the issue of the licence until the relevant frequencies become available as a result of the expiry, surrender or cancellation of one or more other apparatus licences that, under section 153D, are affected by the spectrum re-allocation declaration concerned.
 - (6) A system so determined may require the ACMA to give specified information to the ACCC.
 - (7) Subsections (2), (3), (4), (5) and (6) do not, by implication, limit subsection (1).
 - (9) The Minister may give written directions to the ACMA in relation to the exercise of the power to determine procedures imposing a limit as mentioned in subsection (3).
 - (10) A direction under subsection (9) must be published in the *Gazette*.
 - (11) The ACMA must exercise its powers under subsection (1) in a manner consistent with any directions given by the Minister under subsection (9).
 - (11A) Before determining a price-based allocation system under subsection (1), the ACMA must consult the ACCC about whether the system should impose limits as mentioned in subsection (3) and, if so, the nature of those limits.
 - (12) Before determining a price-based allocation system under subsection (1), the ACMA must consult the ACCC about whether the procedures should include a requirement mentioned in subsection (6) and, if so, the nature of the requirement.
 - (12A) A price-based allocation system determined under subsection (1) may confer a power to make a decision of an administrative character on a person or the ACMA.
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Section 106A

- (13) If a transmitter licence is issued under a system so determined, the ACMA must publish in the *Gazette*:
- (a) the successful applicant's name; and
 - (b) the amount that the applicant agreed to pay to the Commonwealth for issue of the licence.
- (14) If:
- (a) a transmitter licence of a kind specified for the purposes of subsection (1) would authorise a person to operate a radiocommunications transmitter; and
 - (b) this Act or any other law requires that a person operating a transmitter:
 - (i) of that kind; or
 - (ii) for a purpose for which the transmitter is to be used; be within a specified class of persons;
- the Minister may give the ACMA a written direction requiring the ACMA, in determining a price-based allocation system, to limit the persons eligible to apply for such a transmitter licence to:
- (c) persons within that specified class; or
 - (d) persons not within, but eligible to be within, that class; or
 - (e) persons within that class and persons not within, but eligible to be within, that class.
- (15) The ACMA must comply with a direction under subsection (14).
- (16) A direction under subsection (14) is a legislative instrument.
- (17) Subsections (9) and (14) do not, by implication, limit the Minister's power to give directions otherwise than under those subsections.
- (18) A determination under subsection (1) is a legislative instrument.

106A Issue of apparatus licence taken to be an acquisition of an asset and conduct

- (1) For the purposes of the provisions of the *Competition and Consumer Act 2010* mentioned in subsection (2), the issue of an apparatus licence to a person is taken to be:
 - (a) an acquisition by the person of an asset of another person; and
 - (b) conduct engaged in by the person.
- (2) The provisions of the *Competition and Consumer Act 2010* are:
 - (a) section 50 and subsection 81(1); and
 - (b) the remaining provisions of that Act, to the extent that those provisions relate to section 50 of that Act.
- (3) Subsection (1) does not apply to a transmitter licence issued under section 102 or to an NBS transmitter licence.
- (4) Subsection (1) does not apply to the issue of an apparatus licence if the licence is issued under Division 7 by way of renewal of an existing apparatus licence.

Division 3—Conditions of apparatus licences

107 General conditions

- (1) An apparatus licence is subject to the following conditions:
 - (a) a condition that the licensee, and any person authorised by the licensee to operate a radiocommunications device under the licence, must comply with this Act;
 - (b) a condition that the licensee inform each person so authorised of the person's obligations to comply with this Act and the conditions of the licence;
 - (c) a condition that the licensee meet all obligations (if any) of the licensee to pay:
 - (i) charges fixed by determinations under section 60 of the *Australian Communications and Media Authority Act 2005*; and
 - (ii) amounts of apparatus licence tax; and
 - (iii) amounts of interim tax;
 - (d) a condition that any radiocommunications device operated under the licence must comply with all the standards applicable to it under the equipment rules;
 - (g) such other conditions as are specified in the licence.
- (2) Paragraphs (1)(a), (b), (c) and (d) do not limit the kinds of conditions that may be specified under paragraph (1)(g) or imposed under paragraph 111(1)(a).

Note: Inclusion of conditions under paragraph (1)(g) is a reviewable decision under Part 5.6.
- (3) This section does not apply to:
 - (a) transmitter licences issued under section 101A or 102; or
 - (c) digital radio multiplex transmitter licences.
- (5) If the issue of an apparatus licence is covered by section 153M (which deals with re-allocation of spectrum), a condition of the licence may provide for the progressive authorisation of the

operation of the radiocommunications device under the licence.

The progressivity is to be based on the times when a particular part or parts of the spectrum become available as a result of the expiry, surrender or cancellation of one or more other apparatus licences that, under section 153D, are affected by the spectrum re-allocation declaration concerned.

- (6) Subsection (5) does not, by implication, limit anything in subsection (1).

108 Additional conditions for transmitter licences

- (1) A transmitter licence is subject to the additional conditions set out in subsection (2) relating to the operation of any radiocommunications transmitter under the licence by the licensee, or by any person authorised by the licensee to operate a radiocommunications transmitter under the licence.
- (2) The licensee, and any person so authorised:
- (a) must not operate, or permit operation of, the transmitter for a purpose that is inconsistent with a purpose of a kind specified in the appropriate frequency band plan (if any) under subsection 32(4); and
 - (b) must not operate, or permit operation of, the transmitter except in accordance with any conditions specified in the licence that relate to:
 - (i) containment of interference, or of the likelihood of interference, to radiocommunications; or
 - (ii) transmission of an identification signal; and
 - (c) must not operate, or permit operation of, the transmitter except on a frequency or frequencies, or on a frequency channel, and at a constancy, specified in the licence; and
 - (d) must not operate, or permit operation of, the transmitter:
 - (i) in a way that would be likely to cause reasonable persons, justifiably in all the circumstances, to be seriously alarmed or seriously affronted; or
 - (ii) for the purpose of harassing a person; and

Section 108

- (da) must not operate, or permit operation of, the transmitter for transmitting an international broadcasting service unless there is in force an international broadcasting licence authorising the provision of that service; and
 - (e) if the licence is a licence in respect of which persons operating the transmitter are required under section 119 to be qualified operators in relation to the licence—must not operate the transmitter unless he or she is such a qualified operator; and
 - (f) must comply with section 187 of the *Navigation Act 2012*; and
 - (g) must comply with any direction:
 - (i) that relates to operation of the transmitter; and
 - (ii) to which subsection (3) applies.
- (3) This subsection applies to a direction that:
- (a) is given, in a way not inconsistent with any relevant guidelines under section 112, either orally or in writing; and
 - (b) is given by:
 - (i) a member of the Australian Federal Police; or
 - (ii) a member of the police force of a State or Territory; or
 - (iii) an officer of the Defence Force; or
 - (iv) an officer of the Australian Coastal Surveillance Centre; or
 - (v) an officer who is included in a class of officers specified in the regulations, and who is an officer of an organisation specified in the regulations the sole or principal purpose of which is to deal with natural disasters; and
 - (c) is reasonably necessary for the purposes of:
 - (i) securing the safety of a vessel, aircraft or space object that is in danger; or
 - (ii) dealing with an emergency involving a serious threat to the environment; or
 - (iii) dealing with an emergency involving risk of death of, or injury to, persons; or

Section 108A

- (iv) dealing with an emergency involving risk of substantial loss of, or substantial damage to, property.
- (4) This section does not limit the kinds of conditions that may be specified under paragraph 107(1)(f) or (g) or imposed under paragraph 111(1)(a).
- (5) This section does not apply to:
 - (a) transmitter licences issued under section 102; or
 - (c) digital radio multiplex transmitter licences.

108A Conditions of transmitter licences for temporary community broadcasters

- (1) A transmitter licence issued under section 101A is subject to the following conditions:
 - (a) a condition that the licensee must comply with this Act;
 - (b) a condition that the licensee meet all obligations (if any) of the licensee to pay:
 - (i) charges fixed by determinations under section 60 of the *Australian Communications and Media Authority Act 2005*; and
 - (ii) amounts of apparatus licence tax;
 - (c) a condition that the licensee inform each person authorised by the licensee to operate a radiocommunications transmitter under the licence of the person's obligations to comply with this Act and the conditions of the licence;
 - (d) a condition that the licensee, and any person so authorised, must comply with guidelines developed by the ACMA under section 33 of the *Broadcasting Services Act 1992*;
 - (f) such other conditions as are specified in the licence.

Note: Inclusion of conditions under paragraph (1)(f) is a reviewable decision under Part 5.6.

- (2) The conditions of the licence, including any further conditions imposed under paragraph 111(1)(a), must not be inconsistent with the related licence as referred to in section 101A.

Section 109

109 Conditions of transmitter licences for certain broadcasting services

- (1) A transmitter licence issued under section 102 is subject to the following conditions:
- (a) a condition that the licensee must comply with this Act;
 - (b) a condition that the licensee meet all obligations (if any) of the licensee to pay:
 - (i) charges fixed by determinations under section 60 of the *Australian Communications and Media Authority Act 2005*; and
 - (ii) amounts of apparatus licence tax; and
 - (iii) amounts of interim tax;
 - (c) a condition that the licensee inform each person authorised by the licensee to operate a radiocommunications transmitter under the licence of the person's obligations to comply with this Act and the conditions of the licence;
 - (d) if subsection 26(1) of the *Broadcasting Services Act 1992* applies—a condition that the licensee, and any person so authorised, must not operate, or permit operation of, such a transmitter otherwise than in accordance with any relevant technical specifications determined by the ACMA under that subsection;
 - (da) if a BSA television licence area plan is applicable to the transmission of one or more television broadcasting services under the authority of the licence—a condition that the licensee, and any person so authorised, must not operate, or permit operation of, such a transmitter otherwise than in accordance with any relevant technical specifications determined under the plan;
 - (e) a condition that the licensee, and any person so authorised, must comply with guidelines developed by the ACMA under section 33 of the *Broadcasting Services Act 1992*;
 - (f) such other conditions as are specified in the licence.
- (2) The conditions of a licence issued under section 102, including any further conditions imposed under paragraph 111(1)(a), must
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Section 109B

not be inconsistent with the related licence as referred to in section 102.

Note: Inclusion of conditions under paragraph (1)(f) is a reviewable decision under Part 5.6.

(3) In this section:

television broadcasting service has the same meaning as in section 26 of the *Broadcasting Services Act 1992*.

109B Conditions of digital radio multiplex transmitter licences—general

- (1) A digital radio multiplex transmitter licence is subject to the following conditions:
- (a) a condition that the licensee must comply with this Act;
 - (b) a condition that the licensee meet all obligations (if any) of the licensee to pay:
 - (i) charges fixed by determinations under section 60 of the *Australian Communications and Media Authority Act 2005*; and
 - (ii) amounts of apparatus licence tax;
 - (c) a condition that the licensee inform each person authorised by the licensee to operate a multiplex transmitter under the licence of the person's obligations to comply with this Act and the conditions of the licence;
 - (d) if the licence is for 2 or more multiplex transmitters—a condition that one of those multiplex transmitters is to be used as the main multiplex transmitter and the others as repeater multiplex transmitters;
 - (e) a condition that the licensee, and any person so authorised, must not operate, or permit the operation of, a multiplex transmitter under the licence except on a frequency channel or channels, and at a constancy, specified in the licence in accordance with the relevant digital radio channel plan;
 - (f) if the licence is a category 1 digital radio multiplex transmitter licence—a condition that the licensee, and any

Section 109B

person so authorised, must not operate, or permit the operation of, a multiplex transmitter under the licence for transmitting a service unless:

- (i) the service is a digital commercial radio broadcasting service, and there is in force a commercial radio broadcasting licence authorising the provision of the service in the designated BSA radio area concerned; or
 - (ii) the service is a digital community radio broadcasting service, and there is in force a designated community radio broadcasting licence authorising the provision of the service in the designated BSA radio area concerned;
- (g) if the licence is a category 2 digital radio multiplex transmitter licence—a condition that the licensee, and any person so authorised, must not operate, or permit the operation of, a multiplex transmitter under the licence for transmitting a service unless:
- (i) the service is a digital commercial radio broadcasting service, and there is in force a commercial radio broadcasting licence authorising the provision of the service in the designated BSA radio area concerned; or
 - (ii) the service is a digital community radio broadcasting service, and there is in force a designated community radio broadcasting licence authorising the provision of the service in the designated BSA radio area concerned;
- or
- (iii) the service is a digital national radio broadcasting service;
- (h) if the licence is a category 3 digital radio multiplex transmitter licence—a condition that the licensee, and any person so authorised, must not operate, or permit the operation of, a multiplex transmitter under the licence for transmitting a service unless the service is a digital national radio broadcasting service;
- (i) if the licence is a foundation category 1 digital radio multiplex transmitter licence—a condition that the licensee, or a person so authorised, will:

Section 109B

- (i) commence to transmit a service covered by subparagraph (f)(i) or (ii) on the digital radio start-up day for the designated BSA radio area concerned; and
 - (ii) transmit a service covered by subparagraph (f)(i) or (ii) at all times after the commencement referred to in subparagraph (i) of this paragraph;
- (j) if the licence is a foundation category 2 digital radio multiplex transmitter licence—a condition that the licensee, or a person so authorised, will:
 - (i) commence to transmit a service covered by subparagraph (g)(i), (ii) or (iii) on the digital radio start-up day for the designated BSA radio area concerned; and
 - (ii) transmit a service covered by subparagraph (g)(i), (ii) or (iii) at all times after the commencement referred to in subparagraph (i) of this paragraph;
- (k) a condition that the licensee, and any person so authorised, must not operate, or permit the operation of, a multiplex transmitter under the licence for transmitting a service unless that service is transmitted using a digital modulation technique;
- (l) a condition that the licensee must not carry on any activities other than activities that consist of:
 - (i) operating a multiplex transmitter under the licence; and
 - (ii) activities that are related to the operation of the multiplex transmitter;
- (m) a condition that the licensee, and any person so authorised, must not operate, or permit operation of, a multiplex transmitter under the licence otherwise than in accordance with any relevant technical specifications determined by the relevant digital radio channel plan;
- (n) a condition that the licensee, and any person so authorised, must comply with guidelines developed by the ACMA under section 33 of the *Broadcasting Services Act 1992*;
- (o) a condition that the licensee, and any person so authorised, will comply with any standards under section 130AB of the

Section 109B

Broadcasting Services Act 1992 (which deals with technical standards relating to the operation of multiplex transmitters);

- (p) a condition that the licensee, or a person so authorised, will comply with subsection 130V(1) of the *Broadcasting Services Act 1992* (which deals with industry standards);
- (q) a condition that the licensee will, if requested to do so by the ACMA, submit to the ACMA, within a specified period of at least 30 days, an implementation plan that complies with any relevant determinations under subsection (2);
- (r) a condition that the licensee, and any person so authorised, must comply with an implementation plan submitted to the ACMA by the licensee;
- (s) if the licence is a category 3 digital radio multiplex transmitter licence—such other conditions as are specified in the regulations;
- (t) such other conditions as are specified in the licence.

Implementation plans

- (2) The ACMA may, by legislative instrument, determine requirements to be complied with by implementation plans.
- (3) The Minister may, by legislative instrument, give the ACMA a direction about the exercise of the power conferred by subsection (2).
- (4) The ACMA must comply with a direction under subsection (3).

Licences allocated under subsection 40(1) of the Broadcasting Services Act 1992

- (5) Subparagraphs (1)(f)(i) and (g)(i) do not apply in relation to a commercial radio broadcasting licence allocated under subsection 40(1) of the *Broadcasting Services Act 1992*.

Continuity of transmission

- (6) The ACMA may, by legislative instrument, specify circumstances in which a digital radio multiplex transmitter licensee, or a person

Section 109C

authorised by such a licensee, is taken, for the purposes of subparagraph (1)(i)(ii), to be transmitting a service covered by subparagraph (1)(f)(i) or (ii).

- (7) The ACMA may, by legislative instrument, specify circumstances in which a digital radio multiplex transmitter licensee, or a person authorised by such a licensee, is taken, for the purposes of subparagraph (1)(j)(ii), to be transmitting a service covered by subparagraph (1)(g)(i), (ii) or (iii).
- (8) A copy of a declaration under subsection (6) or (7) must be made available on the ACMA's website.

Ministerial directions

- (9) The Minister may, by legislative instrument, give the ACMA a direction about the exercise of the power conferred by paragraph (1)(t) to specify conditions in a digital radio multiplex transmitter licence.
- (10) The ACMA must comply with a direction under subsection (9).

109C Conditions of category 1 and category 2 digital radio multiplex transmitter licences—access etc.

Compliance with access regime etc.

- (1) A category 1 digital radio multiplex transmitter licence and a category 2 digital radio multiplex transmitter licence are subject to the following conditions:
 - (a) a condition that the licensee, and each person authorised by the licensee to operate a multiplex transmitter under the licence, will comply with any applicable obligations under Division 4B;
 - (b) a condition that the licensee, and any person so authorised, will comply with an access undertaking in force under Division 4B in relation to the licence;

Section 109C

- (c) a condition that the licensee, and any person so authorised, will not give access to multiplex capacity under the licence otherwise than in compliance with:
 - (i) the standard access obligations (if any) that are applicable to the licence; or
 - (ii) the excess-capacity access obligations (if any) that are applicable to the licence; or
 - (iii) the distributed-capacity access obligations (if any) that are applicable to the licence.

Proceeds of auctions

- (2) If:
 - (a) a foundation digital radio multiplex transmitter licence was issued otherwise than in accordance with a price-based allocation system determined under section 106; and
 - (b) the licensee receives the net proceeds of an auction mentioned in subsection 118NT(6);the licence is subject to the following conditions:
 - (c) the licensee will set aside the net proceeds of the auction in a separate account with an ADI (within the meaning of the *Banking Act 1959*);
 - (d) the licensee will not apply those net proceeds except for the purpose of:
 - (i) promoting the digital radio broadcasting platform in Australia; or
 - (ii) discharging a liability of the licensee to pay a fee or charge in relation to the maintenance or operation of the account; or
 - (iii) discharging a liability incurred by the licensee in connection with the auction (other than a liability to comply with an obligation under Division 4B).

Definition

- (3) In this section:

multiplex capacity has the same meaning as in Division 4B.

109D Conditions of foundation digital radio multiplex transmitter licences

Scope

- (1) This section applies to a foundation digital radio multiplex transmitter licence for a designated BSA radio area if the licence was issued otherwise than in accordance with a price-based allocation system determined under section 106.

Issue of shares to digital community radio broadcasting representative company

- (3) The licence is subject to the condition that, if:
- (a) there is a digital community radio broadcasting representative company (the *representative company*) for the designated BSA radio area; and
 - (b) the representative company gives the licensee a written request under this paragraph to be issued with shares in the licensee; and
 - (c) the request is made:
 - (i) before the digital radio start-up day for the designated BSA radio area; or
 - (ii) within 12 months after the digital radio start-up day for the designated BSA radio area; and
 - (d) if an invitation was made to the representative company under whichever of paragraph 102C(5)(a) or 102D(5)(a) applied in relation to the formation of the licensee—no shares were issued to the representative company in connection with the invitation;
- the licensee must:
- (e) by written notice given to the representative company, offer to issue to the representative company a number of shares in the licensee such that, if the offer were accepted, the

Section 110

representative company would hold two-ninths of the shares in the licensee; and

- (f) ensure that the offer is made within 30 days after the licensee receives the request; and
- (g) keep the offer open for at least 120 days after the offer is made; and
- (h) ensure that the rights and restrictions (if any) attached to the shares the subject of the offer are the same as the rights and restrictions (if any) attached to the shares held by existing shareholders in the licensee; and
- (i) ensure that the offer price per share does not exceed the amount worked out using the formula:

$$\frac{\text{Total price of pre-offer shares}}{\text{Number of pre-offer shares}}$$

where:

number of pre-offer shares is the number of shares in the licensee (the ***pre-offer shares***) that were issued before the offer was made.

total price of pre-offer shares is the total amount paid or payable to the licensee as consideration for the issue of the pre-offer shares.

- (4) The digital community radio broadcasting representative company for the designated BSA radio area is not entitled to make more than one request under subsection (3).
- (5) For the purposes of subsection (4), disregard a request if the request does not result in compliance by the licensee with the requirements of subsection (3).

110 Conditions relating to interference

The conditions that may be specified in an apparatus licence under paragraph 107(1)(g), 108A(1)(f), 109(1)(f) or 109B(1)(t) include, for example:

Section 110A

- (a) a condition requiring the licensee to place advertisements, in a specified way, asking members of the public to contact the licensee if they believe that operation of a transmitter to which the licence relates is causing interference to other radiocommunications; and
- (b) a condition that, if operation of the transmitter is causing interference to other radiocommunications, the licensee must (at the licensee's own expense) adjust, or fit devices to, receivers in order to eliminate or minimise the interference.

110A Conditions determined by the ACMA

- (1) The ACMA may, by legislative instrument, determine that each apparatus licence is taken to include one or more specified conditions.
- (2) The ACMA may, by legislative instrument, determine that each apparatus licence included in a specified class of apparatus licences is taken to include one or more specified conditions.
- (3) The ACMA's power under subsection (1) or (2) is not limited by sections 107 to 109D.
- (4) Conditions determined under this section are in addition to the conditions in sections 107 to 109D.
- (5) A determination under subsection (1) or (2) may confer a power to make a decision of an administrative character on a person or the ACMA.
- (6) A determination under subsection (1) or (2) may confer a power to make a decision of an administrative character on a person who holds a specified kind of accreditation.
- (7) A determination under subsection (1) or (2) may authorise a person who holds a specified kind of accreditation to charge fees in relation to the exercise by the person of a power conferred by the determination. A fee must not be such as to amount to taxation.

Section 111

111 Changes to licence conditions

- (1) The ACMA may, by notice in writing given to the licensee of an apparatus licence:
- (a) impose one or more further conditions to which the licence is subject; or
 - (b) revoke or vary any condition imposed under paragraph (a); or
 - (c) revoke or vary any condition specified under paragraph 107(1)(g), 108A(1)(f), 109(1)(f) or 109B(1)(t); or
 - (d) if the licence is a transmitter licence, other than a licence issued under section 101A or 102—vary a condition of the kind referred to in paragraph 108(2)(a), (b) or (c).

Note: Decisions under this section are reviewable under Part 5.6.

- (2) The notice given under subsection (1) must specify that:
- (a) the licensee may request a statement of reasons for the change; and
 - (b) a request must be made within 28 days of receipt of the notice.
- (3) A person receiving a notice under subsection (1) may request a statement of reasons for the decision within 28 days of receiving the notice.
- (4) If the ACMA receives a request in accordance with subsection (3), the ACMA must give the person a statement of reasons within 28 days of receipt of that request.

Ministerial directions

- (6) The Minister may, by legislative instrument, give the ACMA a direction about the exercise of a power conferred by paragraph (1)(a), (b) or (c) to impose, vary or revoke conditions of a digital radio multiplex transmitter licence.
- (7) The ACMA must comply with a direction under subsection (6).

111A Licence conditions may confer powers on the ACMA or a person who holds an accreditation

Scope

- (1) This section applies to:
 - (a) a condition specified under paragraph 107(1)(g), 108A(1)(f), 109(1)(f), 109A(1)(k) or 109B(1)(t); or
 - (b) a condition imposed under paragraph 111(1)(a).

The ACMA

- (2) A condition may confer a power to make a decision of an administrative character on the ACMA.

Person who holds an accreditation

- (3) A condition may confer a power to make a decision of an administrative character on a person who holds a specified kind of accreditation.
- (4) The legislative rules may authorise a person who holds a specified kind of accreditation to charge fees in relation to the exercise by the person of a power conferred by a condition. A fee must not be such as to amount to taxation.

112 Guidelines relating to conditions etc.

- (1) The ACMA may, by legislative instrument, make guidelines:
 - (a) that it is to apply in exercising its powers under sections 107, 108 and 111; or
 - (b) for the purposes of paragraph 108(3)(a).
- (2) In exercising its powers under sections 107, 108 and 111, the ACMA must comply with any relevant guidelines that are in force.

113 Contravention of conditions

- (1) If a person:
-

Section 113A

- (a) is the holder of an apparatus licence; or
- (b) has been authorised under section 114 in relation to an apparatus licence;

the person must not contravene a condition of the licence.

Civil penalty: 100 penalty units.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

113A Constitutional safety net—issue of shares to digital community radio broadcasting representative company

- (1) If the operation of subsection 109D(3) would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth 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 Commonwealth 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.

Division 4—Third party users**114 Licensees may authorise third party users**

- (1) Subject to subsections (2), (3) and (3AA), a licensee of an apparatus licence may, by written instrument, authorise other persons to operate radiocommunications devices under the licence.
- (2) The licensee must not authorise a person if to do so would be inconsistent with determinations of the ACMA under section 115.
- (3) The licensee must not authorise a person if:
 - (a) the person has been issued an apparatus licence that:
 - (i) was or is of the same type as the licensee's licence; and
 - (ii) authorised operation of radiocommunications devices of the same kind as those to which the licensee's licence relates; and
 - (b) the person's licence:
 - (i) is suspended; or
 - (ii) has been cancelled within the last 2 years.
- (3AA) The licensee must not authorise a person if:
 - (a) the licence is a digital radio multiplex transmitter licence; and
 - (b) the person is not a qualified company.
- (4) Authorising other persons does not prevent the licensee doing anything in accordance with the licence.

114A Authorisation under apparatus licence taken to be an acquisition of an asset and conduct

- (1) For the purposes of the provisions of the *Competition and Consumer Act 2010* mentioned in subsection (2), the authorisation under subsection 114(1) of this Act of a person to operate radiocommunications devices under an apparatus licence is taken to be:

Section 115

- (a) an acquisition by the person of an asset of another person;
and
 - (b) conduct engaged in by the person.
- (2) The provisions of the *Competition and Consumer Act 2010* are:
 - (a) section 50 and subsections 81(1) and (1A); and
 - (b) the remaining provisions of that Act, to the extent that those provisions relate to section 50 of that Act.

115 Determinations limiting authorisation of third party users

- (1) The ACMA may, by legislative instrument, determine:
 - (a) categories of apparatus licences in respect of which licensees must not authorise other persons to operate radiocommunications devices; or
 - (b) classes of persons who must not be so authorised; or
 - (c) circumstances in which persons must not be so authorised.
- (2) A determination under subsection (1) may confer a power to make a decision of an administrative character on the ACMA.

116 Revocation of authorisations

- (1) If the ACMA is satisfied that a person authorised under section 114 has contravened a condition of the licence to which the authorisation relates, the ACMA may give the licensee a written notice directing the licensee to revoke the authorisation.

Note: Directions to revoke an authorisation are reviewable under Part 5.6.

- (2) The notice must give the reasons for the direction.
- (3) As soon as practicable and, in any event, within 7 days after service of the notice, the licensee must revoke the authorisation.

Civil penalty: 30 penalty units.

- (4) The licensee must not further authorise the person under section 114 until the direction is:

Section 117

- (a) revoked under subsection 289(1) of this Act or as provided for by subsection 33(3) of the *Acts Interpretation Act 1901*; or
- (b) set aside by a court or the AAT.

Civil penalty: 30 penalty units.

(5) If:

- (a) a person has been authorised under section 114 in relation to a particular licence; and
- (b) at the time of the authorisation, the person was the licensee of another apparatus licence of the same type that authorised operation of radiocommunications devices of the same kind as those to which the first-mentioned licence relates; and
- (c) the other licence is suspended or cancelled;

the authorisation is taken to have been revoked on the day on which the other licence is suspended or cancelled.

117 Licensees must keep records of authorisations

A licensee of an apparatus licence who authorises a person under section 114 must:

- (a) cause a copy of the authorisation to be kept in Australia; and
- (b) retain the copy for at least one year after the authorisation ceases to be in force.

Civil penalty: 20 penalty units.

118 Licensees must notify authorised persons of certain matters

- (1) As soon as practicable and, in any event, within 7 days after the licensee of an apparatus licence is given:
 - (a) a notice under section 111 relating to changes in licence conditions; or
 - (b) a notice under subsection 116(1) requiring an authorisation under section 114 to be revoked; or
 - (c) a notice under subsection 126(1) suspending the licence; or

Section 118

(d) a notice under subsection 128(1) or 128B(1) cancelling the licence;

the licensee must notify the effect of the notice to each person who is currently authorised under section 114 in relation to the licence.

Civil penalty: 20 penalty units.

- (2) Giving such a notice to the licensee does not render unlawful anything done by a person authorised by the licensee under section 114 before the person is notified under subsection (1) of this section.

Division 4B—Access to digital radio multiplex transmitter licences

Subdivision A—Introduction

118N Simplified outline

The following is a simplified outline of this Division:

- This Division sets out an access regime for digital radio multiplex transmitter licences.
- A digital radio multiplex transmitter licensee is required to comply with access obligations in relation to multiplex capacity under the licence.
- The access obligations facilitate the provision of access to multiplex capacity by content service providers in order that the content service providers can provide content services.
- The terms and conditions on which a digital radio multiplex transmitter licensee is required to comply with the access obligations are as set out in an access undertaking in force in relation to the licence.

118NA Scope

This Division applies in relation to a digital radio multiplex transmitter licence if the licence is:

- (a) a category 1 digital radio multiplex transmitter licence; or
- (b) a category 2 digital radio multiplex transmitter licence.

118NB Definitions

In this Division:

Section 118NB

access undertaking means an undertaking under section 118ND.

content service means:

- (a) for the purposes of the application of this Division to a category 1 digital radio multiplex transmitter licence—a service covered by subparagraph 109B(1)(f)(i) or (ii); or
- (b) for the purposes of the application of this Division to a category 2 digital radio multiplex transmitter licence—a service covered by subparagraph 109B(1)(g)(i), (ii) or (iii).

content service provider means a company who provides, or proposes to provide, a content service.

distributed-capacity access entitlement has the meaning given by section 118NU.

distributed-capacity access obligations has the meaning given by section 118NN.

excess-capacity access entitlement has the meaning given by section 118NT.

excess-capacity access obligations has the meaning given by section 118NM.

external auditor means a person authorised under section 118PD to be an external auditor for the purposes of this Division.

multiplex capacity, in relation to a digital radio multiplex transmitter licence, means:

- (a) if the licence is for a single multiplex transmitter—so much of the gross transmission capacity of the multiplex transmitter as is available for the transmission of content services; or
- (b) if the licence is for a main multiplex transmitter and one or more repeater multiplex transmitters—both:
 - (i) so much of the gross transmission capacity of the main multiplex transmitter as is available for the transmission of content services; and

- (ii) so much of the gross transmission capacity of each of the repeater multiplex transmitters as is available for the transmission of content services.

For the purposes of this definition, in working out so much of the gross transmission capacity of a multiplex transmitter as is available for the transmission of content services, include transmission capacity used to provide error protection for those content services.

Procedural Rules means Procedural Rules made under section 118PO.

standard access entitlement has the meaning given by whichever of section 118NQ, 118NR or 118NS is applicable.

standard access obligations has the meaning given by section 118NL.

118NC National broadcasters

For the purpose of this Division, a national broadcaster is taken to be entitled to provide digital national radio broadcasting services in each designated BSA radio area.

Subdivision B—Access undertakings

118ND Digital radio multiplex transmitter licensees must give the ACCC access undertakings

- (1) A digital radio multiplex transmitter licensee must, within 50 days after the issue of the licence, give the ACCC a written undertaking that each of the following persons:
 - (a) the first holder of the licence;
 - (b) any person authorised by the first holder of the licence to operate a multiplex transmitter under the licence;
 - (c) any future holder of the licence;
 - (d) any person authorised by a future holder of the licence to operate a multiplex transmitter under the licence;

Section 118NE

will comply with such terms and conditions as are ascertained in accordance with the undertaking in relation to:

- (e) the standard access obligations (if any) that are, or may become, applicable to the licence; and
 - (f) the excess-capacity access obligations (if any) that are, or may become, applicable to the licence; and
 - (g) the distributed-capacity access obligations (if any) that are, or may become, applicable to the licence.
- (2) The undertaking must be in a form approved in writing by the ACCC.
 - (3) The undertaking must be accompanied by the fee (if any) specified in the Procedural Rules. The amount of the fee must not be such as to amount to taxation.
 - (4) The undertaking may be without limitations or may be subject to such limitations as are specified in the undertaking.

118NE Further information about access undertakings

- (1) This section applies if a digital radio multiplex transmitter licensee gives an access undertaking to the ACCC.
- (2) The ACCC may request the licensee to give the ACCC further information about the access undertaking.
- (3) If:
 - (a) the Procedural Rules make provision for, or in relation to, a time limit for giving the information; and
 - (b) the licensee does not give the ACCC the information within the time limit allowed by the Procedural Rules;the ACCC may, by written notice given to the licensee, reject the access undertaking.
- (4) If the Procedural Rules do not make provision for, or in relation to, a time limit for giving the information, the ACCC may refuse to consider the access undertaking until the licensee gives the ACCC the information.

- (5) The ACCC may withdraw its request for further information, in whole or in part.

118NF ACCC to accept or reject access undertakings

- (1) This section applies if a digital radio multiplex transmitter licensee gives an access undertaking to the ACCC.

Decision to accept or reject access undertaking

- (2) After considering the access undertaking, the ACCC must:
- (a) accept the access undertaking; or
 - (b) reject the access undertaking.
- (3) Before accepting the access undertaking, the ACCC must:
- (a) publish a copy of the access undertaking on the ACCC's website; and
 - (b) invite members of the public to make submissions to the ACCC about the access undertaking within a specified period; and
 - (c) consider any submissions the ACCC receives from members of the public within that period.
- (4) If the ACCC rejects the access undertaking, the ACCC may give the licensee a written notice advising the licensee that, if the licensee:
- (a) makes such alterations to the access undertaking as are specified in the notice; and
 - (b) gives the altered access undertaking to the ACCC within the time limit allowed by the Procedural Rules;
- the ACCC will accept the altered access undertaking.
- (5) If the ACCC rejects the access undertaking, the ACCC may, by written notice given to the licensee, determine that an undertaking in the terms specified in the determination is the access undertaking in relation to the licence.
- (6) Before giving a notice under subsection (5), the ACCC must:

Section 118NG

- (a) publish a copy of the notice on the ACCC's website; and
- (b) invite members of the public to make submissions to the ACCC about the notice within a specified period; and
- (c) consider any submissions the ACCC receives from members of the public within that period.

Notice of decision

- (7) If the ACCC accepts the access undertaking, the ACCC must give the licensee a written notice stating that the access undertaking has been accepted.
- (8) If the ACCC rejects the access undertaking, the ACCC must give the licensee a written notice:
 - (a) stating that the access undertaking has been rejected; and
 - (b) setting out the reasons for the rejection; and
 - (c) if the ACCC gives a notice under subsection (5)—stating that the notice has been given.

118NG Duration of access undertakings etc.

Duration of access undertaking accepted by ACCC

- (1) If:
 - (a) a digital radio multiplex transmitter licensee gives an access undertaking to the ACCC; and
 - (b) the ACCC accepts the access undertaking;the access undertaking:
 - (c) comes into force at the time of acceptance; and
 - (d) remains in force while the licence is in force; and
 - (e) is suspended while the licence is suspended.

Duration of access undertaking determined by ACCC

- (2) If, under subsection 118NF(5), the ACCC determines that an undertaking is the access undertaking in relation to a digital radio multiplex transmitter licence, the access undertaking:

- (a) comes into force when the determination is made; and
- (b) remains in force while the licence is in force; and
- (c) is suspended while the licence is suspended.

Transfer of digital radio multiplex transmitter licence

- (3) To avoid doubt, if:
 - (a) an access undertaking is in force in relation to a digital radio multiplex transmitter licence; and
 - (b) the licence is transferred;then:
 - (c) the transfer does not result in the lapse of the access undertaking; and
 - (d) the transferee, and any person authorised by the transferee to operate a multiplex transmitter under the licence, is bound by the access undertaking.
- (4) Subsection (3) does not prevent the variation of an access undertaking.

Renewal of digital radio multiplex transmitter licence

- (5) If:
 - (a) a digital radio multiplex transmitter licence is renewed; and
 - (b) immediately before the expiry of the original licence, an access undertaking was in force in relation to the original licence;the access undertaking:
 - (c) remains in force while the new licence is in force, as if:
 - (i) it were an access undertaking in relation to the new licence; and
 - (ii) each reference in the access undertaking to a holder of the original licence were a reference to a holder of the new licence; and
 - (d) is suspended while the new licence is suspended.

Section 118NH

- (6) Subsection (5) does not prevent the variation of an access undertaking.

118NH Variation of access undertakings

- (1) This section applies if an access undertaking is in force in relation to a digital radio multiplex transmitter licence.
- (2) The licensee:
- (a) may give the ACCC a variation of the access undertaking; and
 - (b) must give the ACCC a variation of the access undertaking if required to do so by the ACCC.

Decision to accept or reject variation

- (3) After considering the variation, the ACCC must:
- (a) accept the variation; or
 - (b) reject the variation.
- (4) Before accepting the variation, the ACCC must:
- (a) publish a copy of the variation on the ACCC's website; and
 - (b) invite members of the public to make submissions to the ACCC about the variation within a specified period; and
 - (c) consider any submissions the ACCC receives from members of the public within that period.
- (5) If the ACCC rejects the variation, the ACCC may give the licensee a written notice advising the licensee that, if the licensee:
- (a) makes such alterations to the variation as are specified in the notice; and
 - (b) gives the altered variation to the ACCC within the time limit allowed by the Procedural Rules;
- the ACCC will accept the altered variation.
- (6) If the ACCC rejects the variation, the ACCC may, by written notice given to the licensee, vary the access undertaking.

- (7) Before giving a notice under subsection (6), the ACCC must:
- (a) publish a copy of the notice on the ACCC's website; and
 - (b) invite members of the public to make submissions to the ACCC about the notice within a specified period; and
 - (c) consider any submissions the ACCC receives from members of the public within that period.

Notice of decision

- (8) If the ACCC accepts the variation, the ACCC must give the licensee a written notice:
- (a) stating that the variation has been accepted; and
 - (b) setting out the terms of the variation.
- (9) If the ACCC rejects the variation, the ACCC must give the licensee a written notice:
- (a) stating that the variation has been rejected; and
 - (b) setting out the reasons for the rejection; and
 - (c) if ACCC gives a notice under subsection (6)—stating that the notice has been given.

Requirement to give variation

- (10) The ACCC must not, under paragraph (2)(b), impose a requirement (the **current requirement**) on the licensee to give the ACCC a variation of the access undertaking unless:
- (a) the current requirement is imposed by a written notice given to the licensee on or after 1 January 2015; and
 - (b) the ACCC is satisfied that the access undertaking would be rejected if it were given to the ACCC when the current requirement is imposed; and
 - (c) no previous requirement was imposed on the licensee under paragraph (2)(b) during the 5-year period ending immediately before the current requirement was imposed.
- (11) If the licensee does not give the ACCC a variation of the access undertaking when required to do so by the ACCC under

Section 118NI

paragraph (2)(b), the ACCC may, by written notice given to the licensee, vary the access undertaking.

- (12) Before giving a notice under subsection (11), the ACCC must:
- (a) publish a copy of the notice on the ACCC's website; and
 - (b) invite members of the public to make submissions to the ACCC about the notice within a specified period; and
 - (c) consider any submissions the ACCC receives from members of the public within that period.

118NI Further information about variation of access undertakings

- (1) This section applies if:
- (a) an access undertaking is in force in relation to a digital radio multiplex transmitter licence; and
 - (b) the licensee gives the ACCC a variation of the access undertaking.
- (2) The ACCC may request the licensee to give the ACCC further information about the variation.
- (3) If:
- (a) the Procedural Rules make provision for, or in relation to, a time limit for giving the information; and
 - (b) the licensee does not give the ACCC the information within the time limit allowed by the Procedural Rules;
- the ACCC may, by written notice given to the licensee, reject the variation.
- (4) If the Procedural Rules do not make provision for, or in relation to, a time limit for giving the information, the ACCC may refuse to consider the variation until the licensee gives the ACCC the information.
- (5) The ACCC may withdraw its request for further information, in whole or in part.

118NJ Decision-making criteria

Acceptance of access undertaking

- (1) The ACCC may, by legislative instrument, determine criteria to be applied by the ACCC in deciding whether to accept access undertakings.
- (2) In deciding whether to accept access undertakings, the ACCC must:
 - (a) apply criteria determined under subsection (1); and
 - (b) have regard to such other matters (if any) as the ACCC considers relevant.

Acceptance of variation of access undertaking

- (3) The ACCC may, by legislative instrument, determine criteria to be applied by the ACCC in deciding whether to accept variations of access undertakings.
- (4) In deciding whether to accept variations of access undertakings, the ACCC must:
 - (a) apply criteria determined under subsection (3); and
 - (b) have regard to such other matters (if any) as the ACCC considers relevant.

118NK Register of access undertakings

- (1) The ACCC is to maintain a Register in which the ACCC includes all access undertakings that are in force.
- (2) The Register may be maintained by electronic means.
- (3) The Register is to be made available for inspection on the internet.

Section 118NL

Subdivision C—Standard access obligations, excess-capacity access obligations and distributed-capacity access obligations

118NL Standard access obligations

- (1) This section sets out the *standard access obligations*.
- (2) If:
 - (a) a content service provider has a standard access entitlement in relation to a fraction of multiplex capacity under a digital radio multiplex transmitter licence; and
 - (b) the content service provider may use that entitlement for a particular purpose;the licensee, and any person authorised by the licensee to operate a multiplex transmitter under the licence, must give the content service provider:
 - (c) access to that fraction of multiplex capacity for that purpose; and
 - (d) access to services that facilitate the use of that fraction of multiplex capacity for that purpose.
- (3) The licensee, or the person so authorised, is not required to comply with those obligations unless an access undertaking is in force in relation to the licence.

118NM Excess-capacity access obligations

- (1) This section sets out the *excess-capacity access obligations*.
- (2) If:
 - (a) a content service provider has an excess-capacity access entitlement in relation to a fraction of multiplex capacity under a digital radio multiplex transmitter licence; and
 - (b) the content service provider may use that entitlement for a particular purpose;

the licensee, and any person authorised by the licensee to operate a multiplex transmitter under the licence, must give the content service provider:

- (c) access to that fraction of multiplex capacity for that purpose; and
 - (d) access to services that facilitate the use of that fraction of multiplex capacity for that purpose.
- (3) The licensee, or the person so authorised, is not required to comply with those obligations unless an access undertaking is in force in relation to the licence.

118NN Distributed-capacity access obligations

- (1) This section sets out the *distributed-capacity access obligations*.

- (2) If:

- (a) a content service provider has a distributed-capacity access entitlement in relation to a fraction of multiplex capacity under a digital radio multiplex transmitter licence; and
- (b) the content service provider may use that entitlement for a particular purpose;

the licensee, and any person authorised by the licensee to operate a multiplex transmitter under the licence, must give the content service provider:

- (c) access to that fraction of multiplex capacity for that purpose; and
 - (d) access to services that facilitate the use of that fraction of multiplex capacity for that purpose.
- (3) The licensee, or the person so authorised, is not required to comply with those obligations unless an access undertaking is in force in relation to the licence.

Section 118NO

118NO Compliance with access obligations

- (1) This section applies if a digital radio multiplex transmitter licensee, or a person authorised by the licensee to operate a multiplex transmitter under the licence, is required to comply with:
 - (a) the standard access obligations (if any) that are applicable to the licence; or
 - (b) the excess-capacity access obligations (if any) that are applicable to the licence; or
 - (c) the distributed-capacity access obligations (if any) that are applicable to the licence.
- (2) The digital radio multiplex transmitter licensee, or the person so authorised, must comply with the obligations on such terms and conditions as are ascertained in accordance with an access undertaking in force in relation to the licence.

118NP Other obligations

The licensee of a digital radio multiplex transmitter licence, and each person authorised by the licensee to operate a multiplex transmitter under the licence, must not discriminate, as between content service providers who have access to multiplex capacity under the licence, in relation to:

- (a) the technical and operational quality of the services supplied to the content service providers; and
 - (b) the technical and operational quality and timing of the fault detection, handling and rectification supplied to the content service providers;
- for the purposes of facilitating the use of that multiplex capacity.

118NQ Standard access entitlements of commercial broadcasters

Scope

- (1) This section applies to a foundation digital radio multiplex transmitter licence for a designated BSA radio area.

Standard access entitlements

- (2) If:
- (a) an incumbent digital commercial radio broadcasting licensee for the designated BSA radio area, by written notice given to the digital radio multiplex transmitter licensee, claims access to one-ninth of multiplex capacity under the digital radio multiplex transmitter licence; and
 - (b) the notice is given within 30 days after the issue of the digital radio multiplex transmitter licence;
- the incumbent digital commercial radio broadcasting licensee:
- (c) is entitled to access to one-ninth of multiplex capacity under the digital radio multiplex transmitter licence (which entitlement is called a ***standard access entitlement***); and
 - (d) may only use that standard access entitlement for the purpose of providing, under the digital commercial radio broadcasting licence, one or more digital commercial radio broadcasting services in the designated BSA radio area; and
 - (e) is not entitled to transfer the digital commercial radio broadcasting licensee's standard access entitlement.
- (3) Subsection (2) has effect subject to subsections (5) and (6).
- (4) If the digital radio multiplex transmitter licensee receives a subsection (2) notice, the licensee must, within 7 days after receiving the notice, give a copy of the notice to the ACCC.
- (5) An incumbent digital commercial radio broadcasting licensee for the designated BSA radio area must not give a subsection (2) notice to the digital radio multiplex transmitter licensee if:
- (a) the incumbent digital radio broadcasting licensee has given another subsection (2) notice to the digital radio multiplex transmitter licensee; or
 - (b) the incumbent digital commercial radio broadcasting licensee has given a subsection (2) notice to the licensee of another digital radio multiplex transmitter licence for the designated BSA radio area.

Section 118NR

- (6) If subsection (2) notices would result in demand from incumbent digital commercial radio broadcasting licensees for access to multiplex capacity under the first-mentioned digital radio multiplex transmitter licence being greater than so much of the multiplex capacity under the first-mentioned digital radio multiplex transmitter licence as is neither:
- (a) reserved under subsection 118NR(2) (which deals with community broadcasters); nor
 - (b) covered by a standard access entitlement arising under subsection 118NS(2) (which deals with national broadcasters);
- the ACCC may, by written notice given to a particular incumbent digital commercial radio broadcasting licensee before the digital radio start-up day for the designated BSA radio area:
- (c) cancel the licensee's subsection (2) notice; and
 - (d) determine that this section has effect as if the licensee's subsection (2) notice had never been given; and
 - (e) determine that this section has effect as if the licensee had given a notice under subsection (2) in relation to another foundation digital radio multiplex transmitter licence for the designated BSA radio area.

118NR Standard access entitlements of community broadcasters

Scope

- (1) This section applies to a foundation digital radio multiplex transmitter licence for a designated BSA radio area.

Reservation of multiplex capacity

- (2) Two-ninths of multiplex capacity under the digital radio multiplex transmitter licence is reserved for digital community radio broadcasting licensees who are or may be nominated in accordance with subsection (3), (7) or (10).

Standard access entitlements—applicable fraction of multiplex capacity

- (3) If:
- (a) the digital community radio broadcasting representative company for the designated BSA radio area, by written notice given to the licensee of the digital radio multiplex transmitter licence:
 - (i) nominates 2 or more digital community radio broadcasting licensees for the purposes of this subsection; and
 - (ii) for each nominated digital community radio broadcasting licensee, determines an applicable fraction; and
 - (b) the notice is in force;
- each nominated digital community radio broadcasting licensee:
- (c) is entitled to access to the digital community radio broadcasting licensee's applicable fraction of the multiplex capacity reserved under subsection (2) (which entitlement is called a *standard access entitlement*); and
 - (d) may only use that standard access entitlement for the purpose of providing, under the digital community radio broadcasting licence, one or more digital community radio broadcasting services in the designated BSA radio area; and
 - (e) is not entitled to transfer the digital community radio broadcasting licensee's standard access entitlement.
- (4) The sum of the applicable fractions determined in a notice under subsection (3) must not be greater than 1.
- (5) The applicable fractions determined in a notice under subsection (3) may be the same or different for each nominated digital community radio broadcasting licensee.
- (6) A notice given by a digital community radio broadcasting representative company cannot be in force under subsection (3) at the same time as:

Section 118NR

- (a) another notice given by the company is in force under subsection (3); or
- (b) a notice given by the company is in force under subsection (7) or (10).

Standard access entitlements—designated fraction of multiplex capacity

(7) If:

- (a) the digital community radio broadcasting representative company for the designated BSA radio area, by written notice given to the licensee of the digital radio multiplex transmitter licence, nominates 2 or more digital community radio broadcasting licensees for the purposes of this subsection; and

- (b) the notice is in force;

each nominated digital community radio broadcasting licensee:

- (c) is entitled to access to the designated fraction of the multiplex capacity reserved under subsection (2) (which entitlement is called a *standard access entitlement*); and
- (d) may only use that standard access entitlement for the purpose of providing, under the digital community radio broadcasting licence, one or more digital community radio broadcasting services in the designated BSA radio area; and
- (e) is not entitled to transfer the digital community radio broadcasting licensee's standard access entitlement.

(8) For the purposes of subsection (7), the *designated fraction* is as follows:

$$\frac{1}{\text{Number of nominated digital community radio broadcasting licensees}}$$

(9) A notice given by a digital community radio broadcasting representative company cannot be in force under subsection (7) at the same time as:

- (a) another notice given by the company is in force under subsection (7); or
- (b) a notice given by the company is in force under subsection (3) or (10).

Standard access entitlements—half of multiplex capacity

(10) If:

- (a) the digital community radio broadcasting representative company for the designated BSA radio area, by written notice given to the licensee of the digital radio multiplex transmitter licence, nominates a single digital community radio broadcasting licensee for the purposes of this subsection; and
 - (b) the notice is in force;
- the nominated digital community radio broadcasting licensee:
- (c) is entitled to access to half of the multiplex capacity reserved under subsection (2) (which entitlement is called a ***standard access entitlement***); and
 - (d) may only use that standard access entitlement for the purpose of providing, under the digital community radio broadcasting licence, one or more digital community radio broadcasting services in the designated BSA radio area; and
 - (e) is not entitled to transfer the digital community radio broadcasting licensee's standard access entitlement.

(11) A notice given by a digital community radio broadcasting representative company cannot be in force under subsection (10) at the same time as:

- (a) another notice given by the company is in force under subsection (10); or
- (b) a notice given by the company is in force under subsection (3) or (7).

Subsequent notices

(12) If:

Section 118NR

- (a) a digital community radio broadcasting representative company gives a notice (the ***first notice***) under subsection (3); and
 - (b) the first notice is in force;the company must not give another notice under subsection (3) or a notice under subsection (7) or (10) unless the other notice under subsection (3) or the notice under subsection (7) or (10), as the case may be:
 - (c) is accompanied by a notice under subsection (15) revoking the first notice; and
 - (d) is expressed to take effect immediately after the revocation of the first notice.
- (13) If:
 - (a) a digital community radio broadcasting representative company gives a notice (the ***first notice***) under subsection (7); and
 - (b) the first notice is in force;the company must not give another notice under subsection (7) or a notice under subsection (3) or (10) unless the other notice under subsection (7) or the notice under subsection (3) or (10), as the case may be:
 - (c) is accompanied by a notice under subsection (15) revoking the first notice; and
 - (d) is expressed to take effect immediately after the revocation of the first notice.
- (14) If:
 - (a) a digital community radio broadcasting representative company gives a notice (the ***first notice***) under subsection (10); and
 - (b) the first notice is in force;the company must not give another notice under subsection (10) or a notice under subsection (3) or (7) unless the other notice under subsection (10) or the notice under subsection (3) or (7), as the case may be:

- (c) is accompanied by a notice under subsection (15) revoking the first notice; and
- (d) is expressed to take effect immediately after the revocation of the first notice.

Revocation of notices

- (15) If a notice given by a digital community radio broadcasting representative company under subsection (3), (7) or (10) is in force:
 - (a) the company may, by written notice given to the licensee of the digital radio multiplex transmitter licence, revoke the notice given under subsection (3), (7) or (10), as the case may be; and
 - (b) the revocation takes effect at the start of the 30th day after the day on which the notice of revocation is given.
- (16) A notice of revocation under subsection (15) has no effect unless the digital community radio broadcasting representative company also gives the licensee of the digital radio multiplex transmitter licence:
 - (a) if the notice of revocation relates to a notice (the ***original notice***) given under subsection (3)—either:
 - (i) a fresh notice under subsection (3) that is expressed to take effect immediately after the revocation of the original notice; or
 - (ii) a notice under subsection (7) or (10) that is expressed to take effect immediately after the revocation of the original notice; and
 - (b) if the notice of revocation relates to a notice (the ***original notice***) given under subsection (7)—either:
 - (i) a fresh notice under subsection (7) that is expressed to take effect immediately after the revocation of the original notice; or
 - (ii) a notice under subsection (3) or (10) that is expressed to take effect immediately after the revocation of the original notice; and

Section 118NR

- (c) if the notice of revocation relates to a notice (the *original notice*) given under subsection (10)—either:
 - (i) a fresh notice under subsection (10) that is expressed to take effect immediately after the revocation of the original notice; or
 - (ii) a notice under subsection (3) or (7) that is expressed to take effect immediately after the revocation of the original notice.
- (17) If:
 - (a) a digital community radio broadcasting licensee is nominated in a notice under subsection (3), (7) or (10); and
 - (b) the notice is revoked under subsection (15);this section does not prevent that digital community radio broadcasting licensee from being nominated in:
 - (c) in the case of the revocation of a notice given under subsection (3):
 - (i) a fresh notice under subsection (3); or
 - (ii) a notice under subsection (7) or (10); and
 - (d) in the case of the revocation of a notice given under subsection (7):
 - (i) a fresh notice under subsection (7); or
 - (ii) a notice under subsection (3) or (10); and
 - (e) in the case of the revocation of a notice given under subsection (10):
 - (i) a fresh notice under subsection (10); or
 - (ii) a notice under subsection (3) or (7).

No variation of notices

- (18) A notice under subsection (3), (7) or (10) cannot be varied.

Limit on nomination

- (19) The nomination of a digital community radio broadcasting licensee for the purposes of subsection (3), (7) or (10) has no effect if the licensee has already been nominated for the purposes of any of

those subsections in the subsection's application to another digital radio multiplex transmitter licence for the designated BSA radio area.

Transitional

- (20) For the purposes of the application of this section before the digital radio start-up day for the designated BSA radio area, ***digital community radio broadcasting licensee*** includes an incumbent digital community radio broadcasting licensee.

118NS Standard access entitlements of national broadcasters

Scope

- (1) This section applies to a foundation category 2 digital radio multiplex transmitter licence for a designated BSA radio area.

Standard access entitlements

- (2) Each national broadcaster:
- (a) is entitled to access to one-ninth of multiplex capacity under the digital radio multiplex transmitter licence (which entitlement is called a ***standard access entitlement***); and
 - (b) may only use that standard access entitlement for the purpose of providing one or more digital national radio broadcasting services in the designated BSA radio area; and
 - (c) may transfer the national broadcaster's standard access entitlement to the other national broadcaster.
- (3) If a standard access entitlement is transferred as mentioned in paragraph (2)(c):
- (a) the standard access entitlement may be further transferred, or successively transferred, so long as the holder for the time being of the standard access entitlement is a national broadcaster; and
 - (b) the holder for the time being of the standard access entitlement is entitled to access to one-ninth of multiplex

Section 118NT

capacity under the digital radio multiplex transmitter licence for the purpose of providing one or more digital national radio broadcasting services in the designated BSA radio area.

118NT Excess-capacity access entitlements etc.

Scope

- (1) This section applies to a foundation digital radio multiplex transmitter licence for a designated BSA radio area if:
 - (a) on the digital start-up day for the area, the multiplex capacity available under the digital radio multiplex transmitter licence exceeds the aggregate of:
 - (i) the fractions of multiplex capacity relating to standard access entitlements that have come into existence under subsections 118NQ(2) and 118NS(2); and
 - (ii) the fractions of multiplex capacity reserved under subsection 118NR(2); or
 - (b) at any time after the 12-month period beginning on the digital start-up day for the area, the multiplex capacity available under the digital radio multiplex transmitter licence exceeds the aggregate of:
 - (i) the fractions of multiplex capacity relating to standard access entitlements that have come into existence under subsections 118NQ(2) and 118NS(2); and
 - (ii) the fractions of multiplex capacity reserved under subsection 118NR(2); and
 - (iii) the fractions of multiplex capacity relating to any excess-capacity access entitlements that have previously come into existence under subsections (4) and (7);and an access undertaking is in force in relation to the licence.

Initial level of demand for access to excess multiplex capacity must be ascertained

- (2) If paragraph (1)(a) applies, the digital radio multiplex transmitter licensee must:

- (a) within 90 days after the digital radio start-up day for the designated BSA radio area, ascertain the level of demand for access to that excess multiplex capacity from content service providers who are entitled to provide one or more content services in the designated BSA radio area; and
- (b) by notice published on the licensee's website:
 - (i) give at least 30 days notice of the licensee's intention to ascertain the level of demand as mentioned in paragraph (a); and
 - (ii) invite content service providers to express an interest in having access to that excess multiplex capacity.

Subsequent level of demand for access to excess multiplex capacity may be ascertained

- (3) If paragraph (1)(b) applies, the following provisions have effect:
 - (a) the digital radio multiplex transmitter licensee may ascertain the level of demand for access to that excess multiplex capacity from content service providers who are entitled to provide one or more content services in the designated BSA radio area; and
 - (b) if the licensee proposes to ascertain the level of demand as mentioned in paragraph (a)—the digital radio multiplex transmitter licensee must, by notice published on the licensee's website:
 - (i) give at least 30 days notice of the licensee's intention to ascertain the level of demand as mentioned in paragraph (a); and
 - (ii) invite content service providers to express an interest in having access to that excess multiplex capacity.

Demand falls short of excess multiplex capacity

- (4) If the demand from interested content service providers for access to that excess multiplex capacity, as ascertained under whichever of subsection (2) or (3) is applicable, falls short of that excess multiplex capacity—each interested content service provider:

Section 118NT

- (a) is entitled to access to the fraction of multiplex capacity sought by the interested content service provider (which entitlement is called an *excess-capacity access entitlement*); and
 - (b) may only use that excess-capacity access entitlement for the purpose of providing one or more content services in the designated BSA radio area; and
 - (c) may transfer that excess-capacity access entitlement to another content service provider who is entitled to provide one or more content services in the designated BSA radio area.
- (5) The excess-capacity access entitlement referred to in paragraph (4)(a) commences:
- (a) at the end of the 30-day period beginning on the day on which the demand from interested content service providers is ascertained under whichever of subsection (2) or (3) is applicable; or
 - (b) if the digital radio multiplex transmitter licensee agrees to an earlier time—at that earlier time.

Demand is greater than excess multiplex capacity

- (6) If the demand from interested content service providers for access to that excess multiplex capacity, as ascertained under whichever of subsection (2) or (3) is applicable, is greater than that excess multiplex capacity, the digital radio multiplex transmitter licensee must:
- (a) use an open and transparent auction process to determine which content service providers are to have access to which fractions of multiplex capacity for the purpose of providing one or more content services in the designated BSA radio area; and
 - (b) do so before the end of the 60-day period beginning on the day on which the demand from interested content service providers is ascertained under whichever of subsection (2) or (3) is applicable.

- (7) If, as a result of an auction process mentioned in subsection (6), a content service provider is to have access to a particular fraction of multiplex capacity, the content service provider:
- (a) is entitled to access to that fraction of multiplex capacity (which entitlement is called an *excess-capacity access entitlement*); and
 - (b) may only use that excess-capacity access entitlement for the purpose of providing one or more content services in the designated BSA radio area; and
 - (c) may transfer that excess-capacity access entitlement to another content service provider who is entitled to provide one or more content services in the designated BSA radio area.
- (8) The excess-capacity access entitlement referred to in paragraph (7)(a) commences:
- (a) at the end of the 30-day period beginning on the day on which the auction process mentioned in subsection (6) is completed; or
 - (b) if the digital radio multiplex transmitter licensee agrees to an earlier time—at that earlier time.
- (9) For the purposes of the application of paragraph (8)(a) to a content service provider, the auction process mentioned in subsection (6) is completed when the content service provider makes the relevant auction payment.
- (10) If an excess-capacity access entitlement is transferred as mentioned in paragraph (4)(c) or (7)(c):
- (a) the excess-capacity access entitlement may be further transferred, or successively transferred, so long as the holder for the time being of the excess-capacity access entitlement is a content service provider who is entitled to provide content services in the designated BSA radio area; and
 - (b) the holder for the time being of the excess-capacity access entitlement is entitled to access to the relevant fraction of multiplex capacity under the digital radio multiplex

Section 118NU

transmitter licence for the purpose of providing one or more content services in the designated BSA radio area.

- (11) This section has effect subject to section 118NV.

118NU Distributed-capacity access entitlements etc.

Scope

- (1) This section applies to a non-foundation digital radio multiplex transmitter licence for a designated BSA radio area if an access undertaking is in force for the licence.

Initial level of demand for access to multiplex capacity must be ascertained

- (2) The following provisions have effect:
- (a) the digital radio multiplex transmitter licensee must, before commencing to transmit a content service, ascertain the level of demand for access to multiplex capacity from content service providers who are entitled to provide one or more content services in the designated BSA radio area; and
 - (b) if the licensee proposes to ascertain the level of demand as mentioned in paragraph (a)—the digital radio multiplex transmitter licensee must, by notice published on the licensee's website:
 - (i) give at least 30 days notice of the licensee's intention to ascertain the level of demand as mentioned in paragraph (a); and
 - (ii) invite content service providers to express an interest in having access to that multiplex capacity.

Subsequent level of demand for access to multiplex capacity may be ascertained

- (3) The following provisions have effect:
- (a) the digital radio multiplex transmitter licensee may, at any time after commencing to transmit a content service,

ascertain the level of demand for access to multiplex capacity from content service providers who are entitled to provide one or more content services in the designated BSA radio area; and

- (b) if the licensee proposes to ascertain the level of demand as mentioned in paragraph (a)—the digital radio multiplex transmitter licensee must, by notice published on the licensee's website:
 - (i) give at least 30 days notice of the licensee's intention to ascertain the level of demand as mentioned in paragraph (a); and
 - (ii) invite content service providers to express an interest in having access to that multiplex capacity.

Demand falls short of multiplex capacity

- (4) If the demand from interested content service providers for access to multiplex capacity, as ascertained under whichever of subsection (2) or (3) is applicable, falls short of the multiplex capacity—each interested content service provider:
 - (a) is entitled to access to the fraction of multiplex capacity sought by the interested content service provider (which entitlement is called a ***distributed-capacity access entitlement***); and
 - (b) may only use that distributed-capacity access entitlement for the purpose of providing one or more content services in the designated BSA radio area; and
 - (c) may transfer that distributed-capacity access entitlement to another content service provider who is entitled to provide one or more content services in the designated BSA radio area.
- (5) The distributed-capacity access entitlement referred to in paragraph (4)(a) commences:
 - (a) at the end of the 30-day period beginning on the day on which the demand from interested content service providers is ascertained under whichever of subsection (2) or (3) is applicable; or

Section 118NU

- (b) if the digital radio multiplex transmitter licensee agrees to an earlier time—at that earlier time.

Demand is greater than multiplex capacity

- (6) If the demand from interested content service providers for access to multiplex capacity, as ascertained under whichever of subsection (2) or (3) is applicable, is greater than the multiplex capacity, the digital radio multiplex transmitter licensee must:
 - (a) use an open and transparent auction process to determine which content service providers are to have access to which fractions of multiplex capacity for the purpose of providing one or more content services in the designated BSA radio area; and
 - (b) do so before the end of the 60-day period beginning on the day on which the demand from interested content service providers is ascertained under whichever of subsection (2) or (3) is applicable.
- (7) If, as a result of an auction process mentioned in subsection (6), a content service provider is to have access to a particular fraction of multiplex capacity, the content service provider:
 - (a) is entitled to access to that fraction of multiplex capacity (which entitlement is called a ***distributed-capacity access entitlement***); and
 - (b) may only use that distributed-capacity access entitlement for the purpose of providing one or more content services in the designated BSA radio area; and
 - (c) may transfer that distributed-capacity access entitlement to another content service provider who is entitled to provide one or more content services in the designated BSA radio area.
- (8) The distributed-capacity access entitlement referred to in paragraph (7)(a) commences:
 - (a) at the end of the 30-day period beginning on the day on which the auction process mentioned in subsection (6) is completed; or

- (b) if the digital radio multiplex transmitter licensee agrees to an earlier time—at that earlier time.
- (9) For the purposes of the application of paragraph (8)(a) to a content service provider, the auction process mentioned in subsection (6) is completed when the content service provider makes the relevant auction payment.
- (10) If a distributed-capacity access entitlement is transferred as mentioned in paragraph (4)(c) or (7)(c):
 - (a) the distributed-capacity access entitlement may be further transferred, or successively transferred, so long as the holder for the time being of the distributed-capacity access entitlement is a content service provider who is entitled to provide content services in the designated BSA radio area; and
 - (b) the holder for the time being of the distributed-capacity access entitlement is entitled to access to the relevant fraction of multiplex capacity under the digital radio multiplex transmitter licence for the purpose of providing one or more content services in the designated BSA radio area.
- (11) This section has effect subject to section 118NV.

118NV Capacity cap—digital commercial radio broadcasting licensees

- (1) If there is only one digital radio multiplex transmitter licence for a designated BSA radio area, a digital commercial radio broadcasting licensee is not entitled to access to more than two-ninths of multiplex capacity under the digital radio multiplex transmitter licence for the purposes of providing, under the digital commercial radio broadcasting licence, one or more digital commercial digital radio broadcasting services in the designated BSA radio area.
- (2) If there are 2 or more digital radio multiplex transmitter licences for a designated BSA radio area, a digital commercial radio broadcasting licensee is not entitled to access to more than the

Section 118NW

designated fraction of the total multiplex capacities under those digital radio multiplex transmitter licences for the purposes of providing, under the digital commercial radio broadcasting licence, one or more digital commercial digital radio broadcasting services in the designated BSA radio area.

- (3) For the purposes of subsection (2), the *designated fraction* of the total multiplex capacities under those digital radio multiplex transmitter licences is as follows:

$$\frac{2}{\text{Number of digital radio multiplex transmitter licences}} \times 9$$

118NW Suspension of access entitlements

- (1) A standard access entitlement that relates to a digital radio multiplex transmitter licence is suspended while the licence is suspended.
- (2) An excess-capacity access entitlement that relates to a digital radio multiplex transmitter licence is suspended while the licence is suspended.
- (3) A distributed-capacity access entitlement that relates to a digital radio multiplex transmitter licence is suspended while the licence is suspended.

118NX Transfer of digital radio multiplex transmitter licence

Standard access entitlement

- (1) To avoid doubt, if:
 - (a) a content service provider has a standard access entitlement in relation to a fraction of multiplex capacity under a digital radio multiplex transmitter licence; and
 - (b) the licence is transferred;

the transfer does not affect the continuity of the standard access entitlement.

- (2) Subsection (1) does not prevent:
- (a) the transfer of a standard access entitlement under subsection 118NS(2) or (3); or
 - (b) the revocation of a notice given under subsection 118NR(3), (7) or (10).

Excess-capacity access entitlement

- (3) To avoid doubt, if:
- (a) a content service provider has an excess-capacity access entitlement in relation to a fraction of multiplex capacity under a digital radio multiplex transmitter licence; and
 - (b) the licence is transferred;
- the transfer does not affect the continuity of the excess-capacity access entitlement.
- (4) Subsection (3) does not prevent the transfer of an excess-capacity access entitlement.

Distributed-capacity access entitlement

- (5) To avoid doubt, if:
- (a) a content service provider has a distributed-capacity access entitlement in relation to a fraction of multiplex capacity under a digital radio multiplex transmitter licence; and
 - (b) the licence is transferred;
- the transfer does not affect the continuity of the distributed-capacity access entitlement.
- (6) Subsection (5) does not prevent the transfer of a distributed-capacity access entitlement.

Section 118NY

118NY Renewal of digital radio multiplex transmitter licence

Standard access entitlement

- (1) If:
- (a) a digital radio multiplex transmitter licence is renewed; and
 - (b) immediately before the expiry of the original licence, a content service provider held a standard access entitlement in relation to a fraction of multiplex capacity under the licence;
- the entitlement remains in existence while the new licence is in force, as if it were a standard access entitlement in relation to the new licence.
- (2) Subsection (1) does not prevent:
- (a) the transfer of a standard access entitlement under subsection 118NS(2) or (3); or
 - (b) the revocation of a notice given under subsection 118NR(3), (7) or (10).

Excess-capacity access entitlement

- (3) If:
- (a) a digital radio multiplex transmitter licence is renewed; and
 - (b) immediately before the expiry of the original licence, a content service provider held an excess-capacity access entitlement in relation to a fraction of multiplex capacity under the licence;
- the entitlement remains in existence while the new licence is in force, as if it were an excess-capacity access entitlement in relation to the new licence.
- (4) Subsection (3) does not prevent the transfer of an excess-capacity access entitlement.

Distributed-capacity access entitlement

- (5) If:
- (a) a digital radio multiplex transmitter licence is renewed; and

- (b) immediately before the expiry of the original licence, a content service provider held a distributed-capacity access entitlement in relation to a fraction of multiplex capacity under the licence;
the entitlement remains in existence while the new licence is in force, as if it were a distributed-capacity access entitlement in relation to the new licence.
- (6) Subsection (5) does not prevent the transfer of a distributed-capacity access entitlement.

Subdivision D—Enforcement

118NZ Judicial enforcement of access obligations etc.

- (1) If the Federal Court is satisfied that a digital radio multiplex transmitter licensee, or a person authorised by a digital radio multiplex transmitter licensee to operate a multiplex transmitter under the licence, has contravened any of the following obligations:
 - (a) the standard access obligations (if any) that are applicable to the licence;
 - (b) the excess-capacity access obligations (if any) that are applicable to the licence;
 - (c) the distributed-capacity access obligations (if any) that are applicable to the licence;
 - (d) the obligations that are applicable to the licence under section 118NP;the Court may, on the application of:
 - (e) the ACCC; or
 - (f) any person whose interests are affected by the contravention;make all or any of the following orders:
 - (g) an order directing the licensee or the person so authorised to comply with the obligation;
 - (h) an order directing the licensee or the person so authorised to compensate any other person who had suffered loss or damage as a result of the contravention;

Section 118P

- (i) any other order that the Court thinks appropriate.
- (2) The Federal Court may discharge or vary an order granted under this section.

118P Enforcement of access undertakings

- (1) This section applies if an access undertaking is in force in relation to a digital radio multiplex transmitter licence.
- (2) If:
 - (a) the ACCC; or
 - (b) a person (the *affected person*) whose interests are affected by the access undertaking;thinks that another person (the *third person*) has breached the access undertaking, the ACCC or the affected person may apply to the Federal Court for an order under subsection (3).
- (3) If the Federal Court is satisfied that the third person has breached the access undertaking, the Court may make all or any of the following orders:
 - (a) an order directing the third person to comply with the access undertaking;
 - (b) an order directing the third person to compensate any other person who has suffered loss or damage as a result of the breach;
 - (c) any other order that the Court thinks appropriate.
- (4) The Federal Court may discharge or vary an order granted under this section.

Subdivision E—External audits

118PA External audits

Scope

- (1) This section applies if:
-

- (a) an access undertaking is in force in relation to a digital radio multiplex transmitter licence; and
- (b) a person is:
 - (i) the licensee of the licence; or
 - (ii) a person authorised by the licensee to operate a multiplex transmitter under the licence; and
- (c) the ACCC has reasonable grounds to suspect that the person has breached, is breaching, or is proposing to breach:
 - (i) the access undertaking; or
 - (ii) any of the standard access obligations (if any) that are applicable to the licence; or
 - (iii) any of the excess-capacity access obligations (if any) that are applicable to the licence; or
 - (iv) any of the distributed-capacity access obligations (if any) that are applicable to the licence; or
 - (v) the obligations that are applicable to the licence under section 118NP.

Requirement

- (2) The ACCC may, by written notice given to the person, require the person to:
 - (a) appoint an external auditor; and
 - (b) arrange for the external auditor to carry out an external audit of whichever of the following is specified in the notice:
 - (i) the person's compliance with the access undertaking; or
 - (ii) one or more specified aspects of the person's compliance with the access undertaking; or
 - (iii) the person's compliance with the standard access obligations (if any) that are applicable to the licence; or
 - (iv) one or more specified aspects of the person's compliance with the standard access obligations (if any) that are applicable to the licence; or
 - (v) the person's compliance with the excess-capacity access obligations (if any) that are applicable to the licence; or

Section 118PA

- (vi) one or more specified aspects of the person's compliance with the excess-capacity access obligations (if any) that are applicable to the licence; or
- (vii) the person's compliance with the distributed-capacity access obligations (if any) that are applicable to the licence; or
- (viii) one or more specified aspects of the person's compliance with the distributed-capacity access obligations (if any) that are applicable to the licence; or
- (ix) the person's compliance with the obligations that are applicable to the licence under section 118NP; or
- (x) one or more specified aspects of the person's compliance with the obligations that are applicable to the licence under section 118NP; and
- (c) arrange for the external auditor to give the person a written report (the **audit report**) setting out the results of the audit; and
- (d) give the ACCC a copy of the audit report within:
 - (i) the period specified in the notice; or
 - (ii) if the ACCC allows a longer period—that longer period.
- (3) The notice must specify:
 - (a) the matters to be covered by the audit; and
 - (b) the form of the audit report and the kinds of details it is to contain.
- (4) The matters that may be specified under paragraph (3)(a) may include any or all of the following:
 - (a) an assessment of the person's existing capacity to comply with the access undertaking;
 - (b) an assessment of what the person will need to do, or continue to do, to comply with the access undertaking;
 - (c) an assessment of the person's existing capacity to comply with the standard access obligations (if any) that are applicable to the licence;

- (d) an assessment of what the person will need to do, or continue to do, to comply with the standard access obligations (if any) that are applicable to the licence;
 - (e) an assessment of the person's existing capacity to comply with the excess-capacity obligations (if any) that are applicable to the licence;
 - (f) an assessment of what the person will need to do, or continue to do, to comply with the excess-capacity obligations (if any) that are applicable to the licence;
 - (g) an assessment of the person's existing capacity to comply with the distributed-capacity obligations (if any) that are applicable to the licence;
 - (h) an assessment of what the person will need to do, or continue to do, to comply with the distributed-capacity obligations (if any) that are applicable to the licence;
 - (i) an assessment of the person's existing capacity to comply with the obligations that are applicable to the licence under section 118NP;
 - (j) an assessment of what the person will need to do, or continue to do, to comply with the obligations that are applicable to the licence under section 118NP.
- (5) Subsection (4) does not limit paragraph (3)(a).

Compliance

- (6) The person must comply with a notice under subsection (2).

118PB Eligibility for appointment

- (1) An individual is not eligible to be appointed by a person (the **first person**) in accordance with a requirement covered by paragraph 118PA(2)(a) if the individual is an officer, employee or agent of:
- (a) the first person; or
 - (b) another person who is in a position to exercise control of the digital radio multiplex transmitter licence concerned; or

Section 118PC

- (c) a company, where another person is in a position to exercise control of the company and the digital radio multiplex transmitter licence concerned.

Application of control rules

- (2) Schedule 1 to the *Broadcasting Services Act 1992* applies for the purposes of paragraphs (1)(b) and (c) in a corresponding way to the way in which it applies for the purposes of Part 5 of that Act.

118PC External auditor may have regard to the results of previous audit

In carrying out an external audit in accordance with a notice under section 118PA, an external auditor may, if:

- (a) an external audit was completed under that section within the last preceding 2 years; and
- (b) the external auditor is satisfied that the previous audit is still relevant;

have regard to the results of the previous audit.

118PD External auditors

- (1) The ACCC may, by writing, authorise a specified individual to be an external auditor for the purposes of this Division.

Note 1: For specification by class, see subsection 33(3AB) of the *Acts Interpretation Act 1901*.

Note 2: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) An authorisation under subsection (1) is not a legislative instrument.

Subdivision F—Review of decisions

118PE Review by Australian Competition Tribunal

- (1) A person whose interests are affected by a decision of the ACCC under subsection 118NF(2) or (5) or 118NH(3), (6) or (11) may apply in writing to the Australian Competition Tribunal for a review of the decision.
- (2) The application must be made within 21 days after the ACCC made the decision.
- (3) The Australian Competition Tribunal must review the decision.

118PF Functions and powers of Australian Competition Tribunal

Decision on review

- (1) On a review of a decision of the ACCC under subsection 118NF(2) or (5) or 118NH(3), (6) or (11), the Australian Competition Tribunal may make a decision:
 - (a) in any case—affirming the ACCC’s decision; or
 - (b) in the case of a review of a decision of the ACCC under subsection 118NF(2) to accept an access undertaking—setting aside the ACCC’s decision; or
 - (c) in the case of a review of a decision of the ACCC under subsection 118NF(2) to reject an access undertaking—both:
 - (i) setting aside the ACCC’s decision; and
 - (ii) in substitution for the decision so set aside, to accept the undertaking; or
 - (d) in the case of a review of a decision of the ACCC to make a determination under subsection 118NF(5)—setting aside the ACCC’s decision; or
 - (e) in the case of a review of a decision of the ACCC to make a determination under subsection 118NF(5)—both:
 - (i) setting aside the ACCC’s decision; and

Section 118PF

- (ii) in substitution for the decision so set aside, to make a determination under that subsection; or
 - (f) in the case of a review of a decision of the ACCC under subsection 118NH(3) to accept a variation of an access undertaking—setting aside the ACCC’s decision; or
 - (g) in the case of a review of a decision of the ACCC under subsection 118NH(3) to reject a variation of an access undertaking—both:
 - (i) setting aside the ACCC’s decision; and
 - (ii) in substitution for the decision so set aside, to accept the variation; or
 - (h) in the case of a review of a decision of the ACCC to make a determination under subsection 118NH(6) or (11)—setting aside the ACCC’s decision; or
 - (i) in the case of a review of a decision of the ACCC to make a determination under subsection 118NH(6) or (11)—both:
 - (i) setting aside the ACCC’s decision; and
 - (ii) in substitution for the decision so set aside, to make a determination under that subsection;
- and, for the purposes of the review, the Australian Competition Tribunal may perform all the functions and exercise all the powers of the ACCC.

- (2) A decision by the Australian Competition Tribunal:
- (a) affirming a decision of the ACCC; or
 - (b) setting aside a decision of the ACCC; or
 - (c) made in substitution for a decision of the ACCC;
- is taken, for the purposes of this Act (other than section 118PE or this section), to be a decision of the ACCC.

Conduct of review

- (3) For the purposes of a review by the Australian Competition Tribunal, the member of the Australian Competition Tribunal presiding at the review may require the ACCC to give such information, make such reports and provide such other assistance to the Australian Competition Tribunal as the member specifies.

- (4) For the purposes of a review, the Australian Competition Tribunal may have regard only to:
- (a) any information given, documents produced or evidence given to the ACCC in connection with the making of the decision to which the review relates; and
 - (b) any other information that was referred to in the ACCC's reasons for making the decision to which the review relates.

Australian Competition Tribunal to make decision within 6 months

- (5) If:
- (a) a person applies to the Australian Competition Tribunal for a review of a decision of the ACCC under subsection 118NF(2) or (5) or 118NH(3), (6) or (11); and
 - (b) the Australian Competition Tribunal does not make a decision under subsection (1) of this section on the review within 6 months after receiving the application for review;
- the Australian Competition Tribunal is taken to have made, at the end of that 6-month period, whichever of the following decisions is applicable:
- (c) in the case of a review of a decision of the ACCC under subsection 118NF(2) to accept an access undertaking—a decision setting aside the ACCC's decision;
 - (d) in the case of a review of a decision of the ACCC under subsection 118NF(2) to reject an access undertaking:
 - (i) a decision setting aside the ACCC's decision; and
 - (ii) in substitution for the decision so set aside, a decision to accept the undertaking;
 - (e) in the case of a review of a decision of the ACCC to make a determination under subsection 118NF(5)—a decision setting aside the ACCC's decision; or
 - (f) in the case of a review of a decision of the ACCC under subsection 118NH(3) to accept a variation of an access undertaking—a decision setting aside the ACCC's decision;

Section 118PF

- (g) in the case of a review of a decision of the ACCC under subsection 118NH(3) to reject a variation of an access undertaking:
 - (i) a decision setting aside the ACCC's decision; and
 - (ii) in substitution for the decision so set aside, a decision to accept the variation;
- (h) in the case of a review of a decision of the ACCC to make a determination under subsection 118NH(6) or (11)—a decision setting aside the ACCC's decision.

Extension of decision-making period

- (6) The Australian Competition Tribunal may, by written notice given to the applicant for review, extend or further extend the 6-month period referred to in subsection (5), so long as:
 - (a) the extension or further extension is for a period of not more than 3 months; and
 - (b) the notice includes a statement explaining why the Australian Competition Tribunal has been unable to make a decision on the review within that 6-month period or that 6-month period as previously extended, as the case may be.
- (7) As soon as practicable after the Australian Competition Tribunal gives a notice under subsection (6), the Australian Competition Tribunal must cause a copy of the notice to be made available on the internet.

Time of acceptance of undertaking

- (8) To avoid doubt, if the Australian Competition Tribunal makes a decision to accept an access undertaking, the time of acceptance of the undertaking is the time when the Australian Competition Tribunal made its decision.

Note: Division 2 of Part IX of the *Competition and Consumer Act 2010* applies to proceedings before the Australian Competition Tribunal.

**118PG Provisions that do not apply in relation to a Australian
Competition Tribunal review**

Division 1 of Part IX of the *Competition and Consumer Act 2010* does not apply in relation to a review by the Australian Competition Tribunal of a decision made by the ACCC under subsection 118NF(2) or (5) or 118NH(3), (6) or (11).

**118PH Statement of reasons for reviewable decision—specification
of documents**

- (1) If the ACCC:
 - (a) makes a decision referred to in section 118PE; and
 - (b) gives a person a written statement setting out the reasons for the decision;the statement must specify the documents that the ACCC examined in the course of making the decision.
- (2) If a document is specified under subsection (1), information in the document is taken, for the purposes of paragraph 118PF(4)(b), to be referred to in the ACCC's reasons for making the decision.

Subdivision G—Injunctions

118PI Injunctions

Restraining injunctions

- (1) If:
 - (a) a person is:
 - (i) a digital radio multiplex transmitter licensee; or
 - (ii) a person authorised by a digital radio multiplex transmitter licensee to operate a multiplex transmitter under the licence; and
 - (b) the person has engaged, is engaging or is proposing to engage, in any conduct in contravention of this Division;

Section 118PJ

the Federal Court may, on the application of the ACCC, grant an injunction:

- (c) restraining the person from engaging in the conduct; and
- (d) if, in the court's opinion, it is desirable to do so—requiring the person to do something.

Performance injunctions

(2) If:

- (a) a person is:
 - (i) a digital radio multiplex transmitter licensee; or
 - (ii) a person authorised by a digital radio multiplex transmitter licensee to operate a multiplex transmitter under the licence; and
- (b) the person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
- (c) the refusal or failure was, is or would be a contravention of this Division;

the Federal Court may, on the application of the ACCC, grant an injunction requiring the person to do that act or thing.

118PJ Interim injunctions

Grant of interim injunction

- (1) If an application is made to the Federal Court for an injunction under section 118PI against a person who is:
 - (a) a digital radio multiplex transmitter licensee; or
 - (b) a person authorised by a digital radio multiplex transmitter licensee to operate a multiplex transmitter under the licence;the court may, before considering the application, grant an interim injunction restraining the 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 118PI, as a condition of granting an interim injunction, to give any undertakings as to damages.

118PK Discharge or variation of injunctions

The Federal Court may discharge or vary an injunction granted under this Subdivision.

118PL Certain limits on granting injunctions not to apply

Restraining injunctions

- (1) The power of the Federal Court under this Subdivision 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.

Performance injunctions

- (2) The power of the Federal Court to grant an injunction requiring a person to do an act or thing may be exercised:
- (a) if the court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or

Section 118PM

- (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the person refuses or fails to do that act or thing.

118PM Other powers of the Federal Court unaffected

The powers conferred on the Federal Court under this Subdivision are in addition to, and not instead of, any other powers of the court, whether conferred by this Act or otherwise.

Subdivision H—Miscellaneous

118PN Annual reports

- (1) This section applies if an access undertaking in relation to a digital radio multiplex transmitter licence was in force during the whole or a part of a financial year.
- (2) The licensee must, within 60 days after the end of the financial year, give the ACCC a report about such matters as:
 - (a) are specified in the Procedural Rules; and
 - (b) relate to:
 - (i) compliance during that financial year with the access undertaking; or
 - (ii) compliance during that financial year with the standard access obligations (if any) applicable to the licence; or
 - (iii) compliance during that financial year with the excess-capacity access obligations (if any) applicable to the licence; or
 - (iv) compliance during that financial year with the distributed-capacity access obligations (if any) applicable to the licence; or

- (v) compliance during that financial year with the obligations that are applicable to the licence under section 118NP.

118PO Procedural Rules

- (1) The ACCC may, by legislative instrument, make rules:
 - (a) making provision for, or in relation to, the practice and procedure to be followed by the ACCC in performing functions, or exercising powers, under this Division; or
 - (b) making provision for, or in relation to, all matters and things incidental to any such practice or procedure, or necessary or convenient to be prescribed for the conduct of any business of the ACCC under this Division; or
 - (c) prescribing matters required or permitted by any other provision of this Division to be prescribed by the Procedural Rules.
- (2) Rules under subsection (1) are to be known as Procedural Rules.
- (3) The Procedural Rules may make provision for, or in relation to, any or all of the following:
 - (a) the confidentiality of information or documents given to the ACCC by a person who gave the ACCC an access undertaking or a variation of an access undertaking;
 - (b) the form and content of access undertakings, variations or other documents given to the ACCC under this Division;
 - (c) requiring the ACCC to give information to the ACMA about the operation of this Division;
 - (d) requiring the ACMA to give information to the ACCC that is relevant to the operation of this Division.
- (4) The Procedural Rules may make provision for, or in relation to, a matter by empowering the ACCC to make decisions of an administrative character.

Section 118PP

- (5) The Procedural Rules may provide that the ACCC may refuse to consider an access undertaking if:
 - (a) the ACCC is satisfied that the access undertaking:
 - (i) is frivolous; or
 - (ii) is vexatious; or
 - (iii) was not given in good faith; or
 - (b) the ACCC has reason to believe that the access undertaking was given for the purpose, or for purposes that include the purpose, of frustrating or undermining the effective administration of this Division.
- (6) Subsections (3), (4) and (5) do not limit subsection (1).

118PP Constitutional safety net

- (1) If the operation of this Division or section 109C would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court for the recovery from the Commonwealth 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.

**Division 4C—Access to broadcasting transmission towers
etc. by digital radio multiplex transmitter
licensees and authorised persons**

Subdivision A—Introduction

118Q Simplified outline

The following is a simplified outline of this Division:

- The owner or operator of a broadcasting transmission tower must provide the following persons with access to the tower:
 - (a) digital radio multiplex transmitter licensees;
 - (b) persons authorised by digital radio multiplex transmitter licensees under section 114.
- The owner or operator of a designated associated facility must provide the following persons with access to the facility:
 - (a) digital radio multiplex transmitter licensees;
 - (b) persons authorised by digital radio multiplex transmitter licensees under section 114.
- The owner or operator of a broadcasting transmission tower must provide the following persons with access to the site of the tower:
 - (a) digital radio multiplex transmitter licensees;
 - (b) persons authorised by digital radio multiplex transmitter licensees under section 114.

Section 118QA

118QA Definitions

In this Division:

broadcasting transmission tower has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

designated associated facility has the meaning given by section 118QB.

designated content service means a service mentioned in paragraph 109B(1)(f), (g) or (h).

facility includes apparatus, equipment, a structure, a line or an electricity cable or wire.

site means:

- (a) land; or
- (b) a building on land; or
- (c) a structure on land.

118QB Designated associated facilities

For the purposes of this Division, a ***designated associated facility*** means any of the following facilities:

- (a) an antenna;
- (b) a combiner;
- (c) a feeder system;
- (d) a facility of a kind specified in the regulations;

where:

- (e) the facility is, or is to be, associated with a radiocommunications transmitter; and
- (f) the facility is used, or capable of being used, in connection with the transmission of one or more designated content services.

118QC Extended meaning of *access*

- (1) For the purposes of this Division, ***giving access*** to a broadcasting transmission tower includes replacing the tower with another tower located on the same site and giving access to the replacement tower.
- (2) For the purposes of this Division, ***giving access*** to a designated associated facility includes:
 - (a) replacing the facility with another facility located on the same site and giving access to the replacement facility; or
 - (b) giving access to a service provided by means of the designated associated facility.
- (3) For the purposes of this Division, ***giving access*** to a site on which is situated a broadcasting transmission tower includes replacing the tower with another tower located on the site.

Subdivision B—Access to broadcasting transmission towers etc. by digital radio multiplex transmitter licensees

118QD Access to broadcasting transmission towers

- (1) The owner or operator of a broadcasting transmission tower must, if requested to do so by a person (the ***access seeker***) who is:
 - (a) a digital radio multiplex transmitter licensee; or
 - (b) a person authorised by a digital radio multiplex transmitter licensee under section 114;give the access seeker access to the tower.
- (2) The owner or operator of the broadcasting transmission tower is not required to comply with subsection (1) unless:
 - (a) the access is provided for the sole purpose of enabling the access seeker to install or maintain either or both of the following:
 - (i) a multiplex transmitter;
 - (ii) associated facilities;

Section 118QD

used, or for use, wholly or principally in connection with the transmission of one or more designated content services in accordance with the digital radio multiplex transmitter licence concerned; and

- (b) the access seeker gives the owner or operator reasonable notice that the access seeker requires the access.

Compliance not technically feasible

- (3) The owner or operator of a broadcasting transmission tower is not required to comply with subsection (1) if there is in force a written certificate issued by the ACMA stating that, in the ACMA's opinion, compliance with subsection (1) in relation to that tower is not technically feasible.
- (4) In determining whether compliance with subsection (1) in relation to a tower is technically feasible, the ACMA must have regard to:
 - (a) whether compliance is likely to result in significant difficulties of a technical or engineering nature; and
 - (b) whether compliance is likely to result in a significant threat to the health or safety of persons who operate, or work on, the tower; and
 - (c) if compliance is likely to have a result referred to in paragraph (a) or (b)—whether there are practicable means of avoiding such a result, including (but not limited to):
 - (i) changing the configuration or operating parameters of a facility situated on the tower; and
 - (ii) making alterations to the tower; and
 - (d) such other matters (if any) as the ACMA considers relevant.

Issue of certificate

- (5) If the ACMA receives a request to make a decision about the issue of a certificate under subsection (3), the ACMA must use its best endeavours to make that decision within 10 business days after the request was made.

118QE Access to designated associated facilities

Scope

- (1) This section applies to a designated associated facility if the facility is situated on, at, in or under:
- (a) a broadcasting transmission tower; or
 - (b) the site on which a broadcasting transmission tower is situated.

Access to designated associated facilities

- (2) The owner or operator of the designated associated facility must, if requested to do so by a person (the *access seeker*) who is:
- (a) a digital radio multiplex transmitter licensee; or
 - (b) a person authorised by a digital radio multiplex transmitter licensee under section 114;
- give the access seeker access to the facility.
- (3) The owner or operator of the designated associated facility is not required to comply with subsection (2) unless:
- (a) the access is provided for the sole purpose of enabling the access seeker to use:
 - (i) the facility; or
 - (ii) a service provided by means of the facility;
wholly or principally in connection with the transmission of one or more designated content services in accordance with the digital radio multiplex transmitter licence concerned; and
 - (b) the access seeker gives the owner or operator reasonable notice that the access seeker requires the access.

Compliance not technically feasible

- (4) The owner or operator of a designated associated facility is not required to comply with subsection (2) if there is in force a written certificate issued by the ACMA stating that, in the ACMA's

Section 118QF

opinion, compliance with subsection (2) in relation to that facility is not technically feasible.

- (5) In determining whether compliance with subsection (2) in relation to a facility is technically feasible, the ACMA must have regard to:
- (a) whether compliance is likely to result in significant difficulties of a technical or engineering nature; and
 - (b) whether compliance is likely to result in a significant threat to the health or safety of persons who operate, or work on, a facility situated on the site; and
 - (c) if compliance is likely to have a result referred to in paragraph (a) or (b)—whether there are practicable means of avoiding such a result, including (but not limited to):
 - (i) changing the configuration or operating parameters of a facility situated on the site; and
 - (ii) making alterations to a facility situated on the site; and
 - (d) such other matters (if any) as the ACMA considers relevant.

Issue of certificate

- (6) If the ACMA receives a request to make a decision about the issue of a certificate under subsection (4), the ACMA must use its best endeavours to make that decision within 10 business days after the request was made.

Exemptions

- (7) The regulations may provide for exemptions from subsection (2).
- (8) Regulations made for the purposes of subsection (7) may make provision with respect to a matter by conferring on the ACCC a power to make a decision of an administrative character.

118QF Access to sites of broadcasting transmission towers

- (1) The owner or operator of a broadcasting transmission tower must, if requested to do so by a person (the *access seeker*) who is:
- (a) a digital radio multiplex transmitter licensee; or

Section 118QF

- (b) a person authorised by a digital radio multiplex transmitter licensee under section 114;
give the access seeker access to a site if:
 - (c) the tower is situated on the site; and
 - (d) either:
 - (i) the site is owned, occupied or controlled by the owner or operator of the tower; or
 - (ii) the owner or operator of the tower has a right (either conditional or unconditional) to use the site.
- (2) The owner or operator of the broadcasting transmission tower is not required to comply with subsection (1) unless:
 - (a) the access is provided for the sole purpose of enabling the access seeker to install or maintain either or both of the following:
 - (i) a multiplex transmitter;
 - (ii) associated facilities;used, or for use, wholly or principally in connection with the transmission of one or more designated content services in accordance with the digital radio multiplex transmitter licence concerned; and
 - (b) the access seeker gives the owner or operator reasonable notice that the access seeker requires the access.

Compliance not technically feasible

- (3) The owner or operator of a broadcasting transmission tower is not required to comply with subsection (1) if there is in force a written certificate issued by the ACMA stating that, in the ACMA's opinion, compliance with subsection (1) in relation to that tower is not technically feasible.
- (4) In determining whether compliance with subsection (1) in relation to a site is technically feasible, the ACMA must have regard to:
 - (a) whether compliance is likely to result in significant difficulties of a technical or engineering nature; and

Section 118QG

- (b) whether compliance is likely to result in a significant threat to the health or safety of persons who operate, or work on, a facility situated on the site; and
- (c) if compliance is likely to have a result referred to in paragraph (a) or (b)—whether there are practicable means of avoiding such a result, including (but not limited to):
 - (i) changing the configuration or operating parameters of a facility situated on the site; and
 - (ii) making alterations to a facility situated on the site; and
- (d) such other matters (if any) as the ACMA considers relevant.

Issue of certificate

- (5) If the ACMA receives a request to make a decision about the issue of a certificate under subsection (3), the ACMA must use its best endeavours to make that decision within 10 business days after the request was made.

118QG Terms and conditions of access

Access to broadcasting transmission towers

- (1) The owner or operator of a broadcasting transmission tower must comply with subsection 118QD(1) on such terms and conditions as are:
 - (a) agreed between the following parties:
 - (i) the owner or operator;
 - (ii) the access seeker (within the meaning of that subsection); or
 - (b) failing agreement, determined by an arbitrator appointed by the parties.

If the parties fail to agree on the appointment of an arbitrator, the ACCC is to be the arbitrator.

Section 118QG

Access to designated associated facilities

- (2) The owner or operator of a designated associated facility must comply with subsection 118QE(2) on such terms and conditions as are:
- (a) agreed between the following parties:
 - (i) the owner or operator;
 - (ii) the access seeker (within the meaning of that subsection); or
 - (b) failing agreement, determined by an arbitrator appointed by the parties.

If the parties fail to agree on the appointment of an arbitrator, the ACCC is to be the arbitrator.

Access to sites of broadcasting transmission towers

- (3) The owner or operator of a broadcasting transmission tower must comply with subsection 118QF(1) on such terms and conditions as are:
- (a) agreed between the following parties:
 - (i) the owner or operator;
 - (ii) the access seeker (within the meaning of that subsection); or
 - (b) failing agreement, determined by an arbitrator appointed by the parties.

If the parties fail to agree on the appointment of an arbitrator, the ACCC is to be the arbitrator.

Conduct of arbitration

- (4) The regulations may make provision for and in relation to the conduct of an arbitration under this section.
- (5) The regulations may provide that, for the purposes of a particular arbitration conducted by the ACCC under this section, the ACCC may be constituted by a single member, or a specified number of members, of the ACCC. For each such arbitration, that member or

Chapter 3 Licensing of radiocommunications

Part 3.3 Apparatus licences

Division 4C Access to broadcasting transmission towers etc. by digital radio multiplex transmitter licensees and authorised persons

Section 118QH

those members are to be nominated in writing by the Chair of the ACCC.

- (6) Subsection (5) does not limit subsection (4).

118QH Code relating to access

- (1) The ACCC may, by legislative instrument, make a Code setting out conditions that are to be complied with in relation to the provision of access under this Division.
- (2) Before making an instrument under subsection (1), the ACCC must consult:
 - (a) digital radio multiplex transmitter licensees; and
 - (b) owners and operators of broadcasting transmission towers; and
 - (c) owners and operators of designated associated facilities.
- (3) An access seeker (within the meaning of subsection 118QD(1), 118QE(2) or 118QF(1)) must comply with the Code.
- (4) The owner or operator of a broadcasting transmission tower must comply with the Code, to the extent to which the Code relates to the provision of access under section 118QD or 118QF.
- (5) The owner or operator of a designated associated facility must comply with the Code, to the extent to which the Code relates to the provision of access under section 118QE.

Subdivision C—Miscellaneous

118QI Arbitration—acquisition of property

- (1) This section applies to a provision of this Division that authorises the conduct of an arbitration (whether by the ACCC or another person).
- (2) The provision has no effect to the extent (if any) to which it purports to authorise the acquisition of property if that acquisition:

Section 118QJ

- (a) is otherwise than on just terms; and
 - (b) would be invalid because of paragraph 51(xxxi) of the Constitution.
- (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.

118QJ Relationship between this Division and the *National Transmission Network Sale Act 1998*

Part 3 of the *National Transmission Network Sale Act 1998* does not apply in relation to an access seeker seeking access to:

- (a) a broadcasting transmission tower; or
- (b) a site;

to the extent to which this Division applies in relation to the access seeker seeking access to that tower or site.

Division 5—Qualified operators

119 ACMA to determine the need for qualified operators

- (1) The ACMA may determine, by written instrument, that persons operating transmitters under transmitter licences included in a class of transmitter licences specified in the instrument must be qualified operators.
- (2) A determination under subsection (1) may confer a power to make a decision of an administrative character on a person.

120 Applications for certificates of proficiency

- (1) A person who wishes to be a qualified operator in relation to one or more such classes of transmitter licences may apply to the ACMA for a certificate of proficiency.
- (2) The application must be in a form approved by the ACMA.

121 Issuing certificates of proficiency

- (1) Subject to section 122, the ACMA may issue to the applicant a certificate of proficiency in writing certifying that the holder of the certificate is taken to be a qualified operator in relation to a specified class of transmitter licences.
- (2) The classes of transmitter licences so specified are to be any or all of the classes of transmitter licences for which determinations under section 119 are in force.
- (3) If the ACMA refuses to issue a certificate of proficiency, it must give the applicant a written notice of the refusal together with a statement of its reasons.

Note: Refusals to issue certificates of proficiency are reviewable under Part 5.6.

122 Restrictions on issuing certificates of proficiency

- (1) The ACMA must not issue a certificate of proficiency unless:
- (a) the ACMA is satisfied that the applicant has reached the minimum age in relation to the class of certificates in which the certificate is included; and
 - (b) the ACMA:
 - (i) is satisfied that the applicant has achieved satisfactory results in approved examinations or in examinations conducted under the regulations; or
 - (ii) is satisfied, upon reasonable grounds, that the applicant would probably achieve such results.
- (2) In this section:

approved examination means an examination conducted by:

- (a) the ACMA; or
- (b) a body or organisation approved by the ACMA, by written instrument, for the purposes of this section; or
- (c) an examination approved by the ACMA, by written instrument, for the purposes of this section.

minimum age, in relation to a class of certificates, means the age that the ACMA, by notice published in the *Gazette*, declares to be the minimum age for the purposes of this section in relation to that class.

122A Delegating the power to issue certificates of proficiency

- (1) The ACMA may, by writing, delegate the power to issue a certificate of proficiency under section 121 to a body or organisation approved by the ACMA as mentioned in paragraph (b) of the definition of ***approved examination*** in subsection 122(2).
- (1A) If, under section 50 of the *Australian Communications and Media Authority Act 2005*, the ACMA has delegated the power referred to

Section 123

in subsection (1) of this section to a Division of the ACMA, the following provisions have effect:

- (a) the Division may delegate the power to a body or organisation referred to in subsection (1) of this section;
 - (b) subsections 52(2), (3), (4), (5) and (6) of the *Australian Communications and Media Authority Act 2005* have effect as if the delegation by the Division were a delegation under section 52 of that Act.
- (2) However, the delegate is not entitled to make a final decision refusing to issue a certificate of proficiency. If the delegate decides not to issue the certificate, the delegate must refer the application, for a final decision, to:
- (a) the ACMA, if the delegation to the delegate was under subsection (1); or
 - (b) the Division that delegated the power, if the delegation to the delegate was under subsection (1A).
- (3) The powers conferred on the ACMA by subsection (1), and on a Division of the ACMA by subsection (1A), are in addition to the powers conferred by section 238 of this Act and by sections 50, 51 and 52 of the *Australian Communications and Media Authority Act 2005*.

123 Re-examination of qualified operators

- (1) If, at any time:
- (a) the ACMA has reasonable grounds for believing that a qualified operator will probably be unable to achieve satisfactory results in an examination of the kind referred to in paragraph 122(1)(b);
- the ACMA may:
- (b) give to the operator a written request that the operator submit himself or herself to an examination, or a further examination, of that kind.
- (2) The request must set out:
- (a) particulars of the examination in question; and

- (b) the time and place of the examination; and
- (c) the effect of subparagraph 124(3)(b)(iii).

124 Cancelling certificates of proficiency

- (1) The ACMA may, by written notice given to a qualified operator, cancel the operator's certificate of proficiency.
- (2) The notice must give the reasons for the cancellation.
- (3) In deciding whether to cancel the certificate, the ACMA must have regard to:
 - (a) all matters that it considers relevant; and
 - (b) without limiting paragraph (a), the following matters:
 - (i) any matters to which the ACMA must have regard in deciding whether to issue a certificate of proficiency;
 - (ii) whether the ACMA is satisfied, that the operator has failed to achieve satisfactory results in an examination or further examination referred to in section 123;
 - (iii) whether the operator has refused or failed, without reasonable excuse, to comply with a request under section 123;
 - (iv) whether the operator has been convicted of an offence against the regulations;
 - (iva) whether the operator has been convicted of an offence against section 136.1 or 137.1 of the *Criminal Code* that relates to this Act;
 - (v) whether the ACMA is satisfied that the operator has contravened rules relating to the conduct or administration of an examination of the kind referred to in paragraph 122(1)(b).

Note: Cancellations of certificates of proficiency are reviewable under Part 5.6.

- (4) If:
 - (a) a person has been issued with a certificate of proficiency; and
 - (b) the ACMA subsequently cancels the certificate;

Section 124

the person must not falsely represent that the person holds the certificate.

Civil penalty: 20 penalty units.

Division 6—Suspending and cancelling apparatus licences

Subdivision A—General provisions

125 Application of this Subdivision

- (1) Subject to subsection (2), this Subdivision applies to an apparatus licence if the ACMA is satisfied that the licensee, or a person authorised by the licensee to operate a radiocommunications device under the licence, has:
 - (a) contravened a condition of the licence, or in any other way contravened this Act; or
 - (b) operated a radiocommunications device under the licence, or purportedly under the licence:
 - (i) in contravention of any other law (whether written or unwritten) of the Commonwealth, a State or a Territory; or
 - (ii) in the course of contravening such a law.
- (2) This Subdivision does not apply to transmitter licences issued under section 101A or 102.

126 Suspending apparatus licences

- (1) The ACMA may, by written notice given to the licensee, suspend the apparatus licence.

Note: Suspensions of apparatus licences are reviewable under Part 5.6.
- (2) The notice must give the reasons for suspending the licence.
- (3) The ACMA may, at any time, by written notice given to the licensee, revoke the suspension of the licence.

Section 127

127 Period of suspension

- (1) Subject to subsection (2), the suspension of the apparatus licence, unless it is sooner revoked, ceases:
 - (a) if, within 28 days after the suspension, proceedings for an offence against this Act are instituted against the licensee, or against a person authorised by the licensee to operate a radiocommunications device under the licence, and he or she is convicted of the offence—on the expiration of 14 days after the date of the conviction; or
 - (b) if such proceedings are instituted within 28 days after the suspension and he or she is not convicted of the offence—on the completion of the proceedings; or
 - (c) in any other case—on the expiration of 28 days after the suspension.
- (2) If:
 - (a) the notice of suspension specifies a day as the day on which the suspension of the apparatus licence ceases; and
 - (b) that day occurs before the day fixed under subsection (1);the suspension of the licence, unless it is sooner revoked, ceases on the day so specified.
- (3) In subsection (1):

proceedings does not include proceedings by way of appeal or review.

128 Cancelling apparatus licences

- (1) The ACMA may, by written notice given to the licensee, cancel the apparatus licence.

Note: Cancellations of apparatus licences are reviewable under Part 5.6.
- (2) The notice must give the reasons for cancelling the licence.

Subdivision B—International broadcasting services

128A Application of this Subdivision

This Subdivision applies to a transmitter licence if:

- (a) the licence authorises the operation of a radiocommunications transmitter for transmitting one or more international broadcasting services; and
- (b) each international broadcasting licence that authorised the provision of those international broadcasting services has been surrendered or cancelled.

128B Cancelling transmitter licences

- (1) The ACMA must, by written notice given to the holder of the transmitter licence, cancel the transmitter licence.
- (2) The notice must give the reasons for cancelling the licence.

Division 7—Renewing apparatus licences

129 Applications for renewal of apparatus licences

- (1) A licensee of an apparatus licence (other than a transmitter licence issued under section 101A or 102 or a non-foundation digital radio multiplex transmitter licence) may apply to the ACMA for the licence to be renewed.
- (2) If there is a renewal application period for the licence, the application must be made within the renewal application period.
- (3) If there is no renewal application period for the licence, the application must be made within the period:
 - (a) beginning 6 months before the licence is due to expire; and
 - (b) ending 60 days after the licence expires.
- (4) The application must:
 - (a) be made in a manner approved, in writing, by the ACMA; and
 - (b) be in a form approved, in writing, by the ACMA; and
 - (c) be accompanied by such information (if any) as is specified in an instrument under subsection (6); and
 - (d) be accompanied by such documents (if any) as are specified in an instrument under subsection (7).
- (5) The ACMA may approve different forms for different applications.
- (6) The ACMA may, by legislative instrument, specify information for the purposes of paragraph (4)(c).
- (7) The ACMA may, by legislative instrument, specify documents for the purposes of paragraph (4)(d).
- (8) An instrument under paragraph (4)(a) is a notifiable instrument.
- (9) An approved form of application may provide for verification by statutory declaration of statements in applications.

Deemed applications

(10) If:

- (a) the ACMA gives a person a notice that is expressed to be a licence renewal notice; and
- (b) the notice relates to one or more apparatus licences held by the person; and
- (c) in response to the notice, the person:
 - (i) pays to the ACMA (on behalf of the Commonwealth) the amount specified in the notice as the amount due; and
 - (ii) does so on or before the day specified in the notice as the payment due date;

then:

- (d) if the notice relates to a single apparatus licence—the person is taken to have made an application under subsection (1) for the licence to be renewed; and
- (e) if the notice relates to 2 or more apparatus licences—the person is taken to have made separate applications under subsection (1) for each of those licences to be renewed; and
- (f) subsection (4) does not apply to that application or those applications, as the case requires.

129A Further information

- (1) If an application is made for the renewal of an apparatus licence, the ACMA may, by written notice given to the applicant, require the applicant to give the ACMA, within the period specified in the notice, further information in connection with the application.
- (2) If the applicant breaches the requirement, the ACMA may, by written notice given to the applicant:
 - (a) refuse to consider the application; or
 - (b) refuse to take any action, or any further action, in relation to the application.

Section 130

130 Renewing apparatus licences

- (1) When an application is made for the renewal of an apparatus licence, the ACMA may renew the licence by issuing to the applicant a new apparatus licence.
- (2) The conditions of the new apparatus licence need not be the same as those of the licence that it replaces.
- (2A) The ACMA must not renew the licence if:
 - (a) under section 153D, the licence is affected by a spectrum re-allocation declaration; and
 - (b) the licence is due to expire after the end of the re-allocation period for the spectrum re-allocation declaration.
- (2C) The ACMA must not renew the licence if the licence included a renewal statement to the effect that the licence cannot be renewed.
- (2D) If the licence included a renewal statement to the effect that the licence may be renewed at the discretion of the ACMA so long as specified circumstances exist, the ACMA must not renew the licence unless the ACMA is satisfied that the specified circumstances exist.
- (2E) The ACMA must not renew the licence by issuing a new apparatus licence that specifies a period for the purposes of subsection 103(2) that is 10 years or longer unless the ACMA is satisfied that it is in the public interest to do so.
- (2F) If the licence included a public interest statement, the ACMA must not renew the licence unless the ACMA is satisfied that it is in the public interest to do so.
- (3) In deciding whether to renew the licence, the ACMA:
 - (a) must have regard to the same matters to which it must have regard under subsections 100(4) and (6) in deciding whether to issue such a licence; and
 - (b) may have regard to the same matters to which it may have regard under subsections 100(4C) and (5) in deciding whether to issue such a licence.

- (3A) In deciding whether to renew the licence, the ACMA may have regard to the following matters:
- (a) whether the applicant has an outstanding liability to pay an amount of:
 - (i) apparatus licence tax; or
 - (ii) spectrum licence tax; or
 - (iii) spectrum access charge; or
 - (iv) interim tax;
 - (b) whether the applicant has contravened a condition of the licence;
 - (c) whether the following conditions are satisfied:
 - (i) a person authorised by the applicant under section 114 in relation to the licence has contravened a condition of the licence;
 - (ii) the applicant was aware, or ought reasonably to have been aware, of the contravention;
 - (iii) the applicant failed to take reasonable steps to prevent the contravention;
 - (d) whether the applicant held another licence that was cancelled during the previous 2 years (otherwise than under section 87, 128B, 153H or 307).
- (4) The new licence comes into force, or is taken to have come into force, immediately after the expiration of the licence that it replaces.
- (4A) If:
- (a) the ACMA renews the licence by issuing a new apparatus licence; and
 - (b) under section 153D, the new licence is affected by a spectrum re-allocation declaration;
- the period specified in the new licence for the purposes of subsection 103(2) must end before the end of the re-allocation period for the spectrum re-allocation declaration.
- (5) If the ACMA:
-

Section 131

- (a) refuses to renew the licence; or
 - (b) renews the licence but not on the same conditions;
- the ACMA must give the licensee a written notice stating that fact.

Note: Refusals to renew apparatus licences, and changes to licence conditions on renewal, are reviewable under Part 5.6.

- (6) The notice given under subsection (5) must specify that:
 - (a) the licensee may request a statement of reasons for the decision; and
 - (b) a request must be made within 28 days of receipt of the notice.
- (7) A person receiving a notice under subsection (5) may request a statement of reasons for the decision within 28 days of receiving the notice.
- (8) If the ACMA receives a request in accordance with subsection (7), it must give the person a statement of reasons within 28 days of receipt of the request.

131 Application of other provisions

Section 101, subsections 103(2), (3) and (6) and sections 104 and 105 apply to renewing an apparatus licence in the same way that they apply to issuing an apparatus licence.

Division 8—Transfer of apparatus licences**131AA Applications for transfer of apparatus licences**

- (1) Subject to section 131AC, a licensee of an apparatus licence may, at any time before the licence is due to expire, apply in writing to the ACMA for the licence to be transferred to another person.
- (2) The application must be in a form approved by the ACMA and must be signed by both the licensee and the proposed transferee.
- (3) The ACMA may approve different forms for different applications.
- (4) An NBS transmitter licence cannot be transferred to any person other than:
 - (a) the Australian Broadcasting Corporation; or
 - (b) the Special Broadcasting Service Corporation; or
 - (c) the Commonwealth.
- (5) A category 1 digital radio multiplex transmitter licence must not be transferred to a person unless:
 - (a) the person is a qualified company; and
 - (b) an access undertaking is in force under Division 4B in relation to the licence.
- (6) A category 2 digital radio multiplex transmitter licence must not be transferred to a person unless:
 - (a) the person is a qualified company; and
 - (b) an access undertaking is in force under Division 4B in relation to the licence.
- (7) A category 3 digital radio multiplex transmitter licence must not be transferred to a person unless the person is a qualified company, and:
 - (a) both:
 - (i) each national broadcaster beneficially owns shares in the company; and

Section 131AB

- (ii) there are no other beneficial owners of shares in the company; or
- (b) both:
 - (i) a single national broadcaster beneficially owns all the shares in the company; and
 - (ii) the other national broadcaster has consented to that beneficial ownership.

131AB Transfer of apparatus licences

- (1) Subject to section 131AC, when an application is made, the ACMA may transfer the licence into the name of the transferee.
- (2) In deciding whether to transfer the licence, the ACMA:
 - (a) must have regard to the same matters to which it must have regard under subsections 100(4) and (6) in deciding whether to issue such a licence; and
 - (b) may have regard to the same matters to which it may have regard under subsection 100(5) in deciding whether to issue such a licence.
- (3) The transferred licence:
 - (a) subject to Division 6, continues in force until the end of the period for which the licence is in force when issued to the initial licensee; and
 - (b) subject to section 111, continues on the same conditions as those which applied immediately before the transfer.

131AC Apparatus licences not transferable in certain circumstances

- (1) The ACMA may, by legislative instrument, determine:
 - (a) that particular types of apparatus licence are not transferable under this Division; and
 - (b) that in specified circumstances an apparatus licence is not transferable under this Division.
 - (2) A determination under subsection (1) may confer a power to make a decision of an administrative character on the ACMA.
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Division 10—Provisional international broadcasting certificates

131AE Applications for certificates

- (1) If a person proposes to make an application for a transmitter licence authorising operation of a radiocommunications transmitter for transmitting an international broadcasting service, the person may apply in writing to the ACMA for a provisional international broadcasting certificate in relation to the proposed application for the transmitter licence.
- (2) An application under subsection (1) must be in a form approved by the ACMA.

131AF Issuing certificates

- (1) After considering an application under section 131AE, the ACMA may issue to the applicant a provisional international broadcasting certificate in relation to the proposed application for the transmitter licence.
- (2) The certificate must state that, if the following conditions are satisfied:
 - (a) the applicant applies for the transmitter licence when the certificate is in force;
 - (b) at the time when the application for the transmitter licence is made:
 - (i) there is in force an international broadcasting licence that authorises the provision of the international broadcasting service concerned; and
 - (ii) spectrum is available for use for the provision of that service;
 - (c) such other conditions (if any) as are specified in the certificate;the ACMA will be disposed to issue the transmitter licence.

Section 131AG

- (3) In deciding whether to issue a provisional international broadcasting certificate, the ACMA:
 - (a) must have regard to all of the matters to which it would be required to have regard when deciding whether to issue the transmitter licence concerned (other than the matter mentioned in subsection 100(3B)); and
 - (b) may have regard to:
 - (i) any other matters to which it would be permitted to have regard when deciding whether to issue the transmitter licence concerned; and
 - (ii) such other matters as the ACMA considers relevant.
- (4) If the ACMA refuses to issue a provisional international broadcasting certificate to a person, the ACMA must give written notice of the refusal to the person, together with a statement of its reasons.

131AG Duration of certificates

- (1) A provisional international broadcasting certificate comes into force on the day on which it was issued and remains in force for 240 days.
- (2) If a provisional international broadcasting certificate expires, subsection (1) does not prevent the making of a fresh application for a new certificate.

Part 3.4—Class licences

Division 1—General

132 ACMA may issue class licences

- (1) The ACMA may, by legislative instrument, issue class licences.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) A class licence authorises any person:
- (a) to operate a radiocommunications device of a specified kind;
or
 - (b) to operate a radiocommunications device for a specified purpose; or
 - (c) to operate a radiocommunications device of a specified kind for a specified purpose.
- (3) Operation of a radiocommunications device is not authorised by a class licence if it is not in accordance with the conditions of the licence.

133 Conditions of class licences

- (1) The ACMA may include in a class licence such conditions as it thinks fit.
- (2) The conditions may, for example, include all or any of the following:
- (a) a condition specifying the frequencies at which operation of radiocommunications devices is authorised under the licence;
 - (b) a condition specifying other technical requirements about operation of radiocommunications devices under the licence;
 - (c) a condition specifying the area within which operation of radiocommunications devices is authorised under the licence;

Section 134

- (d) a condition specifying the periods during which operation of radiocommunications devices is authorised under the licence;
 - (e) a condition that any radiocommunications device operated under the licence must comply with all the standards applicable to it under the equipment rules.
- (3) A condition included in a class licence may confer a power to make a decision of an administrative character on a person or the ACMA.

134 Varying class licences

To avoid doubt, the power to vary a class licence in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* includes the power to vary the licence by:

- (a) including one or more further conditions; or
- (b) revoking any conditions of the licence.

136 Consultation on variations and revocations

- (1) Before varying a class licence, the ACMA must cause to be published, in accordance with subsection (2A), a written notice that:
 - (a) states that it proposes to vary the licence; and
 - (b) states the subject matter of the proposed variation; and
 - (c) sets out the licence and the proposed variation; and
 - (d) invites interested persons to make representations about the proposed variation by a specified date that is at least one month after the date of publication of the notice.
- (1A) In addition to subsection (1), if the variation of a class licence would affect the spectrum allocated, to be allocated or to be re-allocated by issuing or re-issuing spectrum licences, before varying the class licence:
 - (a) the ACMA must be satisfied that:
 - (i) the variation of the class licence would not result in unacceptable levels of interference to the operation of

Section 136

- radiocommunications devices operated, or likely to be operated, under spectrum licences; and
- (ii) the variation of the class licence would be in the public interest; and
- (b) the ACMA must consult all licensees of spectrum licences who may be affected by the proposed variation of the class licence.
- (2) Before revoking a class licence, the ACMA must cause to be published, in accordance with subsection (2A), a written notice that:
- (a) states that it proposes to revoke the licence; and
- (b) sets out the licence; and
- (c) invites interested persons to make representations about the proposed revocation by a specified date that is at least one month after the date of publication of the notice.
- (2A) A notice under subsection (1) or (2) must be published:
- (a) on the ACMA's website; and
- (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.
- (3) A person may, not later than the date specified in a notice under subsection (1) or (2), make representations to the ACMA about the proposed variation or revocation.
- (4) The ACMA must, before varying or revoking the licence, give due consideration to any representations so made.
- (5) Failure to comply strictly with subsection (1), (1A), (2) or (2A) does not affect the validity of the notice, or the validity of the variation or revocation of the class licence, if the requirements of that subsection are substantially complied with.
- (6) This section does not apply to variation or revocation of a class licence if the ACMA is satisfied that the variation or revocation is a matter of urgency.
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Section 137

137 Compliance with plans

The ACMA must not issue a class licence that is inconsistent with the spectrum plan or any relevant frequency band plan.

138 Parts of the spectrum allocated for spectrum licences

- (1) If a spectrum licence authorises the operation of radiocommunications devices:
 - (a) at one or more frequencies; and
 - (b) within one or more areas;the ACMA must not issue a class licence that authorises the operation of radiocommunications devices:
 - (c) at those frequencies; and
 - (d) within those areas;unless subsection (2) is satisfied.
- (1A) If a marketing plan is in force in relation to the issue of a spectrum licence that authorises the operation of radiocommunications devices:
 - (a) at one or more frequencies; and
 - (b) within one or more areas;the ACMA must not issue a class licence that authorises the operation of radiocommunications devices:
 - (c) at those frequencies; and
 - (d) within those areas;unless subsection (2) is satisfied.
- (2) Before issuing a class licence to which subsection (1) or (1A) applies:
 - (a) the ACMA must be satisfied that:
 - (i) issuing the class licence would not result in unacceptable levels of interference to the operation of radiocommunications devices operated, or likely to be operated, under spectrum licences; and

Section 138

- (ii) issuing the class licence would be in the public interest;
and
- (b) the ACMA must consult all licensees of spectrum licences
who may be affected by the proposed class licence.

Division 2—Requests for advice

140 Requests for advice on operation of radiocommunications devices

- (1) A person who operates, or is proposing to operate, a radiocommunications device may give to the ACMA a written request for advice on whether operation of the device is authorised under the class licence specified in the request.
- (2) The request may be limited to advice on operation of the device in the circumstances specified in the request.
- (3) The circumstances so specified may include the way in which the device is operated.
- (4) The request must be in a form approved by the ACMA.

141 ACMA to advise on the operation of radiocommunications devices

- (1) The ACMA is to give, to a person who requests advice under section 140, written advice on whether it thinks the operation of the radiocommunications device, as specified in the request, is authorised under the class licence in question.
- (2) The advice may state that operation of the device is authorised under the class licence only if, or unless, the device is operated in the circumstances specified in the advice.
- (3) The circumstances so specified may include the way in which the device is operated.

142 The effect of the ACMA's advice

- (1) If:
 - (a) the advice states that the operation of the device is authorised under the class licence; and

Section 142

- (b) the device is operated only in accordance with the advice; neither the ACMA nor any other authority of the Commonwealth may take any action against the person to whom the advice was given, during the period of 5 years commencing on the day the advice was given, on the basis that operation of the device is not so authorised.
- (2) This Division does not imply that operation of a radiocommunications device is not authorised under a class licence unless it is in accordance with advice given under this Division.

Part 3.5—Registration of licences

143 The Register of Radiocommunications Licences

- (1) There is to be a register known as the Register of Radiocommunications Licences.
- (2) The Register is to be established and kept by the ACMA.
- (3) The Register may be kept by electronic means.
- (4) The Register may consist of 2 or more registers, each of which contains so much of the information that is required to be entered in the Register as the ACMA determines.

144 Contents of the Register—spectrum licences

- (1) The Register is to contain the following information for each spectrum licence:
 - (a) the licensee's name and postal address;
 - (b) the date of issue and date of expiry of the licence;
 - (c) such details as the ACMA determines, in writing, about the conditions of spectrum licences;
 - (d) such details as the ACMA determines, in writing, about authorisations by licensees for other persons to operate radiocommunications devices under spectrum licences;
 - (e) such details as the ACMA determines, in writing, about radiocommunications devices that are operated under spectrum licences.
- (2) The ACMA may include in the Register such other details about spectrum licences as it thinks necessary or convenient for the purposes of this Act.

**145 Refusal to register radiocommunications transmitters for
operation under spectrum licences**

- (1) The ACMA may:
- (a) refuse to include in the Register under paragraph 144(1)(e) details of a radiocommunications transmitter that is proposed to be operated under a spectrum licence;
- if the ACMA is satisfied that:
- (b) operation of the transmitter could cause an unacceptable level of interference to the operation of other radiocommunications devices under that or any other spectrum licence, or any other licence.

Note: Operation of a radiocommunications transmitter without registration of its details may breach a licence condition under section 69.

- (2) If the ACMA refuses an application to include in the Register details of such a transmitter, it must give the applicant written notice of the refusal, together with a statement of its reasons.

Note: Refusals to include in the Register such details are reviewable decisions under Part 5.6.

- (3) The ACMA may require that, before such details are included in the Register, there be presented to the ACMA a certificate, issued by a person who holds an accreditation of a kind specified in the legislative rules, stating that operation of the device under the licence satisfies any conditions that are required to be satisfied, in relation to the issue of such a certificate, under a determination made under section 266A.
- (3A) The legislative rules may authorise a person who holds a kind of accreditation mentioned in subsection (3) to charge fees in relation to the issue of certificates under subsection (3). A fee must not be such as to amount to taxation.
- (4) The ACMA may determine, by written instrument, what are unacceptable levels of interference for the purposes of this section.

Section 146

146 Updating the Register to take variations etc. of spectrum licences into account

- (1) Subject to subsection (2), the ACMA must, as soon as practicable, make the changes to the information in the Register about a spectrum licence that the ACMA considers are necessary or convenient for taking into account:
 - (a) any variation of the licence under section 72, 73, 87, 90 or 92; or
 - (b) any suspension of the licence under section 75; or
 - (c) any cancellation of the licence under section 77 or 87, or any cancellation of the licence that, under section 307, is taken to have occurred on acceptance of a surrender of the licence; or
 - (d) any assignment of the licence under section 85; or
 - (e) any resumption of the licence under section 89 or 91.
- (2) The ACMA need not make such changes in order to take into account an assignment of the licence under section 85, or a variation of the licence under section 87 that relates to the assignment, unless:
 - (a) the ACMA has been given the information required under section 86; and
 - (b) the appropriate charge fixed by determination made under section 60 of the *Australian Communications and Media Authority Act 2005* has been paid.

147 Contents of the Register—apparatus licences

- (1) The Register is to contain the following information for each apparatus licence:
 - (a) the licensee's name and postal address;
 - (b) the date of issue and date of expiry of the licence;
 - (c) such details as the ACMA determines, in writing, about the conditions of apparatus licences;
 - (d) such details as the ACMA determines, in writing, about authorisations by licensees for other persons to operate radiocommunications devices under apparatus licences;

Section 148

- (e) such details as the ACMA determines, in writing, about radiocommunications devices that are operated under apparatus licences; and
 - (f) if, under section 153D, the licence is affected by a spectrum re-allocation declaration—a note to that effect.
- (2) The ACMA may include in the Register such other details about apparatus licences as it thinks necessary or convenient for the purposes of this Act.

148 Updating the Register to take variations etc. of apparatus licences into account

The ACMA must, as soon as practicable, make the changes to the information in the Register about an apparatus licence that the ACMA considers are necessary or convenient in order to take into account:

- (a) any variation of the licence under section 111; or
- (b) any suspension of the licence under section 126; or
- (c) any cancellation of the licence under section 128 or 128B, or any cancellation of the licence that, under section 307, is taken to have occurred on acceptance of a surrender of the licence; or
- (d) any transfer of the licence under section 131AB.

149 Contents of the Register—class licences

- (1) The Register is to contain, for each class licence, such details as the ACMA determines, in writing, about class licences.
- (2) The ACMA may include in the Register such other details about class licences as it thinks necessary or convenient for the purposes of this Act.

Section 150

150 Updating the Register to take variations etc. of class licences into account

The ACMA must, as soon as practicable, make the changes to the information in the Register about a class licence that the ACMA considers are necessary or convenient in order to take into account:

- (a) any variation of the licence; or
- (b) any revocation of the licence.

151 Inspection of the Register

- (1) Subject to section 152, the ACMA must ensure that the Register is available for inspection by any person during the hours that the ACMA is open for business.
- (2) If the Register is kept wholly or partly by use of a computer, subsection (1) is taken to be complied with, so far as the Register is so kept, by giving members of the public access to a computer terminal that they can use to inspect the Register, either on a screen or in the form of a computer print-out.

152 Parts of the Register may be kept confidential

Section 151 does not apply in relation to a part of the Register if the ACMA is satisfied that it would not be in the national interest (for example, for defence or security reasons) for information in that part of the Register to be available to the public.

153 Correction of the Register

- (1) The ACMA may, at any time, correct information in the Register.
- (2) The correction may be made:
 - (a) in any case—on the ACMA's own initiative; or
 - (b) if the information is about a spectrum licence or an apparatus licence—on the application of the licensee or a person authorised by the licensee to operate radiocommunications devices under the licence.

Section 153

- (3) An application under paragraph (2)(b) must be in a form approved by the ACMA.
- (4) On making a correction, the ACMA must give written notice of the correction to:
 - (a) the licensee; and
 - (b) if an application was made under paragraph (2)(b) by a person (other than the licensee) for the information to be corrected—that person; and
 - (c) any other person who has given written notice to the ACMA under subsection (6) in relation to the licence to which the correction relates.
- (5) On refusing an application for a correction, the ACMA must give to the applicant written notice of the refusal, together with a statement of its reasons.

Note: Refusals to correct the Register are reviewable decisions under Part 5.6.
- (6) A person may give a written notice to the ACMA stating that the person wishes to be notified about corrections to the Register in relation to specified licences.

Section 153A

Part 3.6—Re-allocation of encumbered spectrum

153A Outline of this Part

- (1) This Part is about the re-allocation of spectrum.
- (2) Section 153B allows the ACMA to make a declaration that one or more specified parts of the spectrum are subject to re-allocation. The declaration is called a *spectrum re-allocation declaration*.
- (3) A spectrum re-allocation declaration may provide that the part or parts of the spectrum should be re-allocated:
 - (a) by issuing spectrum licences under Subdivision B of Division 1 of Part 3.2 (see section 153L); or
 - (b) by issuing apparatus licences under Division 2 of Part 3.3 (see section 153M); or
 - (c) by a combination of:
 - (i) issuing spectrum licences under Subdivision B of Division 1 of Part 3.2 (see section 153L); and
 - (ii) issuing apparatus licences under Division 2 of Part 3.3 (see section 153M).
- (4) Certain apparatus licences that are affected by a spectrum re-allocation declaration will be cancelled at the end of the period specified in the declaration (see section 153H).

153B Spectrum re-allocation declaration

- (1) The ACMA may make a written declaration that one or more specified parts of the spectrum are subject to re-allocation under this Part in relation to a specified period (the *re-allocation period*).
- (2) The declaration is called a *spectrum re-allocation declaration*.
- (3) For each part of the spectrum specified in the declaration, the declaration must be expressed to apply with respect to one or more specified areas.

Section 153B

- (4) The re-allocation period must:
 - (a) begin at a time specified in the declaration; and
 - (b) run for at least 12 months.
- (4A) The re-allocation period must not begin before the commencement of the declaration.
- (5) The declaration must specify a time as the *re-allocation deadline* for the declaration. That time must not be later than the end of the re-allocation period.
- (6) For each part of the spectrum specified in the declaration, the declaration must state whether the part of the spectrum should be re-allocated:
 - (a) by issuing spectrum licences under Subdivision B of Division 1 of Part 3.2 (see section 153L); or
 - (b) by issuing apparatus licences under Division 2 of Part 3.3 (see section 153M); or
 - (c) by a combination of:
 - (i) issuing spectrum licences under Subdivision B of Division 1 of Part 3.2 (see section 153L); and
 - (ii) issuing apparatus licences under Division 2 of Part 3.3 (see section 153M).
- (7) The declaration must not specify a particular part of the spectrum with respect to a particular area if, at the time of the declaration, a spectrum licence is in force authorising the operation of radiocommunications devices:
 - (a) at frequencies that are wholly or partly within that part of the spectrum; and
 - (b) within that area.
- (8) A particular part of the spectrum may be specified in the declaration whether or not any apparatus licences are in force authorising the operation of radiocommunications devices at frequencies that are wholly or partly within that part of the spectrum.

Section 153D

- (9) A particular part of the spectrum may be specified in the declaration even if it adjoins:
 - (a) another part of the spectrum that is also specified in the declaration; or
 - (b) 2 other parts of the spectrum that are also specified in the declaration.
- (10) A spectrum re-allocation declaration is a legislative instrument.

153D Affected apparatus licences and licensees

- (1) For the purposes of this Part, an apparatus licence is *affected* by a spectrum re-allocation declaration if the licence authorises the operation of radiocommunications devices:
 - (a) at frequencies that are wholly or partly within the part or parts of the spectrum specified in the declaration; and
 - (b) within the area or areas specified in the declaration with respect to that part or those parts.
- (2) In this Part:

affected apparatus licensee means the licensee of an affected apparatus licence.

153H Effect of spectrum re-allocation declaration

- (1) This section applies to an apparatus licence if:
 - (a) immediately before the end of the re-allocation period for a spectrum re-allocation declaration, the licence is affected by the declaration; and
 - (b) the licence came into force after the commencement of this section; and
 - (c) the licence is not:
 - (i) an NBS transmitter licence; or
 - (iv) a transmitter licence issued under section 102.
- (2) The licence is cancelled under this section at the end of the re-allocation period.

153J Revocation and variation of spectrum re-allocation declaration

- (1) The ACMA must not revoke a spectrum re-allocation declaration if:
 - (a) the declaration states that a particular part of the spectrum should be re-allocated by issuing licences; and
 - (b) the ACMA has begun allocating any or all of those licences.
- (2) The ACMA must not vary a spectrum re-allocation declaration if:
 - (a) the declaration states that a particular part of the spectrum should be re-allocated by issuing licences; and
 - (b) the ACMA has begun allocating any or all of those licences with respect to a particular area; and
 - (c) the variation relates to the whole or a part of that area.
- (2A) Subsection (2) does not prevent the ACMA from varying a spectrum re-allocation declaration if the ACMA considers that there are exceptional circumstances that warrant the variation.
- (3) For the purposes of this section, the ACMA is taken to ***begin allocating*** licences if, and only if:
 - (a) in a case where the licences are to be allocated by auction—the ACMA publishes an advertisement for that auction; or
 - (b) in a case where the licences are to be allocated by tender—the ACMA publishes an advertisement calling for suitable tenders; or
 - (c) in any other case—the ACMA invites applications for the allocation of the licences.
- (4) This section does not, by implication, limit the ACMA's power to vary a spectrum re-allocation declaration in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.

Section 153K

153K Automatic revocation of spectrum re-allocation declaration if no licences allocated by re-allocation deadline

- (1) This section applies if:
 - (a) a spectrum re-allocation declaration states that a particular part of the spectrum should be re-allocated by issuing licences; and
 - (b) no such licences are allocated before the re-allocation deadline for the declaration.
- (2) The declaration is taken to have been revoked immediately after the re-allocation deadline.
- (3) As soon as practicable after the re-allocation deadline, the ACMA must give each affected apparatus licensee a written notice stating that the declaration is taken to have been revoked.
- (4) Subsection (2) applies despite subsection 153J(1).
- (5) This section does not, by implication, limit the ACMA's power to revoke a spectrum re-allocation declaration in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.

153L Re-allocation by means of issuing spectrum licences

- (1) This section applies if a spectrum re-allocation declaration states that a part or parts of the spectrum should be re-allocated:
 - (a) by issuing spectrum licences; or
 - (b) by a combination of:
 - (i) issuing spectrum licences; and
 - (ii) issuing apparatus licences.
- (2) The spectrum licences must be issued under Subdivision B of Division 1 of Part 3.2 in accordance with a marketing plan prepared under section 39A.

Section 153M

153M Re-allocation by means of issuing apparatus licences

- (1) This section applies if a spectrum re-allocation declaration states that a part or parts of the spectrum should be re-allocated:
 - (a) by issuing apparatus licences; or
 - (b) by a combination of:
 - (i) issuing spectrum licences; and
 - (ii) issuing apparatus licences.
- (2) The apparatus licences must be issued under Division 2 of Part 3.3 in accordance with a price-based allocation system determined under section 106.

153N Restriction on issuing spectrum licences for parts of the spectrum subject to re-allocation

- (1) This section applies if the ACMA makes a spectrum re-allocation declaration under section 153B in relation to a particular part or parts of the spectrum.
- (2) During the re-allocation period, the ACMA must not issue a spectrum licence that authorises the operation of radiocommunications devices:
 - (a) at frequencies that are within that part, or those parts, of the spectrum; and
 - (b) within the area or areas specified in the declaration;unless:
 - (c) the licence is issued as mentioned in section 153L (which deals with re-allocation of spectrum by issuing spectrum licences); or
 - (d) at the start of the re-allocation period, the licence had already been allocated under subsection 62(1).

Section 153P

153P Restriction on issuing apparatus licences for parts of the spectrum subject to re-allocation

- (1) This section applies if a spectrum re-allocation declaration is in force in relation to a particular part or parts of the spectrum.
- (2) During the re-allocation period, the ACMA must not issue an apparatus licence that authorises the operation of radiocommunications devices:
 - (a) at frequencies that are within that part, or those parts, of the spectrum; and
 - (b) within the area or areas specified in the declaration;unless:
 - (c) the licence is issued as mentioned in section 153M (which deals with re-allocation of spectrum by issuing apparatus licences); or
 - (d) the licence is issued by way of renewal of an apparatus licence (see Division 7 of Part 3.3); or
 - (da) the licence is issued to a body covered by any of paragraphs 27(1)(b) to (be) for the purpose of investigations or operations conducted by the body; or
 - (e) the ACMA is satisfied that the special circumstances of the particular case justify the issuing of the licence.

Chapter 4—General regulatory provisions

154 Outline of this Chapter

- (1) This Chapter imposes requirements that relate both to radiocommunications and to radio emissions in general.
- (2) Part 4.1 is about equipment rules, protected symbols, equipment bans and equipment recall.
- (3) Part 4.2 contains offence provisions relating to radio emissions, in particular offences aimed at containing various kinds of interference with radiocommunications.
- (4) Part 4.3 establishes a conciliation process for the settlement of interference disputes.
- (5) Part 4.4 enables certain restrictions to be imposed by restrictive orders made during declared periods of emergency.

Part 4.1—Equipment

Division 1—Introduction

155 Simplified outline of this Part

- The ACMA may make equipment rules.
- The equipment rules may prescribe standards for equipment.
- The equipment rules may impose obligations or prohibitions in relation to equipment.
- An obligation or prohibition may relate to:
 - (a) the operation of equipment; or
 - (b) the supply of equipment; or
 - (c) offers to supply equipment; or
 - (d) the possession of equipment; or
 - (e) the import of equipment.
- A person must not use or apply a protected symbol unless the use or application is authorised by or under:
 - (a) this Act; or
 - (b) the equipment rules.
- A protected symbol is a symbol:
 - (a) the design of which is determined by the ACMA; and
 - (b) the purpose of which is to indicate compliance by equipment with any standards that are prescribed by the equipment rules and that are applicable to the equipment.
- The ACMA may impose interim bans, or permanent bans, on equipment.

Section 155

- The ACMA may require a supplier to recall equipment.
- If a supplier voluntarily recalls equipment, the supplier must notify the ACMA of the recall.

Division 2—Equipment rules

156 Equipment rules

- (1) The ACMA may, by legislative instrument, make rules (*equipment rules*) relating to equipment.
- (2) The ACMA may make 2 or more sets of equipment rules.
- (3) The equipment rules must be directed towards achieving any or all of the following objectives:
 - (a) ensuring the electromagnetic compatibility of equipment;
 - (b) containing interference to radiocommunications;
 - (c) containing interference to any uses or functions of equipment;
 - (d) establishing for the uses or functions of equipment an adequate level of immunity from electromagnetic disturbances caused by the use of other equipment;
 - (e) protecting the health or safety of individuals from any adverse effect likely to be attributable to radio emissions resulting from a reasonably foreseeable use (including a misuse) of radiocommunications transmitters;
 - (f) ensuring that persons who operate equipment have access to information about the equipment;
 - (g) ensuring that radiocommunications transmitters are not supplied to persons intending to operate those transmitters unless those persons are authorised by or under this Act to operate those transmitters;
 - (h) ensuring that designated radiocommunications receivers are not supplied to persons intending to operate those receivers unless those persons are authorised by or under this Act to operate those receivers;
 - (i) an objective specified in the legislative rules;
 - (j) an objective that is incidental or ancillary to any of the above objectives.

- (4) Before making equipment rules directed towards achieving the objective mentioned in paragraph (3)(e), the ACMA must consult ARPANSA (the Australian Radiation Protection and Nuclear Safety Agency).

157 Constitutional limits

The equipment rules may only be made to the extent that they are supported by one or more of the following provisions of the Constitution:

- (a) paragraph 51(i);
- (b) paragraph 51(v);
- (c) paragraph 51(vi);
- (d) paragraph 51(vii);
- (e) paragraph 51(viii);
- (f) paragraph 51(xiii);
- (g) paragraph 51(xiv);
- (h) paragraph 51(xv);
- (i) paragraph 51(xx);
- (j) paragraph 51(xxix);
- (k) paragraph 51(xxxix);
- (l) section 52;
- (m) section 122.

158 Standards

- (1) The equipment rules may prescribe standards for equipment.
 - (2) Standards may require equipment:
 - (a) to have particular design features; or
 - (b) to meet particular performance requirements.
 - (3) A standard may be of general application or may be limited as provided in the equipment rules. This subsection does not limit subsection 33(3A) of the *Acts Interpretation Act 1901*.
 - (4) This section does not, by implication, limit subsection 156(1).
-

- (5) This section has effect subject to subsection 156(3).

159 Obligations, prohibitions and permits

Obligations and prohibitions

- (1) The equipment rules may impose obligations or prohibitions in relation to equipment.
- (2) The equipment rules may impose obligations:
 - (a) to ensure that quality assurance programs in relation to equipment are conducted; or
 - (b) to ensure that tests in relation to equipment are conducted; or
 - (c) to ensure that labels are applied to equipment; or
 - (d) to ensure that records are kept or retained; or
 - (e) to ensure that a thing specified in the legislative rules is done.
- (3) The equipment rules may impose obligations or prohibitions that relate to:
 - (a) the operation of equipment; or
 - (b) the supply of equipment; or
 - (c) offers to supply equipment; or
 - (d) the possession of equipment; or
 - (e) the import of equipment.
- (4) If the equipment rules impose an obligation on a person to cause a thing to be done, the rules may require that the thing be done by another specified person.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.
- (5) If the equipment rules impose an obligation on a person to cause a thing to be done, the equipment rules may require that the thing be done by another person holding an accreditation of a specified kind.

- (6) If the equipment rules impose an obligation on a person to cause a thing to be done, the equipment rules may require that the thing be done by another person who:
 - (a) satisfies the conditions specified in the equipment rules; and
 - (b) is approved, in writing, by a person holding an accreditation of a specified kind.
- (7) If the equipment rules impose an obligation on a person to cause a thing to be done, the equipment rules may require that the thing be done by another person who is approved, in writing, by a person holding an accreditation of a specified kind.
- (8) The equipment rules may prohibit a person from:
 - (a) supplying; or
 - (b) offering to supply;a specified kind of equipment unless the person satisfies one or more specified conditions.
- (9) The equipment rules may require that, if:
 - (a) the supply of equipment to a person; or
 - (b) an offer to supply equipment to a person;involves the person accessing the supplier's website, the supplier must ensure that, before the equipment is supplied to the person, the person's attention is drawn to material that:
 - (c) is on the website; and
 - (d) complies with specified requirements.
- (10) The equipment rules may prohibit a person from applying a specified kind of label to equipment unless the person does so in specified circumstances.
- (11) The equipment rules may prohibit a person who supplies, or offers to supply, equipment from publishing a specified kind of material about the equipment on the person's website unless the person does so in specified circumstances.
- (12) The equipment rules may prohibit a person from doing an act or thing specified in the legislative rules.

Section 159

Permits

- (13) The equipment rules may prohibit the doing of an act or thing by a person unless:
 - (a) the person holds a permit issued by the ACMA under the equipment rules; and
 - (b) the permit authorises the person to do that act or thing.
- (14) An act or thing is not authorised by a permit if it is not in accordance with the conditions of the permit.
- (15) The equipment rules may make provision for:
 - (a) the issue of permits by the ACMA; and
 - (b) the inclusion by the ACMA of conditions in a permit; and
 - (c) the cancellation of permits by the ACMA.

Note 1: Refusals to issue permits are reviewable under Part 5.6.

Note 2: Decisions about permit conditions are reviewable under Part 5.6.

Note 3: Cancellations of permits are reviewable under Part 5.6.

- (16) The equipment rules may make provision for ACMA to vary a permit by:
 - (a) including one or more further conditions; or
 - (b) varying any conditions of the permit; or
 - (c) revoking any conditions of the permit.

Note: Decisions about permit conditions are reviewable under Part 5.6.

Other matters

- (17) Subsections (2) to (16) do not limit subsection (1).
- (18) Subsections (2) to (16) do not limit each other.
- (19) This section does not, by implication, limit subsection 156(1).
- (20) This section has effect subject to subsection 156(3).

160 Breach of equipment rules and permit conditions*Offence*

- (1) A person commits an offence if:
- (a) the person is subject to a prohibition imposed by the equipment rules; and
 - (b) the prohibition does not consist of contravening a condition of a permit; and
 - (c) the person engages in conduct; and
 - (d) the person's conduct contravenes the prohibition.

Penalty: 500 penalty units.

- (2) A person commits an offence if:
- (a) the person is subject to an obligation imposed by the equipment rules; and
 - (b) the obligation is not an obligation to do an act or thing:
 - (i) within a particular period; or
 - (ii) before a particular time; and
 - (c) the obligation is not an obligation to keep or retain records; and
 - (d) the obligation is not an obligation to comply with a condition of a permit; and
 - (e) the person engages in conduct; and
 - (f) the person's conduct contravenes the obligation.

Penalty: 500 penalty units.

- (3) A person commits an offence if:
- (a) the person is subject to an obligation imposed by the equipment rules; and
 - (b) the obligation is an obligation to do an act or thing:
 - (i) within a particular period; or
 - (ii) before a particular time; and
 - (c) the obligation is not an obligation to keep or retain records; and

Section 160

- (d) the obligation is not an obligation to comply with a condition of a permit; and
- (e) the person engages in conduct; and
- (f) the person's conduct contravenes the obligation.

Penalty: 500 penalty units.

- (4) The maximum penalty for each day that an offence against subsection (3) continues is 10% of the maximum penalty that could be imposed in respect of the principal offence.

Civil penalties

- (5) If:

- (a) a person is subject to a prohibition imposed by the equipment rules; and
- (b) the prohibition does not consist of contravening a condition of a permit;

the person must not contravene the prohibition.

Civil penalty: 500 penalty units.

- (6) If:

- (a) a person is subject to an obligation imposed by the equipment rules; and
- (b) the obligation is not an obligation to do an act or thing:
 - (i) within a particular period; or
 - (ii) before a particular time; and
- (c) the obligation is not an obligation to keep or retain records; and
- (d) the obligation is not an obligation to comply with a condition of a permit;

the person must not contravene the obligation.

Civil penalty: 500 penalty units.

- (7) If:

Section 160

- (a) a person is subject to an obligation imposed by the equipment rules; and
 - (b) the obligation is an obligation to do an act or thing:
 - (i) within a particular period; or
 - (ii) before a particular time; and
 - (c) the obligation is not an obligation to keep or retain records; and
 - (d) the obligation is not an obligation to comply with a condition of a permit;
- the person must not contravene the obligation.

Civil penalty: 500 penalty units.

- (8) The maximum civil penalty for each day that a contravention of subsection (7) continues is 10% of the maximum civil penalty that can be imposed in respect of a contravention of that subsection.

Note: Subsection (7) is a continuing civil penalty provision under section 93 of the Regulatory Powers Act.

- (9) If:

- (a) a person is subject to an obligation imposed by the equipment rules; and
 - (b) the obligation is an obligation to keep or retain records;
- the person must not contravene the obligation.

Civil penalty: 30 penalty units.

- (10) If a person is the holder of a permit, the person must not contravene a condition of the permit.

Civil penalty: 100 penalty units.

- (11) Subsection (10) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

Section 161

161 Equipment rules may confer powers on the ACMA

The equipment rules may make provision in relation to a matter by conferring a power on the ACMA.

162 Equipment rules may confer powers on accredited persons

- (1) The equipment rules may make provision in relation to a matter by conferring a power on a person who holds a specified kind of accreditation.
- (2) The equipment rules may authorise a person who holds a specified kind of accreditation to charge fees in relation to the exercise by the person of a power conferred by the equipment rules. A fee must not be such as to amount to taxation.

163 Equipment rules may authorise the charging of fees by certain persons

The equipment rules may authorise a person who is required, under rules made for the purposes of subsection 159(4) or (7), to do a thing, to charge fees in relation to the doing of the thing by the person. A fee must not be such as to amount to taxation.

164 Divisions 4 and 5 do not limit the ACMA's power to make equipment rules

Divisions 4 and 5 do not, by implication, limit the ACMA's power to make equipment rules.

Division 3—Protected symbols**165 Use or application of protected symbols***General prohibition*

- (1) A person must not:
- (a) use in relation to a business, trade, profession or occupation;
or
 - (b) apply (as a trade mark or otherwise) to goods imported,
manufactured, produced, sold, offered for sale or let on hire;
or
 - (c) use in relation to:
 - (i) goods or services; or
 - (ii) the promotion (by any means) of the supply or use of
goods or services;
- a protected symbol, or a symbol so closely resembling a protected
symbol as to be likely to be mistaken for it.

Civil penalty: 50 penalty units.

- (2) Nothing in subsection (1) limits anything else in that subsection.

Use or application—corporations power

- (3) A constitutional corporation must not:
- (a) use in relation to a business, trade, profession or occupation;
or
 - (b) apply (as a trade mark or otherwise) to goods imported,
manufactured, produced, sold, offered for sale or let on hire;
or
 - (c) use in relation to:
 - (i) goods or services; or
 - (ii) the promotion (by any means) of the supply or use of
goods or services;

Section 165

a protected symbol, or a symbol so closely resembling a protected symbol as to be likely to be mistaken for it.

Civil penalty: 50 penalty units.

- (4) Nothing in subsection (3) limits anything else in that subsection.

Use or application—other legislative powers

- (5) A person must not:

- (a) use in relation to a business, trade, profession or occupation;
or
- (b) apply (as a trade mark or otherwise) to goods imported, manufactured, produced, sold, offered for sale or let on hire;
or
- (c) use in relation to:
 - (i) goods or services; or
 - (ii) the promotion (by any means) of the supply or use of goods or services;

a protected symbol, or a symbol so closely resembling a protected symbol as to be likely to be mistaken for it, if the use or application is in the course of, or in relation to:

- (d) trade or commerce between Australia and places outside Australia; or
- (e) trade or commerce among the States; or
- (f) trade or commerce within a Territory, between a State and a Territory or between 2 Territories; or
- (g) the supply of goods or services to:
 - (i) the Commonwealth; or
 - (ii) a Territory; or
 - (iii) an authority or instrumentality of the Commonwealth;
or
 - (iv) an authority or instrumentality of a Territory; or
- (h) the defence of Australia; or
- (i) the operation of lighthouses, lightships, beacons or buoys; or
- (j) astronomical or meteorological observations; or

Section 166

- (k) an activity of a constitutional corporation; or
- (l) banking, other than State banking; or
- (m) insurance, other than State insurance; or
- (n) weighing or measuring.

Civil penalty: 50 penalty units.

- (6) Nothing in subsection (5) limits anything else in that subsection.

Exceptions

- (7) Subsections (1), (3) and (5) do not apply to a person who uses or applies a protected symbol for the purposes of:
 - (a) labelling equipment in accordance with the equipment rules; or
 - (b) labelling customer equipment (within the meaning of the *Telecommunications Act 1997*) or customer cabling (within the meaning of that Act), in accordance with section 407 of that Act.
- (8) Subsections (1), (3) and (5) do not apply to a person who uses or applies a protected symbol for a purpose of a kind specified in a determination under subsection (9).
- (9) The ACMA may, by legislative instrument, determine one or more specified kinds of purpose for the purposes of subsection (8).
- (10) The equipment rules may provide that subsections (1), (3) and (5) do not apply in relation to a specified use or application of a protected symbol.

166 Protected symbol

- (1) For the purposes of this Act, ***protected symbol*** means a symbol:
 - (a) the design of which is set out in a determination under subsection (2); and
 - (b) a purpose of which, after the commencement of this section, is to indicate compliance by equipment with any standards that:

Section 166

- (i) are prescribed by the equipment rules; and
 - (ii) are applicable to the equipment.
- (2) The ACMA may, by legislative instrument, determine one or more designs for the purposes of paragraph (1)(a).

Labels applied to equipment

- (3) For the purposes of this Act, if:
 - (a) a label is applied to equipment; and
 - (b) the label embodies a symbol referred to in subsection (1);the label is taken to indicate that the equipment meets the requirements of any standards that:
 - (c) are prescribed by the equipment rules; and
 - (d) are applicable to the equipment.

Division 4—Bans on equipment

Subdivision A—Interim bans

167 Interim bans on equipment

- (1) The ACMA may, by notifiable instrument, impose an *interim ban* on equipment of a specified kind if:
 - (a) the ACMA has reasonable grounds to believe that equipment of that kind is designed to have an adverse effect on radiocommunications; or
 - (b) the ACMA has reasonable grounds to believe that a reasonably foreseeable use (including a misuse) of equipment of that kind would be likely to substantially:
 - (i) interfere with radiocommunications; or
 - (ii) disrupt or disturb radiocommunications in any other way; or
 - (c) both:
 - (i) equipment of that kind consists of radiocommunications transmitters; and
 - (ii) the ACMA has reasonable grounds to believe that radio emissions resulting from the operation of equipment of that kind would be likely to adversely affect the health or safety of individuals.

Publication

- (2) If the ACMA makes a notifiable instrument imposing an interim ban, the ACMA must publish a notice that sets out:
 - (a) a statement to the effect that the ban has been imposed; and
 - (b) the time when the ban came, or is to come, into force; and
 - (c) the kind of equipment to which the ban relates; and
 - (d) the reason or reasons for imposing the ban.
- (3) The following provisions have effect:

Section 168

- (a) the ACMA must publish a notice under subsection (2) on the ACMA's website;
- (b) the legislative rules may provide that the ACMA must also publish a notice under subsection (2) in accordance with the legislative rules.

168 Duration of interim bans

- (1) An interim ban imposed by the ACMA:
 - (a) comes into force on the day specified in the instrument imposing the ban; and
 - (b) subject to this Act, remains in force for 60 days.
- (2) If an interim ban is in force, the ACMA may, by notifiable instrument, extend the period for which the ban is in force by a period of up to 30 days.

169 Revocation of interim bans

- (1) If an interim ban is in force:
 - (a) the ACMA may, by notifiable instrument, revoke the ban; and
 - (b) the revocation takes effect on the day specified in the instrument.
- (2) If:
 - (a) an interim ban on equipment of a particular kind is in force; and
 - (b) a permanent ban on equipment of that kind comes into force;the interim ban is revoked when the permanent ban comes into force.

170 Compliance with interim bans

Supply

- (1) A person must not supply equipment of a particular kind to another person if:

Section 171

- (a) the other person intends to operate the equipment; and
- (b) an interim ban on equipment of that kind is in force.

Civil penalty: 200 penalty units.

Offer to supply

- (2) A person must not offer to supply equipment of a particular kind to another person if:
- (a) the other person intends to operate the equipment; and
 - (b) an interim ban on equipment of that kind is in force.

Civil penalty: 200 penalty units.

Operation

- (3) A person must not operate equipment of a particular kind if an interim ban on equipment of that kind is in force.

Civil penalty: 200 penalty units.

- (4) If:
- (a) a person contravenes subsection (1), (2) or (3); and
 - (b) another person suffers loss or damage because of a reasonably foreseeable use (including a misuse) of the equipment;
- the other person is taken, for the purposes of this Division, to have suffered the loss or damage because of the contravention.

171 Actions for damages

- (1) If:
- (a) a person (the ***claimant***) suffers loss or damage because of conduct engaged in by another person; and
 - (b) the conduct contravened subsection 170(1), (2) or (3);
- the claimant may recover the amount of the loss or damage by action in the Federal Court or the Federal Circuit and Family Court of Australia against:

Section 172

- (c) that other person; or
 - (d) any person involved in the contravention.
- (2) An action under subsection (1) may be commenced at any time within 6 years after the day on which the cause of action that relates to the conduct accrued.
- (3) A reference in this section to a person involved in the contravention is a reference to a person who has:
 - (a) aided, abetted, counselled or procured the contravention; or
 - (b) induced the contravention, whether through threats or promises or otherwise; or
 - (c) been in any way (directly or indirectly) knowingly concerned in or a party to the contravention; or
 - (d) conspired with others to effect the contravention.

Subdivision B—Permanent bans

172 Permanent bans on equipment

- (1) The ACMA may, by legislative instrument, impose a *permanent ban* on equipment of a specified kind if:
 - (a) the ACMA is satisfied that equipment of that kind is designed to have an adverse effect on radiocommunications; or
 - (b) the ACMA is satisfied that a reasonably foreseeable use (including a misuse) of equipment of that kind would be likely to substantially:
 - (i) interfere with radiocommunications; or
 - (ii) disrupt or disturb radiocommunications in any other way; or
 - (c) both:
 - (i) equipment of that kind consists of radiocommunications transmitters; and
 - (ii) the ACMA is satisfied that radio emissions resulting from the operation of equipment of that kind would be

likely to adversely affect the health or safety of individuals.

- (2) Before imposing a permanent ban on the grounds mentioned in paragraph (1)(c), the ACMA must consult ARPANSA (the Australian Radiation Protection and Nuclear Safety Agency).

Publication

- (3) If the ACMA makes a legislative instrument imposing a permanent ban, the ACMA must publish a notice that sets out:
- (a) a statement to the effect that the ban has been imposed; and
 - (b) the time when the ban came, or is to come, into force; and
 - (c) the kind of equipment to which the ban relates; and
 - (d) the reason or reasons for imposing the ban.
- (4) The following provisions have effect:
- (a) the ACMA must publish a notice under subsection (3) on the ACMA's website;
 - (b) the legislative rules may provide that the ACMA must also publish a notice under subsection (3) in accordance with the legislative rules.

173 When permanent bans come into force

A permanent ban comes into force on the day specified by the ACMA in the instrument imposing the ban.

174 Revocation of permanent bans

If a permanent ban is in force:

- (a) the ACMA may, by legislative instrument, revoke the ban; and
- (b) the revocation takes effect on the day specified in the instrument.

Section 175

175 Compliance with permanent bans—offences

Supply

- (1) A person commits an offence if:
- (a) the person supplies equipment of a particular kind to another person who intends to operate the equipment; and
 - (b) a permanent ban on equipment of that kind is in force.

Penalty: Imprisonment for 2 years or 1,000 penalty units, or both.

Offer to supply

- (2) A person commits an offence if:
- (a) the person offers to supply equipment of a particular kind to another person who intends to operate the equipment; and
 - (b) a permanent ban on equipment of that kind is in force.

Penalty: Imprisonment for 2 years or 1,000 penalty units, or both.

Operation

- (3) A person commits an offence if:
- (a) the person operates equipment of a particular kind; and
 - (b) a permanent ban on equipment of that kind is in force.

Penalty: Imprisonment for 2 years or 1,000 penalty units, or both.

Possession

- (4) A person commits an offence if:
- (a) the person has equipment of a particular kind in the person's possession; and
 - (b) the possession is for the purpose of:
 - (i) operating the equipment; or
 - (ii) supplying the equipment to another person who intends to operate the equipment; and
 - (c) a permanent ban on equipment of that kind is in force.

Penalty for contravention of this subsection: Imprisonment for 2 years or 1,000 penalty units, or both.

176 Compliance with permanent bans—civil penalties

Supply

- (1) A person must not supply equipment of a particular kind to another person if:
- (a) the other person intends to operate the equipment; and
 - (b) a permanent ban on equipment of that kind is in force.

Civil penalty: 1,000 penalty units.

Offer to supply

- (2) A person must not offer to supply equipment of a particular kind to another person if:
- (a) the other person intends to operate the equipment; and
 - (b) a permanent ban on equipment of that kind is in force.

Civil penalty: 1,000 penalty units.

Operation

- (3) A person must not operate equipment of a particular kind if a permanent ban on equipment of that kind is in force.

Civil penalty: 1,000 penalty units.

Possession

- (4) A person must not have equipment of a particular kind in the person's possession if:
- (a) a permanent ban on equipment of that kind is in force; and
 - (b) the possession is for the purpose of:
 - (i) operating the equipment; or
 - (ii) supplying the equipment to another person who intends to operate the equipment.

Section 177

Civil penalty: 1,000 penalty units.

(5) If:

- (a) a person contravenes subsection (1), (2), (3) or (4); and
- (b) another person suffers loss or damage because of a reasonably foreseeable use (including a misuse) of the equipment;

the other person is taken, for the purposes of this Division, to have suffered the loss or damage because of the contravention.

177 Actions for damages

(1) If:

- (a) a person (the *claimant*) suffers loss or damage because of conduct engaged in by another person; and
- (b) the conduct contravened subsection 176(1), (2), (3) or (4);

the claimant may recover the amount of the loss or damage by action in the Federal Court or the Federal Circuit and Family Court of Australia against:

- (c) that other person; or
- (d) any person involved in the contravention.

(2) An action under subsection (1) may be commenced at any time within 6 years after the day on which the cause of action that relates to the conduct accrued.

(3) A reference in this section to a person involved in the contravention is a reference to a person who has:

- (a) aided, abetted, counselled or procured the contravention; or
- (b) induced the contravention, whether through threats or promises or otherwise; or
- (c) been in any way (directly or indirectly) knowingly concerned in or a party to the contravention; or
- (d) conspired with others to effect the contravention.

Subdivision C—Presumptions**178 Presumptions***Presumption relating to supply or offer to supply*

- (1) For the purposes of subsections 170(1) and (2), 175(1) and (2) and 176(1) and (2), if:

- (a) at a particular time, a person (the **first person**) supplies, or offers to supply, equipment to another person; and
- (b) the equipment can be operated;

it must be presumed that the other person intends to operate the equipment, unless the first person adduces or points to evidence that suggests a reasonable possibility that, at that time, the other person did not intend to operate the equipment.

Presumptions relating to possession

- (2) For the purposes of subsections 175(4) and 176(4), if:

- (a) at a particular time, a person has equipment in the person's possession, otherwise than for the purpose of supplying the equipment to another person; and
- (b) the equipment can be operated;

it must be presumed that the person has the equipment in the person's possession for the purpose of operating the equipment, unless the person adduces or points to evidence that suggests a reasonable possibility that, at that time, the person did not have the equipment in the person's possession for the purpose of operating the equipment.

- (3) For the purposes of subsections 175(4) and 176(4), if:

- (a) at a particular time, a person (the **first person**) has equipment in the person's possession for the purpose of supplying the equipment to another person; and
- (b) the equipment can be operated;

it must be presumed that the other person intends to operate the equipment, unless the first person adduces or points to evidence

Section 179

that suggests a reasonable possibility that, at that time, the other person did not intend to operate the equipment.

When equipment can be operated

- (4) For the purposes of paragraphs (1)(b), (2)(b) and (3)(b), it is immaterial whether the equipment can be operated:
- (a) immediately; or
 - (b) after taking one or more steps (for example, the connection of the equipment to a power supply).

Subdivision D—Amnesty for banned equipment

179 Amnesty for banned equipment

Amnesty period

- (1) The ACMA may, by notifiable instrument, declare that, for the purposes of subsection (2), a specified period is an amnesty period for a specified permanent ban.

Amnesty

- (2) If:
- (a) a permanent ban on equipment of a particular kind is in force; and
 - (b) an amnesty period has been declared under subsection (1) for the ban;
- then:
- (c) the owner of equipment of that kind may, during the amnesty period for the ban, agree with the ACMA (on behalf of the Commonwealth) to forfeit the equipment to the Commonwealth; and
 - (d) if the owner does so—subsections 175(4) and 176(4), to the extent to which they relate to the ban, do not apply, and are taken never to have applied, to the possession of the equipment by:
 - (i) the owner; or

- (ii) any other person.

180 The ACMA may take possession of equipment

- (1) If the owner of equipment agrees, in accordance with section 179, to forfeit the equipment to the Commonwealth:
- (a) the ACMA may take possession of the equipment; and
 - (b) if the ACMA does so—the ACMA must give the owner a receipt for the equipment taken into possession.
- (2) If:
- (a) the ACMA has purported to take possession of equipment under subsection (1); and
 - (b) the ACMA was not entitled to take possession of the equipment under that subsection;
- the ACMA must take all reasonable steps to return the equipment to the owner of the equipment.

181 Forfeiture of equipment to the Commonwealth

- (1) If:
- (a) the ACMA has taken possession of equipment under subsection 180(1); and
 - (b) at least 90 days have passed since the ACMA gave the owner a receipt under paragraph 180(1)(b) for the equipment;
- the ACMA may declare, in writing, that the equipment is forfeited to the Commonwealth.
- (2) The ACMA must give a copy of the declaration to the owner of the equipment.

Deemed forfeiture

- (3) If:
- (a) the owner of equipment agrees, in accordance with section 179, to forfeit the equipment to the Commonwealth; and

Section 182

- (b) the ACMA has taken possession of the equipment under subsection 180(1); and
 - (c) the ACMA has not, within the 120-day period beginning at the start of the day when the ACMA gave the owner a receipt under paragraph 180(1)(b) for the equipment, made a declaration under subsection (1) of this section that the equipment is forfeited to the Commonwealth;
- then, at the end of the 120-day period, the equipment is forfeited to the Commonwealth.

182 Forfeited equipment may be sold, destroyed or otherwise disposed of

Equipment forfeited under section 181:

- (a) may be sold, destroyed or otherwise disposed of in accordance with the directions of the ACMA; and
- (b) pending such directions, must be kept in such custody as the ACMA directs.

Division 5—Recall of equipment**Subdivision A—Compulsory recall of equipment****183 Compulsory recall of equipment**

Equipment that will or may cause substantial disruption, substantial disturbance or substantial interference to radiocommunications

- (1) The ACMA may, by legislative instrument, issue a ***recall notice*** for equipment of a specified kind if:
- (a) a person, in trade or commerce, supplies, or has supplied, equipment of that kind; and
 - (b) the ACMA is satisfied that a reasonably foreseeable use (including a misuse) of such equipment will or may cause substantial disruption, substantial disturbance or substantial interference to radiocommunications; and
 - (c) the ACMA is satisfied that one or more suppliers of such equipment have not taken satisfactory action to prevent that equipment causing substantial disruption, substantial disturbance or substantial interference to radiocommunications.

Equipment designed to have an adverse effect on radiocommunications

- (2) The ACMA may, by legislative instrument, issue a ***recall notice*** for equipment of a specified kind if:
- (a) a person, in trade or commerce, supplies, or has supplied, equipment of that kind; and
 - (b) the ACMA is satisfied that equipment of that kind is designed to have an adverse effect on radiocommunications.

Section 183

Equipment likely to adversely affect health or safety

- (3) The ACMA may, by legislative instrument, issue a ***recall notice*** for equipment of a specified kind if:
- (a) equipment of that kind consists of radiocommunications transmitters; and
 - (b) a person, in trade or commerce, supplies, or has supplied, equipment of that kind; and
 - (c) the ACMA is satisfied that radio emissions resulting from the operation of equipment of that kind would be likely to adversely affect the health or safety of individuals.

Permanent ban

- (4) The ACMA may, by legislative instrument, issue a ***recall notice*** for equipment of a specified kind if:
- (a) a person, in trade or commerce, supplies, or has supplied, equipment of that kind; and
 - (b) a permanent ban on such equipment is in force; and
 - (c) the ACMA is satisfied that one or more suppliers of such equipment have not taken satisfactory action to recall such equipment so supplied by those suppliers.

Publication

- (5) If the ACMA, by legislative instrument, issues a recall notice under subsection (1), (2), (3) or (4), the ACMA must publish a notice that sets out:
- (a) a statement to the effect that the recall notice has been issued; and
 - (b) the time when the recall notice commences, or is to commence; and
 - (c) the kind of equipment to which the recall notice relates; and
 - (d) the reason or reasons for issuing the recall notice.
- (6) The following provisions have effect:
- (a) the ACMA must publish a notice under subsection (5) on the ACMA's website;

- (b) the legislative rules may provide that the ACMA must also publish a notice under subsection (5) in accordance with the legislative rules.

Other matters

- (7) It is not necessary, for the purposes of paragraph (1)(a) or (c), (2)(a), (3)(b) or (4)(a) or (c), for the ACMA to know the identities of any of the suppliers of the equipment.
- (8) A recall notice for equipment may be issued under subsection (1), (2), (3) or (4) even if the equipment has become fixtures since the time the equipment was supplied.

184 Contents of a recall notice

- (1) A recall notice for equipment may require one or more suppliers of the equipment to take one or more of the following actions:
 - (a) recall the equipment;
 - (b) disclose to the public, or to a class of persons specified in the notice, the reasons for the issue of the recall notice;
 - (c) inform the public, or a class of persons specified in the notice, that the supplier undertakes to do whichever of the following the supplier thinks is appropriate:
 - (i) repair or modify the equipment;
 - (ii) replace the equipment;
 - (iii) refund to a person to whom the equipment was supplied (whether by the supplier or by another person), and who returns the equipment, the price paid for the equipment;
 - (d) if an undertaking is given by a supplier in accordance with paragraph (c):
 - (i) comply with the undertaking; and
 - (ii) comply with section 185 in relation to the undertaking;
 - (e) disclose to the public, or to a class of persons specified in the notice, procedures as specified in the notice for disposing of the equipment.

Section 185

- (2) The recall notice may specify:
 - (a) the manner in which the action required to be taken by the notice must be taken; and
 - (b) the period within which the action must be taken.
- (3) If the recall notice requires a supplier of the equipment to take action of a kind referred to in paragraph (1)(c), the ACMA may specify in the notice that, if:
 - (a) the supplier undertakes to refund the price paid for equipment; and
 - (b) a period of more than 12 months has elapsed since a person (whether or not the person to whom the refund is to be made) acquired the equipment from the supplier;the amount of a refund may be reduced by the supplier by an amount, calculated in a manner specified in the notice, that is attributable to the use which a person has had of the equipment.

185 Obligations of a supplier in relation to a recall notice

Scope

- (1) This section applies if a recall notice for equipment requires a supplier to take action of a kind referred to in paragraph 184(1)(c).

Obligations—repair or modify

- (2) If:
 - (a) the recall notice was issued under subsection 183(1); and
 - (b) the supplier undertakes to repair or modify the equipment;the supplier must cause the equipment to be repaired or modified so that:
 - (c) a reasonably foreseeable use or misuse of the equipment will not cause substantial disruption, substantial disturbance or substantial interference to radiocommunications; and
 - (d) the equipment is not covered by an interim ban, or a permanent ban, that is in force.

- (3) If:
- (a) the recall notice was issued under subsection 183(2); and
 - (b) the supplier undertakes to repair or modify the equipment;
the supplier must cause the equipment to be repaired or modified so that:
 - (c) the equipment would not be likely to have an adverse effect on radiocommunications; and
 - (d) the equipment is not covered by an interim ban, or a permanent ban, that is in force.
- (4) If:
- (a) the recall notice was issued under subsection 183(3); and
 - (b) the supplier undertakes to repair or modify the equipment;
the supplier must cause the equipment to be repaired or modified so that:
 - (c) radio emissions resulting from a reasonably foreseeable use (including a misuse) of the equipment would not be likely to adversely affect the health or safety of individuals; and
 - (d) the equipment is not covered by an interim ban, or a permanent ban, that is in force.

Obligations—replacement

- (5) If:
- (a) the recall notice was issued under subsection 183(1); and
 - (b) the supplier undertakes to replace the equipment;
the supplier must replace the equipment with similar equipment that satisfies the following conditions:
 - (c) a reasonably foreseeable use or misuse of the similar equipment will not cause substantial disruption, substantial disturbance or substantial interference to radiocommunications;
 - (d) the similar equipment is not covered by an interim ban, or a permanent ban, that is in force.
- (6) If:

Section 186

- (a) the recall notice was issued under subsection 183(2); and
 - (b) the supplier undertakes to replace the equipment;
the supplier must replace the equipment with similar equipment that satisfies the following conditions:
 - (c) the similar equipment would not be likely to have an adverse effect on radiocommunications;
 - (d) the similar equipment is not covered by an interim ban, or a permanent ban, that is in force.
- (7) If:
- (a) the recall notice was issued under subsection 183(3); and
 - (b) the supplier undertakes to replace the equipment;
the supplier must replace the equipment with similar equipment that satisfies the following conditions:
 - (c) radio emissions resulting from a reasonably foreseeable use (including a misuse) of the similar equipment would not be likely to adversely affect the health or safety of individuals;
 - (d) the similar equipment is not covered by an interim ban, or a permanent ban, that is in force.
- (8) If the supplier undertakes:
- (a) to repair or modify the equipment; or
 - (b) to replace the equipment;
the cost of the repair, modification or replacement, including any necessary transportation costs, must be paid by the supplier.

186 Compliance with recall notices

Offence

- (1) A person commits an offence if:
- (a) a recall notice for equipment is in force; and
 - (b) the notice requires the person to do one or more things; and
 - (c) the person engages in conduct; and
 - (d) the person's conduct contravenes the notice.

Section 187

Penalty: 1,000 penalty units.

Civil penalty

(2) If:

- (a) a recall notice for equipment is in force; and
 - (b) the notice requires a person to do one or more things;
- the person must comply with the notice.

Civil penalty: 1,000 penalty units.

(3) If:

- (a) a person contravenes subsection (2) in relation to equipment; and
- (b) another person suffers loss or damage:
 - (i) because of a reasonably foreseeable use (including a misuse) of the equipment; or
 - (ii) because, contrary to the recall notice, the other person was not provided with particular information in relation to the equipment;

the other person is taken, for the purposes of this Division, to have suffered the loss or damage because of the contravention.

187 Actions for damages

(1) If:

- (a) a person (the ***claimant***) suffers loss or damage because of conduct engaged in by another person; and
- (b) the conduct contravened subsection 186(2);

the claimant may recover the amount of the loss or damage by action in the Federal Court or the Federal Circuit and Family Court of Australia against:

- (c) that other person; or
- (d) any person involved in the contravention.

Section 188

- (2) An action under subsection (1) may be commenced at any time within 6 years after the day on which the cause of action that relates to the conduct accrued.
- (3) A reference in this section to a person involved in the contravention is a reference to a person who has:
 - (a) aided, abetted, counselled or procured the contravention; or
 - (b) induced the contravention, whether through threats or promises or otherwise; or
 - (c) been in any way (directly or indirectly) knowingly concerned in or a party to the contravention; or
 - (d) conspired with others to effect the contravention.

Subdivision B—Voluntary recall of equipment

188 Notification requirements for a voluntary recall of equipment

Scope

- (1) This section applies if a person voluntarily takes action to recall equipment of a particular kind (including equipment that has become fixtures since being supplied) because:
 - (a) a reasonably foreseeable use (including a misuse) of such equipment will or may cause substantial disruption, substantial disturbance or substantial interference to radiocommunications; or
 - (b) such equipment would be likely to have an adverse effect on radiocommunications; or
 - (c) in a case where such equipment consists of radiocommunications transmitters—radio emissions resulting from a reasonably foreseeable use (including a misuse) of such equipment would be likely to adversely affect the health or safety of individuals; or
 - (d) a permanent ban on such equipment is in force.

Notifying the ACMA

- (2) The person must, within 2 days after taking the action, give the ACMA a written notice that complies with subsection (4).

Civil penalty: 20 penalty units.

- (3) The following provisions have effect:
- (a) the ACMA must publish a copy of the notice on the ACMA's website;
 - (b) the legislative rules may provide that the ACMA must also publish a copy of the notice in accordance with the legislative rules.

Requirements for notice

- (4) A notice under subsection (2) must:
- (a) state that the equipment is subject to recall; and
 - (b) if a reasonably foreseeable use or misuse of the equipment will or may cause substantial disruption, substantial disturbance or substantial interference to radiocommunications—set out the circumstances of that use or misuse; and
 - (c) if the equipment would be likely to have an adverse effect on radiocommunications—set out that adverse effect; and
 - (d) if:
 - (i) the equipment consists of radiocommunications transmitters; and
 - (ii) radio emissions resulting from a reasonably foreseeable use (including a misuse) of the equipment would be likely to adversely affect the health or safety of individuals;set out:
 - (iii) the circumstances of that use (including misuse); and
 - (iv) the way in which the health or safety of individuals is likely to be adversely affected by that use (including misuse); and

Section 188

- (e) if a permanent ban on the equipment is in force—state that fact.

Continuing contravention of civil penalty provision

- (5) The maximum civil penalty for each day that a contravention of subsection (2) continues is 10% of the maximum civil penalty that can be imposed in respect of a contravention of that subsection.

Note: Subsection (2) is a continuing civil penalty provision under section 93 of the Regulatory Powers Act.

Part 4.2—Offences relating to radio emission

192 Interference likely to prejudice safe operation of vessels, aircraft or space objects

Subject to section 196, a person must not use a transmitter in a way likely to interfere with radiocommunications if the person knows that such interference is likely to prejudice the safe operation of an vessel, aircraft or space object.

Penalty:

- (a) if the offender is an individual—imprisonment for 5 years; or
- (b) otherwise—5,000 penalty units.

193 Interference in relation to certain radiocommunications

- (1) Subject to section 196, a person must not, without the ACMA's written permission, use a transmitter in a way that the person knows is likely to interfere substantially with radiocommunications carried on by or on behalf of:
 - (a) an organisation specified in the regulations that is:
 - (i) a fire-fighting, civil defence or rescue organisation; or
 - (ii) an organisation providing ambulance services; or
 - (iii) any other organisation the sole or principal purpose of which is to secure the safety of persons during an emergency; or
 - (b) the Royal Flying Doctor Service; or
 - (c) the Australian Federal Police or the police force of a State or Territory.

Penalty:

- (a) if the offender is an individual—imprisonment for 5 years; or
- (b) otherwise—5,000 penalty units.

Section 194

- (2) If the ACMA refuses to give permission to a person who applied for it, the ACMA must give the person a written notice of the refusal, together with a statement of its reasons.

Note: Refusals to give permission are reviewable decisions under Part 5.6.

194 Interference likely to endanger safety or cause loss or damage

Subject to section 196, a person must not do any act or thing that the person knows is likely to:

- (a) interfere substantially with radiocommunications; or
- (b) otherwise substantially disrupt or disturb radiocommunications;

if the interference, disruption or disturbance is likely to endanger the safety of another person or to cause another person to suffer or incur substantial loss or damage.

Penalty:

- (a) if the offender is an individual—imprisonment for 5 years; or
- (b) otherwise—5,000 penalty units.

195 Transmission from foreign vessel, aircraft or space object

- (1) Subject to section 196 and subsection (2), a person must not, outside Australia and without the ACMA's written permission, use a transmitter that is on board a foreign vessel, foreign aircraft or foreign space object:
- (a) for the purposes of transmitting to the general public in Australia radio programs or television programs; or
 - (b) in a manner that the person knows is likely to interfere substantially with radiocommunications:
 - (i) within Australia; or
 - (ii) between a place in Australia and a place outside Australia.

Civil penalty: 300 penalty units.

- (2) This section does not apply to use of a transmitter:

Section 196

- (a) in accordance with an agreement, treaty or convention that:
 - (i) is entered into between Australia and any other country or countries; and
 - (ii) is specified in the regulations; or
 - (b) under the direction of a person exercising powers under the law of the Commonwealth or of a State or Territory.
- (3) If the ACMA refuses to give permission to a person who applied for it, the ACMA must give the person a written notice of the refusal.

Note: Refusals to give permission are reviewable decisions under Part 5.6.

196 Emergency transmissions etc.

- (1) A person does not contravene section 192, 193, 194 or 195 by doing anything that the person reasonably believes was necessary for the purpose of:
- (a) securing the safety of a vessel, aircraft or space object that was in danger; or
 - (b) dealing with an emergency involving a serious threat to the environment; or
 - (c) dealing with an emergency involving risk of death of, or injury to, persons; or
 - (d) dealing with an emergency involving risk of substantial loss of, or substantial damage to, property; or
 - (e) if a national emergency declaration is in force—dealing with the emergency to which the national emergency declaration relates.
- (2) In proceedings for an offence against section 192, 193 or 194, the burden of proving any of the matters referred to in subsection (1) lies on the defendant.
- (3) In proceedings for a civil penalty order for a contravention of subsection 195(1), the burden of proving any of the matters referred to in subsection (1) of this section lies on the defendant.

Section 197

197 Causing interference etc.

A person must not engage in conduct that will result, or is likely to result, in:

- (a) substantial interference; or
 - (b) substantial disruption; or
 - (c) substantial disturbance;
- to radiocommunications:
- (d) within Australia; or
 - (e) between a place in Australia and a place outside Australia.

Civil penalty: 500 penalty units.

198 Transmission of false information

A person must not, in a transmission made by a transmitter operated by the person, make a statement, or convey information, with intention of inducing a false belief that:

- (a) the person or any other person is dying, has died, is being injured or has been injured; or
- (b) property is being, or has been, destroyed or damaged; or
- (c) there is a risk of the occurrence of an event referred to in paragraph (a) or (b); or
- (d) there has been, is or is to be a plan, proposal, attempt, conspiracy, threat to do, or omit to do, an act, being an act or omission that is likely to result in the occurrence of an event referred to in paragraph (a) or (b).

Penalty:

- (a) if the offender is an individual—imprisonment for 5 years; or
- (b) otherwise—5,000 penalty units.

199 Transmission likely to cause explosion

- (1) A person must not use a transmitter in a manner that the person knows is likely to cause an explosion.

Penalty:

Section 200

- (a) if the offender is an individual—imprisonment for 5 years; or
 - (b) otherwise—5,000 penalty units.
- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

200 Imputed knowledge

For the purposes of establishing a contravention of section 192, 193 or 194, paragraph 195(1)(b) or section 199, if, having regard to:

- (a) a person's abilities, experience, qualifications and other attributes; and
- (b) all the circumstances surrounding the alleged contravention; the person ought reasonably to have known that using the transmitter in question, or doing the act or thing in question, was a contravention of that provision, the person is taken to have known that using the transmitter, or doing the act or thing, was such a contravention.

201 Operation of laws of States or Territories

This Part is not intended to exclude or limit the concurrent operation of:

- (a) the law of a State or Territory; or
- (b) regulations, Ordinances or other instruments of a legislative character made under an Act other than this Act.

Part 4.3—Settlement of interference disputes

Division 1—Conciliators

202 Conciliator

For the purposes of this Act, ***conciliator*** means a person who holds an accreditation of a kind specified in the legislative rules.

Division 2—Referral of matters to conciliators

205 Referral of complaints to conciliators

- (1) If a complaint in writing is made to the ACMA to the effect that:
 - (a) a person has engaged, is engaging or proposes to engage in conduct (including any act and any refusal or omission to act) that has caused, is causing or is likely to cause:
 - (i) interference or risk of interference to radiocommunications; or
 - (ii) any other disruption or disturbance, or risk of disruption or disturbance, to radiocommunications; and
 - (b) the interests of the complainant have been, are or are likely to be affected by the conduct;the ACMA may refer the matter to a conciliator.
- (2) If the ACMA decides not to refer a complaint to a conciliator, the ACMA must give to the complainant a written notice informing the complainant of the decision and the reasons for the decision.
- (3) A reference in this section to being engaged in conduct includes a reference to being involved in, or contributing to, that conduct.

206 Referral of other matters to conciliators

- (1) If it appears to the ACMA that, even though a complaint has not been made under subsection 205(1):
 - (a) a person has engaged, is engaging or is proposing to engage in disputed conduct; and
 - (b) the interests of another person have been, are or are likely to be affected by the conduct;the ACMA may refer the matter to a conciliator.
- (2) A reference in this section to being engaged in disputed conduct includes a reference to being involved in, or contributing to, that conduct.

Section 207

207 Consideration of whether to refer a matter

- (1) In considering whether to refer a matter to a conciliator, the ACMA must have regard to all matters it thinks relevant.
- (2) Without limiting subsection (1), the ACMA must have regard to:
 - (a) whether, in the ACMA's opinion:
 - (i) the matter is trivial; or
 - (ii) the person whose interests allegedly have been, are being or are likely to be affected does not wish the matter to be referred to a conciliator; and
 - (b) if the matter arises from a complaint to the ACMA—whether, in the ACMA's opinion:
 - (i) the complaint is frivolous or vexatious or was not made in good faith; or
 - (ii) the interests of the complainant have not been, are not being or are not likely to be affected by the conduct in question; or
 - (iii) there is some other remedy that is reasonably available to the complainant; or
 - (iv) the complainant has made reasonable efforts to negotiate a resolution of the matter.

Division 3—The conciliation process

208 Conciliator may effect settlement in relation to disputed conduct

Subject to section 209, a conciliator to whom a matter is referred under Division 2 must:

- (a) inquire into the disputed conduct to which the matter relates; and
- (b) try to effect a settlement of the matter; and
- (c) if the conciliator cannot effect a settlement—as soon as practicable, give to the ACMA a written report setting out:
 - (i) the conciliator's recommendations for resolving the matter; and
 - (ii) the reasons for those recommendations.

209 Conciliator may decide not to make inquiry

- (1) A conciliator may decide not to inquire into disputed conduct to which the matter relates, or, if the conciliator has commenced to inquire into the conduct, decide not to continue the inquiry, if:
 - (a) the conciliator believes that:
 - (i) the matter is trivial; or
 - (ii) the person whose interests allegedly have been, are being, or are likely to be affected does not wish the inquiry to be made or continued (as the case may be); or
 - (b) if the inquiry arises from a complaint to the ACMA—the conciliator believes that:
 - (i) the complaint is frivolous or vexatious or was not made in good faith; or
 - (ii) the interests of the complainant have not been, are not being or are not likely to be affected by the conduct; or
 - (iii) there is some other remedy that is reasonably available to the complainant; or
 - (iv) the complainant has made reasonable efforts to negotiate a resolution of the matter.

Section 210

- (2) If a conciliator decides not to inquire into, or not to continue to inquire into, conduct in respect of which a complaint was made, the conciliator must:
 - (a) give the complainant written notice of the decision and the reasons for the decision; and
 - (b) give to the ACMA a written report on the matter that includes the information referred to in paragraph (a).
- (3) A report under paragraph (2)(b) must be given as soon as practicable after it is prepared.

210 Compulsory conference

- (1) For the purposes of conducting an inquiry into, or trying to effect a settlement of, a matter under section 208, a conciliator may direct a person referred to in subsection (2) to attend, at a time and place specified in the notice, a conference presided over by the conciliator.
- (2) A direction may be given to:
 - (a) if the matter arose as a result of a complaint under subsection 205(1)—the complainant; or
 - (b) the person whose disputed conduct led to the inquiry; or
 - (c) any other person whose presence at the conference the conciliator thinks is reasonably likely to be conducive to settling the matter.
- (3) A direction is to be given by written notice given to the person concerned.
- (4) The person is entitled to be paid by the Commonwealth any allowances for the expenses of a person's attendance that are determined by the ACMA and published in the *Gazette*.
- (5) The person must not:
 - (a) fail to attend as required by the direction; or

Section 211

- (b) fail to attend and report himself or herself from day to day unless excused, or released from further attendance, by the conciliator.

Penalty: 50 penalty units.

- (5A) Subsection (5) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5A) (see subsection 13.3(3) of the *Criminal Code*).

- (6) Evidence of anything said or of the production of any document at a conference under this section is not admissible:
- (a) in any court (whether or not exercising federal jurisdiction); or
 - (b) in proceedings before a person authorised by a law of the Commonwealth or of a State or Territory, or by consent of parties, to hear evidence;
- except in a prosecution for an offence against section 136.1 or 137.1 of the *Criminal Code* that relates to this Act.

211 Protection from civil actions

- (1) Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because a statement was made in good faith to a conciliator in connection with an inquiry into disputed conduct.
- (2) A reference in subsection (1) to making a statement includes a reference to giving a document or information.

Division 4—Directions

212 ACMA may issue directions

- (1) If the ACMA:
 - (a) receives a conciliator's report in relation to a matter under paragraph 208(c); and
 - (b) is satisfied that, in order to prevent the disputed conduct to which the matter relates from causing:
 - (i) interference, or risk of interference, to radiocommunications; or
 - (ii) any other disruption or disturbance, or risk of disruption or disturbance, to radiocommunications;a person to whom this section applies must take specified action, or refrain from taking specified action;the ACMA may issue a written direction to the person to take that action within a specified period, or to refrain from taking that action, as the case may be.
- (2) In issuing a direction the ACMA must have regard to the conciliator's report.
- (3) This section applies to any of the following persons:
 - (a) a person who has engaged, is engaging or proposes to engage in the disputed conduct in question;
 - (b) if the matter in question arose as a result of a complaint under subsection 205(1)—the complainant.
- (4) A reference in this section to being engaged in conduct includes a reference to being involved in, or contributing to, that conduct.
- (5) If the ACMA issues a direction to a person, it must give the person notice of the reasons for that direction.

Note: A decision to issue a direction is reviewable under Part 5.6.

213 Complainants to be kept informed

If:

- (a) the ACMA receives a conciliator's report in relation to a matter under paragraph 208(c); and
- (b) the matter arose as a result of a complaint under subsection 205(1);

the ACMA must, by written notice, inform the complainant of:

- (c) any direction issued under section 212 in relation to the matter (other than a direction issued to the complainant); or
- (d) any decision not to issue a direction under section 212 in relation to the matter, together with the reasons for the decision.

214 Contravention of a direction

A person commits an offence if:

- (a) the person has been issued with a direction under section 212; and
- (b) the person engages in conduct; and
- (c) the person's conduct contravenes the direction.

Penalty: 100 penalty units.

215 Commonwealth not liable for costs

The Commonwealth is not liable for any loss, damage or injury suffered by a person as a result of complying with a direction under section 212.

Division 5—Miscellaneous

216 Offences relating to settlement of interference disputes

It is an offence for a person to:

- (a) refuse to employ another person; or
- (b) dismiss or threaten to dismiss another person from his or her employment; or
- (c) prejudice, or threaten to prejudice another person in his or her employment; or
- (d) intimidate or coerce or impose any pecuniary or other penalty on, another person;

because that other person:

- (e) has made, or proposes to make, a complaint of the kind referred to a conciliator under section 205; or
- (f) has given, or proposes to give, information or documents to a third person exercising any power or performing any function under this Part; or
- (g) has attended, or proposes to attend, a conference held under section 210.

Penalty: Imprisonment for 6 months.

217 Operation of State and Territory laws

This Part is not intended to affect the operation of a law of a State or Territory if the law is capable of operating concurrently with this Part.

Part 4.4—Restricted use zones

Division 1—Declarations of emergency

219 Declaration of period of emergency

- (1) Subject to section 220, the Governor-General may, by Proclamation, declare that a period specified in the Proclamation will be a period of emergency.
- (2) The period must not be expressed to commence on a day earlier than the day on which the Proclamation is published in the *Gazette*.
- (3) The period may not exceed 3 months.

220 Circumstances in which Proclamation may be made

The Governor-General may not make a Proclamation under section 219 unless satisfied that it is necessary in the public interest to do so due to an emergency involving:

- (a) prejudice to the security or defence of Australia; or
- (b) a serious threat to the environment; or
- (c) risk of death of, or injury to, persons; or
- (d) risk of substantial loss of, or substantial damage to, property.

221 Termination of period of emergency

- (1) If, at any time during a period of emergency, the Governor-General becomes satisfied that it is no longer necessary in the public interest that the period of emergency should continue, the Governor-General must, by a new Proclamation, revoke the Proclamation that declared the period of emergency.
- (2) The revocation terminates the period of emergency.

Section 221A

221A Effect of a national emergency declaration

If a national emergency declaration is in force:

- (a) the declaration is taken to be a Proclamation under section 219 for the purposes of this Act; and
- (b) the declaration is taken to have been published in the Gazette on the day on which the declaration commenced; and
- (c) the period of emergency is the period specified in the declaration for the purposes of subparagraph 11(4)(b)(iii) of the *National Emergency Declaration Act 2020* or that period as extended or further extended under section 12 of that Act; and
- (d) subsection 219(3) does not apply to the declaration; and
- (e) the period of emergency is terminated on the day the declaration ceases to be in force.

Division 2—Restrictive orders

222 Restrictive orders

- (1) During a period of emergency, the Minister may, in writing, make a restrictive order that prohibits or regulates:
 - (a) the use, within a specified area, of radiocommunications transmitters; or
 - (b) the operation of transmitters within a specified area if such use is, in the Minister's view, likely to interfere with radiocommunications.
- (2) The Minister:
 - (a) must not make the order unless guidelines are in force under section 230; and
 - (b) in making the order, must comply with the guidelines in force under section 230.
- (3) The order comes into force:
 - (a) on the day it is published under subsection 223(1); or
 - (b) if a later day (being a day during a period of emergency) is specified in the order—on that later day.

223 Publication of restrictive orders

- (1) A copy of the order must be published in the *Gazette*.
- (2) As soon as practicable after making the order, the Minister:
 - (a) must cause a copy of the order to be published in one or more newspapers circulating generally in the capital city of the State or Territory in which the order has effect; and
 - (b) may, if the Minister thinks fit, cause particulars of the order to be published by radio or television broadcast.
- (3) A failure to comply with paragraph (2)(a) does not affect the order's validity.

Section 224

224 Application of orders to broadcasting

A restrictive order does not apply to:

- (a) a broadcasting station; or
 - (b) a fixed transmitter the use or operation of which is essential to the operation of a broadcasting station;
- unless the order is expressed so to apply.

225 Revocation of orders

A restrictive order is taken to be revoked:

- (a) at the end of the period of emergency during which it came into force; or
- (b) if the order has an extended operation under section 226—at the end of the last period of emergency during which the order continues to be in force.

226 Orders may have extended operation

If, during a period of emergency, a Proclamation under subsection 219(1) declares that an emergency will exist during a later period commencing immediately after the end of the first-mentioned period, any restrictive order in force immediately before the end of the first-mentioned period (including an order in force by virtue of previous applications of this subsection) continues in force unless it is:

- (a) revoked as provided for by subsection 33(3) of the *Acts Interpretation Act 1901*; or
- (b) disallowed under section 42 of the *Legislation Act 2003*; or
- (c) set aside by a court.

227 Contravention of orders

- (1) A person must not contravene a restrictive order.

Penalty: 300 penalty units.

Section 228

- (1A) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

- (2) A person does not contravene subsection (1) if the person contravenes a restrictive order in the reasonable belief that the act or omission constituting the contravention is necessary for the purposes of:
- (a) securing the safety of a vessel, aircraft or space object that was in danger; or
 - (b) dealing with an emergency involving a serious threat to the environment; or
 - (c) dealing with an emergency involving risk of death of, or injury to, persons; or
 - (d) dealing with an emergency involving risk of substantial loss of, or substantial damage to, property.
- (3) In proceedings for an offence against subsection (1), the burden of proving any of the matters referred to in subsection (2) lies on the defendant.
- (4) Nothing in subsection (2) limits the scope of the expression “reasonable excuse” in subsection (1A).

228 Orders to prevail over inconsistent laws

- (1) Subject to subsection (2), a restrictive order has effect despite any law of the Commonwealth (excluding this Act but including regulations made under this Act), or any law of a State or Territory, that is inconsistent with the order.
- (2) This Part does not affect the operation of a law of a State or Territory so far as the law is capable of operating concurrently with this Part.

229 Restrictive orders are legislative instruments

A restrictive order is a legislative instrument.

Division 3—Guidelines for making restrictive orders

230 Minister may make guidelines

- (1) At any time (whether or not during a period of emergency) the Minister may, by instrument in writing:
 - (a) make guidelines with respect to the exercise of the Minister's powers under section 222 to make restrictive orders; or
 - (b) vary or revoke guidelines made by the Minister under this subsection (including guidelines varied by virtue of one or more previous applications of this subsection).
- (2) A guideline is a legislative instrument.

Chapter 5—Administration and enforcement

231 Outline of this Chapter

- (1) This Chapter provides for various matters dealing with the administration and enforcement of this Act.
- (2) Part 5.1 provides for the ACMA to delegate certain powers to authorities of the Commonwealth.
- (4) Part 5.3 allows the ACMA to make advisory guidelines about any aspect of radiocommunication or radio emission.
- (5) Part 5.4 provides for persons to be accredited to issue certificates under this Act.
- (6) Part 5.5 deals with matters relating to the enforcement of this Act.
- (7) Part 5.6 enables specified decisions under this Act to be reconsidered by the ACMA and reviewed by the AAT.
- (8) Part 5.7 provides for the ACMA to determine charges for things done by the ACMA, including spectrum access charges for spectrum licences.

Part 5.1—Delegation

238 Delegation

- (1) The powers conferred on the ACMA by subsection (2), and on a Division of the ACMA by subsection (3), are in addition to the powers conferred by sections 50, 51 and 52 of the *Australian Communications and Media Authority Act 2005*.
- (2) The ACMA may, by writing, delegate to an authority of the Commonwealth the ACMA's power to issue or cancel certificates of proficiency under Division 5 of Part 3.3.
- (3) If, under section 50 of the *Australian Communications and Media Authority Act 2005*, the ACMA has delegated the power referred to in subsection (2) to a Division of the ACMA, the following provisions have effect:
 - (a) the Division may delegate the power to an authority of the Commonwealth;
 - (b) subsections 52(2), (3), (4), (5) and (6) of the *Australian Communications and Media Authority Act 2005* have effect as if the delegation by the Division were a delegation under section 52 of that Act.
- (4) If:
 - (a) a power of the ACMA is delegated to an authority of the Commonwealth under subsection (2) or (3); and
 - (b) the authority is established under an Act that permits the authority's powers under that Act to be delegated to another person or body;the power of the ACMA in question may be further delegated under that Act as if it were one of the authority's powers under that Act.

Part 5.3—Advisory guidelines

262 ACMA may make advisory guidelines

- (1) The ACMA may make written advisory guidelines about any aspect of radiocommunication or radio emissions.
- (2) Advisory guidelines, for example, may be made about:
 - (a) any matter in respect of which equipment rules may be made; or
 - (b) the use, construction, design or performance of any thing; or
 - (c) interference with radiocommunications; or
 - (d) frequency allocation and coordination.
- (3) The ACMA must:
 - (a) give a copy of each advisory guideline it makes to the Minister; and
 - (b) publish each such advisory guideline in the way it thinks fit.

Section 263

Part 5.4—Accreditation

263 ACMA may accredit persons

- (1) The ACMA may, by written notice, give a person an accreditation of a particular kind.
- (2) An accreditation is to be given in accordance with the accreditation rules.
- (3) An accreditation comes into force on the day specified in the notice of accreditation.

Note: A decision to refuse to give an accreditation is reviewable under Part 5.6.

264 Conditions of accreditation

An accreditation of a particular kind is subject to:

- (a) such conditions relating to accreditations of that kind as are specified in the accreditation rules; and
- (b) such conditions (if any) as the ACMA specifies in the instrument of accreditation.

Note: A decision to specify a condition in an instrument of accreditation is reviewable under Part 5.6.

264A Withdrawal of accreditation

Scope

- (1) This section applies if an accreditation given to a person is in force.

Withdrawal

- (2) The ACMA may, by written notice given to the person, withdraw the accreditation if the ACMA is satisfied that:

Section 265

- (a) the accreditation is no longer in accordance with the accreditation rules, as in force at the time the notice is given (whether or not the accreditation rules have been amended since the accreditation was given); or
- (b) the person has contravened a condition of the accreditation.

Note: A decision to withdraw an accreditation is reviewable under Part 5.6.

- (3) A notice under subsection (2) must set out the reasons for withdrawing the accreditation.
- (4) In deciding whether to withdraw the accreditation, the ACMA must comply with the accreditation rules.

265 Procedure for withdrawing accreditation

- (1) Before withdrawing a person's accreditation, the ACMA must give the person written notice:
 - (a) stating that the ACMA is considering withdrawing the accreditation; and
 - (b) inviting the person to make representations to the ACMA about the matter on or before the day specified in the notice.
- (2) The day specified under paragraph (1)(b) must be at least 14 days after the day on which the notice is given.
- (3) The ACMA must give due consideration to any representations made by or on behalf of the person on or before that day.

266 Accreditation rules

- (1) The ACMA may, by legislative instrument, make rules (***accreditation rules***) prescribing matters required or permitted by this Act to be prescribed by the accreditation rules.
- (2) The accreditation rules may deal with the accreditation process.
- (3) The accreditation rules may provide for procedures that must be followed in relation to deciding whether to accredit persons.

Section 266A

- (4) The accreditation rules may provide for procedures that must be followed in relation to deciding whether to withdraw the accreditation of persons.
- (5) The accreditation rules may provide for:
 - (a) the kinds of accreditation; and
 - (b) in respect of each kind of accreditation—the qualifications and other requirements required before a person can be given that kind of accreditation.
- (6) The accreditation rules may make provision in relation to a matter by conferring a power on the ACMA.

Example: The power to approve a form.

266A ACMA determination in relation to certificates

The ACMA may, by legislative instrument, determine the conditions that are to apply in relation to the issuing of a certificate under this Act.

Part 5.5—Enforcement

Division 1—Introduction

267 Simplified outline of this Part

- If a person has contravened, or is contravening, a civil penalty provision of this Act, the ACMA may give the person a remedial direction.
- A civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.
- Infringement notices may be given under Part 5 of the Regulatory Powers Act for alleged contraventions of certain provisions of this Act.
- The ACMA may accept an enforceable undertaking under Part 6 of the Regulatory Powers Act that relates to a provision of this Act.
- Injunctions may be granted under Part 7 of the Regulatory Powers Act in relation to contraventions of certain provisions of this Act.
- Forfeiture notices may be given for alleged contraventions of certain provisions of this Act.
- A provision is subject to monitoring under Part 2 of the Regulatory Powers Act if it is:
 - (a) an offence against Part 4.1 of this Act; or
 - (b) a civil penalty provision of this Act; or
 - (c) an offence against subsection 284J(8) of this Act.

Section 267

- Information given in compliance, or purported compliance, with subsection 284J(8) or a provision of Part 4.1 is subject to monitoring under Part 2 of the Regulatory Powers Act.
- An offence against this Act, or a civil penalty provision of this Act, is subject to investigation under Part 3 of the Regulatory Powers Act.
- Inspectors appointed under this Act have the following additional powers:
 - (a) the power to give directions to a holder of an apparatus licence or a spectrum licence in relation to managing interference with radiocommunications;
 - (b) the power to enter premises to adjust transmitters in emergencies;
 - (c) the power to direct a person to operate a transmitter;
 - (d) the power to require a person to produce an apparatus licence, a spectrum licence, a third party authorisation, a certificate or a permit;
 - (e) the power to require a person to produce a copy of a record of an authorisation;
 - (f) the power to require a person to produce a record the retention of which is required by the equipment rules.
- A court may order the forfeiture to the Commonwealth of anything used, or otherwise involved, in:
 - (a) the commission of an offence against this Act; or
 - (b) a contravention of a civil penalty provision of this Act.
- The ACMA may issue a public warning notice.

Note: Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014* (see section 5).

Division 2—Enforcement**268 Remedial directions—breach of civil penalty provision***Scope*

- (1) This section applies if a person has contravened, or is contravening, a civil penalty provision of this Act.

Remedial direction

- (2) The ACMA may give the person a written direction requiring the person to take specified action directed towards ensuring that the person does not contravene the provision, or is unlikely to contravene the provision, in the future.

Note: A decision to give a direction is reviewable under Part 5.6.

- (3) The following are examples of the kinds of direction that may be given to a person under subsection (2):
- (a) a direction that the person implement effective administrative systems for monitoring compliance with a civil penalty provision of this Act;
 - (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 civil penalty provision of this Act, in so far as those requirements affect the employees, agents or contractors concerned.
- (4) A person must not contravene a direction under subsection (2).

Civil penalty: 50 penalty units.

269 Civil penalty provisions—enforcement

Enforceable civil penalty provision

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

- (2) For the purposes of Part 4 of the Regulatory Powers Act, the ACMA is an authorised applicant in relation to the civil penalty provisions of this Act.

Relevant court

- (3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:
- (a) the Federal Court;
 - (b) the Federal Circuit and Family Court of Australia.

External Territories

- (4) Part 4 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

Geographical application

- (5) Sections 16, 17, 17A and 18 have effect as if a reference in those sections to this Act included a reference to Part 4 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1) of this section.

Sudden or extraordinary emergency

- (6) A person is not liable under Part 4 of the Regulatory Powers Act to have a civil penalty order made against the person for a contravention of a civil penalty provision of this Act if:
- (a) the person carries out the conduct constituting the contravention in response to circumstances of sudden or extraordinary emergency; and
 - (b) the person believes on reasonable grounds that:
 - (i) circumstances of sudden or extraordinary emergency exist; and
 - (ii) contravening the provision is the only reasonable way to deal with the emergency; and
 - (iii) the conduct is a reasonable response to the emergency.
- Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).
- (7) Without limiting subsection (6), if a national emergency declaration was in force at the time the person carried out the conduct, the emergency to which the declaration relates is taken, for the purposes of that subsection, to be a circumstance of sudden or extraordinary emergency.

270 Infringement notices*Provisions subject to an infringement notice*

- (1) The following provisions of this Act are subject to an infringement notice under Part 5 of the Regulatory Powers Act:
- (a) subsection 46(3);
 - (b) subsection 47(3);
 - (c) subsection 113(1);
 - (d) section 117;
 - (e) subsection 118(1);
 - (f) subsection 160(5);
 - (g) subsection 160(6);
 - (h) subsection 160(7);

Section 270

- (i) subsection 160(9);
- (j) subsection 165(1);
- (k) subsection 170(1);
- (l) subsection 170(2);
- (m) subsection 170(3);
- (n) subsection 188(2);
- (o) subsection 195(1);
- (p) section 197;
- (q) subsection 284F(4);
- (r) subsection 284S(4);
- (s) subsection 300(4);
- (t) subsection 300A(1);
- (u) subsection 300A(3);
- (v) subsection 300A(5);
- (w) subsection 300B(2);
- (x) section 300C.

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

Infringement officer

- (2) For the purposes of Part 5 of the Regulatory Powers Act, each of the following:
- (a) a member of the staff of the ACMA authorised, in writing, by the ACMA for the purposes of this subsection;
 - (b) the Chair of the ACMA;
- is an infringement officer in relation to the provisions mentioned in subsection (1).

Relevant chief executive

- (3) For the purposes of Part 5 of the Regulatory Powers Act, the Chair of the ACMA is the relevant chief executive in relation to the provisions mentioned in subsection (1).

Section 270

- (4) The relevant chief executive may, in writing, delegate any or all of the relevant chief executive's powers and functions under Part 5 of the Regulatory Powers Act to a person who is:
 - (a) a member of the staff of the ACMA; and
 - (b) an SES employee or an acting SES employee.
- (5) A person exercising powers or performing functions under a delegation under subsection (4) must comply with any directions of the relevant chief executive.

Withdrawal of notice

- (6) For the purposes of Part 5 of the Regulatory Powers Act, as it applies to the provisions mentioned in subsection (1), if:
 - (a) an infringement notice has been given to a person under that Part, as it applies to those provisions; and
 - (b) the relevant chief executive is deciding whether or not to withdraw the infringement notice;

section 106 of that Act has effect as if it provided that, when so deciding, the relevant chief executive may (in addition to the matters set out in paragraph 106(3)(b) of that Act) take into account whether:

- (c) the owner of a thing has agreed, in accordance with a forfeiture notice, to forfeit the thing to the Commonwealth; and
- (d) the forfeiture notice relates to a contravention that is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention in the infringement notice.

Effect of payment of amount

- (7) If:
 - (a) a person is given an infringement notice for an alleged contravention of a civil penalty provision of this Act; and
 - (b) the person pays the amount stated in the notice before the end of the period referred to in paragraph 104(1)(h) of the Regulatory Powers Act; and

Section 271

(c) the notice has not been withdrawn;
the person may not be prosecuted in a court for an offence that is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention in the notice.

- (8) Subsection (7) has effect in addition to section 107 of the Regulatory Powers Act.

External Territories

- (9) Part 5 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

Geographical application

- (10) Sections 16, 17, 17A and 18 have effect as if a reference in those sections to this Act included a reference to Part 5 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1) of this section.

271 Enforceable undertakings

Enforceable provisions

- (1) The provisions of this Act are enforceable under Part 6 of the Regulatory Powers Act.

Authorised person

- (2) For the purposes of Part 6 of the Regulatory Powers Act, the ACMA is an authorised person in relation to the provisions mentioned in subsection (1).

Relevant court

- (3) For the purposes of Part 6 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):

Section 272

- (a) the Federal Court;
- (b) the Federal Circuit and Family Court of Australia.

Publication of undertaking

- (4) The following provisions have effect:
 - (a) the ACMA must publish an undertaking given in relation to a provision mentioned in subsection (1) on the ACMA's website;
 - (b) the legislative rules may provide that the ACMA must also publish an undertaking given in relation to a provision mentioned in subsection (1) in accordance with the legislative rules.

External Territories

- (5) Part 6 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

Geographical application

- (6) Sections 16, 17, 17A and 18 have effect as if a reference in those sections to this Act included a reference to Part 6 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1) of this section.

272 Injunctions*Enforceable provisions*

- (1) The following provisions of this Act are enforceable under Part 7 of the Regulatory Powers Act:
 - (a) subsection 46(3);
 - (b) subsection 47(3);
 - (c) subsection 113(1);
 - (d) section 117;
 - (e) subsection 160(5);

Section 272

- (f) subsection 160(6);
- (g) subsection 160(7);
- (h) subsection 160(9);
- (i) subsection 165(1);
- (j) subsection 170(1);
- (k) subsection 170(2);
- (l) subsection 170(3);
- (m) subsection 176(1);
- (n) subsection 176(2);
- (o) subsection 176(3);
- (p) subsection 176(4);
- (q) subsection 186(2);
- (r) subsection 188(2);
- (s) subsection 195(1);
- (t) section 197;
- (u) subsection 227(1);
- (v) subsection 284S(4);
- (w) subsection 300A(1);
- (x) subsection 300A(3);
- (y) subsection 300A(5);
- (z) subsection 300B(2);
- (za) section 300C.

Note: Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions.

Authorised person

- (2) The ACMA is an authorised person in relation to the provisions mentioned in subsection (1) for the purposes of Part 7 of the Regulatory Powers Act.

Section 272

Relevant court

- (3) For the purposes of Part 7 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):
- (a) the Federal Court;
 - (b) the Federal Circuit and Family Court of Australia.

External Territories

- (4) Part 7 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

Geographical application

- (5) Sections 16, 17, 17A and 18 have effect as if a reference in those sections to this Act included a reference to Part 7 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1) of this section.

Division 3—Forfeiture notices

273 Provisions subject to a forfeiture notice

The following provisions of this Act are subject to a forfeiture notice under this Division:

- (a) subsection 46(3);
- (b) subsection 47(3);
- (c) subsection 160(5);
- (d) subsection 160(6);
- (e) subsection 160(7);
- (f) subsection 165(1);
- (g) subsection 170(1);
- (h) subsection 170(2);
- (i) subsection 170(3);
- (j) subsection 176(1);
- (k) subsection 176(2);
- (l) subsection 176(3);
- (m) subsection 176(4);
- (n) subsection 195(1);
- (o) section 197.

274 When a forfeiture notice may be given

- (1) If a designated forfeiture officer believes on reasonable grounds that:
 - (a) a person has contravened a provision subject to a forfeiture notice under this Division; and
 - (b) a thing was used, or otherwise involved, in the contravention of the provision;the designated forfeiture officer may give to the person a forfeiture notice for the alleged contravention.
- (2) The forfeiture notice must be expressed to relate to the thing.

Section 275

- (3) The forfeiture notice must be given within 12 months after the day on which the contravention is alleged to have taken place.
- (4) A designated forfeiture officer may give a person a single forfeiture notice relating to multiple alleged contraventions (whether of the same provision or different provisions).
- (5) A person must not be given:
 - (a) a forfeiture notice; and
 - (b) an infringement notice under Part 5 of the Regulatory Powers Act;that relate to the same alleged contravention.

275 Matters to be included in a forfeiture notice

- (1) A forfeiture notice must:
 - (a) be identified by a unique number; and
 - (b) state the day on which the notice is given; and
 - (c) state the name of the person to whom the notice is given; and
 - (d) state:
 - (i) the name and contact details of the person who gave the notice; and
 - (ii) that the person is a designated forfeiture officer; and
 - (e) give brief details of the alleged contravention or contraventions to which the notice relates, including:
 - (i) the provision or the provisions that were allegedly contravened; and
 - (ii) the maximum penalty that a court could impose for each contravention, if the provision or those provisions were contravened; and
 - (iii) the time (if known) and day of, and the place of, each alleged contravention; and
 - (f) describe the thing to which the notice relates; and
 - (g) state that, if, within 28 days after the day the notice is given, the owner of the thing agrees with the ACMA (on behalf of the Commonwealth) to forfeit the thing to the

Section 276

Commonwealth, then (unless the notice is withdrawn) proceedings seeking a civil penalty order or orders will not be brought in relation to the alleged contravention or contraventions; and

- (h) state that agreeing to forfeit the thing to the Commonwealth is not an admission of guilt or liability; and
 - (i) state that the person to whom the notice is given may apply to the ACMA to have the period specified in the notice extended; and
 - (j) state that the owner of the thing may choose not to agree to forfeit the thing to the Commonwealth and, if the owner so chooses, proceedings seeking a civil penalty order or orders may be brought in relation to the alleged contravention or contraventions; and
 - (k) set out how the notice can be withdrawn; and
 - (l) state that if the notice is withdrawn, proceedings seeking a civil penalty order or orders may be brought in relation to the alleged contravention or contraventions; and
 - (m) state that the person to whom the notice is given may make written representations to the ACMA seeking the withdrawal of the notice.
- (2) To avoid doubt, the person to whom a forfeiture notice is given may be the owner of the thing to which the notice relates.
- (3) If:
- (a) a forfeiture notice relating to a thing is given to a person; and
 - (b) the owner of the thing agrees, in accordance with the notice, to forfeit the thing to the Commonwealth;
- the owner is not entitled to revoke the agreement.

276 Extension of time to agree to forfeit a thing to the Commonwealth

- (1) A person to whom a forfeiture notice has been given may apply to the ACMA for an extension of the period referred to in paragraph 275(1)(g).

Section 277

- (2) If the application is made before the end of that period, the ACMA may, in writing, extend that period. The ACMA may do so before or after the end of that period.
- (3) If the ACMA extends that period, a reference in this Division, or in a notice or other instrument under this Division, to the period referred to in paragraph 275(1)(g) is taken to be a reference to that period so extended.
- (4) If the ACMA does not extend that period, a reference in this Division, or in a notice or other instrument under this Division, to the period referred to in paragraph 275(1)(g) is taken to be a reference to the period that ends on the later of the following days:
 - (a) the day that is the last day of the period referred to in paragraph 275(1)(g);
 - (b) the day that is 7 days after the day the person was given notice of the ACMA's decision not to extend.
- (5) The ACMA may extend that period more than once under subsection (2).

277 Withdrawal of a forfeiture notice*Representations seeking withdrawal of notice*

- (1) A person to whom a forfeiture notice has been given may make written representations to the ACMA seeking the withdrawal of the notice.

Withdrawal of notice

- (2) The ACMA may withdraw a forfeiture notice given to a person, so long as the thing to which the notice relates has not been forfeited to the Commonwealth.

Note: For forfeiture, see section 280.

- (3) For the purposes of subsection (2), it is immaterial whether the person has made representations seeking the withdrawal of the notice.

Section 277

- (4) In deciding whether or not to withdraw a forfeiture notice (the ***relevant forfeiture notice***), the ACMA:
- (a) must take into account any written representations seeking the withdrawal that were given by the person to the ACMA; and
 - (b) may take into account the following:
 - (i) whether a court has previously imposed a penalty on the person for a contravention of a provision subject to a forfeiture notice under this Division;
 - (ii) the circumstances of the alleged contravention or contraventions;
 - (iii) whether the person has paid an amount, stated in an infringement notice under Part 5 of the Regulatory Powers Act, for a contravention that is constituted by conduct that is substantially the same as the conduct alleged to constitute a contravention in the relevant forfeiture notice;
 - (iv) whether the owner of the thing has agreed to forfeit another thing to the Commonwealth, in accordance with another forfeiture notice, for a contravention that is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute a contravention in the relevant forfeiture notice;
 - (v) any other matter the ACMA considers relevant.

Notice of withdrawal

- (5) Notice of the withdrawal of a forfeiture notice must be given to the person to whom the forfeiture notice was given. The withdrawal notice must state:
- (a) the person's name and address; and
 - (b) the day the forfeiture notice was given; and
 - (c) the identifying number of the forfeiture notice; and
 - (d) that the forfeiture notice is withdrawn; and

Section 278

- (e) that proceedings seeking a civil penalty order or orders may be brought in relation to the alleged contravention or contraventions.

278 Effect of agreeing to forfeit a thing to the Commonwealth

If:

- (a) a person is given a forfeiture notice for:
 - (i) an alleged contravention; or
 - (ii) multiple alleged contraventions; and
- (b) the owner of the thing to which the notice relates agrees, in accordance with the notice, to forfeit the thing to the Commonwealth; and
- (c) the notice has not been withdrawn;

then:

- (d) any liability of the person for the alleged contravention or contraventions is discharged; and
- (e) proceedings seeking a civil penalty order or orders may not be brought in relation to the alleged contravention or contraventions; and
- (f) the person is not regarded as having admitted guilt or liability for the alleged contravention or contraventions; and
- (g) the person may not be prosecuted in a court for an offence that is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute a contravention in the notice.

279 The ACMA may take possession of a thing

(1) If:

- (a) a forfeiture notice relating to a thing is given to a person; and
- (b) the owner of the thing agrees, in accordance with the notice, to forfeit the thing to the Commonwealth; and
- (c) the notice has not been withdrawn;

then:

- (d) the ACMA may take possession of the thing; and
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Section 279

- (e) if the ACMA does so—the ACMA must give the owner a receipt for the thing taken into possession.

(2) If:

- (a) the ACMA withdraws a forfeiture notice relating to a thing; and
- (b) the owner of the thing has already agreed, in accordance with the notice, to forfeit the thing to the Commonwealth; and
- (c) the ACMA has taken possession of the thing under subsection (1);

then:

- (d) the ACMA must take all reasonable steps to return the thing to the owner; and
- (e) the agreement ceases to have effect.

(3) If:

- (a) a forfeiture notice relating to a thing is given to a person; and
- (b) the owner of the thing does not have possession of the thing when the notice is given; and
- (c) the owner of the thing agrees, in accordance with the notice, to forfeit the thing to the Commonwealth; and
- (d) the owner of the thing takes possession of the thing so as to enable the ACMA to take possession of the thing under subsection (1); and
- (e) at the time when the owner takes possession of the thing, the notice had not been withdrawn;

sections 47 and 160 and subsections 175(4) and 176(4) do not apply to the owner's possession of the thing until whichever of the following events happens first:

- (f) the ACMA takes possession of the thing under subsection (1);
- (g) the notice is withdrawn.

(4) If:

- (a) the ACMA has purported to take possession of a thing under subsection (1); and

Section 280

- (b) the ACMA was not entitled to take possession of the thing under that subsection;
the ACMA must take all reasonable steps to return the thing to the owner of the thing.

280 Forfeiture of a thing to the Commonwealth

- (1) If:
- (a) a forfeiture notice relating to a thing is given to a person; and
 - (b) the owner of the thing agrees, in accordance with the notice, to forfeit the thing to the Commonwealth; and
 - (c) the notice has not been withdrawn; and
 - (d) the ACMA has taken possession of the thing under subsection 279(1); and
 - (e) at least 90 days have passed since the ACMA gave the owner a receipt under paragraph 279(1)(e) for the thing;
- the ACMA may declare, in writing, that the thing is forfeited to the Commonwealth.
- (2) The ACMA must give a copy of the declaration to the owner of the thing.

Deemed forfeiture

- (3) If:
- (a) a forfeiture notice relating to a thing is given to a person; and
 - (b) the owner of the thing agrees, in accordance with the notice, to forfeit the thing to the Commonwealth; and
 - (c) the ACMA has taken possession of the thing under subsection 279(1); and
 - (d) the ACMA has not, within the 120-day period beginning at the start of the day when the ACMA gave the owner a receipt under paragraph 279(1)(e) for the thing, made a declaration under subsection (1) of this section that the thing is forfeited to the Commonwealth; and
 - (e) the notice has not been withdrawn before the end of the 120-day period;

Section 281

then, at the end of the 120-day period, the thing is forfeited to the Commonwealth.

281 Forfeited things may be sold, destroyed or otherwise disposed of

A thing forfeited under section 280:

- (a) may be sold, destroyed or otherwise disposed of in accordance with the directions of the ACMA; and
- (b) pending such directions, must be kept in such custody as the ACMA directs.

282 Effect of this Division

This Division does not:

- (a) require a forfeiture notice to be given to a person for one or more alleged contraventions of one or more provisions subject to a forfeiture notice under this Division; or
- (b) affect the liability of a person for one or more alleged contraventions of one or more provisions subject to a forfeiture notice under this Division if:
 - (i) the person does not comply with a forfeiture notice given to the person for those contraventions; or
 - (ii) a forfeiture notice is not given to the person for those contraventions; or
 - (iii) a forfeiture notice is given to the person for those contraventions and is subsequently withdrawn; or
- (c) prevent the giving of 2 or more forfeiture notices to a person for one or more alleged contraventions of one or more provisions subject to a forfeiture notice under this Division; or
- (d) limit a court's discretion to order the forfeiture to the Commonwealth of a thing used, or otherwise involved, in the contravention of a provision subject to a forfeiture notice under this Division.

283 Designated forfeiture officer

A person is a *designated forfeiture officer* for the purposes of this Act if the person is:

- (a) a member of the staff of the ACMA authorised, in writing, by the ACMA for the purposes of this section; or
- (b) the Chair of the ACMA.

Division 4—Inspectors

284 Inspectors

- (1) A person is an *inspector* for the purposes of this Act if the person is:
- (a) a Commonwealth officer appointed by the ACMA, by written instrument, to be an inspector for the purposes of this Act; or
 - (b) a Commonwealth officer included in a class of Commonwealth officers appointed by the ACMA, by notifiable instrument, to be inspectors for the purposes of this Act; or
 - (c) an eligible State officer appointed by the ACMA, by written instrument, to be an inspector for the purposes of this Act; or
 - (d) an eligible State officer included in a class of eligible State officers appointed by the ACMA, by notifiable instrument, to be inspectors for the purposes of this Act; or
 - (e) a member (other than a special member) of the Australian Federal Police.
- (2) Subsection (1) has effect subject to subsection (3).
- (3) An instrument under paragraph (1)(a), (b), (c) or (d) may specify provisions of this Act or the Regulatory Powers Act in relation to which appointments made by the instrument are to apply, and any such limitation has effect accordingly.

Eligible State officer

- (4) For the purposes of this section, *eligible State officer* means a person who, whether on a full-time or part-time basis, and whether in a permanent capacity or otherwise:
- (a) is in the service or employment of an eligible State or an authority of an eligible State; or
 - (b) holds or performs the duties of any office or position established by or under a law of an eligible State;

Section 284

and includes a member of the police force of an eligible State.

Eligible State

- (5) A State may, by written notice given to the ACMA, consent to be treated as an eligible State for the purposes of this section.
- (6) A notice under subsection (5) may be given on behalf of a State by a Minister of the State.
- (7) If a State consents under subsection (5) to be treated as an eligible State for the purposes of this section, the ACMA must, by notifiable instrument, declare that the State is an *eligible State* for the purposes of this section.

State

- (8) For the purposes of this section, **State** includes:
 - (a) the Australian Capital Territory; and
 - (b) the Northern Territory.

Division 5—Monitoring and investigation powers

284A Monitoring powers

Provisions subject to monitoring

- (1) A provision is subject to monitoring under Part 2 of the Regulatory Powers Act if it is:
- (a) an offence against a provision of Part 4.1 of this Act; or
 - (b) a civil penalty provision of Part 4.1 of this Act; or
 - (c) an offence against subsection 284J(8) of this Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the provisions have been complied with. It includes powers of entry and inspection.

Information subject to monitoring

- (2) Information given in compliance or purported compliance with:
- (a) a provision of Part 4.1; or
 - (b) subsection 284J(8);
- is subject to monitoring under Part 2 of the Regulatory Powers Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

Authorised applicant

- (3) For the purposes of Part 2 of the Regulatory Powers Act, an inspector who:
- (a) is covered by paragraph 284(1)(a), (b), (c) or (d); and
 - (b) is not a member of the police force of a State or Territory;
- is an authorised applicant in relation to the provisions mentioned in subsection (1) of this section and information mentioned in subsection (2) of this section.

Authorised person

- (4) For the purposes of Part 2 of the Regulatory Powers Act, an inspector who:
- (a) is covered by paragraph 284(1)(a), (b), (c) or (d); and
 - (b) is not a member of the police force of a State or Territory;
- is an authorised person in relation to the provisions mentioned in subsection (1) of this section and information mentioned in subsection (2) of this section.

Issuing officer

- (5) For the purposes of Part 2 of the Regulatory Powers Act, each of the following persons is an issuing officer in relation to the provisions mentioned in subsection (1) and information mentioned in subsection (2):
- (a) if a Judge of the Federal Court has consented to act as an issuing officer for the purposes of this Act and that consent is in force—the Judge;
 - (b) if a Judge of the Federal Circuit and Family Court of Australia has consented to act as an issuing officer for the purposes of this Act and that consent is in force—the Judge;
 - (c) a magistrate.

Relevant chief executive

- (6) For the purposes of Part 2 of the Regulatory Powers Act, the Chair of the ACMA is the relevant chief executive in relation to the provisions mentioned in subsection (1) and information mentioned in subsection (2).
- (7) The relevant chief executive may, in writing, delegate the powers and functions mentioned in subsection (8) to a person who is:
- (a) a member of the staff of the ACMA; and
 - (b) an SES employee or an acting SES employee.
- (8) The powers and functions that may be delegated are:

Section 284A

- (a) powers under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1) and information mentioned in subsection (2); and
 - (b) powers and functions under the Regulatory Powers Act that are incidental to a power mentioned in paragraph (a).
- (9) A person exercising powers or performing functions under a delegation under subsection (7) must comply with any directions of the relevant chief executive.

Relevant court

- (10) For the purposes of Part 2 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1) and information mentioned in subsection (2):
 - (a) the Federal Court;
 - (b) the Federal Circuit and Family Court of Australia.

Premises

- (11) For the purposes of Part 2 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1) and information mentioned in subsection (2), each of the following is taken to be premises:
 - (a) a vessel;
 - (b) an aircraft;
 - (c) a space object.
- (12) An authorised person must not enter premises under Part 2 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1) and information mentioned in subsection (2), if the premises are used solely or primarily as a residence.

Person assisting

- (13) An authorised person may be assisted by other persons in exercising powers, or performing functions or duties, under Part 2

Section 284B

of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1) and information mentioned in subsection (2).

Use of force in executing a warrant

- (14) In executing a monitoring warrant:
- (a) an authorised person may use such force against things as is necessary and reasonable in the circumstances; and
 - (b) a person assisting the authorised person may use such force against things as is necessary and reasonable in the circumstances.

External Territories

- (15) Part 2 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1) and information mentioned in subsection (2), extends to every external Territory.

Geographical application

- (16) Sections 16, 17, 17A and 18 have effect as if a reference in those sections to this Act included a reference to Part 2 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1) of this section and information mentioned in subsection (2) of this section.

284B Investigation powers—general

Provisions subject to investigation

- (1) A provision is subject to investigation under Part 3 of the Regulatory Powers Act if it is:
- (a) an offence provision of this Act; or
 - (b) a civil penalty provision of this Act.

Note: ***Offence against this Act*** has an extended meaning (see section 11).

Section 284B

Authorised applicant

- (2) For the purposes of Part 3 of the Regulatory Powers Act, an inspector is an authorised applicant in relation to evidential material that relates to a provision mentioned in subsection (1).

Authorised person

- (3) For the purposes of Part 3 of the Regulatory Powers Act, an inspector is an authorised person in relation to evidential material that relates to a provision mentioned in subsection (1).

Issuing officer

- (4) For the purposes of Part 3 of the Regulatory Powers Act, each of the following persons is an issuing officer in relation to evidential material that relates to a provision mentioned in subsection (1):
- (a) if a Judge of the Federal Court has consented to act as an issuing officer for the purposes of this Act and that consent is in force—the Judge;
 - (b) if a Judge of the Federal Circuit and Family Court of Australia has consented to act as an issuing officer for the purposes of this Act and that consent is in force—the Judge;
 - (c) a magistrate.

Relevant chief executive

- (5) For the purposes of Part 3 of the Regulatory Powers Act, the Chair of the ACMA is the relevant chief executive in relation to evidential material that relates to a provision mentioned in subsection (1).
- (6) The relevant chief executive may, in writing, delegate the powers and functions mentioned in subsection (7) to a person who is:
- (a) a member of the staff of the ACMA; and
 - (b) an SES employee or an acting SES employee.
- (7) The powers and functions that may be delegated are:

Section 284B

- (a) powers under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1); and
 - (b) powers and functions under the Regulatory Powers Act that are incidental to a power mentioned in paragraph (a).
- (8) A person exercising powers or performing functions under a delegation under subsection (6) must comply with any directions of the relevant chief executive.

Relevant court

- (9) For the purposes of Part 3 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to evidential material that relates to a provision mentioned in subsection (1):
 - (a) the Federal Court;
 - (b) the Federal Circuit and Family Court of Australia.

Premises

- (10) For the purposes of Part 3 of the Regulatory Powers Act, as it applies in relation to a provision mentioned in subsection (1), each of the following is taken to be premises:
 - (a) a vessel;
 - (b) an aircraft;
 - (c) a space object.

Person assisting

- (11) An authorised person may be assisted by other persons in exercising powers, or performing functions or duties, under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1).

Disposal

- (12) Part 3 of the Regulatory Powers Act, as it applies in relation to a provision mentioned in subsection (1), has effect as if a reference

Section 284C

in section 68 of that Act to the disposal of a thing included a reference to the disposal of a thing by way of destruction.

Use of force in executing a warrant

- (13) In executing an investigation warrant:
- (a) an authorised person may use such force against things as is necessary and reasonable in the circumstances; and
 - (b) a person assisting the authorised person may use such force against things as is necessary and reasonable in the circumstances.

External Territories

- (14) Part 3 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

Geographical application

- (15) Sections 16, 17, 17A and 18 have effect as if a reference in those sections to this Act included a reference to Part 3 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1) of this section.

284C Identity card

- (1) Part 3 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection 284B(1) of this Act, has effect as if a reference in paragraphs 55(6)(b) and 56(1)(b) of the Regulatory Powers Act to an identity card, when used in relation to an authorised person who is:
- (a) a member of the Australian Federal Police; or
 - (b) a member of the police force of an eligible State (within the meaning of section 284 of this Act);
- were a reference to written evidence of the fact that the authorised person is such a member.

Section 284D

- (2) Section 76 of the Regulatory Powers Act, so far as it applies in relation to a provision mentioned in subsection 284B(1) of this Act, does not apply to an authorised person who is:
- (a) a member of the Australian Federal Police; or
 - (b) a member of the police force of an eligible State (within the meaning of section 284 of this Act).

284D Retention of thing seized etc.

- (1) Section 66 of the Regulatory Powers Act, as it applies in relation to a provision mentioned in subsection 284B(1) of this Act, has effect subject to subsections (2), (3) and (4) of this section.
- (2) If:
- (a) a thing is seized under the Regulatory Powers Act, as it applies in relation to a provision mentioned in subsection 284B(1) of this Act; and
 - (b) proceedings for an offence against this Act are instituted within the period of 60 days after the seizure; and
 - (c) the thing may have been used, or otherwise involved, in the alleged commission of the offence;

the thing may be retained until the proceedings (and any appeal from those proceedings) have been finalised.

Note: *Offence against this Act* has an extended meaning (see section 11).

- (3) If:
- (a) a thing is seized under the Regulatory Powers Act, as it applies in relation to a provision mentioned in subsection 284B(1) of this Act; and
 - (b) proceedings under section 82 of the Regulatory Powers Act in relation to a contravention of a civil penalty provision of this Act are instituted within the period of 60 days after the seizure; and
 - (c) the thing may have been used, or otherwise involved, in the alleged contravention of the civil penalty provision;
- the thing may be retained until the proceedings (and any appeal from those proceedings) have been finalised.

Section 284E

- (4) If:
- (a) a thing is seized under the Regulatory Powers Act, as it applies in relation to a provision mentioned in subsection 284B(1) of this Act; and
 - (b) proceedings under subsection 284L(3) of this Act in relation to a contravention of a civil penalty provision of this Act are instituted within the period of 60 days after the seizure; and
 - (c) the thing may have been used, or otherwise involved, in the alleged contravention of the civil penalty provision;
- the thing may be retained until the proceedings (and any appeal from those proceedings) have been finalised.
- (5) The ACMA may, by written instrument, authorise a thing seized under the Regulatory Powers Act, as it applies in relation to a provision mentioned in subsection 284B(1) of this Act, to be released to the owner, or to the person from whom it was seized, either:
- (a) unconditionally; or
 - (b) on such conditions as the ACMA thinks fit, including conditions as to giving security for payment of its value if it is forfeited under section 284L of this Act.

284E Securing evidential material

- (1) If:
- (a) an authorised person (within the meaning of Part 3 of the Regulatory Powers Act as it applies in relation to a provision mentioned in subsection 284B(1) of this Act) enters premises under that Part as it applies in relation to such a provision; and
 - (b) the occupier of the premises has consented to the authorised person entering the premises; and
 - (c) a thing is found during the exercise of the investigation powers on the premises; and
 - (d) the authorised person believes on reasonable grounds that the thing is evidential material (within the meaning of Part 3 of

Section 284F

the Regulatory Powers Act as it applies in relation to a provision mentioned in subsection 284B(1) of this Act); the thing may be secured, for a period not exceeding 24 hours, by locking it up, placing a guard or any other means.

Extensions

- (2) The authorised person may apply to an issuing officer (within the meaning of Part 3 of the Regulatory Powers Act as it applies in relation to a provision mentioned in subsection 284B(1) of this Act) for an extension of the 24-hour period if the authorised person believes on reasonable grounds that the thing needs to be secured for longer than that period.
- (3) Before making the application, the authorised person must give notice to the occupier of the premises, or another person who apparently represents the occupier, of the authorised person's intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.
- (4) The 24-hour period may be extended more than once.

Note: For the process by which an issuing officer may extend the period, see section 74 of the Regulatory Powers Act.

- (5) Section 74 of the Regulatory Powers Act, as it applies in relation to a provision mentioned in subsection 284B(1) of this Act, has effect as if a reference in that section to an application under subsection 51(5) of that Act included a reference to an application under subsection (2) of this section.

284F Directions to licensees—managing interference with radiocommunications

- (1) An inspector may give a written direction to the holder of an apparatus licence or a spectrum licence in relation to either or both of the following:
 - (a) the installation, maintenance or operation of a radiocommunications device that is, or is to be, operated under the licence;

Section 284F

- (b) anything that is, or is to be, installed or used in connection with a radiocommunications device that is, or is to be, operated under the licence;
if the direction is for the purpose of avoiding, minimising or reducing interference with radiocommunications.
- (2) A direction given under this section to the holder of an apparatus licence applies to the holder of the licence, and may also be expressed to apply to:
 - (a) all persons authorised under section 114 in relation to the licence; or
 - (b) a specified class of persons authorised under section 114 in relation to the licence; or
 - (c) a specified person authorised under section 114 in relation to the licence.
- (3) A direction given under this section to the holder of a spectrum licence applies to the holder of the licence, and may also be expressed to apply to:
 - (a) all persons authorised under section 68 in relation to the licence; or
 - (b) a specified class of persons authorised under section 68 in relation to the licence; or
 - (c) a specified person authorised under section 68 in relation to the licence.
- (4) A person who is:
 - (a) the holder of an apparatus licence; or
 - (b) authorised under section 114 in relation to an apparatus licence; or
 - (c) the holder of a spectrum licence; or
 - (d) authorised under section 68 in relation to a spectrum licence;must comply with a direction under this section.

Civil penalty: 30 penalty units.

- (5) A direction given under this section is not a legislative instrument.

284H Powers of inspectors to require operation of transmitters

- (1) If an inspector believes on reasonable grounds that a transmitter has been, is being, or may be, operated so as to cause interference with radiocommunications, the inspector may, for the purpose of investigating:
 - (a) interference with radiocommunications; or
 - (b) risk of interference with radiocommunications;direct a person to operate the transmitter.
- (2) An inspector must not direct that a transmitter be operated if that operation is likely to:
 - (a) endanger the safety of a person; or
 - (b) cause damage to property.
- (3) The operation of a transmitter in accordance with a direction does not give rise to:
 - (a) an offence against this Act; or
 - (b) a contravention of a civil penalty provision of this Act.

Note: **Offence against this Act** has an extended meaning (see section 11).

Offence

- (4) A person commits an offence if:
 - (a) the person is subject to a direction under subsection (1); and
 - (b) the person engages in conduct; and
 - (c) the person's conduct contravenes the direction.

Penalty: 30 penalty units.

284J General powers of inspectors

- (1) If an inspector suspects on reasonable grounds that a person has done an act in respect of which the person is required to hold:
 - (a) an apparatus licence; or
 - (b) an authorisation under section 114; or
 - (c) a spectrum licence; or

Section 284J

- (d) an authorisation under section 68; or
 - (e) a certificate of proficiency; or
 - (f) a permit;the inspector may, by written notice given to the person, require the person to:
 - (g) produce:
 - (i) the licence, authorisation, certificate or permit; or
 - (ii) evidence of its existence and contents; and
 - (h) do so within the period, and in the manner, specified in the notice.
- (2) If an inspector suspects on reasonable grounds that the holder of an apparatus licence has given an authorisation under section 114, the inspector may, by written notice given to the holder, require the holder to:
 - (a) produce a copy of a record of that authorisation; and
 - (b) do so within the period, and in the manner, specified in the notice.
- (3) If an inspector suspects on reasonable grounds that the holder of a spectrum licence has given an authorisation under section 68, the inspector may, by written notice given to the holder, require the holder to:
 - (a) produce a copy of a record of that authorisation; and
 - (b) do so within the period, and in the manner, specified in the notice.
- (4) If an inspector suspects on reasonable grounds that a person is required by the equipment rules to retain a record, the inspector may, by written notice given to the person, require the person to:
 - (a) produce the record; and
 - (b) do so within the period, and in the manner, specified in the notice.
- (5) An inspector may, by written notice given to a person, require the person to:

Section 284K

- (a) produce evidence of having applied a label to a transmitter in accordance with an obligation imposed on the person under section 300; and
 - (b) do so within the period, and in the manner, specified in the notice.
- (6) A period specified under subsection (1), (2), (3), (4) or (5) must not be shorter than 14 days.

Offences

- (7) A person commits an offence if:
 - (a) the person is subject to:
 - (i) a requirement under subsection (1) (other than a requirement that relates to a permit); or
 - (ii) a requirement under subsection (2), (3) or (5); and
 - (b) the person engages in conduct; and
 - (c) the person's conduct contravenes the requirement.

Penalty: 30 penalty units.

- (8) A person commits an offence if:
 - (a) the person is subject to:
 - (i) a requirement under subsection (1) that relates to a permit; or
 - (ii) a requirement under subsection (4); and
 - (b) the person engages in conduct; and
 - (c) the person's conduct contravenes the requirement.

Penalty: 30 penalty units.

284K Self-incrimination etc.

- (1) An individual is not excused from producing a document under section 284J on the ground that the production of the document might tend to incriminate the individual in relation to an offence.

Note: A body corporate is not entitled to claim the privilege against self-incrimination.

Section 284K

- (2) However:
- (a) the document produced; or
 - (b) producing the document; or
 - (c) any information, document or thing obtained as a direct or indirect consequence of producing the document;
- is not admissible in evidence against the individual:
- (d) in civil proceedings for the recovery of a penalty; or
 - (e) in criminal proceedings (other than proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to section 284J of this Act).
- (3) If, at general law, an individual would otherwise be able to claim the privilege against self-exposure to a penalty (other than a penalty for an offence) in relation to producing a document under section 284J, the individual is not excused from producing a document under that section on that ground.

Note: A body corporate is not entitled to claim the privilege against self-exposure to a penalty.

**Division 6—Power of inspectors to enter premises and
adjust transmitters in emergencies****Subdivision A—Powers of inspectors****284KA Power of inspectors to enter premises and adjust
transmitters in emergencies**

*Interference with radiocommunications that are essential to the
safety of human life*

- (1) If an inspector believes on reasonable grounds that:
 - (a) a transmitter is operating on any land, or on or in any premises, vessel, aircraft, space object or vehicle; and
 - (b) the land, premises, vessel, aircraft, space object or vehicle is or are unoccupied; and
 - (c) the operation of the transmitter is interfering with radiocommunications that are essential to the safety of human life;the inspector may:
 - (d) enter the land, premises, vessel, aircraft, space object or vehicle, if the entry is made in circumstances of such seriousness and urgency as to require and justify entry to prevent the consequence set out in paragraph (c); and
 - (e) take such action as the inspector considers necessary to cause the transmitter to:
 - (i) cease operating; or
 - (ii) operate in such a way as to no longer give rise to the consequence set out in paragraph (c).
- (2) In exercising a power conferred by paragraph (1)(e) in relation to a transmitter, an inspector must try to ensure that any disruption caused to the performance of the transmitter is no greater than is necessary to prevent the consequence set out in paragraph (1)(c).

Section 284KA

Substantial loss or damage

- (3) If an inspector believes on reasonable grounds that:
- (a) a transmitter is operating on any land, or on or in any premises, vessel, aircraft, space object or vehicle; and
 - (b) the land, premises, vessel, aircraft, space object or vehicle is or are unoccupied; and
 - (c) the operation of the transmitter is causing substantial loss or damage;
- the inspector may:
- (d) enter the land, premises, vessel, aircraft, space object or vehicle, if the entry is made in circumstances of such seriousness and urgency as to require and justify entry to prevent the consequence set out in paragraph (c); and
 - (e) take such action as the inspector considers necessary to cause the transmitter to:
 - (i) cease operating; or
 - (ii) operate in such a way as to no longer give rise to the consequence set out in paragraph (c).
- (4) However, an inspector is not authorised to enter the land, premises, vessel, aircraft, space object or vehicle under subsection (3) unless the entry is made under a transmitter access warrant.
- (5) In exercising a power conferred by paragraph (3)(e) in relation to a transmitter, an inspector must try to ensure that any disruption caused to the performance of the transmitter is no greater than is necessary to prevent the consequence set out in paragraph (3)(c).

Notification of the owner of the transmitter

- (6) If an inspector has, under a power conferred by this section:
- (a) entered any land, premises, vessel, aircraft, space object or vehicle; and
 - (b) taken any action in respect of a transmitter;

the inspector must, as soon as practicable, take all reasonable steps to notify the owner of the transmitter that the action has been taken.

Subdivision B—Investigation warrants

284KB Transmitter access warrants

Application for warrant

- (1) An inspector may apply to an issuing officer by telephone, fax or other electronic means for a warrant under this section in relation to land, premises, a vessel, an aircraft, a space object or a vehicle.

Note: For *issuing officer*, see section 284KD.

- (2) The issuing officer:
 - (a) may require communication by voice to the extent that it is practicable in the circumstances; and
 - (b) may make a recording of the whole or any part of any such communication by voice.
- (3) Before applying for the warrant, the inspector must prepare an information that sets out the grounds on which the warrant is sought. If it is necessary to do so, the inspector may apply for the warrant before the information is sworn or affirmed.

Issue of warrant

- (4) The issuing officer may issue the warrant if, after considering the terms of the information and receiving such further information (if any) that the issuing officer requires, the issuing officer is satisfied that:
 - (a) a transmitter is operating on any land, or on or in the premises, vessel, aircraft, space object or vehicle; and
 - (b) the land, premises, vessel, aircraft, space object or vehicle is or are unoccupied; and
 - (c) the operation of the transmitter is causing substantial loss or damage.

Section 284KB

Content of warrant

- (5) The warrant must:
 - (a) describe the land, premises, vessel, aircraft, space object or vehicle to which the warrant relates; and
 - (b) state that the warrant is issued under this Division; and
 - (c) name one or more inspectors; and
 - (d) specify the day (not more than 1 week after the issue of the warrant) on which the warrant ceases to be in force.
- (6) The warrant must authorise each inspector named in the warrant to:
 - (a) enter the land, premises, vessel, aircraft, space object or vehicle, if the entry is made in circumstances of such seriousness and urgency as to require and justify entry to prevent the consequence set out in paragraph (4)(c); and
 - (b) take such action as the inspector considers necessary to cause the transmitter to:
 - (i) cease operating; or
 - (ii) operate in such a way as to no longer give rise to the consequence set out in paragraph (4)(c).
- (7) The warrant must state whether entry is authorised to be made at any time of the day or during specified hours of the day.

Informing inspector

- (8) After completing and signing the warrant, the issuing officer must inform the inspector who applied for the warrant, by telephone, fax or other electronic means, of:
 - (a) the terms of the warrant; and
 - (b) the day on which, and the time at which, the warrant was signed.

Obligations on inspector

- (9) The inspector who applied for the warrant must then do the following:

Section 284KC

- (a) complete a form of warrant in the same terms as the warrant completed and signed by the issuing officer;
 - (b) state on the form the following:
 - (i) the name of the issuing officer;
 - (ii) the day on which, and the time at which, the warrant was signed;
 - (c) send the following to the issuing officer:
 - (i) the form of warrant completed by the inspector;
 - (ii) the information referred to in subsection (3), which must have been duly sworn or affirmed.
- (10) The inspector who applied for the warrant must comply with paragraph (9)(c) by the end of the day after the earlier of the following:
- (a) the day on which the warrant ceases to be in force;
 - (b) the day on which the warrant is executed.

Issuing officer to attach documents together

- (11) The issuing officer must attach the documents provided under paragraph (9)(c) to the warrant signed by the issuing officer.

284KC Offence relating to warrants

An inspector must not:

- (a) state in a document that purports to be a form of warrant under section 284KB the name of an issuing officer unless that issuing officer signed the warrant; or
- (b) state on a form of warrant under that section a matter that, to the inspector's knowledge, departs in a material particular from the terms of the warrant signed by the issuing officer under that section; or
- (c) purport to execute, or present to another person, a document that purports to be a form of warrant under that section that the inspector knows departs in a material particular from the terms of a warrant signed by an issuing officer under that section; or

Section 284KD

- (d) purport to execute, or present to another person, a document that purports to be a form of warrant under that section where the inspector knows that no warrant in the terms of the form of warrant has been completed and signed by an issuing officer; or
- (e) give to an issuing officer a form of warrant under that section that is not the form of warrant that the inspector purported to execute.

Penalty: Imprisonment for 2 years.

Subdivision C—Issuing officers

284KD Issuing officer

For the purposes of this Division, each of the following persons is an *issuing officer*:

- (a) if a Judge of the Federal Court has consented to act as an issuing officer for the purposes of this Act and that consent is in force—the Judge;
- (b) if a Judge of the Federal Circuit and Family Court of Australia has consented to act as an issuing officer for the purposes of this Act and that consent is in force—the Judge;
- (c) a magistrate.

284KE Powers of issuing officers

Powers conferred personally

- (1) A power conferred on an issuing officer by this Division is conferred on the issuing officer:
 - (a) in a personal capacity; and
 - (b) not as a court or a member of a court.

Powers need not be accepted

- (2) The issuing officer need not accept the power conferred.

Protection and immunity

- (3) An issuing officer exercising a power conferred by this Division has the same protection and immunity as if the issuing officer were exercising the power:
- (a) as the court of which the issuing officer is a member; or
 - (b) as a member of the court of which the issuing officer is a member.

Division 7—Court-ordered forfeiture

284L Court may order forfeiture

- (1) If a court convicts a person of an offence against this Act, the court may order the forfeiture to the Commonwealth of anything used, or otherwise involved, in the commission of the offence.

Note: *Offence against this Act* has an extended meaning (see section 11).

- (2) If a court makes a civil penalty order under section 82 of the Regulatory Powers Act in relation to a contravention of a civil penalty provision of this Act, the court may order the forfeiture to the Commonwealth of anything used, or otherwise involved, in the contravention of the civil penalty provision.
- (3) If the Federal Court or the Federal Circuit and Family Court of Australia is satisfied that a thing was used, or otherwise involved, in a contravention of a civil penalty provision of this Act, the court may, on the application of the ACMA, order the forfeiture to the Commonwealth of that thing.

284M Forfeited goods may be sold, destroyed or otherwise disposed of

A thing forfeited under section 284L:

- (a) may be sold, destroyed or otherwise disposed of in accordance with the directions of the ACMA; and
- (b) pending such directions, must be kept in such custody as the ACMA directs.

Division 8—Public warning notices**284N Public warning notices**

- (1) The ACMA may issue to the public, in a way that the ACMA thinks fit, a written notice containing a warning about particular conduct engaged in by a person if:
 - (a) the ACMA suspects on reasonable grounds that the conduct may constitute a contravention of:
 - (i) a provision of Part 4.1; or
 - (ii) section 192; or
 - (iii) section 193; or
 - (iv) section 194; or
 - (v) section 195; or
 - (vi) section 197; or
 - (vii) a provision of the equipment rules; and
 - (b) the ACMA is satisfied that one or more persons have suffered, or are likely to suffer, detriment as a result of the conduct; and
 - (c) the ACMA is satisfied that it is in the public interest to issue the notice.
- (2) A notice under subsection (1) may be issued to the public by being published on the ACMA's website.
- (3) Subsection (2) does not, by implication, limit the ACMA's power to decide a way in which a notice under subsection (1) may be issued to the public.
- (4) A notice issued under subsection (1) is not a legislative instrument.

Division 9—Miscellaneous

284P Act not to affect performance of duties by inspectors

Nothing in Chapter 3 or Part 4.1 or 4.2 prohibits the doing of any act or thing by an inspector in the performance of the inspector's duties under this Act or Part 3 of the Regulatory Powers Act.

284Q Inspectors not authorised to enter or search certain land or premises etc. used for defence purposes

Nothing in Division 5 or 6 of this Part, or in Part 3 of the Regulatory Powers Act, authorises an inspector to enter or to search:

- (a) land or premises that are:
 - (i) occupied or used for the purposes of defence; and
 - (ii) specified in the legislative rules; or
- (b) a vessel, aircraft, space object or vehicle that is in the possession or control of the Defence Force or a part of the Defence Force;

unless:

- (c) permission to do so has been given by the person for the time being in charge of those premises or that land, vessel, aircraft, space object or vehicle; or
- (d) if it is not reasonably practicable to obtain permission of the kind mentioned in paragraph (c)—the entry and search is supervised by a member of the Defence Force, or an APS employee in the Defence Department, authorised to have access to those premises or that land, vessel, aircraft, space object or vehicle.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

Part 5.5A—Information-gathering powers

284R Simplified outline of this Part

- The ACMA may require a person to give the ACMA information, or produce to the ACMA a document, that relates to:
 - (a) the supply of radiocommunications devices; or
 - (b) the operation, or proposed operation, of radiocommunications devices; or
 - (c) the unlawful possession of radiocommunications devices; or
 - (d) compliance, or non-compliance, with conditions of an apparatus licence or a spectrum licence.

284S The ACMA may obtain information or documents

Scope

- (1) This section applies to a person if:
 - (a) the ACMA believes on reasonable grounds that:
 - (i) the person has information or a document that relates to the supply of, or an offer to supply, one or more radiocommunications devices; and
 - (ii) the information or document is relevant to the operation of this Act or the equipment rules, so far as this Act relates, or the equipment rules relate, to interference with radiocommunications; and
 - (iii) the information or document would be reasonably likely to assist the ACMA in connection with managing, limiting or preventing interference with radiocommunications; or
 - (b) the ACMA believes on reasonable grounds that:

Section 284S

- (i) the person has information or a document that relates to the supply of, or an offer to supply, one or more radiocommunications transmitters; and
 - (ii) the information or document is relevant to the operation of this Act, so far as this Act relates to radio emissions that result from a reasonably foreseeable use (including a misuse) of those radiocommunications transmitters and that would be likely to adversely affect the health or safety of individuals; or
- (c) the ACMA believes on reasonable grounds that:
 - (i) the person has information or a document that relates to the supply of, or an offer to supply, one or more radiocommunications transmitters; and
 - (ii) the information or document is relevant to the operation of the equipment rules, so far as the equipment rules are directed towards achieving the objective of protecting the health or safety of individuals from any adverse effect likely to be attributable to radio emissions resulting from a reasonably foreseeable use (including a misuse) of those radiocommunications transmitters; or
- (d) the ACMA believes on reasonable grounds that the person has information or a document that relates to the operation, or proposed operation, of one or more radiocommunications devices under:
 - (i) an apparatus licence; or
 - (ii) a spectrum licence; or
 - (iii) a class licence; or
- (e) the ACMA believes on reasonable grounds that the person has information or a document that relates to the proposed operation of one or more radiocommunications devices under:
 - (i) an apparatus licence that might be issued in the future; or
 - (ii) a spectrum licence that might be issued in the future; or
 - (iii) a class licence that might be issued in the future; or

Section 284S

- (f) the ACMA believes on reasonable grounds that the person has information or a document that relates to compliance or non-compliance with one or more conditions of:
 - (i) an apparatus licence; or
 - (ii) a spectrum licence; or
 - (iii) a class licence; or
- (g) the ACMA believes on reasonable grounds that the person has information or a document that relates to the operation, or proposed operation, of one or more radiocommunications devices otherwise than as authorised by:
 - (i) an apparatus licence; or
 - (ii) a spectrum licence; or
 - (iii) a class licence; or
- (h) the ACMA believes on reasonable grounds that the person has information or a document that relates to the possession, or proposed possession, of one or more radiocommunications devices for the purpose of operating those devices otherwise than as authorised by:
 - (i) an apparatus licence; or
 - (ii) a spectrum licence; or
 - (iii) a class licence.

Requirement

- (2) The ACMA may, by written notice given to the person, require the person:
 - (a) to give the ACMA, within the period and in the manner and form specified in the notice, any such information; or
 - (b) to produce to the ACMA, within the period and in the manner specified in the notice, any such documents; or
 - (c) to make copies of any such documents and to produce to the ACMA, within the period and in the manner specified in the notice, those copies.
- (3) A period specified under subsection (2) must not be shorter than 14 days.

Section 284T

Compliance

- (4) A person must comply with a requirement under subsection (2).

Civil penalty: 20 penalty units.

Other provisions not limited

- (5) This section does not, by implication, limit:
- (a) any other provision of this Act that requires a person to:
 - (i) give information; or
 - (ii) produce a document; or
 - (b) a power conferred by this Act to make:
 - (i) regulations; or
 - (ii) rules; or
 - (iii) any other legislative instrument.

284T Copying documents—compensation

A person is entitled to be paid by the ACMA, on behalf of the Commonwealth, reasonable compensation for complying with a requirement covered by paragraph 284S(2)(c).

284U Copies of documents

- (1) The ACMA may:
- (a) inspect a document or copy produced under subsection 284S(2); and
 - (b) make and retain copies of, or take and retain extracts from, such a document.
- (2) The ACMA may retain possession of a copy of a document produced in accordance with a requirement covered by paragraph 284S(2)(c).

Section 284V

284V ACMA may retain documents

- (1) The ACMA may take, and retain for as long as is necessary, possession of a document produced under subsection 284S(2).
- (2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the ACMA to be a true copy.
- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (4) Until a certified copy is supplied, the ACMA must, at such times and places as the ACMA thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.

284W Self-incrimination

- (1) An individual is not excused from giving information or producing a document under section 284S on the ground that giving the information or producing the document might tend to incriminate the individual in relation to an offence.

Note: A body corporate is not entitled to claim the privilege against self-incrimination.

- (2) However:
 - (a) the information given or the document produced; or
 - (b) giving the information or producing the document; or
 - (c) any information, document or thing obtained as a direct or indirect consequence of giving the information or producing the document;is not admissible in evidence against the individual:
 - (d) in civil proceedings for the recovery of a penalty; or
 - (e) in criminal proceedings (other than proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Part).

Section 284W

- (3) If, at general law, an individual would otherwise be able to claim the privilege against self-exposure to a penalty (other than a penalty for an offence) in relation to giving information or producing a document under section 284S, the individual is not excused from giving information or producing a document under that section on that ground.

Note: A body corporate is not entitled to claim the privilege against self-exposure to a penalty.

Part 5.6—Review of decisions

285 Decisions that may be subject to reconsideration by the ACMA

An application may be made to the ACMA for reconsideration of any of the following decisions:

- (a) variation of a spectrum licence under section 73 or 87 or paragraph 92(2)(b);
- (b) suspension of a spectrum licence under section 75;
- (c) cancellation of a spectrum licence under section 77 or 87;
- (d) refusal to renew a spectrum licence, or renewal of a spectrum licence with different conditions, under section 77C;
- (e) refusal to issue an apparatus licence under section 100;
- (ea) refusal to issue a transmitter licence under section 101A;
- (ec) variation of an apparatus licence under section 103C;
- (f) inclusion of conditions in an apparatus licence under paragraph 107(1)(g), 108A(1)(f), 109(1)(f) or 109B(1)(t);
- (g) a decision under section 111 concerning the conditions of an apparatus licence;
- (h) directions under subsection 116(1) to revoke an authorisation under section 114;
- (i) refusal to issue a certificate of proficiency under section 121;
- (j) cancellation of a certificate of proficiency under section 124;
- (k) suspension of an apparatus licence under section 126;
- (l) cancellation of an apparatus licence under section 128;
- (m) refusal to renew an apparatus licence, or renewal of an apparatus licence with different conditions, under section 130;
- (ma) refusal to transfer an apparatus licence under section 131AB;
- (mb) refusal to issue a provisional international broadcasting certificate under section 131AF;
- (n) refusal to include in the Register under section 145 details of a radiocommunications transmitter;
- (o) refusal to correct the Register under section 153;

Section 286

- (p) refusal to issue a permit under the equipment rules;
- (q) a decision under the equipment rules about the conditions of a permit;
- (r) cancellation of a permit under the equipment rules;
- (s) a decision of the ACMA:
 - (i) made under the equipment rules; and
 - (ii) declared by the equipment rules to be a decision to which this section applies;
- (sa) a decision to impose an interim ban under section 167;
- (t) refusal to give permission under subsection 193(1) or 195(1) to use a transmitter;
- (u) directions under section 212 in relation to the settlement of an interference dispute;
- (v) refusal to give to a person an accreditation under section 263;
- (va) a decision under paragraph 264(b) to specify a condition in an instrument of accreditation;
- (w) withdrawal of a person's accreditation under section 264A;
- (waa) a decision of the ACMA:
 - (i) made under the accreditation rules; and
 - (ii) declared by the accreditation rules to be a decision to which this section applies;
- (wa) a decision under subsection 268(2) to give a direction;
- (wb) a decision of the ACMA:
 - (i) made under the legislative rules; and
 - (ii) declared by the legislative rules to be a decision to which this section applies;
- (x) making of a pre-acquisition declaration under Part 1 of the Schedule.

286 Deadlines for reaching certain decisions

- (1) If this Act (other than section 77A) provides for a person to make an application to the ACMA for such a decision, the ACMA must make the decision:
 - (a) within 90 days after receiving the application; or

Section 286

- (aa) in the case of an application under section 129 where the ACMA has, within those 90 days, given the applicant a notice under section 129A requiring the applicant to give the ACMA further information in connection with the application—within 90 days after receiving that further information; or
 - (b) in the case of an application not made under section 129 where the ACMA has, within those 90 days, given the applicant a written request for further information about the application—within 90 days after receiving that further information.
- (2) The ACMA is taken, for the purposes of this Part, to have made a decision to refuse the application mentioned in subsection (1) if it has not informed the applicant of its decision before the end of the relevant period of 90 days.
- (3) If a renewal decision-making period statement is included in a spectrum licence, the ACMA must make a decision under section 77C in response to an application for the renewal of the spectrum licence:
 - (a) before the end of the renewal decision-making period specified in the statement; or
 - (b) if the ACMA has, within that period, given the applicant a notice under section 77B requiring the applicant to give the ACMA further information in connection with the application—within that period, as extended by one day for each day in the period:
 - (i) beginning when the notice was given; and
 - (ii) ending when that further information was received.
- (4) The ACMA is taken, for the purposes of this Part, to have made a decision to refuse the application mentioned in subsection (3) if the ACMA has not informed the applicant of its decision before the end of the period within which the ACMA was required, under that subsection, to make the decision.
- (5) If subsection (4) applies, the ACMA must:

Section 287

- (a) prepare a written statement explaining why it was unable to make its decision before the end of the period within which the ACMA was required, under subsection (3), to make the decision; and
 - (b) give the statement to the applicant as soon as practicable after the end of that period.
- (6) If a renewal decision-making period statement is not included in a spectrum licence, the ACMA must make a decision under section 77C in response to an application for the renewal of the spectrum licence:
 - (a) within 6 months after receiving the application; or
 - (b) if the ACMA has, within that 6 months, given the applicant a notice under section 77B requiring the applicant to give the ACMA further information in connection with the application—within 6 months after receiving that further information.
- (7) The ACMA is taken, for the purposes of this Part, to have made a decision to refuse the application mentioned in subsection (6) if the ACMA has not informed the applicant of its decision before the end of the relevant period of 6 months.
- (8) If subsection (7) applies, the ACMA must:
 - (a) prepare a written statement explaining why it was unable to make its decision before the end of the relevant period of 6 months; and
 - (b) give the statement to the applicant as soon as practicable after the end of the relevant period of 6 months.

287 Statements to accompany notification of decisions

- (1) If the ACMA makes a decision of a kind referred to in section 285 and gives written notice of the decision to a person whose interests it affects, the notice must include:
 - (a) a statement to the effect that a person affected by the decision may, if he or she is dissatisfied with the decision, seek a

Section 288

reconsideration of the decision by the ACMA under subsection 288(1); and

- (b) a statement to the effect that, if a person who has applied for a reconsideration is dissatisfied with the ACMA's decision on the reconsideration, application may, subject to the *Administrative Appeals Tribunal Act 1975* be made to the AAT for review of the decision on that reconsideration.
- (2) Failure to comply with this section does not affect the validity of a decision.

288 Applications for reconsideration of decisions

- (1) A person affected by a decision of a kind referred to in section 285 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 by the ACMA; and
 - (b) set out the reasons for the application.
- (3) The application must be made within:
 - (a) 28 days after the applicant is informed of the decision; or
 - (b) if, either before or after the expiration of that period of 28 days, the ACMA extends the period within which the application may be made—the extended period for making the application.
- (4) An approved form of an application may provide for verification by statutory declaration of statements in applications.

289 Reconsideration by the ACMA

- (1) Upon receiving such an application the ACMA must:
 - (a) reconsider the decision; and
 - (b) affirm, vary or revoke the decision.

Section 290

- (2) The ACMA's decision on reconsideration of a decision has effect as if it had been made under the application under which the original decision was made.
- (3) The ACMA must give to the applicant a notice stating its decision on the reconsideration together with a statement of its reasons for its decision.

290 Deadlines for reconsiderations

- (1) The ACMA must make its decision on reconsideration of a decision within 90 days after receiving an application for reconsideration.
- (2) The ACMA is taken, for the purposes of this Part, to have made a decision affirming the original decision if it has not informed the applicant of its decision on the reconsideration before the end of the period of 90 days.

291 Statements to accompany notification of decisions on reconsideration

- (1) A notice under subsection 289(3) notifying the applicant that a decision has been affirmed or varied must include:
 - (a) a statement to the effect that a person affected by the decision so affirmed or varied may, subject to the *Administrative Appeals Tribunal Act 1975*, if he or she is dissatisfied with the decision so affirmed or varied, apply to the AAT for review of the decision; and
 - (b) a statement to the effect that the person may request a statement under section 28 of that Act in relation to the decision so affirmed or varied.
- (2) Failure to comply with this section does not affect the validity of a decision.

Section 292

292 Review by the AAT

Applications may be made to the AAT to review a decision of a kind referred to in section 285 if the ACMA has affirmed or varied the decision under section 289.

Part 5.7—Charges

294 Spectrum access charges

- (1) The ACMA may, by written instrument, make determinations:
 - (a) fixing spectrum access charges payable by licensees for issuing spectrum licences; and
 - (b) specifying the times when spectrum access charges are payable.
- (2) The Minister may give written directions to the ACMA about the matters dealt with in determinations.
- (3) Directions may, for example, require that:
 - (a) the level of spectrum access charges payable in respect of one or more specified classes of public or community services is to be a specified portion only of the level of spectrum access charges otherwise payable; or
 - (b) spectrum access charges are not to be payable in respect of a specified class of public or community services; or
 - (c) persons are to be permitted to pay in instalments, as specified in the direction, the spectrum access charges payable in respect of a specified class of public or community services; or
 - (d) a spectrum access charge reflect the amount that the Minister considers to be the value of the spectrum.
- (4) The ACMA must ensure that its determinations comply with any directions in force under this section.
- (5) A direction made under subsection (2) is not a legislative instrument.

Section 295

295 Publication of determinations

Determinations are to be made public in the way the ACMA thinks appropriate.

296 Collection of charges on behalf of the ACMA

The ACMA may enter into arrangements with persons or other bodies under which those persons or other bodies may, on the ACMA's behalf, receive from persons payments of charges under this Part.

297 Limits on charges

The amount or rate of a charge fixed by a determination must not be such as to amount to taxation.

298 Recovery of charges

A charge fixed by a determination may be recovered as a debt due to the Commonwealth.

298A Fees imposed by bodies or organisations

- (1) The ACMA may, by notifiable instrument, determine that a specified body or organisation approved by the ACMA as mentioned in paragraph (b) of the definition of ***approved examination*** in subsection 122(2) may charge fees for performing its functions under this Act.
- (2) Such a fee must not be such as to amount to taxation.

Chapter 6—Miscellaneous

299 International agreements etc.

- (1) A person or body exercising a power conferred under this Act (other than Part 4.4 or 5.5) must have regard to:
 - (a) any agreement, treaty or convention, between Australia and another country or countries, that makes provision in relation to radio emission; and
 - (b) any instrument or writing specified in the regulations.
- (2) Nothing in subsection (1) limits the kinds of matters to which the person or body may have regard in exercising those powers.
- (3) Regulations made for the purposes of paragraph (1)(b) may prescribe a specified instrument or writing:
 - (a) as in force or existence at the time when the regulations come into effect; or
 - (b) as amended or altered from time to time.

300 Labelling of radiocommunications transmitters for purposes of identification

- (1) The ACMA may, by determination in writing, require any person who operates a radiocommunications transmitter under a licence to apply to that transmitter a label setting out the information specified in the determination.
- (2) Without limiting the generality of subsection (1), the determination may specify the following information:
 - (a) details about the licence under which the radiocommunications transmitter is being operated;
 - (b) the name and address of the licensee.
- (3) The label must be in the form specified by the determination.

Section 300A

- (4) A person required by a determination to apply a label to a radiocommunications transmitter must comply with the determination.

Civil penalty 100 penalty units.

- (5) A determination is a legislative instrument.

300A Transitional—failure to comply with requirements to be met after a label has been applied to a device

General rule

- (1) If:
- (a) before the commencement of this section, the ACMA gave a notice under repealed subsection 182(1); and
 - (b) the notice specified requirements to be met after a label has been applied to a device;

a manufacturer or importer must comply with those requirements in relation to a label that was applied to a device before the commencement of this section.

Civil penalty: 20 penalty units.

- (2) Subsection (1) does not apply if the manufacturer or importer has a reasonable excuse.

Corporations power

- (3) If:
- (a) before the commencement of this section, the ACMA gave a notice under repealed subsection 182(1); and
 - (b) the notice specified requirements to be met after a label has been applied to a device; and
 - (c) a manufacturer or importer is a constitutional corporation;
- the manufacturer or importer must comply with those requirements in relation to a label that was applied to a device before the commencement of this section.

Section 300A

Civil penalty: 20 penalty units.

- (4) Subsection (3) does not apply if the manufacturer or importer has a reasonable excuse.

Other legislative powers

- (5) If:
- (a) before the commencement of this section, the ACMA gave a notice under repealed subsection 182(1); and
 - (b) the notice specified requirements to be met after a label has been applied to a device; and
 - (c) before the commencement of this section, a manufacturer or importer manufactured or imported a device for the purposes of supply:
 - (i) in the course of, or in relation to, constitutional trade or commerce; or
 - (ii) to the Commonwealth; or
 - (iii) to a Territory; or
 - (iv) to an authority or instrumentality of the Commonwealth; or
 - (v) to an authority or instrumentality of a Territory;
- the manufacturer or importer must comply with those requirements in relation to a label that was applied to the device before the commencement of this section.

Civil penalty: 20 penalty units.

- (6) Subsection (5) does not apply if the manufacturer or importer has a reasonable excuse.

Constitutional trade or commerce

- (7) For the purposes of this section, ***constitutional trade or commerce*** means:
- (a) trade or commerce between Australia and places outside Australia; or
 - (b) trade or commerce among the States; or

Section 300B

- (c) trade or commerce within a Territory, between a State and a Territory or between 2 Territories.

Transitional

- (8) If:

- (a) a notice was in force under repealed section 182 immediately before the commencement of this section; and
- (b) the notice specified requirements to be met after a label has been applied to a device;

then, despite the repeal of that section by the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020*, the notice, so far as it specified those requirements, continues in force, in relation to a label applied to a device before the commencement of this section, as if that section had not been repealed.

300B Transitional—general powers of inspectors

- (1) An inspector may:

- (a) if the inspector suspects a person on reasonable grounds of having recorded particulars relating to the supply of a radiocommunications device in a document under repealed section 301—require the person to produce that document; or
- (b) require a person who has been required to retain records by a notice under repealed subsection 182(1) for a specified period to produce such records at any time during that period.

- (2) A person must comply with a requirement under subsection (1).

Civil penalty: 20 penalty units.

- (3) Subsection (2) does not apply if the person has a reasonable excuse.

300C Transitional—retention of records of the supply of radiocommunications devices

If:

Section 302

- (a) a person supplied a radiocommunications device during the 2-year period ending at the commencement of this section; and
- (b) the person was required by repealed section 301 to cause particulars relating to the supply of the device to be recorded in a document;

the person must retain the document for at least 2 years after the supply.

Civil penalty: 20 penalty units.

302 Exemptions from certain compliance provisions

Compliance provision

- (1) For the purposes of this section, each of the following is a **compliance provision**:
- (a) subsection 46(1);
 - (b) subsection 46(3);
 - (c) subsection 47(1);
 - (d) subsection 47(3);
 - (e) subsection 170(1);
 - (f) subsection 170(2);
 - (g) subsection 170(3);
 - (h) subsection 175(1);
 - (i) subsection 175(2);
 - (j) subsection 175(3);
 - (k) subsection 175(4);
 - (l) subsection 176(1);
 - (m) subsection 176(2);
 - (n) subsection 176(3);
 - (o) subsection 176(4).

Exemptions

- (2) The ACMA may, by legislative instrument, determine either or both of the following:
 - (a) that one or more specified acts are exempt from one or more specified compliance provisions;
 - (b) that one or more specified persons are exempt from one or more specified compliance provisions.
- (3) A determination under subsection (2) is subject to such conditions (if any) as are specified in the determination.
- (4) The ACMA must not determine an exemption under subsection (2) unless the ACMA is satisfied that:
 - (a) the exemption is in the public interest; or
 - (b) the exemption is of a kind specified in the legislative rules.
- (5) A determination under subsection (2) may confer a power to make a decision of an administrative character on the ACMA.

303 Compilation etc. of information

The ACMA may:

- (a) conduct research into; and
- (b) compile, and publish in any way it thinks fit, information about;

any of the following:

- (c) allocation and use of the spectrum;
- (d) market demand for, and prices paid for allocation of, parts of the spectrum;
- (e) charges fixed by the ACMA, including any discounts or exemptions in respect of public or community services;
- (f) social, economic and environmental effects of radio transmission;
- (g) supply, manufacture and operation of devices;
- (h) standards;

Section 304

- (i) any other matter relating to radiocommunications or radio emissions.

304 Applications in electronic form

- (1) If a provision of this Act provides that an application must be made in a manner approved, in writing, by the ACMA, a manner approved by the ACMA may have the effect of requiring an application to be in an electronic form (for example, requiring an application to be made using an online system).
- (2) Subsection (1) has effect despite anything in the *Electronic Transactions Act 1999*.

304A Service of notices and instruments by electronic means

Paragraphs 9(1)(d) and (2)(d) of the *Electronic Transactions Act 1999* do not apply to a notice or instrument under:

- (a) this Act; or
- (b) a legislative instrument made under this Act; or
- (c) the Regulatory Powers Act, so far as that Act relates to this Act.

Note: Paragraphs 9(1)(d) and (2)(d) of the *Electronic Transactions Act 1999* deal with the consent of the recipient of information to the information being given by way of electronic communication.

305 Evidentiary certificates

- (1) A Commonwealth officer who holds such qualifications as are specified in the regulations may issue a certificate, signed by the officer, setting out such facts as he or she considers relevant with respect to:
 - (a) his or her qualifications; and
 - (b) an examination he or she has made of a device.
- (2) A certificate purporting to be issued under subsection (1) and to be duly signed is, in proceedings under or arising out of this Act or the *Customs Act 1901*, prima facie evidence of the facts stated in it.

Section 305A

- (3) The ACMA may issue a certificate, signed by a person authorised by the ACMA for the purposes of this subsection, stating that at a specified time, or during a specified period, a specified person was, or was not, the holder of a specified kind of radiocommunications instrument.
- (4) A certificate purporting to be issued under subsection (3) and to be duly signed is, in proceedings under or arising out of this Act, prima facie evidence of the facts stated in it.
- (5) In this section:
radiocommunications instrument means:
 - (a) a licence; or
 - (b) a permit; or
 - (c) a certificate.

305A Computerised decision-making

- (1) The ACMA may arrange for the use, under the ACMA's control, of computer programs for any purposes for which the ACMA may, or must, under this Act or under a legislative instrument made under this Act:
 - (a) make a decision; or
 - (b) exercise any power or comply with any obligation; or
 - (c) do anything else related to making a decision or exercising a power or complying with an obligation.
- (2) For the purposes of this Act and any legislative instrument made under this Act, the ACMA is taken to have:
 - (a) made a decision; or
 - (b) exercised a power or complied with an obligation; or
 - (c) done something else related to the making of a decision or the exercise of a power or the compliance with an obligation; that was made, exercised, complied with or done by the operation of a computer program under an arrangement made under subsection (1).

Section 306

- (3) The ACMA must substitute a decision for a decision (the *initial decision*) made by the operation of a computer program under an arrangement under subsection (1) if the ACMA is satisfied that the initial decision is incorrect.

306 Conduct by directors, employees and agents

- (1) If, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
 - (b) that the director, employee or agent had the state of mind.
- (2) Any conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.
- (3) If, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by an employee or agent of the person within the scope of his or her actual or apparent authority; and
 - (b) that the employee or agent had the state of mind.
- (4) Any conduct engaged in on behalf of a person other than a body corporate by an employee or agent of the person within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person

took reasonable precautions and exercised due diligence to avoid the conduct.

- (5) If:
- (a) a person other than a body corporate is convicted of an offence; and
 - (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;
- the person is not liable to be punished by imprisonment for that offence.
- (6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
 - (b) the person's reasons for the intention, opinion, belief or purpose.
- (7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.
- (8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.
- (9) Part 2.5 of the *Criminal Code* does not apply to an offence against this Act.

Note: Part 2.5 of the *Criminal Code* deals with corporate criminal responsibility.

307 Surrender of licences, certificates and permits

If the holder of a licence, certificate or permit surrenders it, it is taken, for the purposes of this Act (except where otherwise provided), to have been cancelled upon acceptance of the surrender by the ACMA.

Section 308

308 No compensation for suspensions and cancellations

A person is not entitled to compensation from the Commonwealth solely because of:

- (a) suspension or cancellation of, or variation of the conditions of, a licence, certificate or permit; or
- (b) withdrawal of an accreditation under section 264A.

308A Compensation for acquisition of property

- (1) If the operation of this Act, or a legislative instrument under this Act, 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), the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in:
 - (a) the Federal Court; or
 - (b) the Supreme Court of a State or Territory;for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

309 Officers and employees of governments and authorities

The Governor-General may make arrangements with the Governor of a State or the Administrator of a Territory for performance of functions and exercise of powers under this Act by officers or employees of that State or Territory or of an authority of that State or Territory.

310 Operation of this Act in relation to the Broadcasting Services Act

- (1) Regulations under this Act have effect despite any regulation made under the *Broadcasting Services Act 1992*.

Section 311

- (2) This Act is not intended to limit or exclude the operation of any regulation made under the *Broadcasting Services Act 1992* so far as the regulation can operate concurrently with this Act.

311 Act not to affect performance of functions by States or certain Territories

- (1) The ACMA must not exercise its powers under Chapter 3 in a way that prevents exercise of the powers, or performance of the functions, of government of a State, the Australian Capital Territory or the Northern Territory.
- (2) A restrictive order has no effect so far as it would, but for this subsection, prevent exercise of the powers, or performance of the functions, of government of a State, the Australian Capital Territory or the Northern Territory.

312 Application of the Competition and Consumer Act

Nothing in Part 3.2 or 3.3 is to be taken as specifically authorising or approving any act or thing for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*.

313 Legislation of the Australian Antarctic Territory

This Act does not affect the Governor-General's power under section 11 of the *Australian Antarctic Territory Act 1954* to make Ordinances prohibiting or regulating use of radiocommunications devices the operation of which is authorised under class licences.

313A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* (except Part 2.5) applies to all offences against this Act.

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

Section 313B

313B Legislative rules

- (1) The Minister may, by legislative instrument, make rules (*legislative rules*) prescribing matters:
 - (a) required or permitted by this Act to be prescribed by the legislative rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the legislative rules may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.
- (3) The legislative rules may make provision in relation to a matter by conferring a power to make a decision of an administrative character on the ACMA.
- (4) The legislative rules may make provision in relation to a matter by conferring a power to make a decision of an administrative character on a person who holds a specified kind of accreditation.
- (5) The legislative rules may authorise a person who holds a specified kind of accreditation to charge fees in relation to the exercise by the person of a power conferred by the legislative rules. A fee must not be such as to amount to taxation.
- (6) Legislative rules that are inconsistent with the regulations have no effect to the extent of the inconsistency, but legislative rules are taken to be consistent with the regulations to the extent that the rules are capable of operating concurrently with the regulations.

314 Regulations

- (1) The Governor-General may make regulations prescribing all matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may make provision in relation to:
 - (a) prohibiting or regulating any act or thing likely to cause interference, or risk of interference, to radiocommunications; or
 - (b) prohibiting or regulating making of radio emissions from a place within a specified area; or
 - (c) prohibiting or regulating making of radio emissions in a way likely to cause an explosion; or
 - (g) refund of charges on surrender of certificates or licences; or
 - (h) issue and return of duplicates of licences, certificates and permits, and of licences granted under the regulations; or
 - (i) any matter incidental to or connected with any of the foregoing.
- (3) The power to make regulations in relation to a matter is not limited merely by the fact that:
 - (a) this Act makes provision in relation to the matter; or
 - (b) this Act expressly allows such provision to be made:
 - (i) by legislative rules, equipment rules, advisory guidelines or orders; or
 - (ii) by specifying conditions to which licences or permits are subject.
- (4) Paragraph (2)(c) is not intended to limit or exclude concurrent operation of a law of a State or Territory.
- (5) The regulations may provide, in respect of an offence against the regulations, for imposition of a fine not exceeding 10 penalty units.

Section 314A

- (6) The limitation imposed by subsection (5) on the penalties that the regulations may prescribe does not prevent the regulations from requiring a person to make a statutory declaration.

314A Instruments under this Act may provide for matters by reference to other instruments

- (1) An instrument under this Act may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) provisions of any Act:
- (a) as in force at a particular time; or
 - (b) as in force from time to time.
- (2) An instrument under this Act may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) matter contained in any other instrument or writing whatever:
- (a) as in force or existing at a particular time; or
 - (b) as in force or existing from time to time;
- even if the other instrument or writing does not yet exist when the instrument under this Act is made.
- (3) A reference in subsection (2) to any other instrument or writing includes a reference to an instrument or writing:
- (a) made by any person or body in Australia or elsewhere (including, for example, the Commonwealth, a State or Territory, an officer or authority of the Commonwealth or of a State or Territory or an overseas entity); and
 - (b) whether of a legislative, administrative or other official nature or of any other nature; and
 - (c) whether or not having any legal force or effect;
- for example:
- (d) regulations or rules under an Act; or
 - (e) a State Act, a law of a Territory, or regulations or any other instrument made under such an Act or law; or
 - (f) an international technical standard or performance indicator; or

Section 314A

- (g) a written agreement or arrangement or an instrument or writing made unilaterally.
- (4) Nothing in this section limits the generality of anything else in it.
- (5) Subsections (1) and (2) have effect despite anything in:
 - (a) the *Acts Interpretation Act 1901*; or
 - (b) the *Legislation Act 2003*.
- (6) In this section:
 - instrument under this Act*** means:
 - (a) the regulations; or
 - (aa) the legislative rules; or
 - (ab) the equipment rules; or
 - (b) any other instrument made under this Act.

Clause 1

Schedule—Resuming spectrum licences by compulsory process

Sections 91 and 93

Part 1—Resumption Procedures

1 Pre-acquisition declarations

- (1) The ACMA must cause to be published in the *Gazette* a pre-acquisition declaration for the spectrum licence, or the part of the spectrum licence, that it wishes to resume.
- (2) The pre-acquisition declaration must contain:
 - (a) a description of the licence, or the part of the licence, to be resumed; and
 - (b) a statement of the ACMA's reasons for the resumption.

2 Service on licensees and third party users

- (1) Within 14 days after publication in the *Gazette*, the ACMA must serve the declaration on the licensee by registered post sent to the address of the place of residence or business of the licensee last known to the ACMA.
- (2) The licensee must, within 7 days after being so served, give a written notice of the proposed resumption to:
 - (a) if the whole of the licence is to be resumed—each person (if any) authorised by the licensee to operate a radiocommunications device under the licence; or
 - (b) if a part of the licence is to be resumed—each person (if any) so authorised whose interests would be affected by resumption of that part of the licence.
- (3) Failure to comply with the requirements of this clause does not affect the validity of the pre-acquisition declaration.

Note: A pre-acquisition declaration is reviewable under Part 5.6.

3 Resumption notices

- (1) If the pre-acquisition declaration is in force at the end of the review period, the ACMA must cause to be published in the *Gazette* a notice that the licence, or the part of the licence, is resumed.
- (2) The review period commences when the pre-acquisition declaration is made and ends:
 - (a) if the period for applying under Part 5.6 for reconsideration of the pre-acquisition declaration has expired without such an application being made—at the end of the period for applying for reconsideration; or
 - (b) if the pre-acquisition declaration was reconsidered under Part 5.6 and the period for applying under that Part for review by the AAT of the reconsideration has expired without such an application being made—at the end of the period for applying for review by the AAT; or
 - (c) if review by the AAT was applied for within that period—when the review, and any appeals or other proceedings arising from the review, have been finally disposed of.

4 Date of effect of resumptions

The resumption takes effect:

- (a) if the resumption notice specifies a day for the purpose—on that day; or
- (b) otherwise—14 days after the day on which the resumption notice was published.

5 Notification of licensees

Within 14 days after the resumption notice was published, the ACMA must give to the licensee a written notice that:

- (a) sets out a copy of the resumption notice; and
- (b) sets out particulars of:
 - (i) the licensee's right to claim compensation for the resumption; and

Clause 5

- (ii) how a claim is to be made; and
- (c) includes the form, approved by the ACMA, on which such a claim is to be made.

Part 2—Compensation

1 The basis on which compensation is payable

- (1) If a spectrum licence or a part of a spectrum licence is resumed under section 91, the compensation payable to the licensee under section 93 and this Part is compensation for:
 - (a) the market value of the licence, or the part of the licence, on the day before the day on which the pre-acquisition declaration was published; and
 - (b) any loss, injury or damage suffered, or expense reasonably incurred, as a direct, natural and reasonable consequence of the resumption.
- (2) The market value of the licence, or the part of the licence, at a particular time is the amount that would have been paid for it if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer.
- (3) If the market value is assessed upon the basis that the licence, or the part of the licence, had potential to be used for a purpose other than the purpose for which it was used at the relevant time, compensation is not payable in respect of any loss or damage that would necessarily have been suffered, or expense that would necessarily have been incurred, in realising that potential.
- (4) If:
 - (a) a pre-acquisition declaration is published for resumption of a spectrum licence or a part of a spectrum licence; and
 - (b) the pre-acquisition declaration is revoked before the resumption takes place;the compensation payable to the licensee under section 93 and this Part is compensation for any loss, injury or damage suffered, or expense reasonably incurred, as a direct, natural and reasonable consequence of the publication of the pre-acquisition declaration.

Clause 2

2 Amounts of compensation payable

- (1) The amount of compensation payable to the licensee is:
- (a) the amount of compensation agreed by the ACMA under paragraph 4(a); or
 - (b) the amount of compensation specified in an offer of the ACMA that is accepted by the licensee under subclause 6(1); or
 - (c) the amount of compensation determined by the AAT under clause 7; or
 - (d) the amount of compensation determined by the Federal Court under clause 8; or
 - (e) the amount of compensation determined by an independent valuer under clause 9;
- whichever is applicable.
- (2) Once the amount of compensation is fixed under one of the paragraphs in subclause (1), the other paragraphs are no longer capable of application in fixing the amount of compensation.

3 Claims for compensation

The licensee may claim compensation by giving to the ACMA a written claim in a form approved by the ACMA.

4 Consideration of claims by the ACMA

The ACMA must consider the claim and, by written notice given to the licensee:

- (a) agree to pay the amount of compensation specified in the claim; or
- (b) offer to pay an amount of compensation different to the amount specified in the claim; or
- (c) reject the claim.

5 Deadline for consideration of claims

- (1) The ACMA must give the notice to the licensee within 42 days, or such longer period as is agreed between the ACMA and the licensee, after receiving the claim.
- (2) The ACMA is taken to have rejected the claim if it has not informed the licensee of its decision on the claim before the end of the period within which the notice must be given.

6 Consideration of offers by licensees

- (1) If the ACMA offers under paragraph 4(b) to pay an amount of compensation to the licensee, the licensee may, in writing, accept the offer at any time during the period of 42 days, or such longer period as is agreed between the ACMA and the licensee, after the offer was made.
- (2) The licensee is taken to have rejected the offer if:
 - (a) during the period during which the licensee may accept the offer, the licensee informs the ACMA, in writing, that the offer is rejected; or
 - (b) the period ends and the licensee has not accepted the offer.

7 Determination of compensation by the AAT

- (1) Subject to subclause (5), if:
 - (a) under paragraph 4(c), the ACMA has rejected the claim; or
 - (b) under subclause 5(2), the ACMA is taken to have rejected the claim; or
 - (c) under subclause 6(2), the licensee is taken to have rejected an offer by the ACMA;the licensee may apply to the AAT to review the ACMA's decision to reject the claim, or make the offer, as the case requires.
- (2) Subject to subclauses (3) and (4), the *Administrative Appeals Tribunal Act 1975* applies to the application.

Clause 8

- (3) Section 29 of that Act applies to the application as if the prescribed time for lodging the application with the AAT were the period of 90 days beginning on the day on which the ACMA rejected the claim, or the ACMA's offer was taken to be rejected, as the case requires.
- (4) The AAT must make a decision on the application determining the amount of compensation.
- (5) An application cannot be made to the AAT if an application has already been made under clause 8 to the Federal Court to determine the amount of compensation.

8 Determination of compensation by the Federal Court

- (1) Subject to subsection (3), if:
 - (a) under paragraph 4(c), the ACMA has rejected the claim; or
 - (b) under subclause 5(2), the ACMA is taken to have rejected the claim; or
 - (c) under subclause 6(2), the licensee is taken to have rejected an offer by the ACMA;the licensee may apply to the Federal Court to determine the amount of compensation to which the licensee is entitled.
- (2) On the application, the Federal Court must determine the amount of compensation.
- (3) An application cannot be made to the Federal Court if an application has already been made under clause 7 to the AAT to review the ACMA's decision to reject the claim or to make the offer, as the case requires.

9 Determination of compensation by independent valuers

- (1) Subject to subclause (4), the ACMA and the licensee may agree on appointment of an independent valuer to determine the amount of compensation.

Clause 9

- (2) Clauses 3 to 8 no longer apply once an independent valuer is appointed under the agreement.
- (3) The independent valuer must determine the amount of compensation.
- (4) Agreement on appointment of an independent valuer has no effect if an application related to the amount of compensation has already been made to the AAT under clause 7 or to the Federal Court under clause 8.

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

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

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

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

Legislation history and amendment history—Endnotes 3 and 4

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

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

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

Editorial changes

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

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

Misdescribed amendments

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

Endnote 1—About the endnotes

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

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

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

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

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Radiocommunications Act 1992	174, 1992	11 Dec 1992	1 July 1993 (s 2)	
Transport and Communications Legislation Amendment Act 1993	4, 1994	18 Jan 1994	Sch (amdt to s 5, 39(4)(d), 100(5), 110, 147(1)(d), 156(e), 157(2), 158(2), 184(2), 184(2)(a), 184(2)(b), 184(3), 255(2)(a), 255(2)(b), 307 and Sch 1(1), (4) Radiocommunications Act 1992): 1 July 1993 (s 2(1)) Sch (amdt to s 187, 314 and 315 Radiocommunications Act 1992): 18 Jan 1994 (s 2(2))	—
Communications and the Arts Legislation Amendment Act (No. 1) 1995	32, 1995	12 Apr 1995	Sch (items 52–66, 69–121): 12 Apr 1995 (s 2(1)) Sch (items 67, 68): 8 Sept 1995 (s 2(2) and gaz 1995, No S341)	—
Radiocommunications Amendment Act 1997	41, 1997	22 Apr 1997	22 Apr 1997 (s 2)	Sch 1 (items 92–94)
Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997	59, 1997	3 May 1997	Sch 2: 1 July 1997 (s 2(2)(e))	Sch 2 (items 21, 71, 72)

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Communications Legislation Amendment Act (No. 1) 1997	119, 1997	7 July 1997	Sch 2: 4 Aug 1997 (s 2)	—
Radiocommunications Legislation Amendment Act 1997	145, 1997	9 Oct 1997	Sch 1 (items 6–8): 9 Oct 1997 (s 2(1))	—
Television Broadcasting Services (Digital Conversion) Act 1998	99, 1998	27 July 1998	s 4 and Sch 2: 27 July 1998 (s 2)	s 4
National Transmission Network Sale (Consequential Amendments) Act 1998	131, 1998	21 Dec 1998	Sch 1 (items 9–13): 21 Dec 1998 (s 2)	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (items 761–763): 5 Dec 1999 (s 2(1), (2))	—
Australian Federal Police Legislation Amendment Act 2000	9, 2000	7 Mar 2000	Sch 2 (item 49) and Sch 3 (items 20, 30, 34, 35): 2 July 2000 (s 2(1) and gaz 2000, No S328)	Sch 3 (items 20, 30, 34, 35)
Radiocommunications Legislation Amendment Act 2000	34, 2000	3 May 2000	Sch 1 (items 1–34), Sch 2 (items 1–23) and Sch 3: 31 May 2000 (s 2)	Sch 3
Broadcasting Services Amendment (Digital Television and Datacasting) Act 2000	108, 2000	3 Aug 2000	Sch 2: 1 Jan 2001 (s 2(2) and gaz 2000, No GN50)	Sch 2 (item 51)
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	137, 2000	24 Nov 2000	Sch 2 (items 349–356, 418, 419): 24 May 2001 (s 2(3))	Sch 2 (items 418, 419)

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Broadcasting Services Amendment Act 2000	172, 2000	21 Dec 2000	Sch 1 (items 27–36(1)): 21 Dec 2000 (s 2(1)) Sch 2 (items 7–11): 1 Jan 2001 (s 2(2))	Sch 1 (item 36(1))
Communications and the Arts Legislation Amendment (Application of Criminal Code) Act 2001	5, 2001	20 Mar 2001	s 4 and Sch 1 (items 50–100): 24 May 2001 (s 2(1)(a))	s 4
Broadcasting Legislation Amendment Act (No. 2) 2001	92, 2001	20 July 2001	Sch 1 (item 20): 20 July 2001 (s 2)	—
Statute Law Revision Act 2002	63, 2002	3 July 2002	Sch 1 (item 28): 1 July 1999 (s 2(1) item 22)	—
Broadcasting Legislation Amendment Act (No. 2) 2002	120, 2002	2 Dec 2002	Sch 1 (items 14, 15): 30 Dec 2002 (s 2(1) item 2)	—
Australian Crime Commission Establishment Act 2002	125, 2002	10 Dec 2002	Sch 2 (item 118): 28 Nov 2003 (s 2(1) item 5) Sch 2 (item 226): 1 Jan 2003 (s 2(1) item 6)	Sch 2 (item 226)
as amended by				
Crimes Legislation Enhancement Act 2003	41, 2003	3 June 2003	Sch 2 (item 1AA): 10 Dec 2002 (s 2(1) item 4A)	—
Communications Legislation Amendment Act (No. 3) 2003	108, 2003	24 Oct 2003	Sch 1 (items 5–7): 12 Dec 2003 (s 2(1) item 2 and gaz 2003, No GN49) Sch 1 (items 11–22): 24 Oct 2003 (s 2(1) item 3)	—

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Communications Legislation Amendment Act (No. 1) 2003	114, 2003	27 Nov 2003	Sch 3: 28 Nov 2003 (s 2(1) item 4)	—
Designs (Consequential Amendments) Act 2003	148, 2003	17 Dec 2003	Sch 2 (items 15, 16): 17 June 2004 (s 2(1) item 2)	—
Greater Sunrise Unitisation Agreement Implementation Act 2004	47, 2004	21 Apr 2004	Sch 2 (items 19, 20): 7 Feb 2007 (s 2(1) item 7)	—
Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005 as amended by	45, 2005	1 Apr 2005	Sch 1 (items 71–118), Sch 2 and Sch 4: 1 July 2005 (s 2(1) items 2, 3, 10)	Sch 4
Omnibus Repeal Day (Autumn 2014) Act 2014	109, 2014	16 Oct 2014	Sch 2 (items 177–181): 17 Oct 2014 (s 2(1) item 2)	—
Offshore Petroleum (Repeals and Consequential Amendments) Act 2006	17, 2006	29 Mar 2006	Sch 2 (items 99–102): 1 July 2008 (s 2(1) item 2)	—
Law Enforcement Integrity Commissioner (Consequential Amendments) Act 2006	86, 2006	30 June 2006	Sch 1 (item 56): 30 Dec 2006 (s 2(1) item 2)	—
Communications Legislation Amendment (Enforcement Powers) Act 2006	120, 2006	4 Nov 2006	Sch 1 (items 51, 52): 4 Feb 2007 (s 2(1) item 2)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Broadcasting Legislation Amendment Act (No. 1) 2006	127, 2006	4 Nov 2006	Sch 1 (items 9–11): 5 Nov 2006 (s 2)	—
Broadcasting Legislation Amendment (Digital Television) Act 2006	128, 2006	4 Nov 2006	Sch 1 (items 21–27, 28A, 29): 5 Nov 2006 (s 2(1) item 2) Sch 2 (items 88B–92Y, 93C–95): 1 Jan 2007 (s 2(1) item 3) Sch 2A (items 28, 29): 4 May 2007 (s 2(1) item 4) Sch 3 (items 16A–16H, 16J–16M, 17–29): 1 Jan 2009 (s 2(1) item 5)	Sch 1 (items 28A, 29) and Sch 2 (items 93C–95)
Broadcasting Services Amendment (Collection of Datacasting Transmitter Licence Fees) Act 2006	153, 2006	8 Dec 2006	Sch 1 (items 10, 11): 1 Jan 2007 (s 2)	—
Offshore Petroleum Amendment (Greater Sunrise) Act 2007	49, 2007	10 Apr 2007	Sch 1 (items 95, 96): 1 July 2008 (s 2(1) item 2)	—
Broadcasting Legislation Amendment (Digital Radio) Act 2007	68, 2007	28 May 2007	Sch 1 (items 119–177, 183, 184, 186): 29 May 2007 (s 2(1) item 2) Sch 2 (items 1, 2): 19 July 2007 (s 2(1) item 3)	Sch 1 (items 183, 184, 186)
as amended by				
Statute Law Revision Act 2008	73, 2008	3 July 2008	Sch 2 (item 1): 29 May 2007 (s 2(1) item 44)	—

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Corporations (NZ Closer Economic Relations) and Other Legislation Amendment Act 2007	85, 2007	21 June 2007	Sch 3 (items 1, 2): 19 July 2007 (s 2(1) item 7)	—
Communications Legislation Amendment (Information Sharing and Datacasting) Act 2007	178, 2007	28 Sept 2007	Sch 1 (items 6, 7): 29 Sept 2007 (s 2(1) item 4)	—
Broadcasting Legislation Amendment (Digital Radio) Act 2008	114, 2008	31 Oct 2008	Sch 1 (items 4, 5): 1 Nov 2008 (s 2)	—
Offshore Petroleum Amendment (Greenhouse Gas Storage) Act 2008	117, 2008	21 Nov 2008	Sch 3 (items 57, 57A, 57B): 22 Nov 2008 (s 2(1) item 4)	—
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Sch 1 (items 41–44) and Sch 5 (items 85–110): 1 Mar 2010 (s 2(1) items 4, 37) Sch 5 (item 137(a)): 1 Mar 2010 (s 2(1) item 38)	—
Broadcasting Legislation Amendment (Digital Television) Act 2010	94, 2010	29 June 2010	Sch 1 (items 144A–144E, 145): 30 June 2010 (s 2(1) item 2)	—
Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010	103, 2010	13 July 2010	Sch 6 (items 1, 90–95, 189): 1 Jan 2011 (s 2(1) items 3, 5, 7)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010	140, 2010	15 Dec 2010	Sch 1 (items 1–5): 1 Jan 2011 (s 2(1) item 2)	—
Radiocommunications Amendment Act 2010	146, 2010	16 Dec 2010	17 Dec 2010 (s 2)	Sch 1 (item 11)
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Sch 6 (items 90–93): 19 Apr 2011 (s 2(1) item 17)	—
Broadcasting Legislation Amendment (Digital Dividend and Other Measures) Act 2011	36, 2011	26 May 2011	Sch 1 (items 29–53) and Sch 2 (items 62, 63): 27 May 2011 (s 2(1) item 2)	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 970–972) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) item 7, 12)	Sch 3 (items 10, 11)
Navigation (Consequential Amendments) Act 2012	129, 2012	13 Sept 2012	Sch 2 (item 77): 1 July 2013 (s 2(1) item 2)	—
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Sch 1 (item 111) and Sch 3 (item 5): 22 Sept 2012 (s 2(1) items 2, 35)	—
Broadcasting Legislation Amendment (Digital Dividend) Act 2013	51, 2013	28 May 2013	Sch 1 (items 11–24): 1 Oct 2013 (s 2(2)) Sch 1 (item 25): 29 May 2013 (s 2(1))	Sch 1 (item 25)
Statute Law Revision Act 2013	103, 2013	29 June 2013	Sch 3 (items 136–183, 343): 29 June 2013 (s 2(1) item 16)	Sch 3 (item 343)

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Omnibus Repeal Day (Autumn 2014) Act 2014	109, 2014	16 Oct 2014	Sch 2 (items 92–104, 118–143, 155–160, 233–236): 17 Oct 2014 (s 2(1) item 2)	Sch 2 (items 155–160, 234, 236)
Statute Law Revision Act (No. 1) 2015	5, 2015	25 Feb 2015	Sch 1 (items 36, 37), Sch 3 (items 165–169) and Sch 5 (item 6): 25 Mar 2015 (s 2(1) items 2, 10)	—
Acts and Instruments (Framework Reform) Act 2015	10, 2015	5 Mar 2015	Sch 1 (items 161, 162, 166–179) and Sch 3 (items 313–324, 348, 349): 5 Mar 2016 (s 2(1) item 2)	Sch 1 (items 166–179) and Sch 3 (items 348, 349)
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 3 (items 1, 6): 5 Mar 2016 (s 2(1) item 8)	Sch 3 (item 6)
Broadcasting and Other Legislation Amendment (Deregulation) Act 2015	22, 2015	19 Mar 2015	Sch 1 (items 11, 12): 20 Mar 2015 (s 2(1) item 2) Sch 2 (items 135–163, 166): 19 Mar 2015 (s 2(1) item 3)	Sch 2 (item 166)
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 2 (item 317): 1 July 2016 (s 2(1) item 5) Sch 2 (item 356–396): 18 June 2015 (s 2(1) item 6)	Sch 2 (items 356–396)
as amended by				
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 2: 24 Mar 2016 (s 2(1) item 2)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Crimes Legislation Amendment (Powers, Offences and Other Measures) Act 2015	153, 2015	26 Nov 2015	Sch 15 (item 13): 27 Nov 2015 (s 2(1) item 3)	—
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 257): 10 Mar 2016 (s 2(1) item 6)	—
Broadcasting Legislation Amendment (Digital Radio) Act 2016	14, 2016	29 Feb 2016	Sch 1 (items 44–60), Sch 3 (items 8–14), Sch 4 and Sch 5 (item 2): 1 Mar 2016 (s 2(1) item 1)	—
Statute Update Act 2016	61, 2016	23 Sept 2016	Sch 1 (item 401): 21 Oct 2016 (s 2(1) item 1)	—
Law Enforcement Legislation Amendment (State Bodies and Other Measures) Act 2016	86, 2016	30 Nov 2016	Sch 1 (items 1, 56–58): 1 Dec 2016 (s 2(1) items 2, 4) Sch 1 (items 51, 54, 55): 1 July 2017 (s 2(1) item 3)	Sch 1 (items 1, 54–58)
Broadcasting Legislation Amendment (Broadcasting Reform) Act 2017	113, 2017	16 Oct 2017	Sch 5 (items 20–25) and Sch 6 (items 9–13, 38–42): 17 Oct 2017 (s 2(1) items 12, 13, 15)	Sch 5 (items 22–25) and Sch 6 (items 38–43)
as amended by				
Telecommunications Legislation Amendment Act 2019	6, 2019	1 Mar 2019	Sch 3 (items 2, 3): 2 Mar 2019 (s 2(1) item 1)	—

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Communications Legislation Amendment (Deregulation and Other Measures) Act 2019	120, 2019	12 Dec 2019	Sch 2: 12 Dec 2019 (s 2(1) item 1)	Sch 2 (items 2–5)
Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021	13, 2021	1 Mar 2021	Sch 2 (item 148): 1 Sept 2021 (s 2(1) item 5)	—
Competition and Consumer Amendment (Competition Policy Review) Act 2017	114, 2017	27 Oct 2017	Sch 9 (items 164–167): 6 Nov 2017 (s 2(1) item 10)	—
Broadcasting Legislation Amendment (Digital Radio) Act 2018	11, 2018	5 Mar 2018	Sch 1 (items 2–14, 16): 5 Mar 2018 (s 2(1) item 1)	Sch 1 (item 16)
Intelligence Services Amendment (Establishment of the Australian Signals Directorate) Act 2018	25, 2018	11 Apr 2018	Sch 1 (items 90, 100–108): 1 July 2018 (s 2(1) item 2)	Sch 1 (items 100–108)
Timor Sea Maritime Boundaries Treaty Consequential Amendments Act 2019	57, 2019	7 Aug 2019	Sch 1 (items 144–146): 30 Aug 2019 (s 2(1) item 2)	—
National Emergency Declaration (Consequential Amendments) Act 2020	129, 2020	15 Dec 2020	Sch 1 (items 41–46): 16 Dec 2020 (s 2(1) item 2) Sch 2 (item 2): 17 June 2021 (s 2(1) item 3)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020	151, 2020	17 Dec 2020	Sch 1, Sch 2 (items 1, 2, 4), Sch 3, Sch 4 (items 1–35, 42–52), Sch 5, Sch 6 (items 1–35, 41–49), Sch 7, Sch 8, Sch 9 (items 1–40), Sch 10 (items 1, 2) and Sch 11: 17 June 2021 (s 2(1) items 2–4, 6–8, 10, 12, 13) Sch 4 (item 36) and Sch 6 (items 39, 40): 1 Sept 2021 (s 2(1) items 5, 9) Sch 6 (item 50): 18 Dec 2020 (s 2(1) item 11) Note: This amending title was affected by an editorial change (see C2021C00345)	Sch 2 (item 4), Sch 3 (items 109– 120), Sch 4 (items 42–52), Sch 5 (items 22–29), Sch 6 (items 41–50), Sch 7 (item 2) and Sch 8 (items 13–15)
Broadcasting Legislation Amendment (2021 Measures No. 1) Act 2021	62, 2021	29 June 2021	Sch 3 and Sch 6 (items 3–7): 30 June 2021 (s 2(1) item 4)	Sch 6 (item 7)

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Chapter 1	
Part 1.2	
s 3	am No 114, 2003 rs No 151, 2020
s 4	am No 41, 1997; No 59, 1997; No 151, 2020
Part 1.3	
s 5	am No 4, 1994; No 32, 1995; No 41, 1997; No 59, 1997; No 119, 1997; No 145, 1997; No 99, 1998; No 131, 1998; No 146, 1999; No 9, 2000; No 34, 2000; No 108, 2000; No 172, 2000; No 45, 2005; No 128, 2006; No 153, 2006; No 68, 2007; No 5, 2011; No 36, 2011; No 136, 2012; No 51, 2013; No 103, 2013; No 22, 2015; No 14, 2016; No 113, 2017 ed C72 am No 129, 2020; No 151, 2020
s 6	am No 151, 2020
s 7	am No 59, 1997; No 34, 2000; No 45, 2005; No 103, 2013
s 7A	ad No 151, 2020
s 9	rs No 151, 2020
s 9A	ad No 59, 1997 rep No 151, 2020
s 9B.....	ad No 99, 1998
s 9C.....	ad No 68, 2007 am No 8, 2010; No 11, 2018
s 9D	ad No 68, 2007
s 10	am No 103, 2013
s 10A	ad No 34, 2000 am No 45, 2005; No 103, 2013
s 10B.....	ad No 151, 2020
s 11	am No 32, 1995; No 137, 2000; No 5, 2001; No 151, 2020

Endnote 4—Amendment history

Provision affected	How affected
Part 1.4	
Division 2	
s 16	am No 34, 2000; No 47, 2004; No 45, 2005; No 103, 2013
s 17	am No 17, 2006; No 117, 2008
s 17A	ad No 47, 2004
	am No 49, 2007; No 117, 2008; No 57, 2019
Division 4	
s 23	am No 34, 2000; No 45, 2005
s 24	am No 5, 2011; No 25, 2018; No 151, 2020
s 26	am No 5, 2011; No 151, 2020
s 27	am No 125, 2002; No 114, 2003; No 45, 2005; No 86, 2006; No 136, 2012; No 103, 2013; No 5, 2015; No 153, 2015; No 86, 2016; No 151, 2020
s 28	am No 59, 1997; No 45, 2005
Part 1.5	
Part 1.5.....	ad No 151, 2020
s 28A	ad No 151, 2020
s 28B.....	ad No 151, 2020
s 28C.....	ad No 151, 2020
Part 1.6	
Part 1.6.....	ad No 151, 2020
s 28D	ad No 151, 2020
s 28E.....	ad No 151, 2020
s 28F	ad No 151, 2020
Chapter 2	
s 29	am No 41, 1997; No 68, 2007; No 151, 2020
Part 2.1	
s 30	am No 59, 1997; No 45, 2005; No 109, 2014; No 10, 2015; No 151, 2020
s. 31	am. No. 59, 1997; No. 34, 2000
	rs. No. 45, 2005

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
	am. No. 68, 2007 (as am. by 73, 2008); No. 8, 2010; No. 36, 2011; No 14, 2016
s 32	am No 59, 1997; No 34, 2000; No 45, 2005; No 68, 2007; No 36, 2011; No 109, 2014; No 10, 2015; No 22, 2015; No 151, 2020
s. 33	am. No. 59, 1997; No. 45, 2005; No 109, 2014
s. 34	am. No. 59, 1997; No. 45, 2005 rep No 109, 2014
s 35	am No 103, 2013; No 109, 2014 rep No 10, 2015
Part 2.2	
Part 2.2 heading	am No 151, 2020
s 36	am No 41, 1997; No 59, 1997; No 34, 2000; No 45, 2005; No 68, 2007 rep No 151, 2020
s 37	am No 59, 1997; No 45, 2005; No 109, 2014; No 151, 2020
s 38	am No 41, 1997; No 59, 1997; No 45, 2005; No 109, 2014 rep No 151, 2020
s 39	am No 4, 1994; No 41, 1997; No 59, 1997; No 45, 2005; No 109, 2014; No 151, 2020
s 39A	ad No 41, 1997 am No 45, 2005; No 109, 2014; No 151, 2020
s. 40	am. No. 59, 1997; No. 45, 2005 rep No 109, 2014
s 41	am No 41, 1997; No 59, 1997; No 45, 2005; No 151, 2020
s 42	am No 59, 1997; No 45, 2005; No 109, 2014; No 151, 2020
s. 43	am. No. 59, 1997; No. 45, 2005 rep No 109, 2014
s 44	am No 59, 1997; No 45, 2005; No 151, 2020
Part 2.3	
Part 2.3.....	ad. No. 68, 2007
s 44A	ad No 68, 2007 am No 8, 2010; No 22, 2015; No 11, 2018; No 151, 2020; No 62, 2021

Endnote 4—Amendment history

Provision affected	How affected
Chapter 3	
s. 45	am. No. 41, 1997
Part 3.1	
Division 1	
Division 1 heading.....	am No 151, 2020
s 46	am No 32, 1995; No 5, 2001; No 151, 2020
s 47	am No 32, 1995; No 5, 2001; No 151, 2020
s 48	am No 151, 2020
s 49	am No 34, 2000; No 129, 2020; No 151, 2020
Part 3.2	
s 51	am No 41, 1997; No 59, 1997; No 45, 2005; No 103, 2010; No 151, 2020
Division 1	
Subdivision A	rep No 151, 2020
s 52	am No 41, 1997
	rep No 151, 2020
s 53	am No 59, 1997; No 45, 2005
	rep No 151, 2020
s 54	am No 59, 1997; No 45, 2005
	rep No 151, 2020
s 55	am No 59, 1997; No 45, 2005
	rep No 151, 2020
s 56	am No 59, 1997; No 45, 2005
	rep No 151, 2020
s 57	am No 59, 1997; No 45, 2005
	rep No 151, 2020
s 58	am No 59, 1997; No 45, 2005; No 140, 2010
	rep No 151, 2020
s 59	am No 59, 1997; No 45, 2005
	rep No 151, 2020
Subdivision B	
Subdivision B heading.....	rs No 41, 1997

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 60	am No 41, 1997; No 59, 1997; No 34, 2000; No 45, 2005; No 140, 2010; No 151, 2020
s 60A	ad No 151, 2020
s 60B.....	ad No 151, 2020
s. 61	am. No. 59, 1997; No. 45, 2005
s. 62	am. Nos. 41 and 59, 1997; No. 45, 2005; No. 140, 2010
s. 63	am. No. 59, 1997; No. 45, 2005
Subdivision C	
s 65	am No 41, 1997; No 151, 2020
s 65A	ad No 151, 2020
s 66	am No 41, 1997
s. 67	am. Nos. 59 and 145, 1997; No. 45, 2005
s 68	am No 59, 1997; No 45, 2005; No 140, 2010; No 103, 2013; No 151, 2020
s 68A	ad No 41, 1997 am No 103, 2010 rs No 114, 2017 am No 151, 2020
s. 69	am. No. 59, 1997; No. 45, 2005
s 69A	ad No 34, 2000 am No 151, 2020
s. 70	rep. No. 41, 1997
s 71	am No 41, 1997; No 59, 1997; No 34, 2000; No 45, 2005; No 151, 2020
Subdivision D	
Subdivision D heading.....	rs No 103, 2010
Subdivision D	ad No 41, 1997
s 71A	ad No 41, 1997 am No 103, 2010 rs No 114, 2017 am No 151, 2020

Endnote 4—Amendment history

Provision affected	How affected
Division 2	
s 72	am No 59, 1997; No 45, 2005; No 151, 2020
s 73	am No 59, 1997; No 45, 2005; No 151, 2020
s 73A	ad No 151, 2020
Division 3	
ss. 74, 75	am. No. 59, 1997; No. 45, 2005
s. 77	am. No. 59, 1997; No. 45, 2005
Division 3A	
Division 3A	ad No 151, 2020
s 77A	ad No 151, 2020
s 77B	ad No 151, 2020
s 77C	ad No 151, 2020
s 77D	ad No 151, 2020
s 77E	ad No 151, 2020
Division 4	
Division 4 heading	rs No 151, 2020
s 78	am No 59, 1997; No 45, 2005; No 146, 2010; No 109, 2014; No 151, 2020
s 79	am No 59, 1997; No 45, 2005; No 146, 2010; No 151, 2020
s 80	am No 151, 2020
s 81	am No 59, 1997; No 45, 2005; No 151, 2020
s 82	am No 32, 1995; No 59, 1997; No 45, 2005; No 146, 2010; No 10, 2015 rep No 151, 2020
s 83	am No 41, 1997
Division 5	
s. 85	am. No. 140, 2010
s. 86	am. No. 32, 1995; No. 59, 1997; No. 45, 2005
s. 87	am. Nos. 41 and 59, 1997; No. 45, 2005
s 88	am No 59, 1997; No 45, 2005; No 103, 2013; No 151, 2020

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
Division 6	
Subdivision A	
s 89	am No 32, 1995; No 59, 1997; No 45, 2005
s. 90	am. No. 59, 1997; No. 45, 2005
Subdivision B	
s 91	am No 59, 1997; No 45, 2005
s 92	am No 59, 1997; No 45, 2005
s. 95	am. No. 59, 1997; No. 45, 2005
Part 3.3	
s 96	am No 108, 2000; No 151, 2020
s 96A	ad No 62, 2021
	ed C75
s 96B.....	ad No 62, 2021
Division 1	
Division 1 heading.....	am No 151, 2020
s 97	am No 59, 1997; No 45, 2005; No 151, 2020
s 98	am No 41, 1997; No 59, 1997; No 45, 2005; No 103, 2013; No 151, 2020
s 98A	ad No 128, 2006
	am No 8, 2010
	rep No 151, 2020
s 98B.....	ad No 128, 2006
	am No 8, 2010
	rep No 151, 2020
ss. 98C, 98D	ad. No. 68, 2007
	am. No. 8, 2010
s. 98E.....	ad. No. 68, 2007
Division 2	
s 99	am No 59, 1997; No 45, 2005; No 151, 2020

Endnote 4—Amendment history

Provision affected	How affected
s 100	am No 4, 1994; No 32, 1995; No 41, 1997; No 59, 1997; No 119, 1997; No 99, 1998; No 131, 1998; No 34, 2000; No 108, 2000; No 172, 2000; No 92, 2001; No 45, 2005; No 128, 2006; No 68, 2007; No 94, 2010; No 36, 2011; No 22, 2015; No 113, 2017; No 151, 2020
s. 100AA.....	ad. No. 36, 2011 rs No 22, 2015
s. 100A.....	ad. No. 99, 1998 am. No. 108, 2000; No. 108, 2003; No. 128, 2006; No 51, 2013; No 22, 2015
s 100B.....	ad No 99, 1998 am No 108, 2000; No 108, 2003; No 45, 2005; No 128, 2006; No 36, 2011; No 51, 2013 rep No 22, 2015
s 100C.....	ad No 108, 2000
s 100D	ad No 108, 2000 am No 128, 2006
s. 100E.....	ad. No. 128, 2006
s. 101	am. No. 59, 1997; No. 45, 2005
s. 101A.....	ad. No. 119, 1997 am. No. 45, 2005
s 101B.....	ad. No. 128, 2006 am. No. 94, 2010 rep No 22, 2015
s 101C.....	ad. No. 128, 2006 am. No. 94, 2010 rep No 22, 2015
s. 102	am. No. 59, 1997; No. 99, 1998; Nos. 108 and 172, 2000; No. 108, 2003; No. 45, 2005; Nos. 127 and 128, 2006; No. 68, 2007; No 51, 2013; No 22, 2015
s. 102A.....	ad. No. 99, 1998 am. Nos. 108 and 172, 2000; No. 108, 2003; No. 45, 2005; Nos. 127 and 128, 2006; No. 36, 2011; No 51, 2013

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
	rep No 22, 2015
s 102AA.....	ad. No. 128, 2006
	rep No 22, 2015
s 102AB.....	ad. No. 128, 2006
	rep No 22, 2015
s 102AC.....	ad No 128, 2006
	am No 36, 2011
	rs No 22, 2015
s. 102AD.....	ad. No. 36, 2011
	rs No 22, 2015
ss. 102AE, 102AF.....	ad. No. 94, 2010
	rep. No. 36, 2011
s 102AG.....	ad. No. 94, 2010
	rep No 22, 2015
s 102AH.....	ad. No. 94, 2010
	rep No 22, 2015
s 102B.....	ad No 108, 2000
	rs No 45, 2005
	rep No 151, 2020
s 102C.....	ad No 68, 2007
	am No 8, 2010; No 11, 2018
s 102D	ad No 68, 2007
	am No 8, 2010; No 11, 2018
ss. 102E, 102F	ad. No. 68, 2007
s 102G	ad No 151, 2020
s 103	am No 119, 1997; No 99, 1998; No 108, 2000; No 120, 2002; No 128, 2006; No 68, 2007; No 103, 2013; No 22, 2015; No 151, 2020; No 62, 2021
s 103A	ad No 151, 2020
s 103B.....	ad No 151, 2020
s 103C.....	ad No 151, 2020

Endnote 4—Amendment history

Provision affected	How affected
s. 104	rs. No. 32, 1995 am. No. 59, 1997; No. 114, 2003; No. 45, 2005
s. 105	am No 59, 1997; No 114, 2003; No 45, 2005 rs No 151, 2020
s. 105A	ad No 151, 2020
s. 106	am No 32, 1995; No 41, 1997; No 59, 1997; No 119, 1997; No 131, 1998; No 108, 2000; No 45, 2005; No 128, 2006; No 103, 2013; No 151, 2020
s. 106A	ad No 41, 1997 am No 99, 1998; No 131, 1998; No 128, 2006; No 103, 2010; No 22, 2015 rs No 114, 2017 am No 151, 2020
Division 3	
s. 107	am No 32, 1995; No 41, 1997; No 59, 1997; No 119, 1997; No 99, 1998; No 108, 2000; No 45, 2005; No 128, 2006; No 68, 2007; No 8, 2010; No 103, 2013; No 22, 2015; No 113, 2017; No 151, 2020
s. 108	am No 32, 1995; No 119, 1997; No 99, 1998; No 34, 2000; No 108, 2000; No 172, 2000; No 128, 2006; No 68, 2007; No 8, 2010; No 129, 2012; No 22, 2015; No 151, 2020
s. 108A	ad No 119, 1997 am No 45, 2005; No 103, 2013; No 151, 2020
s. 109	am No 59, 1997; No 99, 1998; No 45, 2005; No 128, 2006; No 8, 2010; No 36, 2011; No 22, 2015; No 113, 2017
s. 109A	ad No 108, 2000 am No 45, 2005; No 128, 2006; No 153, 2006; No 51, 2013; No 113, 2017 rep No 151, 2020
s. 109B.....	ad. No. 68, 2007 am. No. 8, 2010; No 14, 2016
s. 109C.....	ad. No. 68, 2007
s. 109D.....	ad. No. 68, 2007 am. No. 114, 2008; No 14, 2016

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 110	am No 4, 1994; No 119, 1997; No 108, 2000; No 68, 2007; No 151, 2020
s 110A	ad No 151, 2020
s 111	am No 32, 1995; No 59, 1997; No 119, 1997; No 99, 1998; No 108, 2000; No 45, 2005; No 128, 2006; No 68, 2007; No 178, 2007; No 22, 2015; No 151, 2020
s 111A	ad No 151, 2020
s 112	am. No. 59, 1997; No. 45, 2005; No 103, 2013
s 113	am No 32, 1995 rs No 5, 2001 am No 4, 2016 rs No 151, 2020
s. 113A.....	ad. No. 114, 2008
Division 4	
s 114	am No 59, 1997; No 108, 2000; No 45, 2005; No 68, 2007; No 151, 2020
s 114A	ad No 41, 1997 am No 103, 2010 rs No 114, 2017 am No 151, 2020
s 115	am No 59, 1997; No 45, 2005; No 103, 2013; No 151, 2020
s 116	am No 59, 1997; No 45, 2005; No 151, 2020
s 117	am No 32, 1995; No 5, 2001; No 151, 2020
s 118	am No 32, 1995; No 108, 2000; No 172, 2000; No 5, 2001; No 45, 2005; No 151, 2020
Division 4A	ad No 128, 2006 rep No 151, 2020
s 118A	ad No 128, 2006 rep No 151, 2020
s 118B.....	ad No 128, 2006 rep No 151, 2020
s 118C.....	ad No 128, 2006 am No 85, 2007

Endnote 4—Amendment history

Provision affected	How affected
	rep No 151, 2020
s 118D	ad No 128, 2006
	rep No 151, 2020
s 118E	ad No 128, 2006
	rep No 151, 2020
s 118F	ad No 128, 2006
	rep No 151, 2020
s 118G	ad No 128, 2006
	am No 85, 2007
	rep No 151, 2020
s 118H	ad No 128, 2006
	rep No 151, 2020
s 118J	ad No 128, 2006
	am No 8, 2010
	rep No 151, 2020
s 118K	ad No 128, 2006
	rep No 151, 2020
s 118L	ad No 128, 2006
	rep No 151, 2020
s 118M	ad No 128, 2006
	am No 51, 2013
	rep No 151, 2020
Division 4B	
Division 4B	ad No 68, 2007
Subdivision A	
s. 118N	ad. No. 68, 2007
s 118NA	ad No 68, 2007
s 118NB	ad No 68, 2007
	am No 14, 2016
s 118NC	ad No 68, 2007

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
Subdivision B	
s 118ND.....	ad No 68, 2007 am No 11, 2018
s. 118NE.....	ad. No. 68, 2007 am. No. 68, 2007
s. 118NF.....	ad. No. 68, 2007 am. No. 8, 2010
s. 118NG.....	ad. No. 68, 2007
s. 118NH.....	ad. No. 68, 2007 am. No. 8, 2010
s. 118NI.....	ad. No. 68, 2007 am. No. 68, 2007
s. 118NJ.....	ad. No. 68, 2007
s. 118NK.....	ad. No. 68, 2007 am. No. 8, 2010
Subdivision C	
s 118NL.....	ad No 68, 2007
s 118NM.....	ad No 68, 2007
s 118NN.....	ad No 68, 2007
s 118NO.....	ad No 68, 2007
s 118NP.....	ad No 68, 2007
s 118NQ.....	ad No 68, 2007 am No 14, 2016
s 118NR.....	ad No 68, 2007
s 118NS.....	ad No 68, 2007
s 118NT.....	ad. No. 68, 2007 am. No. 8, 2010; No 11, 2018
s 118NU.....	ad No 68, 2007 am No 8, 2010
s 118NV.....	ad No 68, 2007
s 118NW.....	ad No 68, 2007

Endnote 4—Amendment history

Provision affected	How affected
s 118NX.....	ad No 68, 2007 am No 14, 2016
s 118NY.....	ad No 68, 2007 am No 14, 2016
Subdivision D	
s. 118NZ.....	ad. No. 68, 2007
s. 118P.....	ad. No. 68, 2007
Subdivision E	
s 118PA.....	ad No 68, 2007
s 118PB.....	ad No 68, 2007
s 118PC.....	ad No 68, 2007
s 118PD.....	ad No 68, 2007 am No 46, 2011
Subdivision F	
s. 118PE.....	ad. No. 68, 2007
s 118PF.....	ad No 68, 2007 am No 8, 2010; No 103, 2010
s. 118PG.....	ad. No. 68, 2007 am. No. 103, 2010
s. 118PH.....	ad. No. 68, 2007
Subdivision G	
ss. 118PI–118PM.....	ad. No. 68, 2007
Subdivision H	
s. 118PN–118PP.....	ad. No. 68, 2007
Division 4C	
Division 4C.....	ad No 68, 2007
Subdivision A	
s. 118Q.....	ad. No. 68, 2007
s. 118QA.....	ad. No. 68, 2007 am. No. 46, 2011
ss. 118QB, 118QC.....	ad. No. 68, 2007

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
Subdivision B	
ss. 118QD–118QH.....	ad. No. 68, 2007
Subdivision C	
ss. 118QI, 118QJ	ad. No. 68, 2007
Division 5	
s 119	am No 59, 1997; No 45, 2005; No 151, 2020
s 120	am No 59, 1997; No 45, 2005
s 121	am No 59, 1997; No 45, 2005
s 122	am No 59, 1997; No 45, 2005
s. 122A.....	ad. No. 34, 2000
	am. No. 45, 2005
s. 123	am. No. 59, 1997; No. 45, 2005
s 124	am No 32, 1995; No 59, 1997; No 137, 2000; No 5, 2001; No 45, 2005; No 151, 2020
Division 6	
Division 6 heading.....	rs No 108, 2000
	am No 151, 2020
Subdivision A	
Subdivision A heading.....	ad No 172, 2000
s 125	am No 59, 1997; No 119, 1997; No 99, 1998; No 108, 2000; No 172, 2000; No 45, 2005; No 128, 2006; No 51, 2013; No 22, 2015; No 151, 2020
s. 126	am. No. 59, 1997; No. 45, 2005
s. 128	am. No. 59, 1997; No. 45, 2005
Subdivision B	
Subdivision B	ad No 172, 2000
s. 128A.....	ad. No. 172, 2000
s. 128B.....	ad. No. 172, 2000
	am. No. 45, 2005
Division 6A heading.....	rs No 45, 2005
	rep No 151, 2020

Endnote 4—Amendment history

Provision affected	How affected
Division 6A	ad No 108, 2000 rep No 151, 2020
s 128C.....	ad No 108, 2000 rs No 45, 2005 am No 128, 2006; No 51, 2013 rep No 151, 2020
s 128D	ad No 108, 2000 rs No 45, 2005 am No 128, 2006; No 51, 2013 rep No 151, 2020
s. 128E.....	ad. No. 108, 2000 am. No. 45, 2005 rep. No. 128, 2006
Division 7	
s 129	am No 59, 1997; No 119, 1997; No 99, 1998; No 34, 2000; No 45, 2005; No 128, 2006; No 68, 2007; No 22, 2015 rs No 151, 2020
s 129A	ad No 151, 2020
s 130	am No 32, 1995; No 41, 1997; No 59, 1997; No 99, 1998; No 34, 2000; No 108, 2000; No 45, 2005; No 22, 2015; No 151, 2020
s 131	am No 108, 2000; No 68, 2007; No 151, 2020
Division 8	
Division 8	ad No 32, 1995
s 131AA.....	ad No 32, 1995 am No 59, 1997; No 131, 1998; No 45, 2005; No 68, 2007; No 14, 2016; No 151, 2020
s 131AB.....	ad No 32, 1995 am No 59, 1997; No 99, 1998; No 108, 2000; No 45, 2005; No 22, 2015; No 151, 2020
s 131AC.....	ad No 32, 1995 am No 59, 1997; No 45, 2005; No 103, 2013; No 151, 2020
s 131ACA.....	ad No 108, 2000

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
	rs No 45, 2005
	rep No 151, 2020
Division 9	ad No 99, 1998
	rep No 108, 2000
s. 131AD	ad. No. 99, 1998
	rep. No. 108, 2000
Division 10	
Division 10	ad No 172, 2000
s 131AE	ad No 172, 2000
	am No 45, 2005
s 131AF	ad No 172, 2000
	am No 45, 2005
s 131AG	ad No 172, 2000
Part 3.4	
Division 1	
s. 132	am. No. 59, 1997; No. 45, 2005; No 109, 2014; No 109, 2014; No 10, 2015
s 133	am No 59, 1997; No 45, 2005; No 10, 2015; No 151, 2020
s. 134	am. No. 59, 1997; No. 45, 2005
	rs No 109, 2014
s. 135	am. No. 59, 1997; No. 45, 2005
	rep No 109, 2014
s. 136	am. No. 59, 1997; No. 45, 2005; No. 146, 2010; No 109, 2014
s. 137	am. No. 59, 1997; No. 45, 2005
s 138	am No 59, 1997; No 45, 2005
	rs No 146, 2010
	am No 151, 2020
s 139	am No 103, 2013
	rep No 10, 2015
Division 2	
s. 140	am. No. 59, 1997; No. 45, 2005

Endnote 4—Amendment history

Provision affected	How affected
s. 141	am. No. 59, 1997; No. 45, 2005
s. 142	am. No. 59, 1997; No. 45, 2005
Part 3.5	
ss. 143, 144	am. No. 59, 1997; No. 45, 2005
s. 145	am No 59, 1997; No 34, 2000; No 45, 2005; No 151, 2020
s. 146	am. No. 59, 1997; No. 45, 2005
s. 147	am. No. 4, 1994; Nos. 41 and 59, 1997; No. 45, 2005
s. 148	am No 32, 1995; No 59, 1997; No 108, 2000; No 172, 2000; No 45, 2005; No 151, 2020
s. 149	am. No. 59, 1997; No. 45, 2005
s. 150	am. No. 59, 1997; No. 45, 2005; No 109, 2014
s. 151	am. No. 59, 1997; No. 45, 2005
s. 152	am. No. 59, 1997; No. 45, 2005
s. 153	am. No. 32, 1995; No. 59, 1997; No. 45, 2005
Part 3.6	
Part 3.6	ad. No. 41, 1997
s. 153A	ad No 41, 1997 am No 151, 2020
s. 153B	ad No 41, 1997 am No 151, 2020
s. 153C	ad No 41, 1997 am No 59, 1997; No 45, 2005; No 103, 2013; No 109, 2014 rep No 151, 2020
s. 153D	ad. No. 41, 1997
s. 153E	ad No 41, 1997 am No 59, 1997; No 45, 2005 rep No 151, 2020
s. 153F	ad No 41, 1997 am No 59, 1997; No 45, 2005 rep No 151, 2020
s. 153G	ad No 41, 1997

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
	am No 59, 1997; No 45, 2005; No 109, 2014
	rep No 151, 2020
s. 153H.....	ad. No. 41, 1997
	am. No. 36, 2011; No 22, 2015
s 153J.....	ad No 41, 1997
	am No 59, 1997; No 45, 2005; No 151, 2020
s 153K	ad No 41, 1997
	am No 59, 1997; No 45, 2005; No 151, 2020
s 153L.....	ad No 41, 1997
	am No 151, 2020
s 153M.....	ad No 41, 1997
	am No 151, 2020
s 153N	ad No 41, 1997
	am No 59, 1997; No 45, 2005; No 151, 2020
s 153P	ad No 41, 1997
	am No 59, 1997; No 114, 2003; No 45, 2005; No 36, 2011; No 22, 2015; No 151, 2020
Chapter 4	
s 154	am No 151, 2020
Part 4.1	
Part 4.1.....	rs No 151, 2020
Division 1	
s 155	am No 41, 1997
	rs No 151, 2020
Division 2	
s 156	am No 4, 1994; No 41, 1997; No 59, 1997; No. 45, 2005
	rs No 151, 2020
s 157	am No 4, 1994; No 32, 1995; No 41, 1997; No 59, 1997; No 5, 2001
	rs No 151, 2020
s 158	am No 4, 1994; No 32, 1995; No 41, 1997; No 59, 1997; No 5, 2001
	rs No 151, 2020

Endnote 4—Amendment history

Provision affected	How affected
s 159	am No 41, 1997 rs No 151, 2020
s 160	am No 32, 1995; No 41, 1997; No 5, 2001 rs No 151, 2020
s 161	rs No 151, 2020
s 162	am No 41, 1997; No 59, 1997; No 45, 2005; No 103, 2013 rs No 151, 2020
s 163	am No 41, 1997; No 59, 1997; No 63, 2002; No 45, 2005; No 46, 2011 rs No 151, 2020
s 163A	ad No 41, 1997 am No 59, 1997; No 45, 2005 rep No 151, 2020
s 164	am No 59, 1997 rep No 109, 2014 ad No 151, 2020
Division 3	
s 165	am No 59, 1997 rep No 103, 2013 ad No 151, 2020
s 166	am No 41, 1997 rs No 151, 2020
Division 4	
Division 4 heading.....	rs No 41, 1997; No 151, 2020
Subdivision A	
s 167	am No 41, 1997; No 59, 1997; No 45, 2005 rs No 151, 2020
s 168	am No 59, 1997; No 45, 2005 rs No 151, 2020
s 169	am No 59, 1997; No 45, 2005; No 103, 2013 rs No 151, 2020
s 169A	ad No 59, 1997

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
	rep No 151, 2020
s 170	am No 32, 1995
	rs No 5, 2001
	am No 4, 2016
	rs No 151, 2020
s 171	am No 59, 1997; No 137, 2000; No 45, 2005
	rs No 151, 2020
	am No 151, 2020
Subdivision B	
s 172	am No 41, 1997; No 34, 2000; No 129, 2020
	rs No 151, 2020
s 173	am No 41, 1997
	rs No 151, 2020
s 174	am No 59, 1997; No 45, 2005
	rs No 151, 2020
s 175	rs No 151, 2020
s 176	rs No 151, 2020
s 177	rs No 151, 2020
	am No 151, 2020
Subdivision C	
s 178	am No 5, 2001
	rs No 151, 2020
Division 6	rep No 41, 1997
Subdivision D	
s 179	rep No 41, 1997
	ad No 151, 2020
s 180	rep No 41, 1997
	ad No 151, 2020
s 181	rep No 41, 1997
	ad No 151, 2020
s 182	am No 32, 1995; No 41, 1997; No 59, 1997; No 45, 2005; No 10, 2015

Endnote 4—Amendment history

Provision affected	How affected
	rs No 151, 2020
Division 5	
Subdivision A	
s 183	rs No 59, 1997 am No 45, 2005 rs No 151, 2020
s 183A	ad No 59, 1997 am No 45, 2005 rep No 151, 2020
s 184	am No 4, 1994; No 41, 1997 rep No 59, 1997 ad No 151, 2020
s 185	rep No 59, 1997 ad No 151, 2020
s 186	am No 32, 1995; No 41, 1997; No 59, 1997; No. 5, 2001 rs No 151, 2020
s 187	rs No 4, 1994 am No 41, 1997; No 59, 1997; No 5, 2001 rs No 151, 2020 am No 151, 2020
s 187A	ad No 32, 1995 am No 41, 1997; No 59, 1997; No. 5, 2001; No. 45, 2005; No 10, 2015 rep No 151, 2020
Subdivision B	
s 188	rs No 151, 2020
s 188A	ad No 59, 1997 am No 5, 2001; No 148, 2003; No 45, 2005; No 103, 2013; No 4, 2016 rep No 151, 2020
s 189	am No 32, 1995; No 5, 2001 rep No 151, 2020
s 190	am No 41, 1997; No 59, 1997; No 45, 2005; No 10, 2015

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
	rep No 151, 2020
s 191	am No 59, 1997; No 45, 2005; No 109, 2014
	rep No 151, 2020
Part 4.2	
s. 192	am. No. 32, 1995; No. 34, 2000
s. 193	am. No. 32, 1995; No. 59, 1997; No. 45, 2005
s. 194	am. No. 32, 1995
s 195	am No 32, 1995; No 59, 1997; No 34, 2000; No 45, 2005; No 151, 2020
s 196	am No 34, 2000; No 129, 2020; No 151, 2020
s 197	rs No 5, 2001
	am No 4, 2016
	rs No 151, 2020
s. 198	am. No. 32, 1995
s. 199	am. No. 32, 1995; No. 5, 2001
Part 4.3	
Division 1	
s 202	am No 59, 1997; No 45, 2005
	rs No 151, 2020
s 203	am No 59, 1997; No 45, 2005
	rep No 151, 2020
s 204	am No 146, 1999
	rep No 151, 2020
Division 2	
ss. 205–207	am. No. 59, 1997; No. 45, 2005
Division 3	
s 208	am No 59, 1997; No 45, 2005
s 209	am No 59, 1997; No 45, 2005
s 210	am No 59, 1997; No 137, 2000; No 5, 2001; No 45, 2005; No 61, 2016
Division 4	
s 212	am No 59, 1997; No 45, 2005
s 213	am No 59, 1997; No 45, 2005

Endnote 4—Amendment history

Provision affected	How affected
s 214	am No 32, 1995 rs No 5, 2001 am No 4, 2016; No 151, 2020
Division 5	
s. 218	am. No. 59, 1997; No. 45, 2005 rep No 5, 2015
Part 4.4	
Division 1	
s 221A	ad No 129, 2020
Division 2	
s 226	am No 151, 2020
s. 227	am. No. 32, 1995; No. 34, 2000; No. 5, 2001
s 229	am No 103, 2013
Division 3	
s 230	am No 103, 2013
Chapter 5	
s 231	am No 59, 1997; No 45, 2005; No 120, 2006; No 151, 2020
Part 5.1	
Part 5.1 heading	rs No 59, 1997
Division 1 heading	rep No 59, 1997
s. 232	rep. No. 59, 1997
s. 233	am. No. 41, 1997 rep. No. 59, 1997
ss. 234–236	rep. No. 59, 1997
s. 237	am. No. 32, 1995 rep. No. 59, 1997
s 238	am No 32, 1995; No 41, 1997; No 59, 1997; No 119, 1997; No 108, 2000; No 45, 2005; No 151, 2020
Div. 2 of Part 5.1	rep. No. 59, 1997
ss. 239–254	rep. No. 59, 1997
Part 5.2	rep No 151, 2020

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 255	am No 4, 1994; No 59, 1997; No 45, 2005 rep No 151, 2020
s 256	am No 59, 1997; No 45, 2005 rep No 151, 2020
s 257	am No 59, 1997; No 45, 2005 rep No 151, 2020
s 258	am No 59, 1997; No 45, 2005 rep No 151, 2020
s 259	am No 59, 1997; No 45, 2005 rep No 151, 2020
s 260	am No 59, 1997; No 45, 2005 rep No 151, 2020
s 261	rs No 59, 1997 am No 45, 2005 rep No 151, 2020
s 261A	ad No 59, 1997 am No 45, 2005 rep No 151, 2020
s 261B.....	ad No 59, 1997 am No 5, 2001; No 45, 2005; No 4, 2016 rep No 151, 2020
s 261C.....	ad No 59, 1997 am No 5, 2001; No 45, 2005; No 4, 2016 rep No 151, 2020
s 261D	ad No 59, 1997 am No 45, 2005 rep No 151, 2020
Part 5.3	
s 262	am No 41, 1997; No 59, 1997; No 45, 2005; No 151, 2020
Part 5.4	
s 263	am No 32, 1995; No 59, 1997; No 34, 2000; No 45, 2005

Endnote 4—Amendment history

Provision affected	How affected
	rs No 151, 2020
s 264	am No 59, 1997; No 34, 2000; No 45, 2005
	rs No 151, 2020
s 264A	ad No 151, 2020
s. 265	am. No. 59, 1997; No. 45, 2005
s 266	am No 59, 1997; No 34, 2000; No 45, 2005; No 103, 2013
	rs No 151, 2020
s. 266A.....	ad. No. 32, 1995
	am. No. 59, 1997; No. 45, 2005; No 103, 2013
Part 5.5	
Part 5.5.....	rs No 151, 2020
Division 1	
s 267	am No 59, 1997; No 45, 2005
	rs No 151, 2020
Division 2	
s 268	am No 32, 1995; No 59, 1997; No 5, 2001; No 45, 2005
	rs No 151, 2020
s 269	am No 34, 2000; No 129, 2020
	rs No 151, 2020
	am No 151, 2020
s 270	rs No 151, 2020
s 271	rs No 151, 2020
	am No 151, 2020
s 272	am No 34, 2000
	rs No 151, 2020
	am No 151, 2020
Division 3	
s 273	rs No 151, 2020
s 274	rs No 151, 2020
s 275	am No 34, 2000
	rs No 151, 2020

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 276	am No 59, 1997; No 45, 2005 rs No 151, 2020
s 277	am No 59, 1997; No 34, 2000 rs No 151, 2020
s 278	am No 32, 1995; No 5, 2001 rs No 151, 2020
s 279	am No 32, 1995; No 59, 1997; No 34, 2000; No 5, 2001; No 151, 2020 rs No 151, 2020
s 280	rs No 151, 2020
s 281	am No 59, 1997; No 45, 2005 rs No 151, 2020
s 282	rs No 151, 2020
s 283	am No 34, 2000; No 5, 2011 rs No 151, 2020
Division 4	
s 284	rs No 151, 2020
Division 5	
s 284A	ad No 151, 2020 am No 151, 2020
s 284B.....	ad No 151, 2020 am No 151, 2020
s 284C.....	ad No 151, 2020
s 284D	ad No 151, 2020
s 284E.....	ad No 151, 2020
s 284F	ad No 151, 2020
s 284H	ad No 151, 2020
s 284J.....	ad No 151, 2020
s 284K	ad No 151, 2020
Division 6	
Subdivision A	
s 284KA.....	ad No 151, 2020

Endnote 4—Amendment history

Provision affected	How affected
Subdivision B	
s 284KB	ad No 151, 2020
s 284KC	ad No 151, 2020
Subdivision C	
s 284KD	ad No 151, 2020
	am No 151, 2020
s 284KE	ad No 151, 2020
Division 7	
s 284L	ad No 151, 2020
	am No 151, 2020
s 284M	ad No 151, 2020
Division 8	
s 284N	ad No 151, 2020
Division 9	
s 284P	ad No 151, 2020
s 284Q	ad No 151, 2020
Part 5.5A	
Part 5.5A	ad No 151, 2020
s 284R	ad No 151, 2020
s 284S	ad No 151, 2020
s 284T	ad No 151, 2020
s 284U	ad No 151, 2020
s 284V	ad No 151, 2020
s 284W	ad No 151, 2020
Part 5.6	
Division 1 heading	ad No 108, 2000
	rs No 45, 2005
	rep No 151, 2020
s 285	am No 32, 1995; No 59, 1997; No 119, 1997; No 108, 2000; No 172, 2000; No 45, 2005; No 68, 2007; No 151, 2020
s 286	am No 59, 1997; No 45, 2005; No 151, 2020

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 287	am No 59, 1997; No 45, 2005
s 288	am No 59, 1997; No 45, 2005
ss. 289, 290	am. No. 59, 1997; No. 45, 2005
s. 292	am. No. 59, 1997; No. 45, 2005
Division 2 heading	rs No 45, 2005
	rep No 151, 2020
Division 2	ad No 108, 2000
	rep No 151, 2020
s 292A	ad No 108, 2000
	am No 45, 2005
	rep No 151, 2020
s 292B	ad No 108, 2000
	am No 45, 2005
	rep No 151, 2020
s 293	am No 32, 1995; No 41, 1997
	rep No 59, 1997
Part 5.7	
s. 294	am. No. 59, 1997; No. 45, 2005; No. 146, 2010
s. 295	am. No. 59, 1997; No. 45, 2005
s. 296	am. No. 59, 1997; No. 45, 2005
s 298A	ad No 34, 2000
	am No 45, 2005
	rs No 151, 2020
Part 5.8	ad No 120, 2006
	rep No 151, 2020
s 298B	ad No 120, 2006
	rep No 151, 2020
s 298C	ad No 120, 2006
	am No 8, 2010
	rep No 151, 2020
s 298D	ad No 120, 2006

Endnote 4—Amendment history

Provision affected	How affected
	rep No 151, 2020
Chapter 6	
s 300	am No 32, 1995; No 59, 1997; No 45, 2005; No 103, 2013; No 151, 2020
s 300A	ad No 151, 2020
s 300B.....	ad No 151, 2020
s 300C.....	ad No 151, 2020
s 301	am No 32, 1995; No 5, 2001
	rep No 151, 2020
s 302	am No 32, 1995
	rep No 137, 2000
	ad No 151, 2020
s. 303	am. Nos. 41 and 59, 1997; No. 45, 2005
s 304	am No 59, 1997; No 45, 2005
	rs No 151, 2020
s 304A	ad No 151, 2020
s 305	am No 59, 1997; No 45, 2005
	ed C68
	am No 151, 2020
s 305A	ad No 151, 2020
s. 306	am. No. 137, 2000; No 5, 2015
s. 307	am. No. 4, 1994; No. 59, 1997; No. 45, 2005
s 308	am No 151, 2020
s 308A	ad No 151, 2020
s. 311	am. No. 59, 1997; No. 45, 2005; No 59, 2015
s. 312	am. No. 41, 1997; No. 103, 2010
s. 313A.....	ad. No. 5, 2001
s 313B.....	ad No 68, 2007
	rep No 14, 2016
	ad No 151, 2020
s 314	am No 4, 1994; No 32, 1995; No 34, 2000; No 151, 2020
s 314A	ad No 32, 1995

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
	rs No 59, 1997
	am No 10, 2015; No 151, 2020
s 315	am No 4, 1994; No 32, 1995
	rs No 34, 2000
	rep No 151, 2020
Schedule	
Schedule	am. No. 4, 1994; No. 59, 1997; No. 45, 2005